

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

Proceeding on Motion of the Commission As to the
Rates, Charges, Rules and Regulations
of Central Hudson Gas & Electric for Electric Service.

Case 23-E-0418

Proceeding on Motion of the Commission As to the
Rates, Charges, Rules and Regulations
of Central Hudson Gas & Electric for Gas Service.

Case 23-G-0419

MOTION TO DENY
CENTRAL HUDSON GAS & ELECTRIC'S
RATE CASE FILINGS AND
REQUEST FOR A PUBLIC HEARING

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Contents

INTRODUCTION	2
BACKGROUND	4
ARGUMENT	7
I. Central Hudson’s Rate Filing Should Be Denied Due To Significant Concerns Regarding The Accuracy Of The Data, Which Makes The Overall Filing Deficient, Premature, And Against The Public Interest.....	7
Expenses And Capital Investments That Central Hudson May Have Incurred, Or May Incur, Imprudently In The Development Of CIS System, But That May Not Have Been Sufficiently Identified Or Excluded From Consideration In Central Hudson’s Proposals.....	9
Failure Of The Company In Its Filings To Acknowledge That Some Portion Of Its Arrears Accumulation After August, 2021, May Relate To Problems With The September 1, 2021, CIS Launch; And The Extent To Which These Problems May Have Contributed To The Company’s Deteriorating Credit Metrics.....	12
II. Central Hudson’s Rate Case Request For Additional Investment Funds Directed Towards Information Technology And Customer Service Is Against The Public Interest And Premature At This Juncture.....	19
III. Ongoing CIS Issues At Central Hudson Necessitate The Need For Transparent Resolutions Prior To Proceeding With Any Increase In Customer Rates, And Proceeding With The Case At This Juncture Is Against The Public Interest.....	20
The Virtual Public Statement Hearings Show that Billing Issues Persist.....	20
The In-Person Public Statement Hearings Show that Billing Issues Persist	21
Affidavits Submitted by Customers Prove that Billing Issues Persist and Many Issues Remain Unresolved.....	22
IV. Lack of Final Resolution in Ongoing Proceedings and Matters Makes the Rate Case Premature and Against the Public Interest.....	26
Operations and Management Audit	26
The Prudence And Penalty Proceeding.....	27
The Independent Billing Monitor	28
V. Central Hudson’s Struggles To File Its Rate Case Updates At The Appropriate Time And In The Appropriate Manner Is Cause For Concern.....	28
CONCLUSION & REQUESTED RELIEF	30

INTRODUCTION

The Public Utility Law Project (“PULP”) submits this motion to deny the above-captioned rate cases filed by Central Hudson Gas & Electric (hereinafter, the Company or Central Hudson)¹ pursuant to 16 NYCRR § 3.6. PULP argues herein that the Company’s rate filing is against the public interest as it fails to comply with well-established law, regulation, and policy based on significant concerns relating to the accuracy of the baseline data used to compile its rate filings.² PULP also requests a hearing pursuant to relevant case law,³ and Public Service Law (“PSL”) §66(12), for the purposes of evaluating the proposed rate changes and the concerns addressed in this motion.

PULP believes that there are multiple, substantive reasons that the above-captioned rate cases are against the public’s interest that will be discussed in specificity below. To begin, there are significant concerns surrounding the accuracy of the underlining data used to establish the rate filing due to widespread billing issues involving the Company’s customer information system (“CIS”) upgrade that went live on or around September 1, 2021. This is in violation of 16 NYCRR § 61.3 and § 61.4. The billing issues that followed have affected residential, small business, and commercial customers for years. Unfortunately, as described below, the Company’s customers are still reporting new problems and several customers still have existing unresolved billing matters.

Following its failed CIS upgrade, Central Hudson has been under investigation by the Department of Public Service (“DPS” or “Department”) since 2022.⁴ The Company not only has an enduring history of billing issues⁵ but current investigations into Central Hudson’s practices

¹ Case 23-E-0418 et. al., Proceeding on Motion of the Commission as to the Rates, Charges, Rules and Regulations of Central Hudson Gas & Electric for Electric Service; Central Hudson filed their rate case on July 31, 2023.

² PULP’s Motion to Deny will explore a number of instances we believe violate sections of 16 NYCRR Part 61.

³ See, *Matter of New York Tel. Co. v. Public Serv. Comm’n. of State of N.Y.*, 59 A.D.2d 17, 19 (3d Dep’t), (August 4, 1977); *Id.* at 19, “It is not enough to argue that consumers, for whose benefit and protection the public hearing was designed, are protected here by respondent’s rejection of the original filing because the public has a vital interest not only in rates that are not excessive, but also in rates that enable a utility to provide adequate service and, consequently, even a proposed rate increase should not be denied without an opportunity for the public to be heard (*see*, 1 N.Y. Jur., Administrative Law, § 131).”

⁴ Case 22-06666, In the Matter of Staff’s Investigation into Central Hudson’s Customer Information System Implementation and Resulting Billing Errors.

⁵ Case 23-E-0418, et. al., Public Statement Hearing Transcript September 12, 2023 – 1PM Teleconference, at 9 (lines 17-25)-10 (lines 2-13); *see also*, Transcript September 20, 2023 - 1PM-Teleconference, *supra* note 1, at 54 (lines 10-25)-57 (lines 2).

are still pending, without any final corrective orders by the New York State Public Service Commission (“PSC” or “Commission”).⁶ There also has been no confirmation from the Department, nor the recently appointed billing monitor, nor Overton Consulting, that the issues with the billing system have been permanently corrected, and that forward looking bills are generating accurately. As such, PULP argues it’s premature and against the public interest to consider increasing the Company’s rates until these investigations are complete and all of the necessary corrective actions are implemented by the Company. Coincidentally, this will also work to ensure that all underlying data required for the rate filing is accurate. These aspects of PULP’s motion are discussed in greater detail below.

Given these substantial concerns, PULP hereby submits the following motion to deny Central Hudson’s rate case. PULP also respectfully requests that a hearing be scheduled for the purposes of evaluating the proposed rate changes and the concerns addressed in this motion.⁷

In the alternative, if by the Dec. 19, 2023, deadline for Rebuttal Testimony in these cases,⁸ neither the Administrative Law Judges nor the Commission have ruled on PULP’s motion, or there has been a decision to deny PULP’s motion, PULP urges that the case proceed through litigation rather than confidential settlement.

Finally, PULP further suggests that any consideration involving the adjustment of the Company’s rates be limited to a temporary rate increase pursuant to PSL § 114. As argued below, any rates set should be temporary in order to provide DPS Staff and the Commission the opportunity to determine whether the data put forth by the Central Hudson is reliable in setting permanent rates, should the Commission determine an increase is required in order to fulfill the obligation to provide safe and reliable service.⁹

⁶ Open and active Cases and Matters involving Central Hudson’s CIS billing issues include: Case 22-00666, In the Matter of Staff’s Investigation into Central Hudson’s Customer Information System Implementation and Resulting Billing Errors; Case 22-M-0645, Proceeding on Motion of the Commission Concerning Central Hudson Gas & Electric Corporation’s Development and Deployment of Modifications to its Customer Information and Billing System and Resulting Impacts on Billing Accuracy, Timeliness, and Errors; Matter 21-M-0541, Proceeding on Motion of the Commission to Conduct a Comprehensive Management and Operations Audit of Central Hudson Gas & Electric Corporation.

⁷ See, Matter of New York Tel. Co. v. Public Serv. Comm’n. of State of N.Y., 59 A.D.2d 17, 19 (3d Dep’t), (August 4, 1977); PSL §66(12).

⁸ Ruling on Procedural Matters and Amending Protective Order, Cases 23-E-0418 et al., September 8, 2023, available at: <https://documents.dps.ny.gov/public/MatterManagement/CaseMaster.aspx?MatterCaseNo=23-E-0418>.

⁹ PSL § 65.

BACKGROUND

The range of problems that Central Hudson’s customers have experienced since September 2021, include but are not limited to, (1) not receiving bills for several months at a time, (2) receiving multiple bills per month with different amounts due, (3) large fluctuations between estimated bills and actual bills, (4) inaccurate billing, (5) budget billing related issues, (6) uncharacteristically high bills that were paid by the customer’s auto-billing system that, in some cases, caused the customer’s personal bank account to overdraw, and (7) widespread issues relating to complex billing situations such as customers with solar panels on their homes, customers enrolled in community distributed generation, or customer accounts involving energy service companies. These issues are well documented by the public comments submitted in Matter no. 22-00666 (“CIS Implementation and Errors”). As of October 31, 2023, there are 4,500 comments that have been filed in the record of this matter, with the last comment and customer concern filed as recently as October 30, 2023.¹⁰

On December 5, 2022, PULP filed a motion to institute a prudence review and penalty assessment, citing the widespread and prolonged customer billing issues.¹¹ Shortly thereafter, the Commission initiated matter number 22-M-0645¹² (“Central Hudson Prudence/Penalty” proceeding). On December 15, 2022, the DPS Staff released a comprehensive, 59-page investigatory report (hereinafter “OIE Report”) that alleged,¹³

“After a review of utility documents and interviews of company officials, staff identified several apparent violations of the Public Service Law, regulations, and Commission

¹⁰ Case 22-00666, In the Matter of Staff’s Investigation into Central Hudson’s Customer Information System Implementation and Resulting Billing Errors; on October 18, 2023, a customer wrote the following public comment “Please help. Central Hudson keeps billing me with an estimated bill and will not give me an actual reading for my residence. I have called multiple times and spent countless hours on the phone with them and they refuse to help me. Thank you.” available at:

<https://documents.dps.ny.gov/public/MatterManagement/CaseMaster.aspx?MatterSeq=67815&MNO=22-00666>.

¹¹ See, PULP Motion to Institute a Prudence Review and Civil Penalty Assessment, Dec. 5, 2022, 22-00666, In the Matter of Staff’s Investigation into Central Hudson’s Customer Information System Implementation and Resulting Billing Errors, available at:

<https://documents.dps.ny.gov/public/MatterManagement/CaseMaster.aspx?MatterSeq=67815&MNO=22-00666>.

¹² Proceeding on Motion of the Commission Concerning Central Hudson Gas & Electric Corporation’s Development and Deployment of Modifications to its Customer Information and Billing System and Resulting Impacts on Billing Accuracy, Timeliness, and Errors.

¹³ Case 22-M-0645 – In the Matter of an Investigation by the DPS Office of Investigations and Enforcement Into Central Hudson Gas and Electric Corporation’s Development and Deployment of Modifications to its Customer Information and Billing System and Resulting Impacts on Billing Accuracy, Timeliness, and Errors, "New York State Department of Public Service Investigation Report" (Dec. 2022).

orders. In addition, staff has reason to believe that the company mismanaged the project and that the costs associated with the project may have been imprudent.”¹⁴

On the same day, the Commission ordered Central Hudson to show cause, within thirty days, and explain why it should not face civil or administrative penalties for its apparent violations of the PSL, regulations, and Commission orders. In that order, the Commission also asked the Company to justify the costs incurred in implementing their system and why the Commission should not initiate a prudence proceeding to investigate the propriety of costs incurred by Central Hudson related to implementation of the system.¹⁵ Central Hudson provided its response on January 17, 2023.¹⁶ To date, in 22-M-0645, the Commission has not decided whether to proceed with a civil penalty action and/or an administrative penalty proceeding. On November 2, 2021, in a separate proceeding, the Commission initiated a comprehensive management and operations audit into the Company in matter number 21-M-0541 (“Management and Operations Audit”).¹⁷

On April 20, 2023, the Commission released the public version of the audit report, which suggested thirty-seven¹⁸ recommendations and ordered Central Hudson to submit an implementation plan within thirty days.¹⁹ The Commission’s explanation of the process to follow indicated that the public would have an opportunity to comment on the Company’s proposed implementation plan. On May 20, 2023, Central Hudson responded by filing its implementation plan.²⁰ To date, the Commission has made no decision on the Company’s motion to treat the plan as confidential, nor has the Commission decided whether to accept, modify, or reject the plan. Accordingly, there also has not been any opportunity for public scrutiny or comment.

On June 22, 2023, the Commission found that the Company failed to meet all three of its customer service metric targets, thereby resulting in a negative revenue adjustment of \$2.87

¹⁴ See, “Central Hudson Called to Account for Apparent Billing System Defects Utility Faces Potential Civil Penalty Action and Financial Review PSC Orders Central Hudson to Study the Elimination of Bi-Monthly Bill Estimates.” Press Release, (Dec. 15, 2022).

¹⁵ Case 22-M-0645, Order to Commence Proceeding and Show Cause, at 24-26.; The Commission also ordered the Company to submit a plan to eliminate bi-monthly estimates and to evaluate potential impacts of such a change on customers.

¹⁶ See generally, Central Hudson, 22-M-0654 Central Hudson Response 01 17 2023, Case 22-M-0654 (2023).

¹⁷ 21-M-0541, Proceeding on Motion of the Commission to Conduct a Comprehensive Management and Operations Audit of Central Hudson Gas & Electric Corporation.

¹⁸ See generally, Overland Consulting, *Comprehensive Management and Operations Audit of Central Hudson Gas & Electric Corporation*, Case 21-M-0541 (2023).

¹⁹ 21-M-0541, Order Releasing Audit Report, April 20, 2023.

²⁰ 21-M-0541, Central Hudson, Request for Nondisclosure.

million. A month later, on July 27, 2023, the Commission announced that the Department of Public Service, through an agreement with the Company, would install an Independent Monitor at Central Hudson to “review the capability and functionality of the company’s customer information and billing system; review the integration of monthly meter reading into the system, along with a timeline to complete the work; and evaluate whether the company’s remedial actions taken to date have effectively resolved the problems identified.”²¹ Pursuant to the agreement, Central Hudson also agreed to accelerate plans to read customer meters on a monthly basis with testing to begin as early as August of 2023 and with full implementation expected in calendar year 2024.²²

On July 31, 2023, the Company then filed its rate case initiating the above referenced proceedings, requesting an increase in annual electric delivery revenues of approximately \$139.5 million (31.6% increase in base delivery revenues, or 13.3% increase in total system revenues) compared to the revenues approved in Rate Year Three of the Company’s current rate plan. The requested increase in electric delivery revenues results in a monthly bill increase of \$30.12 (31.9% increase on the delivery bill, or 16.4% increase on the total bill) for an average residential customer using 660 kWh per month. On August 29, 2023, a procedural conference was held in these proceedings, with the schedule ordered thereafter.²³ Four virtual public statement hearings and four in-person public service hearings have also been held.²⁴

On September 15, 2023, Central Hudson submitted updates and corrections to its rate filing that consisted of the following: a cover letter to the Secretary; a Narrative Statement, and three Attachments.²⁵ On October 2, 2023, the Company then filed essentially, an update to its

²¹ See, Matter No, 22-M-0645, “DPS to Install Independent Monitor to Examine Billing System at Central Hudson Central Hudson to Read Customers’ Meters Every Month — Resolving a Major Customer Issue Investigation Continues to Determine Appropriate Penalty and Prudence Remedy for Billing System Failures.” Press Release, July 27, 2023.

²² Case 22-M-0645, Proceeding on Motion of the Commission Concerning Central Hudson Gas & Electric Corporation’s Development and Deployment of Modifications to its Customer Information and Billing System and Resulting Impacts on Billing Accuracy, Timeliness, and Errors, at 4.

²³ Central Hudson’s updates and corrections were due Sept. 15, 2023; the Filing of DPS Staff and Intervenor Testimony due Nov. 21, 2023, Rebuttal Testimony due Dec. 19, 2023, and the Commencement of the Evidentiary hearing on Jan. 9, 2024.

²⁴ Case 23-E-0418 et. al., Notice Inviting Comment and Announcing Virtual Public Statement Hearings (August 18, 2023); Notice Soliciting Comments and Announcing Public Statement Hearings (Sept. 26, 2023).

²⁵ Central Hudson Update filing on Sept. 15, 2023, consisted of a cover letter, narrative statement, and attachments all categorized as “Reports.” Available at: <https://documents.dps.ny.gov/public/MatterManagement/CaseMaster.aspx?MatterSeq=71378&MNO=23-E-0418>.

update, by submitting revised policy panel testimony and two exhibits.²⁶ Pursuant to the procedural schedule, parties and DPS staff are currently working on Initial Testimony, due on November 21, 2023, followed by Rebuttal Testimony, due on December 19, 2023, and the evidentiary hearing, which is scheduled to commence on January 9, 2024.²⁷

PULP is grateful to the Department Staff for their diligent investigation and report on the Company's billing issues, the Office of Consumer Services for their efforts to assist customers with the complaint process, Overton Consulting for their work on the management and operations audit, the recently placed independent billing monitor, and the Commission for all their efforts to date. PULP also recognizes that the above discussion represents steps towards corrective action. However, it is imperative to recognize that these are only steps in a much longer process. Billing problems persist, resolution is ongoing, no final orders from the Commission have been issued that confirm that the system is accurate, nor conformation that all existing billing issues have been rectified, and that new bills being generated are in fact accurate. As a result of these concerns, PULP now submits this motion to deny Central Hudson's rate case for the specific reasons outlined below, while also requesting a hearing on this motion.

ARGUMENT

I. Central Hudson's Rate Filing Should Be Denied Due To Significant Concerns Regarding The Accuracy Of The Data, Which Makes The Overall Filing Deficient, Premature, And Against The Public Interest.

Pursuant to 16 NYCRR § 61.3, when filing a rate case, the investor-owned utilities have a duty to base their rate requests on Company specific data. Beyond this foundational requirement, the burden of proof is on the utility to demonstrably affirm that its proposed rates, rules and regulations, along with the underlying methodologies and data used to derive changes in revenues, expenses, or income, are just and reasonable.²⁸ It's then the Commission's duty to

²⁶ Central Hudson's updated Testimony of the Policy Panel was categorized as Testimony and Exhibits, as filed on October 2, 2023.

²⁷ Ruling on Procedural Matters and Amending Protective Order, Cases 23-E-0418 et al., September 8, 2023, available at: <https://documents.dps.ny.gov/public/MatterManagement/CaseMaster.aspx?MatterCaseNo=23-E-0418>.

²⁸ 16 NYCRR §§ 61.1 - 6.3; *also see*, Case 92-M-0138, 1992 Revised Procedural Guidelines, Section E, p. 5.

“ensure that all charges are just and reasonable and that the rates produce sufficient revenue for the utility to provide safe and adequate service.”²⁹

Pursuant to the Commission's regulations, every rate filing shall “exactly set forth” all changes in rates.³⁰ This includes all comparative balance sheets, and three preceding years of earned surplus statements and “all assumptions of changes in price inputs because of inflation or other factors or changes in activity levels due to modified work practices (or other reasons should be separately developed). Staff and other parties in rate cases should be able to retrace projections back to their historical source. All assumptions, escalation factors, contingency provisions and changes in activity levels should be quantified and properly supported.”³¹ Further, pursuant to 16 NYCRR § 61.4, “speculative or conjectural data are not acceptable and all estimates must be explained in detail and the bases definitely established.” PULP asserts herein that Central Hudson’s rate case filing fails to meet these requirements, which are explained below.

In this context, PULP emphasizes the depth and breadth of concerns arising from Central Hudson’s pervasive CIS problems. Given the scale of these issues and their potential to compromise data integrity, we are compelled to question the overall accuracy and reliability of the data underpinning the Company’s rate case filing. Simply put, without any formal resolutions to these matters, fundamental questions remain unanswered as to whether parties and the public at-large can rely on the data informing the filing. To underscore these concerns, PULP will present examples in two key, but non-exhaustive, areas that demonstrate the uncertainties tied to Central Hudson’s rate case data:

- Expenses and capital investments that Central Hudson may have incurred, or may incur, imprudently in the development of CIS system, but that may not have been sufficiently identified or excluded from consideration in Central Hudson’s proposals, and;
- The failure of the Company in its filings to acknowledge that some portion of its arrears accumulation after August, 2021, may relate to problems with the September 1, 2021, CIS launch; and the extent to which these problems may have contributed to the Company’s deteriorating credit metrics.

²⁹ PSL §65(1).

³⁰ 16 NYCRR Part 61.3(3)(c)(3).

³¹ 16 NYCRR Part 61.

Expenses And Capital Investments That Central Hudson May Have Incurred, Or May Incur, Imprudently In The Development Of CIS System, But That May Not Have Been Sufficiently Identified Or Excluded From Consideration In Central Hudson's Proposals

DPS Office Of Investigations and Enforcement Report Recommended Action to Recover Imprudently Incurred Expenses

In December 2022, the DPS Office Of Investigations and Enforcement issued its OIE Report in Case 22-M-0645³² concerning Central Hudson's development and deployment of modifications to its customer information and billing system and resulting impacts on billing accuracy, timeliness, and errors.³³ One of OIE's recommendations was that:

Given the magnitude of the Company deficiencies identified during OIE's investigation and the resulting impact on customers, OIE recommends that the Commission initiate an administrative prudence proceeding to recoup imprudently incurred expenses made by the Company related to the development, preparation, and implementation of the CIS system and Project Phoenix as well as consequential expenses related to the Company's post "go-live" remediation efforts that were and are necessary to address defects and shortcomings in the system and address negative impacts to customers.³⁴

Possibility That Imprudently Incurred CIS-Related Expenses, As Well As Consequential Expenses Related to Post "Go-Live" Remediation Effort Expenses, Are Included In Central Hudson's Filings

In light of the fact that no findings are publicly available from a prudence proceeding of the sort recommended in the OIE report,³⁵ it is impossible to ascertain whether all of the historical or anticipated future costs included in the Company's filings in these proceedings were, or will be, incurred prudently. Central Hudson's only acknowledgement that there may have been costs incurred imprudently is its statement that it set aside (excluded) \$9 million of incremental operations and maintenance ("O&M") expense-related costs related to the SAP CIS transition in preparing data for the test ("historical") year of April 1, 2022, through March 31, 2023. (Filing Cover Letter at 4). The Company's statement stands in stark contrast to DPS's July 27, 2023, press

³² See, Case 22-M-0645, *Proceeding on Motion of the Commission Concerning Central Hudson Gas & Electric Corporation's Development and Deployment of Modifications to its Customer Information and Billing System and Resulting Impacts on Billing Accuracy, Timeliness, and Errors*. Available at: <https://documents.dps.ny.gov/public/MatterManagement/CaseMaster.aspx?MatterCaseNo=22-M-0645&CaseSearch=Search>.

³³ See, Case 22-M-0645, *New York State Department of Public Service Investigation Report*. Available at: <https://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={7410F817-B458-4232-9522-BF3FB9BAB451}>.

³⁴ OIE Report at 59.

³⁵ *Id.*

release, where the Department's investigation into billing system failures continues so as to determine potential penalties and prudence remedies.³⁶ It therefore is not possible to determine whether problems associated with the development, preparation, and implementation of the CIS system have been sufficiently considered for purposes of developing a revenue requirement for Central Hudson's proposed Rate Year of July 1, 2024 through June 30, 2025.

It is also possible that there have been, and will continue to be, consequential expenses related to post "go-live" remediation efforts on the part of Central Hudson necessary to address defects and shortcomings in the system and address negative impacts to customers. To cite one example, the Company's Customer Experience Panel Testimony includes statements that the Company has added resources, and expects to add further resources, in part for responding to customers who file complaints with the Commission; or whose complaints arrive via other channels, including state elected officials (Attorney General, state legislative), county executives, members of Congress, and others. This includes analyzing and investigating complaints, responding to the customer, and tracking and closing the complaints in the PSC Portal. (Customer Experience Panel Testimony at 21). As justification for these actions, the Panel acknowledges that:

PSC Complaints received by Central Hudson remain elevated with no expectation that they will significantly diminish. Complaints from all channels, including from elected officials, the Public Utility Law Project, and the Better Business Bureau, continue to arrive at elevated levels compared to historic norms. Historically, Central Hudson would receive a few hundred complaints each year. In 2022, the Company received more than 3,000 complaints. The Company is on track for a similar total in 2023. In addition to PSC Complaints, the Company receives around an additional 75 to 150 complaints each month from elected officials and other channels. On average it takes approximately 2.5 hours to handle each complaint including time to review, process, analyze, communicate with the customer, and close the complaint. The increase in Consumer Outreach staff and their work is aimed not only at resolving PSC complaints, but also at conducting important outreach activities in the communities we serve in order to answer questions before they become complaints.³⁷

Here, also, the fact that no findings are publicly available from a prudence proceeding of the sort recommended in the OIE Report makes it impossible to ascertain whether all of the historical or anticipated future costs of additional resources discussed by the Customer Experience Panel to

³⁶ See, Case 22-M-0645, *DPS to Install Independent Monitor to Examine Billing System at Central Hudson*, at 1. Available at: <https://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={30B69889-0000-C012-AAD7-FE2FD8929D5E}>.

³⁷ The Company's Customer Experience Panel Testimony at 23.

deal with much higher levels of customer complaints were, or will be, incurred prudently; or whether they instead include consequential expenses related to the Company's post "go-live" remediation efforts that were and are necessary to address defects and shortcomings in the system and address negative impacts to customers.

Another example of possible consequential expenses related to the implementation of the new CIS system launch involves the Customer Experience Panel's statement that incremental personnel will be needed to implement the Company's plan to resume collection efforts. Central Hudson states that it will require additional collectors, contact center personnel, and billing department personnel in order to carry out collections efforts, address customer inquiries and concerns, match customers with assistance programs and help customers through the collection process. It projects that thirty-three collectors and eleven billing department FTE's will need to be hired for the Rate Year and estimates that Rate Year expense associated with external call center costs will be approximately \$2.7 million. The Panel further states that the incremental customer billing personnel are needed in order to investigate an estimated 10% of the collections calls in order to provide customers with greater certainty regarding the accuracy of their arrears balances, which it considers necessary in order to facilitate customer action associated with those arrears balances.³⁸

Again, the fact that no findings are publicly available from a prudence proceeding of the sort recommended in the OIE report makes it impossible to ascertain whether all of the historical or anticipated future costs of additional resources discussed by the Customer Experience Panel to deal with additional collections needs were, or will be, incurred prudently; or whether they include consequential expenses related to the Company's post "go-live" remediation efforts that were and are necessary to address defects and shortcomings in the system and address negative impacts to customers.

A final example of consequential expenses that may have been incurred, or will be incurred to remediate problems with the new CIS system involves the Company's Technology Capital and Operations Panel Testimony that through collective efforts across the Company, Central Hudson continues to remediate key bill calculation and printing issues and continues to ensure customer

³⁸ *Id.* at 35 – 37.

billing cycles return to thresholds that were in place prior to the SAP CIS implementation.³⁹ Here again, without having the findings of a prudence proceeding of the sort recommended in the OIE report, no determination can be made that all such costs have, and will be, incurred prudently.

Capital Investments in The CIS System

As the OIE Report indicates, it is estimated that Central Hudson's ratepayers will have paid \$21 million toward the "disastrous rollout" of the new CIS system through June 30, 2023, as provided in the Company's two most recent rate plans.⁴⁰ For the Rate Year, the Company's Technology Capital and Operations Panel proposes a further \$6.9 million ratepayer-funded investment in this system.⁴¹ However, without any resolution of the problems involved in the current phase of the system, including the sort of accountability for Company implementation failures to-date that would result from a prudence proceeding that separates those costs which should be borne by ratepayers from those which are properly chargeable to shareholders, no determination can be made that all such costs have, and will be, incurred prudently.

Failure Of The Company In Its Filings To Acknowledge That Some Portion Of Its Arrears Accumulation After August, 2021, May Relate To Problems With The September 1, 2021, CIS Launch; And The Extent To Which These Problems May Have Contributed To The Company's Deteriorating Credit Metrics

Unprecedented Complaints and Billing Errors

The unprecedented level of complaints the Company acknowledges receiving since its CIS launch in September 2021, the magnitude of billing errors ascribed to the new billing system in the OIE Report, and the lack of any findings from a prudence proceeding of the sort recommended by DPS, make it impossible rely upon Central Hudson's arrears data after August 2021. For example, the OIE Report includes a recommendation that the Commission order Central Hudson to refund payments made by customers who were illegally backbilled.⁴² Should such refunds be ordered, there would also presumably be a corresponding reduction in the Company's revenues. In the case of backbilled customers who had not made payments on such billings, and who therefore may constitute a portion of the unprecedented arrears that have accumulated since September 2021, further revenue reductions would result from any reversal of charges determined

³⁹ See, the Company's Technology Capital and Operations Panel Testimony statement, at 11.

⁴⁰ OIE Report at 45 - 46.

⁴¹ The Company's Technology Capital and Operations Panel, at 11 - 14.

⁴² OIE Report at 59.

by the PSC to settle these arrears. This and any other consideration affecting sales and revenue could have implications for decisions in this case such as the:

- Development of forecasts of electric and gas customers, sales and base delivery revenues for all service classes for the period April 1, 2023, through June 30, 2025;
- Interclass revenue allocation of the Company's proposed electric and gas delivery rate changes;
- Proposed changes in the Company's electric and gas delivery rates and the revenue effect of those changes, and;
- Recognition of uncollectibles to be recovered from ratepayers.

Without the publicly available findings of a prudence proceeding of the sort recommended in the OIE Report, it is impossible to place reliance on the Company's data pertaining to these sales and revenue-related areas.

Impact Of CIS Problems On Deteriorating Cash Flow Metrics

The possibility that Central Hudson's arrears data may not be reliable also has important implications for the justification that the Company provides for its request for a 9.8% authorized return on equity ("ROE") and an authorized 50% equity ratio in these proceedings, since that justification is based significantly on a deterioration of the Company's cash flow metrics. In its testimony, the Finance Panel identifies multiple factors causing this cash flow deterioration, including federal tax reform; a growing capital program needed to maintain reliability, safety and to support New York State's clean energy goals; the under-collection of major operating expenses such as storm restoration costs, energy efficiency programs, and heat pump programs; *growing customer arrears* and the reduction of the equity ratio from 50% to 48%.⁴³ The reasons cited by the Finance Panel for the build-up of arrears since 2020 are the suspension of collections activities after March, 2020 in light of the COVID-19 Pandemic and the increase in energy supply prices in 2021 and 2022.⁴⁴ The Finance Panel makes no acknowledgement of the possibility that problems associated with the rollout of the new CIS system, as documented in the OIE Report, could be a

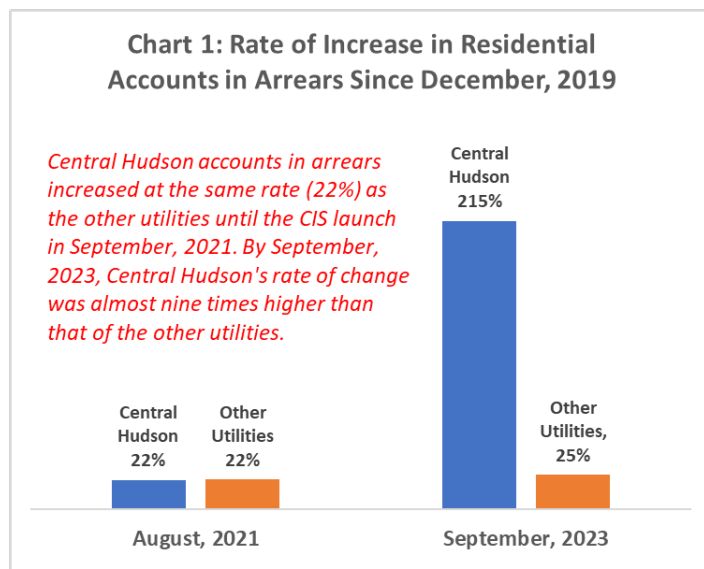
⁴³ The Company's Finance Panel Testimony at 9, (*Emphasis Added*).

⁴⁴ *Id.* at 13.

major factor contributing to the unprecedented accumulation of arrears since September 2021. Neither do the Policy Panel nor the Customer Experience Panel acknowledge as much in their discussions of the arrears problem.⁴⁵

Central Hudson Arrears An Outlier After CIS-Launch

However, publicly available data makes clear that Central Hudson’s arrears progression since 2019 is an outlier among New York’s major utilities, and strongly suggests that problems with the CIS launch cited in the OIE Report are at least partly responsible. (Charts 1 - 2).

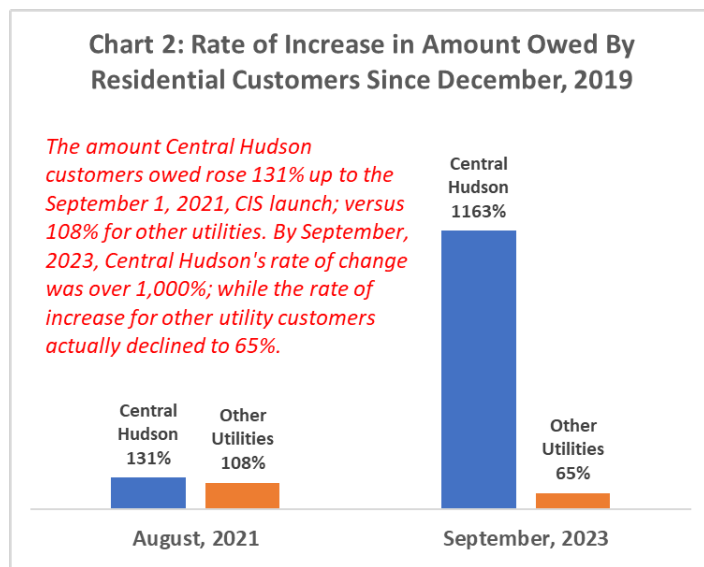


(Exhibit 1 at 2)

Chart 1 shows that, while Central Hudson’s arrears progression tracked those of the other major utilities up until the September 1, 2021, CIS rollout, it diverged inexplicably thereafter. The Company’s accounts in arrears increased at the same rate as the other utilities (22%) from December, 2019 through August, 2021 (22%). But by September 2023, Central Hudson's rate of change accelerated to 215%, versus 25% for the other utilities. About 4,600 more residential Central Hudson customers had fallen behind on their bills between December 2019 and August 2021; by September 2023 the total who had fallen behind since December 2019 was about 46,000 – ten times the rate prior to the CIS launch. Moreover, whereas the percent of Central Hudson customers in arrears was less than that of other utilities until the CIS launch, by September 2023, the percent of Central Hudson customers in arrears (24%) was almost twice that of other utilities

⁴⁵ The Company’s Policy Panel at 5 - 6; the Company’s Customer Experience Panel at 32.

(13%). Nothing like this can be said for residential customers of the State's other utilities, the additional numbers of whom fell into arrears only incrementally.⁴⁶



(Exhibit 1 at 2)

Chart 2 shows that the amount Central Hudson customers owed rose 131% from December 2019 up to the CIS launch on September 1, 2021, versus 108% for the other utilities. But by September 2023, the amounts Central Hudson customers owed had jumped over 1,000%, while the rate of increase for other utility customers actually declined, from 108% to 65%. In December 2019, the Company's residential customers owed just \$8.6 million, growing to \$19.9 million just before the CIS launch, and then to an unprecedented \$109.2 million at September 2023. Unlike the comparative progress Phase 2 arrears relief achieved for the Company's peers, no overall arrears reduction was achieved at Central Hudson. Instead, the Company has been beset by post-CIS launch arrears acceleration.⁴⁷

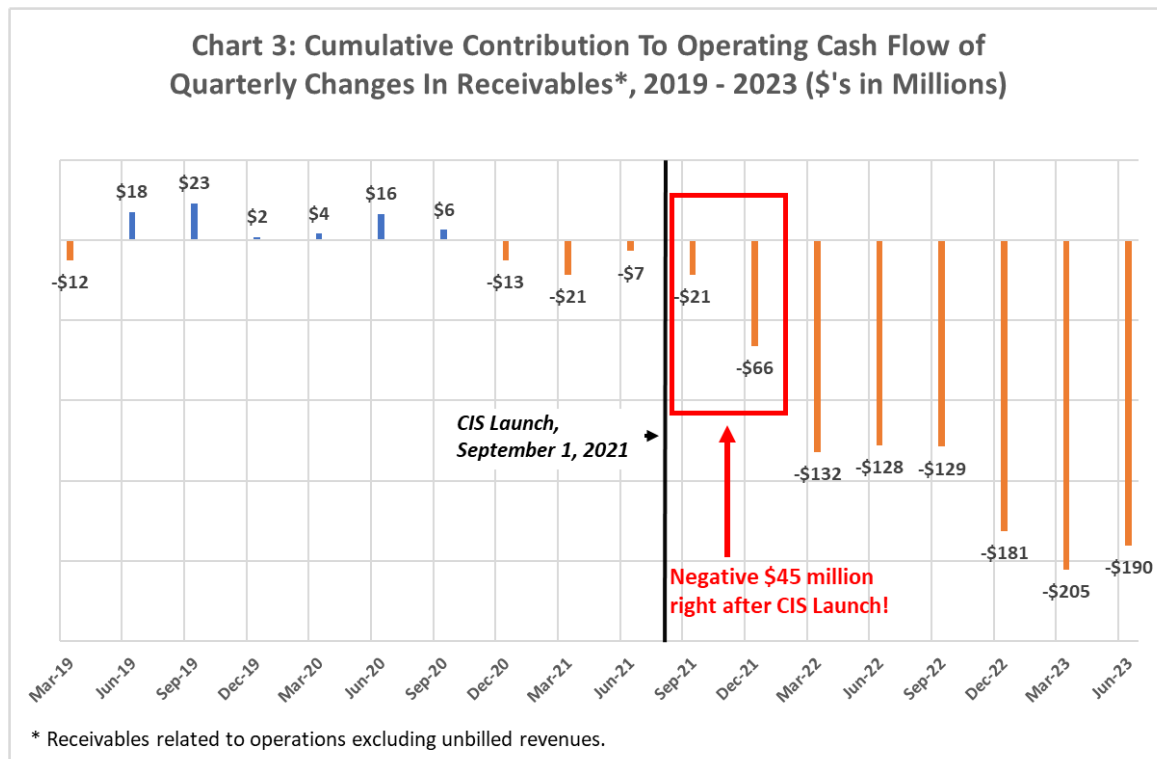
Impact on the Company's Operating Cash Flow

The impact of Central Hudson's rapidly deteriorating arrears situation on its operating cash flow in the immediate aftermath of the CIS launch is demonstrable. Quarterly and annual financial reports submitted by Central Hudson show that the cumulative contribution of quarterly changes in accounts receivable (of which, arrears aged over 60 days are a component) to operating cash

⁴⁶ PULP Exhibit 1 at 2

⁴⁷ *Id.*

flow began a sharp and unprecedented deterioration in the October to December 2021 quarter – *immediately after* the CIS launch and *well before* the early 2022 supply price spike began hitting Central Hudson ratepayers’ bills. (Chart 3).



(Exhibit 1 at 3)

During the October – December 2021 quarter alone, increasing accounts receivable contributed \$45 million to Central Hudson cumulative operating cash flow deterioration since 2019. This timing coincides with the immediate aftermath of both Central Hudson’s CIS launch and the acute acceleration of its residential arrears problem relative to New York’s other major utilities, as reflected in Charts 1 and 2. In three out of seven quarters after September, 2021, the extent of accounts receivable increase cause Central Hudson to experience outright negative operating cash flow. By June 2023, cumulative net increases in accounts receivable had contributed approximately \$190 million to the deterioration in Central Hudson's operating cash flow.⁴⁸

⁴⁸ *Id.* at 3.

There is no doubt that the pandemic caused economic hardship to a significant number of residential Central Hudson customers, as it did for residential customers of all the State’s electric and gas utilities. Alleviating this hardship was the purpose of the Commission’s Phase 1 and 2 arrears forgiveness programs in 2022-23. However, the pandemic affected all utility customers throughout the State and therefore cannot explain the divergence in arrears progression between the Company and its peers after August, 2021, as reflected in Charts 1 and 2.

It is also likely, as pointed out by the Company, that energy supply cost increases contributed to the buildup of Central Hudson’s arrears and its deteriorating cash flow metrics. However, as Charts 4 and 5 show, electric and gas supply price spikes did not begin to show up on customer bills in a meaningful way until early 2022.

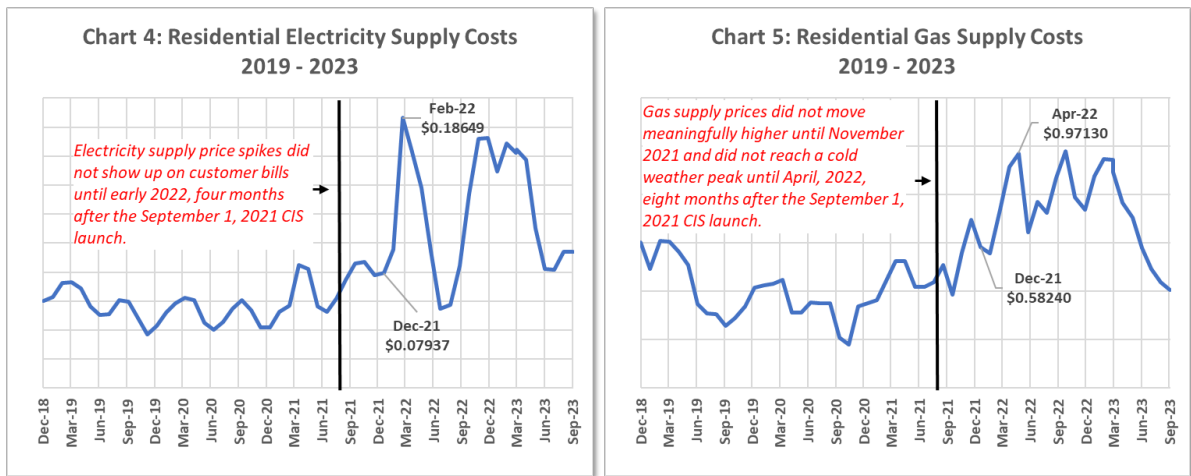


Exhibit 1 at 4

The energy supply price spikes of 2022 do not explain the sudden, sharp deterioration in cash flow in the final quarter of 2021, as shown in Chart 3. At \$0.07937, the cost of residential electricity supply remained within the range of approximately 3.5 – 8.5 cents per kWh it had maintained since 2019. And, although the cost of gas supply price began moving meaningfully higher by November, 2021, it receded back to \$0.58240 per therm by December, within the range of approximately 18 cents to 60 cents per therm it had maintained since 2019 — not reaching a cold weather period peak until April, 2022. Moreover, the supply price shocks that began in early 2022 affected residential utility customers statewide and were not isolated to Central Hudson’s

service area.⁴⁹ Thus, as with the disruptions caused by the pandemic, the supply price shocks do nothing to explain the divergence in arrears progression between Central Hudson and its peers after August 2021.

As previously stated, it appears highly likely that increasing arrears due to the problems associated with the CIS launch, as cited in the OIE Report, have been a significant contributor to the deteriorating cash flow metrics Central Hudson uses in part to justify its proposal for a 9.8% ROE and a 50% equity ratio. It is impossible to determine based on the information provided by the Company in its filings the degree to which CIS problems have caused its residential customers to dispute their bills, to be unable to pay erroneous bills, or to accumulate arrears for other reasons. What is known is that customers of all the other utilities in New York State have been subject to the disruptions and affordability issues caused by the pandemic and energy supply price increases. Only Central Hudson has seen arrears accumulate at the rates it has reported, and only Central Hudson has had such an experience from September 2021 to the present.

Yet, the Company does not acknowledge that problems associated with the CIS rollout, as documented in the OIE Report, may have been a factor contributing to the unprecedented accumulation of arrears after August 2021. The uncertainties created by the lack of information made available about the Commission's ongoing investigation into the CIS rollout make it impossible to judge whether the Company is justified in its request for its proposed ROE and equity ratio; or whether the Company would have had much better credit metrics had these problems not occurred — perhaps enough so to allow it to avoid recent credit rating downgrades. If the latter is true, then a significant aspect of the justification for its ROE and equity ratio requests in these proceedings must be called into question. Here again, public interest would be well served by having the findings from a prudence proceeding of the sort recommended in the OIE Report available before making such decisions.

For the reasons described above, PULP has significant concerns relating to the accuracy of the Company's data relied upon for the revenue requirement and thereby argue they are violating 16 NYCRR § 61.3 and 16 NYCRR § 61.4.

⁴⁹ See, Governor Hochul Highlights Available Programs to Help New Yorkers Manage Rising Energy Costs, Governor Kathy Hochul, March 4, 2022. Available at, <https://www.governor.ny.gov/news/governor-hochul-highlights-available-programs-help-new-yorkers-manage-rising-energy-costs>.

II. Central Hudson’s Rate Case Request For Additional Investment Funds Directed Towards Information Technology And Customer Service Is Against The Public Interest And Premature At This Juncture.

The Company’s Technology Capital and Operations Panel testimony states that the company is requesting \$47 million per year, over the next four years, significant portions of which are earmarked for improvements to the SAP CIS (as discussed earlier) and customer service experience.⁵⁰ PULP is concerned that this specific request is against the public interest. Without final resolution by the Commission on the Order to Show Cause in the prudence proceeding, and the Department’s Investigation, there are significant questions raised about the use of prior expenses, as raised in the Department’s Investigatory Report, along with the \$47 million being requested in the rate case.⁵¹ Without the Commission acting on the Order to Show Cause enacting a prudence proceeding it’s impossible to know whether past costs were appropriate and whether future costs relating to the system should be allowed. The results of the Company’s information technology (“IT”) spending are still being felt by customers today and will likely continue to have bill impacts far into the future.⁵² Yet, in the context of the rate case, Central Hudson aims to have rate payers fund additional programs that will make IT systems arguably more costly.⁵³

From the Technology Capital and Operations Panel Testimony, Central Hudson cites continuing issues with bill calculation and printing, and then indicates that they believe that these issues will be resolved by the end of 2023.⁵⁴ The Panel then relies on these issues and improvements in its justification for requesting additional investment in the SAP CIS system.⁵⁵ PULP interprets this testimony to be Central Hudson's effort to request additional funds to improve the underlining, CIS system that is still under investigation. Therefore, because of the potential for imprudent requests for additional funding, the rate case must be denied at this time.

⁵⁰ See, Cases 23-E-0418 et al, *Direct Testimony of the Technology Capital and Operations Panel*, at 7, 11-14 (Jul. 31, 2023).

⁵¹ “Central Hudson promised ratepayers and the Commission a modern system capable of handling complex billing and an improved customer experience. The company spent over 21 million dollars of ratepayer money and delivered neither.” Case 22-M-0645, New York State Department of Public Service, *Investigation Report* (Dec. 2022) at 47.

⁵² *Id.* at 7.

⁵³ See, *id.* at 11-14.

⁵⁴ *Id.* at 11.

⁵⁵ *Id.*

III. Ongoing CIS Issues At Central Hudson Necessitate The Need For Transparent Resolutions Prior To Proceeding With Any Increase In Customer Rates, And Proceeding With The Case At This Juncture Is Against The Public Interest.

Despite the passage of time, PULP is deeply troubled by the ongoing indications that Central Hudson's CIS system is not yet fully operational and that customers continue to grapple with billing issues. Recent feedback from the rate case public statement hearings, combined with comments logged in the dockets related to the Company, paint a concerning picture. These testimonials are the most current information available to suggest that Central Hudson has yet to fully address and resolve issues originating from its CIS implementation. It would be a disservice to the public to pursue a rate case until there's confirmation that the CIS system is operating correctly and all outstanding billing issues have been corrected.

The Virtual Public Statement Hearings Show that Billing Issues Persist

On September 12, and 20, 2023, the Commission held four virtual public statement hearings. The virtual public statement hearings were attended by elected officials,⁵⁶ a member of the New York State Climate Action Council,⁵⁷ community organizers,⁵⁸ and many of Central Hudson's rate payers.⁵⁹ Each of these individuals, whether they represented themselves or organizations, voiced concerns about the rate plan.⁶⁰ These ranged from issues with how the rate filing addressed climate change, to the dozens of customers who voiced their dissatisfaction with Central Hudson.⁶¹

At each hearing there were customers who are experiencing ongoing billing issues. One of the first speakers at these hearings discussed the trouble they were having with Central Hudson's customer service and their inability to help rectify the situation and resolve the billing

⁵⁶ Case 23-E-0418, et. al., Public Statement Hearing Transcript-Wednesday September 20, 2023 - 1PM-Teleconference, at 40 (line 16-25)-43 (line 2-22).

⁵⁷ Case 23-E-0418, et. al., Public Statement Hearing Transcript-Wednesday September 12, 2023 - 1PM-Teleconference, at 20 (line 5-25)-22 (2-21).

⁵⁸ Case 23-E-0418, et. al., Public Statement Hearing Transcript-Wednesday September 20, 2023 - 5PM-Teleconference, at 10 (line 25)-12 (line 2).

⁵⁹ Case 23-E-0418, et. al., Public Statement Hearing Transcript-Wednesday September 12, 2023 - 5PM-Teleconference, at 10 (line 17-25)-11 (line 2-20).

⁶⁰ See, Transcript September 12, 2023 - 1PM-Teleconference, at 14 (line 2-25)-15 (2-19); see also, Transcript September 12, 2023 - 5PM-Teleconference, at 15 (line 9-25)-17 (line 2-10); Transcript September 20, 2023 - 1PM-Teleconference, at 9 (line 23-25)-13 (2-11).

⁶¹ See generally, *id.*

issues.⁶² At the 5 P.M. hearing later that day, a Central Hudson customer commented that they had to file multiple complaints with DPS against Central Hudson regarding the poor customer service, and that they still were not receiving an accurate estimated bill, despite their best efforts to remedy the situation.⁶³ Of note at the next meeting was a retired person who had not had his meter read at the time of the hearing and whose estimated bills rose to be nearly \$800 per month.⁶⁴ This customer did their best to pay their bills on time, expecting that the estimations would be rectified eventually, however at the time of the hearing, this customer's account had not been recalculated based on his actual usage.⁶⁵ At the final public statement hearing an individual who runs a small non-profit commented about a building they owned that was rarely used.⁶⁶ This building received inaccurate estimations that were taken out of the non-profits account via autopay.⁶⁷ Because this building was rarely used the billing issue went unnoticed for some time, and—at the time of the public statement hearing—had yet to be resolved.⁶⁸

The In-Person Public Statement Hearings Show that Billing Issues Persist

On October 17 and 18, 2023, four in-person public hearings were held in Central Hudson's service territory.⁶⁹ PULP staff attended all four hearings, where customers shared stories about their billing issues, difficulties connecting with customer service, and more. Particularly troubling was the number of stories that indicated that billing issues were ongoing and several matters had not been resolved. Examples include but are not limited to:

In Catskill, the majority of the commenters stated that they are still receiving incorrect bills or have not received a bill in several months. One speaker noted that there's the sense that the public has lost confidence in Central Hudson. In Newburgh, many customers commented that they cannot currently afford their bills and stressed that the increase will put them further behind. In Poughkeepsie, commenters stated that they are confused by the bills they received from Central Hudson and will be unable to afford an increase. Lastly, in Kingston, many elected officials commented that they still receive daily calls from their constituents regarding incorrect,

⁶² See, Transcript September 12, 2023 – 1PM-Teleconference, at 9 (lines 17-25)-10 (lines 2-13).

⁶³ See, Transcript September 12, 2023 - 5PM-Teleconference, at 13 (lines 11-25)-14 (lines 2-19).

⁶⁴ See, Transcript September 20, 2023 - 1PM-Teleconference, at 54 (lines 10-25)-57 (lines 2).

⁶⁵ *Id.*

⁶⁶ See, Transcript September 20, 2023 - 5PM-Teleconference, at 23 (lines 19-25)-27 (lines 2-11).

⁶⁷ *Id.*

⁶⁸ *Id.*

⁶⁹ Case 23-E-0418 et. al., Notice Soliciting Comments and Announcing Public Statement Hearings, (Sept. 26, 2023).

inconsistent bills and unresolved complaints to the company. Overall, it is clear from the comments at these hearings that customers are upset, angry, confused, and are still experiencing issues as a result of the CIS upgrade.

Affidavits Submitted by Customers Prove that Billing Issues Persist and Many Issues Remain Unresolved

PULP has also collected affidavits, for the purpose of providing sworn statements, which are evidence that Central Hudson customers still struggling with billing issues. Those affidavits are included in this Motion as Exhibits 2-5. For the purpose of protecting confidentiality, PULP has filed non-confidential/redacted versions for public view and confidential/un-redacted versions with the Administrative Law Judges and the parties who have signed the protective order in this Case. The Affidavits included in Exhibits 2-5 are evidence showing the struggles customers have faced to have their billing concerns addressed. Many if not all the Customers' issues with Central Hudson remain unresolved.

One customer described in their affidavit billing issues that had continued for approximately two years.⁷⁰ While the customer's balance grew through monthly bills ranging from \$200 to \$300, their budget billing amount was only \$75 per month before the CIS change.⁷¹ The customer's balance began to increase and at one point topped \$1,000.⁷² Concerned about the balance, the customer applied for financial assistance from charities and social services.⁷³ To this day, the customer remains concerned that some if not all of the financial assistance they were approved for failed to be applied to their account, and as a result, they believe that this issue remains unresolved.⁷⁴

The second affidavit is from an individual who has been a Central Hudson customer since 1986.⁷⁵ This customer explained that their billing issues with the company have been "outrageous, unacceptable and stressful...."⁷⁶ This individual explains that their problems included issues with erratic budget billing that began with the incorrect budget plan amount, followed by the monthly amounts increasing unexpectedly, but when speaking with the company

⁷⁰ PULP Exhibit 2.

⁷¹ *Id.* at 2.

⁷² *Id.*

⁷³ *Id.*

⁷⁴ *Id.* at 3.

⁷⁵ PULP Exhibit 3, at 3.

⁷⁶ *Id.*

the customer was told that the budget plan amount was incorrect and therefore, had to be increased again.⁷⁷ The customer then explains that they failed to receive any bills for a period of time, and then received numerous charges, credits, and billed amounts that made no sense. At one point the customer indicates that a \$374.17 charge was added to their account as a “contribution to the Good Neighborhood Fund,”⁷⁸ which the customer did not authorize.⁷⁹ The customer explains that their total balance is \$5,439.71 with \$543.69 currently due.⁸⁰ The customer does not believe that their issues have been resolved and they end by “respectfully asking for assistance in this matter.”⁸¹

A third Central Hudson customer explains in their affidavit how on April 24, 2023, Central Hudson unexpectedly charged \$1,873.24 to their credit card.⁸² This amount was not only unanticipated, but it also resulted in the customer going over their credit card limit. The customer first called their credit card company to investigate the charge, but the credit card company directed them to speak directly with the Company. While speaking with Central Hudson, the customer was told that since they “hadn’t set a limit for the amount that could be taken, there was nothing they could do.”⁸³ Central Hudson then explained that the \$1,873.24 represented an adjustment to their payment plan over “the previous number of months,” but when the customer asked the Company for the dates that their meter was read, Central Hudson could not provide the dates.⁸⁴ The customer believes that this matter remains unresolved.⁸⁵

The fourth Central Hudson customer’s affidavit describes in extensive detail their billing issues with Central Hudson, and their difficulty obtaining information and a resolution of their concerns.⁸⁶ This customer filed their first complaint with the Department over two-years ago but is still awaiting the date for their informal hearing.⁸⁷ This customer’s issues first began in April 2021 when they noticed that they received estimated bills two months in a row.⁸⁸ The following

⁷⁷ *Id.* at 2-3.

⁷⁸ *Id.* at 3.

⁷⁹ The customer’s affidavit shows that the charge was later removed by the Company following the customer’s call to the company to ask that it be removed; *Id.*

⁸⁰ *Id.*

⁸¹ *Id.* at 4.

⁸² PULP Exhibit 4 at 2.

⁸³ *Id.*

⁸⁴ *Id.*

⁸⁵ *Id.* at 3.

⁸⁶ PULP Exhibit 5.

⁸⁷ *Id.*

⁸⁸ *Id.* at 2-3.

month resulted in another estimated bill. When the customer called the Company to request an actual meter reading, Central Hudson told them that their meter “was not working” and that an order had been placed to check the meter.⁸⁹ After receiving additional bill estimates, followed by one “purportedly actual read” in June 2021, in September 2021, the customer received more estimated bills, two months in a row.⁹⁰ At this point, the customer called the Company who encouraged them to take a photo of their meter and submit their own actual read. Unfortunately, the customer was “unable to take a useful photo because it is an ERT meter ...” so they called the Company back that same day but was told that there was nothing they could do to help, besides transferring the customer to the “corporate headquarters.”⁹¹ After nearly an hour on hold, the customer’s call was dropped without getting the chance to speak with anyone at corporate headquarters.⁹²

After this incident, the customer filed their first complaint with the Department.⁹³ Unfortunately, this first complaint was closed when the customer reportedly failed to respond to an email sent to them by the Company within 60-days.⁹⁴ During this same time period the customer was experiencing growing difficulties with the Company.⁹⁵ The customer’s affidavit explains how they opened a new complaint on May 17, 2022, and has made a concerted effort to update the complaint so that it wouldn’t close like their prior complaint.⁹⁶ In August 2022, the customer received a spreadsheet from the Company reflecting alleged usage between March 2021 and June 2022, but there was no explanation of the billing issues or the “purported meter readings when the meter was not working.”⁹⁷ To this day, the customer is awaiting an informal hearing on their complaint and still has not received an explanation relating to the history of

⁸⁹ *Id.* at 3.

⁹⁰ *Id.*

⁹¹ *Id.*

⁹² *Id.*

⁹³ *Id.*

⁹⁴ *Id.* at 4.

⁹⁵ PULP Exhibit 5 at 2-5 shows a detailed back and forth between Central Hudson and the customer who was told between March 2021 through June 2022, contradictory information on different occasions that bills/usage were based on estimated or actual readings, while also being told that their meter was not working and/or no new meter number was in the system. PULP encourages the full review of Exhibit 5 as our attempt to summarize this back and forth does not do justice to the customer’s extensive efforts to seek resolution of their concerns, and their efforts to track what has happened to their bills.

⁹⁶ *Id.* at 4.

⁹⁷ *Id.*

estimated and purported actual meter readings, during the time period when they were told by the Company that their meter was not working.⁹⁸

The stories shared at the public statement hearings and those contained in the Affidavits must be acknowledged in the context of this rate case. It's important to note that in the Company's reply to PULP's motion, Central Hudson may argue that there's been a decrease in "new" DPS complaints filed against them, which should be considered evidence that their billing system is functioning properly. PULP would like to take this opportunity to assert that the in-person hearings made it evident that there's widespread general confusion amongst many of the company's customers. This confusion includes what the status of existing complaints with DPS against Central Hudson are, "who" the customers have filed complaints with (just Central Hudson directly or also with DPS), struggles connecting with the Company's customer service representatives to report new concerns, and more.

For example, some customers do not know about DPS' complaint process, and instead, have only tried communicating and "complaining" to the Company. Some customers who've made DPS complaints in the past may believe that they have "active" DPS complaint, when they, in fact, may be closed. In addition, some customers are still reporting difficulties connecting with the Company's customer service representatives because they are on hold for extremely long periods of time and/or get disconnected prior to speaking with an agent. This means that customers are still trying to resolve matters on their own directly with Central Hudson but struggling to connect with the company.

As a result, PULP cautions the Department and Commission from basing decisions on the current count of incoming or new complaints made to the DPS as PULP does not believe that they are an accurate accounting of the sheer number of actual issues remaining or new. The current customer experience for Central Hudson customers is one riddled with difficulties and confusion. No matter what the new DPS complaint total is as of today, the evidence provided by PULP's affidavits and the public statement hearings should be an indication of ongoing, unresolved, and new billing issues.

⁹⁸ *Id.* at 5.

IV. Lack of Final Resolution in Ongoing Proceedings and Matters Makes the Rate Case Premature and Against the Public Interest.

As PULP continues to monitor the operational status and customer concerns associated with Central Hudson's CIS system, another recurring theme emerges: a clear lack of resolution in the three significant proceedings related to the Company. The public, including PULP, is unaware of where much of the Department's investigation, the audit, and billing monitor's work remains, due to the inherently necessary investigatory process between the Company and Department Staff. Unfortunately, the lack of clarity as to where the investigatory and resolution process stands is another factor leading to the eroding of public confidence in the effectiveness of the regulatory process and the Company's ability to operate, let alone seek a rate increase.

Operations and Management Audit

First, through the Operations and Management Audit (21-M-0541) the last item filed on DPS' document and matter management system ("DMM") is the Company's proposed Management Audit Implementation plan, filed on May 22, 2023. In that filing, the Company responded to thirty-seven recommendations made by Overton Consulting. Central Hudson indicated that thirty-six of the thirty-seven recommendations were "in progress," which means "Implementation plan established; work may have commenced," and one is marked "completed."⁹⁹ As of today, no further information is included on DMM, which leaves the public waiting for an update on the Company's efforts to implement all thirty-seven recommendations.

Moreover, to date, the public has not yet had the opportunity to comment on the Company's proposed implementation plan. In the Commission's press release originally announcing the audit the public was told that,

"In terms of next steps, Central Hudson has 30 days to submit an implementation plan with the Commission. Staff will review Central Hudson's implementation plan to ensure it addresses the underlying findings in the audit report. Staff will also review and assess any proposed modifications or rejections. *The implementation plan will be submitted for public comment*, including any revisions resulting from staff's review, further refinement

⁹⁹ The completed recommendation is related to "Governance and Management" specifically, "Central Hudson's organizational structure should be revisited, and the number of senior level leadership positions expanded to provide appropriate executive oversight to significant corporate functional areas." at 2, 11.

by Central Hudson, or public comments, will be presented to the Commission for approval or modification.”¹⁰⁰ (*emphasis added*).

While Central Hudson complied with the timeline to submit its implementation plan, the public is still awaiting the opportunity to review and comment on the Company's corrective actions plan, followed by the need for Commission action. PULP believes that it is against the public interest to proceed with the rate case until the Operations and Management Audit process has been finalized and all corrective actions have been implemented and confirmed by Overton Consulting for accuracy purposes.

The Prudence And Penalty Proceeding

Second, when considering the Central Hudson Prudence/Penalty proceeding, the Commission has not yet decided on the open Order to Show Cause.¹⁰¹ On January 17, 2023, Central Hudson responded to the Commission’s Order to show cause explaining why, in their view, the Commission should not commence a proceeding to examine the prudence of the utility’s expenses, and/or a civil penalty action and/or an administrative penalty action, pursuant to Public Service Law §§25 and 25-a, for apparent violations of the Public Service Law, rules and regulations adopted thereto, and Commission orders.¹⁰² As of today, the Commission has not made a decision on whether to proceed with such a proceeding or penalty action.

Prudence reviews provide the Commission the ability to review the Company’s actions and costs associated with the CIS upgrade as “investor-owned utilities are only allowed to earn a profit and recoup costs on monetary disbursements which are 'prudent,' and that any non-prudent costs must be borne by the utilities' shareholders rather than the customers.”¹⁰³ PULP firmly believes that it’s against the public interest to allow Central Hudson’s rate case to proceed without a determination by the Commission as to the Order to Show Cause in 22-M-0645.

¹⁰⁰ See, Matter 21-M-0541, *PSC Receives Audit of Central Hudson*, (Press Release), (April 20, 2023), available at: <https://documents.dps.ny.gov/public/MatterManagement/CaseMaster.aspx?MatterSeq=66705&MNO=21-M-0541>.

¹⁰¹ See generally, Order to Commence Proceeding and Show Cause, (Dec. 15, 2022), 22-M-0645, Proceeding on Motion of the Commission Concerning Central Hudson Gas & Electric Corporation's Development and Deployment of Modifications to its Customer Information and Billing System and Resulting Impacts on Billing Accuracy, Timeliness, and Errors.

¹⁰² 22-M-0645, Proceeding on Motion of the Commission Concerning Central Hudson Gas & Electric Corporation's Development and Deployment of Modifications to its Customer Information and Billing System and Resulting Impacts on Billing Accuracy, Timeliness, and Errors, see generally Central Hudson’s response, dated January 17, 2023, available at: <https://documents.dps.ny.gov/public/MatterManagement/CaseMaster.aspx?MatterCaseNo=22-M-0645&CaseSearch=Search>.

¹⁰³ *Niagara Mohawk Power Corp. v. Stone & Webster Eng'g Corp.*, 725 F. Supp. 656 (N.D.N.Y 1989).

There's a strong likelihood that if a prudence proceeding commences that the Department and Commission will find imprudent costs, which should not be allowed in the baseline data of the rate case, nor borne by the customers to pay.

The Independent Billing Monitor

Third, with the announcement on July 27, 2023, that the Commission would be installing an independent monitor to oversee the Company's billing,¹⁰⁴ PULP firmly believes that it's against the public interest for the rate case to proceed until the independent monitor's work has been completed, and corrective action ordered, implemented, and confirmed for accuracy purposes. It's also important to note that the Commission was clear in the order appointing the independent monitor that the Agreement between them and the Company did not "finally resolve issues raised in the Order to Show Cause and any potential enforcement or prudence proceeding."¹⁰⁵ The Agreement also did not address questions of liability.¹⁰⁶ Each of these assertions support PULP's argument that these fundamental matters relating to Central Hudson's billing system remain open and active.

PULP is deeply concerned that it is against the public interest to proceed with a rate increase while there is the lack of final corrective action and transparency in these three critical proceedings. Given the current landscape of uncertainty and ambiguity, it is difficult for stakeholders to operate in such an environment of uncertainty and ambiguity, and we contend that its essential that these proceedings reach clear and definitive resolutions to restore public trust and ensure that ratepayer interests are prioritized.

V. Central Hudson's Struggles To File Its Rate Case Updates At The Appropriate Time And In The Appropriate Manner Is Cause For Concern.

On September 15, 2023, Central Hudson submitted updates and corrections to its rate filing, but the filing was submitted in a narrative format, rather than following the required

¹⁰⁴ See, Matter No., 22-M-0645, "DPS to Install Independent Monitor to Examine Billing System at Central Hudson Central Hudson to Read Customers' Meters Every Month — Resolving a Major Customer Issue Investigation Continues to Determine Appropriate Penalty and Prudence Remedy for Billing System Failures." Press Release, July 27, 2023.

¹⁰⁵ *Id.* at 6; The order indicated that: This Interim Agreement relates to but does not resolve allegations arising from the Company's development and deployment of the SAP System contained in the Order to Show Cause ("Order to Show Cause") filed in Case 22-M-0645 and the report filed in the same case by the DPS Office of Investigations and Enforcement ("OIE"), issued on December 15, 2022 (Interim Agreement at 1).

¹⁰⁶ *Id.*

format for testimony.¹⁰⁷ In its cover letter, Central Hudson also indicated that “The Company will further support these and any other proposed adjustments, including but not limited to material changes identified after the Update, as part of the Company’s Rebuttal Testimony filings.”¹⁰⁸ On October 2, 2023, the Company then filed an update to its update by submitting policy panel testimony with two exhibits, which included an update to its narrative statement and an update to its primary drivers. Unlike the filing made on September 15, 2023, the October 2, 2023, update appears to conform with the Commission’s format requirements.¹⁰⁹ However, in the Company’s Updated Exhibit __ (PP-1U), the narrative statement still indicated that,

“The Company recognizes that the revenue requirement changes discussed in this Update may impact the testimony and exhibits of other witnesses or panels and any such impacts will be appropriately reflected in the Companies’ Rebuttal Testimony. This includes, but is not limited to, updated revenue allocation, rate design and resulting bill impacts, as well as the effect on deferred taxes (updates included here were assumed to be at the statutory tax rate).”¹¹⁰

PULP staff are still reviewing the updates but we want to assert herein that it would be inappropriate for the Company to wait until its rebuttal testimony to provide vital supporting information. As discussed above, PULP already has concerns about the accuracy of the revenue requirement. If the Company is unable to provide the full and necessary updates through its September 15th or October 2 filings, nor through discovery, but has to wait until rebuttal testimony is due on December 19, 2023, PULP would also be concerned that this would prejudice PULP and the other parties to the rate case. Moreover, the delay in providing these updates in a timely manner would affect the development of the record in this case. Finally, PULP raises this matter as another example of how the Company’s ongoing CIS issues may be impacting its ability to operate and present adequate rate case filings, as required by the PSL.¹¹¹

¹⁰⁷ 16 NYCRR Section 4.5.

¹⁰⁸ Central Hudson’s September 15, 2023, Update and Narrative Statement available at: <https://documents.dps.ny.gov/public/MatterManagement/CaseMaster.aspx?MatterSeq=71378&MNO=23-E-0418>.

¹⁰⁹ 16 NYCRR Section 4.5.

¹¹⁰ Central Hudson’s Updated Narrative Statement, September 15, 2023, at 1, available at <https://documents.dps.ny.gov/public/MatterManagement/CaseMaster.aspx?MatterSeq=71378&MNO=23-E-0418>.

¹¹¹ 16 NYCRR § 61; example, it is required under 16 NYCRR § 61.3(a), “The utility whose rates, rules and regulations are being considered shall establish by competent testimony.”

CONCLUSION & REQUESTED RELIEF

Central Hudson's customers have faced a number of billing related issues and struggles since the Company's September 2021 CIS upgrade. The sentiment repeatedly expressed at the in-person public hearings in this case was the lack of confidence and the erosion of trust that has occurred between Central Hudson and its customers.¹¹² This sentiment cannot and should not be ignored. The public needs the Department and the Commission to act with their interest in mind, by ordering a hearing in this matter and ultimately denying Central Hudson's rate case filing.

The Company should not be provided a rate increase until its billing system has been deemed by Department Staff, Overton Consulting, and the independent billing monitor, to be fully functioning, until all outstanding billing issues are corrected, and until there has been a complete, verified accounting for project costs, overruns, and monies spent on the CIS implementation, roll-out, and corrective actions implemented. The public also needs the Commission to issue final orders to approve the corrective actions recommended and confirmation that accuracy has been achieved. Reason would specifically suggest that a Commission decision about the Company's prudence—or not—and any accompanying penalties, would be necessary to inform any decisions about the Company's request, and confirm the accuracy of the baseline data included in the filing, before considering granting Central Hudson any more ratepayer money.

If by December 19, 2023, the Administrative Law Judges or the PSC has not ruled on this Motion, or rejects PULP's motion to deny either before or following a hearing, PULP urges the Commission and Department to proceed with litigation for the purpose of issuing rates, rather than proceed with confidential settlement negotiations. Pursuing a one-year litigated outcome would restrict any rate increase to the amount the Commission deems is necessary to maintain safe and reliable service, pending clarification, verification, and resolution of issues that have been solely in the control of Central Hudson.

In relation to the Company's rates, if the Administrative Law Judges or the Commission find that a rate adjustment is necessary to assure safe and reliable service,¹¹³ PULP encourages

¹¹² As of the date of this filing the transcripts from the in-person public statement hearings had not been released. PULP staff attended all four hearings and heard this assertion about erosion of confidence and trust specifically at the Catskill Hearing.

¹¹³ PSL § 65.

considering the adoption of temporary rates, as set forth in PSL§114, pending the outcome of the matters associated with the billing investigation and other open matters. This would provide opportunity to set rates in an expedited manner to avoid delay while allowing the Commission and Staff to fully assess whether the data provided by the Company can be relied upon in setting permanent rates.¹¹⁴

Please note, if the Commission proceeds with the rate case through confidential settlement, PULP fully intends to remain involved in the case as an active party. Denying PULP the ability to be involved in the rate case process would, in our opinion, be detrimental to the outcome of the proceeding due to our consumer advocacy experience and focus on low-income households and DACs. We believe that our active party status is absolutely necessary to advocate for rate payer protection and prudent investment of the Company's funds. PULP will not walk away from the rate case process, leaving customers vulnerable to the administrative outcome that will follow.

In conclusion, PULP firmly believes that due to the concerns outlined herein, the public interest is best served by denying the rate case following a hearing on the merits.

Respectfully submitted,

/s/

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¹¹⁴ See, Case 10-E-0050, Niagara Mohawk Power Corporation – Electric Rates, Order Establishing Rates for Electric Service (issued January 24, 2011). In that case, where it became clear that the Company's financial projections for 2012 and 2013 could not be examined sufficiently to permit any overall delivery rate determinations for an additional two years, the Commission opened a separate proceeding, the "Service Company Audit" case, and made \$50 Million of the revenue temporary, pending a determination in the Audit case.

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