STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

In the Matter of a Competitive Energy Efficiency Initiative — **Case 18-M-0084**

COMMENTS IN OPPOSITION OF MULTIPLE INTERVENORS

(I.D. No. PSC-09-23-00025-P)

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COUCH WHITE, LLP
540 BROADWAY, P.O. BOX 22222
ALBANY, NEW YORK 12201-2222

TABLE OF CONTENTS

PRELIMINARY STATEMENT

Multiple Intervenors, an unincorporated association of over 55 large industrial, commercial, and institutional energy consumers with manufacturing and other facilities located throughout New York State, including the Central Hudson Gas & Electric Corporation ("Central Hudson") service territory, hereby submits its Comments in Opposition to Central Hudson's "Petition to Support Clean Heat Market Growth Through Transfer of Unspent and Previously Authorized Funding" ("Petition"), which was filed with the New York State Public Service Commission ("Commission") on February 3, 2023 in Case 18-M-0084.[1]

In its Petition, Central Hudson indicates that it has exhausted its Commission-approved six-year (*i.e.*, 2020-2025) Clean Heat Program budget of $43.2 million. (Petition at 1.) Central Hudson estimates that in order to satisfy anticipated demand associated with the Clean Heat Program through 2025, additional funding of approximately $27.1 million will be required. (*Id.*) Central Hudson seeks authorization from the Commission to: (a) utilize $13.5 million of funds previously budgeted for non-low-to-moderate-income ("non-LMI") electric energy efficiency ("EE") programs during 2023-2025, "while proportionately adjusting each portfolio's saving target"; (b) recover an incremental $13.6 million in "continuing funding" from customers "to be drawn upon as needed"; and (c) initiate a surcharge on customers to "facilitate cost recovery of accelerated expenditures beyond the levels at which the Company's current rates were predicated." (*Id.* at 2.)

Multiple Intervenors has numerous concerns and objections regarding Central Hudson's Petition and the relief requested therein. Initially, it appears that Central Hudson has mismanaged its Clean Heat Program. After presumably balancing the desired objectives of the

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[1] Case 18-M-0084, *In the Matter of a Comprehensive Energy Efficiency Initiative*.

heat pump programs and customers' ability to fund such efforts, the Commission determined appropriate 2020-2025 budgets for the State's electric utilities; for Central Hudson, that budget was $43.2 million.[2] Central Hudson now reports that it expended the entirety of its 2020-2025 Clean Heat Program budget by the end of 2022. (Petition at 6.) The utility claims it managed the Program by reducing incentives twice. (*Id.* at 7.) Such claim, however, merely raises the question of whether the incentives initially were set too high, and why Central Hudson did not seek to reduce the incentives more frequently and/or more materially to ensure that the customer-funded budget was not exhausted halfway through the scheduled term.

Second, it is not clear to Multiple Intervenors that shifting $13.7 million in funding from non-LMI EE programs to the Clean Heat Program is in the public interest. Presumably, the Commission sought to achieve certain objectives from each portfolio and in this instance increased spending on the Clean Heat Program would entail reduced spending on (and savings from) EE programs. Multiple Intervenors also notes that the Central Hudson's requested relief raises certain equity considerations. All customers support the Clean Heat Program and EE programs through higher delivery rates. Significantly, however, the focus on the Clean Heat Program is on residential and small commercial customers, while customers of all types participate in the utility's EE programs. Thus, there would be consequences (*e.g.*, reduced EE program savings, potential interclass inequities) associated with shifting unused EE funding to the Clean Heat Program.

Third, Multiple Intervenors strongly opposes Central Hudson's request to increase collections from customers by $13.6 million. The budgets approved by the Commission in this proceeding were – and are – substantial. Central Hudson's electric customers were directed to

[2] Case 18-M-0084, *supra*, Order Authorizing Utility Energy Efficiency and Building Electrification Portfolios Through 2025 (issued January 16, 2020) at Appendix C.

fund, *inter alia*: (a) an initial 2021-2025 electric EE budget of $10.9 million;[3] (b) an incremental 2021-2025 electric EE budget of $12.5 million;[4] and (c) a 2020-2025 Clean Heat Program budget of $43.2 million.[5] Those Commission-mandated expenditures currently are reflected in the electric delivery rates authorized by the Commission as part of an adopted, multi-year rate plan. Customers of all types already are subject to a litany of past, present, and future funding obligations that have stretched (and will continue to stretch) resources. Additional, proposed collections of $13.6 million are material, and unjustified in this instance. Moreover, from the perspective of customers, one of the primary benefits of multi-year rate plans is rate certainty, which would be frustrated if Central Hudson's requested relief were to be granted.

Finally, if, notwithstanding Multiple Intervenors' positions, the Commission authorizes increased collections from customers, Multiple Intervenors opposes the proposed use of a volumetric surcharge, such as the System Benefits Charge ("SBC"), which would recover a disproportionate share of such collections from large, high-load-factor customers (who, ironically, are not the target of, and do not benefit directly from, the Clean Heat Program). If such collections are authorized, then the amounts should be deferred until Central Hudson's next rate proceeding (which would preserve the rates that were negotiated in the utility's last rate proceeding). As detailed, *infra*, Central Hudson's proposed use of the SBC is blatantly inconsistent with its current, Commission-adopted rate plan. Moreover, because Central Hudson's purported need for additional customer collections apparently stems from its failure to

[3] Case 18-M-0084, *supra*, Order Adopting Accelerated Energy Efficiency Targets (issued December 13, 2018) at Appendix C.

[4] Case 18-M-0084, *supra*, Order Authorizing Utility Energy Efficiency and Building Electrification Portfolios Through 2025 at Appendix A.

[5] *Id.* at Appendix C.

administer the Clean Heat Program within the Commission-approved budget (or anywhere close to it), customers should not be required to pay carrying charges on any deferral authorized herein.

ARGUMENT

POINT I

UTILITIES SHOULD BE REQUIRED TO MANAGE EE AND HEAT PUMP PROGRAMS WITHIN – AND NOT IN DISREGARD OF – COMMISSION-APPROVED BUDGETS

When the Commission sets multi-year budgets for EE and heat pump programs, it presumably strives to balance the objectives desired from the programs with customers' ability to afford them (in addition to other financial obligations imposed on customers). Utilities should be expected to operate within Commission-approved budgets, or such budgets are rendered meaningless. While the Petition lacks information upon which definitive judgments could be made, it certainly appears that something has gone seriously awry with Central Hudson's administration of its Clean Heat Program.

Central Hudson is the entity responsible for establishing program incentives, and adjusting those incentives – either up or down – to maximize performance within (as opposed to in disregard of) the established budget. Here, Central Hudson appears to have exhausted the 2020-2025 budget a full three years in advance of the scheduled program end. While Central Hudson touts the strong demand for its Clean Heat Program (*see*, *e.g.*, Petition at 1, 5), the fact that the budget was exhausted so early raises serious questions as to whether such strong demand stems in whole or large part from incentives that were well in excess of what was needed.

According to Central Hudson, it lowered incentives for the Clean Heat Program twice. (*Id.* at 7.) Significantly, however, such reductions obviously were insufficient – in frequency and/or magnitude – to prevent a massively-premature exhaustion of the Commission-approved budget. The failure of Central Hudson to operate within the budget now places the Commission in the difficult position of having to: (a) potentially approve shifting budgeted funds away from EE programs that also seek to achieve desired objectives; (b) potentially increase collections from customers to a much higher level than what it found was reasonable a short time ago; and/or (c) temporarily discontinue or aggressively reduce the incentives available under the Clean Heat Program, which reportedly has exceeded its 2020-2025 MMBtu savings target. (*Id.* at 5.)

From Multiple Intervenors' perspective, Commission action is needed to uphold the relevance of the program budgets that it establishes. Such budgets reflect a balancing of competing interests and concerns by the Commission, including customer affordability, and generally should not be exceeded. To its credit, the Commission provides utilities with ample flexibility to shift funds between years and, within certain limitations, between programs themselves. But, if utilities are permitted to exceed total multi-year budgets with impunity, and by significant amounts, then such budgets effectively are rendered meaningless.[6] In a recent order involving a different utility, the Commission indicated it agreed with a commenter that it "is not acceptable for the Company to disregard spending caps and simply assume that customers

[6] Here, Central Hudson is seeking an approximate 63% increase in 2020-2025 Clean Heat Program expenditures (*i.e.*, $27.1 million / $43.2 million) and an approximate 31% increase in collections from customers for that program (*i.e.*, $13.6 million / $43.2 million).

will provide additional revenues."[7] Of course, if the Commission routinely approves incremental collections from customers well in excess of its previously-established budgets, then utilities will continue to make precisely that assumption.

For the foregoing reasons, Multiple Intervenors urges the Commission to preserve the relevance of the multi-year budgets that it approves. In administering EE and heat pump programs, utilities should be required to manage expenditures within Commission-established budgets. Exhausting a six-year budget three years early should not be construed as a success if the incentives offered were much higher than necessary and the exhaustion of the budget necessitates shifting money away from EE programs and/or increasing customer collections to levels substantially higher than what the Commission previously deemed were appropriate.

POINT II

IT IS NOT CLEAR FROM PETITION WHETHER FUNDS SHOULD BE SHIFTED FROM CENTRAL HUDSON'S EE PROGRAMS TO ITS CLEAN HEAT PROGRAM

In its Petition, Central Hudson proposes to repurpose $13.5 million in customer funds approved by the Commission for use in non-LMI electric EE programs and instead utilize them on its Clean Heat Program. (Petition at 2.) The utility further proposes that each portfolio's savings target be adjusted proportionately. (*Id.*) Multiple Intervenors has several concerns regarding Central Hudson's proposed repurposing of non-LMI electric EE program

[7] Case 18-M-0084, *supra*, Order Approving Funding for Clean Heat Program (issued August 11, 2022) at 22.

funds.[8] Initially, it is not clear from the Petition that the shifting funds from non-LMI electric EE programs to the Clean Heat Program is in the public interest. Additionally, the proposed transfer potentially raises customer equity concerns given the more narrow targeted market for the Clean Heat Program and the methodology utilized currently to recover EE costs from customers.

The Commission previously established 2020-2025 budgets for electric EE and heat pump programs. Both types of programs are consistent with current State policy, and both types of programs are intended to produce certain benefits. Central Hudson reports that the Clean Heat Program has achieved its targeted level of savings for 2020-2025. (*Id.* at 5.) The Petition lacks a similar representation with respect to non-LMI electric EE program savings. While Central Hudson anticipates that future EE-related savings may be more challenging to achieve than in recent years (*see id.* at 9-10), that, in and of itself, does not warrant the shifting of customer funds towards the "easier" program.

Moreover, it appears that the targeted non-LMI EE program savings would be reduced downward by the same amount of MMBtu energy savings that would be added to the Clean Heat Program savings target. (*Id.* at 12.) Thus, under such proposal, the transfer of customer funds from non-LMI EE programs to the Clean Heat Program would not be expected to result in any increased savings, thereby raising issues about why such transfer should be undertaken. It is not clear from the Petition how the public interest is served by transferring funds out of non-LMI EE programs and into the Clean Heat Program.[9]

[8] If such repurposing is approved by the Commission, then Multiple Intervenors agrees there would be a need to adjust each portfolio's savings target, although not necessarily with the proportionality approach that Central Hudson advocates.

[9] That point noted, transferring previously-approved funds between programs is far preferable to increasing the magnitude of already-substantial collections from customers.

Multiple Intervenors also is concerned about the equity of Central Hudson's proposal to its members. Under current Commission policy – with which Multiple Intervenors disagrees – the vast majority of EE program costs are allocated to service classes on the basis of energy consumption (thereby largely disregarding the significant contributions that EE programs make toward reducing electric demand, particularly peak demand). Consequently, large, high-load-factor customers (who, ironically, tend to be amongst the most efficient energy consumers in the State) routinely bear a disproportionate share of a utility's EE program costs. From the perspective of such customers, while the cost of Central Hudson's EE programs often dwarf the potential direct benefits achievable therefrom, they at least are able to participate in the programs and attempt to recoup a portion of the costs expended on funding them. In contrast, the Clean Heat Program is targeted primarily (if not exclusively) at residential and small commercial customers, as opposed to large non-residential customers. Thus, the transfer of funds proposed by Central Hudson raises equity concerns regarding the sources and target of such funds.

POINT III

THE COMMISSION SHOULD DENY CENTRAL HUDSON'S PROPOSAL TO INCREASE 2020-2025 CUSTOMER COLLECTIONS FOR THE CLEAN HEAT PROGRAM

Central Hudson proposes in its Petition to increase scheduled collections from customers by $13.6 million to provide the utility with "continuity funding" for its Clean Heat Program. (Petition at 2.) For numerous reasons, Multiple Intervenors opposes this proposal.

First, Central Hudson has failed to justify why increased collections from customers is in the public interest. The Commission established 2020-2025 budgets for all EE and heat pump programs to be administered by the State's electric utilities. Central Hudson expended the entirety of its heat pump program budget a full three years early, which raises numerous issues regarding the efficacy of the utility's efforts to comply with the Commission-approved budget for that program. In any event, due to this accelerated rate of spending and higher-than-necessary incentives that had to be reduced twice, the Clean Heat Program exceeded the Commission's MMBtu savings target. (*Id.* at 5.) Thus, increased customer collections are not needed to achieve the 2020-2025 savings levels targeted by the Commission for this program.

Second, energy affordability is a major concern, and the EE and heat pump program budgets approved previously by the Commission presumably reflected the desired balance between mandated program spending and the need to constrain customer collections. Moreover, Central Hudson is in the middle of a Commission-adopted multi-year rate plan that makes no provision for an additional $13.6 million in customer collections for "continuity funding." Rather, that rate plan was negotiated by numerous parties, including Multiple Intervenors, based upon, *inter alia*, the Commission-approved EE and heat pump program budgets for Central Hudson. One of the benefits of multi-year rate plans from the perspective of customers is rate certainty; approval of a new, material surcharge well into the term of the current rate plan would eviscerate that benefit.[10]

[10] While Multiple Intervenors opposes Central Hudson's proposal to increase total spending and customer collections by $13.6 million for the reasons set forth herein, if, *arguendo*, the Commission nevertheless authorizes incremental spending by the utility on its Clean Heat Program, any such spending recoverable from customers should be deferred, without carrying charges (*i.e.*, to reflect Central Hudson's role in failing to comply with previously-established program budgets), until the utility's next electric rate proceeding. Such a deferral would be far preferable than the proposed introduction of new surcharge recoveries in the middle of an ongoing rate plan. This issue is addressed further, *infra*, in Point IV.

Third, Central Hudson's proposal to increase customer collections by $13.6 million should not be evaluated in isolation. Customers are facing enormous energy cost pressures during a challenging economic period.

For instance, customers are being required to fund, *inter alia*: (a) many billions in out-of-market payments to incentivize/subsidize the development of new, large-scale renewable generation facilities under Tier 1 of the Clean Energy Standard ("CES"); (b) hundreds of millions in out-of-market payments to incentivize/subsidize the continued operation of existing renewable generation facilities under CES Tier 2; (c) many billions in out-of-market payments to incentivize/subsidize the continued operation of existing nuclear generation facilities under CES Tier 3; (d) many billions in out-of-market payments to incentivize/subsidize the development of incremental transmission and renewable generation to serve New York City under CES Tier 4; (e) many billions in out-of-market payments to incentivize/subsidize the development of new, offshore wind generation facilities; (f) a Clean Energy Fund with a current projected cost of approximately $7.5 billion; (g) approximately $1.9 billion in electric EE program costs through 2025 and potentially more thereafter; (h) approximately $900 million in gas EE program costs through 2025 and potentially more thereafter; (i) approximately $450 million in heat pump program costs through 2025 and potentially more thereafter; (j) approximately $700 million in electric vehicle infrastructure program costs through 2025 and potentially more thereafter; (k) $112.5 million for an Electric Generation Facility Cessation Mitigation Program; (l) many billions toward multiple, large-scale transmission projects to increase the deliverability of renewable energy; (m) many billions toward utility local transmission and distribution projects in furtherance of Climate Leadership and Community Protection Act objectives; (n) hundreds of millions of dollars toward Earnings Adjustment Mechanisms to incentivize utilities to help achieve certain outcomes; and (o) hundreds of millions (or more) in out-of-market payments to incentivize Distributed Energy Resources through net energy metering arrangements and "value stack" compensation.[11]

For the foregoing reasons, the Commission should deny Central Hudson's proposal to increase customer collections for the Clean Heat Program by $13.6 million.

POINT IV

CENTRAL HUDSON'S PROPOSAL TO RECOVER INCREMENTAL HEAT PUMP PROGRAM COSTS THROUGH THE SBC SHOULD BE REJECTED

In its Petition, Central Hudson proposes to recover $13.6 million in incremental heat pump program costs from customers and to utilize the existing SBC to effectuate such recovery. (Petition at 15.) The Commission should reject such proposal. Central Hudson's proposal is blatantly inconsistent with its existing rate plan, and also would be inequitable to high-load-factor customers who would bear a disproportionate burden associated with recovery of heat pump program costs on a purely volumetric basis in disregard of cost causation principles.

Central Hudson currently is operating under a Commission-adopted rate plan, memorialized in a Joint Proposal, that it negotiated with other parties.[12] In the Joint Proposal,

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[11] *See* Case 18-E-0130, *In the Matter of Energy Storage Deployment*, Initial Comments of Multiple Intervenors (dated March 20, 2023) at 10-15 (containing a more complete recitation of some of the funding obligations being imposed on customers, complete with citations to the relevant Commission decisions). Such Comments were submitted in response to a proposal, not yet acted upon by the Commission, to require customers to fund an incremental $1.0-$1.7 billion to incentivize/subsidize energy storage projects.

[12] *See* Cases 20-E-0428 and 20-G-0429, *Proceeding on Motion of the Commission as to the Rates, Charges, Rules, and Regulations of Central Hudson Gas & Electric Corporation for*

the Signatory Parties (including Central Hudson) addressed explicitly how differences between collections from customers and spending on heat pump programs would be treated:

> In accordance with the Order in Case 18-M-0084, the Company is authorized to defer over/under spending compared to the rate allowance plus the funding that the Company had available from other existing regulatory liabilities, *with the ability to defer overspending capped at the cumulative NENY budgets through 2025. The difference between funding and spending for the heat pump program will be deferred until new rates are established or the deferral is superseded or expressly revoked by the Commission.*[13]

Thus, the Signatory Parties intended that: (a) Central Hudson would defer over-spending or under-spending on heat pump programs (*i.e.*, the difference between customer funding and utility spending); (b) such deferrals would be capped at the cumulative 2020-2025 heat pump budget established by the Commission; and (c) said deferrals would remain in effect until new electric delivery rates are established for the utility.

Furthermore, to the extent the Commission is inclined to authorize a more expedited recovery of excess heat pump program costs, a mechanism already exists for such recovery – the Rate Adjustment Mechanism ("RAM").[14] The Signatory Parties negotiated the categories of revenues and deferrals that potentially could be subject to RAM surcharges or credits, and one such category is: "deferred regulatory asset balance related to electric energy efficiency and heat pump programs."[15]

Electric and Gas Service, Order Adopting Terms of Joint Proposal and Establishing Electric and Gas Rate Plan (issued November 18, 2021), *adopting* Joint Proposal (dated August 24, 2021). Multiple Intervenors and others are Signatory Parties to the Joint Proposal.

[13] *Id.*, Joint Proposal at 30 (emphasis added).

[14] *See id.* at 52 and Appendix G.

[15] *Id.* at Appendix G, Sheet 1 of 4.

Significantly, the RAM is distinguishable from Central Hudson's proposed use of the SBC here in two important respects. First, total annual recoveries (or credits) under the RAM are limited strictly to specified amounts, estimated to represent 2.5% of total operating revenues.[16] The intent of such limitation is clear – the Signatory Parties agreed that Central Hudson would utilize the RAM for accelerated recoveries (or returns) of certain amounts, subject to specified limitations intended to protect customers from excessive surcharges (and the utility from excessive credits). Central Hudson's proposal here, to utilize the SBC instead of the RAM, is a clear end-around the Joint Proposal that it negotiated and the Commission adopted.

Second, the RAM provides explicitly that surcharges and credits thereunder "will be allocated to service classes/subclasses based on annual delivery service revenues."[17] Thus, the Signatory Parties negotiated – and the Commission adopted – provisions specifying how certain deferrals, including any "deferred regulatory asset balance related to electric energy efficiency and heat pump programs," would be allocated amongst the service classes. In contrast, Central Hudson's proposal would disregard what was negotiated and adopted with respect to allocation and instead rely on the SBC, which is allocated and recovered solely on the basis of energy consumption. Moreover, Central Hudson's proposal, if adopted notwithstanding Multiple Intervenors' opposition thereto and the clean provisions of the utility's rate plan, would be inequitable to large non-residential, high-load-factor customers, who would be assessed a disproportionate share of the increased heat pump program costs notwithstanding the fact that, upon information and belief, participants in the Clean Heat Program exclusively or primarily are residential and small commercial customers. Such an outcome not only would be inconsistent

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[16] *Id.* at Appendix G, Sheet 2 of 4.

[17] *Id.* at Appendix G, Sheet 2 of 4.

with the Joint Proposal and the Commission's order adopting same, but also with baste cost causation principles.

Accordingly, Central Hudson's proposal to recover incremental heat pump program costs through the SBC should be rejected.

CONCLUSION

For all the foregoing reasons, Central Hudson's Petition should be denied in its entirety. If, *arguendo*, the Commission is inclined to grant the Petition in part, it only should do after taking into account and adopting Multiple Intervenors' positions herein to the greatest extent practicable.

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Albany, New York

Respectfully submitted,

Michael B. Mager

Michael B. Mager, Esq.
Counsel to Multiple Intervenors
Couch White, LLP
540 Broadway, P.O. Box 22222
Albany, New York 12201-2222