

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION



Case 12-M-0192 - Joint Petition of Fortis Inc., et al.
and CH Energy Group, Inc., et al. for
Approval of the Acquisition of CH
Energy Group, Inc. by Fortis Inc. and
Related Transactions.

STAFF STATEMENT OF MATERIAL ISSUES OF FACT

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Introduction

In accordance with the June 29, 2012 Ruling on Schedule and Procedure, the July 31, 2012 Ruling On Motion For Reconsideration and the November 28, 2012 e-mail notification from Administrative Law Judge (ALJ) Prestemon, Department of Public Service Staff (Staff) provides its list of material issues of fact to date. Staff has strictly interpreted the November 28th instructive e-mail and the below list only contains facts that Staff believes are in dispute on various issues. There are many issues in dispute that are not listed below because specific facts do not appear to be disputed.¹ Staff has attempted to not include disputes of opinion, and interpretation of Commission precedent, policy or statute in Staff's list; however, in some instances it appeared to Staff that facts, policy and precedent were sufficiently intertwined to initially be included in the list.

Further, it appears that many of the prominent issues in this proceeding concern the interpretation of Commission precedent and policy, which Staff understands is

¹ Staff refers the parties to the Policy Panel Corrected Exhibit PP-2 and the issues addressed in the sur-rebuttal testimony of the Policy Panel as a fairly exhaustive list of issues from Staff's perspective.

outside the scope of this exercise. While Staff has attempted to list what it believes are issues that are material and the resolution of which may be aided by a hearing, this list is not meant to be inclusive or binding and Staff reserves the right to supplement this list throughout this proceeding, including, during hearings and briefs.

Finally, Staff believes the major issue in the proceeding is the calculation of the level of the Positive Benefit Adjustment (PBA) that is recommended to be required to obtain Commission approval. In rebuttal, the Petitioners offered a comparative analysis for the first time that calculated the PBA level at \$0. Staff could also take an approach that is similar to the Petitioners' analysis, but would first correct a "scaling" error in the calculation that brings the result to \$58 million, not addressing other potential corrections to the analysis and what the Petitioners refer to as a \$20 million risk "adder". Staff believes that further adjustments may be warranted to the \$58 million, both upward and downward, to reflect the risks inherent in the instant transaction.

Issues

Risks

1. Management and Governance

- Will the use of Central Hudson resources for other Fortis affiliates be at Central Hudson ratepayer expense?
- Are the rulings of the Canadian Securities Administrators equivalent to the provisions of the Sarbanes-Oxley Act (SOX)?

- Does an independent audit of internal controls as contemplated under SOX provide a value of benefit to Central Hudson ratepayers?
- In 2008, did Iberdrola or any of its affiliates provide shared services to its regulated U.S. utilities?

2. Goodwill

- Is Fortis' goodwill post-merger a risk only to Fortis Shareholders?
- What was the level of goodwill on Iberdrola's books under US Generally Accepted Accounting Principles post merger?
- What would be the projected level of goodwill on Fortis's books post merger under Internal Financial Reporting Standards?

3. Excessive Rates

- Is there a risk that Central Hudson rates may be excessive post-Merger?
- If a rate increase is deemed "warranted" for a specific rate year based on additional costs and expenses, does that necessarily mean that there must be a corresponding rate increase during that rate year?
- If there is deferral treatment for many of the rate drivers for a specific rate year that would "warrant" a rate increase, do ratepayers remain responsible to pay for these drivers at some later point in time?

Benefits

4. "Identifiable" Monetary Benefits/Transaction Risks

- Are there transaction risks requiring Public Benefit Adjustments?
- Are risks requiring Public Benefit Adjustments fully neutralized or mitigated?
- Are the proposed benefits of the Merger fully responsive to the risks of the Merger?
- Are there risks associated with this Merger?
- Can all risks of this Merger be mitigated or neutralized?
- Do the risks of this Merger outweigh the alleged benefits?
- Was the "Reduction of Alternative Transaction" amount of \$135 million in the Petitioners' Comparative Analysis (see Mosher Rebuttal Testimony, pg. 7) scaled to the delivery revenues of NYSEG and RGE as compared to KeySpan NY and LI?
- Are the alleged foregone carrying charges on capital expenditures a benefit to Central Hudson rate payers *without considering an updated ROE for the time period of the rate freeze*?
- Does maintaining the various performance mechanisms, targets and metrics provide a benefit to Central Hudson ratepayers?
- Is it proper to include alleged synergy savings into Petitioners' PBA comparative analysis?
- What is the age of the holding company Fortis Inc.?

- What were the various credit ratings of Iberdrola in 2008?

Other Issues

5. Natural Gas Capacity Panel

- Reliability Forecasts - Should reliability forecasts be developed independently from sales forecasts and be based on a minimum thirty years of weather data?
- Capacity Asset Management - Should shareholders benefit through a sharing mechanism from the release of excess capacity that is paid by ratepayers?
- Is there excess capacity?
- Transportation and Balancing Procedures and Charges - Should the weighed cost of commodity for gas injected into storage during the non-winter season be utilized to more accurately estimate the actual storage price paid by all sales customers?