

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

Proceeding on Motion of the Commission as to the
Rates, Charges, Rules and Regulations of Central
Hudson Gas & Electric Corporation for Electric Service

Case 05-E-0934

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NEW YORK STATE CONSUMER PROTECTION BOARD'S
RESPONSE IN OPPOSITION TO PETITION FOR REHEARING BY
CENTRAL HUDSON GAS & ELECTRIC CORPORATION

Teresa A. Santiago
Chairperson and Executive Director

Douglas W. Elfner
Director of Utility Intervention

David Prestemon
Intervenor Attorney

Dated: September 13, 2006
Albany, New York

NYS CONSUMER PROTECTION BOARD
5 EMPIRE STATE PLAZA
SUITE 2101
ALBANY, NEW YORK 12223-1556
<http://www.nysconsumer.gov>

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On July 24, 2006, the Public Service Commission (“PSC” or “the Commission”) issued an Order in which it approved a Joint Proposal submitted by Central Hudson Gas & Electric Corporation (“Central Hudson” or “the Company”) and other parties, with modification.¹ By Petition dated August 29, 2006, the Company asked the PSC to reconsider the return on common equity approved in that Order,² asserting that the Commission’s decision in a subsequent case for another utility³ is a new circumstance that warrants a different determination. For the reasons explained herein, the Consumer Protection Board (“CPB”) recommends that the Company’s Petition be denied in its entirety.

¹ Cases 05-E-0934 and 05-G-0935, Order Establishing Rate Plan, July 24, 2006 (“July 24 Order” or “Order”).

² Cases 05-E-0934 and 05-G-0935, Petition for Rehearing on Behalf of Central Hudson Gas & Electric Corporation, August 29, 2006. (“Central Hudson Petition” or “Company Petition”)

³ Citing Case 05-E-1222, Proceeding on Motion of the Commission as to the Rates, Charges, Rules and Regulations of New York State Electric & Gas Corporation for Electric Service, Order Adopting Recommended Decision with Modification, August 23, 2006 (“NYSEG”).

I. CENTRAL HUDSON HAS WAIVED ITS RIGHT TO PETITION FOR REHEARING.

The July 24 Order adopts the Joint Proposal negotiated and supported by Central Hudson with one material exception: it imposes a reconciliation mechanism to ensure that any shortfall in distribution right-of-way maintenance spending will be used for the benefit of ratepayers, rather than retained by the Company.⁴ The Commission noted that such a reconciliation mechanism, proposed by the CPB, “provides protection for ratepayers and helps ensure reliability, without harming the Company.”⁵ Although the Commission found that this change would not harm the Company, it nevertheless provided Central Hudson an opportunity to indicate whether it accepted that change. In particular, the Commission stated:

Central Hudson Gas & Electric Corporation shall file a written statement of unconditional acceptance of this Order, as of [July 31, 2006].⁶

By letter dated July 27, 2006, Central Hudson responded:

In accordance with Ordering Paragraph 2 of the Commission’s Order Establishing Rate Plan (issued and Effective July 24, 2006) (“Order”) in the above referenced proceedings, Central Hudson Gas & Electric Corporation (“Central Hudson”) advises the Commission that it accepts the Order.⁷

By the terms of Ordering Paragraph 2, that statement constituted an unconditional acceptance of the Commission’s Order. Central Hudson has waived its right to contest the terms of the Joint Proposal as modified and approved by the Commission.

⁴ July 24 Order, p. 68.

⁵ Id.

⁶ July 24 Order, Ordering Clause 2, p. 75.

⁷ Cases 05-E-0934 and 05-G-0935, letter from Mr. Arthur R. Upright, Senior Vice President Regulatory Affairs, Financial Planning & Accounting, to Ms. Jaclyn A. Brillings, Secretary, Public Service Commission, July 27, 2006. A copy of this letter is attached as Exhibit 1.

The Company's suggestion, in a footnote, that it can unconditionally accept an order and then turn around and challenge it, is belied by the very case it relies upon.⁸ In that case, Penn Central failed to respond to a requirement imposed by the PSC pursuant to PSL § 23(1) that it respond within 10 days whether it accepted the Commission's order or not. When subjected to a fine for its recalcitrance, the railroad argued that it had serious doubts about the legality of the order and that the 10-day response time was too short for it to evaluate the complex issues involved.⁹

The court disagreed. PSL § 23 does "not allow the PSC to require a utility to answer affirmatively."¹⁰ If it has serious problems, it can reject the order and file for rehearing. In fact, the court added, "section 23 seeks an affirmative or negative reply but does not rule out an intermediate response."¹¹ Thus, it would have been permissible for Penn Central, and Central Hudson in this case, to say, "We need more time to think about it."

PSL § 23 "permits the PSC to determine whether a utility is satisfied with a directive issued to it."¹² That is useful planning information. The Commission can find out whether its work is done, or whether some additional concerns are going to be raised by the company. The purpose of the statute would be completely frustrated if a utility could, as Central Hudson claims, "unconditionally" accept an order, and then come back a month later and say it had its fingers crossed.

⁸ The Company's attempt to renege on its acceptance of the July 24 Order also raises substantial questions about its intention to comply with its commitments under that Order.

⁹ People v. Penn Central Company, 34 A.D.2d 278; 311 N.Y.S.2d 150; 1970 N.Y. App. Div. LEXIS 4614 (3d Dep't 1970).

¹⁰ Id. at 311 N.Y.S.2d 152.

¹¹ Id. at 153.

¹² Id.

Central Hudson was given a week to respond to Ordering Paragraph 2. It replied in three days. Clearly, the Company was perfectly happy with the deal it negotiated and the Order it received. That the grass now looks greener on NYSEG's side of the fence is not grounds for allowing it to rescind its well-considered acceptance.¹³

II. THE COMPANY'S PROPOSAL FOR A HIGHER RETURN ON EQUITY HAS NO FACTUAL BASIS.

Central Hudson requests that the Commission revise the 9.6% return on equity in its July 24 Order to 9.9%, which it claims would result from applying the methodology used by the PSC in the NYSEG case and adding a 36 basis point stay-out premium.¹⁴ There is no legal or factual basis for approving this request.

The return on equity in this case was established through negotiations. No methodology for deriving, or modifying, that 9.6% return was identified in the Joint Proposal. Therefore, there is no legal basis for the Company's assertion that the Commission inappropriately used a "different" methodology for Central Hudson than it did for NYSEG. The Commission merely accepted a negotiated result that, in context, it found to be reasonable.

In addition, there is no basis for the Company's assertion that "the Commission should have updated the ROE in the Central Hudson case" to reflect the latest data available.¹⁵ The

¹³ It is noteworthy that the PSC resolved another contested issue, the discount rate for pension and OPEB expense, differently for Central Hudson and NYSEG. In the Central Hudson case, the CPB adopted a 5.50% discount rate, over the CPB's objections that the proper discount rate is at least 5.75%. (July 24 Order, p. 70) In the NYSEG case, one month later, the PSC accepted the CPB's position and found that the proper discount rate was 6.25%. (NYSEG Order, p. 55) Central Hudson did not request rehearing on this issue, although the arguments in its Petition for Rehearing apply with equal force to this matter.

¹⁴ Central Hudson Petition, p. 4.

¹⁵ Id.

Commission typically updates ROE and certain forecasts in litigated proceedings, but not in proceedings involving a Joint Proposal, since the proponents of negotiated settlements have indicated their acceptance of all the terms of that agreement. Central Hudson could have pursued a litigated resolution of the ROE issue or negotiated an agreement that included an update for ROE. Having failed to do either, it chose to bear the risk that financial costs would increase after it signed the Joint Proposal. Its request that the Commission relieve it from the consequences of its decision is without merit.

Finally, even if updating the terms of the negotiated resolution of this case were appropriate, there is no factual basis for increasing the rate of return on equity included in the settlement. Central Hudson, without providing any explanation or support, asserts that it should receive an equity return of 9.9%. It appears that this figure was derived by taking the 9.55% equity return approved by the Commission for NYSEG and adding a 36 basis point stay-out premium.

In our Post-Hearing Brief, we explained that including a stay-out premium of that magnitude in the return on equity for Central Hudson was inappropriate because, as described in the Generic Finance Case, such premiums are intended to account for the risk associated with multi-year rate freezes, a risk that is not present in plans such as Central Hudson's where rates are adjusted annually.¹⁶ Nevertheless, in the context of an overall settlement, the Commission approved the 9.6% rate of return for the Company. In doing so, it may have accepted a rate higher than the CPB deemed justified, but it certainly did not endorse the notion that a 36 basis point stay-out premium is an inherent requirement of the type of plan approved for Central Hudson.

¹⁶ Cases 05-E-0934, 05-G-0935, Post-Hearing Brief of the New York State Consumer Protection Board, May 12, 2006, pp. 30-2.

Moreover, even if a stay-out premium were implicit in the Commission's decision, there would be no reason to adjust the rate of return for Central Hudson based on the results of the NYSEG case. The Generic Finance Case prescribes a consistent methodology for calculating return on equity on a company by company basis, not a generic statewide rate. The appropriate rate for one company is not *ipso facto* the right number for another.

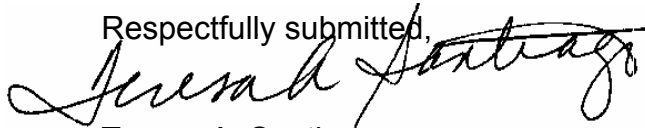
NYSEG is rated Baa1 by Moody's and BBB+ by Standard & Poor's, while Central Hudson is rated A2 by Moody's and A by Standard & Poor's. To account for the difference in credit standing between NYSEG and the A-rated proxy group recommended by Generic Finance, Staff of the Department of Public Service and CPB witnesses took two different approaches, but arrived at results that differed by only eleven basis points.¹⁷ The Staff used a larger proxy group that included lower-rated companies. The CPB used an A-rated proxy group, and then added an adjustment for credit rating of 33 basis points. Because the Commission expressly approved the methodologies used by the CPB and Staff, its finding of a 9.55% return for NYSEG implicitly included a credit adjustment of approximately 33 basis points that is not required for the A-rated Central Hudson. Subtracting 33 basis points from the 9.55% return awarded by the Commission to NYSEG would make Central Hudson's return based on the Generic Finance Case methodology approximately 9.22%. Adding the 36 basis points stay-out premium that NYSEG has referred to in its petition would bring Central Hudson's equity return to 9.58%, virtually identical to the 9.6% equity return approved by the PSC. Proper application of the methodology in the Generic Finance Case does not support the 9.9% return on equity proposed by the Company.

¹⁷ See Case No. 05-E-1222, Proceeding on Motion of the Commission as to the Rates, Charges, Rules and Regulations of New York State Electric & Gas Corporation for Electric Service, "Initial Brief of the New York State Consumer Protection Board," pp. 32-33.

CONCLUSION

For the reasons set forth herein, the Public Service Commission should deny the August 29, 2006 Petition for Rehearing on Behalf of Central Hudson Gas & Electric Corporation in its entirety.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Teresa A. Santiago", written in a cursive style.

Teresa A. Santiago
Chairperson and Executive Director

Douglas W. Elfner
Director of Utility Intervention

David Prestemon
Intervenor Attorney

Dated: September 13, 2006
Albany, New York

EXHIBIT

Arthur R. Upright
Senior Vice President
Regulatory Affairs,
Financial Planning & Accounting



July 27, 2006

VIA OVERNIGHT MAIL

Hon. Jaclyn A. Brilling
Secretary
Public Service Commission
Three Empire State Plaza
Albany, New York 12223

Dear Secretary Brilling:

Re: Case 05-E-0934 and 05-G-0935

In accordance with Ordering Paragraph 2 of the Commission's Order Establishing Rate Plan (issued and Effective July 24, 2006) ("Order") in the above referenced proceedings, Central Hudson Gas & Electric Corporation ("Central Hudson") advises the Commission that it accepts the Order.

In accordance with Ordering Paragraph 6 of the Order, Central Hudson hereby withdraws its pending petition for rehearing in Case 04-G-0463 concerning gas balancing.

In accordance with Ordering Paragraph 7 of the Order, Central Hudson hereby withdraws its pending petition for rehearing in Case 00-E-1273 concerning electric reliability.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Arthur R. Upright", written over a horizontal line.

ARU:dmg

cc: Active Parties (via e-mail & US mail)

R. J. Glasser, Thompson Hine (via e-mail and US mail)

The CH Energy Group Companies
Central Hudson Gas & Electric Corporation
Central Hudson Enterprises Corporation

284 South Avenue Poughkeepsie NY 12601
Phone: 845-486-5247 Fax: 845-486-5894
email: aupright@cenhud.com