



July 3, 2013

Donna Giliberto, Esq.
Records Access Officer
New York State Public Service Commission
Three Empire State Plaza
Albany, New York 12223

Re: Confidential filing made pursuant to the Commission's Order in Case 12-M-0192.

Dear Ms. Giliberto:

Pursuant to the Commission's Order Authorizing Acquisition Subject to Conditions in Case 12-M-0192, Central Hudson Gas & Electric Corporation ("Central Hudson") is submitting the attached presentation consisting of confidential financial data. Central Hudson seeks confidential treatment of financial data pursuant to 16 NYCRR Part 6-1.

The requested information constitutes a trade secret pursuant to Section 87 of the Public Officers Law and Part 6-1 of the Regulations. That request is supported by Section 87, as well as the decisions in *New York Telephone Company v. Public Service Commission*, 58 N.Y.2d 213 (1982) and *Matter of Encore College Bookstores, Inc. v. Auxiliary Services Corporation of the State University of New York at Farmingdale*, 87 N.Y.2d 410 (1995).

Section 87 provides an exception from public disclosure for records that "are trade secrets or are submitted to an agency by a commercial enterprise or derived from information obtained from a commercial enterprise and which if disclosed would cause substantial injury to the competitive position of the subject enterprise." N.Y. Public Officers Law § 87.2(d) (McKinney 2001). The material is information submitted to the Commission, a state agency, by Central Hudson, a commercial enterprise, which if disclosed would cause substantial injury to Central Hudson and/or customers.

Disclosure would harm Central Hudson by impairing its ability to act in the capital markets to minimize capital costs for customers. The Commission promulgated Part 6-1 of the Regulations to further define what constitutes a trade secret. Section 6-1.3(b)(2) of the Regulations contain the factors the Commission will consider in determining trade secret status.¹

The Court of Appeals has considered what constitutes trade secret material. The Court held that the trade secret exemption in the Public Officers Law Section 87(2)(d) is triggered when public disclosure of the trade material would "cause substantial harm to the competitive position of the

¹ The factors are: i) the extent to which the disclosure would cause unfair economic or competitive damage; ii) the extent to which the information is known by others and can involve similar activities; iii) the worth or value of the information to the person and the person's competitors; iv) the degree of difficulty and cost of developing or duplicating the information by others without the person's consent; and v) other statute(s) or regulations specifically excepting the information from disclosure. 16 N.Y.C.R.R. § 6-1.3(b)(2).

person from whom the information was obtained.”² The Court determined that the party seeking trade secret protection need not establish actual competitive harm; “rather, actual competition and the likelihood of substantial competitive injury is all that need be shown.” In determining whether substantial harm exists, the Court determined that the existence of substantial competitive harm depends on the “commercial value of the requested information to competitors and the cost of acquiring it through other means.” The Court concluded, “where FOIA disclosure is the sole means by which competitors can obtain the requested information, the inquiry ends here.”

The material submitted by Central Hudson falls within the definition of trade secret material. The information concerns material that would permit unauthorized persons to speculate in the markets to the detriment of Central Hudson and its customers. None of the information is publicly available. If the information is disclosed it would provide others with a competitive advantage to the detriment of Central Hudson and its customers.

The information is also protected by 5 USCS § 552(b)(4) as confidential financial information.

Section 87 of the New York Public Officers Law provides an exception from public disclosure for records that “are specifically exempted from disclosure by state or federal statute.” N.Y. Public Officers Law § 87.2(d) (McKinney 2012). The material submitted to the Commission, a state agency, by Central Hudson contains confidential financial information that if disclosed, would discourage the exchange of such information between Central Hudson and the federal government. The Commission promulgated Part 6-1 of the Regulations to, in part, permit the protection of confidential financial information.

The Commission is empowered to exempt from public disclosure material that constitutes a trade secret,³ or consists of confidential financial information. The Company, for the reasons stated above, respectfully requests that the attached presentation be deemed confidential material exempt from public disclosure under Public Officers Law Section 87 and Part 6-1 of the Commissions Regulations.

Please contact the undersigned at (845)486-5831 or pcolbert@cenhud.com with any questions regarding this matter.

Respectfully submitted,



Paul A. Colbert
Associate General Counsel
Regulatory Affairs

Cc: Doris Stout-DPS Director OAAF
Jeff Hogan-DPS Chief OAAF

² *Encore College Bookstores, Inc. v. Auxiliary Services Corporation of the State University of New York at Farmingdale*, 87 N.Y.2d 410 (1995).

³ *New York Telephone Company v. Public Service Commission*, 56 N.Y.2d 213 (1982).