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September 12, 2013

VIA ELECTRONIC AND
FIRST CLASS MAIL

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

Re: Case 13-T-0306; Kerhonkson Substation

Dear Ms. Giliberto:

Pursuant to Staff's August 29, 2013 request for information in Case 13-T-0306, regarding Central Hudson Gas & Electric Corporation's ("Central Hudson") Application for approval of its Environmental Management & Construction Plan ("EM&CP") Addendum for its Kerhonkson Substation, Central Hudson is submitting the attached documents which contain confidential commercial or critical infrastructure information. Central Hudson seeks confidential treatment of the material pursuant to 16 NYCRR Part 6-1.

The filing contains three (3) attachments regarding Central Hudson's internal load (current and future) information regarding its P and MK Transmission Lines and associated substation facilities. These attachments are:

1. P and MK Area Study Memo EP2010-008 (May 2, 2011);
2. Kerhonkson 69 kV Voltage Regulators Memo EP2013-011 (June 27, 2013); and
3. P and MK Loads 1988-2013 (undated).

Central Hudson requests confidential treatment for these three (3) attachments.

The requested information constitutes confidential information pursuant to Section 87 of the Public Officers Law and Part 6-1 of the Regulations. As described further below, this request is supported by Section 87, as well as the decisions of the New York State Court of Appeals and Commission precedent.

Critical Infrastructure Information

Pursuant to Section 6-1.3(b)(3) of the Commission's Rules, the reasons why Critical Infrastructure Information ("CII") should be excepted from public disclosure as provided in the Public Officers Law ("POL") must be provided. Section 87(2)(f) of the POL provides for an exception to disclosure of records or portions thereof that "if disclosed could endanger the life or safety of any person." "Critical infrastructure" is defined in POL §86(5) as "systems, assets, places or things, whether physical or virtual, so vital to the state that the disruption, incapacitation or destruction of such systems, assets, places or things could jeopardize the health, safety, welfare or security of the state, its residents or its economy." Finally, POL §89(5)(a)(1-a) specifically provides that records containing CII will be excepted from disclosure and maintained apart by the Commission from all other agency records upon request.

The documents referenced above contain detailed substation and transmission line system diagrams, as well as forecasted electric load, system flows and vulnerabilities, based on specific engineering design information. In our opinion, these documents clearly qualify as CII and the public interest requires that they be protected from public disclosure. If such information were publicly disclosed, it could be used by persons to plan and carry out a targeted attack on specific utility infrastructure serving customers of Central Hudson. Disclosure of such information would not only be contrary to the public interest, but also would represent an undue risk of endangering life or threatening personal safety.

The Department of Public Service and the Public Service Commission have consistently held that this type of information should be protected from disclosure as CII. See Case 06-T-0650, *Application of New York Regional Interconnect, Inc.*, Ruling Granting Protection for Critical Energy Infrastructure Information (July 31, 2008) (finding that disclosure "has the potential to lead to disruption of New York's power system, which could endanger the life and safety of the public"); Case 08-T-0746, *Application of the Village of Arcade and Noble Allegany Windpark, LLC*, Ruling Granting Request for Confidential Status (July 30, 2008) (finding that portions of the System Reliability Impact Study should be exempted from disclosure as CII); Case 08-T-0034, *Application of Hudson Transmission Partners, LLC*, Ruling Granting Protection for Critical Energy Infrastructure Information (April 25, 2008) (protecting CII from public disclosure); Case 07-T-0140, *Application of Noble Wethersfield Windpark, LLC*, Ruling Granting Protection from Disclosure for Critical Infrastructure Information (March 15, 2007); Case 10-T-0139, *Application of Champlain Hudson Power Express, Inc.*, Ruling Granting

Protection and Approving Protective Order (June 12, 2012). In one such ruling, Request for Unredacted Exhibits 14, 15 and 16 to the Petition in Case 06-M-0878 (July 10, 2008), the Commission found:

[I]nformation concerning specific structures, potential weakness in the system, maps and drawings of the existing electric system (including configurations of various components), overhead transmission standards, structure work lists, and ratings on certain circuits constitutes critical infrastructure information that should be excepted from public disclosure because such information, if disclosed, could endanger the life or safety of people. This is so because the information would allow particular parts of the electric system to be targeted by those planning harm to the State's electric grid.

Id., at page. 4.

Confidential Commercial Information

Section 87 of the POL also 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.”

The Court of Appeals has considered what constitutes trade secret material. The Court held that the trade secret exemption under POL § 87(2)(d) is triggered when public disclosure of the trade material would “cause substantial harm to the competitive position of the person from whom the information was obtained.” See New York Telephone Company v. Public Service Commission, 58 N.Y.2d 213, 219-220 (1982). In Matter of Encore College Bookstores, Inc. v. Auxiliary Services Corporation of the State of New York at Farmingdale, 87 N.Y.2d 410, 419 (1995), 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.” Id.

The Commission has promulgated rules and regulations to implement applicable provisions of the POL. See 16 NYCRR 6-1.1, et seq. Section 6-1.3 allows a party to seek trade secret or confidential commercial information protection for any records submitted to the Commission. Id. § 6-1.3. Section 6-1.3(b)(2) requires the Company to “show the reasons why the information, if disclosed, would cause substantial injury to the competitive position of the subject commercial enterprise.” Id. § 6-1.3(b)(2). The Commission defines a “trade secret” as “any formula, pattern, device or compilation of information which is used in one’s business, and which provides an opportunity to obtain an advantage over competitors who do not know or use it.” Id. § 6-1.3(a). Factors to be considered by the Commission in determining whether to grant trade secret or confidential commercial information status include, but are not necessarily limited to:

- 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 the information;
- v) the ease or difficulty associated with obtaining or duplicating the information by others without the person’s consent; and
- vi) other statute(s) or regulations specifically excepting the information from disclosure.

Attachment 13 of the above-referenced May 2, 2011 memo contains cost information which meets the trade secret or confidential commercial information requirements because: 1) if disclosed, it could cause Central Hudson to suffer substantial economic and competitive harm; 2) it is neither generally available to the public nor easy for members of the general public to obtain or duplicate without permission; and 3) it would be of great value to others.

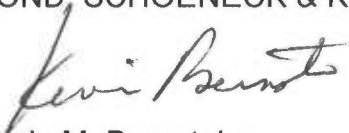
Release of the cost information would cause economic and competitive harm to Central Hudson because it could be used by its competitors, future bidders and vendors to, inter alia, unfairly influence their bid prices for construction of the transmission projects referenced in the May 2, 2011 memo. Disclosure of the omitted cost information could also impair Central Hudson’s negotiating leverage and undercut efforts to obtain maximum value for ratepayers. Disclosure could thus result in exposing Central Hudson to an unreasonable risk of harm to its competitive position as it contains non-public commercially sensitive business information regarding the cost of the proposed transmission projects.

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For the reasons stated above, Central Hudson respectfully requests that the documents identified above be deemed confidential material (either as critical infrastructure or confidential commercial information) exempt from public disclosure under POL § 87 and Part 6-1 of the Commission's Regulations.

Sincerely,

BOND, SCHOENECK & KING, PLLC

A handwritten signature in dark ink, appearing to read "Kevin Bernstein", written over a horizontal line.

Kevin M. Bernstein

Enclosures

cc: Steven Blow, DPS
David Morrell, DPS
Central Hudson