

**STATE OF NEW YORK  
PUBLIC SERVICE COMMISSION**

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In the Matter of the Review	:	
of Utility Codes of Conduct	:	Case 15-M-0501
as Impacted by Reforming the	:	
Energy Vision.	:	
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CENTRAL HUDSON GAS & ELECTRIC CORPORATION'S CODE OF CONDUCT  
CONSISTENT WITH THE NEW YORK STATE PUBLIC SERVICE COMMISSION'S  
ORDER ISSUED AND EFFECTIVE SEPTEMBER 15, 2016

Dated: November 8, 2019

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## INTRODUCTION

The Amended and Restated Settlement Agreement (“RSA”) approved by the New York State Public Service Commission (“Commission”) on February 19, 1998 resolved many issues associated with the transition from a fully regulated electric generation paradigm to restructured competitive wholesale and retail electric markets in the state of New York. Much of the RSA is no longer applicable to Central Hudson Gas & Electric Corporation (“Central Hudson”) because its generation assets have been divested, corporate structure is in place, rules governing the competitive generation markets have been approved, stranded cost issues resolved, reliability rules enacted, and environmental issues resolved. The Commission, in its Order Authorizing Acquisition Subject to Conditions Issued and Effective June 26, 2013, in Case 12-M-0192 required that:

At or prior to the time of Central Hudson's next base rate filing it will consolidate the RSA, Standards and codes of conduct into on comprehensive document and file the consolidated document with the Commission. The intention of this requirement is to organize the provisions into an integrated document without altering the effect and content of the provisions.<sup>1</sup>

As required by the Commission, Amended RSA (“ARSA”) was been prepared to eliminate the RSA provisions that were no longer effective and maintain the intent of the RSA that remains relevant to Central Hudson and its customers.

The Commission, in Cases 15-M-0501 and 14-M-0101 issued its Order Setting Standards for Codes of Conduct issued and effective September 15, 2016. Therein, the Commission required the electric utilities, including Central Hudson, to amend their codes of conduct in a manner consistent with the Order. Central Hudson has amended its Consolidated Amended Restated

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<sup>1</sup> *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*, Case 12-M-0192 (Order Authorizing Acquisition Subject to Conditions at Joint Proposal at 19-20) (Issued and Effective June 26, 2013).

Settlement Agreement (“CARSA”) to incorporate the required amendments and to further update the CARSA to eliminate no longer applicable provisions and to add provisions that are required by the new paradigm in which Central Hudson operates. Pursuant to Section IV(A) of the CARSA Central Hudson may amend the CARSA in a manner consistent with the Commission’s Orders and statute.

Central Hudson amended the CARSA effective November 8, 2019 to be renamed “Code of Conduct”. Central Hudson’s Code of Conduct (“COC”) has no other changes from the version filed with the New York State Department of Public Service Staff (“Staff”) on March 4, 2019 and found by Staff to be consistent with the Commission’s September 15, 2016 Order in Case 15-M-0501 by Staff’s letter dated March 12, 2019.

## **AMENDED REVISED SETTLEMENT AGREEMENT**

### **I. Definitions**

- A.** “Administrative Officers” mean all corporate officers other than Operating Officers.
- B.** “ARSA” means the Revised Settlement Agreement that replaced Central Hudson’s Amended and Restated Settlement Agreement in Case 12-M-0192.
- C.** “CARSA” means Central Hudson’s Consolidated Amended and Restated Settlement Agreement filed on July 24, 2014 in Case 12-M-0192.
- D.** “Central Hudson” means the Central Hudson Gas & Electric Corporation.
- E.** “CHEC” means Central Hudson Enterprises Corporation.
- F.** “CHEG” means CH Energy Group, Inc.
- G.** “CHET” means Central Hudson Electric Transmission, LLC.
- H.** “CHGT” means Central Hudson Gas Transmission, LLC.
- I.** “COC” means Central Hudson’s Code of Conduct.
- J.** “Commission” means the New York State Public Service Commission.
- K.** “Director - OAA&F” means the Director - Office of Accounting, Audits & Finance of the Department of Public Service
- L.** “EAF” means Environmental Assessment Form.
- M.** “ESCO” means Electric Service Company.
- N.** “Ethics Code” means Central Hudson’s Code of Business Conduct and Ethics.
- O.** “FERC” means the Federal Energy Regulatory Commission or its successor agency, if any.
- P.** “Fortis” means Fortis Inc.
- Q.** “NTAC” means NYPA Transmission Access Charge.



- R.** “NYISO” means New York Independent System Operator.
- S.** “NYPA” means New York Power Authority.
- T.** “Operating Officers” mean corporate officers with direct responsibility for carrying out engineering, customer service, or generation resource acquisition functions.
- U.** “Records Access Officer” means the Commission’s Record Access Officer.
- V.** “RSA” means the original Amended and Restated Settlement Agreement.
- W.** “SEC” means the United States Security and Exchange Commission.
- X.** “Secretary” means the Commission’s Secretary.
- Y.** “SEQRA” means the State Environmental Quality Review Act.
- Z.** “Shared Employee” means a Central Hudson employee assigned to perform work for Central Hudson and one or more affiliate(s) for a period of more than six months.
- AA.** “Staff” means the Department of Public Service Staff.
- BB.** “Transco” means a New York Transmission Company owned in part by a Central Hudson affiliate.

## **II. State Environmental Quality Review Act Evaluations**

Central Hudson, in conformance with SEQRA, will file an EAF for each project.

## **III. Corporate Structure**

### **A. Corporate Structure**

Central Hudson is authorized to maintain a corporate structure whereby it is owned directly or indirectly by a holding company. The direct and/or indirect holding company(s), currently CHEG and Fortis, may hold ownership interests in regulated and/or unregulated entities. CHEG currently holds interests in three unregulated subsidiaries, CHEC, CHET and CHGT. CHEC holds only interests in small unregulated generating entities. CHET holds an interest in Transco, which

is an electric transmission company regulated by FERC. CHGT currently holds no assets. CHEG, its successors or assigns shall comply with Public Service Law Section 110. CHEG may also be a subsidiary of a domestic or foreign holding company. The ultimate holding company, currently Fortis, leading to direct ownership of Central Hudson shall also comply with Public Service Law Section 110.

CHEG, Fortis, or any other affiliate or subsidiary thereof, may invest in any line of businesses in any location in which such businesses may be conducted. CHEG, Fortis, or any other affiliate or subsidiary thereof may use any corporate name, trademark, on the identification of any affiliate or subsidiary except that the name “Central Hudson” will not be used as the name of any Central Hudson competitive affiliate operating in Central Hudson’s service territory.

Central Hudson is, and will remain, an entity regulated by the Commission. Nothing herein prohibits a change in corporate structure of Central Hudson or CHEG where such change is made in compliance with the Commission’s statutory authority. Central Hudson will provide Staff with an updated corporate structure as requested.

## **B. Common Officers**

Central Hudson maintains Operating and Administrative officers. Central Hudson’s Operating officers are not authorized to serve as Operating Officers of a competitive affiliate operating in Central Hudson’s service territory or the service territory of a regulated affiliate operating in New York. Central Hudson’s Operating Officers are authorized to serve as Administrative Officers of Central Hudson’s affiliates wherever located. Central Hudson’s Administrative Officers are authorized to serve as Administrative or Operating Officers of any Central Hudson affiliate except that they are not authorized to serve as Operating Officers of a

competitive affiliate operating in Central Hudson's service territory or the service territory of a Central Hudson regulated affiliate operating in New York.

There shall be no restriction on the number of Central Hudson's Administrative Officers that may serve as officers of Central Hudson affiliates. No more than two of Central Hudson's Operating Officers are authorized to serve simultaneously as Operating Officers of any Central Hudson affiliate.

### **C. Services Offered by Central Hudson**

Central Hudson is authorized to continue to offer customers regulated and market based wholesale and retail energy services insofar as the Commission may, from time to time, revise the scope of the latter. Central Hudson also retains the option of providing to its customers, with Commission approval, the same range of energy products and services that unaffiliated, unregulated ESCOs may offer to their customers. Central Hudson may be authorized to provide such services as a regulated utility, to the extent that the provision of such energy products or services benefits Central Hudson's customers, or at Central Hudson's risk—below the line—to the extent they do not. Central Hudson is authorized to engage in retail sales within its service territory under Commission-approved tariffs.

## **IV. Code of Conduct**

### **A. Introduction**

Central Hudson retains the right to manage its own affairs including the right to amend this Code of Conduct from time to time in a manner consistent with the Commission's Orders and statute. Central Hudson shall provide the Secretary and Staff with thirty (30) days-notice prior to amending this Code of Conduct.

The following pertains to transactions, conflicts of interest, cost allocations and the sharing of information (collectively referred to herein as the “Standards”) between Central Hudson and affiliates.<sup>1</sup> References in these Standards to any of the foregoing affiliates shall be deemed to include any successors. Central Hudson shall comply with the Standards within thirty (30) days following their effective date. Nothing in these Standards relieves Central Hudson or its affiliates from any obligation they may have pursuant to the PSL, including Sections 70 and 110. Nothing herein serves to divest Central Hudson or its affiliates of their legal rights under the PSL, Commission Orders or otherwise.

All costs and revenues recorded on Central Hudson's books of account from all affiliate transactions shall conform in all material respects to the Commission's Uniform System of Accounts.

## **B. Organizational Structure**

### **1. Separation and Location**

Central Hudson shall maintain separate books of account and other business records from its affiliates.

Central Hudson shall petition the Commission for approval before it establishes and maintains at an existing Central Hudson location separate and distinct office and work space from any competitive affiliate operating in any energy-related business(es) within Central Hudson’s service territory.

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<sup>1</sup> Affiliates are considered any entity as defined as such under Public Service Law (“PSL”) §110(2).

Central Hudson shall maintain appropriate physical and technological security, with an appropriate monitoring system, to prevent competitive affiliates from accessing or obtaining Central Hudson's confidential information or other information that may provide the affiliate with a competitive advantage.

Central Hudson will not conduct competitive services, including competitive behind-the-meter energy services, absent an application to, and approval by the Commission, except that Central Hudson will be permitted to provide solutions to customer reliability and deliverability issues related to electric and gas transmission and distribution.

Finally, any affiliate shall be established as a separate business entity from Central Hudson.

## **2. Board of Directors**

Fortis will maintain a board of directors for Central Hudson, the majority of whom will be independent,<sup>2</sup> with the majority of such independent directors being resident in the State of New York and with emphasis on selecting candidates who reside, conduct business or work within the Central Hudson service territory. At least two independent directors shall reside in Central Hudson's service territory.

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<sup>2</sup> Independent is as defined in Section 10A of the Securities Exchange Act of 1934. Nothing herein prohibits an independent Central Hudson director from being elected to the board of directors of Fortis Inc., and such appointment shall not immediately and by itself deprive the Central Hudson director of his or her status as independent for purposes of these Standards. If, however, the election of an independent Central Hudson board member to the Fortis Inc. board would result in a minority of independent directors on the Central Hudson board, excluding that director, Central Hudson and/or Fortis shall notify the Secretary of the Commission of the nomination of such director within 10 days following the issuance of the Fortis Inc. proxy materials pertaining to the election of Fortis Inc. board members. As part of such notice, Central Hudson and/or Fortis shall describe the benefits to Central Hudson and its customers of having such director serve on both boards. In the event that the Commission raises concerns about such director's service on both boards, Central Hudson and Fortis shall make reasonable business efforts to address such concerns. In the event that the Commission does not deem the efforts or measures taken by Central Hudson and Fortis to be adequate for their intended purpose, Fortis and Central Hudson shall, within no more than two years, ensure that the Central Hudson board is constituted with a majority of independent directors, excluding the director previously elected to the board of Fortis Inc.

## **C. Affiliate Transactions**

### **1. Standards of Competitive Conduct**

Central Hudson shall comply with the Commission rules governing Uniform Business Practices: Central Hudson shall not provide financial support to an affiliate pursuant to the Commission's Order Authorizing Acquisition Subject to Conditions issued and effective June 26, 2013 in Case 12-M-0192.

### **2. Sales Leads**

Central Hudson will not provide market information or sales leads for customers in its service territory to any affiliate, including an affiliated ESCO and will refrain from giving any appearance that it speaks on behalf of an affiliate.

Central Hudson will not imply or represent to any customer, supplier or third party that any form of advantage may accrue to such customer, supplier or third party in the use of Central Hudson's services as a result of that customer, supplier or third party dealing with an affiliate. No affiliate will imply or represent to any customer, supplier or third party that any form of advantage may accrue to such customer, supplier or third party in the use of Central Hudson's services as a result of that customer, supplier or third party dealing with an affiliate. Central Hudson will not purchase goods or services on preferential terms offered only by suppliers who purchase goods or services from or sell goods or services to an affiliate of Central Hudson.

### **3. Customer Inquiries**

If a customer requests information about securing any competitive retail service or product offered within Central Hudson's service territory by an affiliate, Central Hudson must provide a list of competitive retail companies or affiliates that are qualified and approved pursuant to Central

Hudson's standards (including retail access standards) as providers of the requested products or services within Central Hudson's service territory. While this list may include Central Hudson affiliates, the list must provide information by company in alphabetical order and may not place greater emphasis on or promote any Central Hudson affiliate. A Central Hudson employee shall not promote any competitive retail affiliate operating in Central Hudson's service territory, other than to acknowledge, at the request of a customer, that an affiliation exists between Central Hudson and such affiliate or provide a list of competitive retail providers, which may include competitive retail affiliates.

#### **4. Customer Information**

Central Hudson shall not release proprietary customer information to ESCOs, including an ESCO affiliated with Central Hudson, without the prior authorization by the customer and subject to the customer's direction regarding the ESCOs to whom the information may be released.<sup>3</sup> Central Hudson shall maintain verifiable proof of customer authorization for two years after receipt of the authorization. The verifiable proof shall be available to Staff at Central Hudson's offices upon request. Under no circumstance will Central Hudson release more than twenty four (24) months of proprietary customer information unless authorized to do so by the customer or ordered to provide the information by a regulatory authority or court of competent jurisdiction. Proprietary customer information includes, but is not limited to the customer's name, address, telephone number, account number, social security number and credit report. If a customer authorizes the release of information to a Central Hudson affiliate or one or more of the affiliate's competitors, Central Hudson shall make that information available to the affiliate and/or other competitors

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<sup>3</sup> It is not a release of information by Central Hudson where an ESCO accesses customer information through Central Hudson's website, or otherwise, without Central Hudson's knowledge. Central Hudson will act in accordance with Uniform Business Standards.

designated by the customer on a non-discriminatory basis. Nothing herein shall require Central Hudson to release customer information to its affiliate or any competitor unless such release is authorized by the customer.

Except for purposes of complying with applicable statutes, regulations and orders, Central Hudson will not disclose to any competitive affiliate or non-affiliate any customer or market information about its gas or electric transmission and distribution systems that may provide a competitive advantage in the gas and electric markets. Customer or market information includes, but is not limited to, confidential information that Central Hudson receives from a marketer, customer or prospective customer, which is not available from sources other than Central Hudson, unless it makes such information available to all competitors on a non-discriminatory basis.

Pursuant to the Commission's Order on Rehearing Granting Petition for Rehearing issued and effective December 3, 2010 in Case 07-M-0548, Central Hudson may also enter contracts for the benefit of customers with third party service and/or materials providers, including affiliates, that include the transfer of proprietary customer information or other confidential material. Central Hudson may enter a contract with an affiliate or third party service and/or material provider that requires the transfer of proprietary customer information or other confidential material if the affiliate or third party executes a Confidentiality and Non-Disclosure Agreement.

Under all circumstances where Central Hudson transfers proprietary customer information or other confidential market data to an affiliate, ESCO, or other third party Central Hudson shall execute a Confidentiality and Non-Disclosure Agreement with the affiliate, ESCO or other third party. The Confidentiality and Non-Disclosure Agreement shall restrict access to the protected material to only those employees of the recipient affiliate, ESCO or other third party whose functions, including services or sales to utility customers and services or sales facilitated by the



Distributed System Platform Provider (“DSP”), require that they have access to the subject information. Such employees shall be instructed to maintain the confidentiality of such information and execute an Individual Non-Disclosure Agreement. The standard form of Central Hudson’s Confidentiality and Non-Disclosure Agreement is set forth as Attachment 2. Central Hudson shall use its best efforts to model each third party Confidentiality and Non-Disclosure Agreement after the standard form and shall retain executed Confidentiality and Non-Disclosure Agreements at its headquarters for Staff’s review upon its request.

Central Hudson may not disclose customer information of a third party that it receives from the third party, including a Central Hudson affiliate, without the written consent of the third party. Central Hudson shall disclose a third party’s customer information only to parties or classes of parties authorized by the third party disclosing the information. If the disclosing third party does not limit to whom its customer information may be distributed Central Hudson will provide equal access of the third party’s customer information contemporaneously to market participants of which it is aware and for which it has correct contact information.

Central Hudson’s critical infrastructure information shall remain, in all media formats, within the headquarters of Central Hudson, and it shall retain customer data (i.e., names, addresses, telephone numbers, social security numbers, credit reports) in all media formats, within the headquarters or customer service center of Central Hudson unless a regulatory authority or court of competent jurisdiction requires Central Hudson to provide the information.

## **5. Complaint Procedure**

If any competitor or customer of Central Hudson believes that Central Hudson has violated the Standards, such competitor or customer may file a complaint in writing with Central Hudson. Central Hudson will respond to the complaint in writing within twenty (20) business days after

receipt of the complaint. After providing its response to the complainant, Central Hudson and the complainant will meet, if necessary, within fifteen (15) days in an attempt to resolve the matter informally. If Central Hudson and the complainant are not able to resolve the matter informally within fifteen (15) business days after the commencement of the informal resolution process, the complainant may refer the matter to the Commission for disposition. This provision shall not preclude the Commission from addressing any such matter more expeditiously in the event that exigent circumstances so require. Nothing herein shall preclude a complainant from filing a formal complaint before the Commission without participating in the informal resolution process. In any instance in which a formal complaint is filed with the Commission Central Hudson shall have a full and fair opportunity to be heard through a process established by the Commission. The Commission may order any such remedies to resolve the complaint as are within its statutory authority.

#### **6. No Advantage Gained by Dealing with Affiliate**

Central Hudson will refrain from giving any appearance that Central Hudson speaks on behalf of any affiliate operating in its service territory. If Central Hudson possesses and makes information publicly available it shall provide equal access of such information to all market participants of which it is aware and for which it has correct contact information, including its affiliates. Central Hudson will not participate in any joint promotion or marketing with any affiliate operating in its service territory. Concerning competitive retail electric or natural gas services offered in the market, Central Hudson will not represent to any customer, supplier or third-party that an advantage may accrue to such customer, supplier or third-party in the use of the Company's tariffed services as a result of that customer, supplier or third-party dealing with a competitive affiliate. A competitive affiliate operating in any energy-related business(es) within

Central Hudson's service territory may not use the name "Central Hudson" to market its competitive product. No non-Central Hudson company will be allowed by Central Hudson or Fortis to use the Central Hudson name, trade names, trademarks, service markets or a derivative of a name of Central Hudson in any manner.<sup>4</sup>

## **7. No Rate Discrimination**

All similarly-situated customers, including ESCOs and customers of ESCOs, whether affiliated or unaffiliated, will pay the same rates for Central Hudson's tariffed utility services. If there is discretion in the application of any tariff provision, Central Hudson must not offer its affiliate more favorable terms and conditions than it has offered to all similarly-situated competitors of the affiliate. In particular, Central Hudson shall process all requests for similar service in the same manner, within similar time periods, and without any preferential treatment for customers seeking tariffed services from Central Hudson affiliates. Central Hudson shall not give preference to a customer of an affiliate, or to an affiliate, regarding repairs or maintenance, operation of its system, or interconnections and dispatch.

Central Hudson shall, pursuant to Public Service Law Section 66(12)(d), charge all tariff customers the rates and charges specified in its schedule filed and in effect.

Central Hudson may provide non-tariffed service to customers, including affiliates, by contract or other similar arrangement. Contract service provided by Central Hudson shall not affect the rate paid by tariffed customers. Central Hudson shall maintain executed contracts or other arrangements on file at its corporate headquarters available for review by Staff upon request.

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<sup>4</sup> "Non-Central Hudson company" means an entity that is not controlled by Central Hudson or Fortis and that is not an affiliate of Central Hudson or Fortis Inc.

#### **D. Training and Certification**

Central Hudson and any affiliate operating in its service territory, shall conduct training on these Standards for its officers and directors (including employee directors) and Shared Employees. Central Hudson's officers and directors, Shared Employees and affiliates operating in Central Hudson's service territory shall certify familiarity with these Standards within ninety (90) days following their effective date. Central Hudson shall certify that it has provided training regarding the Standards to any new officers, directors and Shared Employees within ninety (90) days after the start date for each new officer, director, or Shared Employee. Training shall be provided to all Central Hudson employees on an annual basis concerning Central Hudson's policies and procedures, if any, restricting information sharing between Central Hudson employees engaged in Distributed Energy Resource ("DER") procurement and/or Platform Service Revenue ("PSR") activities and Central Hudson employees not engaged in DER procurement and/or PSR activities.

#### **E. Adherence to Standards**

On an annual basis Central Hudson's General Counsel and Vice President Human Resources & Safety, or their successors, shall provide certification to the Commission of Central Hudson's material adherence to the Standards. If, after an investigation by an independent auditor and hearing, the Commission finds that Central Hudson is not in substantial compliance<sup>5</sup> with the Standards, the Commission can order Central Hudson to pay for the cost of the independent auditor. If Central Hudson is in substantial compliance with the Standards it may petition to defer and recover the costs of the independent auditor without regard to the Commission's three-part test for

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<sup>5</sup> Substantial compliance shall be determined by the Commission.

deferral accounting. As part of the independent auditor's investigation it shall review the transactions and cost allocations necessary to determine Central Hudson's substantial compliance or lack thereof

#### **F. Ethics**

All Central Hudson employees, officers and directors must adhere to Central Hudson's Ethics Code as it may be amended from time to time. Central Hudson will maintain its Ethics Code at its headquarters in a manner available to Staff upon request. Central Hudson will make the Ethics Code available to its employees, officers and directors electronically at all times.

#### **G. Corporate Governance**

Central Hudson directors, officers and employees shall adhere to the applicable Governance Guidelines as they may be amended from time to time. Governance Guidelines set forth Central Hudson's principles and requirements for conflict of interest, recusal from participation in decision making and other corporate governance issues. Central Hudson will maintain its Governance Guidelines at its headquarters in a manner available to Staff upon request. Central Hudson will make its Governance Guidelines available to its employees, officers and directors electronically at all times.

#### **H. Cost Allocations**

Central Hudson will continue to follow the cost allocation procedures approved by the Commission as the Guidelines for Transactions Between Central Hudson and its Affiliates in Case 96-E-0909 as set forth and amended in Sections V(D) and (E) below. In the event that Central Hudson's affiliate transactions exceed \$7.5 million, as measured by the transactions in the immediately preceding rate year excluding transactions with an affiliated Transco and dividend

payments, Central Hudson and Staff will discuss appropriate modifications to the Cost Allocation Guidelines set forth in Sections V(D) and (E). If such discussions do not lead to a resolution of cost allocation issues within ninety (90) days Central Hudson shall notify the Commission's Secretary and convene a collaborative to resolve cost allocation issues. Adherence to the Guidelines will assure that Central Hudson maintains proper cost allocation procedures regarding transactions between Central Hudson and its affiliates. Central Hudson will meet annually with Staff on or before April 1 of each year to review its cost allocations and their application. If at any time Central Hudson becomes aware of events likely to cause a reconsideration of or material change to its ownership or cost allocations, Central Hudson will advise Staff and arrange a meeting in order to consider cost allocation issues. Central Hudson may seek to amend the Cost Allocation Guidelines from time to time and will file with the Secretary of the Commission all proposed amendments and supplements to the guidelines at least thirty (30) days prior to their proposed effective date. These procedures apply to Paragraphs I through L below.

#### **I. Transfer of Assets**

Public Service Law Section 70 applies to certain transfers of assets from Central Hudson to any affiliate. Transfers of assets from Central Hudson to any affiliated entity shall not be made absent any statutorily required Commission approval. Central Hudson will continue to abide by the Guidelines for Transactions Between Central Hudson and its Affiliates approved by the Commission in Case 96-E-0909 as set forth in Attachment H of the RSA on February 19, 1998, set forth as amended here at Sections V(D) and (E). Central Hudson will maintain its affiliate transaction guidelines at its headquarters in a manner available to Staff upon request. Central Hudson will make its affiliate transaction guidelines available to its employees, officers and directors electronically at all times. Any affiliate receiving goods or services from Central Hudson

will compensate Central Hudson in a timely fashion. Standard commercial terms for payments will apply to transactions between Central Hudson and its affiliates. If the Commission determines that the commercial terms applicable to a transaction between Central Hudson and an affiliate are unreasonable it may issue an appropriate remedy.

#### **J. Transfer of Services**

Central Hudson will continue to abide by the Guidelines for Transactions Between Central Hudson and its Affiliates approved by the Commission in Case 96-E-0909 as set forth in Attachment H of the RSA on February 19, 1998, set forth and amended here as Sections V(D) and (E). Central Hudson will maintain its affiliate transaction guidelines at its headquarters in a manner available to Staff upon request. Central Hudson will make its affiliate transaction guidelines available to its employees, officers and directors electronically at all times. Any affiliate receiving goods or services from Central Hudson will compensate Central Hudson in a timely fashion.

#### **K. Insurance**

Central Hudson and any affiliate may be covered by common property, casualty and other business insurance policies. Such policies shall provide Central Hudson with commercially reasonable protections against liability. Central Hudson and its affiliates shall maintain a corporate structure sufficient to protect it from the liabilities of its affiliates, as well as any increases in Central Hudson's insurance costs resulting from the inclusion of property or assets held by an affiliate(s) in such insurance policies. Central Hudson shall, to the extent that market information is available, submit with each rate case petition, a market survey to determine whether it could obtain insurance separately from its affiliates on financial and other terms and conditions superior to the common policies maintained with its affiliates and report to the Staff the results of its survey.

The costs of such policies shall be allocated among Central Hudson and any affiliate in an equitable manner in accordance with its Cost Allocation Guidelines.

## **L. Personnel**

### **1. Sharing of Employees, Officers and Directors**

Central Hudson and its affiliates may have Shared Employees. Operating employees, defined as non-management employees, shall not be shared except for purposes of training or emergencies—including mutual assistance. A Shared Employee is a Central Hudson employee assigned to perform work for Central Hudson and one or more affiliate(s) for a period of more than six months. Central Hudson shall maintain a list of Shared Employees by position and employee number updated every six months at its offices and available for inspection by Staff upon request.

Operating Officers of Central Hudson will not be Operating Officers of any of its affiliates.

An officer or director of Central Hudson may not serve as an Operating Officer of a competitive affiliate operating in Central Hudson's service territory.

Corporate employees may be provided by Central Hudson on a fully loaded cost-basis. During its provision of any such shared services, such individual shall be subject to all requirements in these Standards pertaining to information obtained about/from Central Hudson. Nothing herein shall limit the Commission's authority to determine ratemaking issues arising out of such transactions.

Central Hudson shall allocate the costs of employees performing work for Central Hudson and an affiliate pursuant to Attachment H of the RSA as Approved by the Commission on February 19, 1998 and set forth and amended here as Sections V(D) and (E).



Officers and directors of Central Hudson may not use any of the Company's marketing, sales, advertising, public relations, and/or energy purchasing expertise to provide services to any affiliate that competes with Central Hudson in any energy-related business within Central Hudson's service territory. Before any Central Hudson employee performs work for an affiliate, whether such employee is a Shared Employee or not, Central Hudson shall ensure that such employees are familiar with the Standards. Nothing herein shall limit the Commission's authority over ratemaking issues arising out of such transactions.

Affiliates may provide services to Central Hudson and may have separate contracts and billings for such services. Nothing in this section shall authorize Central Hudson to engage in a transaction with any affiliate if such transaction would otherwise be prohibited under these Standards, or authorize Central Hudson to tender preferential treatment to any affiliate. Any management, construction, engineering or similar contract between Central Hudson and any affiliate and any contract for the purchase by Central Hudson from an affiliate shall be governed by Public Service Law Section 110.

## **2. Transfer of Employees**

If a Central Hudson employee accepts a position of employment with any affiliate, he or she will be required to resign from Central Hudson, unless there is a conflict with the collective bargaining agreement in which case the collective bargaining agreement shall control. Any such employee shall be prohibited from copying or taking any non-public customer or competitively sensitive market information from Central Hudson.

### **3. Compensation for Employee Transfers**

Employees may be transferred from Central Hudson to an affiliate or an affiliate to Central Hudson. Employees transferred by Central Hudson to an affiliate competing with Central Hudson in Central Hudson's service territory may not be reemployed by Central Hudson for a minimum of one year after such transfer. Central Hudson will file annual reports with the Commission showing transfers between Central Hudson and any affiliates by employee number, former company, former position and salary and new company, new position and salary or annualized base compensation. If the Commission determines that employee transfers inappropriately harm Central Hudson and its customers the Commission may order an appropriate remedy.

### **4. Employee Loans in an Emergency**

The foregoing provisions in no way restrict any affiliate from loaning employees to Central Hudson to respond to an emergency that threatens the safety or reliability of service to customers; nor shall such provisions restrict Central Hudson from loaning employees to other regulated utilities, whether affiliated or unaffiliated, to respond to an emergency that threatens such safety or reliability of service to consumers. Central Hudson shall allocate the costs of employees loaned to, or from, a Central Hudson affiliate pursuant to Attachment H of the RSA as Approved by the Commission on February 19, 1998 and set forth and amended here as Sections V(D) and (E).

### **5. Compensation and Benefits**

The compensation of Central Hudson's operating employees, officers and directors (including employee directors) may not be tied directly to the performance of any affiliates; provided, however, that this provision shall not preclude such compensation based upon aggregate performance of Central Hudson and any affiliate, including compensation based on Fortis's stock

performance. The employees of Central Hudson and any affiliate may participate in common pension and benefit plans, and the cost shall be allocated pursuant to Attachment H of the RSA as Approved by the Commission on February 19, 1998 and set forth and amended here as Sections V(D) and (E).

## **6. Legal Representation**

Central Hudson shall have its own internal and/or external counsel whose primary responsibility is to serve Central Hudson. Central Hudson shall not provide counsel for a competitive affiliate operating in Central Hudson's service territory in any matter between the two affiliates where the interest of the competitive affiliate is adverse to that of Central Hudson. Regarding any matter Central Hudson will take appropriate steps to ensure that Central Hudson's interests are vigorously and independently protected. The same law firm may represent Central Hudson and any affiliate on any matter, provided that on any matter involving a transaction between affiliates in which the interests of Central Hudson may be adverse to the interests of the affiliate, Central Hudson or the affiliate will retain counsel from an alternative law firm or utilize internal counsel. Outside counsel shall adhere to the same standards as are required of Central Hudson to protect Central Hudson's confidential information that may be available to them in the course of their representation.

## **M. Audits**

### **1. Access to Books, Records and Reports**

The following provisions govern the access by Staff, and are not intended to supersede or otherwise limit or expand the applicability of the Public Service Law, to all books and records

related to all transactions for goods and services and cost allocations that occur between Central Hudson and any affiliates:

## **2. Access to Information**

Staff will have access, upon reasonable notice and subject to appropriate resolution of any issues pertaining to applicable privileges and protections against disclosure, including the attorney/client privilege, and confidentiality, to the books and records of any affiliate, controlled by Central Hudson, with which Central Hudson has transactions. Staff will have access to the extent necessary to verify the reasonableness of the charges associated with the transactions, to confirm that the terms and conditions of the transactions do not discriminate against entities competing with Central Hudson in its service territory, and as necessary for ratemaking purposes.<sup>6</sup> For any affiliate over which Central Hudson does not have sufficient control to require such access, Central Hudson shall nevertheless employ its best efforts to provide such access and, in the event Central Hudson is unable to do so, it shall provide an explanation of the reasons therefor. These Standards will not be interpreted as restricting Staff in obtaining any affiliate information pursuant to Public Service Law Section 110. Nothing herein shall limit the Commission's authority over ratemaking issues arising out of such transactions.

## **3. Location of Audit Information**

All access to Central Hudson's books and records and the books and records of affiliates controlled by Central Hudson shall be provided at Central Hudson's headquarters and shall be available to Staff upon request and in no event shall these provisions unreasonably delay Staff's

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<sup>6</sup> The provisions of the RSA at 70-73, titled 32. *Privileged Information* and 33. *Confidentiality of Record*, now Section VIII(A), (B) herein, shall govern and control the resolution of privilege and confidentiality issues that may arise. Nothing herein shall deprive Central Hudson, or its affiliates, of the ability to claim privilege or confidentiality.

ability to perform its audit functions. Central Hudson will use its best efforts to provide access to the books and records of affiliates it does not control at its headquarters and will provide Staff with an explanation if it cannot do so. Any information provided shall be subject to applicable privileges and protections against disclosure pursuant to Civil Procedure Law and Rules §§ 3101 and 4503 and as provided for in the Public Service Law and the Commission's regulations at 16 NYCRR Parts 3 through 5 including resolution of confidentiality issues pursuant to the Commission's regulations on confidential information at 16 NYCRR Part 6, with due regard to the regulations of any other commission that may have jurisdiction over the information.

#### **4. Company Liaison**

A senior officer of Central Hudson will designate an employee, as well as an alternate to act in the absence of such designee (“Liaisons”), to act as liaison between Central Hudson and Staff. The Liaisons will facilitate the production of information to Staff. If Central Hudson believes that information requested by Staff should not be provided Central Hudson will provide the reason for its belief through the Liaisons.

#### **N. Reporting**

Commencing with the period ending December 31, 2013, Central Hudson shall file, by April 1 of each year, a joint annual report to the Commission, summarizing, for the prior year, any asset transfers, shared employees, employee transfers, employee loans for emergencies, contracts, cost allocations, affiliate transactions and competitor or customer complaints concerning the course of conduct between Central Hudson and any affiliate that is related to these Standards. Further, any management employee transfers shall be reported to the Commission on a quarterly basis beginning on April 1 of each year.

Employee transfers between Central Hudson and an affiliate shall be reported by employee number, former company, former position, new company and new position. Employee loans from an affiliate to Central Hudson to respond to an emergency that threatens the safety or reliability of service to consumers shall be reported by employee number, companies involved and length of loan period.

#### **O. Confidentiality of Records**

Central Hudson and, as applicable, any affiliate shall designate as confidential any non-public information to or of which Staff requests access or disclosure, and which such entity believes is entitled to be treated as a trade secret, confidential commercial information, critical infrastructure, confidential customer information, personal privacy information, or material subject to protection for other reasons, and may submit information to the Commission or Staff subject to the Commission's regulations on confidential information at 16 NYCRR Part 6.

#### **V. Cost Allocation Guidelines**

The Cost Allocation Guidelines set forth in Sections V(D) and (E) shall be applicable to any transactions between an unregulated and regulated affiliate, such as between CHEG and Central Hudson; provided, however, that Sections V(D) and (E) shall apply in lieu of any existing generic retail standards of conduct (e.g., Case 93-G-0932) and in lieu of any future generic retail standards of conduct established by the Commission. Pursuant to these Cost Allocation Guidelines Central Hudson is prohibited from engaging in transaction that cross subsidize its affiliates. Wholesale transactions and other activities under FERC's jurisdiction will be governed by the standards of conduct imposed under FERC's Order 889 *Open Access Service Real Time Information System and Standards of Conduct*, its successors, and the provisions of the applicable FERC Market-Based Rate Schedules.

**A. Cost of Goods and Services**

Central Hudson may provide services to CHEG or any other affiliate on a tariffed basis or on a fully allocated cost basis, determined in accordance with the Cost Allocation Guidelines set forth in Sections V(D) and (E). Services from an affiliate to Central Hudson under a management, construction, engineering or similar contract subject to Public Service Law Section 110 requirements for a written contract will be governed by Section 110, subject to any applicable FERC requirements. To the extent the provision of such services are not governed by Public Service Law Section 110 and the Code of Conduct is followed, they may be provided pursuant to this Agreement. Central Hudson may sell goods to its affiliates at the higher of cost or market price and may purchase goods from its affiliates at the lower of cost or market price.

**B. Generation Purchases**

Central Hudson's affiliates may have bilateral sales contract(s) with Central Hudson. Any such purchases(s) by Central Hudson will be subject to the usually applicable Commission standards of prudence in purchasing of supply by Central Hudson.

**C. Other Purchases by Central Hudson**

Other than any purchases of electric energy, capacity or ancillary services, CHEG or any affiliate may provide goods and services to Central Hudson at the lower of fully distributed cost or a price not greater than fair market value. Central Hudson shall use competitive bidding practices or standard offers to purchase DER, if it makes such purchases. Central Hudson shall engage an independent party to monitor the DER procurement selection process when competitive bidding is used as the procurement process and a Central Hudson affiliate participates in the process.

## **D. Transactions Between Central Hudson and its Affiliates**

The following procedures set forth the manner in which all costs associated with work performed by Central Hudson for its affiliates (including subsidiaries) are to be charged to the respective affiliates on a monthly basis.

### **1. Direct Charges**

Direct Charges are related to authorized services provided by the appropriate business area. These services are charged to the entity benefitted on a direct time and materials basis. Labor costs will include an allocation for fringe benefits. Business areas will report direct labor through the payroll system and other charges as appropriate.

### **2. Allocated Charges**

Allocated Charges have been developed to distribute to affiliates costs that cannot be directly charged, based on an average cost per activity as described below:

<b>Function</b>	<b>Basis of Allocation<sup>7</sup></b>	
(a) Executive Salaries/Expenses	50%	Number of employees
	50%	Net assets as a percentage of total assets
(b) Directors' Fees/Expenses	50%	Number of employees
	50%	Net assets of affiliates as a percentage of total assets
(c) Property/Casualty Directors' & Officers Liability  Employee-Related (e.g. blanket crime,	underwriter's/brokers' assessment of risk.	

<sup>7</sup> For cost allocation purposes herein, number of employees, assets, gross revenues will be determined as of December 31 of each year.



travel, EPLI) Workers' Compensation premiums; losses directly charged.	number of employees
(d) Human Resources (including labor), Employee Benefits & Pensions premiums; losses directly charged.	number of employees
(e) Information Systems	
• Labor	direct charge [or number of employees for "corporate systems"]
• Hardware/software	50% Number of employees
	50% Net assets of affiliates as a percentage of total assets
(g) Treasury, Finance & Accounting; Office Services and any other not specified	50% Number of employees
	50% Net assets of affiliates as a percentage of total assets

Procedures will be employed to estimate the annual average number of employees during the initial year and any other periods of significant change. The following utility areas or activities have been identified as serving a general corporate function. The costs associated with performing these functions will be charged to the holding company for further allocation to its non-utility affiliates: Financial Reporting; Taxes; Financial Planning; Annual Report and Shareholders' Quarterly Reports (including Production and Mailing Costs).

### **3. Income Taxes**

Income Taxes will be allocated among affiliates on a stand-alone basis (in accordance with a Tax Sharing Agreement).

#### **4. Other**

All allocation factors will be calculated annually. The methodology will be reviewed and updated as necessary. Notification must be given to the Controller of any new intercompany transaction not covered under this procedure. Finance & Accounting will be responsible for designing an appropriate allocation method in accordance with the goals and objectives outlined herein, and for implementing an effective billing procedure.

#### **E. Transactions Between the Holding Company and its Affiliates**

The following procedures set forth the manner in which holding company costs, whether benefitting an affiliate or of a general corporate nature, are to be charged to affiliates. The holding company can be the repository of all corporate unallocated charges.

##### **1. Direct Charges**

Direct Charges are related to authorized services provided by the appropriate holding company functional area. These services are charged to the benefitting entity on a direct time and materials basis.

##### **2. Indirect Charges**

Costs that cannot be directly charged to affiliates will be allocated based on the following:

<b>Service Department or Function</b>	<b>Basis of Allocation</b>
(a) Designated Officers	50% Number of employees 50% Net assets of affiliates as a percentage of total assets
(b) Directors' Fees	50% Number of employees 50% Net assets of affiliates as a percentage of total assets
(c) Building Services - Corporate Headquarters	Square footage occupied by Holdco divided by total square footage

The remaining expenses of the holding company represent costs associated with performing general corporate functions. These costs will be allocated using a formula based on the sum of each affiliate's operating revenues, capital expenditures, operation and maintenance expense and capitalization as a percentage of the sum of all such items on a consolidated basis. However, this allocation method may be changed as appropriate. These expenses include but are not limited to the following: (1) Corporate Secretary & Treasurer's Office; (2) Internal Auditing; (3) Shareholder Relations; and (4) Costs directly charged and allocated from the utility to the holding company.

Any modification of these procedures will be filed with the OAA&F.

#### **F. Annual Report and Meeting with Staff**

By April 1st of each year, Central Hudson will file with the Director - OAA&F the following annual reports, which shall receive "Trade Secret" protection or protection for other applicable reasons:

## **1. Annual Report of Affiliate Transactions**

The Annual Report of Affiliate Transaction will contain: (i) The cost allocations followed in connection with transactions between Central Hudson and its affiliates; (ii) An itemization of all asset transfers where the value of the transferred asset(s) between Central Hudson and CHEG its successors or assigns including but not limited to Fortis, or any affiliate exceeds \$7,500,000 in the aggregate amount, including the price at which such assets are transferred and, to the extent available, the original cost of items above \$7,500,000 and the net book value at the time of transfer; (iii) The number of all Central Hudson employees transferred to or hired by an affiliate from Central Hudson; and (iv) A list of all persons not employed by Central Hudson who participate in any Central Hudson or common employee benefit program. A summary of non-tariffed transfers of goods and services will also be included. The Report will include a certification that the applicable management employees of CHEG its successors or assigns including but not limited to Fortis, Central Hudson and each affiliate that enters transactions with Central Hudson are familiar with the Cost Allocation Guidelines and Code of Conduct requirements provided for herein. An officer will also certify that the Cost Allocation Guidelines and Code of Conduct have been followed during the reporting period.

## **2. Annual Report of Non-Utility Investments**

The Annual Report of Non-Utility Investments will contain: (i) A description of all non-utility investments made by CHEG during the fiscal year; (ii) Condensed financial statements (income statement, balance sheet and statement of cash flows) for each CHEG non-utility investment for the fiscal year; and (iii) A narrative description of the results of operations of the CHEG non-utility investments for the fiscal year in question. Each such report also will include any published material from credit rating agencies describing or discussing the effect of CHEG's

its successors or assigns including but not limited to Fortis' non-utility investments on Central Hudson's credit rating.

### **3. Annual Meeting With Staff**

A senior officer of Central Hudson and CHEG will meet annually with Staff to review Central Hudson's capital attraction plans and activities, respectively, including Central Hudson's Board of Directors' certification and demonstration that Central Hudson has retained or has access to sufficient capital to maintain and upgrade its plant, works and system as required for the continued provision of safe and adequate service.

## **VI. Credit Rating**

### **A. Central Hudson's Issuance of Securities; Debt Rating**

Central Hudson will continue to be the obligor for any long-term debt of Central Hudson. Debt issuances to the public by Central Hudson or issuances of common stock by Central Hudson to CHEG, its successors or assigns including but not limited to Fortis, will be made pursuant to Commission authorization under Public Service Law Section 69.

### **B. Downgrade Notice**

If CHEG, its successors or assigns including but not limited to Fortis, or Central Hudson experiences a downgrade of its senior debt, or is placed on credit watch/review, by a credit rating agency, Central Hudson will promptly notify the Director - OAA&F, and provide the reason(s) stated by the rating agency(ies) for such occurrence.

### **C. Dividend Payment Policies**

Dividends from Central Hudson to CHEG, its successors or assigns including but not limited to Fortis, will not exceed a rate equivalent to 100% of the annual average income available for common, calculated on a two-year rolling average basis.

In the event of a downgrade of Central Hudson's senior debt rating below BBB+ by more than one credit rating agency, if the stated reason(s) for the downgrade is the performance of or concerns about the financial condition of CHEG or any affiliate other than Central Hudson, dividends will be limited to a rate of not more than 75% of the average annual income available for dividends, on a two year rolling average basis.

In the event that Central Hudson's senior debt is placed on "Credit Watch" (or the equivalent) for a rating below BBB by more than one credit rating agency, if the stated reason(s) for the downgrade is the performance of or concerns about the financial condition of CHEG or any affiliate other than Central Hudson, dividends will be limited to a rate of not more than 50% of the average annual income available for dividends, on a two-year rolling average basis.

In the event of a downgrade of Central Hudson's senior debt rating below BBB- by more than one credit rating agency, if the action is stated as being due in substantial part to the performance of or concerns about the financial condition of CHEG or any affiliate other than Central Hudson, no dividends will be paid by Central Hudson to CHEG, its successors or assigns including but not limited to Fortis, until Central Hudson's senior debt rating has been restored to BBB- or higher by all credit rating agencies then rating Central Hudson. Within 30 days after the downgrade, Central Hudson will provide the Director - OAA&F a written description of the actions that management plans to take to address the downgrade.

## **VII. Prohibitions on Loans, Guarantees and Pledges**

Central Hudson, except as may be consistent with other provisions of this Agreement, will not make loans to CHEG or any other affiliate nor will Central Hudson guarantee or otherwise provide enforceable credit support for the obligations (notes, debentures, debt and other securities) of CHEG or any other affiliate. Central Hudson's Assets will be pledged only for Central Hudson's obligations and no utility assets will be pledged as security for indebtedness of CHEG or any other affiliate, absent prior Commission approval.

## **VIII. Privileged and Confidential Material**

### **A. Privileged Material**

Nothing in this Agreement shall require CHEG, Central Hudson or any affiliate to provide Staff access to, or to disclose to Staff, any information to which the entity in possession of such information would be entitled to assert a legal privilege, such as the attorney-client privilege, if, either (i) the privilege could be asserted against Staff or any other party in a proceeding before the Commission, or (ii) providing Staff access to or making disclosure of such information to Staff would impair in any manner the right of the entity in possession of such information to assert such privilege against third parties.

If Staff seeks access to or disclosure of any information that either CHEG, Central Hudson or any affiliate believes is exempt from access or disclosure, counsel for the entity asserting such privilege will so inform the requesting party, detailing, to the extent practical without destroying the privilege, the reasons why the privilege is being claimed in sufficient detail to permit Staff to determine whether or not to dispute the claim of privilege. If Staff decides to dispute such claim, it may request that the Commission or an administrative law judge conduct an *in camera* review

of such information to determine whether it is, in fact, exempt from access or disclosure. Such determination will be subject to review by the Commission and, if necessary, judicial review.

## **B. Confidentiality of Records**

CHEG, Central Hudson and any applicable affiliate will designate as confidential any non-public information to or of which Staff requests access or disclosure, and which CHEG, Central Hudson or any applicable affiliate believe is entitled to be treated as material protected from public disclosure. Material may be protected if it is protected from disclosure by federal or state statute or rule, or the ruling of an administrative agency or court of competent jurisdiction and includes but is not limited to material that is trade secret, confidential commercial information, critical infrastructure, personal privacy information or confidential customer information. Each member of Staff who is accorded access to, or to whom disclosure is made of, designated confidential portions of books and records, financial information, contracts, minutes, memoranda, business plans, and the like, will agree in writing to maintain such information as confidential, other than information that has been, or may in the future be, made public. Confidential information will be transmitted to the Staff by filing with the Records Access Officer under Part 6-1 of the Commission's Rules as those Rules may be amended from time to time. The definition of "information that previously has been made public" will mean information that (i) has been disclosed by either CHEG, Central Hudson or any other affiliate in financial or other literature to the financial community or to the public at large, (ii) appears in documents contained in the public files of a local, state or federal agency, body or court and which has not been accorded confidential treatment or (iii) information that otherwise is in the public domain.

In the event that Staff receives any information designated as confidential pursuant to the procedures described herein and desires to use such information publicly in a proceeding before



the Commission, such party will first notify counsel for CHEG, Central Hudson and any applicable affiliate of the nature of such information as well as its intention to use such information in such proceeding and afford CHEG, Central Hudson and any applicable affiliate the opportunity to apply to the presiding administrative law judge, the Records Access Officer, or the Commission for a ruling designed to maintain the confidentiality of such information under Part 6-1 of the Commission's Rules of Procedure. Staff may object to any such application on the grounds that such information is not entitled to be treated as confidential under Part 6-1.

In the event that a member of Staff receives any information designated as confidential pursuant to the procedures described herein and desires to use or refer to such information in a memorandum or other document which may become an "agency record" as that term is defined in the New York Freedom of Information Law, Staff first will notify CHEG, Central Hudson or any applicable affiliate of the nature of such information as well as its intended use, and afford CHEG, Central Hudson or any applicable affiliate the opportunity to apply under Part 6-1 of the Commission's Rules of Procedure for a protective order designed to maintain the confidentiality of such information. Staff may object to any such application on the grounds that such information is not entitled to confidential treatment under Part 6-1.

#### **IX. Lists and Copies of Securities and Exchange Commission Filings**

A list of all filings made with the SEC by CHEG or any of its affiliates will be provided quarterly to the Director-OAA&F, along with an acknowledgment that, upon request, Staff will be provided with a copy of any such filing not subject to confidentiality provisions before the SEC. Any CHEG or affiliate 8-k filings will be provided promptly to Staff.

## **X. Monitoring and Reporting Requirements Related to This Agreement**

This part identifies information Central Hudson has agreed to provide to Staff as part of this Agreement. Other than listed below, Central Hudson is not required to submit reports by this Agreement.

### **A. Market Information**

Central Hudson shall, to the extent that market information is available, submit with each rate case petition, a market survey to determine whether it could obtain insurance separately from its affiliates on financial and other terms and conditions superior to the common policies maintained with its affiliates and report to the Staff the results of its survey.

### **B. Affiliate Transaction Report**

Central Hudson will file an Affiliate Transaction Reports with the Commission showing:

#### **1. Employee transfers between Central Hudson and any affiliates by:**

- i. Employee number;
- ii. Former company;
- iii. Former position and salary;
- iv. New company; and
- v. New position and salary or annualized base compensation;  
and
- vi. The number of all Central Hudson employees transferred to  
or hired by an affiliate from Central Hudson.

## **2. Annual Report of Affiliate Transactions**

Commencing with the period ending December 31, 2013, Central Hudson shall file, by April 1 of each year, an Annual Report of Affiliate Transactions to the Commission, summarizing, for the prior year, any:

- i. Asset transfers;
- ii. Shared employees;
- iii. Employee loans for emergencies reported by employee number, companies involved, and length of the loan;
- iv. Contracts between affiliates;
- v. Cost allocations;
- vi. Other Affiliate transactions;
- vii. Competitor or customer complaints concerning the course of conduct between Central Hudson and any affiliate that is related to the Code of Conduct;
- viii. Management employee transfers shall be reported to the Commission on a quarterly basis beginning on April 1 of each year;
- ix. The cost allocations followed in connection with transactions between Central Hudson and its affiliates;
- x. An itemization of all asset transfers where the value of the transferred asset(s) between Central Hudson and CHEG its successors or assigns including but not limited to Fortis, or any affiliate exceeds \$500,000 in the aggregate amount, including the price at which such assets are transferred and,

to the extent available, the original cost of items above \$500,000 and the net book value at the time of transfer;

- xi. A list of all persons not employed by Central Hudson who participate in any Central Hudson or common employee benefit program; and
- xii. A summary of non-tariffed transfers of goods and services.

### **3. Annual Report of Non-Utility Investments**

The Annual Report of Non-Utility Investments shall include:

- i. A description of all non-utility investments made by CHEG during the fiscal year;
- ii. Condensed financial statements (income statement, balance sheet and statement of cash flows) for each CHEG non-utility investment for the fiscal year;
- iii. A narrative description of the results of operations of the CHEG non-utility investments for the fiscal year in question; and
- iv. Each such report also will include any published material from credit rating agencies describing or discussing the effect of CHEG's its successors or assigns including but not limited to Fortis' non-utility investments on Central Hudson's credit rating.

## **XI. Other Provisions**

### **A. Term of COC**

This COC shall become effective as of the Effective Date upon its filing with the Commission and shall remain effective through each successive rate plan of Central Hudson. The Commission may amend this COC upon its Order approving an amendment to the COC agreed upon by the parties to a Central Hudson rate proceeding, or upon its Order resolving a Central Hudson rate proceeding or any other applicable Commission Order.

### **B. Effect of COC**

The filing of this COC and/or the applicable Commission Order approving this COC represents approval of all of its terms and conditions. This COC is based on the premise that in approving this COC the Commission will find, in substance, that:

1. The mutual concessions and assurances set forth in this COC are inextricably interrelated;
2. This COC furthers the public interest.

Furthermore, it is understood that Central Hudson will request that the Commission make such findings and the parties to an applicable proceeding, if any, agree not to oppose such a request.

If the COC is not approved in its entirety without modification, this COC will be deemed to have been disapproved and the parties to an applicable proceeding, if any, shall have no obligations under this COC other than to discuss in good faith whether any alteration of this COC or condition to its adoption and approval that may be specified by the Commission is acceptable to them. Each party to this COC, if any, fully reserves its rights in that event.

Generic determinations by the Commission on the specific issues agreed upon in this COC, will be addressed in good faith by the parties to this COC and will provide guidance for potential tailoring or application that preserves this COC and associated concessions and assurances of Central Hudson and the Commission. Nothing in this Agreement limits the rights of a party to challenge the Commission's decisions on "Generic Issues". In the event of a conflict between this COC and a Commission decision on "Generic Issues" this COC shall control until the Commission's Order in Central Hudson's next rate case, whereupon the Commission's Order concerning "Generic Issues" shall be adopted, the Commission shall adopt the parties recommendation to resolve the conflict, or the Commission shall issue an Order resolving the conflict.

**C. Applicable Law**

This Agreement shall be construed in accordance with the laws of the State of New York.

**D. Entire Agreement and Merger**

This Agreement represents the entire agreement among the parties in the applicable proceeding, if any, with respect to the subject matters herein and all prior understandings are merged into this Agreement.

**E. Titles**

The titles of the parts of this Agreement are for the convenience of reference only and are of no significance in the interpretation or construction of this Agreement.

**F. Counterparts**

This Agreement may be executed in counterparts.

WHEREFORE, this Agreement has been executed as of the date first set forth above by each of the following parties to the applicable proceeding, if any, who, by its signature, each represents that it is fully authorized to execute this Agreement and, if executing this Agreement in a representative capacity, it is fully authorized to execute this Agreement on behalf of its principals.

Signature Page

Staff of the Department of Public Service

The undersigned party to Public Service Commission Case No. \_\_\_\_\_ has participated in the negotiations among the parties which led to the Revised Settlement Agreement dated \_\_\_\_\_ and agrees to the provisions of such Revised Settlement Agreement.

Staff of the Department of Public Service

\_\_\_\_\_  
By:

Dated:



Signature Page

Central Hudson Gas & Electric Corporation

The undersigned party to Public Service Commission Case No. \_\_\_\_\_ has participated in the negotiations among the parties which led to the Revised Settlement Agreement dated \_\_\_\_\_ and agrees to the provisions of such Revised Settlement Agreement.

Central Hudson Gas & Electric Corporation

\_\_\_\_\_  
By:

Dated:

**ATTACHMENT 1**  
**ORGANIZATION CHART**

**ATTACHMENT 2**  
**CONFIDENTIALITY AND NONDISCLOSURE AGREEMENT**

This Confidentiality and Non-disclosure Agreement (the "Agreement") is made and entered into this \_\_\_\_ th day of \_\_\_\_\_, 20\_\_\_\_, by and between \_\_\_\_\_, a \_\_\_\_\_ ("Company") and Central Hudson Gas & Electric Corporation, a New York corporation ("Central Hudson"). \_\_\_\_\_ and Central Hudson may be referred to herein individually as a "Party" and collectively as the "Parties".

**WITNESSETH:**

A. The Company and Central Hudson are entering into this Agreement to govern the exchange of certain information for the purpose of evaluating, negotiating and/or consummating a project relating to \_\_\_\_\_ (the "Project").

B. In connection with the Project, the Company and Central Hudson will be exchanging, reviewing, and analyzing certain information, some or all of which could be considered Confidential Information (as such term is defined in Section 4 of this Agreement). As used in this Agreement, "Disclosing Party" shall mean the party that discloses its Confidential Information to the other party and "Receiving Party" shall mean the party that receives Confidential Information.

NOW THEREFORE, for and in consideration of the mutual exchange of Confidential Information to each other and in further consideration of the promises and the agreements herein contained, the sufficiency of which is hereby acknowledged and confessed, the Parties do hereby agree as follows:

1. Nondisclosure and Use of Confidential Information. Without the Disclosing Party's prior written consent, the Receiving Party shall not: (a) disclose to any third party the fact that the Disclosing Party has provided any Confidential Information to the Receiving Party; (b) disclose to any third party the Confidential Information or any portion thereof; or (c) use any Confidential Information for any purpose other than for the purpose stated in paragraph "A" above. The Confidential Information may be disclosed to Receiving Party's affiliates, directors, officers, employees, consultants, subcontractors and agents and its affiliates' directors, officers, employees, consultants, subcontractors and agents (collectively, "Representatives"), but only if each such Representative needs to know the Confidential Information in connection with the Project described above and signs the Individual Non-Disclosure Agreement ("INA") set forth as Attachment 1 to this Agreement. The Receiving Party shall provide a copy of each INA to the Disclosing Party within ten (10) business days after the INA is signed. The Confidential Information shall not be used by the Receiving Party or its Representatives for any purpose other than in connection with the Project. It is understood that (i) such Representatives shall be informed by the Receiving Party of the confidential nature of the Confidential Information and shall be required to adhere to the terms of this Agreement by the Receiving Party, and (ii) in any event, Receiving Party shall be responsible for any breach of this Agreement by any of its Representatives. Receiving Party shall not disclose the Confidential Information in any form whatsoever to any person other than as permitted hereby, and shall safeguard the Confidential Information from unauthorized disclosure. For purposes hereof, "person" will be interpreted

broadly to include any corporation, company, partnership, individual or governmental authority.

2. Standard of Care. The Receiving Party agrees to use at least the same care and discretion to avoid disclosure of the Disclosing Party's Confidential Information as it uses with its own similar information it does not wish to disclose, but in no event less than a reasonable standard of care; provided, however, that if the Disclosing Party requests that the Receiving Party employ specific measures against disclosure (*e.g.*, restrictions on copying), the Receiving Party shall agree to be bound by such measures by accepting the Confidential Information, provided that the Disclosing Party delivering the Confidential Information makes such request in writing on or before the date the Confidential Information is provided and identifies with specificity the Confidential Information that is to be subject to such specific measures. The Receiving Party shall promptly provide the Disclosing Party with notice of any actual or threatened breach of the terms of this Agreement or unauthorized disclosure of the Disclosing Party's Confidential Information.

3. Notice Preceding Compelled Disclosure. If Receiving Party or its Representatives are requested or required (by oral question, interrogatories, requests for information or documents, subpoena, civil investigative demand, or similar process) to disclose any Confidential Information, Receiving Party shall promptly notify Disclosing Party of such request or requirement so that Disclosing Party may seek an appropriate protective order. To the fullest extent permitted by law, Receiving Party agrees to cooperate with Disclosing Party to obtain an appropriate protective order. If, in the absence of a protective order or the receipt of a written waiver by the Disclosing Party, Receiving Party or its Representatives are compelled by a subpoena or by an order of a court of competent jurisdiction to disclose any portion of the Confidential Information or else stand liable for contempt or suffer other censure or penalty, Receiving Party and its Representatives may disclose only such portion(s) of the Confidential Information to the party compelling disclosure as is required by such subpoena or order and, in connection with such compelled disclosure, Receiving Party and its Representatives shall use their reasonable efforts to obtain from the party to whom disclosure is made written assurance that confidential treatment will be accorded to such portion(s) of the Confidential Information as is disclosed.

4. Definition of "Confidential Information". As used in this Agreement, "Confidential Information" means all information that is furnished to Receiving Party or its Representatives by Disclosing Party in the course of discussions or evaluations of the Project which concerns the Confidential Information, Disclosing Party, its partners or co-venturers, affiliates, or subsidiaries, and which is either confidential, proprietary, or otherwise not generally available to the public. Any information furnished to Receiving Party or its Representatives by a director, officer, employee, stockholder, partner, co-venturer, consultant, agent, or representative of Disclosing Party will be deemed furnished by Disclosing Party for the purpose of this Agreement. The term "Confidential Information" shall specifically include, but shall not be limited to, the Disclosing Party's following information: business plans, strategies, forecasts and analyses; financial information; employee and vendor information; software (including all documentation and code), hardware, system designs, and protocols; product and service specifications; purchasing, logistics, sales, marketing and other business processes and energy infrastructure, information, location, quantity, production, flow, load, usage, size, capacity and/or other data or information; customer list, accounts, billing information and personal data including but not limited to names, addresses, telephone numbers, account numbers, dates of birth, social security numbers, employment

information, and demographic, financial and transaction information (“Customer Information”); and all reports, analyses, notes or other information that are based on, contain or reflect any such information. Confidential Information also includes all information that by its nature should reasonably be expected to be treated as confidential, whether or not such information is identified as confidential.

5. Information Excluded from “Confidential Information”. Notwithstanding any provision in this Agreement to the contrary, the following will not constitute Confidential Information for purposes of this Agreement: (i) information which is or becomes generally available to the public other than as a result of a disclosure by Receiving Party or its Representatives; (ii) information which was already known to Receiving Party on a non-confidential basis prior to being furnished to Receiving Party by Disclosing Party; (iii) information which becomes available to Receiving Party on a non-confidential basis from a source other than Disclosing Party or a representative of Disclosing Party if such source was not subject to any prohibition against transmitting the information to Receiving Party and was not bound by a confidentiality agreement with Disclosing Party; or (iv) information which was independently developed by the Receiving Party or its Representatives without reference to, or consideration of, the Confidential Information; provided however, that any specific Confidential Information, or any combination of features comprising the same, will not be deemed to fall within sub-paragraphs (i) to (iv) of this paragraph 3 inclusive, merely because the same is embraced by more general information or individual features which do fall within such paragraphs.

6. Return of Information. The Confidential Information shall, at all times, remain the property of Disclosing Party. At the Disclosing Party’s sole discretion and immediately upon its request, all Confidential Information and any copies thereof shall be immediately returned to Disclosing Party or destroyed by Receiving Party (in which case an authorized representative of Receiving Party shall certify to such destruction in writing to Disclosing Party), and no copies will be retained by Receiving Party or its Representative unless the Parties agree otherwise in writing or unless required by any applicable laws or regulations governing document retention (in which case Receiving Party shall continue to keep such information confidential in accordance with the terms set forth herein). Any Confidential Information that may be found in drafts, notes, compilations, studies, synopses, or summaries thereof, or other documents prepared by or for Receiving Party or its Representatives, and written Confidential Information not so requested to be returned, will be held by Receiving Party and kept subject to the terms of this Agreement, or destroyed. Notwithstanding the return or destruction of material, information and documents containing Confidential Information, the Receiving Party shall continue to be bound by the Receiving Party’s obligations of confidentiality and other obligations hereunder.

7. No Waiver. No failure or delay in exercising any right, power or privilege hereunder will operate as a waiver thereof, nor will any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power, or privilege hereunder.

8. Remedies. Receiving Party acknowledges and agrees that money damages would not be a sufficient remedy for any breach of this Agreement by Receiving Party or its Representatives and Disclosing Party will be entitled to specific performance and injunctive relief as remedies for any such breach. Such remedies will not be deemed to be the exclusive remedies for a breach of this Agreement by Receiving Party or any of its Representatives but will be in addition to all other

remedies available at law or in equity to Disclosing Party.

9.Indemnification and Defense. To the fullest extent permitted by law, the Receiving Party agrees to indemnify, defend, and hold the Disclosing Party, its Officers, Directors and employees free and harmless from any liability, damages, claims, causes of action, and/or litigation (including reasonable attorneys' fees) related to and/or arising out of any breach or default by Receiving Party of the terms, conditions or provisions of this Agreement, including but not limited to any claims made by the Disclosing Party's customers or any other third-party person or entity.

10.Duration. This Agreement shall remain in force and effect for one (1) year from the date first above written unless earlier terminated by either Party giving thirty (30) days written notice to the other, provided, however, that the restrictions on disclosure shall survive termination of the Agreement for a period of two (2) years from the date of expiry or termination of this Agreement or such longer period during which any Confidential Information retains its status as a trade secret or otherwise qualifies as confidential under applicable law. Notwithstanding the foregoing, sections 9 and 16 and the restrictions on disclosure for Customer Information shall remain binding for the fullest term permitted by law.

11.No Obligation or Joint Venture. The Parties hereto understand and agree that unless and until a definitive agreement has been executed and delivered, no contract or agreement providing for a project between the Parties shall be deemed to exist between the Parties, and neither Party will be under any legal obligation of any kind whatsoever with respect to such transaction by virtue of this or any written or oral expression thereof, except, in the case of this Agreement, for the matters specifically agreed to herein. For purposes of this Agreement, the term "definitive agreement" does not include an executed letter of intent, memorandum of understanding or any other preliminary written agreement or offer, unless specifically so designated in writing and executed by both Parties. This Agreement neither obligates a Party to deal exclusively with the other Party nor prevents a Party or any of its affiliates from competing with the other Party or any of its affiliates. Either Party may terminate consideration and discussion of the Project at any time for any reason whatsoever, and the terminating party shall have no liability to the other party by reason of the termination; provided, however, that notwithstanding any such termination the Parties shall continue to be bound by the restrictions on disclosure detailed in this Agreement.

12.Independent Review. Neither Party makes any representation or warranty (express or implied) as to the accuracy or completeness of any Confidential Information provided by it hereunder, although each Party represents that it shall endeavor in good faith to provide information which is reliable and accurate, and each party agrees to assume full responsibility for all conclusions that it derives from its review of the Confidential Information. Nothing contained in this Agreement nor the conveying of Confidential Information hereunder shall be construed as granting or conferring any rights by license or otherwise in any intellectual property.

13.Publicity. Neither Party will use any logo, trademark, design, mark or any distinguishing feature of the other Party in any manner (including without limitation, in any advertising or promotional material) without the express prior written authorization of such other Party, which may be arbitrarily withheld.

14.Nondisclosure of Existence of Negotiations. Without the prior written consent of the other Party, or except as may be required by applicable law or regulation, each Party shall be prohibited from disclosing to any person, other than its Representatives who have a need to know such information in connection with the Project that the Confidential Information has been disclosed to the Receiving Party. Notwithstanding the foregoing sentence, neither Party shall be prohibited from disclosing the fact that discussions or negotiations are taking place between the Parties regarding the Project, provided that, neither Party shall disclose the substance or status of such discussions or negotiations.

15.Notices. All notices to be given to a party hereunder shall be in writing and delivered personally, by overnight courier, by mail or by facsimile, addressed as follows:

If to Central Hudson:

Central Hudson Gas & Electric Corporation

284 South Avenue

Poughkeepsie, NY 12601

Attention: \_\_\_\_\_

Tel: (845) 486-\_\_\_\_\_

Facsimile: (845) 486-\_\_\_\_\_

Email: \_\_\_\_\_

If to \_\_\_\_\_:

Name

Address

City, State, Zip

Attention: Mr. \_\_\_\_\_

Title \_\_\_\_\_

Tel: \_\_\_\_\_

Fax: \_\_\_\_\_

Email: \_\_\_\_\_

Notices shall be deemed effective upon receipt. A Party may change its contact information by providing such information to the other Party in accordance with this Section 15.

16.Jurisdiction. This Agreement shall be governed by and construed in accordance with the laws of the State of New York, without regard to the conflict of laws principles thereof. For the limited purposes of the interpretation and/or enforcement of this Agreement, the Parties (a) consent and agree to the exclusive personal and subject matter jurisdiction of the New York State Supreme Court, County of Dutchess, in connection with any action or proceeding that relates to or arises from this Agreement, (b) consent to, and waive any objection to, the personal and subject matter jurisdiction of that court over any legal matter that relates to this Agreement, and (c) agree to service of process of any action commenced under this paragraph by FedEx to the addresses set forth in Section 15.

17. Cyber Insurance – Each Party receiving Confidential Information shall secure, provide and maintain during the term of this Agreement, an insurance policy that provides coverage for any and all liabilities, damages, claims, losses, costs and expenses, of any kind, that may be incurred by or asserted against the Central Hudson resulting from or related to:
- (1) any act, error, or omission or negligence related to Company's technology and/or professional services;
  - (2) intellectual property infringement arising out of software and/or content;
  - (3) breaches of security;
  - (4) violation or infringement of any right to privacy, or any breach of federal, state, local or foreign security and/or privacy laws or regulations;
  - (5) theft, damage, destruction, or corruption of any data of Central Hudson or any employee, or customer of Central Hudson, including without limitation, unauthorized access, unauthorized use, identity theft, theft of personally identifiable information or confidential corporate information, transmission of a computer virus or other type of malicious code; and
  - (6) participation, including a denial of service attack on a third party.

Minimum limits of \$1,000,000 per occurrence.

Such insurance must cover all of the foregoing without limitation if caused by an independent Company working on behalf of the Company, in performing Services under this Agreement. The policy must be kept in force by Company during the term of this Agreement and for six (6) years (either as a policy in force or extended reporting period) after this Agreement is terminated or after completion of the Project provided for herein, whichever is later.

18. Company shall comply with the requirements set forth in the Data Security Rider, Attachment 2 to this Agreement and shall answer the questions set forth in the Vendor Questionnaire, Attachment 3 to this Agreement.

19. Miscellaneous. The Agreement inures to the benefit of the Parties hereto and their successors and assigns and is binding on each other and each other's successors and assigns; provided, however, that neither Party will assign this Agreement without the written consent of the other Party. This Agreement constitutes the entire agreement between the Parties hereto with respect to the subject matter hereof and supersedes and replaces any and all prior agreements and understandings with regard to the subject matter hereof. If any provision of this Agreement is held by a court of competent jurisdiction in a final, non-appealable judgment to be invalid, illegal or unenforceable, the remainder of the provisions of this Agreement shall remain in full force and effect and any invalid, illegal or unenforceable provision shall be replaced with a valid, legal or enforceable provision, the effect of which comes as close as possible to that of the invalid, illegal or unenforceable provision. The headings of the Sections of this Agreement are inserted for convenience only and do not constitute a part hereof or affect in any way the meaning or interpretation of this Agreement. This Agreement may be executed in multiple counterparts, each of which shall be deemed to be an original for all purposes. This Agreement may be executed by



facsimile or reproductive signature and the Parties shall recognize, and not challenge, such execution as the valid and binding execution hereof. This Agreement may be modified only in a writing signed by both Parties.

IN WITNESS WHEREOF, the undersigned have executed this Agreement as of the date first written above.

**[Insert Counterparty's Name]**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**Central Hudson Gas & Electric Corporation**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**ATTACHMENT 1  
INDIVIDUAL NON-DISCLOSURE AGREEMENT**

I, \_\_\_\_\_, have read the Agreement between \_\_\_\_\_, (“Company”) and Central Hudson Gas & Electric Corporation., (“Central Hudson”) dated \_\_\_\_\_ \_\_, 20\_\_ (the “Agreement”) and agree to the terms and conditions contained therein. My duties and responsibilities on behalf of \_\_\_\_\_ require me to have access to the Confidential Information disclosed by Central Hudson to the Company pursuant to the Agreement.

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Name

---

Date

## **Data Security Rider**

### **I. General**

(1) This Data Security Rider shall apply to Company in the event that Company is granted or has access, in any way, to the Confidential Information of Central Hudson.

(2) Definitions:

- i. “Cardholder Data” means a User’s individual credit or debit card cardholder name, number, expiration date, the Card Security Code / Card Verification Value / Card Validation Code / Card Authentication Value, or Card Identification Number / Card Authentication Value 2 / Card Validation Code 2 / Card Verification Value 2.
- ii. “Confidential Information” has the meaning set forth in the agreement with the vendor.
- iii. “Customer Information” means a customer’s Central Hudson account number, name, address, zip code, phone number, email address, social security number, bank account number or routing number, credit card information, driver’s license number, billing or usage data, enrollment in a low income or similar program, health status, including being on life support, meter GPS coordinates, or information regarding a customer’s personal residence, such as square footage, smart appliances in residence, home network internet protocol address.
- iv. “Cyber Event” means (a) any occurrence in an information system or network that has, or may potentially result in, unauthorized access, processing, corruption, modification, transfer or disclosure of Confidential Information or (b) a violation of an explicit or implemented Company security policy.
- v. “Cyber Incident” means (a) the loss or misuse (by any means) of Central Hudson Confidential Information; (b) the inadvertent, unauthorized and/or unlawful access, processing, corruption, modification, transfer, disclosure, sale or rental of Confidential Information; or (c) any other act or omission that compromises the security, confidentiality, integrity, availability, or privacy of Confidential Information.
- vi. “Data” means all: (i) drawings, plans, maps, diagrams, charts, calculations, sketches, illustrations, designs and design layouts (collectively the “Drawings”), (ii) written technical specifications, design criteria, engineering data and all other information and data relating to the Services and/or Inputs, (iii) computer programs, software and source codes, (iv) operating and maintenance manuals with respect to the Services and/or Inputs, and (v) any other written or otherwise recorded data and information relating to the Scope of Services described in Exhibit A of the Agreement; which are either annexed to or referred to in the Agreement or this Data Security Rider (“Rider”) or required to be supplied by the Company pursuant to the terms of the Agreement or Rider or which Central Hudson may reasonably require in connection with the construction, installation, use, operation, maintenance, repair, replacement or upgrading of the Services and/or Inputs.

- vii. “Personal Identifiable Information” (“PII”) is defined as customer account number, name, address, phone number, electric or gas usage, billing amounts, social security numbers, driver’s license number, credit card number, debit card number, or banking information.
- viii. “Services” has the meaning set forth in the agreement or statement of work.
- ix. “Subcontractor” means any individual, firm or corporation engaged directly or indirectly by the Company in performance of any part of the Services, including any individual, firm or corporation that is an affiliate, agent, or assigned of Company.
- x. “Users” means a Central Hudson electric or natural gas customer.

## **II. Privacy and Data Security**

- (1) Confidential Information and Data shall at all times remain the sole property of Central Hudson. Nothing in this Rider will be interpreted or construed as granting Company any license or other right under any patent, copyright, trademark, trade secret, or other proprietary right or any right to assert any lien over or right to withhold from Central Hudson any Confidential Information or Data of Central Hudson.
- (2) The Company shall provide annual security awareness training to any individual who has access to PII of Central Hudson’s customers. Upon Central Hudson’s request, the Company shall promptly provide to Central Hudson evidence that individuals with access to any PII of Central Hudson’s customers have received such training.
- (3) The Company must provide 20 business days prior written notice to Central Hudson if a new Subcontractor will be engaged by Company to support the Services that the Company is providing to Central Hudson. The Company will assist Central Hudson in providing information, in form and substance sufficient to Central Hudson, regarding the state of the internal control environment of the Subcontractor to enable the Central Hudson to perform any security assessment that Central Hudson deems necessary. Central Hudson reserves the right to reject any proposed Subcontractor if the Subcontractor’s internal control environment does not meet Central Hudson’s requirements.
- (4) The Company shall ensure that any Subcontractor is bound by terms and obligations at least as stringent as those set forth in the Agreement and Data Security Rider. Central Hudson reserves the right to audit such terms and obligations and to determine, in its sole discretion, whether or not the obligations and terms are sufficient.
- (5) At any and all times during which Company or Subcontractor is in possession of or processing Confidential Information, Company and its Subcontractors shall:
  - i. Have appropriate and reasonable security controls and/or measures in place to protect and safeguard the Confidential Information of Central Hudson and its Users from disclosure or unauthorized access and/or use. The Company and its Subcontractors shall secure its computer systems, network, and devices using a defense-in-depth approach, compliant with industry recognized best practices or frameworks (e.g., NIST SP 800-53, ISO 27001 / 27002, COBIT, CIS Security Benchmarks, Top 20 Critical Controls, etc.).
  - ii. Have appropriate and reasonable privacy controls and/or measures to protect Central Hudson’s Customer Information according to industry recognized best practices or frameworks (e.g., DOE Data Guard Energy Data Privacy Program, AICPA Generally Accepted Privacy Principles, NISTIR 8062, ISO 29100, etc.).

- iii. Comply with all applicable privacy and security laws, regulations, of New York State Public Service Commission Orders to which it or Central Hudson is subject and not, by act or omission, place Central Hudson in violation of any privacy or security law, regulation or order known by Company to be applicable to Central Hudson.
  - iv. Promptly notify Central Hudson of any material change(s) to the Company's security policies, procedures, controls or measures.
  - v. Safely secure or encrypt Confidential Information during storage or transmission.
  - vi. Store Confidential Information only within the boundaries of the United States.
  - vii. Except as may be necessary in connection with providing Services, not store Confidential Information on removable devices or media.
  - viii. Not back up Confidential Information to the cloud without Central Hudson's prior written approval.
- (6) If the Company uses a service provider or co-location data center, the Company shall do so only if in compliance with the complementary user entity controls stated in the service provider's or co-location's SSAE 16 audit report.
- (7) If the Services provided include the use of the Company's hosted site(s), a privacy statement shall be present on the site that, at a minimum, includes the same language as in the Central Hudson's privacy statement located at: <http://www.centralhudson.com/privacy/index.aspx>.
- (8) To the extent that the Company or Subcontractor processes Users' credit card transactions as part of providing the agreed upon Services, the following requirements shall apply with respect to the Cardholder Data:
- i. Company and its Subcontractor(s) represent that it is presently in compliance, and will remain in compliance with the Payment Card Industry Data Security Standard ("PCI DSS"), and all updates to PCS DSS, developed and published jointly by American Express, Discover, MasterCard and Visa ("Payment Card Brands") for protecting Cardholder Data.
  - ii. Company and its Subcontractor(s) acknowledges that Cardholder Data is owned exclusively by Central Hudson, credit card issuers, the relevant Payment Card Brand, and entities licensed to process credit and debit card transactions on behalf of Central Hudson, and further acknowledges that such Cardholder Data may be used solely to assist the foregoing parties in completing a transaction, supporting a loyalty program, providing fraud control services, or for other uses specifically required by law, the operating regulations of the Payment Card Brands, or this Data Security Rider.
  - iii. Company and its Subcontractor(s) agrees that, in the event of a Cyber Incident arising out of or relating to Company or Subcontractor's premises or equipment contained thereon, Company and Subcontractor shall provide full cooperation and access to its premises, books, logs and records by a designee of the Payment Card Brands to the extent necessary to perform a thorough security review and to validate Company's or Subcontractor's compliance with the PCI DSS.
- (9) If Central Hudson wishes to discontinue the use of a hosted system and retrieve all Central Hudson Data, the Company and its Subcontractors shall ensure administrative interfaces and open APIs exist that provide access to all Confidential Information and Data. With sufficient additional technical services resources and sufficient available bandwidth, all Confidential Information and Data will be retrieved within 15 business days by Central Hudson and Central Hudson will authorize the Company and Subcontractor to delete the

Confidential Information and Data from within the hosted system in a manner consistent with the Agreement.

### **III. System Development**

- (1) To the extent that Company provides the Services, the Company and its Subcontractors shall agree to apply the following requirements:
  - i. Establish policies and procedures that ensure the application system has been designed, built and implemented in a secure manner according to industry recognized best practices or frameworks (e.g., Build Security in Maturity Model (BSIMM) benchmarks, Open Group ACS Trusted Technology Provider framework, NIST, OWASP, etc.).
  - ii. Establish policies and procedures that ensure data security has been designed, built, and implemented into the application system according to industry recognized best practices or frameworks (e.g., CDSA, MULITSAFE, CSA Trusted Cloud Architectural Standard, FedRAMP, CAESARS, etc.).
  - iii. Establish policies and procedures that ensure the application system has been properly tested, including the development of a security test plan that defines an approach for testing or otherwise establishing that each of the security requirements has been met.
  - iv. Perform vulnerability assessment and penetration test on the application system to identify any security issues prior to the application system being placed into production. The Company or its Subcontractors verify that appropriate and reasonable action will be taken to mitigate any security issues identified prior to the system being placed into production.
  - v. Upon Central Hudson's request, the Company and each Subcontractor shall promptly provide the results of any vulnerability assessment and penetration test.
  - vi. Establish policies and procedures that ensure the application system has a proper change management and patch management process that includes applying, testing, and validating the appropriate changes / patches before being placed in the production system.
  - vii. Upon Central Hudson's request, the Company and each Subcontractor shall promptly provide a self-certification letter to Central Hudson verifying that the application system meets the security requirements stated in the Data Security Rider, that all security activities have been performed, and all identified security issues have been documented and resolved.
- (2) Company warrants that the application system contains no virus, Trojan, worm, undocumented shutdown mechanism or other code or feature which is intended, or is known by Company as likely, to disable, damage, destroy, deny access to or degrade the performance of the application system, or Confidential Information, Data or other information technology resource. Company warrants that the application system contains no backdoors or other feature that is intended to allow Company or someone else to gain unauthorized or surreptitious access to the application system or Confidential Information, Data or other information technology resources. Company agrees to indemnify and hold Central Hudson harmless from any claims, damages, causes of action, costs and expenses arising out of or related to any breach of the warranty set forth in this paragraph.

#### **IV. Incident Reporting**

- (1) It shall be presumed that the consequences of a virus, worm, Trojan, hacker intrusion or similar network security breach is not beyond the control of the Company or its Subcontractors.
- (2) The Company shall remain responsible for any Cyber Event or Cyber Incident in relation to its or its Subcontractor's obligation set forth in the Agreement and Data Security Rider.
- (3) The Company and their Subcontractors shall notify Central Hudson of a cyber-incident based on the Notification Table. Upon Central Hudson's request, the Company shall utilize and pay the cost for a computer forensic expert to investigate the incident that is either provided by the Company or Central Hudson.

<b>Classification</b>	<b>Description</b>	<b>Notification By</b>
Low	<ul style="list-style-type: none"><li>• System unavailable affecting 5% of Users.</li></ul>	Within 24 hours upon identification
Medium	<ul style="list-style-type: none"><li>• System unavailable affecting 10% of Users.</li><li>• Cyber Event as defined in the Data Security Rider.</li></ul>	Within 8 hours upon identification
High	<ul style="list-style-type: none"><li>• System unavailable affecting 15% of Users.</li><li>• Cyber Incident as defined in the Data Security Rider.</li><li>• User request, complaint or other communication regarding potential misuse or unauthorized access to User's customer information.</li></ul>	Immediately upon identification

- (4) The Company and its Subcontractors shall establish policies and procedures to properly investigate a Cyber Event or Cyber Incident and be willing to work with Central Hudson's forensic examiner.

#### **V. Right to Audit**

- (1) Upon Central Hudson's request, the Company shall provide reasonable evidence that the controls of the Company and its Subcontractors have the proper security controls in place to protect Central Hudson's Confidential Information and to ensure that the Company's Subcontractor's information systems related to the Services are operating effectively to ensure availability. The evidence may include, as determined by the Central Hudson, third party audit reports, such as the AICPA's SSAE 16 SOC 1 and SOC 2 (all 5 of the trust principles) reports or a penetration test report, or a certification letter from a third party verifying that the Company and its Subcontractors are in compliance, such as an ISO 27001 or PCI DSS certification letter.

- (2) Central Hudson may also, at its discretion, perform a security controls audit or penetration testing of the Company upon notice to the Company not less than 30 business days. The Company shall include in each of its Contracts with each of its Subcontractors a right for the Central Hudson to audit their services. The Company is responsible for addressing any user entity control requirements and any control deficiencies or findings that are noted in these audit reports.



**Vendor Questionnaire**

1. Is your computer network internal to your organization or do you have it hosted by a cloud / colocation vendor? If so, what vendor do you use?
2. What technical security measures has the vendor taken to protect its network?
  - a. Firewall,
  - b. Intrusion detection / prevention system,
  - c. Anti-virus / anti-malware,
  - d. Data loss prevention,
  - e. Endpoint protection,
  - f. Network access control,
  - g. Data encryption,
  - h. Vulnerability scanning,
  - i. Identity access management,
  - j. Password management,
  - k. Security alerting, audit logging, etc.,
  - l. Remote access.
3. What procedural security measures has the vendor taken to protect its network?
  - a. Timely removal of terminated employees,
  - b. Security awareness training – focus on phishing emails (required by PSC),
  - c. Computer use policy,
  - d. Incident response procedures,
  - e. System pre-implementation testing,
  - f. Change management controls,
  - g. Physical security controls over computer room,
  - h. Background checks on IT personnel,
  - i. Framework (CoBIT, ISO 27001),
  - j. Employee signed NDA,
  - k. Data privacy controls, etc.
4. How is the data transferred? Will it be encrypted in transit?
5. Where is the data physically located? (in the U.S. or foreign country)
6. How is the data stored and backed up? Will it be encrypted?
7. How do you ensure that unauthorized access is prevented?
8. Do you allow your employees to save Central Hudson data to a local or removable device or to print Central Hudson data?

**CONFIDENTIAL DRAFT DOCUMENT, 10-05-2016**

9. Upon Central Hudson request, how would you either return or delete Central Hudson data (both electronic and hardcopy for production and backup systems)?
10. Are personnel able to access Central Hudson data from a mobile device? If so, what security measures have you taken to protect the device?
11. Do you have third party security assessments / audits performed on your network? (penetration test, vulnerability testing, SSAE 16 SOC 2 audit).
12. Do you have cyber insurance of \$1 million?
13. Does the vendor use outsourced third parties to assist in providing the service?
14. Will the vendor use cloud computing software / hardware to provide the service?