

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

CASE 12-M-0192 - Joint Petition of Fortis Inc. et al. and CH Energy Group, Inc. et al. for Approval of the Acquisition of CH Energy Group, Inc. by Fortis Inc. and Related Transactions.

ORDER AUTHORIZING ACQUISITION
SUBJECT TO CONDITIONS

(Issued and Effective June 26, 2013)

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PUBLIC SERVICE COMMISSION

At a session of the Public Service
Commission held in the City of
Albany on June 13, 2013

COMMISSIONERS PRESENT:

Garry A. Brown, Chairman
Patricia L. Acampora
James L. Larocca
Gregg C. Sayre

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BY THE COMMISSION:

INTRODUCTION

By this order, we authorize the acquisition of CH
Energy Group Inc. (CHEG), the parent company of Central Hudson
Gas & Electric Corporation (Central Hudson), by Fortis Inc.
(Fortis). In doing so, we adopt, with modifications, the terms
of a Joint Proposal submitted for our consideration on
January 28, 2013, by the Department of Public Service trial
staff (Staff); Fortis; CHEG; the Utility Intervention Unit of
the Department of State (UIU); Multiple Intervenors (MI); and
the Counties of Dutchess, Orange and Ulster. Those terms ensure
significant, tangible benefits for Central Hudson's customers
including \$9.25 million in guaranteed rate savings, a \$35
million fund to be used for deferral write-offs and/or future
rate mitigation, a \$5 million Community Benefit Fund for low-

income customer programs and economic development, a rate freeze, and an earnings sharing mechanism more favorable to ratepayers. They also establish comprehensive financial safeguards, corporate governance requirements, service quality and performance mechanisms, and other measures that will minimize any risk associated with the transaction. With certain other requirements we will add to the terms originally proposed, we find that, on balance, the acquisition will provide a significant net public benefit, and will serve the public interest as required by Public Service Law (PSL) §70.

BACKGROUND AND PROCEDURAL HISTORY

On February 20, 2012, CHEG entered into an Agreement and Plan of Merger (Merger Agreement) with Fortis, a Canadian holding company; FortisUS Inc. (FortisUS), a wholly-owned subsidiary of Fortis; and Cascade Acquisition Sub Inc. (Cascade), a wholly-owned subsidiary of FortisUS. Under the terms of the Merger Agreement, CHEG would merge with Cascade, with CHEG as the surviving entity.

Central Hudson, a regulated utility serving about 301,000 electric customers and 75,000 natural gas customers, 85% of them residential, in eight counties in the mid-Hudson region, is a wholly owned subsidiary of CHEG. As a result, consummation of the proposed merger would make Central Hudson an indirect, wholly-owned subsidiary of Fortis.

Under PSL §70, the transfer of ownership of all or any part of the franchise, works or system of any gas or electric corporation is prohibited without the consent of the Commission. That consent may be given only if the Commission determines that the proposed acquisition, with such terms and conditions as the Commission may fix and impose, "is in the public interest." Consequently, on April 20, 2012, Fortis, FortisUS, Cascade, CHEG

and Central Hudson sought such consent by filing the petition that is the subject of this proceeding.

Subsequent to the filing, the matter was assigned to Administrative Law Judges, and a Notice of Proposed Rulemaking was published.¹ On May 16, 2012, the judges conducted an initial procedural conference. Participants at the conference in addition to Petitioners and Staff were UIU, MI, the International Brotherhood of Electrical Workers Local 320 (IBEW Local 320), the Retail Energy Supply Association (RESA), Empire State Development Corporation; and the County of Dutchess. All were admitted as parties to the proceeding, as were Hess Corporation, the County of Orange, the County of Ulster, the Joint Task Force of the Town and Village of Athens (Athens), the Public Utility Law Project of New York, Inc. (PULP), and, as a group, Accent Energy Midwest Gas, LLC, Accent Energy Midwest II, LLC, IGS Energy, Inc., and Interstate Gas Supply, Inc.

Following eight months of litigation, during which testimony was filed by Staff and PULP, and comments were submitted by Athens, Dutchess County, ESD, IBEW Local 320, MI, and UIU, Petitioners filed a notice of settlement negotiations in December 2012. Discussions pursuant to that notice led to the Joint Proposal we are now considering.

In a January 29, 2013, ruling, the judges established a schedule for statements in support of, or opposition to, the Joint Proposal. Statements expressing general support for the Joint Proposal were filed by Petitioners, Staff, MI and UIU. The Counties of Dutchess, Orange, and Ulster expressed support

¹ *New York State Register*, May 23, 2012, p. 15.

limited to specific provisions of the Joint Proposal.² Statements opposing adoption of the Joint Proposal in its present form were filed by PULP, RESA, the New York State Energy Marketers Coalition, and IBEW Local 320. Reply statements were filed by Petitioners, Staff, IBEW Local 320, MI, PULP, and RESA.

In their January 29, 2013, ruling, the judges also required that any party advocating an evidentiary hearing on the Joint Proposal must specify in its initial comments a material issue of fact that could not be resolved without the cross-examination of witnesses. No party's initial comments attempted to make such a showing and, accordingly, no evidentiary hearing was held.

On April 24, 2013, the Secretary issued a notice announcing the preparation of a Recommended Decision (RD) and a schedule for the filing of exceptions. The RD was filed by the judges on May 3, 2013. It recommended that the Joint Proposal not be approved and that the petition to authorize the merger transaction be denied. Exceptions to the RD were subsequently

² The signatures of the Counties were accompanied by disclaimers stating that they were affixed for the purpose of expressing support for specific provisions of the Joint Proposal, and that the Counties took no position on the balance of the document. In general, the Counties stated support for provisions calling for a rate freeze, the crediting of synergy savings, and the payment of positive benefits including the Community Benefit Fund and write-down of regulatory assets. The Counties participated as parties, and signed the Joint Proposal, through their county executives. Subsequent to execution of the Joint Proposal, the Ulster County legislature, by resolution, and a majority of the members of the Dutchess County legislature, by letter, opposed approval of the proposal, while Orange County Executive Edward Diana submitted comments supporting it fully.

filed by Staff, Petitioners, MI, UIU, PULP, and Citizens for Local Power and the Consortium in Opposition to the Acquisition.³

PUBLIC COMMENTS

On February 21, 2013, public statement hearings concerning the Joint Proposal were held in Kingston and Poughkeepsie. Approximately 40 people attended the hearings, 17 of whom provided comments on the record. Commenters included Central Hudson customers from throughout the utility's service territory, as well as New York State Assembly Member Kevin Cahill and Town of Rosendale Council Member Manna Jo Greene.

The original notice of public statement hearings called for all comments to be submitted by March 21, 2013. After receiving numerous requests for additional time from public officials and others, the Secretary extended the deadline through May 1, 2013. During the extension period, additional public statement hearings were held on April 17, 2013, in Poughkeepsie and April 18, 2013, in Kingston. Approximately 130 people attended the hearings and 47 provided comments. Speakers included Assembly Member Frank Skartados, Dutchess County Legislators Richard Perkins and Joel Tyner, Rosendale Council Member Greene, Rosendale Supervisor Jeanne Walsh, Woodstock Town Council Member Jay Wenk, and a representative from the office of State Senator Cecilia Tkaczyk. All speakers at all of the public statement hearings opposed the merger. Through June 12, 2013, over 500 comments opposing the merger were received by the Commission by mail, e-mail, telephone, and posting to the Commission's website. In addition, 913 individuals had signed a

³ These last two parties were admitted on May 1, 2013. Although some members of the groups had previously submitted comments, the organizations themselves had not participated in the proceeding prior to their admission. These parties have participated jointly in the proceeding and are referred to herein as CLP/COA.

petition posted on the SignOn.org website expressing opposition to the merger.⁴

Commenters opposed to the merger included Senator Tkaczyk and Senator Terry Gipson; Assembly Members Cahill, Didi Barrett, and James Skoufis; City of Beacon Mayor Randy Casale; Town of Woodstock Supervisor Jeremy Wilber; 13 members of the Dutchess County Legislature, by joint letter; Dutchess County Legislature Assistant Majority Leader Angela Flesland, individually; and former Member of Congress Maurice D. Hinchey. All of these past and present public officials urged the Commission to disapprove the proposed merger transaction, as did resolutions adopted by the Ulster County Legislature; the City of Newburgh; the Towns of Esopus, Marbletown, Newburgh, New Paltz, Olive, Rosendale, and Woodstock; the Village of Red Hook, and the Rosendale Environmental Commission. The Economic Development Committee of the Town of Red Hook also opposed the merger, as did AARP, the Sierra Club, the Dutchess County Central Labor Council, and the Hudson Valley Area Labor Federation.

Opponents of the merger expressed varying degrees of concern about the potential for long-run negative consequences not only for Central Hudson ratepayers, but also for the economic well-being of the utility's Mid-Hudson service territory if the transaction were consummated. The themes evoked most frequently in the comments derived from the perception that the transaction would replace a well-regarded, highly capable and locally engaged utility with a foreign entity of unproven quality having no inherent ties to the service

⁴ The SignOn.Org website allows petition signers to cause e-mails to be sent to the Secretary memorializing their signatures, and many individuals availed themselves of that option. The numbers cited above do not include those e-mails.

territory and financial objectives that may conflict with the interests of ratepayers.

This perceived potential for a divergence of interests between a distant holding company and the local community served by its utility subsidiary was a source of concern for nearly all of the commenters, many of whom expressed a general uneasiness with the prospect of foreign ownership of critical infrastructure necessary to provide essential electric and gas services. Some saw this as a continuation of a disturbing trend toward more and more foreign ownership of U.S. businesses, and expressed concern that domestic control over vital industries was being lost.

Others had more specific concerns. Many commenters described Central Hudson as having been very proactive in promoting energy efficiency and renewable energy. They suggested that there was no language in the Joint Proposal that would ensure a comparable environmental responsiveness from the merged companies. In a similar vein, many commenters noted Central Hudson's record of community involvement and support for local economic development. They questioned whether that level of commitment would extend beyond the funding expressly provided in the Joint Proposal, which they characterized as a purely short-term benefit.

For other commenters, the issue was primarily economic. They viewed the putative financial benefits of the Joint Proposal for ratepayers as meager and transitory, while the financial risks would be substantial and persistent. Assembly Member Cahill, for example, argued that the proposed merger transaction makes no financial sense. Fortis, he suggested, could not make a profit and still maintain current levels of service for Central Hudson ratepayers. Ultimately, he contended, customers would be forced to provide that profit

through either increased rates or decreased service reliability and safety.

Following issuance of the notice announcing the preparation of an RD, and before the RD itself was issued, we began to receive comments supporting the merger. The first such comment, posted on April 24, came from Charles S. North, President and CEO of the Dutchess County Regional Chamber of Commerce. Mr. North stated that after meeting with Central Hudson officials and learning the facts of the transaction, he strongly supported it. Fortis's commitments to provide \$50 million in benefits and to maintain Central Hudson as a standalone entity are a win/win for customers, he said. In Mr. North's opinion, Central Hudson will benefit from the resources of a larger organization and has done right by its customers in agreeing to the merger.

Within a week we had received approximately 274 comments urging that the merger be approved. Through June 13, 2013, that number had grown to over 400. Nearly half of those supportive comments came from Central Hudson employees. Many others came from Central Hudson customers and from businesses and business organizations including the Edison Electric Institute, the Hudson Valley Economic Development Corporation, the Putnam County Economic Development Corporation, the Westchester County Office of Economic Development, the Dutchess County Economic Development Corporation, the Council of Industry of Southeastern New York, the New Paltz Regional Chamber of Commerce, the Sullivan County Partnership for Economic Development, the Greater Newburgh Partnership, the Orange County Industrial Development Authority, and the Orange County Partnership. Supporters of the merger emphasize the value of the positive benefits provided for in the Joint Proposal and the commitments of Fortis to operate Central Hudson as a stand-alone

entity, maintaining local jobs and keeping its headquarters in the community. The economic development organizations stress particularly the importance of the proposed \$5 million Community Benefit Fund (described below).

Supplemental comments were filed on May 1, 2013 by Citizens for Local Power and Consortium in Opposition to the Acquisition, jointly (CLP/COA); Joint Proposal signatory MI; opponent IBEW Local 320; and Petitioners. CLP/COA expounded in detail on the benefits and detriments of the merger as proposed, to show that it not only would fail the Commission's positive net benefits test but would be affirmatively harmful and, in that respect, compares unfavorably with all the major energy company mergers the Commission has approved since 1999. CLP/COA said the Joint Proposal satisfies neither the statutory public interest standard, nor the criteria in the Settlement Guidelines such as conformity with state policies and consensus among adversarial parties. It charged Fortis with disingenuousness or indifference regarding values the Commission should uphold in the pursuit of objectives such as environmental protection, economic development, utility infrastructure improvements, and development of sustainable energy resources.

For the most part, MI's comments repeated its criticism of previously raised objections to the Joint Proposal and emphasized the potential loss of \$49.5 million in positive benefits to ratepayers if the proposal were rejected. MI also argued that less weight should be given to comments from entities that did not participate fully in the process leading to the Joint Proposal, particularly those of the legislatures of Dutchess and Ulster Counties whose county executives were signatories to the proposal.

IBEW Local 320 repeated its previously stated concerns about Central Hudson's outsourcing policies and their impact on

union jobs and service quality, and contended that they had not been alleviated. The Joint Proposal should not be approved, it said, unless provision is made for a needed infusion of internal workers. The local also asserted that the "vast majority" of employees who had responded with comments supporting the merger were not represented by the union.

Petitioners' additional comments contended that the record demonstrates that the Joint Proposal will produce benefits that greatly exceed any risks presented by the merger. They cited comments by Staff in support of the Joint Proposal stating Staff's view that the criteria for approval of the merger under PSL §70, as established in previous Commission decisions, have been met or exceeded, and that the transaction compares favorably with those previously approved.

Petitioners also argued that comments received in opposition to the merger, mainly from non-parties, have generally been misinformed, are contradicted by the terms of the Joint Proposal and/or the comments of the signatories, and have added nothing of significance to the record. For many of the most frequently raised criticisms of the merger, Petitioners provided information tending to refute the allegations, for example, with respect to concerns about foreign ownership of Central Hudson, NAFTA, environmental issues, infrastructure investment, financial risks, and so forth. Petitioners concluded that the Joint Proposal:

is a compelling path forward that assures the continuation and enhancement of Central Hudson consistent with its past performance as a well-run, low-cost utility that is extraordinarily sensitive to local needs and Commission requirements.⁵

⁵ Additional Comments of Petitioners, p. 47.

Subsequent to the issuance of the RD, the parties' and commenters' positions continued to evolve. By letter to the Secretary dated May 23, 2013, IBEW Local 320 reported that it had reached an agreement with Petitioners and that it now fully supports the merger. That support was echoed in letters from the president of the New York State AFL-CIO and from the Utility Workers Council of the IBEW. Assembly Member Skoufis, previously opposed to the merger, also submitted a letter stating that he was now convinced that the transaction should be approved. Letters of support also were sent by State Senators Larkin and Maziarz, and Assembly Member Lalor.

All of the comments received have been included in the official record and have been fully reviewed and considered in the preparation of this order.

THE JOINT PROPOSAL'S TERMS

The Joint Proposal expresses the agreement of the signatory parties that the proposed acquisition of Central Hudson by Fortis is in the public interest for purposes of PSL §70, and should be approved, subject to the terms described in the proposal. Broadly speaking, those terms are intended to perform two functions: the mitigation of potential risks that might arise from consummation of the merger transaction, and the securing of incremental public benefits to ensure a net positive outcome from the transaction.⁶

A. Risk Mitigation

1. Corporate Structure, Governance and Financial

⁶ The points noted here are simply highlights of the Joint Proposal, provided as a convenience to the reader. For a complete statement of its terms, one should rely on the proposal itself, which accompanies this order as the Attachment and constitutes a part of the order.

Protections

a. Goodwill and Acquisition Costs

To the extent that the consideration paid by Fortis for the stock of CHEG exceeds the book value of CHEG's assets, an accounting asset, goodwill, will be created. As we have made clear in previous orders, neither the cost of acquiring, nor the cost of carrying, that asset should be borne by utility customers, and the existence of goodwill should not adversely affect ratepayers. The Joint Proposal includes provisions intended to ensure that this will be the case for Central Hudson customers. It bars goodwill associated with the merger transaction from being recorded on the books of Central Hudson, to the extent permitted by U.S. Generally Accepted Accounting Principles (U.S. GAAP). If those accounting rules require goodwill to be "pushed down" to Central Hudson for financial reporting purposes, the Joint Proposal precludes it from being reflected in the regulated accounts of Central Hudson on which rates are based. In addition, if either Fortis or FortisUS is obligated to record an impairment of the goodwill created by the transaction, the Commission must be notified within five days. Finally, the Joint Proposal requires Central Hudson to submit to Staff a schedule of all external legal, financial advisory, and similar costs incurred to achieve the merger in order to permit the Commission to ensure that they cannot be recovered in rates.

b. Credit Quality and Dividend Restrictions

The Joint Proposal incorporates an array of conditions designed to protect the credit quality of Central Hudson. First, to permit the Commission to adequately monitor the impact of the transaction on Central Hudson's finances, the Joint Proposal establishes a continuing requirement that copies of all presentations made by Central Hudson, Fortis or any Fortis affiliate be provided to Staff within ten business days. Both

Fortis and Central Hudson are required to be registered with at least two major nationally and internationally recognized rating agencies, to maintain separate debt instruments, and to be separately rated by at least two rating agencies. In addition, neither Fortis nor Central Hudson will be permitted to enter into any debt instrument containing cross-default provisions that could affect Central Hudson.⁷

To mitigate the risk of an increase in Central Hudson's financing costs, the Joint Proposal requires that Fortis and Central Hudson support the objective of maintaining an "A" credit rating for the utility, unless the Commission modifies its financial integrity policies. Also, to ensure that Central Hudson maintains the common equity capitalization on which rates are based, the Joint Proposal would bar Central Hudson from paying dividends if its average common equity ratio for the 13 months prior to the proposed dividend were more than 200 basis points below the ratio used in setting rates.⁸

The Joint Proposal would also continue dividend restrictions originally imposed as part of a Restructuring Settlement Agreement (RSA) approved by the Commission in 1998.⁹

⁷ A cross-default provision is one that can trigger default on a debt obligation based on a default on a different debt obligation. For example, a provision in a Central Hudson debt instrument permitting acceleration of the due date for repayment in the event of a default by Fortis on one of its bonds would be a cross-default provision prohibited under the terms of the Joint Proposal.

⁸ In response to a question posed by the judges, the signatory parties clarified their intention that this provision would bar a dividend not only when Central Hudson's trailing 13-month average equity ratio was already below the 200 basis point threshold, but also when the payment of the dividend would itself cause the average to drop below the threshold.

⁹ Case 96-E-0909, *Central Hudson Gas & Electric Corp.*, Order Adopting Terms of Settlement Subject to Modifications and Conditions (issued February 19, 1998).

Among other things, the RSA stipulates that if Central Hudson's senior debt rating is downgraded below 'BBB+' by more than one credit rating agency and the downgrade is because of the performance of, or concerns about, the financial condition of its parent or an affiliate, dividends will be limited to a rate of not more than 75% of the average annual income available for dividends, on a two-year rolling average basis. In the event that the debt rating is placed on 'Credit Watch' for a rating below 'BBB' by more than one credit rating agency, dividends are limited to 50% of the average net income, and if there is a downgrade below 'BBB-' by more than one credit rating agency, no dividends are allowed to be paid until such time as the rating has been restored to 'BBB-' or higher.

In addition to continuing the RSA limitations, the Joint Proposal includes a new provision that would insulate Central Hudson ratepayers from the effects of a downgrade to Fortis's credit rating. If within three years of the merger Central Hudson's credit rating were downgraded as a direct result of a Fortis downgrade, the higher debt cost resulting from the downgrade would not be reflected in Central Hudson's cost of capital used to set rates. Ratepayers would be held harmless for the financial impact of the Fortis downgrade.

The Joint Proposal also would bar Central Hudson from providing financial support to Fortis or its other affiliates except as permitted by the Joint Proposal, the RSA or a Commission order. It would also require that Central Hudson's banking and other financial arrangements be kept separate from those of other Fortis affiliates.

Finally, the Joint Proposal would authorize Central Hudson to deregister from the United States Securities and Exchange Commission (SEC) and rely more on the private market

under SEC Rule 144A to issue debt.¹⁰ Our order issued last year in Case 12-M-0172 would be amended to permit such private financing.¹¹

c. Money Pooling

Money pools enable affiliated companies to make their excess cash on hand available as a quick, low-cost source of short-term funding for other pool participants. The Joint Proposal would permit Central Hudson to participate in such pooling arrangements, but only with Fortis, FortisUS and other entities that are regulated utilities operating in the United States, provided that Fortis and FortisUS may participate only as lenders and may not receive loans or fund transfers, directly or indirectly. Cross-default provisions affecting Central Hudson would be prohibited.

d. Special Class of Preferred Stock

The Joint Proposal would require the creation of special class of Central Hudson preferred stock to be held by a trustee approved by the Commission. Without the consent of the holder of this "golden share," Central Hudson would be precluded from entering into voluntary bankruptcy. This is identical to a provision included in our order approving the acquisition of New York State Electric and Gas Corporation and Rochester Gas & Electric Corporation by Iberdrola.¹² The Joint Proposal states

¹⁰ Rule 144A is a safe harbor exemption from the registration requirements of the Securities Act of 1933 that allows companies to sell securities in the private market to qualified institutional buyers in a more timely fashion with fewer disclosures and filing requirements.

¹¹ Case 12-M-0172, *Central Hudson Gas & Electric Corp.*, Order Authorizing Issuance of Securities (issued September 14, 2012).

¹² Case 07-M-0906, *Iberdrola, S.A. et al. - Acquisition Petition*, Order Authorizing Acquisition Subject to Conditions (issued January 6, 2009)(*Iberdrola* order), pp. 43-44.

that Commission approval is intended to include "all [other] Commission authorization necessary for Central Hudson to establish [this special class of preferred stock]."¹³ This authorization includes the consent and approval required under PSL §108 for an amendment of the Company's certificate of incorporation to establish the special class of stock.

With the golden share in place, Central Hudson would be permitted to demonstrate in future rate cases that its stand-alone capital structure should be used for setting rates. That demonstration would be made by submitting current written evaluations from at least two rating agencies supporting the evaluation of Central Hudson as a separate company, without material adjustments based on risks related to the capital structure and ratings of Fortis. If such evaluations were not available, Central Hudson would have the burden of providing comparable evidence to support the stand-alone assumption.

e. Financial Transparency and Reporting

The Joint Proposal incorporates a number of provisions intended to ensure that the Commission and its Staff have ready access to the financial data and other information necessary to continue our regulatory oversight of Central Hudson. It provides that Central Hudson will continue to use the standards of U.S. GAAP for its financial accounting and financial reports. If that accounting method were replaced for publicly-traded entities, the change would apply to Central Hudson. Central Hudson would also be required to continue to satisfy all of the Commission's reporting requirements for jurisdictional companies of its size and nature.

Central Hudson would also continue to comply with the provisions of sections 302 through 404 of the Sarbanes-Oxley Act

¹³ Joint Proposal, p. 11, ¶4.

(SOX) as if Central Hudson were still bound directly by the provisions of SOX, even though it would be a subsidiary of a foreign holding company. This would include annual attestation audits by independent auditors with respect to Central Hudson's financial statements and internal controls over financial reporting.

The Joint Proposal would also require that Staff be given ready access to any books and records of Fortis and its affiliates that Staff might deem necessary to determine whether the rates and charges of Central Hudson are just and reasonable. That access must include, but is not limited to, all information supporting the underlying costs and the basis for any factor that determines the allocation of those costs. Central Hudson would also be required annually to file the financial statements, including balance sheets, income statements, and cash flow statements of Fortis and its major regulated and unregulated energy company subsidiaries in the United States, and to provide, to the extent available from a recognized financial reporting information service, the "as reported" quarterly and annual balance sheets, income statements and statements of cash flows of Fortis in U.S. dollars with the underlying currency translation assumptions. All required financial filings would be in English and in U.S. dollars or, if that were not practicable, with the underlying currency translation assumptions.

f. Affiliate Standards

The RSA that we approved when Central Hudson was reorganized as a subsidiary of CHEG included a set of standards addressing transactions, conflicts of interest, cost allocations, and information sharing among Central Hudson and its affiliates. The Joint Proposal would update and revise those standards and apply them to Fortis. Central Hudson would

be barred from entering into transactions with affiliates that were not in compliance with the transaction standards; would be prohibited from sharing operating (*i.e.*, non-management) employees with affiliates; and would be required to give 180 days' prior notice and obtain Commission approval before initiating any material shared services initiatives or establishing a shared services organization that would provide material services to Central Hudson.¹⁴ Current cost allocation guidelines would be continued, but would be subject to revision if intercompany transactions grew beyond a defined level.

g. Follow-On Merger Savings

The Joint Proposal includes a condition that would ensure Central Hudson customers an appropriate share of any savings resulting from future mergers or acquisitions by Fortis until new rates are set. This condition is identical to follow-on merger savings provisions that have been adopted as a condition to the approval of other recent mergers.

h. Corporate Governance and Operational Provisions

The Joint Proposal contains a number of provisions intended to address concerns that the responsiveness of Central Hudson to the community it serves might be diminished if the utility becomes a subsidiary of a foreign holding company. The provisions specify that the headquarters of Central Hudson would remain within the service territory.¹⁵ A new board of directors would be appointed within one year with a majority of directors

¹⁴ "Material" is defined as services individually or collectively having a value greater than 5% of Central Hudson's net income on an after tax basis.

¹⁵ In response to a question from the judges, the signatory parties clarified that "headquarters" means the place where all senior officers and their support staff, legal, administrative, accounting, operating supervision, and other head office functions are located.

who are independent, and at least one independent director would be required to live within the service territory.¹⁶ At least 50% of Central Hudson's officers would also be required to live within the territory.

In addition, the Joint Proposal specifies that Central Hudson is to be governed, managed and operated on a stand-alone basis post-merger. Local management would continue to make decisions concerning staffing levels, and current employees, both management and non-management, would be retained for two years after closing of the merger. Within 30 days after each of the first two anniversary dates of the merger closing, Central Hudson would be required to file a report with the Secretary comparing the level of union and management employees on that date to the levels on the merger closing date. The collective bargaining process would be continued. The Central Hudson Board would continue to be responsible for management oversight, including capital and operating budgets, dividend policy, debt, and equity requirements. The Board would also have an audit committee, with a majority of members who are independent, and it would continue to be responsible for the financial integrity and effectiveness of internal controls. Finally, to maintain an active corporate and charitable presence in the service territory, Central Hudson would agree to maintain its 2011 level of community involvement through 2017.

¹⁶ The signatory parties agreed in response to a question from the judges that an independent director is one who receives no consulting, advisory or other compensation from Central Hudson or an affiliate or subsidiary of Central Hudson. A director who is an officer, employee or consultant of Central Hudson, FortisUS, Fortis, or any other Fortis affiliate would not be considered independent.

2. Performance

To mitigate the risk that pressure to demonstrate the profitability of the merger transaction might lead to deferred investment in utility plant, reduced maintenance levels and other cost-cutting measures that could eventually have a negative impact on Central Hudson's provision of safe and reliable service, the Joint Proposal includes a broad range of performance-related mechanisms, some of which are more stringent than those currently applicable to Central Hudson. All of these performance mechanisms would continue until modified by the Commission in a subsequent proceeding. The Joint Proposal also incorporates provisions mandating specific levels of expenditures for important safety, maintenance, and infrastructure development activities.

a. Performance Mechanisms

i. Service Quality

Under the terms of the Joint Proposal, the Service Quality Performance Mechanism included in Central Hudson's current rate plan would be continued with two changes. First, the target for the PSC complaint rate would be made more stringent, with the allowed number of complaints reduced from 1.7 per year per 100,000 customers to 1.1. Second, the maximum negative revenue adjustment (NRA) imposed as a result of failure to meet defined targets would be doubled from \$1.9 million annually to \$3.8 million. During a period of dividend restriction under the financial provisions of the Joint Proposal, the maximum NRA would be increased even further, to \$5.7 million, and it would rise again, to \$7.6 million, if

performance targets were missed three times in any five-year period.¹⁷

ii. Electric Reliability

The Joint Proposal would maintain the electric reliability standards included in Central Hudson's current rate plan. As with the service quality performance mechanism, potential NRAs would be doubled immediately, tripled in the event of a dividend restriction, and quadrupled if targets were missed in three of any five calendar years. In addition, Attachment II to the Joint Proposal defines uniform reporting requirements that are intended to aid our monitoring of Central Hudson's performance and to contribute to consistency of reporting among utilities.

iii. Gas Safety

As with electric reliability, the gas safety performance targets in Central Hudson's current rate plan would be continued, with potential NRAs immediately doubled, tripled in the event of a dividend restriction and quadrupled if targets are missed in three of five calendar years. In addition, the Joint Proposal would establish a new metric for compliance with certain pipeline safety regulations set forth in 17 NYCRR Parts 255 and 261, with potential NRAs of up to 100 basis

¹⁷ In response to a question from the judges, the signatories clarified that this was what was intended by the phrase "if targets are missed for three years within the next five year period," in section IV.B.2 of the Joint Proposal.

points.¹⁸ The provision is essentially the same as those we have adopted for Corning Natural Gas and National Grid.¹⁹

iv. Leak-Prone Pipe

The Joint Proposal would increase required annual expenditures for the replacement of leak-prone pipe, as determined through a risk-based analysis, from \$6.0 million to \$7.7 million, as recommended by Staff. The provision is intended to drive down active leaks, reduce leakage rates on the distribution system and lower overtime and operating and maintenance costs. If Central Hudson fails to expend the required amount, one-half of the revenue requirement equivalent of the shortfall would be deferred for ratepayer benefit.

b. Expenditure Requirements

i. Right-of-Way Tree Trimming

The Joint Proposal would continue to budget expenditures for right-of-way tree trimming through June 30, 2014 at the level established in Central Hudson's current rate plan for the year ending June 30, 2013. At the end of the one-year extension, actual expenditures would be compared to the budget. Any shortfall would be deferred for the benefit of ratepayers with carrying charges at the pre-tax rate of return.

¹⁸ The Joint Proposal states that all gas safety targets for calendar year 2013 remain effective until modified by a Commission order; however, the new safety violation metric has a calendar year 2014 target. We will require that the calendar year 2014 target for the New Safety Violation Metric remain in effect until modified by the Commission.

¹⁹ Case 11-G-0280, *Corning Natural Gas Corp.*, Order Adopting Terms of Joint Proposal and Establishing a Multi-Year Rate Plan (issued April 20, 2012), p. 21; Cases 12-E-0201 and 12-G-0202, *Niagara Mohawk Power Corp. d/b/a National Grid - Electric and Gas Rates*, Order Approving Electric and Gas Rate Plans in Accord with Joint Proposal (issued March 15, 2013), pp. 13-14.

ii. Stray Voltage Testing

The Joint Proposal would establish targeted expenditures for the year ending June 30, 2014, of \$2.023 million for stray voltage testing and \$350,000 for stray voltage mitigation. If Central Hudson's expenditures fell short of either of the targets, the shortfall would be deferred for the benefit of ratepayers with carrying charges at the pre-tax rate of return.

iii. Infrastructure Investment

The Joint Proposal would continue the net plant reconciliation mechanism included in Central Hudson's current rate plan with new targets established for the year ending June 30, 2014. Actual net plant in service as of that date would be compared to the targets and the revenue requirement impact of any difference would be calculated using the methodology described in Attachment IV to the Joint Proposal.²⁰ If the difference were negative, Central Hudson would be required to defer the revenue requirement impact for the benefit of ratepayers with carrying charges at the pre-tax rate of return. If the difference were positive, no deferral would be permitted.

B. Incremental Benefits

While the provisions of the Joint Proposal discussed above are intended to be beneficial to ratepayers, their primary purpose is to reduce the potential for negative impacts from the merger. Consequently, to ensure a net positive outcome for ratepayers, the Joint Proposal includes a number of provisions that are designed to generate incremental benefits that would not be realized in the absence of the merger.

²⁰ The signatory parties confirmed that references to "Attachment III" on page 34 of the Joint Proposal should read "Attachment IV."

1. Rate Freeze

The Joint Proposal provides that Central Hudson rates currently scheduled to remain in effect through June 30, 2013, would continue through June 30, 2014 -- a one-year rate freeze.

2. Earnings Sharing

Central Hudson's current rate plan specifies that when the utility's earned return on equity exceeds 10.5%, ratepayers receive 50% of the excess up to an earned return of 11.0%; 80% of the excess between 11.0% and 11.5%; and 90% of the excess over 11.5%. Under the terms of the Joint Proposal, the 50% and 90% sharing thresholds would be lowered, and the 80% sharing level would be eliminated. Ratepayers would be credited with 50% of earnings between 10.0% and 10.5%, and 90% in excess of 10.5%. In addition, Central Hudson would be required to apply 50% of its share of earnings exceeding 10.5% to write down certain deferred expenses that would otherwise be recovered in rates, provided that doing so would not reduce the actual earned return below 10.5%.

3. Synergy Savings

The signatories to the Joint Proposal agree that the merger transaction will generate synergy savings of at least \$1.85 million annually, and Central Hudson would guarantee this amount for five years, for a total of \$9.25 million. The savings would begin to accrue in the month following closing of the merger transaction and would be available for rate mitigation at the start of the first rate year in the next rate case filed by Central Hudson.

4. Deferral Write-Offs and Future Rate Mitigation

The Joint Proposal specifies that upon closing of the merger, Fortis will provide Central Hudson \$35 million which will be recorded as a regulatory liability, to be used to write

down storm restoration expenses for which deferral and recovery from ratepayers has been requested in three pending petitions to the Commission, including most notably one for Superstorm Sandy.²¹ The total deferral requested in those petitions is \$29.7 million, of which \$11.1 million has been denied, with petitions for rehearing pending. The total deferral authorized will, therefore, be less than \$35 million. The Joint Proposal provides that the unused portion of the \$35 million will be reserved for the benefit of ratepayers as a regulatory liability with carrying charges at the pre-tax rate of return, subject to future disposition by the Commission.

5. Community Benefit Fund

In addition to the \$35 million for deferral write-offs and rate mitigation, Fortis would be required to provide Central Hudson \$5 million for a Community Benefit Fund to be used for low-income customer and economic development programs.

a. Low-Income Program Enhancements

The Joint Proposal specifies that \$500,000 from the Community Benefit Fund would be used to supplement funds currently provided in rates for programs targeted to low-income customers. Currently, Central Hudson provides a bill credit of

²¹ The three cases involve storm restoration costs associated with Hurricane Irene in August 2011, a major snowstorm in October 2011, and Superstorm Sandy in October 2012. In Case 11-E-0651, *Central Hudson Gas & Electric Corp.- Storm Restoration Expenses for the Rate Year Ended June 30, 2012*, we approved deferral of \$8.9 million in expenses associated with Irene. Central Hudson had sought deferral of \$11.4 million. A petition for rehearing is pending. In Case 12-M-0204, *Central Hudson Gas & Electric Corp.- Costs Associated with the October 29, 2011 Snow Storm*, we denied recovery of \$8.6 million associated with the snowstorm. A petition for rehearing is pending. In Case 13-E-0048, *Central Hudson Gas & Electric Corp.- Deferred Incremental Costs*, Central Hudson seeks deferral of \$9.7 million in costs associated with Superstorm Sandy. The case is pending.

\$11.00 per month for all customers who are Home Energy Assistance Program (HEAP) recipients. Under the Joint Proposal, within 30 days after an order in this case, Central Hudson would implement a new schedule of discounts providing credits of \$17.50 per month for HEAP-participant heating customers receiving only electric or only gas service, and \$23.00 for those receiving both. Non-heating customers would receive credits of \$5.50 for one service, or \$11.00 for both, provided that customers currently receiving an \$11.00 credit for a single service would continue to receive that amount. Central Hudson would also be required to waive reconnection fees for participants in its low-income programs up to a total of \$50,000. If the total cost of the programs exceeded the amount allowed in rates plus the \$500,000 from the Community Benefit Fund, the shortfall would be made up from funds previously deferred for the benefit of the low-income programs, with any excess deferred as a regulatory asset. Central Hudson would be required to continue to refer participants in its low-income programs to the New York Energy Research and Development Authority's EmPower New York program for energy efficiency services. Finally, the Joint Proposal establishes a schedule for quarterly reporting on low-income programs to the Commission, and specifies the data to be provided.

b. Economic Development

The Joint Proposal provides for \$5 million dollars to be allocated by Central Hudson for the support of economic development programs. The \$5 million would consist of \$4.5 million from the Community Benefit Fund and \$500,000 from Central Hudson's existing Competition Education Fund. Within 15 days after an order in this case, Central Hudson would file a proposal with the Commission for modification of its existing economic development programs and would request expedited

consideration. The modifications would provide for Central Hudson to continue to administer its programs pursuant to existing Commission authorizations with input from the counties in its service territory. They would also establish a criterion that applicants for project funding that do not have participation from Empire State Development, a county industrial development agency, a county community college, or a local municipal resolution would seek a letter of support from the county where the project would be located. Central Hudson would also agree to seek county participation in economic development grant award notifications and announcements, and would meet twice a year with representatives of all the counties in its service territory.

6. State Infrastructure Enhancements

The Joint Proposal would commit Central Hudson to continue to support the New York State Transmission Assessment and Reliability Study, the Energy Highway, and economically justified gas expansion. Fortis would agree to provide equity support to the extent required by Central Hudson for projects that receive regulatory approval and proceed to construction.

7. Gas Expansion Pilot Program

Central Hudson would commit to continue its existing gas marketing expansion campaign during the rate freeze period and would continue to provide information and assistance to customers who are seeking or considering gas service. Where adequate financial commitments and reasonable franchise conditions can be secured, it would pursue expansion of gas facilities to areas not currently served and would seek expedited Commission approval for such expansion. Within 90 days of an order in this case, Central Hudson would initiate a modified gas service request tracking system retaining sufficient data to demonstrate why service was or was not

initiated. In addition, by July 1, 2013, or as part of a new franchise filing, Central Hudson would propose a limited pilot expansion program designed to test a number of innovative measures to facilitate gas service expansion.²²

8. Retail Access

For the stated purpose of supporting the Commission's retail market development initiatives, the Joint Proposal would require Central Hudson within 90 days following the closing of the merger transaction to include a total bill comparison on all retail access residential bills using consolidated billing. The comparison would be generated using an existing Central Hudson program that has already been implemented. In addition, within 60 days after the issuance of an order in this case, Central Hudson would be required to file a proposal to provide payment-troubled customers -- those subject to service termination -- with similar bill comparison information. The cost of implementing these initiatives would be paid from Central Hudson's existing Competition Education Fund. If the balance in the fund were inadequate, Central Hudson would be permitted to defer the excess cost. Central Hudson would report quarterly to Staff on the progress of its bill comparison efforts.

DISCUSSION OF EXCEPTIONS TO THE RECOMMENDED DECISION

In the RD issued May 3, 2013, the judges concluded that the transaction as formulated in the JP would not provide net benefits sufficient to justify Commission approval. Briefs on exceptions were filed May 17 by Petitioners, Staff, CLP/COA, MI, PULP, and UIU; and briefs opposing exceptions were filed on or about May 24 by all those parties except UIU. Our consideration of the RD, the exceptions, and the other comments

²² Given the timing of this order, we will extend this deadline to September 1, 2013.

and filings that we have received leads us to reject the RD's ultimate conclusion, while accepting most of its reasoning, as explained below.

Overall Balance of Interests

The judges evaluated the proposed transaction in accordance with the analytic approach that we stated in our *Iberdrola* decision and recapitulate in the concluding section of this order. That is, the judges compared the transaction's inherent benefits with any offsetting risks or detriments, mitigated insofar as possible, to determine whether the merger would provide net positive benefits or could be made to do so through the addition of monetary positive benefit adjustments. On exceptions, Petitioners argue that the RD misdefined and misapplied the *Iberdrola* criteria. We disagree, although our ultimate conclusion approving the merger differs from the judges'.

We conclude that Petitioners' exceptions in this regard are moot, for reasons which nevertheless merit further comment. First, of course, is that we are approving the transaction, obviating whatever concerns the parties may have as to precisely what route the judges followed in arriving at their recommendation to the contrary.

More significantly, there is little fundamental difference between our reasoning and the judges'. While the RD attached considerable weight to public comments in which customers subjectively seemed to devalue the economic benefits of the transaction, the judges disagreed with nearly all the other contentions raised in opposition to the merger, namely that: its economic benefits would not materialize, it would create NAFTA issues, its low-income provisions were inadequate, foreign ownership would be objectionable, the financial risks

would be unacceptable, and environmental values would be impaired.

The judges accepted the opponents' views in only two respects: that the transaction would create uncertainty for employees, and that the community's sense of attachment to an independent Central Hudson outweighed the merger's benefits. However, even these two limited reservations on the judges' part were closely tied to circumstances that either have changed or that we view differently than did the judges: the unionized and non-unionized workforce have withdrawn their opposition to the merger, and we do not observe the monolithic opposition among the general public that the judges found so unusual. Moreover, the RD's entire balancing of all the proposal's benefits and detriments was expressly hedged with an acknowledgement by the judges that their analysis was unavoidably qualitative and, therefore, that other observers, such as the Commission, might reasonably reach a contrary result.

For all these reasons, we think the RD is *sui generis* and, contrary to the Petitioners' exceptions, cannot usefully be criticized as a violation of general principles relevant to a §70 public interest determination.

Our only remaining concern about the exceptions is Petitioners' argument that the essence of the *Iberdrola* test is a comparison of economic benefits among various approved mergers on a per capita basis. We disagree with this exception. The RD properly concluded that such comparisons are problematic because of significant differences among the mergers themselves, and because a quantitative comparison does not capture possible changes in Commission policy over time. Nor do we agree with Petitioners' argument that the RD should have considered the alleged financial and managerial superiority of Fortis as compared with acquiring parent companies in other mergers.

While the characteristics of an acquiring company may well be highly relevant in a given case, no two cases are identical; each presents detriments and benefits to be weighed against each other, not necessarily in comparison with other transactions.

In summary, the RD reflects a valid definition and understanding of the relevant standard of review under the *Iberdrola* precedent. Nevertheless, based on our own weighing of the merger's benefits, detriments, and mitigation measures, we conclude that approval would satisfy the public interest criterion of PSL §70 for the reasons cited in the RD and herein.

Economic Benefits

The RD found that the \$9.25 million in guaranteed rate savings, the \$35 million payment by Fortis to Central Hudson to establish a regulatory liability for the benefit of ratepayers, and \$5 million to be provided by Fortis to establish a Community Benefit Fund are tangible monetary benefits that will be realized only as a result of the merger. In contrast, it concluded that the one-year rate freeze should not be credited with providing any significant ratepayer value, because rates could not be raised until nearly the end of the freeze year even if Central Hudson filed for such an increase immediately. Petitioners take exception to the latter conclusion, pointing out that the rate freeze would preclude Central Hudson from recovering \$8.7 million in carrying charges related to capital investments made during the year.

PULP, on exceptions, argues that the \$35 million regulatory liability is not as concrete a benefit as the RD found. It says that, normally, deferral petitions are subject to strict scrutiny and must satisfy well-established Commission criteria before they are allowed. Here, PULP says, Central Hudson is being permitted to treat untested storm recovery expense claims as if they were sure to be approved, and to treat

the offset of those unproven claims as though they were benefits of the merger.

PULP's arguments are simply wrong. As we explained above, Central Hudson will be permitted to offset the \$35 million regulatory liability only against storm expenses that have been fully reviewed and approved by the Commission. Orders have now been issued in proceedings on two of the petitions cited in the Joint Proposal involving deferral requests totaling \$20 million for Hurricane Irene and the October 2011 snowstorm. The orders rejected deferral of \$11.1 million, over 55% of the amounts claimed. The \$35 million fund established pursuant to the Joint Proposal will be used only to eliminate or reduce amounts that would be recovered from ratepayers under normal ratemaking standards. It is a real, monetary benefit.

As to the rate freeze, the issue is essentially moot. While it may provide some quantifiable benefit to ratepayers, as Petitioners allege, that benefit is not necessary for our decision. We find that the well-defined, tangible economic benefits are more than adequate to provide a net positive benefit to ratepayers.

Jobs

Both Petitioners and Staff take exception to the RD's conclusion that even after consideration of the job retention provisions of the Joint Proposal, workforce uncertainty remained an unmitigated risk of the merger. Petitioners contend that the preservation of pre-merger contract rights and the two-year no-layoff period provided by the Joint Proposal actually enhance employee security. Staff adds that the Joint Proposal's requirement for Central Hudson to file employee level information with the Commission for two years, combined with increased disincentives for failure to meet performance targets and a requirement of Commission approval for the transfer of

functions to a shared services affiliate, minimizes the likelihood of post-acquisition downsizing.

We find this issue to be substantially less of a concern than it was at the time of the RD. Since the issuance of the RD, IBEW Local 320 has reached an agreement with Petitioners that will provide even greater job security to union employees than is offered by the Joint Proposal. As a result, IBEW Local 320 now fully supports the merger. Moreover, since the RD, we have received nearly 200 comments from non-union employees of Central Hudson expressing support for the merger. Given this level of support from throughout the organization, we find no basis for concluding that the merger can be expected to have a detrimental impact on jobs at Central Hudson.

NAFTA

The RD addressed a contention first put forward by PULP that the North American Free Trade Agreement (NAFTA) could threaten our ability to regulate Central Hudson. The threat allegedly arises from the treaty's anti-expropriation provisions which allow foreign investors from NAFTA member states to seek compensation for government actions that are "tantamount to expropriation" without compensation. The RD thoroughly analyzed cases cited by PULP and by other commenters and concluded that those cases suggested that:

a state regulatory agency acting lawfully within its statutory authority is not liable to a claim of damages under NAFTA unless an entity covered by the treaty can demonstrate that it made its investment in the state pursuant to express commitments made by the agency which were subsequently broken.²³

As the RD noted, none of the Petitioners has been assured of any particular regulatory treatment by the Commission.

²³ RD, p. 46.

On exceptions, PULP reiterates its claim that NAFTA will be a threat if the acquisition is approved, and PULP is joined in this contention by CLP/COA. Each argues that regardless of the current state of the case law, the existence of NAFTA presents a risk that our future regulation of Central Hudson may be compromised by a fear of expropriation claims. CLP/COA adds that the judges must have perceived some risk as they suggested in the RD that we might condition approval of the acquisition on Petitioners' certification that they have been promised no particular future regulatory treatment.

PULP and CLP/COA present no new legal authority or other information to discredit the judges' conclusion that NAFTA presents no risk to our regulatory jurisdiction. Their arguments are speculative, at best.

Furthermore, the RD did not recommend that we condition approval of the merger on a certification that Petitioners have received no express promise of particular regulatory treatment. It said, rather, that we could do so if we were concerned that there might be some doubt on that point. We have no such concern. The RD correctly stated that no such express assurances have been given. We find that the rights afforded Fortis under NAFTA do not present a credible risk to the public interest such as would require the imposition of any specific conditions on the merger beyond those provided for in the Joint Proposal.

Low-Income Programs

The RD found that the Joint Proposal's provisions for enhancing programs aimed at low-income customers are reasonably well suited to that purpose and quantitatively significant. It did not, however, consider the enhancements to be a benefit of the merger, because they could have been obtained without the transaction, such as through a rate case.

UIU, on exceptions, finds the latter conclusion troubling. It says that the increase in the monthly discount for combination gas and electric customers provided for in the Joint Proposal is unprecedented, both in percentage and dollar terms, and with respect to the source of the funds to pay for it. An increase in funding for low-income programs coming from shareholders rather than ratepayers has never been achieved before, UIU asserts. Even assuming such a result could be obtained in a rate case, UIU adds, that could not happen for at least a year. According to UIU, causing the poorest of Central Hudson's customers to forgo the increased monthly discount provided in the Joint Proposal for an additional year is clearly not in the public interest.

PULP, by contrast, reiterates its view that the provisions for low-income customers are inadequate. It argues that further steps must be taken to reduce the level of service terminations on the Central Hudson system, which place an additional burden on already economically stressed customers. Central Hudson's rate structure should generally be made more equitable, PULP argues, with added low-income protections, and collection efforts showing deference to the needs of economically vulnerable consumers.

We agree with UIU that the low-income customer discount enhancements specified in the Joint Proposal are unique and should have been considered an additional benefit of the merger. While it is true that such changes could, in theory, have been achieved through a rate case, it is unlikely that they would have been so advantageous to customers in both size and funding source; and in any case, they would not have been achieved for a year, and perhaps longer. It may be reasonable to argue that measures included in a Joint Proposal involving a utility acquisition, if they merely reflect established

Commission policy routinely implemented in rate cases, result from the policy rather than from the transaction under consideration. Here, however, the low-income program enhancements go well beyond what might be considered normal, incremental progress that could be expected in a rate case.

PULP reiterates arguments made previously that were adequately addressed in the RD. For now, we are satisfied that low-income programs for Central Hudson customers will be significantly improved when the terms of the Joint Proposal are implemented.

Foreign Ownership

In response to comments arguing that the merger would be contrary to the public interest because it would result in ownership of Central Hudson by a foreign company, the RD concluded that foreign ownership is not objectionable *per se*, but that it could complicate our oversight of Central Hudson.

On exceptions, MI argues that this conclusion is inconsistent with the RD's finding that the Joint Proposal's regulatory safeguards would mitigate such risks to the fullest extent possible. Petitioners add that there were no disputes between them and Staff over the production of documents and information, assurance of cooperation from Fortis, maintenance of transparency, or other issues related to facilitating the regulatory process. The provisions of the Joint Proposal addressing these matters were agreed to by Staff and many were, in fact, substantially similar to those in the RSA under which CHEG and Central Hudson are currently operating.

We agree with the RD that foreign ownership of Central Hudson is not inherently objectionable, but we do not agree that it will necessarily complicate our regulatory oversight. One clarification is required, however, to ensure that the provisions of the Joint Proposal negotiated by Staff are

interpreted consistently by all parties in a manner that will ensure the level of cooperation and access to information we expect from the parent companies of regulated utilities. Acceptance of the terms of this order will confirm that Petitioners understand and agree that the Commission and the Department of Public Service Staff shall have access to the books and records of Petitioners and all of their affiliates to the extent such information and materials are relevant to the Commission's exercise of authority under the PSL or any other applicable statute. Our authority to review such books and records is vital to ensuring that ratepayers are protected under the new organization. Therefore our approval of this acquisition as in the public interest is conditional upon the affirmation of this legal authority.

Community Values

As the RD explained, the judges were troubled by the prospect that the merger would impair a unique affinity that Central Hudson has built with its community in a small, closely knit service territory. In assessing the transaction's benefits and detriments pursuant to the analytic framework defined in our *Iberdrola* decision, they counted the supposed erosion of this community relationship as a detriment. Other than CLP/COA, all parties except.

The judges found that local public opposition to the merger was relevant in primarily two respects. First, they noted that effective management of the utility company depends on a collaborative relationship between the company and its customers, especially at a time like the present when regulators are attempting to help utilities develop new services requiring customer acceptance and cooperation. As a few examples, we would cite our efforts on behalf of initiatives such as improved emergency response efforts, energy efficiency programs, retail

access by energy services companies, smart grid technology and time-of-use pricing, electric and gas infrastructure upgrades and expansion, and increased reliance on distributed generation and demand response.

We agree with the judges that any deterioration in customer relations because of the merger would be detrimental insofar as it might impede management performance in these areas. However, as the *Iberdrola* analysis recognizes, the weighing of benefits and detriments is a qualitative exercise; and risks or detriments, once identified, may be at least partly counterbalanced by mitigating circumstances or directives. One mitigating factor in this instance is that we expect Central Hudson's commitments to the State's environmental and energy policy objectives will continue unabated by the merger.

Another mitigating factor is that Petitioners have justified the merger partly on the basis of their representations that "Fortis operates a stand-alone business model whereby the holding company provides financial support for the utility operations ..., but has only minimal and infrequent involvement in the day-to-day management of those operations. ... Fortis believes that, where an acquired utility is fundamentally sound and well-managed, it should be allowed to continue operating as a locally managed company that is responsive to local regulatory requirements"²⁴ We expect this "federal" governance model will minimize any change experienced by customers in their interactions with Central Hudson.

In addition to customers' future dealings with Central Hudson, the judges' second concern about negative community opinion was that it diminishes the value of the transaction's

²⁴ Petitioners' initial statement supporting the Joint Proposal, pp. 4-5.

benefits insofar as customers prize preservation of the corporate *status quo* more highly than the economic benefits offered in the Joint Proposal. We disagree with the merger proponents' exceptions to this aspect of the RD; contrary to their objections, it was not error for the judges to rely on public opinion merely because opinions are difficult to measure or may be misinformed. These infirmities certainly add to the difficulty of quantitatively analyzing a transaction's net benefits, but they do not nullify the relevance of customer preferences.

Financial Safeguards

The RD enumerated the many conditions included in the Joint Proposal that are designed to protect the financial integrity of Central Hudson in the event that it becomes a subsidiary of Fortis. It concluded that those conditions are reasonably designed to mitigate the concerns to which they are addressed.

On exceptions, PULP argues that any hope these financial protection provisions will perform as intended is unwarranted. PULP says a bankruptcy court has concluded that an independent director cannot be bound to vote against a voluntary bankruptcy filing, and this allegedly means that the "golden share" holder appointed pursuant to the Joint Proposal cannot be relied on to protect utility customers. PULP also speculates that there may be other "cross-border" complications that could

defeat the financial protection provisions required by the Joint Proposal.²⁵

PULP's arguments are unpersuasive. The bankruptcy ruling it refers to was addressing the obligations of an independent member of the board of directors. It stated that a director has an inherent fiduciary responsibility to protect the interests of shareholders. A director cannot be relied upon to vote against a voluntary bankruptcy if that is the best course of action available. The holder of the "golden share" to be appointed under the terms of the Joint Proposal, by contrast, will have no such conflict. It will represent a special class of preferred stock whose only interest is in avoiding voluntary bankruptcy. There are no other fiduciary responsibilities for this trustee to balance. PULP's remaining contentions regarding other potential "cross-border" complications are not sufficiently concrete to be given significant weight in our decision.

CLP/COA also criticizes the RD's conclusions concerning financial protections. First, it contends, in essence, that Fortis is engaged in numerous ventures which may present risks that cannot now be foreseen and addressed by the Joint Proposal. Second, CLP/COA argues that the lower credit rating of Fortis makes a future downgrade for Central Hudson likely, but the Joint Proposal provides protection for ratepayers from the cost of such a downgrade for only three years. Finally, CLP/COA maintains that the accounting goodwill created by the proposed merger is too great to be sustained. It

²⁵ PULP also suggests that Fortis's own investment guidelines state that the company will oppose proposals for golden shares when they arise, and suggests that this implies that Fortis will attempt to negate the requirement in this case, perhaps using NAFTA. Petitioners point out, however, that the documents cited by PULP pertained to an unrelated company named "Fortis," not Fortis Inc. of Canada.

says the goodwill will inevitably be impaired and ratepayers cannot be fully insulated from the effect of the resulting write-down or write-off.

Staff responds that Fortis's ventures are not overly risky. Over 90% of its investments are in low-risk North American regulated utilities. It points out that even if Fortis suffers losses in its other businesses, the Joint Proposal includes provisions that would prevent Central Hudson from being used as a source of cash. These provisions, one of which is continued from the RSA and one of which is new, limit or preclude the payment of dividends by Central Hudson to its parent if Central Hudson's credit rating or equity ratio falls below defined levels.

As to the time limitation on the automatic protection of ratepayers from the effects of a Fortis downgrade, Staff points out that this provision is new and is the product of lessons learned from previous mergers. It says that in combination with the dividend restriction, the provision ensures adequate protection for ratepayers.

With respect to goodwill, Staff states that it was keenly aware of the issue and recognized the risk. It says that a significant portion of the positive benefit adjustments negotiated as part of the Joint Proposal were intended to compensate for that risk.

Petitioners respond that CLP/COA itself acknowledges that the financial protection provisions of the Joint Proposal are as comprehensive, and even stronger, than analogous conditions we have imposed in other recent mergers. Petitioners contend that CLP/COA has failed to demonstrate why these provisions will not perform their intended functions, and they point out that Standard & Poor's has concluded that the "ring fencing" set forth in the Joint Proposal could enable the rating

agency to differentiate the ratings of Central Hudson from those of Fortis.

Furthermore, Petitioners argue, far from being inevitable as CLP/COA alleges, neither a credit downgrade nor an impairment of goodwill is likely for Fortis. They say that Fortis's level of goodwill after acquiring CHEG will be substantially lower than that of Iberdrola after its acquisition of Energy East. Petitioners note that Standard & Poor's and Dominion Bond Rating Services affirmed Fortis's existing credit ratings after announcement of the merger agreement. In any event, they say, the ring fencing provisions of the Joint Proposal ensure that the risk of any goodwill impairment will be borne by shareholders of Fortis, not the ratepayers of Central Hudson.

With the addition of one further condition described below, we conclude the financial safeguards provided for in the Joint Proposal are adequate to protect Central Hudson's ratepayers from any fluctuations in the fortunes of the utility's parent company. Dividend restrictions combined with money pooling limitations and the ban on cross-default provisions will preclude Central Hudson from being used as a cash or credit source for Fortis's other ventures. The "golden share" requirement will prevent the placement of Central Hudson in voluntary bankruptcy. Goodwill accounting requirements will preclude the effects of any impairment that may occur from being reflected in utility rates. The automatic exclusion from rates of any credit cost increase attributable to a downgrade of Fortis's credit will be in place for only three years, but protection for ratepayers does not end with its expiration. Under our normal rate-setting standards, we have, and intend to exercise, the authority to exclude from rates any credit costs incurred by Central Hudson that are attributable to its parent

and are in excess of the cost of credit that would be incurred by the utility standing alone.

Based on our experience with previous mergers, we will add to these safeguards a further provision concerning tax liabilities. During discovery, Fortis informed Staff that, post merger, Central Hudson's United States federal and New York State income tax returns would be filed as part of the consolidated tax returns of FortisUS, the holding company for Fortis's United States subsidiaries. Such consolidated tax returns join the regulated and competitive market affiliates of Fortis and could expose New York ratepayers to tax liabilities that are the responsibility of the non-regulated or out-of-state subsidiaries of Fortis. To prevent this risk, we will require that Petitioners commit that Fortis will indemnify Central Hudson for any tax obligations Central Hudson incurs that it would not have incurred if it had filed on a stand-alone basis.

Fortis also informed Staff that it expects that the staff of Central Hudson will prepare the consolidated returns and that tax elections and filing positions related to the return will be determined by Central Hudson management, with input provided by Fortis where required as it may relate to the nature of the business activities of FortisUS Inc. and the non-regulated businesses of CHEG.²⁶ We will require that an Income Tax Preparation and Sharing Agreement be adopted and used to formalize this relationship, protect Central Hudson's customers, and allocate tax benefits and obligations among the companies participating in the consolidated income tax returns. The agreement is to be submitted as a compliance filing in this proceeding within 90 days following the closing of the merger

²⁶ Responses to Staff Interrogatories DPS-M278 (Staff's DPS-M78) and DPS-M316 (Staff's DPS-M116), which were provided in Staff Policy Panel Exhibit__ (PP-1).

transaction. It must provide for full Staff access to all income tax records of subsidiaries that join in the consolidated tax return with Central Hudson, and must also define the contractual mechanism for implementing the income tax indemnification requirement defined above.

The financial safeguards defined in the Joint Proposal, with the one addition we have made, are strong and comprehensive. They are fully adequate to protect the interests of Central Hudson's ratepayers.

Environment and Infrastructure

In the RD, the judges rejected concerns raised by commenters that Fortis might reverse policies of Central Hudson to promote alternative and green energy within its service territory. The RD found such concerns misplaced, reasoning that, because of the differing roles of Central Hudson as a distribution utility and Fortis as an owner of other subsidiaries in the generation business, Fortis's past performance in other settings had little bearing on Central Hudson's future conduct as a Fortis affiliate subject to our regulatory supervision. CLP/COA excepts, expressing strong misgivings about Fortis's record in matters involving utility infrastructure and environmental impacts, and Petitioners contest CLP/COA's allegations in response.

The exception is denied. First, we decline to evaluate claims regarding the highly impassioned and localized disputes noted by CLP/COA, because they already have been adjudicated in other jurisdictions and because our investigative abilities and resources are better employed in deciding questions material to cases pending before us.

Another, related consideration is that, as the judges observed, Central Hudson's scope of activity as an energy distribution company differs significantly from that of Fortis

as an energy producer. CLP/COA responds that Central Hudson's distribution system should and will evolve as dictated by environmental and energy policy objectives, and we agree. But the fact remains that, regardless of Central Hudson's corporate structure, the distribution system will continue to be designed, maintained, and operated by Central Hudson under New York's jurisdiction and regulations, in furtherance of the State's policies as adopted from time to time.

Moreover, CLP/COA's concerns presuppose that Fortis's corporate outlook will contradict and supersede Central Hudson's. We find this assumption simplistic in several respects. First, as noted, the two firms are in different lines of business. Second, the supposition that Fortis would override Central Hudson's fundamental orientation toward environmental issues overlooks Petitioners' representations, which we deem binding upon them, that Fortis's decentralized model of corporate control will afford latitude to local management in case of differences between subsidiary and parent in terms of policy orientation or priorities.

Central Hudson has a long-standing history of proven commitment to environmentally positive policies and practices. For example, the company supports about 1,323 net-metered residential or business customers using renewable generation (predominantly 14 megawatts of solar photovoltaic capacity) in its service territory, with another 148 systems pending. A major reason for this relatively large amount of installed solar PV capacity, which offsets an estimated 5,600 tons of greenhouse gas emissions annually, is that Central Hudson has been one of New York's most cooperative utilities in facilitating interconnection for customers that install renewable energy.

Central Hudson's level of support for renewable energy reflects not simply internal corporate culture but also the

conditions in which the company operates. Thus, Central Hudson's relatively early embrace of farsighted environmental policies has been partly a response to the State's financial incentive programs and partly a response to the high degree of environmental awareness that prevails among its customers. Regardless of corporate structure, we expect Central Hudson's orientation in that respect will continue to comport with state policies and customer preferences in its service territory, and therefore that the subsidiary will continue actively supporting expanded use of environmentally sound energy resources.

Of course we also will exercise our legal authority as necessary to reinforce the company's performance of its obligations under New York laws and regulations and we will monitor Central Hudson's responses to policy guidance, if any, from Fortis.

Retail Access

The Joint Proposal would call for Central Hudson to include, within 90 days following the closing of the merger transaction, a total bill comparison on all retail access residential bills using consolidated billing. The comparison would be generated using an existing Central Hudson program that has already been implemented. Within 60 days after the issuance of this order, Central Hudson would also be required to file a proposal to provide payment-troubled customers -- those subject to service termination -- with similar bill comparison information.

The RD noted that the Joint Proposal expressly recognized that its provisions might have to be modified based on the outcome of the Commission's *Retail Energy Markets* case.²⁷

²⁷ Cases 12-M-0476, *et al.*, *Residential and Small Non-residential Retail Energy Markets*.

It recommended, therefore, that the Joint Proposal be modified to defer implementation of both the publication of bill comparisons on the consolidated bills of residential retail access customers and the provision of bill comparison information to payment-troubled customers until 30 days following an order in that proceeding. RESA takes exception to this recommendation; it argues that establishing a fixed implementation period for these measures is premature, given that the outcome of the generic proceeding remains uncertain as to how bill comparisons should be presented, or even whether they should be used at all.

Staff and Petitioners also except to the RD, but their objection is exactly the opposite of RESA's. They contend that Central Hudson is capable of providing the required bill comparisons now and that postponing implementation until completion of the *Retail Energy Markets* case will merely engender needless delay.

We agree with RESA that mandating an implementation plan before the nature of the plan to be implemented is fully defined would be unwise and potentially an inefficient use of resources. Therefore, we will depart from the Joint Proposal's terms and instead require that bill comparisons on consolidated bills and bill comparison information for payment-troubled customers be implemented in conformance with the requirements of the order in the *Retail Energy Markets* case, when issued. To the extent that Central Hudson has the capability to provide such bill comparisons more quickly or effectively than other utilities, that capability can be taken into account in that order.

PETITIONERS' ENHANCEMENTS

Following the exchange of briefs on exceptions and opposing exceptions, on May 30, 2013, Petitioners filed a letter in which they proposed "final enhancements" to the terms of the transaction beyond the terms included in the Joint Proposal.

These enhancements are:

1. Petitioners propose an extension of the freeze on delivery rates for an additional year beyond that provided in the Joint Proposal, to June 30, 2015. While Petitioners do not undertake to quantify the value of this additional one-year rate freeze, they note that, over the prior seven years, Central Hudson's delivery rates increased by an average of \$23 million per year. They also state that Central Hudson is committed to spending \$215 million on capital improvements to its system by mid-2015. This willingness to make such a capital investment without an increase in rates to provide a return on that investment is a demonstration, they say, of Fortis's strong commitment to the State of New York.
2. Petitioners offer to extend the Joint Proposal's "no lay-off" commitment for both union and non-union employees of Central Hudson from two years to four years.
3. Petitioners offer to extend, from five years to ten, their commitment to maintain Central Hudson's level of community support.
4. Petitioners commit that the new board of directors of Central Hudson will include two independent directors who reside within Central Hudson's service territory, rather

than the one independent director meeting such qualifications proposed in the Joint Proposal.²⁸

Multiple Intervenors, PULP, and CLP/COA all filed comments, on June 5 or June 6, 2013, responding to Petitioners' offers of these enhancements. MI asserts that Petitioners' offer represents "meaningful enhancements to the customer benefits and protections embodied in the Joint Proposal." MI further characterizes the enhancements as "entirely one-sided," in that they supplement previously offered benefits and protections for customers without any reduction or subtraction of such benefits. Consequently, MI argues that the enhancements offer should be evaluated very favorably, and it urges us to adopt the Joint Proposal with the enhancements. According to MI, the most compelling enhancement is the proposal to extend the delivery rate freeze for an additional year, through June 30, 2015. Although MI admits that the benefit is not quantifiable, it asserts that the benefit "almost certainly is material."

PULP and CLP/COA similarly single out the one-year extension of the rate freeze in responding to Petitioners' enhancements. Both PULP and CLP/COA argue that the additional year is not a benefit. Instead, they say, the offer undoubtedly reflects a situation in which Central Hudson is overearning and seeking to extend rates that are too high. Both point out that Central Hudson's rates were set based upon an allowed return on equity (ROE) of 10%, a level that would likely be considered too

²⁸ The Petitioners' May 30, 2013, letter containing the proposed enhancements to the terms of the transaction stated that the second director would "reside, do business or work within Central Hudson's service territory." Petitioners clarified that this was in error and that the language should be as in the Joint Proposal where the independent director is required to reside in the service territory, and we will so require.

high in light of the current interest rate environment. They point to recently filed Staff testimony in the pending Consolidated Edison rate case, in which Staff recommends an ROE of 8.7%,²⁹ as well as two recent Commission orders, one approving an ROE of 9.3% for Niagara Mohawk³⁰ and another requiring National Fuel Gas to show cause why its rates should not be lowered and made temporary in light of projected overearnings by that utility.³¹ PULP argues that the average increase in rates over the last seven years is not particularly indicative of further trends, due to lower interest costs, cost cutting, high earnings, or other factors which call into question the reasonableness of current rates and ROEs. Both PULP and CLP/COA urge us to reject the Joint Proposal, the additional enhancements, and the proposed acquisition.

We agree with MI that these enhancements can only be regarded as improvements to the Joint Proposal, as they provide additional benefits not previously proposed. The additional year of a rate freeze represents only a commitment on the part of Central Hudson not to file for a rate increase to take effect prior to July 1, 2015. In no way does it represent a guarantee that we would not institute a proceeding to lower rates if such an action appeared to be warranted at any time during the next two years. Consequently, the assertions by PULP and CLP/COA that this promise by Central Hudson would entitle it to overearn during the period are inaccurate and unfounded. Our experience

²⁹ Cases 13-E-0030, *et al.*, *Consolidated Edison - Electric, Gas and Steam Rates*, testimony of DPS Staff witness Craig E. Henry, prefiled May 31, 2013.

³⁰ Case 12-E-0201, *Niagara Mohawk Power Corp. - Rates*, Order Approving Joint Proposal (issued March 15, 2013).

³¹ Case 13-G-0136, *National Fuel Gas Distribution Corp. - Rates*, Order Instituting Proceeding and to Show Cause (issued April 19, 2013).

leads us to conclude that Central Hudson's expenses and capital investments during the next two years, even taking into consideration a more current cost of capital, would likely entitle it to some rate relief, such that Central Hudson's forgoing a rate increase has value for consumers. Consequently, we will accept the offered enhancements and add them as additional conditions to our approval of the acquisition.

We accept these enhancements with two caveats with respect to future rate-setting for Central Hudson, one clarification, and one modification. First, our ordering of the workforce commitments does not lessen our right and obligation to closely examine Central Hudson's labor budget in future rate proceedings and does not preclude an adjustment to workforce estimates to ensure that rates are set at proper levels.

Second, we note that our ordering of the extra year of the rate freeze does not reflect our acceptance of Petitioners' statement that Central Hudson "will spend \$215 on capital expenditures" between July 1, 2013 and June 30, 2015. We appreciate the expression of commitment to the utility's infrastructure in the service territory and adopt it as a floor subject to consultation with Staff as to overall spending levels and priorities. We will require Central Hudson to develop its capital expenditure plan in greater detail in coordination with Staff.

Further, we clarify that the extension of the rate freeze we are accepting applies to all of the terms and conditions of Central Hudson's current rate plan as modified by the requirements of this order. Those terms and conditions will remain in effect until changed by subsequent Commission order.

Also, the Joint Proposal requires Central Hudson to file a report with the Secretary within 30 days after the first two anniversary dates of the merger's closing, comparing the

numbers of union and management employees on the anniversary date with those on the date on which the merger closed. With our adoption of Petitioners' enhancements, we will require this filing for the first four years after the merger's closing.

In addition, the Joint Proposal provides targets for tree trimming expenditures, stray voltage testing and mitigation costs, and net plant only for one year. Extension of the rate freeze will require that targets be established for the second year. Therefore, we will require Central Hudson to define such targets in cooperation with Staff. Within 20 days following issuance of this order, Central Hudson will submit its capital investment plan and proposed targets for the second year of the rate freeze to the Director, Office of Gas, Electric, and Water for review. Forty-five days after that submission Central Hudson and Staff will file their respective or joint recommendations concerning the tree trimming expenditure, stray voltage testing and mitigation cost, and net plant targets with the Secretary for a final Commission determination.

MOTION FOR EVIDENTIARY HEARINGS

Shortly before the RD was issued, CLP/COA was admitted as a party to the proceeding, and it filed a motion requesting evidentiary hearings. The RD was issued before responses opposing the motion were due.³² Nevertheless, the judges reviewed the motion standing alone and recommended that we deny it.

From a procedural standpoint, considering fairness and efficiency, the judges found the motion inconsistent with the rule that parties joining a proceeding already underway must

³² CLP/COA intervened and filed its motion May 1, 2013, with opposing responses due May 8. The RD was issued May 3.

accept the record as developed prior to their intervention,³³ inasmuch as all previous intervenors had to meet a much earlier deadline for identifying issues allegedly requiring evidentiary hearings.³⁴ Moreover, the judges observed, the pre-filed testimony and exhibits could be incorporated into the record (as advocated by CLP/COA) without evidentiary hearings.³⁵ Meanwhile, in terms of substantive issues, the judges found "no factual questions that could be clarified by confrontation of witnesses and could materially affect the Commission's decision."³⁶

In addition to the CLP/COA motion, public comments submitted to us or published in the news media likewise express support for hearings.³⁷ Responses opposing the motion have been filed by Petitioners, Staff, and MI. PULP and IBEW have filed responses stating that they do not oppose the motion but proposing that it be held in abeyance pending our determination at this time whether outstanding or newly identified issues create a need for hearings. (Parties opposing the motion oppose the PULP and IBEW recommendation as well.)³⁸

³³ 16 NYCRR 4.3(c)(2).

³⁴ The RD cites only a February 8, 2013 deadline for identifying evidentiary issues. (RD, p. 4.) However, as we explain here, the judges adopted that deadline after the Joint Proposal was filed, thereby extending similar deadlines previously set for October 5, 2012 and then November 16, 2012.

³⁵ RD, p. 4.

³⁶ RD, p. 5.

³⁷ *E.g.*, letters dated May 10, 2013 from Assembly Member Kevin A. Cahill to Chairman Brown; May 6, 2013 from U.S. Representative Sean Patrick Maloney to Chairman Brown; and April 30, 2013 from Shayne R. Gallo, Mayor, City of Kingston, to Acting Secretary Cohen.

³⁸ IBEW's response antedates its decision to support the merger proposal, possibly implying that IBEW has abandoned its conditional support of additional hearings.

Having now had an opportunity to consider not only the motion as presented to the judges but also the subsequent responses and public comments on this question, we agree with the judges that our decision regarding the merger should be based on the documentary evidence and public comments already in the record without additional hearings.

As Petitioners suggest, a useful approach is to examine (1) whether the movants cite reasons for introducing the motion as late in the proceedings as they did; (2) whether granting the motion would prejudice other parties or the public interest; and, if so, (3) whether such prejudice would be outweighed by the hearings' evidentiary value. Regarding the last point, no party claims that evidentiary hearings are statutorily required in this case; therefore the hearing process already conducted suffices legally if the resulting record constitutes substantial evidence and provides a rational basis for decision.

On the first question, that of timing, those opposing the motion are correct that there is no discernible reason for its submittal as late as May 1, 2013. There can be no serious claim that the merger proposal was esoteric or came as a surprise late in the proceeding, having been public knowledge since it was first announced on February 21, 2012; nor, for example, does CLP/COA allege a belated discovery of new facts or issues. The present merger petition was filed on April 20, 2012, followed by a May 16, 2012 procedural conference open to all interested persons. The judges initially set an October 5, 2012 deadline "for all parties to file any statements of material factual issues they believe the [parties'] comments or testimony raise and warrant consideration in an evidentiary

hearing.”³⁹ They later extended that deadline to November 16, 2012, as part of a general rescheduling designed to provide Staff and intervenors six additional weeks for discovery and testimony.⁴⁰ Then, after the Joint Proposal was negotiated and filed, the judges issued yet another, similar invitation whereby “any party who contends that an evidentiary hearing on the Joint Proposal is necessary must demonstrate [by February 8, 2013] that a material issue of fact exists that cannot be resolved without the cross-examination of witnesses.”⁴¹

During the entire period from the initial April 2012 filing until CLP/COA’s actual intervention in May 2013, intervention was freely authorized for every interested applicant without opposition, so that CLP/COA’s absence can only be deemed voluntary. Thus it was procedurally appropriate for the judges to rely on 16 NYCRR 4.3(c)(2) in concluding that CLP/COA was subject to the several deadlines it had missed for requesting an evidentiary hearing, wholly apart from the judges’ substantive finding that CLP/COA had failed to identify reasons for a hearing.

Given the lack of a justification for the late filing of CLP/COA’s motion, technically it becomes unnecessary to reach the second question, whether the delay occasioned by extending the proceeding at this stage would prejudice the parties or the public interest. Nevertheless, we find that it would. As the judges stated when granting additional time (over Petitioners’ objections) for preparation of Staff and intervenor cases:

In scheduling administrative proceedings, the

³⁹ Case 12-M-0192, Ruling on Schedule and Procedure (issued June 29, 2012), p. 1.

⁴⁰ Case 12-M-0192, Ruling on Motion for Reconsideration (issued July 31, 2012), p. 1.

⁴¹ Case 12-M-0192, Ruling on Schedule and Content of Comments on Joint Proposal (issued January 29, 2013), p. 2.

primary concern is fairness. To the extent possible, a schedule should be adopted that does not prejudice the interests of any party. Here, Petitioners have an interest in seeing their petition determined by the Commission within a commercially reasonable time.⁴²

Not only does that analysis remain valid at the present stage; but we now are met with the additional consideration that CLP/COA's proposed modification of the procedural schedule to accommodate hearings would be unfair to other parties that made efforts, including timely intervention, to comply with the schedule previously adopted. Such unfairness in turn would disserve the public interest by undermining the Commission's, judges', and parties' interest in securing compliance with schedules established in future proceedings.

Finally, the third question enumerated above is whether an otherwise prejudicial delay can be justified by the value the evidentiary hearings would add to the record. CLP/COA and others advocating a hearing have not satisfied that criterion. Typically in our proceedings, the reasons for an evidentiary hearing are that it enables parties to elicit information that could not be obtained through discovery, or to test the accuracy or cogency of facts and opinions presented by opposing parties through their witnesses.

The parties that intervened earlier than CLP/COA did not identify issues even arguably suitable for such procedures despite three formal invitations to do so, as described above. Those currently seeking hearings likewise have not shown that cross-examination might enhance the record regarding material

⁴² Case 12-M-0192, Ruling on Motion for Reconsideration (issued July 31, 2012), pp. 4-5, citing Case 08-E-0077, *Entergy Corporation, et al. - Reorganization*, Ruling on Discovery, Process, Schedule and Scope of Issues (issued August 14, 2008), p. 31.

issues. Nor can they explain why the procedures actually used in this case have been less effective than confrontation of witnesses.

Thus, for example, CLP/COA says cross-examination is needed "to ensure clarity [and] accuracy and to probe credibility,"⁴³ begging the question what material fact is unclear or unverified or raises an issue of credibility. Similarly, elected officials' public comments argue that a determination of the public interest under PSL §70 requires a factual basis;⁴⁴ that "full and informed public input is vital";⁴⁵ or that we must examine "[e]ach and every fact and estimate" regarding Petitioners' "financial health, commitments to customer service, labor contract continuation limitations, and promises of ratepayer relief."⁴⁶ Each of these premises, while unexceptionable on its face, stops short of explaining why a decision should not be based on the record already compiled through months of discovery, preparation of adversarial testimony and exhibits by Staff and intervenors, and a subsequent Joint Proposal negotiated over an additional two months in discussions open to all interested parties.

The CLP/COA motion and other comments also attempt to characterize this case as a deviation from established procedures, insofar as the case has included no evidentiary hearings even though the merger proposal is momentous. This objection not only lacks a supporting legal theory, but also does not describe our practices accurately. To generalize about our merger proceedings, or indeed any Commission cases where hearings are merely discretionary, the most that accurately can

⁴³ CLP/COA motion, p. 5.

⁴⁴ Gallo letter, *supra*, p. 1.

⁴⁵ Maloney letter, *supra*.

⁴⁶ Cahill letter, *supra*, p. 1.

be said is that the procedures adopted are tailored to the nature of the facts and issues to be determined.⁴⁷ For example, among the merger cases cited by CLP/COA to show that evidentiary hearings are customary, three differed from this case in that each included establishment of a detailed rate plan,⁴⁸ and the fourth differed in that the parties did not negotiate a Joint Proposal.⁴⁹ And in none of the other cases was the evidentiary hearing proposed belatedly as here.

In summary, the judges were correct that to grant the motion for hearings would be improper because of the circumstances in which CLP/COA intervened, would be prejudicial and contrary to the public interest, and would not enhance the record on any material issue requiring a decision.

CONCLUSION

The acquisition of CHEG by Fortis, subject to the terms of the Joint Proposal as modified, clarified and

⁴⁷ A typical criterion in choosing between evidentiary hearings and other procedures is whether the issues are factual. As the judges in another proceeding explained: "we are not excluding issues from consideration in the hearing process, ... instead, we are distinguishing between contested factual matters requiring adjudication and legal or policy matters, for which no facts are in dispute, and which are appropriately addressed by argument." Case 10-T-0139, *Champlain Hudson Power Express Inc. - Transmission Siting*, Ruling on Issues (issued May 8, 2012), p. 3, n. 7.

⁴⁸ Case 01-M-0075, *Niagara Mohawk Power Corp., National Grid PLC, et al. - Merger*, Opinion and Order Authorizing Merger and Adopting Rate Plan (issued December 3, 2001); Case 01-E-0359, *N.Y.S. Electric & Gas Corp. - Price Protection Plan*, Order Adopting Provisions Of Joint Proposal With Modifications (issued February 27, 2002); Case 06-M-0878, *National Grid PLC and KeySpan Corp. - Stock Acquisition*, Order Authorizing Acquisition Subject to Conditions and Making Some Revenue Requirement Determinations (issued September 17, 2007).

⁴⁹ Case 07-M-0906, *Iberdrola S.A., Energy East Corp., et al. - Acquisition*.

supplemented in our discussion above, provides substantial benefits and minimal risks. We approve it as being in the public interest within the meaning of PSL §70.⁵⁰

As the RD explained, the clearest articulation of the public interest analysis in a case such as this can be found in our decision approving the acquisition of New York State Electric and Gas Corporation and Rochester Gas & Electric Corporation by Iberdrola.⁵¹ It starts by requiring Petitioners to make a three-part showing: that the transaction would provide customers positive net benefits, after considering (1) the expected benefits properly attributable to the transaction, offset by (2) any risks or detriments that would remain after applying (3) reasonable mitigation measures.

Once we have gauged the net benefits by comparing the transaction's intrinsic benefits versus its detriments and risks, we can assess whether the achievement of net positive benefits requires that the intrinsic benefits be supplemented with monetized benefits (sometimes described as "positive benefit adjustments" or PBAs). Then, if necessary, we establish a quantified PBA requirement, "as an exercise of informed judgment because there is no mathematical formula on which to base such a decision."⁵²

⁵⁰ In adopting the Joint Proposal's terms, we neither reject nor adopt the terms stated in §§VI.A. through F. of the Joint Proposal ("Other Provisions"), as they concern only the parties' mutual obligations. Nothing in the Joint Proposal would preclude reliance on our order adopting the Joint Proposal's terms, as precedent in other cases. See Cases 06-G-1185 and 06-G-1186, *KeySpan Energy Delivery - Rates*, Order Adopting Gas Rate Plans (issued December 21, 2007), pp. 58-60.

⁵¹ RD pp. 57-58.

⁵² *Iberdrola* order, p. 136.

In this instance, the elements we called for in *Iberdrola* are combined in a Joint Proposal whose terms include the basic merger transaction, measures to mitigate the transaction's risks or detriments, and supplemental, monetized benefits. In reviewing the proposed benefits achievable only through approval of the transaction and the Joint Proposal, we find them sufficiently significant, and the risks sufficiently minimized, to produce a net positive benefit for ratepayers that justifies approval of the transaction.

As we have discussed, the benefits include \$9.25 million in guaranteed rate savings, a \$35 million fund to be used for deferral write-offs and/or future rate mitigation, a \$5 million Community Benefit Fund for low-income customer programs and economic development, and an earnings sharing mechanism more favorable to ratepayers than the present formula. As for any offsetting risks or detriments, we find that they have been minimized sufficiently, because the Joint Proposal's terms as modified and adopted establish comprehensive financial safeguards, corporate governance requirements, employee retention requirements, service quality and performance mechanisms, and other risk mitigation measures. Those provisions together with Fortis's "federal" business model and an extension of Central Hudson's current level of community involvement will ensure the continuation of Central Hudson's role in its service territory as a responsive and responsible corporate citizen.

Based on these considerations, we find that the proposed transaction provides a clear net benefit to Central Hudson's ratepayers, and that the transaction therefore is in the public interest as required by PSL §70.

Finally, we are conditioning our approval of the transaction on Petitioners' providing the "enhancements"

outlined above, namely: an extension of the originally proposed rate freeze through June 30, 2015; job security provisions extended to four years as compared with the two years originally proposed; continuation of Central Hudson's level of involvement in community programs for ten years, rather than the five originally proposed; and a provision that Central Hudson's Board of Directors will include two independent directors residing in the service territory, rather than one as originally proposed.

In summary, we approve the merger transaction because it will serve the public interest as required by PSL §70; and we adopt Petitioners' proposed enhancements, because they provide other advantages additional to those enumerated in the Joint Proposal. Therefore, the motion is denied.

The Commission orders:

1. In accordance with the foregoing discussion, and subject to the determinations and understandings set forth above, the terms of the Joint Proposal dated January 25, 2013, which was filed in this proceeding on January 28, 2013, are adopted in their entirety except as otherwise noted, and are incorporated as part of this order.

2. Fortis Inc. and CH Energy Group, Inc., on behalf of themselves and their subsidiaries that are parties to the petition initiating this proceeding, must submit a written statement of complete and unconditional acceptance of this order and its terms and conditions, signed and acknowledged by duly authorized officers before the earlier of the closing date of the proposed acquisition or July 8, 2013. These statements must be filed with the Secretary and served contemporaneously on all active parties in this proceeding. In the absence of such acceptance, our approval of the proposed acquisition is rescinded.

3. Within 90 days following the closing of the merger, Fortis Inc. shall file with the Secretary a Tax Preparation and Sharing Agreement incorporating the provisions described in this order.

4. Pursuant to PSL §108, Central Hudson Gas & Electric Corporation is authorized to amend its Certificate of Incorporation to provide for the establishment of a class of preferred stock having one share subordinate to any existing preferred stock, as defined by the terms of the Joint Proposal that we are adopting by this order. Such share of stock shall have voting rights only with respect to Central Hudson Gas & Electric Corporation's right to commence any voluntary bankruptcy without the consent of the holder of that share of stock.

5. As described in the body of this order, within 20 days following the issuance of this order, Central Hudson Gas & Electric Corporation shall file with the Secretary its capital investment plan and proposed targets for tree trimming expenditures, stray voltage testing and mitigation costs, and net plant for the year ending June 30, 2015. Forty-five days after that submission, Central Hudson and Staff shall file their respective or joint recommendations concerning the tree trimming expenditure, stray voltage testing and mitigation costs, and net plant targets with the Secretary for a final Commission determination.

6. The motion for evidentiary hearings filed by Citizens for Local Power and the Consortium in Opposition to the Acquisition is denied.

7. The Secretary in his sole discretion may extend any deadlines established by this order.

8. This proceeding is continued but shall be closed by the Secretary as soon as the compliance filings have been completed, unless he finds good cause to continue it further.

By the Commission,

(SIGNED)

JEFFREY C. COHEN
Acting Secretary

Public Service Commission
State of New York

x-----x :
Joint Petition of Fortis Inc., FortisUS :
Inc., Cascade Acquisition Sub Inc., CH :
Energy Group, Inc., and Central Hudson :
Gas & Electric Corporation for Approval : Case 12-M-0192
of the Acquisition of CH Energy Group, :
Inc. by Fortis Inc. and Related :
Transactions. :
x-----x :

Joint Proposal for Commission Approval of the Acquisition of
CH Energy Group, Inc. by Fortis Inc. and Related Transactions

Dated: January 25, 2013

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Public Service Commission
State of New York

x-----x :
Joint Petition of Fortis Inc., FortisUS :
Inc., Cascade Acquisition Sub Inc., CH :
Energy Group, Inc., and Central Hudson : Case 12-M-0192
Gas & Electric Corporation for Approval :
of the Acquisition of CH Energy Group, :
Inc. by Fortis Inc. and Related :
Transactions. :
x-----x :

Joint Proposal for Commission Approval of
the Acquisition of CH Energy Group, Inc. by
Fortis Inc. and Related Transactions

I. INTRODUCTION

This proposal ("Joint Proposal") for the complete resolution of the Joint Petition in this proceeding is submitted jointly to the New York State Public Service Commission ("Commission") by Cascade Acquisition Sub Inc. ("Cascade"), CH Energy Group, Inc. ("CHEG"), Central Hudson Gas & Electric Corporation ("Central Hudson"), Department of Public Service Staff ("Staff"), Department of State Utility Intervention Unit ("UIU"), Dutchess County New York, Fortis Inc. ("Fortis"), FortisUS Inc. ("FortisUS"), Multiple Intervenors, Orange County New York, and Ulster County New York. The supporting parties are referred to herein collectively as the "Signatories."

II. PROCEDURAL SUMMARY

Subsequent to the April 20, 2012 filing of the Joint Petition, direct testimony and exhibits, formal proceedings have

included an on-the-record technical conference, two administrative conferences, scheduling and procedural rulings by the Presiding Administrative Law Judges, and extensive discovery. Twelve parties, including Staff, have been admitted. On October 12, 2012, in accordance with the procedural schedule, eight parties filed their initial positions. Staff filed corrected testimony on November 5, 2012. Petitioners submitted their reply comments and rebuttal testimony and Staff filed their rebuttal testimony on November 27, 2012. Staff also filed sur-rebuttal testimony on December 4, 2012. Three parties filed their lists of Disputed Issues of Material Fact on December 4, 2012.

Pursuant to a Notice of Potential Settlement filed by Petitioners on December 12, 2012, a series of settlement discussions commenced on December 17, 2012 and continued on December 18, 19 and 20 and January 2,3,4,7,8 and 11, 2013. Following these discussions, drafts of this Joint Proposal and the Signatories' comments thereon were exchanged, and this Joint Proposal was executed by the Signatories.

III. APPROVAL OF TRANSACTION

The Signatories recommend that the Commission approve the indirect transfer to Fortis of the ownership of Central Hudson through the acquisition and related transactions described in

the Joint Petition, subject to the terms described herein.¹ The Signatories have concluded that these terms establish that the upstream transfer of the equity interests in Central Hudson is "in the public interest" pursuant to Public Service Law ("PSL") Section 70, and should be approved.

IV. TERMS OF COMMISSION APPROVAL

A. Corporate Structure and Financial Protections

1) Goodwill and Acquisition Cost Conditions

a) Cascade, CHEG, Central Hudson, Fortis and FortisUS (referred to collectively herein as "Petitioners") agree that the Goodwill and transaction costs of this acquisition will be excluded from the rate base, expenses, and capitalization in the determination of rates and earned returns of Central Hudson for New York State regulatory accounting and reporting purposes.

b) If, at any time after the closing of this acquisition, as a result of any impairment analysis by Fortis, FortisUS, CHEG or Central Hudson, either Fortis or FortisUS makes a book entry reflecting

¹ Pursuant to the February 20, 2012 Agreement and Plan of Merger, the acquisition will be accomplished by the merger of Cascade with and into CHEG, with CHEG as the surviving corporation that will be wholly-owned by Fortis. Central Hudson and its sister unregulated affiliates (Griffith Energy Services, Inc. and Central Hudson Enterprises Corporation) will continue to be wholly-owned subsidiaries of CHEG and, therefore, indirect, wholly-owned subsidiaries of Fortis.

impairment of the Goodwill from this acquisition, Central Hudson must submit the impairment analysis to the Commission within five business days after the entry has been made.

- c) To the extent permissible under U.S. Generally Accepted Accounting Principles ("U.S. GAAP"), no goodwill or transaction costs associated with this acquisition will be reflected on the books maintained by Central Hudson after the closing of the acquisition of CHEG by FortisUS and Fortis. Should changes in U.S. GAAP require that the goodwill associated with the acquisition be "pushed down" and therefore reflected in the accounts of Central Hudson, the goodwill will not be reflected in the regulated accounts of Central Hudson for purposes of determining rate base, setting rates, establishing capital structure or other regulatory accounting and reporting purposes.
- d) Central Hudson will provide a final schedule of the external costs to achieve the merger following consummation of the transaction as a demonstration that there will be no recovery requested in Central Hudson rates, or recognition in the determination of rate base of any legal and financial advisory fees,

or other external costs associated with Fortis' acquisition of CHEG, and indirectly, Central Hudson.

2) Credit Quality and Dividend Restriction Conditions

a) After the closing of this transaction, copies of all presentations made to credit rating agencies by Central Hudson, Fortis or any Fortis affiliate in the line between Central Hudson and Fortis that present or discuss the finances and credit of Central Hudson or CHEG, will be provided to Staff within ten business days of the presentation on a continuing basis. These presentations will be subject to the confidentiality and privilege provisions of sections VI.B 32 and 33 of the Restructuring Settlement Agreement ("RSA") approved by the Commission in Case 96-E-0909, In the Matter of Central Hudson Gas & Electric Corporation's Plans for Electric Rate/Restructuring Pursuant to Opinion No. 96-12, Order Adopting Terms of Settlement Subject to Modifications and Conditions (issued on February 19, 1998).

b) To the extent not already in place, Fortis and Central Hudson must register with at least two major nationally and internationally recognized bond rating agencies, such as Dominion Bond Rating

Services ("DBRS"), Fitch Ratings ("Fitch"), Moody's Investor Services ("Moody's") and Standard & Poor's ("S&P"). Consistent with section VI.B 20 of the RSA, Central Hudson will continue to maintain separate debt instruments and its own corporate and debt credit ratings with at least two of these nationally recognized credit rating agencies. Neither Fortis nor Central Hudson will enter into any credit or debt instrument containing cross default provisions that would affect Central Hudson.

c) Fortis and Central Hudson will continue to support the objective of maintaining an "A" credit rating for Central Hudson, unless and until the Commission modifies its financial integrity policies. In so doing, Fortis and Central Hudson will maintain the equity capitalization ratio of Central Hudson at the level used by the Commission in establishing Central Hudson's rates as follows. At each month end, Central Hudson and Fortis agree to maintain a minimum common equity ratio ("MER") (measured using a trailing 13-month average) in relation to the equity ratio used to set rates. The MER is defined as no less than 200 basis points below the equity ratio used to set rates. In the event that the MER

is not met, no dividends are payable until such time the MER is restored.

- d) In the event the Commission establishes rates for Central Hudson on a basis that does not recognize Central Hudson's actual equity capitalization, or deems or imputes for ratemaking purposes an equity capitalization below Central Hudson's actual equity capitalization, Central Hudson shall be free to dividend its excess equity capitalization to match that recognized or deemed by the Commission in establishing Central Hudson's rates.
- e) If, as a direct result of a downgrade of Fortis Inc.'s debt within three years following the closing of this transaction, Central Hudson is downgraded to either S&P's or Fitch's BBB category (BBB+ or lower), or the equivalent for Moody's (Baa1 or lower) or DBRS's (BBB(high) or lower), and Central Hudson incurs increased costs of debt, the incremental cost of debt incurred by Central Hudson in comparison to the cost of debt which would otherwise have been incurred by Central Hudson under its pre-downgrade credit rating will not be reflected in Central Hudson's cost of capital or the

determination of Central Hudson's rates in subsequent rate cases.

If such a downgrade occurs in the time discussed and debt is issued, then in subsequent rate cases Mergent Bond Record data (or the equivalent, if Mergent data is not available) for the relevant month(s) of issue will be used to quantify the adjustment needed to avoid reflecting the higher interest rate expense. For each one-notch downgrade to Central Hudson, one-third of the difference between A and Baa Public Utility Bond yield averages will be used to adjust the interest rate allowed in rate cases. The differential will only apply for each credit rating agency which downgrades Central Hudson's debt due to a Fortis downgrade. For instance, if Central Hudson is rated by two credit rating agencies and only one downgrades them due to a Fortis downgrade, then only 50% of the one-notch yield difference per Mergent Bond Record data will be used to calculate the interest rate adjustment in subsequent rate cases.

f) Central Hudson will continue to comply with any and all sections of the RSA with respect to restrictions

on the payment of common dividends related to credit ratings.

- g) Central Hudson will not lend to, guarantee or financially support Fortis or any of its affiliates, or any subsidiary or other joint venture of Central Hudson, except as is consistent with section VI.B 23 of the RSA or permitted by the Money Pooling Conditions referred to below. Furthermore, Central Hudson will not engage in, provide financial support to or guarantee any non-regulated businesses, except as authorized in the RSA or by Commission order.
- h) Central Hudson shall maintain banking, committed credit facilities and cash management arrangements which are separate from other affiliates.
- i) In addition to the special class of preferred stock referred to in item 4, below, Central Hudson's financing authorization in Case 12-M-0172, Order Authorizing Issuance of Securities, issued and effective September 14, 2012 ("Financing Order") is amended to authorize Central Hudson to use private financing as an alternative to public debt offerings. This authorization supersedes Ordering Clause 5 in the Financing Order. Private financings are subject to the conditions and requirements

described in the other Ordering Clauses in the Financing Order and, Central Hudson's proposal to address Ordering Clause 6 in the Financing Order, as was filed with the Commission on November 9, 2012, is accepted and approved by the Commission's adoption of this Joint Proposal.

3) Money Pooling Conditions

- a) Central Hudson may participate in a money pool only if all other participants, with the exception of Fortis and FortisUS, are regulated utilities operating within the United States, in which case Central Hudson may participate as either a borrower or a lender. Fortis and FortisUS may participate only as lenders in money pools involving Central Hudson. Central Hudson may not participate in any money pool in which any participant directly or indirectly loans or transfers funds to Fortis or FortisUS.
- b) Neither Fortis nor FortisUS, nor any of their affiliates may, at closing of the approved acquisition of Central Hudson, have any cross default provision that affects Central Hudson in any manner. Neither Fortis nor FortisUS, nor any of their affiliates may enter into any cross default

provision following the closing that affects Central Hudson in any manner. Notwithstanding the foregoing, to the extent that any cross default provision that might affect Central Hudson already exists, Fortis and FortisUS must use their best efforts to eliminate that cross default provision within six months after closing. If any cross default provision remains in effect at the end of that period, Fortis and FortisUS must obtain indemnification from an investment grade entity, at a cost not borne by Central Hudson's ratepayers, which fully protects Central Hudson from the effects of any cross default provision.

4) Special Class of Preferred Stock Conditions

- a) Central Hudson must modify its corporate by-laws as necessary to establish a voting right in order to prevent a bankruptcy, liquidation, receivership, or similar proceedings ("bankruptcy") of Central Hudson from being caused by a bankruptcy of Fortis, FortisUS, or any other affiliate. The Commission's approval of this Joint Proposal will represent all Commission authorization necessary for Central Hudson to establish a class of preferred stock having one share (the "golden share"), subordinate

to any existing preferred stock, and to issue that share of stock to a party who shall protect the interests of New York and be independent of the parent company and its subsidiaries. Such share of stock shall have voting rights only with respect to Central Hudson's right to commence any voluntary bankruptcy without the consent of the holder of that share of stock. Central Hudson shall notify the Commission of the identity and qualifications of the party to whom the share is issued and the Commission may, to the extent that such party is not reasonably qualified to hold such share in the Commission's opinion, require that the share be reissued to a different party within three months of receipt of such notification. If Central Hudson has failed to propose a shareholder that is approved by the Commission within six months after the closing of the acquisition, the Commission will appoint a shareholder of its own selection. In the event that Central Hudson is unable to meet this condition despite good faith efforts to do so, it must petition for relief from this condition, explaining why the condition is impossible to meet and how it proposes to meet an underlying requirement that a

bankruptcy involving Fortis, FortisUS, or any other affiliate does not result in its voluntary inclusion in such a bankruptcy.

b) In any rate proceeding in which use of Central Hudson's capital structure is requested, Central Hudson will submit the most current written evaluations from at least two rating agencies addressing Central Hudson's credit profile. These credit reports shall be relied upon to the extent that they provide written evidence that supports the evaluation of Central Hudson and the treatment of Central Hudson's capital structure by the Commission primarily as a separate company, without material adjustments to the rating based on risks related to the capital structure and ratings of its ultimate parent. This evidence, together with the golden share would provide sufficient proof that the use of Central Hudson's capital structure should be used for rate making purposes. In the event written evaluations from at least two rating agencies do not provide such evidence or are not available, Central Hudson shall have the opportunity to meet its burden of proof through other means. Central Hudson's capital structure will continue to be reviewed in

relation to the level of risk of Central Hudson at that time.

5) Financial Transparency and Reporting Conditions

a) Central Hudson must continue to use the standards of Generally Accepted Accounting Principles applicable to publicly-traded entities ("Public GAAP," "U.S. GAAP," or simply "GAAP") for its financial accounting and financial reports. Central Hudson will, for purposes of its financial accounting and financial reporting, continue to use the generally accepted accounting principles which include, but are not limited to the determinations by the Financial Accounting Standards Board ("FASB"), or any successor entity, for U.S. publicly accountable enterprises ("U.S. GAAP" or simply "GAAP"). Any future changes in U.S. GAAP, including any decision to replace U.S. GAAP with International Financial Reporting Standards ("IFRS"), will be applied by Central Hudson. In the event of future changes to accounting standards, recovery by Central Hudson for the incremental costs incurred in making such changes will be addressed in a future rate proceeding.

b) Central Hudson must continue to satisfy all Commission reporting requirements that currently apply to it; provided however, that nothing in this provision is intended to preclude Central Hudson from requesting relief from any such reporting provision and, further, that nothing herein is intended to require Central Hudson to continue to make reports in the future that utilities have been generally or generically excused by the Commission from making.

c) After the closing of this acquisition, Central Hudson shall continue to comply with the provisions of sections 302 through 404 of the Sarbanes-Oxley Act ("SOX") as if Central Hudson were still bound directly by the provisions of SOX, with the understanding that no filings with the Securities and Exchange Commission will be required. Specifically, Central Hudson's periodic statutory financial reports must continue to include certifications provided by its officers concerning compliance with SOX requirements, including certifications on internal controls, as if still bound by the provisions of SOX.

- d) Central Hudson shall remain subject to annual attestation audits by independent auditors with respect to its financial statements and internal controls over financial reporting.
- e) Subject to the confidentiality and privilege provisions of sections VI.B 32 and 33 of the RSA, Fortis and Central Hudson will provide Staff access pursuant to section VI.B 30 of the RSA to the books and records and Standards Pertaining To Transactions, Conflicts Of Interest, Cost Allocations And Sharing Of Information Between Central Hudson Gas And Electric Corporation And Affiliates ("Standards"), including, but not limited to, tax returns, of Fortis and FortisUS to the extent necessary to determine whether the rates and charges of Central Hudson are just and reasonable and provide Staff the opportunity to ensure that costs are allocated equitably among affiliates in accordance with the RSA, Standards and Central Hudson code of conduct and that intercompany transactions involving Central Hudson are priced reasonably in accordance with the RSA, Standards and Central Hudson code of conduct. Subject to the confidentiality and privilege provisions of sections

VI.B 32 and 33 of the RSA, that access must include, but not be limited to, all information supporting the underlying costs and the basis for any factor that determines the allocation of those costs.

f) Commencing for the year in which the closing takes place, Central Hudson must file annually with the Commission Fortis financial statements, including balance sheets, income statements, and cash flow statements for Fortis, Inc. and its major regulated and unregulated energy company subsidiaries in the United States. U.S. business entities with annual revenues less than ten percent of total Fortis revenues may be aggregated, provided that each entity included is fully identified. Aggregated U.S. business entities shall be identified as either regulated or unregulated. To satisfy this filing requirement, Fortis Inc.'s U.S. GAAP Canadian dollar denominated quarterly and annual Financial Reports, including Management Discussion and Analysis, which have been filed publically with Canadian securities regulators, will be filed by Central Hudson with the Commission. Additionally, Central Hudson will provide to the Commission, to the extent available from a recognized financial reporting information

service such as SNL Financial or Bloomberg, Fortis Inc.'s "as reported" quarterly and annual Balance Sheet, Income Statement and Statement of Cash Flows in U.S. dollars with the underlying currency translation assumptions.

- g) All information required by the financial transparency and reporting requirements in subparagraphs (a) through (f) above must be provided in English and in U.S. dollars, with the exception of Financial Reports and Management Discussion and Analysis referred to in subparagraph (f), and books and records and Canadian tax returns that statutorily require Canadian dollar reporting. In such cases, foreign exchange for U.S. dollar translation will be provided as described in subparagraphs (a) through (f) above and, shall be publicly available subject to the confidentiality and privilege provisions of sections VI.B 32 and 33 of the RSA.
- 6) Affiliate Transactions, Cost Allocations, and Code of Conduct
- a) Fortis shall be subject to the rules, practices, and procedures in the RSA, Standards, and code of

conduct governing relations among CHEG and Central Hudson in the same manner as they apply to CHEG.

b) Central Hudson will not enter into transactions with affiliates that are not in compliance with the RSA guidelines regarding affiliate transactions, including the updated Standards set forth in Attachment I. Central Hudson will also not enter into transactions with affiliates on terms less favorable to Central Hudson than specified in the RSA, including the updated Standards.

c) Central Hudson shall provide 180 days notice to the Commission prior to the commencement of any planned material (i.e., individually or collectively exceeding greater than 5% of Central Hudson net income on an after tax basis) shared services initiatives, and prior to establishment of a services organization that would provide material (i.e., individually or collectively exceeding greater than 5% of Central Hudson net income on an after tax basis) services to Central Hudson. Further, any such noticed shared service initiative would require Commission approval.

d) At or prior to the time of Central Hudson's next base rate filing it will consolidate the RSA,

Standards and codes of conduct into one comprehensive document and file the consolidated document with the Commission. The intention of this requirement is to organize the provisions into an integrated document without altering the effect and content of the provisions.

7) Follow-On Merger Savings

a) In the event that Fortis completes any additional mergers or acquisitions within the United States before the Commission adopts an order approving new rates for Central Hudson, Fortis must share the follow-on merger savings that are reasonably applicable to Central Hudson and its customers between shareholders and ratepayers, on a 50/50 basis, to the extent the portions of such savings realized by Fortis are material (*i.e.*, 5 percent or more of Central Hudson net income on an after-tax basis). Central Hudson must submit, within 90 days of the follow-on merger closing, a comprehensive and detailed proposal to share the follow-on merger savings, to begin on the closing date of the follow-on merger. In addition, the proposal must include an allocation method for sharing the synergy savings and efficiency gains among corporate entities that

addresses the time period from the receipt of the synergy savings by Central Hudson until the Commission approves new rates. The ratepayer share shall be set aside in a deferral account for future Commission disposition.

8) Corporate Governance and Operational Provisions

- a) No later than one year after the closing of Fortis's acquisition of CHEG, Fortis shall appoint a board of directors for Central Hudson, the majority of whom will be independent (as defined in the Standards, see Attachment I), with the majority of such independent directors being resident in the State of New York, with emphasis on selecting candidates who reside, conduct business or work within the Central Hudson service territory. At least one independent director of Central Hudson shall be a resident of the service territory. Except with respect to the initial appointment of the board of directors for Central Hudson within one year following the closing, nothing in this Joint Proposal is intended to restrict the rights of Fortis to take any action before the Commission, or otherwise, regarding the appointment of directors meeting the above residency criteria at any time, as it sees fit.

- b) Subject to the right of Central Hudson to petition the Commission for approval to relocate its corporate headquarters outside of Central Hudson's service territory, the corporate headquarters of Central Hudson shall remain within Central Hudson's service territory. Complete books and records of Central Hudson shall be maintained at Central Hudson's corporate headquarters.
- c) At least 50% of Central Hudson's officers shall reside within Central Hudson's service territory.
- d) Central Hudson shall be governed, managed and operated in the fashion described in Petitioners' testimony. Specifically, the Signatories agree that:
- i) The board of directors of Central Hudson will be responsible for management oversight generally, including the approval of annual capital and operating budgets; establishment of dividend policy; and determination of debt and equity requirements. The Central Hudson board of directors will have an audit committee, the majority of whom will also be independent. The responsibility of this committee will include the oversight of the ongoing financial

integrity and effectiveness of internal controls of Central Hudson.

ii) Central Hudson's local management will continue to make decisions regarding staffing levels and hiring practices; will continue to negotiate future collective bargaining agreements; will continue to be the direct contact and decision making authority in regulatory matters; and, will continue to represent Central Hudson in all future regulatory matters.

iii) To provide continuity in the management and staffing of Central Hudson, and ensure that the necessary human resources are maintained to continue the delivery of safe, reliable service to customers, the current employees of Central Hudson (union and management) will be retained for a period of two years following the closing under their respective current conditions of employment. Central Hudson reserves the right to take disciplinary and any other actions it determines necessary or appropriate within its existing labor agreement and employee relations practices. Central Hudson also agrees to maintain for two years after the closing the

level of operating employees, as defined in the Standards, that is recognized in rates and to file a report with the Secretary of the Commission within 30 days after the first two anniversary dates of the merger's closing comparing the level of union and management employees on the anniversary to date to the levels on the date upon which the merger closed.

- iv) To ensure the continued active corporate and charitable presence of Central Hudson in its service territory, Central Hudson shall maintain its community involvement at not less than current (2011) levels for five years after the closing of the acquisition (2013 through 2017).

B. PERFORMANCE MECHANISMS

1) Customer Service

The following targets and effective dates will apply:

Measure	Value	Effective
PSC Complaint Rate	1.1 - 1.6	7/1/13
CSI	85 - 82, etc. structure per the current rate plan	7/1/13
Keeping Scheduled Appointments	\$20 paid to customer for missed appt. per current rate plan	7/1/13

These targets will continue to apply unless and until changed by Commission Order.

2) Negative Revenue Adjustments ("NRAs")

The NRAs shown in the following table have been doubled from those in the current rate plan.² The NRAs in the current rate plan shall be tripled if targets are missed during a dividend restriction and quadrupled if targets are missed for three years within the next five year period.

Central Hudson Service Quality Performance Mechanism

Customer Satisfaction Index	Negative Revenue Adjustment
85% or higher	None
84% ≤ CSI < 85%	\$475,000
83% ≤ CSI < 84%	\$950,000
82% ≤ CSI < 83%	\$1,425,000
< 82%	\$1,900,000
Total Amount at Risk	\$1,900,000

² The Commission's Order Establishing Rate Plan, issued June 18, 2010, in Cases 09-E-0588 and 09-G-0589, set forth electric and gas rate plans for Central Hudson for the period July 1, 2010 through June 30, 2013.

PSC Annual Complaint Rate	Negative Revenue Adjustment
<1.1	None
1.1	\$950,000
1.2	\$1,140,000
1.3	\$1,330,000
1.4	\$1,520,000
1.5	\$1,710,000
1.6 or higher	\$1,900,000
Total Amount at Risk	\$1,900,000

3) Electric Reliability

The electric service annual metrics for System Average Frequency Index (SAIFI) target of 1.45 and Customer Average Duration Index (CAIDI) target of 2.50 continue through 2013.

Electric Reliability Reporting requirements, quarterly meeting requirements, revenue adjustment source, and exclusions are defined in Attachment II.

All Electric Reliability NRAs of the current rate plan shall be doubled. In addition, the NRAs of the current rate plan shall be tripled if targets are missed during a dividend restriction and quadrupled if targets are missed for three years within the next five year period. All electric reliability targets

for calendar year 2013 remain in effect until modified by a Commission order in a subsequent Central Hudson electric rate case.

4) Gas Safety Metrics

Emergency Response Time

The gas emergency response time metrics of 75% response within 30 minutes and 90% response within 45 minutes will be continued.

Gas Leak Backlog

The calendar year 2013 leak backlog target is 260 at year-end. The calendar year 2013 repairable leaks backlog target is 20 at year-end.

Damage Prevention

The calendar year 2013 total damages per 1,000 one call tickets target is 2.40. The calendar year 2013 mismarks per 1,000 one call tickets target is 0.50. The calendar year 2013 Company and Company Contractor damages per 1,000 one call tickets target is 0.25.

New Parts 255 and 261 Violation Metric

Central Hudson will incur a negative revenue adjustment for instances of noncompliance (violations) of certain pipeline safety regulations set forth in 16 NYCRR Parts 255 and 261, as identified during Staff's annual field and record audits. Attachment III sets

forth a list of identified high risk and other risk pipeline safety regulations pertaining to this metric. Central Hudson will be assessed a negative revenue adjustment for each high risk or other risk violation, up to a combined maximum of 100 basis points per calendar year as follows:

High Risk Violation	Occurrences	Basis Points Per Violation
Calendar Year 2013	1-30	1/4
	31+	1/2
Calendar Year 2014	1-25	1/2
	26+	1

Other Risk Violation	Occurrences	Basis Points Per Violation
Calendar Year 2013	1-30	1/9
	31+	1/3
Calendar Year 2014	1-25	1/9
	26+	1/3

This metric will be effective as of the start of the Commission Order in this case, but will then be measured on calendar years, as identified above. With respect to violations, only documentation or actions performed, or required to be performed, on or after

the date of the Commission Order in this case will constitute an occurrence under the metric.

At the conclusion of each audit, Staff and Central Hudson will have a compliance meeting where Staff will present its findings to Central Hudson. Central Hudson will have five business days from the date the audit findings are presented to cure any identified document deficiency. Only official Central Hudson records, as defined in Central Hudson's Operating and Maintenance plan, will be considered by Staff as a cure to a document deficiency. Staff will submit its final audit report to the Secretary of the Commission under Case 12-M-0192. If Central Hudson disputes any of Staff's final audit results, Central Hudson may appeal Staff's finding[s] to the Commission. Central Hudson will not incur a negative revenue adjustment on the contested finding until such time as the Commission has issued a final decision on the contested findings. Central Hudson does not waive its right to seek an appeal of any Commission determination regarding a violation under applicable law.

If an alleged high risk or other risk violation set forth in Attachment III is the subject of a separate

penalty proceeding by the Commission under PSL 25, that instance will not constitute an occurrence under this performance metric.

Negative Revenue Adjustments

Other than the Parts 255 and 261 metric, all Gas Safety NRAs of the current rate plan shall be doubled. In addition, the NRAs of the current rate plan shall be tripled if targets are missed during a dividend restriction and quadrupled if targets are missed for three years within the next five year period.

Continuation

All gas safety targets for calendar year 2013 remain in effect until modified by a Commission order in a subsequent Central Hudson gas rate case.

5) Infrastructure Enhancement for Leak-prone Pipe

A minimum capital budget of \$7.7 million is established for the replacement of leak-prone pipe over calendar year 2014. The pipe to be removed from service shall be identified and ranked using a risk-based methodology. If actual expenditures fall short of \$7.7 million, Central Hudson will defer for ratepayer benefit the revenue requirement equivalent of the shortfall multiplied by 0.5. Central Hudson shall maintain the minimum pipe replacement level

beyond 2014 at \$7.7 million, until changed by the Commission.

C. RATE FREEZE PROVISIONS

The Commission's Order Establishing Rate Plan, issued June 18, 2010, in Cases 09-E-0588 and 09-G-0589, set forth electric and gas rate plans for Central Hudson for the period July 1, 2010 through June 30, 2013. The July 1, 2013 rate reductions for S.C. 11 gas customers (see Section IX, Part B, and Appendix M, Sheet 4 of 5 of the current rate plan) will go into effect as provided in the current rate plan. In the period between July 1, 2013 and June 30, 2014 (Rate Freeze Period), the provisions of the current rate plan applicable to "rate year 3", except as modified in this Joint Proposal, are continued.

1) Earnings Sharing and Calculations of Earned Rates of Return

The Earnings Sharing Provision in Section VI.D of the current Commission-approved rate plan will be modified as of July 1, 2013, to read:

Actual regulatory earnings in excess of 10.00% and up to 10.50% will be shared equally between ratepayers and shareholders. Actual regulatory earnings in excess of 10.50% will be shared 90/10 (ratepayer/shareholder). These earnings sharing percentages shall be maintained until the effective date of the succeeding Commission rate order.

The Company will defer for the future benefit of ratepayers fifty percent of its share of any actual earnings in excess of 10.50% to reduce the deferred debit undercollections of MGP Site Investigation & Remediation Costs, interest costs on variable rate, interest costs on new issuances of long term debt, property tax, and stray voltage expense; provided, however, that such reduction in deferred debit deferrals will be further limited so as not to cause the resulting actual earnings to decrease below a 10.50% return on equity.

In calculating earned rates of return for regulatory purposes, the \$35 million of combined write-offs of deferred regulatory assets and future rate mitigation funds, and the one-time funding of \$5 million for economic development and low income purposes referred to in this Joint Proposal shall be included and not "normalized out" for purposes of determining actual expenses for the rate year in which those benefits are booked by Central Hudson.

2) Distribution and Transmission Right-of-Way Tree Trimming and SIR Costs

At the end of Rate Freeze Period, the actual total expenditures for distribution ROW tree trimming will be compared to \$11.397 million and any under-spending will be deferred as of the end of Rate Freeze Period. Carrying charges at the Pre-Tax Rate of Return ("PTROR") will be applied by the Company to the amount

deferred from the end of Rate Freeze Period until the effective date of the succeeding Commission rate order.

At the end of Rate Freeze Period, the actual total expenditures for transmission ROW tree trimming will be compared to \$1.711 million and any under-spending will be deferred as of the end of Rate Freeze Period. Carrying charges at the PTROR will be applied by the Company to the amount deferred from the end of Rate Freeze Period until the effective date of the succeeding Commission rate order. In addition, the deferral for Manufactured Gas Plant ("MGP") Site Investigation and Remediation ("SIR") Costs authorized in Paragraph V.A.1 of the current rate plan will be modified as of July 1, 2013 to apply to all Environmental SIR costs incurred by Central Hudson during the period from July 1, 2013 to June 30, 2014. This modification does not limit Staff or the Commission's authority to review the prudence of any SIR costs.

3) Stray Voltage Testing

Actual Stray Voltage Testing expenditures, excluding mitigation costs, will be compared to \$2.023 million for the twelve months ending June 30, 2014. Any

under-spending as of June 30, 2014, exclusive of expenditures for actual mitigation costs, will be deferred for future return to customers with carrying charges at the PTROR.

Actual mitigation costs in the twelve months ending June 30, 2014 will be compared to \$350,000. The differences between \$350,000 and actual mitigation expenditures will be deferred for future recovery by the Company, or return to customers, with carrying charges at the PTROR.

D. NET PLANT TARGETS

The net plant targets for the twelve month period ending June 30, 2014 of \$919.3 million for Electric and \$252.2 million for Gas, with associated annual depreciation expenses of \$32.7 million and \$9.0 million, respectively, will be established.

The actual average electric and gas net plant balances at the end of the twelve month period ending June 30, 2014 will be calculated using the calculation methods described in Attachment III. The net plant targets shown in Attachment III limit total Common Software construction expenditures, including Legacy Replacements, in the Rate Freeze Period to \$5.0 million.

Reconciliations

The actual electric and gas net plant will be compared to the electric and gas net plant target for the twelve month period ending June 30, 2014, and the revenue requirement difference (i.e., return and depreciation as described in Attachment IV) will be determined.

Deferral For the Benefit of Ratepayers

If, at the end of the twelve month period ending June 30, 2014, the revenue requirement difference from net plant additions is negative, Central Hudson will defer the revenue requirement impact for the benefit of customers. If, at the end of the twelve month period ending June 30, 2014, the revenue requirement impact is positive, no deferral will be made. Carrying charges at the PTROR will be applied by the Company to the amount deferred from the end of the twelve month period ending June 30, 2014 until addressed by the Commission in a Central Hudson rate order.

E. LOW INCOME

The Signatories agree that the existing funding for low income programs available currently in rates will be supplemented with \$500,000 from the Community Benefit Fund being made available by the Petitioners as a result of this transaction. In addition, the Signatories agree

to the following modifications to existing low income programs:

1. Central Hudson's current low income program is made up of two components: the Enhanced Powerful Opportunities Program ("EPOP"), which is a targeted program open to selected participants, and a broad-based bill discount program that provides a monthly bill credit to all customers that are Home Energy Assistance Program ("HEAP") recipients.
2. The EPOP program and its associated funding will remain unchanged.
3. The bill discount program currently provides a monthly bill credit of \$11.00 to all customers who are HEAP recipients. Data provided by Central Hudson reflect that the program has 8,641 participants as of the twelve months ended November 30, 2012, and projected annual spending of \$1,140,612 ($\$11 \times 12 \times 8,641$).
4. Within 30 days of a Commission order in this proceeding, Central Hudson will modify its current discount program, which provides dual-service customers with one discount, by implementing the following discount levels for single and dual service bill discount program participants:

	Electric only	Gas only	Both Elec. & Gas
Heating	\$17.50	\$17.50	\$23.00
Non-heating	\$5.50	\$5.50	\$11.00

5. In order to ensure that no current participant faces a reduction in current benefit levels, any single service non-heating customer currently receiving a bill discount of \$11.00 will continue receiving such benefit at the \$11.00 level, instead of the \$5.50 level specified above.
6. The total cost of the bill discount program is expected to be \$1,662,672. Actual expenditures may vary based on HEAP participation levels.
7. Central Hudson will waive service reconnection fees, no more than one time per customer until new rates go into effect, for customers participating in either the EPOP or bill discount programs. Funding for reconnection fee waivers is limited to \$50,000 until new rates go into effect. Central Hudson may grant waivers to individual customers more than once during this period, on a case-by-case basis and for good cause shown, provided that the program funding allocation for such waivers is not exceeded. Upon notice to Staff and the UIU, Central Hudson will be

permitted, first, to limit the waiver to (50) percent of the total reconnection fee, if the cost of waived reconnection fees is projected to exceed the annual allocation, and, second to suspend the waiver program if the budget limit is reached.

8. A sum of \$500,000 of the total costs of the low-income bill discount and reconnection fee waiver programs is to be supplied from the Community Benefit Fund. To the extent that actual expenditures exceed the rate allowance in current rates of \$1,531,200, plus \$500,000 from the Community Benefit Fund, any shortfall will be supplied first, from the cumulative unused portions of the current rate allowances for the bill discount program, which is expected to be approximately \$500,000, and second, will be deferred as a regulatory asset. To the extent that actual expenditures fall short of the current rate allowance plus the cumulative unused portions of the current rate allowances for the bill discount program plus \$500,000 from the Community Benefit Fund, any excess will be deferred for use of the low-income bill discount program and the reconnection fee waiver program in a future rate proceeding.

9. Customers enrolled in the EPOP or low income bill discount programs will continue to be referred by Central Hudson to the New York State Energy Research and Development Authority's Empower-NY program or any successor to the Empower-NY program, for energy efficiency services.
10. The parties agree that these modifications justify returning to a quarterly reporting schedule. Central Hudson will file quarterly and annual reports on the EPOP and bill discount programs with the Secretary and provide copies to other parties currently receiving copies of EPOP reports. With respect to the bill discount program, the reports will provide:
 - a. The number of customers enrolled in the bill discount program;
 - b. The aggregate amounts of low-income bill discounts for the quarter and year to date; and
 - c. The number of reconnections of low income customers for which the fee was fully or partially waived, and the aggregate amount of reconnection fees waived to date.
11. Nothing in this Joint Proposal is intended to prejudice the treatment of low income matters by the Commission in Central Hudson's next rate case.

F. RETAIL ACCESS

In support of the Commission's retail market development initiatives, Central Hudson will set forth a total bill comparison, using the existing Central Hudson computer program that had been previously implemented, on all retail access residential bills using consolidated billing issued after 90 days following closing. The Signatories agree that this total bill comparison is to provide information to retail access customers that should be made available by the utility as part of the Commission's retail energy markets initiatives. Central Hudson shall report quarterly to the Secretary on this initiative so that Staff can continue to review and supervise this initiative and report any changes deemed desirable to the Commission on an on-going basis.

Central Hudson's quarterly reports will also be provided to other parties currently receiving Central Hudson's EPOP reports.

In addition, for similar purposes of supporting the Commission's retail market development initiatives, within 60 days following issuance of the Commission Order in this case, Central Hudson will file a proposal to provide payment-troubled (i.e., subject to termination) customers with bill comparison information. The type of

reporting and continued monitoring appropriate for this initiative will be developed as part of the resolution of Central Hudson's pending proposal.

The costs of these two initiatives will be funded from the existing Competition Education Fund (net of the transfer of funds for economic development, as described below). Central Hudson shall propose a use or uses for any balance remaining in the Competition Education Fund, after these two initiatives have been funded, in its first rate filing following the closing. In the event that the costs of these two initiatives exceed the funding available from the existing Competition Education Fund (net of the transfer of funds for economic development), Central Hudson is authorized to defer the excess costs for future recovery with carrying charges at the PTROR.

The Signatories anticipate that modifications to either initiative may become appropriate based on developments in the ongoing generic retail access proceeding, Case 12-M-0476.

G. ECONOMIC DEVELOPMENT AND SUPPORT FOR STATE
INFRASTRUCTURE ENHANCEMENTS

1. Economic Development

The Signatories agree that \$5 million will be allocated to economic development purposes to enhance the existing Central Hudson economic development programs. The \$5 million is in addition to the current Central Hudson rate allowance for economic development funding. The funding for this program will be through \$4.5 million from the remaining balance of the \$5 million Community Benefit Fund being provided by Petitioners and \$500,000 from Central Hudson's Competition Education Fund.

The parties to this proceeding will confer following the execution and filing of this Joint Petition in this case to seek to jointly develop consensus modifications to the existing Central Hudson economic development programs. Central Hudson shall make a filing with the Commission within 15 days following the Commission's order in this case proposing modifications to the existing economic development programs that include the parties' agreements. As part of the filing made by Central

Hudson, expedited consideration by the Commission will be requested. The proposal will be for programs that will continue to be administered by Central Hudson pursuant to existing Commission authorizations, with the clarifications and modifications as follows. Central Hudson will continue to hold custody of funds and administer the programs with input from the Counties in Central Hudson's service territory. The \$5 million will not receive carrying charges. The proposal will include the criterion that all applications for projects that do not have participation from Empire State Development, a County Industrial Development Agency, a County Community College, or local municipal resolution pursuant to existing program requirements will seek a letter of support from the County of origin. In addition, the proposal will state that Central Hudson will seek participation concerning award notifications and announcements from the County of origin prior to issuing such announcements.

In addition to filing the above proposal, Central Hudson will meet twice per year with representatives from all of the Counties in the Central Hudson

service territory to discuss economic development and potential program improvements. Nothing in this Joint Proposal is intended to prejudge the treatment of economic development matters by the Commission in Central Hudson's next rate case.

2) State Infrastructure Enhancements

Central Hudson shall continue to support the New York State Transmission Assessment and Reliability Study ("STARS"), the Energy Highway and economically justified gas expansion. Fortis agrees to provide equity support to the extent required by Central Hudson for such projects as receive regulatory approval and proceed to construction.

3) Gas Expansion Pilot Program

Central Hudson will commit to actively promote its "Simply Better" gas marketing expansion campaign in the Rate Freeze Period, seeking gas customer additions where Company gas facilities already exist, and economic expansion of its gas system, consistent with the Commission's Part 230 regulations, to identified expansion target areas in each operating district. The Company will continue to provide requesting and targeted customers with access to conversion calculators, third-party

turnkey conversion services (potentially including a project specialist from start to finish, a licensed heating installation professional, a detailed cost/benefit proposal on converting their heating equipment, removal of existing oil tank, and coordination of the service and heating installations), and available financing from third-party lenders to assist customers who are seeking gas delivery service or to convert from alternate fuels.

In the event that adequate financial commitments can be secured from new firm service customers and municipal franchise approvals on reasonable conditions are secured in locations where Central Hudson does not currently have gas facilities or local franchises, Central Hudson will commit to file for expedited Commission approval to exercise such franchises as are shown by Central Hudson's analyses to comply with Part 230.

Central Hudson will begin, within 90 days of an Order in this proceeding approving this Joint Proposal, to track all gas service requests and keep record of: (1) applicable gas service request dates (i.e., customer request received, Company evaluation

or commitment made, service denied/initiated); (2) the address of requested service including the township and county; (3) calculated cost to install new service lines and main extensions including customer payment responsibility; and (4) reasons for a service not being initiated. Customer information will be protected consistent with the updated Standards addressed elsewhere in this Joint Proposal.

Central Hudson will propose applying a limited pilot expansion program aimed at testing ideas to economically expand gas to customers. The pilot can be either part of a new franchise filing or a separate filing to the Commission no later than July 1, 2013. The pilot will test all or any of the following ideas:

- (1) Piggy back on top of anchor customers to reduce the actual need for additional pipe beyond the 100 foot rule;
- (2) surcharge all customers or specific customers over five years or more based on the savings from their alternative fuel to write down assets in order to meet the overall Rate of Return (ROR) by year 5;

(3) increase the minimum 100 feet allowed by a higher "average" amount for everyone in the customer cluster to be served based on anticipated additional revenues; and/or

(4) Trade Alliance by Central Hudson to purchase heating equipment from manufacturers for conversion/new customers and pass the savings to customers.

H. NEXT RATE CASE FILING

The Signatories recognize that Central Hudson may file new rate case applications at any time; however, the Petitioners agree to make such filing no earlier than the date that would be permitted for filing for rates to become effective on or after July 1, 2014. In its next rate case filing, Central Hudson shall provide, in a format similar to that of Petitioners' rebuttal testimony, an updated comparison between the debt ratings of Central Hudson and the regulated affiliates of Fortis based upon the latest rating agencies' analyses available at that time. In the same rate case filing, Central Hudson will include its analysis of Staff's white paper recommendations on LAUF.

V. ECONOMIC BENEFITS, INCLUDING SYNERGIES AND POSITIVE BENEFIT ADJUSTMENTS

Petitioners have agreed to provide quantified economic benefits comprised of the following synergy and positive benefit adjustments: (i) synergy savings which are guaranteed for a period of 5 years and which will provide for future rate mitigation of \$9.25 million over the 5 years; (ii) a total of \$35 million of combined write-offs of deferred regulatory assets and future rate mitigation funds; and, (iii) one-time funding of \$5 million for a Community Benefit Fund for economic development and low income purposes. The Signatories agree that the benefits identified herein are sufficient to meet the Commission's public interest criterion (PSL Section 70).

In reaching these agreements, the Signatories have recognized a number of additional factors that demonstrate that these quantified benefits are appropriate. The Signatories agree that the corporate governance and financial commitments made by Petitioners, together with the nature of Fortis' business model and proven track record, reduce the risks presented by this transaction and provide additional value to Central Hudson's ratepayers. In addition, the Signatories agree that absent the transaction, it is likely that Central Hudson could have

demonstrated a need for a rate increase for the Rate Freeze Period. However, as a consequence of Central Hudson opting not to file a rate case for the Rate Freeze Period as part of the terms of this Joint Proposal, rates will be frozen for the full Rate Freeze Period. The parties agree these provisions provide additional benefits.

A. Synergy Savings/Guaranteed Rate Reductions

The Signatories have agreed that the transaction will produce synergy savings/guaranteed future rate mitigation totaling \$9.25 million (\$1.85 million/year for 5 years). Petitioners have agreed to guarantee these cost savings for a period of five years, and will begin accruing these guaranteed cost savings in the month following closing. The Signatories recognize that this accrual will provide rate mitigation for the benefit of customers that will be available at the start of the first rate year in the next rate case filed by Central Hudson. The Signatories anticipate that the forecast effect of the synergy cost savings will also be reflected in rates in Central Hudson's next rate case.

B. Deferred Storm Restoration Cost Write-offs and Future Rate Mitigation

A total of \$35 million will be provided to Central Hudson by Fortis upon the closing of the transaction and will be

recorded as a regulatory liability to be applied to write off regulatory assets on the books of Central Hudson due to storm restoration costs and to provide balance sheet offsets and rate mitigation in Central Hudson's next rate filing.

1) Storm Restoration Cost Write-offs

Central Hudson currently has two storm restoration cost deferral petitions pending before the Commission in Cases 11-E-0651 (\$11.0 million exclusive of carrying charges) and 12-M-0204 (\$1.6 million exclusive of carrying charges), for a total of \$12.6 million exclusive of carrying charges.

Additionally, Central Hudson has estimated that the incremental storm restoration costs above the current rate allowance resulting from Super-storm Sandy will be approximately \$10 million. The Signatories agree that Central Hudson shall file a formal Super-storm Sandy deferral petition as soon as reasonably practicable.³

The Signatories agree to utilize a placeholder total for these three events of \$22 million. The

³ The Signatories agree that the review of the new petition will be expedited to the extent possible.

Signatories agree that \$22 million will be written off promptly after the closing against the \$35 million regulatory liability being funded by Fortis, subject to true-up for subsequent Commission determinations concerning the storm restoration costs of the three storms. The Signatories agree that the three deferral requests will be reviewed by Staff consistent with the principles and practices in the recent Central Hudson storm restoration deferral petitions involving Twin Peaks (February 2010) in Case 10-M-0473 and the December 2008 ice storm in Case 09-M-0004.

2) Disposition of the Remaining Balance

The difference between the \$35 million being provided by Fortis and the \$22 million in placeholder storm restoration cost write-offs is currently estimated as a \$13 million placeholder. The Signatories agree that this \$13 million difference will be reserved as a regulatory liability with carrying charges at the pre-tax rate of return rate. At the time of the final, trued-up storm restoration cost determination by the Commission, the reserve and associated carrying charges will be adjusted up or down to conform to

the Commission's determination. The final amount will be reserved for additional future balance sheet write-offs or other rate moderation purposes, as shall be determined in Central Hudson's next rate case.

C. Community Benefit Fund

A total of \$5 million will be provided by Fortis for a Community Benefit Fund to be utilized for low income and economic development purposes as discussed in greater detail previously in this Joint Proposal.

VI. OTHER PROVISIONS

A. Counterparts

This Joint Proposal may be executed in counterparts, all of which taken together shall constitute one and the same instrument which shall be binding upon each signatory when it is executed in counterpart, filed with the Secretary of the Commission and approved by the Commission; provided, however, that, upon execution, filing with the Secretary and prior to approval by the Commission, each Signatory shall be bound to support adoption of this Joint Proposal and, to the extent required by the context, to undertake actions necessary for implementation of the provisions of this Joint Proposal upon its approval by the Commission.

B. Provisions Not Separable

The Signatories intend this Joint Proposal to be a complete resolution of all the issues in Case 12-M-0192 and the terms of this Joint Proposal are submitted as an integrated whole. If the Commission does not accept this Joint Proposal according to its terms as the basis of the resolution of all issues addressed without change or condition, each Signatory shall have the right to withdraw from this Joint Proposal upon written notice to the Commission within ten days of the Commission Order. Upon such a withdrawal, the Signatories shall be free to pursue their respective positions in this proceeding without prejudice, and this Joint Proposal shall not be used in evidence or cited against any such Signatory or used for any other purpose. It is also understood that each provision of this Joint Proposal is in consideration and support of all the other provisions, and expressly conditioned upon acceptance by the Commission. Except as set forth herein, none of the Signatories is deemed to have approved, agreed to or consented to any principle, methodology or interpretation of law underlying or supposed to underlie any provision herein.

C. Provisions Not Precedent

The terms and provisions of this Joint Proposal apply solely to, and are binding only in the context of the purposes and results of this Joint Proposal. None of the terms or provisions of this Joint Proposal and none of the positions taken herein by any Signatory may be referred to, cited, or relied upon by any other party in any fashion as precedent or otherwise in any other proceeding before this Commission or any other regulatory agency or before any court of law for any purpose other than furtherance of the purposes, results, and disposition of matters governed by this Joint Proposal. This Joint Proposal shall not be construed, interpreted or otherwise deemed in any respect to constitute an admission by any Signatory regarding any allegations, contentions or issues raised in this proceeding or addressed in this Joint Proposal.

D. Submission of Proposal

Each Signatory agrees to submit this Joint Proposal to the Commission, to support and request its adoption by the Commission, and not to take a position in this proceeding contrary to the agreements set forth herein or to assist another participant in taking such a contrary position in these proceedings.

E. Further Assurances

The Signatories recognize that certain provisions of this Joint Proposal require that actions be taken in the future to fully effectuate this Joint Proposal.

Accordingly, the Signatories agree to cooperate with each other in good faith in taking such actions. In the event of any disagreement over the interpretation of this Joint Proposal or implementation of any of the provisions of this Joint Proposal, which cannot be resolved informally among the Signatories, such disagreement shall be resolved in the following manner: (a) the Signatories shall promptly convene a conference and in good faith attempt to resolve any such disagreement; and (b) if any such disagreement cannot be resolved by the Signatories, any Signatory may petition the Commission for resolution of the disputed matter.

F. Entire Agreement

This Joint Proposal, including all attachments, exhibits and appendices, if any, represents the entire agreement of the Signatories with respect to the matters resolved herein.

VII. SIGNATURES

WHEREFORE, This Joint Proposal has been agreed to as of January 25, 2013 by and among the following, each of whom by his

[55]

or her signature represents that he or she is fully authorized to execute this Joint Proposal and, if executing this Joint Proposal in a representative capacity, that he or she is fully authorized to execute it on behalf of his or her principal(s).

[SIGNATURES APPEAR ON THE FOLLOWING PAGES.]

SIGNATURE PAGES TO JOINT PROPOSAL DATED JANUARY 25, 2013

Cascade Acquisition Sub Inc., Fortis Inc. and FortisUS Inc.

By: Barry V. Perry
Barry V. Perry
Vice President, Finance and
Chief Financial Officer of Fortis Inc.

CH Energy Group Inc.

By: _____
Christopher A. Capone
Executive Vice-President and Chief Financial Officer

Central Hudson Gas & Electric Corporation

By: _____
Michael L. Mosher
Vice-President Regulatory Affairs

Staff of N.Y.S. Department of Public Service

By: _____
John L. Favreau, Esq.
Assistant Counsel
Staff of N.Y.S. Department of Public Service

New York Department of State Utility Intervention Unit

By: _____
Robert T. Friel
Director

Dutchess County New York: Dutchess County supports the following portions of the Joint Proposal: paragraphs IV.G.1 and V.C (Economic Development), paragraph V.A (Synergy Savings/Guaranteed Rate Reductions), paragraph V.B (Deferred Storm Restoration Cost Write-offs and Future Rate Mitigation), and paragraph IV.C and the portions of

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Vice-President Regulatory Affairs

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Christopher A. Capone
Executive Vice-President and Chief Financial Officer

Central Hudson Gas & Electric Corporation

By: M.L. Mosher
Michael L. Mosher
Vice-President Regulatory Affairs

Staff of N.Y.S. Department of Public Service

By: _____
John L. Favreau, Esq.
Assistant Counsel
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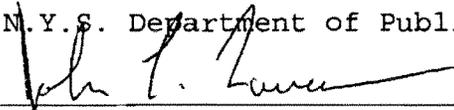
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Case 12-M-0192

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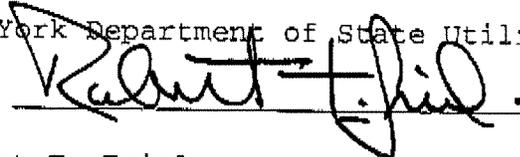
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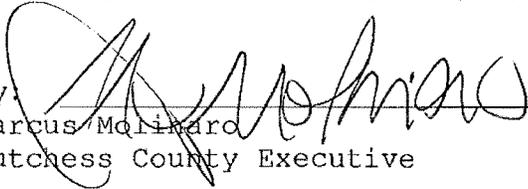
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paragraph IV.H related to the one-year rate freeze. In addition, Dutchess County takes no position with respect to the matters discussed in rest of the Joint Proposal.

By:  _____
Marcus Molinaro
Dutchess County Executive

Multiple Intervenors

By: _____
Michael B. Mager, Esq.
Couch White, LLP
Attorneys for Multiple Intervenors

Orange County New York: Orange County supports the following portions of the Joint Proposal: paragraphs IV.G.1 and V.C (Economic Development), paragraph V.A (Synergy Savings/Guaranteed Rate Reductions), paragraph V.B (Deferred Storm Restoration Cost Write-offs and Future Rate Mitigation), and paragraph IV.C and the portions of paragraph IV.H related to the one-year rate freeze. In addition, Orange County takes no position with respect to the matters discussed in rest of the Joint Proposal.

By: _____
Edward A. Diana
County Executive for Orange County

Ulster County New York: Ulster County supports paragraphs IV.G and V.C of the Joint Proposal and takes no position with respect to the matters discussed in rest of the Joint Proposal.

By: _____
Mike Hein
Ulster County Executive

paragraph IV.H related to the one-year rate freeze. In addition, Dutchess County takes no position with respect to the matters discussed in rest of the Joint Proposal.

By: _____
Marcus Molinaro
Dutchess County Executive

Multiple Intervenors

By: Michael B. Mager
Michael B. Mager, Esq.
Couch White, LLP
Attorneys for Multiple Intervenors

Orange County New York: Orange County supports the following portions of the Joint Proposal: paragraphs IV.G.1 and V.C (Economic Development), paragraph V.A (Synergy Savings/Guaranteed Rate Reductions), paragraph V.B (Deferred Storm Restoration Cost Write-offs and Future Rate Mitigation), and paragraph IV.C and the portions of paragraph IV.H related to the one-year rate freeze. In addition, Orange County takes no position with respect to the matters discussed in rest of the Joint Proposal.

By: _____
Edward A. Diana
County Executive for Orange County

Ulster County New York: Ulster County supports paragraphs IV.G and V.C of the Joint Proposal and takes no position with respect to the matters discussed in rest of the Joint Proposal.

By: _____
Mike Hein
Ulster County Executive

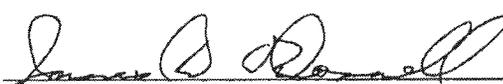
paragraph IV.H related to the one-year rate freeze. In addition, Dutchess County takes no position with respect to the matters discussed in rest of the Joint Proposal.

By: _____
Marcus Molinaro
Dutchess County Executive

Multiple Intervenors

By: _____
Michael B. Mager, Esq.
Couch White, LLP
Attorneys for Multiple Intervenors

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for By:  _____
Edward A. Diana
County Executive for Orange County

Ulster County New York: Ulster County supports paragraphs IV.G and V.C of the Joint Proposal and takes no position with respect to the matters discussed in rest of the Joint Proposal.

By: _____
Mike Hein
Ulster County Executive

paragraph IV.H related to the one-year rate freeze. In addition, Dutchess County takes no position with respect to the matters discussed in rest of the Joint Proposal.

By: _____
Marcus Molinaro
Dutchess County Executive

Multiple Intervenors

By: _____
Michael B. Mager, Esq.
Couch White, LLP
Attorneys for Multiple Intervenors

Orange County New York: Orange County supports the following portions of the Joint Proposal: paragraphs IV.G.1 and V.C (Economic Development), paragraph V.A (Synergy Savings/Guaranteed Rate Reductions), paragraph V.B (Deferred Storm Restoration Cost Write-offs and Future Rate Mitigation), and paragraph IV.C and the portions of paragraph IV.H related to the one-year rate freeze. In addition, Orange County takes no position with respect to the matters discussed in rest of the Joint Proposal.

By: _____
Edward A. Diana
County Executive for Orange County

Ulster County New York: Ulster County supports paragraphs IV.G, the portions of paragraph IV.H related to the one-year rate freeze, and V.C of the Joint Proposal and takes no position with respect to the matters discussed in rest of the Joint Proposal.

By:  _____
Mike Hein
Ulster County Executive

ATTACHMENT I
STANDARDS OF CONDUCT

**STATE OF NEW YORK
BEFORE THE
PUBLIC SERVICE COMMISSION**

Case 12-M-0192- Joint Petition of Fortis Inc. et al. and CH Energy Group, Inc. et al. for Approval of the Acquisition of CH Energy Group, Inc. by Fortis Inc. and Related Transactions.

**STANDARDS PERTAINING TO TRANSACTIONS,
CONFLICTS OF INTEREST, COST ALLOCATIONS
AND SHARING OF INFORMATION BETWEEN
CENTRAL HUDSON GAS AND ELECTRIC CORPORATION
AND AFFILIATES**

I. Introduction

This *Standards Pertaining To Transactions, Conflicts Of Interest, Cost Allocations And Sharing Of Information Between Central Hudson Gas And Electric Corporation And Affiliates* replaces and supersedes the *Amended and Restated Settlement Agreement As Approved by the Commission on February 19, 1998 With Modifications and Conditions* (“RSA”), Case 96-E-0909 (Attachment I Standards of Conduct) as to the language and topics addressed herein. All other provisions of the RSA, including Attachments A-H, J, K, remain as approved by the Commission in Case 96-E-0909 unless otherwise agreed to by the Parties in writing or ordered by the Commission. Central Hudson Gas and Electric (“Central Hudson”) retains the right to manage its own affairs including the right to amend the Standards of Conduct from time to time in a manner consistent with the Commission’s Orders and statute. Central Hudson shall provide the Secretary and Department of Public Service Staff (“Staff”) with thirty (30) days notice prior to amending these Standards.

The following pertains to transactions, conflicts of interest, cost allocations and the sharing of information (collectively referred to herein as the “Standards”) between

Central Hudson and affiliates.¹ References in these Standards to any of the foregoing affiliates shall be deemed to include any successors. Central Hudson shall comply with the Standards within thirty (30) days following their effective date. Nothing in these Standards relieves Central Hudson or its affiliates from any obligation they may have pursuant to the PSL, including Sections 70 and 110. Nothing herein serves to divest Central Hudson or its affiliates of their legal rights under the PSL, Public Service Commission (“Commission”) Orders or otherwise.

All costs and revenues recorded on Central Hudson's books of account from all affiliate transactions shall conform in all material respects to the Commission's Uniform System of Accounts.

II. Organizational Structure

A. Separation and Location

Central Hudson shall maintain separate books of account and other business records from its affiliates.

Central Hudson shall petition the Commission for approval before it establishes and maintains at an existing Central Hudson location separate and distinct office and work space from any competitive affiliate operating in any energy-related business(es) within Central Hudson’s service territory.

Central Hudson shall maintain appropriate physical and technological security, with an appropriate monitoring system, to prevent competitive affiliates from accessing or obtaining Central Hudson’s confidential information or other information that may provide the affiliate with a competitive advantage.

Central Hudson will not conduct competitive services, including competitive behind-the-meter energy services, absent an application to, and approval by the Commission, except that Central Hudson will be permitted to provide solutions to customer reliability and deliverability issues related to electric and gas transmission and distribution.

¹ Affiliates are considered any entity as defined as such under Public Service Law (“PSL”) §110(2).

Finally, any affiliate shall be established as a separate business entity from Central Hudson.

B. Board of Directors

No later than one year after the closing of the acquisition of CH Energy Group, Inc. (“CHEG”) by Fortis Inc. (“Fortis”), Fortis will appoint a board of directors for Central Hudson, the majority of whom will be independent², with the majority of such independent directors being resident in the State of New York and with emphasis on selecting candidates who reside, conduct business or work within the Central Hudson service territory.

III. Affiliate Transactions

A. Standards of Competitive Conduct

Central Hudson shall comply with the Commission rules governing Uniform Business Practices:³

1. Sales Leads

Central Hudson will not provide market information or sales leads for customers in its service territory to any affiliate, including an affiliated energy services company and will refrain from giving any appearance that it speaks on behalf of an affiliate.

² Independent is as defined in Section 10A of the Securities Exchange Act of 1934. Nothing herein prohibits an independent Central Hudson director from being elected to the board of directors of Fortis Inc., and such appointment shall not immediately and by itself deprive the Central Hudson director of his or her status as independent for purposes of these Standards. If, however, the election of an independent Central Hudson board member to the Fortis Inc. board would result in a minority of independent directors on the Central Hudson board, excluding that director, Central Hudson and/or Fortis shall notify the Secretary of the Commission of the nomination of such director within 10 days following the issuance of the Fortis Inc. proxy materials pertaining to the election of Fortis Inc. board members. As part of such notice, Central Hudson and/or Fortis shall describe the benefits to Central Hudson and its customers of having such director serve on both boards. In the event that the Commission raises concerns about such director’s service on both boards, Central Hudson and Fortis shall make reasonable business efforts to address such concerns. In the event that the Commission does not deem the efforts or measures taken by Central Hudson and Fortis to be adequate for their intended purpose, Fortis and Central Hudson shall, within no more than two years, ensure that the Central Hudson board is constituted with a majority of independent directors, excluding the director previously elected to the board of Fortis Inc..

³FortisUS Energy Corporation, which owns four Qualifying Facilities with a combined output of approximately 23 MW, all of which is sold under contracts with National Grid, does not operate in Central Hudson’s service territory or compete with Central Hudson.

Central Hudson will not imply or represent to any customer, supplier or third party that any form of advantage may accrue to such customer, supplier or third party in the use of Central Hudson's services as a result of that customer, supplier or third party dealing with an affiliate. No affiliate will imply or represent to any customer, supplier or third party that any form of advantage may accrue to such customer, supplier or third party in the use of Central Hudson's services as a result of that customer, supplier or third party dealing with an affiliate. Central Hudson will not purchase goods or services on preferential terms offered only by suppliers who purchase goods or services from or sell goods or services to an affiliate of Central Hudson.

2. Customer Inquiries

If a customer requests information about securing any competitive retail service or product offered within Central Hudson's service territory by an affiliate, Central Hudson must provide a list of competitive retail companies or affiliates that are qualified and approved pursuant to Central Hudson's standards (including retail access standards) as providers of the requested products or services within Central Hudson's service territory. While this list may include Central Hudson affiliates, the list must provide information by company in alphabetical order and may not place greater emphasis on or promote any Central Hudson affiliate. A Central Hudson employee shall not promote any competitive retail affiliate operating in Central Hudson's service territory, other than to acknowledge, at the request of a customer, that an affiliation exists between Central Hudson and such affiliate or provide a list of competitive retail providers, which may include competitive retail affiliates.

3. Customer Information

Central Hudson shall not release proprietary customer information to Energy Service Companies ("ESCOs"), including an ESCO affiliated with Central Hudson, without the prior authorization by the customer and subject to the customer's direction regarding the ESCOs to whom the information may be released.⁴ Central Hudson

⁴ It is not a release of information by Central Hudson where an ESCO accesses customer information through Central Hudson's website, or otherwise, without Central Hudson's knowledge. Central Hudson will act in accordance with Uniform Business Standards.

shall maintain verifiable proof of customer authorization for two years after receipt of the authorization. The verifiable proof shall be available to Staff at Central Hudson's offices upon request. Under no circumstance will Central Hudson release more than 24 months of proprietary customer information unless authorized to do so by the customer or ordered to provide the information by a regulatory authority or court of competent jurisdiction. Proprietary customer information includes the customer's name, address, telephone number, account number, social security number and credit report. If a customer authorizes the release of information to a Central Hudson affiliate or one or more of the affiliate's competitors, Central Hudson shall make that information available to the affiliate and/or other competitors designated by the customer on a non-discriminatory basis. Nothing herein shall require Central Hudson to release customer information to its affiliate or any competitor unless such release is authorized by the customer.

Except for purposes of complying with applicable statutes, regulations and orders, Central Hudson will not disclose to any competitive affiliate or non-affiliate any customer or market information about its gas or electric transmission and distribution systems that may provide a competitive advantage in the gas and electric markets. Customer or market information includes, but is not limited to, confidential information that Central Hudson receives from a marketer, customer or prospective customer, which is not available from sources other than Central Hudson, unless it makes such information available to all competitors on a non-discriminatory basis.

Pursuant to the Commission's Order on Rehearing Granting Petition for Rehearing issued and effective December 3, 2010 in Case 07-M-0548, Central Hudson may also enter contracts for the benefit of customers with third party service and/or materials providers, including affiliates, that include the transfer of proprietary customer information or other confidential material. Central Hudson may enter a contract with an affiliate or third party service and/or material provider that requires the transfer of proprietary customer information or other confidential material if the affiliate or third party executes a Confidentiality and Non-Disclosure Agreement.

Under all circumstances where Central Hudson transfers proprietary customer information or other confidential market data to an affiliate, ESCO, or other third party Central Hudson shall execute a Confidentiality and Non-Disclosure Agreement with the affiliate, ESCO or other third party. The Confidentiality and Non-Disclosure Agreement shall restrict access to the protected material to only those employees of the recipient affiliate, ESCO or other third party whose functions require that they have access to the subject information. Such employees shall be instructed to maintain the confidentiality of such information and execute an Individual Non-Disclosure Agreement. A copy of Central Hudson's Confidentiality and Non-Disclosure Agreement is set forth as Code of Conduct Attachment 1. Central Hudson shall retain executed Confidentiality and Non-Disclosure Agreements at its headquarters for Staff's review upon its request.

Central Hudson's critical infrastructure information shall remain, in all media formats, within the headquarters of Central Hudson, and it shall retain customer data (i.e., names, addresses, telephone numbers, social security numbers, credit reports) in all media formats, within the headquarters or customer service center of Central Hudson unless a regulatory authority or court of competent jurisdiction requires Central Hudson to provide the information.

4. Complaint Procedure

If any competitor or customer of Central Hudson believes that Central Hudson has violated the Standards, such competitor or customer may file a complaint in writing with Central Hudson. Central Hudson will respond to the complaint in writing within twenty (20) business days after receipt of the complaint. After providing its response to the complainant, Central Hudson and the complainant will meet, if necessary, in an attempt to resolve the matter informally. If Central Hudson and the complainant are not able to resolve the matter informally within fifteen (15) business days after the commencement of the informal resolution process, the complainant may refer the matter to the Commission for disposition. This provision shall not preclude the Commission from addressing any such matter more expeditiously in the event that exigent circumstances so require. Nothing herein shall preclude a complainant from filing a formal complaint before the Commission without participating in the

informal resolution process. In any instance in which a formal complaint is filed with the Commission Central Hudson shall have a full and fair opportunity to be heard through a process established by the Commission. The Commission may order any such remedies to resolve the complaint as are within its statutory authority.

5. No Advantage Gained by Dealing with Affiliate

Central Hudson will refrain from giving any appearance that Central Hudson speaks on behalf of any affiliate operating in its service territory. Central Hudson will not participate in any joint promotion or marketing with any affiliate operating in its service territory. Concerning competitive retail electric or natural gas services offered in the market, Central Hudson will not represent to any customer, supplier or third-party that an advantage may accrue to such customer, supplier or third-party in the use of the Company's tariffed services as a result of that customer, supplier or third-party dealing with a competitive affiliate. A competitive affiliate operating in any energy-related business(es) within Central Hudson's service territory may not use the name "Central Hudson" to market its competitive product. No non-Central Hudson company will be allowed by Central Hudson or Fortis to use the Central Hudson name, trade names, trademarks, service markets or a derivative of a name of Central Hudson in any manner.⁵

6. No Rate Discrimination

All similarly-situated customers, including ESCOs and customers of ESCOs, whether affiliated or unaffiliated, will pay the same rates for Central Hudson's tariffed utility services. If there is discretion in the application of any tariff provision, Central Hudson must not offer its affiliate more favorable terms and conditions than it has offered to all similarly-situated competitors of the affiliate. In particular, Central Hudson shall process all requests for similar service in the same manner, within similar time periods, and without any preferential treatment for customers seeking tariffed services from Central Hudson affiliates. Central Hudson shall not give preference to a customer of an affiliate, or to an affiliate, regarding repairs or maintenance, or operation of its

⁵ "Non-Central Hudson company" means an entity that is not controlled by Central Hudson or Fortis and that is not an affiliate of Central Hudson or Fortis Inc.

system.

Central Hudson shall, pursuant to Public Service law Section 66(12)(d), charge all tariff customers the rates and charges specified in its schedule filed and in effect.

Central Hudson may provide non-tariffed service to customers, including affiliates, by contract or other similar arrangement. Contract service provided by Central Hudson shall not affect the rate paid by tariffed customers. Central Hudson shall maintain executed contracts or other arrangements on file at its corporate headquarters available for review by Staff upon request.

B. Training and Certification

Central Hudson and any affiliate operating in its service territory, shall conduct training on these Standards for its officers and directors (including employee directors) and Shared Employees. Central Hudson's officers and directors, Shared Employees and affiliates operating in Central Hudson's service territory shall certify familiarity with these Standards within ninety (90) days following their effective date. Central Hudson shall certify that it has provided training regarding the Standards to any new officers, directors and Shared Employees within ninety (90) days after the start date for each new officer, director, or Shared Employee.

C. Adherence to Standards

On an annual basis Central Hudson's General Counsel and Vice President Human Resources and Health & Safety, or their successors, shall provide certification to the Commission of Central Hudson's adherence to the Standards. If, after an investigation by an independent auditor and hearing, the Commission finds that Central Hudson is not in substantial compliance⁶ with the Standards, the Commission can order Central Hudson to pay for the cost of the independent auditor. If Central Hudson is in substantial compliance with the Standards it may petition to defer and recover the costs of the independent auditor without regard to the Commission's three-part test for deferral accounting. As part of the independent auditor's investigation it shall review the transactions and cost allocations necessary to determine Central Hudson's substantial compliance or lack thereof

⁶ Substantial compliance shall be determined by the Commission.

IV. Ethics

All Central Hudson employees, officers and directors must adhere to Central Hudson's Code of Business Conduct and Ethics ("Ethics Code") as it may be amended from time to time. Central Hudson will maintain its Ethics Code at its headquarters in a manner available to Staff upon request. Central Hudson will make the Ethics Code available to its employees, officers and directors electronically at all times.

A. Corporate Governance

Central Hudson directors, officers and employees shall adhere to the applicable CHEG Governance Guidelines as they may be amended from time to time. Governance Guidelines set forth Central Hudson's principles and requirements for conflict of interest, recusal from participation in decision making and other corporate governance issues. Central Hudson will maintain its Governance Guidelines at its headquarters in a manner available to Staff upon request. Central Hudson will make its Governance Guidelines available to its employees, officers and directors electronically at all times.

V. Cost Allocations

Central Hudson will continue to follow the cost allocation procedures approved by the Commission as the Guidelines for Transactions Between Central Hudson and its Affiliates approved by the Commission in Case 96-E-0909 as set forth in Attachment H Cost Allocation Guidelines of the Amended and Restated Settlement Agreement as Approved by the Commission on February 19, 1998. In the event that Central Hudson's affiliate transactions exceed \$7.5 million, as measured by the transactions in the immediately preceding rate year excluding transactions with an affiliated Transmission Company ("Transco") and dividend payments, Central Hudson and Staff will discuss appropriate modifications to the Cost Allocation Guidelines set forth in the RSA at Attachment H. If such discussions do not lead to a resolution of cost allocation issues within ninety (90) days Central Hudson shall notify the Commission's Secretary and convene a collaborative to resolve cost allocation issues. Adherence to the Guidelines will assure that Central Hudson maintains proper cost

allocation procedures regarding transactions between Central Hudson and its affiliates. Central Hudson will meet annually with Staff on or before April 1 of each year to review its cost allocations and their application. If at any time Central Hudson becomes aware of events likely to cause a reconsideration of or material change to its ownership or cost allocations, Central Hudson will advise Staff and arrange a meeting in order to consider cost allocation issues. Central Hudson may seek to amend the Cost Allocation Guidelines from time to time and will file with the Secretary of the Commission all proposed amendments and supplements to the guidelines at least thirty (60) days prior to their proposed effective date. These procedures apply to Paragraphs V (A-D) set forth below.

A. Transfer of Assets

Public Service Law Section 70 applies to certain transfers of assets from Central Hudson to any affiliate. Central Hudson will continue to abide by the Guidelines for Transactions Between Central Hudson and its Affiliates approved by the Commission in Case 96-E-0909 as set forth in Attachment H of the Amended and Restated Settlement Agreement as Approved by the Commission on February 19, 1998. Central Hudson will maintain its affiliate transaction guidelines at its headquarters in a manner available to Staff upon request. Central Hudson will make its affiliate transaction guidelines available to its employees, officers and directors electronically at all times. Any affiliate receiving goods or services from Central Hudson will compensate Central Hudson in a timely fashion. Standard commercial terms for payments will apply to transactions between Central Hudson and its affiliates. If the Commission determines that the commercial terms applicable to a transaction between Central Hudson and an affiliate are unreasonable it may issue an appropriate remedy.

B. Transfer of Services

Central Hudson will continue to abide by the Guidelines for Transactions Between Central Hudson and its Affiliates approved by the Commission in Case 96-E-0909 as set forth in Attachment H of the Amended and Restated Settlement Agreement as Approved by the Commission on February 19, 1998. Central Hudson will maintain its affiliate transaction guidelines at its headquarters in a manner

available to Staff upon request. Central Hudson will make its affiliate transaction guidelines available to its employees, officers and directors electronically at all times. Any affiliate receiving goods or services from Central Hudson will compensate Central Hudson in a timely fashion.

C. Insurance

Central Hudson and any affiliate may be covered by common property, casualty and other business insurance policies. Such policies shall provide Central Hudson with commercially reasonable protections against liability. Central Hudson and its affiliates shall maintain a corporate structure sufficient to protect it from the liabilities of its affiliates, as well as any increases in Central Hudson's insurance costs resulting from the inclusion of property or assets held by an affiliate(s) in such insurance policies. Central Hudson shall, to the extent that market information is available, submit with each rate case petition, a market survey to determine whether it could obtain insurance separately from its affiliates on financial and other terms and conditions superior to the common policies maintained with its affiliates and report to the Staff the results of its survey. The costs of such policies shall be allocated among Central Hudson and any affiliate in an equitable manner.

D. Personnel

1. Sharing of Employees, Officers and Directors

Central Hudson and its affiliates may have Shared Employees. Operating employees, defined as non-management employees, shall not be shared except for purposes of training or emergencies—including mutual assistance. A Shared Employee is a Central Hudson employee assigned to perform work for Central Hudson and one or more affiliate(s) for a period of more than six months. Central Hudson shall maintain a list of Shared Employees by position and employee number updated every six months at its offices and available for inspection by Staff upon request.

Operating officers (i.e., those officers providing other than corporate services) of Central Hudson will not be operating officers of any of its affiliates.

An officer or director of Central Hudson may not serve as an officer or

director of a competitive affiliate operating in Central Hudson's service territory.

Corporate employees may be provided by Central Hudson on a fully loaded cost-basis. During its provision of any such shared services, such individual shall be subject to all requirements in these Standards pertaining to information obtained about/from Central Hudson. Nothing herein shall limit the Commission's authority to determine ratemaking issues arising out of such transactions.

Central Hudson shall allocate the costs of employees performing work for Central Hudson and an affiliate pursuant to Attachment H of the Amended and Restated Settlement Agreement as Approved by the Commission on February 19, 1998.

Officers and directors of Central Hudson may not use any of the Company's marketing, sales, advertising, public relations, and/or energy purchasing expertise to provide services to any affiliate that competes with Central Hudson in any energy-related business within Central Hudson's service territory. Before any Central Hudson employee performs work for an affiliate, whether such employee is a Shared Employee or not, Central Hudson shall ensure that such employees are familiar with the Standards. Nothing herein shall limit the Commission's authority over ratemaking issues arising out of such transactions.

Affiliates may provide services to Central Hudson and may have separate contracts and billings for such services. Nothing in this section shall authorize Central Hudson to engage in a transaction with any affiliate if such transaction would otherwise be prohibited under these Standards, or authorize Central Hudson to tender preferential treatment to any affiliate. Any management, construction, engineering or similar contract between Central Hudson and any affiliate and any contract for the purchase by Central Hudson from an affiliate shall be governed by PSL §110.

2. Transfer of Employees

If a Central Hudson employee accepts a position with any affiliate, he or she will be required to resign from Central Hudson, unless there is a conflict with the

collective bargaining agreement in which case the collective bargaining agreement shall control. Any such employee shall be prohibited from copying or taking any non-public customer or competitively sensitive market information from Central Hudson.

3. Compensation for Employee Transfers

Employees may be transferred from Central Hudson to an affiliate or an affiliate to Central Hudson. Employees transferred by Central Hudson to an affiliate competing with Central Hudson in Central Hudson's service territory may not be reemployed by Central Hudson for a minimum of one year after such transfer. Central Hudson will file annual reports with the Commission showing transfers between Central Hudson and any affiliates by employee number, former company, former position and salary and new company, new position and salary or annualized base compensation. If the Commission determines that employee transfers inappropriately harm Central Hudson and its customers the Commission may order an appropriate remedy.

4. Employee Loans in an Emergency

The foregoing provisions in no way restrict any affiliate from loaning employees to Central Hudson to respond to an emergency that threatens the safety or reliability of service to customers; nor shall such provisions restrict Central Hudson from loaning employees to other regulated utilities, whether affiliated or unaffiliated, to respond to an emergency that threatens such safety or reliability of service to consumers. Central Hudson shall allocate the costs of employees loaned to, or from, a Central Hudson affiliate pursuant to Attachment H of the Amended and Restated Settlement Agreement as Approved by the Commission on February 19, 1998.

5. Compensation and Benefits

The compensation of Central Hudson's operating employees, officers and directors (including employee directors) may not be tied directly to the performance of any affiliates; provided, however, that this provision shall not preclude such compensation based upon aggregate performance of Central Hudson and any affiliate, including compensation based on Fortis's stock performance. The employees of Central Hudson and any affiliate may participate in common pension and benefit

plans, and the cost shall be allocated pursuant to Attachment H of the Amended and Restated Settlement Agreement as Approved by the Commission on February 19, 1998.

6. Legal Representation

Central Hudson shall have its own internal and/or external counsel whose primary responsibility is Central Hudson. Central Hudson shall not provide counsel for a competitive affiliate operating in Central Hudson's service territory in any matter between the two affiliates where the interest of the competitive affiliate is adverse to that of Central Hudson. Regarding any matter Central Hudson will take appropriate steps to ensure that Central Hudson's interests are vigorously and independently protected. Outside counsel shall adhere to the same standards as are required of Central Hudson to protect Central Hudson's confidential information that may be available to them in the course of their representation.

VI. Audits

A. Access to Books, Records and Reports

The following provisions govern the access by Staff, and are not intended to supersede or otherwise limit or expand the applicability of the PSL, to all books and records related to all transactions for goods and services and cost allocations that occur between Central Hudson and any affiliates:

1. Access to Information

Staff will have access, upon reasonable notice and subject to appropriate resolution of any issues pertaining to applicable privileges and protections against disclosure, including the attorney/client privilege, and confidentiality, to the books and records of any affiliate, controlled by Central Hudson, with which Central Hudson has transactions. Staff will have access to the extent necessary to verify the reasonableness of the charges associated with the transactions, to confirm that the terms and conditions of the transactions do not discriminate against entities competing with Central Hudson in its service territory, and as necessary for ratemaking purposes.⁷ For

⁷ The provisions of the RSA at 70-73, titled 32. *Privileged Information* and 33. *Confidentiality of Record* shall govern and control the resolution of privilege and confidentiality issues that may arise.

any affiliate over which Central Hudson does not have sufficient control to require such access, Central Hudson shall nevertheless employ its best efforts to provide such access and, in the event Central Hudson is unable to do so, it shall provide an explanation of the reasons therefor. These Standards will not be interpreted as restricting Staff in obtaining any affiliate information pursuant to PSL § 110. Nothing herein shall limit the Commission's authority over ratemaking issues arising out of such transactions.

2. Location of Audit Information

All access to Central Hudson's books and records and the books and records of affiliates controlled by Central Hudson shall be provided at Central Hudson's headquarters and shall be available to Staff upon request and in no event shall these provisions unreasonably delay Staff's ability to perform its audit functions. Central Hudson will use its best efforts to provide access to the books and records of affiliates it does not control at its headquarters and will provide Staff with an explanation if it cannot do so. Any information provided shall be subject to applicable privileges and protections against disclosure pursuant to Civil Procedure Law and Rules §§ 3101 and 4503 and as provided for in the PSL and the Commission's regulations at 16 NYCRR Parts 3 through 5 including resolution of confidentiality issues pursuant to the Commission's regulations on confidential information at 16 NYCRR Part 6, with due regard to the regulations of any other commission that may have jurisdiction over the information.

3. Company Liaison

A senior officer of Central Hudson will designate an employee, as well as an alternate to act in the absence of such designee ("Liaisons"), to act as liaison between Central Hudson and Staff. The Liaisons will facilitate the production of information to Staff. If Central Hudson believes that information requested by Staff should not be provided Central Hudson will provide the reason for its belief through the Liaisons.

Nothing herein shall deprive Central Hudson, or its affiliates, of the ability to claim privilege or confidentiality as set forth in the RSA.

B. Reporting

Commencing with the period ending December 31, 2013, Central Hudson shall file, by April 1 of each year, a joint annual report to the Commission, summarizing, for the prior year, any asset transfers, shared employees, employee transfers, employee loans for emergencies, contracts, cost allocations, affiliate transactions and competitor or customer complaints concerning the course of conduct between Central Hudson and any affiliate that is related to these Standards. Further, any management employee transfers shall be reported to the Commission on a quarterly basis beginning on April 1 of each year.

Employee transfers between Central Hudson and an affiliate shall be reported by employee number, former company, former position, new company and new position. Employee loans from an affiliate to Central Hudson to respond to an emergency that threatens the safety or reliability of service to consumers shall be reported by employee number, companies involved and length of loan period.

C. Confidentiality of Records

Central Hudson and, as applicable, any affiliate shall designate as confidential any non-public information to or of which Staff requests access or disclosure, and which such entity believes is entitled to be treated as a trade secret, and may submit information to the Commission or Staff subject to the Commission's regulations on confidential information at 16 NYCRR Part 6.

ATTACHMENT II
ELECTRIC RELIABILITY PERFORMANCE MECHANISM

Electric Reliability

Operation of Mechanism

This electric service Reliability Performance Mechanism ("reliability mechanism") has been in effect for Central Hudson Gas & Electric Corporation beginning on June 18, 2010 and will remain in effect until reset by the Commission. The measurement periods for the reliability mechanism metrics will be on a calendar year basis.

The reliability mechanism establishes the following performance metrics:

(a) threshold standards, consisting of system-wide performance targets for frequency and duration of electric service interruption defined as:

1. CAIDI - Customer Average Interruption Duration Index.

The average interruption duration time (customers-hours interrupted) for those customers that experience an interruption during the year.

2. SAIFI - System Average Interruption Frequency Index. It is the average number of times that a customer is interrupted per 1,000 customers served during the year.

The electric service annual metrics for System Average Frequency Index (SAIFI) and Customer Average Duration Index (CAIDI) shall be a 15 basis point (electric, pre-tax) potential negative revenue adjustment for failure to achieve an annual

SAIFI target of 1.45, and a 15 basis point (electric, pre-tax) potential negative revenue adjustment for failure to achieve an annual CAIDI of 2.50. These index targets are the same as approved in the 2009 Rate Order in Case 09-E-0588 (2009 Rate Order). After the merger, the revenue adjustment will double where the Company does not satisfy a performance target.

(b) The Quarterly Meeting process will be continued per the 2009 Rate Order.

All revenue adjustments related to this reliability mechanism will come from shareholder funds and will be deferred for the benefit of ratepayers.

Exclusions

The following exclusions will be applicable to operating performance under this reliability mechanism:

- (a) Any outages resulting from a major storm, as defined in 16 NYCRR Part 97 (i.e., at least 10% of the customers interrupted within an operating area or customers out of service for at least 24 hours), except as otherwise noted.
- (b) Any incident resulting from a catastrophic event beyond the control of the Company, including but not limited to plane crash, water main break, or natural disasters (e.g., hurricanes, floods, earthquakes).

- (c) Any incident where problems beyond the Company's control involving generation or the bulk transmission system is the key factor in the outage, including, but not limited to, NYISO mandated load shedding. This criterion is not intended to exclude incidents that occur as a result of unsatisfactory performance by the Company.

Reporting

The Company will prepare an annual report(s) on its performance under this reliability mechanism. The annual report(s) will be filed by March 31st of each year to the Secretary.

The reports will state the:

- (a) Company's annual system-wide performance under the RPM and identify whether a revenue adjustment is applicable and, if so, the amount of the revenue adjustment;
- (b) Company's performance under the other metrics and identify whether a revenue adjustment is applicable and, if so, the amount of the revenue adjustment; and
- (c) Basis for requesting and provide adequate support for all exclusions.

ATTACHMENT III
PARTS 255/261 MATERIALS

HIGH RISK SECTIONS PART 255

ACTIVITY TITLE	CODE SECTION	RISK FACTOR
Material - General	255.53(a),(b),(c)	HIGH
Transportation of Pipe	255.65	HIGH
Pipe Design - General	255.103	HIGH
Design of Components - General Requirements	255.143	HIGH
Design of Components - Flexibility	255.159	HIGH
Design of Components - Supports and anchors	255.161	HIGH
Compressor Stations: Emergency shutdown	255.167	HIGH
Compressor Stations: Pressure limiting devices	255.169	HIGH
Compressor Stations: Ventilation	255.173	HIGH
Valves on pipelines to operate at 125 psig or more	255.179	HIGH
Distribution line valves	255.181	HIGH
Vaults: Structural Design requirements	255.183	HIGH
Vaults: Drainage and waterproofing	255.189	HIGH
Protection against accidental overpressuring	255.195	HIGH
Control of the pressure of gas delivered from high pressure distribution systems	255.197	HIGH
Requirements for design of pressure relief and limiting devices	255.199	HIGH
Required capacity of pressure relieving and limiting stations	255.201	HIGH
Qualification of welding procedures	255.225	HIGH
Qualification of Welders	255.227	HIGH
Protection from weather	255.231	HIGH
Miter Joints	255.233	HIGH
Preparation for welding	255.235	HIGH
Inspection and test of welds	255.241(a),(b)	HIGH
Nondestructive testing-Pipeline to operate at 125 PSIG or more	255.243(a)-(e)	HIGH
Welding inspector	255.244(a),(b),(c)	HIGH
Repair or removal of defects	255.245	HIGH
Joining Of Materials Other Than By Welding - General	255.273	HIGH
Joining Of Materials Other Than By Welding - Copper Pipe	255.279	HIGH
Joining Of Materials Other Than By Welding - Plastic Pipe	255.281	HIGH
Plastic pipe: Qualifying persons to make joints	255.285(a),(b),(d)	HIGH
Notification requirements	255.302	HIGH
Compliance with construction standards	255.303	HIGH
Inspection: General	255.305	HIGH
Inspection of materials	255.307	HIGH
Repair of steel pipe	255.309	HIGH
Repair of plastic pipe	255.311	HIGH
Bends and elbows	255.313(a),(b),(c)	HIGH
Wrinkle bends in steel pipe	255.315	HIGH
Installation of plastic pipe	255.321	HIGH
Underground clearance	255.325	HIGH
Customer meters and service regulators: Installation	255.357(d)	HIGH
Service lines: Installation	255.361(e),(f),(g),(h),(i)	HIGH
Service lines: Location of valves	255.365(b)	HIGH
External corrosion control: Buried or submerged pipelines installed after July 31, 1971	255.455(d),(e)	HIGH
External corrosion control: Buried or submerged pipelines installed before August 1, 1971	255.457	HIGH
External corrosion control: Protective coating	255.461(c)	HIGH
External corrosion control: Cathodic protection	255.463	HIGH
External corrosion control: Monitoring	255.465(a),(e)	HIGH
Internal corrosion control: Design and construction of transmission line	255.476(a),(c)	HIGH
Remedial measures: General	255.483	HIGH
Remedial measures: transmission lines	255.485(a),(b)	HIGH
Strength test requirements for steel pipelines to operate at 125 PSIG or more	255.505(a),(b),(c),(d)	HIGH
General requirements (UPGRADES)	255.553 (a),(b),(c),(f)	HIGH
Upgrading to a pressure of 125 PSIG or more in steel pipelines	255.555	HIGH
Upgrading to a pressure less than 125 PSIG	255.557	HIGH
Conversion to service subject to this Part	255.559(a)	HIGH
General provisions	255.603	HIGH
Operator Qualification	255.604	HIGH
Essentials of operating and maintenance plan	255.605	HIGH
Change in class location: Required study	255.609	HIGH
Damage prevention program	255.614	HIGH
Emergency Plans	255.615	HIGH
Customer education and information program	255.616	HIGH
Maximum allowable operating pressure: Steel or plastic pipelines	255.619	HIGH
Maximum allowable operating pressure: High pressure distribution systems	255.621	HIGH
Maximum and minimum allowable operating pressure: Low pressure distribution systems	255.623	HIGH
Odorization of gas	255.625(a),(b)	HIGH

Tapping pipelines under pressure	255.627	HIGH
Purging of pipelines	255.629	HIGH
Control Room Management	255.631(a)	HIGH
Transmission lines: Patrolling	255.705	HIGH
Leakage Surveys - Transmission	255.706	HIGH
Transmission lines: General requirements for repair procedures	255.711	HIGH
Transmission lines: Permanent field repair of imperfections and damages	255.713	HIGH
Transmission lines: Permanent field repair of welds	255.715	HIGH
Transmission lines: Permanent field repair of leaks	255.717	HIGH
Transmission lines: Testing of repairs	255.719	HIGH
Distribution systems: Leak surveys and procedures	255.723	HIGH
Compressor stations: procedures	255.729	HIGH
Compressor stations: Inspection and testing relief devices	255.731	HIGH
Compressor stations: Additional inspections	255.732	HIGH
Compressor stations: Gas detection	255.736	HIGH
Pressure limiting and regulating stations: Inspection and testing	255.739(a),(b)	HIGH
Regulator Station Overpressure Protection	255.743(a),(b)	HIGH
Transmission Line Valves	255.745	HIGH
Prevention of accidental ignition	255.751	HIGH
Protecting cast iron pipelines	255.755	HIGH
Replacement of exposed or undermined cast iron piping	255.756	HIGH
Replacement of cast iron mains paralleling excavations	255.757	HIGH
Leaks: Records	255.807(d)	HIGH
Leaks: Instrument sensitivity verification	255.809	HIGH
Leaks: Type 1	255.811(b),(c),(d),(e)	HIGH
Leaks: Type 2A	255.813(b),(c),(d)	HIGH
Leaks: Type 2	255.815	HIGH
Leak Follow-up	255.819(a)	HIGH
High Consequence Areas	255.905	HIGH
Required Elements (IMP)	255.911	HIGH
Knowledge and Training (IMP)	255.915	HIGH
Identification of Potential Threats to Pipeline Integrity and Use of the Threat Identification in an Integrity Program (IMP)	255.917	HIGH
Baseline Assessment Plan(IMP)	255.919	HIGH
Conducting a Baseline Assessment (IMP)	255.921	HIGH
Direct Assessment (IMP)	255.923	HIGH
External Corrosion Direct Assessment (ECDA) (IMP)	255.925	HIGH
Internal Corrosion Direct Assessment (ICDA) (IMP)	255.927	HIGH
Confirmatory Direct Assessment (CDA) (IMP)	255.931	HIGH
Addressing Integrity Issues (IMP)	255.933	HIGH
Preventive and Mitigative Measures to Protect the High Consequence Areas (IMP)	255.935	HIGH
Continual Process of Evaluation and Assessment (IMP)	255.937	HIGH
Reassessment Intervals (IMP)	255.939	HIGH
General requirements of a GDPIM plan	255.1003	HIGH
Implementation requirements of a GDPIM plan.	255.1005	HIGH
Required elements of a GDPIM plan.	255.1007	HIGH
Required report when compression couplings fail.	255.1009	HIGH
Requirements a small liquefied petroleum gas (LPG) operator must satisfy to implement a GDPIM plan	255.1015	HIGH

HIGH RISK SECTIONS PART 261		
Operation and maintenance plan	261.15	HIGH
Leakage Survey	261.17(a),(c)	HIGH
Carbon monoxide prevention	261.21	HIGH
Warning tag procedures	261.51	HIGH
HEFPA Liaison	261.53	HIGH
Warning Tag Inspection	261.55	HIGH
Warning tag: Class A condition	261.57	HIGH
Warning tag: Class B condition	261.59	HIGH

OTHER RISK SECTIONS PART 255		
ACTIVITY TITLE	CODE SECTION	RISK FACTOR
Preservation of records	255.17	OTH
Compressor station: Design and construction	255.163	OTH
Compressor station: Liquid removal	255.165	OTH
Compressor stations: Additional safety equipment	255.171	OTH
Vaults: Accessibility	255.185	OTH
Vaults: Sealing, venting, and ventilation	255.187	OTH
Calorimeter or calorimeter structures	255.190	OTH
Design pressure of plastic fittings	255.191	OTH
Valve installation in plastic pipe	255.193	OTH
Instrument, control, and sampling piping and components	255.203	OTH
Limitations On Welders	255.229	OTH
Quality assurance program	255.230	OTH
Preheating	255.237	OTH
Stress relieving	255.239	OTH
Inspection and test of welds	255.241(c)	OTH
Nondestructive testing-Pipeline to operate at 125 PSIG or more	255.243(f)	OTH
Plastic pipe: Qualifying joining procedures	255.283	OTH
Plastic pipe: Qualifying persons to make joints	255.285(c),(e)	OTH
Plastic pipe: Inspection of joints	255.287	OTH
Bends and elbows	255.313(d)	OTH
Protection from hazards	255.317	OTH
Installation of pipe in a ditch	255.319	OTH
Casing	255.323	OTH
Cover	255.327	OTH
Customer meters and regulators: Location	255.353	OTH
Customer meters and regulators: Protection from damage	255.355	OTH
Customer meters and service regulators: Installation	255.357(a),(b),(c)	OTH
Customer meter installations: Operating pressure	255.359	OTH
Service lines: Installation	255.361(a),(b),(c),(d)	OTH
Service lines: valve requirements	255.363	OTH
Service lines: Location of valves	255.365(a),(c)	OTH
Service lines: General requirements for connections to main piping	255.367	OTH
Service lines: Connections to cast iron or ductile iron mains	255.369	OTH
Service lines: Steel	255.371	OTH
Service lines: Cast iron and ductile iron	255.373	OTH
Service lines: Plastic	255.375	OTH
Service lines: Copper	255.377	OTH
New service lines not in use	255.379	OTH
Service lines: excess flow valve performance standards	255.381	OTH
External corrosion control: Buried or submerged pipelines installed after July 31, 1971	255.455(a)	OTH
External corrosion control: Examination of buried pipeline when exposed	255.459	OTH
External corrosion control: Protective coating	255.461(a),(b),(d),(e),(f),(g)	OTH
Rectifier Inspection	255.465 (b),(c),(f)	OTH
External corrosion control: Electrical isolation	255.467	OTH
External corrosion control: Test stations	255.469	OTH
External corrosion control: Test lead	255.471	OTH
External corrosion control: Interference currents	255.473	OTH
Internal corrosion control: General	255.475(a),(b)	OTH
Atmospheric corrosion control: General	255.479	OTH
Atmospheric corrosion control: Monitoring	255.481	OTH
Remedial measures: transmission lines	255.485(c)	OTH
Remedial measures: Pipelines lines other than cast iron or ductile iron lines	255.487	OTH
Remedial measures: Cast iron and ductile iron pipelines	255.489	OTH
Direct Assessment	255.490	OTH
Corrosion control records	255.491	OTH
General requirements (TESTING)	255.503	OTH
Strength test requirements for steel pipelines to operate at 125 PSIG or more	255.505(e),(h),(i)	OTH

Test requirements for pipelines to operate at less than 125 PSIG	255.507	OTH
Test requirements for service lines	255.511	OTH
Environmental protection and safety requirements	255.515	OTH
Records (TESTING)	255.517	OTH
Notification requirements (UPGRADES)	255.552	OTH
General requirements (UPGRADES)	255.553(d),(e)	OTH
Conversion to service subject to this Part	255.559(b)	OTH
Change in class location: Confirmation or revision of maximum allowable operating pressure	255.611(a),(d)	OTH
Continuing surveillance	255.613	OTH
Odorization	255.625(e),(f)	OTH
Pipeline Markers	255.707(a),(c),(d),(e)	OTH
Transmission lines: Record keeping	255.709	OTH
Distribution systems: Patrolling	255.721(b)	OTH
Test requirements for reinstating service lines	255.725	OTH
Inactive Services	255.726	OTH
Abandonment or inactivation of facilities	255.727(b)-(g)	OTH
Compressor stations: storage of combustible materials	255.735	OTH
Pressure limiting and regulating stations: Inspection and testing	255.739(c),(d)	OTH
Pressure limiting and regulating stations: Telemetering or recording gauges	255.741	OTH
Regulator Station MAOP	255.743 (e)	OTH
Service Regulator - Min.& Oper. Load	255.744 (d),(e)	OTH
Distribution Line Valves	255.747	OTH
Valve maintenance: Service line valves	255.748	OTH
Regulator Station Vaults	255.749	OTH
Caulked bell and spigot joints	255.753	OTH
Reports of accidents	255.801	OTH
Emergency lists of operator personnel	255.803	OTH
Leaks General	255.805(a),(b),(e),(g),(h)	OTH
Leaks: Records	255.807(a),(b),(c)	OTH
Type 2	255.815(b),(c),(d)	OTH
Type 3	255.817	OTH
Interruptions of service	255.823(a),(b)	OTH
Logging and analysis of gas emergency reports	255.825	OTH
Annual Report	255.829	OTH
Reporting safety-related conditions	255.831	OTH
General (IMP)	255.907	OTH
Changes to an Integrity Management Program (IMP)	255.909	OTH
Low Stress Reassessment (IMP)	255.941	OTH
Measuring Program Effectiveness (IMP)	255.945	OTH
Records (IMP)	255.947	OTH
Records an operator must keep	255.1011	OTH

OTHER RISK SECTIONS PART 261		
High Pressure Piping - Annual Notice	261.19	OTH
Warning tag: Class C condition	261.61	OTH
Warning tag: Action and follow-up	261.63(a)-(h)	OTH
Warning Tag Records	261.65	OTH

ATTACHMENT IV
NET PLANT TARGETS

Central Hudson Gas & Electric Corporation

Net Plant Targets for TME 6/30/2014 (\$000)

	<u>Electric¹</u>
	<u>TME 6/30/2014</u>
<u>Electric Net Plant Target:</u>	
Plant In Service	1,262,196
Accumulated Reserve	(360,501)
Net Plant	901,695
NIBCWIP	17,638
Net Electric Plant Target	919,333 ⁴

<u>Depreciation Expense Target:</u>	
Transportation Depreciation ³	1,991
Depreciation Expense ³	32,710
Electric Depreciation Expense Target	34,701 ⁴

	<u>Gas¹</u>
	<u>TME 6/30/2014</u>
<u>Gas Net Plant Target:</u>	
Plant In Service	361,146
Accumulated Reserve	(117,428)
Net Plant	243,718
NIBCWIP	8,438
Net Gas Plant Target	252,156 ⁴

<u>Depreciation Expense Target:</u>	
Transportation Depreciation ³	417
Depreciation Expense ³	8,999
Gas Depreciation Expense Target	9,416 ⁴

¹ - Electric and Gas amounts include allocation of Common Plant.

² - Electric and Gas Plant, Reserves and NIBCWIP are from Staff Exhibits ARP-3 and ARP-4, Schedule 7.

³ - Electric and Gas Depreciation are from Staff Exhibits ARP-3 and ARP-4, Schedule 1.

⁴ - Net Plant and Depreciation Target.