

STATE OF NEW YORK  
PUBLIC SERVICE COMMISSION

At a session of the Public Service  
Commission held in the City of  
New York on March 18, 1998

COMMISSIONERS PRESENT:

John F. O'Mara, Chairman  
Maureen O. Helmer  
Thomas J. Dunleavy  
James D. Bennett

CASE 98-E-0439 - Proceeding on Motion of the Commission as to  
the Dispute between Central Hudson Gas and  
Electric Corporation and the Poughkeepsie-  
Highland Railroad Bridge Company, Inc. over  
Ownership of Abandoned Electric Facilities.

ORDER INSTITUTING PROCEEDING AND  
ORDER TO SHOW CAUSE

(Issued and Effective March 26, 1998)

BY THE COMMISSION:

BACKGROUND

In 1888, the New Haven and Hartford Railroad (or a predecessor) constructed a 7,000-foot, steel bridge over the Hudson River connecting the Town of Highland and the City of Poughkeepsie to service its Central New England line. In 1949, Central Hudson Gas & Electric Corporation received permission from the New Haven and Hartford Railroad, pursuant to a written lease agreement, to string and operate an electric cable on the bridge. Eventually, pursuant to subsequent lease agreements, six transmission cables were installed with insulators held by very large brackets (approximately six feet in length) attached to the south side of the bridge.

In 1974, a fire occurred on the Poughkeepsie (eastern) end of the bridge, when Pennsylvania Central was the owner, rendering the bridge no longer suitable for train traffic, but not affecting the transmission facilities. The subsequent owner, Consolidated Rail Corporation (Conrail), apparently decided it

was not cost effective to refurbish the bridge because only one or two trains a day had been using the bridge before the fire. By the early 1980's, Conrail decided that the bridge should be demolished because it was no longer used and was expensive to maintain, and property taxes were accumulating.

A dispute ensued between Conrail and Central Hudson regarding the transmission facilities on the bridge; a License Agreement gave Conrail the authority to request that Central Hudson move its facilities off the bridge, but given that the transmission facilities were the major source of electric power to Poughkeepsie, serious public interest concerns were implicated. Central Hudson resisted complying with the request, and Conrail sought a court order enforcing the License Agreement.

In an agreement endorsed by the Supreme Court of the State of New York, County of Westchester, on September 26, 1984, Conrail agreed to make every effort to obtain by May 31, 1985, all the permits it needed to demolish the bridge and Central Hudson agreed to make every effort to obtain the permits necessary to cross the Hudson River in another manner by that date. If Conrail obtained the permits by that date, according to the Court-endorsed agreement, Central Hudson would:

cease any transmission of electrical current across the bridge, and it will abandon any and all of its electrical circuits, wire and appurtenances thereto across the bridge and will relinquish forever any claim to occupancy, use, maintenance or otherwise in relation to the transmission of electricity across the Poughkeepsie bridge. (Emphasis added.)

The agreement also states that if Conrail was unable to obtain all of the permits by May 31, 1985, then Central Hudson "at its option, will have the right to remain as a month-to-month tenant on the bridge at a monthly rental of \$10,000 per month." (Emphasis added.) Once Conrail obtained the permits, then the previous condition would apply requiring Central Hudson to relinquish forever any claim of occupancy and use.

Apparently, while it was pursuing the litigation against Central Hudson and negotiating a settlement, Conrail came to realize that it would be difficult to obtain the permits necessary to demolish the bridge; the lead paint that had been used for years to paint the bridge concerned the municipalities and perhaps other agencies who did not want lead to fall into the Hudson River. The cost of demolition may have been another concern. In any event, apparently without telling Central Hudson or the Court, about one month after the Court endorsed the agreement between Conrail and Central Hudson, Conrail sold the land underlying the bridge and the bridge itself to an individual for one dollar. It appears that this individual then sold the bridge to another person for one dollar. No upkeep has occurred on the bridge and no property taxes have been paid.

In 1985, keeping its part of the agreement and with the knowledge of our Staff, Central Hudson installed a submarine cable under the Hudson River and deactivated the facilities on the bridge. It appears that Central Hudson neither filed for nor obtained Commission authorization pursuant to Section 70 of the Public Service Law to abandon the facilities. In the relatively recent past the various government entities involved sold the land underlying the bridge through tax sales to a non-profit group called the Poughkeepsie-Highland Railroad Bridge Company, Inc. (Bridge Company), which calls this particular project "Walkway Over The Hudson." It is not certain that the Bridge Company actually owns the bridge, since the individual who purchased the bridge for one dollar still maintains that he owns the bridge, and the conveyance of the real property to the Bridge Company explicitly states that the bridge itself is not being conveyed.

In 1995, the Bridge Company contacted our Consumer Services Division to complain that Central Hudson refused to acknowledge ownership of the facilities and refused to remove them from the bridge (CSD Case No 679121). After an investigation, the Consumer Services Division advised the Bridge Company that Central Hudson was correct in asserting that the

utility did not own the facilities. The Bridge Company then appealed to Senator Stephen M. Saland, who, in turn, expressed his views in writing to us.

DISCUSSION

When the agreement between Conrail and Central Hudson was negotiated and approved by the Court, it was contemplated that the bridge would be demolished as soon as permits were obtained. Central Hudson was on notice that it had to find an alternative route and, in fact, in early 1985, it did so. The agreement did not contemplate that Conrail would cease efforts to demolish the bridge and, of course, did not contemplate sale of the bridge to an individual, or anyone else for that matter. Indeed, the sole reason for Conrail bringing the lawsuit was to have Central Hudson deactivate the facilities.

According to the agreement, once Conrail obtained the permit required to demolish the bridge, Central Hudson would "cease any transmission of electrical current across the bridge, and it will abandon any and all of its electrical circuits, wire and appurtenances thereto across the bridge and will relinquish forever any claim to occupancy, use, maintenance or otherwise in relation to the transmission of electricity across the Poughkeepsie bridge." Central Hudson believes that the words "abandon" and "relinquish" mean that it no longer has any ownership interest in the transmission facilities regardless of any legal obligations pursuant to Section 70.

Central Hudson has stated that but for the Court-endorsed agreement, as per its usual practice, it would have removed the abandoned facilities. But here it points to that agreement as absolving it of any responsibility. The Bridge Company is concerned not only that the six cables, insulators and the brackets are unsightly to walkers and hikers, but that as they deteriorate they pose a danger to pedestrians, boaters and freight train traffic traveling underneath the bridge. The Bridge Company does not wish to be liable for any injuries that may occur due to the abandoned facilities.

Central Hudson has not adequately demonstrated that it has no continuing interest in or responsibility for the facilities. Moreover, public policy considerations abound here as well. It appears that Conrail entered into negotiations and developed plans to sell the bridge to an individual while at the same time litigating with Central Hudson and then working out an agreement with the Court's approval. By selling the bridge to an individual who had neither the means nor the interest to keep up the facility, Conrail imposed a burden on society, even though no government consent was apparently required. Now, the Bridge Company, a not-for-profit group, claims to own the bridge through purchase via tax sales; that group apparently does not have the means to remove the electric facilities, nor for that matter, to maintain the bridge. It is questionable that an agreement that was not designed for the facts at hand and which contained conditions that were not fulfilled should absolve Central Hudson of its responsibility regarding the electric facilities. We question whether it is in the public interest or legally permissible for a utility to unilaterally abandon facilities when it turns off power.

#### CONCLUSION

As the first step in resolving this dispute, we will direct Central Hudson to show cause why it does not continue to own and have responsibility for the electric facilities on the bridge. We also direct the utility to explain what steps it will take to resolve the dispute between itself and the Bridge Company.

#### The Commission orders:

1. A proceeding is instituted to inquire into and resolve the issues identified in the body of this order.
2. Central Hudson Gas & Electric Corporation is directed to show cause in writing, within 45 days of the issuance of this order, why it does not continue to own and have responsibility for the electric facilities on the bridge.

3. Central Hudson Gas & Electric Corporation is directed to explain what steps it will take to resolve the dispute between itself and the Poughkeepsie-Highland Railroad Bridge Company.

4. This proceeding is continued.

By the Commission,

(SIGNED)

JOHN C. CRARY  
Secretary