

via Federal Express

November 26, 2007

Hon. Jaclyn Brilling
Secretary
New York State
Public Service Commission
Three Empire State Plaza
Albany, New York 12223

Re: SAPA I.D. Nos.: PSC-41-07-00015-P, and 000016-P

Dear Secretary Brilling:

These comments are submitted on behalf of Central Hudson Gas & Electric Corporation ("Central Hudson") in response to the above-referenced State Register Notices. Notice 000015 proposes an increase of unspecified amount in the funding of energy efficiency through utility rates. Notice 000016 proposes to reallocate a portion of system benefit charge (SBC) funds (meaning, apparently, a portion of the currently existing funding level) from NYSERDA to the Division of Housing and Community Renewal ("DHCR"), as well as to other, unidentified, entities. Notice 000016 also clarifies that a portion of the funding increase from utility ratepayers proposed in Notice 000015 may also be allocated to DHCR and other, unidentified, entities.

These proposals, individually and in combination, are attempts by the Commission to collect taxes and are not proper exercise of Commission ratemaking authority. The Courts have defined a "tax" as "a levy made for the purpose of raising revenue for a general governmental purpose...." See, Kessler v. Hevesi, 13 Misc. 3d 1181A, 824 N.Y.S. 2d 763, 2006 N.Y. Misc. Lexis 1862 (N.Y. County Supreme Ct. June 28, 2006). Or, as "[c]harges exacted for revenue purposes, or to offset the cost of general governmental functions...." See Health Services Medical Corp. of Central New York v. Chassin, 175 Misc. 2d 621, 668 N.Y.S. 2d 1006 (S. Ct. Onondaga County, 1998), aff'd 259 A.D. 2d 1053, 689 N.Y.S. 2d 875 (4th Dep't., 1999).

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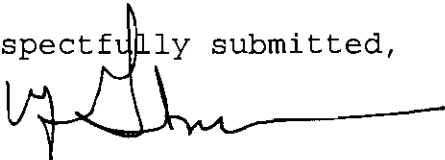
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By virtue of Governor Spitzer's 15x15 Policy, energy efficiency is a general governmental function. This conclusion is confirmed by the proliferation of state agencies and other entities that are now seeking to receive revenues through the Commission. The Notices themselves further corroborate this conclusion by their repeated references to other, unidentified entities, in addition to NYSERDA and DHCR, as recipients of the revenues the Commission is attempting to raise. Decisions on how to fund the State's energy efficiency activities rest with the Legislature, not the Commission. Accordingly, Central Hudson submits that the proposals are beyond the Commission's authority.

It is also noted that the estimates of attaining the 15x15 policy objectives developed by the Commission's Staff suggest that several billion dollars may be required. Decisions on how to obtain revenues of this level are properly made by the Legislature, which has many more options than a "surcharge" imposed "on a volumetric basis from all firm customers," as proposed by the Commission. For example, the Legislature may prefer to develop some form of tax related to the use of carbon.

Central Hudson is also concerned that the collections (assuming for discussion purposes they are within the Commission's authority) will be discriminatory, in the sense that collections from one area or group of customers may not produce commensurate benefits back to the parties that provided the dollars. This has been a concern under the SBC relative to the nearly \$40 million that have been provided to NYSERDA by ratepayers in the Mid-Hudson valley through the SBC that, in Central Hudson's view, have not been matched by receipt in the Mid-Hudson valley of energy efficiency programs by NYSERDA back to those same ratepayers.

Respectfully submitted,



Robert J. Glasser