

STATE OF NEW YORK  
PUBLIC SERVICE COMMISSION

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

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

RULING ON EVIDENTIARY HEARING DATE AND PROCESS

(Issued December 26, 2023)

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

This ruling grants the request by Department of Public Service trial staff (DPS Staff) to delay the commencement of the evidentiary hearing in these proceedings approximately two weeks and establishes procedures for the process leading up to and including the evidentiary hearing.

Parties filed rebuttal testimony on December 19, 2023. We held a procedural conference on December 21, 2023, for the purpose of discussing whether the parties would pursue settlement or continue on a litigated track. During the conference, Central Hudson Gas & Electric Corporation (Central Hudson), indicated that, after engaging in exploratory discussion with other parties, namely DPS Staff, the parties would not engage in settlement discussions. Central Hudson and other parties stated their willingness to engage in limited settlement discussions to narrow the number of issues for the evidentiary hearing and we advised that a notice of impending settlement negotiations must be filed prior to the commencement of any such discussions.

DPS Staff requested that the evidentiary hearing be delayed two weeks, until January 23, 2024. Central Hudson indicated its general agreement with a delay, without an extension of the suspension period, and requested the hearing commence on January 24, 2024. Several other parties, including Multiple Intervenors, Dutchess County, PULP, UIU, and Walmart indicated general agreement with the proposal to delay the evidentiary hearing. PULP requested that the hearing commence the week of January 29, 2024. Several parties requested until close of business Friday, December 22, 2023, to confer with their witnesses to confirm availability for the new proposed dates. We granted that request. No party has opposed the requested delay of the evidentiary hearing.

We established the January 9, 2023 evidentiary hearing date considering the necessary procedural steps to build the record and bring this matter before the Commission within the statutory timeframe. In consideration of intervening holidays and the parties' interests in engaging in some limited settlement to potentially narrow the scope of issues, we grant the request for relief. In so doing, we do caution that the following procedural processes may be on an expedited schedule.

The evidentiary hearing will now commence on Wednesday, January 24, 2024, at 10:00 a.m. The hearing will be held at the Public Service Commission's Albany offices. All persons who intend to attend the hearing, and who are not Department of Public Service employees, must provide their name via email to Aisha Hammer ([Aisha.Hammer@dps.ny.gov](mailto:Aisha.Hammer@dps.ny.gov)), prior to 2:00 p.m. on Friday, January 19, 2024, and must be prepared to show valid photo identification upon arrival at 3 Empire State Plaza. These procedures are necessary to comply with building security requirements.

**Corrections to Testimony and/or Exhibits**

Several parties have already submitted corrections to testimony, which were styled as "erratum notices." Should any party discover a need to correct its testimony and/or exhibits, it must file a letter with the Secretary identifying the error(s), providing a new, clean copy of the testimony and/or exhibit, and a red-line version showing the change(s). These documents must be simultaneously served on the Administrative Law Judges (ALJs) and all parties to these proceedings. Parties should inform the ALJs and other parties of corrections as soon as possible, in the form described above, but no later than Tuesday, January 16, 2024. Parties may raise objections to the proposed corrections by 4:30 p.m. Friday, January 19, 2024. If no objection is raised by that time, the corrected clean version of the testimony and/or exhibit will be entered into the record and will be used during the hearing.

To the extent that corrections are not discovered in time to address them in the form described above, please bring enough hard copies of the corrections to distribute at the hearing to the ALJs and all parties.

**Pre-Filed Testimony**

Counsel for a sponsoring witness need not bring hard copies of pre-filed testimony to provide to the Court Reporter for inclusion in the transcript. To generate a transcript for this hearing, a transcription service technician will prepare an audio recording and later prepare a transcript based on the recording. To facilitate the transcription of pre-filed testimony, please email to the ALJs ".pdf" files of all testimony (testimony ONLY, not exhibits) no later than 4:30 p.m. Monday, January 22, 2024. All files should be named consistently using the following naming convention:

<Name of Party> - <Initial, Supplemental Initial,  
Rebuttal, Supplemental Rebuttal> - Testimony of  
<Witness or Panel Name> - CH <Electric/Gas/Both>

If any of the testimony has been corrected and no objection was raised, the name of the ".pdf" file should indicate that the testimony was corrected. For example, corrected testimony would be labeled:

MI - Corrected Initial - Testimony of Pollock -  
CH Both

As in the example above, the party's name should be in shorthand - e.g., "DPS Staff" for Department of Public Service Staff, "MI" for Multiple Intervenors.

To the extent that a correction to testimony is made at the hearing, that party will be required to provide a corrected ".pdf" document electronically by 4:30 p.m. the day following the conclusion of cross examination of that witness.

**Pre-Filed Exhibits**

Counsel for a sponsoring witness need not supply electronic or hard-copy pre-filed exhibits for the Court Reporter. All the pre-filed exhibits are on file electronically with the Secretary. We will circulate an exhibit list to the parties that includes the pre-filed exhibits. Each party that filed exhibits is required to review the document and must advise us by 4:30 p.m. Thursday, January 18, 2024, either of any corrections that must be made to the spreadsheet to render it accurate, or, that your party's data is accurate. Once we have received feedback from the parties, we will assign hearing numbers and circulate an exhibit list for the pre-filed exhibits.

Counsel must bring copies of pre-filed exhibits for their own reference and sufficient copies of any document needed for cross examination of witnesses (also see the paragraph below on new exhibits).

**Court Reporter**

Each party appearing at the hearing must bring a list identifying each of its representatives who will participate in the hearing to provide to the court reporter. This will assist in generating an accurate transcript. Preferably, the list should indicate the person's role in the hearing (attorney, witness, etc.).

**New Exhibits Introduced During Cross Examination**

If a party introduces an exhibit during the hearing that has not been pre-filed, the party must, at the time of introduction: 1) provide hard copies to the ALJs; 2) provide hard copies to the witnesses being cross examined; 3) provide hard copies to all interested parties participating in the hearing. To save paper, the hard-copy exhibits should be double-sided. At the conclusion of the hearing, a true electronic copy of the exhibit must be filed with the Secretary by the party introducing the exhibit labeled with the assigned exhibit number.

To the extent that you intend to introduce multiple exhibits during your cross examination of a witness, to save time, it is appreciated that you collate and bundle the exhibits together in advance of the hearing to save time in disbursing them during the hearing. We can mark the exhibits as you introduce them.

**Cross Examination of Confidential Material**

Any counsel intending to ask cross examination questions regarding any confidential Protected Information shall contact the ALJs no later than 4:30 p.m. on Thursday, January 18, 2024, to allow the ALJs an opportunity to make appropriate arrangements. Parties are encouraged to work around the confidential Protected Information to the maximum extent possible.

**Attending Cross Examination of Other Parties**

Repetitious and/or duplicative cross examination will not be permitted. If another party shares a common issue with your party and you intend to cross examine the same witness(es), plan to attend the hearing to listen to that party's questioning of the witness(es). Advanced coordination is appreciated and encouraged.

**Hearing Schedule**

As noted above, the hearing will commence on Wednesday, January 24, 2024, at 10:00 a.m., and will continue daily thereafter, excluding weekends, as needed. To assist us in establishing a schedule of witnesses in these proceedings, we will circulate separately by email two documents: a "Cross Examination Time Estimates Worksheet" and "Witness Unavailability Worksheet." All parties must fill out these forms and return them to the ALJs, copying all parties, no later than 4:30 p.m. Friday, January 12, 2024. Thereafter, we will create a schedule to be distributed to the parties.

**Motions to Strike or Exclude Testimony or Exhibits**

If any party objects to the inclusion of any pre-filed testimony and/or an exhibit in the record, the motion should be made no later than Friday, January 19, 2024, and we will address the motions at the hearing. Any party wishing to strike or exclude newly proffered testimony or exhibits, the motion must be made

during the hearing, at the time the testimony or exhibit is offered. At the ALJs' discretion, motions may be resolved immediately, or a decision may be reserved until after the hearing. If a decision on the motion is reserved, the ALJs will establish deadlines for the submission of written arguments at the conclusion of the hearing. Any objection to testimony or an exhibit that is not raised at the hearing will be considered waived.

**Subject to Check**

To ensure an accurate evidentiary record is developed, as a general rule witnesses may not accept statements as true "subject to check" unless good cause is shown. In those limited instances, the witness may do so only if the statement can be easily and quickly verified. If a witness is permitted to take a statement as true subject to check, to avoid any ambiguity or confusion in the record, the witness must verify the veracity of the statement before the witness is excused from the witness stand. A short break will be provided to allow the witness to verify the information.

**Witness Affidavits**

To the extent that it is determined in advance of the hearing that no party has cross examination questions for a witness, and we have no questions for that witness, the witness will not be called, and instead will submit a simple affidavit which will allow the pre-filed testimony to be offered into evidence. We will circulate a sample affidavit separately by email.

**Procedural Conference**

We intend to hold a procedural conference the afternoon of Monday, January 22, 2024. At the conference parties may request any clarification of these procedures or to pose questions.

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Parties are encouraged to present any questions in writing by close of business, Friday, January 19, 2024. We will circulate a meeting invitation to the parties with the details of the conference.

(SIGNED)

JAMES A. COSTELLO

(SIGNED)

ASHLEY MORENO