

# Public Utility Law Project of New York, Inc.

P.O. Box 10787, Albany, NY 12201  
Tel: (518) 281-5991, Fax: (518) 286-2392

July 18, 2013

Hon. Jeffrey A. Cohen  
Acting Secretary  
Public Service Commission  
Three Empire State Plaza  
Albany, NY 12223  
Dear Secretary Cohen:

RE: *Objection to “Golden Share” Compliance filing in Case 12-M-0192 - Joint Petition of Fortis Inc., FortisUS 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.*

Dear Secretary Cohen:

The Commission's June 26 Order Authorizing Acquisition Subject to Conditions in Case 12-M-0192 includes a “golden share” provision designed to protect Central Hudson customers from potential voluntary bankruptcy proceedings filed by its new corporate parent, Fortis, or Fortis affiliates. The Order states at page 15:

The Joint Proposal would require the creation of special class of Central Hudson preferred stock to be held by a trustee approved by the Commission. Without the consent of the holder of this “golden share,” Central Hudson would be precluded from entering into voluntary bankruptcy.”

At page 40 of the Order, the Commission also stated: "The holder of the “golden share” to be appointed under the terms of the Joint Proposal . . . will represent a special class of preferred stock whose only interest is in avoiding voluntary bankruptcy.”

At Page 42, the Order states states:

The “golden share” requirement will prevent the placement of Central Hudson in voluntary bankruptcy.

In decretal paragraph 1 at page 61 of the Order, the Commission generally adopted the terms and conditions of Joint Proposal of settling parties, which contains further details of the “golden share”. The Joint Proposal at page 11 states that the holder of the "golden share" shall:

"protect the interests of New York and be independent of the parent company and its subsidiaries."

Central Hudson's "golden share" compliance filing attaches its revised corporate certificate containing the new "golden share." The certificate states that the holder:

shall act to protect the interests of the State of New York, including legal and other interests arising under the Public Service Law....

Central Hudson made a compliance filing on July 12, 2013 in which it nominates a newly created private entity, GSS Holdings (CHGE) to hold its "golden share." The new entity will be a wholly owned subsidiary of another private company, Global Securitization Services, LLC. Central Hudson describes that company as "a privately held limited liability company owned by its senior management." While Global Securitization Services, LLC has experience in the Enron bankruptcy and holds other golden shares from the Iberdrola/NYSEG/RG&E merger, the Commission has not scrutinized this arrangement.

PULP contends that there is no real assurance that the nominated private holder of the "golden share" will act as intended to protect the public interest. There is no indication that these private companies or their management have any special knowledge, qualification or authority to determine how to "protect the interests of the State of New York, including legal and other interests arising under the Public Service Law."

Central Hudson's compliance filing alludes to but does not provide a copy of a contract governing how the "golden share" holder is to cast its vote:

GSS Holdings (CHGE), Inc. and Global have entered into an agreement with the Company in which both companies represent that GSS Holdings (CHGE), Inc.(a)has not and will not conduct any business activities other than holding the Junior Preferred Share, (b) will not incur any liabilities other than those pursuant to the agreement, and (c) will not sell, assign, transfer, pledge, hypothecate or otherwise convey the Junior Preferred Share.

The compliance filing does not assert that the "golden share" holder has any contractual duty to vote the "golden share" so as to "prevent the placement of Central Hudson in voluntary bankruptcy," as the Commission says is intended. There is no reference to any contractual provisions relating to how the holder of the "golden share" is to determine and "protect the interests of the State of New York, including legal and other interests arising under the Public Service Law...." Apparently we must conclude based on what has been filed that there are no written standards for the "golden share" holder to apply in determining how to vote the share when a bankruptcy is proposed by the new Fortis-controlled Central Hudson Board.

There is no claim that these privately held entities (GSS Holdings (CHGE), Inc. and Global Securitization Services, LLC) have any actual legal responsibility to vote against voluntary bankruptcy. As private entities they have no independent authority to determine what is necessary

to “protect the interests of the State of New York, including legal and other interests arising under the Public Service Law....” Certainly there is no assertion of any independent authority or duty of these entities to determine the public interest or act on behalf of the State of New York or “interests arising under the Public Service Law.” Central Hudson alludes to *ex parte* assurances given to Commission staff:

“As outlined in previous discussions with Staff, the Company believes GSS Holdings (CHGE), Inc. will act faithfully to protect the interests of New York and will be independent of the ultimate parent company, Fortis, Inc., and its subsidiaries.”

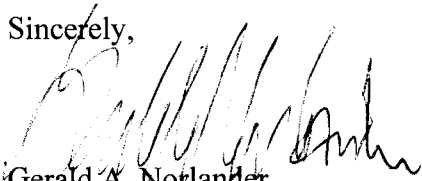
While Central Hudson/Fortis and anonymous DPS staff may be convinced of the faithfulness of these private interests to the public interest, there is no Order of the Commission actually requiring the proposed private holder of the "golden share" to vote against a resolution of the new Fortis-controlled Central Hudson board to file for voluntary bankruptcy. Despite the blithe assertions in Central Hudson’s letter that the proposed “golden share” holder is independent and will do the right thing, there appears to be no contractual or legal duty to do so, and there can be no assurance that the Commission’s expectations will be met.

Accordingly, PULP opposes Central Hudson’s nomination of the proposed private “golden share” holder. Under the Commission’s Order, it is the Commission, not Central Hudson, who has final decision over identity of the “golden share” holder.

Persons actually empowered to protect the “interests of the State of New York” are New York State officials. Accordingly, PULP recommends that the New York State Controller hold the “golden share.” The Controller is an elected statewide official, and is familiar with corporate and public fiduciary responsibilities. Alternatively, the “golden share” holder should be some other public official, such as the Attorney General, who could credibly “protect the interests of the State of New York, including legal and other interests arising under the Public Service Law,” as contemplated in the Commission’s Order.

Thank you for your consideration.

Sincerely,



Gerald A. Norlander  
Executive Director

cc: Parties in Case 12-M-0192 (via email)