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February 15, 2013

Via e-mail

Honorable Jeffrey C. Cohen, Acting Secretary
State of New York Public Service Commission
Three Empire State Plaza
Albany, New York 12223-1350

Re: Case 12-M-0192 – *Joint Petition of Fortis Inc., Fortis U.S. Inc, Cascade Acquisition Sub Inc., CH Energy Group, Inc., and Central Hudson Gas & Electric Corporation for Approval of the Acquisition of CH Energy Group, Inc. by Fortis Inc. and Related Transactions* -- PULP Reply Comments.

Dear Acting Secretary Cohen:

PULP submits this letter as its Reply Comments in opposition to the Joint Proposal for resolution of the above-entitled matter. The Petitioners' Initial Comments, and those of the other Joint Proposal proponents, ignore or understate risks to consumers of the proposed merger and extension of the current rate plan, and overstate the claimed benefits. This was anticipated in PULP's Initial Comments filed February 8, 2013. Accordingly, in this limited Reply we only address Petitioners' exaggeration of "guaranteed" future ratepayer benefits. Petitioners state:

> 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.[1]

The "*guarantee*" of future rate "*mitigation*" is not the same as an immediate or even promised future rate *reduction.*

There is an inherent risk that promises of future rate benefits for consumers will never materialize or will be illusory. Neither the Joint Proposal, nor a Commission order approving it would constitute an enforceable contract, and so there can be no "guarantee" that promises will not be abridged, modified, or negated in the future. *Matter of Kessel [and PULP] v. Public Serv. Commn. of State of N.Y.*, 193 A.D.2d 339 (3d Dept. 1993). Such risks arise, for example, from the possibility that the financial strength of the utility could be negatively impacted in the interim period between the promises and their effectuation; that a different Commission would modify the benefit; or that the deferred customer credit would be offset or negated by using it to "mitigate" inflated and questionable claims of the utility for recovery of new items, such as costs from new storms. Continuation of the existing rate plan without correction of the weak storm damage provisions exposes customers to continued risk of inadequate pre-storm prophylactic measures like tree trimming that may result larger outages and avoidable recovery costs being shifted to them, which could more than wipe out the benefit of future rate mitigation.[2]

Accordingly, PULP urges the Commission to reject the Joint Proposal, for the reasons stated in its Initial Comments or, in the alternative, to condition any merger

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[1] Petitioners' Initial Comments at 27 (*emphasis added*).

[2] See PULP's opposition to Central Hudson's latest storm cost deferral petition in Case 13-E-0048, available at http://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId=%7BC4BEA440-96A2-4013-96A0-0B5F55327716%7D

approval on acceptance of immediately tangible rate reductions and other additional measures to benefit customers, including improved provisions regarding storm costs, as recommended by PULP in its Initial Comments.

Thank you for your consideration.

Respectfully submitted,

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Cc: ALJs and active parties (via email).