

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

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Petition of Central Hudson Gas & :
Electric Corporation for Approval, :
Pursuant to Public Service Law: Case No. 13-M-0505
Section 113(2) and 16 NYCRR :
Section 89.3, of a Proposed :
Allocation of Tax Refunds. :
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STATEMENT ON BEHALF OF
CENTRAL HUDSON GAS & ELECTRIC CORPORATION
IN SUPPORT OF JOINT PROPOSAL

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Dated: Poughkeepsie, New York
June 24, 2014

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I. PRELIMINARY STATEMENT

This statement is submitted on behalf of Central Hudson Gas & Electric Corporation ("Central Hudson" or the "Company") in accordance with the Procedural Ruling dated June 18, 2014 by Presiding Administrative Law Judge Van Ort.

II. STATEMENT OF THE CASE

This is a case under § 113.2 of the Public Service Law and § 89.3 of the Commission's regulations.

On November 7, 2013, Central Hudson filed with the Commission a Petition notifying the Commission of the receipt of tax refunds and requesting a sharing of the refunds between customers and the Company.¹ The refunds amount to \$2.725 million

¹ Petition of Central Hudson Gas & Electric Corporation, dated November 7, 2013 ("Petition").

in tax refunds and interest.² They arise out of a series of challenges to property taxes for electric and gas properties in Orange County, New York that Central Hudson had pursued for over a decade. Initial efforts at settling the challenges with the taxing authorities were not successful.³ As a result, over the extended period of the disputes, Central Hudson incurred \$439,000 in costs to achieve incremental to the various rate allowances during the time period, in pursuing its challenges including a significant trial and subsequent appeals, in which Central Hudson substantially prevailed.⁴ The Company and the taxing authorities subsequently settled.⁵ The Petition proposed that the Company's incremental costs to achieve and an additional \$581,000, for a total of \$1.020 million be retained by the Company and that \$1.695 million be deferred for the account of customers.⁶

² Petition at 1. The initial estimate of \$2.715 was later updated to \$2.725 million as a result of a subsequent increase in the amount of interest received.

³ Petition at 2.

⁴ Exhibit 3 of the Petition presented an analysis of the relevant rate allowances and a demonstration of the incremental nature of the costs identified by Central Hudson. Staff reviewed these analyses as part of its investigation and has not informed the Company of any debate with the Company's analyses.

⁵ Petition at 3. One issue, related to the treatment of easements as personalty for tax valuation purposes, remains on appeal by Central Hudson.

⁶ Petition at 17. As shown in the Petition, this allocation would have reduced the amount of losses suffered by the Company, but was far from

Notice of the Petition was published in the State Register on December 24, 2013.⁷ A hearing was scheduled for March 18, 2014. No party other than Staff and the Company appeared as an interested party on the Commission's DMM system. Following discovery by Staff, and exploratory discussions, a Notice of Proposed Settlement Meeting was circulated to the Presiding Administrative Law Judge and subsequently to Multiple Intervenors ("MI"), at the ALJ's direction.⁸

A settlement meeting and a subsequent conference call ensued in which the Company, Staff and MI participated. As reflected in the Joint Proposal filed with the Commission on June 13, 2014 ("JP"), Staff and the Company agreed on a sharing of the tax refund and also to defer the customers' share for disposition by the Commission (presumably in the Company's upcoming rate case). The JP provides for the recovery by the Company of its incremental costs to achieve of \$438,975 and an additional \$342,832, and for the deferral of \$1,942,715 for the benefit of

putting it into a gain position. In contrast, it would have increased the tax-related benefits received by customers over the period.

⁷ The SAPA Notice provided for the filing of comments 45 days later. No comments were filed.

⁸ According to the Commission's DMM system, as of the morning of the date hereof, MI had not filed a Method of Service form in this matter.

customers, with interest on the deferred amount at the Company's pre-tax rate of return.⁹

MI has informed Staff and the Company that it does not object to the sharing set forth in the JP, but does object to the deferral and seeks a refund "expeditiously, by service classification."¹⁰

III. DISCUSSION

The Commission's Settlement Guidelines state that decisions, including those to adopt the terms of settlement agreements (Joint Proposals), must be just and reasonable and in the public interest.¹¹ In addition to compliance with proper procedures, determining whether the terms of a Joint Proposal are in the public interest involves substantive consideration of:

consistency with the law and regulatory,
economic, social and environmental State and
Commission policies;

⁹ JP at 3.

¹⁰ JP at 2. MI has not provided Central Hudson with any more complete statement of MI's position. Although Central Hudson has informed MI that property taxes have both demand and energy elements in the Company's costs of service (which vary between electric and gas services), MI has not specified to Central Hudson a specific basis or bases upon which the refunds would be allocated to service classes. In view of the vagueness of MI's statement of its position, Central Hudson reserves the right to respond to any comments in opposition to the JP that may be made by MI.

¹¹ Cases 90-M-0225 and 92-M-0138, Opinion, Order and Resolution Adopting Settlement Procedures and Guidelines, Opinion No. 92-2 (issued March 24, 1992) ("Settlement Guidelines"), at 30.

whether the terms of the Joint Proposal compare favorably with the likely result of a fully litigated case and produces a result within the range of reasonable outcomes;¹²

whether the Joint Proposal fairly balances the interests of ratepayers, investors and the long-term soundness of the utility; and,

whether the Joint Proposal provides a rational basis for the Commission's decision.

Additional consideration is given to the completeness of the record and whether the JP is contested. Each of these factors is addressed below.

A. Sharing of tax refunds between the utility and customers is consistent with law and State policy.

As noted in the Petition, the Commission has a long-standing policy of sharing tax refunds between the utility and customers.¹³ The sharing proposed by Central Hudson in its petition was based upon existing Commission precedent.¹⁴

¹² The Settlement Guidelines also explain that parties' burden to show that the agreement compares favorably with a litigated result increases when the record is less developed. Settlement Guidelines at 31.

¹³ Petition at 8-9.

¹⁴ Id. at 9 et seq. Historical evidence indicates that the Commission's original posture, when the amendment of PSL § 113 relating to utility refunds was before the Legislature in the wake of the 1976 Niagara Mohawk v. PSC decision [*Niagara Mohawk Power Corp. v. PSC*, 54 A.D.2d 255 (3d Dep't 1976)] was to allow utilities to defer tax deficiencies. This is indicated by the Commission's memorandum in response to the proposed amendment of PSL 113 noting that, in order to encourage regulated companies to claim all tax benefits to which entitled and thus tend to keep rates to consumers at the lowest reasonable level, the Commission had adopted a policy of allowing regulated companies to defer tax deficiencies, for later reflection in customer rates. Since the Commission's tax deficiency policy allowed regulated companies to obtain

Additional PSL § 113 decisions supporting Central Hudson's request include Cases 08-M-1445/09-M-0818, Case 06-E-0494 and Case 02-W-0670.

- B. The terms of the present JP compare favorably with the likely results of litigation and produces a result within the range of reasonableness.

Central Hudson believes that the analysis of Commission precedent set forth in its Petition demonstrated that the Company's proposal is supported by substantial precedent and that it would likely have prevailed had the matter proceeded to a hearing. That analysis produces a result that is significantly more favorable to the Company than the JP sharing of the refund. The authorities relied upon in the Petition and note 13, *infra*, indicate that it is likely that Central Hudson would have been able to support the entire amount requested in its Petition, or even more. Conversely, Staff has alleged that it would have taken an aggressive position in opposition to the Company's

rate recovery of upward changes from the level of taxes that had previously been reflected in rates, a reversal of the Appellate Division decision by the proposed legislation would ensure evenhanded treatment of tax refunds and tax deficiency assessments. However, during much of the time period relevant to the present Central Hudson tax refunds, Central Hudson was not permitted to defer any deficiencies, but, as shown in the Company's Petition, was at risk and required to absorb them. The principle of reciprocity as reflected in the Commission's legislative memorandum, would therefore have required that Central Hudson be permitted to recover all of the refunds arising out of that time period. The Company's Petition, however, sought to recover only 25% of those "Tier 1" refunds.

request. The sharing agreed to in the JP therefore lies within the range of likely outcomes were there to have been litigation.

C. The JP fairly balances the interests.

Since the JP produces an outcome that is within the range likely to result from litigation, even if at the lower portion of that Range in Central Hudson's opinion, the JP fairly balances the interests.

D. The JP provides a rational basis for the Commission's action.

For this factor as well, the fact that the outcome produced by the JP lies within the likely range of results of litigation is dispositive.

E. The record is adequate for decision.

The Petition presented a significant legal analysis and substantial factual evidence showing the relevant facts. Staff investigated the factual picture through several interrogatories and, ultimately, found no material defect in Central Hudson's factual presentation. As a result, there are no disputes of material fact.

F. The contested aspect of the JP can be resolved on the present record without a hearing because there is no issue of material fact, and should be resolved through approving the deferral contained in the JP.

The only contested issue is the deferral of the customers' portion of the refund, as compared to the "expeditious" refund

sought by MI. This question involves a policy choice for the Commission and does not involve contested questions of material fact.

MI has sought to justify its position on the ground of the recent FERC establishment of the "new capacity zone" that includes the Mid-Hudson Valley. However, there is no functional or causal relationship between the present tax refunds and the new capacity zone. The present refunds arise out of gas and electric delivery property, whereas the capacity zone relates to generation costs. Moreover, Central Hudson has sought judicial review of the FERC capacity zone decision (as have others), and upon the eventual success of those challenges, a remedy related to those generation costs will be produced.

Furthermore, there is no existing mechanism to employ in a current, one-time refund and Commission policy favors spreading returns of gas refunds over a twelve month time period.¹⁵

¹⁵ The Commission requires that each LDC's tariff include provisions for returning supplier refunds. Central Hudson's tariffs, and those of most other LDCs, require that supplier refunds be credited to the monthly GAC over a succeeding 12 month period. A showing of "exceptional circumstances" is required to justify any departures. CASE 10-G-0251 - Proceeding to Investigate the Proper Ratemaking Treatment of Pipeline Refunds Received by Certain Utilities from Tennessee Gas Pipeline Company, ORDER APPROVING PROPOSED TREATMENT OF REFUNDS (Issued and Effective October 20, 2010), at n. 8, and 16 NYCRR § 720-6.5(f). Although the source of the present refund is litigation pertaining to property taxes, that source is not material in relation to the underlying concern of spreading refunds over an annual period to avoid monthly and seasonal distortions in usage. These precedents imply that MI would be required to

In addition, there are sensible reasons to defer the customers' portion. First, the application of carrying charges at the PTROR provides a "return" on the balances that far exceeds any reliable return otherwise available. Second, as a result of the rate freeze of Central Hudson's rates through June 30, 2015, there has been a buildup of costs to serve that have not been charged to customers on a current basis. Deferring the customers' share will provide a notable source of mitigation for the rate resetting. Third, deferring the customers' share at the present time will give the Commission the most flexibility to decide how to employ these benefits in the context of the Commission's objectives, which may include consideration of policies being evaluated in the recent Reforming the Energy Vision Case.

Central Hudson believes that it is far better to preserve the present refunds for the benefit of all customers through deferring them than to squander them now to produce a refund

demonstrate some exceptional reasons for its position favoring a one-time refund, but none have been presented.

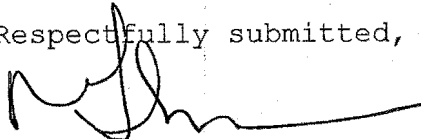
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favoring one or two large industrials already having very low delivery rates.¹⁶

IV. CONCLUSION

The JP meets the Commission's criteria for approval of settlement and should be approved.

Respectfully submitted,



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¹⁶ Spreading the customers' share of the tax refund across all customers through a refund at the present time would produce a one-time refund on the order of about \$3.00 for the average residential customer and would be time-consuming and expensive for Central Hudson to administer.