

APPENDIX C

Robert F. Kennedy, Jr. Letter and Opinion Piece

ROBERT F. KENNEDY, JR.

May 28, 2013

The Honorable Garry Brown, Commissioner
c/o Acting Secretary Jeffrey Cohen, secretary@dps.ny.gov
Re: CASE 12-M-0192

Dear Commissioner Brown:

Administrative Law Judges (ALJs) Epstein and Prestemon have issued a Recommended Decision **against** permitting the acquisition of Central Hudson by Canadian holding company Fortis, Inc. I strongly support their recommendation and urge the PSC to rule accordingly, for reasons that are based on personal experience as well as legal, financial, and environmental considerations.

The ALJs point out that in deciding whether a public utility can be permitted to be sold, the sale must stand the test of providing a positive net benefit. As the Recommended Decision in an earlier case (Iberdrola's acquisition of Energy East) put it, in a remark that is highly pertinent to the matter at hand, "The question the Commission should ask is why the transaction, on balance, is worthwhile for anyone but petitioners?" My own experience with Fortis, Inc., has shown Fortis to be a corporation that pursues growth and expansion at the expense of, and with breathtaking disregard for, the people its utilities were created to serve. This record alone should be sufficient grounds for the PSC to deny the acquisition.

The destructive history of Fortis, Inc., in Belize is by now relatively well known. Fortis, in the late 1990s, acquired a majority (70%) interest in Belize's distribution utility BEL, and bought hydroelectric company BELCO from Duke Power. With the acquisition of BELCO came ownership of the Mollejon Dam on the Macal River, along with the rights to construct additional hydroelectric facilities there. As a senior attorney for the Natural Resources Defense Council (NRDC), I became involved in the fight to prevent construction of the seven-megawatt Chalillo Dam, visited Belize, and saw examples of Fortis' corporate behavior up close. These examples include:

- Suppression of information that put the economic value of the dam in doubt;
- Suppression of an engineering study showing that the rock on which the dam would be built was not granite, but sandstone infused with graphite splitters;
- Failure to disclose mercury contamination of water due to the pre-existing Mollejon Dam. For a full year after the mercury contamination became known to the company, Fortis did nothing to address the problem or even inform downstream villagers of the danger to their fish, water, and health. Such behavior would be considered criminal here. Only after the Chalillo Dam was completed did Fortis reveal the contamination, and then it did a poor job of getting the information to those whose health was at risk;

- Failure to disclose information about a seismic fault at the dam site, and inadequate testing of water flows, followed by a year-long delay in producing an emergency evacuation plan in case the dam should fail, and a shocking lack of active concern to get this information to those who would be in harm's way.¹
- Failure to properly test for other forms of water contamination.

So much for the ethics, managerial expertise, and public service record of Fortis, Inc.

There are other reasons why the PSC should be extremely skeptical about Fortis's capacity and appropriateness to be the owner of a New York State utility. Some of these are financial. Fortis may have begun as a hydroelectric company in Newfoundland, but it has long since become a holding company whose principal interests and motivations are financial. Its success is predicated on continuous expansion, with all the risks that inevitably accompany such a strategy. The acquisition of Central Hudson, for \$1.5 billion, including \$500,000,000 in outstanding debt, financed by a \$600,000,000 subscription, and producing almost \$500,000,000 in goodwill, which cannot be used to raise rates, will place significant additional financial pressure on the company—pressure that will have to be relieved either by cutting costs, or by further expansionary tactics and new acquisitions, all of which will tend to reduce Fortis' already weak capacity to add anything, either financially or managerially, to the responsible evolution and strengthening of Central Hudson.

If successful, the acquisition of Central Hudson would be Fortis' first U.S. property, following a failed attempt to acquire a utility in Vermont a few years ago. Fortis' creation of a special "Cascade Acquisition Subsidiary" to handle the acquisition suggests that the holding company sees Central Hudson as the first in a string of potential U.S. takeovers. While the fact that Central Hudson is a regulated utility provides some protections, and the Joint Proposal makes a serious attempt to install financial safeguards against a possible failure of Fortis, the safeguards would all be unnecessary if the risks were not understood to be real. The memory of what happened just a few miles south of Central Hudson's service territory, when DYNEGY failed, almost taking the entire local school system with it, is one reason for the intense opposition the proposed deal has generated from municipalities and citizens in Central Hudson's Mid-Hudson Valley service area. The DYNEGY example should remind us all of the increasing volatility in the energy business, and should militate strongly against the PSC permitting this deal to go through.²

Like many other financial companies, Fortis, Inc., seems to have jumped on the fracking bandwagon. The corporation publicly states that its future profitability is linked to the supply of cheap shale gas and to "no significant changes in government energy plans and environmental laws that may materially affect the operations and cash flows of the Corporation and its subsidiaries." Its CEO, Stanley Marshall, is quoted as saying, "Shale gas is a game changer not only for the gas industry but for the electricity industry as well."³ Environmental risk is a risk that the PSC can and I believe must consider in fulfilling its charge to balance the benefits and

¹ The information was posted on the Internet by Belize's National Emergency Management Organization. It took a Supreme Court decision to ensure that copies were sent to local town halls, etc.

² DYNEGY, a Texas-based company, went bankrupt in 2012, leading to the closure of two generation plants in Newburgh, NY. The local business had been purchased for \$900 million and was sold in a fire sale for \$23 million.

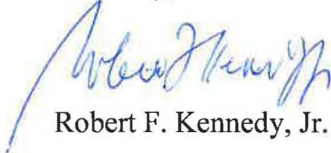
³ Speech to the Toronto Board of Trade, November 6, 2012.

detriments of any acquisition. New York State is currently experiencing an epic battle over fracking, pitting environmentalists and many others against some business interests. The PSC is certainly not expected to weigh in on this battle, and Fortis is by no means alone among corporations profiting from the—perhaps short-term—availability of cheap shale gas. But the PSC should be leery of putting a utility, which after all is a publicly regulated monopoly, in the hands of an entity that is solidly on the side of fracking and that sees its profitability as dependent on a failure by New York State to advance environmental and energy plans. The urgency of climate change is now recognized at both State and Federal levels. New York needs to retain the capacity to act decisively, particularly when it comes to essential services.

In closing, I would like to add my voice to those who are calling for an evidentiary hearing. Such a hearing would create a documentary record against which the truth value of Fortis' statements could, and should, be tested. Particularly in light of the record of obfuscation and malfeasance that it demonstrated in Belize, Fortis should be made to go on record, in a situation in which they can be held liable for misstatements, before any role for them in New York State's energy future is even considered.

I earnestly entreat the PSC to follow the lead of the ALJs and **reject** the proposed acquisition of Central Hudson by Fortis, inc.

Sincerely,



Robert F. Kennedy, Jr.

Utility deal company has deceitful past

By ROBERT F. KENNEDY JR., Commentary
Published 4:15 pm, Thursday, June 6, 2013

This month, New York's Public Service Commission will decide whether to permit a Canadian holding company, Fortis Inc., to acquire Central Hudson, the electric utility serving 375,000 mid-Hudson homes and businesses. PSC commissioners should consider Fortis' history and the company's future profitability strategies, which it ties to shale gas extraction.

In 2000, the Natural Resources Defense Council agreed to help the local opposition to Fortis' proposed Chalillo Dam — a seven-megawatt hydroelectric project on the Macal River in an ecologically sensitive part of the Belizean rainforest. I represented these groups as a senior NRDC attorney. During the litigation that followed, we learned that Fortis had routinely lied about its proposed dam's safety and its economic, environmental and geological impacts.

Fortis solemnly promised that the dam would not raise electric costs while concealing secret studies proving the opposite. In 2005, two years after the dam went live, Belize's electric rates climbed 25 percent. Belizeans paid twice as much for electricity as their neighbors in Mexico and Guatemala. In 2008, when Fortis moved to jack rates another 25 percent, Belize's newly elected government expropriated the company's assets.

Fortis digitally removed nearby fault lines from the geological map it provided to regulators to deceive them about dire earthquake hazards at the proposed dam site. Only after the dam won approval and construction began did this become public.

Fortis knowingly lied when it claimed its dam would not harm wildlife. The project destroyed Central America's last large habitats for endangered jaguars, tapirs and scarlet macaws.

Fortis hid its study showing hazardous levels of neurotoxic mercury in the Macal River, caused by another Fortis dam, until a year after its Chalillo Dam was complete. During that period, Belizeans continued to drink river water and swim, wash, bathe and fish — all activities perilous to their health.

These are only a few examples of Fortis' willingness to deceive the public and government regulators while profiteering from reckless activities. If it gobbles Central Hudson, Fortis won't build dams in New York. Nevertheless, the company will monopolize electric and gas delivery services that are both essential and dangerous when poorly managed. An already overstretched PSC will have to research, oversee and monitor Fortis to keep the company honest — with no guarantees of success, given Fortis' history.

The recent news that we passed a frightening milestone — atmospheric concentrations of carbon dioxide now exceeds 400 parts per million — eclipsed a more heartening local study; New York state could be 100 percent carbon-free by 2030.

New York shouldn't tie its energy future to a company that bases its future profitability on shale gas extraction. Fortis' own investor information states that its profitability is linked to "the current environment of low natural gas prices and an abundance of shale gas reserves [that] should help maintain the competitiveness of natural gas versus alternative energy sources in North America."

It also states that Fortis' profitability is contingent on "no significant changes in government energy plans and environmental laws that may materially affect ... operations and cash flows."

As the PSC is aware, there is intense public opposition to the proposed deal among Hudson Valley cities, towns, and residents. These New Yorkers want our state to transition to clean energy and do not want Central Hudson sold to a company whose profitability depends on the increasing use of fracked shale gas.

PSC judges, in their recommended decision, concluded that the proposed merger's detriments outweigh its benefits.

Only two New York utilities remain in the hands of U.S.-based companies: CH Energy (which owns Central Hudson) and Con Edison. Fortis' proposal to buy Central Hudson represents the worst of globalization. The PSC should deny its application and keep a company, notable for its reckless corporate culture, from taking control of New York's energy destiny.

Kennedy is senior attorney at the NRDC.