

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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PETITION FOR REHEARING OF  
THE NEW YORK STATE CONSUMER PROTECTION BOARD

Teresa A. Santiago  
Chairperson and Executive Director

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Dated: August 30, 2006  
Albany, New York

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The Consumer Protection Board (“CPB”) seeks rehearing of the July 24, 2006 Order<sup>1</sup> in this proceeding pursuant to §22 of the Public Service Law and §3.7 of the Public Service Commission’s (“PSC” or “Commission”) Rules and Regulations<sup>2</sup> on the grounds that certain of the Order’s findings are not supported by the evidence. The Commission should rehear these issues and modify its July 24 Order.

Specifically, the Order lacks any reasonable basis for its decisions that Central Hudson Gas & Electric Corporation (“Central Hudson” or the “Company”): (1) should be permitted to retain approximately \$20 million of ratepayer funds instead of using them to mitigate the impact of the electric delivery rate increases approved in this proceeding and (2) should not provide its customers the opportunity to purchase electric and natural gas service at a fixed price. Those decisions should be reversed.

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

<sup>2</sup> 16 NYCRR §3.7.

In its July 24, 2006 Order, the PSC approved the largest percentage electric delivery rate increase and the largest percentage natural gas delivery rate increase for any energy utility in the state in more than a decade. The Order attempts to strike a fair balance between the interests of ratepayers and those of shareholders but it misses important opportunities to mitigate the impact on consumers without adversely affecting the utility.

Correction of the errors we identify below will provide the important consumer benefits of (1) reducing the amount of the electric delivery bill increases and (2) providing consumers an important tool to help manage their energy bills without reducing Central Hudson's earnings, thereby preserving the balance the Commission sought to achieve.

I. APPROXIMATELY \$20 MILLION OF RATEPAYER FUNDS ASSOCIATED WITH THE ELECTRIC DEPRECIATION RESERVE SHOULD BE USED TO MODERATE THE PROPOSED ELECTRIC DELIVERY RATE INCREASE.

The CPB requested that the PSC use all reasonable means to reduce the amount of the delivery rate increases in this proceeding, particularly because of the magnitude of those increases and high energy prices.<sup>3</sup> One of our most important recommendations was that approximately \$20 million of ratepayer money being held by Central Hudson, be used to moderate the electric delivery rate increases.<sup>4</sup> The Commission voted instead, to permit Central Hudson to retain those customer funds for unspecified future purposes.<sup>5</sup>

The electric depreciation reserve contains a surplus of \$19.837 million<sup>6</sup> representing amounts that customers paid for electric service over and above the just and reasonable cost

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<sup>3</sup> Post-Hearing Brief of the New York State Consumer Protection Board, May 12, 2006, ("CPB Post-Hearing Brief"), pp. 1-2, 4-5; SM 710-3.

<sup>4</sup> Id. pp. 15-6.

<sup>5</sup> July 24 Order, p. 21.

<sup>6</sup> July 24 Order, Attachment 1, Appendix G, Schedule 3.

of that service. The CPB recommended that those ratepayer funds be used to decrease the amount of the first year increase by \$6 million, or approximately one-third of the \$17.9 million increase approved by the PSC.<sup>7</sup>

The Order rejected this proposal for three reasons.<sup>8</sup> First, it asserted that the amount of rate mitigation that would result from the CPB's proposal would provide a "minimal" benefit.<sup>9</sup> This assertion is contradicted by the numbers in the record. Reducing the electric delivery rate increase by approximately \$20 million over the next three years, slightly more than the full amount of the rate increase in the first year (\$17.888 million),<sup>10</sup> or one-third of the amount of the increase in the first year sustained over three years (\$6 million for each of three years), is indeed significant and cannot by any reasonable standard be deemed a "minimal" benefit to Central Hudson's customers.

Moreover, the Order's characterization of the benefit as "minimal" is not supported by any citation to the record. The record incontrovertibly demonstrates that because of the magnitude of the delivery rate increases and high energy prices, there is a compelling need for the Commission to minimize the impact of its decision on consumers.<sup>11</sup> The CPB's proposal to use approximately \$20 million of customers' money to help offset part of the large rate increase was supported by a panel of expert witnesses with over 70 years of experience in utility ratemaking. In contrast, no witness testified and no evidence was produced that the

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<sup>7</sup> Under our proposal, customers would pay \$6 million less than approved by the PSC, in each of the three years of the rate plan. This would leave several million dollars available for unanticipated circumstances, after considering the interest that would accrue over three years on the remaining balance. The \$20 million of customer funds could be used in other ways as well. For example, the \$20 million could be used to completely eliminate the need for any electric delivery rate increase in the first year. The CPB does not recommend that approach, since, among other things, it would result in a rate increase of approximately \$36 million (approximately 20%) next year.

<sup>8</sup> July 24 Order, p. 71.

<sup>9</sup> Id.

<sup>10</sup> July 24 Order, Attachment 1, Appendix A, Schedule 2.

<sup>11</sup> See footnote 3, infra.

\$20 million would have a “minimal” impact; no witness testified and no evidence was produced in opposition to the CPB’s proposal; and, no party challenged this CPB recommendation on cross examination. Opposition to the CPB’s proposal was limited to summary declarations in the post-hearing briefs of DPS Staff and Central Hudson. Accordingly, the Order’s conclusion, in the face of overwhelming record evidence to the contrary, constitutes an error of fact.

In directing Central Hudson to continue to retain its customers’ money, the Order also cited a concern about “large, future deferrals.”<sup>12</sup> Again, however, the Order produced no record evidence that such deferrals are likely. Indeed, the record shows that there is no basis for such a position. The large deferrals in recent years, mainly attributable to pension and OPEB costs, have been addressed through the large rate increases approved by the Commission in this case.<sup>13</sup> In addition, the PSC approved a mechanism to limit the ability of the Company to defer expenses if its earnings exceed certain levels.<sup>14</sup> The absence of such a mechanism from Central Hudson’s last rate plan contributed to the large deferrals in recent years. Including this mechanism in this rate plan substantially reduces the likelihood of large deferrals in the next three years.

In fact, the record in this case shows that other aspects of the July 24, 2006 Order suggest that future events may lead to the accumulation of ratepayer credits, instead of deferrals. In particular, the Order declined to update the pension and OPEB discount rate to reflect current information, thereby requiring ratepayers to pay higher rates than justified by

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<sup>12</sup> July 24 Order, p. 71.

<sup>13</sup> According to the July 24, 2006 Order, pension and OPEB expenses account for 55% of the electric increase and 47% of the gas increases. (July 24, 2006 Order, p. 64)

<sup>14</sup> Id., Attachment 1, p. 28.

current costs, and preserving overpayments for ratepayers' future benefit.<sup>15</sup> Further, Central Hudson is one of the only utilities in New York State to have a defined benefit pension plan for all of its employees. Should the Company transition from those plans, its pension costs would likely be lower than reflected in its approved rates, and customer overpayments would be preserved for their future benefit.<sup>16</sup> The Order also approved mechanisms to preserve for ratepayer benefit, overcollections of funds ostensibly required for capital construction projects and right-of-way maintenance expense.<sup>17</sup> The record supports the conclusion that it is unlikely that Central Hudson will actually spend those amounts, which represent very large increases from the Company's spending in recent years.<sup>18</sup> The Order's conclusion that the Company should retain \$20 million as insurance against future deferrals in the face of the evidence on the record that the Company is more likely to owe ratepayers money in the future, constitutes an error of fact.

Third, the Order claims that its "policies favoring rate stability" indicate that the utility should retain ratepayer funds.<sup>19</sup> However, this claim is unsupported as the Order expresses more concern about a rate increase that may occur four years in the future, than the known rate increases that will occur in the present. The most obvious way to "favor rate stability" would be to minimize the rate increases in this proceeding, which are known with certainty.

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<sup>15</sup> Id., p. 70. The Order uses a 5.5% discount rate to calculate pension and OPEB expenses. Interestingly, less than one-month later, for another utility, the PSC updated this discount rate to 6.25%. (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 Modifications, August 23, 2006 ("2006 NYSEG Order"), p. 55.) This demonstrates that Central Hudson's customers are likely to overpay for these expenses.

<sup>16</sup> CPB Post-Hearing Brief, p. 29; Post-Hearing Brief on Behalf of Central Hudson, revised June 5, 2006, p. 25.

<sup>17</sup> July 24 Order, pp. 67-8.

<sup>18</sup> Id.

<sup>19</sup> Id., p. 71.

By assuming future rate increases and not properly considering current rate increases, the Order reflects an error of fact.

As shown above, the record evidence overwhelmingly demonstrates that Central Hudson should not be permitted to retain the \$20 million of ratepayer funds. Even if there were such evidence, the Order has not explained why the Commission should deviate from well-established agency precedent in which ratepayer funds are used to mitigate large rate increases. The CPB cannot recall an instance in which the Commission approved rate increases of this magnitude (10% for three consecutive years), while not using all, or virtually all, ratepayer funds to mitigate those increases. Indeed, even when the PSC approved a rate decrease, as it recently did for NYSEG, it ordered that the vast majority of ratepayer funds be returned to customers.<sup>20</sup>

The Order also erred by not properly considering fundamental principles of ratepayer equity. The \$20 million at issue was paid by customers in recent years. Retaining these funds for potential use in 2010 increases the likelihood of a mismatch between customers who contributed those funds, and customers who will receive the benefit of those overpayments. The Commission should minimize this potential inequity.

Additionally, the Order erred by ignoring fundamental ratemaking principles. The funds at issue belong to ratepayers. If ratepayers wish to have their money saved to pay future obligations, they have the opportunity to put that money in a bank. The Commission erred when it decided on behalf of all customers, in a matter that is contrary to all record evidence, that customer money is best left with Central Hudson.<sup>21</sup> Customers have a reasonable expectation, both in unregulated and regulated markets, that when they have

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<sup>20</sup> 2006 NYSEG Order, pp. 68-71.

<sup>21</sup> Moreover, permitting the Company to retain ratepayer funds may encourage ill-advised spending on projects that are not required for safe and reliable service at just and reasonable rates. CPB Post-Hearing Brief, pp. 16-7.

overpaid, the Company will either refund those overpayments, or use those overpayments to reduce their subsequent bills as soon as possible. The Commission should revise its July 24, 2006 Order to conform to this fundamental customer expectation.

Overall, there is no better use for ratepayer funds at this time than to mitigate these electric delivery rate increases. The Commission should modify its July 24, 2006 Order to achieve this purpose.

## II. CENTRAL HUDSON'S CUSTOMERS SHOULD HAVE THE OPPORTUNITY TO PURCHASE ENERGY SERVICES FROM THE UTILITY AT A FIXED PRICE.

The CPB demonstrated through uncontroverted evidence, that: (1) consumers have a strong preference for fixed price energy products; (2) ESCOs are not offering fixed price electricity or gas products to mass market customers in Central Hudson's service territory at just and reasonable prices; and, (3) Central Hudson should offer these products at a regulated price using a structure identical to that proposed by the Commission in 2005.<sup>22</sup> DPS Staff, supported by Central Hudson and some ESCOs, argued to the contrary. The Order's analysis of the extensive facts and arguments regarding this issue take up only one paragraph of its 76-page Order.<sup>23</sup> That paragraph inaccurately reflects these extensive facts and rejects the uncontroverted evidence that fixed price options must be available from the utility in these circumstances.

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<sup>22</sup> See, e.g., CPB Post-Hearing Brief, pp. 6-14.

<sup>23</sup> July 24 Order, pp. 73-4.



## A. Bases for the Commission's Decision

The Order bases its rejection of utility-provided fixed price options on four assertions, each of which is erroneous in fact.

### 1. Budget Billing is an Alternative

The Order asserts that customers do not require fixed price options since “budget or levelized payment plans are available.”<sup>24</sup> That is incorrect. Fixed price products enable consumers to lock in a commodity price and eliminate any risk of commodity price fluctuations. Consumers who choose to participate in budget payment plans are not protected from the risk of commodity price fluctuations.<sup>25</sup> By ignoring this fundamental difference, the Commission committed an error of fact.

### 2. A Competitive Market for Fixed Price Products Exists

Without any evidence on the record, the Order states that “the record shows there is a competitive market in Central Hudson’s territory, which includes provision of fixed-price offers from competitive suppliers.”<sup>26</sup> However, the record conclusively demonstrates the contrary.

The CPB was the only party to submit testimony on the extent of competition in retail energy markets in Central Hudson’s territory. The CPB’s panel of experts, including two experienced economists, demonstrated that these markets cannot be considered to be competitive by any relevant measure, including those used by economists to evaluate the structure, conduct and performance of markets. (SM 922-3) No party submitted any testimony to the contrary and no party even attempted to challenge that assessment on cross

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<sup>24</sup> Id., p. 73.

<sup>25</sup> As a result of commodity price spikes in the 2005 – 06 heating season, utilities adjusted the “levelized” amounts of budget billing plans, resulting in large bill increases and numerous complaints from consumers.

<sup>26</sup> July 24 Order, pp. 73-4.

examination. The Order's decision to ignore the sworn and unchallenged testimony of experts and reach a contrary conclusion with no record support and constitutes an error of fact.

The record incontrovertibly demonstrates that ESCOs are not offering fixed price electricity or gas products to mass market customers at just and reasonable prices.<sup>27</sup> In the 2005-06 heating season, only one ESCO in Central Hudson's service territory even claimed to offer electricity to residential customers at a "fixed price."<sup>28</sup> One provider cannot possibly comprise a "competitive market" as the Order alleges. Similarly, only four ESCOs even claimed to offer gas to residential customers at a "fixed price" in the 2005-06 heating season, but at a price that was substantially higher than what Central Hudson would have been able to offer. Further, the record shows that those alleged "fixed price products," may in fact permit the ESCO to increase the price without recourse by the customer.<sup>29</sup> Moreover, the record demonstrates that even residential customers with a strong preference for fixed price products have not been satisfied with ESCO offers. Of the 8,504 customers who subscribed to Central Hudson's natural gas fixed price option when that service was terminated on October 1, 2005, only 21% had chosen ESCO service six months later. Thus, the vast majority of fixed price customers in Central Hudson's service territory determined that they would rather pay the utility's variable price, even when those prices were spiking to unprecedented levels, than take service from any one of those ESCOs.<sup>30</sup>

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<sup>27</sup> SM 623-5.

<sup>28</sup> Id.

<sup>29</sup> SM 929-31, Exhibit 101.

<sup>30</sup> SM 716.

### 3. The Design of the Fixed Price Option Lacks Detail

The Order erroneously asserts that the design of the proposed fixed price option “lacks sufficient detail to be implemented successfully.”<sup>31</sup> The CPB’s proposal has all the detail that the PSC itself designed for Central Hudson in 2005.<sup>32</sup> The conclusion that such detail was acceptable in 2005, but not 2006, is contradictory and reflects an error of fact.

In this case, the CPB recommended that Central Hudson be required to offer fixed price electric and natural gas commodity service to mass market customers, using the same structure that the Company had used to offer its gas fixed price option for many years, with one exception – Central Hudson would comply with the condition identified in the PSC’s Order in Case 05-G-0311. In that proceeding, the Commission concluded that the Company was subsidizing its fixed price offering by recovering its costs through the gas adjustment clause (“GAC”), and directed the Company to “separately [account] for the costs of furnishing the FPO service and [not] seek GAC recovery of these costs.”<sup>33</sup> The PSC did not specify precisely how Central Hudson would recover all of its costs, or dispose of its gains, without reconciliation through the GAC.

As the CPB testified in 2006, the gains or losses resulting from Central Hudson’s fixed price option could be reflected in the following year’s fixed price, flowed through to FPO customers or shared with the Company. (SM 917-8; CPB Post-Hearing Brief, pp. 13 – 4) Since the CPB’s proposal in 2006 is identical in detail to that contained in the PSC’s Order in 2005, the Order’s conclusion that the CPB’s proposal “lacks sufficient detail,” is erroneous.

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<sup>31</sup> Id., p. 73.

<sup>32</sup> Case 05-G-0311, Petition of the Small Customer Marketer Coalition for a Declaratory Ruling Regarding the Fixed Price Option for all Customers with Annual Consumption Requirements Greater than 500 Ccf Operating under Central Hudson Gas & Electric Corporation’s Service Classification 1 and 2, Order Directing The Future Termination, Subject to Conditions, Of a Fixed Price Offer, July 22, 2005 (“Fixed Price Order”).

<sup>33</sup> Fixed Price Order, p. 10.

#### 4. There is Insufficient Time to Implement Fixed Price Options

The Order erroneously contends that “there is insufficient time to remedy [the lack of sufficient detail] and implement utility sponsored fixed price options in time for the 2006-2007 heating season.”<sup>34</sup> As evidence by the record, there is no lack of detail, therefore there is no shortage of time.

Furthermore, the Order ignores the Commission’s 2005 findings on this very subject. In its July 22, 2005 Order, the Commission directed Central Hudson to offer a fixed price option for gas commodity supply service only in conformance with new conditions that it identified, for the first time, in this 2005 Order. It was the position of the Commission on July 22, 2005 that it was providing Central Hudson enough time to implement a fixed price option for gas commodity service with new terms – of the precise nature CPB recommends here – before the beginning of the 2005 heating season. Its conclusion at a Public Session on July 19, 2006, by Order issued several days later, that the Company would not have enough time to implement that exact program in the subsequent year, amounts to an error of fact.

Moreover, on August 23, 2006, the Commission authorized NYSEG to offer a fixed price electricity product at a price to be effective January 1, 2007. That decision demonstrates that, contrary to the Order’s assertion, it is not necessary to have a fixed price option for electricity service in place before the heating season. We recommend that the Commission direct Central Hudson to make these options available to consumers as soon as possible, but no later than November 1, 2006. In subsequent years, the natural gas fixed price product should be available before the heating season.

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<sup>34</sup> July 24 Order, p. 73.

## 5. Other Factors

In concluding that utility-provided fixed price options need not be required, the July 24, 2006 Order also cited its consideration of other “concerns that were raised by DPS Staff, the Company and SCMC/RESA.”<sup>35</sup> A brief review demonstrates why those concerns did not even merit mention. For example, DPS Staff asserts that the competitive market “responded adequately” to the absence of a fixed price option from Central Hudson.<sup>36</sup> The evidence demonstrates otherwise: one ESCO offering electric fixed price service and only four offering gas fixed price service, at higher prices than Central Hudson would have charged.<sup>37</sup> Similarly, Central Hudson claims that consumers are not interested in fixed price options.<sup>38</sup> The Company rejects the sworn testimony of CPB experts, that consumers have a strong preference for fixed price options when they are available.<sup>39</sup> Central Hudson did not challenge this testimony on cross examination.

The “other concerns” about fixed price products cited in the Order are not supported by the record. The only evidence that does exist on these subjects contradicts the “concerns” expressed.

### B. Facts Ignored by the Order

The Order’s analysis of the extensive record regarding the fixed price option issue did not mention the extensive record evidence regarding consumers’ strong preference for fixed

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<sup>35</sup> Id.

<sup>36</sup> DPS Staff Post Hearing Brief, p. 14.

<sup>37</sup> See Section II (A) 2, infra.

<sup>38</sup> Post-Hearing Brief on Behalf of Central Hudson Gas & Electric Corporation, Revised, June 5, 2006, p. 8.

<sup>39</sup> SM 623, 714.

price products. Omitting this information from consideration in its analysis led to the significant error of fact that consumers are not interested in fixed price offers.

The record shows that consumers have a strong preference for fixed price energy products when they are available.<sup>40</sup> For example, evidence from NYSEG's service territory indicates that more than 75% of customers who affirmatively chose a commodity option, selected a fixed price option from the utility. Further, a recent academic study confirms conventional wisdom that unanticipated home energy bill increases cause hardship on low income households. That study found that consumers without substantial financial assets decrease spending on items such as food, personal care, and other household expenditures by 40 cents for each unanticipated dollar increase in their home energy bill.<sup>41</sup> The CPB Panel testified that the availability of reasonably priced fixed price products would provide low income customers a valuable tool to help avoid the need to substantially reduce their expenditures on food and other personal care items if the price of energy increases unexpectedly.<sup>42</sup>

The events of this past heating season further demonstrate the need for customers to have the opportunity to purchase electricity and natural gas at a fixed price. For example, the gas supply charges paid by Central Hudson customers increased from an average of \$.83 per hundred cubic feet ("Ccf") in the winter of 2003-2004, to a high of \$1.7075 per Ccf in November 2005. For electricity, the average price was \$.06193 per kWh in 2004, and peaked in 2005 at \$.12593 per kWh.<sup>43</sup> At the same time, the percentage of the Company's electric supply portfolio from sources other than fixed price contracts of 6 months or longer in

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<sup>40</sup> Id.

<sup>41</sup> SM 717-8.

<sup>42</sup> SM 718.

<sup>43</sup> SM 714-5.

duration, increased from 46% in 2004 to 63% in 2005, increasing the exposure of customers to spot market purchases.<sup>44</sup>

Based on this and other record evidence, the CPB panel testified that fixed price products should be available to all consumers at just and reasonable prices, and would be expected to be particularly highly valued by customers on fixed incomes and low-income customers, since these products would facilitate household budgeting.

### C. New Information

#### 1. The NYSEG Proceeding

In evaluating Petitions for Rehearing, the Commission may consider new information since the record was closed. The CPB urges the Commission to consider in this case, the record and its August 23, 2006 decision in the NYSEG electric case<sup>45</sup> in evaluating the issue of utility-provided fixed price natural gas and electricity service. In that proceeding, the Commission correctly concluded that NYSEG should be permitted to offer electricity at a fixed price to its mass market customers. The PSC stated:

The evidentiary record established in this proceeding supports the conclusion that the market for residential retail commodity service in NYSEG's service territory is not fully competitive. No parties excepting to this finding assert that it is unsupported by the record.<sup>46</sup>

The Commission also stated:

There is no question that regulation is always a poor substitute for a vibrant, fully functioning competitive market. For that reason, our many pronouncements, such as our Competition Policy Statement, favor reliance on competitive forces as a preferred alternative to regulatory rate setting whenever possible. Nevertheless, when a

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<sup>44</sup> SM 715.

<sup>45</sup> Case 05-E-1222, Order Adopting Recommended Decision with Modifications, August 23, 2006.

<sup>46</sup> Id., p. 8.

fully functioning competitive market is lacking, regulation assumes importance as the next best alternative. Here, given the lack of a fully competitive market for residential retail fixed price commodity service in NYSEG's service territory, we will exercise our authority to ensure the provision of that service at a just and reasonable rate.<sup>47</sup>

The need for a utility provided fixed-price electricity product for Central Hudson's customers is even more compelling than for NYSEG's customers. The PSC's finding of "the lack of a fully competitive market for residential retail fixed price commodity service in NYSEG's service territory"<sup>48</sup> concerns a market in which ESCOs provide service to 6.8% of residential customers.<sup>49</sup> At the same time, ESCOs provide service to only 1.1% of residential customers in Central Hudson's service territory.<sup>50</sup> Similarly, 11 ESCOs are authorized to provide electric service to residential customers in NYSEG's territory, but only six ESCOs are authorized in Central Hudson's territory.<sup>51</sup> Further, the record in the NYSEG case showed that several ESCOs were offering electricity at a fixed price product to residential customers,<sup>52</sup> whereas the record in the Central Hudson case showed that only one ESCO offered such a service.<sup>53</sup>

In directing NYSEG to offer a fixed price service, the Commission also stated that "consumers' demand for and dependence upon a fixed price offering is uniquely highly

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<sup>47</sup> Id., p. 10.

<sup>48</sup> Id.

<sup>49</sup> PSC's Electric Retail Access Migration Report, June 2006, available at [www.dps.state.ny.us](http://www.dps.state.ny.us)

<sup>50</sup> Id. The percentage of residential customers obtaining electric service from an ESCO, in sequence, is 1.1% for Central Hudson, 6.6% for National Grid, 6.8% for NYSEG, 7.0% for Con Edison, 19.3% for RG&E and 30.2% for Orange & Rockland. On the basis of residential customer load, ESCOs in Central Hudson's territory are even more of an outlier. ESCOs in Central Hudson's service territory have secured only 1.2% of residential electric customer load, or 16% of the next lowest utility. The percentage of residential customer load served by ESCOs is 7.7% for Con Edison, 8.0% for National Grid, 9.2% for NYSEG, 24.6% for RG&E and 30.2% for Orange & Rockland.

<sup>51</sup> PSC's Competitive Electric and Gas Marketer Sources Directory.

<sup>52</sup> Case 05-E-1222, Recommended Decision, June 9, 2006, pp. 95-7.

<sup>53</sup> See Point II (A) 2, infra.



developed in NYSEG's service territory."<sup>54</sup> That explanation does not justify denying Central Hudson's customers the opportunity to purchase electricity at a fixed price. In Central Hudson's territory, residential and small business customers have not had the opportunity to purchase electricity at a fixed price that is just and reasonable from any provider for many years, so no quantitative evidence regarding their demand for and dependence upon a fixed price offering is available. This unfortunate fact should not be used to deny Central Hudson's customers the opportunity to purchase this highly valued product at a just and reasonable price.

## 2. ESCO Announcement

Recently, another ESCO, Direct Energy, announced that it had plans to begin to offer both electricity and natural service to residential customers in Central Hudson's service territory, perhaps at a fixed price. Some parties may contend that this obviates the need for Central Hudson to offer such products. The CPB welcomes the participation of ESCOs in energy markets in Central Hudson's territory. However, that Company's announcement does not affect the need for Central Hudson to offer electricity and natural gas fixed price products at this time, for several reasons. It is not certain that Direct Energy will offer fixed price natural gas and electricity services to Central Hudson's mass market customers in the near future. According to the PSC's web site as of August 21, 2006, Direct Energy does not currently offer any natural gas service to any mass market customers in New York State. Assuming, arguendo, that it does offer such service, the addition of one additional ESCO offering an alleged "fixed price" product would not result in a competitive market for fixed price products for residential and small business customers.

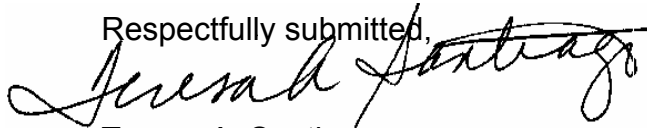
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<sup>54</sup> NYSEG Order, p. 8.

CONCLUSION

For the reasons set forth herein, the Public Service Commission should reconsider certain aspects of its July 24, 2006 Order in this proceeding to ensure that approximately \$20 million of ratepayer funds being held by Central Hudson Gas & Electric Corporation is used to mitigate the electric rate increase and that the utility offers electricity and natural gas at a fixed price to its residential customers.

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

John M. Walters  
Intervenor Attorney

Dated: August 30, 2006  
Albany, New York