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January 17, 2022

Hon. Michelle L. Phillips
Secretary to the Commission
New York State Public Service Commission
Agency Building 3
Albany, NY 12223-1350

Re: *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.*

Dear Secretary Phillips:

Please accept for filing in the above-referenced Case Central Hudson Gas & Electric Corporation's Response to the New York State Public Service Commission's Order to Commence Proceeding and Show Cause issued and effective December 15, 2022.

Please contact the undersigned at (845) 486-5831 or pcolbert@cenhud.com with any questions regarding this matter.

Respectfully submitted,

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**STATE OF NEW YORK
PUBLIC SERVICE COMMISSION**

<i>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.</i>	Case 22-M-0645
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**CENTRAL HUDSON GAS & ELECTRIC CORPORATION'S RESPONSE TO ORDER
TO COMMENCE PROCEEDING AND SHOW CAUSE**

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INTRODUCTION

Central Hudson Gas & Electric Corporation (“Central Hudson”) timely responds to the New York State Public Service Commission’s (“Commission”) Order to Commence Proceeding and Show Cause (“Show Cause Order”).¹

I. Central Hudson Acknowledges the Unintended Disruptive Impact on Customers.

Central Hudson has always prided itself on providing superior customer service. Whether through storm restoration, answering calls or responding to service needs at the customer’s location, Central Hudson has a culture of going above and beyond to meet its customers’ needs. That said, Central Hudson recognizes that immediately after launching its new SAP-based Customer Information System (“CIS”) on September 1, 2021, there were issues with its new SAP CIS (“SAP system”). These issues resulted in impacts to a portion of Central Hudson’s customers, including delayed and inaccurate invoices, confusion, and anxiety. Central Hudson has been humbled by the identification of these issues and the resulting impact on customer satisfaction.²

Despite Central Hudson’s best efforts to correct the issues, the issues continued, and Central Hudson experienced a rise in customer complaint levels, harsh criticism from politicians, and questions from the Commission and others seeking to understand the problems with the SAP system. As a result of Central Hudson’s poor customer service

¹ 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.*

² Office of Investigations and Enforcement (“OIE”) (New York State Department of Public Service Investigation Report at 21) (December 15, 2022) (“OIE Report”).

relating to the SAP transition, the trust that its customers have in Central Hudson has declined—trust that Central Hudson had developed over more than one hundred years.

Central Hudson redoubled its efforts with the help of its union and management employees, third-party experts, and contractors to correct all issues. Presently, Central Hudson continues to work diligently to resolve the remaining SAP system issues. Despite the extraordinary efforts of its employees and the expenditure by Central Hudson of millions of dollars to fix the SAP system issues, the process has been slower than anticipated and, for that, Central Hudson is apologetic to its customers and other affected stakeholders.

The Commission reasonably launched an investigation conducted by the Office of Investigations and Enforcement (“OIE”) of the New York State Department of Public Service (“DPS”), which resulted in the Show Cause Order. The issues facing Central Hudson’s customers include high frequency of estimated bills and backbills, bill print issues and, in a few cases, incorrect amounts withdrawn from customer accounts. Central Hudson has corrected, and continues to correct, the SAP system defects that caused these and other issues, and has timely corrected customer accounts through refunds, credits, and bill corrections. However, there remains a high level of public skepticism about whether Central Hudson has and will overcome these issues and regain customers’ confidence. Central Hudson is correcting the issues, issuing corrected bills where needed and issuing credits where warranted. Central Hudson assures our customers, the public and the Commission that it will overcome this adversity and again earn its customers’ respect and confidence by returning to its tradition of providing superior customer service, including, in particular, billing services.

II. Despite SAP system Shortcomings, Central Hudson has not violated the Public Service Law (“PSL”), rules, or Commission Orders and penalties under PSL §§ 25, 25-a and a prudence review are Not Warranted.

Central Hudson acknowledges that the transition to the SAP system has been plagued with issues that have impacted the experience of many of our customers. However, the fact that problems arose during the transition is not a legal basis, alone, to impose penalties against Central Hudson under PSL §§ 25 or 25-a or to find Central Hudson’s actions were imprudent. The Commission must apply applicable factual and legal standards to proceed under PSL §§ 25 and 25-a or with a prudence review. To meet the statutory requirements, the Show Cause Order relies on the OIE Report.

Central Hudson respectfully asks that the Commission consider several factors before it decides how to proceed. Central Hudson asks that the Commission consider the law and facts as they are, not as the OIE Report misinterprets and misapplies. The Commission undoubtedly has authority to issue penalties under PSL § 25-a and conduct a prudence review under PSL § 66(12)—in certain circumstances for certain conduct. It is also clear that there are limits to the Commission’s authority and standards that it must meet before the Commission can exercise its authority. A balanced reading of the law will lead the Commission to determine that Central Hudson made reasonable decisions to comply with the law, rules and Commission Orders so that it could provide customers with accurate bills as expeditiously as possible during a difficult situation.

The facts also deserve a thorough review without omission or prejudice. The evidence gathered by the OIE is extensive and shows that Central Hudson made reasoned decisions to implement the SAP system, but some issues arose when the transition occurred. Once the transition is made you cannot go back to legacy CIS for

two main reasons: (1) more than sixty systems, many of which are third party systems, had been, over a year-long pre-transition effort, reconfigured, integrated with, and made dependent on, the new SAP system; and (2) the legacy CIS mainframe was trending toward obsolescence, with diminishing support, and elevated a cybersecurity risk. The evidence also shows that Central Hudson did extensive training and testing, much more than the OIE Report includes.

The evidence further demonstrates that Central Hudson spent significant funds responsibly to obtain resources and expertise, before and after the SAP system went live. Central Hudson solicited feedback from its employees and acted on their advice and comments. In fact, the entire organization worked tirelessly to resolve issues so that it could provide the standard of customer service that is part of Central Hudson's culture. That we failed in providing the expected level of customer service is undeniable, but Central Hudson also succeeded by protecting customers from financial harm resulting from the transition and it continues to do so. The facts demonstrate that Central Hudson has resolved issues so that Business Practice Exception Managements ("BPEM"), which is a valuable tool to identify and resolve issues, are declining in number. The number of customer complaints is declining. The number of backbills is declining. These are all positive developments.

Finally, Central Hudson asks that the Commission consider that although customers have been unfortunately inconvenienced and justifiably confused by receiving estimated bills, multiple backbills and delayed bills, customers have not been financially harmed. Central Hudson has worked through a higher volume of complaints than it has ever had. Central Hudson has worked cooperatively with all stakeholders, customers,

Energy Service Entities (“ESE”),³ DPS Staff (“Staff”), the Commission and politicians (to the extent they have been willing to work with Central Hudson).

Central Hudson did not ignore the issues and did not complain about its predicament; Central Hudson did what it always does, its employees went to work to get the job done. The job is not finished. Central Hudson respectfully requests that, after reviewing the law and facts in a fair and unbiased light, considering Central Hudson’s efforts and the alternatives, the Commission will support Central Hudson in its efforts to finish the job, get the billing system right and allow customers to benefit from its new capabilities.

III. Legal issues are raised because the Show Cause Order and OIE Report inappropriately rely on statutes, rules, and Commission Orders.

The Show Cause Order and the OIE Report are legally deficient and do not meet the standards required under the applicable statutes or Commission Orders. The Show Cause Order and OIE Report rely on five statutes under the PSL: PSL §§ 25, 25-a, 41, 65, and 66.

To start, as to PSL § 65, the Show Cause Order and OIE Report incorrectly allege that Central Hudson fails to provide “just and reasonable service” because “the new CIS SAP billing system resulted in unjust and unreasonable charges for service, affecting over 8,050 customer accounts,…”⁴ The allegation is factually inaccurate as all of the listed accounts have been accurately billed or credited within the time permitted by the

³ ESEs include ESCOs, CDGs, Distributed Energy Resource Supplier (“DERS”), Distributed Generation

⁴ OIE Report at 47.

aforementioned backbilling statutes, rules and Orders.⁵ To the extent that billing is outside the permitted time periods Central Hudson has billed and credited customers to ensure they do not pay a legally impermissible upward adjustment and Central Hudson has not recovered, and will not seek recovery, of those costs. Central Hudson's customers have not been overcharged and it is inaccurate to so state.

With regard to PSL § 25, the Commission has failed to assert a specific violation and, even if it did so, the Commission has the burden to demonstrate that Central Hudson knowingly failed or neglected to comply with applicable statutes or Commission Orders.⁶ Neither the Show Cause Order nor the OIE Report states, let alone establishes, that Central Hudson knowingly failed or neglected to comply with an applicable statute or Commission Order because Central Hudson used its best efforts to comply and, to the best of its knowledge, has complied with applicable statutes and Commission Orders.

As to PSL § 25-a, the Commission is required to assess specific considerations, make specific notifications and hold an evidentiary hearing where it has the burden of proof to demonstrate by a preponderance of the evidence that Central Hudson has failed to comply with “a provision of this chapter, regulation or an order adopted under authority of this chapter...”⁷ The Commission cannot meet the preponderance of the evidence standard because the Show Cause Order and the OIE Report misstate the law and the facts, which show that Central Hudson has complied with applicable statutes, rules and Commission Orders.

⁵ DPS-001 IR-004 Attachment 1 CONFIDENTIAL; DPS-001 IR-004 Update CONFIDENTIAL (Appendix at A-183; Manual Refund Check Summary and Timeline Autopay CONFIDENTIAL (Appendix at A-640).

⁶ PSL § 25 (2023).

⁷ PSL § 25-a (2023).

The Show Cause Order and OIE Report misinterpret and misapply PSL § 41 by claiming that Central Hudson has only six months to send a bill to a residential customer under any circumstance.⁸ PSL § 41 actually allows up to 24 months to bill a residential customer for previously rendered service—the six month rule pertains only to the first bill issued to a new residential customer.⁹ The language of PSL § 41 is virtually identical to the language of 16 NYCRR § 11.14, which is also quoted and relied on by the Show Cause Order and OIE Report, and the language approved by the Commission in Central Hudson’s tariff.¹⁰ This language expressly permits Central Hudson to issue a backbill for service that reflects an upward adjustment (*i.e.*, a higher amount for a billing period) to an existing residential customer up to twelve months after service and in some instances longer. The Show Cause Order and OIE Report simply misconstrue, and are in direct conflict with, the statute, rule and Central Hudson’s Commission approved tariff.¹¹ Also, the reliance by the Show Cause Order and OIE Report on Case 91-E-0176, which has never been applied to Central Hudson, is inapposite to this proceeding.

The Show Cause Order and OIE Report state that PSL § 66(12) provides the Commission with authority to conduct a prudence review.¹² Central Hudson agrees that the Commission has the authority pursuant to PSL § 66(12) to conduct a prudence review—but there are standards and rules as to how and when this can be done. The OIE Report, however, fails to reference the proper legal standard to initiate such a review,

⁸ Show Cause Order at 15-16.

⁹ PSL § 41 (2023).

¹⁰ 16 NYCRR § 11.14; PSC No: 15 Electricity Leaf 62-63, Central Hudson Gas & Electric Corporation; PSC No: 12 Gas Leaves 32-33, Central Hudson Gas & Electric Corporation.

¹¹ *Id.*

¹² OIE Report at 44; Show Cause Order at 23-24.

incorrectly stating that “[i]n determining the prudence of Central Hudson’s expenditures on Project Phoenix, it is important to determine what was promised versus what was delivered.”¹³ Promises are not part of the legal standard. The proper standard is that “Staff is obliged to demonstrate a tenable basis for raising the specter of imprudence before the utility can be called upon to defend its conduct;...”¹⁴ Staff has not met that standard based on the factual errors underlying its assertion.

The Show Cause Order improperly holds that PSL § 66(2) “empowers the Commission to hold utilities to” the requirement that utility service is just and reasonable as set forth in PSL § 65(1).¹⁵ However, PSL § 66(2) pertains only to facilities used to manufacture or distribute gas or electricity.¹⁶ PSL § 66(2) lists those facilities as “works, wires, poles, lines, conduits, ducts and other reasonable devices, apparatus and property of gas corporations, electric corporations and municipalities;...”¹⁷ It is not legally permissible to incorporate billing systems in the list of facilities covered by PSL § 66(2) because billing systems are not among the facilities used to manufacture or deliver gas or electricity.¹⁸

¹³ OIE Report at 45.

¹⁴ *Long Island Lighting Co. v. Public Service Com.*, 134 A.D.2d 135, 144; 523 N.Y.S.2d 615 **, **620; 1987 N.Y. App. Div. LEXIS 50855 ***, ***20 (Supreme Court of New York, Appellate Division, Third Department December 30, 1987).

¹⁵ Show Cause Order at 12.

¹⁶ PSL § 66(2).

¹⁷ *Id.*

¹⁸ *Yates v. United States*, 574 U.S. 528, 544 (2015).

IV. Moving Forward.

A. Actions Taken.

Central Hudson completed numerous actions to resolve SAP issues, most notably during the last three months of 2022. Those actions focused on resolving remaining bill calculation and bill print accuracy issues. Specifically, Central Hudson targeted for resolution Budget Billing; Retail Choice; Collective (Summary) Billing; Net Meter; Community Distributed Generation (“CDG”)/Remote Net Metering (“RNM”) and CDG Net Crediting. These tasks have been substantially accomplished except CDG/RNM and CDG Net Crediting, which Central Hudson anticipates completing by March 31, 2023. Central Hudson also successfully returned approximately 25,000 customers to commodity service after the New York Independent System Operator (“NYISO”) ordered Central Hudson to serve the customers due to supplier defaults.

These accomplishments included programing, manual task completion, and testing of 113 resolutions. Of the 113 issues only 13 remain open and Central Hudson expects to complete development and testing of those issues by the end of March 2023. Approximately 100 Central Hudson employees and contractors took part in this effort. Central Hudson continues to marshal resources to provide accurate and timely billing service through the SAP system. This effort allowed Central Hudson to manage scope and delivery deadlines associated with over 72,000 bills.

B. What is next?

Central Hudson will continue to resolve outstanding issues including the resolution of remaining Electronic Data Interchange (“EDI”) issues, which will be invisible to customers, but will have a significant impact on ESEs and large customers using interval

metering data. Additional billing issues will be resolved through automation including remote crediting, Customer Benefit Charge, and sundry billing. Central Hudson will also address BPEM optimization. BPEM optimization will provide a more wholistic view of customer issues across various BPEM categories, which will provide efficiency in resolution and an ability to perform root cause analysis of BPEM volume, as well as seek to automate BPEM resolutions, thereby reducing BPEM volumes and decreasing manual BPEM handling time. Customers will notice faster bill processing and automation will free up valuable resources for other tasks. Central Hudson will evaluate a CDG billing process, which may enable more efficient CDG billing. Finally, Central Hudson will address data, account activities, operational backlogs, and estimation, providing customers with transparency and more bills based on actual meter reads. Central Hudson will complete these tasks by the end of 2023.

C. Augmenting Training.

Central Hudson is currently reevaluating training needs that have been impacted by higher employee turnover, lower employee tenure in customer facing roles, and the need to maintain SAP proficiency for all employees, particularly new employees. Central Hudson has launched a new training initiative for customer service operations employees. A cross-functional project team has been formed to enhance Customer Experience employee training and development over the coming months. The goals of the enhanced training program are: (1) to implement a proficiency based, data driven, comprehensive training program for Contact Center employees; (2) establish metrics to measure and assess improvement in proficiency levels and the knowledge base of employees; (3) improve the standardization of content within the SAP training environment; and (4)

establish a sustainable training organization in the contact center. During the next nine months, Central Hudson expects to achieve the following training milestones: (a) assess and prioritize training needs and develop training content and programs by mid-February; and (b) establish a stand-alone Contact Center training organization prior to the third quarter of 2023.

D. Augmenting Staffing.

Central Hudson is assessing staffing needs under the new SAP system paradigm to ensure customers and ESEs receive the billing services they require. Central Hudson commits to provide a staffing plan to DPS Staff with a timeframe and milestones so that stakeholders know what to expect from a staffing resource perspective.

E. Further Commitments.

Central Hudson remains committed to providing timely and accurate billing services for customers and ESEs. To achieve that objective Central Hudson commits to working with Staff to develop a billing services plan with milestones so that success can be measured and known. The plan will result in auditable systems and records permitting Staff and the Commission to confirm billing services performance and hold Central Hudson accountable for its performance.

HISTORY OF THE CASE

Central Hudson installed its legacy CIS system over forty years ago. The legacy CIS system utilized an IBM mainframe, which was a state-of-the-art system for a vertically integrated utility. In 1998, the Commission decided that New York should become a competitive retail electric and gas state and opened New York to retail competition for

commodity service.¹⁹ Since that time, through a series of Commission orders, utility billing has become significantly more complex and unique to New York.

Specifically, the Commission permitted: (a) retail commodity competition from Energy Service Companies (“ESCO”); (b) retail wheeling of energy; and (c) certain customers to be their own competitive supplier. At the same time the Commission adopted EDI as the data transfer protocol between utilities and ESCOs, permitted EDI companies to operate on behalf of ESCOs, and instituted a variety of different surcharges and rate structures. For many years, the legacy CIS system was able to continue to provide billing services but reliance on that system became more and more complicated, expensive, manual-intensive, and risky.

In recent years the Commission ordered the institution of complex billing arrangements through a series of orders including but not limited to: 07-M-0548 involving energy efficiency portfolio standards and customer consent and information protection issues; 12-M-0476 involving information and billing requirements for retail access; 14-M-0101 requiring data transfer and retail market development including net metering; 15-E-0751 concerning Distributed Energy Resources (“DER”); 16-M-0015 concerning Community Choice Aggregation; 18-M-0386 involving Cybersecurity and interconnection with ESCOs, CDG and Distributed Energy Resource Suppliers (“DERS”); 19-M-0463 involving consolidated billing with CDG; and 20-M-0082 introducing data requirements, including the Integrated Energy Data Resource (“IEDR”). During this time the legislature also passed the Climate Leadership and Community Protection Act (“CLCPA”), which

¹⁹ CASE 96-E-0909 - *In the Matter of Central Hudson Gas & Electric Corporation’s Plans for Electric Rate/Restructuring Pursuant to Opinion No. 96-12* (Order Adopting Terms of Settlement Subject to Modifications and Conditions) (Issued and Effective February 19, 1998).

made the Commission and utilities responsible for helping New York reach climate and environmental goals, again making billing and data exchange more complicated. Central Hudson realized that it needed to provide a modern digital customer interface to better serve customers and an integrated software suite to serve its internal needs and meet Commission requirements other than billing and data requirements.

Also, during this time of great change, in Cases 14-E-0318 and 14-G-0319 Staff proposed that Central Hudson transition from bimonthly billing and meter reading to monthly billing.²⁰ The Joint Proposal agreed to by Staff and approved by the Commission resulted in monthly billing but not monthly meter reading and approved estimated billing every other month when no meter was read.²¹ In the Joint Proposal, the cost of adding 11 call center employees to answer questions about monthly billing was approved, but no costs were authorized relating to additional monthly meter readers.²² Central Hudson has never agreed to, and has not been authorized to read customer meters on a monthly basis. Central Hudson will file the plan to make monthly meter reads required by Ordering Clause three of the Show Cause Order contemporaneously with this Response.

The rise of unique, complex, and overlapping billing to meet competitive and environmental goals led to a series of meetings with Staff to discuss how to upgrade Central Hudson's legacy CIS system. Those meetings culminated in Central Hudson's

²⁰ Cases 14-E-0318, 14-G-0319 - *Proceeding on Motion of the Commission as to the Rates, Charges, Rules and Regulations of Central Hudson Gas & Electric Corporation for Electric and Gas Service* (Order Approving Rate Plan at 13) (Issued and Effective June 17, 2015).

²¹ *Id.* at 44-45.

²² *Id.* at Joint Proposal at 9, Appendix A.

proposal to upgrade legacy CIS with bolt on solutions made in Cases 17-E-0459 and 17-G-0460.²³

Soon after the conclusion of Cases 17-E-0459 and 17-G-0460 billing requirements continued to evolve and become more complex, including Cases such as 18-M-0376 regarding cybersecurity and data transfer with ESEs, 19-M-0463 involving consolidated billing with CDGs, and 20-M-0082 introducing data requirements such as IEDR. Consequently, cybersecurity considerations increased in importance as utilities were asked to take on more data storage and transfer responsibility.

As a result of these developments Central Hudson began a series of meetings with experts,²⁴ Staff and the Commission. The result of those meetings was a pivot from Central Hudson's proposal to use bolt on technology to improve and retain legacy CIS to a strategy for the replacement of legacy CIS.

Central Hudson made the pivot to a replacement of legacy CIS after extensive research and preparatory work. Central Hudson consulted with experts and identified the leading utility CIS systems in the world. This process led to discussions with Software AG, which might have led to a mainframe solution, and with Oracle and SAP, both software solutions. Oracle and SAP are the leaders in utility CIS software solutions. Central Hudson, rather than go through a simple RFP process, went through an expanded

²³ Cases 17-E-0459, 17-G-0460 - *Proceeding on Motion of the Commission as to the Rates, Charges, Rules and Regulations of Central Hudson Gas & Electric Corporation for Electric and Gas Service* (Order Adopting Terms of Joint Proposal and Establishing Electric and Gas Rate Plan at 40-41, Joint Proposal at Appendix P) (Issued and Effective June 14, 2018).

²⁴ Gartner was, and remains, Central Hudson's chief technology consultant used to help plan solutions and identify technology.

RFP process, which included the entire purchase process with both Oracle and SAP and full negotiation of the purchase price.

During this time Central Hudson also performed the following and many other tasks: (1) established a list of 2,586 system requirements necessary to comply with Commission rules;²⁵ (2) established a progress and closeout tracking spreadsheet of 2,598 technical system requirements; (3) established an extensive training program covering all technical and regulatory requirements as well as providing Central Hudson employees, with a training course catalog including 101 courses, workshops, and after hour training;²⁶ (4) trained employees before and after go live;²⁷ (5) hired an expert to help determine which software provider to select;²⁸ (6) selected SAP as the software provider;²⁹ (7) developed and issued a Request for Proposal (“RFP”) to hire a system integrator;³⁰ (8); entered a contract with the System Integrator;³¹ (9) created a steering committee made up of executives, experts, and management, an SAP system transition Team consisting of management leads, and restructured Central Hudson’s workforce to meet the needs of the transition to the new SAP system;³² and (10) performed engagement and risk identification surveys to make sure that employees were engaged and confident of business readiness.³³

²⁵ DPS-002 IR-009 Attachment 58 CONFIDENTIAL.

²⁶ SAP Training Course Catalog CONFIDENTIAL (Appendix at A-662).

²⁷ IT PMO Go Live Memo at 23 CONFIDENTIAL (Appendix at A-1).

²⁸ DPS-001 IR-007 Attachments 49, 50 CONFIDENTIAL.

²⁹ DPS-001 IR-007 Attachment 1 CONFIDENTIAL.

³⁰ DPS-001 IR-002 Attachment 62 CONFIDENTIAL.

³¹ DPS-001 IR-007 Attachment 20 CONFIDENTIAL.

³² IT PMO Go Live Memo at 23 CONFIDENTIAL (Appendix at A-1).

³³ DPS-005 IR-054 Attachments 1-7 CONFIDENTIAL.

After completing its tasks, meeting with Staff and entering contracts to purchase the software and hire a system implementor, Central Hudson made its rate filing in Cases 20-E-0428 and 20-G-0429 on August 27, 2020.³⁴ Central Hudson's rate filing included proposals for cost recovery of the purchase and implementation of the SAP system.³⁵ The Joint Proposal in Cases 20-E-0428 and 20-G-0429 was signed by Central Hudson, Staff and other parties and filed on August 24, 2021.³⁶ The Commission approved a Joint Proposal that included cost recovery for the SAP system including net plant additions of \$45,356,000 and O&M costs of \$3,664,000 through the end of the second rate year.³⁷

Shortly thereafter, on September 1, 2021, Central Hudson went live with its new SAP System.³⁸ While many aspects of the transition to the SAP system went well, unfortunately, very public customer facing issues arose.³⁹ Most of the customer issues that arose were associated with CDG subscription fee and crediting, SAP interface with EDI affecting ESCOs, BPEM alerts about system configuration, and Sarbanes Oxley controls causing actual meter reads to be supplanted by bill estimates.⁴⁰ These three issues resulted in the delay of bills being sent to CDG customers, ESCOs having difficulty verifying customer transactions and Purchase of Receivables ("POR"). Central Hudson addressed these three issues by correcting customer bills and the SAP system to

³⁴ Cases 20-E-0428, 20-G-0429 - *Proceeding on Motion of the Commission as to the Rates, Charges, Rules and Regulations of Central Hudson Gas & Electric Corporation for Electric and Gas Service* (Filing Letter) (August 27, 2020).

³⁵ *Id.*

³⁶ *Id.* (Order Adopting Terms of Joint Proposal and Establishing Electric and Gas Rate Plan at 8).

³⁷ *Id.* at (Order Adopting Terms of Joint Proposal and Establishing Electric and Gas Rate Plan at 36, Joint Proposal at Appendix A, Schedules 1-2) (Issued and Effective November 18, 2021); Confidential DPS-008 IR-083

³⁸ IT PMO Go Live Memo at 23 CONFIDENTIAL (Appendix at A-1).

³⁹ DPS-001 IR-002.

⁴⁰ *Id.*

calculate and send backbills to customers based on actual meter reads instead of estimates, thus causing a reallocation of volumetric charges to associated actual energy usage with volumetric charges.⁴¹ There were other issues that arose, but these three issues were the issues that affected the majority of impacted customers.

Despite the fact that the Joint Proposal was approved, including Central Hudson's rate recovery of SAP costs on November 18, 2021, no issues regarding the SAP transition were raised.⁴² Any Party could have raised these issues, but they did not.

Shortly after customers, Staff, ESCOs, CDGs and others had noticed Central Hudson's billing issues, gas and electric commodity prices became volatile and started to rise for reasons completely unrelated to the billing issues. In response, customers complained to Central Hudson about the volatile and elevated prices. However, Central Hudson has no control over the pricing issues except that Central Hudson hedges commodity in accordance with the Commission's policies. Nevertheless, customers and politicians conflated the billing issues with commodity price increases.

Central Hudson undertook, with Commission approval,⁴³ the transition from its legacy CIS billing system to its new SAP system. The transition was a complex undertaking that was necessary for many reasons including that expertise and support for the legacy CIS system was no longer available, the legacy CIS system presented a cybersecurity risk, and the legacy CIS system could no longer adapt to the unique,

⁴¹ *Id.*

⁴² OIE Report at 25.

⁴³ Cases 20-E-0428, 20-G-0429 - *Proceeding on Motion of the Commission as to the Rates, Charges, Rules and Regulations of Central Hudson Gas & Electric Corporation for Electric and Gas Service* (Order Adopting Terms of Joint Proposal and Establishing Electric and Gas Rate Plan at 36, Joint Proposal at Appendix A, Schedules 1-2) (Issued and Effective November 18, 2021).

complex, and overlapping billing requirements imposed by the Commission over many years to effectuate competition, Reforming the Energy Vision (“REV”) and now, the CLCPA.⁴⁴

Central Hudson undertook an extensive process to determine the replacement for its legacy CIS billing system. It made reasonable decisions throughout the process, but various issues arose before go-live. Central Hudson made reasonable decisions to correct those issues, amending training procedures, correcting system issues, engaging employees, communicating with customers, Staff, ESEs and the Commission. Still, despite its best efforts, issues arose at and after go-live that impacted customers. Central Hudson added resources to resolve the billing issues, but new issues continued to arise even as old issues were closed. Central Hudson added more resources and issues are now closing faster than they are opening and complaints are decreasing.

Central Hudson has been in constant communication with Staff, the Commission, customers, and ESEs for more than a year. Part of that communication has been through the discovery process in this proceeding which began on April 7, 2022.⁴⁵ Given the issues that resulted from the implementation of the SAP system, and the public outcry associated with those issues, the Commission reasonably announced this investigation at its March 2022, meeting and commenced the investigation on April 5, 2022.⁴⁶ Unfortunately, the OIE Report does not accurately state the law or the facts and is more of a prosecutorial document than an impartial investigative report and did not provide the Commission with a reasonable description of the issues necessary to make a Show Cause determination.

⁴⁴ Interview of Donna Kladis at 3 (June 2, 2022).

⁴⁵ DPS-001 IRs 001-008.

⁴⁶ Show Cause Order at 2.

The OIE Report does not support the Commission moving forward with penalty or prudence proceedings against Central Hudson.

STATEMENT OF THE LAW

A review of the statutes, rules and Commission Orders applicable to this matter will demonstrate that the OIE Report has misstated and/or misapplied the law. The review includes the law adopted in the Show Cause Order where it is different than the law presented in the OIE Report on which the Show Cause Order relies.

I. The Commission's Legal Authority

A. PSL §§ 65(1), 66(2) do not provide the Commission with authority to investigate or order improvements to a billing system.

The Commission relies on PSL §§ 65(1), 66(2), and 25-a for its authority to engage in a prudence review of Central Hudson's billing system and impose penalties for violations of applicable statutes, rules or Commission Orders.⁴⁷ Regarding PSL § 65(1) the Show Cause Order incorrectly quotes the statute as "requires that utilities provide 'service, as shall be safe and adequate and in all respects just and reasonable.'"⁴⁸ The correct quote from PSL § 65(1) is "[e]very gas corporation, every electric corporation and every municipality shall furnish and provide such service, instrumentalities and facilities as shall be safe and adequate and in all respects just and reasonable." The import of the

⁴⁷ Show Cause Order at 1, 12, 26. As a pre-introduction and at Ordering Clause 1 the Commission mentions PSL § 25, which has a different standard of review than does PSL § 25-a. The Commission does not substantively rely on PSL § 25 in the Show Cause Order. PSL § 25 requires the Commission to demonstrate that Central Hudson knowingly failed or neglected to obey or comply with a provision of the PSL or a Commission Order. Because the Commission did not rely on PSL § 25 to support the Show Cause Order's alleged Apparent Violations Central Hudson will not discuss the legal standard necessary for the Commission to penalize Central Hudson under PSL § 25, but instead, will discuss PSL § 25-a upon which the Commission does rely. Central Hudson reserves its right to contest the applicability and process used to allege penalties pursuant to PSL § 25 if the Commission chooses to do so as part of this proceeding.

⁴⁸ *Id.* at 12.

difference is that it is not at all clear that the list of “service, instrumentalities and facilities” includes billing systems or billing services because the legislative history indicates that the list references distribution and transmission service and not anything else.⁴⁹

This issue becomes clear with a review of the Commission’s authority under PSL § 66(2). PSL § 66(2) states in part:

Investigate and ascertain, from time to time, the quality of gas supplied by persons, corporations and municipalities; *examine or investigate the methods employed by such persons, corporations and municipalities in manufacturing, distributing and supplying gas or electricity for light, heat or power and in transmitting the same*, and have power to order such reasonable improvements as will best promote the public interest, preserve the public health and protect those using such gas or electricity and those employed in the manufacture and distribution thereof, *and have power to order reasonable improvements and extensions of the works, wires, poles, lines, conduits, ducts and other reasonable devices, apparatus and property* of gas corporations, electric corporations and municipalities;...⁵⁰

In enacting PSL § 66(2), the legislature focused on the manufacturing, distribution and supplying of gas and electricity through facilities such as wires, poles, lines, conduits, and other similar equipment.⁵¹ There is no indication that the legislature considered or included billing services or facilities as part of the list included in PSL § 66(2).

In fact, the United States Supreme Court has considered this issue.⁵² In *Yates*, the captain of a fishing boat was convicted under 18 U.S.C. § 1519, enacted as part of Sarbanes Oxley, of catching and keeping undersized fish. When boarded by federal

⁴⁹ PSL § 65(1) bill jacket.

⁵⁰ PSL § 66(2) (2023) (emphasis added).

⁵¹ PSL § 66(2) bill jacket.

⁵² *Yates v. United States*, 574 U.S. 528; 135 S. Ct. 1074 **; 191 L. Ed. 2d 64 ***; 2015 U.S. LEXIS 1503 **** (Supreme Court of the United States) (February 25, 2015, Decided) (*Yates*).

agents and instructed to segregate the undersized fish, Captain Yates instead told his crew to throw the undersized fish overboard, and was thus charged with concealing evidence.⁵³ 18 U.S.C. § 1519 states in pertinent part “[w]hoever knowingly alters, destroys, mutilates, conceals, covers up, falsifies, or makes a false entry in any record, document, or tangible object....”⁵⁴ The question before the Court was whether the fish was a tangible object under the statute.

The Court held that the ambiguous term “tangible object” must be interpreted narrowly as an object used in record keeping and stated that “we resist reading §1519 expansively to create a coverall spoliation of evidence statute, advisable as such a measure might be. Leaving that important decision to Congress, we hold that a “tangible object” within §1519’s compass is one used to record or preserve information.”⁵⁵

Applying *Yates* to PSL § 66(2) the list of facilities is defined by the terms “manufacturing, distributing and supplying.”⁵⁶ A billing system does not manufacture, distribute or supply electricity or gas and there is nothing in the legislative history to suggest that a billing system is an “other reasonable device.”⁵⁷ The *Yates* reasoning is also applicable to PSL § 65(1) where the provision “as shall be safe and adequate and in all respects just and reasonable” is defined by the furnishing and provision of such service, instrumentalities and facilities.⁵⁸

⁵³ *Id.* at 574 U.S. 528; 135 S. Ct. 1074 **, 1076**; 191 L. Ed. 2d 64 ***, 70***; 2015 U.S. LEXIS 1503 ****, 1****.

⁵⁴ *Id.* at 574 U.S. 528, 531; 135 S. Ct. 1074 **, 1078**; 191 L. Ed. 2d 64 ***, 72***; 2015 U.S. LEXIS 1503 ****, 6****.

⁵⁵ *Id.* at 574 U.S. 528, 548; 135 S. Ct. 1074 **, 1088-89**; 191 L. Ed. 2d 64 ***, 82***; 2015 U.S. LEXIS 1503 ****, 31****.

⁵⁶ PSL § 66(2) (2023).

⁵⁷ *Id.*

⁵⁸ PSL § 65(1) (2023).

Further, New York's State's rules of statutory construction require the same interpretation as *Yates* because those rules require the use of *noscitur a sociis* meaning that the lists of facilities in PSL § 66(2) are defined by the adjectives "manufacturing, distributing and supplying" and the nouns "manufacture and distribution".⁵⁹ The same statutory construction rule applies to the "safe and adequate" language in PSL § 65(1), which is defined by "such service, instrumentalities and facilities."⁶⁰

There is nothing in PSL §§ 65(1) or 66(2), or their respective legislative history, to suggest that the legislative intent goes beyond providing the Commission jurisdiction to determine whether Central Hudson is providing safe and adequate service under PSL § 65(1) and under PSL § 66(2) to investigate the methods used by Central Hudson, and the ability to order reasonable improvements, over poles, wires, conduit, pipes and other similar facilities.⁶¹ The SAP system is not one of the facilities over which the Commission has jurisdiction under PSL §§ 65(1) or 66(2). Stated affirmatively, the Commission does not have jurisdiction to determine whether Central Hudson is providing safe and reliable service through its SAP system, investigate Central Hudson's SAP system, or order reasonable improvements to the SAP system. The Commission is a creature of statute and has only those powers expressly delegated to it by the legislature.⁶²

⁵⁹ Statutes § 239 (2023); PSL § 66(2) (2023).

⁶⁰ Statutes § 239 (2023); PSL § 65(1) (2023).

⁶¹ PSL §§ 65(1), 66(2) bill jackets.

⁶² *In the Matter of New York State Electric & Gas Corporation, Appellant, v Public Service Commission of the State of New York et al.*, 308 A.D.2d 108, 111; 763 N.Y.S.2d 352, 354; 2003 N.Y. App. Div. LEXIS 8192, ***5 (Supreme Court of New York, Appellate Division, Third Department) (July 17, 2003, Decided).

B. The Standard of review applicable to PSL §§ 25 and 25-a.

The OIE Report recommends that the Commission should require Central Hudson to Show Cause why the “Commission should not commence an administrative penalty action pursuant to...” PSL §§ 25, 25-a, but it does not articulate the legal standard the Commission must apply under those sections.⁶³ The Show Cause Order references PSL §§ 25 and 25-a, but applies only PSL § 25-a to each apparent violation raised in the Show Cause Order.⁶⁴ The Show Cause Order does discuss the standard of review required of the Commission before it may assess a penalty, but the discussion is incomplete.⁶⁵

Before the Commission may determine that any penalty is due it must hold a hearing where the Commission has the burden of proof to show by a preponderance of the evidence that Central Hudson has failed to reasonably comply with a provision or regulation of, or order adopted under the Public Service Law.⁶⁶ It is insufficient for the OIE Report to allege issues such as a large number of estimated bills, delayed bills, or inaccurate bills that were properly corrected by Central Hudson, all of which are permitted under the PSL, rules and Commission Orders. Instead, the OIE Report and the Show Cause Order must identify specific violations of the PSL, 16 NYCRR or Commission Orders through evidence at a hearing. Neither the OIE Report nor the Show Cause Orders have shown such specific violations.

⁶³ OIE Report at 59.

⁶⁴ Show Cause Order at 1, 12-13, 25.

⁶⁵ *Id.* at 12-13.

⁶⁶ PSL § 25-a(2)(c), (3) (2023).

II. Apparent violation of law, overcharges, delayed billing and backbilling.

A. Central Hudson did not overcharge customers.

The Show Cause Order relies upon PSL § 65 while the OIE Report relies upon PSL § 65 and Case 91-E-0176, no other legal support is cited for these alleged violations of overcharges, delayed billing and backbilling.⁶⁷ Both the Show Cause Order and the OIE Report quote PSL § 65(1), which requires Central Hudson to charge customers the applicable rate approved by the Commission.⁶⁸ As will be discussed later, that is what happened. No customer was ultimately overcharged.

That no customer was overcharged becomes apparent by the OIE Report's and Show Cause Order's reliance on Case 91-E-0176, which is in direct conflict with the allegation of overcharges and does not support the allegation of delayed billing.⁶⁹ Reliance upon Case 91-E-0176, which is not a currently effective Order, conflicts with the allegation of overcharges because pursuant to the OIE Report's interpretation, Case 91-E-0176 expressly allows utilities "four months after the utility actually becomes aware of the circumstance error, or condition that caused the underbilling..." to correct the billing error.⁷⁰ In this proceeding, all customer bills were corrected by Central Hudson within the applicable time frame, or properly credited if the timeframe was exceeded, so there were no overcharges.

⁶⁷ Show Cause Order at 14; OIE Report at 47-49.

⁶⁸ PSL § 65(1) (2023).

⁶⁹ OIE Report at 49.

⁷⁰ 91-E-0176 - *In the Matter of the Rules and Regulations of the Public Service Commission, Contained in 16NYCRR, in Relation to Complaint Procedures--Appeal by Long Island Lighting Company of the Informal Decision Rendered in Favor of Donald Johnson filed in C26358 (E959005)* (Commission Determination at 13) (Issued and Effective July 15, 1991).

B. Case 91-E-0176 is not current law.

Case 91-E-0176, however, is not a currently effective order. It is New York law that a superseding Commission Order replaces a prior Commission Order.⁷¹ New York law may be stated as “[w]hen provisions contained in an original act are omitted from an amendatory act, it is reasonable to presume that they were intentionally omitted.”⁷² Similarly, “all orders of the [FCC] * * * shall continue in force * * * until the [FCC] or a court of competent jurisdiction issues a superseding order.”⁷³

In this instance the Commission has issued an order following every Central Hudson rate case since 1991 approving Central Hudson’s compliance tariffs.⁷⁴ In every tariff compliance Order the Commission has approved tariffs in conflict with the interpretation of Case 91-E-0176 proposed by the OIE Report. In every Central Hudson tariff compliance Order, the Commission has approved tariffs, which state “superseding” right on the tariff, and require for residential customers that: (1) a first bill for a new customer be rendered within six months of service rendered;⁷⁵ (2) may issue an upward

⁷¹ Statutes § 193 et. al. (2023); *New York Tel. Co. v. Public Service Com.*, 98 A.D.2d 535*, 537*, 471 N.Y.S.2d 891**, 892-893* | 1984 N.Y. App. Div. LEXIS 16500***, 7*** (Supreme Court of New York, Appellate Division, Third Department) (January 19, 1984).

⁷² Statutes § 193 et. al. (2023).

⁷³ *New York Tel. Co. v. Public Service Com.*, 98 A.D.2d 535*, 537*, 471 N.Y.S.2d 891**, 892-893* | 1984 N.Y. App. Div. LEXIS 16500***, 7*** (Supreme Court of New York, Appellate Division, Third Department) (January 19, 1984).

⁷⁴ Cases 00-E-1273, 00-G-1273 – Proceeding on Motion of the Commission as to the Rates, Charges, Rules and Regulations of Central Hudson Gas and Electric Corporation for Electric and Gas Service (Approved as Recommended and so Ordered By the Commission) (Issued and Effective December 19, 2001); Cases 20-E-0428, 20-G-0429 - *Proceeding on Motion of the Commission as to the Rates, Charges, Rules and Regulations of Central Hudson Gas & Electric Corporation for Electric and Gas Service* (Order Approving Tariff Amendments [SIC] On A Permanent Basis) (Issued and Effective June 21, 2022). (Central Hudson has not cited every rate case from 1991 because they are not all available on the Commission’s website and it would be too voluminous, but from 2000 to the present all rate tariff compliance orders are available).

⁷⁵ PSC No: 15 Electricity Leaf: 62 Company: Central Hudson Gas & Electric Corporation Revision: 2 Initial Effective Date: 04/09/04 Superseding Revision: 1; PSC No: 12 Gas Leaf: 32 Company: Central Hudson Gas & Electric Corporation Revision: 2 Initial Effective Date: 04/09/04 Superseding Revision: 1.

adjusted bill for a previously rendered bill within 12 months after the billing period to which the service pertains;⁷⁶ (3) an upward adjustment to a previously rendered bill more than 12 months after the time service was provided *will be made within four months of the billing dispute*;⁷⁷ and (4) may not issue an upward rebill to a customer after 24 months unless due to the customer's culpable conduct.⁷⁸

The tariffs for non-residential customers require that Central Hudson: (1) not render a backbill more than six months after Central Hudson actually became aware of the circumstance that caused the underbilling, unless a court extends the time to render a backbill;⁷⁹ (2) will not upwardly revise a backbill unless the first backbill explicitly stated that Central Hudson reserved the right to do so, the revised backbill is rendered within 12 months after Central Hudson became aware of the circumstance that caused the underbilling, and the customer knew or reasonably should have known that the original billing or the first backbill was incorrect;⁸⁰ (3) must render a downward adjusted backbill as soon as reasonably possible and within two months after Central Hudson becomes aware that the first backbill was excessive;⁸¹ (4) will not bill a customer for service rendered more than 24 months before Central Hudson became aware of the circumstance that caused the underbilling unless Central Hudson can demonstrate that the customer knew or reasonably should have known that the original billing was incorrect;⁸² (5) will not upwardly revise an estimated demand unless it can demonstrate

⁷⁶ *Id.* at Leaf 63; Leaf 32.

⁷⁷ *Id.* at Leaf 63; Leaf 33 (emphasis added).

⁷⁸ *Id.*

⁷⁹ *Id.* at Leaf 64; Leaf 33.

⁸⁰ *Id.* at Leaf 64; Leaf 34

⁸¹ *Id.* at Leaf 65; Leaf 34.

⁸² *Id.*

that, for the period during which the demand was estimated, Central Hudson complied with the meter reading requirements and the no access procedures;⁸³ (6) will base all revised demands on the best available information including the customer's present and historical energy consumption and load factor;⁸⁴ (7) No revised demand will exceed 95 percent of the subsequent actual demand, unless Central Hudson has, along with the estimated demand bill, offered a special appointment to read the meter, and the customer failed to arrange and keep such appointment in which case the estimated demand may be revised up to the level of the subsequent actual demand;⁸⁵ (8) will downwardly revise any estimated demand that exceeds the subsequent actual demand, within 30 calendar days after such actual demand was obtained;⁸⁶ and (9) may only upwardly revise an estimated demand within 60 calendar days after the subsequent actual demand was obtained.⁸⁷

The above tariff provisions are paraphrased but important to include as a comparison to what the OIE Report and Show Cause Order are suggesting. Central Hudson's tariff provisions are also consistent with the applicable statute, PSL § 41, and rules, 16 NYCRR §§ 11.14 and 13.9.

C. Even if Case 91-E-0176 represented current law the OIE Report has misinterpreted the Commission's Order.

While Case 91-E-0176 is not an effective Order and therefore, not current law, the interpretation of 91-E-0176 set forth in the OIE Report and Show Cause Order conflicts

⁸³ *Id.*

⁸⁴ *Id.*

⁸⁵ *Id.* at Leaf 65.1; Leaf 34.

⁸⁶ *Id.*

⁸⁷ *Id.*

with the 91-E-0176 Order and the applicable statutes and the rules. First, the OIE Report incorrectly suggests that Case 91-E-0176 presents a measure of a timely bill from the provision of service.⁸⁸ It does not. The Commission states that:

Commission regulation requires that a utility may only *terminate service* as a result of nonpayment of charges in cases such as this one, where there is culpable conduct of the customer, if the utility commences *billing within four months* of cessation of the culpable conduct or of excusable utility delay. The effect of 16 NYCRR 11.4(a) (1) in this case is that, *since the utility did not bill complainant within four months of July 28, 1987 (when as a result of the utility's discovery of the unmetered service condition and replacement of the meter, the delay caused by complainant's culpable conduct ceased), the utility may not terminate* complainant's service on account of nonpayment of the amount owed.⁸⁹

The Commission's Order in Case 91-E-0176 can only be interpreted by understanding 16 NYCRR § 11.4(a)(1), which permits a utility to terminate service if a customer fails to pay their bill at any time during the prior 12 months except that termination for service rendered in excess of the prior 12 months by the utility:

is permitted in cases involving billing disputes during the 12-month period, estimated bills, the culpable conduct of the customer or excusable utility delays; and provided further, that *the utility shall commence any such billing not more than four months after the resolution of the billing dispute, the adjustment to estimated bills, or the cessation of excusable utility delays or delays caused by the customer's culpable conduct;...*⁹⁰

⁸⁸ OIE Report at 48-49.

⁸⁹ 91-E-0176 - *In the Matter of the Rules and Regulations of the Public Service Commission, Contained in 16NYCRR, in Relation to Complaint Procedures--Appeal by Long Island Lighting Company of the Informal Decision Rendered in Favor of Donald Johnson filed in C26358 (E959005)* (Commission Determination at 12) (Issued and Effective July 15, 1991) (emphasis added).

⁹⁰ 16 NYCRR § 11.14(a)(1) (emphasis added).

Thus, the Commission Order in Case 91-E-0176 does not discuss how quickly Central Hudson must send out a bill for any period, but rather applies a four-month rule only to situations where there is a dispute that is for a billing period more than 12 months prior.⁹¹ The utility fails the four-month rule if it does not backbill within four months after the dispute is resolved.⁹² That is not the case in this proceeding where there are no billing disputes more than 12-months old and the termination of service is not an issue because Central Hudson has not initiated service terminations since the COVID moratorium and does not expect to do so until the third quarter of 2024.

D. The OIE Report and Show Cause Order misapply Case 91-E-0176 to the facts of this proceeding.

The Show Cause Order seeks to apply the four-month rule of Case 91-E-0176 to residential bills rendered four months, and the nonresidential rule to bills rendered six months, after September 1, 2021, the date the SAP system went live.⁹³ The Show Cause Order applies an incorrect interpretation of Case 91-E-0176, the applicable statutes, rules, tariffs and orders. In each of the six cases involving Case 91-E-0176 and/or a conservation adjustment, the Commission decision was based on the discovery of the particular issue in the case to the particular customer, not a general knowledge of issues that might be affecting unidentified specific customers.⁹⁴

⁹¹ 91-E-0176 - *In the Matter of the Rules and Regulations of the Public Service Commission, Contained in 16NYCRR, in Relation to Complaint Procedures--Appeal by Long Island Lighting Company of the Informal Decision Rendered in Favor of Donald Johnson filed in C26358 (E959005)* (Commission Determination at 12) (Issued and Effective July 15, 1991); 16 NYCRR § 11.4(a)(1)

⁹² *Id.*

⁹³ Show Cause Order at 16.

⁹⁴ Case 26358 - *In the Matter of the Complaint of New York State Electric & Gas Corporation against Robert Reynolds (E503698)* (Commission Determination) (Issued and Effective October 20, 1989) (*Reynolds*);

PSL § 41 discusses billing “the customer,” not the discovery of general issues that may or may not affect a customer.⁹⁵ 16 NYCRR §§ 11.14 and 13.9 references “a customer” and “the customer” not a general issue associated with the utility.⁹⁶ Central Hudson’s tariffs have language identical to 16 NYCRR §§ 11.14 and 13.9. The Commission has never used the commencement date of an issue to apply the backbill time requirements to all affected customers regardless of when Central Hudson, or any other utility, was able to identify the customer(s) affected.

While the Commission could institute such a rule prospectively it cannot now amend its precedent and rules and apply them retroactively.⁹⁷ In *Loomis* the Court held that “This power of fixing rates and making regulations concerning intrastate traffic is clearly within the jurisdiction of our state public service commission, *but their*

Case 91-E-0176 - *In the Matter of the Rules and Regulations of the Public Service Commission, Contained in 16NYCRR, in Relation to Complaint Procedures--Appeal by Long Island Lighting Company of the Informal Decision Rendered in Favor of Donald Johnson* filed in C26358 (E959005) (Commission Determination) (Issued and Effective July 15, 1991) (*Johnson*); Case 94-W-0958 - *In the Matter of the Rules and Regulations of the Public Service Commission, Contained in 16 NYCRR, in Relation to Complaint Procedures--Appeal by Jamaica Water Supply Company of the Informal Decision Rendered in Favor of Fred Izzo*, filed in C 26358 (462839) (Commission Determination) (Issued and Effective February 7, 1995) (*Izzo*); Case 98-W-0680 - *In the Matter of the Rules and Regulations of the Public Service Commission, Contained in 16 NYCRR, in Relation to Complaint Procedures--Appeal by Congregation Sons of Israel of the Informal Decision Rendered in Favor of United Water New York Incorporated*, filed in C 26358 (878153) (Commission Opinion) (Issued and Effective May 30, 2001) (*Congregation Sons of Israel*); Case 07-G-0988 - *In the Matter of the Rules and Regulations of the Public Service Commission, Contained in 16 NYCRR, in Relation to Complaint Procedures--Appeal by Highland Car Service Inc. of the Informal Decision Rendered in Favor of Consolidated Edison Company of New York, Inc. (519041)* (Commission Opinion) (Issued and Effective September 20, 2010) (*Highland Car Service*); Case 11-G-0463 - *In the Matter of the Rules and Regulations of the Public Service Commission, Contained in 16 NYCRR, in Relation to Complaint Procedures--Appeal by Consolidated Edison Company of New York, Inc. of the Informal Decision Rendered in Favor of Mr. Soo Jai Lee (027212)* (Commission Opinion) (Issued and Effective September 20, 2016) (*Lee*); Case 17-E-0607 - *In the Matter of the Rules and Regulations of the Public Service Commission, Contained in 16 NYCRR, in Relation to Complaint Procedures--Appeal by Joseph Moore of the Informal Decision Rendered in Favor of Consolidated Edison Company of New York, Inc.(435463)* (Commission Determination) (Issued and Effective January 23, 2018) (*Moore*).

⁹⁵ PSL § 41(a) (2023).

⁹⁶ 16 NYCRR §§ 11.14, 13.9.

⁹⁷ *Loomis v. Lehigh V. R. Co.*, 208 N.Y. 312 *, 326-327*; 101 N.E. 907 **, 912**, 1913 N.Y. LEXIS 1054 ***, 26*** (Court of Appeals of New York) (April 29, 1913, Decided) (*Loomis*).

*determinations are not retroactive.*⁹⁸ Central Hudson issued backbills within the appropriate time period as it discovered each customer affected by each billing issue that arose.

E. Central Hudson has interpreted and applied the law correctly.

The law about timeliness of bills and backbills for residential customers is set forth in PSL § 41, 16 NYCRR § 11.14, and Central Hudson’s electric and gas tariffs.⁹⁹ PSL § 41(1) requires utilities to issue a first bill to a new residential customer within six-months.¹⁰⁰ It is clear that PSL § 41(1) refers to a first bill to a new residential customer because PSL § 41(3) permits Central Hudson to “render a bill for *previously unbilled service*, or adjust upward a bill previously rendered, to a residential customer after the expiration of twenty-four months from the time service...”¹⁰¹ If PSL § 41(1) is read to require all first bills for service rendered for any prior billing period applicable to an existing residential customer to be rendered within six months, then PSL § 41(3) is rendered meaningless because Central Hudson would never be able to render a bill for previously unbilled service for up to 24-months. The two sections of PSL § 41 must be read *in pari materia* to give effect to every section and every word in the statute.¹⁰² This construction

⁹⁸ *Id.*

⁹⁹ Central Hudson would note that its electric and gas tariffs have another section that governs billing for service supplied and both sections state that “[b]ills will generally be rendered each month” but do not set specific time periods for bill issuance. PSC No: 15 Electricity Leaf: 54 Company: Central Hudson Gas & Electric Corporation Revision: 7 Initial Effective Date: 07/01/21 Superseding Revision: 6; PSC No: 12 Gas Leaf: 25 Company: Central Hudson Gas & Electric Corporation Revision: 5 Initial Effective Date: 07/01/21 Superseding Revision: 4

¹⁰⁰ PSL § 41(1) (2023).

¹⁰¹ PSL § 41(3) (2023).

¹⁰² Statutes § 231 (2023).

of PSL § 41 is consistent with 16 NYCRR § 11.14 and Central Hudson's electric and gas tariffs.¹⁰³

16 NYCRR § 11.14 and Central Hudson's electric and gas tariffs permits Central Hudson to make an upward adjustment to a previously rendered residential bill after 12 months from the time the service was provided if the failure to bill correctly was due to the customer's conduct, not due to utility neglect, was an adjustment needed for budget billing, or there was a billing dispute with the customer.¹⁰⁴ If Central Hudson makes an upward adjustment to a residential customer's previously rendered bill more than 12 months after service was rendered it must do so within four months after resolution of the utility neglect, budget billing adjustment, or billing dispute with the residential customer.¹⁰⁵ Central Hudson may make an upward adjustment to a residential customer's previously rendered bill more than 24 months after the time of service if the customer engaged in culpable conduct that caused or contributed to the failure of the utility to render a timely or accurate bill.¹⁰⁶ The applicable rules and tariffs do not address downward adjustments

¹⁰³ 16 NYCRR § 11.14(a); PSC No: 15 Electricity Leaf: 62 Company: Central Hudson Gas & Electric Corporation Revision: 2 Initial Effective Date: 04/09/04 Superseding Revision: 1; PSC No: 12 Gas Leaf: 32 Company: Central Hudson Gas & Electric Corporation Revision: 2 Initial Effective Date: 04/09/04 Superseding Revision: 1.

¹⁰⁴ 16 NYCRR § 11.14(b); PSC No: 15 Electricity Leaves: 62-65.1 Company: Central Hudson Gas & Electric Corporation Revision: 2 Initial Effective Date: 04/09/04 Superseding Revision: 1; PSC No: 12 Gas Leaves: 32-34 Company: Central Hudson Gas & Electric Corporation Revision: 2 Initial Effective Date: 04/09/04 Superseding Revision: 1.

¹⁰⁵ 16 NYCRR § 11.14(c); PSC No: 15 Electricity Leaves: 62-65.1 Company: Central Hudson Gas & Electric Corporation Revision: 2 Initial Effective Date: 04/09/04 Superseding Revision: 1; PSC No: 12 Gas Leaves: 32-34 Company: Central Hudson Gas & Electric Corporation Revision: 2 Initial Effective Date: 04/09/04 Superseding Revision: 1.

¹⁰⁶ 16 NYCRR § 11.14(e); PSC No: 15 Electricity Leaves: 62-65.1 Company: Central Hudson Gas & Electric Corporation Revision: 2 Initial Effective Date: 04/09/04 Superseding Revision: 1; PSC No: 12 Gas Leaves: 32-34 Company: Central Hudson Gas & Electric Corporation Revision: 2 Initial Effective Date: 04/09/04 Superseding Revision: 1.

to residential customers' bills but Central Hudson believes it has an obligation to return overpayments to customers once it discovers the overpayment.

Non-residential customers are governed by different rules. PSL § 41 is not applicable to non-residential customers. 16 NYCRR § 13.9 and Central Hudson's tariffs specify the time frame for a first bill to a new non-residential customer because a backbill is defined as "that portion of any bill, other than a levelized bill, which represents charges not previously billed for service that was actually delivered to the customer during a period before the current billing cycle..., which of course, includes the first period during which a new customer received service."¹⁰⁷ Central Hudson must render a backbill within six-months after it discovers the circumstance giving rise to the backbill and cannot exceed the six-month period to render a bill absent a court order.¹⁰⁸ Central Hudson may render an upward adjusted backbill within 12 months after it becomes aware of the circumstance that caused the underbilling.¹⁰⁹ Central Hudson may backbill up to 24 months if it can demonstrate that the customer knew or should have known that the original bill was incorrect.¹¹⁰ For an electric demand customer where Central Hudson estimated demand, Central Hudson may issue an upward adjusted backbill within 60 days after Central Hudson obtains the actual demand.¹¹¹ In all cases of a downward adjusted non-

¹⁰⁷ 16 NYCRR § 13.1(b)(17); PSC No: 15 Electricity Leaf: 14 Company: Central Hudson Gas & Electric Corporation Revision: 4 Initial Effective Date: 10/11/07 Superseding Revision: 3; PSC No: 12 Gas Leaf: 7 Company: Central Hudson Gas & Electric Corporation Revision: 0 Initial Effective Date: 08/02/99 Superseding Revision: Stamps: Received: 06/23/99 Status: Effective: 08/02/99.

¹⁰⁸ 16 NYCRR § 13.9.

¹⁰⁹ 16 NYCRR § 13.9; PSC No: 15 Electricity Leaves: 62-65.1 Company: Central Hudson Gas & Electric Corporation Revision: 2 Initial Effective Date: 04/09/04 Superseding Revision: 1; PSC No: 12 Gas Leaves: 32-34 Company: Central Hudson Gas & Electric Corporation Revision: 2 Initial Effective Date: 04/09/04 Superseding Revision: 1.

¹¹⁰ *Id.*

¹¹¹ 16 NYCRR § 13.9; PSC No: 15 Electricity Leaves: 62-65.1 Company: Central Hudson Gas & Electric Corporation Revision: 2 Initial Effective Date: 04/09/04 Superseding Revision: 1.

residential backbill, Central Hudson must issue the backbill within one or two months after discovery of the circumstance.¹¹²

F. The Commission should disregard the OIE Report and Show Cause Order regarding overcharges, bill delays and backbills.

The statutes, rules and orders cited in the OIE Report and Show Cause Order regarding overcharges, bill delays and backbills should be disregarded. There can be no overcharges, delayed bills, backbill issues, or utility neglect if Central Hudson has followed the applicable statutes, rules and Commission Orders, which it has.

III. Apparent Violation of 16 NYCRR 11.13: Meter Readings and Estimated Bills and the Commission's Order in Case 21-M-0045.

The OIE Report and the Show Cause Order correctly cite 16 NYCRR § 11.13, the Commission's Order in Case 21-M-0045 and Central Hudson's tariffs as the controlling law.¹¹³ The OIE Report and the Show Cause Order failed to recognize that nonresidential customers also have rules about estimated bills, and also neglected to cite the backbill rules and tariffs previously discussed, which provide Central Hudson with time to correct previously rendered bills with issues.

Central Hudson denies the allegations that it violated 16 NYCRR § 11.13 because circumstances did indicate that the meter reads were likely to be erroneous. Central Hudson adds that it must maintain controls on meter reads, not only pursuant to the Commission's Order in Case 21-M-0045, but also to meet Sarbanes Oxley requirements

¹¹² *Id.*

¹¹³ OIE Report at 51-55; Show Cause Order at 16-19; PSC No: 15 Electricity Leaf: 57 Company: Central Hudson Gas & Electric Corporation Revision: 5 Initial Effective Date: 11/01/2019 Superseding Revision: 4; PSC No: 12 Gas Leaf: 27 Company: Central Hudson Gas & Electric Corporation Revision: 2 Initial Effective Date: 07/01/16 Superseding Revision: 1 Issued in Compliance with Order in C. 14-G-0319 dated June 17, 2015.

pursuant to the Commission's Order in 12-M-0192.¹¹⁴ Once a control, or threshold in this case, is met, it generates a BPEM on a worklist and Central Hudson must investigate it. The threshold was, and remains, a usage threshold, a factual error made by the OIE Report and Central Hudson complies with the usage threshold requirements of the Commission's Order in Case 21-M-0045.¹¹⁵ Central Hudson was unaware that any particular BPEM did not represent a meter read error, and was therefore, erroneous pursuant to 16 NYCRR § 11.13(a)(4), and in fact some meter reads were erroneous. Of course, neither Central Hudson, the Commission, nor Staff would have preferred that incorrectly calculated bills based on how SAP may have misinterpreted the meter reads, be sent, rather than properly calculated estimates corrected through the backbill process.¹¹⁶

IV. Apparent Violation of Commission Order 21-M-0045, New Procedures for Bill Estimates.

The Show Cause Order alleges that Central Hudson failed to file compliance reports with the Commission as required by ordering clauses four and five of the Commission's Order Approving Revised Bill Estimation Methods in Case 21-M-0045.¹¹⁷ The allegation is incorrect as Central Hudson had substantial discussions with Staff, which was initially concerned about the information contained in the report, and after

¹¹⁴ CASE 12-M-0192 - *Joint Petition of Fortis Inc. et al. and CH Energy Group, Inc. et al. for Approval of the Acquisition of CH Energy Group, Inc. by Fortis Inc. and Related Transactions* (Order Authorizing Acquisition Subject to Conditions at 16-17 (Issued and Effective June 26, 2013).

¹¹⁵ DPS-004 IR-034 at lines 26-54 (which are the usage thresholds measured by meter indices) CONFIDENTIAL.

¹¹⁶ OIE Report at 51-55; Show Cause Order at 16-19.

¹¹⁷ Show Cause Order at 22.

Central Hudson amended the report as Staff requested, Central Hudson heard no more about a deficient report and kept filing the report in the same form.¹¹⁸

Regardless, even if Central Hudson failed to comply with ordering clauses four and five of the Commission's Order in Case 21-M-0045, the Commission has waived its right to enforce the Order retroactively.¹¹⁹ The Commission has the right to enforce its orders pursuant to PSL § 24. Where, as in the instance of Case 21-M-0045 ordering clauses four and five, the Commission fails to enforce its orders, the Court has held:

If the commission became satisfied that its order was not being properly complied with, it could, under section 74 of the Public Service Commissions [SIC] Law, have commenced an action against the plaintiff to have such violation stopped and prevented, and therefore the Public Service Commission recognized the fact that, under the circumstances of the case, the plaintiff had substantially complied with the provisions of its order, or, if it regarded the acts of the plaintiff as a violation of its order, by its conduct in not stopping or preventing such violations, *the commission waived the requirements of its order.*¹²⁰

V. Prudence.

The Commission properly states that a prudence review “is determined by judging whether the utility acted reasonably under the circumstances at the time, ‘considering that the company had to solve its problems prospectively rather than in reliance on

¹¹⁸ Case 21-M-0045 - *In the Matter of the Petition of Central Hudson Gas and Electric Corporation to Revise the Heating and Non-Heating Procedures Used to Calculate Bill Estimates* (Amended Q4 Report) (April 19, 2022).

¹¹⁹ *Municipal Gas Co. v. PSC*, 183 N.Y.S. 900*, 903*; 1920 N.Y. Misc. LEXIS 1652 **, 4-5**; 113 Misc. 748 (Supreme Court of New York, Trial Term) (Albany County August 14, 1920); *Municipal Gas Co. v. Public Service Com.*, 184 A.D. 757 *, 758*; 172 N.Y.S. 563**; 1918 N.Y. App. Div. LEXIS 6656 *** (Supreme Court of New York, Appellate Division, Third Department) (November 18, 1918); 1979 N.Y. PUC LEXIS 8 (New York Public Service Commission) (March 28, 1979) (Cases 27350, 27469; Opinion No. 79-7) (NY Public Service Commission Decisions Reporter) (1979 N.Y. PUC LEXIS 8*, 15-16*, 81*).

¹²⁰ *Municipal Gas Co. v. PSC*, 183 N.Y.S. 900*, 903*; 1920 N.Y. Misc. LEXIS 1652 **, 4-5**; 113 Misc. 748 (Supreme Court of New York, Trial Term) (Albany County August 14, 1920) (emphasis added).

hindsight.”¹²¹ But, neither the Show Cause Order nor the OIE Report discuss the standard the Commission must meet before it may begin a prudence review. There are two standards, one where the issue is service and the other in a rate proceeding. In this instance, there is no rate proceeding before the Commission as Central Hudson has not asked for recovery of any costs incurred that the Commission has not already approved for recovery in Cases 20-E-0428 and 20-G-0429. The prudence of Central Hudson’s transition from its legacy CIS system to its SAP system and the ratemaking approved for that project is not at issue in this proceeding because “[r]ate making is a prospective and *not a retrospective* process.”¹²²

PSL § 72 properly sets forth the burden of proof in a rate proceeding as:

At any hearing involving a rate, the burden of proof to show that the change in rate or price if proposed by the person, corporation or municipality operating such utility, or that the existing rate or price, if on motion of the commission or in a complaint filed with the commission it is proposed to reduce the rate or price, is just and reasonable shall be upon the person, corporation or municipality operating such utility;...¹²³

In other words, if the utility proposes an increase in rates, it has the burden of proof to show that the requested increase is just and reasonable and if the Commission or a third party proposes a decrease in rates the utility has the burden of proof to show that its current rates are just and reasonable. But that is not the case in this proceeding. There is no request by any party or the Commission to adjust Central Hudson’s rates.

¹²¹ Show Cause Order at 23.

¹²² *Niagara Mohawk Power Corp. v. Public Service Com.*, 54 A.D.2d 255*, 257*; 388 N.Y.S.2d 157 **, 159; 1976 N.Y. App. Div. LEXIS 13763***, 5***; 16 P.U.R.4th 538 (Supreme Court of New York, Appellate Division, Third Department) (November 10, 1976) (emphasis added).

¹²³ PSL § 72 (2023).

Instead, the question in this proceeding is whether it was prudent for Central Hudson to spend approximately \$33,427,000 more than was authorized by the Commission to fix issues that arose during, and subsequent to, the transition to the SAP system.¹²⁴ Under these circumstances Central Hudson has a presumption that it has used reasonable managerial judgement.¹²⁵ Under these circumstances The OIE Report and the Show Cause Order have the burden of providing a rational basis to infer that Central Hudson may have acted imprudently.¹²⁶ Specifically, the Court held that:

The usual burdens of proof are also slightly different in this case. A utility company seeking a rate change has the burden of proving that the requested regulatory action is "just and reasonable". However, *a utility's decision to expend monetary resources is presumed to have been made in the exercise of reasonable managerial judgment. DPS carries the initial burden of providing a rational basis to infer that the utility may have acted imprudently before the burden shifts to the utility to demonstrate that its decision was prudent when made.*¹²⁷

The OIE Report and Show Cause Order have not met the required burden of proof. Besides the errors of law and facts included in the OIE Report and Show Cause Order, which undercut their ability meet the burden of proof necessary to proceed with a prudence review, if Central Hudson had not made expenditures to remedy the billing issues that arose during the transition to the SAP system the OIE Report would likely have determined that a prudence review was necessary because of Central Hudson's

¹²⁴ DPS-008 IR-083 Attachment 1 Update CONFIDENTIAL.

¹²⁵ *Matter of National Fuel Gas Distrib. Corp. v. Public Serv. Commn. of the State of N.Y.*, 16 N.Y.3d 360*, 369*; 947 N.E.2d 115**, 120-121**; 922 N.Y.S.2d 224***, 229-230***; 2011 N.Y. LEXIS 471****, 12****; 2011 NY Slip Op 2435 (Court of Appeals of New York March 29, 2011, Decided).

¹²⁶ *Id.*

¹²⁷ *Id.* (citations omitted) (emphasis added).

failure to act.¹²⁸ In other words pursuant to the OIE Report's reasoning Central Hudson was wrong if it acted and wrong if it failed to act. In NYSEG the Commission held:

Indeed, even absent overearnings, utility managements are expected to operate prudently in providing safe and reliable service. In performing their responsibilities, utilities routinely incur costs that either rise above or fall below rate allowances. For example, as detailed in Case 10-E-0050, prior to filing for a rate increase in 2010, Niagara Mohawk Power Corporation d/b/a National Grid had made investments that significantly exceeded existing rate allowances, even though its earnings were falling to below 5%. As a result, *the absence of rate relief is not an excuse for delaying movement to a full cycle VM program.*¹²⁹

Due to its reliance on the OIE Report, the Show Cause Order has failed to meet the required burden of proof to demonstrate that Central Hudson's management decision-making regarding expenditures to address SAP system issues was imprudent. In this instance the OIE Report and Show Cause Order have not examined each decision point or the applicable circumstances surrounding each decision made by Central Hudson. Central Hudson made reasonable decisions based on the information available at the time of the decision and the Commission cannot substitute its judgement for that of Central Hudson in this regard. If there are multiple reasonable decisions available, it is enough that Central Hudson made one. Further, if Central Hudson had failed to make expenditures to address issues, it is likely a Show Cause Order would have been issued based on alleged non-performance instead of alleged faulty performance. Central

¹²⁸ CASE 13-E-0117 - *New York State Electric & Gas Corporation - Petition for Authorization to Implement Full-Cycle Distribution Vegetation Management* (Order Denying Petition and Establishing Further Procedures at 16) (Issued and Effective October 1, 2013) (NYSEG)

¹²⁹ *Id.* (emphasis added).

Hudson's actions have a presumption of reasonableness, and no prudence review is warranted in this circumstance.¹³⁰

STATEMENT OF THE FACTS

The OIE Report and Show Cause Order rely on facts that are misconstrued and misinterpreted because other facts were omitted. Central Hudson will address the facts relied on by the OIE Report and Show Cause Order for the apparent violations of law set forth in the Show Cause Order.

VI. Apparent violation of law, overcharges, delayed billing and backbilling.

A. Central Hudson did not overcharge customers.

The Show Cause Order does not set forth any evidence to support the allegation that Central Hudson overcharged 8,500 [SIC] customers.¹³¹ The OIE Report incorrectly states that Central Hudson overcharged 8,050 customers because "SAP system controls failed to prevent incorrect bills from being sent to many customers"¹³² Central Hudson does not deny that 8,050 customers received initial bills that were incorrect.¹³³ All 8,050 affected customers were remedied quickly, long before the Commission's backbill rules required, some before they received a bill.¹³⁴ None of these customers were overcharged. Further, Central Hudson has instituted a system to credit customers for charges they would otherwise properly owe except that Central Hudson is beyond the

¹³⁰ *Matter of National Fuel Gas Distrib. Corp. v. Public Serv. Commn. of the State of N.Y.*, 16 N.Y.3d 360*, 369*; 947 N.E.2d 115**, 120-121**; 922 N.Y.S.2d 224***, 229-230***; 2011 N.Y. LEXIS 471****, 12****; 2011 NY Slip Op 2435 (Court of Appeals of New York March 29, 2011, Decided).

¹³¹ Show Cause Order at 14-15 (the Show Cause Order stated 8,500 but meant 8,050 as set forth in the OIE Report and DPS-001 IR-004 Attachment 1 CONFIDENTIAL).

¹³² OIE Report at 14.

¹³³ DPS-001 IR-004 Attachment 1 CONFIDENTIAL.

¹³⁴ *Id.*

time period to bill an upward adjustment. The automated system bills and credits to avoid an overcharge and avoid charging Central Hudson's remaining customers for the potential overcharge through the revenue decoupling mechanism or otherwise.¹³⁵ For these circumstances, to date, Central Hudson has assumed responsibility for over \$1.6 million that would have otherwise been charged to customers and for which Central Hudson will not seek recovery.¹³⁶

The OIE Report relied on by the Show Cause Order cites only one piece of evidence that it takes out of context and misstates.¹³⁷ DPS-001 IR-004 asked Central Hudson to “[p]roduce a list of customers who were overbilled due to the billing system change including the amount overcharged and any and all correspondence with the customer concerning the overcharge.”¹³⁸ Central Hudson responded with a definition of “overcharge,” a discussion of automated controls to prevent overcharges, that all overcharges had been corrected and not one, but 12 attachments.¹³⁹

DPS-001 IR-004 Attachment 1 CONFIDENTIAL shows the number of customers initially overcharged, some before they received any bill and others that did receive a bill.¹⁴⁰ DPS-001 IR-004 Attachment 1 CONFIDENTIAL also shows the date the problem arose, the date it was resolved, whether resolution was in progress, and how many customers were affected by each issue.¹⁴¹ The Attachment shows that: (1) nine of the

¹³⁵ Central Hudson accomplished the crediting in accordance with the Commission's utility accounting rules by either sending a bill with the upward adjustment and credit on the bill, which means the customer is held harmless, or where allowable, Central Hudson does not send a bill but debits the customer's accounts to ensure that all other customers are not charged with the unbilled and uncollected upward adjustment.

¹³⁶ Credit Table CONFIDENTIAL (Appendix at A-24).

¹³⁷ OIE Report at 47-48, footnote 239.

¹³⁸ DPS-001 IR-004.

¹³⁹ DPS-001 IR-004 Attachments 1-11 CONFIDENTIAL.

¹⁴⁰ *Id.* at Attachment 1 CONFIDENTIAL.

¹⁴¹ *Id.*

issues were resolved, all in less than three and a half months and only two took more than one month to resolve; (2) one resolution was ready for release, which took about four and a half months to resolve; and that four issues remained in progress.¹⁴² All of those in progress have since been resolved.¹⁴³

All resolutions were made within the time frame required by 16 NYCRR §§ 11.14, 13.9 and Central Hudson's tariffs.¹⁴⁴ The remaining 11 confidential attachments show detail associated with each one of the issues that arose, including the specific customers affected. Thus, the OIE Report knew that the issues had been corrected and customers had been timely reimbursed, credited or rebilled, but failed to report that information to the Commission. The alleged overcharges are not overcharges because they were corrected timely and did not result in financial harm to any customer.

B. The facts show that Central Hudson delayed billing some customers but that all customers were timely backbilled within the period prescribed by the applicable rule or tariff, or credited.

The Show Cause Order makes two factual statements that are relevant to the issue of delayed bills: (1) "Central Hudson admitted to becoming aware immediately upon go-live that system transition issues were causing billing delays to customers;" and (2) "[f]ollowing system cutover, Central Hudson improperly sent 83 backbills to nonresidential customers, and 1,600 backbills to residential customers in violation of the Public Service Law, DPS regulations, and Commission Orders." The first statement is based on Central

¹⁴² *Id.*

¹⁴³ DPS-001 IR-004 Attachment 1 Update CONFIDENTIAL. (PP-15678 included downward and upward adjustments, and upward adjusted customers would have received bill credits) (Appendix at A-183).

¹⁴⁴ PSL § 41 (2022); 16 NYCRR §§ 11.14, 13.9; PSC No: 15 Electricity Leaf 62-65.1, Central Hudson Gas & Electric Corporation; PSC No: 12 Gas Leaves 32-35, Central Hudson Gas & Electric Corporation.

Hudson's responses to DPS-003 IR-026, DPS-004 IR-032 and Attachment 1 CONFIDENTIAL to that response, DPS-004 IR-035, and DPS-009-085 each cited by the OIE Report.¹⁴⁵ Although those interrogatories each ask about delayed bills none make the admission set forth in the Show Cause Order's first statement quoted above.¹⁴⁶

DPS-003 IR-024, not cited by the OIE Report, does discuss two types of bill blocks made at go live pertaining to certain CDG customers and certain net metered customers.¹⁴⁷ Nothing in DPS-003, IR-024 identified which specific customers were bill blocked, and therefore, had their bills delayed. It is the identification of the circumstance affecting each individual customer that triggers the time periods for issuing a backbill in 16 NYCRR §§ 11.14 and 13.9 and Central Hudson's tariffs.¹⁴⁸ Even prior to go live Central Hudson was manually billing CDG and net metered customers.¹⁴⁹

Further, the OIE Report knew that customers with delayed billing were being billed within a range of times from a delay as short as a day and as long as some months.¹⁵⁰ In fact, OIE discussed DPS-003, IR-024 with the SAP Project Lead on this very topic, but it simply never found its way into the OIE Report.¹⁵¹ Specifically, the SAP Project Lead told OIE that:

So, what you need to do is, if I have a subscriber who is red [SIC] and to be issued a bill on the first of the month and the host may be the tenth of the month, *I would have to bill block*

¹⁴⁵ OIE Report at 48 at footnotes 241-245.

¹⁴⁶ DPS-003 IR-026; DPS-004 IR-032; DPS-004 IR-032 Attachment 1 CONFIDENTIAL; DPS-004 IR-035; DPS-009 IR-085.

¹⁴⁷ DPS-003 IR-24.

¹⁴⁸ PSL § 41 (2022); 16 NYCRR §§ 11.14, 13.9; PSC No: 15 Electricity Leaf 62-65.1, Central Hudson Gas & Electric Corporation; PSC No: 12 Gas Leaves 32-35, Central Hudson Gas & Electric Corporation.

¹⁴⁹ David Rossi Interview of Central Hudson CTO at 7 (June 2, 2022).

¹⁵⁰ David Rossi Interview of SAP Project Lead at 41-43 (August 5, 2022).

¹⁵¹ *Id.*

*that customer from the first through the ninth and then release the bill block to go out with the host at that point and time.*¹⁵²

The import of the interrogatories and the interview with the SAP Project Lead is that the Commission's first statement cannot be true because there was not a static group of delayed customer bills. Customers were being billed as quickly as possible, or credited, based on the identification of the issue associated with each customer, the resources available to process the bill and the rules setting the amount of time Central Hudson was permitted to delay the bill under the applicable rules and tariffs.

The OIE Report alleges that Central Hudson knew of issues at go live and cites DPS-003 IR-027.¹⁵³ This is a further attempt to show that Central Hudson knew of issues on September 1, 2021, when the SAP system went live. Central Hudson's response to DPS-003 IR-027 says that Central Hudson became aware of issues at go live because "[d]espite system testing, the system did have defects arise, as was expected and is normal for a go-live of this magnitude. Once defects arose, Central Hudson triaged and assigned resources to resolve the defects." No specific issues were identified in Central Hudson's response and Central Hudson, prudently and correctly, had systems in place to identify and address the issues that arose.¹⁵⁴

The OIE Report discusses delayed bills as if BPEMs and delayed bills are the same thing, which they are not.¹⁵⁵ A BPEM is used to analyze and monitor mass activities within SAP. The BPEM process monitoring allows Central Hudson to identify successful

¹⁵² *Id.* at 42 (emphasis added).

¹⁵³ OIE Report at 51 footnote 252.

¹⁵⁴ 16 NYCRR §§ 11.14, 13.9; PSC No: 15 Electricity Leaf 62-65.1, Central Hudson Gas & Electric Corporation; PSC No: 12 Gas Leaves 32-35, Central Hudson Gas & Electric Corporation.

¹⁵⁵ OIE Report at 15-16.

and incorrect processes. Problem messages are added to a clarification worklist. Part of the identification process was to determine which customers were affected by which BPEM or issue. The fact that Central Hudson knew that general issues existed does not start the time period under the backbill rules. Central Hudson had to work through each BPEM. None of Central Hudson's responses to OIE interrogatories show a violation of any statute, rule, or order.

What do Central Hudson's responses show? DPS-004 IR-032 Attachment 1 CONFIDENTIAL is instructive. DPS-004 IR-032 Attachment 1 CONFIDENTIAL column A lists customers by customer type, each row shows the number of customers of each type that had delayed bills for a specific time period ranging from less than one month to seven or more months.¹⁵⁶ DPS-004 IR-032 Attachment 1 CONFIDENTIAL does not show when Central Hudson discovered the issue affecting any specific customer, whether the backbill is an upward adjustment or a downward adjustment, whether the backbill was associated with a budget bill plan, due to the customer's culpable conduct, whether there was a dispute with the customer, or whether the customer was issued a credit. The delayed bill was not due to Central Hudson's neglect because Central Hudson did everything it could to get the bill out, and it did get the bill out within the time period permitted by the rules. The information set forth in DPS-004 IR-032 Attachment 1 CONFIDENTIAL is insufficient to determine if the alleged violation occurred.

DPS-003 IR-026 provides the number of bill delayed customers associated with the issues identified in DPS-003 IR-24.¹⁵⁷ DPS-004 IR-035 is an update to DPS-003 IR-

¹⁵⁶ DPS-004 IR-032 Attachment 1 CONFIDENTIAL.

¹⁵⁷ DSP-003 IR-026.

026 and DPS-009 IR-085 is an update to DPS-004 IR-035.¹⁵⁸ What the interrogatory responses do show is a steady decline in the number of delayed bill customers.¹⁵⁹ Although, as indicated on DPS-009 IR-085, due to NYISO's default of an ESCO's customers back to Central Hudson supply, which took several months to work through because they were returned on July 18, 2022, not on each customer's billing cycle, there was a temporary increase in bill delayed customers.¹⁶⁰

The second question is answered by the information, or lack thereof, included in the interrogatory responses incorrectly relied on by the OIE Report. From the evidence presented Central Hudson has no reason to believe that there is a violation of the backbill rules, and neither should the Commission. Could Central Hudson provide the information necessary to perform a customer-by-customer analysis? No. The SAP system is not designed to answer discovery inquiries, it is designed to bill customers. A manual analysis is required to determine whether backbill rules were violated and Central Hudson would need to significantly increase full time employee resources at considerable cost to perform such an analysis.

Central Hudson has however, designed an automated system to credit customers with an overcharge associated with a time barred prohibited upward adjustment. This process also allows Central Hudson to avoid charging unaffected customers for the bill credits and ensures that no customer overcharges result from Central Hudson's billing transition issues.¹⁶¹ To date, Central Hudson has issued more than \$1.6 million of credits.

¹⁵⁸ DPS-004 IR-035, DPS-009 IR-085.

¹⁵⁹ DPS-003 IR-026; DPS-004 IR-032; DPS-004 IR-032 Attachment 1 CONFIDENTIAL; DPS-004 IR-035; DPS-009 IR-085.

¹⁶⁰ DPS-009 IR-085.

¹⁶¹ Credit Table CONFIDENTIAL (Appendix at A-24).

Central Hudson will not seek cost recovery for the credits.¹⁶² There is no violation of the backbill rules based on the information presented and the Commission should not assess penalties or initiate a prudence review based on the OIE Report.

VII. The facts show that Central Hudson complied with 16 NYCRR § 11.13 and the Commission's Order in Case 21-M-0045.

The Show Cause Order bases this allegation on two basic facts alleged in the OIE Report. The first allegation is that Central Hudson did not base its thresholds for using an estimate instead of an actual meter read, on usage as required by the Commission's Order in Case 21-M-0045.¹⁶³ This allegation is incorrect. The only basis for the allegation that Central Hudson failed to use usage thresholds as the Commission Ordered in Case 21-M-0045 is Central Hudson's response to DPS-004 IR-034 Attachment 1 CONFIDENTIAL.¹⁶⁴ Lines 26 to 54 of DPS-004 IR-34 Attachment 1 CONFIDENTIAL clearly show the usage thresholds by meter index.¹⁶⁵ Column one is the customer type, column two is the valid from consumption (Estimated). Column three is the valid-to consumption (Estimated), column four is the percent deviation threshold, and column six is the absolute deviation threshold.¹⁶⁶ The usage thresholds are clearly marked. Central Hudson did not violate the Commission's Order in Case 21-M-0045.

The second allegation is based on a misunderstanding of what a BPEM is, how it is used and when Central Hudson started using BPEMs.¹⁶⁷ A BPEM is a process used to analyze and monitor exceptions within SAP. BPEMs permit Central Hudson to identify

¹⁶² *Id.*

¹⁶³ Show Cause Order at 17-18; OIE Report at 52-54.

¹⁶⁴ OIE Report at 52 footnote 255.

¹⁶⁵ DPS-004 IR-034 Attachment 1 CONFIDENTIAL.

¹⁶⁶ *Id.*

¹⁶⁷ Show Cause Order at 18; OIE Report at 52.

incorrect processes. Problem messages from BPEMs are added to a worklist so the issue can be fixed. Central Hudson did not have similar BPEM reporting under the legacy CIS system. The reporting and visibility of BPEMs are SAP features to allow constant monitoring and correction of the SAP system. That issue identification feature is prudent, and as issues are resolved will allow Central Hudson to operate and maintain a more reliable and accurate billing system. For BPEMs to be useful and result in a more reliable and accurate system BPEMs must be worked and not ignored. Despite having a robust staffing plan, and adding staffing throughout the transition process, Central Hudson was unable to keep up with BPEMs.¹⁶⁸

Central Hudson's staffing included 50 fulltime employees dedicated to training, testing, development, Contact Center support and other necessary personnel.¹⁶⁹ Central Hudson's staffing did not count support personnel such as Customer Service Representatives ("CSR") and others who provided critical support to the project. The System Integrator provided 114 employees performing various tasks through go live and after.¹⁷⁰ The System Integrator included project managers, service quality executive, billing leads, bill compare, developers and other subject matter experts.¹⁷¹ Central Hudson hired other experts and brought back the System Integrator after their engagement expired because we needed the help. Still, working the BPEMs was a challenge where success eluded us. BPEMs are declining and the more they decline the

¹⁶⁸ DPS-002 IR-009 Attachment 13 CONFIDENTIAL.

¹⁶⁹ *Id.*

¹⁷⁰ *Id.*

¹⁷¹ *Id.*

easier it will be to work the BPEMs timely, and the more resources Central Hudson will have for other important tasks.¹⁷²

Central Hudson, however, had to, and did, treat BPEMs seriously. Without investigation, Central Hudson did not know if issues existed that would have rendered the actual meter read bill erroneous. The OIE Report incorrectly states that “[a]s designed, if the system identified a bill above a threshold, it would create a BPEM that would block the bill from being sent to the customer.”¹⁷³ That statement, like the statement that Central Hudson did not use usage thresholds, is simply untrue.

The BPEMs create a list of issues to be reviewed, they do not block bills, but they do result in an estimated bill if Central Hudson cannot resolve the issue identified by the BPEM within seven days.¹⁷⁴ Central Hudson read customer meters timely throughout the transition. Once a BPEM was resolved, if it was appropriate, the customer was backbilled based on the actual meter read. This is one reason, not the only reason, why there have been so many backbills.¹⁷⁵ In response to a question from OIE regarding this subject, Central Hudson’s SAP Project Lead stated:

Yeah. We have seen examples where we go through the cancel, rebill process where we go back into the system, we verify that there was an actual read and realize that that actual read is plausible for, *could be a number of reasons, and then we will go back and do a cancel and then rebill based on the actuals rather than the estimate that originally generated the bill.*¹⁷⁶

¹⁷² DPS-008 IR-080.

¹⁷³ OIE Report at 52.

¹⁷⁴ David Rossi Interview of SAP Project Lead at 49 (August 5, 2022).

¹⁷⁵ *Id.* at 50 (August 5, 2022).

¹⁷⁶ *Id.*

Next, the OIE Report conflates several issues. First, improperly citing DPS-003 IR-024, the OIE Report inaccurately states that “CDG customer bills were blocked due to SAP system errors related to the allocation of credits.”¹⁷⁷ This statement is wrong, CDG bills were blocked because of timing differences between billing the customer and the Host Allocation Report.¹⁷⁸ No billing system in the world has a process to bill CDGs pursuant to the Commission’s CDG billing requirements because New York is unique in this regard. More importantly for this apparent violation, CDG bill block has nothing to do with estimated bills or the Commission’s Order in Case 21-M-0045.

Again, citing DPS-003 IR-024 the OIE Report discusses net metering and one of several reasons for a bill block, an incorrect interpretation of metering indices, without mentioning the other reasons, including move-in/move-outs and training requirements.¹⁷⁹ Net metering customers do not get estimated bills and have nothing to do with the alleged violation of the estimating rules and compliance with the Commission’s Order in Case 21-M-0045. The OIE Report then incorrectly claims that retail access customers had bills blocked when the bills were only delayed.¹⁸⁰ Once again this has nothing to do with estimating bill compliance, but the OIE Report decided to mention it anyway. Finally, the OIE Report states that “[o]ther customers had their bills blocked for various problems related to the accuracy of the data in the system...,” although their bills were merely delayed, not blocked and it has nothing to do with the inaccurately alleged estimating bill compliance issue.¹⁸¹

¹⁷⁷ OIE Report at 52-53.

¹⁷⁸ DPS-003 IR-024.

¹⁷⁹ OIE Report at 53; DPS-003 IR-024.

¹⁸⁰ *Id.*

¹⁸¹ *Id.*

The OIE Report, in an effort to show non-compliance with 16 NYCRR § 11.13, incorrectly asserts that Central Hudson cannot show that “circumstances indicate a reported reading is likely to be erroneous.”¹⁸² Of course Central Hudson can establish pursuant to 16 NYCRR § 11.13 that reported readings were likely to be erroneous; if the meter reading failed the usage threshold it is presumed erroneous until the issue raised by the BPEM is resolved. There is no factual basis for the allegation that Central Hudson did not comply with the Commission’s Order in 21-M-0045 and 16 NYCRR § 11.13.

VIII. The facts show that Central Hudson complied with the Commission’s Order in Case 21-M-0045, Ordering Clause four.

Central Hudson did file the reports required by Ordering Clause four in Case 21-M-0455. The Show Cause Order allegation is not that the reports weren’t filed, it is that they did not contain adequate information.¹⁸³ Staff expressed that concern to Central Hudson and there was a series of communications by email, telephone and teleconference about the quality and content of the Ordering Clause four report. Based on those discussions Central Hudson filed an amended report on April 19, 2022.¹⁸⁴ Staff sent an email asking when the amended report would be filed, to which Central Hudson responded and then filed the amended report and Staff said “Thank you!”¹⁸⁵ Thereafter, Central Hudson did not hear from Staff that the report was inadequate and Central Hudson continued to file the report as amended. Central Hudson was, and remains, in compliance with the Commission’s Order in Case 21-M-0045 at ordering clause four.

¹⁸² OIE Report at 53.

¹⁸³ Show Cause Order at 22.

¹⁸⁴ Case 21-M-0045 - *Petition of Central Hudson Gas and Electric Corporation to Revise the Heating and Non-Heating Procedures Used to Calculate Bill Estimates* (DMM at SR. No. 4, Item 9) (April 19, 2022).

¹⁸⁵ Staff email April 7, 2022, 10:01 AM CONFIDENTIAL (Appendix at A-644).

IX. The facts demonstrate that Central Hudson’s management decisions to transition to the SAP system and manage the SAP system was after it was operating, were prudent.

The Show Cause Order raises two factual issues to support the commencement of a prudence review of Central Hudson’s management decisions transitioning from its legacy CIS system to its SAP system.¹⁸⁶ The factual issues are the OIE Report’s “extended narrative” and Central Hudson’s SAP system expenditures over “two rate plans.”¹⁸⁷ The OIE Report’s facts have been inaccurate throughout, cannot be relied upon, and are insufficient to support a prudence review.

The OIE Report begins with an incorrect assertion that Central Hudson has experienced cost overruns compared to its authorized rate case information technology expenditures and capital investment from Cases 17-E-0459 and 17-G-0460.¹⁸⁸ Cases 17-E-0459 and 17-G-0460 have nothing to do with this proceeding, the approved rate case allowances for the SAP system or the cost overruns. The Commission approved the rate case allowances for the SAP system in Cases 20-E-0428 and 20-G-0429, just one rate plan.¹⁸⁹ The approved project and rate case allowance has already been determined as prudent and is not at issue in this proceeding. Central Hudson has spent an incremental \$33,427,000 in an effort to correct the remaining issues associated with the SAP system and those incremental costs have not been approved for cost recovery

¹⁸⁶ Show Cause Order at 24-25.

¹⁸⁷ *Id.* at 24.

¹⁸⁸ OIE report at 45-46.

¹⁸⁹ Cases 20-E-0428, 20-G-0429 - *Proceeding on Motion of the Commission as to the Rates, Charges, Rules and Regulations of Central Hudson Gas & Electric Corporation for Electric and Gas Service* (Rebuttal Testimony of the Information Technology Panel at 3, 9, 18, 21, 23, 33-35) (Statement of Central Hudson Gas & Electric Corporation in Support of Joint Proposal at 5, 38-39) (Order Adopting Terms of Joint Proposal and Establishing Electric and Gas Rate Plan at 36, Joint Proposal at Appendix A) (Issued and Effective November 18, 2021); DPS-008 IR-083 Attachment 1 CONFIDENTIAL (December 12, 2022 Update).

by the Commission in any rate proceeding.¹⁹⁰ Perhaps the OIE Report is suggesting that Central Hudson should not have spent additional money to correct issues and provide adequate billing services for customers? Central Hudson thinks that a prudence review of its decision making would be appropriate if it had not attempted to correct SAP system issues.

The OIE Report makes inaccurate claims that it has established that Central Hudson has:

- Failed to properly train its staff,
- Failed to properly test the new system,
- Failed to properly allocate resources,
- Failed to address known system defects,
- Failed to address known process deficiencies,
- Rushed to go live, and¹⁹¹
- Failed to have (or develop) a contingency plan to revert to the legacy system once problems manifested themselves across the customer base following go live.¹⁹²

A. Central Hudson reasonably planned for and implemented training.

Regarding training, the OIE Report begins by noting the Governor's March 2020 declaration of an emergency due to COVID and criticized Central Hudson for not having a contingency plan for training during the COVID emergency.¹⁹³ The COVID emergency certainly impacted the transition to SAP, including training, but was hardly foreseeable and is not a basis for imprudence. As a basis for its inaccurate assertion that Central Hudson's training was impacted by, and that Central Hudson did not have a contingency

¹⁹⁰ DPS-008 IR-083 Attachment 1 CONFIDENTIAL (December 12, 2022, Update).

¹⁹¹ The OIE Report did not expressly address this allegation or the allegation of failing to develop a contingency plan so neither will Central Hudson, but Central Hudson reserves its right to address these issues should they arise.

¹⁹² OIE Report at 46.

¹⁹³ *Id.* at 26-27 at footnotes 121-125.

plan during COVID, the OIE Report cites to its interview of Central Hudson's SAP Project Lead; yet, while onboarding new employees and contractors during COVID was discussed, there was no discussion about COVID's impact on training.¹⁹⁴ The OIE Report completely ignores the actual training discussions with Central Hudson's SAP Project Lead where OIE asked whether he was aware of employee comments that Central Hudson needed to focus on "day one readiness" and the SAP Project Lead replied:

Yeah. So, we, we understood --you know, we got the sentiment back from the end users and one of the things we started to do is, *we added additional training sessions*. I think we may have defined them as "blitz sessions", or "ad-hoc sessions" where we started to identify what specific areas, by, by group, of the organization where people felt they needed more, or were results for telling us we needed to invest more time in training, so *we started doing additional training sessions*. The other thing we did is, it is talked about, here, about the support for the supervisors. *We also started getting supervisors additional training*, and more communication and more support so that they could be out front and with their reports to make sure that they were also supporting those individuals and if they felt that there was training needed.¹⁹⁵

In other words, the OIE knew that Central Hudson took action to address training issues but did not include that information in the OIE Report.

The OIE Report next relies on DPS-003 IR-021 Attachment 3 because it shows that although courses were available there was no scheduling or attendance for Complex Billing, Net Metering and Manage Retail Choice Provider training.¹⁹⁶ The OIE Report fails to mention that workshops were provided by the System Integrator in these subject

¹⁹⁴ David Rossi Interview of SAP Project Lead at 5 (August 5, 2022) (The OIE Report also cited to an April 11, 2022, presentation to Staff where Central Hudson indicated that COVID required resources work remotely. Of course, the COVID emergency affected the SAP system project and Central Hudson recognized it appropriately and told Staff. OIE Report at 27 footnote 126).

¹⁹⁵ *Id.* at 13-15.

¹⁹⁶ OIE Report at 27, footnotes 127-128; DPS-003 IR-021 Attachment 3.

areas.¹⁹⁷ Also training was provided to supervisors, known as Tower Leads, so that they could train their team.¹⁹⁸ The OIE Report also fails to mention DPS-003 IR-021 Attachment 2 CONFIDENTIAL and the interview with Central Hudson’s SAP Project Lead who makes clear there was training for net metering and complex billing including CDG.¹⁹⁹ The OIE Report continues to inaccurately characterize the discovery by stating that: “Central Hudson instead chose to hope that employees would pick up proficiency through testing in a manner that was “ad hoc” and “not tracked.””²⁰⁰ Central Hudson actually said:

*Training related to complex billing, net metering, and retail access were completed outside the planned training curriculum. Resources responsible for these areas, Customer Accounting, were involved in testing for many months and as such proficiency on these topics was gained through that process. In addition, ad hoc training, not tracked in the same fashion as other training, was provided to the Customer Accounting department after standard work hours.*²⁰¹

Nothing was left to hope or chance, employees were trained, and it was wrong for the OIE Report to imply otherwise.

Next, the OIE Report implies resources and training contributed to post-go live issues.²⁰² The SAP Project Lead informed the OIE that the reason for increased resources needed to process CDG billing was an unexpected 15,000 customer increase just after go live and that he did not have insight into staffing levels because the accounting department was responsible for CDG billing resources.²⁰³ In this regard, on

¹⁹⁷ DPS-002 IR-009 Attachment 12 CONFIDENTIAL.

¹⁹⁸ David Rossi Interview of SAP Project Lead at 15 (August 5, 2022)

¹⁹⁹ DPS-003 IR-021 Attachment 2 CONFIDENTIAL; David Rossi Interview of SAP Project Lead at 17-22 (August 5, 2022).

²⁰⁰ OIE Report at 27.

²⁰¹ DPS-007 IR-066 (emphasis added).

²⁰² OIE Report at 27, footnotes 130-131.

²⁰³ David Rossi Interview of SAP Project Lead at 8-9 (August 5, 2022) (the SAP Project Lead was wrong about the sudden increase in CDG customers but there was a steady increase over time).

July 25, 2022, prior to the August 5, 2022, interview with the SAP Project Lead, the OIE had asked Central Hudson's Chief Financial Officer ("CFO") about CDG billing resources.²⁰⁴ Regarding CDG resources the CFO stated:

*So we actually have increased the resources in that department by a lot, we had typically 5 technicians and have approved – and brought on 8 more, it's taken some time to get them in the door, they are classified positions and so there is a certain process you have to go through to bring them in, to test them, to interview, and then to bring them on board and to start training them in the right sequence of what they have to learn. We did get those resources, it's just taken some time to get the right people in here that can pass the test, to get them in, and then get them trained and up to speed.*²⁰⁵

Once again, the OIE Report erroneously omits that CDG resources were increased and trained. Further, the OIE Report states that "[n]ot surprisingly, the number of employees proficient in complex billing was "insufficient to address the billing issues that arose" post go-live."²⁰⁶ But the SAP Project Lead actually said that Central Hudson postponed the original July go live because of a lack of business readiness so that Central Hudson had more time to prepare, this cite had nothing to do with resource levels or training two months later when Central Hudson went live with the SAP system.²⁰⁷

Following a discussion of OIE's interview of the SAP Project Lead the OIE Report states without basis or citation that "when concerns arose, leadership repeatedly delayed

²⁰⁴ David Rossi Interview of CFO at 29 (July 25, 2022).

²⁰⁵ *Id.* at 29-30 (emphasis added).

²⁰⁶ OIE Report at 27, footnote 130.

²⁰⁷ David Rossi Interview of SAP Project Lead at 12 (August 5, 2022).

resolution until after go-live.”²⁰⁸ This statement has no basis and is not true. Management action was taken throughout the project as all interviewees stated.²⁰⁹

The OIE criticizes Central Hudson for treating risks raised by its employees on a risk summary and planning spreadsheet, differently than OIE would have treated seven of 153 risks identified and implies that Central Hudson ignored employees.²¹⁰ Central Hudson gathered a list of risks associated with SAP system go live and made plans to address those risks.²¹¹ Understanding and planning to address risks was a prudent management decision, but OIE mischaracterized Central Hudson’s responses to the risks. For example, the first risk raised was risk 133.²¹² When OIE asked Central Hudson’s SAP Project Lead about risk 133 and whether training was postponed past go live, the SAP Project Lead responded “I don’t believe so. It was right up to Go-Live and I know [SIC] continued pass [SIC] Go-Live but I thought the [SIC] continued pass [SIC] Go-Live were refresher courses.”²¹³ Thus, the OIE Report knew that Central Hudson had addressed the risk but decided not to put the information in the OIE Report.

The OIE Report finished its discussion of training by quoting a number of Central Hudson employees who had various concerns about training and their readiness.²¹⁴ Central Hudson management was aware of these concerns as it conducted regular employee surveys and gathered employee information through other communications as

²⁰⁸ OIE Report at 28.

²⁰⁹ David Rossi Interview of SAP Project Lead (August 5, 2022); David Rossi Interview of CFO (July 25, 2022); David Rossi Interview of Central Hudson Chief Technology Office (June 2, 2022).

²¹⁰ OIE Report at 28-30.

²¹¹ DPS-004 IR-031 Attachment 1 CONFIDENTIAL.

²¹² OIE Report at 28.

²¹³ David Rossi Interview of SAP Project Lead at 32 (August 5, 2022).

²¹⁴ OIE Report at 28-33.

well.²¹⁵ Employees were struggling with the transition to the SAP system the closer that Central Hudson got to go live.²¹⁶ OIE asked the SAP Project Lead what Central Hudson did about the situation and the SAP Project Lead explained that Central Hudson added training, by group, to supervisors, and increased communications.²¹⁷ The record shows that Central Hudson took reasonable steps to address training issues and a prudence review would be inappropriate.²¹⁸

B. Central Hudson reasonably tested the SAP system.

The OIE Report begins its discussion of testing by inaccurately stating that “a mere 2.88% were dedicated to Retail Choice, 1.25% were dedicated to Net-metering, and less than 1% were dedicated to Community Distributed Generation (CDG).”²¹⁹ The OIE Report bases its faulty facts on DPS-007 IR-075 Attachment 1.²²⁰ Central Hudson suspects that the OIE Report did not include all of the applicable rows for each category chosen by OIE, but the percentages are 5.73% dedicated to Retail Choice, 1.34% dedicated to net-metering, and 1.34% dedicated to CDG.²²¹ The OIE Report opines that the percentages are low but it is unclear what percentages the OIE Report expected for each category, given the large number of total tests. Regardless, Central Hudson’s management decision to test as often as it did was reasonable based on the information available to it at the time.

²¹⁵ David Rossi Interview of SAP Project Lead at 12-16 (August 5, 2022); DPS-005 IR-054 Attachments 1-7 CONFIDENTIAL.

²¹⁶ *Id.* at 14.

²¹⁷ *Id.* at 14-15.

²¹⁸ IT PMO Go Live Memo at 23 CONFIDENTIAL (Appendix at A-1).

²¹⁹ OIE Report at 35.

²²⁰ *Id.* at footnote 174.

²²¹ DPS-007 IR-075 Attachment 1 (Column H totals for each category divided by total tests).

As with its criticism of Central Hudson's training, the OIE Report provides quotes from Central Hudson employees evidencing concerns about testing.²²² Central Hudson received valuable information from its employees and acted on it. The discovery shows that Central Hudson performed thousands of tests to ensure that the SAP system would work.²²³

The OIE Report criticizes Central Hudson for offering an incentive bonus to the System Integrator in what the OIE Report characterizes as a desperate attempt to go live on September 1, 2021.²²⁴ According to the OIE Report, Central Hudson was so desperate that it had already postponed go live once, at great cost to Central Hudson, and apparently, OIE believes that \$1,000,000 was enough for the System Integrator to jeopardize its business by allowing a client to go live unprepared. This is simply hyperbole that should not be in the OIE Report and should be ignored.

Next, the OIE Report discusses a risk associated with estimates that was identified by an employee.²²⁵ That issue was fixed prior to go live. Central Hudson does perform estimating accuracy testing and the overall test must come within 10% of the actual bill to pass, which it has each time.²²⁶ These tests are Sarbanes Oxley controls and are performed every quarter. The test referred to in the OIE Report as DPS-007 IR-073 was a test performed against a limited number of specific accounts while the Sarbanes Oxley test is run against approximately 10% of Central Hudson's customer accounts.²²⁷

²²² OIE Report at 35-38.

²²³ DPS-007 IR-075 Attachment 1; IT PMO Go Live Memo at 23 CONFIDENTIAL (Appendix at A-1).

²²⁴ OIE Report at 37.

²²⁵ OIE Report at 38.

²²⁶ Estimating Simulation Portion August 16, 2021, 05, 15, 16 CONFIDENTIAL (Appendix at A-184).

²²⁷ DPS-007 IR-073 Attachment 1 CONFIDENTIAL; Estimating Simulation Portion August 16, 2021, 05, 15, 16 CONFIDENTIAL (Appendix at 184).

The OIE Report goes on to mischaracterize statements by Central Hudson's CTO stating that "[s]everal months after go-live, when asked what could have been done differently, Central Hudson's CTO pointed to, among other things, the lack of sufficient testing."²²⁸ Commenting about the decision to not go live in July the CTO stated:

And we needed to fix those defects and we needed to keep testing to make sure there were no other ones that, you know, were impactful. And so we – *we made the decision to not go live and continue resolving those particular defects* that we did find during bill compare and then test them, *and then if we felt we were ready in September we were going to go ready.*²²⁹

Based on the OIE Report's substantial errors its recitation as to testing should not be accepted by the Commission.

C. Central Hudson properly allocated staffing resources.

The OIE report accurately states that Central Hudson identified prior to go live that it would need additional staffing.²³⁰ But the OIE Report fails to mention that Central Hudson did add staff prior to go live, in July of 2021 and again after go live in October 2021.²³¹ The OIE Report is correct that the CDG customer increase rate was not as fast as the SAP Project Lead recalled, nonetheless, it caused issues due to the need to manually process the CDG bills because the SAP system could not be customized in time to automate the process for go live.

The OIE Report cites statements by the SAP Project Lead and the CTO that Central Hudson needed additional resources to handle the manual process needed to

²²⁸ OIE report at 38.

²²⁹ David Rossi Interview of Central Hudson Chief Technology Office at 15 (June 2, 2022) (emphasis added).

²³⁰ OIE Report at 39; DPS-004 IR-042.

²³¹ David Rossi Interview of SAP Project Lead at 10-11 (August 5, 2022).

process CDG bills and Backbills.²³² Central Hudson had more than 160 employee and contractor staffing resources, more than 10% of its workforce, assigned to this project and brought in more and more resources prior to and after go live.²³³

For some reason the OIE Report cites employee comments from DPS-004 IR-031 Attachment 1 CONFIDENTIAL to state that Central Hudson should not have been surprised that it needed additional staffing, except Central Hudson was not surprised, admitted it needed staffing and obtained more staffing.²³⁴ Staffing with the right skill set was difficult to identify and all staffing was, and remains, hard to attract in the current economic environment. Central Hudson did not hesitate to spend and add staff at any time during the project.

D. Central Hudson addressed known system defects.

The OIE Report correctly points out that system defects continued after go live.²³⁵ The OIE Report continues to confuse defects and BPEMs. BPEMs create a list of issues to identify and resolve if needed, and defects may result from the BPEM list or through other means. Central Hudson continued to identify and resolve issues from before go live and since.²³⁶ To date Central Hudson has spent an incremental \$33,427,000 to resolve system issues and will continue until issues arise at normal levels and customers are receiving proper bill service.²³⁷ The OIE Report suggests that Central Hudson should

²³² OIE Report at 40.

²³³ DPS-002 IR-009 Attachment 1 CONFIDENTIAL.

²³⁴ OIE Report at 41; DPS-004 IR-042; David Rossi Interview of SAP Project Lead at 10-11 (August 5, 2022).

²³⁵ OIE report at 58.

²³⁶ IT PMO Go Live Memo at 23 CONFIDENTIAL (Appendix at A-1); DPS-008 IR-083 December 12, 2022, Update.

²³⁷ DPS-008 IR-083 December 12, 2022, Update.

provide CSRs with scripts from which they can respond to customers and cited a conversation with one customer.²³⁸ During the conversation the CSR was polite and helped the customer by arranging for an employee to check the customer's meter read, which was the proper thing to do because the customer either needed reinstatement of an actual meter read and a reallocation of usage, or he had a defective meter or inaccurate meter read.²³⁹ The customer left the call satisfied that he would receive help and never filed a complaint, so the issue was resolved.²⁴⁰ Central Hudson's CSRs are well trained to identify customer issues, offer an appropriate solution and be polite at all times. This CSR answered the call appropriately. Regardless, Central Hudson continuously augments employee training.

Also, the statement that "The Project Phoenix Project Manager and the technology team knew there were defects in the system that were causing billing errors,..." appears to be the OIE's question, not a statement by the SAP Project Lead.²⁴¹ There is nothing imprudent in the facts set forth by the OIE Report.

E. Central Hudson has explored, identified and resolved SAP system issues and has been properly candid with customers, the Commission and politicians.

Central Hudson has approximately 310,000 electric customers and 90,000 gas customers. Those customers are affected by volatile high commodity prices. It is hard to remember because of the publicity and outrage associated with the SAP billing issues, but those billing issues have affected approximately only 18% of customer bills over more

²³⁸ OIE Report at 42-43.

²³⁹ DPS-001 IR-005 Attachment 31 CONFIDENTIAL.

²⁴⁰ DPS-001 IR-005 CONFIDENTIAL.

²⁴¹ David Rossi Interview of SAP Project Lead at 53-54 (August 5, 2022).

than a year, which were adjusted or delayed.²⁴² Most customers are interested in, and bothered by, increasing commodity prices, not billing issues that have not affected them. Even those customers that have been impacted by bill delays, estimated bills and backbills have not been financially harmed as all bills have been corrected by Central Hudson in a timely fashion or the customer has been credited.

The OIE Report is naïve to believe that the majority of customers are interested in billing issues that have not impacted them. Further, Central Hudson has been candid with its impacted customers. Central Hudson has sent bill messages, emails, and texts. Central Hudson is in the middle of holding open houses in each of its districts so that it can talk to customers in person. As the OIE Report notes Central Hudson also held a Facebook town hall.²⁴³ Further, although it may not look like it if you are an impacted customer, most customer facing issues have been resolved and the instances of occurrence are dropping monthly.²⁴⁴ Those issues include a declining number of BPEMs, dissatisfied customers, adjusted bills, and complaints and the number of satisfied customers may be starting to increase slightly.²⁴⁵

ARGUMENT

Central Hudson recognizes that customers that have experienced delayed bills, consecutive estimated bills, backbills and some less frequent issues, are frustrated, inconvenienced, and confused. Central Hudson takes responsibility for those issues and is doing everything it can to resolve those issues and provide timely and accurate billing

²⁴² Case 15-M-0566 - *In the Matter of Revisions to Customer Performance Indicators Applicable to Gas and Electric Corporations* (November PIR Report plus delayed customer bills) (January 6, 2023).

²⁴³ OIE Report at 43.

²⁴⁴ OIE Report at 16, 21-23, 25

²⁴⁵ *Id.*

service to its customers. Central Hudson has corrected customer bills through the backbill process to ensure that each customer has an accurate bill. Central Hudson has credited customers with the amount of the upward adjustment if an upward adjusted bill was time barred. No customer has been financially harmed, and Central Hudson has not violated a PSL statute, rule of 16 NYCRR, or a Commission Order.

The Show Cause Order, which unfortunately relied on the OIE Report has misstated the law and facts and is therefore, not credible. The OIE Report has made significant legal and factual errors, such as misstating the Commission's Order in Case 91-E-0176 and stating that Central Hudson does not have usage thresholds in compliance with the Commission's Order in Case 21-M-0045. Under these circumstances, the OIE Report and the Show Cause Order that adopted it are not credible and there remain no grounds for the Commission to proceed with penalties under PSL § 25-a. Similarly, the OIE Report has failed to meet its burden of proof to allow the Commission to proceed with a prudence review.

Central Hudson has already addressed the legal issues associated with the Commission's authority and will not repeat them here. The Show Cause Order has effectively alleged three violations of law and the prospect of an imprudence review. Central Hudson will address each.

X. Apparent violation of law, overcharges, delayed billing and backbilling.

Central Hudson, as do all utilities, must make choices when performing billing services because no billing system is perfect, and issues arise. Should Central Hudson send an inaccurate bill or delay a bill; should Central Hudson send a properly calculated estimated bill or an actual meter read bill that may be incorrect; should Central Hudson

relax controls and ignore BPEMs to allow bills to go out or should it maintain quality controls and resolve issues. These are not easy decisions for any utility, and certainly not for a utility like Central Hudson, going through a billing system change for the first time in over forty years.

The path Central Hudson chose was to delay bills where it knew that there were accuracy issues, send properly calculated estimates instead of delaying bills where it could, maintain controls and resolve BPEM issues and backbill to correct inaccuracies that occurred due to estimated bills or for other reasons and, to do all of that within the time constraints permitted by PSL § 41, 16 NYCRR §§ 11.14, 13.9, and the Commission's Orders. Central Hudson also complied with those statutes and rules by crediting customers where Central Hudson was outside the time limits to bill an upward adjustment. Those statutes and rules anticipate delayed bills, inaccurate bills and other issues that require correction and permit Central Hudson to correct the issues within defined periods of time and through proper bill credits.

The OIE Report discusses autopay withdrawals and points out that Central Hudson withdrew an incorrect amount from 15 customers totaling \$112,991.57.²⁴⁶ In each case the issue was corrected, and a refund was issued the same day that the withdrawal occurred.²⁴⁷ Further the OIE Report inaccurately indicates that customers paid more than \$16,000,000—the actual number was \$18,175,175.58—through autopay, which means that only 0.6% of autopay customer dollars were affected and all were timely corrected.²⁴⁸ All inaccurate bills, including the alleged overcharged bills, have been corrected, most in

²⁴⁶ OIE Report at 17.

²⁴⁷ Manual Refund Check Summary and Timeline Autopay CONFIDENTIAL (Appendix at A-640).

²⁴⁸ OIE Report at 17; DPS-008 IR-081.

a matter of days.²⁴⁹ The OIE Report indicates Staff spoke to one of these customers who said their calls went unanswered and they were not certain they were receiving a proper bill.²⁵⁰ Central Hudson spoke to the same customer, explained their bill, and the customer was satisfied and did not file a complaint. Like any other bill corrected within the permitted timeframe, these are not overcharges, they are simply inaccurate bills corrected pursuant to the backbill or other appropriate process.²⁵¹

For a new residential customer Central Hudson has six months to render a bill.²⁵² If the failure to bill an existing residential customer for a prior service period is not due to Central Hudson's neglect, Central Hudson may send an upward adjusted backbill for up to twelve months after service was rendered.²⁵³ Because Central Hudson has not broken any applicable statute, rule or Commission Order, Central Hudson has not been neglectful.²⁵⁴ Further, Central Hudson's efforts and expenditures to resolve issues as quickly as possible, even if not as successful as Central Hudson would like, bolster the position that Central Hudson has not failed to bill due to neglect. An upward adjusted backbill issued more than twelve months after service was rendered must be issued within four months of resolution of the budget bill adjustment, dispute with the customer and

²⁴⁹ DPS-001 IR-004 Attachment 1 CONFIDENTIAL; DPS-001 IR-004 Update CONFIDENTIAL; Manual Refund Check Summary and Timeline Autopay CONFIDENTIAL (Appendix at A-640).

²⁵⁰ OIE Report at 17.

²⁵¹ *Id.*

²⁵² PSL § 41 (2023); 16 NYCRR § 11.14; PSC No: 15 Electricity Leaf: 62-65.1 Company: Central Hudson Gas & Electric Corporation Revision: 2 Initial Effective Date: 04/09/04 Superseding Revision: 1; PSC No: 12 Gas Leaf: 32-35 Company: Central Hudson Gas & Electric Corporation Revision: 2 Initial Effective Date: 04/09/04 Superseding Revision: 1.

²⁵³ *Id.*

²⁵⁴ PSL § 25-a (2023)

there must not be utility neglect.²⁵⁵ Central Hudson will always issue a downward adjusted bill to the customer regardless of the time-period involved once the issue is discovered. Central Hudson's automated crediting process to avoid asking residential customers to pay time barred upward adjustments to customers is set at six months.

The argument that Central Hudson has only four months to issue an upward adjusted backbill to a residential customer pursuant to Case 91-E-0176 is simply wrong because the Commission's Order in that Case has been superseded by its Orders approving tariffs in every rate case since, and the properly interpreted four-month rule in 91-E-0176 is embedded in 16 NYCRR § 11.14(c) and Central Hudson's tariffs. There is no basis to apply any time period but that contained in the rule or Central Hudson's tariff.

The rules for nonresidential customers are different. Central Hudson may not render—*i.e.* send—a backbill to a nonresidential customer more than six months after Central Hudson becomes aware of the circumstance causing the backbill absent a court order.²⁵⁶ Central Hudson may send a second upward adjusted backbill within twelve months after Central Hudson becomes aware of the circumstance giving rise to the need for a second backbill.²⁵⁷

The Show Cause Order alleges that all time periods should be measured from September 1, 2021, because Central Hudson allegedly knew that customers were not

²⁵⁵ 16 NYCRR § 11.14; PSC No: 15 Electricity Leaf: 62-65.1 Company: Central Hudson Gas & Electric Corporation Revision: 2 Initial Effective Date: 04/09/04 Superseding Revision: 1; PSC No: 12 Gas Leaf: 32-35 Company: Central Hudson Gas & Electric Corporation Revision: 2 Initial Effective Date: 04/09/04 Superseding Revision: 1.

²⁵⁶ 16 NYCRR § 13.9; PSC No: 15 Electricity Leaf: 62-65.1 Company: Central Hudson Gas & Electric Corporation Revision: 2 Initial Effective Date: 04/09/04 Superseding Revision: 1; PSC No: 12 Gas Leaf: 32-35 Company: Central Hudson Gas & Electric Corporation Revision: 2 Initial Effective Date: 04/09/04 Superseding Revision: 1.

²⁵⁷ *Id.*

receiving bills on that date.²⁵⁸ That requires a reading of 16 NYCRR §§ 11.14 and 13.9 that is not customer specific, which is a strained interpretation of the rule that has never been applied by the Commission. The plain reading of PSL § 41, which specifies “a customer,” 16 NYCRR §§ 11.14 and 13.9, which specify “a residential customer,” or “the customer” is that Central Hudson must know that there is an issue with specific customers, not the general population of customers. Central Hudson’s tariffs make the same singular references. Nowhere does any rule or tariff discuss a mass billing event affecting many customers. Further, Central Hudson did not know which specific customers were affected and had to work through that process customer-by-customer, which it did, and bills were rendered.

The facts show that Central Hudson has complied with the time requirements for bill issuance and backbilling. As previously reviewed, the OIE Report relied upon Central Hudson’s responses to DPS-003 IR-026, DPS-004 IR-032 and Attachment 1 CONFIDENTIAL to that response, DPS-004 IR-035, and DPS-009-085 each cited by the OIE Report.²⁵⁹ DPS-003 IR-026 simply shows the raw number of customers with delayed bills without reference to any time frame, whether they are a new or existing customer, when Central Hudson knew of the circumstance causing the delay, whether it is a first or second backbill, whether it is an upward or downward adjustment, or the service period to which the backbill applied.²⁶⁰ There is nothing in DPS-003 IR-026 that indicates that Central Hudson may be in violation of the backbill time requirements.

²⁵⁸ Show Cause Order at 16.

²⁵⁹ OIE Report at 48 at footnotes 241-245.

²⁶⁰ DPS-003 IR-026.

DPS-004 IR-032 provides information about the duration of the backbill, but none of the other information necessary to show a violation of the backbill time requirements.²⁶¹ Further, by not applying the unlawful four-month rule there are only 65 customers on DPS-004 IR-032 Attachment 1 CONFIDENTIAL that could potentially be outside the time limits for backbills and there is no reason to think that they are, or that if they are, that they have not been properly credited.²⁶² To clarify, Central Hudson interprets the rule and its tariffs to permit up to seven months because each customer is on a different billing cycle. As long as a bill is sent before the seventh bill would be due the customer will receive the bill in no more than six months from the applicable service period, billing cycle to billing cycle. DPS-004 IR-032 Attachment 1 CONFIDENTIAL shows 65 customers that may be outside the six-month limit but does not show if there is an upward or downward adjustment, there is a billing dispute, if they are a budget bill customer, when a first backbill was issued if there was one, or if they were credited.²⁶³ No one can tell from this response if there is a violation of the backbill time limits.

DPS-004 IR-035 is simply an update to DPS-003 IR-026 and suffers from the same infirmities. DPS-009 IR-085 is an update to DPS-004 IR-035 and provides a little more information, but not the information necessary to determine if Central Hudson has violated the backbill time requirements.

Central Hudson is not withholding relevant information. The SAP billing system, indeed, no billing system, is designed to answer discovery questions. Reviewing issues such as this requires customer-by-customer analysis, which is what is necessary to

²⁶¹ DPS-004 IR-032 Attachment 1 CONFIDENTIAL.

²⁶² *Id.*

²⁶³ *Id.*

ensure there is no violation of the backbill time requirements. A customer-by-customer analysis would take significant staffing resources and time. As a result Central Hudson, through an automated process, bills and credits customers so they do not pay a prohibited upward adjusted charge out of time. This assures that customers are not overcharged.

The OIE Report seems to object to the frequency with which Central Hudson delayed and revised bills within the rules, but there is no cap on these actions within the rules. Of course, while Central Hudson's preference is to not send any backbills, backbills are often necessary to ensure that accurate bills are provided if inputs change. Because the allegations that Central Hudson has violated requirements regarding delayed bill and backbill timing and has overcharged customers are not supported by the law or evidence the Commission should not commence a penalty review pursuant to PSL § 25-a and the OIE Report has not carried its burden of proof necessary for the Commission to commence a prudence review.

XI. Apparent Violation of 16 NYCRR 11.13: Meter Readings and Estimated Bills and the Commission's Order in Case 21-M-0045.

As set forth in the Statement of Facts, this allegation is simply wrong. The very evidence relied on by the Show Cause Order and OIE Report, DPS-004 IR-034 Attachment 1 CONFIDENTIAL shows the usage thresholds at lines 26-54 as required by the Commission's Order in Case 21-M-0045. It is true that Central Hudson has other controls that may cause an estimated bill to be sent for other reasons as we are required to do by the Commission's Order in 12-M-0192 because Central Hudson must comply with Sarbanes Oxley. Every other utility has similar controls.

Also, BPEMs provide exactly what 16 NYCRR § 11.13(a)(4) requires, “circumstances indicate a reported reading is likely to be erroneous;...”²⁶⁴ BPEMs provide circumstances that a meter reading may be erroneous because they identify an issue that SAP deems an indication that the bill the SAP system has produced is suspect. The BPEM is put on a worklist and must be resolved before the suspect circumstances are settled and the bill based on the actual meter read can be released. If the BPEM cannot be resolved within seven days, the SAP system sends the customer a bill based on estimated usage in compliance with the Commission’s Order in Case 21-M-0045. If the BPEM is resolved such that the actual meter read is confirmed as accurate the customer receives a backbill based on the actual meter read. Usually, the customer receives backbills for several billing periods because usage must be reallocated pursuant to the replacement of the estimate with the actual meter read. While Central Hudson agrees that this process can be confusing to customers that receive the backbills, the process ensures that the customer receives an accurate bill. Further, as pointed out by the OIE Report, BPEMs are decreasing as issues are resolved, which means that fewer backbills will occur over time, as is also demonstrated by the OIE Report.²⁶⁵

Central Hudson has not violated 16 NYCRR § 11.13 or the usage threshold requirements of the Commission’s Order in Case 21-M-0045. This incorrect allegation does not present a reason for the Commission to initiate a penalty proceeding pursuant

²⁶⁴ 16 NYCRR 11.13(a)(4).

²⁶⁵ OIE Report at 16, 23 (BPEMs and backbills increased in August due to the New York Independent System Operator’s default of two ESCOs back to Central Hudson commodity service, but that was an anomaly, and all returned customers are now being billed in the normal course).

to PSL § 25-a and the OIE has not met the burden of proof necessary to start a prudence review.

XII. Central Hudson complied with the Commission's Order in Case 21-M-0045, Ordering Clause four.

Central Hudson filed all of the reports required by the Commission's Order at Ordering Clause four in Case 21-M-0045.²⁶⁶ The issue raised by the Show Cause Order is that the Report did not contain all of the information required by Ordering Clause Four.²⁶⁷ As previously indicated Staff was concerned about the lack of content in the Report and expressed that concern to Central Hudson.²⁶⁸ Staff's concerns started a series of communications by email, telephone and teleconference, leading to an amended report that seemed to satisfy Staff.²⁶⁹ Under these circumstances Central Hudson reasonably believes it was in compliance with Ordering Clause four of the Commission's Order in 21-M-0045. Central Hudson will add more detail to the Ordering Clause four report going forward.

Even if the Commission believes Central Hudson violated Ordering Clause 4 of its Order in Case 21-M-0045, the Commission has failed to enforce its Order and cannot

²⁶⁶ Case 21-M-0045 - *Petition of Central Hudson Gas and Electric Corporation to Revise the Heating and Non-Heating Procedures Used to Calculate Bill Estimates* (DMM).

²⁶⁷ Show Cause Order at 22.

²⁶⁸ Staff Email November 4, 2021, CONFIDENTIAL (Appendix at A-641).

²⁶⁹ Staff Email April 7, 2022, CONFIDENTIAL (Appendix at A-644).

enforce it retroactively.²⁷⁰ The Commission's failure to enforce its Order is a waiver of its right to retroactively enforce.²⁷¹

In the first instance Central Hudson has complied with the Commission's Order in Case 21-M-0045 at Ordering Clause four. In the second instance, the Commission has waived its right to enforce the Order retroactively due to its failure to file an enforcement action. Because Central Hudson did not violate a PSL statute, 16 NYCRR rule or Commission Order, this issue should not result in a PSL § 25-a penalty proceeding and the OIE Report has not met the burden of proof required for the Commission to initiate a prudence review.

XIII. Central Hudson's management decisions are presumed to be, and have been, reasonable and the OIE Report has not met its burden of proof to proceed with a prudence review.

The Show Cause Order, through its reliance on the OIE Report, makes a hindsight assessment that Central Hudson's management decisions during the transition from Central Hudson's legacy CIS system to the SAP System that resulted in customer issues, meets the burden of proof necessary to initiate a prudence review of Central Hudson's management of the project. Such a hindsight review is impermissible, and the Show Cause Order agrees that it is impermissible.²⁷²

²⁷⁰ *Municipal Gas Co. v. PSC*, 183 N.Y.S. 900*, 903*; 1920 N.Y. Misc. LEXIS 1652 **, 4-5**; 113 Misc. 748 (Supreme Court of New York, Trial Term) (Albany County August 14, 1920); *Municipal Gas Co. v. Public Service Com.*, 184 A.D. 757 *, 758*; 172 N.Y.S. 563**; 1918 N.Y. App. Div. LEXIS 6656 *** (Supreme Court of New York, Appellate Division, Third Department) (November 18, 1918); 1979 N.Y. PUC LEXIS 8 (New York Public Service Commission) (March 28, 1979) (Cases 27350, 27469; Opinion No. 79-7) (NY Public Service Commission Decisions Reporter) (1979 N.Y. PUC LEXIS 8*, 15-16*, 81*).

²⁷¹ *Id.*

²⁷² Show Cause Order at 23.

The Show Cause Order states that the proper standard for review “is determined by judging whether the utility acted reasonably under the circumstances at the time, ‘considering that the company had to solve its problems prospectively rather than in reliance on hindsight.’”²⁷³ But the Commission is not yet at the assessment stage of a prudence review and before it gets there it must meet the burden of proof necessary to overcome the presumption that Central Hudson’s management decisions were prudent.²⁷⁴ The basis for the Show Cause Order’s determination that the burden of proof has been met is the OIE Report.²⁷⁵ The OIE Report contains errors of law and fact such that it cannot be relied upon and therefore the Show Cause Order has not met its burden of proof.

A. OIE Report’s factual errors regarding training.

The OIE Report is legally deficient because it asks the Commission to engage in retroactive ratemaking, which is not permitted.²⁷⁶ The OIE Report seeks retroactive ratemaking by attempting to use Cases 17-E-0459 and 17-G-0460 to establish a rate baseline for the SAP system knowing that the SAP system was not approved until Cases 20-E-0428 and 20-G-0429.²⁷⁷ The use of 17-E-0459 and 17-G-0460 is legally deficient and cannot be sustained.

²⁷³ Show Cause Order at 23.

²⁷⁴ *Matter of National Fuel Gas Distrib. Corp. v. Public Serv. Commn. of the State of N.Y.*, 16 N.Y.3d 360*, 369*; 947 N.E.2d 115**, 120-121**, 922 N.Y.S.2d 224***, 229-230***, 2011 N.Y. LEXIS 471****, 12****; 2011 NY Slip Op 2435 (Court of Appeals of New York March 29, 2011, Decided).

²⁷⁵ Show Cause Order at 24.

²⁷⁶ OIE Report at 4, 6, 9-10, 12-13, 26, 45, 57; *Loomis v. Lehigh V. R. Co.*, 208 N.Y. 312 *, 326-327*; 101 N.E. 907 **, 912**; 1913 N.Y. LEXIS 1054 ***, 26*** (Court of Appeals of New York) (April 29, 1913, Decided) (*Loomis*).

²⁷⁷ Cases 17-E-0459, 17-G-0460 - *Proceeding on Motion of the Commission as to the Rates, Charges, Rules and Regulations of Central Hudson Gas & Electric Corporation for Electric & Gas Service* (Staff

The OIE Report also incorrectly alleges Central Hudson overcharged customers, delayed bills, sent inaccurate bills, and caused erroneous automatic withdrawals from customer bank accounts, each instance of which has been corrected within the time frame permitted by the backbill statutes and rules.²⁷⁸ It is improper to allege imprudence when Central Hudson acted within the rules and no financial harm came to any customer.

The legal argument that the OIE Report attempts to make is that even where the statutes and rules recognize and expect that there will be initial billing errors and allow for a correction of those errors, Central Hudson is imprudent if it makes the initial error even when it corrects the error. The reasoning of the OIE Report means that the statutes, rules and Commission Orders are meaningless because even if Central Hudson complies with them the standard can be changed on a moment's notice. New York's laws of statutory construction do not permit this interpretation.²⁷⁹

The OIE Report also makes many factual errors. The first factual error is related to a legal error, the OIE Report's attempt to determine cost overruns from a baseline using Central Hudson's 17-E-0459 and 17-G-0460 rate cases.²⁸⁰ Any cost overruns must be derived from Central Hudson's 20-E-0428 and 20-G-0429 rate cases where the SAP

Information Technology Panel at 12) (November 2017); Cases 20-E-0428, 20-G-0429 - *Proceeding on Motion of the Commission as to the Rates, Charges, Rules and Regulations of Central Hudson Gas & Electric Corporation for Electric and Gas Service* (Rebuttal Testimony of the Information Technology Panel at 3, 9, 18, 21, 23, 33-35) (Statement of Central Hudson Gas & Electric Corporation in Support of Joint Proposal at 5, 38-39) (Order Adopting Terms of Joint Proposal and Establishing Electric and Gas Rate Plan at 36, Joint Proposal at Appendix A) (Issued and Effective November 18, 2021).

²⁷⁸ PSL § 41 (2022); 16 NYCRR §§ 11.14, 13.9; PSC No: 15 Electricity Leaf 62-65.1, Central Hudson Gas & Electric Corporation; PSC No: 12 Gas Leaves 32-35, Central Hudson Gas & Electric Corporation.

²⁷⁹ Statutes § 97 (2023).

²⁸⁰ OIE Report at 4, 6, 9-10, 12-13, 26, 45, 57.

system was approved.²⁸¹ The amount that Central Hudson has spent above the amount approved in the 2020 rate cases is approximately \$33,427,000, not the cost overruns claimed by the OIE Report related to Cases 17-E-0459 and 17-G-0460.²⁸²

The OIE Report criticizes Central Hudson for a lack of training but omits evidence that more training occurred than the OIE Report claimed.²⁸³ Although the OIE Report relied on the interview with Central Hudson's SAP Project Lead to assert a lack of training, the OIE Report failed to cite those portions of the interview where the SAP Project Lead stated that Central Hudson performed additional training.²⁸⁴ The OIE Report also relies on DPS-003 IR-021 Attachment 3 in an attempt to demonstrate that Central Hudson lacked training in specific areas such as Complex billing, Net metering and Manage Retail Choice training, but failed to cite to the training workshops on those subjects provided by the System Integrator.²⁸⁵ The OIE Report continues to obfuscate training evidence by presenting discovery out of context by saying that Central Hudson's training for Complex billing, Net metering and Manage Retail Choice was ad hoc and not tracked, which is not true.²⁸⁶ In truth, Central Hudson actually said that there was additional training for

²⁸¹ Cases 20-E-0428, 20-G-0429 - *Proceeding on Motion of the Commission as to the Rates, Charges, Rules and Regulations of Central Hudson Gas & Electric Corporation for Electric and Gas Service* (Rebuttal Testimony of the Information Technology Panel at 3, 9, 18, 21, 23, 33-35) (Statement of Central Hudson Gas & Electric Corporation in Support of Joint Proposal at 5, 38-39) (Order Adopting Terms of Joint Proposal and Establishing Electric and Gas Rate Plan at 36, Joint Proposal at Appendix A) (Issued and Effective November 18, 2021); DPS-008 IR-083 Attachment 1 CONFIDENTIAL (December 12, 2022 Update).

²⁸² DPS-008 IR-083 Attachment 1 CONFIDENTIAL (December 12, 2022 Update); OIE Report at 9-10.

²⁸³ OIE Report at 26-27 at footnotes 121-125.

²⁸⁴ David Rossi Interview of SAP Project Lead at 5 (August 5, 2022).

²⁸⁵ OIE Report at 27, footnotes 127-128; DPS-003 IR-021 Attachment 3; DPS-002 IR-009 Attachment 12 CONFIDENTIAL.

²⁸⁶ OIE Report at 27.

Complex billing, Net metering and Manage Retail Choice conducted outside the planned curriculum.²⁸⁷ Central Hudson has confirmed that this training took place.

The OIE Report continues to misrepresent the facts by stating that the number of proficient complex billing employees was insufficient to address billing issues post go live. But the OIE Report was quoting the SAP Project Lead discussing one of the reasons why Central Hudson delayed go live in July, it had nothing to do with whether Central Hudson's employees were properly trained by the time Central Hudson went live in September.²⁸⁸ The OIE Report concludes without basis or attribution that Central Hudson management delayed training until after go live although it knew that management was taking action to implement training throughout the project.²⁸⁹

The OIE Report continued to misstate the evidence by citing training risks identified by Central Hudson employees that were addressed by Central Hudson management.²⁹⁰ The OIE asked the SAP Project Lead about the employee comments and the SAP Project Lead explained that Central Hudson added training by group, to supervisors and increased communications.²⁹¹ The evidence shows that Central Hudson took training into account when it went live in September and that its decision was reasonable.²⁹²

²⁸⁷ DPS-007 IR-066.

²⁸⁸ OIE Report at 27, footnote 130; David Rossi Interview of SAP Project Lead at 12 (August 5, 2022).

²⁸⁹ OIE Report at 28; David Rossi Interview of SAP Project Lead (August 5, 2022); David Rossi Interview of CFO (July 25, 2022); David Rossi Interview of Central Hudson Chief Technology Office (June 2, 2022).

²⁹⁰ OIE Report at 28-30; DPS-004 IR-031 Attachment 1 CONFIDENTIAL; David Rossi Interview of SAP Project Lead at 32 (August 5, 2022).

²⁹¹ David Rossi Interview of SAP Project Lead at 14-15 (August 5, 2022).

²⁹² IT PMO Go Live Memo at 23 CONFIDENTIAL (Appendix at A-1).

B. OIE Report factual errors regarding testing.

The OIE Report starts by misstating the amount of training that Central Hudson performed for Retail Choice, Net-Metering and CDG as 2.88%, 1.25%, and less than 1% respectively when the actual percentages were 5.73%, 1.34%, and 1.34%.²⁹³ It appears that the OIE Report omitted some testing categories for Retail Choice, Net Metering and CDG that appear on DPS-007 IR-075 Attachment 1. The OIE Report again uses employee comments that Central Hudson asked for and received as the basis for criticizing testing, but employee comments provide valuable information that Central Hudson used to improve its preparedness to go live.²⁹⁴

The OIE Report next takes Central Hudson to task for providing an incentive bonus to the System Integrator to help Central Hudson get ready for go live in September.²⁹⁵ Incentive bonuses are standard practice in many industries, including IT and construction, and known to produce good results. Certainly, this was a reasonable and prudent decision well within Central Hudson's discretion.

When referring to an employee comment from DPS-004 IR-031 Attachment 1 CONFIDENTIAL, a list of risks gathered by Central Hudson from employees to identify and resolve issues, the OIE Report used the comment to criticize Central Hudson instead of praise Central Hudson for being proactive and identifying and resolving issues. The issue identified by the employee was fixed before go live. Once again, the OIE Report conflated the CTO's statement about needing testing and therefore, canceling go live in

²⁹³ OIE Report at 35; DPS-007 IR-075 Attachment 1.

²⁹⁴ OIE Report at 35-38.

²⁹⁵ *Id.* at 37.

July, with having adequate testing and deciding to go live in September. Central Hudson's management decisions concerning testing were reasonable.

C. Central Hudson's staffing decisions were prudent.

Central Hudson started the SAP system project with more than 160 employee and contract resources.²⁹⁶ Central Hudson added staff prior to go live, after go live and continues to add staff to address issues.²⁹⁷ The OIE Report inappropriately fails to mention Central Hudson's decisions and actions to add staffing. Finding staff with the right skill set was difficult but Central Hudson did the best it could given the labor market. Central Hudson's staffing decisions were prudent.

D. Central Hudson prudently addressed known defects and continues to do so.

There is no question that system defects continued to be identified after go live.²⁹⁸ But BPEMs are not defects and the OIE Report continues to confuse the two. BPEMs create a list of issues to work and resolve. Defects are discovered from many sources including BPEMs, customers and employees. Central Hudson continues to identify and resolve defects and increase resources.²⁹⁹ Issue resolution will continue until they are identified at normal rates and customers are receiving proper billing services.³⁰⁰

The OIE Report criticizes a Central Hudson CSR who was polite, offered the correct resources and left the customer satisfied on that day, although more work was to

²⁹⁶ DPS-002 IR-009 Attachment 1 CONFIDENTIAL.

²⁹⁷ David Rossi Interview of SAP Project Lead at 10-11 (August 5, 2022).

²⁹⁸ OIE Report at 58.

²⁹⁹ IT PMO Go Live Memo at 23 CONFIDENTIAL (Appendix at A-1); DPS-008 IR-083 December 12, 2022, Update.

³⁰⁰ DPS-008 IR-083 December 12, 2022, Update.

be done.³⁰¹ The customer did not file a complaint. This criticism that CSRs should work from scripts instead of think for themselves was not deserved. Central Hudson employees do a terrific job. The OIE Report concludes this section on defects by citing its own question, as opposed to the answer provided, saying that Central Hudson knew there were defects causing billing errors, but this was not a statement by the interviewee, the SAP Project Lead.³⁰² As of August 24, 2021, a week before go live, there had been 7,177 defects logged and only 4 critical defects remained, all of which were resolved before go live.³⁰³

Prior to go-live, all issues were placed into one of four categories, Critical, Major, Minor and Trivial.³⁰⁴ Critical issues had to be resolved prior to go-live, Major and Minor issues had to have a workaround if they were not resolved prior to go-live, and Trivial issues did not need to be resolved or have a workaround because they did not adversely affect functionality.³⁰⁵ All conditions were met at go-live. After careful consideration by all involved, the decision to go live was unanimous by the Steering Committee and the Project Team voted 42 to 1 to go live.³⁰⁶ The one vote against go live was concerned with the 387 defects outstanding but the overwhelming majority of the voters were comfortable to go live, including the experts hired to help make the decision. The decision to go live represented a reasonable management decision.

³⁰¹ OIE Report at 42-43.

³⁰² David Rossi Interview of SAP Project Lead at 53-54 (August 5, 2022).

³⁰³ IT PMO Go Live Memo at 23 CONFIDENTIAL (Appendix at A-1).

³⁰⁴ *Id.* at 13.

³⁰⁵ *Id.*

³⁰⁶ *Id.*

E. Central Hudson has communicated candidly with customers, the Commission and politicians about SAP issues.

The OIE Report criticizes Central Hudson for the content it presented during a Facebook townhall meeting.³⁰⁷ The Facebook townhall meeting covered many topics including volatile and rising commodity prices. Most Central Hudson customers have not been impacted by the billing system, although it is hard to tell from all of the publicity the billing system issues have generated, and are interested in what is impacting their pocketbook. The billing system has not impacted customers pocketbooks because Central Hudson has corrected bills or credited customers as expeditiously as possible.³⁰⁸ Central Hudson has sent bill messages, emails, and texts. Central Hudson is in the middle of holding open houses in each of its districts so that it can talk to customers in person. The first of these open houses was held at its Poughkeepsie headquarters on December 15 and the second open house is scheduled to be held in Kingston on January 19.

Central Hudson has also participated and presented at Staff workshops with ESCOs and CDGs. The OIE Report discusses issues associated with complex billing entities CDG providers and ESCOs.³⁰⁹ Specifically Central Hudson has had difficulty integrating the automation of the subscription fees and credits associated with CDGs and integrating EDI with the SAP system to provide matching EDI transaction data to ESCOs. Central Hudson has communicated and worked diligently with CDGs and ESCOs,

³⁰⁷ OIE Report at 43.

³⁰⁸ DPS-001 IR-004 Attachments 1 CONFIDENTIAL; DPS-001 IR-004 Attachment 1 Update CONFIDENTIAL (Appendix at A-183); Manual Refund Check Summary and Timeline Autopay CONFIDENTIAL (Appendix at A-640).

³⁰⁹ OIE Report at 17-19.

including Agway, to resolve issues. CDG and ESCO customers have been receiving bills, CDG subscriptions and credits have been processed, ESCOs received a spreadsheet with the ESCO data necessary to verify POR, and EDI issues have been corrected leaving only past customer interactions to be fixed. Central Hudson is working through those past transactions with Agway, and other ESCOs, as requested.

Further, regarding one ESCO, Staff recognized that Central Hudson had not harmed the ESCO and asked for Central Hudson's assistance to demonstrate that fact.³¹⁰ Central Hudson provided the assistance requested by Staff. The OIE Report cannot state facts both ways; Central Hudson has harmed ESCOs, or it has not. Neither the OIE Report nor the Show Cause Order alleged a specific imprudent decision made by Central Hudson.

Central Hudson made many decisions during the course of the project to purchase and implement the SAP system. It determined that the legacy CIS system was deficient because it was antiquated, could not be supported, was a cyber security risk and could not perform the complex billing required by the Commission. Management decision to take action was not imprudent.

Central Hudson's management decisions have been prudent. The Commission should not proceed with a PSL § 25-a penalty proceeding and has not met its burden of proof to proceed with a prudence review.

³¹⁰ Staff Email May 20, 2022, CONFIDENTIAL (Appendix at A-649).

CONCLUSION

As Central Hudson said at the beginning of this Response to the Show Cause Order, many things went wrong during, and following, the SAP system transition that regrettably impacted a portion of our customers and Central Hudson accepts responsibility for those issues. Central Hudson has continued to identify and resolve issues and almost all statistics are moving in the right direction.³¹¹ It should be kept in mind that the impacted customers have not been financially harmed and Central Hudson is committed to remedying any situation that may present a risk of financial harm on an expedited basis. Central Hudson has made extraordinary expenditures to resolve issues and has not sought cost recovery to this date.

That some things went wrong does not mean that Central Hudson should be subjected to penalties or a prudence review. Central Hudson hired experts to help it find the best CIS system available. Central Hudson interviewed and fully vetted the two leading systems in the world, SAP and Oracle. Central Hudson purchased the SAP system—a system used by thousands of utilities around the world. Central Hudson issued an RFP to identify the best System Integrator at competitive pricing to implement the SAP system and hired an experienced SAP expert, Ernst & Young (“EY”). Including Central Hudson employees, EY and other contractors Central Hudson had the equivalent of more than 10% of its workforce dedicated to this project. Central Hudson created internal employee teams to lead the SAP effort, created surveys to gauge employee engagement, listened to voiced concerns, identified risks, and resolved issues. Central

³¹¹ OIE Report at 16, 21-23, 25.

Hudson created virtual training programs with over 100 courses, had the System Integrator hold workshops, offered training after hours to specified groups, trained supervisors so they could train their teams and continued training after go-live. Central Hudson tested every aspect of the SAP system and resolved more than 7,100 defects before go-live. Central Hudson communicated with customers, regulators and politicians. All of these efforts were prudent and reasonable.

Had Central Hudson not spent an incremental \$33,427,000 thus far to resolve issues, and been focused on addressing SAP system Defects, Central Hudson could have been properly criticized for failure to respond. But, it has voluntarily taken those steps, and more, to make sure the SAP system issues are resolved and customer are held harmless.

Central Hudson made prudent management decisions throughout the process and a penalty proceeding under PSL § 25-a or a prudence review is inappropriate under these circumstances. Central Hudson respectfully requests that Staff and the Commission work with Central Hudson to resolve issues and provide superior billing services to customers rather than assess punitive penalties that will do more harm than good.

Respectfully submitted by:

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