

STATE OF NEW YORK  
PUBLIC SERVICE COMMISSION

CASE 23-E-0418 - Proceeding on Motion of the Commission as to the Rates, Charges, Rules and Regulations of Central Hudson Gas & Electric Corporation for Electric Service.

CASE 23-G-0419 - Proceeding on Motion of the Commission as to the Rates, Charges, Rules and Regulations of Central Hudson Gas & Electric Corporation for Gas Service.

RULING ON PROCEDURAL MATTERS AND AMENDING PROTECTIVE ORDER

(Issued September 8, 2023)

JAMES A. COSTELLO and ASHLEY MORENO, Administrative Law Judges:

A procedural conference was held in these proceedings on August 29, 2023, to address a variety of matters, including party status and schedule. Central Hudson Gas & Electric Corporation (Central Hudson), Department of Public Service trial Staff (DPS Staff), Communities for Local Power, Dutchess County, Key Capture Energy, Multiple Intervenors, New York Power Authority (NYPA), New York State Department of State Utility Intervention Unit (UIIU), Public Utility Law Project of New York, Inc. (PULP), Assemblymember Sarahana Shrestha, and the Town of Olive were represented at the conference. In addition, representatives of New York Geothermal Energy Organization, Ulster County, and Walmart, Inc. made appearances, stating their intent to request party status in the near future.

Party Status

Regarding party status, neither Central Hudson nor any other participant raised any opposition to any of the pending party status requests in either proceeding. Several entities

have party status as of right.<sup>1</sup> By this ruling, we are confirming our oral ruling that the persons or entities listed on Appendix A to this ruling are hereby granted party status because we find that their intervention as parties is likely to contribute to the development of a complete record in the case(s).

Persons or entities who filed requests to intervene following the procedural conference, as well as Mid-Hudson Energy Transition, Inc. (MHET) for whom we seek further information about its participation, have not yet been conferred party status (i.e., Energy Justice Law and Policy Center). Following the procedural conference, we requested further clarification from MHET, and we will consider its request for party status upon receipt of that information.

As we discussed at the conference, requests for party status will be treated as motions. All parties seeking party status will be provisionally added to the party list(s). If no objection is raised by a party or by us within the requisite time, party status is deemed to be conferred on that person/entity.

All persons and entities filing a request to intervene in these proceedings are required to adhere to the standards of conduct required of attorneys appearing before the courts of the State of New York and are required to treat all other parties, the Administrative Law Judges, and Commission with respect. All parties are required to become familiar with and adhere to the Commission's Rules of Procedure (see 16 New York Codes, Rules and Regulations (NYCRR) Parts 1-6) and to read and follow our rulings.

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<sup>1</sup> For example, the party status of Central Hudson, DPS Staff, and UIU, is recognized by 16 NYCRR §4.3(b)(1).

Ex Parte Communications

As this is an evidentiary process, the ex parte rule applies to these proceedings. Parties are prohibited from raising *substantive* issues in these proceedings with us, written or verbal, without notice on all parties. The purpose of this rule is to ensure fair play - that no party can gain an unfair advantage by discussing substantive issues of the cases with the Administrative Law Judges without other parties present to weigh in. However, parties are welcome and encouraged to reach out to us with any procedural questions.

Discovery

Central Hudson will be using a portal for parties to access discovery in these proceedings. To the extent that any discovery responses are amended or corrected, both the original response, and any revised response, must be posted to the portal. To promote transparency and avoid confusion, our expectation is that no information posted to the portal be deleted or removed.

Schedule

Central Hudson circulated a proposed schedule to us on August 25, 2023. In its email correspondence, Central Hudson indicated that DPS Staff supports the schedule, that Multiple Intervenors, UIU, and PULP indicated no objection to the schedule, and the remaining individuals and entities appearing on the party list did not comment on or express opposition to the proposed schedule.

The proposed schedule included the following milestones and dates: Staff and Intervenor Testimony (November 21, 2023); Rebuttal Testimony (December 19, 2023); and the Commencement of Evidentiary Hearing (January 9, 2024). At the procedural conference, Central Hudson clarified that it inadvertently excluded the date by which it would provide

updates and corrections. It proposes to do so by September 15, 2023.

No party opposed the proposed schedule and therefore we adopt it as proposed:

Milestone	Date
Filing of Central Hudson Updates and Corrections	September 15, 2023
Filing of DPS Staff and Intervenor Testimony and Exhibits	November 21, 2023
Filing of Rebuttal Testimony	December 19, 2023
Commencement of Evidentiary Hearing	January 9, 2024

#### Testimony

Parties are required to present their initial and rebuttal cases by means of prepared written testimony and exhibits. Parties are not authorized to file comments in lieu of testimony because they are unsworn statements, not subject to cross-examination, and will not enhance the evidentiary record. Any comments filed by parties will be treated as public comments and included in the administrative case records for these proceedings.

Testimony and exhibits must adhere to the formatting requirements included in the Commission's Rules of Procedure at 16 NYCRR 4.5. Testimony and exhibits must be separately filed rather than filed as one combined document. Parties are reminded that all testimony and exhibits must be filed with the Secretary, served on all parties, and on the Administrative Law Judges.

Exhibit List

We will separately circulate a spreadsheet to the parties by email with instructions so that the parties can start populating an exhibit list for use later in the proceeding. Any party filing testimony or exhibits is required to fill out the spreadsheet in conformance with our instructions. A separate process will be established for identifying exhibits introduced at the evidentiary hearing.

Settlement

To the extent that the parties may pursue settlement negotiations in these proceedings necessitating relief from the litigation schedule, Central Hudson is required to consent to an extension of the suspension period of no less than 30 days. Parties are reminded that, though there may be extensions of the suspension period, to the extent that Central Hudson seeks to be made-whole during that extension, there is a financial impact on ratepayers. Therefore, to the extent the parties pursue settlement later in these proceedings, we encourage the parties to be mindful of the financial impact to ratepayers and pursue settlement deliberately and expediently to alleviate any potential rate compression.

Protective Order

On August 9, 2023, we adopted a Protective Order in these proceedings. All parties must be familiar with and adhere to the provisions of the Protective Order. Any party that wants access to Protected Information shall fill out the applicable Acknowledgment or Agreement, file it with the Secretary, and serve it on all parties and on the Administrative Law Judges.

Considering our grant of party status to Assemblymember Shrestha, we are amending the Protective Order to include provisions for addressing substantive determinations regarding Freedom of Information Law (FOIL) requests that may be

submitted to Assemblymember Shrestha's office or the State Legislature. Accordingly, attached to this ruling is a revised Protective Order that includes provisions to address such circumstances.

The changes to the Protective Order include:

- Inclusion of new paragraph 5b. that defines "State Legislature," "State Legislator" and "legislative employee";
- Amendment of paragraph 12 to insert "of record" after "counsel or an authorized representative" to clarify that counsel or authorized representative shall appear on the party list(s);
- Inclusion of a new paragraph 12c requiring State Legislators to sign a "State Legislator and State Legislature Agreement", attached to the Protective Order as Attachment D, that describes the process to be followed where the State Legislator or State Legislature receives a FOIL request for Protected Information obtained through the State Legislator's participation in these proceedings, and it is determined that the Protected Information is not otherwise exempt from disclosure;
- Modification of paragraphs 15 and 16 to include the State Legislator and State Legislature Agreement; and,
- Inclusion of a new Protective Order - Attachment D - State Legislator and State Legislature Agreement.

In order to access Protected Information, Assemblymember Shrestha must execute Attachment D, file it with the Secretary, and serve a copy on the parties and Administrative Law Judges. Protected Information may not be shared with any other member of the State Legislature or with

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anyone else not entitled to access Protected Information pursuant to the Protective Order.

Procedural Questions

All parties are encouraged to reach out to us with any procedural questions, either by email or phone.

(Signed)

JAMES A. COSTELLO

(Signed)

ASHLEY MORENO

Parties to Case 23-E-0418

Central Hudson Gas & Electric Corporation  
New York State Department of Public Service Trial Staff<sup>2</sup>  
Communities for Local Power  
Dutchess County  
Key Capture Energy  
Multiple Intervenors  
New York Power Authority  
New York State Department of State - Utility Intervention Unit  
Public Utility Law Project of New York, Inc.  
Assemblymember Sarahana Shrestha  
Town of Olive

Parties to Case 23-G-0418

Central Hudson Gas & Electric Corporation  
New York State Department of Public Service Trial Staff  
Communities for Local Power  
Dutchess County  
Multiple Intervenors  
New York Power Authority  
New York State Department of State - Utility Intervention Unit  
Public Utility Law Project of New York, Inc.  
Assemblymember Sarahana Shrestha

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<sup>2</sup> Department of Public Service trial staff is reminded to file its list of persons designated as trial staff as soon as practical and to update that list as applicable. 16 NYCRR 4.3(d).



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AMENDED PROTECTIVE ORDER

(Adopted by Ruling Issued on September 8, 2023)

**PURPOSE**

1. The purpose of this Protective Order is to facilitate the parties' participation in and the expeditious conduct of these proceedings by making Protected Information available to the parties promptly, without adversely affecting any party's legitimate interests in either maintaining or challenging the confidentiality of the Protected Information.

**DEFINITIONS**

For the purposes of this Protective Order:

2. "Protected Information" is information that is submitted to the New York State Department of Public Service (DPS) by a party to these proceedings under cover of a claim that it should be protected from public disclosure under the Freedom of Information Law (FOIL), Public Officers Law (POL) § 84 et seq., as implemented by Part 6 of the Rules of the Public Service Commission (Commission), 16 NYCRR § 6-1.1 et seq., and the procedures outlined in Paragraph 6 below regarding a Request for Protected Status.
3. The "submission" of documents is a generic term referring to any means by which a party to these proceedings transfers documents into the possession of the DPS. Discovery questions and answers are examples of documents that are submitted. Discovery questions and answers traditionally are not filed in Commission proceedings and

do not become part of the formal record unless a party tenders them as an exhibit through an evidentiary or similar process.

4. The "filing" of documents refers only to the process whereby a person tenders a document for inclusion in the formal record of this case that is maintained by the Secretary of the Commission. Through the DPS Document and Matter Management (DMM) system, the Secretary has the capability to receive and store both public and confidential documents in the formal record of a proceeding, and both are considered filed in the Secretary's files. Documents that are filed are a subset of documents that are submitted.
- 5a. For purposes of this Protective Order, "State Agency" means any state or municipal department, board, bureau, division, commission, committee, public authority, public corporation, council, office, or other governmental entity performing a governmental or proprietary function for the state or any one or more municipalities thereof, except the judiciary or the state legislature.
- 5b. For the purposes of this Protective Order, "State Legislature" means the legislature of the state of New York, including any committee, subcommittee, joint committee, select committee, or commission thereof." "State Legislator" means any member of the legislature of the state of New York. "Legislative employee" shall mean any officer or employee of the legislature but shall not include members of the legislature.

#### **PROCESS FOR SUBMISSION AND SHARING OF PROTECTED INFORMATION**

6. To qualify its information as Protected Information, the party submitting the information (Providing Party) to the DPS must submit to the Administrative Law Judges a contemporaneous, written request (Request for Protected Status) that:
  - a. clearly and specifically identifies what information the Providing Party believes should receive such treatment;
  - b. briefly describes how the information meets the criteria for exemption from public disclosure under FOIL and the Commission rules implementing it, cited above; and

- c. identifies to which parties the Protected Information has been or will be provided.

The Protected Information itself shall be submitted to the Administrative Law Judges with the Request for Protected Status.

7. The Request for Protected Status must be served on all parties. A Providing Party should endeavor in all cases to prepare a Request for Protected Status that does not, itself, include Protected Information, so that the Request for Protected Status can be served on all parties and, if appropriate, publicly filed, as outlined below. If that is not possible, a Providing Party shall prepare redacted and unredacted versions of the Request for Protected Status, in which case only the redacted version should be served on parties not entitled to receive Protected Information.
8. The party making a Request for Protected Status must provide the Protected Information directly to counsel for parties requesting it and entitled to receive it under this Protective Order at the same time it submits the Request for Protected Status.
9. The Request for Protected Status needs to be filed with the Secretary of the Commission only if the Protected Information is included in a document to be filed with the Secretary. Further details about filing documents are outlined in Paragraph 23.
10. The cover page of any document containing Protected Information shall be clearly marked "CONFIDENTIAL SUBJECT TO PROTECTIVE ORDER IN CASE(S) [23-E-0418, 23-G-0419 or 23-E-0418 et al.]." In addition, each page of a document on which Protected Information appears should be clearly marked "CONFIDENTIAL - CONTAINS PROTECTED INFORMATION." Where possible, when a document is being created for submission in these proceedings, the Protected Information itself should be denoted as illustrated in the following example:

In a sentence where confidential information is to be revealed, the sentence should flag the precise confidential information by including **BEGIN CONFIDENTIAL INFORMATION < > END CONFIDENTIAL INFORMATION** in one or more places so that a redacted version with identical line

numbering and pagination can be prepared from it as necessary. For example, "As shown on Exhibit RBG-1, Applicant forecasts that, once it is fully operational, its production cost will be **BEGIN CONFIDENTIAL INFORMATION <\$40> END CONFIDENTIAL INFORMATION** per MWH on an average annual basis,".

#### **ACCESS TO PROTECTED INFORMATION**

11. Any party that: (a) has requested the information or normally would be entitled to service of such under the Commission's Rules of Procedure; and (b) is not a party that would benefit from access to the Protected Information by reason of being a competitor or having an adverse business interest to the Providing Party, is entitled to access to Protected Information under this Protective Order. Parties receiving Protected Information under this Protective Order are "Receiving Parties."
12. Except as provided in subparagraphs (a) and (b) below, to access Protected Information, counsel or an authorized representative of record of a Receiving Party must execute the Acknowledgment attached hereto as Attachment A, file the signed Acknowledgment with the Secretary of the Commission, and contemporaneously serve it on all other parties and the Administrative Law Judges. Counsel or other authorized representative that has signed the Acknowledgment on behalf of the Receiving Party is responsible for ensuring that the party's officers, principals, employees, agents, and consultants are familiar with the terms of this Protective Order.
  - a. Trial staff of the DPS (DPS Staff) is subject to and is familiar with the provisions of Public Service Law § 15 and Public Officers Law § 74, which provide for disciplinary action, fine, or prosecution for the disclosure of confidential information. Therefore, DPS Staff is not required to execute the Acknowledgement in this Protective Order to have access to Protected Information but is otherwise bound by the terms of this Protective Order.

- b. New York State Agencies<sup>3</sup> and Municipalities<sup>4</sup> may participate in these proceedings in the same manner as any other intervenor-party. Like DPS Staff, State Agencies are subject to both POL § 74 and FOIL. Similarly, Municipalities are subject to both Article 18 of the General Municipal Law<sup>5</sup> and FOIL. Therefore, they need not sign the Acknowledgement but, instead, must sign and file with the Secretary a State Agency and Municipality Agreement, attached hereto as Attachment B. The State Agency and Municipality Agreement sets forth that Agency's or Municipality's agreement that all determinations regarding the confidentiality of Protected Information shall be made by the Administrative Law Judges in these proceedings in the first instance, and otherwise made exclusively by the DPS, in acknowledgement that the State Agency or Municipal party has obtained Protected Information only by virtue of its status as a party in these proceedings.
- c. State Legislators and legislative employees may participate in these proceedings in the same manner as any other intervenor-party. State Legislators and legislative employees are subject to POL §74 and the State Legislature is subject to FOIL. Therefore, State Legislators and legislative employees need not sign the Acknowledgement but, instead, must sign and file with the Secretary a State Legislator and State Legislature Agreement, attached hereto as Attachment D. The State Legislator and State Legislature Agreement sets forth that State Legislator and State Legislature's agreement that all determinations regarding the confidentiality of Protected Information shall be made by the Administrative Law Judges in these proceedings in the first instance, and otherwise made exclusively by the DPS, in acknowledgement that the State Legislator party has obtained Protected Information only by virtue of its status as a party in these proceedings.

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<sup>3</sup> As defined in Public Officers Law § 74.

<sup>4</sup> As defined in General Municipal Law § 800(4).

<sup>5</sup> See General Municipal Law § 805-a(1)(b).

13. A Receiving Party's consultant or other expert who is not an employee or agent of the Receiving Party but is retained to assist the Receiving Party in its participation in these proceedings, is an "Outside Consultant." If an Outside Consultant desires to obtain access to Protected Information, the Receiving Party shall:
- a. provide the Outside Consultant with a copy of this Protective Order;
  - b. obtain from the Outside Consultant an executed Consultant Protective Agreement, attached to this Protective Order as Attachment C;
  - c. file a copy of the executed Consultant Protective Agreement with the Secretary of the Commission and contemporaneously serve it on all other parties and the Administrative Law Judges;
  - d. notify the Providing Party of its intention to make Protected Information available to the Outside Consultant; and
  - e. obtain the consent of the Providing Party, which consent may not be unreasonably withheld. If the Providing Party does not object to the notice within five (5) business days following the filing of the Consultant Protective Agreement, consent to such access will be deemed granted. If the Providing Party does object to the provision of any or all of its Protected Information to the Outside Consultant, the Administrative Law Judges will establish procedures to resolve the objection expeditiously.
14. Counsel or an authorized representative of record of a Receiving Party may, on a need-to-know basis and solely for the purposes of these proceedings, provide access to Protected Information to the following persons, subject to the conditions set forth in this Protective Order:
- a. Persons employed by the Receiving Party; and
  - b. Persons not employed by the Receiving Party but who are identified by that party as Outside Consultants participating in these proceedings on behalf of that party, provided that each such person has executed the Consultant Protective Agreement and a copy of that

Agreement has been filed and served on all other parties pursuant to Paragraph 13.

15. When executing the Acknowledgement, State Agency and Municipality Agreement, and/or Consultant Protective Agreement, and/or State Legislator and State Legislature Agreement, a party may indicate that it does not want to receive all Protected Information automatically. The purpose of this provision is to relieve parties with limited interests in these proceedings from the obligation to safeguard unwanted information. In lieu of the Protected Information itself, the Providing Party will send parties that have elected this option a notice of the availability of Protected Information and a brief description of the nature of the information. Parties who receive this notice may request all or some of the described information at any time during these proceedings. The Providing Party has no obligation to make it available until such request is received.
  
16. A Providing Party may opt not to supply Protected Information to parties that have executed the Acknowledgement, State Agency and Municipality Agreement, and/or Consultant Protective Agreement, and/or State Legislator and State Legislature Agreement if the Providing Party has a good-faith belief that such parties are not qualified to be Receiving Parties, as described in Paragraph 11 of this Protective Order. To exercise this option, the Providing Party shall provide a written justification for its belief that such parties are among the persons for whom exceptions to disclosure of the Protected Information are or should be established. If such parties object to the withholding of the Protected Information by the Providing Party, and the parties have attempted to resolve the objections on an informal basis but cannot reach agreement, the matter may be brought to the Administrative Law Judges for resolution.

**SAFEGUARDING PROTECTED INFORMATION**

17. All parties, including their officers, principals, employees, and agents, are bound by this Protective Order.
18. No party shall disclose, copy or otherwise reproduce, or use Protected Information for any purpose other than that authorized by this Protective Order.
19. No duplication or reproduction of the Protected Information may be made beyond that which is necessary to give access to the persons authorized by the provisions of this Protective Order. Persons who are provided with access to Protected Information pursuant to this Protective Order may take limited notes regarding such information to the extent necessary in connection with these proceedings and should label such notes "Confidential." The protections afforded to Protected Information apply not only to the originally provided document or file in which it was contained, but also to any subsequent documents, notes, recordings, electronic files, or other media in which it may be incorporated, including copies generated by automated back-up systems for computer workstations and network data storage devices.
20. All parties in possession of Protected Information must safeguard it from public disclosure in accordance with the terms, purposes, and intent of this Protective Order. To this end, persons having custody of any Protected Information shall keep all copies and notes of Protected Information segregated physically under lock, electronically under password protection or encryption, or otherwise properly secured when they are not being reviewed.
21. With the exception stated here, no person receiving Protected Information may use such information for any purpose other than preparation for and participation in these proceedings, and then solely as contemplated in this Protective Order. The exception to this restriction is that DPS Staff may use Protected Information received in the course of these proceedings for other purposes and in other proceedings, but only to the extent that DPS Staff otherwise would be entitled to receive such Protected Information either in the course of the ongoing regulatory functions of the DPS generally or specifically in its roles as trial or advisory staff in a proceeding before the



Public Service Commission or New York State Board on  
Generation Siting and the Environment.

**USE OF PROTECTED INFORMATION IN THESE PROCEEDINGS**

22. Any party may rely upon, quote, cite to, ask questions about, dispute, criticize, and otherwise use Protected Information in the conduct of this case, so long as such party maintains its confidentiality consistent with this Protective Order, through measures required by this Protective Order, such as the preparation of Redacted and Unredacted Versions, proper labeling of Protected Information, restricted sharing of Protected Information, and proper storage and safekeeping of Protected Information, among other requirements.
23. Filed Documents: Parties may refer to Protected Information in briefs, motions, pre-filed testimony, exhibits, or other materials filed in these proceedings. When a party includes Protected Information in a filed document, the filing party must adhere to the following procedure:
  - a. The filing party shall file a Request for Protected Status identifying all Protected Information contained in its filing. This applies even if a Request for Protected Status with respect to the Protected Information previously was submitted to the Administrative Law Judges.
  - b. If the filing party received the Protected Information under the terms of this Protective Order, the filing party shall prepare a Request for Protected Status identifying the Providing Party and appending the Providing Party's previously submitted Request for Protected Status.
  - c. The filing party must prepare separate versions that include and omit the Protected Information (the Unredacted Version and the Redacted Version, respectively). The versions must be identical in pagination and formatting, differing only in the presence or absence of the Protected Information. The Unredacted Version must bear a conspicuous notation on the cover page and on each page bearing Protected Information, as described in Paragraph 10. The Unredacted Version will be treated as Protected Information pursuant to this Protective Order; the

Redacted Version will be treated as a public, non-confidential document. The Unredacted Version should be served only upon those parties entitled to receive Protected Information under the terms of this Protective Order, while the Redacted Version, and the Request for Protected Status, shall be served on all other parties.

- i. If the filing party is a registered DMM E-filer, the filer shall file both the Redacted and Unredacted Versions electronically, making use of the capability of DMM to accept a confidential document for filing from a registered user.
  - ii. If the filing party is not registered DMM E-filer, the filer shall send to the Secretary for filing only the Redacted Version and the Request for Protected Status. The Unredacted Version shall be submitted to the Administrative Law Judges with a request to file the Unredacted Version in DMM on the filing party's behalf and included in the formal case file maintained by the Secretary.
24. Where a document containing Protected Information is submitted but not filed, such as a document exchanged in discovery, the Providing Party must prepare a Redacted Version and provide the Redacted Version to any party that is precluded from receiving an Unredacted Version under Paragraphs 11 and 16 of this Protective Order.
  25. Where a Receiving Party intends to use Protected Information provided by a Providing Party in a filed document, such as in pre-filed testimony, a hearing exhibit, or a brief, the Receiving Party shall give the Administrative Law Judges and the Providing Party at least five (5) business days' notice prior to the filing deadline. Thereafter, the Providing Party and the Receiving Party promptly shall confer in good faith on ways that might enable the Receiving Party to submit a public document, such as the waiver of the Providing Party's claim of confidentiality as to particular pieces of information or the creation of a redacted version that meets the Receiving Party's need to convey information with equal effectiveness.
  26. If Protected Information is proposed to be included in the evidentiary record of the case, the Administrative Law

Judges shall take steps to ensure that separate confidential and public versions of the transcript of testimony and the exhibits are created.

27. If, at any time, it becomes apparent that Protected Information is to be discussed at a hearing or conference, the Administrative Law Judges shall take steps to ensure that only those entitled to receive Protected Information will be able to hear or review the information.
28. To facilitate the management of a hearing or conference at which Protected Information will be discussed, counsel or the authorized representative of a party will advise the parties and the Administrative Law Judges as far in advance as possible and, absent good cause shown, not less than 72 hours in advance, that particular testimony, questioning, discussions or presentations are expected to include Protected Information.

**DETERMINATIONS REGARDING CONFIDENTIAL STATUS OF PROTECTED INFORMATION**

29. In general, this Protective Order allows the parties to these proceedings to exchange, use, and file Protected Information in these proceedings without the need for a formal determination as to whether the information is entitled to be exempt from public disclosure under FOIL or the Commission's implementing regulations, 16 NYCRR Part 6. In the absence of any such formal determination, the DPS will treat all Protected Information as confidential, consistent with the requirements of FOIL.
30. If (a) there is a request for public disclosure of any Protected Information, or (b) any party to these proceedings wishes to challenge a Providing Party's assertion that information is Protected Information and should be exempt from disclosure under FOIL, or (c) the Administrative Law Judges so choose as a matter of discretion, the Administrative Law Judges will rule on the confidentiality of Protected Information under FOIL. Before the Administrative Law Judges make such a ruling, the Providing Party will be given an opportunity to provide a more detailed brief justifying its claim that the information is confidential and exempt from disclosure under FOIL.

31. Any party may object to the designation of particular documents or other materials as Protected Information. A party objecting to the designation of documents or materials as Protected Information must notify the Providing Party, other parties to these proceedings entitled to access to the information in question, and the Administrative Law Judges of its objection. Thereafter the Administrative Law Judges shall set a deadline for the Providing Party's brief and establish such other procedures as may be appropriate to the determination.
32. In the event the Administrative Law Judges rule that certain information is not entitled to confidentiality under FOIL, the information nevertheless shall continue to be Protected Information under this Protective Order, and to be subject to all the confidentiality protections afforded by this Protective Order, until all appeals relating to the confidentiality determination are exhausted. Where no further appeals are available and there is a final, non-appealable determination that information is not entitled to confidentiality under FOIL, the information must continue to be Protected Information under this Protective Order until 15 days after such final determination. Thereafter, the information will lose its status as Protected Information under this Protective Order and can be made public.

#### **UNAUTHORIZED RELEASE OF PROTECTED INFORMATION**

33. If a party believes that it may have disclosed Protected Information to a person not entitled to receive it under the terms of this Protective Order, it will notify the Providing Party and Administrative Law Judges immediately and will give detailed information concerning all steps taken or that will be taken to reverse or minimize the consequences of the improper release.
34. Persons who use or disclose Protected Information contrary to the terms of this Protective Order will be subject to such sanctions as may be imposed by the Administrative Law Judges or the Commission, which may include limitation or termination of the responsible individual's or party's participation in these proceedings. Such persons and the parties they represent also may be liable criminally or civilly under relevant federal and State statutes and regulations.

**OBLIGATION TO DESTROY PROTECTED INFORMATION**

35. The obligation of a party in possession of Protected Information to safeguard it from public disclosure does not end with these proceedings. It continues as specified in FOIL and 16 NYCRR § 6-1.4(a)(3).
36. Within one year following the completion of these proceedings, including the periods for administrative or judicial review of these proceedings, all Receiving Parties shall certify to each Providing Party that the Protected Information has been destroyed. The certification will describe how the Protected Information was destroyed and address the destruction of any subsequent documents, notes, recordings, electronic files, or other media in which it may be recorded. Parties acknowledge that complete destruction or elimination of all versions of Protected Information may be impossible or extremely impracticable, due to the existence of copies generated by automated back-up systems for computer workstations and network data storage devices. Nevertheless, they shall exercise best efforts to destroy reasonably accessible versions of the Protected Information and maintain measures to continue to protect the confidentiality of any Protected Information that may remain in such systems.
37. In special circumstances, such as where Protected Information is contained in a format that makes its destruction problematic or gives it particular value to the Providing Party, the Providing Party may specify that the Protected Information must be returned to it in lieu of destruction.
38. Notwithstanding the foregoing, DPS Staff may retain Protected Information, as stated above in Paragraph 21, provided that confidentiality is maintained consistent with the terms and conditions of the Protective Order. Other parties may retain Protected Information beyond the one-year period only if given express permission to do so by the Providing Party.

**RIGHTS RESERVED**

39. Nothing in this Protective Order imposes any obligations upon a Providing Party with respect to the handling of its own Protected Information.

40. This Protective Order does not constitute a substantive ruling that the Protected Information is entitled to confidential status pursuant to FOIL or the Commission's implementing regulations. This Protective Order shall in no way constitute a waiver of the rights of any party in these proceedings to contest any assertion, or to appeal any finding, that specific information is or is not Protected Information or that such information should or should not be subject to the protective requirements of this Protective Order.
41. Nothing in this Protective Order limits or expands in any way the applicable law concerning the permissible scope of discovery. Nothing in this Protective Order limits in any way the right of any party to question, challenge, or object to the admissibility of any Protected Information furnished under the terms of this Protective Order on any grounds available by law, including relevancy, materiality and jurisdiction.

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PROTECTIVE ORDER - ATTACHMENT A  
ACKNOWLEDGMENT

On behalf of:

\_\_\_\_\_  
(Name of Party)

I acknowledge receipt of a copy of the Protective Order adopted in a ruling issued on September 8, 2023, in the above-captioned proceedings and affirm that I have read and understand its terms and provisions.

I understand that certain information to which the party I represent is to be given access is Protected Information within the meaning of that term under the Protective Order and that the use or disclosure of that Protected Information, other than as permitted by the Protective Order, may cause substantial commercial harm to a Providing Party. I assume full responsibility for ensuring the employees, officers, and agents of the party I represent who may obtain access to Protected Information are fully aware of all terms of the Protective Order.

I further certify that I am an attorney representing the party named above, or an authorized representative of such party, and

that I have full authority to execute this document.  
The party named above elects (check one):

- To receive all Protected Information as soon as it is made available pursuant to the Protective Order.
- To receive notice of the availability of Protected Information.

BY: \_\_\_\_\_ NAME: \_\_\_\_\_  
(Signature) (Print or Type)

DATE: \_\_\_\_\_ TELEPHONE: \_\_\_\_\_

E-MAIL ADDRESS: \_\_\_\_\_



STATE OF NEW YORK  
PUBLIC SERVICE COMMISSION

CASE 23-E-0418 - Proceeding on Motion of the Commission as to the Rates, Charges, Rules and Regulations of Central Hudson Gas & Electric Corporation for Electric Service.

CASE 23-G-0419 - Proceeding on Motion of the Commission as to the Rates, Charges, Rules and Regulations of Central Hudson Gas & Electric Corporation for Gas Service.

PROTECTIVE ORDER - ATTACHMENT B  
STATE AGENCY AND MUNICIPALITY AGREEMENT

On behalf of: \_\_\_\_\_  
(Name of Party, hereafter referred to as the "State Agency or Municipality")

I acknowledge receipt of a copy of the Protective Order adopted in a ruling issued September 8, 2023, in the above-captioned proceedings and affirm that I have read and understand its terms and provisions.

The State Agency or Municipality acknowledges that certain information to which it will be given access is Protected Information (as defined in the Protective Order) and that the use or disclosure of that Protected Information, other than as permitted by the Protective Order, may cause substantial commercial harm to a Providing Party.

The State Agency or Municipality acknowledges that (a) it is granted access to Protected Information only by virtue of its party status in these proceedings and (b) the Protective Order governs the treatment of Protected Information by all parties, including the State Agency or Municipality. The State Agency or Municipality agrees that any substantive determination of the confidential status of Protected Information pursuant to the Freedom of Information Law (FOIL), Article 6 of the Public Officers Law, will be made by the Department of Public Service (DPS). The Administrative Law Judges will make the determination in the first instance. The State Agency or Municipality agrees that it will maintain as confidential all Protected Information until, at a minimum, 15 days after a Providing Party's claim has been finally denied by the DPS in these proceedings.

State Agency Parties or Municipality Parties are subject to FOIL. As such, the State Agency or Municipality agrees that:

1. Where a FOIL request is received by the State Agency or Municipality seeking Protected Information obtained through that Agency's or Municipality's participation in these proceedings, and where the Administrative Law Judges have not made a substantive determination regarding the Protected Information's status as confidential, the records shall not be disclosed by the State Agency or Municipality. The State Agency or Municipality shall deny the request for disclosure, citing to the Protective Order. The State Agency or Municipality may refer the requestor to DPS for a substantive determination.
2. Where any FOIL request is received by the State Agency or Municipality for Protected Information obtained by that State Agency or Municipality through its participation in these proceedings and the Administrative Law Judges, or DPS on appeal from the Administrative Law Judges, has granted the information confidential status, the State Agency or Municipality shall deny the request for disclosure, citing to the Administrative Law Judges' or DPS's determination and the Protective Order.
3. Any appeal of an initial denial of disclosure under FOIL that is received by the State Agency or Municipality shall be denied on the same basis as the initial denial. Where no substantive determination as to the confidentiality of the Protected Information has been made by the Administrative Law Judges, the State Agency or Municipality may refer the requestor to DPS for a substantive determination.
4. Where the Administrative Law Judges have made a substantive determination that the information alleged to be confidential should be made public because it is not exempt from public disclosure under FOIL, and any appeals from this determination are fully resolved, with the final decision in favor of public disclosure, the State Agency or Municipality may release the information in response to a FOIL request, citing the DPS determination.

I certify that I am an attorney for, or an authorized representative of, the State Agency or Municipality identified above and have full authority to execute this document on its behalf.

NAME AND TITLE (PRINTED): \_\_\_\_\_

SIGNATURE: \_\_\_\_\_

DATE: \_\_\_\_\_ TELEPHONE: \_\_\_\_\_

E-MAIL ADDRESS: \_\_\_\_\_

I certify that I am the Records Access Officer/Appeals Officer of the (circle one) State Agency or Municipality identified above and have full authority to execute this document on its behalf.

NAME (Printed): \_\_\_\_\_

TITLE (circled) RECORDS ACCESS OFFICER or APPEALS OFFICER

SIGNATURE: \_\_\_\_\_

DATE: \_\_\_\_\_ TELEPHONE: \_\_\_\_\_

E-MAIL ADDRESS: \_\_\_\_\_

The State Agency or Municipality named above elects (check one):

- To receive all Protected Information as soon as it is made available pursuant to the Protective Order.
- To receive notice of the availability of Protected Information.

STATE OF NEW YORK  
PUBLIC SERVICE COMMISSION

CASE 23-E-0418 - Proceeding on Motion of the Commission as to the Rates, Charges, Rules and Regulations of Central Hudson Gas & Electric Corporation for Electric Service.

CASE 23-G-0419 - Proceeding on Motion of the Commission as to the Rates, Charges, Rules and Regulations of Central Hudson Gas & Electric Corporation for Gas Service.

PROTECTIVE ORDER - ATTACHMENT C  
CONSULTANT PROTECTIVE AGREEMENT

I acknowledge receipt of a copy of the Protective Order adopted in a ruling issued September 8, 2023, in the above-captioned proceedings, and affirm that I have read and understand its terms and provisions. I also acknowledge the importance of maintaining the confidentiality of the Protected Information.

In return for the opportunity to receive without delay information submitted in these proceedings that the Providing Party claims to be Protected Information as defined in the Protective Order, I certify that I will be bound by, and will comply fully with, the terms and conditions of the Protective Order. I assume full responsibility for ensuring such compliance.

I certify that I have full authority to execute this document.

BY: \_\_\_\_\_ NAME: \_\_\_\_\_  
(Signature) (Print or Type)

RETAINED BY (PARTY NAME): \_\_\_\_\_

FIRM/EMPLOYER, if applicable: \_\_\_\_\_

DATE: \_\_\_\_\_ TELEPHONE: \_\_\_\_\_

E-MAIL ADDRESS: \_\_\_\_\_

STATE OF NEW YORK  
PUBLIC SERVICE COMMISSION

CASE 22-E-0064 - Proceeding on Motion of the Commission as to the Rates, Charges, Rules and Regulations of Consolidated Edison Company of New York, Inc. for Electric Service.

CASE 22-G-0065 - Proceeding on Motion of the Commission as to the Rates, Charges, Rules and Regulations of Consolidated Edison Company of New York, Inc. for Gas Service.

PROTECTIVE ORDER - ATTACHMENT D  
STATE LEGISLATOR AND STATE LEGISLATURE AGREEMENT

On behalf of: \_\_\_\_\_  
(Name of Party, hereafter referred to as the "State  
Legislator" or "State Legislature")

I acknowledge receipt of a copy of the Protective Order adopted in a ruling issued September 8, 2023, in the above-captioned proceedings and affirm that I have read and understand its terms and provisions.

The State Legislator acknowledges that certain information to which they will be given access is Protected Information (as defined in the Protective Order) and that the use or disclosure of that Protected Information, other than as permitted by the Protective Order, may cause substantial commercial harm to a Providing Party.

The State Legislator acknowledges that (a) it is granted access to Protected Information only by virtue of its party status in these proceedings and (b) the Protective Order governs the treatment of Protected Information by all parties, including the State Legislator. The State Legislator and State Legislature agrees that any substantive determination of the confidential status of Protected Information pursuant to the Freedom of Information Law (FOIL), Article 6 of the Public Officers Law, will be made by the Department of Public Service (DPS). The Administrative Law Judges will make the determination in the first instance. The State Legislator and Legislature agree that it will maintain as confidential all Protected Information until, at a minimum, 15 days after a Providing Party's claim has been finally denied by the DPS in these proceedings.

The State Legislature is subject to FOIL. As such, the State Legislator and State Legislature agree that:

1. Where a FOIL request is received by the State Legislator or State Legislature seeking Protected Information obtained through the State Legislator's participation in these proceedings, and it is determined that the Protected Information is not otherwise exempt from disclosure, and where the Administrative Law Judges have not made a substantive determination regarding the Protected Information's status as confidential, the records shall not be disclosed by the State Legislator or State Legislature. The State Legislator or State Legislature shall deny the request for disclosure, citing to the Protective Order. The State Legislator or State Legislature may refer the requestor to DPS for a substantive determination.
2. Where any FOIL request is received by the State Legislator or State Legislature for Protected Information obtained by the State Legislator through the State Legislator's participation in these proceedings and the Administrative Law Judges, or DPS on appeal from the Administrative Law Judges, has granted the information confidential status, the State Legislator and State Legislature shall deny the request for disclosure, citing to the Administrative Law Judges' or DPS's determination and the Protective Order.
3. Any appeal of an initial denial of disclosure under FOIL that is received by the State Legislator or State Legislature shall be denied on the same basis as the initial denial. Where no substantive determination as to the confidentiality of the Protected Information has been made by the Administrative Law Judges, the State Legislator or State Legislature may refer the requestor to DPS for a substantive determination.
4. Where the Administrative Law Judges have made a substantive determination that the information alleged to be confidential should be made public because it is not exempt from public disclosure under FOIL, and any appeals from this determination are fully resolved, with the final decision in favor of public disclosure, the State Legislator or State Legislature may release the information in response to a FOIL request, citing the DPS determination.

I certify that I am an attorney or an authorized representative of record of the State Legislator identified above and have full

authority to execute this document on the State Legislator's behalf.

NAME AND TITLE (PRINTED):

\_\_\_\_\_

SIGNATURE:

\_\_\_\_\_

DATE: \_\_\_\_\_ TELEPHONE: \_\_\_\_\_

E-MAIL ADDRESS: \_\_\_\_\_

I certify that I am the Records Access Officer/Appeals Officer of the State Legislator and State Legislature identified above and have full authority to execute this document on its behalf.

NAME (Printed): \_\_\_\_\_

TITLE (circled) RECORDS ACCESS OFFICER or APPEALS OFFICER

SIGNATURE: \_\_\_\_\_

DATE: \_\_\_\_\_ TELEPHONE: \_\_\_\_\_

E-MAIL ADDRESS: \_\_\_\_\_

The State Legislator named above elects (check one):

- To receive all Protected Information as soon as it is made available pursuant to the Protective Order.
- To receive notice of the availability of Protected Information.