STATE OF ALASKA

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THE REGULATORY COMMISSION OF ALASKA

Before Commissioners: Stephen A. McAlpine, Chairman
Rebecca L. Pauli
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Janis W. Wilson

In the Matter of the Joint Application Filed by Hydro One Limited and Avista Corporation for Authority for Hydro One Limited to Acquire a Controlling Interest in ALASKA ELECTRIC LIGHT & POWER COMPANY	U-17-097

APPLICANTS' JOINT REPLY TO COMMENTS

I. INTRODUCTION.

Hydro One Limited ("Hydro One") and Avista Corporation ("Avista") (collectively, the "Applicants"), jointly submit this reply to the comments submitted in this docket.[1] The Applicants appreciate the commenters' interest in how the proposed transaction will affect electric utility service in Juneau. However, as detailed below, the Applicants respectfully submit that many of the assertions and concerns raised in the comments are unfounded and misplaced in this docket.[2] In short, none of the comments reasonably support denying or imposing conditions on the requested acquisition of controlling interest.

[1] On December 11, 2017, the Applicants filed a joint reply to comments filed on December 5, 2017, by Congressman Don Young's office.

[2] On January 18, 2018, Hydro One's President and Chief Executive Officer (Mayo Schmidt), Avista's Chairman of the Board and Chief Executive Officer (Scott Morris), and Avista's President (Dennis Vermillion) personally appeared at publicly noticed meetings in Juneau, where they addressed questions and concerns regarding the proposed transaction from the public and the City and Borough of Juneau ("CBJ") Assembly Committee of the Whole, in an effort to correct some of the unfounded claims that were reflected in the comments filed with the Commission.

The proposed transaction is consistent with the public interest because it preserves the *status quo* and over the long term, will provide benefits to ratepayers in Juneau. Indeed, the proposed transaction will allow Avista, Alaska Electric Light and Power Company ("AELP"), and AELP's ratepayers to benefit from being part of a larger organization (the benefits of scale). This is particularly true as Hydro One has an excellent track record in Ontario and looks forward to serving as a valued partner for both Avista and AELP. The proposed transaction easily meets the applicable standard of approval—AELP will continue to be fit, willing, and able to provide certificated utility service, and the acquisition will not change AELP's management, personnel, operations, facilities, services, rates, or tariffs in a way that is inconsistent with the public interest.

Below is a brief summary of the Applicants' responses to the main arguments raised in the comments:

1. Hydro One is a Canadian company with the Province of Ontario as a major shareholder. Hydro One is proud to be a Canadian corporation. Anti-Canada prejudice provides no justifiable reason to deny or condition approval of the Application. Hydro One is not a governmental entity. Hydro One is fit, willing, and able to own a parent-level controlling interest in AELP.

2. The proposed transaction will not increase AELP rates or allow AELP customers to subsidize Hydro One or its Ontario customers. The structure of the proposed transaction, the committed-to affiliated interest cost assignment and allocation methodology, and the Commission's affiliated interest rules, will preclude the proposed transaction from increasing AELP's electric rates.

3. The proposed transaction will not allow Hydro One to "take over" Juneau's electric utility assets. Under the proposed transaction, Hydro One will not acquire ownership or management of any of the facilities used to provide electric utility service in Juneau. AELP and its experienced management will continue to manage, operate, and maintain the electric utility in Juneau.

4. Hydro One cannot use Chapter 11 of the North America Free Trade Agreement ("NAFTA Chapter 11") to circumvent or diminish the Commission's jurisdiction over AELP. NAFTA Chapter 11 cannot affect the scope of the Commission's authority over AELP, and the Commission cannot be financially impacted by a NAFTA Chapter 11 claim.

5. Approval of the Application should not be subject to conditions. None of the commenters' proposed conditions are substantively related to the proposed transaction. All of the proposed conditions are beyond the scope of this docket. None of the proposed conditions are necessary for the proposed transaction to be consistent with the public interest.

6. Approval of the Application should not be conditioned on Snettisham Electric Company's ("SEC's") divestiture of the Snettisham purchase option. The proposed transaction will not affect the Snettisham purchase option. Alaska statute, Commission cost-based ratemaking, and a prior Commission order regarding the rate treatment of Snettisham costs preclude the possibility that the Snettisham purchase option will adversely affect Juneau customers.

7. Approval of the Application should not be conditioned on AELP's allowed rate of return on equity ("ROE") being limited to that of Hydro One in Ontario. The Commission sets

allowed ROEs based on an estimate of the specific utility's cost of equity capital. There is no justification to limit AELP's allowed ROE to Hydro One ROEs in Ontario.

8. Approval of the Application should not be conditioned on prior Commission approval of an interconnection tariff or a Federal Energy Regulatory Commission ("FERC")-compliant open access transmission tariff ("OATT"). AELP is already subject to applicable joint use statutes. AELP is actively working in good faith with Juneau Hydropower, Inc. ("JHI") in an ongoing interconnection review process. Alaska has not adopted mandatory FERC OATT requirements. The proposed conditions would be discriminatory.

9. Approval of the Application should not be conditioned on AELP being required to file formal integrated resource plans ("IRPs"). Any Alaska IRP requirements should be determined in legislative or rulemaking proceedings, not in a controlling interest adjudicatory docket. The proposed condition would be discriminatory.

10. AELP strongly supports cost-effective renewable energy, but approval of the Application should not be conditioned on a commitment to implement the CBJ's Juneau Renewable Energy Strategy ("JRES").

11. Approval of the Application should not be conditioned on Hydro One posting a $50 million bond. AELP will remain fit, willing, and able to manage, operate, and maintain Juneau's electric utility system. There is no need for an emergency repair bond to be posted by AELP and certainly not by its ultimate parent company. The proposed condition would be discriminatory.

12. Approval of the Application should not be conditioned on Hydro One and Avista matching in Alaska all commitments made in other jurisdictions. The 55 commitments attached

to the Merger Agreement between Avista and Hydro One were tailored to certain requirements and past practices of the Washington, Oregon, and Idaho utility commissions, relate primarily to the specific relationship between Hydro One and Avista, and are not applicable to the controlling interest requirements of this Commission or AELP. However, as applicable and practicable, those commitments will be honored with respect to AELP's operations in Alaska. In addition, the Applicants have separately and specifically agreed to several commitments that overlap with the 55 commitments. In addition, as will be explained in greater detail, the Applicants and AELP hereby commit to $1 million of rate credits for AELP customers, which roughly approximates the per-customer rate credits that Hydro One and Avista have committed to in other jurisdictions.

II. STANDARD OF APPROVAL AND SCOPE OF THIS DOCKET.

As an initial matter, the comments filed in this proceeding, and the proposed conditions on approval advocated by some of the commenters, should be considered in context with the standard of approval in this docket. The positions and proposed conditions set forth in some of the comments seek to address issues that are beyond the standard of approval and proper scope for a controlling interest application in Alaska, particularly where, as here, the proposed transaction involves only a change in control of the ultimate parent (Avista) of a certificated utility (AELP) through the substitution of Hydro One for the institutional and retail investors that currently own Avista's stock.

In prior controlling interest dockets, the Commission has applied a relatively narrow standard of approval that focuses on the impacts of the proposed transaction on the *certificated utility itself*, rather than solely on the attributes of the entity seeking to acquire a

controlling interest in the utility. For example, in Order No. U-17-032(2)/ U-17-033(2)/ U-17-035(2)/ U-17-036(2)/ U-17-082(2) (Nov. 7, 2017) ("*GCI Liberty*"), the Commission addressed applications for GCI Liberty, Inc., to acquire controlling interests in all of the certificated GCI intrastate telecommunications and cable television utilities. In addressing the standard of approval, the Commission stated:

> Controlling interest in a public utility holding a certificate may not be transferred without our prior approval. In deciding whether to approve an application to acquire a controlling interest we take guidance from the statutory standard for granting a new certificate—whether the applicant is fit, willing, and able to provide the service applied for and whether the service applied for is required by the public convenience and necessity. *However, those standards are not directly applicable when we consider acquisition of an existing, already certificated public utility.* In the case of an acquisition we rebuttably presume a public utility that is successfully providing service before the acquisition is presently is fit, willing, and able to provide service, and that the service the public utility is providing is required by the public convenience and necessity or, in the context of competitive markets, that the service provided contributes to the public convenience and necessity.
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> *In evaluating an application to acquire a controlling interest, then, we must determine only whether the public utility, after the acquisition, will remain fit, willing, and able to provide the utility service authorized by the certificate.* When determining whether a public utility remains fit, willing, and able, we examine managerial, technical, and financial fitness. Finally, in deciding whether to approve the acquisition of a controlling interest in a public utility holding a certificate, we consider whether the proposed acquisition is consistent with the public interest.[3]

Thus, controlling interest dockets are more limited than certificate of public convenience and necessity ("CPCN") dockets in significant ways, and the Commission focuses its analysis on whether *the certificated public utility itself* will continue to be fit, willing, and able

[3] *GCI Liberty* at 8-9 (footnotes omitted, emphasis added).

to provide certificated utility service after the acquisition, and whether the acquisition will *change the certificated utility's* management, personnel, operations, facilities, services, rates, or tariffs in such a way that is inconsistent with the public interest.[4] To the extent that the comments raise arguments or seek conditions that do not directly relate to these issues, the Applicants respectfully submit that they are beyond the scope of this docket.

As just one example, JHI requests that the Commission condition approval of the Application on AELP first developing, filing, and obtaining Commission approval of a generally applicable tariff for interconnection with independent power producers ("IPPs"), and AELP "mak[ing] a written submission" of a process and timeline for completing currently pending, good faith interconnection negotiations between AELP and JHI.[5] Those proposed conditions are beyond the scope of the *impacts that the proposed transaction will (or will not) have* on AELP's fitness, willingness, and ability to serve and on the public interest. JHI may believe as a general matter that imposing those types of requirements on AELP would be beneficial for JHI in its current interconnection negotiations[6] or even that such requirements are as a matter of general

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[4] *See GCI Liberty* at 10-13; Order No. U-13-197(2) (May 30, 2014) ("*Avista*") at 6-9 (approving application for Avista to acquire a controlling interest in AELP); Order No. U-12-005(5) (Aug. 14, 2012) ("*Alta Gas*") at 13-17 (approving Alta Gas' acquisition of a controlling interest in ENSTAR Natural Gas Company ("ENSTAR") and Alaska Pipeline Company ("APC")).

[5] Comments of JHI on Avista Acquisition (Dec. 21, 2017) at 4.

[6] Through its proposed conditions on approval of the Application, JHI is inappropriately attempting to use the Commission and this controlling interest docket to interfere with ongoing interconnection agreement processes and negotiations between AELP and JHI. Given the magnitude and importance of Hydro One's $5.3 billion, five-state, acquisition of Avista, it is apparent that JHI's obviously self-serving proposed conditions are intended to inappropriately gain leverage and concessions in interconnection negotiations with AELP that are completely unrelated to the proposed transaction. To this end, it appears that JHI and its managing director

policy "in the public interest," but they have nothing to do with the *impacts of the proposed transaction* on AELP's fitness, willingness, or ability to serve or the *impacts of the proposed transaction* on the public interest.

III. CONCERNS STATED ABOUT HYDRO ONE ARE UNFOUNDED AND MISPLACED IN THIS CONTROLLING INTEREST DOCKET.

Surprisingly, many of the comments in this docket appear to reflect an unjustified and discriminatory anti-Canada sentiment. Obviously, Canada is one of the United States' oldest, strongest, and most stable allies and trading partners, and Alaska and Alaska businesses have benefited greatly from Canadian business investment in Alaska utility and non-utility businesses (Alta Gas is one current example). Indeed, having a well-capitalized, C$25 billion utility corporation like Hydro One invest (albeit indirectly) in an Alaska utility, particularly when

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Duff Mitchell have been primary propagators of much of the misinformation that is reflected in many of the comments.

It should be noted that this is not the first time that JHI has used a Commission proceeding to inappropriately attempt to exert commercial pressure on AELP. In Docket U-16-067, regarding AELP's relatively mundane request for approval of a depreciation rate for a back-up generator-related plant account, JHI intervened ostensibly as an "interested party," conducted extensive and irrelevant discovery, unsuccessfully filed a meritless motion to compel discovery, proposed to present oral witness testimony at the hearing despite having affirmatively elected not to submit prefiled testimony, and, after causing significant unnecessary cost and delay, the day before hearing notified the Commission of its refusal to participate in the hearing. *See* Order No. U-16-067(9) (Nov. 3, 2016) at 2-4. The Commission subsequently stated: "Anyone granted party status in our proceedings has an express obligation to participate fully in hearings and prehearing conferences. . . . JHI did not seek our permission to be excused from participating in the October 10 prehearing conference or hearing and did not appear or participate in either the conference or the hearing. We could reasonably have taken the time to determine if JHI violated its obligations under 3 AAC 48.155(b)(3), and the appropriate sanction for any violations found." *Id*. at 5.

the utility is subject to full economic regulation by the Commission, can only strengthen AELP's ability to provide safe, reliable, cost-effective electric utility services in Juneau.

Nevertheless, several of the comments oppose approval of the Application based largely on the fact that Hydro One is a Canadian corporation, or that the Province of Ontario owns a significant, but not majority, share of Hydro One stock. Other comments oppose approval of the Application based on irrelevant and misinformed perceptions about the electric rates of a Hydro One subsidiary—Hydro One Networks—in Ontario. In addition to being unfounded and misleading, many of the concerns stated about Hydro One in the comments are misplaced and unrelated to the standard of approval in this controlling interest docket.

A. Hydro One is not seeking a CPCN and will not own, manage, operate, or maintain AELP's electric utility facilities.

As is explained in the Application, Hydro One is a large, well-capitalized investor-owned electric transmission and distribution utility that has extensive experience and management expertise in owning and operating regulated electric utility systems. As such, Hydro One is more than qualified to replace the current non-utility institutional and retail investors (including foreign investors) as the ultimate owner of the stock of AELP's current parent company—Avista. In addition, adding Hydro One into AELP's upstream ownership structure will further enhance AELP's ability to quickly and efficiently access outside utility expertise and support as needed to fulfill its public utility obligations.

Many of the arguments raised in the comments incorrectly allege or assume that the proposed transaction will involve Hydro One "taking over" responsibility for the provision of certificated electric utility service in Juneau, and ownership, management, operation, and

maintenance of the facilities used to provide that service. Such allegations and assumptions are simply not true, and they unnecessarily confuse the proper analysis of the requested acquisition of controlling interest in AELP in this docket.

If the proposed transaction involved a sale of AELP's electric utility assets and CPCN to Hydro One, then this docket would be a CPCN transfer docket. In that event, the Commission would properly analyze the details of Hydro One's fitness to *provide certificated electric utility service in Juneau*, and to own, manage, operate, and maintain *those Alaska utility facilities*; how Hydro One's utility operations in Juneau would relate to Hydro One's utility operations in Canada; and how that new ownership, management, operation, and maintenance would affect customers in Juneau. But, the proposed transaction does not involve a sale of AELP's assets to Hydro One, and Hydro One is not seeking to be a certificated Alaska electric utility. Instead, the proposed transaction is much more limited. Hydro One seeks merely to be allowed to acquire the stock of Avista that is currently owned by various institutional and retail investors, such as the Vanguard Group, Inc. and Blackrock Inc.[7]

After the proposed transaction closes, AELP will continue to be the certificated electric utility in Juneau. AELP alone will continue to be required to fulfill all of the extensive obligations and responsibilities that a CPCN imposes. If AELP were to fail to meet any of those obligations and responsibilities, for any reason, the Commission has extensive statutory authority to enforce those obligations and impose appropriate remedies to protect AELP's customers and the public interest, regardless of who owns the stock of Avista.

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[7] *See* Application at 33.

As it does today, AELP, not Avista or Hydro One, will continue to own, manage, operate, and maintain the electric utility facilities in Juneau. Avista has not inserted itself into AELP management and neither will Hydro One. Since Avista's acquisition of AELP, the only turnover in AELP management has resulted from retirements in the normal course and promotions.

Thus, to the extent that the comments in this docket attempt to criticize Hydro One's fitness, willingness, or ability to *provide utility service in Juneau* or to *own, manage, operate, or maintain AELP's electric utility assets* in the public interest, they are inapplicable and misplaced in this parent-level controlling interest docket. Nevertheless, to clarify the record in this docket, in the subsections below the Applicants will briefly address the substance of some of the stated criticisms of Hydro One.

B. Hydro One is not a governmental entity.

Despite allegations to the contrary in some of the comments, Hydro One is not a governmental entity. It used to be a Crown corporation, but that is no longer the case. Private investors hold more than half of Hydro One's shares and the goal is for 60% of the company to be held by private investors. As of the date hereof, the Province owns 47.4% of Hydro One's shares.[8] Based on facts known today and assuming the proposed transaction is completed, the

[8] A recent transaction has reduced the Province's percentage ownership. On January 2, 2018, the Province announced that it had completed the sale of approximately 2.4% of the outstanding common shares of Hydro One Limited to OFN Power Holdings LP, a limited partnership that is indirectly owned by 129 First Nations in Ontario. *See* https://www.newswire.ca/news-releases/ontario-completes-sale-of-hydro-one-shares-to-first-nations-667669333.html (visited Jan. 15, 2018).

Province's level of ownership of Hydro One will decline to less than 43%. While Hydro One Inc. and its subsidiaries were previously subject to the *Auditor General Act* (Ontario) and the Ombudsman Act (Ontario), they no longer are. In 2015, prior to completion of the initial public offering of Hydro One, Hydro One Inc. and its subsidiaries (and by virtue of a deeming provision in the *Electricity Act, 1998,* Hydro One) ceased to be subject to a number of Ontario statutes that apply to entities owned by the Province, including the *Auditor General Act* and the Auditor General's right to audit therein. The *Auditor General Act* (Ontario) specifically states that, for purposes of this Act, Hydro One Inc. and its subsidiaries (and Hydro One) are deemed not to be agencies of the Crown or Crown controlled corporations. The only obligation that Hydro One Inc. and its auditors continue to have under the *Auditor General Act* (Ontario) is to provide financial information to the Province for the Province's public reporting purposes; however, Hydro One is not required by such residual obligation to give information and access to records that relate to a period for which Hydro One has not yet disclosed to the public its audited or unaudited financial statements.

Pursuant to the Province's governance agreement with Hydro One, it does not hold or exercise any managerial oversight over Hydro One. Accordingly, following the proposed transaction, the Province will not hold or exercise any managerial oversight or control over Hydro One or Avista, and certainly not over AELP, SEC, or Alaska Energy and Resources Company ("AERC"). Upon completion of the proposed transaction, Avista will continue to exist as an indirect, wholly owned subsidiary of Hydro One, AERC (an Alaska corporation located in Juneau) will continue to be a wholly-owned subsidiary of Avista, and AELP and SEC (Alaska corporations located in Juneau) will continue to be wholly-owned subsidiaries of AERC.

C. Hydro One's Electricity Rates in Ontario.

Several commenters voiced concerns with electricity prices in Ontario and what Hydro One's ownership could mean for AELP's rates in Alaska. As described later in this reply, the proposed transaction cannot and will not increase AELP's rates. Thus, electricity prices in Ontario are simply irrelevant to, and beyond the scope of, this docket. However, to correct the record, Hydro One is not responsible for the recent electric rate increases in Ontario because the primary driver for electricity costs in Ontario is the cost of generation—a cost over which Hydro One has no control.

As in all jurisdictions, Ontario's electric system has three major components: generation (producing the commodity—power), transmission (getting the power across the province through high-voltage lines), and distribution (delivering the power to homes and businesses). In Ontario, the Independent Electricity System Operator ("IESO") delivers key services including managing the power system in real-time, planning for the Province's future energy needs, enabling conservation, and designing a more efficient electricity marketplace. The Ontario Energy Board ("OEB") is an independent and impartial public regulatory agency. The OEB regulates Ontario's electricity market, including the activities of transmitters and distributors.

Hydro One provides more than 98% of the transmission services in Ontario, and it is one of about 65 electric distribution companies ("LDCs") that provide distribution services in the province. Hydro One is involved in the delivery of electricity—*it does not set the price of electricity*.

The cost of electricity for customers in Ontario is determined in part by the prices set by generators selling their electricity into a wholesale electricity market that is operated and administered by the IESO and in part by the OEB. Both large industrial customers and LDCs purchase their electricity from the wholesale electricity market and pay the market rate for electricity plus the Global Adjustment (which covers the difference between the market rate for electricity and what is paid to generators based on fixed contracts, in addition to the substantial costs of conservation and demand management programs put in place by the government of Ontario). In order to minimize the fluctuation in electricity market prices for the majority of customers, the OEB sets the electricity commodity prices that apply to residential and small commercial customers (in May and November of each year) based on a forecast of the wholesale electricity market rates and cost of the Global Adjustment.

As the entity that actually bills local residences and businesses in its service territory for electricity, Hydro One is often incorrectly portrayed in the media as the company "raising electricity rates." However, the electricity bill that customers receive from Hydro One clearly identifies that there are three distinct components to their bill, two of which are costs Hydro One collects on behalf of other parties: (1) the cost of electricity (including the Global Adjustment), which is the price set by the OEB or the electricity market; (2) the cost of delivery, which is Hydro One's cost of providing transmission and distribution delivery services; and (3) regulatory charges, which primarily cover the IESO's cost to plan and administer the wholesale electricity system and maintain the reliability of the provincial grid. Hydro One is only responsible for the cost of delivering electricity, and not the price of the electricity or the regulatory charges.

While the cost of electricity for a typical residential customer in Ontario has more than doubled over the last 10 years, those increases have not been driven by Hydro One. Over that same 10-year period, customer costs for Hydro One's transmission and distribution delivery services have increased by an average of less than 3% annually. The limited role Hydro One has played in Ontario's rising electricity rates is highlighted by the Fraser Institute Report, "Evaluating Electricity Price Growth in Ontario," dated July 20, 2017.[9] This Report does not once mention Hydro One as a factor in rising electricity prices. To the contrary, it concludes that the rise of energy prices is "directly tied to policy choices by the Ontario government."[10] Specifically, the Report cites a rise in generation costs associated with investments in green energy as an explanation for the current cost of electricity in Ontario.

D. Hydro One's Reliable Electric Service in Ontario.

AELP customers will continue to receive reliable service from a well maintained system for two reasons. First and foremost, the system will continue to be managed and operated by AELP as a stand-alone utility subject to Commission oversight. The addition of a new upstream owner above the Avista level will not affect AELP's system planning, design, or maintenance. Thus, commenters' assertions about Hydro One's transmission asset maintenance are simply irrelevant to and beyond the scope of this docket. However, again, to correct the record, Hydro One has a strong culture of reliability and serves a number of remote areas in a challenging northern environment. Based on a report using information from 2014 and released

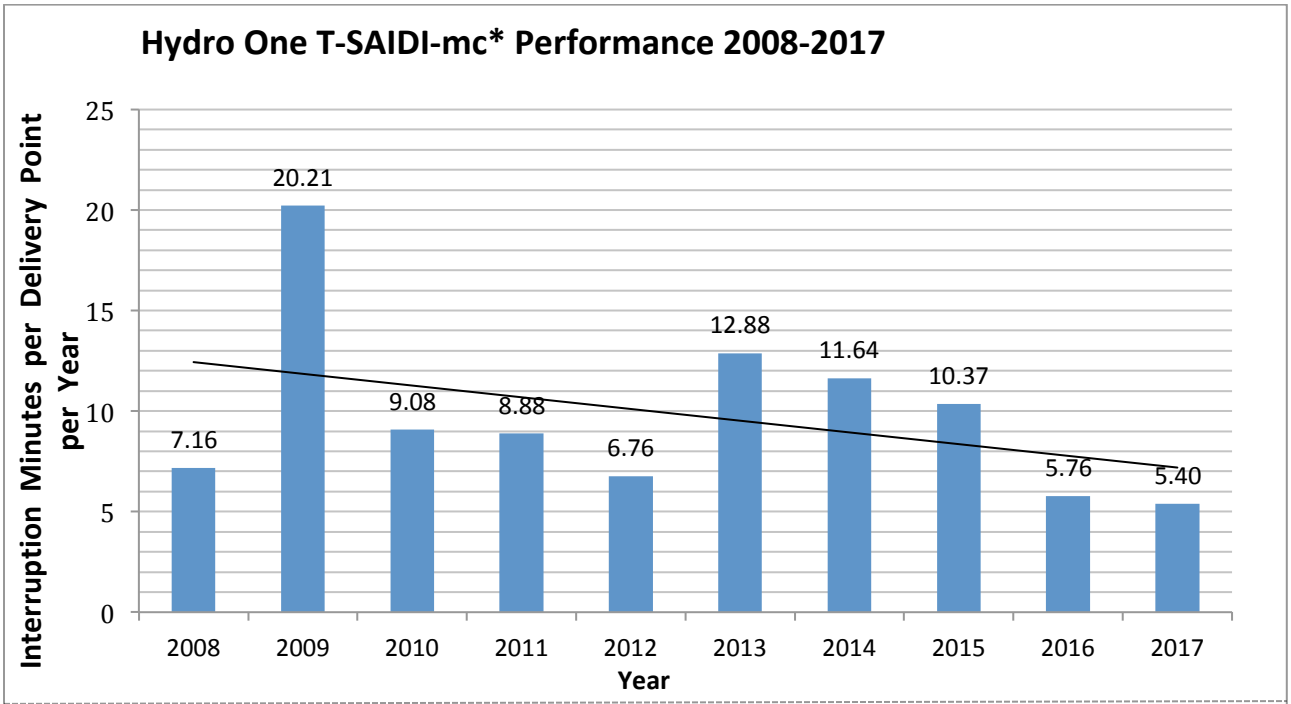
[9] Several comments incorrectly cite to this report as evidence that Hydro One will raise rates.

[10] Fraser Institute Report at 18.

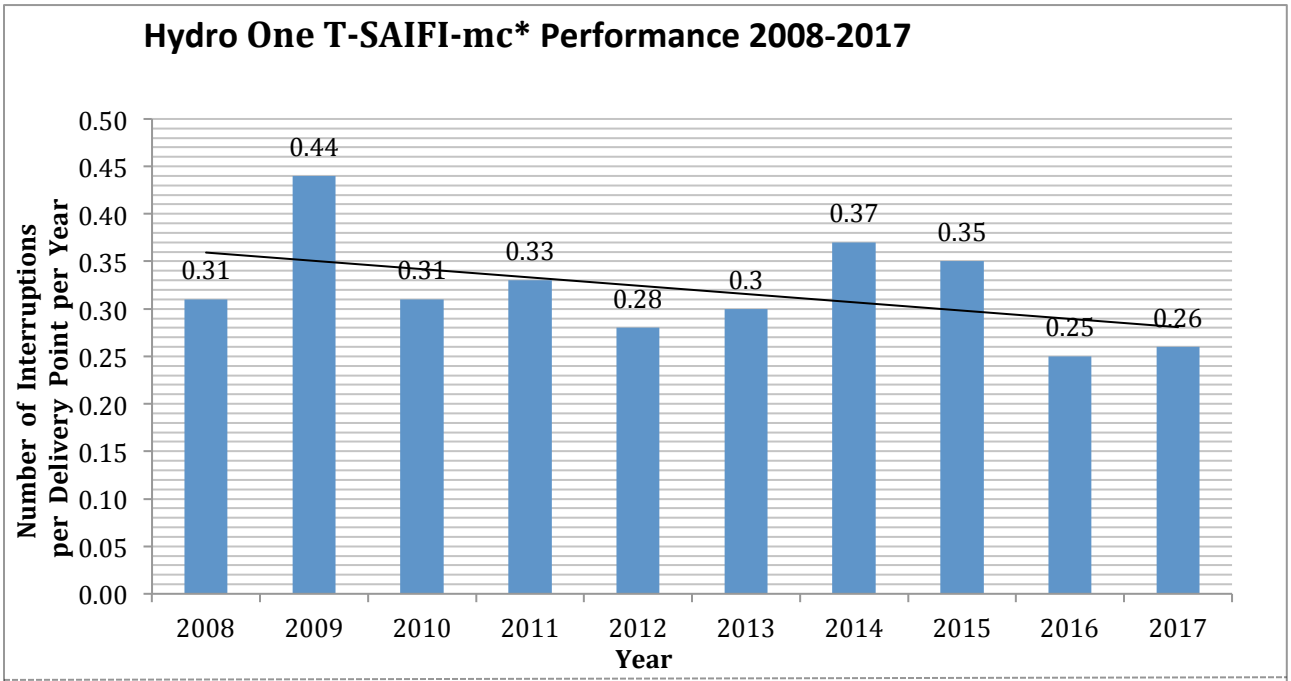
in 2015 when Hydro One was still a Crown corporation, some of the comments in this docket insinuate that Hydro One's transmission asset maintenance program is inadequate.[11] In fact, contrary to the assertions in the report, Hydro One follows sound asset management practices and condition-based principles in determining the assets that need to be replaced to maintain asset performance while minimizing costs to the benefit of the ratepayers. This Hydro One policy allows it to focus on the actual working condition of its transmission assets instead of passing on unnecessary costs to ratepayers by replacing "old" assets merely because they are old. This policy has played a key role in Hydro One's ability to continuously improve reliability while limiting increases in rates. Indeed, as can be seen in the charts below, from 2010 to 2016 Hydro One's reliability performance trends improved in both frequency and duration of interruptions for both multi-circuit and single-circuit delivery points.

[11] Comments of Randy Sutak at page 2, citing to a 2015 auditor report.

2008 to 2017 Multi-Circuit Reliability Performance:

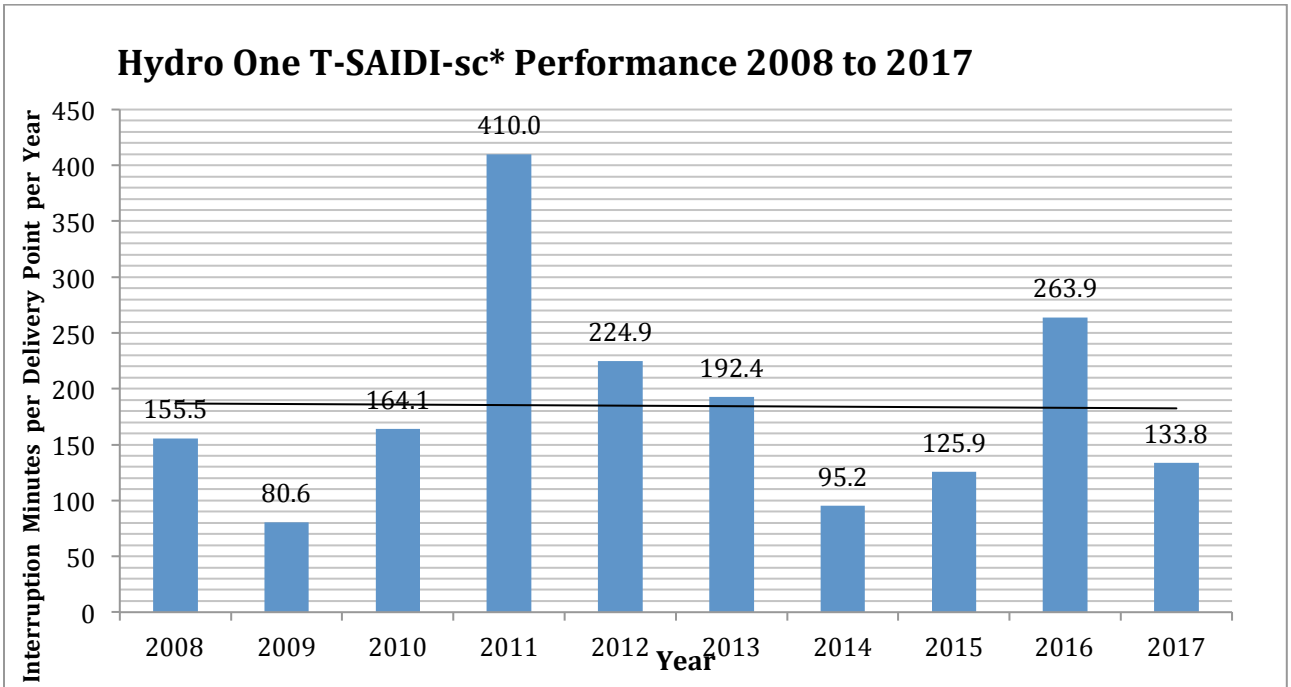


*: Transmission System Average Interruption Duration Index for Multi Circuit Supplied Delivery Points

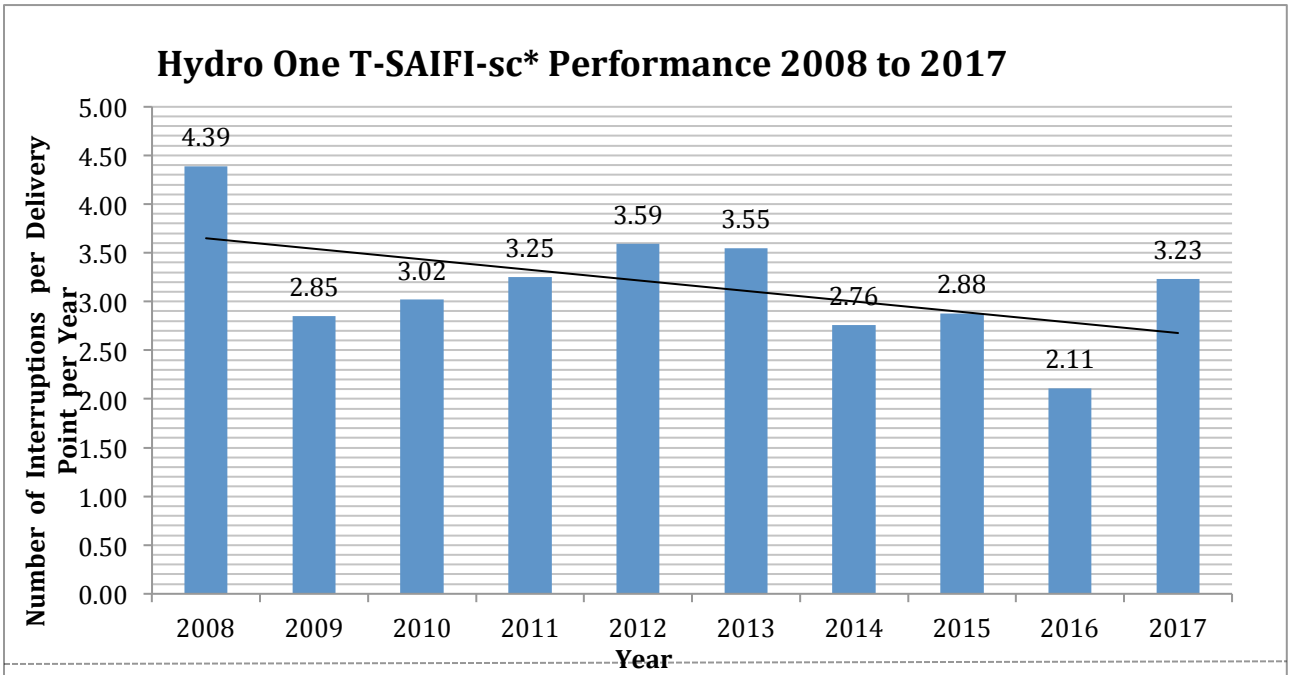


*: Transmission System Average Interruption Frequency Index for Multi Circuit Supplied Delivery Points

2008 to 2017 Single-Circuit:



*: Transmission System Average Interruption Duration Index for Single Circuit Supplied Delivery Points



*: Transmission System Average Interruption Frequency Index for Single Circuit Supplied Delivery Points

Moreover, since Hydro One's initial public offering and its addition of a new executive team, including a new Chief Operating Officer with substantial American transmission experience, continually strengthening Hydro One's already strong reliability has been a core focus. To this end, Hydro One established annual reliability targets and objectives to continuously improve performance over the next five years and maintain its top quartile (tier 1) transmission reliability performance as benchmarked with its peers throughout the period. Thus, although Hydro One will not be maintaining, operating or designing AELP's system, its strong and continuously improving record with respect to reliability will only serve to benefit AELP and its customers.

E. Hydro One as a Valued Partner.

The proposed transaction will add a second large, experienced electric utility company into AELP's upstream ownership structure without altering any aspect of AELP's local management and operations, services, rates, or regulatory oversight by the Commission. Although Hydro One will not be responsible for the management, operation, or maintenance of AELP's electric utility assets, Hydro One is certainly managerially, technically, and financially fit, willing, and able to support, as an ultimate owner, AELP's provision of safe and reliable service to customers.

As was explained in the Application, Hydro One is a large, well-capitalized investor-owned electric transmission and distribution utility and has extensive experience owning and operating regulated utility systems. Through its subsidiaries, Hydro One provides electric distribution service to more than 1.3 million retail end-use customers, as well as electric transmission service to many local distribution utilities and large industrial customers.

Hydro One has a very experienced management team and approximately 5,400 full-time and 2,100 casual and temporary employees.

Hydro One has a significant asset base and a stable stream of revenues and cash flow. As of year-end 2016, Hydro One had total assets of C$25 billion, annual revenues of over C$6.5 billion, and a market capitalization of C$14 billion. At December 31, 2016, Hydro One had a capital structure of approximately 53% debt and 47% equity. Hydro One had funds from operations ("FFO") - to - interest expense ratio of 3.80, and FFO - to - debt ratio of 0.13. Hydro One's short-term liquidity is provided through funds from operations, a C$1.5 billion commercial paper program (of which approximately C$1 billion was available at December 31, 2016), and undrawn credit facilities of C$2.55 billion. Both S&P and Moody's have commented on the adequacy of liquidity for Hydro One and its subsidiaries in determining their credit ratings. S&P affirmed an 'A' long-term corporate credit rating on both Hydro One and Hydro One Inc. Moody's affirmed the ratings of Hydro One Inc.'s senior unsecured regular bonds (A3), senior unsecured medium-note program ((P)A3), and senior unsecured commercial paper (P-2). DBRS rates Hydro One Inc.'s long-term debt at A (High) and its short-term debt at R1 (Low), and expressed its view that, should the merger be financed as contemplated in the announcement, it will have no impact on Hydro One Inc.'s credit profile.

Based on the foregoing, the criticisms of Hydro One raised in some of the comments do not negate the Applicants' satisfaction of the standard of approval for Hydro One's acquisition of a controlling interest in AELP. Hydro One is not seeking to "take over" ownership, management, operation, or maintenance of the electric utility system in Juneau and is not seeking a CPCN from the Commission to operate as an Alaska utility. Instead, the proposed

transaction simply involves the replacement of current institutional and retail investors with Hydro One as the ultimate owner of Avista and, indirectly, of AERC and AELP. Hydro One is certainly fit, willing, and able to serve in that ultimate ownership role, and adding a large, experienced electric utility like Hydro One into AELP's upstream ownership structure is certainly consistent with the public interest. There is nothing about Hydro One, as an ultimate parent company, or the proposed transaction that would support a finding (1) that AELP will not continue to be fit, willing, and able to provide certificated electric utility services in Juneau, or (2) that the proposed transaction will change AELP's management, personnel, operations, facilities, services, rates, or tariffs in a way that is not consistent with the public interest.

IV. THE PROPOSED TRANSACTION WILL NOT INCREASE AELP'S RATES.

Several commenters object to the proposed transaction based on a concern that it will somehow result in increased electric rates for AELP customers. In addition, some of the comments state or imply that Hydro One could somehow subsidize its electric rates in Ontario through increases to AELP's rates in Juneau. These concerns are completely unfounded for the following reasons:

First, as was committed to in the Application, AELP will not seek to recover in rates any acquisition adjustment or premium or transaction costs associated with the proposed transaction.[12]

Second, the proposed transaction will not increase AELP's costs. As has been the case since Avista acquired AERC in 2014, AELP will continue to operate independently of

[12] Application at 27.

Avista and Hydro One, with its own debt, capital structure, and separately incurred administrative and general, operations, and maintenance costs. AELP's rates will continue to be based on AELP's costs and revenue requirement, which are based on audited financial statements that are maintained separately from those of Avista or Hydro One. Hydro One's acquisition of the stock of Avista will not negatively impact the costs that AELP incurs or its revenue requirement.[13] Related to this point, some comments speculate that AELP management will receive bonuses if the proposed transaction closes. That is not true. No AELP employees will receive a bonus related to Hydro One's acquisition of Avista.

Third, heightened scrutiny in Commission rate cases under applicable affiliated interest transaction statutes and Commission precedent prevents AELP from including in Juneau electric rates any Avista or Hydro One costs or charges unless AELP can affirmatively show the reasonableness of including such costs in a rate case. AS 42.05.441(c) requires the utility to *make a "clear and convincing showing"* that payments made to a person having an ownership interest of more than 70% in the utility for goods or services are reasonably necessary for the operation of the utility, and that the costs for the goods or services are competitive with the price

[13] Some comments incorrectly claim that AELP's rates increased as a result of Avista's 2014 acquisition of AERC. To the contrary, AELP's planned 2014 rate increase (discussed at page 21 of the Avista/AERC application in Docket U-13-197, but unrelated to that transaction) was *avoided* as a result of the AERC acquisition. In addition, AELP's last base rate increase (3.86% in 2016) would have been greater if Avista had not acquired AERC. AELP's revenue requirement was lower than it otherwise would have been due to (1) a $522,000 per year reduction in property insurance premiums resulting from AELP being covered under Avista policies; (2) reduced tax accounting expense; and (3) reduced cost of capital resulting from a refinancing of AELP's Lake Dorothy bonds and CoBank loan, associated with Avista's acquisition of AERC.

at which the goods or services could be obtained from a person having no ownership interest. In addition, AS 42.05.511(c) states that in a rate proceeding, *the utility has the burden of proving* that the provision of goods or services from an affiliated interest is "necessary and consistent with the public interest," and that payments made to affiliated interest are reasonably based on the cost incurred by the affiliated interest and on the estimated cost the utility would have incurred if it had provided the goods or services with its own personnel and capital. This heightened scrutiny of affiliated interest costs precludes AELP from increasing its rates in order to subsidize Avista, Hydro One, or their customers.

Fourth, the effectiveness of the Commission's heightened scrutiny of affiliated interest transactions is even greater for AELP rates given the simple and transparent affiliated interest cost assignment and allocation methodology between Avista and AELP that was reviewed by the Commission in Docket U-13-197 (regarding Avista's acquisition of AERC).[14] Under that methodology, if and to the extent that Avista employees dedicate time and incur costs related to the operation of AELP, those costs will be directly assigned to AELP and will be included in the proposed revenue requirement in future AELP rate cases. All such costs will be subject to review and approval of the Commission. Likewise, should AELP employees dedicate time or incur costs related to Avista utility operations, such costs will be directly assigned to

[14] Application at 27. In its comments at page 17, JHI claims that Hydro One's acquisition of Avista will add costs to AELP "that will be difficult to discern through affiliated interest investigations." That is simply incorrect. The committed-to cost assignment and allocation methodology is simple and transparent, and as required by the Commission's affiliated interest statutes and precedent, AELP directly addresses all affiliated interest costs affirmatively in its base rate increase filings. *See, e.g.,* Prefiled Direct Testimony of Constance S. Hulbert (Sep. 16, 2016) at 16-22, in TA453-1 (Docket U-16-086) (AELP's last base rate case).

Avista. Since Avista's acquisition of AERC, direct charges from Avista have been minor (approximately $37,000 per year for tax accounting and director fees), and there have been no allocated costs charged for services provided by Avista. In this instant docket, the Applicants and AELP affirm their commitment to continuation of the affiliated interest cost assignment and allocation methodology described above and in the Application. The Applicants do not expect AELP to incur any direct or allocated charges from Hydro One, but if it ever does, they will be subject to the above-described cost assignment and allocation methodology and the heightened scrutiny of the Commission's affiliated interest statutes and precedent as discussed earlier.

Fifth, OEB ratemaking and the corporate structure of Hydro One also eliminate any risk of cross-subsidization. Electric rates in Ontario are regulated by the OEB. The OEB would not consider revenues from AELP operations when setting Hydro One's electric rates in Ontario. In addition, AELP and Avista will not be subsidiaries (direct or indirect) of the Hydro One company that serves ratepayers in Ontario—Hydro One Networks. In other words, the operating utility in Ontario will not be the parent company of Avista or AELP. Thus, from the standpoint of corporate structure, revenues from operations in the United States will not be allocable or attributable to the operating utility in Ontario.

V. LOCAL MANAGEMENT OF AELP.

In the Application, the Applicants stated that the proposed transaction seeks to significantly preserve local control of Avista and AELP and that the Applicants are committed to retention of existing employees and management teams.[15] One commenter suggested that AELP

[15] Application at 25-26.

does not really have "local management" (now or after the proposed transaction) because most of the members of AELP's board of directors are people related to Avista.[16] In response, when the Applicants refer to "local management" and "local control" of AELP, they are referring to the critical management-level employees who live and work in Juneau and, independently from Avista, plan and execute the safe, reliable, and efficient provision of electric utility services in Juneau. That includes the experienced local AELP management team discussed in the Application.

After Avista's acquisition of AERC in 2014, AELP continued to be managed locally by the same team of managers and key personnel as existed before that transaction (other than normal retirements). Although AELP's board of directors reasonably consists largely of representatives of AELP's owner (Avista), the AELP board and Avista have strongly supported local, independent management of AELP. In fact, when AELP's President and General Manager Tim McLeod retired in 2017, AELP's board of directors promoted Connie Hulbert, AELP's experienced, long-standing Secretary-Treasurer (who grew up in Juneau and had worked for AELP for 21 years) to succeed Mr. McLeod as AELP's President and General Manager. There will be no change to AELP's board of directors as a result of the proposed transaction and, more importantly, Hydro One and Avista have agreed to continue the commitment to local, independent management of AELP and its provision of safe and reliable electric utility service in Juneau.

[16] *See* Comments of Randy Sutak at 8-9.

VI. INTERNATIONAL LAW HAS NO BEARING ON THE COMMISSION'S AUTHORITY AND JURISDICTION OVER AELP.

Citing comments previously filed in Docket U-17-085 by Margo Waring, JHI raises as a concern that if the Commission approves the Application, Hydro One could use the anti-expropriation provisions of NAFTA[17] Chapter 11 to circumvent and diminish the Commission's jurisdiction and authority.[18] Ms. Waring's and JHI's comments restate some of the arguments raised by the Sierra Club before the Maryland Public Service Commission in a pending matter.[19] Specifically, JHI claims that, "the RCA could lose jurisdiction over SEC based on [NAFTA Chapter 11];" and that "the state PUC could lose authority to enforce commitments related to rates, interconnection or other consumer protections."[20]

These claims are extremely speculative, as well as factually and legally incorrect. Similar claims were raised by intervenors in a New York Public Service Commission ("NYPSC") proceeding where a Canadian electric utility sought approval to acquire a New York electric utility.[21] The NYPSC rightfully determined that these arguments "do not present a credible risk to the public interest such as would require the imposition of any specific conditions

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[17] 32 I.L.M. 289 (1993).

[18] *See* JHI Comments at 12-13 (citing comments of Margo Waring, Docket U-17-085 (Nov. 6, 2017)).

[19] Comments of Margo Waring in Docket U-17-085 at Exh. 1; JHI Comments at 12 n.39.

[20] JHI Comments at 12.

[21] *See* Joint Petition for Approval of the Acquisition of CH Energy Group, Inc. by Fortis Inc. and Related Transactions, New York Public Service Commission Case 12-M-0192 ("*Fortis*"), Order Authorizing Acquisition (Jun. 26, 2013) ("*Fortis* Final Order") (attached hereto as Exhibit 1); and Recommended Decision of Administrative Law Judges (May 3, 2013) ("*Fortis* Recommended Decision") (attached hereto as Exhibit 2).

on the merger."[22] The Commission should likewise disregard any arguments that claim NAFTA Chapter 11 poses a threat to the Commission's authority to regulate AELP should Hydro One's acquisition be approved.

NAFTA Chapter 11 cannot affect the scope of the Commission's authority to determine "rates, interconnection or other consumer protections" as claimed by JHI.[23] First, NAFTA Chapter 11 only provides for monetary awards or restitution of expropriated property and, therefore, cannot be used to alter or nullify a Commission decision or regulation.[24] Second, the U.S. State Department is also solely responsible for the defense of NAFTA claims and bears all the costs of the litigation.[25] Consequently, the Commission cannot be financially impacted by a NAFTA Chapter 11 claim.

To date, the United States has been a defendant 17 times under NAFTA Chapter 11, and contrary to Ms. Waring's assertion, none of those claims involved a foreign utility protesting a state utility commission's decision.[26] Not only has the State Department

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[22] *Fortis* Final Order at 34.

[23] JHI Comments at 12.

[24] *See* NAFTA Art. 1135(1)(a), (b).

[25] *See* NAFTA, Art. 1137(2); U.S. Department of State website at https://www.state.gov/s/l/c3439.htm.

[26] The list of all NAFTA Chapter 11 arbitration cases and related proceedings is available on the U.S. Department of State website at https://www.state.gov/s/l/c3741.htm. Three claims were not pursued after claimant filed its Notice of Arbitration, *see Canacar v. United States*, *Domtar v. United States*, and *Kenex v. United States*. *TransCanada v. United States* was discontinued before the tribunal was constituted. Three of the claims (*Canfor, Tembec,* and *Terminal Forest Prods*.) were consolidated into *Softwood Lumber Consolidated v. United States* with the majority of claims dismissed on jurisdictional grounds, and the remainder withdrawn; one of the claimants was ordered to pay the United States costs and fees related to the arbitration. The remaining nine

never lost a NAFTA Chapter 11 claim brought by a foreign investor, it has also never settled such a claim.[27] The State Department's success record is largely due to the standard of review applied by NAFTA Chapter 11 tribunals, which grants higher deference to a domestic agency's decisions than is found under the arbitrary and capricious standard.[28] As stated in the *Fortis* Final Order:

> [A] state regulatory agency acting lawfully within its statutory authority is not liable to a claim of damages under NAFTA unless an entity covered by the treaty can demonstrate that it made its investment in the state pursuant to express commitments made by the agency which were subsequently broken.[29]

For avoidance of doubt, the Applicants' hereby affirm that the Commission has made no "express commitments" to induce Hydro One's acquisition of Avista stock. As a result, Hydro One enjoys no special procedural or substantive advantages as "an entity covered by [NAFTA]" over any domestic entity to challenge the lawful actions of the Commission.

The Commission is also not subject to financial risks from NAFTA Chapter 11 claims. There is no legislation that would permit the federal government to recover from the

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claims all had final awards issued by the NAFTA Chapter 11 tribunal dismissing each claim in its entirety. *See generally ADF v. United States*, ICSID Case No. ARB(AF)/001, Award of Jan. 9, 2003; *Apotex I v. United States*, ICSID Case No. UNCT/10/2, Award of Jun. 14, 2013; *Apotex II v. United States*, ICSID Case No. ARB(AF)/12/1, Award of Aug. 25, 2014; *Canadian Cattlemen v. United States*, UNCITRAL, Award of Jan. 28, 2008; *Glamis Gold v. United States*, UNCITRAL, Award of Jun. 8, 2009 (hereafter "*Glamis*"); *Grand River v. United States*, UNCITRAL, Award of Jan. 12, 2011; *Methanex v. United States*, UNCITRAL, Award of Aug. 3, 2005; *Mondev v. United States*, ICSID Case No. ARB(AF)/99/2, Award of Oct. 11, 2002; *Loewen v. United States*, ICSID Case No. ARB(AF)/98/3, Award of Jun. 26, 2003.

[27] See *id.*

[28] *See* NAFTA Arts. 1103, 1105; *Fortis* Recommended Decision at 46; *Glamis* at 262-68.

[29] *Fortis* Final Order at 33 (quoting *Fortis* Recommended Decision at 46).

Commission litigation expenses or awards. As such, it should not be a surprise that the State Department has never sought any form of cost recovery related to a NAFTA Chapter 11 dispute from a state or local agency.[30]

Therefore, even if a foreign investor were to protest a Commission decision, NAFTA does not provide for a means to reverse the decision, and under federal law the Commission cannot be made to share in the litigation costs. Because the Commission's authority would neither be circumvented nor superseded, and the Commission cannot be made to pay for any alleged damages or costs, NAFTA cannot "affect the RCA's ability to regulate AEL&P under Hydro One ownership."[31]

The Applicants note that Alta Gas Ltd, a Canadian corporation, has owned a controlling interest in ENSTAR and APC since 2012 and owns a controlling interest in Cook Inlet Natural Gas Storage Alaska, LLC ("CINGSA"). Those utilities have experienced adverse determinations by the Commission, including in the CINGSA found gas case (Docket U-15-016). In that docket, the Commission, among other things, denied CINGSA's request to retain 100% of the proceeds of a proposed sale of a certain quantity "found native gas," and instead required CINGSA to transfer 87% of any such proceeds for the benefit of its firm storage service customers.[32] CINGSA appealed that decision to the Alaska Superior Court arguing, among other things, that the Commission *lacked statutory authority* to preclude CINGSA from

[30] *See supra* n.27.

[31] Margo Waring Comment, U-17-085 (Nov. 6, 2017).

[32] Order No. U-15-016(14) (Dec. 4, 2015) at 35-36.

retaining all of the proceeds and that the Commission's order was an *unconstitutional "taking."*[33] The Court affirmed the Commission's decision,[34] and CINGSA did not appeal the Court's order further. Given the significant dollar amount at issue for CINGSA (and its ultimate parent Alta Gas Ltd), and CINGSA's belief that the Commission had exceeded its statutory authority and violated the Alaska and United States Constitutions, one would think that Alta Gas Ltd would have pursued a NAFTA Chapter 11 claim if it were a viable means of restricting the Commission's jurisdiction over CINGSA's disposition of found native gas. Alta Gas Ltd and CINGSA did not pursue any such claim and, in fact, never mentioned it as a possible option in Docket U-15-016 or the subsequent appeal. That is further, practical support for the conclusion that granting the Application in this docket will not subject the Commission to any credible risk of "losing jurisdiction" over AELP or SEC.

For all of the foregoing reasons, and others addressed more fully in the authorities cited in this section, the Commission should disregard the incorrect claims that NAFTA poses a risk to the Commission's authority and certainly should not rely on any such claim of risk as justifying denial of Hydro One's acquisition of a controlling interest in AELP.

VII. THE PROPOSED CONDITIONS ON APPROVAL ARE BEYOND THE PROPER SCOPE OF THIS CONTROLLING INTEREST DOCKET AND ARE NOT NECESSARY FOR THE PROPOSED TRANSACTION TO BE CONSISTENT WITH THE PUBLIC INTEREST.

Some of the commenters propose that if the Application is granted, various conditions should be imposed on that approval in order to "protect the public interest." Some

[33] *See* Decision and Order, Alaska Superior Court Case No. 3AN-16-04024CI (Aug. 17, 2017) ("CINGSA Appeal Order") at 1.

[34] *Id*.

commenters appear to believe that any change to AELP's operations that they view as "in the public interest" are legitimate potential conditions on approval of the Application. That is not the case. Any conditions on approval of the Application must be related to the impacts of the proposed transaction (Hydro One's acquisition of the stock of Avista).[35]

In light of the foregoing, none of the proposed conditions are substantively related to the proposed transaction, all are clearly beyond the proper scope of this docket and this Commission's standard of approval for a parent-level controlling interest application, and all would discriminatorily impose requirements on AELP and the Applicants that do not apply to any other certificated Alaska electric utility. None of the proposed conditions are necessary for the proposed transaction to be consistent with the public interest.

A. SEC's Snettisham Purchase Option.

Several commenters propose that the Commission require that AELP's unregulated affiliate SEC "divest" itself of its rights under the Snettisham Option Agreement[36] as a condition on Hydro One obtaining ownership of Avista's stock.[37] The Applicants addressed

[35] For example, if a commenter believed that imposing retail electric competition ("retail wheeling") in Juneau would be in the "public interest," that commenter might propose that as a condition on approval of a controlling interest application. However, the Commission would not likely impose such a condition, because it is completely unrelated to the proposed transaction that is before it. Instead, the Commission might advise such a commenter that the proper procedure for addressing an issue like retail competition would be to file a petition for rulemaking or seek necessary statutory amendments.

[36] Snettisham Option Agreement, dated August 18, 1998, attached as Exhibit 3. This is the version of the agreement that was recorded in the Juneau Recording District. The order of the exhibits in the recorded agreement is different from that shown in the Snettisham Option Agreement that is Exhibit D to the Commission-stamped Snettisham PSA, as the latter had mislabeled Exhibits A and B. However, the text of both agreements is identical.

[37] *See*, *e.g.*, JHI Comments at 10-14. At page 11, n.36 of its comments, JHI cites Bench Order No. 1 in Dockets U-83-055/U-83-076, regarding Pacific Telecom, Inc.'s acquisition of Multivisions, Ltd., as precedent for ordering divestiture as a condition of an acquisition. That order is easily distinguishable from the circumstances in this docket. First, the divestiture in the

that proposed condition in their December 11, 2017, joint reply to the comments filed by Congressman Young's office.

Below, the Applicants elaborate on the Snettisham purchase option and why there is no credible justification for requiring divestiture of that option as a condition of approval of the Application. As will be explained: (1) the proposed transaction will not in any way alter the ownership, operation, maintenance, or ratemaking treatment of Snettisham or the parties to the Snettisham Option Agreement; (2) the potential future transfer of Snettisham from the Alaska Industrial and Export Authority ("AIDEA") to a non-governmental entity (such as SEC or AELP) was contemplated in the 1995 federal legislation authorizing the sale of Snettisham to AIDEA, the AIDEA Snettisham Power Revenue Bond Resolution,[38] the Commission-approved Snettisham Power Sales Agreement[39] ("Snettisham PSA") and AIDEA CPCN, and the 1998 "CBJ/AELP Right of First Refusal Agreement"[40]; (3) stated concerns about possible future rate increases from Hydro One selling, "collateralizing," or "monetizing" Snettisham, or "cashing in" Snettisham's "equity," do not withstand scrutiny; and (4) Alaska statute and a prior Commission order regarding the rate treatment of Snettisham costs preclude the possibility that a future exercise of the Snettisham purchase option will adversely affect Juneau customers.

Pacific Telecom case was based on a stated concern about anticompetitive impacts in the Alaska telecommunications market. Second, the Commission did not order a divestiture as a condition of approval. Instead, the divestiture was agreed to by the parties in a stipulation in order to expedite the proceeding, and the Commission approved the transaction and the stipulation.

[38] The provisions in the bond resolution are part of the underlying security that the bondholders acquired when they bought the bonds.

[39] Agreement for the Sale and Purchase of the Electric Capability of the Snettisham Hydroelectric Project, effective August 18, 1998, approved in Order No. U-97-245(1) (Jun. 24, 1998).

[40] Agreement Between the City and Borough of Juneau and Alaska Electric Light and Power, dated March 16, 1998, attached as Exhibit 4.

1. Background on Snettisham, the Snettisham Option Agreement, and the CBJ/AELP Right of First Refusal Agreement.

Snettisham consists of a 73 MW hydroelectric power plant located approximately 30 miles south of Juneau, approximately 44 miles of transmission lines, and related substation and other facilities. Snettisham supplies approximately two-thirds of AELP's energy requirements. Snettisham was owned by the federal government until 1998, when the project was purchased from the federal Alaska Power Administration ("APA") by AIDEA.

AIDEA's purchase of Snettisham was financed with the proceeds of tax-exempt revenue bonds issued by AIDEA, with payment on those bonds secured by the revenues of the Commission-approved Snettisham PSA between AIDEA and AELP.[41] Under the PSA, AELP is obligated and entitled to purchase the entire generation and transmission capability of Snettisham on a "take-or-pay" basis.[42] Snettisham was refinanced in 2015, with AIDEA's issuance of approximately $66 million in bonds. The bonds were refinanced in order to lower the interest rate and benefit AELP customers. As of year-end 2017, the bonds outstanding are $59,745,000 and are scheduled to be paid off in 2034.

AELP is obligated to pay all principal, interest, and other costs associated with the Snettisham bonds.[43] In addition, AELP is obligated to operate and maintain Snettisham, pay all operating and capital costs associated with Snettisham, fund the Snettisham repair and replacement ("R&R") reserve, and reimburse all of AIDEA's Snettisham-related administrative

[41] Order No. U-97-245(1) (Jun. 24, 1998), Appendix at 3.

[42] *Id.*, Appendix at 2.

[43] *Id*.

costs.[44] AIDEA holds CPCN No. 549 to provide wholesale electric service from Snettisham to AELP under the PSA.[45] Because AIDEA is a certificated public utility, any disposition of Snettisham is subject to prior review by the Commission.[46] The proposed transaction will not alter any of these arrangements and obligations.

Prior to AIDEA's acquisition of Snettisham, AELP purchased Snettisham power from the APA on a "take-and-pay" $/kWh basis, which meant if and when Snettisham power was not available for use by AELP, AELP was not required to pay APA. In order to provide adequate security for the bonds used to finance AIDEA's acquisition of Snettisham, the AIDEA/AELP Snettisham PSA had to be a "take-or-pay" agreement. This means that AELP is required to pay all of the Snettisham debt service and project costs, including AIDEA's administrative costs, and operate and maintain the Snettisham facilities, regardless of whether and how much Snettisham output is available for use by AELP. Because of the take-or-pay, operation and maintenance, and administrative cost obligations, AELP is considered the "tax owner" of Snettisham for federal income tax purposes and had to account for the Snettisham assets and bond obligations as an asset and liability on AELP's balance sheet.[47] Thus, as was

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[44] *Id*.

[45] *See* Order No. U-98-021(1) (Jul. 16, 1998).

[46] *Id*. at 3. While AIDEA is not subject to economic regulation by the Commission due to its status as a political subdivision, it is subject to Commission authority under AS 42.05.221 — 42.05.281 regarding its CPCN and authorization and obligation to provide public utility service. *See* AS 42.05.711(b).

[47] *See* Order No. U-97-245(1), Appendix at 12. Being the "tax owner" means that AELP is not allowed to deduct certain expenses for income tax purposes, such as amounts paid for bond principal payments and annual contributions to the Snettisham R&R reserve.

stated in the order approving the Snettisham PSA, "for tax and accounting purposes, AEL&P is purchasing Snettisham,"[48] and AIDEA's legal title to Snettisham was largely to facilitate cost-effective revenue bond financing secured solely by the PSA and the Snettisham assets.

The take-or-pay and operation and maintenance obligations AELP had to assume were the primary reason AELP wanted, and AELP and AIDEA negotiated, the Snettisham Option Agreement. Under the Snettisham Option Agreement, at any time after the first five years of the term of the Snettisham PSA (i.e., at any time after August 18, 2003) and until the end of the PSA's term (December 31, 2038[49]), SEC[50] has the option to purchase Snettisham from AIDEA, subject to certain conditions in the Option Agreement and the AIDEA Snettisham Power Revenue Bond Resolution.[51] The purchase price is generally the outstanding principal and unpaid interest of the Snettisham bonds, which can be paid by SEC either assuming the outstanding bond debt or arranging for advance defeasance of the outstanding bond debt.[52] If SEC acquires Snettisham pursuant to the Snettisham Option Agreement during the term of the PSA, the PSA and all of its rates, terms, and conditions, continues in effect, with SEC assuming

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[48] *See id.*

[49] If on December 31, 2038, there are no Snettisham bonds outstanding and AIDEA still owns Snettisham, AELP has the option to extend the term of the PSA to December 31, 2048. *See* Snettisham PSA § 2(c).

[50] Originally, AELP was intended to own the Snettisham purchase option, but in order for AIDEA's Snettisham bonds to be marketable, the purchase option had to be held by a "bankruptcy-remote" affiliate of AELP, rather than AELP itself, while the bonds remain outstanding. SEC was formed by AERC to hold the purchase option. Order No. U-97-245(1), Appendix at 5. Once all of the Snettisham bonds are paid off, AELP could acquire direct ownership of Snettisham from SEC.

[51] *See* Snettisham Option Agreement §§ 1(a); 2.

[52] *See id.* at § 1(b)-(d).

all of AIDEA's obligations and "stepping into the shoes" of AIDEA as the power seller.[53] SEC's acquisition of Snettisham would require prior approval by the Commission of the transfer of AIDEA's CPCN and assignment of the PSA to SEC.[54]

If SEC does not exercise the purchase option by the end of the PSA term, AIDEA has no obligation to transfer ownership of Snettisham to any entity, and AIDEA and AELP will have to negotiate a new PSA, which will be subject to prior Commission approval. The Snettisham Option Agreement is not assignable by SEC "to any other person or entity."[55]

Thus, the Snettisham Option Agreement allows SEC to acquire Snettisham from AIDEA prior to the Snettisham bonds being paid off, or after the bonds have been paid off, throughout the term of the PSA. AELP wanted to have that option in the event that AIDEA ownership of Snettisham became more costly to AELP customers than would be the case with SEC or AELP owning Snettisham.

For example, if there were ever a change in federal income tax law that made complete ownership of Snettisham by SEC or AELP less expensive from a tax perspective than being deemed the "tax owner," exercising the option might reduce the annual cost of Snettisham power for AELP's customers. In addition, there was a concern that in future years, AIDEA might attempt to extract greater compensation from AELP through the AIDEA "administrative

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[53] *See* Snettisham PSA § 14(b)(iii).

[54] *See* AS 42.05.221 (requiring a CPCN to provide electric utility service for compensation); AS 42.05.281 (requiring prior Commission approval to transfer a CPCN); AS 42.05.431(b) (requiring advance Commission approval of a "wholesale power agreement between public utilities").

[55] *See id.* at § 4.

cost" reimbursement obligation in the Snettisham PSA. For example, one concern at the time was that after the bonds are paid off, and the annual amounts that AELP and its customers pay for Snettisham power would decrease significantly because the debt service obligation would cease, there might be an incentive at that time for AIDEA to attempt to extract more administrative cost reimbursement as "compensation" for AIDEA's ownership of Snettisham, or at least there could be the risk of a costly dispute with AIDEA about such matters. Moreover, after the PSA expires, AIDEA, as a political subdivision of the State that is exempt from economic regulation pursuant to AS 42.05.711(b), could attempt to substantially increase the compensation to be paid by AELP (and its customers) for Snettisham power.[56]

Any of the potential situations discussed above could place AELP and its customers at risk of higher costs for Snettisham power in the future. The Snettisham Option Agreement provided, and still provides, AELP with options and bargaining power in the event that the cost of Snettisham power to AELP's customers could be reduced by exercising the option.

[56] In this regard, it should be noted that, if implemented, past and current proposals for ownership of Snettisham to be restricted to State or CBJ ownership could be precisely the most harmful outcome for AELP customers after the expiration of the Snettisham PSA. As political subdivisions, which are exempt from Commission economic regulation under AS 42.05.711(b), AIDEA and the CBJ would not be directly subject to Commission regulation of the wholesale rates charged to AELP (and AELP's customers). By contrast, non-governmental entities such as SEC or AELP have no statutory exemption from Commission economic regulation and, in the absence of a PSA, would be required to obtain prior Commission review and approval of cost-based rates to be charged for Snettisham power.

Since August 18, 2003, SEC could have at any time exercised the Snettisham purchase option. SEC has not done so because under current circumstances, costs to AELP customers would increase. The primary reasons for this are that if SEC acquired Snettisham, it would have to obtain a hydropower license from the FERC, pay certain fees to the United States Forest Service ("USFS"), and pay CBJ property taxes. Under AIDEA ownership, Snettisham is exempt from these requirements and costs. Accordingly, the Snettisham purchase option provides AELP with an opportunity to minimize the cost of Snettisham power for its customers if circumstances arise that make ownership a lower net cost option. However, currently, the added cost for AELP, and thus its customers, of exercising the purchase option would outweigh any benefits. The proposed condition that SEC divest its rights under the Snettisham Option Agreement would harm AELP customers by terminating SEC and AELP's ability to seize upon a future opportunity to reduce the cost of Snettisham power for its customers.

If SEC ever acquires Snettisham from AIDEA, it would not be able to subsequently sell Snettisham to AELP until all of the Snettisham bonds are paid off. Further, SEC's ability to sell Snettisham to an unaffiliated third party is limited by the 1998 CBJ/AELP Right of First Refusal Agreement. That agreement was filed in the docket in which the Commission approved the Snettisham PSA (Docket U-97-245) and provided that the CBJ would promptly express its support for approval of the PSA[57] (which included the Snettisham Option Agreement as Exhibit D to the PSA). In that docket, the initial filing included a unanimously

[57] CBJ/AELP Right of First Refusal Agreement at B.1.

approved resolution from the CBJ supporting the Snettisham transaction.[58] Section B.4 of the CBJ/AELP Right of First Refusal Agreement provides that if AELP or "an affiliate" (such as SEC), "having acquired Snettisham from AIDEA, ever agrees to sell Snettisham to any unaffiliated third party, then the CBJ shall have a right of first refusal to purchase Snettisham instead, under the same terms and conditions (including any assumption of risks and any refunding of outstanding debts agreed to by such third party,") subject to certain conditions. In addition, Section B.3 provides that if AELP or an affiliate (such as SEC) acquires Snettisham from AIDEA, neither of them "will thereafter sell Snettisham to any unaffiliated third party unless that third party . . . agrees to dedicate Snettisham power to meet ratepayer loads within the CBJ."

JHI asserts that the limitations the CBJ negotiated in the CBJ/AELP Right of First Refusal Agreement are illusory because the CBJ would not be able to obtain financing or make such a major financial commitment to acquire Snettisham within 90 days.[59] JHI has mischaracterized the timelines that apply to the CBJ's right of first refusal. Under Section B.4 of the agreement, the CBJ has to offer to purchase Snettisham within 90 days under the same terms and conditions agreed to by a third party, but it provides the CBJ with *18 months* to complete the purchase (unless the parties agree to extend those timelines). The CBJ negotiated those timelines and presumably knows better than JHI whether they are sufficient for the CBJ.

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[58] *See* Order No. U-97-245(1), Appendix at 5.

[59] JHI Comments at 14.

2. The proposed transaction will not in any way alter the ownership, operation, maintenance, or ratemaking treatment of Snettisham or the parties to the Snettisham Option Agreement.

None of the commenters identify how the proposed transaction would change the *status quo* with respect to any aspect of Snettisham ownership, operation, maintenance, or ratemaking. Instead, some commenters obfuscate the issue by asserting or implying that the proposed transaction will allow Hydro One or a "foreign government" to acquire Snettisham. That is simply not true. In addition, some commenters simply *speculate* that Hydro One might unilaterally compel Avista to compel AERC to compel SEC to imprudently exercise the Snettisham purchase option, somehow obtain prior Commission approval to do so, and then somehow escalate the cost basis of Snettisham that is included in the costs recovered from Juneau customers through the Commission-approved PSA and Commission-approved AELP rates. To the contrary, Hydro One would not, and practically could not, do any such thing.

Apart from the baseless speculation of some commenters, the salient fact is that *nothing* with respect to Snettisham will change as a result of the proposed transaction. AIDEA will continue to own Snettisham as a certificated wholesale electric utility and will continue to meet its obligations to AELP and AELP customers under the Snettisham PSA. AELP, not Hydro One, Avista, AERC, or SEC, will continue to effectively and efficiently operate and maintain Snettisham, continue to meet its obligations under the PSA and other related Snettisham agreements, and continue to recover the Snettisham costs that it incurs through regulated rates that are subject to Commission review and approval. As it has since 2003, SEC will continue to hold the Snettisham purchase option under the Snettisham Option Agreement and will not exercise that option unless and until circumstances change in such a way that SEC or AELP

ownership of Snettisham would reduce total nets costs for AELP customers and the Commission preapproves the transfer of Snettisham ownership to SEC or AELP.

3. The potential future transfer of Snettisham from AIDEA to a non-governmental entity (such as SEC or AELP) was contemplated in the 1995 federal legislation authorizing the sale of Snettisham to AIDEA, the AIDEA Snettisham Power Revenue Bond Resolution, the Commission-approved Snettisham PSA and AIDEA CPCN, and the CBJ/AELP Right of First Refusal Agreement.

Some commenters assert that SEC's Snettisham purchase option is contrary to the intent of the federal law that authorized the sale of Snettisham to AIDEA.[60] These commenters appear to believe that the federal law limited AIDEA to transferring Snettisham only to another state or local governmental entity. To the contrary, the federal law that authorized the sale of Snettisham from APA to AIDEA, specifically addressed "subsequent transfers" of Snettisham "to any other person."[61]

In addition, the Snettisham Option Agreement was expressly accounted for in the AIDEA Snettisham Power Revenue Bond Resolution. For example, Section 7.7.3(a) of AIDEA Snettisham Power Revenue Bond Resolution No. G98-09 (Jul. 22, 1998) states: "The Authority [(AIDEA)] may sell the Project [(Snettisham)] to the Project Purchaser [(SEC)] in the manner contemplated by and subject to the terms and conditions of the [Snettisham] Option Agreement, and subject to the following additional terms and conditions . . . ." None of the commenters

[60] *See*, *e.g.*, JHI Comments at 10-11; Comments of Robert Allen Woolf (Dec. 19, 2017) at 1, 5-6.

[61] Pub. L. 105-58, Title I (Alaska Power Administration Asset Sale and Termination Act), § 104(b) (Nov. 28, 1995). That subsection provided that the exemption of Snettisham from FERC hydropower licensing requirements (provided in 104(a)) would not apply to any portion of Snettisham that was subsequently transferred from AIDEA to "any other person."

acknowledge this fact or address the significance of proposing that the Commission require the divestiture of a Snettisham purchase option that is expressly provided for in the Snettisham bond resolution and is an integral part of bondholders' security.

Moreover, the Snettisham Option Agreement and SEC's purchase option were transparently presented and explained by AELP in Docket U-97-245 (approving the Snettisham PSA) and reviewed by the Commission in that docket and in Docket U-98-021 (granting AIDEA a CPCN for Snettisham). As noted earlier, the Snettisham Option Agreement is an integral part of the Snettisham PSA (Exhibit D to the PSA), which the Commission reviewed and approved in Order No. U-97-245(1). The Staff Report that the Commission adopted as its findings of fact and conclusions of law[62] expressly referenced and explained the Snettisham Option Agreement and SEC's purchase option under that agreement.[63] Similarly, Order No. U-98-021(1) expressly addressed AIDEA's potential future transfer of Snettisham to AELP or an AELP affiliate, and the Staff Report that the Commission adopted as its findings of fact and conclusions of law expressly addressed a commenter's concern about the Snettisham Option Agreement.[64]

Finally, the CBJ was well aware of the Snettisham purchase option and that Snettisham could be transferred to AELP or an affiliate (such as SEC) in the future, as it negotiated a right of first refusal for subsequent transfers in the CBJ/AELP Right of First Refusal Agreement. Related to that, the comments of Robert Allen Woolf incorrectly assert that when

[62] *See* Order No. U-97-245(1) at 9 (incorporating Staff's Report—the Appendix to the Order—by reference and adopting it as the Commission's findings of fact and conclusions of law).

[63] Order No. U-97-245(1), Appendix at 5, 12, 14.

[64] Order No. U-98-021(1) at 3, 4 (adopting Staff's Report—the Appendix to the Order—as the Commission's finding of fact and conclusions of law); Order No. U-98-021(1), Appendix at 3-6.

the CBJ's Energy Advisory Committee ("JEAC"), of which Mr. Woolf was a member, reviewed the sale of Snettisham from APA to AIDEA, "there was no intent, ever, to allow Snettisham to be purchased by a private entity."[65] Mr. Woolf also urges the Commission to interview Robert LeResche, former APA Executive Director to determine how the Snettisham purchase option "was added" to the APA/AIDEA sale documents.[66] In response, the Snettisham purchase option was transparently discussed in multiple forums and, as discussed above, expressly provided for in the federal divestiture legislation, the Snettisham PSA, the AIDEA bond resolution, and the CBJ/AELP Right of First Refusal Agreement. More specifically related to Mr. Woolf's comment, and the JEAC, Exhibit 5 is a March 3, 1997, memorandum from Robert LeResche, then a consultant to the John Nuveen & Co. investment banking firm, *to the JEAC* to explain and clarify the Snettisham purchase option and related issues. That memorandum also explained how a future transfer to AELP or an affiliate would not affect the Snettisham PSA.

Based on the foregoing, any claims or insinuations that there was never an intent that ownership of Snettisham could ever be transferred to a private entity like SEC or AELP are simply not supported by the facts. The Snettisham purchase option was well-known, discussed, and negotiated in multiple forums and documents associated with AIDEA's acquisition of Snettisham from APA, and the Snettisham Option Agreement is an integral part of the Snettisham PSA that was reviewed and approved by the Commission.

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[65] Woolf Comments at 1.

[66] *Id.* at 4.

4. Stated concerns about possible future rate increases from Hydro One selling, "collateralizing," or "monetizing" Snettisham, or "cashing in" Snettisham's "equity," do not withstand scrutiny.

JHI and other commenters raise vague, general concerns that the proposed transaction could allow Hydro One to use the Snettisham purchase option for Hydro One's (or "the Canadian provincial government's"[67]) financial gain at the expense of Juneau electric ratepayers. Those comments refer to Hydro One selling, "collateralizing," or "monetizing" Snettisham, or "cashing in" the "equity" in Snettisham. As an initial matter, none of those commenters explain how these concerns arise *as a result of the proposed transaction*. If the stated concerns had any merit, they would apply now under the current ownership of Avista, they would have applied before Avista acquired AERC, and they would have applied when the Snettisham Option Agreement and other Snettisham agreements went into effect in 1998. For this reason alone, there is no justification for requiring SEC to divest itself of the Snettisham purchase option as a condition for approval of the Hydro One/Avista Application in this docket.

More specifically, none of those commenters make any attempt to explain how their concerns about "collateralizing," "monetizing," or "cashing in equity" could actually materialize with respect to a regulated utility asset like Snettisham. These concerns simply do not withstand scrutiny. For example, assume that SEC acquires Snettisham and seeks to sell it to another private entity. Assume further that the CBJ does not exercise its right of first refusal to acquire Snettisham under the terms agreed to by the private entity.

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[67] JHI Comments at 11.

First, the purchaser must assume all of the obligations that AIDEA now has under the Snettisham PSA, which extends until 2038 (or 2048), and related agreements, and be subject to Commission certification and regulation. Regardless of what price the purchaser paid to acquire Snettisham, the purchaser would not be permitted to require AELP to pay more for Snettisham power than is currently required under the Snettisham PSA. That, in and of itself, makes it very unlikely that a purchaser would pay a significant premium, such as the "replacement cost" value referenced in many of the comments. AELP would still be responsible under the Snettisham Operation and Maintenance Agreement to operate and maintain Snettisham. AELP would still be obligated to pay the debt service on any outstanding Snettisham bond debt. The purchaser would not be able to refinance those bonds unless "such refunding or refinancing would reduce [AELP's] cost of Electric Power from the Project."[68] Thus, the stated concerns about "collateralizing" or "monetizing" Snettisham through debt to increase rates are unfounded.

Second, the Snettisham PSA and the costs that AELP incurs under that agreement and collects in customer rates are all subject to the Commission's regulatory and ratemaking authority. If the assumed SEC resale of Snettisham to another private entity would somehow cause customer rates to increase, that would be reviewed and scrutinized before the sale as part of the required preapproval of the transfer of SEC's CPCN to the purchaser.

Third, even after the Snettisham PSA expires (2038 or 2048), the compensation that AELP would pay to the purchaser for Snettisham power would be subject to direct, prior

[68] Snettisham PSA § 5(e).

Commission review and approval (assuming that the purchaser is not a political subdivision of the State and exempt from economic regulation under AS 42.05.711(b)). In addition, as will be explained later, Alaska statute and a prior Commission order limit the cost basis that the purchaser would be permitted to include in rates paid by AELP for Snettisham power. Again, that significantly reduces the possibility that a purchaser would pay to SEC an unreasonably high purchase price, such as replacement cost, for Snettisham. More importantly, even if a purchaser were irrationally willing to pay a huge premium to SEC to acquire Snettisham, the limits on the cost basis that could be included in rates would prevent Juneau ratepayers from paying for that premium in rates.

Based on the foregoing, the stated concerns about the Snettisham purchase option allowing Hydro One to sell, "collateralize," or "monetize" Snettisham, or "cash in" the "equity" in Snettisham at ratepayer expense are unfounded. These types of concerns are never raised in Alaska controlling interest dockets involving certificated and economically regulated electric utilities, precisely because cost-based rate regulation precludes those impacts. That is certainly the case with respect to Snettisham, SEC, AELP, and its customers, regardless of whether Hydro One or current institutional and retail investors own the stock of Avista.

5. Alaska statute and a prior Commission order regarding the rate treatment of Snettisham costs preclude the possibility that a future exercise of the Snettisham purchase option will adversely affect Juneau customers.

If the option to purchase Snettisham from AIDEA were in fact exercised at some point in the future by SEC, the Commission would have ample opportunity to review the transaction and impose any appropriate conditions because AIDEA is a certificated utility. The

Commission could also reject the transfer if it found that the transfer is not consistent with the public interest. In its order granting AIDEA a CPCN for its ownership of Snettisham, the Commission specifically recognized that "[c]ertification of AIDEA will also provide regulatory review of AIDEA's disposition of Snettisham."[69] That order stated that "certificating AIDEA will address the concerns expressed in the comments centering on the sale or disposal of Snettisham by AIDEA. . . . As a certificated utility, in accordance with AS 42.05.281, AIDEA will not be able to transfer the certificate without prior approval of the Commission. This provides the Commission the opportunity to review the transaction to assure that it is in the public interest."[70]

The Commission also required that the value of Snettisham for ratemaking purposes be based on the purchase price AIDEA paid for Snettisham, not the higher net book value, explaining that this ratemaking treatment addresses the concern that "if AIDEA, or AEL&P's affiliate, were to sell the project at a price higher than [AIDEA's original purchase price] but less than the federal government's original cost of the property minus depreciation, the seller would realize a significant gain and the purchaser may be able to use the higher price for rate making purposes."[71] Notably, this special ratemaking treatment imposed by Commission order is an additional restriction on the cost basis for Snettisham ratemaking beyond what is required by AS 42.05.441(b), which requires that rates be set on the lower of acquisition cost or original cost less depreciation to the person first devoting the property to public service.

[69] Order No. U-98-021(1) at 3.

[70] *Id.*, Appendix at 3-4.

[71] *Id.* at 4; *id.*, Appendix at 5-6.

Thus, any concerns regarding the effects of a potential future transfer of Snettisham by AIDEA will be addressed by the Commission if and when such a transfer is proposed in proceedings involving either the transfer of AIDEA's CPCN or AIDEA's discontinuance of wholesale electric service to AELP. The Commission's review of such a transfer would be required regardless of whether the Applicants or some other entity, foreign or domestic, holds a controlling interest in AELP at that time.

Based on all of the foregoing, there is no justifiable reason to condition approval of the Application on SEC divesting its Snettisham purchase option.

B. AELP's Allowed Rate of Return on Equity.

Several comments propose that if the Application is approved, AELP's allowed ROE be limited to the lower allowed ROE used to set rates for Hydro One's electric utility in Ontario. This type of condition would be unprecedented in Alaska and is unjustifiable.

First, no commenter has cited any Commission precedent in which the Commission imposed this type of condition in a controlling interest docket.

Second, as with the other proposed conditions, there is no logical nexus between the proposed ROE condition and any changes to the *status quo* of AELP's operations that would be caused by the proposed transaction.

Third, the Commission adjudicates allowed ROEs based on specific cost of capital principles, practices, and methodologies that it has adopted through prior Commission orders. Those principles, practices, and methodologies may differ significantly from current or future principles, practices, and methodologies used by the OEB for Hydro One's electric utility system.

Fourth, the Commission sets allowed ROEs based on a reasonable estimate of the specific utility's cost of equity capital. That is a very fact-specific inquiry and relies heavily on comparisons with a proxy group of "similar" publicly traded utilities and the unique equity risks of the utility at issue. Simply requiring AELP to use Hydro One's allowed ROE ignores these fundamental aspects of the Commission's cost of capital practices and precedent, particularly given that Hydro One has no generation assets or operations.

A summary of how allowed ROEs are currently set in Ontario will demonstrate the unreasonableness of requiring AELP to use those ROEs when setting AELP rates. In Ontario, the OEB annually determines the regulated ROE that all licensed electricity distributors and transmitters and natural gas distributors can use to determine their revenue requirements. In 2009, the OEB issued a Cost of Capital Report outlining the current methodology used by it to calculate ROE.[72] For 2017, the OEB determined the ROE to be 8.78% for all electricity and natural gas regulated utilities. This approved ROE is based on the Long Term Canada Bond Forecast. Together with the approved values for deemed long-term and short-term debt rates for use in utilities' 2017 cost of service and custom incentive rate-setting applications, the OEB considered the 8.78% ROE and the relationship between these three cost of capital parameters to be reasonable and representative of market conditions at this time.

[72] *See* https://www.oeb.ca/oeb/_Documents/EB-2009-0084/CostofCapital_Report_20091211.pdf.

C. Interconnection Tariff and Agreement; Open Access Transmission Tariff; JHI Comments; and Line Extension "Commitment."

1. Interconnection Tariff and Agreement.

JHI and Lesil McGuire submitted comments that primarily complain that AELP does not have a formal interconnection tariff and completed interconnection agreement in place that apply to JHI and its proposed Sweetheart Lake hydroelectric project. JHI proposes that the Commission condition approval of the Application on AELP first developing, filing, and obtaining Commission approval of a generally applicable tariff for interconnection with IPPs, and AELP "mak[ing] a written submission" of a process and timeline for completing ongoing, interconnection negotiations between AELP and JHI.[73] The Commission should not adopt either of those proposed conditions for the following reasons:

First, no commenter has cited any Commission precedent in which the Commission imposed this type of condition in a controlling interest docket.

Second, the proposed conditions are beyond the scope of the *impacts that the proposed transaction will (or will not) have* on AELP's fitness, willingness, and ability to serve or on the public interest. There is nothing about the proposed transaction itself (Hydro One's acquisition of Avista stock) that in any way relates to AELP's practices, processes, or current negotiations for interconnection with IPPs. JHI and Ms. McGuire unsuccessfully attempt to manufacture a tortured nexus between that discrete AELP interconnection issue and the Commission's review of Hydro One's acquisition of Avista by erroneously claiming that Avista

[73] JHI Comments at 4.

has not "lived-up to the commitments made in the context of [Docket U-13-197]."[74] That claim is false. As the Commission accurately stated in Order No. U-13-197(2), in that docket Avista asserted that "AEL&P will continue operating under the same experienced local management team that is currently in place," and the Commission concluded, "We find that AEL&P and AIDEA are already subject to the existing joint use and interconnection statutes, AS 42.05.311 and AS 42.05.321, regardless of whether AERC or Avista holds a controlling interest in AEL&P."[75] No "commitments" from Docket U-13-197 were broken.

Third, AELP, JHI, and consultants for each party are actively involved in an ongoing, interconnection review process pursuant to a JHI-signed interconnection application, which was submitted to AELP on February 7, 2017.[76] The 15-step process is summarized on the Interconnection Request Flow Chart that is attached as Exhibit 6. AELP and JHI have completed Steps 1 through 7 of that process, including an Interconnection Feasibility Study. The parties last met in person on October 6, 2017, and AELP has been waiting since September 22, 2017, for JHI to provide a signed agreement for a system impact study (Step 8). During this review process, AELP has been acting in good faith, JHI has not expressed the caustic complaints about the process that it recently set forth in its comments, and the parties are proceeding with the interconnection review process. Under these circumstances, that process should be allowed to

[74] Comments of Lesil McGuire (Dec. 21, 2017) at 1.

[75] Order No. U-13-197(2) (May 30, 2014) at 6, 9.

[76] The history of JHI's interconnection and transmission inquiries is discussed in greater detail later in Section VII.C.3.b.

continue without the disruptive interference of the unreasonable conditions proposed by JHI in this docket.

Fourth, JHI's proposed conditions would unreasonably and discriminatorily impose IPP-related interconnection tariff and process filing requirements on AELP that do not apply to any other Alaska electric utilities. AELP is in compliance with its obligations under applicable joint use and interconnection statutes and regulations. There is no justification for discriminatorily imposing additional, more burdensome requirements only on AELP, and certainly not as a condition on approval of a completely unrelated controlling interest Application by Hydro One and Avista.

Neither JHI nor Ms. McGuire credibly argues that Hydro One is not "fit, willing, and able" to own, as an indirect, ultimate parent company, a controlling interest in AELP. Neither JHI nor Ms. McGuire credibly demonstrates that Hydro One's acquisition of a controlling interest is not "consistent with the public interest" or that AELP customers will be negatively impacted by Hydro One's acquisition of Avista. Instead, JHI and Ms. McGuire are inappropriately attempting to use the Commission and this controlling interest docket to unreasonably interfere with ongoing, interconnection review procedures and negotiations between AELP and JHI. The Commission should reject JHI's and Ms. McGuire's proposed interconnection conditions.

2. Open Access Transmission Tariff.

Presumably at the urging of JHI, several commenters propose that as a condition of approval of the Hydro One/Avista Application, AELP be required to file a FERC-compliant OATT applicable to potential IPPs like JHI. This type of condition would be

unprecedented for an Alaska controlling interest transfer application and is unjustifiable in this docket.

First, no commenter has cited any Commission precedent in which the Commission imposed this type of condition in a controlling interest docket.

Second, as with the other proposed conditions, this proposed condition is beyond the scope of this controlling interest docket. There is no logical nexus between the proposed condition and any changes to the *status quo* of AELP's operations that would be caused by the proposed transaction.

Third, the proposed condition would unreasonably and discriminatorily impose on AELP mandatory FERC OATT requirements, beyond the current generally applicable joint use requirements of AS 42.05.311 and AS 42.05.321, which do not apply to any other electric utility in Alaska. Whether Alaska should adopt FERC's OATT requirements for Alaska electric utilities is a significant issue of state regulatory policy. If Alaska ever contemplates adopting such requirements, it should be done through a broad public process (such as legislative or rulemaking proceedings) with input and participation from all affected utility and non-utility stakeholders and based on a well-developed record. There is no justification for imposing such requirements, on an *ad hoc* basis, in a controlling interest adjudicatory docket, and in a manner that would discriminatorily impose significant requirements (and costs) on AELP (and its customers) that do not apply to any other electric utility in Alaska.

3. Specific Responses to Other Aspects of JHI's Comments.

Although not directly related to JHI's proposed conditions, there are several inaccurate and misleading statements contained in JHI's comments. To ensure an accurate record, responses to some of the more egregious misstatements are set forth below.

a. Responses to Section II. A. of JHI Comments.

JHI states that both JHI and the Juneau District Heating ("JDH") are supported by the CBJ in part because JHI's operations will further the renewable energy goals established in the "CBJ Renewable Energy Strategy." JHI cites a letter of support from Mary Becker (CBJ Mayor at the time).[77] It should be noted that the "CBJ Renewable Energy Strategy" has not yet been adopted by the CBJ as implied in JHI's comments. It should also be noted that the letter signed by Ms. Becker states "Under JHI's proposal, energy from the Sweetheart Lake hydropower facility would power the seawater heat pumps and the mechanical system for the Juneau heating district." The website for JDH also states "The Sweetheart Lake Hydroelectric Facility will power the Juneau District Heating heat pumps and infrastructure." However, the land purchased by JDH is located within AELP's certificated service area, and AELP has informed JDH that AELP, not JDH, will provide electric service to that site. AELP is the only entity legally authorized to provide retail electric utility service within its certificated service area.

JHI states at lines 17-18 of page 5 that AELP "relies on a mixture of generation sources" and that AELP "does not have sufficient hydro or renewable resources to meet the

[77] JHI Comments at 5 n.12,

electrical demand within the City and Borough of Juneau territorial limits." JHI's statement is incorrect and misleading. First, AELP is fueled 100% by renewable hydroelectricity, except for use of the backup diesel-generating facilities during the following circumstances:

1. Exercising the diesel units to ensure that they are ready in the event of an emergency.

2. Planned outages of the transmission line for maintenance work.

3. Unplanned outages during which hydro energy cannot be delivered to AELP's customers and the customers would otherwise be out of power.

Even if AELP overbuilt its system such that it had a vast surplus of hydro capacity, it would still need to maintain diesel generation for times when available hydro could not be delivered due to transmission or distribution line maintenance or outages. JHI incorrectly implies that having prudent, economic backup diesel facilities means that AELP is not providing renewable energy to the community of Juneau.

Second, AELP has sufficient hydro resources to meet the electrical demand of all of the firm customers within its certificated service area. There is an operating mine within the CBJ, the Kensington mine, which has always generated its own electricity. The Kensington mine is outside of AELP's certificated area. A number of years ago, AELP attempted to partner with the Kensington mine to develop a nearby run of the river hydro resource to partially meet the energy needs of the mine. Kensington declined that offer.

Because the Kensington mine is outside of AELP's service area, AELP is not obligated to serve the mine. Additionally, the Kensington mine is not connected to the Juneau electrical grid. The necessary line extension to connect Kensington to AELP's system has been estimated to cost $31 million dollars, which does not include the additional cost of constructing a

substation that would be required at the mine site.[78] The cost of the transmission line, coupled with (a) the uncertainty that faces any mine regarding the long term duration of its operations, and (b) the low cost of fuel for the mine's own energy production, have convinced AELP that it is not in the best interest of its customers to pursue serving the Kensington mine by constructing assets not otherwise required to meet the needs of AELP's firm customers.

JHI has stated its intent to serve the Kensington mine with energy produced from JHI's proposed Sweetheart Lake hydro project. If JHI can economically provide power to the Kensington mine, then that would be an excellent outcome. However, it is misleading for JHI to imply that AELP is not meeting the needs of customers within its certificated service area simply because AELP is not pursuing connection of the mine. AELP does not want to risk the consequences to its firm customers of building such significant infrastructure for a mine when there is a reasonable risk that the mine will cease operations before the cost of that infrastructure is paid for, thus requiring AELP's firm service customers to bear the rate impacts of such costs.

In its comments at lines 19-20 of page 5, JHI declares that the "Snettisham Hydroelectric Power facility provides part of Juneau's power, and *AELP runs diesel periodically to meet its remaining demand*." (Emphasis added). That statement includes footnote 15, which is a meaningless reference to AIDEA bond documents, noting that Snettisham provides two-thirds of power to the Juneau area. While Snettisham does provide about two-thirds of Juneau's electricity, the other one-third is provided by other, AELP-owned hydroelectric projects**.** It is misleading and incorrect to state that AELP is supplementing Snettisham electricity with diesel

[78] *See* Comments of AELP in Docket U-15-109, page 3.

power in order to meet the needs of Juneau. As stated above, diesel generation is used sparingly, and has not been used to meet base load generation since the Lake Dorothy hydroelectric project came online in 2009. The chart below demonstrates this fact.

Energy Sources (MWh)	2010	2011	2012	2013	2015	2016
AELP Hydro	116,275	124,070	140,866	147,462	151,616	148,837
Diesel	586	3,740	1,039	1,023	481	648
Snettisham Hydro	278,410	257,713	282,736	252,009	270,791	265,892
Total Energy Resources	395,271	385,523	424,641	400,494	422,888	415,377
Diesel Energy as Percent of Total	0.15%	0.97%	0.24%	0.26%	0.11%	0.16%

JHI further misstates, at lines 1 through 7 of page 6, the very nature of AELP's service to its surplus energy customers, commonly called interruptible customers. JHI claims that some large interruptible customers must "install and operate back up diesel generation to cover periods when AELP cuts them off from renewable sources of electricity for any reason. Forcing interruptible customers onto diesel is counter to the emission and renewable energy goals of the Climate Action Plan and the Juneau Renewable Energy Strategy." The very reason that customers agree to purchase surplus energy through interruptible energy contracts is because they have their own, *pre-existing source of energy*, and they willingly allow AELP to suspend delivery of energy at times when hydropower is not available. If not for AELP's provision of interruptible energy, these customers would instead *always* be generating 100% of their energy needs with diesel (or for the small-sized interruptible customers, heating their homes with oil heat).

AELP aggressively pursued interruptible contracts with its two largest interruptible customers, Princess Cruise Lines ("PCL") and the Greens Creek mine. Originally, both customers were 100% fueled with diesel (or other form of hydrocarbon fuel). By selling surplus energy to these existing petroleum-fueled loads, AELP is able to fully load its hydro resources; this arrangement provides a huge benefit to AELP's firm customers in that every dollar paid by an interruptible customer for surplus energy is a dollar that firm customers do not have to pay.

In the case of PCL, the two companies worked together to develop the first location in the world where a cruise ship could rely completely on shore-side power. PCL invested money into infrastructure aboard their ships to allow them to connect to AELP's hydropower-generated system. JHI states that AELP forced the cruise lines to "install and operate back up diesel generation." That is blatantly untrue, as the ships could not even leave port without sufficient on-board generation of their own.

In the case of the Greens Creek mine, the mine operated for many years solely on its own diesel generation. AELP and Greens Creek worked together on an interruptible power sales agreement under which, if the mine is operating and to the extent that surplus energy is available, the mine agrees to purchase that interruptible energy. If surplus energy is not available or is curtailed, then the mine generates its own electricity as necessary.

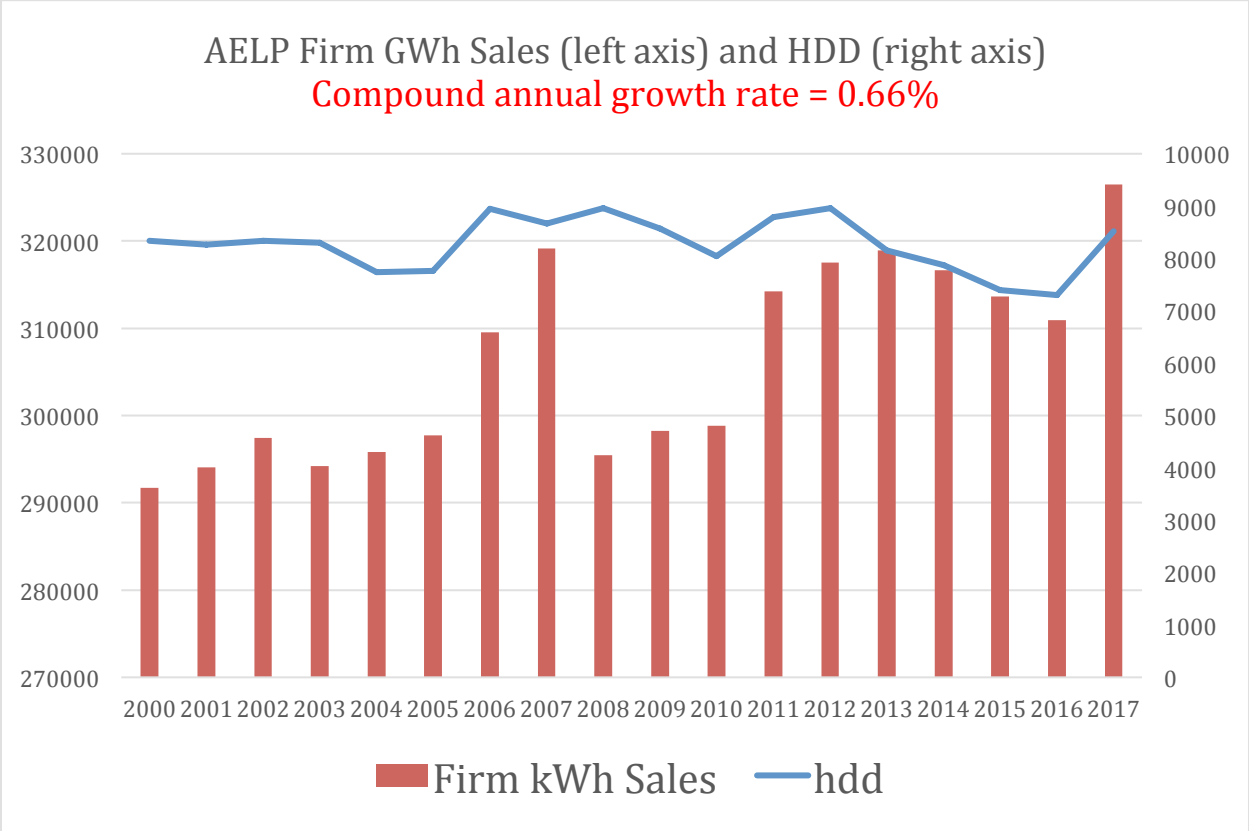
In direct contrast to what JHI has claimed, AELP has worked hard to replace, to the extent possible, the use of diesel energy by its large interruptible customers. This has resulted in an economic benefit for AELP's firm customers by bringing additional revenues into

the system, and an overall environmental benefit by replacing diesel generation with hydro generation.

JHI's comments include the claim at lines 7-8 of page 6 that Juneau's demand for electricity "is projected to increase substantially in the future," and citing the year-to-date increase in AELP's 2017 firm electric sales as compared to 2016. This is an extremely short span of time on which to project future energy needs, and it reflects an abnormally warm base year (2016). It should be noted that heating degree days ("HDDs")[79] in Juneau for the 2017 period cited by JHI were 23% greater than the 2016 period. Notably, JHI's comments in Docket U-17-085 cited the January – August 2017 energy sales increase over the same period in 2016, which at the time was a 6.18% increase (this increase is associated with 2017's HDDs being 28% higher than those in the same period during 2016). The January – November 2017 electric sales increase cited at line 9 of page 6 of the JHI comments in the instant docket is 5.17% as compared to the prior year period; the year-to-date percent increase in firm sales has decreased by over one percentage point just in the time span between the comments filed in U-17-085 and in this docket. HDDs in calendar year 2017 were 2% higher than normal (slightly colder than normal), whereas HDDs in 2016 were 13% lower than normal (much warmer than normal). In fact, 2016 was the warmest year shown in AELP's HDD records, which span back to 1960.

[79] In general, HDDs is a measurement of the sum of the daily variations between the average ambient temperature and 65 degrees Fahrenheit over a period of time. In general, higher HDD reflects colder average temperatures and, in Alaska, usually results in higher electric usage. Lower HDD reflects warmer average temperatures and, in Alaska, usually results in lower electric usage.

JHI may be projecting that demand for electricity in Juneau is going to increase substantially in the future, but AELP is not currently projecting anything of the sort. In fact, the compound annual growth rate for firm sales in Juneau for the period from the year 2000 to 2017 is 0.66% as shown in the graph below:



It is also clear from the graph that it took ten years for firm sales in Juneau to make up the decrease in consumption which followed the 2008 avalanche, and in fact, AELP saw a decrease in firm sales each year during 2014, 2015, and 2016.

The comments of JHI in U-17-085 (lines 8-9 on page 6) include the statement that "Juneau's EV and commercial and residential heat pump growth will put further pressure on

AELP's limited renewable energy sources." AELP does expect some load growth in these areas. However, firm load growth from heat pumps is substantially moderated due to the combination of frequently high costs to convert and the low cost of fuel oil. Electric vehicles use relatively little electricity and can charge in a manner that does not place an undue burden on Juneau's electric system; therefore AELP hopes to see more electric vehicle adoption. AELP's effective planning and implementation of innovative programs provides it with tools to manage growth. In the foreseeable future, the firm load growth that AELP experiences will be served by curtailing interruptible energy sales until it becomes economically prudent to build an additional increment of hydroelectric generation. AELP has identified several potential hydroelectric projects that could be constructed for a lower cost per kilowatt-hour than JHI's proposed Sweetheart Lake project.

b. Responses to Section II. B. of JHI's Comments.

JHI states, at footnote 19 of page 7, that it first submitted an interconnection request on October 17, 2012. JHI implies that it made the interconnection request to AELP. However, JHI's interconnection request was submitted to AIDEA, not to AELP. In its reply to JHI, AIDEA described the contractual agreement between AIDEA and AELP and said that JHI's request for interconnection and transmission services would need to be addressed by both AELP and AIDEA. AIDEA stated that it did not object to JHI communicating directly with AELP regarding interconnection and transmission issues involving the Snettisham transmission infrastructure.

In June 2013, JHI sent another letter to AIDEA, requesting a follow-up to JHI's 2012 letter to AIDEA. AIDEA reiterated that JHI should contact AELP directly to discuss any interconnection with the Snettisham transmission line.

JHI did not submit a written interconnection request to AELP until October 19, 2016. That request did not provide sufficient information regarding technical aspects of the interconnection. On December 11, 2016, AELP provided to JHI the form which would provide necessary information, and also provided the interconnection review process flow chart discussed earlier. JHI returned the signed application, along with the process flow chart, to AELP on February 7, 2017. Since then, AELP has been actively working with JHI to proceed through the interconnection steps.

In the time period between JHI sending the interconnection request to AIDEA in 2012 and submitting an interconnection request to AELP in late 2016, JHI requested from AELP and received:

1. technical specifications on the Snettisham transmission line and AELP's own transmission lines
2. the estimated cost to extend the 69KV transmission line from Lena to Echo Cove
3. estimated transmission and ancillary service charges
4. the placement of conduit in right of way areas under construction, for serving the proposed heating district load within AELP's service area

On page 9 at lines 7-8, JHI falsely asserts that "AELP has never provided JHI a planned interconnection process that it would follow." As noted above, in December of 2016, AELP provided JHI with a flow chart of the process, and since that time has been actively engaged with JHI on that very process.

JHI states that "Avista could easily have given AELP an interconnection tariff from one of its other operating states to adapt and file in Alaska." (Lines 19-21 on page 9.) That is not the case. First, Avista operates its system under different regulatory requirements and vastly different operational circumstances that include substantial access to the North American transmission grid with multiple generators and redundant transmission paths. Second, JHI's proposed project is larger than any of the four hydroelectric generation plants (2 MW, 4 MW, 5 MW, 14 MW) that AELP owns. JHI is requesting to connect its proposed 19.8 MW facility to AELP's electrically-islanded, 80 MW system. To put this into perspective, this is equivalent to Avista connecting a 425 MW facility to its system. Nevertheless, AELP did request and receive from Avista information regarding Avista's interconnection process, and incorporated that information into the process which was provided to JHI in December of 2016 and which is currently being followed.

As required by AS 42.05.311 and AS 42.05.321 (joint use statutes), AELP is willing to allow JHI to interconnect under rates, terms, and conditions that preclude substantial injury to AELP, substantial detriment to AELP's customers, and the creation of safety hazards. AELP is committed to applying the joint use statutes in a fair and nondiscriminatory manner. However, it should be noted that any such commitments will necessarily include the project-specific review process that AELP, JHI, and their respective engineering consultants have been following since February 7, 2017, to ensure that such interconnections do not adversely affect AELP's customers.

Interestingly, JHI states at lines 11-12 of page 10 that if it does not have an interconnection agreement in place within its two-year license term, its FERC license will expire.

In the many correspondence documents and other communication from JHI to AELP, JHI has never stated that it needed an interconnection agreement by September 8, 2018.

4. AELP Line Extension "Commitment."

Again, presumably at the of urging JHI, Echo Ranch Bible Camp ("Echo Ranch") submitted comments on December 12, 2017, and December 28, 2017, implying that it had requested an AELP line extension in 1970 and, "despite commitments and discussions to bring electrical service to our bible camp and North Juneau for decades we are still waiting."[80] The apparent implication, is that over 47 years ago AELP committed to Echo Ranch to extend electric facilities (over 26 miles of transmission facilities and 3 miles of distribution facilities, or over 15 miles of only distribution facilities) to Echo Ranch's camp, but AELP refused to follow through with that promise. Respectfully, that implication is false and misleading.

As background, in 1970, Glacier Highway Electric Association, Inc. ("GHEA") obtained from the Commission an extension of its service area to include an area between Eagle River and Berners Bay, near Juneau.[81] In 1988, 18 years later, the Commission approved a joint application by GHEA and AELP to transfer GHEA's CPCN to AELP as part of a "merger" under which AELP would acquire the assets of GHEA.[82]

Echo Ranch's December 28, 2017, comments quote from the ordering paragraphs of Order No. U-70-004(1) to imply that GHEA had undertaken an *affirmative commitment* to,

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[80] Comments of Echo Ranch Bible Camp (Dec. 12, 2017) at 1; Supplemental Comments of Echo Ranch Bible Camp (Dec. 28, 2017).

[81] Order No. U-70-004(1) (Jul. 24, 1970) at 3-4.

[82] Order No. U-88-026(2) (Nov. 11, 1988) at 3-5, Appendix A at 1.

within two years of that order, extend electric service throughout the extended service area that had been granted in Order No. U-70-004(1),[83] and that that commitment somehow was assumed by AELP 18 years later when it acquired GHEA's utility assets.[84] Echo Ranch then expands the implication by stating, "It does not appear that the conditions set down in U-70-4 were met by GHEA *or AEL&P*."[85] Based on its incomplete presentation of Order No. U-70-004(1), Echo Ranch appears to propose a condition in this docket to the Commission: "The RCA has the authority to remove and remedy the service territory identified in U-70-4 as a condition in the U-17-097 docket and to ensure open access and non-discriminatory tariffs on all current and future transmission lines."[86]

In response, the Applicants provide the following: First, a cursory review of Order No. U-70-004(1) clearly reveals that GHEA did not make any commitments to the Commission, Echo Ranch, or anyone else to extend its facilities throughout the requested service area within two years (or within any other period of time), and AELP certainly did not make any such commitments, given that it did not acquire GHEA's assets until 18 years later in 1988. Instead, it is apparent from the three pages of the body of the order that the services potentially required in GHEA's proposed expanded service area were presented as speculative, and that *the*

[83] According to Echo Ranch, its bible camp is located within that area. Echo Ranch December 28, 2017, Comments at 1.

[84] *Id*. at 1-2.

[85] *Id*. at 1 (emphasis added).

[86] *Id*. at 2.

Commission wanted to be able to "void" the service area expansion if the expected load did not materialize.[87]

A review of those three pages of the body of Order No. U-70-004(1) reveals that GHEA's service area extension was prompted, not by its desire to "reserve" expanded service territory, and certainly not by the Echo Ranch camp's need for electric utility service, but by a proposed $50 million pulp mill "expected to commence [construction] in 1970 or 1971."[88] If the mill became operational, it was expected "to result in the migration of 300 families into the area . . . ."[89] In fact, the Commission stated, "The utility proposes to extend its transmission facilities northwesterly to Echo Cove *for the purpose of providing electric service to the mill site* and to any developments along the way."[90] That pulp mill never materialized.

Contrary to the strained factual presentation and argument of Echo Ranch's comments, there are no unfulfilled AELP line extension commitments to a bible camp that require imposition of "open access and non-discriminatory tariffs on all current and future transmission lines" as a condition on approval of the Application in this docket.[91]

As with any potential customer within its service area, AELP stands ready, willing, and able to extend its certificated, regulated electric utility service to the Echo Ranch bible camp in accordance with AELP's Commission-approved line extension tariff. Based on a

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[87] *See id.*

[88] *See* Order No. U-70-004(1) at 1.

[89] *Id*.

[90] *Id*. (emphasis added).

[91] Echo Ranch December 28, 2017, Comments at 2.

review of its records, AELP is not able to locate any written request for service or for a line extension from Echo Ranch or others within its proximity. It has only found a 2009 e-mail exchange between AELP and an electrician hired by Echo Ranch to find ways to reduce Echo Ranch's energy costs. *See* Exhibit 7.

Based on the foregoing, the comments of Echo Ranch do not credibly support the imposition of any conditions on the approval of the Hydro One/Avista controlling interest Application

D. Integrated Resource Plans.

Several commenters propose that approval of the Hydro One/Avista Application be conditioned on AELP being required to prepare and file for approval formal IRPs. This type of condition would be unprecedented for an Alaska controlling interest transfer application and is unjustifiable in this docket.

First, no commenter has cited any Commission precedent in which the Commission imposed this type of condition in a controlling interest docket.

Second, as with the other proposed conditions, this proposed condition is beyond the scope of this controlling interest docket. There is no logical nexus between the proposed condition and any changes to the *status quo* of AELP's operations that would be caused by the proposed transaction.

Third, the proposed condition would unreasonably and discriminatorily impose on AELP IRP requirements that do not apply to any other electric utility in Alaska. The Applicants recognize that some other jurisdictions have well-developed uniform IRP requirements for electric utilities codified in state statute or regulatory commission regulations. Alaska does not.

Whether Alaska should adopt generally applicable IRP requirements, and precisely what the scope and substance of those requirements should be, are significant issues of state regulatory policy. If Alaska ever contemplates adopting IRP requirements, it should be done through a broad public process (such as legislative or rulemaking proceedings) with input and participation from all affected utility and non-utility stakeholders and based on a well-developed record. While there may be reasonable arguments for some type of IRP requirements in Alaska, there is no justification for imposing undefined IRP requirements, on an *ad hoc* basis, in a controlling interest adjudicatory docket, and in a manner that would discriminatorily impose significant requirements (and costs) on AELP (and its customers) that do not apply to any other electric utility in Alaska.

E. Compliance with the Juneau Renewable Energy Strategy.

Renewable Juneau proposes that approval of the Hydro One/Avista Application be subject to the following condition:

> A strong commitment to Juneau's community values. These include implementing Juneau's Renewable Energy Strategy and supporting seniors and low income households so they will not experience significant rate/fee increases. AELP must devise methods to assist in energy efficiency upgrades and conversion to lower cost heating alternatives.[92]

Many other commenters adopted this and similarly-worded proposed conditions in their comments.

As background, the JRES is a document prepared by the Juneau Commission on Sustainability ("JCOS") that proposes broad long term policy strategies for the CBJ related to

[92] Comments of Renewable Juneau (Dec 21, 2017) at 2.

"energy" use, including the CBJ's own energy efficiency, use of fossil fuels for space heating and transportation in Juneau, and renewable energy. The JRES has not been adopted by the CBJ Assembly, but AELP understands that it is scheduled for Assembly action in the near future. AELP reviewed various drafts of the JRES and provided feedback, criticisms, and suggestions.

Hydro One, Avista, and AELP certainly support renewable energy. AELP has been a leader in supplying 100% of Juneau's electric utility service from hydroelectric resources (other than backup diesel generation) and in encouraging electric vehicle use. As discussed later in this section, AELP will continue to participate in local efforts to cost-effectively increase energy efficiency and reduce reliance on fossil fuels. However, the proposed condition is unprecedented in Commission controlling interest dockets and is unjustifiable in this docket.

First, no commenter has cited any Commission precedent in which the Commission imposed this type of condition in a controlling interest docket.

Second, as with the other proposed conditions, the proposed condition is beyond the scope of this controlling interest docket. There is no logical nexus between the proposed condition and any changes to the *status quo* of AELP's management or operations that would be caused by the proposed transaction. There is nothing about the proposed transaction—Hydro One's acquisition of Avista stock from current institutional and retail investors—that will alter AELP's commitment to renewable energy and environmental goals. Thus, imposing a condition that would require AELP to "implement" or "comply with" broad CBJ energy strategies is not necessary or appropriate for the Application to satisfy the Commission's standard of approval for a controlling interest application.

Although the Applicants strongly oppose the JERS-related conditions proposed, AELP will continue its commitment to cost-effective renewable energy and will work with the CBJ and other stakeholders to fulfill that commitment. AELP supplies Juneau with 100% renewable electricity at a cost that is roughly equal to the national average, while operating a small, remote, isolated electric grid. That has resulted largely from AELP adherence to the following long-held corporate goals:

1. Provide safe and reliable electric service from renewable resources
2. Provide among the lowest average electric rates for regulated utilities within Alaska over the long run while maintaining financial integrity
3. Use electric resources efficiently

AELP recognizes that preserving the integrity of the environment helps maintain a healthy local economy and community. AELP recognizes the merit of efforts to reduce carbon emissions in Juneau. No aspect of the proposed transaction will negatively impact AELP's desire or ability to maintain and improve upon a long track record of responsible investment that balances the need to meet environmental goals with the need to maintain a stable, affordable supply of electricity.

F. Require a $50 Million Bond.

Several commenters propose that approval of the Application be conditioned on Hydro One being required to obtain a $50 million bond "for emergency system repairs."[93] One commenter proposes further that the bond be "supervised by the RCA," that the costs of the bond

[93] *See* Renewable Energy Comments at 2.

be funded solely by Hydro One without any recovery of such costs from AELP electric rates. Again, such a condition would be unprecedented for an Alaska controlling interest transfer application and is completely unjustifiable in this docket.

First, no commenter has cited any Commission precedent in which the Commission imposed this type of condition in a controlling interest docket.

Second, again, the proposed condition is beyond the scope of this controlling interest docket. There is no logical nexus between the proposed condition and any changes to the *status quo* of AELP's operations that would be caused by the proposed transaction. None of the commenters have asserted, let alone proven, that AELP's ability to respond to a need for emergency repairs to the Juneau electric system will be impaired as a result of the proposed transaction substituting Hydro One for the institutional and retail investors as the owner of Avista.

Third, the Commission has not and does not require financially fit, willing, and able certificated electric utilities, and certainly not their ultimate parent companies, to "post a bond" for possible future system repairs. Even if the Commission did require such bonds from certificated electric utilities (which it does not), Hydro One is not seeking a CPCN to provide electric utility service in Juneau and will not own, manage, operate, or maintain any of the electric utility assets used and relied upon by AELP to provide certificated electric utility service. Hydro One is merely proposing to substitute itself for current institutional and retail investors, who have no bonding or financial support obligations regarding AELP, as the owner of Avista's stock. There is no doubt that Hydro One is fit, willing, and able to do that. In fact, although it is not necessary for approval of a controlling interest application, compared to the *status quo*,

adding Hydro One into AELP's upstream ownership structure will certainly *improve* AELP's ability to respond to a significant facility failure. Particularly with respect to unexpected transmission facility failures, adding to its ownership structure a large, well-capitalized electric transmission and distribution utility, with approximately 7,400 regular and non-regular employees (as of December 31, 2017), and experience with remote, northern climate transmission facilities, can only be expected to enhance AELP's ability to respond to facility failures.[94]

After the proposed transaction, AELP (and AIDEA with respect to Snettisham) will continue to be the certificated electric utility in Juneau. For over 125 years, AELP has been fit, willing, and able to provide electric service in Juneau, and AELP is currently fit, willing, and able to manage, operate, and maintain the facilities necessary to provide that service. Nothing about the proposed transaction will negatively impact AELP's ability to continue to provide that service, and none of the commenters have demonstrated any facts or evidence to the contrary.

G. Return of $15 Million to the Denali Commission with the KWETICO Transmission Line between North Douglas Island to Admiralty Island.

In his December 29, 2017, comments, Bradley Fluetsch proposes that approval of the Application be conditioned on AELP returning to the Denali Commission grant funds that were issued in 2004 and 2005 for construction of a transmission line from AELP's facilities on North Douglas Island to the facilities of Hecla Greens Creek Mining Company ("HGCMC") on

[94] *See* Comments of Neil MacKinnon (Dec. 21, 2017) ("When AEL&P was sold to Avista the immediate benefit that I saw was the access to a 'deeper bench' of expertise to help AEL&P meet its mission of providing 'safe and reliable electric power at reasonable rates' to our customers. . . . The merger of Avista with Hydro One is the same thing on a larger scale.")

Admiralty Island. Mr. Fluetsch erroneously claims that "the previous owner cashed in on selling that Denali Commission funded power line" and "it would be a crime to allow that line to be sold to a Canadian government sponsored entity."[95] Mr. Fluetsch's comments are grossly misinformed and his proposed condition is without merit.

First, again, the proposed condition is beyond the scope of this controlling interest docket. There is no logical nexus between the proposed condition and any changes to the *status quo* of AELP's operations that would be caused by the proposed transaction.

Second, the transmission line at issue is owned by Kwaan Electric Transmission Intertie Cooperative, Inc. ("KWETICO"), a certificated and regulated electric transmission cooperative utility. KWETICO's initial and current cooperative members are Inside Passage Electric Cooperative, Inc. ("IPEC") and AELP. The transmission line is *not* owned by AELP, AERC, or Avista.[96]

Third, the Denali Commission grants funded the KWETICO transmission line for the purpose of extending the availability of electricity in Southeast Alaska through the acquisition and construction of electric transmission interties between communities in Southeast Alaska, as was generally envisioned by the Southeast Conference.

Fourth, neither the ownership nor the operation of KWETICO will be affected in any way by the proposed transaction.

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[95] Bradley Fluetsch Comments at 1.

[96] KWETICO and the transmission line are discussed in Docket U-05-100.

For these reasons, the proposed condition should be rejected. Furthermore, for the record, the creation of KWETICO and receipt of Denali Commission grant funds have been a significant financial benefit to AELP's customers, not to AELP. The grant funds reduced the amount of net plant in service included in KWETICO's revenue requirement, which greatly reduced the KWETICO transmission rates that would have otherwise been charged for use of the transmission line. If it had not been for the receipt of Denali Commission grant funds, it is likely that the HGCMC mine would never have been connected to AELP's electric system, which means that AELP ratepayers would not be receiving the direct base rate offset of $8.7 million that HGCMC pays annually toward AELP's revenue requirement, as every dollar that HGCMC pays for interruptible energy purchases from AELP is a dollar that AELP's firm service customers will never have to pay in electric rates. Additionally, every dollar received by AELP from HGCMC in excess of the annual retained amount of $8.7 million is a credit to AELP's cost of power adjustment ("COPA") balancing account, which also flows through as rate reductions for AELP's electric customers in Juneau.

H. Matching Commitments Made in Other Jurisdictions.

Several commenters propose that approval of the Application be conditioned on Hydro One and Avista "matching" with respect to AELP the "55 commitments" they have made in their applications in other jurisdictions. Those 55 commitments were included as Exhibit 9 to the Application in this docket and discussed at pages 24 through 27 of the Application. Again, such a condition would be unprecedented for an Alaska controlling interest transfer application and is unjustifiable in this docket.

First, no commenter has cited any Commission precedent in which the Commission imposed this type of condition in a controlling interest docket.

Second, again, the proposed condition is beyond the scope of this controlling interest docket. The standard of approval for an application for approval to acquire a controlling interest in an Alaska electric utility is whether the utility (AELP) will continue to be fit, willing, and able to provide certificated utility service after the proposed transaction and whether the proposed transaction will impose changes on the *status quo*, which will harm the public interest.[97] There is no logical nexus between that standard and the specific commitments made by Hydro One and Avista in other jurisdictions.

Third, many of the "55 commitments" offered in the applications filed in other jurisdictions were tailored to certain requirements and past practices of the Washington, Oregon, and Idaho utility commissions, relate primarily to the specific relationship between Hydro One and Avista, and are not applicable to the controlling interest requirements of this Commission or to Hydro One and Avista's corporate relationship with AELP under the proposed transaction.

Fourth, notwithstanding the foregoing, the Applicants have already committed, and hereby reaffirm, that as applicable and practicable, the 55 commitments will be honored with respect to AELP's operations in Alaska.[98] In addition, the Applicants have separately, specifically, and expressly committed to the following, which overlap with many of the 55 commitments, and the Applicant's reaffirm these commitments in this reply:

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[97] *See GCI Liberty* at 10-13; *Avista* at 6-9; *Alta Gas* at 13-17.

[98] Application at 25.

1. The proposed transaction will not alter the direct ownership of AELP by AERC or the direct ownership of AERC by Avista, or any aspect of AELP's management, operations, facilities, financing, services, rates, or tariffs.

2. AELP will continue to operate independently from Avista, under the same experienced management team and employees as existed prior to the proposed transaction.

3. AELP employee compensation and benefits levels will be maintained for a period of three years and will not be less favorable than the current compensation and benefits, in the aggregate.

4. AELP will not seek to recover in rates any premium associated with the acquisition of Avista stock, or transaction costs associated with the proposed transaction.

5. The Applicants affirm their commitment to adhere to the affiliated interest transaction cost assignment and allocation methodology that was reviewed in Docket U-13-197.

6. The proposed transaction will not increase AELP rates or revenue requirements.

7. The proposed transaction will not impair the ability of AELP to raise capital or maintain a reasonable capital structure.

8. Avista and the Avista Foundation provide charitable contributions and support for economic development and innovation in AELP's service. Since Avista acquired AERC in 2014, Avista and Avista Foundation have contributed over $224,000 to charitable and economic development causes in Juneau. The overall increase in this type of support provided for Avista and the Avista Foundation in the 55 commitments (see Commitments 11 and 53) will also benefit AELP's customers and the Juneau community.

I. The Applicants and AELP commit to $1 million of rate credits for AELP customers.

The Applicants had not previously proposed to provide a rate credit to AELP customers because the rate credit in other states is based on anticipated cost savings to be realized once Avista ceases to be a standalone public company. In the other states, the Applicants expect to save approximately $1.7 million annually on costs associated with filings required for Avista to be a publicly traded company and other administrative costs. None of the costs that the Applicants will save have ever been passed through to AELP. Accordingly, none of those cost savings will accrue to Alaska. In essence, AELP ratepayers have been getting this savings-based credit all along because the costs at issue have never been charged to AELP ratepayers.

Nevertheless, in light of the concerns raised by some comments and to demonstrate their commitment to the customers of AELP, the Applicants will provide a rate credit to AELP customers. This credit will be in the amount of $1 million over 10 years. This amount roughly approximates the per-customer rate credits that the Applicants have committed to in the other jurisdictions. The Applicants propose that the $1 million AELP rate credit be provided to AELP customers through AELP's quarterly COPA calculation. Specifically, the Applicants propose that AELP's COPA calculation will include a $25,000 credit entry to the COPA balancing account every quarter ($100,000 per year and $1 million over 10 years), beginning with AELP's first COPA filing following Commission approval of the Application and closing of the proposed transaction. With that first COPA filing, AELP will file revisions to its COPA tariff sheets (Rate Schedule 98) reflecting these changes.

VIII. Approval of the Application without any of the commenters proposed conditions is consistent with Commission precedent.

The Applicants are not aware of any prior Commission decision denying a controlling interest application involving a parent-level stock acquisition like that of the proposed transaction, and none of the commenters have cited a prior Commission order denying, or imposing significant substantive conditions on, a controlling interest application under circumstances analogous to those presented by the Hydro One/Avista Application. To the contrary, since 2012, the Commission has approved three controlling interest applications involving parent-level stock acquisitions very similar to that of the proposed transaction, without imposing substantive conditions.

First, in 2012 in *Alta Gas*, the Commission approved Alta Gas Ltd's parent-level acquisition of a controlling interest in ENSTAR and APC.[99] In its order, the Commission's managerial fitness determination stated: "The Applicants' expressed intention is that the Alta Gas acquisition of SEMCO will have no immediate effect on current management at the regulated utilities [ENSTAR and APC] level. The principal officers of Alta Gas appear qualified for their positions, and we find that ENSTAR and APC will continue to be managerially fit to provide service following the transfer."[100] Similarly, the Commission's technical fitness determination stated "the Applicants assert that the management and employees responsible for maintaining and operating the utility systems will remain in place. Based on this assertion, we

[99] *Alta Gas*, Order No. U-12-005(5).

[100] *See id.* at 13.

find that the transaction will not affect the technical fitness of ENSTAR and APC."[101] In determining that the acquisition of controlling interest in ENSTAR and APC was in the public interest, the Commission relied primarily on the fact that the proposed transaction would not adversely impact "the rates paid by customers of ENSTAR and APC," "the current operations of ENSTAR and APC," "overall costs of providing service currently reflected in rates," or the "capital structure of ENSTAR and APC," and that no acquisition adjustment associated with the proposed transaction would be included in ENSTAR or APC rates.[102]

Second, in 2014 in *Avista*, the Commission approved Avista's parent-level acquisition of a controlling interest in AELP under circumstances that are almost identical to the currently proposed transaction.[103] In its order, the Commission's managerial fitness determination concluded: "The Applicants' expressed intention is that the Avista acquisition of AEL&P will have no immediate effect on current management at the regulated utilities level. We rely on the assertion that AEL&P will continue operating under the same experienced local management team that is currently in place. We find that AEL&P will continue to be managerially fit to provide service following the transfer and merger."[104] Similarly, the Commission's technical fitness determination stated "the Applicants assert that the management and employees responsible for maintaining and operating the utility systems will remain in place. Based on this assertion, we find that the transaction will not affect the technical fitness of

[101] *Id.* at 16.

[102] *Id.* at 16-17.

[103] *Avista*, Order No. U-13-197(2).

[104] *Id.* at 6.

AEL&P."[105] In determining that the acquisition of controlling interest in AELP was in the public interest, the Commission relied primarily on the fact that "AEL&P will continue to benefit from long-term and stable ownership by an experienced, vertically-integrated electric utility company [Avista]"; "there will be no interruption in the safe, reliable, and cost effective service now provided to the citizens of Juneau by AEL&P"; and "any premium or transaction costs associated with the proposed transaction will not be included in rates charged to any AEL&P customer."[106]

Third, on November 7, 2017, in *GCI Liberty*, the Commission approved applications for GCI Liberty, Inc., to acquire controlling interests in all of the certificated GCI intrastate telecommunications and cable television utilities.[107] Regarding managerial fitness, the Commission stated:

> The proposed transaction involves only a change in control of the ultimate parent of [the certificated GCI utilities]. Applicants do not propose any changes to facilities or plant in Alaska. They pledge that the proposed transaction will not affect the management, personnel, or equipment used by [the certificated GCI utilities] to provide service. GCI's management team operating [the certificated GCI utilities], who will continue to oversee certificated service after the proposed transaction, has extensive experience operating in accordance with our governing statutes and regulations. We find that the acquisition of control of [the certificated GCI utilities] will result in no change in management and that [the certificated GCI utilities] remain managerially fit to provide public utility service under their certificates.[108]

Regarding technical fitness, the Commission stated:

> On a technical level [the certificated GCI utilities] are successfully

[105] *Id.* at 8.

[106] *Id.* at 8-9.

[107] *GCI Liberty*, Order Nos. U-17-032(2)/ U-17-033(2)/ U-17-035(2)/ U-17-036(2)/ U-17-082(2).

[108] *Id.* at 10.

> operating their facilities and providing safe and reliable service. The proposed transaction apparently will have limited practical effect on the day-to-day operations of the certificated GCI subsidiaries and we have no evidence that the proposed transaction will have a negative effect on the customers and communities they serve.
>
> Acquisition of control of [the certificated GCI utilities] by Applicants will not result in any change in operating personnel, operating procedures, or operating facilities or equipment. We find that [the certificated GCI utilities] remain technically fit to provide public utility service under their certificates.[109]

Regarding financial fitness, the Commission analyzed GCI's financial fitness before and after the proposed transaction. The Commission concluded, "We find that acquisition of the control of [the certificated GCI utilities] by Applicants will not adversely affect the financial fitness of those companies to provide certificated public utility services and, thus, that [the certificated GCI utilities] remain financially fit after the acquisition."[110]

Notably, similar to JHI, AIPPA, and others in the instant docket, two commenters—Alaska Communications and Quintillion Subsea Operation, LLC and Quintillion Networks, LLC ("Quintillion")—filed comments in *GCI Liberty* proposing that the Commission condition approval of the controlling interest application on, among other things, a requirement that GCI Liberty offer *joint use access* to certain GCI *transmission facilities* (the TERRA-SW fiber and microwave network) under rates, terms, and conditions more advantageous to the commenters than existed before the proposed transaction.[111] The Commission properly declined

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[109] *Id.* at 11.

[110] *Id.* at 13.

[111] *See* Comments of Alaska Communications, Docket U-17-032 (Jun. 19, 2017) at 2-5, 20-22; Comments of Quintillion, Docket U-17-032 (Jun. 19, 2017) at 24-26.

to consider those proposed conditions as it found them to be beyond the limited scope of the controlling interest dockets: "We need not and do not address those concerns in these dockets. Silence in this order on the issue should not encourage Applicants or commenters to believe we agree with their position. Simply put, *discussion of the issue is beyond the scope of these dockets*."[112]

Like the controlling interest transactions reviewed in *Alta Gas*, *Avista*, and *GCI Liberty*, the proposed transaction in this docket involves only a change in controlling interest of AELP's ultimate parent company, and the proposed transaction will not negatively impact AELP's management, personnel, operations, facilities, services, rates, or tariffs. Accordingly, approval of the Hydro One/Avista Application without substantive conditions is entirely consistent with the Commission's recent precedent in analogous parent-level controlling interest dockets.

IX. Benefits of Proposed Transaction to AELP Customers.

Without any of the unreasonable conditions on approval suggested in some of the comments, the proposed transaction will benefit AELP customers. Indeed, over time the merger will provide increased opportunities for innovation, research and development, and efficiencies by extending the use of technology, best practices, and business processes over a broader customer base and a broader set of infrastructure between the two companies. The proposed transaction will allow AELP and its customers to benefit from being part of a larger organization

[112] Order Nos. U-17-032(2)/ U-17-033(2)/ U-17-035(2)/ U-17-036(2)/ U-17-082(2) at 14-15 (emphasis added).

(the benefits of scale), while at the same time preserving local control of AELP, its commitment to community involvement, and the retention of AELP's employees and management team, as well as its culture and its way of doing business. In addition, Avista and the Avista Foundation provide charitable contributions and support for economic development and innovation in AELP's service area, and overall increases in that support by Avista will benefit AELP's customers and the Juneau community. Finally, AELP and its customers will benefit from the organizational culture of local control and management and employee retention embodied in the 55 commitments between Hydro One and Avista and in the separate commitments discussed in Section VII.H that expressly apply to AELP's operations.

X. CONCLUSION.

Based on the foregoing, the Application satisfies the Commission's standard for approval of an acquisition of controlling interest. After the proposed transaction, AELP will continue to be fit, willing, and able to provide certificated utility service. In addition, the proposed transaction is consistent with the public interest because it will not adversely affect AELP's management, personnel, operations, facilities, services, rates, or tariffs in any way and over the long term will provide benefits to AELP customers in Juneau. Accordingly, the Applicant's respectfully request that the Application be approved.

RESPECTFULLY SUBMITTED this 5th day of February, 2018.

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Exhibit 1

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

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

(Issued and Effective June 26, 2013)

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STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

At a session of the Public Service Commission held in the City of Albany on June 13, 2013

COMMISSIONERS PRESENT:

Garry A. Brown, Chairman
Patricia L. Acampora
James L. Larocca
Gregg C. Sayre

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

(Issued and Effective June 26, 2013)

BY THE COMMISSION:

INTRODUCTION

By this order, we authorize the acquisition of CH Energy Group Inc. (CHEG), the parent company of Central Hudson Gas & Electric Corporation (Central Hudson), by Fortis Inc. (Fortis). In doing so, we adopt, with modifications, the terms of a Joint Proposal submitted for our consideration on January 28, 2013, by the Department of Public Service trial staff (Staff); Fortis; CHEG; the Utility Intervention Unit of the Department of State (UIU); Multiple Intervenors (MI); and the Counties of Dutchess, Orange and Ulster. Those terms ensure significant, tangible benefits for Central Hudson's customers including $9.25 million in guaranteed rate savings, a $35 million fund to be used for deferral write-offs and/or future rate mitigation, a $5 million Community Benefit Fund for low-

income customer programs and economic development, a rate freeze, and an earnings sharing mechanism more favorable to ratepayers. They also establish comprehensive financial safeguards, corporate governance requirements, service quality and performance mechanisms, and other measures that will minimize any risk associated with the transaction. With certain other requirements we will add to the terms originally proposed, we find that, on balance, the acquisition will provide a significant net public benefit, and will serve the public interest as required by Public Service Law (PSL) §70.

BACKGROUND AND PROCEDURAL HISTORY

On February 20, 2012, CHEG entered into an Agreement and Plan of Merger (Merger Agreement) with Fortis, a Canadian holding company; FortisUS Inc. (FortisUS), a wholly-owned subsidiary of Fortis; and Cascade Acquisition Sub Inc. (Cascade), a wholly-owned subsidiary of FortisUS. Under the terms of the Merger Agreement, CHEG would merge with Cascade, with CHEG as the surviving entity.

Central Hudson, a regulated utility serving about 301,000 electric customers and 75,000 natural gas customers, 85% of them residential, in eight counties in the mid-Hudson region, is a wholly owned subsidiary of CHEG. As a result, consummation of the proposed merger would make Central Hudson an indirect, wholly-owned subsidiary of Fortis.

Under PSL §70, the transfer of ownership of all or any part of the franchise, works or system of any gas or electric corporation is prohibited without the consent of the Commission. That consent may be given only if the Commission determines that the proposed acquisition, with such terms and conditions as the Commission may fix and impose, "is in the public interest." Consequently, on April 20, 2012, Fortis, FortisUS, Cascade, CHEG

and Central Hudson sought such consent by filing the petition that is the subject of this proceeding.

Subsequent to the filing, the matter was assigned to Administrative Law Judges, and a Notice of Proposed Rulemaking was published.[1] On May 16, 2012, the judges conducted an initial procedural conference. Participants at the conference in addition to Petitioners and Staff were UIU, MI, the International Brotherhood of Electrical Workers Local 320 (IBEW Local 320), the Retail Energy Supply Association (RESA), Empire State Development Corporation; and the County of Dutchess. All were admitted as parties to the proceeding, as were Hess Corporation, the County of Orange, the County of Ulster, the Joint Task Force of the Town and Village of Athens (Athens), the Public Utility Law Project of New York, Inc. (PULP), and, as a group, Accent Energy Midwest Gas, LLC, Accent Energy Midwest II, LLC, IGS Energy, Inc., and Interstate Gas Supply, Inc.

Following eight months of litigation, during which testimony was filed by Staff and PULP, and comments were submitted by Athens, Dutchess County, ESD, IBEW Local 320, MI, and UIU, Petitioners filed a notice of settlement negotiations in December 2012. Discussions pursuant to that notice led to the Joint Proposal we are now considering.

In a January 29, 2013, ruling, the judges established a schedule for statements in support of, or opposition to, the Joint Proposal. Statements expressing general support for the Joint Proposal were filed by Petitioners, Staff, MI and UIU. The Counties of Dutchess, Orange, and Ulster expressed support

[1] *New York State Register*, May 23, 2012, p. 15.

limited to specific provisions of the Joint Proposal.[2] Statements opposing adoption of the Joint Proposal in its present form were filed by PULP, RESA, the New York State Energy Marketers Coalition, and IBEW Local 320. Reply statements were filed by Petitioners, Staff, IBEW Local 320, MI, PULP, and RESA.

In their January 29, 2013, ruling, the judges also required that any party advocating an evidentiary hearing on the Joint Proposal must specify in its initial comments a material issue of fact that could not be resolved without the cross-examination of witnesses. No party's initial comments attempted to make such a showing and, accordingly, no evidentiary hearing was held.

On April 24, 2013, the Secretary issued a notice announcing the preparation of a Recommended Decision (RD) and a schedule for the filing of exceptions. The RD was filed by the judges on May 3, 2013. It recommended that the Joint Proposal not be approved and that the petition to authorize the merger transaction be denied. Exceptions to the RD were subsequently

[2] The signatures of the Counties were accompanied by disclaimers stating that they were affixed for the purpose of expressing support for specific provisions of the Joint Proposal, and that the Counties took no position on the balance of the document. In general, the Counties stated support for provisions calling for a rate freeze, the crediting of synergy savings, and the payment of positive benefits including the Community Benefit Fund and write-down of regulatory assets. The Counties participated as parties, and signed the Joint Proposal, through their county executives. Subsequent to execution of the Joint Proposal, the Ulster County legislature, by resolution, and a majority of the members of the Dutchess County legislature, by letter, opposed approval of the proposal, while Orange County Executive Edward Diana submitted comments supporting it fully.

filed by Staff, Petitioners, MI, UIU, PULP, and Citizens for Local Power and the Consortium in Opposition to the Acquisition.[3]

PUBLIC COMMENTS

On February 21, 2013, public statement hearings concerning the Joint Proposal were held in Kingston and Poughkeepsie. Approximately 40 people attended the hearings, 17 of whom provided comments on the record. Commenters included Central Hudson customers from throughout the utility's service territory, as well as New York State Assembly Member Kevin Cahill and Town of Rosendale Council Member Manna Jo Greene.

The original notice of public statement hearings called for all comments to be submitted by March 21, 2013. After receiving numerous requests for additional time from public officials and others, the Secretary extended the deadline through May 1, 2013. During the extension period, additional public statement hearings were held on April 17, 2013, in Poughkeepsie and April 18, 2013, in Kingston. Approximately 130 people attended the hearings and 47 provided comments. Speakers included Assembly Member Frank Skartados, Dutchess County Legislators Richard Perkins and Joel Tyner, Rosendale Council Member Greene, Rosendale Supervisor Jeanne Walsh, Woodstock Town Council Member Jay Wenk, and a representative from the office of State Senator Cecilia Tkaczyk. All speakers at all of the public statement hearings opposed the merger. Through June 12, 2013, over 500 comments opposing the merger were received by the Commission by mail, e-mail, telephone, and posting to the Commission's website. In addition, 913 individuals had signed a

[3] These last two parties were admitted on May 1, 2013. Although some members of the groups had previously submitted comments, the organizations themselves had not participated in the proceeding prior to their admission. These parties have participated jointly in the proceeding and are referred to herein as CLP/COA.

petition posted on the SignOn.org website expressing opposition to the merger.[4]

Commenters opposed to the merger included Senator Tkaczyk and Senator Terry Gipson; Assembly Members Cahill, Didi Barrett, and James Skoufis; City of Beacon Mayor Randy Casale; Town of Woodstock Supervisor Jeremy Wilber; 13 members of the Dutchess County Legislature, by joint letter; Dutchess County Legislature Assistant Majority Leader Angela Flesland, individually; and former Member of Congress Maurice D. Hinchey. All of these past and present public officials urged the Commission to disapprove the proposed merger transaction, as did resolutions adopted by the Ulster County Legislature; the City of Newburgh; the Towns of Esopus, Marbletown, Newburgh, New Paltz, Olive, Rosendale, and Woodstock; the Village of Red Hook, and the Rosendale Environmental Commission. The Economic Development Committee of the Town of Red Hook also opposed the merger, as did AARP, the Sierra Club, the Dutchess County Central Labor Council, and the Hudson Valley Area Labor Federation.

Opponents of the merger expressed varying degrees of concern about the potential for long-run negative consequences not only for Central Hudson ratepayers, but also for the economic well-being of the utility's Mid-Hudson service territory if the transaction were consummated. The themes evoked most frequently in the comments derived from the perception that the transaction would replace a well-regarded, highly capable and locally engaged utility with a foreign entity of unproven quality having no inherent ties to the service

[4] The SignOn.Org website allows petition signers to cause e-mails to be sent to the Secretary memorializing their signatures, and many individuals availed themselves of that option. The numbers cited above do not include those e-mails.

territory and financial objectives that may conflict with the interests of ratepayers.

This perceived potential for a divergence of interests between a distant holding company and the local community served by its utility subsidiary was a source of concern for nearly all of the commenters, many of whom expressed a general uneasiness with the prospect of foreign ownership of critical infrastructure necessary to provide essential electric and gas services. Some saw this as a continuation of a disturbing trend toward more and more foreign ownership of U.S. businesses, and expressed concern that domestic control over vital industries was being lost.

Others had more specific concerns. Many commenters described Central Hudson as having been very proactive in promoting energy efficiency and renewable energy. They suggested that there was no language in the Joint Proposal that would ensure a comparable environmental responsiveness from the merged companies. In a similar vein, many commenters noted Central Hudson's record of community involvement and support for local economic development. They questioned whether that level of commitment would extend beyond the funding expressly provided in the Joint Proposal, which they characterized as a purely short-term benefit.

For other commenters, the issue was primarily economic. They viewed the putative financial benefits of the Joint Proposal for ratepayers as meager and transitory, while the financial risks would be substantial and persistent. Assembly Member Cahill, for example, argued that the proposed merger transaction makes no financial sense. Fortis, he suggested, could not make a profit and still maintain current levels of service for Central Hudson ratepayers. Ultimately, he contended, customers would be forced to provide that profit

through either increased rates or decreased service reliability and safety.

Following issuance of the notice announcing the preparation of an RD, and before the RD itself was issued, we began to receive comments supporting the merger. The first such comment, posted on April 24, came from Charles S. North, President and CEO of the Dutchess County Regional Chamber of Commerce. Mr. North stated that after meeting with Central Hudson officials and learning the facts of the transaction, he strongly supported it. Fortis's commitments to provide $50 million in benefits and to maintain Central Hudson as a standalone entity are a win/win for customers, he said. In Mr. North's opinion, Central Hudson will benefit from the resources of a larger organization and has done right by its customers in agreeing to the merger.

Within a week we had received approximately 274 comments urging that the merger be approved. Through June 13, 2013, that number had grown to over 400. Nearly half of those supportive comments came from Central Hudson employees. Many others came from Central Hudson customers and from businesses and business organizations including the Edison Electric Institute, the Hudson Valley Economic Development Corporation, the Putnam County Economic Development Corporation, the Westchester County Office of Economic Development, the Dutchess County Economic Development Corporation, the Council of Industry of Southeastern New York, the New Paltz Regional Chamber of Commerce, the Sullivan County Partnership for Economic Development, the Greater Newburgh Partnership, the Orange County Industrial Development Authority, and the Orange County Partnership. Supporters of the merger emphasize the value of the positive benefits provided for in the Joint Proposal and the commitments of Fortis to operate Central Hudson as a stand-alone

entity, maintaining local jobs and keeping its headquarters in the community. The economic development organizations stress particularly the importance of the proposed $5 million Community Benefit Fund (described below).

Supplemental comments were filed on May 1, 2013 by Citizens for Local Power and Consortium in Opposition to the Acquisition, jointly (CLP/COA); Joint Proposal signatory MI; opponent IBEW Local 320; and Petitioners. CLP/COA expounded in detail on the benefits and detriments of the merger as proposed, to show that it not only would fail the Commission's positive net benefits test but would be affirmatively harmful and, in that respect, compares unfavorably with all the major energy company mergers the Commission has approved since 1999. CLP/COA said the Joint Proposal satisfies neither the statutory public interest standard, nor the criteria in the Settlement Guidelines such as conformity with state policies and consensus among adversarial parties. It charged Fortis with disingenuousness or indifference regarding values the Commission should uphold in the pursuit of objectives such as environmental protection, economic development, utility infrastructure improvements, and development of sustainable energy resources.

For the most part, MI's comments repeated its criticism of previously raised objections to the Joint Proposal and emphasized the potential loss of $49.5 million in positive benefits to ratepayers if the proposal were rejected. MI also argued that less weight should be given to comments from entities that did not participate fully in the process leading to the Joint Proposal, particularly those of the legislatures of Dutchess and Ulster Counties whose county executives were signatories to the proposal.

IBEW Local 320 repeated its previously stated concerns about Central Hudson's outsourcing policies and their impact on

union jobs and service quality, and contended that they had not been alleviated. The Joint Proposal should not be approved, it said, unless provision is made for a needed infusion of internal workers. The local also asserted that the "vast majority" of employees who had responded with comments supporting the merger were not represented by the union.

Petitioners' additional comments contended that the record demonstrates that the Joint Proposal will produce benefits that greatly exceed any risks presented by the merger. They cited comments by Staff in support of the Joint Proposal stating Staff's view that the criteria for approval of the merger under PSL §70, as established in previous Commission decisions, have been met or exceeded, and that the transaction compares favorably with those previously approved.

Petitioners also argued that comments received in opposition to the merger, mainly from non-parties, have generally been misinformed, are contradicted by the terms of the Joint Proposal and/or the comments of the signatories, and have added nothing of significance to the record. For many of the most frequently raised criticisms of the merger, Petitioners provided information tending to refute the allegations, for example, with respect to concerns about foreign ownership of Central Hudson, NAFTA, environmental issues, infrastructure investment, financial risks, and so forth. Petitioners concluded that the Joint Proposal:

> is a compelling path forward that assures the continuation and enhancement of Central Hudson consistent with its past performance as a well-run, low-cost utility that is extraordinarily sensitive to local needs and Commission requirements.[5]

[5] Additional Comments of Petitioners, p. 47.

Subsequent to the issuance of the RD, the parties' and commenters' positions continued to evolve. By letter to the Secretary dated May 23, 2013, IBEW Local 320 reported that it had reached an agreement with Petitioners and that it now fully supports the merger. That support was echoed in letters from the president of the New York State AFL-CIO and from the Utility Workers Council of the IBEW. Assembly Member Skoufis, previously opposed to the merger, also submitted a letter stating that he was now convinced that the transaction should be approved. Letters of support also were sent by State Senators Larkin and Maziarz, and Assembly Member Lalor.

All of the comments received have been included in the official record and have been fully reviewed and considered in the preparation of this order.

THE JOINT PROPOSAL'S TERMS

The Joint Proposal expresses the agreement of the signatory parties that the proposed acquisition of Central Hudson by Fortis is in the public interest for purposes of PSL §70, and should be approved, subject to the terms described in the proposal. Broadly speaking, those terms are intended to perform two functions: the mitigation of potential risks that might arise from consummation of the merger transaction, and the securing of incremental public benefits to ensure a net positive outcome from the transaction.[6]

A. Risk Mitigation

1. Corporate Structure, Governance and Financial

[6] The points noted here are simply highlights of the Joint Proposal, provided as a convenience to the reader. For a complete statement of its terms, one should rely on the proposal itself, which accompanies this order as the Attachment and constitutes a part of the order.

Protections

a. Goodwill and Acquisition Costs

To the extent that the consideration paid by Fortis for the stock of CHEG exceeds the book value of CHEG's assets, an accounting asset, goodwill, will be created. As we have made clear in previous orders, neither the cost of acquiring, nor the cost of carrying, that asset should be borne by utility customers, and the existence of goodwill should not adversely affect ratepayers. The Joint Proposal includes provisions intended to ensure that this will be the case for Central Hudson customers. It bars goodwill associated with the merger transaction from being recorded on the books of Central Hudson, to the extent permitted by U.S. Generally Accepted Accounting Principles (U.S. GAAP). If those accounting rules require goodwill to be "pushed down" to Central Hudson for financial reporting purposes, the Joint Proposal precludes it from being reflected in the regulated accounts of Central Hudson on which rates are based. In addition, if either Fortis or FortisUS is obligated to record an impairment of the goodwill created by the transaction, the Commission must be notified within five days. Finally, the Joint Proposal requires Central Hudson to submit to Staff a schedule of all external legal, financial advisory, and similar costs incurred to achieve the merger in order to permit the Commission to ensure that they cannot be recovered in rates.

b. Credit Quality and Dividend Restrictions

The Joint Proposal incorporates an array of conditions designed to protect the credit quality of Central Hudson. First, to permit the Commission to adequately monitor the impact of the transaction on Central Hudson's finances, the Joint Proposal establishes a continuing requirement that copies of all presentations made by Central Hudson, Fortis or any Fortis affiliate be provided to Staff within ten business days. Both

Fortis and Central Hudson are required to be registered with at least two major nationally and internationally recognized rating agencies, to maintain separate debt instruments, and to be separately rated by at least two rating agencies. In addition, neither Fortis nor Central Hudson will be permitted to enter into any debt instrument containing cross-default provisions that could affect Central Hudson.[7]

To mitigate the risk of an increase in Central Hudson's financing costs, the Joint Proposal requires that Fortis and Central Hudson support the objective of maintaining an "A" credit rating for the utility, unless the Commission modifies its financial integrity policies. Also, to ensure that Central Hudson maintains the common equity capitalization on which rates are based, the Joint Proposal would bar Central Hudson from paying dividends if its average common equity ratio for the 13 months prior to the proposed dividend were more than 200 basis points below the ratio used in setting rates.[8]

The Joint Proposal would also continue dividend restrictions originally imposed as part of a Restructuring Settlement Agreement (RSA) approved by the Commission in 1998.[9]

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[7] A cross-default provision is one that can trigger default on a debt obligation based on a default on a different debt obligation. For example, a provision in a Central Hudson debt instrument permitting acceleration of the due date for repayment in the event of a default by Fortis on one of its bonds would be a cross-default provision prohibited under the terms of the Joint Proposal.

[8] In response to a question posed by the judges, the signatory parties clarified their intention that this provision would bar a dividend not only when Central Hudson's trailing 13-month average equity ratio was already below the 200 basis point threshold, but also when the payment of the dividend would itself cause the average to drop below the threshold.

[9] Case 96-E-0909, *Central Hudson Gas & Electric Corp.*, Order Adopting Terms of Settlement Subject to Modifications and Conditions (issued February 19, 1998).

Among other things, the RSA stipulates that if Central Hudson's senior debt rating is downgraded below 'BBB+' by more than one credit rating agency and the downgrade is because of the performance of, or concerns about, the financial condition of its parent or an affiliate, dividends will be limited to a rate of not more than 75% of the average annual income available for dividends, on a two-year rolling average basis. In the event that the debt rating is placed on 'Credit Watch' for a rating below 'BBB' by more than one credit rating agency, dividends are limited to 50% of the average net income, and if there is a downgrade below 'BBB-' by more than one credit rating agency, no dividends are allowed to be paid until such time as the rating has been restored to 'BBB-' or higher.

In addition to continuing the RSA limitations, the Joint Proposal includes a new provision that would insulate Central Hudson ratepayers from the effects of a downgrade to Fortis's credit rating. If within three years of the merger Central Hudson's credit rating were downgraded as a direct result of a Fortis downgrade, the higher debt cost resulting from the downgrade would not be reflected in Central Hudson's cost of capital used to set rates. Ratepayers would be held harmless for the financial impact of the Fortis downgrade.

The Joint Proposal also would bar Central Hudson from providing financial support to Fortis or its other affiliates except as permitted by the Joint Proposal, the RSA or a Commission order. It would also require that Central Hudson's banking and other financial arrangements be kept separate from those of other Fortis affiliates.

Finally, the Joint Proposal would authorize Central Hudson to deregister from the United States Securities and Exchange Commission (SEC) and rely more on the private market

under SEC Rule 144A to issue debt.[10] Our order issued last year in Case 12-M-0172 would be amended to permit such private financing.[11]

c. Money Pooling

Money pools enable affiliated companies to make their excess cash on hand available as a quick, low-cost source of short-term funding for other pool participants. The Joint Proposal would permit Central Hudson to participate in such pooling arrangements, but only with Fortis, FortisUS and other entities that are regulated utilities operating in the United States, provided that Fortis and FortisUS may participate only as lenders and may not receive loans or fund transfers, directly or indirectly. Cross-default provisions affecting Central Hudson would be prohibited.

d. Special Class of Preferred Stock

The Joint Proposal would require the creation of special class of Central Hudson preferred stock to be held by a trustee approved by the Commission. Without the consent of the holder of this "golden share," Central Hudson would be precluded from entering into voluntary bankruptcy. This is identical to a provision included in our order approving the acquisition of New York State Electric and Gas Corporation and Rochester Gas & Electric Corporation by Iberdrola.[12] The Joint Proposal states

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[10] Rule 144A is a safe harbor exemption from the registration requirements of the Securities Act of 1933 that allows companies to sell securities in the private market to qualified institutional buyers in a more timely fashion with fewer disclosures and filing requirements.

[11] Case 12-M-0172, *Central Hudson Gas & Electric Corp.*, Order Authorizing Issuance of Securities (issued September 14, 2012).

[12] Case 07-M-0906, *Iberdrola, S.A. et al. - Acquisition Petition*, Order Authorizing Acquisition Subject to Conditions (issued January 6, 2009)(*Iberdrola* order), pp. 43-44.

that Commission approval is intended to include "all [other] Commission authorization necessary for Central Hudson to establish [this special class of preferred stock]."[13] This authorization includes the consent and approval required under PSL §108 for an amendment of the Company's certificate of incorporation to establish the special class of stock.

With the golden share in place, Central Hudson would be permitted to demonstrate in future rate cases that its stand-alone capital structure should be used for setting rates. That demonstration would be made by submitting current written evaluations from at least two rating agencies supporting the evaluation of Central Hudson as a separate company, without material adjustments based on risks related to the capital structure and ratings of Fortis. If such evaluations were not available, Central Hudson would have the burden of providing comparable evidence to support the stand-alone assumption.

e. Financial Transparency and Reporting

The Joint Proposal incorporates a number of provisions intended to ensure that the Commission and its Staff have ready access to the financial data and other information necessary to continue our regulatory oversight of Central Hudson. It provides that Central Hudson will continue to use the standards of U.S. GAAP for its financial accounting and financial reports. If that accounting method were replaced for publicly-traded entities, the change would apply to Central Hudson. Central Hudson would also be required to continue to satisfy all of the Commission's reporting requirements for jurisdictional companies of its size and nature.

Central Hudson would also continue to comply with the provisions of sections 302 through 404 of the Sarbanes-Oxley Act

[13] Joint Proposal, p. 11, ¶4.

(SOX) as if Central Hudson were still bound directly by the provisions of SOX, even though it would be a subsidiary of a foreign holding company. This would include annual attestation audits by independent auditors with respect to Central Hudson's financial statements and internal controls over financial reporting.

The Joint Proposal would also require that Staff be given ready access to any books and records of Fortis and its affiliates that Staff might deem necessary to determine whether the rates and charges of Central Hudson are just and reasonable. That access must include, but is not limited to, all information supporting the underlying costs and the basis for any factor that determines the allocation of those costs. Central Hudson would also be required annually to file the financial statements, including balance sheets, income statements, and cash flow statements of Fortis and its major regulated and unregulated energy company subsidiaries in the United States, and to provide, to the extent available from a recognized financial reporting information service, the "as reported" quarterly and annual balance sheets, income statements and statements of cash flows of Fortis in U.S. dollars with the underlying currency translation assumptions. All required financial filings would be in English and in U.S. dollars or, if that were not practicable, with the underlying currency translation assumptions.

f. Affiliate Standards

The RSA that we approved when Central Hudson was reorganized as a subsidiary of CHEG included a set of standards addressing transactions, conflicts of interest, cost allocations, and information sharing among Central Hudson and its affiliates. The Joint Proposal would update and revise those standards and apply them to Fortis. Central Hudson would

be barred from entering into transactions with affiliates that were not in compliance with the transaction standards; would be prohibited from sharing operating (*i.e.*, non-management) employees with affiliates; and would be required to give 180 days' prior notice and obtain Commission approval before initiating any material shared services initiatives or establishing a shared services organization that would provide material services to Central Hudson.[14] Current cost allocation guidelines would be continued, but would be subject to revision if intercompany transactions grew beyond a defined level.

g. Follow-On Merger Savings

The Joint Proposal includes a condition that would ensure Central Hudson customers an appropriate share of any savings resulting from future mergers or acquisitions by Fortis until new rates are set. This condition is identical to follow-on merger savings provisions that have been adopted as a condition to the approval of other recent mergers.

h. Corporate Governance and Operational Provisions

The Joint Proposal contains a number of provisions intended to address concerns that the responsiveness of Central Hudson to the community it serves might be diminished if the utility becomes a subsidiary of a foreign holding company. The provisions specify that the headquarters of Central Hudson would remain within the service territory.[15] A new board of directors would be appointed within one year with a majority of directors

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[14] "Material" is defined as services individually or collectively having a value greater than 5% of Central Hudson's net income on an after tax basis.

[15] In response to a question from the judges, the signatory parties clarified that "headquarters" means the place where all senior officers and their support staff, legal, administrative, accounting, operating supervision, and other head office functions are located.

who are independent, and at least one independent director would be required to live within the service territory.[16] At least 50% of Central Hudson's officers would also be required to live within the territory.

In addition, the Joint Proposal specifies that Central Hudson is to be governed, managed and operated on a stand-alone basis post-merger. Local management would continue to make decisions concerning staffing levels, and current employees, both management and non-management, would be retained for two years after closing of the merger. Within 30 days after each of the first two anniversary dates of the merger closing, Central Hudson would be required to file a report with the Secretary comparing the level of union and management employees on that date to the levels on the merger closing date. The collective bargaining process would be continued. The Central Hudson Board would continue to be responsible for management oversight, including capital and operating budgets, dividend policy, debt, and equity requirements. The Board would also have an audit committee, with a majority of members who are independent, and it would continue to be responsible for the financial integrity and effectiveness of internal controls. Finally, to maintain an active corporate and charitable presence in the service territory, Central Hudson would agree to maintain its 2011 level of community involvement through 2017.

[16] The signatory parties agreed in response to a question from the judges that an independent director is one who receives no consulting, advisory or other compensation from Central Hudson or an affiliate or subsidiary of Central Hudson. A director who is an officer, employee or consultant of Central Hudson, FortisUS, Fortis, or any other Fortis affiliate would not be considered independent.

2. Performance

To mitigate the risk that pressure to demonstrate the profitability of the merger transaction might lead to deferred investment in utility plant, reduced maintenance levels and other cost-cutting measures that could eventually have a negative impact on Central Hudson's provision of safe and reliable service, the Joint Proposal includes a broad range of performance-related mechanisms, some of which are more stringent than those currently applicable to Central Hudson. All of these performance mechanisms would continue until modified by the Commission in a subsequent proceeding. The Joint Proposal also incorporates provisions mandating specific levels of expenditures for important safety, maintenance, and infrastructure development activities.

a. Performance Mechanisms

i. Service Quality

Under the terms of the Joint Proposal, the Service Quality Performance Mechanism included in Central Hudson's current rate plan would be continued with two changes. First, the target for the PSC complaint rate would be made more stringent, with the allowed number of complaints reduced from 1.7 per year per 100,000 customers to 1.1. Second, the maximum negative revenue adjustment (NRA) imposed as a result of failure to meet defined targets would be doubled from $1.9 million annually to $3.8 million. During a period of dividend restriction under the financial provisions of the Joint Proposal, the maximum NRA would be increased even further, to $5.7 million, and it would rise again, to $7.6 million, if

performance targets were missed three times in any five-year period.[17]

ii. Electric Reliability

The Joint Proposal would maintain the electric reliability standards included in Central Hudson's current rate plan. As with the service quality performance mechanism, potential NRAs would be doubled immediately, tripled in the event of a dividend restriction, and quadrupled if targets were missed in three of any five calendar years. In addition, Attachment II to the Joint Proposal defines uniform reporting requirements that are intended to aid our monitoring of Central Hudson's performance and to contribute to consistency of reporting among utilities.

iii. Gas Safety

As with electric reliability, the gas safety performance targets in Central Hudson's current rate plan would be continued, with potential NRAs immediately doubled, tripled in the event of a dividend restriction and quadrupled if targets are missed in three of five calendar years. In addition, the Joint Proposal would establish a new metric for compliance with certain pipeline safety regulations set forth in 17 NYCRR Parts 255 and 261, with potential NRAs of up to 100 basis

[17] In response to a question from the judges, the signatories clarified that this was what was intended by the phrase "if targets are missed for three years within the next five year period," in section IV.B.2 of the Joint Proposal.

points.[18] The provision is essentially the same as those we have adopted for Corning Natural Gas and National Grid.[19]

iv. Leak-Prone Pipe

The Joint Proposal would increase required annual expenditures for the replacement of leak-prone pipe, as determined through a risk-based analysis, from $6.0 million to $7.7 million, as recommended by Staff. The provision is intended to drive down active leaks, reduce leakage rates on the distribution system and lower overtime and operating and maintenance costs. If Central Hudson fails to expend the required amount, one-half of the revenue requirement equivalent of the shortfall would be deferred for ratepayer benefit.

b. Expenditure Requirements

i. Right-of-Way Tree Trimming

The Joint Proposal would continue to budget expenditures for right-of-way tree trimming through June 30, 2014 at the level established in Central Hudson's current rate plan for the year ending June 30, 2013. At the end of the one-year extension, actual expenditures would be compared to the budget. Any shortfall would be deferred for the benefit of ratepayers with carrying charges at the pre-tax rate of return.

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[18] The Joint Proposal states that all gas safety targets for calendar year 2013 remain effective until modified by a Commission order; however, the new safety violation metric has a calendar year 2014 target. We will require that the calendar year 2014 target for the New Safety Violation Metric remain in effect until modified by the Commission.

[19] Case 11-G-0280, *Corning Natural Gas Corp.*, Order Adopting Terms of Joint Proposal and Establishing a Multi-Year Rate Plan (issued April 20, 2012), p. 21; Cases 12-E-0201 and 12-G-0202, *Niagara Mohawk Power Corp. d/b/a National Grid - Electric and Gas Rates*, Order Approving Electric and Gas Rate Plans in Accord with Joint Proposal (issued March 15, 2013), pp. 13-14.

ii. Stray Voltage Testing

The Joint Proposal would establish targeted expenditures for the year ending June 30, 2014, of $2.023 million for stray voltage testing and $350,000 for stray voltage mitigation. If Central Hudson's expenditures fell short of either of the targets, the shortfall would be deferred for the benefit of ratepayers with carrying charges at the pre-tax rate of return.

iii. Infrastructure Investment

The Joint Proposal would continue the net plant reconciliation mechanism included in Central Hudson's current rate plan with new targets established for the year ending June 30, 2014. Actual net plant in service as of that date would be compared to the targets and the revenue requirement impact of any difference would be calculated using the methodology described in Attachment IV to the Joint Proposal.[20] If the difference were negative, Central Hudson would be required to defer the revenue requirement impact for the benefit of ratepayers with carrying charges at the pre-tax rate of return. If the difference were positive, no deferral would be permitted.

B. Incremental Benefits

While the provisions of the Joint Proposal discussed above are intended to be beneficial to ratepayers, their primary purpose is to reduce the potential for negative impacts from the merger. Consequently, to ensure a net positive outcome for ratepayers, the Joint Proposal includes a number of provisions that are designed to generate incremental benefits that would not be realized in the absence of the merger.

[20] The signatory parties confirmed that references to "Attachment III" on page 34 of the Joint Proposal should read "Attachment IV."

1. Rate Freeze

The Joint Proposal provides that Central Hudson rates currently scheduled to remain in effect through June 30, 2013, would continue through June 30, 2014 -- a one-year rate freeze.

2. Earnings Sharing

Central Hudson's current rate plan specifies that when the utility's earned return on equity exceeds 10.5%, ratepayers receive 50% of the excess up to an earned return of 11.0%; 80% of the excess between 11.0% and 11.5%; and 90% of the excess over 11.5%. Under the terms of the Joint Proposal, the 50% and 90% sharing thresholds would be lowered, and the 80% sharing level would be eliminated. Ratepayers would be credited with 50% of earnings between 10.0% and 10.5%, and 90% in excess of 10.5%. In addition, Central Hudson would be required to apply 50% of its share of earnings exceeding 10.5% to write down certain deferred expenses that would otherwise be recovered in rates, provided that doing so would not reduce the actual earned return below 10.5%.

3. Synergy Savings

The signatories to the Joint Proposal agree that the merger transaction will generate synergy savings of at least $1.85 million annually, and Central Hudson would guarantee this amount for five years, for a total of $9.25 million. The savings would begin to accrue in the month following closing of the merger transaction and would be available for rate mitigation at the start of the first rate year in the next rate case filed by Central Hudson.

4. Deferral Write-Offs and Future Rate Mitigation

The Joint Proposal specifies that upon closing of the merger, Fortis will provide Central Hudson $35 million which will be recorded as a regulatory liability, to be used to write

down storm restoration expenses for which deferral and recovery from ratepayers has been requested in three pending petitions to the Commission, including most notably one for Superstorm Sandy.[21] The total deferral requested in those petitions is $29.7 million, of which $11.1 million has been denied, with petitions for rehearing pending. The total deferral authorized will, therefore, be less than $35 million. The Joint Proposal provides that the unused portion of the $35 million will be reserved for the benefit of ratepayers as a regulatory liability with carrying charges at the pre-tax rate of return, subject to future disposition by the Commission.

5. Community Benefit Fund

In addition to the $35 million for deferral write-offs and rate mitigation, Fortis would be required to provide Central Hudson $5 million for a Community Benefit Fund to be used for low-income customer and economic development programs.

a. Low-Income Program Enhancements

The Joint Proposal specifies that $500,000 from the Community Benefit Fund would be used to supplement funds currently provided in rates for programs targeted to low-income customers. Currently, Central Hudson provides a bill credit of

[21] The three cases involve storm restoration costs associated with Hurricane Irene in August 2011, a major snowstorm in October 2011, and Superstorm Sandy in October 2012. In Case 11-E-0651, *Central Hudson Gas & Electric Corp.- Storm Restoration Expenses for the Rate Year Ended June 30, 2012*, we approved deferral of $8.9 million in expenses associated with Irene. Central Hudson had sought deferral of $11.4 million. A petition for rehearing is pending. In Case 12-M-0204, *Central Hudson Gas & Electric Corp.- Costs Associated with the October 29, 2011 Snow Storm*, we denied recovery of $8.6 million associated with the snowstorm. A petition for rehearing is pending. In Case 13-E-0048, *Central Hudson Gas & Electric Corp.- Deferred Incremental Costs*, Central Hudson seeks deferral of $9.7 million in costs associated with Superstorm Sandy. The case is pending.

$11.00 per month for all customers who are Home Energy Assistance Program (HEAP) recipients. Under the Joint Proposal, within 30 days after an order in this case, Central Hudson would implement a new schedule of discounts providing credits of $17.50 per month for HEAP-participant heating customers receiving only electric or only gas service, and $23.00 for those receiving both. Non-heating customers would receive credits of $5.50 for one service, or $11.00 for both, provided that customers currently receiving an $11.00 credit for a single service would continue to receive that amount. Central Hudson would also be required to waive reconnection fees for participants in its low-income programs up to a total of $50,000. If the total cost of the programs exceeded the amount allowed in rates plus the $500,000 from the Community Benefit Fund, the shortfall would be made up from funds previously deferred for the benefit of the low-income programs, with any excess deferred as a regulatory asset. Central Hudson would be required to continue to refer participants in its low-income programs to the New York Energy Research and Development Authority's EmPower New York program for energy efficiency services. Finally, the Joint Proposal establishes a schedule for quarterly reporting on low-income programs to the Commission, and specifies the data to be provided.

b. Economic Development

The Joint Proposal provides for $5 million dollars to be allocated by Central Hudson for the support of economic development programs. The $5 million would consist of $4.5 million from the Community Benefit Fund and $500,000 from Central Hudson's existing Competition Education Fund. Within 15 days after an order in this case, Central Hudson would file a proposal with the Commission for modification of its existing economic development programs and would request expedited

consideration. The modifications would provide for Central Hudson to continue to administer its programs pursuant to existing Commission authorizations with input from the counties in its service territory. They would also establish a criterion that applicants for project funding that do not have participation from Empire State Development, a county industrial development agency, a county community college, or a local municipal resolution would seek a letter of support from the county where the project would be located. Central Hudson would also agree to seek county participation in economic development grant award notifications and announcements, and would meet twice a year with representatives of all the counties in its service territory.

6. State Infrastructure Enhancements

The Joint Proposal would commit Central Hudson to continue to support the New York State Transmission Assessment and Reliability Study, the Energy Highway, and economically justified gas expansion. Fortis would agree to provide equity support to the extent required by Central Hudson for projects that receive regulatory approval and proceed to construction.

7. Gas Expansion Pilot Program

Central Hudson would commit to continue its existing gas marketing expansion campaign during the rate freeze period and would continue to provide information and assistance to customers who are seeking or considering gas service. Where adequate financial commitments and reasonable franchise conditions can be secured, it would pursue expansion of gas facilities to areas not currently served and would seek expedited Commission approval for such expansion. Within 90 days of an order in this case, Central Hudson would initiate a modified gas service request tracking system retaining sufficient data to demonstrate why service was or was not

initiated. In addition, by July 1, 2013, or as part of a new franchise filing, Central Hudson would propose a limited pilot expansion program designed to test a number of innovative measures to facilitate gas service expansion.[22]

8. Retail Access

For the stated purpose of supporting the Commission's retail market development initiatives, the Joint Proposal would require Central Hudson within 90 days following the closing of the merger transaction to include a total bill comparison on all retail access residential bills using consolidated billing. The comparison would be generated using an existing Central Hudson program that has already been implemented. In addition, within 60 days after the issuance of an order in this case, Central Hudson would be required to file a proposal to provide payment-troubled customers -- those subject to service termination -- with similar bill comparison information. The cost of implementing these initiatives would be paid from Central Hudson's existing Competition Education Fund. If the balance in the fund were inadequate, Central Hudson would be permitted to defer the excess cost. Central Hudson would report quarterly to Staff on the progress of its bill comparison efforts.

DISCUSSION OF EXCEPTIONS TO THE RECOMMENDED DECISION

In the RD issued May 3, 2013, the judges concluded that the transaction as formulated in the JP would not provide net benefits sufficient to justify Commission approval. Briefs on exceptions were filed May 17 by Petitioners, Staff, CLP/COA, MI, PULP, and UIU; and briefs opposing exceptions were filed on or about May 24 by all those parties except UIU. Our consideration of the RD, the exceptions, and the other comments

[22] Given the timing of this order, we will extend this deadline to September 1, 2013.

and filings that we have received leads us to reject the RD's ultimate conclusion, while accepting most of its reasoning, as explained below.

Overall Balance of Interests

The judges evaluated the proposed transaction in accordance with the analytic approach that we stated in our *Iberdrola* decision and recapitulate in the concluding section of this order. That is, the judges compared the transaction's inherent benefits with any offsetting risks or detriments, mitigated insofar as possible, to determine whether the merger would provide net positive benefits or could be made to do so through the addition of monetary positive benefit adjustments. On exceptions, Petitioners argue that the RD misdefined and misapplied the Iberdrola criteria. We disagree, although our ultimate conclusion approving the merger differs from the judges'.

We conclude that Petitioners' exceptions in this regard are moot, for reasons which nevertheless merit further comment. First, of course, is that we are approving the transaction, obviating whatever concerns the parties may have as to precisely what route the judges followed in arriving at their recommendation to the contrary.

More significantly, there is little fundamental difference between our reasoning and the judges'. While the RD attached considerable weight to public comments in which customers subjectively seemed to devalue the economic benefits of the transaction, the judges disagreed with nearly all the other contentions raised in opposition to the merger, namely that: its economic benefits would not materialize, it would create NAFTA issues, its low-income provisions were inadequate, foreign ownership would be objectionable, the financial risks

would be unacceptable, and environmental values would be impaired.

The judges accepted the opponents' views in only two respects: that the transaction would create uncertainty for employees, and that the community's sense of attachment to an independent Central Hudson outweighed the merger's benefits. However, even these two limited reservations on the judges' part were closely tied to circumstances that either have changed or that we view differently than did the judges: the unionized and non-unionized workforce have withdrawn their opposition to the merger, and we do not observe the monolithic opposition among the general public that the judges found so unusual. Moreover, the RD's entire balancing of all the proposal's benefits and detriments was expressly hedged with an acknowledgement by the judges that their analysis was unavoidably qualitative and, therefore, that other observers, such as the Commission, might reasonably reach a contrary result.

For all these reasons, we think the RD is *sui generis* and, contrary to the Petitioners' exceptions, cannot usefully be criticized as a violation of general principles relevant to a §70 public interest determination.

Our only remaining concern about the exceptions is Petitioners' argument that the essence of the *Iberdrola* test is a comparison of economic benefits among various approved mergers on a per capita basis. We disagree with this exception. The RD properly concluded that such comparisons are problematic because of significant differences among the mergers themselves, and because a quantitative comparison does not capture possible changes in Commission policy over time. Nor do we agree with Petitioners' argument that the RD should have considered the alleged financial and managerial superiority of Fortis as compared with acquiring parent companies in other mergers.

While the characteristics of an acquiring company may well be highly relevant in a given case, no two cases are identical; each presents detriments and benefits to be weighed against each other, not necessarily in comparison with other transactions.

In summary, the RD reflects a valid definition and understanding of the relevant standard of review under the *Iberdrola* precedent. Nevertheless, based on our own weighing of the merger's benefits, detriments, and mitigation measures, we conclude that approval would satisfy the public interest criterion of PSL §70 for the reasons cited in the RD and herein.

Economic Benefits

The RD found that the $9.25 million in guaranteed rate savings, the $35 million payment by Fortis to Central Hudson to establish a regulatory liability for the benefit of ratepayers, and $5 million to be provided by Fortis to establish a Community Benefit Fund are tangible monetary benefits that will be realized only as a result of the merger. In contrast, it concluded that the one-year rate freeze should not be credited with providing any significant ratepayer value, because rates could not be raised until nearly the end of the freeze year even if Central Hudson filed for such an increase immediately. Petitioners take exception to the latter conclusion, pointing out that the rate freeze would preclude Central Hudson from recovering $8.7 million in carrying charges related to capital investments made during the year.

PULP, on exceptions, argues that the $35 million regulatory liability is not as concrete a benefit as the RD found. It says that, normally, deferral petitions are subject to strict scrutiny and must satisfy well-established Commission criteria before they are allowed. Here, PULP says, Central Hudson is being permitted to treat untested storm recovery expense claims as if they were sure to be approved, and to treat

the offset of those unproven claims as though they were benefits of the merger.

PULP's arguments are simply wrong. As we explained above, Central Hudson will be permitted to offset the $35 million regulatory liability only against storm expenses that have been fully reviewed and approved by the Commission. Orders have now been issued in proceedings on two of the petitions cited in the Joint Proposal involving deferral requests totaling $20 million for Hurricane Irene and the October 2011 snowstorm. The orders rejected deferral of $11.1 million, over 55% of the amounts claimed. The $35 million fund established pursuant to the Joint Proposal will be used only to eliminate or reduce amounts that would be recovered from ratepayers under normal ratemaking standards. It is a real, monetary benefit.

As to the rate freeze, the issue is essentially moot. While it may provide some quantifiable benefit to ratepayers, as Petitioners allege, that benefit is not necessary for our decision. We find that the well-defined, tangible economic benefits are more than adequate to provide a net positive benefit to ratepayers.

Jobs

Both Petitioners and Staff take exception to the RD's conclusion that even after consideration of the job retention provisions of the Joint Proposal, workforce uncertainty remained an unmitigated risk of the merger. Petitioners contend that the preservation of pre-merger contract rights and the two-year no-layoff period provided by the Joint Proposal actually enhance employee security. Staff adds that the Joint Proposal's requirement for Central Hudson to file employee level information with the Commission for two years, combined with increased disincentives for failure to meet performance targets and a requirement of Commission approval for the transfer of

functions to a shared services affiliate, minimizes the likelihood of post-acquisition downsizing.

We find this issue to be substantially less of a concern than it was at the time of the RD. Since the issuance of the RD, IBEW Local 320 has reached an agreement with Petitioners that will provide even greater job security to union employees than is offered by the Joint Proposal. As a result, IBEW Local 320 now fully supports the merger. Moreover, since the RD, we have received nearly 200 comments from non-union employees of Central Hudson expressing support for the merger. Given this level of support from throughout the organization, we find no basis for concluding that the merger can be expected to have a detrimental impact on jobs at Central Hudson.

NAFTA

The RD addressed a contention first put forward by PULP that the North American Free Trade Agreement (NAFTA) could threaten our ability to regulate Central Hudson. The threat allegedly arises from the treaty's anti-expropriation provisions which allow foreign investors from NAFTA member states to seek compensation for government actions that are "tantamount to expropriation" without compensation. The RD thoroughly analyzed cases cited by PULP and by other commenters and concluded that those cases suggested that:

> a state regulatory agency acting lawfully within its statutory authority is not liable to a claim of damages under NAFTA unless an entity covered by the treaty can demonstrate that it made its investment in the state pursuant to express commitments made by the agency which were subsequently broken.[23]

As the RD noted, none of the Petitioners has been assured of any particular regulatory treatment by the Commission.

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[23] RD, p. 46.

On exceptions, PULP reiterates its claim that NAFTA will be a threat if the acquisition is approved, and PULP is joined in this contention by CLP/COA. Each argues that regardless of the current state of the case law, the existence of NAFTA presents a risk that our future regulation of Central Hudson may be compromised by a fear of expropriation claims. CLP/COA adds that the judges must have perceived some risk as they suggested in the RD that we might condition approval of the acquisition on Petitioners' certification that they have been promised no particular future regulatory treatment.

PULP and CLP/COA present no new legal authority or other information to discredit the judges' conclusion that NAFTA presents no risk to our regulatory jurisdiction. Their arguments are speculative, at best.

Furthermore, the RD did not recommend that we condition approval of the merger on a certification that Petitioners have received no express promise of particular regulatory treatment. It said, rather, that we could do so if we were concerned that there might be some doubt on that point. We have no such concern. The RD correctly stated that no such express assurances have been given. We find that the rights afforded Fortis under NAFTA do not present a credible risk to the public interest such as would require the imposition of any specific conditions on the merger beyond those provided for in the Joint Proposal.

Low-Income Programs

The RD found that the Joint Proposal's provisions for enhancing programs aimed at low-income customers are reasonably well suited to that purpose and quantitatively significant. It did not, however, consider the enhancements to be a benefit of the merger, because they could have been obtained without the transaction, such as through a rate case.

UIU, on exceptions, finds the latter conclusion troubling. It says that the increase in the monthly discount for combination gas and electric customers provided for in the Joint Proposal is unprecedented, both in percentage and dollar terms, and with respect to the source of the funds to pay for it. An increase in funding for low-income programs coming from shareholders rather than ratepayers has never been achieved before, UIU asserts. Even assuming such a result could be obtained in a rate case, UIU adds, that could not happen for at least a year. According to UIU, causing the poorest of Central Hudson's customers to forgo the increased monthly discount provided in the Joint Proposal for an additional year is clearly not in the public interest.

PULP, by contrast, reiterates its view that the provisions for low-income customers are inadequate. It argues that further steps must be taken to reduce the level of service terminations on the Central Hudson system, which place an additional burden on already economically stressed customers. Central Hudson's rate structure should generally be made more equitable, PULP argues, with added low-income protections, and collection efforts showing deference to the needs of economically vulnerable consumers.

We agree with UIU that the low-income customer discount enhancements specified in the Joint Proposal are unique and should have been considered an additional benefit of the merger. While it is true that such changes could, in theory, have been achieved through a rate case, it is unlikely that they would have been so advantageous to customers in both size and funding source; and in any case, they would not have been achieved for a year, and perhaps longer. It may be reasonable to argue that measures included in a Joint Proposal involving a utility acquisition, if they merely reflect established

Commission policy routinely implemented in rate cases, result from the policy rather than from the transaction under consideration. Here, however, the low-income program enhancements go well beyond what might be considered normal, incremental progress that could be expected in a rate case.

PULP reiterates arguments made previously that were adequately addressed in the RD. For now, we are satisfied that low-income programs for Central Hudson customers will be significantly improved when the terms of the Joint Proposal are implemented.

Foreign Ownership

In response to comments arguing that the merger would be contrary to the public interest because it would result in ownership of Central Hudson by a foreign company, the RD concluded that foreign ownership is not objectionable *per se*, but that it could complicate our oversight of Central Hudson.

On exceptions, MI argues that this conclusion is inconsistent with the RD's finding that the Joint Proposal's regulatory safeguards would mitigate such risks to the fullest extent possible. Petitioners add that there were no disputes between them and Staff over the production of documents and information, assurance of cooperation from Fortis, maintenance of transparency, or other issues related to facilitating the regulatory process. The provisions of the Joint Proposal addressing these matters were agreed to by Staff and many were, in fact, substantially similar to those in the RSA under which CHEG and Central Hudson are currently operating.

We agree with the RD that foreign ownership of Central Hudson is not inherently objectionable, but we do not agree that it will necessarily complicate our regulatory oversight. One clarification is required, however, to ensure that the provisions of the Joint Proposal negotiated by Staff are

interpreted consistently by all parties in a manner that will ensure the level of cooperation and access to information we expect from the parent companies of regulated utilities. Acceptance of the terms of this order will confirm that Petitioners understand and agree that the Commission and the Department of Public Service Staff shall have access to the books and records of Petitioners and all of their affiliates to the extent such information and materials are relevant to the Commission's exercise of authority under the PSL or any other applicable statute. Our authority to review such books and records is vital to ensuring that ratepayers are protected under the new organization. Therefore our approval of this acquisition as in the public interest is conditional upon the affirmation of this legal authority.

Community Values

As the RD explained, the judges were troubled by the prospect that the merger would impair a unique affinity that Central Hudson has built with its community in a small, closely knit service territory. In assessing the transaction's benefits and detriments pursuant to the analytic framework defined in our *Iberdrola* decision, they counted the supposed erosion of this community relationship as a detriment. Other than CLP/COA, all parties except.

The judges found that local public opposition to the merger was relevant in primarily two respects. First, they noted that effective management of the utility company depends on a collaborative relationship between the company and its customers, especially at a time like the present when regulators are attempting to help utilities develop new services requiring customer acceptance and cooperation. As a few examples, we would cite our efforts on behalf of initiatives such as improved emergency response efforts, energy efficiency programs, retail

access by energy services companies, smart grid technology and time-of-use pricing, electric and gas infrastructure upgrades and expansion, and increased reliance on distributed generation and demand response.

We agree with the judges that any deterioration in customer relations because of the merger would be detrimental insofar as it might impede management performance in these areas. However, as the *Iberdrola* analysis recognizes, the weighing of benefits and detriments is a qualitative exercise; and risks or detriments, once identified, may be at least partly counterbalanced by mitigating circumstances or directives. One mitigating factor in this instance is that we expect Central Hudson's commitments to the State's environmental and energy policy objectives will continue unabated by the merger.

Another mitigating factor is that Petitioners have justified the merger partly on the basis of their representations that "Fortis operates a stand-alone business model whereby the holding company provides financial support for the utility operations ..., but has only minimal and infrequent involvement in the day-to-day management of those operations. ... Fortis believes that, where an acquired utility is fundamentally sound and well-managed, it should be allowed to continue operating as a locally managed company that is responsive to local regulatory requirements ...."[24] We expect this "federal" governance model will minimize any change experienced by customers in their interactions with Central Hudson.

In addition to customers' future dealings with Central Hudson, the judges' second concern about negative community opinion was that it diminishes the value of the transaction's

[24] Petitioners' initial statement supporting the Joint Proposal, pp. 4-5.

benefits insofar as customers prize preservation of the corporate *status quo* more highly than the economic benefits offered in the Joint Proposal. We disagree with the merger proponents' exceptions to this aspect of the RD; contrary to their objections, it was not error for the judges to rely on public opinion merely because opinions are difficult to measure or may be misinformed. These infirmities certainly add to the difficulty of quantitatively analyzing a transaction's net benefits, but they do not nullify the relevance of customer preferences.

Financial Safeguards

The RD enumerated the many conditions included in the Joint Proposal that are designed to protect the financial integrity of Central Hudson in the event that it becomes a subsidiary of Fortis. It concluded that those conditions are reasonably designed to mitigate the concerns to which they are addressed.

On exceptions, PULP argues that any hope these financial protection provisions will perform as intended is unwarranted. PULP says a bankruptcy court has concluded that an independent director cannot be bound to vote against a voluntary bankruptcy filing, and this allegedly means that the "golden share" holder appointed pursuant to the Joint Proposal cannot be relied on to protect utility customers. PULP also speculates that there may be other "cross-border" complications that could

defeat the financial protection provisions required by the Joint Proposal.[25]

PULP's arguments are unpersuasive. The bankruptcy ruling it refers to was addressing the obligations of an independent member of the board of directors. It stated that a director has an inherent fiduciary responsibility to protect the interests of shareholders. A director cannot be relied upon to vote against a voluntary bankruptcy if that is the best course of action available. The holder of the "golden share" to be appointed under the terms of the Joint Proposal, by contrast, will have no such conflict. It will represent a special class of preferred stock whose only interest is in avoiding voluntary bankruptcy. There are no other fiduciary responsibilities for this trustee to balance. PULP's remaining contentions regarding other potential "cross-border" complications are not sufficiently concrete to be given significant weight in our decision.

CLP/COA also criticizes the RD's conclusions concerning financial protections. First, it contends, in essence, that Fortis is engaged in numerous ventures which may present risks that cannot now be foreseen and addressed by the Joint Proposal. Second, CLP/COA argues that the lower credit rating of Fortis makes a future downgrade for Central Hudson likely, but the Joint Proposal provides protection for ratepayers from the cost of such a downgrade for only three years. Finally, CLP/COA maintains that the accounting goodwill created by the proposed merger is too great to be sustained. It

[25] PULP also suggests that Fortis's own investment guidelines state that the company will oppose proposals for golden shares when they arise, and suggests that this implies that Fortis will attempt to negate the requirement in this case, perhaps using NAFTA. Petitioners point out, however, that the documents cited by PULP pertained to an unrelated company named "Fortis," not Fortis Inc. of Canada.

says the goodwill will inevitably be impaired and ratepayers cannot be fully insulated from the effect of the resulting write-down or write-off.

Staff responds that Fortis's ventures are not overly risky. Over 90% of its investments are in low-risk North American regulated utilities. It points out that even if Fortis suffers losses in its other businesses, the Joint Proposal includes provisions that would prevent Central Hudson from being used as a source of cash. These provisions, one of which is continued from the RSA and one of which is new, limit or preclude the payment of dividends by Central Hudson to its parent if Central Hudson's credit rating or equity ratio falls below defined levels.

As to the time limitation on the automatic protection of ratepayers from the effects of a Fortis downgrade, Staff points out that this provision is new and is the product of lessons learned from previous mergers. It says that in combination with the dividend restriction, the provision ensures adequate protection for ratepayers.

With respect to goodwill, Staff states that it was keenly aware of the issue and recognized the risk. It says that a significant portion of the positive benefit adjustments negotiated as part of the Joint Proposal were intended to compensate for that risk.

Petitioners respond that CLP/COA itself acknowledges that the financial protection provisions of the Joint Proposal are as comprehensive, and even stronger, than analogous conditions we have imposed in other recent mergers. Petitioners contend that CLP/COA has failed to demonstrate why these provisions will not perform their intended functions, and they point out that Standard & Poor's has concluded that the "ring fencing" set forth in the Joint Proposal could enable the rating

agency to differentiate the ratings of Central Hudson from those of Fortis.

Furthermore, Petitioners argue, far from being inevitable as CLP/COA alleges, neither a credit downgrade nor an impairment of goodwill is likely for Fortis. They say that Fortis's level of goodwill after acquiring CHEG will be substantially lower than that of Iberdrola after its acquisition of Energy East. Petitioners note that Standard & Poor's and Dominion Bond Rating Services affirmed Fortis's existing credit ratings after announcement of the merger agreement. In any event, they say, the ring fencing provisions of the Joint Proposal ensure that the risk of any goodwill impairment will be borne by shareholders of Fortis, not the ratepayers of Central Hudson.

With the addition of one further condition described below, we conclude the financial safeguards provided for in the Joint Proposal are adequate to protect Central Hudson's ratepayers from any fluctuations in the fortunes of the utility's parent company. Dividend restrictions combined with money pooling limitations and the ban on cross-default provisions will preclude Central Hudson from being used as a cash or credit source for Fortis's other ventures. The "golden share" requirement will prevent the placement of Central Hudson in voluntary bankruptcy. Goodwill accounting requirements will preclude the effects of any impairment that may occur from being reflected in utility rates. The automatic exclusion from rates of any credit cost increase attributable to a downgrade of Fortis's credit will be in place for only three years, but protection for ratepayers does not end with its expiration. Under our normal rate-setting standards, we have, and intend to exercise, the authority to exclude from rates any credit costs incurred by Central Hudson that are attributable to its parent

and are in excess of the cost of credit that would be incurred by the utility standing alone.

Based on our experience with previous mergers, we will add to these safeguards a further provision concerning tax liabilities. During discovery, Fortis informed Staff that, post merger, Central Hudson's United States federal and New York State income tax returns would be filed as part of the consolidated tax returns of FortisUS, the holding company for Fortis's United States subsidiaries. Such consolidated tax returns join the regulated and competitive market affiliates of Fortis and could expose New York ratepayers to tax liabilities that are the responsibility of the non-regulated or out-of-state subsidiaries of Fortis. To prevent this risk, we will require that Petitioners commit that Fortis will indemnify Central Hudson for any tax obligations Central Hudson incurs that it would not have incurred if it had filed on a stand-alone basis.

Fortis also informed Staff that it expects that the staff of Central Hudson will prepare the consolidated returns and that tax elections and filing positions related to the return will be determined by Central Hudson management, with input provided by Fortis where required as it may relate to the nature of the business activities of FortisUS Inc. and the non-regulated businesses of CHEG.[26] We will require that an Income Tax Preparation and Sharing Agreement be adopted and used to formalize this relationship, protect Central Hudson's customers, and allocate tax benefits and obligations among the companies participating in the consolidated income tax returns. The agreement is to be submitted as a compliance filing in this proceeding within 90 days following the closing of the merger

[26] Responses to Staff Interrogatories DPS-M278 (Staff's DPS-M78) and DPS-M316 (Staff's DPS-M116), which were provided in Staff Policy Panel Exhibit__ (PP-1).

transaction. It must provide for full Staff access to all income tax records of subsidiaries that join in the consolidated tax return with Central Hudson, and must also define the contractual mechanism for implementing the income tax indemnification requirement defined above.

The financial safeguards defined in the Joint Proposal, with the one addition we have made, are strong and comprehensive. They are fully adequate to protect the interests of Central Hudson's ratepayers.

Environment and Infrastructure

In the RD, the judges rejected concerns raised by commenters that Fortis might reverse policies of Central Hudson to promote alternative and green energy within its service territory. The RD found such concerns misplaced, reasoning that, because of the differing roles of Central Hudson as a distribution utility and Fortis as an owner of other subsidiaries in the generation business, Fortis's past performance in other settings had little bearing on Central Hudson's future conduct as a Fortis affiliate subject to our regulatory supervision. CLP/COA excepts, expressing strong misgivings about Fortis's record in matters involving utility infrastructure and environmental impacts, and Petitioners contest CLP/COA's allegations in response.

The exception is denied. First, we decline to evaluate claims regarding the highly impassioned and localized disputes noted by CLP/COA, because they already have been adjudicated in other jurisdictions and because our investigative abilities and resources are better employed in deciding questions material to cases pending before us.

Another, related consideration is that, as the judges observed, Central Hudson's scope of activity as an energy distribution company differs significantly from that of Fortis

as an energy producer. CLP/COA responds that Central Hudson's distribution system should and will evolve as dictated by environmental and energy policy objectives, and we agree. But the fact remains that, regardless of Central Hudson's corporate structure, the distribution system will continue to be designed, maintained, and operated by Central Hudson under New York's jurisdiction and regulations, in furtherance of the State's policies as adopted from time to time.

Moreover, CLP/COA's concerns presuppose that Fortis's corporate outlook will contradict and supersede Central Hudson's. We find this assumption simplistic in several respects. First, as noted, the two firms are in different lines of business. Second, the supposition that Fortis would override Central Hudson's fundamental orientation toward environmental issues overlooks Petitioners' representations, which we deem binding upon them, that Fortis's decentralized model of corporate control will afford latitude to local management in case of differences between subsidiary and parent in terms of policy orientation or priorities.

Central Hudson has a long-standing history of proven commitment to environmentally positive policies and practices. For example, the company supports about 1,323 net-metered residential or business customers using renewable generation (predominantly 14 megawatts of solar photovoltaic capacity) in its service territory, with another 148 systems pending. A major reason for this relatively large amount of installed solar PV capacity, which offsets an estimated 5,600 tons of greenhouse gas emissions annually, is that Central Hudson has been one of New York's most cooperative utilities in facilitating interconnection for customers that install renewable energy.

Central Hudson's level of support for renewable energy reflects not simply internal corporate culture but also the

conditions in which the company operates. Thus, Central Hudson's relatively early embrace of farsighted environmental policies has been partly a response to the State's financial incentive programs and partly a response to the high degree of environmental awareness that prevails among its customers. Regardless of corporate structure, we expect Central Hudson's orientation in that respect will continue to comport with state policies and customer preferences in its service territory, and therefore that the subsidiary will continue actively supporting expanded use of environmentally sound energy resources.

Of course we also will exercise our legal authority as necessary to reinforce the company's performance of its obligations under New York laws and regulations and we will monitor Central Hudson's responses to policy guidance, if any, from Fortis.

Retail Access

The Joint Proposal would call for Central Hudson to include, within 90 days following the closing of the merger transaction, a total bill comparison on all retail access residential bills using consolidated billing. The comparison would be generated using an existing Central Hudson program that has already been implemented. Within 60 days after the issuance of this order, Central Hudson would also be required to file a proposal to provide payment-troubled customers -- those subject to service termination -- with similar bill comparison information.

The RD noted that the Joint Proposal expressly recognized that its provisions might have to be modified based on the outcome of the Commission's *Retail Energy Markets* case.[27]

[27] Cases 12-M-0476, *et al.*, *Residential and Small Non-residential Retail Energy Markets.*

It recommended, therefore, that the Joint Proposal be modified to defer implementation of both the publication of bill comparisons on the consolidated bills of residential retail access customers and the provision of bill comparison information to payment-troubled customers until 30 days following an order in that proceeding. RESA takes exception to this recommendation; it argues that establishing a fixed implementation period for these measures is premature, given that the outcome of the generic proceeding remains uncertain as to how bill comparisons should be presented, or even whether they should be used at all.

Staff and Petitioners also except to the RD, but their objection is exactly the opposite of RESA's. They contend that Central Hudson is capable of providing the required bill comparisons now and that postponing implementation until completion of the *Retail Energy Markets* case will merely engender needless delay.

We agree with RESA that mandating an implementation plan before the nature of the plan to be implemented is fully defined would be unwise and potentially an inefficient use of resources. Therefore, we will depart from the Joint Proposal's terms and instead require that bill comparisons on consolidated bills and bill comparison information for payment-troubled customers be implemented in conformance with the requirements of the order in the *Retail Energy Markets* case, when issued. To the extent that Central Hudson has the capability to provide such bill comparisons more quickly or effectively than other utilities, that capability can be taken into account in that order.

PETITIONERS' ENHANCEMENTS

Following the exchange of briefs on exceptions and opposing exceptions, on May 30, 2013, Petitioners filed a letter in which they proposed "final enhancements" to the terms of the transaction beyond the terms included in the Joint Proposal. These enhancements are:

1. Petitioners propose an extension of the freeze on delivery rates for an additional year beyond that provided in the Joint Proposal, to June 30, 2015. While Petitioners do not undertake to quantify the value of this additional one-year rate freeze, they note that, over the prior seven years, Central Hudson's delivery rates increased by an average of $23 million per year. They also state that Central Hudson is committed to spending $215 million on capital improvements to its system by mid-2015. This willingness to make such a capital investment without an increase in rates to provide a return on that investment is a demonstration, they say, of Fortis's strong commitment to the State of New York.

2. Petitioners offer to extend the Joint Proposal's "no lay-off" commitment for both union and non-union employees of Central Hudson from two years to four years.

3. Petitioners offer to extend, from five years to ten, their commitment to maintain Central Hudson's level of community support.

4. Petitioners commit that the new board of directors of Central Hudson will include two independent directors who reside within Central Hudson's service territory, rather

than the one independent director meeting such qualifications proposed in the Joint Proposal.[28]

Multiple Intervenors, PULP, and CLP/COA all filed comments, on June 5 or June 6, 2013, responding to Petitioners' offers of these enhancements. MI asserts that Petitioners' offer represents "meaningful enhancements to the customer benefits and protections embodied in the Joint Proposal." MI further characterizes the enhancements as "entirely one-sided," in that they supplement previously offered benefits and protections for customers without any reduction or subtraction of such benefits. Consequently, MI argues that the enhancements offer should be evaluated very favorably, and it urges us to adopt the Joint Proposal with the enhancements. According to MI, the most compelling enhancement is the proposal to extend the delivery rate freeze for an additional year, through June 30, 2015. Although MI admits that the benefit is not quantifiable, it asserts that the benefit "almost certainly is material."

PULP and CLP/COA similarly single out the one-year extension of the rate freeze in responding to Petitioners' enhancements. Both PULP and CLP/COA argue that the additional year is not a benefit. Instead, they say, the offer undoubtedly reflects a situation in which Central Hudson is overearning and seeking to extend rates that are too high. Both point out that Central Hudson's rates were set based upon an allowed return on equity (ROE) of 10%, a level that would likely be considered too

[28] The Petitioners' May 30, 2013, letter containing the proposed enhancements to the terms of the transaction stated that the second director would "reside, do business or work within Central Hudson's service territory." Petitioners clarified that this was in error and that the language should be as in the Joint Proposal where the independent director is required to reside in the service territory, and we will so require.

high in light of the current interest rate environment. They point to recently filed Staff testimony in the pending Consolidated Edison rate case, in which Staff recommends an ROE of 8.7%,[29] as well as two recent Commission orders, one approving an ROE of 9.3% for Niagara Mohawk[30] and another requiring National Fuel Gas to show cause why its rates should not be lowered and made temporary in light of projected overearnings by that utility.[31] PULP argues that the average increase in rates over the last seven years is not particularly indicative of further trends, due to lower interest costs, cost cutting, high earnings, or other factors which call into question the reasonableness of current rates and ROEs. Both PULP and CLP/COA urge us to reject the Joint Proposal, the additional enhancements, and the proposed acquisition.

We agree with MI that these enhancements can only be regarded as improvements to the Joint Proposal, as they provide additional benefits not previously proposed. The additional year of a rate freeze represents only a commitment on the part of Central Hudson not to file for a rate increase to take effect prior to July 1, 2015. In no way does it represent a guarantee that we would not institute a proceeding to lower rates if such an action appeared to be warranted at any time during the next two years. Consequently, the assertions by PULP and CLP/COA that this promise by Central Hudson would entitle it to overearn during the period are inaccurate and unfounded. Our experience

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[29] Cases 13-E-0030, *et al., Consolidated Edison - Electric, Gas and Steam Rates*, testimony of DPS Staff witness Craig E. Henry, prefiled May 31, 2013.

[30] Case 12-E-0201, *Niagara Mohawk Power Corp. - Rates*, Order Approving Joint Proposal (issued March 15, 2013).

[31] Case 13-G-0136, *National Fuel Gas Distribution Corp. - Rates*, Order Instituting Proceeding and to Show Cause (issued April 19, 2013).

leads us to conclude that Central Hudson's expenses and capital investments during the next two years, even taking into consideration a more current cost of capital, would likely entitle it to some rate relief, such that Central Hudson's forgoing a rate increase has value for consumers. Consequently, we will accept the offered enhancements and add them as additional conditions to our approval of the acquisition.

We accept these enhancements with two caveats with respect to future rate-setting for Central Hudson, one clarification, and one modification. First, our ordering of the workforce commitments does not lessen our right and obligation to closely examine Central Hudson's labor budget in future rate proceedings and does not preclude an adjustment to workforce estimates to ensure that rates are set at proper levels.

Second, we note that our ordering of the extra year of the rate freeze does not reflect our acceptance of Petitioners' statement that Central Hudson "will spend $215 on capital expenditures" between July 1, 2013 and June 30, 2015. We appreciate the expression of commitment to the utility's infrastructure in the service territory and adopt it as a floor subject to consultation with Staff as to overall spending levels and priorities. We will require Central Hudson to develop its capital expenditure plan in greater detail in coordination with Staff.

Further, we clarify that the extension of the rate freeze we are accepting applies to all of the terms and conditions of Central Hudson's current rate plan as modified by the requirements of this order. Those terms and conditions will remain in effect until changed by subsequent Commission order.

Also, the Joint Proposal requires Central Hudson to file a report with the Secretary within 30 days after the first two anniversary dates of the merger's closing, comparing the

numbers of union and management employees on the anniversary date with those on the date on which the merger closed. With our adoption of Petitioners' enhancements, we will require this filing for the first four years after the merger's closing.

In addition, the Joint Proposal provides targets for tree trimming expenditures, stray voltage testing and mitigation costs, and net plant only for one year. Extension of the rate freeze will require that targets be established for the second year. Therefore, we will require Central Hudson to define such targets in cooperation with Staff. Within 20 days following issuance of this order, Central Hudson will submit its capital investment plan and proposed targets for the second year of the rate freeze to the Director, Office of Gas, Electric, and Water for review. Forty-five days after that submission Central Hudson and Staff will file their respective or joint recommendations concerning the tree trimming expenditure, stray voltage testing and mitigation cost, and net plant targets with the Secretary for a final Commission determination.

MOTION FOR EVIDENTIARY HEARINGS

Shortly before the RD was issued, CLP/COA was admitted as a party to the proceeding, and it filed a motion requesting evidentiary hearings. The RD was issued before responses opposing the motion were due.[32] Nevertheless, the judges reviewed the motion standing alone and recommended that we deny it.

From a procedural standpoint, considering fairness and efficiency, the judges found the motion inconsistent with the rule that parties joining a proceeding already underway must

[32] CLP/COA intervened and filed its motion May 1, 2013, with opposing responses due May 8. The RD was issued May 3.

accept the record as developed prior to their intervention,[33] inasmuch as all previous intervenors had to meet a much earlier deadline for identifying issues allegedly requiring evidentiary hearings.[34] Moreover, the judges observed, the pre-filed testimony and exhibits could be incorporated into the record (as advocated by CLP/COA) without evidentiary hearings.[35] Meanwhile, in terms of substantive issues, the judges found "no factual questions that could be clarified by confrontation of witnesses and could materially affect the Commission's decision."[36]

In addition to the CLP/COA motion, public comments submitted to us or published in the news media likewise express support for hearings.[37] Responses opposing the motion have been filed by Petitioners, Staff, and MI. PULP and IBEW have filed responses stating that they do not oppose the motion but proposing that it be held in abeyance pending our determination at this time whether outstanding or newly identified issues create a need for hearings. (Parties opposing the motion oppose the PULP and IBEW recommendation as well.)[38]

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[33] 16 NYCRR 4.3(c)(2).

[34] The RD cites only a February 8, 2013 deadline for identifying evidentiary issues. (RD, p. 4.) However, as we explain here, the judges adopted that deadline after the Joint Proposal was filed, thereby extending similar deadlines previously set for October 5, 2012 and then November 16, 2012.

[35] RD, p. 4.

[36] RD, p. 5.

[37] *E.g.*, letters dated May 10, 2013 from Assembly Member Kevin A. Cahill to Chairman Brown; May 6, 2013 from U.S. Representative Sean Patrick Maloney to Chairman Brown; and April 30, 2013 from Shayne R. Gallo, Mayor, City of Kingston, to Acting Secretary Cohen.

[38] IBEW's response antedates its decision to support the merger proposal, possibly implying that IBEW has abandoned its conditional support of additional hearings.

Having now had an opportunity to consider not only the motion as presented to the judges but also the subsequent responses and public comments on this question, we agree with the judges that our decision regarding the merger should be based on the documentary evidence and public comments already in the record without additional hearings.

As Petitioners suggest, a useful approach is to examine (1) whether the movants cite reasons for introducing the motion as late in the proceedings as they did; (2) whether granting the motion would prejudice other parties or the public interest; and, if so, (3) whether such prejudice would be outweighed by the hearings' evidentiary value. Regarding the last point, no party claims that evidentiary hearings are statutorily required in this case; therefore the hearing process already conducted suffices legally if the resulting record constitutes substantial evidence and provides a rational basis for decision.

On the first question, that of timing, those opposing the motion are correct that there is no discernible reason for its submittal as late as May 1, 2013. There can be no serious claim that the merger proposal was esoteric or came as a surprise late in the proceeding, having been public knowledge since it was first announced on February 21, 2012; nor, for example, does CLP/COA allege a belated discovery of new facts or issues. The present merger petition was filed on April 20, 2012, followed by a May 16, 2012 procedural conference open to all interested persons. The judges initially set an October 5, 2012 deadline "for all parties to file any statements of material factual issues they believe the [parties'] comments or testimony raise and warrant consideration in an evidentiary

hearing."[39] They later extended that deadline to November 16, 2012, as part of a general rescheduling designed to provide Staff and intervenors six additional weeks for discovery and testimony.[40] Then, after the Joint Proposal was negotiated and filed, the judges issued yet another, similar invitation whereby "any party who contends that an evidentiary hearing on the Joint Proposal is necessary must demonstrate [by February 8, 2013] that a material issue of fact exists that cannot be resolved without the cross-examination of witnesses."[41]

During the entire period from the initial April 2012 filing until CLP/COA's actual intervention in May 2013, intervention was freely authorized for every interested applicant without opposition, so that CLP/COA's absence can only be deemed voluntary. Thus it was procedurally appropriate for the judges to rely on 16 NYCRR 4.3(c)(2) in concluding that CLP/COA was subject to the several deadlines it had missed for requesting an evidentiary hearing, wholly apart from the judges' substantive finding that CLP/COA had failed to identify reasons for a hearing.

Given the lack of a justification for the late filing of CLP/COA's motion, technically it becomes unnecessary to reach the second question, whether the delay occasioned by extending the proceeding at this stage would prejudice the parties or the public interest. Nevertheless, we find that it would. As the judges stated when granting additional time (over Petitioners' objections) for preparation of Staff and intervenor cases:

In scheduling administrative proceedings, the

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[39] Case 12-M-0192, Ruling on Schedule and Procedure (issued June 29, 1012), p. 1.

[40] Case 12-M-0192, Ruling on Motion for Reconsideration (issued July 31, 2012), p. 1.

[41] Case 12-M-0192, Ruling on Schedule and Content of Comments on Joint Proposal (issued January 29, 2013), p. 2.

> primary concern is fairness. To the extent possible, a schedule should be adopted that does not prejudice the interests of any party. Here, Petitioners have an interest in seeing their petition determined by the Commission within a commercially reasonable time.[42]

Not only does that analysis remain valid at the present stage; but we now are met with the additional consideration that CLP/COA's proposed modification of the procedural schedule to accommodate hearings would be unfair to other parties that made efforts, including timely intervention, to comply with the schedule previously adopted. Such unfairness in turn would disserve the public interest by undermining the Commission's, judges', and parties' interest in securing compliance with schedules established in future proceedings.

Finally, the third question enumerated above is whether an otherwise prejudicial delay can be justified by the value the evidentiary hearings would add to the record. CLP/COA and others advocating a hearing have not satisfied that criterion. Typically in our proceedings, the reasons for an evidentiary hearing are that it enables parties to elicit information that could not be obtained through discovery, or to test the accuracy or cogency of facts and opinions presented by opposing parties through their witnesses.

The parties that intervened earlier than CLP/COA did not identify issues even arguably suitable for such procedures despite three formal invitations to do so, as described above. Those currently seeking hearings likewise have not shown that cross-examination might enhance the record regarding material

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[42] Case 12-M-0192, Ruling on Motion for Reconsideration (issued July 31, 2012), pp. 4-5, citing Case 08-E-0077, *Entergy Corporation, et al. - Reorganization*, Ruling on Discovery, Process, Schedule and Scope of Issues (issued August 14, 2008), p. 31.

issues. Nor can they explain why the procedures actually used in this case have been less effective than confrontation of witnesses.

Thus, for example, CLP/COA says cross-examination is needed "to ensure clarity [and] accuracy and to probe credibility,"[43] begging the question what material fact is unclear or unverified or raises an issue of credibility. Similarly, elected officials' public comments argue that a determination of the public interest under PSL §70 requires a factual basis;[44] that "full and informed public input is vital";[45] or that we must examine "[e]ach and every fact and estimate" regarding Petitioners' "financial health, commitments to customer service, labor contract continuation limitations, and promises of ratepayer relief."[46] Each of these premises, while unexceptionable on its face, stops short of explaining why a decision should not be based on the record already compiled through months of discovery, preparation of adversarial testimony and exhibits by Staff and intervenors, and a subsequent Joint Proposal negotiated over an additional two months in discussions open to all interested parties.

The CLP/COA motion and other comments also attempt to characterize this case as a deviation from established procedures, insofar as the case has included no evidentiary hearings even though the merger proposal is momentous. This objection not only lacks a supporting legal theory, but also does not describe our practices accurately. To generalize about our merger proceedings, or indeed any Commission cases where hearings are merely discretionary, the most that accurately can

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[43] CLP/COA motion, p. 5.

[44] Gallo letter, *supra*, p. 1.

[45] Maloney letter, *supra*.

[46] Cahill letter, *supra*, p. 1.

be said is that the procedures adopted are tailored to the nature of the facts and issues to be determined.[47] For example, among the merger cases cited by CLP/COA to show that evidentiary hearings are customary, three differed from this case in that each included establishment of a detailed rate plan,[48] and the fourth differed in that the parties did not negotiate a Joint Proposal.[49] And in none of the other cases was the evidentiary hearing proposed belatedly as here.

In summary, the judges were correct that to grant the motion for hearings would be improper because of the circumstances in which CLP/COA intervened, would be prejudicial and contrary to the public interest, and would not enhance the record on any material issue requiring a decision.

CONCLUSION

The acquisition of CHEG by Fortis, subject to the terms of the Joint Proposal as modified, clarified and

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[47] A typical criterion in choosing between evidentiary hearings and other procedures is whether the issues are factual. As the judges in another proceeding explained: "we are not excluding issues from consideration in the hearing process, ... instead, we are distinguishing between contested factual matters requiring adjudication and legal or policy matters, for which no facts are in dispute, and which are appropriately addressed by argument." Case 10-T-0139, *Champlain Hudson Power Express Inc. - Transmission Siting*, Ruling on Issues (issued May 8, 2012), p. 3, n. 7.

[48] Case 01-M-0075, *Niagara Mohawk Power Corp., National Grid PLC, et al. - Merger*, Opinion and Order Authorizing Merger and Adopting Rate Plan (issued December 3, 2001); Case 01-E-0359, *N.Y.S. Electric & Gas Corp. - Price Protection Plan*, Order Adopting Provisions Of Joint Proposal With Modifications (issued February 27, 2002); Case 06-M-0878, *National Grid PLC and KeySpan Corp. - Stock Acquisition*, Order Authorizing Acquisition Subject to Conditions and Making Some Revenue Requirement Determinations (issued September 17, 2007).

[49] Case 07-M-0906, *Iberdrola S.A., Energy East Corp., et al. - Acquisition*.

supplemented in our discussion above, provides substantial benefits and minimal risks. We approve it as being in the public interest within the meaning of PSL §70.[50]

As the RD explained, the clearest articulation of the public interest analysis in a case such as this can be found in our decision approving the acquisition of New York State Electric and Gas Corporation and Rochester Gas & Electric Corporation by Iberdrola.[51] It starts by requiring Petitioners to make a three-part showing: that the transaction would provide customers positive net benefits, after considering (1) the expected benefits properly attributable to the transaction, offset by (2) any risks or detriments that would remain after applying (3) reasonable mitigation measures.

Once we have gauged the net benefits by comparing the transaction's intrinsic benefits versus its detriments and risks, we can assess whether the achievement of net positive benefits requires that the intrinsic benefits be supplemented with monetized benefits (sometimes described as "positive benefit adjustments" or PBAs). Then, if necessary, we establish a quantified PBA requirement, "as an exercise of informed judgment because there is no mathematical formula on which to base such a decision."[52]

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[50] In adopting the Joint Proposal's terms, we neither reject nor adopt the terms stated in §§VI.A. through F. of the Joint Proposal ("Other Provisions"), as they concern only the parties' mutual obligations. Nothing in the Joint Proposal would preclude reliance on our order adopting the Joint Proposal's terms, as precedent in other cases. See Cases 06-G-1185 and 06-G-1186, *KeySpan Energy Delivery - Rates*, Order Adopting Gas Rate Plans (issued December 21, 2007), pp. 58-60.

[51] RD pp. 57-58.

[52] *Iberdrola* order, p. 136.

In this instance, the elements we called for in *Iberdrola* are combined in a Joint Proposal whose terms include the basic merger transaction, measures to mitigate the transaction's risks or detriments, and supplemental, monetized benefits. In reviewing the proposed benefits achievable only through approval of the transaction and the Joint Proposal, we find them sufficiently significant, and the risks sufficiently minimized, to produce a net positive benefit for ratepayers that justifies approval of the transaction.

As we have discussed, the benefits include $9.25 million in guaranteed rate savings, a $35 million fund to be used for deferral write-offs and/or future rate mitigation, a $5 million Community Benefit Fund for low-income customer programs and economic development, and an earnings sharing mechanism more favorable to ratepayers than the present formula. As for any offsetting risks or detriments, we find that they have been minimized sufficiently, because the Joint Proposal's terms as modified and adopted establish comprehensive financial safeguards, corporate governance requirements, employee retention requirements, service quality and performance mechanisms, and other risk mitigation measures. Those provisions together with Fortis's "federal" business model and an extension of Central Hudson's current level of community involvement will ensure the continuation of Central Hudson's role in its service territory as a responsive and responsible corporate citizen.

Based on these considerations, we find that the proposed transaction provides a clear net benefit to Central Hudson's ratepayers, and that the transaction therefore is in the public interest as required by PSL §70.

Finally, we are conditioning our approval of the transaction on Petitioners' providing the "enhancements"

outlined above, namely: an extension of the originally proposed rate freeze through June 30, 2015; job security provisions extended to four years as compared with the two years originally proposed; continuation of Central Hudson's level of involvement in community programs for ten years, rather than the five originally proposed; and a provision that Central Hudson's Board of Directors will include two independent directors residing in the service territory, rather than one as originally proposed.

In summary, we approve the merger transaction because it will serve the public interest as required by PSL §70; and we adopt Petitioners' proposed enhancements, because they provide other advantages additional to those enumerated in the Joint Proposal. Therefore, the motion is denied.

The Commission orders:

1. In accordance with the foregoing discussion, and subject to the determinations and understandings set forth above, the terms of the Joint Proposal dated January 25, 2013, which was filed in this proceeding on January 28, 2013, are adopted in their entirety except as otherwise noted, and are incorporated as part of this order.

2. Fortis Inc. and CH Energy Group, Inc., on behalf of themselves and their subsidiaries that are parties to the petition initiating this proceeding, must submit a written statement of complete and unconditional acceptance of this order and its terms and conditions, signed and acknowledged by duly authorized officers before the earlier of the closing date of the proposed acquisition or July 8, 2013. These statements must be filed with the Secretary and served contemporaneously on all active parties in this proceeding. In the absence of such acceptance, our approval of the proposed acquisition is rescinded.

3. Within 90 days following the closing of the merger, Fortis Inc. shall file with the Secretary a Tax Preparation and Sharing Agreement incorporating the provisions described in this order.

4. Pursuant to PSL §108, Central Hudson Gas & Electric Corporation is authorized to amend its Certificate of Incorporation to provide for the establishment of a class of preferred stock having one share subordinate to any existing preferred stock, as defined by the terms of the Joint Proposal that we are adopting by this order. Such share of stock shall have voting rights only with respect to Central Hudson Gas & Electric Corporation's right to commence any voluntary bankruptcy without the consent of the holder of that share of stock.

5. As described in the body of this order, within 20 days following the issuance of this order, Central Hudson Gas & Electric Corporation shall file with the Secretary its capital investment plan and proposed targets for tree trimming expenditures, stray voltage testing and mitigation costs, and net plant for the year ending June 30, 2015. Forty-five days after that submission, Central Hudson and Staff shall file their respective or joint recommendations concerning the tree trimming expenditure, stray voltage testing and mitigation costs, and net plant targets with the Secretary for a final Commission determination.

6. The motion for evidentiary hearings filed by Citizens for Local Power and the Consortium in Opposition to the Acquisition is denied.

7. The Secretary in his sole discretion may extend any deadlines established by this order.

8. This proceeding is continued but shall be closed by the Secretary as soon as the compliance filings have been completed, unless he finds good cause to continue it further.

By the Commission,

(SIGNED) JEFFREY C. COHEN
Acting Secretary

Public Service Commission
State of New York

Joint Petition of Fortis Inc., FortisUS Inc., Cascade Acquisition Sub Inc., CH Energy Group, Inc., and Central Hudson Gas & Electric Corporation for Approval of the Acquisition of CH Energy Group, Inc. by Fortis Inc. and Related Transactions.	:	Case 12-M-0192

Joint Proposal for Commission Approval of the Acquisition of CH Energy Group, Inc. by Fortis Inc. and Related Transactions

Dated: January 25, 2013

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Joint Proposal for Commission Approval of
the Acquisition of CH Energy Group, Inc. by
Fortis Inc. and Related Transactions

I. INTRODUCTION

This proposal ("Joint Proposal") for the complete resolution of the Joint Petition in this proceeding is submitted jointly to the New York State Public Service Commission ("Commission") by Cascade Acquisition Sub Inc. ("Cascade"), CH Energy Group, Inc. ("CHEG"), Central Hudson Gas & Electric Corporation ("Central Hudson"), Department of Public Service Staff ("Staff"), Department of State Utility Intervention Unit ("UIU"), Dutchess County New York, Fortis Inc. ("Fortis"), FortisUS Inc. ("FortisUS"), Multiple Intervenors, Orange County New York, and Ulster County New York. The supporting parties are referred to herein collectively as the "Signatories."

II. PROCEDURAL SUMMARY

Subsequent to the April 20, 2012 filing of the Joint Petition, direct testimony and exhibits, formal proceedings have

included an on-the-record technical conference, two administrative conferences, scheduling and procedural rulings by the Presiding Administrative Law Judges, and extensive discovery. Twelve parties, including Staff, have been admitted. On October 12, 2012, in accordance with the procedural schedule, eight parties filed their initial positions. Staff filed corrected testimony on November 5, 2012. Petitioners submitted their reply comments and rebuttal testimony and Staff filed their rebuttal testimony on November 27, 2012. Staff also filed sur-rebuttal testimony on December 4, 2012. Three parties filed their lists of Disputed Issues of Material Fact on December 4, 2012.

Pursuant to a Notice of Potential Settlement filed by Petitioners on December 12, 2012, a series of settlement discussions commenced on December 17, 2012 and continued on December 18, 19 and 20 and January 2,3,4,7,8 and 11, 2013. Following these discussions, drafts of this Joint Proposal and the Signatories' comments thereon were exchanged, and this Joint Proposal was executed by the Signatories.

III. APPROVAL OF TRANSACTION

The Signatories recommend that the Commission approve the indirect transfer to Fortis of the ownership of Central Hudson through the acquisition and related transactions described in

the Joint Petition, subject to the terms described herein.[1] The Signatories have concluded that these terms establish that the upstream transfer of the equity interests in Central Hudson is "in the public interest" pursuant to Public Service Law ("PSL") Section 70, and should be approved.

IV. TERMS OF COMMISSION APPROVAL

A. Corporate Structure and Financial Protections

1) Goodwill and Acquisition Cost Conditions

a) Cascade, CHEG, Central Hudson, Fortis and FortisUS (referred to collectively herein as "Petitioners") agree that the Goodwill and transaction costs of this acquisition will be excluded from the rate base, expenses, and capitalization in the determination of rates and earned returns of Central Hudson for New York State regulatory accounting and reporting purposes.

b) If, at any time after the closing of this acquisition, as a result of any impairment analysis by Fortis, FortisUS, CHEG or Central Hudson, either Fortis or FortisUS makes a book entry reflecting

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[1] Pursuant to the February 20, 2012 Agreement and Plan of Merger, the acquisition will be accomplished by the merger of Cascade with and into CHEG, with CHEG as the surviving corporation that will be wholly-owned by Fortis. Central Hudson and its sister unregulated affiliates (Griffith Energy Services, Inc. and Central Hudson Enterprises Corporation) will continue to be wholly-owned subsidiaries of CHEG and, therefore, indirect, wholly-owned subsidiaries of Fortis.

impairment of the Goodwill from this acquisition, Central Hudson must submit the impairment analysis to the Commission within five business days after the entry has been made.

c) To the extent permissible under U.S. Generally Accepted Accounting Principles ("U.S. GAAP"), no goodwill or transaction costs associated with this acquisition will be reflected on the books maintained by Central Hudson after the closing of the acquisition of CHEG by FortisUS and Fortis. Should changes in U.S. GAAP require that the goodwill associated with the acquisition be "pushed down" and therefore reflected in the accounts of Central Hudson, the goodwill will not be reflected in the regulated accounts of Central Hudson for purposes of determining rate base, setting rates, establishing capital structure or other regulatory accounting and reporting purposes.

d) Central Hudson will provide a final schedule of the external costs to achieve the merger following consummation of the transaction as a demonstration that there will be no recovery requested in Central Hudson rates, or recognition in the determination of rate base of any legal and financial advisory fees,

or other external costs associated with Fortis' acquisition of CHEG, and indirectly, Central Hudson.

2) Credit Quality and Dividend Restriction Conditions

a) After the closing of this transaction, copies of all presentations made to credit rating agencies by Central Hudson, Fortis or any Fortis affiliate in the line between Central Hudson and Fortis that present or discuss the finances and credit of Central Hudson or CHEG, will be provided to Staff within ten business days of the presentation on a continuing basis. These presentations will be subject to the confidentiality and privilege provisions of sections VI.B 32 and 33 of the Restructuring Settlement Agreement ("RSA") approved by the Commission in 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 on February 19, 1998).

b) To the extent not already in place, Fortis and Central Hudson must register with at least two major nationally and internationally recognized bond rating agencies, such as Dominion Bond Rating

Services ("DBRS"), Fitch Ratings ("Fitch"), Moody's Investor Services ("Moody's") and Standard & Poor's ("S&P"). Consistent with section VI.B 20 of the RSA, Central Hudson will continue to maintain separate debt instruments and its own corporate and debt credit ratings with at least two of these nationally recognized credit rating agencies. Neither Fortis nor Central Hudson will enter into any credit or debt instrument containing cross default provisions that would affect Central Hudson.

c) Fortis and Central Hudson will continue to support the objective of maintaining an "A" credit rating for Central Hudson, unless and until the Commission modifies its financial integrity policies. In so doing, Fortis and Central Hudson will maintain the equity capitalization ratio of Central Hudson at the level used by the Commission in establishing Central Hudson's rates as follows. At each month end, Central Hudson and Fortis agree to maintain a minimum common equity ratio ("MER") (measured using a trailing 13-month average) in relation to the equity ratio used to set rates. The MER is defined as no less than 200 basis points below the equity ratio used to set rates. In the event that the MER

is not met, no dividends are payable until such time the MER is restored.

d) In the event the Commission establishes rates for Central Hudson on a basis that does not recognize Central Hudson's actual equity capitalization, or deems or imputes for ratemaking purposes an equity capitalization below Central Hudson's actual equity capitalization, Central Hudson shall be free to dividend its excess equity capitalization to match that recognized or deemed by the Commission in establishing Central Hudson's rates.

e) If, as a direct result of a downgrade of Fortis Inc.'s debt within three years following the closing of this transaction, Central Hudson is downgraded to either S&P's or Fitch's BBB category (BBB+ or lower), or the equivalent for Moody's (Baa1 or lower) or DBRS's (BBB(high) or lower), and Central Hudson incurs increased costs of debt, the incremental cost of debt incurred by Central Hudson in comparison to the cost of debt which would otherwise have been incurred by Central Hudson under its pre-downgrade credit rating will not be reflected in Central Hudson's cost of capital or the

determination of Central Hudson's rates in subsequent rate cases.

If such a downgrade occurs in the time discussed and debt is issued, then in subsequent rate cases Mergent Bond Record data (or the equivalent, if Mergent data is not available) for the relevant month(s) of issue will be used to quantify the adjustment needed to avoid reflecting the higher interest rate expense. For each one-notch downgrade to Central Hudson, one-third of the difference between A and Baa Public Utility Bond yield averages will be used to adjust the interest rate allowed in rate cases. The differential will only apply for each credit rating agency which downgrades Central Hudson's debt due to a Fortis downgrade. For instance, if Central Hudson is rated by two credit rating agencies and only one downgrades them due to a Fortis downgrade, then only 50% of the one-notch yield difference per Mergent Bond Record data will be used to calculate the interest rate adjustment in subsequent rate cases.

f) Central Hudson will continue to comply with any and all sections of the RSA with respect to restrictions

on the payment of common dividends related to credit ratings.

g) Central Hudson will not lend to, guarantee or financially support Fortis or any of its affiliates, or any subsidiary or other joint venture of Central Hudson, except as is consistent with section VI.B 23 of the RSA or permitted by the Money Pooling Conditions referred to below. Furthermore, Central Hudson will not engage in, provide financial support to or guarantee any non-regulated businesses, except as authorized in the RSA or by Commission order.

h) Central Hudson shall maintain banking, committed credit facilities and cash management arrangements which are separate from other affiliates.

i) In addition to the special class of preferred stock referred to in item 4, below, Central Hudson's financing authorization in Case 12-M-0172, Order Authorizing Issuance of Securities, issued and effective September 14, 2012 ("Financing Order") is amended to authorize Central Hudson to use private financing as an alternative to public debt offerings. This authorization supersedes Ordering Clause 5 in the Financing Order. Private financings are subject to the conditions and requirements

described in the other Ordering Clauses in the Financing Order and, Central Hudson's proposal to address Ordering Clause 6 in the Financing Order, as was filed with the Commission on November 9, 2012, is accepted and approved by the Commission's adoption of this Joint Proposal.

3) Money Pooling Conditions

a) Central Hudson may participate in a money pool only if all other participants, with the exception of Fortis and FortisUS, are regulated utilities operating within the United States, in which case Central Hudson may participate as either a borrower or a lender. Fortis and FortisUS may participate only as lenders in money pools involving Central Hudson. Central Hudson may not participate in any money pool in which any participant directly or indirectly loans or transfers funds to Fortis or FortisUS.

b) Neither Fortis nor FortisUS, nor any of their affiliates may, at closing of the approved acquisition of Central Hudson, have any cross default provision that affects Central Hudson in any manner. Neither Fortis nor FortisUS, nor any of their affiliates may enter into any cross default

provision following the closing that affects Central Hudson in any manner. Notwithstanding the foregoing, to the extent that any cross default provision that might affect Central Hudson already exists, Fortis and FortisUS must use their best efforts to eliminate that cross default provision within six months after closing. If any cross default provision remains in effect at the end of that period, Fortis and FortisUS must obtain indemnification from an investment grade entity, at a cost not borne by Central Hudson's ratepayers, which fully protects Central Hudson from the effects of any cross default provision.

4) Special Class of Preferred Stock Conditions

a) Central Hudson must modify its corporate by-laws as necessary to establish a voting right in order to prevent a bankruptcy, liquidation, receivership, or similar proceedings ("bankruptcy") of Central Hudson from being caused by a bankruptcy of Fortis, FortisUS, or any other affiliate. The Commission's approval of this Joint Proposal will represent all Commission authorization necessary for Central Hudson to establish a class of preferred stock having one share (the "golden share"), subordinate

to any existing preferred stock, and to issue that share of stock to a party who shall protect the interests of New York and be independent of the parent company and its subsidiaries. Such share of stock shall have voting rights only with respect to Central Hudson's right to commence any voluntary bankruptcy without the consent of the holder of that share of stock. Central Hudson shall notify the Commission of the identity and qualifications of the party to whom the share is issued and the Commission may, to the extent that such party is not reasonably qualified to hold such share in the Commission's opinion, require that the share be reissued to a different party within three months of receipt of such notification. If Central Hudson has failed to propose a shareholder that is approved by the Commission within six months after the closing of the acquisition, the Commission will appoint a shareholder of its own selection. In the event that Central Hudson is unable to meet this condition despite good faith efforts to do so, it must petition for relief from this condition, explaining why the condition is impossible to meet and how it proposes to meet an underlying requirement that a

bankruptcy involving Fortis, FortisUS, or any other affiliate does not result in its voluntary inclusion in such a bankruptcy.

b) In any rate proceeding in which use of Central Hudson's capital structure is requested, Central Hudson will submit the most current written evaluations from at least two rating agencies addressing Central Hudson's credit profile. These credit reports shall be relied upon to the extent that they provide written evidence that supports the evaluation of Central Hudson and the treatment of Central Hudson's capital structure by the Commission primarily as a separate company, without material adjustments to the rating based on risks related to the capital structure and ratings of its ultimate parent. This evidence, together with the golden share would provide sufficient proof that the use of Central Hudson's capital structure should be used for rate making purposes. In the event written evaluations from at least two rating agencies do not provide such evidence or are not available, Central Hudson shall have the opportunity to meet its burden of proof through other means. Central Hudson's capital structure will continue to be reviewed in

relation to the level of risk of Central Hudson at that time.

5) Financial Transparency and Reporting Conditions

a) Central Hudson must continue to use the standards of Generally Accepted Accounting Principles applicable to publicly-traded entities ("Public GAAP," "U.S. GAAP," or simply "GAAP") for its financial accounting and financial reports. Central Hudson will, for purposes of its financial accounting and financial reporting, continue to use the generally accepted accounting principles which include, but are not limited to the determinations by the Financial Accounting Standards Board ("FASB"), or any successor entity, for U.S. publicly accountable enterprises ("U.S. GAAP" or simply "GAAP"). Any future changes in U.S. GAAP, including any decision to replace U.S. GAAP with International Financial Reporting Standards ("IFRS"), will be applied by Central Hudson. In the event of future changes to accounting standards, recovery by Central Hudson for the incremental costs incurred in making such changes will be addressed in a future rate proceeding.

b) Central Hudson must continue to satisfy all Commission reporting requirements that currently apply to it; provided however, that nothing in this provision is intended to preclude Central Hudson from requesting relief from any such reporting provision and, further, that nothing herein is intended to require Central Hudson to continue to make reports in the future that utilities have been generally or generically excused by the Commission from making.

c) After the closing of this acquisition, Central Hudson shall continue to comply with the provisions of sections 302 through 404 of the Sarbanes-Oxley Act ("SOX") as if Central Hudson were still bound directly by the provisions of SOX, with the understanding that no filings with the Securities and Exchange Commission will be required. Specifically, Central Hudson's periodic statutory financial reports must continue to include certifications provided by its officers concerning compliance with SOX requirements, including certifications on internal controls, as if still bound by the provisions of SOX.

d) Central Hudson shall remain subject to annual attestation audits by independent auditors with respect to its financial statements and internal controls over financial reporting.

e) Subject to the confidentiality and privilege provisions of sections VI.B 32 and 33 of the RSA, Fortis and Central Hudson will provide Staff access pursuant to section VI.B 30 of the RSA to the books and records and Standards Pertaining To Transactions, Conflicts Of Interest, Cost Allocations And Sharing Of Information Between Central Hudson Gas And Electric Corporation And Affiliates ("Standards"), including, but not limited to, tax returns, of Fortis and FortisUS to the extent necessary to determine whether the rates and charges of Central Hudson are just and reasonable and provide Staff the opportunity to ensure that costs are allocated equitably among affiliates in accordance with the RSA, Standards and Central Hudson code of conduct and that intercompany transactions involving Central Hudson are priced reasonably in accordance with the RSA, Standards and Central Hudson code of conduct. Subject to the confidentiality and privilege provisions of sections

VI.B 32 and 33 of the RSA, that access must include, but not be limited to, all information supporting the underlying costs and the basis for any factor that determines the allocation of those costs.

f) Commencing for the year in which the closing takes place, Central Hudson must file annually with the Commission Fortis financial statements, including balance sheets, income statements, and cash flow statements for Fortis, Inc. and its major regulated and unregulated energy company subsidiaries in the United States. U.S. business entities with annual revenues less than ten percent of total Fortis revenues may be aggregated, provided that each entity included is fully identified. Aggregated U.S. business entities shall be identified as either regulated or unregulated. To satisfy this filing requirement, Fortis Inc.'s U.S. GAAP Canadian dollar denominated quarterly and annual Financial Reports, including Management Discussion and Analysis, which have been filed publically with Canadian securities regulators, will be filed by Central Hudson with the Commission. Additionally, Central Hudson will provide to the Commission, to the extent available from a recognized financial reporting information

service such as SNL Financial or Bloomberg, Fortis Inc.'s "as reported" quarterly and annual Balance Sheet, Income Statement and Statement of Cash Flows in U.S. dollars with the underlying currency translation assumptions.

g) All information required by the financial transparency and reporting requirements in subparagraphs (a) through (f) above must be provided in English and in U.S. dollars, with the exception of Financial Reports and Management Discussion and Analysis referred to in subparagraph (f), and books and records and Canadian tax returns that statutorily require Canadian dollar reporting. In such cases, foreign exchange for U.S. dollar translation will be provided as described in subparagraphs (a) through (f) above and, shall be publicly available subject to the confidentiality and privilege provisions of sections VI.B 32 and 33 of the RSA.

6) Affiliate Transactions, Cost Allocations, and Code of Conduct

a) Fortis shall be subject to the rules, practices, and procedures in the RSA, Standards, and code of

conduct governing relations among CHEG and Central Hudson in the same manner as they apply to CHEG.

b) Central Hudson will not enter into transactions with affiliates that are not in compliance with the RSA guidelines regarding affiliate transactions, including the updated Standards set forth in Attachment I. Central Hudson will also not enter into transactions with affiliates on terms less favorable to Central Hudson than specified in the RSA, including the updated Standards.

c) Central Hudson shall provide 180 days notice to the Commission prior to the commencement of any planned material (i.e., individually or collectively exceeding greater than 5% of Central Hudson net income on an after tax basis) shared services initiatives, and prior to establishment of a services organization that would provide material (i.e., individually or collectively exceeding greater than 5% of Central Hudson net income on an after tax basis) services to Central Hudson. Further, any such noticed shared service initiative would require Commission approval.

d) At or prior to the time of Central Hudson's next base rate filing it will consolidate the RSA,

Standards and codes of conduct into one comprehensive document and file the consolidated document with the Commission. The intention of this requirement is to organize the provisions into an integrated document without altering the effect and content of the provisions.

7) Follow-On Merger Savings

a) In the event that Fortis completes any additional mergers or acquisitions within the United States before the Commission adopts an order approving new rates for Central Hudson, Fortis must share the follow-on merger savings that are reasonably applicable to Central Hudson and its customers between shareholders and ratepayers, on a 50/50 basis, to the extent the portions of such savings realized by Fortis are material (*i.e.*, 5 percent or more of Central Hudson net income on an after-tax basis). Central Hudson must submit, within 90 days of the follow-on merger closing, a comprehensive and detailed proposal to share the follow-on merger savings, to begin on the closing date of the follow-on merger. In addition, the proposal must include an allocation method for sharing the synergy savings and efficiency gains among corporate entities that

addresses the time period from the receipt of the synergy savings by Central Hudson until the Commission approves new rates. The ratepayer share shall be set aside in a deferral account for future Commission disposition.

8) Corporate Governance and Operational Provisions

a) No later than one year after the closing of Fortis's acquisition of CHEG, Fortis shall appoint a board of directors for Central Hudson, the majority of whom will be independent (as defined in the Standards, see Attachment I), with the majority of such independent directors being resident in the State of New York, with emphasis on selecting candidates who reside, conduct business or work within the Central Hudson service territory. At least one independent director of Central Hudson shall be a resident of the service territory. Except with respect to the initial appointment of the board of directors for Central Hudson within one year following the closing, nothing in this Joint Proposal is intended to restrict the rights of Fortis to take any action before the Commission, or otherwise, regarding the appointment of directors meeting the above residency criteria at any time, as it sees fit.

b) Subject to the right of Central Hudson to petition the Commission for approval to relocate its corporate headquarters outside of Central Hudson's service territory, the corporate headquarters of Central Hudson shall remain within Central Hudson's service territory. Complete books and records of Central Hudson shall be maintained at Central Hudson's corporate headquarters.

c) At least 50% of Central Hudson's officers shall reside within Central Hudson's service territory.

d) Central Hudson shall be governed, managed and operated in the fashion described in Petitioners' testimony. Specifically, the Signatories agree that:

i) The board of directors of Central Hudson will be responsible for management oversight generally, including the approval of annual capital and operating budgets; establishment of dividend policy; and determination of debt and equity requirements. The Central Hudson board of directors will have an audit committee, the majority of whom will also be independent. The responsibility of this committee will include the oversight of the ongoing financial

integrity and effectiveness of internal controls of Central Hudson.

ii) Central Hudson's local management will continue to make decisions regarding staffing levels and hiring practices; will continue to negotiate future collective bargaining agreements; will continue to be the direct contact and decision making authority in regulatory matters; and, will continue to represent Central Hudson in all future regulatory matters.

iii) To provide continuity in the management and staffing of Central Hudson, and ensure that the necessary human resources are maintained to continue the delivery of safe, reliable service to customers, the current employees of Central Hudson (union and management) will be retained for a period of two years following the closing under their respective current conditions of employment. Central Hudson reserves the right to take disciplinary and any other actions it determines necessary or appropriate within its existing labor agreement and employee relations practices. Central Hudson also agrees to maintain for two years after the closing the

level of operating employees, as defined in the Standards, that is recognized in rates and to file a report with the Secretary of the Commission within 30 days after the first two anniversary dates of the merger's closing comparing the level of union and management employees on the anniversary to date to the levels on the date upon which the merger closed.

iv) To ensure the continued active corporate and charitable presence of Central Hudson in its service territory, Central Hudson shall maintain its community involvement at not less than current (2011) levels for five years after the closing of the acquisition (2013 through 2017).

B. PERFORMANCE MECHANISMS

1) Customer Service

The following targets and effective dates will apply:

Measure	Value	Effective
PSC Complaint Rate	1.1 - 1.6	7/1/13
CSI	85 - 82, etc. structure per the current rate plan	7/1/13
Keeping Scheduled Appointments	$20 paid to customer for missed appt. per current rate plan	7/1/13

These targets will continue to apply unless and until changed by Commission Order.

2) Negative Revenue Adjustments ("NRAs")

The NRAs shown in the following table have been doubled from those in the current rate plan.[2] The NRAs in the current rate plan shall be tripled if targets are missed during a dividend restriction and quadrupled if targets are missed for three years within the next five year period.

Central Hudson Service Quality Performance Mechanism

Customer Satisfaction Index	**Negative Revenue Adjustment**
85% or higher	None
84% ≤ CSI < 85%	$475,000
83% ≤ CSI < 84%	$950,000
82% ≤ CSI < 83%	$1,425,000
< 82%	$1,900,000
Total Amount at Risk	**$1,900,000**

[2] The Commission's Order Establishing Rate Plan, issued June 18, 2010, in Cases 09-E-0588 and 09-G-0589, set forth electric and gas rate plans for Central Hudson for the period July 1, 2010 through June 30, 2013.

PSC Annual Complaint Rate	Negative Revenue Adjustment
<1.1	None
1.1	$950,000
1.2	$1,140,000
1.3	$1,330,000
1.4	$1,520,000
1.5	$1,710,000
1.6 or higher	$1,900,000
Total Amount at Risk	**$1,900,000**

3) Electric Reliability

The electric service annual metrics for System Average Frequency Index (SAIFI) target of 1.45 and Customer Average Duration Index (CAIDI) target of 2.50 continue through 2013.

Electric Reliability Reporting requirements, quarterly meeting requirements, revenue adjustment source, and exclusions are defined in Attachment II.

All Electric Reliability NRAs of the current rate plan shall be doubled. In addition, the NRAs of the current rate plan shall be tripled if targets are missed during a dividend restriction and quadrupled if targets are missed for three years within the next five year period. All electric reliability targets

for calendar year 2013 remain in effect until modified by a Commission order in a subsequent Central Hudson electric rate case.

4) Gas Safety Metrics

Emergency Response Time

The gas emergency response time metrics of 75% response within 30 minutes and 90% response within 45 minutes will be continued.

Gas Leak Backlog

The calendar year 2013 leak backlog target is 260 at year-end. The calendar year 2013 repairable leaks backlog target is 20 at year-end.

Damage Prevention

The calendar year 2013 total damages per 1,000 one call tickets target is 2.40. The calendar year 2013 mismarks per 1,000 one call tickets target is 0.50. The calendar year 2013 Company and Company Contractor damages per 1,000 one call tickets target is 0.25.

New Parts 255 and 261 Violation Metric

Central Hudson will incur a negative revenue adjustment for instances of noncompliance (violations) of certain pipeline safety regulations set forth in 16 NYCRR Parts 255 and 261, as identified during Staff's annual field and record audits. Attachment III sets

forth a list of identified high risk and other risk pipeline safety regulations pertaining to this metric. Central Hudson will be assessed a negative revenue adjustment for each high risk or other risk violation, up to a combined maximum of 100 basis points per calendar year as follows:

High Risk Violation	Occurrences	Basis Points Per Violation
Calendar Year 2013	1-30	1/4
	31+	1/2
Calendar Year 2014	1-25	1/2
	26+	1

Other Risk Violation	Occurrences	Basis Points Per Violation
Calendar Year 2013	1-30	1/9
	31+	1/3
Calendar Year 2014	1-25	1/9
	26+	1/3

This metric will be effective as of the start of the Commission Order in this case, but will then be measured on calendar years, as identified above. With respect to violations, only documentation or actions performed, or required to be performed, on or after

the date of the Commission Order in this case will constitute an occurrence under the metric.

At the conclusion of each audit, Staff and Central Hudson will have a compliance meeting where Staff will present its findings to Central Hudson. Central Hudson will have five business days from the date the audit findings are presented to cure any identified document deficiency. Only official Central Hudson records, as defined in Central Hudson's Operating and Maintenance plan, will be considered by Staff as a cure to a document deficiency. Staff will submit its final audit report to the Secretary of the Commission under Case 12-M-0192. If Central Hudson disputes any of Staff's final audit results, Central Hudson may appeal Staff's finding[s] to the Commission. Central Hudson will not incur a negative revenue adjustment on the contested finding until such time as the Commission has issued a final decision on the contested findings. Central Hudson does not waive its right to seek an appeal of any Commission determination regarding a violation under applicable law.

If an alleged high risk or other risk violation set forth in Attachment III is the subject of a separate

penalty proceeding by the Commission under PSL 25, that instance will not constitute an occurrence under this performance metric.

Negative Revenue Adjustments

Other than the Parts 255 and 261 metric, all Gas Safety NRAs of the current rate plan shall be doubled. In addition, the NRAs of the current rate plan shall be tripled if targets are missed during a dividend restriction and quadrupled if targets are missed for three years within the next five year period.

Continuation

All gas safety targets for calendar year 2013 remain in effect until modified by a Commission order in a subsequent Central Hudson gas rate case.

5) Infrastructure Enhancement for Leak-prone Pipe

A minimum capital budget of $7.7 million is established for the replacement of leak-prone pipe over calendar year 2014. The pipe to be removed from service shall be identified and ranked using a risk-based methodology. If actual expenditures fall short of $7.7 million, Central Hudson will defer for ratepayer benefit the revenue requirement equivalent of the shortfall multiplied by 0.5. Central Hudson shall maintain the minimum pipe replacement level

beyond 2014 at $7.7 million, until changed by the Commission.

C. RATE FREEZE PROVISIONS

The Commission's Order Establishing Rate Plan, issued June 18, 2010, in Cases 09-E-0588 and 09-G-0589, set forth electric and gas rate plans for Central Hudson for the period July 1, 2010 through June 30, 2013. The July 1, 2013 rate reductions for S.C. 11 gas customers (see Section IX, Part B, and Appendix M, Sheet 4 of 5 of the current rate plan) will go into effect as provided in the current rate plan. In the period between July 1, 2013 and June 30, 2014 (Rate Freeze Period), the provisions of the current rate plan applicable to "rate year 3", except as modified in this Joint Proposal, are continued.

1) Earnings Sharing and Calculations of Earned Rates of Return

The Earnings Sharing Provision in Section VI.D of the current Commission-approved rate plan will be modified as of July 1, 2013, to read:

> Actual regulatory earnings in excess of *10.00%* and up to *10.50%* will be shared equally between ratepayers and shareholders. Actual regulatory earnings in excess of *10.50%* will be shared 90/10 (ratepayer/shareholder). These earnings sharing percentages shall be maintained until the effective date of the succeeding Commission rate order.

The Company will defer for the future benefit of ratepayers fifty percent of its share of any actual earnings in excess of *10.50%* to reduce the deferred debit undercollections of MGP Site Investigation & Remediation Costs, interest costs on variable rate, interest costs on new issuances of long term debt, property tax, and stray voltage expense; provided, however, that such reduction in deferred debit deferrals will be further limited so as not to cause the resulting actual earnings to decrease below a 10.50% return on equity.

In calculating earned rates of return for regulatory purposes, the $35 million of combined write-offs of deferred regulatory assets and future rate mitigation funds, and the one-time funding of $5 million for economic development and low income purposes referred to in this Joint Proposal shall be included and not "normalized out" for purposes of determining actual expenses for the rate year in which those benefits are booked by Central Hudson.

2) Distribution and Transmission Right-of-Way Tree Trimming and SIR Costs

At the end of Rate Freeze Period, the actual total expenditures for distribution ROW tree trimming will be compared to $11.397 million and any under-spending will be deferred as of the end of Rate Freeze Period. Carrying charges at the Pre-Tax Rate of Return ("PTROR") will be applied by the Company to the amount

deferred from the end of Rate Freeze Period until the effective date of the succeeding Commission rate order.

At the end of Rate Freeze Period, the actual total expenditures for transmission ROW tree trimming will be compared to $1.711 million and any under-spending will be deferred as of the end of Rate Freeze Period. Carrying charges at the PTROR will be applied by the Company to the amount deferred from the end of Rate Freeze Period until the effective date of the succeeding Commission rate order. In addition, the deferral for Manufactured Gas Plant ("MGP") Site Investigation and Remediation ("SIR") Costs authorized in Paragraph V.A.1 of the current rate plan will be modified as of July 1, 2013 to apply to all Environmental SIR costs incurred by Central Hudson during the period from July 1, 2013 to June 30, 2014. This modification does not limit Staff or the Commission's authority to review the prudence of any SIR costs.

3) Stray Voltage Testing

Actual Stray Voltage Testing expenditures, excluding mitigation costs, will be compared to $2.023 million for the twelve months ending June 30, 2014. Any

under-spending as of June 30, 2014, exclusive of expenditures for actual mitigation costs, will be deferred for future return to customers with carrying charges at the PTROR.

Actual mitigation costs in the twelve months ending June 30, 2014 will be compared to $350,000. The differences between $350,000 and actual mitigation expenditures will be deferred for future recovery by the Company, or return to customers, with carrying charges at the PTROR.

D. NET PLANT TARGETS

The net plant targets for the twelve month period ending June 30, 2014 of $919.3 million for Electric and $252.2 million for Gas, with associated annual depreciation expenses of $32.7 million and $9.0 million, respectively, will be established.

The actual average electric and gas net plant balances at the end of the twelve month period ending June 30, 2014 will be calculated using the calculation methods described in Attachment III. The net plant targets shown in Attachment III limit total Common Software construction expenditures, including Legacy Replacements, in the Rate Freeze Period to $5.0 million.

Reconciliations

The actual electric and gas net plant will be compared to the electric and gas net plant target for the twelve month period ending June 30, 2014, and the revenue requirement difference (i.e., return and depreciation as described in Attachment IV) will be determined.

Deferral For the Benefit of Ratepayers

If, at the end of the twelve month period ending June 30, 2014, the revenue requirement difference from net plant additions is negative, Central Hudson will defer the revenue requirement impact for the benefit of customers. If, at the end of the twelve month period ending June 30, 2014, the revenue requirement impact is positive, no deferral will be made. Carrying charges at the PTROR will be applied by the Company to the amount deferred from the end of the twelve month period ending June 30, 2014 until addressed by the Commission in a Central Hudson rate order.

E. LOW INCOME

The Signatories agree that the existing funding for low income programs available currently in rates will be supplemented with $500,000 from the Community Benefit Fund being made available by the Petitioners as a result of this transaction. In addition, the Signatories agree

to the following modifications to existing low income programs:

1. Central Hudson's current low income program is made up of two components: the Enhanced Powerful Opportunities Program ("EPOP"), which is a targeted program open to selected participants, and a broad-based bill discount program that provides a monthly bill credit to all customers that are Home Energy Assistance Program ("HEAP") recipients.
2. The EPOP program and its associated funding will remain unchanged.
3. The bill discount program currently provides a monthly bill credit of $11.00 to all customers who are HEAP recipients. Data provided by Central Hudson reflect that the program has 8,641 participants as of the twelve months ended November 30, 2012, and projected annual spending of $1,140,612 ($11 x 12 x 8,641).
4. Within 30 days of a Commission order in this proceeding, Central Hudson will modify its current discount program, which provides dual-service customers with one discount, by implementing the following discount levels for single and dual service bill discount program participants:

	Electric only	Gas only	Both Elec. & Gas
Heating	$17.50	$17.50	$23.00
Non-heating	$5.50	$5.50	$11.00

5. In order to ensure that no current participant faces a reduction in current benefit levels, any single service non-heating customer currently receiving a bill discount of $11.00 will continue receiving such benefit at the $11.00 level, instead of the $5.50 level specified above.

6. The total cost of the bill discount program is expected to be $1,662,672. Actual expenditures may vary based on HEAP participation levels.

7. Central Hudson will waive service reconnection fees, no more than one time per customer until new rates go into effect, for customers participating in either the EPOP or bill discount programs. Funding for reconnection fee waivers is limited to $50,000 until new rates go into effect. Central Hudson may grant waivers to individual customers more than once during this period, on a case-by-case basis and for good cause shown, provided that the program funding allocation for such waivers is not exceeded. Upon notice to Staff and the UIU, Central Hudson will be

permitted, first, to limit the waiver to (50) percent of the total reconnection fee, if the cost of waived reconnection fees is projected to exceed the annual allocation, and, second to suspend the waiver program if the budget limit is reached.

8. A sum of $500,000 of the total costs of the low-income bill discount and reconnection fee waiver programs is to be supplied from the Community Benefit Fund. To the extent that actual expenditures exceed the rate allowance in current rates of $1,531,200, plus $500,000 from the Community Benefit Fund, any shortfall will be supplied first, from the cumulative unused portions of the current rate allowances for the bill discount program, which is expected to be approximately $500,000, and second, will be deferred as a regulatory asset. To the extent that actual expenditures fall short of the current rate allowance plus the cumulative unused portions of the current rate allowances for the bill discount program plus $500,000 from the Community Benefit Fund, any excess will be deferred for use of the low-income bill discount program and the reconnection fee waiver program in a future rate proceeding.

9. Customers enrolled in the EPOP or low income bill discount programs will continue to be referred by Central Hudson to the New York State Energy Research and Development Authority's Empower-NY program or any successor to the Empower-NY program, for energy efficiency services.

10. The parties agree that these modifications justify returning to a quarterly reporting schedule. Central Hudson will file quarterly and annual reports on the EPOP and bill discount programs with the Secretary and provide copies to other parties currently receiving copies of EPOP reports. With respect to the bill discount program, the reports will provide:

a. The number of customers enrolled in the bill discount program;

b. The aggregate amounts of low-income bill discounts for the quarter and year to date; and

c. The number of reconnections of low income customers for which the fee was fully or partially waived, and the aggregate amount of reconnection fees waived to date.

11. Nothing in this Joint Proposal is intended to prejudge the treatment of low income matters by the Commission in Central Hudson's next rate case.

F. RETAIL ACCESS

In support of the Commission's retail market development initiatives, Central Hudson will set forth a total bill comparison, using the existing Central Hudson computer program that had been previously implemented, on all retail access residential bills using consolidated billing issued after 90 days following closing. The Signatories agree that this total bill comparison is to provide information to retail access customers that should be made available by the utility as part of the Commission's retail energy markets initiatives. Central Hudson shall report quarterly to the Secretary on this initiative so that Staff can continue to review and supervise this initiative and report any changes deemed desirable to the Commission on an on-going basis. Central Hudson's quarterly reports will also be provided to other parties currently receiving Central Hudson's EPOP reports.

In addition, for similar purposes of supporting the Commission's retail market development initiatives, within 60 days following issuance of the Commission Order in this case, Central Hudson will file a proposal to provide payment-troubled (i.e., subject to termination) customers with bill comparison information. The type of

reporting and continued monitoring appropriate for this initiative will be developed as part of the resolution of Central Hudson's pending proposal.

The costs of these two initiatives will be funded from the existing Competition Education Fund (net of the transfer of funds for economic development, as described below). Central Hudson shall propose a use or uses for any balance remaining in the Competition Education Fund, after these two initiatives have been funded, in its first rate filing following the closing. In the event that the costs of these two initiatives exceed the funding available from the existing Competition Education Fund (net of the transfer of funds for economic development), Central Hudson is authorized to defer the excess costs for future recovery with carrying charges at the PTROR.

The Signatories anticipate that modifications to either initiative may become appropriate based on developments in the ongoing generic retail access proceeding, Case 12-M-0476.

G. ECONOMIC DEVELOPMENT AND SUPPORT FOR STATE INFRASTRUCTURE ENHANCEMENTS

1. Economic Development

The Signatories agree that $5 million will be allocated to economic development purposes to enhance the existing Central Hudson economic development programs. The $5 million is in addition to the current Central Hudson rate allowance for economic development funding. The funding for this program will be through $4.5 million from the remaining balance of the $5 million Community Benefit Fund being provided by Petitioners and $500,000 from Central Hudson's Competition Education Fund.

The parties to this proceeding will confer following the execution and filing of this Joint Petition in this case to seek to jointly develop consensus modifications to the existing Central Hudson economic development programs. Central Hudson shall make a filing with the Commission within 15 days following the Commission's order in this case proposing modifications to the existing economic development programs that include the parties' agreements. As part of the filing made by Central

Hudson, expedited consideration by the Commission will be requested. The proposal will be for programs that will continue to be administered by Central Hudson pursuant to existing Commission authorizations, with the clarifications and modifications as follows. Central Hudson will continue to hold custody of funds and administer the programs with input from the Counties in Central Hudson's service territory. The $5 million will not receive carrying charges. The proposal will include the criterion that all applications for projects that do not have participation from Empire State Development, a County Industrial Development Agency, a County Community College, or local municipal resolution pursuant to existing program requirements will seek a letter of support from the County of origin. In addition, the proposal will state that Central Hudson will seek participation concerning award notifications and announcements from the County of origin prior to issuing such announcements.

In addition to filing the above proposal, Central Hudson will meet twice per year with representatives from all of the Counties in the Central Hudson

service territory to discuss economic development and potential program improvements. Nothing in this Joint Proposal is intended to prejudge the treatment of economic development matters by the Commission in Central Hudson's next rate case.

2) State Infrastructure Enhancements

Central Hudson shall continue to support the New York State Transmission Assessment and Reliability Study ("STARS"), the Energy Highway and economically justified gas expansion. Fortis agrees to provide equity support to the extent required by Central Hudson for such projects as receive regulatory approval and proceed to construction.

3) Gas Expansion Pilot Program

Central Hudson will commit to actively promote its "Simply Better" gas marketing expansion campaign in the Rate Freeze Period, seeking gas customer additions where Company gas facilities already exist, and economic expansion of its gas system, consistent with the Commission's Part 230 regulations, to identified expansion target areas in each operating district. The Company will continue to provide requesting and targeted customers with access to conversion calculators, third-party

turnkey conversion services (potentially including a project specialist from start to finish, a licensed heating installation professional, a detailed cost/benefit proposal on converting their heating equipment, removal of existing oil tank, and coordination of the service and heating installations), and available financing from third-party lenders to assist customers who are seeking gas delivery service or to convert from alternate fuels.

In the event that adequate financial commitments can be secured from new firm service customers and municipal franchise approvals on reasonable conditions are secured in locations where Central Hudson does not currently have gas facilities or local franchises, Central Hudson will commit to file for expedited Commission approval to exercise such franchises as are shown by Central Hudson's analyses to comply with Part 230.

Central Hudson will begin, within 90 days of an Order in this proceeding approving this Joint Proposal, to track all gas service requests and keep record of: (1) applicable gas service request dates (i.e., customer request received, Company evaluation

or commitment made, service denied/initiated); (2) the address of requested service including the township and county; (3) calculated cost to install new service lines and main extensions including customer payment responsibility; and (4) reasons for a service not being initiated. Customer information will be protected consistent with the updated Standards addressed elsewhere in this Joint Proposal.

Central Hudson will propose applying a limited pilot expansion program aimed at testing ideas to economically expand gas to customers. The pilot can be either part of a new franchise filing or a separate filing to the Commission no later than July 1, 2013. The pilot will test all or any of the following ideas:

(1) Piggy back on top of anchor customers to reduce the actual need for additional pipe beyond the 100 foot rule;

(2) surcharge all customers or specific customers over five years or more based on the savings from their alternative fuel to write down assets in order to meet the overall Rate of Return (ROR) by year 5;

(3) increase the minimum 100 feet allowed by a higher "average" amount for everyone in the customer cluster to be served based on anticipated additional revenues; and/or

(4) Trade Alliance by Central Hudson to purchase heating equipment from manufacturers for conversion/new customers and pass the savings to customers.

H. NEXT RATE CASE FILING

The Signatories recognize that Central Hudson may file new rate case applications at any time; however, the Petitioners agree to make such filing no earlier than the date that would be permitted for filing for rates to become effective on or after July 1, 2014. In its next rate case filing, Central Hudson shall provide, in a format similar to that of Petitioners' rebuttal testimony, an updated comparison between the debt ratings of Central Hudson and the regulated affiliates of Fortis based upon the latest rating agencies' analyses available at that time. In the same rate case filing, Central Hudson will include its analysis of Staff's white paper recommendations on LAUF.

V. ECONOMIC BENEFITS, INCLUDING SYNERGIES AND POSITIVE BENEFIT ADJUSTMENTS

Petitioners have agreed to provide quantified economic benefits comprised of the following synergy and positive benefit adjustments: (i) synergy savings which are guaranteed for a period of 5 years and which will provide for future rate mitigation of $9.25 million over the 5 years; (ii) a total of $35 million of combined write-offs of deferred regulatory assets and future rate mitigation funds; and, (iii) one-time funding of $5 million for a Community Benefit Fund for economic development and low income purposes. The Signatories agree that the benefits identified herein are sufficient to meet the Commission's public interest criterion (PSL Section 70).

In reaching these agreements, the Signatories have recognized a number of additional factors that demonstrate that these quantified benefits are appropriate. The Signatories agree that the corporate governance and financial commitments made by Petitioners, together with the nature of Fortis' business model and proven track record, reduce the risks presented by this transaction and provide additional value to Central Hudson's ratepayers. In addition, the Signatories agree that absent the transaction, it is likely that Central Hudson could have

demonstrated a need for a rate increase for the Rate Freeze Period. However, as a consequence of Central Hudson opting not to file a rate case for the Rate Freeze Period as part of the terms of this Joint Proposal, rates will be frozen for the full Rate Freeze Period. The parties agree these provisions provide additional benefits.

A. Synergy Savings/Guaranteed Rate Reductions

The Signatories have agreed that the transaction will produce synergy savings/guaranteed future rate mitigation totaling $9.25 million ($1.85 million/year for 5 years). Petitioners have agreed to guarantee these cost savings for a period of five years, and will begin accruing these guaranteed cost savings in the month following closing. The Signatories recognize that this accrual will provide rate mitigation for the benefit of customers that will be available at the start of the first rate year in the next rate case filed by Central Hudson. The Signatories anticipate that the forecast effect of the synergy cost savings will also be reflected in rates in Central Hudson's next rate case.

B. Deferred Storm Restoration Cost Write-offs and Future Rate Mitigation

A total of $35 million will be provided to Central Hudson by Fortis upon the closing of the transaction and will be

recorded as a regulatory liability to be applied to write off regulatory assets on the books of Central Hudson due to storm restoration costs and to provide balance sheet offsets and rate mitigation in Central Hudson's next rate filing.

1) Storm Restoration Cost Write-offs

Central Hudson currently has two storm restoration cost deferral petitions pending before the Commission in Cases 11-E-0651 ($11.0 million exclusive of carrying charges) and 12-M-0204 ($1.6 million exclusive of carrying charges), for a total of $12.6 million exclusive of carrying charges. Additionally, Central Hudson has estimated that the incremental storm restoration costs above the current rate allowance resulting from Super-storm Sandy will be approximately $10 million. The Signatories agree that Central Hudson shall file a formal Super-storm Sandy deferral petition as soon as reasonably practicable.[3]

The Signatories agree to utilize a placeholder total for these three events of $22 million. The

[3] The Signatories agree that the review of the new petition will be expedited to the extent possible.

Signatories agree that $22 million will be written off promptly after the closing against the $35 million regulatory liability being funded by Fortis, subject to true-up for subsequent Commission determinations concerning the storm restoration costs of the three storms. The Signatories agree that the three deferral requests will be reviewed by Staff consistent with the principles and practices in the recent Central Hudson storm restoration deferral petitions involving Twin Peaks (February 2010) in Case 10-M-0473 and the December 2008 ice storm in Case 09-M-0004.

2) Disposition of the Remaining Balance

The difference between the $35 million being provided by Fortis and the $22 million in placeholder storm restoration cost write-offs is currently estimated as a $13 million placeholder. The Signatories agree that this $13 million difference will be reserved as a regulatory liability with carrying charges at the pre-tax rate of return rate. At the time of the final, trued-up storm restoration cost determination by the Commission, the reserve and associated carrying charges will be adjusted up or down to conform to

the Commission's determination. The final amount will be reserved for additional future balance sheet write-offs or other rate moderation purposes, as shall be determined in Central Hudson's next rate case.

C. Community Benefit Fund

A total of $5 million will be provided by Fortis for a Community Benefit Fund to be utilized for low income and economic development purposes as discussed in greater detail previously in this Joint Proposal.

VI. OTHER PROVISIONS

A. Counterparts

This Joint Proposal may be executed in counterparts, all of which taken together shall constitute one and the same instrument which shall be binding upon each signatory when it is executed in counterpart, filed with the Secretary of the Commission and approved by the Commission; provided, however, that, upon execution, filing with the Secretary and prior to approval by the Commission, each Signatory shall be bound to support adoption of this Joint Proposal and, to the extent required by the context, to undertake actions necessary for implementation of the provisions of this Joint Proposal upon its approval by the Commission.

B. Provisions Not Separable

The Signatories intend this Joint Proposal to be a complete resolution of all the issues in Case 12-M-0192 and the terms of this Joint Proposal are submitted as an integrated whole. If the Commission does not accept this Joint Proposal according to its terms as the basis of the resolution of all issues addressed without change or condition, each Signatory shall have the right to withdraw from this Joint Proposal upon written notice to the Commission within ten days of the Commission Order. Upon such a withdrawal, the Signatories shall be free to pursue their respective positions in this proceeding without prejudice, and this Joint Proposal shall not be used in evidence or cited against any such Signatory or used for any other purpose. It is also understood that each provision of this Joint Proposal is in consideration and support of all the other provisions, and expressly conditioned upon acceptance by the Commission. Except as set forth herein, none of the Signatories is deemed to have approved, agreed to or consented to any principle, methodology or interpretation of law underlying or supposed to underlie any provision herein.

C. Provisions Not Precedent

The terms and provisions of this Joint Proposal apply solely to, and are binding only in the context of the purposes and results of this Joint Proposal. None of the terms or provisions of this Joint Proposal and none of the positions taken herein by any Signatory may be referred to, cited, or relied upon by any other party in any fashion as precedent or otherwise in any other proceeding before this Commission or any other regulatory agency or before any court of law for any purpose other than furtherance of the purposes, results, and disposition of matters governed by this Joint Proposal. This Joint Proposal shall not be construed, interpreted or otherwise deemed in any respect to constitute an admission by any Signatory regarding any allegations, contentions or issues raised in this proceeding or addressed in this Joint Proposal.

D. Submission of Proposal

Each Signatory agrees to submit this Joint Proposal to the Commission, to support and request its adoption by the Commission, and not to take a position in this proceeding contrary to the agreements set forth herein or to assist another participant in taking such a contrary position in these proceedings.

E. Further Assurances

The Signatories recognize that certain provisions of this Joint Proposal require that actions be taken in the future to fully effectuate this Joint Proposal. Accordingly, the Signatories agree to cooperate with each other in good faith in taking such actions. In the event of any disagreement over the interpretation of this Joint Proposal or implementation of any of the provisions of this Joint Proposal, which cannot be resolved informally among the Signatories, such disagreement shall be resolved in the following manner: (a) the Signatories shall promptly convene a conference and in good faith attempt to resolve any such disagreement; and (b) if any such disagreement cannot be resolved by the Signatories, any Signatory may petition the Commission for resolution of the disputed matter.

F. Entire Agreement

This Joint Proposal, including all attachments, exhibits and appendices, if any, represents the entire agreement of the Signatories with respect to the matters resolved herein.

VII. SIGNATURES

WHEREFORE, This Joint Proposal has been agreed to as of January 25, 2013 by and among the following, each of whom by his

or her signature represents that he or she is fully authorized to execute this Joint Proposal and, if executing this Joint Proposal in a representative capacity, that he or she is fully authorized to execute it on behalf of his or her principal(s).

[SIGNATURES APPEAR ON THE FOLLOWING PAGES.]

SIGNATURE PAGES TO JOINT PROPOSAL DATED JANUARY 25, 2013

Cascade Acquisition Sub Inc., Fortis Inc. and FortisUS Inc.

By: _____
Barry V. Perry
Vice President, Finance and
Chief Financial Officer of Fortis Inc.

CH Energy Group Inc.

By: _____
Christopher A. Capone
Executive Vice-President and Chief Financial Officer

Central Hudson Gas & Electric Corporation

By: _____
Michael L. Mosher
Vice-President Regulatory Affairs

Staff of N.Y.S. Department of Public Service

By: _____
John L. Favreau, Esq.
Assistant Counsel
Staff of N.Y.S. Department of Public Service

New York Department of State Utility Intervention Unit

By: _____

Robert T. Friel
Director

Dutchess County New York: Dutchess County supports the following portions of the Joint Proposal: paragraphs IV.G.1 and V.C (Economic Development), paragraph V.A (Synergy Savings/Guaranteed Rate Reductions), paragraph V.B (Deferred Storm Restoration Cost Write-offs and Future Rate Mitigation), and paragraph IV.C and the portions of

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Executive Vice-President and Chief Financial Officer

Central Hudson Gas & Electric Corporation

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Vice-President Regulatory Affairs

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By: M.L. Mosher
Michael L. Mosher
Vice-President Regulatory Affairs

Staff of N.Y.S. Department of Public Service

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paragraph IV.H related to the one-year rate freeze. In addition, Dutchess County takes no position with respect to the matters discussed in rest of the Joint Proposal.

By: _____
Marcus Molinaro
Dutchess County Executive

Multiple Intervenors

By: _____
Michael B. Mager, Esq.
Couch White, LLP
Attorneys for Multiple Intervenors

Orange County New York: Orange County supports the following portions of the Joint Proposal: paragraphs IV.G.1 and V.C (Economic Development), paragraph V.A (Synergy Savings/Guaranteed Rate Reductions), paragraph V.B (Deferred Storm Restoration Cost Write-offs and Future Rate Mitigation), and paragraph IV.C and the portions of paragraph IV.H related to the one-year rate freeze. In addition, Orange County takes no position with respect to the matters discussed in rest of the Joint Proposal.

By: _____
Edward A. Diana
County Executive for Orange County

Ulster County New York: Ulster County supports paragraphs IV.G and V.C of the Joint Proposal and takes no position with respect to the matters discussed in rest of the Joint Proposal.

By: _____
Mike Hein
Ulster County Executive

paragraph IV.H related to the one-year rate freeze. In addition, Dutchess County takes no position with respect to the matters discussed in rest of the Joint Proposal.

By: _____
Marcus Molinaro
Dutchess County Executive

Multiple Intervenors

By: Michael B. Mager
Michael B. Mager, Esq.
Couch White, LLP
Attorneys for Multiple Intervenors

Orange County New York: Orange County supports the following portions of the Joint Proposal: paragraphs IV.G.1 and V.C (Economic Development), paragraph V.A (Synergy Savings/Guaranteed Rate Reductions), paragraph V.B (Deferred Storm Restoration Cost Write-offs and Future Rate Mitigation), and paragraph IV.C and the portions of paragraph IV.H related to the one-year rate freeze. In addition, Orange County takes no position with respect to the matters discussed in rest of the Joint Proposal.

By: _____
Edward A. Diana
County Executive for Orange County

Ulster County New York: Ulster County supports paragraphs IV.G and V.C of the Joint Proposal and takes no position with respect to the matters discussed in rest of the Joint Proposal.

By: _____
Mike Hein
Ulster County Executive

paragraph IV.H related to the one-year rate freeze. In addition, Dutchess County takes no position with respect to the matters discussed in rest of the Joint Proposal.

By: _____
Marcus Molinaro
Dutchess County Executive

Multiple Intervenors

By: _____
Michael B. Mager, Esq.
Couch White, LLP
Attorneys for Multiple Intervenors

Orange County New York: Orange County supports the following portions of the Joint Proposal: paragraphs IV.G.1 and V.C (Economic Development), paragraph V.A (Synergy Savings/Guaranteed Rate Reductions), paragraph V.B (Deferred Storm Restoration Cost Write-offs and Future Rate Mitigation), and paragraph IV.C and the portions of paragraph IV.H related to the one-year rate freeze. In addition, Orange County takes no position with respect to the matters discussed in rest of the Joint Proposal.

By: _____
Edward A. Diana
for County Executive for Orange County

Ulster County New York: Ulster County supports paragraphs IV.G and V.C of the Joint Proposal and takes no position with respect to the matters discussed in rest of the Joint Proposal.

By: _____
Mike Hein
Ulster County Executive

paragraph IV.H related to the one-year rate freeze. In addition, Dutchess County takes no position with respect to the matters discussed in rest of the Joint Proposal.

By: _____
Marcus Molinaro
Dutchess County Executive

Multiple Intervenors

By: _____
Michael B. Mager, Esq.
Couch White, LLP
Attorneys for Multiple Intervenors

Orange County New York: Orange County supports the following portions of the Joint Proposal: paragraphs IV.G.1 and V.C (Economic Development), paragraph V.A (Synergy Savings/Guaranteed Rate Reductions), paragraph V.B (Deferred Storm Restoration Cost Write-offs and Future Rate Mitigation), and paragraph IV.C and the portions of paragraph IV.H related to the one-year rate freeze. In addition, Orange County takes no position with respect to the matters discussed in rest of the Joint Proposal.

By: _____
Edward A. Diana
County Executive for Orange County

Ulster County New York: Ulster County supports paragraphs IV.G, the portions of paragraph IV.H related to the one-year rate freeze, and V.C of the Joint Proposal and takes no position with respect to the matters discussed in rest of the Joint Proposal.

By: _____
Mike Hein
Ulster County Executive

ATTACHMENT I

STANDARDS OF CONDUCT

STATE OF NEW YORK
BEFORE THE
PUBLIC SERVICE COMMISSION

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.

STANDARDS PERTAINING TO TRANSACTIONS, CONFLICTS OF INTEREST, COST ALLOCATIONS AND SHARING OF INFORMATION BETWEEN CENTRAL HUDSON GAS AND ELECTRIC CORPORATION AND AFFILIATES

I. Introduction

This *Standards Pertaining To Transactions, Conflicts Of Interest, Cost Allocations And Sharing Of Information Between Central Hudson Gas And Electric Corporation And Affiliates* replaces and supersedes the *Amended and Restated Settlement Agreement As Approved by the Commission on February 19, 1998 With Modifications and Conditions* ("RSA"), Case 96-E-0909 (Attachment I Standards of Conduct) as to the language and topics addressed herein. All other provisions of the RSA, including Attachments A-H, J, K, remain as approved by the Commission in Case 96-E-0909 unless otherwise agreed to by the Parties in writing or ordered by the Commission. Central Hudson Gas and Electric ("Central Hudson") retains the right to manage its own affairs including the right to amend the Standards of Conduct from time to time in a manner consistent with the Commission's Orders and statute. Central Hudson shall provide the Secretary and Department of Public Service Staff ("Staff") with thirty (30) days notice prior to amending these Standards.

The following pertains to transactions, conflicts of interest, cost allocations and the sharing of information (collectively referred to herein as the "Standards") between

Central Hudson and affiliates.[1] References in these Standards to any of the foregoing affiliates shall be deemed to include any successors. Central Hudson shall comply with the Standards within thirty (30) days following their effective date. Nothing in these Standards relieves Central Hudson or its affiliates from any obligation they may have pursuant to the PSL, including Sections 70 and 110. Nothing herein serves to divest Central Hudson or its affiliates of their legal rights under the PSL, Public Service Commission ("Commission") Orders or otherwise.

All costs and revenues recorded on Central Hudson's books of account from all affiliate transactions shall conform in all material respects to the Commission's Uniform System of Accounts.

II. Organizational Structure

A. Separation and Location

Central Hudson shall maintain separate books of account and other business records from its affiliates.

Central Hudson shall petition the Commission for approval before it establishes and maintains at an existing Central Hudson location separate and distinct office and work space from any competitive affiliate operating in any energy-related business(es) within Central Hudson's service territory.

Central Hudson shall maintain appropriate physical and technological security, with an appropriate monitoring system, to prevent competitive affiliates from accessing or obtaining Central Hudson's confidential information or other information that may provide the affiliate with a competitive advantage.

Central Hudson will not conduct competitive services, including competitive behind-the-meter energy services, absent an application to, and approval by the Commission, except that Central Hudson will be permitted to provide solutions to customer reliability and deliverability issues related to electric and gas transmission and distribution.

[1] Affiliates are considered any entity as defined as such under Public Service Law ("PSL") §110(2).

Finally, any affiliate shall be established as a separate business entity from Central Hudson.

B. Board of Directors

No later than one year after the closing of the acquisition of CH Energy Group, Inc. ("CHEG") by Fortis Inc. ("Fortis"), Fortis will appoint a board of directors for Central Hudson, the majority of whom will be independent[2], with the majority of such independent directors being resident in the State of New York and with emphasis on selecting candidates who reside, conduct business or work within the Central Hudson service territory.

III. Affiliate Transactions

A. Standards of Competitive Conduct

Central Hudson shall comply with the Commission rules governing Uniform Business Practices:[3]

1. Sales Leads

Central Hudson will not provide market information or sales leads for customers in its service territory to any affiliate, including an affiliated energy services company and will refrain from giving any appearance that it speaks on behalf of an affiliate.

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[2] Independent is as defined in Section 10A of the Securities Exchange Act of 1934. Nothing herein prohibits an independent Central Hudson director from being elected to the board of directors of Fortis Inc., and such appointment shall not immediately and by itself deprive the Central Hudson director of his or her status as independent for purposes of these Standards. If, however, the election of an independent Central Hudson board member to the Fortis Inc. board would result in a minority of independent directors on the Central Hudson board, excluding that director, Central Hudson and/or Fortis shall notify the Secretary of the Commission of the nomination of such director within 10 days following the issuance of the Fortis Inc. proxy materials pertaining to the election of Fortis Inc. board members. As part of such notice, Central Hudson and/or Fortis shall describe the benefits to Central Hudson and its customers of having such director serve on both boards. In the event that the Commission raises concerns about such director's service on both boards, Central Hudson and Fortis shall make reasonable business efforts to address such concerns. In the event that the Commission does not deem the efforts or measures taken by Central Hudson and Fortis to be adequate for their intended purpose, Fortis and Central Hudson shall, within no more than two years, ensure that the Central Hudson board is constituted with a majority of independent directors, excluding the director previously elected to the board of Fortis Inc..

[3] FortisUS Energy Corporation, which owns four Qualifying Facilities with a combined output of approximately 23 MW, all of which is sold under contracts with National Grid, does not operate in Central Hudson's service territory or compete with Central Hudson.

Central Hudson will not imply or represent to any customer, supplier or third party that any form of advantage may accrue to such customer, supplier or third party in the use of Central Hudson's services as a result of that customer, supplier or third party dealing with an affiliate. No affiliate will imply or represent to any customer, supplier or third party that any form of advantage may accrue to such customer, supplier or third party in the use of Central Hudson's services as a result of that customer, supplier or third party dealing with an affiliate. Central Hudson will not purchase goods or services on preferential terms offered only by suppliers who purchase goods or services from or sell goods or services to an affiliate of Central Hudson.

2. Customer Inquiries

If a customer requests information about securing any competitive retail service or product offered within Central Hudson's service territory by an affiliate, Central Hudson must provide a list of competitive retail companies or affiliates that are qualified and approved pursuant to Central Hudson's standards (including retail access standards) as providers of the requested products or services within Central Hudson's service territory. While this list may include Central Hudson affiliates, the list must provide information by company in alphabetical order and may not place greater emphasis on or promote any Central Hudson affiliate. A Central Hudson employee shall not promote any competitive retail affiliate operating in Central Hudson's service territory, other than to acknowledge, at the request of a customer, that an affiliation exists between Central Hudson and such affiliate or provide a list of competitive retail providers, which may include competitive retail affiliates.

3. Customer Information

Central Hudson shall not release proprietary customer information to Energy Service Companies ("ESCOs"), including an ESCO affiliated with Central Hudson, without the prior authorization by the customer and subject to the customer's direction regarding the ESCOs to whom the information may be released.[4] Central Hudson

[4] It is not a release of information by Central Hudson where an ESCO accesses customer information through Central Hudson's website, or otherwise, without Central Hudson's knowledge. Central Hudson will act in accordance with Uniform Business Standards.

shall maintain verifiable proof of customer authorization for two years after receipt of the authorization. The verifiable proof shall be available to Staff at Central Hudson's offices upon request. Under no circumstance will Central Hudson release more than 24 months of proprietary customer information unless authorized to do so by the customer or ordered to provide the information by a regulatory authority or court of competent jurisdiction. Proprietary customer information includes the customer's name, address, telephone number, account number, social security number and credit report. If a customer authorizes the release of information to a Central Hudson affiliate or one or more of the affiliate's competitors, Central Hudson shall make that information available to the affiliate and/or other competitors designated by the customer on a non-discriminatory basis. Nothing herein shall require Central Hudson to release customer information to its affiliate or any competitor unless such release is authorized by the customer.

Except for purposes of complying with applicable statutes, regulations and orders, Central Hudson will not disclose to any competitive affiliate or non-affiliate any customer or market information about its gas or electric transmission and distribution systems that may provide a competitive advantage in the gas and electric markets. Customer or market information includes, but is not limited to, confidential information that Central Hudson receives from a marketer, customer or prospective customer, which is not available from sources other than Central Hudson, unless it makes such information available to all competitors on a non-discriminatory basis.

Pursuant to the Commission's Order on Rehearing Granting Petition for Rehearing issued and effective December 3, 2010 in Case 07-M-0548, Central Hudson may also enter contracts for the benefit of customers with third party service and/or materials providers, including affiliates, that include the transfer of proprietary customer information or other confidential material. Central Hudson may enter a contract with an affiliate or third party service and/or material provider that requires the transfer of proprietary customer information or other confidential material if the affiliate or third party executes a Confidentiality and Non-Disclosure Agreement.

Under all circumstances where Central Hudson transfers proprietary customer information or other confidential market data to an affiliate, ESCO, or other third party Central Hudson shall execute a Confidentiality and Non-Disclosure Agreement with the affiliate, ESCO or other third party. The Confidentiality and Non-Disclosure Agreement shall restrict access to the protected material to only those employees of the recipient affiliate, ESCO or other third party whose functions require that they have access to the subject information. Such employees shall be instructed to maintain the confidentiality of such information and execute an Individual Non-Disclosure Agreement. A copy of Central Hudson's Confidentiality and Non-Disclosure Agreement is set forth as Code of Conduct Attachment 1. Central Hudson shall retain executed Confidentiality and Non-Disclosure Agreements at its headquarters for Staff's review upon its request.

Central Hudson's critical infrastructure information shall remain, in all media formats, within the headquarters of Central Hudson, and it shall retain customer data (i.e., names, addresses, telephone numbers, social security numbers, credit reports) in all media formats, within the headquarters or customer service center of Central Hudson unless a regulatory authority or court of competent jurisdiction requires Central Hudson to provide the information.

4. Complaint Procedure

If any competitor or customer of Central Hudson believes that Central Hudson has violated the Standards, such competitor or customer may file a complaint in writing with Central Hudson. Central Hudson will respond to the complaint in writing within twenty (20) business days after receipt of the complaint. After providing its response to the complainant, Central Hudson and the complainant will meet, if necessary, in an attempt to resolve the matter informally. If Central Hudson and the complainant are not able to resolve the matter informally within fifteen (15) business days after the commencement of the informal resolution process, the complainant may refer the matter to the Commission for disposition. This provision shall not preclude the Commission from addressing any such matter more expeditiously in the event that exigent circumstances so require. Nothing herein shall preclude a complainant from filing a formal complaint before the Commission without participating in the

informal resolution process. In any instance in which a formal complaint is filed with the Commission Central Hudson shall have a full and fair opportunity to be heard through a process established by the Commission. The Commission may order any such remedies to resolve the complaint as are within its statutory authority.

5. No Advantage Gained by Dealing with Affiliate

Central Hudson will refrain from giving any appearance that Central Hudson speaks on behalf of any affiliate operating in its service territory. Central Hudson will not participate in any joint promotion or marketing with any affiliate operating in its service territory. Concerning competitive retail electric or natural gas services offered in the market, Central Hudson will not represent to any customer, supplier or third-party that an advantage may accrue to such customer, supplier or third-party in the use of the Company's tariffed services as a result of that customer, supplier or third-party dealing with a competitive affiliate. A competitive affiliate operating in any energy-related business(es) within Central Hudson's service territory may not use the name "Central Hudson" to market its competitive product. No non-Central Hudson company will be allowed by Central Hudson or Fortis to use the Central Hudson name, trade names, trademarks, service markets or a derivative of a name of Central Hudson in any manner. [5]

6. No Rate Discrimination

All similarly-situated customers, including ESCOs and customers of ESCOs, whether affiliated or unaffiliated, will pay the same rates for Central Hudson's tariffed utility services. If there is discretion in the application of any tariff provision, Central Hudson must not offer its affiliate more favorable terms and conditions than it has offered to all similarly-situated competitors of the affiliate. In particular, Central Hudson shall process all requests for similar service in the same manner, within similar time periods, and without any preferential treatment for customers seeking tariffed services from Central Hudson affiliates. Central Hudson shall not give preference to a customer of an affiliate, or to an affiliate, regarding repairs or maintenance, or operation of its

[5] "Non-Central Hudson company" means an entity that is not controlled by Central Hudson or Fortis and that is not an affiliate of Central Hudson or Fortis Inc.

system.

Central Hudson shall, pursuant to Public Service law Section 66(12)(d), charge all tariff customers the rates and charges specified in its schedule filed and in effect.

Central Hudson may provide non-tariffed service to customers, including affiliates, by contract or other similar arrangement. Contract service provided by Central Hudson shall not affect the rate paid by tariffed customers. Central Hudson shall maintain executed contracts or other arrangements on file at its corporate headquarters available for review by Staff upon request.

B. Training and Certification

Central Hudson and any affiliate operating in its service territory, shall conduct training on these Standards for its officers and directors (including employee directors) and Shared Employees. Central Hudson's officers and directors, Shared Employees and affiliates operating in Central Hudson's service territory shall certify familiarity with these Standards within ninety (90) days following their effective date. Central Hudson shall certify that it has provided training regarding the Standards to any new officers, directors and Shared Employees within ninety (90) days after the start date for each new officer, director, or Shared Employee.

C. Adherence to Standards

On an annual basis Central Hudson's General Counsel and Vice President Human Resources and Health & Safety, or their successors, shall provide certification to the Commission of Central Hudson's adherence to the Standards. If, after an investigation by an independent auditor and hearing, the Commission finds that Central Hudson is not in substantial compliance[6] with the Standards, the Commission can order Central Hudson to pay for the cost of the independent auditor. If Central Hudson is in substantial compliance with the Standards it may petition to defer and recover the costs of the independent auditor without regard to the Commission's three-part test for deferral accounting. As part of the independent auditor's investigation it shall review the transactions and cost allocations necessary to determine Central Hudson's substantial compliance or lack thereof

[6] Substantial compliance shall be determined by the Commission.

IV. Ethics

All Central Hudson employees, officers and directors must adhere to Central Hudson's Code of Business Conduct and Ethics ("Ethics Code") as it may be amended from time to time. Central Hudson will maintain its Ethics Code at its headquarters in a manner available to Staff upon request. Central Hudson will make the Ethics Code available to its employees, officers and directors electronically at all times.

A. Corporate Governance

Central Hudson directors, officers and employees shall adhere to the applicable CHEG Governance Guidelines as they may be amended from time to time. Governance Guidelines set forth Central Hudson's principles and requirements for conflict of interest, recusal from participation in decision making and other corporate governance issues. Central Hudson will maintain its Governance Guidelines at its headquarters in a manner available to Staff upon request. Central Hudson will make its Governance Guidelines available to its employees, officers and directors electronically at all times.

V. Cost Allocations

Central Hudson will continue to follow the cost allocation procedures approved by the Commission as the Guidelines for Transactions Between Central Hudson and its Affiliates approved by the Commission in Case 96-E-0909 as set forth in Attachment H Cost Allocation Guidelines of the Amended and Restated Settlement Agreement as Approved by the Commission on February 19, 1998. In the event that Central Hudson's affiliate transactions exceed $7.5 million, as measured by the transactions in the immediately preceding rate year excluding transactions with an affiliated Transmission Company ("Transco") and dividend payments, Central Hudson and Staff will discuss appropriate modifications to the Cost Allocation Guidelines set forth in the RSA at Attachment H. If such discussions do not lead to a resolution of cost allocation issues within ninety (90) days Central Hudson shall notify the Commission's Secretary and convene a collaborative to resolve cost allocation issues. Adherence to the Guidelines will assure that Central Hudson maintains proper cost

allocation procedures regarding transactions between Central Hudson and its affiliates. Central Hudson will meet annually with Staff on or before April 1 of each year to review its cost allocations and their application. If at any time Central Hudson becomes aware of events likely to cause a reconsideration of or material change to its ownership or cost allocations, Central Hudson will advise Staff and arrange a meeting in order to consider cost allocation issues. Central Hudson may seek to amend the Cost Allocation Guidelines from time to time and will file with the Secretary of the Commission all proposed amendments and supplements to the guidelines at least thirty (60) days prior to their proposed effective date. These procedures apply to Paragraphs V (A-D) set forth below.

A. Transfer of Assets

Public Service Law Section 70 applies to certain transfers of assets from Central Hudson to any affiliate. Central Hudson will continue to abide by the Guidelines for Transactions Between Central Hudson and its Affiliates approved by the Commission in Case 96-E-0909 as set forth in Attachment H of the Amended and Restated Settlement Agreement as Approved by the Commission on February 19, 1998. Central Hudson will maintain its affiliate transaction guidelines at its headquarters in a manner available to Staff upon request. Central Hudson will make its affiliate transaction guidelines available to its employees, officers and directors electronically at all times. Any affiliate receiving goods or services from Central Hudson will compensate Central Hudson in a timely fashion. Standard commercial terms for payments will apply to transactions between Central Hudson and its affiliates. If the Commission determines that the commercial terms applicable to a transaction between Central Hudson and an affiliate are unreasonable it may issue an appropriate remedy.

B. Transfer of Services

Central Hudson will continue to abide by the Guidelines for Transactions Between Central Hudson and its Affiliates approved by the Commission in Case 96-E-0909 as set forth in Attachment H of the Amended and Restated Settlement Agreement as Approved by the Commission on February 19, 1998. Central Hudson will maintain its affiliate transaction guidelines at its headquarters in a manner

available to Staff upon request. Central Hudson will make its affiliate transaction guidelines available to its employees, officers and directors electronically at all times. Any affiliate receiving goods or services from Central Hudson will compensate Central Hudson in a timely fashion.

C. Insurance

Central Hudson and any affiliate may be covered by common property, casualty and other business insurance policies. Such policies shall provide Central Hudson with commercially reasonable protections against liability. Central Hudson and its affiliates shall maintain a corporate structure sufficient to protect it from the liabilities of its affiliates, as well as any increases in Central Hudson's insurance costs resulting from the inclusion of property or assets held by an affiliate(s) in such insurance policies. Central Hudson shall, to the extent that market information is available, submit with each rate case petition, a market survey to determine whether it could obtain insurance separately from its affiliates on financial and other terms and conditions superior to the common policies maintained with its affiliates and report to the Staff the results of its survey. The costs of such policies shall be allocated among Central Hudson and any affiliate in an equitable manner.

D. Personnel

1. Sharing of Employees, Officers and Directors

Central Hudson and its affiliates may have Shared Employees. Operating employees, defined as non-management employees, shall not be shared except for purposes of training or emergencies—including mutual assistance. A Shared Employee is a Central Hudson employee assigned to perform work for Central Hudson and one or more affiliate(s) for a period of more than six months. Central Hudson shall maintain a list of Shared Employees by position and employee number updated every six months at its offices and available for inspection by Staff upon request.

Operating officers (i.e., those officers providing other than corporate services) of Central Hudson will not be operating officers of any of its affiliates.

An officer or director of Central Hudson may not serve as an officer or

director of a competitive affiliate operating in Central Hudson's service territory.

Corporate employees may be provided by Central Hudson on a fully loaded cost-basis. During its provision of any such shared services, such individual shall be subject to all requirements in these Standards pertaining to information obtained about/from Central Hudson. Nothing herein shall limit the Commission's authority to determine ratemaking issues arising out of such transactions.

Central Hudson shall allocate the costs of employees performing work for Central Hudson and an affiliate pursuant to Attachment H of the Amended and Restated Settlement Agreement as Approved by the Commission on February 19, 1998.

Officers and directors of Central Hudson may not use any of the Company's marketing, sales, advertising, public relations, and/or energy purchasing expertise to provide services to any affiliate that competes with Central Hudson in any energy-related business within Central Hudson's service territory. Before any Central Hudson employee performs work for an affiliate, whether such employee is a Shared Employee or not, Central Hudson shall ensure that such employees are familiar with the Standards. Nothing herein shall limit the Commission's authority over ratemaking issues arising out of such transactions.

Affiliates may provide services to Central Hudson and may have separate contracts and billings for such services. Nothing in this section shall authorize Central Hudson to engage in a transaction with any affiliate if such transaction would otherwise be prohibited under these Standards, or authorize Central Hudson to tender preferential treatment to any affiliate. Any management, construction, engineering or similar contract between Central Hudson and any affiliate and any contract for the purchase by Central Hudson from an affiliate shall be governed by PSL §110.

2. Transfer of Employees

If a Central Hudson employee accepts a position with any affiliate, he or she will be required to resign from Central Hudson, unless there is a conflict with the

collective bargaining agreement in which case the collective bargaining agreement shall control. Any such employee shall be prohibited from copying or taking any non-public customer or competitively sensitive market information from Central Hudson.

3. Compensation for Employee Transfers

Employees may be transferred from Central Hudson to an affiliate or an affiliate to Central Hudson. Employees transferred by Central Hudson to an affiliate competing with Central Hudson in Central Hudson's service territory may not be reemployed by Central Hudson for a minimum of one year after such transfer. Central Hudson will file annual reports with the Commission showing transfers between Central Hudson and any affiliates by employee number, former company, former position and salary and new company, new position and salary or annualized base compensation. If the Commission determines that employee transfers inappropriately harm Central Hudson and its customers the Commission may order an appropriate remedy.

4. Employee Loans in an Emergency

The foregoing provisions in no way restrict any affiliate from loaning employees to Central Hudson to respond to an emergency that threatens the safety or reliability of service to customers; nor shall such provisions restrict Central Hudson from loaning employees to other regulated utilities, whether affiliated or unaffiliated, to respond to an emergency that threatens such safety or reliability of service to consumers. Central Hudson shall allocate the costs of employees loaned to, or from, a Central Hudson affiliate pursuant to Attachment H of the Amended and Restated Settlement Agreement as Approved by the Commission on February 19, 1998.

5. Compensation and Benefits

The compensation of Central Hudson's operating employees, officers and directors (including employee directors) may not be tied directly to the performance of any affiliates; provided, however, that this provision shall not preclude such compensation based upon aggregate performance of Central Hudson and any affiliate, including compensation based on Fortis's stock performance. The employees of Central Hudson and any affiliate may participate in common pension and benefit

plans, and the cost shall be allocated pursuant to Attachment H of the Amended and Restated Settlement Agreement as Approved by the Commission on February 19, 1998.

6. Legal Representation

Central Hudson shall have its own internal and/or external counsel whose primary responsibility is Central Hudson. Central Hudson shall not provide counsel for a competitive affiliate operating in Central Hudson's service territory in any matter between the two affiliates where the interest of the competitive affiliate is adverse to that of Central Hudson. Regarding any matter Central Hudson will take appropriate steps to ensure that Central Hudson's interests are vigorously and independently protected. Outside counsel shall adhere to the same standards as are required of Central Hudson to protect Central Hudson's confidential information that may be available to them in the course of their representation.

VI. Audits

A. Access to Books, Records and Reports

The following provisions govern the access by Staff, and are not intended to supersede or otherwise limit or expand the applicability of the PSL, to all books and records related to all transactions for goods and services and cost allocations that occur between Central Hudson and any affiliates:

1. Access to Information

Staff will have access, upon reasonable notice and subject to appropriate resolution of any issues pertaining to applicable privileges and protections against disclosure, including the attorney/client privilege, and confidentiality, to the books and records of any affiliate, controlled by Central Hudson, with which Central Hudson has transactions. Staff will have access to the extent necessary to verify the reasonableness of the charges associated with the transactions, to confirm that the terms and conditions of the transactions do not discriminate against entities competing with Central Hudson in its service territory, and as necessary for ratemaking purposes.[7] For

[7] The provisions of the RSA at 70-73, titled *32. Privileged Information* and *33. Confidentiality of Record* shall govern and control the resolution of privilege and confidentiality issues that may arise.

any affiliate over which Central Hudson does not have sufficient control to require such access, Central Hudson shall nevertheless employ its best efforts to provide such access and, in the event Central Hudson is unable to do so, it shall provide an explanation of the reasons therefor. These Standards will not be interpreted as restricting Staff in obtaining any affiliate information pursuant to PSL § 110. Nothing herein shall limit the Commission's authority over ratemaking issues arising out of such transactions.

2. Location of Audit Information

All access to Central Hudson's books and records and the books and records of affiliates controlled by Central Hudson shall be provided at Central Hudson's headquarters and shall be available to Staff upon request and in no event shall these provisions unreasonably delay Staff's ability to perform its audit functions. Central Hudson will use its best efforts to provide access to the books and records of affiliates it does not control at its headquarters and will provide Staff with an explanation if it cannot do so. Any information provided shall be subject to applicable privileges and protections against disclosure pursuant to Civil Procedure Law and Rules §§ 3101 and 4503 and as provided for in the PSL and the Commission's regulations at 16 NYCRR Parts 3 through 5 including resolution of confidentiality issues pursuant to the Commission's regulations on confidential information at 16 NYCRR Part 6, with due regard to the regulations of any other commission that may have jurisdiction over the information.

3. Company Liaison

A senior officer of Central Hudson will designate an employee, as well as an alternate to act in the absence of such designee ("Liaisons"), to act as liaison between Central Hudson and Staff. The Liaisons will facilitate the production of information to Staff. If Central Hudson believes that information requested by Staff should not be provided Central Hudson will provide the reason for its belief through the Liaisons.

Nothing herein shall deprive Central Hudson, or its affiliates, of the ability to claim privilege or confidentiality as set forth in the RSA.

B. Reporting

Commencing with the period ending December 31, 2013, Central Hudson shall file, by April 1 of each year, a joint annual report to the Commission, summarizing, for the prior year, any asset transfers, shared employees, employee transfers, employee loans for emergencies, contracts, cost allocations, affiliate transactions and competitor or customer complaints concerning the course of conduct between Central Hudson and any affiliate that is related to these Standards. Further, any management employee transfers shall be reported to the Commission on a quarterly basis beginning on April 1 of each year.

Employee transfers between Central Hudson and an affiliate shall be reported by employee number, former company, former position, new company and new position. Employee loans from an affiliate to Central Hudson to respond to an emergency that threatens the safety or reliability of service to consumers shall be reported by employee number, companies involved and length of loan period.

C. Confidentiality of Records

Central Hudson and, as applicable, any affiliate shall designate as confidential any non-public information to or of which Staff requests access or disclosure, and which such entity believes is entitled to be treated as a trade secret, and may submit information to the Commission or Staff subject to the Commission's regulations on confidential information at 16 NYCRR Part 6.

ATTACHMENT II

ELECTRIC RELIABILITY PERFORMANCE MECHANISM

Electric Reliability

Operation of Mechanism

This electric service Reliability Performance Mechanism ("reliability mechanism") has been in effect for Central Hudson Gas & Electric Corporation beginning on June 18, 2010 and will remain in effect until reset by the Commission. The measurement periods for the reliability mechanism metrics will be on a calendar year basis.

The reliability mechanism establishes the following performance metrics:

(a) threshold standards, consisting of system-wide performance targets for frequency and duration of electric service interruption defined as:

1. CAIDI - Customer Average Interruption Duration Index. The average interruption duration time (customers-hours interrupted) for those customers that experience an interruption during the year.
2. SAIFI - System Average Interruption Frequency Index. It is the average number of times that a customer is interrupted per 1,000 customers served during the year.

The electric service annual metrics for System Average Frequency Index (SAIFI) and Customer Average Duration Index (CAIDI) shall be a 15 basis point (electric, pre-tax) potential negative revenue adjustment for failure to achieve an annual

SAIFI target of 1.45, and a 15 basis point (electric, pre-tax) potential negative revenue adjustment for failure to achieve an annual CAIDI of 2.50. These index targets are the same as approved in the 2009 Rate Order in Case 09-E-0588 (2009 Rate Order). After the merger, the revenue adjustment will double where the Company does not satisfy a performance target.

(b) The Quarterly Meeting process will be continued per the 2009 Rate Order.

All revenue adjustments related to this reliability mechanism will come from shareholder funds and will be deferred for the benefit of ratepayers.

Exclusions

The following exclusions will be applicable to operating performance under this reliability mechanism:

(a) Any outages resulting from a major storm, as defined in 16 NYCRR Part 97 (i.e., at least 10% of the customers interrupted within an operating area or customers out of service for at least 24 hours), except as otherwise noted.

(b) Any incident resulting from a catastrophic event beyond the control of the Company, including but not limited to plane crash, water main break, or natural disasters (e.g., hurricanes, floods, earthquakes).

(c) Any incident where problems beyond the Company's control involving generation or the bulk transmission system is the key factor in the outage, including, but not limited to, NYISO mandated load shedding. This criterion is not intended to exclude incidents that occur as a result of unsatisfactory performance by the Company.

Reporting

The Company will prepare an annual report(s) on its performance under this reliability mechanism. The annual report(s) will be filed by March 31st of each year to the Secretary.

The reports will state the:

(a) Company's annual system-wide performance under the RPM and identify whether a revenue adjustment is applicable and, if so, the amount of the revenue adjustment;

(b) Company's performance under the other metrics and identify whether a revenue adjustment is applicable and, if so, the amount of the revenue adjustment; and

(c) Basis for requesting and provide adequate support for all exclusions.

ATTACHMENT III

PARTS 255/261 MATERIALS

PARTS 255 / 261 MATERIALS

HIGH RISK SECTIONS PART 255

ACTIVITY TITLE	CODE SECTION	RISK FACTOR
Material - General	255.53(a),(b),(c)	HIGH
Transportation of Pipe	255.65	HIGH
Pipe Design - General	255.103	HIGH
Design of Components - General Requirements	255.143	HIGH
Design of Components - Flexibility	255.159	HIGH
Design of Components - Supports and anchors	255.161	HIGH
Compressor Stations: Emergency shutdown	255.167	HIGH
Compressor Stations: Pressure limiting devices	255.169	HIGH
Compressor Stations: Ventilation	255.173	HIGH
Valves on pipelines to operate at 125 psig or more	255.179	HIGH
Distribution line valves	255.181	HIGH
Vaults: Structural Design requirements	255.183	HIGH
Vaults: Drainage and waterproofing	255.189	HIGH
Protection against accidental overpressuring	255.195	HIGH
Control of the pressure of gas delivered from high pressure distribution systems	255.197	HIGH
Requirements for design of pressure relief and limiting devices	255.199	HIGH
Required capacity of pressure relieving and limiting stations	255.201	HIGH
Qualification of welding procedures	255.225	HIGH
Qualification of Welders	255.227	HIGH
Protection from weather	255.231	HIGH
Miter Joints	255.233	HIGH
Preparation for welding	255.235	HIGH
Inspection and test of welds	255.241(a),(b)	HIGH
Nondestructive testing-Pipeline to operate at 125 PSIG or more	255.243(a)-(e)	HIGH
Welding inspector	255.244(a),(b),(c)	HIGH
Repair or removal of defects	255.245	HIGH
Joining Of Materials Other Than By Welding - General	255.273	HIGH
Joining Of Materials Other Than By Welding - Copper Pipe	255.279	HIGH
Joining Of Materials Other Than By Welding - Plastic Pipe	255.281	HIGH
Plastic pipe: Qualifying persons to make joints	255.285(a),(b),(d)	HIGH
Notification requirements	255.302	HIGH
Compliance with construction standards	255.303	HIGH
Inspection: General	255.305	HIGH
Inspection of materials	255.307	HIGH
Repair of steel pipe	255.309	HIGH
Repair of plastic pipe	255.311	HIGH
Bends and elbows	255.313(a),(b),(c)	HIGH
Wrinkle bends in steel pipe	255.315	HIGH
Installation of plastic pipe	255.321	HIGH
Underground clearance	255.325	HIGH
Customer meters and service regulators: Installation	255.357(d)	HIGH
Service lines: Installation	255.361(e),(f),(g),(h),(i)	HIGH
Service lines: Location of valves	255.365(b)	HIGH
External corrosion control: Buried or submerged pipelines installed after July 31, 1971	255.455(d),(e)	HIGH
External corrosion control: Buried or submerged pipelines installed before August 1, 1971	255.457	HIGH
External corrosion control: Protective coating	255.461(c)	HIGH
External corrosion control: Cathodic protection	255.463	HIGH
External corrosion control: Monitoring	255.465(a),(e)	HIGH
Internal corrosion control: Design and construction of transmission line	255.476(a),(c)	HIGH
Remedial measures: General	255.483	HIGH
Remedial measures: transmission lines	255.485(a),(b)	HIGH
Strength test requirements for steel pipelines to operate at 125 PSIG or more	255.505(a),(b),(c),(d)	HIGH
General requirements (UPGRADES)	255.553 (a),(b),(c),(f)	HIGH
Upgrading to a pressure of 125 PSIG or more in steel pipelines	255.555	HIGH
Upgrading to a pressure less than 125 PSIG	255.557	HIGH
Conversion to service subject to this Part	255.559(a)	HIGH
General provisions	255.603	HIGH
Operator Qualification	255.604	HIGH
Essentials of operating and maintenance plan	255.605	HIGH
Change in class location: Required study	255.609	HIGH
Damage prevention program	255.614	HIGH
Emergency Plans	255.615	HIGH
Customer education and information program	255.616	HIGH
Maximum allowable operating pressure: Steel or plastic pipelines	255.619	HIGH
Maximum allowable operating pressure: High pressure distribution systems	255.621	HIGH
Maximum and minimum allowable operating pressure: Low pressure distribution systems	255.623	HIGH
Odorization of gas	255.625(a),(b)	HIGH

Tapping pipelines under pressure	255.627	HIGH
Purging of pipelines	255.629	HIGH
Control Room Management	255.631(a)	HIGH
Transmission lines: Patrolling	255.705	HIGH
Leakage Surveys - Transmission	255.706	HIGH
Transmission lines: General requirements for repair procedures	255.711	HIGH
Transmission lines: Permanent field repair of imperfections and damages	255.713	HIGH
Transmission lines: Permanent field repair of welds	255.715	HIGH
Transmission lines: Permanent field repair of leaks	255.717	HIGH
Transmission lines: Testing of repairs	255.719	HIGH
Distribution systems: Leak surveys and procedures	255.723	HIGH
Compressor stations: procedures	255.729	HIGH
Compressor stations: Inspection and testing relief devices	255.731	HIGH
Compressor stations: Additional inspections	255.732	HIGH
Compressor stations: Gas detection	255.736	HIGH
Pressure limiting and regulating stations: Inspection and testing	255.739(a),(b)	HIGH
Regulator Station Overpressure Protection	255.743(a),(b)	HIGH
Transmission Line Valves	255.745	HIGH
Prevention of accidental ignition	255.751	HIGH
Protecting cast iron pipelines	255.755	HIGH
Replacement of exposed or undermined cast iron piping	255.756	HIGH
Replacement of cast iron mains paralleling excavations	255.757	HIGH
Leaks: Records	255.807(d)	HIGH
Leaks: Instrument sensitivity verification	255.809	HIGH
Leaks: Type 1	255.811(b),(c),(d),(e)	HIGH
Leaks: Type 2A	255.813(b),(c),(d)	HIGH
Leaks: Type 2	255.815	HIGH
Leak Follow-up	255.819(a)	HIGH
High Consequence Areas	255.905	HIGH
Required Elements (IMP)	255.911	HIGH
Knowledge and Training (IMP)	255.915	HIGH
Identification of Potential Threats to Pipeline Integrity and Use of the Threat Identification in an Integrity Program (IMP)	255.917	HIGH
Baseline Assessment Plan(IMP)	255.919	HIGH
Conducting a Baseline Assessment (IMP)	255.921	HIGH
Direct Assessment (IMP)	255.923	HIGH
External Corrosion Direct Assessment (ECDA) (IMP)	255.925	HIGH
Internal Corrosion Direct Assessment (ICDA) (IMP)	255.927	HIGH
Confirmatory Direct Assessment (CDA) (IMP)	255.931	HIGH
Addressing Integrity Issues (IMP)	255.933	HIGH
Preventive and Mitigative Measures to Protect the High Consequence Areas (IMP)	255.935	HIGH
Continual Process of Evaluation and Assessment (IMP)	255.937	HIGH
Reassessment Intervals (IMP)	255.939	HIGH
General requirements of a GDPIM plan	255.1003	HIGH
Implementation requirements of a GDPIM plan.	255.1005	HIGH
Required elements of a GDPIM plan.	255.1007	HIGH
Required report when compression couplings fail.	255.1009	HIGH
Requirements a small liquefied petroleum gas (LPG) operator must satisfy to implement a GDPIM plan	255.1015	HIGH

HIGH RISK SECTIONS PART 261		
Operation and maintenance plan	261.15	HIGH
Leakage Survey	261.17(a),(c)	HIGH
Carbon monoxide prevention	261.21	HIGH
Warning tag procedures	261.51	HIGH
HEFPA Liaison	261.53	HIGH
Warning Tag Inspection	261.55	HIGH
Warning tag: Class A condition	261.57	HIGH
Warning tag: Class B condition	261.59	HIGH

OTHER RISK SECTIONS PART 255

ACTIVITY TITLE	CODE SECTION	RISK FACTOR
Preservation of records	255.17	OTH
Compressor station: Design and construction	255.163	OTH
Compressor station: Liquid removal	255.165	OTH
Compressor stations: Additional safety equipment	255.171	OTH
Vaults: Accessibility	255.185	OTH
Vaults: Sealing, venting, and ventilation	255.187	OTH
Calorimeter or calorimeter structures	255.190	OTH
Design pressure of plastic fittings	255.191	OTH
Valve installtion in plastic pipe	255.193	OTH
Instrument, control, and sampling piping and components	255.203	OTH
Limitations On Welders	255.229	OTH
Quality assurance program	255.230	OTH
Preheating	255.237	OTH
Stress relieving	255.239	OTH
Inspection and test of welds	255.241(c)	OTH
Nondestructive testing-Pipeline to operate at 125 PSIG or more	255.243(f)	OTH
Plastic pipe: Qualifying joining procedures	255.283	OTH
Plastic pipe: Qualifying persons to make joints	255.285(c),(e)	OTH
Plastic pipe: Inspection of joints	255.287	OTH
Bends and elbows	255.313(d)	OTH
Protection from hazards	255.317	OTH
Installation of pipe in a ditch	255.319	OTH
Casing	255.323	OTH
Cover	255.327	OTH
Customer meters and regulators: Location	255.353	OTH
Customer meters and regulators: Protection from damage	255.355	OTH
Customer meters and service regulators: Installation	255.357(a),(b),(c)	OTH
Customer meter installations: Operating pressure	255.359	OTH
Service lines: Installation	255.361(a),(b),(c),(d)	OTH
Service lines: valve requirements	255.363	OTH
Service lines: Location of valves	255.365(a),(c)	OTH
Service lines: General requirements for connections to main piping	255.367	OTH
Service lines: Connections to cast iron or ductile iron mains	255.369	OTH
Service lines: Steel	255.371	OTH
Service lines: Cast iron and ductile iron	255.373	OTH
Service lines: Plastic	255.375	OTH
Service lines: Copper	255.377	OTH
New service lines not in use	255.379	OTH
Service lines: excess flow valve performance standards	255.381	OTH
External corrosion control: Buried or submerged pipelines installed after July 31, 1971	255.455(a)	OTH
External corrosion control: Examination of buried pipeline when exposed	255.459	OTH
External corrosion control: Protective coating	255.461(a),(b),(d),(e),(f),(g)	OTH
Rectifier Inspection	255.465 (b),(c),(f)	OTH
External corrosion control: Electrical isolation	255.467	OTH
External corrosion control: Test stations	255.469	OTH
External corrosion control: Test lead	255.471	OTH
External corrosion control: Interference currents	255.473	OTH
Internal corrosion control: General	255.475(a),(b)	OTH
Atmospheric corrosion control: General	255.479	OTH
Atmospheric corrosion control: Monitoring	255.481	OTH
Remedial measures: transmission lines	255.485(c)	OTH
Remedial measures: Pipelines lines other than cast iron or ductile iron lines	255.487	OTH
Remedial measures: Cast iron and ductile iron pipelines	255.489	OTH
Direct Assessment	255.490	OTH
Corrosion control records	255.491	OTH
General requirements (TESTING)	255.503	OTH
Strength test requirements for steel pipelines to operate at 125 PSIG or more	255.505(e),(h),(i)	OTH

Test requirements for pipelines to operate at less than 125 PSIG	255.507	OTH
Test requirements for service lines	255.511	OTH
Environmental protection and safety requirements	255.515	OTH
Records (TESTING)	255.517	OTH
Notification requirements (UPGRADES)	255.552	OTH
General requirements (UPGRADES)	255.553(d),(e)	OTH
Conversion to service subject to this Part	255.559(b)	OTH
Change in class location: Confirmation or revision of maximum allowable operating pressure	255.611(a),(d)	OTH
Continuing surveillance	255.613	OTH
Odorization	255.625(e),(f)	OTH
Pipeline Markers	255.707(a),(c),(d),(e)	OTH
Transmission lines: Record keeping	255.709	OTH
Distribution systems: Patrolling	255.721(b)	OTH
Test requirements for reinstating service lines	255.725	OTH
Inactive Services	255.726	OTH
Abandonment or inactivation of facilities	255.727(b)-(g)	OTH
Compressor stations: storage of combustible materials	255.735	OTH
Pressure limiting and regulating stations: Inspection and testing	255.739(c),(d)	OTH
Pressure limiting and regulating stations: Telemetering or recording gauges	255.741	OTH
Regulator Station MAOP	255.743 (c)	OTH
Service Regulator - Min.& Oper. Load	255.744 (d),(e)	OTH
Distribution Line Valves	255.747	OTH
Valve maintenance: Service line valves	255.748	OTH
Regulator Station Vaults	255.749	OTH
Caulked bell and spigot joints	255.753	OTH
Reports of accidents	255.801	OTH
Emergency lists of operator personnel	255.803	OTH
Leaks General	255.805(a),(b),(e),(g),(h)	OTH
Leaks: Records	255.807(a),(b),(c)	OTH
Type 2	255.815(b),(c),(d)	OTH
Type 3	255.817	OTH
Interruptions of service	255.823(a),(b)	OTH
Logging and analysis of gas emergency reports	255.825	OTH
Annual Report	255.829	OTH
Reporting safety-related conditions	255.831	OTH
General (IMP)	255.907	OTH
Changes to an Integrity Management Program (IMP)	255.909	OTH
Low Stress Reassessment (IMP)	255.941	OTH
Measuring Program Effectiveness (IMP)	255.945	OTH
Records (IMP)	255.947	OTH
Records an operator must keep	255.1011	OTH

OTHER RISK SECTIONS PART 261		
High Pressure Piping - Annual Notice	261.19	OTH
Warning tag: Class C condition	261.61	OTH
Warning tag: Action and follow-up	261.63(a)-(h)	OTH
Warning Tag Records	261.65	OTH

ATTACHMENT IV

NET PLANT TARGETS

Central Hudson Gas & Electric Corporation

Net Plant Targets for TME 6/30/2014
($000)

	Electric[1] TME 6/30/2014	
Electric Net Plant Target:		
Plant In Service	1,262,196	
Accumulated Reserve	(360,501)	
Net Plant	901,695	
NIBCWIP	17,638	
Net Electric Plant Target	919,333	[4]
Depreciation Expense Target:		
Transportation Depreciation [3]	1,991	
Depreciation Expense [3]	32,710	
Electric Depreciation Expense Target	34,701	[4]

	Gas[1] TME 6/30/2014	
Gas Net Plant Target:		
Plant In Service	361,146	
Accumulated Reserve	(117,428)	
Net Plant	243,718	
NIBCWIP	8,438	
Net Gas Plant Target	252,156	[4]
Depreciation Expense Target:		
Transportation Depreciation [3]	417	
Depreciation Expense [3]	8,999	
Gas Depreciation Expense Target	9,416	[4]

[1] - Electric and Gas amounts include allocation of Common Plant.
[2] - Electric and Gas Plant, Reserves and NIBCWIP are from Staff Exhibits ARP-3 and ARP-4, Schedule 7.
[3] - Electric and Gas Depreciation are from Staff Exhibits ARP-3 and ARP-4, Schedule 1.
[4] - Net Plant and Depreciation Target.

Exhibit 2

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

CASE 12-M-0192 - Joint Petition of Fortis Inc., Fortis US Inc., Cascade Acquisition Sub Inc., CH Energy Group, Inc., and Central Hudson Gas & Electric Corporation for Approval of the Acquisition of CH Energy Group, Inc. by Fortis Inc. and Related Transactions.

NOTICE OF SCHEDULE FOR FILING EXCEPTIONS

(Issued May 3, 2013)

Attached is the Recommended Decision of Administrative Law Judges Rafael A. Epstein and David L. Prestemon in this proceeding. Briefs on exceptions are due electronically to the Secretary at secretary@dps.ny.gov and to all active parties by 4:00 p.m. on May 17, 2013.

Briefs opposing exceptions are due by 4:00 p.m. on May 24, 2013, following the same procedures. The parties' briefs should adhere to the guidelines for filing documents with the Secretary (www.dps.ny.gov).

(SIGNED) JEFFREY C. COHEN
Acting Secretary

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

CASE 12-M-0192 - Joint Petition of Fortis Inc., Fortis US Inc., Cascade Acquisition Sub Inc., CH Energy Group, Inc., and Central Hudson Gas & Electric Corporation for Approval of the Acquisition of CH Energy Group, Inc. by Fortis Inc. and Related Transactions.

RECOMMENDED DECISION

BY

ADMINISTRATIVE LAW JUDGES

RAFAEL A. EPSTEIN AND DAVID L. PRESTEMON

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STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

CASE 12-M-0192 - Joint Petition of Fortis Inc., Fortis US Inc., Cascade Acquisition Sub Inc., CH Energy Group, Inc., and Central Hudson Gas & Electric Corporation for Approval of the Acquisition of CH Energy Group, Inc. by Fortis Inc. and Related Transactions.

RECOMMENDED DECISION

RAFAEL A. EPSTEIN and DAVID L. PRESTEMON,
Administrative Law Judges:

BACKGROUND

On February 20, 2012, CH Energy Group, Inc. (CHEG), the parent company of Central Hudson Gas & Electric Corporation (Central Hudson), entered into an Agreement and Plan of Merger (Merger Agreement) with Fortis Inc. (Fortis), a Canadian holding company; FortisUS Inc. (FortisUS), a wholly-owned subsidiary of Fortis; and Cascade Acquisition Sub Inc. (Cascade), a wholly-owned subsidiary of FortisUS. Under the terms of the Merger Agreement, CHEG would merge with Cascade, with CHEG as the surviving entity. As a result, Central Hudson, a regulated New York electric and gas corporation, would become indirectly a wholly-owned subsidiary of Fortis.

Under §70 of the Public Service Law (PSL), the transfer of ownership of all or any part of the franchise, works or system of any gas or electric corporation is prohibited without the consent of the Commission. That consent may be given only if the Commission determines that the proposed acquisition, with such terms and conditions as the Commission may fix and impose, "is in the public interest." Consequently, on April 20, 2012, Fortis, FortisUS, Cascade, CHEG and Central

Hudson (collectively, "Petitioners") sought such consent by filing the petition that is the subject of this proceeding.

Subsequent to the filing, the matter was assigned to Administrative Law Judges, and a Notice of Proposed Rulemaking was published.[1] On May 16, 2012 the Judges conducted an initial procedural conference. Participants at the conference in addition to Petitioners and staff of the Department of Public Service (Staff) were the Utility Intervention Unit of the New York Department of State's Division of Consumer Protection (UIU); the International Brotherhood of Electrical Workers Local 320 (IBEW Local 320); the Retail Energy Supply Association (RESA); Multiple Intervenors (MI); Empire State Development Corporation; and the County of Dutchess. All were admitted as parties to the proceeding, as were Hess Corporation, the County of Orange, the County of Ulster, the Joint Task Force of the Town and Village of Athens (Athens Joint Task Force), the Public Utility Law Project of New York, Inc. (PULP), and, as a group, Accent Energy Midwest Gas, LLC, Accent Energy Midwest II, LLC, IGS Energy, Inc., and Interstate Gas Supply, Inc.

Following a status conference on June 27, 2012, and upon reconsideration of an initial ruling, the Judges adopted a schedule for the proceeding calling for the filing of initial comments or testimony (at the option of the party) by October 12, 2012, and reply comments or rebuttal testimony by November 2, 2012. Ultimately, initial testimony was filed by Staff and PULP, and initial comments were submitted by Athens, Dutchess County, ESD, IBEW Local 320, MI, and UIU. Reply comments were received from Athens, and rebuttal testimony was filed by Petitioners. Staff was subsequently authorized to submit surrebuttal testimony in response to Petitioners, and did so on December 4, 2012.

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[1] *New York State Register*, May 23, 2012, p. 15.

On December 12, 2012, Petitioners filed a Notice of Settlement pursuant to which all parties, except PULP, actively participated in negotiations that lasted approximately ten business days, and resulted in the Joint Proposal that we are addressing in this Recommended Decision.[2] The Joint Proposal was filed with the Secretary on January 28, 2013, and was signed by Petitioners, Staff, MI, UIU and the Counties of Dutchess, Orange and Ulster.[3] It states the conclusion of the signatories that the proposed merger, with the terms and conditions set forth in the proposal, meets the public interest standard of PSL §70 and should be approved.

Statements expressing general support for the Joint Proposal were filed on February 8, 2013, by Petitioners, Staff, MI and UIU. The Counties reiterated their limited support. Statements opposing adoption of the Joint Proposal in its present form were filed by PULP, RESA, the New York State Energy Marketers Coalition (NYSEMC), and IBEW Local 320. Replies were

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[2] PULP explains in its comments in opposition to the Joint Proposal that it was unable to participate due to a lack of available resources caused by a delay in the receipt of funding. Initial Comments of Public Utility Law Project of New York, Inc. (PULP) in Opposition to Joint Proposal (PULP Initial Comments), pp. 1-2.

[3] The signatures of the Counties are accompanied by disclaimers stating that they are affixed for the purpose of expressing support for specific provisions of the Joint Proposal, and that the Counties take no position on the balance of the document. In general, the Counties stated support for provisions calling for a rate freeze, the crediting of synergy savings, and the payment of positive benefits including the Community Benefit Fund and write-down of regulatory assets. The Counties participated as parties, and signed the Joint Proposal, through their county executives. Subsequent to execution of the Joint Proposal, the Ulster County legislature, by resolution, and a majority of the members of the Dutchess County legislature, by letter, opposed approval of the proposal, while Orange County Executive Edward Diana submitted comments supporting it fully.

filed on February 15, 2013, by Petitioners, Staff, IBEW Local 320, MI, PULP, and RESA.

In a January 29, 2013 ruling establishing a schedule for statements in support of, or opposition to, the Joint Proposal, the Judges specified that any party advocating an evidentiary hearing on the Joint Proposal must specify in its initial comments (due February 8, 2013) a material issue of fact that could not be resolved without the cross-examination of witnesses. No party's initial comments attempted to make such a showing.

On May 1, 2013, two additional parties were admitted: Citizens for Local Power (CLP) and the Consortium in Opposition to the Acquisition (Consortium). Although some members of these groups had previously submitted comments, the organizations themselves had not participated in the proceeding prior to their admission.

By motion dated May 1, 2013, CLP and the Consortium have requested an evidentiary hearing. Although the time for opposing responses has not yet expired, we recommend on the basis of the present record that the Commission deny the motion.[4] Regardless of what any responses might assert, we find that the motion is contrary to the principle in Rule 4.3(c)(2) that late intervention is permitted only subject to the new party's acceptance of the record as of the intervention date; and, more substantively, that the motion fails to satisfy the requirement in the January 29, 2013 ruling that any request for hearings be supported by issues that require cross-examination.

We agree with CLP and the Consortium that this case is as important as others where hearings have been held. In our

[4] At Petitioners' request, without opposition from any other party, the due date for responses to the motion has been accelerated to May 6, 2013.

view, however, the determining factor is that an evidentiary hearing would serve no legitimate function because the controversies in the proceeding, notably including those raised by CLP and the Consortium in comments filed simultaneously with the motion, present no factual questions that could be clarified by confrontation of witnesses and could materially affect the Commission's decision. Moreover, while we also agree that the prefiled evidence should be available in the record as a potential basis for the Commission's decision, a hearing is not necessary to accomplish that result.

PUBLIC COMMENTS

On February 21, 2013, public statement hearings concerning the Joint Proposal were held in Kingston and Poughkeepsie. Approximately 40 people attended the hearings, 17 of whom provided comments on the record. Commenters included Central Hudson customers from throughout the utility's service territory, as well as New York State Assembly Member Kevin Cahill and Town of Rosendale Council Member Manna Jo Greene.

The original notice of public statement hearings called for all comments to be submitted by March 21, 2013. After receiving numerous requests for additional time from public officials and others, the Secretary extended the deadline through May 1, 2013. During the extension period, additional public statement hearings were held on April 17, 2013, in Poughkeepsie and April 18, 2013 in Kingston. Approximately 130 people attended the hearings and 47 provided comments. Speakers included Assembly Member Frank Skartados, Dutchess County Legislators Richard Perkins and Joel Tyner, Rosendale Council Member Greene, Rosendale Supervisor Jeanne Walsh, Woodstock Town Council Member Jay Wenk, and a representative from the office of State Senator Cecilia Tkaczyk. All speakers at all of the public statement hearings opposed the merger. Through May 1,

2013, another approximately 316 comments opposing the merger were received by the Commission by mail, e-mail, telephone, and posting to the Commission's website. In addition, 896 individuals had signed a petition posted on the SignOn.org website expressing opposition to the merger.[5]

Commenters opposed to the merger included Senator Tkaczyk and Senator Terry Gipson; Assembly Members Cahill, Didi Barrett, and James Skoufis; City of Beacon Mayor Randy Casale; Town of Woodstock Supervisor Jeremy Wilber; 13 members of the Dutchess County Legislature, by joint letter; Dutchess County Legislature Assistant Majority Leader Angela Flesland, individually; and former Member of Congress Maurice D. Hinchey. All of these past and present public officials urged the Commission to disapprove the proposed merger transaction, as did resolutions adopted by the Ulster County Legislature; the City of Newburgh; the Towns of Esopus, Marbletown, Newburgh, New Paltz, Olive, Rosendale, and Woodstock; the Village of Red Hook, and the Rosendale Environmental Commission. The Economic Development Committee of the Town of Red Hook also opposed the merger, as did AARP, the Sierra Club, the Dutchess County Central Labor Council, and the Hudson Valley Area Labor Federation.

Opponents of the merger expressed varying degrees of concern about the potential for long-run negative consequences not only for Central Hudson ratepayers, but also for the economic well-being of the utility's Mid-Hudson service territory if the transaction were consummated. The themes evoked most frequently in the comments derived from the perception that the transaction would replace a well-regarded,

[5] The SignOn.Org website allows petition signers to cause e-mails to be sent to the Secretary memorializing their signatures, and many individuals availed themselves of that option. The numbers cited above do not include those e-mails.

highly capable and locally engaged utility with a foreign entity of unproven quality having no inherent ties to the service territory and financial objectives that may conflict with the interests of ratepayers. These concerns are epitomized by the comments of Jennifer Metzger, Chair of the Town of Rosendale Environmental Commission, who stated that "Central Hudson's community involvement has benefited Rosendale tremendously," and warned that:

> this level of involvement will decrease or perhaps end in the future if the company is acquired by Fortis Inc. - a foreign company with multiple holdings outside the region and country that has an inherent incentive to cut costs and operational expenses in its subsidiaries to improve its own profitability.

This perceived potential for a divergence of interests between a distant holding company and the local community served by its utility subsidiary was a source of concern for nearly all of the commenters, many of whom expressed a general uneasiness with the prospect of foreign ownership of critical infrastructure necessary to provide essential electric and gas services. Some saw this as a continuation of a disturbing trend toward more and more foreign ownership of U.S. businesses, and expressed concern that domestic control over vital industries was being lost.

Others had more specific concerns. Many commenters described Central Hudson as having been very proactive in promoting energy efficiency and renewable energy. They suggested that there was no language in the Joint Proposal that would ensure a comparable environmental responsiveness from the merged companies. In a similar vein, many commenters noted Central Hudson's record of community involvement and support for local economic development. They questioned whether that level of commitment would extend beyond the funding expressly provided

in the Joint Proposal, which they characterized as a purely short-term benefit.

For other commenters, the issue was primarily economic. They viewed the putative financial benefits of the Joint Proposal for ratepayers as meager and transitory, while the financial risks would be substantial and persistent. Assembly Member Cahill, for example, argued that the proposed merger transaction makes no financial sense. Fortis, he suggested, could not make a profit and still maintain current levels of service for Central Hudson ratepayers. Ultimately, he contended, customers would be forced to provide that profit through either increased rates or decreased service reliability and safety.

Prior to the issuance on April 24, 2013, of the notice announcing the preparation of this recommended decision, the Commission had not received a single public comment supporting the merger. The first such comment, posted on April 24, came from Charles S. North, President and CEO of the Dutchess County Regional Chamber of Commerce. Mr. North stated that after meeting with Central Hudson officials and learning the facts of the transaction, he strongly supported it. Fortis's commitments to provide $50 million in benefits and to maintain Central Hudson as a standalone entity are a win/win for customers, he said. In Mr. North's opinion, Central Hudson will benefit from the resources of a larger organization and has done right by its customers in agreeing to the merger.

Subsequently, through May 1, 2013, the Commission has received approximately 274 comments urging that the merger be approved. About 133 of those comments came from Central Hudson employees. Many others came from Central Hudson customers and from businesses and business organizations including the Edison Electric Institute, the Hudson Valley Economic Development

Corporation, the Putnam County Economic Development Corporation, the Westchester County Office of Economic Development, the Dutchess County Economic Development Corporation, the Council of Industry of Southeastern New York, the New Paltz Regional Chamber of Commerce, the Sullivan County Partnership for Economic Development, the Greater Newburgh Partnership, the Orange County Industrial Development Authority, and the Orange County Partnership. Supporters of the merger emphasize the value of the positive benefits provided for in the Joint Proposal and the commitments of Fortis to operate Central Hudson as a stand-alone entity, maintaining local jobs and keeping its headquarters in the community. The economic development organizations stress particularly the importance of the proposed $5 million Community Benefit Fund (described below).

Supplemental comments were filed on May 1, 2013 by five parties: CLP and the Consortium, jointly; Joint Proposal signatory MI; opponent IBEW Local 320; and Petitioners. CLP and the Consortium expounded in detail on the benefits and detriments of the merger as proposed, to show that it not only would fail the pertinent Commission's positive net benefits test but would be affirmatively harmful and, in that respect, compares unfavorably with all the major energy company mergers the Commission has approved since 1999. They said the Joint Proposal satisfies neither the statutory public interest standard, nor the criteria in the Settlement Guidelines such as conformity with state policies and consensus among adversarial parties. They charged Fortis with disingenuousness or indifference regarding values the Commission should uphold in the pursuit of objectives such as environmental protection, economic development, utility infrastructure improvements, and development of sustainable energy resources.

For the most part, MI's comments repeated its criticism of previously raised objections to the Joint Proposal and emphasized the potential loss of $49.5 million in positive benefits to ratepayers if the proposal were rejected. MI also argued that less weight should be given to comments from entities that did not participate fully in the process leading to the Joint Proposal, particularly those of the legislatures of Dutchess and Ulster Counties whose county executives were signatories to the proposal.

IBEW Local 320 repeated its previously stated concerns about Central Hudson's outsourcing policies and their impact on union jobs and service quality, and contends that they have not been alleviated. The Joint Proposal should not be approved, it said, unless provision is made for a needed infusion of internal workers. The union also submitted a copy of an e-mail sent by a Central Hudson Vice President to employees urging them to submit comments to the Commission supporting the merger and providing templates for that purpose. The e-mail states that, "*The number of posted comments matters* - even if form letters are used [emphasis in original]." IBEW Local 320 states that the "vast majority" of employees who have responded with comments are not represented by the union.

Petitioners' additional comments contended that the record demonstrates that the Joint Proposal will produce benefits that greatly exceed any risks presented by the merger. They cited comments by Staff in support of the Joint Proposal stating Staff's view that the criteria for approval of the merger under PSL §70, as established in previous Commission decisions, have been met or exceeded, and that the transaction compares favorably with those previously approved.

Petitioners also argued that comments received in opposition to the merger, mainly from non-parties, have

generally been misinformed, are contradicted by the terms of the Joint Proposal and/or the comments of the signatories, and have added nothing of significance to the record. For many of the most frequently raised criticisms of the merger, Petitioners provided information tending to refute the allegations, for example, with respect to concerns about foreign ownership of Central Hudson, NAFTA, environmental issues, infrastructure investment, financial risks, and so forth. Petitioners concluded that the Joint Proposal:

> is a compelling path forward that assures the continuation and enhancement of Central Hudson consistent with its past performance as a well-run, low-cost utility that is extraordinarily sensitive to local needs and Commission requirements.[6]

All of the comments received have been included in the official record and have been fully reviewed and considered in the preparation of this recommended decision.

DESCRIPTION OF JOINT PROPOSAL

The Joint Proposal expresses the agreement of the signatory parties that the proposed acquisition of Central Hudson by Fortis is in the public interest for purposes of PSL §70, and should be approved, subject to the terms described in the proposal. Broadly speaking, those terms are intended to perform two functions: the mitigation of any potential risks that might arise from consummation of the merger transaction, and the securing of incremental public benefits to ensure a net positive outcome from the transaction. In this section, we describe the provisions of the Joint Proposal and the statements supporting and opposing their adoption.

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[6] Additional Comments of Petitioners, p. 47.

A. Risk Mitigation

1. Corporate Structure, Governance and Financial Protections

Petitioners state that although their original petition voluntarily included provisions intended to address concerns that were identified in prior Commission orders addressing the acquisition of distribution utilities, the Joint Proposal signatories have agreed to even more comprehensive and stringent requirements for corporate structure, corporate governance and financial protections. Staff agrees, arguing that the Joint Proposal incorporates "a myriad of customer protections" addressing such matters as goodwill and acquisition costs; credit quality and dividend restrictions; money pooling; a special class of preferred stock to be issued in the event of the bankruptcy of Fortis (the "golden share"); financial transparency and continued financial reporting requirements; updated affiliate transaction and cost allocations, as well as, Code of Conduct rules and standards; follow-on merger savings; and corporate governance and operational protection provisions.[7] Similarly, MI states that although Petitioners' original proposal "did a commendable job of advancing reasonable customer protections, the Joint Proposal provides additional and/or strengthened financial and operational protections for customers."[8]

a. Goodwill and Acquisition Costs

To the extent that the consideration paid by Fortis for the stock of CHEG exceeds the book value of CHEG's assets, an accounting asset, goodwill, will be created. As the

[7] Department of Public Service Staff Statement in Support of Joint Proposal (Staff Statement), p. 10.

[8] Initial Comments of Multiple Intervenors in Support of Joint Proposal (MI Comments), p. 12.

Commission has made clear in previous orders, neither the cost of acquiring, nor the cost of carrying, that asset should be borne by utility customers, and the existence of goodwill should not adversely affect ratepayers. The Joint Proposal includes provisions intended to ensure that this will be the case for Central Hudson customers. It bars goodwill associated with the merger transaction from being recorded on the books of Central Hudson, to the extent permitted by U.S. Generally Accepted Accounting Principles (U.S. GAAP). If those accounting rules require goodwill to be "pushed down" to Central Hudson for financial reporting purposes, the Joint Proposal precludes it from being reflected in the regulated accounts of Central Hudson on which rates are based. In addition, if either Fortis or FortisUS is obligated to record an impairment of the goodwill created by the transaction, the Commission must be notified within five days. Staff argues that this provision will afford it and the Commission adequate time to take steps to ensure that the impairment does not adversely affect Central Hudson customers. Finally, the Joint Proposal requires Central Hudson to submit to Staff a schedule of all external legal, financial advisory and similar costs incurred to achieve the merger in order to permit the Commission to ensure that they cannot be recovered in rates.

b. Credit Quality and Dividend Restrictions

Staff identified the possibility of Central Hudson's credit standing being adversely affected by the finances of Fortis as a significant risk of the proposed merger. Accordingly, the Joint Proposal incorporates an array of conditions designed to protect the credit quality of the utility.

First, to permit the Commission to adequately monitor the impact of the transaction on Central Hudson's finances, the

Joint Proposal establishes a continuing requirement that copies of all presentations made by Central Hudson, Fortis or any Fortis affiliate be provided to Staff within ten business days. Both Fortis and Central Hudson are required to be registered with at least two major nationally and internationally recognized rating agencies, to maintain separate debt instruments, and to be separately rated by at least two rating agencies. In addition, neither Fortis nor Central Hudson will be permitted to enter into any debt instrument containing cross-default provisions that could affect Central Hudson.[9]

To mitigate the risk of an increase in Central Hudson's financing costs, the Joint Proposal requires that Fortis and Central Hudson support the objective of maintaining an "A" credit rating for the utility, unless the Commission modifies its financial integrity policies. Also, to ensure that Central Hudson maintains the common equity capitalization on which rates are based, the Joint Proposal would bar Central Hudson from paying dividends if its average common equity ratio for the 13 months prior to the proposed dividend were more than 200 basis points below the ratio used in setting rates.[10] Staff states that this is an additional ratepayer financial protection

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[9] A cross-default provision is one that can trigger default on a debt obligation based on a default on a different debt obligation. For example, a provision in a Central Hudson debt instrument permitting acceleration of the due date for repayment in the event of a default by Fortis on one of its bonds would be a cross-default provision prohibited under the terms of the Joint Proposal.

[10] In response to a question posed by the Judges, the signatory parties clarified their intention that this provision would bar a dividend not only when Central Hudson's trailing 13-month average equity ratio was already below the 200 basis point threshold, but also when the payment of the dividend would itself cause the average to drop below the threshold.

beyond those that the Commission has required in prior transactions.

The Joint Proposal would also continue dividend restrictions originally imposed as part of a Restructuring Settlement Agreement (RSA) approved by the Commission in 1998.[11] Among other things, the RSA stipulates that if Central Hudson's senior debt rating is downgraded below 'BBB+' by more than one credit rating agency and the downgrade is because of the performance of, or concerns about, the financial condition of its parent or an affiliate, dividends will be limited to a rate of not more than 75% of the average annual income available for dividends, on a two-year rolling average basis. In the event that the debt rating is placed on 'Credit Watch' for a rating below 'BBB' by more than one credit rating agency, dividends are limited to 50% of the average net income, and if there is a downgrade below 'BBB-' by more than one credit rating agency, no dividends are allowed to be paid until such time as the rating has been restored to 'BBB-' or higher.

In addition to continuing the RSA limitations, the Joint Proposal includes a new provision that would insulate Central Hudson ratepayers from the effects of a downgrade to Fortis's credit rating. If within three years of the merger Central Hudson's credit rating were downgraded as a direct result of a Fortis downgrade, the higher debt cost resulting from the downgrade would not be reflected in Central Hudson's cost of capital used to set rates. Ratepayers would be held harmless for the financial impact of the Fortis downgrade.

The Joint Proposal also would bar Central Hudson from providing financial support to Fortis or its other affiliates

[11] Case 96-E-0909, *Central Hudson Gas & Electric Corporation*, Order Adopting Terms of Settlement Subject to Modifications and Conditions (issued February 19, 1998).

except as permitted by the Joint Proposal, the RSA or a Commission order. It would also require that Central Hudson's banking and other financial arrangements be kept separate from those of other Fortis affiliates.

Finally, the Joint Proposal would authorize Central Hudson to deregister from the United States Securities and Exchange Commission (SEC) and rely more on the private market under SEC Rule 144A to issue debt.[12] The Commission's order issued last year in Case 12-M-0172 would be amended to permit such private financing.[13] It is expected that the availability of this option will enhance Central Hudson's pricing position, lowering its debt costs, and benefiting ratepayers.

c. Money Pooling

Money pools enable affiliated companies to make their excess cash on hand available as a quick, low-cost source of short-term funding for other pool participants. The Joint Proposal would permit Central Hudson to participate in such pooling arrangements, but only with Fortis, FortisUS and other entities that are regulated utilities operating in the United States, provided that Fortis and FortisUS may participate only as lenders and may not receive loans or fund transfers, directly or indirectly. Cross-default provisions affecting Central Hudson would be prohibited.

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[12] Rule 144A is a safe harbor exemption from the registration requirements of the Securities Act of 1933 that allows companies to sell securities in the private market to qualified institutional buyers in a more timely fashion with fewer disclosures and filing requirements.

[13] Case 12-M-0172, *Central Hudson Gas & Electric Corporation*, Order Authorizing Issuance of Securities (issued September 14, 2012).

d. Special Class of Preferred Stock

The Joint Proposal would require the creation of special class of Central Hudson preferred stock to be held by a trustee approved by the Commission. Without the consent of the holder of this "golden share," Central Hudson would be precluded from entering into voluntary bankruptcy. This is identical to a provision included in the Commission's order approving the acquisition of New York State Electric and Gas Corporation and Rochester Gas & Electric Corporation by Iberdrola.[14]

With the golden share in place, Central Hudson would be permitted to demonstrate in future rate cases that its stand-alone capital structure should be used for setting rates. That demonstration would be made by submitting current written evaluations from at least two rating agencies supporting the evaluation of Central Hudson as a separate company, without material adjustments based on risks related to the capital structure and ratings of Fortis. If such evaluations were not available, Central Hudson would have the burden of providing comparable evidence to support the stand-alone assumption.

e. Financial Transparency and Reporting

The Joint Proposal incorporates a number of provisions intended to ensure that the Commission and its Staff have ready access to the financial data and other information necessary to continue our regulatory oversight of Central Hudson. It provides that Central Hudson will continue to use the standards of GAAP for its financial accounting and financial reports. If that accounting method were replaced for publicly-traded entities, the change would apply to Central Hudson. Central Hudson would also be required to continue to satisfy all of the

[14] Case 07-M-0906, *Iberdrola, S.A. et al. - Acquisition Petition*, Order Authorizing Acquisition Subject to Conditions (issued January 6, 2009)(*Iberdrola* order), pp. 43-44.

Commission's reporting requirements for jurisdictional companies of its size and nature.

Central Hudson would also continue to comply with the provisions of sections 302 through 404 of the Sarbanes-Oxley Act (SOX) as if Central Hudson were still bound directly by the provisions of SOX, even though it would be a subsidiary of a foreign holding company. This would include annual attestation audits by independent auditors with respect to Central Hudson's financial statements and internal controls over financial reporting.

The Joint Proposal would also require that Staff be given ready access to any books and records of Fortis and its affiliates that Staff might deem necessary to determine whether the rates and charges of Central Hudson are just and reasonable. That access must include, but is not limited to, all information supporting the underlying costs and the basis for any factor that determines the allocation of those costs. Central Hudson would also be required annually to file the financial statements, including balance sheets, income statements, and cash flow statements of Fortis and its major regulated and unregulated energy company subsidiaries in the United States, and to provide, to the extent available from a recognized financial reporting information service, the "as reported" quarterly and annual balance sheets, income statements and statements of cash flows of Fortis in U.S. dollars with the underlying currency translation assumptions. All required financial filings would be in English and in U.S. dollars or, if that were not practicable, with the underlying currency translation assumptions.

f. Affiliate Standards

The RSA approved by the Commission when Central Hudson was reorganized as a subsidiary of CHEG included a set of

standards addressing transactions, conflicts of interest, cost allocations, and information sharing among Central Hudson and its affiliates. The Joint Proposal would update and revise those standards and apply them to Fortis. Central Hudson would be barred from entering into transactions with affiliates that were not in compliance with the transaction standards; would be prohibited from sharing operating (i.e., non-management) employees with affiliates, and would be required to give 180 days' prior notice and obtain Commission approval prior to the start of any material shared services initiatives or the establishment of a shared services organization that would provide material services to Central Hudson.[15] Current cost allocation guidelines would be continued, but would be subject to revision if intercompany transactions grew beyond a defined level. Staff contends that, collectively, these provisions ensure that the Commission will have adequate advance notice of any change in Fortis's expressed philosophy of allowing its subsidiary utilities to operate on a stand-alone basis.

g. Follow-On Merger Savings

The Joint Proposal includes a condition that would ensure Central Hudson customers an appropriate share of any savings resulting from future mergers or acquisitions by Fortis until new rates are set. This condition, Staff says, is identical to follow-on merger savings provisions that have been adopted as a condition to the approval of other recent mergers.

h. Corporate Governance and Operational Provisions

The Joint Proposal contains a number of provisions intended to address concerns that the responsiveness of Central Hudson to the community it serves might be diminished as a

[15] "Material" is defined as services individually or collectively having a value greater than 5% of Central Hudson's net income on an after tax basis.

subsidiary of a foreign holding company. The provisions specify that the headquarters of the utility would remain within the service territory.[16] A new board of directors would be appointed within one year with a majority of directors who are independent, and at least one independent director would be required to live within the service territory.[17] At least 50% of Central Hudson's officers would also be required to live within the territory. These requirements, Staff says, go beyond what is currently required for CHEG.

In addition, the Joint Proposal specifies that Central Hudson is to be governed, managed and operated on a stand-alone basis post-merger. Local management would continue to make decisions concerning staffing levels, and current employees, both management and non-management, would be retained for two years after closing of the merger. Within 30 days after each of the first two anniversary dates of the merger closing, Central Hudson would be required to file a report with the Secretary comparing the level of union and management employees on that date to the levels on the merger closing date. The collective bargaining process would be continued. The Central Hudson Board would continue to be responsible for management oversight, including capital and operating budgets, dividend policy, debt, and equity requirements. The Board would also have an audit

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[16] In response to a question from the Judges, the signatory parties clarified that "headquarters" means the place where all senior officers and their support staff, legal, administrative, accounting, operating supervision, and other head office functions are located.

[17] The signatory parties agreed in response to a question from the Judges that an independent director is one who receives no consulting, advisory or other compensation from Central Hudson or an affiliate or subsidiary of Central Hudson. A director who is an officer, employee or consultant of Central Hudson, FortisUS, Fortis, or any other Fortis affiliate would not be considered independent.

committee, with a majority of members who are independent, and it would continue to be responsible for the financial integrity and effectiveness of internal controls. Finally, to maintain an active corporate and charitable presence in the service territory, Central Hudson would agree to maintain its 2011 level of community involvement through 2017.

2. Performance

A common theme throughout the testimony and comments in this case has been the concern that pressure to demonstrate the profitability of the merger transaction might lead to deferred investment in utility plant, reduced maintenance levels and other cost-cutting measures that could eventually have a negative impact on Central Hudson's provision of safe and reliable service. To reduce this risk, the Joint Proposal includes a broad range of performance-related mechanisms, some of which are more stringent than those currently applicable to Central Hudson. All of these performance mechanisms would continue until modified by the Commission in a subsequent proceeding. The Joint Proposal also incorporates provisions mandating specific levels of expenditures for important safety, maintenance and infrastructure development activities.

a. Performance Mechanisms

i. Service Quality

Under the terms of the Joint Proposal, the Service Quality Performance Mechanism included in Central Hudson's current rate plan would be continued with two changes. First, the maximum negative revenue adjustment (NRA) imposed as a result of failure to meet defined targets would be doubled from $1.9 million annually to $3.8 million. Second, the target for the PSC complaint rate would be lowered, from 1.7 per year per 100,000 customers to 1.1. In addition, during a period of dividend restriction under the financial provisions of the Joint

Proposal, the maximum NRA would increase to $5.7 million, and it would rise further, to $7.6 million, if performance targets were missed three times in any five-year period.[18]

ii. Electric Reliability

The Joint Proposal would maintain the electric reliability standards included in Central Hudson's current rate plan. As with the service quality performance mechanism, potential NRAs would be doubled immediately, tripled in the event of a dividend restriction, and quadrupled if targets were missed in three of any five calendar years. In addition, Attachment II to the Joint Proposal defines uniform reporting requirements that Staff says will aid its monitoring of Central Hudson's performance and will contribute to consistency of reporting among utilities.

iii. Gas Safety

As with electric reliability, the gas safety performance targets in Central Hudson's current rate plan would be continued, with potential NRAs immediately doubled, tripled in the event of a dividend restriction and quadrupled if targets are missed in three of five calendar years. In addition, the Joint Proposal would establish a new metric for compliance with certain pipeline safety regulations set forth in 17 NYCRR Parts 255 and 261, with potential NRAs of up to 100 basis

[18] In response to a question from the Judges, the signatories clarified this was what was intended by the phrase "if targets are missed for three years within the next five year period," in section IV.B.2 of the Joint Proposal.

points. The provision is essentially the same as ones the Commission adopted for Corning Natural Gas and National Grid.[19]

iv. Leak-Prone Pipe

The Joint Proposal would increase required annual expenditures for the replacement of leak-prone pipe, as determined through a risk-based analysis, from $6.0 million to $7.7 million, as recommended by Staff. Staff says the increase can be expected to drive down active leaks, reduce leakage rates on the distribution system and lower overtime and operating and maintenance costs. If Central Hudson fails to expend the required amount, one-half of the revenue requirement equivalent of the shortfall would be deferred for ratepayer benefit.

b. Expenditure Requirements

i. Right-of-Way Tree Trimming

The Joint Proposal would continue to budget expenditures for right-of-way tree trimming through June 30, 2014 at the level established in Central Hudson's current rate plan for the year ending June 30, 2013. At the end of the one-year extension, actual expenditures would be compared to the budget. Any shortfall would be deferred for the benefit of ratepayers with carrying charges at the pre-tax rate of return.

ii. Stray Voltage Testing

The Joint Proposal would establish targeted expenditures for the year ending June 30, 2014, of $2.023 million for stray voltage testing and $350,000 for stray voltage mitigation. If Central Hudson's expenditures fell short of

[19] Case 11-G-0280, *Corning Natural Gas Corporation,* Order Adopting Terms of Joint Proposal and Establishing a Multi-Year Rate Plan (issued April 20, 2012), p. 21; Cases 12-E-0201 and 12-G-0202, *Niagara Mohawk Power Corporation d/b/a National Grid - Electric and Gas Rates*, Order Approving Electric and Gas Rate Plans in Accord with Joint Proposal (issued March 15, 2013), pp. 13-14.

either of the targets, the shortfall would be deferred for the benefit of ratepayers with carrying charges at the pre-tax rate of return.

iii. Infrastructure Investment

The Joint Proposal would continue the net plant reconciliation mechanism included in Central Hudson's current rate plan with new targets established for the year ending June 30, 2014. Actual net plant in service as of that date would be compared to the targets and the revenue requirement impact of any difference would be calculated using the methodology described in Attachment IV to the Joint Proposal.[20] If the difference were negative, Central Hudson would be required to defer the revenue requirement impact for the benefit of ratepayers with carrying charges at the pre-tax rate of return. If the difference were positive, no deferral would be permitted.

B. Incremental Benefits

While the provisions of the Joint Proposal discussed above are intended to be beneficial to ratepayers, their primary purpose is to reduce the potential for negative impacts from the merger. Consequently, in an effort to ensure a net positive outcome for ratepayers if the merger transaction is approved, the Joint Proposal includes a number of provisions that are designed to generate incremental benefits that would not be realized in the absence of the merger.

1. Rate Freeze

Under the terms of the Joint Proposal, Central Hudson rates currently scheduled to remain in effect through June 30,

[20] The signatory parties confirmed that references to "Attachment III" on page 34 of the Joint Proposal should read "Attachment IV."

2013, would continue through June 30, 2014. Staff calculates that this "rate freeze" would provide a small, but positive benefit to ratepayers.

2. Earnings Sharing

Central Hudson's current rate plan specifies that when the utility's earned return on equity exceeds 10.5%, ratepayers receive 50% of the excess up to an earned return of 11.0%; 80% of the excess between 11.0% and 11.5%; and 90% of the excess over 11.5%. Under the terms of the Joint Proposal, the 50% and 90% sharing thresholds would be lowered, and the 80% sharing level would be eliminated. Ratepayers would be credited with 50% of earnings between 10.0% and 10.5%, and 90% in excess of 10.5%. In addition, Central Hudson would be required to apply 50% of its share of earnings exceeding 10.5% to write down certain deferred expenses that would otherwise be recovered in rates, provided that doing so would not reduce the actual earned return below 10.5%. Through this revised sharing mechanism, Staff says, ratepayers would gain if any unexpected savings materialize as a result of the merger, but Staff rates the likelihood as small given the earnings impact of the other positive benefits required by the Joint Proposal.

3. Synergy Savings

The signatories to the Joint Proposal agree that the merger transaction will generate synergy savings of at least $1.85 million, and Central Hudson would guarantee this amount for five years, for a total of $9.25 million. The savings would begin to accrue in the month following closing of the merger transaction and would be available for rate mitigation at the start of the first rate year in the next rate case filed by Central Hudson.

4. Deferral Write-Offs and Future Rate Mitigation

The Joint Proposal specifies that upon closing of the merger, Fortis will provide Central Hudson $35 million which will be recorded as a regulatory liability, to be used to write down storm restoration expenses for which deferral and recovery from ratepayers has been requested in three pending petitions to the Commission, including most notably one for Superstorm Sandy. To the extent the total expense recovery ultimately authorized by the Commission is less than $35 million, the balance would be reserved as a regulatory liability with carrying charges at the pre-tax rate of return, subject to future disposition by the Commission.

5. Community Benefit Fund

In addition to the $35 million for deferral write-offs and rate mitigation, Fortis would be required to provide Central Hudson $5 million for a Community Benefit Fund to be used for low income customer and economic development programs.

a. Low Income Program Enhancements

The Joint Proposal specifies that $500,000 from the Community Benefit Fund would be used to supplement funds currently provided in rates for programs targeted to low income customers. Currently, Central Hudson provides a bill credit of $11.00 per month for all customers who are Home Energy Assistance Program (HEAP) recipients. Under the Joint Proposal, within 30 days after an order in this case, Central Hudson would implement a new schedule of discounts providing credits of $17.50 per month for HEAP-participant heating customers receiving only electric or only gas service, and $23.00 for those receiving both. Non-heating customers would receive credits of $5.50 for one service, or $11.00 for both, provided that customers currently receiving an $11.00 credit for a single service would continue to receive that amount. Central Hudson

would also be required to waive reconnection fees for participants in its low income programs up to a total of $50,000. If the total cost of the programs exceeded the amount allowed in rates plus the $500,000 from the Community Benefit Fund, the shortfall would be made up from funds previously deferred for the benefit of the low income programs, with any excess deferred as a regulatory asset. Central Hudson would be required to continue to refer participants in its low income programs to the New York Energy Research and Development Authority's EmPower New York program for energy efficiency services. Finally, the Joint Proposal establishes a schedule for quarterly reporting on low income programs to the Commission, and specifies the data to be provided.

b. Economic Development

The Joint Proposal provides for $5 million dollars to be allocated by Central Hudson for the support of economic development programs. The $5 million would consist of $4.5 million from the Community Benefit Fund and $500,000 from Central Hudson's existing Competition Education Fund. Within 15 days after an order in this case, Central Hudson would file a proposal with the Commission for modification of its existing economic development programs and would request expedited consideration. The modifications would provide for Central Hudson to continue to administer its programs pursuant to existing Commission authorizations with input from the counties in its service territory. They would also establish a criterion that applicants for project funding that do not have participation from Empire State Development, a county industrial development agency, a county community college, or a local municipal resolution would seek a letter of support from the county where the project would be located. Central Hudson would also agree to seek county participation in economic development

grant award notifications and announcements, and would meet twice a year with representatives of all the counties in its service territory.

6. State Infrastructure Enhancements

The Joint Proposal would commit Central Hudson to continue to support the New York State Transmission Assessment and Reliability Study, the Energy Highway, and economically justified gas expansion. Fortis would agree to provide equity support to the extent required by Central Hudson for projects that receive regulatory approval and proceed to construction.

7. Gas Expansion Pilot Program

Central Hudson would commit to continue its existing gas marketing expansion campaign during the rate freeze period and would continue to provide information and assistance to customers who are seeking or considering gas service. Where adequate financial commitments and reasonable franchise conditions can be secured, it would pursue expansion of gas facilities to areas not currently served and would seek expedited Commission approval for such expansion. Within 90 days of an order in this case, Central Hudson would initiate a modified gas service request tracking system retaining sufficient data to demonstrate why service was or was not initiated. In addition, by July 1, 2013, Central Hudson would propose a limited pilot expansion program designed to test a number of innovative measures to facilitate gas service expansion.

8. Retail Access

For the stated purpose of supporting the Commission's retail market development initiatives, the Joint Proposal would require Central Hudson within 90 days following the closing of the merger transaction to include a total bill comparison on all

retail access residential bills using consolidated billing. The comparison would be generated using an existing Central Hudson program that has already been implemented. In addition, within 60 days after the issuance of an order in this case, Central Hudson would be required to file a proposal to provide payment-troubled customers--those subject to service termination--with similar bill comparison information. The cost of implementing these initiatives would be paid from Central Hudson's existing Competition Education Fund. If the balance in the fund were inadequate, Central Hudson would be permitted to defer the excess cost. Central Hudson would report quarterly to Staff on the progress of its bill comparison efforts.

PARTY OPPOSITION TO THE JOINT PROPOSAL

Three parties, RESA, IBEW Local 320, and PULP, submitted statements in opposition to the Joint Proposal. In addition, the Town Board of the Town of Athens, while not expressly opposing the Joint Proposal, has expressed concern that the proposal does not designate a portion of the Community Benefit Fund to be used for expansion of gas service within the town, as was requested in comments submitted by the Athens Joint Task Force before the Joint Proposal was filed.

A. RESA

RESA takes exception to the retail access section of the Joint Proposal, and, in particular, the requirement that Central Hudson include a "total bill comparison" on residential retail access consolidated bills within 90 days following the closing of the merger transaction. It makes, essentially, two points.

First, RESA argues that the implementation of a bill comparison requirement is premature given that the merits of such an initiative are currently being debated in the Retail

Energy Markets case, a separate generic proceeding initiated by the Commission to consider this and various other retail access issues.[21] RESA points out that Central Hudson originally took the position that the Retail Energy Markets case would be a more appropriate forum for considering inclusion of bill comparisons in customer bills, a position with which RESA agreed. Furthermore, RESA says, the Joint Proposal itself states that the signatory parties "anticipate that modifications" to the billing initiative "may become appropriate based on developments" in the Retail Energy Markets case. Therefore, RESA argues, it would be logical and reasonable to await the outcome of that case before deciding on implementation of a monthly price comparison by Central Hudson.

RESA's second point is that the requirements of the Joint Proposal with respect to bill comparisons are vague and ill-defined. It notes that the Joint Proposal calls for the comparisons to be performed "using the existing Central Hudson computer program that had been previously implemented." There is no further information about that program in the Joint Proposal or in the record, and no meaningful description or discussion of the details of how the bill comparison methodology is designed or how it will operate in practice. Given that energy service companies (ESCOs) have significant concerns that such comparisons may be misleading, RESA says, additional review and analysis should be undertaken before this bill comparison requirement is implemented.

Staff responds that the Commission, in initiating the Retail Energy Markets proceeding, expressly specified that questions concerning the inclusion of bill comparisons on

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[21] Cases 12-M-0476, *et al., Proceeding on Motion of the Commission to Assess Certain Aspects of the Residential and Small Non-residential Retail Energy Markets in New York State (Retail Energy Markets).*

customer bills, and the provision of bill comparison information to payment-troubled customers, were "being addressed for Central Hudson's operations in the context of [this merger proceeding]."[22] It says RESA did not object to this approach in the Retail Energy Markets case and did not provide any position on the bill comparison issues in this case prior to its comments on the Joint Proposal. The details of the bill comparison, Staff says, are adequately described when the Joint Proposal is read in conjunction with the questions posed by the Commission in Case 12-M-0476.

With respect to concerns about misleading comparisons, Staff argues that it is the ESCOs' responsibility to ensure that their customers understand what services they receive for the price they pay, and that a total bill comparison merely gives customers purchasing such services a clearer picture of any premium they are paying or cost savings they are realizing. Staff concludes that RESA's opposition should not cause rejection of the Joint Proposal because, if the Commission agrees that the retail access proposals in this case should be deferred pending the results of the *Retail Energy Markets* case, it should simply modify the Joint Proposal to so provide.

According to Petitioners, not only does the bill comparison deserve to be implemented here regardless of the pendency of the *Retail Energy Markets* case, but indeed the experience gained now by implementing it for Central Hudson might very well inform and assist the ongoing efforts in the generic case. A month of real-world experience with bill comparison publication might be worth a year of hearings, they suggest.

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[22] Case 12-M-0476, *et al.*, *Retail Energy Markets*, Order Instituting Proceeding and Seeking Comments Regarding the Operation of the Retail Energy Markets in New York State (issued October 19, 2012), Appendix, note 1.

B. IBEW Local 320

The union's concern, expressed in its comments and reiterated in its opposition to the Joint Proposal, is that, in its view, Central Hudson has a history of inappropriately relying on outside contractors while allowing its internal workforce to decline through attrition. This, it argues, has eviscerated the company's operational knowledge base, leading to shoddy and possibly unsafe work, increasing operating costs, and creating the potential for graft in relations with contractors. It points out that Fortis has expressed its intention to allow Central Hudson to operate as a stand-alone entity, does not have a policy regarding the outsourcing of work, and has no plans to encourage or discourage reductions in non-management employees. This, the union argues, suggests that Central Hudson's current practices concerning the use of outside contractors are likely to persist. It contends that unless the Joint Proposal is modified to include provisions that will curtail the "continued escalating use of third party contractors and diminishing internal company labor," it should be rejected.[23]

Petitioners respond that IBEW Local 320 has failed to supply any factual support for its claims and that they are unjustified. Petitioners say all of the incidents the union cites as examples of improper workmanship resulting from the use of outside contractors have been unrelated to each other and have been fully analyzed in consultation with Staff. The union's contentions that a declining internal workforce will lead to poorer service or higher costs are vague and speculative, Petitioners say, and fail to take into account productivity improvements and technology enhancements which tend to require less labor but reduce costs and improve reliability. Most fundamentally, Petitioners argue, Local 320's demand for

[23] IBEW Initial Comments, p. 6.

the inclusion in the Joint Proposal of rules concerning the use of outside contractors and the size of the internal workforce amounts to an attempt to obtain job advantages for union employees that should be considered, if at all, in the context of collective bargaining.

Staff, similarly, argues that the union's claims are speculative and lack factual support. It notes that nothing in the record of this case or in the recent management audit of Central Hudson suggests that the use of outside contractors has had a detrimental effect on service or reliability. In fact, Staff notes, the audit found that Central Hudson performs some work in-house that is customarily outsourced by other utilities, and recommended that the company implement a work management system covering both outside contractors and the internal workforce, which Central Hudson is doing. Claims of increased costs, Staff says, have no basis in the record, and warnings about potential graft are derived from incidents at a much larger and different utility and are purely speculative with respect to Central Hudson. The legitimate concerns of IBEW Local 320 have been reasonably addressed in the Joint Proposal, Staff contends, through provisions requiring adherence to the current collective bargaining agreement, maintenance of constant staffing levels for the next two years, regular reporting of union and non-union employee levels, and Commission approval for any shared services initiative.

C. PULP

PULP's opposition to the Joint Proposal raises several issues. Initially, PULP implies that the proposal does not represent a reasonably balanced compromise of disputed issues because it lacks the support of "any independent organization representing the interests of residential or low-income customers." PULP contends that UIU lacks the "indicia" of

independence required of consumer utility advocates. According to PULP, UIU's support for the Joint Proposal cannot be deemed to represent the best interests of residential consumers because UIU is part of a state agency with a direct line of accountability to the Governor.

Next, PULP argues that in applying a standard as "amorphous and debatable" as "in the public interest," the Commission should consider the unequal power dynamics within society. Low and fixed income customers, it contends, have much less influence in the decision-making process, and yet are much more likely to be adversely affected by a flawed outcome. Therefore, PULP says, the Commission should focus on minimizing the risk to these customer classes and should give greater weight to proposals that will help protect their interests. A mere rate freeze as offered by the Joint Proposal is of little benefit, PULP says, when thousands of Central Hudson customers have had service terminated or are in arrears on their bills under the current rate structure. The portion of the economic benefits of the merger transaction that are earmarked specifically for low income programs is insignificant, PULP argues. This, it says, is unsurprising because the parties nominally representing the public are mostly local and state government entities having parochial interests that should "not be confused with the interest of residential ratepayers, and the public at large."[24] Therefore, PULP concludes, the Commission should require that additional positive benefits be provided for low income customers if the merger transaction is to be approved.

The alleged benefits of the transaction, PULP contends, are illusory and paltry in comparison with the potential risks. The rate freeze, it says, is of little or no

[24] PULP Initial Comments, p. 15.

value because Central Hudson could not now raise rates much earlier that July 1, 2014 in any case, given the statutory suspension period for rate filings. Furthermore, in PULP's view, the rate plan that would be extended under the Joint Proposal is flawed and may have promoted poor performance leading to inflated storm restoration costs. The Joint Proposal, PULP alleges, mistakenly allows Petitioners to count a write-off of those possibly unjustified storm cost claims as a positive benefit of the transaction. The promised synergy savings are insignificant in relation to the total revenues of Central Hudson, PULP says, and do not even guarantee a rate reduction because they may be offset by increases in other categories of revenue requirement. The $35 million in deferral write-offs is illusory, according to PULP, because it is merely an accounting adjustment that may be traded away in future rate case negotiations over new demands for higher rates. The $5 million Community Benefit Fund is really only $4.5 million, PULP contends, because $500,000 would be taken from the existing, ratepayer-funded Competition Education Fund, and the provisions for low income customer programs are inadequate.

This particular merger transaction creates unusual risk, PULP argues, because Fortis, as a Canadian company investing in a U.S. enterprise, would be entitled to the protections afforded to foreign investors of the signatory nations by the North American Free Trade Agreement (NAFTA). Under Chapter 11 of NAFTA, Canadian, U.S. and Mexican investors may demand binding arbitration of claims for damages based on foreign governmental action that is "tantamount to expropriation" of the investors' interests. The availability of this forum, PULP argues, could threaten the Commission's ability to regulate Central Hudson. A NAFTA tribunal, it suggests, might overturn a Commission rate determination or rejection of a

capital project if it found the decision incidentally diminished the value of Fortis's property, even if that claim would not be valid under New York or federal constitutional law. Furthermore, PULP says, the Commission would have to rely on the federal government to defend its interests, and derivatively those of Central Hudson ratepayers, before the arbitration panel. This "potential grave risk," PULP argues, is not addressed at all in the Joint Proposal and warrants a finding that the merger transaction is not in the public interest.[25]

Staff, Petitioners, and MI all respond that PULP's arguments are unsupported, speculative or misinformed and should be rejected entirely. With respect to the extent to which the interests of residential customers, generally, and low income customers, specifically, were adequately represented in the negotiations leading to the Joint Proposal, all point out that PULP, albeit involuntarily, refrained from participating in the discussions and has no direct knowledge of them. MI describes PULP's derogation of UIU's efforts as "uninformed and not at all reflective of what transpired during settlement negotiations."[26] MI says UIU represented the interests of low income customers competently and aggressively, and adds that Staff, despite its broader concerns, also was very active on low income customer issues.

As to PULP's assertion that the benefits of the Joint Proposal for low income customers are inadequate and should be enhanced, Staff points out that funding for low income programs would be increased by $1 million during the rate freeze year, permitting monthly bill credits for low income heating customers to be more than doubled, and ensuring that no credits are reduced; and that service reconnection fees for many low income

[25] PULP Initial Comments, p. 14.

[26] MI Reply Comments, p. 5.

customers would be eliminated.[27] Staff, Petitioners, and MI also note that in addition to the benefits specifically targeted to them, low income customers would share in the other positive benefits provided by the Joint Proposal, including the synergy savings, deferral write-offs and Community Benefit Fund, to the same extent as other customers in the same service classifications. MI further argues that PULP's position is completely lacking in context. It notes that low income customers are the only group of customers receiving immediate rate relief under the Joint Proposal. Moreover, it says, PULP ignores the fact that expenditures for Central Hudson's low income programs, which are subsidized by all customers, have more than tripled over the last seven years, not counting the cost of low income targeted energy efficiency programs.

PULP's assertions that the positive benefits afforded by the Joint Proposal are intangible or illusory reflect a "disdain for arithmetic," according to Petitioners, and in some cases are simply wrong.[28] The guaranteed synergy savings, for example, will reduce real revenue requirement, Petitioners argue; they are not merely what PULP calls a "notional" credit. PULP's assertion that Fortis will be providing only $4.5 million for the Community Benefit Fund is wrong, Petitioners point out. Fortis will provide $5 million in total, $500,000 of which will be used for low income programs, and $4.5 million for economic development. An additional $500,000 for economic development will come from the existing Competition Education Fund.

MI and Petitioners both point out that PULP is wrong in its contention that the Joint Proposal "allows Petitioners to

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[27] In addition to the $500,000 from the Community Benefit Fund, low income program funds available but unexpended in previous years would be used to provide the total funding required for the expanded program.

[28] Petitioners' Reply Statement, p. 9.

count the write-down of its unaudited and possibly unjustified claims for blanket customer responsibility for all storm costs as merger benefits."[29] Rather, they say, the Joint Proposal expressly states that the write-offs will be applied only to costs allowed following full review by the Commission. Without the deferral write-off, those costs would be recovered in rates. MI concurs with PULP's view that Central Hudson's pending petitions for deferral of storm restoration costs should be closely scrutinized by the Commission, but says those petitions have no bearing on whether the Joint Proposal should be approved.

Finally, Staff, Petitioners and MI all argue that concerns about NAFTA are unpersuasive. According to MI, PULP's theory that the merger might impair the Commission's authority to regulate Central Hudson in the future is "no more than speculation piled upon supposition."[30] To its knowledge, MI says, NAFTA has never been interpreted in a manner detrimental to utility customers, and it notes that PULP's arguments are devoid of any citations to court cases or regulatory decisions that would suggest such a detriment. Staff agrees, noting that PULP has identified no NAFTA provision that preempts Commission jurisdiction.

D. Athens

By resolution dated February 19, 2013, the Town Board of the Town of Athens expressed concern that the Joint Proposal did not adopt the request of the Athens Joint Task Force to set aside a significant portion of the Community Benefit Fund to be used for gas service expansion in the town. The task force, in comments submitted in October and December 2012, pointed out

[29] PULP Initial Comments, p. 10.

[30] MI Reply Statement, p. 10.

that a Central Hudson gas main traverses the town, and that gas distribution service is provided by the utility to towns both north and south of Athens. In Athens itself, however, only one business, and none of the town's 4,000 full-time residents, receives gas service. Using some of the Community Benefit Fund to expand gas service within the town, the task force argued, would meet the needs of the town and village and would provide Fortis the benefit of an expanded customer base for Central Hudson.

ASSESSMENT OF OBJECTIONS TO THE JOINT PROPOSAL

A. Quality of the Economic Benefits

PULP and many commenters suggest that the economic benefits promised by the Joint Proposal may be illusory; that they may never result in savings to ratepayers. With respect to the promised one-year rate freeze, we generally agree. Although potentially a benefit at the time it was offered, the rate freeze, at this point, is largely symbolic, given the unlikelihood that Central Hudson would, or could, file a new rate case within the next two months, as would be necessary to increase rates before July 1, 2014.

On the other hand, modifications to the earnings sharing mechanism that would apply during the period of the freeze could provide value to ratepayers, as they would ensure that a larger share of any overearnings Central Hudson may realize during the freeze year would be credited to customers. This benefit may, in fact, be illusory, however. Given the additional obligations imposed on Central Hudson by the provisions of the Joint Proposal that would have to be funded during the freeze year without additional revenue from rates, overearnings appear unlikely.

The $9.25 million in synergy savings over five years are guaranteed to be credited to ratepayers even if they are not realized by Central Hudson. The $35 million payment by Fortis will be used to establish a regulatory liability against which certain of Central Hudson's regulatory assets may be written down. These benefits are real. The contention that some amounts might be credited against the $35 million for storm restoration expenses that were never actually deferred by Central Hudson is simply incorrect. The Joint Proposal provides that the funds may be used only to offset costs that have been approved by the Commission for deferral and subsequent recovery from ratepayers. If the identified storm restoration deferrals prove to be less than $35 million, the joint proposal provides that the balance of the fund will continue to be recorded as a regulatory liability for subsequent disposition by the Commission for the benefit of ratepayers.

The Community Benefit Fund is also real. This is an incremental $5 million that will be contributed by Fortis and will be used to enhance Central Hudson's low income customer programs and to support economic development projects within the service territory. Absent the fund, these program enhancements would either not be made or would be funded through rates.

The Joint Proposal's provision of an immediate credit to customers for cost savings realized by Central Hudson as a result of subsequent utility acquisitions by Fortis could also generate additional ratepayer benefit. The present value of any such benefit is entirely speculative, however, and cannot be given much weight in assessing the overall value of the merger transaction to ratepayers.

Commenters also argue that even if the economic benefits are real, they represent transitory, one-time payments that will have no lasting impact on customer rates. With regard

to the Community Benefit Fund and the deferral offsets this is generally true, although the write down of regulatory assets does have the persistent benefit of avoiding carrying charges that would continue to accrue as long as the accounts existed. In addition, the synergy savings, to the extent they are actually realized by Central Hudson, would continue to reduce Central Hudson's total revenue requirement beyond the term of the five-year guarantee, and would, therefore, be a continuing benefit to ratepayers. For the most part, though, these benefits are one-time payments that will not be repeated.

In summary, then, we find that the $49.25 million in payments and guaranteed savings provided for in the Joint Proposal are real, will inure to the benefit of ratepayers in the short term, and may generate some additional small, continuing savings. Whether this positive benefit is sufficient to justify a finding that the merger is in the public interest is a matter we will discuss further below.

B. Labor Issues

Local 320 opposition to the Joint Proposal is primarily focused on Central Hudson's policies and practices concerning the use of outside contractors and the shrinking of the utility's internal union workforce. That concern was echoed in comments by the Hudson Valley Area Labor Federation and numerous commenters.

On the one hand, it could be argued that this labor issue has no real bearing on the decision whether the proposed merger is in the public interest. Local 320 acknowledges that both Fortis and Central Hudson say they have no plans to change their labor policies if the transaction is approved. Whether the Commission approves or disapproves the transaction, the policies would remain in place.

On the other hand, plans can change. When the stock premium, transaction costs and positive benefit adjustments are totaled, this merger will be an expensive undertaking. Under the terms of the Joint Proposal, none of those costs can be recovered directly from ratepayers. There will, therefore, be considerable pressure on management to recover them in areas over which they retain control. Recent experience with substantial reductions in force following other utility mergers in this State clearly demonstrates that labor is one of, and perhaps the most important, of those areas.

Under the terms of the Joint Proposal, the labor status quo would be maintained for two years. Many commenters in this case expressed concern that beyond that period, cost-cutting efforts could result in the loss of many well-paying jobs, with a negative ripple effect on the local economy. This is a plausible concern.

It is very difficult, and generally undesirable, for the Commission to inject itself into internal utility management decision-making. There is no bright line distinguishing normal labor productivity enhancement efforts from those driven by need to compensate for extrinsic costs. Unwise cuts will generally only become apparent when they have an adverse effect on service. The Joint Proposal attempts to address this by enhancing performance, service quality, and safety mechanisms, but these mechanisms only set limits on the acceptable degradation of specific measures of Central Hudson's operations. They do not encompass the full range of functions that define the quality of a utility's service. Overall, therefore, we consider workforce uncertainty to be a residual risk of the transaction.

C. NAFTA Threat

PULP's suggestion that the anti-expropriation provisions of NAFTA could be used by Fortis to undermine the Commission's authority to regulate Central Hudson or its jurisdiction over a proposed future sale of the utility is unsupported. None of the few legal authorities cited by PULP suggests that a public utility regulatory agency acting within the scope of its statutory authority might be at risk for a claim of nationalization or expropriation under NAFTA, and we, like MI, have been unable to find any that do raise such a specter. In fact, PULP's cited authorities tend to point in the opposite direction.

PULP's citations include two cases, *Metalclad Corporation v. The United Mexican States* and *Methanex Corporation v. United States of America*, and a law review note discussing the initiation of a case by a Canadian mining company known as Glamis Gold.[31] In the *Metalclad* case, a U.S. company purchased the rights to construct and operate a hazardous waste disposal site in the state of San Luis Potosi, Mexico, after receiving assurances from the federal government that the permits it would obtain through the purchase were all that were required. Metalclad proceeded to fully construct the disposal facility, but was blocked from initiating operations by the local municipality, which claimed authority to require a local construction permit and refused to grant one. The arbitration

[31] Information concerning the *Metalclad* and *Methanex* cases, including the documents cited in this order, are available on the website of the U.S. Department of State, *http://www.state.gov/s/l/c3439.htm*. The law review note is: Judith Wallace, Note, *Corporate Nationality, Investment Protection Agreements, and Challenges to Domestic Natural Resources Law: The Implications of Glamis Gold's NAFTA Chapter 11 Claim*, 17 Geo. Int'l Envtl. L. Rev. 365, 372 (2005).

panel in the NAFTA proceeding found that the federal government had exclusive authority over construction permits for hazardous waste sites in Mexico and that its failure to override the illegal action of the municipality effectively reneged on the assurances it had given, depriving Metalclad of the use of the plant it had constructed.

The *Methanex* case involved a claim by a Canadian company for lost profits resulting from the State of California's ban on the gasoline additive MTBE, for which methanol, produced by Methanex, was used as a feedstock. The arbitration panel's final award dismissed all claims and ordered Methanex to pay $4 million in legal fees and arbitral expenses to the U.S. government. The facts of the case were complicated, but the essential conclusions of the arbiters were that California's ban did not differentiate between foreign and domestic producers, and that a non-discriminatory regulation for a public purpose, which is enacted in accordance with due process and which affects a foreign investor or investment, is not deemed expropriatory and compensable unless specific commitments were given by the regulating government that it would refrain from such regulation.[32]

Similarly, the *Glamis Gold* case involved a claim by a Canadian mining company for the alleged lost value of its proposed Imperial Project gold-mining operation due to the adoption by California of a regulation requiring the backfilling and re-grading of open pit metallic mines. The regulations were adopted while the U.S. Department of the Interior was considering a permit for the operation, and Glamis contended that this action, combined with alleged undue delay by DOI in reviewing the company's application, denied Glamis fair

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[32] *Methanex*, Final Award of the Tribunal on Jurisdiction and Merits (August 3, 2005), Part IV, Chapter D, page 4.

treatment and amounted to uncompensated expropriatory action. The arbitration panel dismissed the claim in its entirety. On the claim of expropriation, it did not have to address any legal issues because it found that the cost of the reclamation measures required was not as great as projected by the claimant and did not have a sufficient economic impact to effect an expropriation. On the question of whether Glamis had been denied fair and equitable treatment, the panel concluded:

> Claimant has not established that the acts complained of fall short of the customary international law minimum standard of treatment. The complained-of acts were not egregious and shocking, a gross denial of justice, manifest arbitrariness, blatant unfairness, a complete lack of due process, evident discrimination, or a manifest lack of reasons. There was no specific inducement of Claimant's expectations. There was no causal focus on the nationality of the investor. There was no corruption exhibited at any level of government. The Imperial Project, although certainly highlighted as a triggering event for some of the measures, was not the subject of discriminatory targeting. There is simply not the egregiousness necessary to breach the fair and equitable treatment standard of [NAFTA] Article 1105 as it currently stands ... [A] breach of Article 1105 still requires acts that exhibit a high level of shock, arbitrariness, unfairness or discrimination.[33]

In other words, even though passage of the California reclamation statute may have been triggered by Glamis Gold's project, it was adopted properly, did not discriminate on the basis of nationality, and did not renege on prior government commitments. Therefore, there was no violation of NAFTA.

A number of commenters have cited the case of *Abitibi-Bowater Inc. v. Government of Canada*, apparently to

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[33] *Glamis Gold Ltd. v. United States of America*, Award (June 8, 2009), p. 353.

suggest that Fortis has demonstrated its willingness to use NAFTA as a remedy for adverse government action. The suggestion arises from the fact that Abitibi-Bowater, formerly a major international pulp and paper products manufacturer, partnered with Fortis to expand and operate hydroelectric plants providing power to Abitibi-Bowater's mills. After a dispute concerning the closure of a mill, Newfoundland and Labrador enacted broad legislation in December 2008 expropriating all of Abitibi-Bowater's property and water rights within the province, sweeping up Fortis's hydroelectric plant interest in the process. Abitibi-Bowater, which was incorporated in Delaware, brought a claim under NAFTA, and the claim was settled by the Government of Canada in December 2010. Fortis, however, was not a party to the NAFTA proceeding, and did not benefit directly from the settlement. According to Petitioners' Additional Comments, Fortis has now been compensated by the Province of Newfoundland-Labrador.

It is evident from the cases discussed above that a state regulatory agency acting lawfully within its statutory authority is not liable to a claim of damages under NAFTA unless an entity covered by the treaty can demonstrate that it made its investment in the state pursuant to express commitments made by the agency which were subsequently broken. None of the Petitioners in this proceeding has been assured of any particular treatment by the Commission. Accordingly, we find that Fortis's status as an investor from a NAFTA member state does not add any significant risk to the transaction. Nevertheless, if the Commission decides to approve the merger and it wishes to ensure that there is no doubt on this point, it should require as a condition of the approval that Petitioners certify that no express promises have been made, extrinsic to

this proceeding, that any particular regulatory treatment will be accorded Central Hudson or its parent company in the future.

D. Provisions for Low Income Customers

As described above, PULP says the Joint Proposal lacks sufficient benefits for low income customers inasmuch as the low income component of the Community Benefit Fund would be limited to $500,000, and rate accommodations for low income customers would be limited to adjustments in rate design rather than allowed revenues, in the form of a prospective reduction for non-heating customers and what PULP calls a "small increase" in the low income benefit for heating customers. PULP observes that all such changes would be revenue neutral for Central Hudson, and PULP unfavorably compares their estimated $1.6 million revenue allocation impact with Central Hudson's $700 million revenue allowance.

In response, Staff and Petitioners invoke their rebuttal testimony that the Joint Proposal's allegedly inadequate low income provisions are only the features designed for the benefit of low income customers exclusively. As such, those provisions supplement the economic benefits that the Joint Proposal assertedly would confer on all customers. Staff also argues that the low income provisions would offer relief more substantial than PULP suggests and would better align low income credits with customer bills.

Aside from the above points, much of the argument over the proposed low income provisions is devoted to PULP's interpretation of the net benefits analysis established in the *Iberdrola* decision. As discussed below, that analysis requires consideration of benefits and countervailing risks or detriments properly attributable to the proposed transaction. From that basic premise, PULP proceeds to advocate what it describes as a corollary that the Commission's determination of net benefits

should err, if at all, in favor of low income customers because they are the ones least able to bear the risk that the transaction will fail to produce net benefits as anticipated. The proponents object that the *Iberdrola* decision states no such proviso.

The argument over customers' disparate risks seems to introduce undue complexity. When the Commission assesses the likelihood that the merger will produce net benefits despite its offsetting risks, the risk that the benefits will not occur is a given which need not be specifically measured and allocated among customers. The Commission's judgment about the transaction inevitably will be informed by its understanding of what the benefits might mean for diverse customer groups. In our view, the real gist of PULP's criticism is not that the Joint Proposal misallocates risks but that it does not provide sufficient benefits.

The Commission's decision in this case must not only satisfy the positive net benefits test but also conform with the other criteria normally relevant when reviewing a negotiated joint proposal pursuant to the Commission's Settlement Guidelines. For purposes of the low income benefits issue, these criteria include, for example, whether adoption of the proposed terms would reasonably balance shareholder and customer interests and promote state policies.[34] From that standpoint, for the reasons cited by Staff and Petitioners, we do not find the proposed amount of low income benefits inherently unreasonable.

We also disagree with PULP's proposal to establish a service quality measure that would limit the allowable number of

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[34] Cases 90-M-0255 *et al., Opinion, Order and Resolution Adopting Settlement Procedures and Guidelines*, Opinion No. 92-2 (issued March 24, 1992), Appendix B, p. 8.

service terminations. Unpaid bills are a cost of the utility business as they are for all businesses, and that cost is borne by the customers who do pay their bills. Restricting terminations does not promote equity; it simply increases the burden of uncollectible bills for all customers.

Finally, we do not regard the proposed transaction as a barrier to the Commission's future adoption of additional benefits for low income customers; nor are the proposed benefits properly attributable to the transaction, as they could also be obtained in its absence. Thus, in summary, we find that the low income provisions neither justify the Commission's rejection of the Joint Proposal, nor deserve to be counted as benefits of the merger.

In a related matter, we reject PULP's suggestion that UIU should not be considered a legitimate representative of the interests of residential and low income customers.[35] UIU retains the consumer protection mandate of its predecessor agency, the Consumer Protection Board. By all accounts, it was an active and hard-working participant in this case and it achieved to a substantial degree what it originally set out to accomplish on behalf of low income customers. PULP, nevertheless, suggests that the significance of UIU's signature on the Joint Proposal should be discounted on the grounds that the organization is a state agency reporting to the Governor and lacks the indicia of independence that are required for membership in the National Association of State Utility Consumer Advocates (NASUCA). PULP neglects to point out, however, that UIU is, in fact, a member

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[35] Petitioners and staff propose that we disregard or discount PULP's arguments because PULP admits that it participated only intermittently in this proceeding, assertedly due to lack of funds. Such a rule would give fewer rights to a party with a hiatus in its participation than our Rules of Procedure accord to a late-admitted party.

of NASUCA.[36] We find the endorsement of UIU, along with those of MI and the Counties, to be a valid indicator of the fact that the Joint Proposal represents a compromise of interests that often are, and were initially in this case, adverse.

E. Foreign Ownership

As noted above, many commenters conveyed a general sense of unease about the transfer to foreign ownership of facilities essential to the provision of electric and gas services to the mid-Hudson region. Many expressed concern that the merger might remove those facilities from domestic control; that Fortis might ignore its obligation to make the investments necessary to maintain safe and reliable service; or that this Canadian company might someday sell Central Hudson to a buyer from a country less friendly to the United States.

Insofar as they are based solely on Fortis's being a business headquartered in a foreign country, we do not consider these concerns to be justified. Central Hudson will remain subject to the laws of New York and of the United States, and will continue to be regulated by the Commission and by the Federal Energy Regulatory Commission with respect to its electric transmission facilities. The Commission has the authority and the responsibility not only to set rates, but also to require necessary capital investments and to reject any proposed transfer of ownership that it finds not to be in the public interest. Ownership of Central Hudson by Fortis will not diminish the Commission's regulatory role.

There are, however, legitimate issues presented by the prospect of a distribution utility subject to the Commission's jurisdiction being wholly owned by a parent company located

[36] See *http://www.nasuca.org/archive/about/membdir.php* for a current directory of NASUCA members.

outside New York, whether in a foreign country or simply another state. These issues have surfaced through experience with previous mergers, and generally they involve ensuring that the Commission will continue to have full and timely access to the information it requires to carry out its regulatory functions. The Joint Proposal recognizes and addresses this problem in quite a few of its provisions. It would, for example, require that Staff be given ready access to any books and records of Fortis and its subsidiaries that Staff may deem necessary to determine whether the rates and charges of Central Hudson are just and reasonable; that Central Hudson annually file the financial statements, including balance sheets, income statements, and cash flow statements of Fortis and its major regulated and unregulated energy company subsidiaries in the United States; and that Central Hudson provide, to the extent available, quarterly and annual balance sheet, income statement and statement of cash flows of Fortis in U.S. dollars with the underlying currency translation assumptions.

The problem with these provisions is that they complicate the regulatory process. To ensure their effectiveness, they require monitoring and oversight, imposing an extra burden on an already overburdened Commission Staff. Furthermore, the provisions have no intrinsic value. It is only the merger that makes them necessary. There would be no need to adopt or implement them otherwise. Consequently, we see the potential for complications in communications and data availability required for effective regulatory oversight to be an additional residual risk of the merger transaction.

F. Loss of Local Focus and Involvement

Many commenters described Central Hudson as a part of the fabric of its Mid-Hudson service territory, an effective, trusted company engaged with and concerned about the community

in which it operates. They expressed concern that the merger would destroy that relationship; that Fortis with its multinational interests would have little concern about the Hudson Valley; and that the focus of Central Hudson's attention would be turned toward the interests of its owners in Newfoundland.

The Joint Proposal reflects recognition of these concerns in many of its provisions. It provides, for example, that a majority of the Board of Directors of Central Hudson must be independent of Fortis and its affiliates other than Central Hudson, and one member must be a resident of the service territory. The headquarters of Central Hudson, including all officers and support staff and operational managers, must remain within the service territory, and at least one-half of the officers must live within the service territory. Central Hudson will be governed, managed, and operated as a stand-alone entity with staffing decisions made by local management. Current employees of Central Hudson will be retained for at least two years. Through at least 2017, Central Hudson would continue its community involvement efforts at no less than the level of its expenditures in 2011.

These provisions are important, but they ultimately do not address the heart of citizens' concerns. Today, Central Hudson is accountable to a parent company that is headquartered in the same city and shares the same interest in the local region. After the merger, it will be accountable to a distant entity with far flung interests. While Fortis may accord Central Hudson considerable operating autonomy as required by the Joint Proposal, strategic decisions concerning the direction of the utility and its involvement with the community will come from, or be strongly influenced by, Fortis. The relationship between Central Hudson and its customers will inevitably be

altered. The breadth and depth of this concern among the residents of Central Hudson's service territory and their elected officials at the town, village, city, and state levels is remarkable. Former Member of Congress Maurice Hinchey states in his comments, "Surely, in a democratic society such as ours, the decision as to what constitutes 'public benefit' is not unrelated to the will of an informed public and its elected representatives." We think it is, and we find lack of public confidence in the putative future benefits of the Joint Proposal to be a significant detriment of the transaction.

G. Financial Concerns

The Joint Proposal incorporates numerous provisions intended to address the risk perceived by Staff that the finances of Fortis could have an adverse impact on Central Hudson's, to the detriment of ratepayers. These provisions would require that goodwill and the costs of the transaction not be recovered from ratepayers; impose restrictions on the payment of dividends by Central Hudson if the utility's equity ratio falls below prescribed levels; hold ratepayers harmless for increased credit costs resulting from the impact on Central Hudson of a Fortis credit downgrade; require both Central Hudson and Fortis to be registered with at least two major nationally and internationally recognized rating agencies, to maintain separate debt instruments, and to be separately rated by at least two rating agencies; bar debt instruments having cross-default provisions affecting Central Hudson; bar Central Hudson from participating as a lender to Fortis or FortisUS in money pooling arrangements; and create a special class of preferred stock that can be voted to prevent Central Hudson from entering into bankruptcy voluntarily.

These provisions are reasonably designed to mitigate the concerns to which they are addressed. Again, however, they

have no inherent value in the absence of the merger. They exist only to reduce risk. Only if they are entirely successful will the financial risk to Central Hudson be completely eliminated.

H. Environmental Concerns

Many commenters praised the efforts of Central Hudson to promote alternative and green energy, particularly solar, within its service territory. They express concern that Fortis may reverse these policies. Some argue that Fortis has shown a preference for natural gas and may be less inclined than Central Hudson to obtain electricity supplies from green sources.

These concerns are fundamentally misplaced. Central Hudson is a distribution utility. With minor exceptions, it does not own generating capacity, and it will not be building additional capacity in the future. Like all New York utilities, Central Hudson will continue to obtain its power from the New York Independent System Operator. Fortis will not have the ability to dictate the source of power sold to Central Hudson customers.

Central Hudson is also not a gas exploration company. It does, however, have an interest in expanding its customer base for gas service, and it will undoubtedly continue to have that objective under Fortis ownership. As noted below, that goal is fully consistent with state policy.

Finally, all utilities in New York are bound to comply with the Commission's policies concerning the promotion and accommodation of green energy alternatives. Even if Fortis were hostile to such technologies, and there is no credible evidence in this record that it is, Central Hudson's compliance with Commission policy would continue to be enforced. Accordingly, we do not see any significant environmental risk arising from the proposed transaction.

I. Expansion of Gas Service

The economic expansion of gas service within the State is a high priority for both the Governor and the Commission, as evidenced by the pending proceeding in which the Commission is examining existing barriers to such expansion and seeking ways to reduce or eliminate them.[37] The Joint Proposal in this case reflects that priority. It requires Central Hudson to support economically justified gas expansion and states that Fortis agrees to provide equity support to Central Hudson for those projects that receive regulatory approval. It also commits Central Hudson to pursue economic expansion of its gas system within each of its operating districts and to seek expedited approval of new franchises. To allow the Commission to monitor those commitments, the Joint Proposal also requires that Central Hudson maintain detailed records of all gas expansion requests and how they were evaluated and resolved.

While the desire of Athens to obtain expanded gas service for its citizens is commendable, we cannot recommend that the Commission adopt the proposal to set aside, in advance, a portion of the Community Benefit Fund to support such expansion. Low income programs will receive $500,000 from that fund. The remaining $4.5 million has been designated for economic development efforts throughout the Central Hudson service territory. If the Joint Proposal is adopted, there is likely to be considerable competition for those funds, and we cannot say on this record that the Athens request should be given priority over all others that may be forthcoming.

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[37] Case 12-G-0297, *Proceeding on Motion of the Commission To Examine Policies Regarding the Expansion of Natural Gas Service*.

J. Retail Access Provisions

RESA contends that the retail access provisions of the Joint Proposal are ill-defined and premature. We agree. The Joint Proposal calls for a "total bill comparison," which is undefined, to be included on the bills of retail access residential customers "using the existing Central Hudson computer program," which likewise is undefined. That total bill comparison, the Joint Proposal says, "is to provide information to retail access customers that should be made available by the utility as part of the Commission's retail energy markets initiatives." What "should be made available" is unspecified, and perhaps cannot be fully defined prior to the completion of the generic *Retail Energy Markets* proceeding.

Significantly, the signatories recognize explicitly that whatever they agree to in the Joint Proposal may have to be modified based on the outcome of the *Retail Energy Markets* case. That case is now in its final stages. We do not believe it makes sense now to order the start of a process that may well have to be redesigned before its introduction. The footnote cited by Staff from the Appendix to the Commission's order initiating the *Retail Energy Markets* proceeding recognized that certain questions concerning the use of bill comparisons were being considered in this case. As the signatories themselves recognize, that footnote cannot reasonably be construed as requiring a final, full resolution of the issue here without reference to the results of the *Retail Energy Markets* case.

Notably, RESA objects only to the manner and timing of the implementation of bill comparisons, not to the signatories' expression of support for their use. Central Hudson has software that should give it a head start over some other utilities in making bill comparisons available to its customers. Therefore, if the Commission adopts the Joint Proposal's terms,

we recommend that it not delete the Retail Access section (IV.F). Rather, the Commission should modify that section to provide that Central Hudson must, within 30 days following a relevant final order in the *Retail Energy Markets* proceeding, file a plan for implementation of both the publication of bill comparisons on the consolidated bills of residential retail access customers and the provision of bill comparison information to payment-troubled customers. The Commission should require that the plan provide for implementation within 30 days after its filing. The cost recovery provisions described in the Retail Access section of the Joint Proposal should be adopted as currently written.

DISCUSSION

A. Standard of Review

Having set forth above our assessments of the Joint Proposal's alleged benefits, risks, and detriments, we arrive at the ultimate issue whether Petitioners have shown that approval of Central Hudson's acquisition by Fortis subject to the Joint Proposal's terms would serve "the public interest" as prescribed by PSL §70(5). We find that the transaction as proposed would not meet that test.

We reach this conclusion by applying the standard of review developed in earlier merger proceedings and stated most rigorously in the *Iberdrola* case. The Commission's order in that case requires initially a three-part assessment addressing the benefits and then any countervailing considerations, as follows: "petitioners must show that the transaction would provide customers positive net benefits after considering the expected benefits offset by any risks or detriments that would remain after applying reasonable mitigation measures."[38] To

[38] *Iberdrola* order, p. 111.

demonstrate an "expected" benefit for purposes of this exercise, Petitioners must show that the benefit is a consequence of the transaction and would not otherwise occur.[39]

Once the net benefits have been gauged by comparing the transaction's intrinsic benefits and offsets, it becomes possible to judge whether the achievement of net positive benefits requires that the intrinsic benefits be supplemented with monetized "positive benefit adjustments" (PBAs).[40] "Then the final step in quantification is to establish a specific PBA amount, necessarily as an exercise of informed judgment because there is no mathematical formula on which to base such a decision."[41]

To a large extent, the criteria described above have shaped the parties' arguments in this case and indeed the Joint Proposal itself. None of the parties overtly challenges the *Iberdrola* order's analysis. But, as discussed below, they disagree about the weight to be accorded the various alleged benefits and detriments, which inevitably entails a degree of uncertainty and subjective evaluation. Our own evaluations of the risks and benefits (set forth below) lead us to recommend that the Commission decline to adopt the Joint Proposal's terms.

As another preliminary comment on the standard of review, a caveat is in order regarding Petitioners' argument that the monetized PBAs in this Joint Proposal are proportional to the PBAs the Commission has required in other cases, when stated as a percentage of the respective companies' revenues.

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[39] See, e.g., *Iberdrola* order, pp. 105-06 (whether above-book proceeds from a post-merger sale of assets could be deemed a result of the merger).

[40] At one point in the *Iberdrola* order (p. 111) and in some of the present pleadings, PBA is misstated as a "public" benefit adjustment."

[41] *Iberdrola* order, p. 136.

Any such comparison among cases should be viewed with great caution because, again, the PBAs required in each case reflect a judgment regarding the shortfall in net benefits after considering a particular transaction's benefits versus its risks or detriments. Such factors often defy quantitative assessment and, more likely than not, are unique to the transaction under consideration.

Thus an attempt to extrapolate from the dollar amount of PBAs required in the *Iberdrola* decision to the amount proposed in this case, based on a variable such as proportionate corporate revenues, for example, poses a number of pitfalls. Among the complications the Commission cited in reaching the *Iberdrola* PBA determination were that much of the risk and benefit was not quantifiable; the PBA amount was influenced by whether synergy savings were expected sooner rather than later; the decision there was assisted by a rate case quality presentation of revenue requirements, not offered here; the result in *Iberdrola* was derived from highly disputed decisions that some earlier mergers were relevant in comparing PBAs while others were less so; and, in its final analysis regarding PBAs, all the Commission could firmly conclude was that the PBA amount it prescribed represented the "middle of the range of reasonableness."[42] Moreover, as we have described, the present case involves an extraordinary degree of public opposition which constitutes an inherent risk or detriment of the transaction, while no comparable element figured into the Commission's analysis of the Iberdrola transaction. There is no simple mathematical formula whereby a PBA amount derived from these numerous considerations could confidently be used to determine the outcome in a different proceeding such as this.

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[42] *Ibid.*, p. 137.

Another obstacle to direct comparisons among PBA levels from one case to the next is that the Commission's decision making is properly informed by past experience which was not available when the Commission performed its risk assessments in earlier merger cases. For example, in the Iberdrola transaction, anticipated benefits in the form of enhanced financial strength and wind generation investment may not have materialized to the extent that the Commission expected. Similarly, in the National Grid acquisition, the challenges to regulatory oversight may have proved more difficult than anticipated. CLP and the Consortium put great emphasis on those negative outcomes and argue that Fortis's superior financial resources, as compared with Central Hudson's, would create new opportunities for management to escape effective regulatory review.

Even if one presupposed that previous mergers have failed to live up to expectations, this of course would not preordain that Central Hudson's acquisition by Fortis would also lead to disappointment. However, the intended relevance of Petitioners' and Staff's comparison between the proposed PBAs and those in other mergers is presumably that, under the Settlement Guidelines, one criterion in evaluating the Joint Proposal is whether it conforms with Commission policy. Unfavorable experiences with the Iberdrola and National Grid transactions make it difficult to assess whether the Commission now believes that the balance of interests struck in those cases, particularly the PBA levels, still represents sound policy when gauging the adequacy of the benefits offered in the Fortis transaction.

B. Benefits Intrinsic to the Merger

As noted, Petitioners must demonstrate that the benefits unattainable absent the transaction, supplemented if

necessary by PBAs or other enhancements, and offset by the transaction's risks or detriments mitigated to the extent possible, would yield a net positive benefit for customers. Of course the mere recital of that test makes clear that it defies mathematical certitude, but calls for an exercise of informed judgment regarding a combination of quantitative and qualitative factors. With that disclaimer, we recommend that the Commission weigh the benefits and mitigated detriments as follows.

In appraising the transaction, the first major difficulty is to identify its intrinsic benefits, before even starting to inquire whether they should be augmented with monetized or incidental benefits and whether the attendant risks are adequately mitigated. For all Petitioners' and opponents' arguments about the adequacy of the benefits and safeguards negotiated in the Joint Proposal, the record provides little basis for finding that the underlying transaction itself would benefit customers or otherwise serve the public interest.

One of the only such rationales is that operational synergies would save customers $9.25 million over five years. Because the Joint Proposal guarantees these savings for ratemaking purposes, the Commission should recognize them as a tangible benefit of the transaction. However, before relying on them as a material consideration, we believe the Commission also should attach some weight to the opponents' claims that they would rather forgo the savings if that is the price they must pay to stop the transaction and retain Central Hudson in its present form. While these objections are more statements of opinion than fact, such opinions themselves are direct evidence that customers may not value the synergy savings as much as the status quo.

A second benefit claimed on behalf of the transaction is that it might enhance Central Hudson's operations insofar as

that company's management would gain access to Fortis's expertise and best practices. Doubtless it would be frivolous for Central Hudson, or any company, to claim that that its management is so excellent as to leave no room for improvement. Nevertheless, given the "federal" model proposed here, such a benefit is not likely to be significant; and in fact Staff has testified that it has no adequate information as to the value of Fortis's expertise for Central Hudson. Consequently, we recommend that the Commission not count access to Fortis's expertise as a material benefit of the transaction.

A third possible benefit of the transaction is that Fortis's size and financial standing would provide Central Hudson ready access to capital. This claim is intuitively appealing because one naturally expects capital cost savings to result from acquisition by a larger parent, all else equal. In this instance, however, the Commission should approach it with special caution. Petitioners have not gone so far as to claim that Central Hudson as a Fortis affiliate could obtain capital on more favorable terms than now, and Staff has testified that it has no information sufficient to support such a theory. Thus, in our view, the record does not support a conclusion that Central Hudson's partaking in Fortis's financial strength should be counted as a benefit of the transaction.

After taking into account the claims of benefits from synergies, shared expertise, and financing at the parent level, there seem to be no other fundamental justifications asserted as contributing to the public interest. In search of other possible rationales, on our own initiative, we have reflected on the possible importance of messages to the investment and business communities. Those dissatisfied with Commission disapproval of a transfer of Central Hudson's ownership might characterize it as a sign that New York is insensitive to values

such as the power of managerial transformation or the marketability of utility company securities. However, we conclude that such criticisms would be unfounded because Fortis disavows any plans for managerial change and because those who invest in New York utilities do so with at least constructive knowledge that the transfer of utility company assets is subject to the Commission's determination of the public interest pursuant to statute.

C. Benefits from the Joint Proposal's Terms

Finding no public interest rationale inherent in the basic merger transaction beyond the $9.25 million guaranteed synergy savings over five years, as discussed in the preceding section, we believe any other customer benefits the Commission might identify are those negotiated as part of the Joint Proposal. As detailed above, we would quantify as $40 million the combined benefit of the rate freeze (no tangible benefit), excess earnings recalibration (no tangible benefit), regulatory liability for storm recovery or other purposes ($35 million), and Community Benefit Fund ($5 million), additional to the $9.25 million of synergies, for a total customer benefit of $49.25 million.

We believe the Joint Proposal's remaining features could be negotiated in other cases absent the merger or, failing that, could be ordered in the routine exercise of the Commission's authority. These comprise the Joint Proposal's provisions for structuring low income and economic development programs (other than the use of the Community Benefit Fund), maintaining and financing Central Hudson's commitments to infrastructure improvements pursuant to state policy initiatives, continuing Central Hudson's gas marketing initiatives, and continued support of the Commission's evolving retail energy access policies. While parties disagree about the

design of these efforts, particularly the measures for low income customers and retail access, no party denies that they would serve the public interest. But, because the merger is not a necessary precondition of achieving or pursuing these programs, their presence in the Joint Proposal does not provide additional support for an inference that approval of the merger itself would serve the public interest.

D. Risks and Mitigation

After identifying the proposed transaction's benefits, the next step in the *Iberdrola* model is to consider the risks and detriments remaining after they are mitigated to the extent possible. Viewed in that context, risk mitigation measures are more appropriately seen not as benefits but as whole or partial solutions to problems that arise only because of the transaction. In fact, as CLP and the Consortium observe, they are tell-tale evidence of possible conflicts between the transaction and the public interest. If such safeguards sufficiently minimize the transaction's risks, the most favorable assessment one can adopt is that risks and mitigation amount to a net zero impact.

For the most part, there seems to be a consensus that adoption of the Joint Proposal's terms would mitigate the transaction's risks to the fullest extent possible. This assessment is supported by a review of the proposed safeguards, exhaustive and generally uncriticized, regarding corporate governance and financing, regulatory oversight, performance standards, and related concerns. However, a critical issue remains whether, despite these safeguards, there are residual risks and detriments that cannot be mitigated and are serious enough to outweigh the transaction's benefits. What the *Iberdrola* analysis teaches, as do experiences with other mergers in recent years, is that a transaction cannot be structured to

completely immunize customers against risks; indeed, that is precisely why the Commission requires evidence of benefits in addition to risk mitigation measures.

Two alleged inadequacies in mitigation measures relative to risks are those asserted by PULP, namely the purportedly unadulterated risks that Commission regulation would be deemed unlawful under NAFTA; and that low income or financially stressed customers are the least able to tolerate rate burdens and present their interests in a case such as this. But the supposed legal conflict between NAFTA and state regulation is overstated, for reasons we already have cited; and we interpret any insufficiency in the proposed treatment of low income customers not as a "risk" in the relevant sense but as an alleged failure to provide customer benefits on a scale that PULP would prefer.

In our view, the primary risk that is not sufficiently mitigated here is the risk, unique to this case, that the loss of local ownership would end an arrangement in which customers have dealt with Central Hudson as a local institution with long established roots in their specific community. As a result, we see this transaction as fundamentally unlike takeovers of sprawling, diffuse service territories by Iberdrola or National Grid. Any doubt whether those cases materially differ from this one should be dispelled by the extraordinarily negative reaction to the proposal among the general public, unprecedented to the best of our knowledge in any other case involving only a transfer of ownership. As we have explained, the risk is not merely that approval of the transaction will generate ill will toward the new owners, but that this negative outlook itself will compromise management's performance of its tasks for years to come.

CONCLUSION

We find it relatively easy to conclude that the benefits of the merger transaction pursuant to the Joint Proposal are outweighed by the detriments remaining after mitigation. Our rationale is that the proposed transaction has generated an extraordinarily intense degree of public opposition to a change of Central Hudson's ownership among customers, their elected officials, and labor representatives and other public organizations in the service territory. Indeed, quite a few commenters made it clear that they would rather forgo the monetized benefits offered in the Joint Proposal than see the Fortis acquisition go forward.

To be clear, we emphatically do not view this case as a plebiscite or, even more inappropriately, a popularity contest between Central Hudson and Fortis. However, the Commission should consider that a utility company's stock in trade, so to speak, consists in large measure of good customer relations. In our view, one of the proposed transaction's unquantifiable but highly material risks or detriments is that the traditional functions of a utility company, as well as emergent changes in the nature of utility service, are likely to be managed more successfully by Central Hudson in its present form as contrasted with a new corporate regime that already has produced the fierce public hostility evidenced in hearings and comments. Moreover, during most of the time that the petition has been pending, Petitioners have made little as far as we can discern to forestall or defuse public opposition, and that apparent passivity itself lends credence to public objections that the new parent company would not appreciate the importance of maintaining customer satisfaction.

Alternatively, recognizing that much of our analysis involves exercises of judgment in which reasonable minds may

differ, we recommend that the Commission consider adopting the proposed terms subject to modifications that would alter the transaction's balance of risks and benefits. The Commission might conclude that this could be accomplished by requiring PBAs additional to those offered in the Joint Proposal, should Petitioners come forward with such a proposed modification. Since any such possibility is speculative, we will not address it except to state our opinion that the proposed transaction's flaws may be inherently unsusceptible to effective remediation by means of supplemental PBAs.

May 3, 2013
RAE, DLP /seh

Exhibit 3

JUNEAU RECORDING DISTRICT

SNETTISHAM OPTION AGREEMENT

THIS AGREEMENT is dated August 18, 1998, by the ALASKA INDUSTRIAL DEVELOPMENT AND EXPORT AUTHORITY, a public corporation of the State of Alaska whose address is 480 West Tudor Road, Anchorage, Alaska 99503 (the "Authority"), and SNETTISHAM ELECTRIC COMPANY, an Alaska corporation whose address is 5601 Tonsgard Court, Juneau, Alaska 99801 ("Affiliate"), and approved by ALASKA ELECTRIC LIGHT AND POWER COMPANY, an Alaska corporation whose address is 5601 Tonsgard Court, Juneau, Alaska 99801 (the "Power Purchaser").

RECITALS

A. Pursuant to the Alaska Power Administration Asset Sale and Termination Act, the United States Department of Energy, Alaska Power Administration ("USDOE") is authorized to sell to the Authority the Snettisham hydroelectric project (the "Project"). The Authority has entered into an agreement with USDOE dated February 10, 1989, together with amendments thereto, expressing the terms and conditions for the purchase and sale of the Project.

B. Pursuant to its Snettisham Power Revenue Bond Resolution, Resolution No. G98-09 as supplemented by Resolution No. G98-10, each adopted on July 22, 1998 (together and as hereafter amended, the "Resolution"), the Authority has authorized the issuance of its Power Revenue Bonds, First Series (Snettisham Hydroelectric Project) (the "First Series Bonds"), in the principal amount of $100,000,000 to finance the Costs of Acquisition and Construction of the Project and certain related costs and expenses.

C. Pursuant to that certain Agreement for the Sale and Purchase of the Electric Capability of the Snettisham Hydroelectric Project of even date herewith between the Authority and the Power Purchaser (and as hereafter amended, the "Power Sales Agreement"), the Authority has agreed to sell, and the Power Purchaser has agreed to buy, all of the Capability of the Project as defined in the Power Sales Agreement. The Power Sales Agreement, among other things, secures the payment of debt service on all Bonds and Parity Obligations issued to finance the Costs of Acquisition and Construction of the Project and any Capital Improvements (as such terms are defined in the Resolution) and has been collaterally assigned to the Trustee as security for payment of such Bonds and Parity Obligations.

D. Both the Power Purchaser and Affiliate are wholly owned subsidiaries under the common control of Alaska Energy and Resources Company, an Alaska corporation, and the Authority desires, subject to the requirements of the Resolution and the terms and conditions of this Agreement, to grant to Affiliate an option to purchase the Project at any time after five (5) years after the issue date of the First Series Bonds.

E. The parties intend that a sale of the Project to Affiliate pursuant to this Agreement shall not, by itself, constitute a default under, or require mandatory redemption of, or result in a change in the payment terms and conditions of Bonds and Parity Obligations then Outstanding or in a change in the payment expectations of the Holders of such Bonds and Parity Obligations, and that such Bonds and Parity Obligations shall continue to be subject to redemption (including redemptions pursuant to any defeasance plan pursuant to this Agreement) only in accordance with their terms.

F. In consideration of the Authority's execution and delivery of this Agreement, Affiliate has caused Alaska Energy and Resources Company to grant to the Authority a security interest in all of the outstanding common stock of Affiliate by executing and delivering to the Authority that certain Pledge Agreement dated as of July 15, 1998.

G. Any capitalized term used and not otherwise defined in this Agreement has the meaning given such term in the Power Sales Agreement or the Resolution.

NOW, THEREFORE, the parties agree as follows:

Section 1. Option to Purchase Project Prior to End of Term

(a) Affiliate's Option Prior to End of Term. At any time after five (5) years from the Effective Date until the end of the Term of the Power Sales Agreement, Affiliate shall have an option to purchase the Project, including the real property described on the attached Exhibit D which is located in the Juneau Recording District, First Judicial District, State of Alaska, from the Authority subject to the requirements of Section 7.7.3 of the Resolution and the terms and conditions of this Agreement. To exercise this option, Affiliate shall deliver to the Authority written notice of the Affiliate's election to do so at least 120 days prior to a purchase date specified in such notice (the "Purchase Date"). Upon Affiliate's delivery of such notice to the Authority, the Authority shall sell the Project to the Affiliate on the Purchase Date, subject to the requirements of Section 7.7.3 of the Resolution and the terms and conditions of this Agreement. The conveyance and sale of the Project to Affiliate shall be subject to the Deed of Trust on the Project granted by the Authority in favor of the Trustee to secure all Outstanding Bonds and Parity Obligations issued or secured under the terms of the Resolution.

(b) Purchase Price of Project. The purchase price of the Project (the "Purchase Price") shall be an amount equal to the sum of (a) (i) the aggregate total principal amount of all outstanding Bonds and Parity Obligations, plus (ii) all unpaid interest to accrue thereon (including, with respect to any Additional Bonds issued by the Authority, the Margin) to the date that all outstanding Bonds and Parity Obligations have been paid, redeemed and retired in full, whether upon redemption or prepayment prior to maturity or at the scheduled maturity thereof, plus (iii) any premium payable on any such redemption or prepayment date, plus (iv) all unpaid liabilities accrued and to accrue for arbitrage rebate or other costs related to or otherwise payable in respect of the Bonds and Parity Obligations to the date that all outstanding Bonds and Parity Obligations have been paid, redeemed and retired in full, whether upon redemption or prepayment prior to maturity or at the scheduled maturity thereof, and (b) any accrued and unpaid Project Costs that are required to be paid by the Power Purchaser to

the Authority prior to or on the Purchase Date pursuant to the Power Sales Agreement.

(c) Purchase of Project Pursuant to Project Sale Agreement. Unless Affiliate elects to provide for payment of the Purchase Price of the Project by the defeasance of all Outstanding Bonds and Parity Obligations, the Purchase Price shall be payable in Installment Payments in accordance with the terms, conditions and requirements of a Project Sale Agreement substantially in the form attached hereto as Exhibit A. Affiliate's obligation to pay such Installment Payments shall be further evidenced by Affiliate's execution and delivery of a Project Note substantially in the form attached hereto as Exhibit B and secured by a pledge to the Trustee of all of the outstanding stock of Affiliate pursuant to a Pledge Agreement substantially in the form attached hereto as Exhibit C. A purchase of the Project by Affiliate pursuant to such Project Sale Agreement shall be subject to the terms and conditions of Section 7.7.3 of the Resolution and the following conditions:

(i) The Authority shall transfer and assign to Affiliate and be released from, and Affiliate shall accept, assume and agree to be bound by, all of the Authority's rights and obligations in, to and under the Power Sales Agreement and the O & M Agreement, subject to a first priority lien and security interest in favor of the Trustee on all amounts payable by the Power Purchaser for Project Costs pursuant to the Power Sales Agreement and the O & M Agreement;

(ii) There shall have been delivered to the Authority and the Trustee an opinion of counsel to Affiliate and the Power Purchaser to the effect that (A) the Power Sales Agreement and the O & M Agreement are the legal, valid and binding obligations of Affiliate and the Power Purchaser enforceable in accordance with their respective terms, except as such enforcement may be limited by bankruptcy, insolvency, moratorium or other laws affecting creditors' rights generally; and (B) the Project Note and the Pledge Agreement are the legal, valid and binding obligations of Affiliate and Alaska Energy and Resources Company, respectively, enforceable in accordance with their respective terms, except as such enforcement may be limited by bankruptcy, insolvency, moratorium or other laws affecting creditors' rights generally;

(iii) The Affiliate shall have paid or reimbursed the Authority for all reasonable costs and expenses incurred by it in connection with the sale of the Project, including without limitation all attorneys' fees, fees and expenses of the Trustee, transfer taxes and title insurance premiums; and

(iv) There shall have been appointed to the board of directors of Affiliate at least one "independent director" within the meaning of Standard & Poor's criteria for special purpose entities.

(d) Payment of Purchase Price by Defeasance of Outstanding Bonds and Parity Obligations. As an alternative to purchasing the Project pursuant to a Project Sale Agreement, Affiliate may cause the Purchase Price to be paid or provided for by delivering to the Authority, the issuers of all Parity Obligations and the Trustee a written plan for defeasing all outstanding Bonds and Parity Obligations in accordance with the requirements of the

Resolution and irrevocably depositing in trust with the Trustee or other Fiduciary on the Purchase Date cash and/or Federal Obligations sufficient to defease all outstanding Bonds and Parity Obligations in accordance with the requirements of the Resolution, and paying (or causing to be paid) to the Authority any portion of the Purchase Price constituting Reimbursable Administrative Costs or Reimbursable Extraordinary Administrative Costs then owed to the Authority under the Power Sales Agreement.

Section 2. Option to Purchase Project at End of Term

If the Project has not been purchased earlier, at least three (3) years prior to the last day of the Term of the Power Sales Agreement, Affiliate shall deliver to the Authority written notice stating whether or not Affiliate elects to purchase the Project on the last day of the Term at the Purchase Price calculated as of such date. If Affiliate gives notice of its election to purchase the Project, Affiliate shall be irrevocably obligated to purchase, and the Authority shall be irrevocably obligated to sell, the Project on the last day of the Term at the Purchase Price, upon compliance only with the conditions set forth in Section 1(c)(iii) of this Agreement. Any and all obligations of the Affiliate with respect to such purchase and sale of the Project shall survive the Term of the Power Sales Agreement.

Section 3. Action by Authority

The Authority shall not be required to take any action or incur any cost or expense in connection with the sale of the Project to Affiliate or the defeasance and redemption or prepayment of the outstanding Bonds or Parity Obligations unless and until the Authority shall have received written notice of Affiliate's intention to exercise the option granted by this Agreement and Affiliate shall have made arrangements satisfactory to the Authority (which may include the deposit of funds in escrow) for the payment of all costs and expenses of the Authority as required by this Agreement, whether or not the purchase is actually consummated.

Section 4. Successors; Assignment

This Agreement shall be binding upon and inure to the benefit of the Authority and any governmental successor thereto, and also shall be binding upon and inure to the benefit of Affiliate and its corporate successors. This Agreement shall not be assignable by Affiliate to any other person or entity, and any such purported assignment shall be void.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed the day and year first above written.

ALASKA INDUSTRIAL DEVELOPMENT AND EXPORT AUTHORITY

By: _____
D. RANDY SIMMONS
Its: Executive Director

SNETTISHAM ELECTRIC COMPANY

By: _____
Its: President

APPROVED:

ALASKA ELECTRIC LIGHT AND POWER COMPANY

By: _____

Its: President

STATE OF ALASKA)
) ss
THIRD JUDICIAL DISTRICT)

THIS IS TO CERTIFY that on this 11th day of August, 1998, before me, the undersigned, a Notary Public in and for the State of Alaska, duly commissioned and sworn as such, personally appeared D. Randy Simmons, known to me to be the Executive Director of ALASKA INDUSTRIAL DEVELOPMENT AND EXPORT AUTHORITY, an public corporation of the State of Alaska, the corporation that executed

the foregoing instrument, and he acknowledged that he executed said instrument as the free and voluntary act and deed of said corporation for the uses and purposes therein mentioned, and that he was authorized to execute said instrument.

WITNESS my official hand and seal the day and year in this certificate first hereinabove written.

OFFICIAL SEAL
STATE OF ALASKA
NOTARY PUBLIC
JEANNIE D. JUDD
My Comm. expires: June 27, 1999

Jeannie D. Judd
Notary Public in and for Alaska
My commission expires: 6-27-99

STATE OF ALASKA)
) ss
FIRST JUDICIAL DISTRICT)

THIS IS TO CERTIFY that on this 15th day of August, 1998, before me, the undersigned, a Notary Public in and for the State of Alaska, duly commissioned and sworn as such, personally appeared William A. Corbus, known to me to be the President of SNETTISHAM ELECTRIC COMPANY, an Alaska corporation, the corporation that executed the foregoing instrument, and he/she acknowledged that he/she executed said instrument as the free and voluntary act and deed of said corporation for the uses and purposes therein mentioned, and that he/she was authorized to execute said instrument.

WITNESS my official hand and seal the day and year in this certificate first hereinabove written.

Notary Public in and for Alaska
My commission expires: 10/6/98

GLEN PRICE NOTARY PUBLIC STATE OF ALASKA

STATE OF ALASKA)
) ss
FIRST JUDICIAL DISTRICT)

THIS IS TO CERTIFY that on this 15th day of August, 1998, before me, the undersigned, a Notary Public in and for the State of Alaska, duly commissioned and sworn as such, personally appeared William A. Corbus, known to me to be the President of ALASKA ELECTRIC LIGHT AND POWER COMPANY, an Alaska corporation, the corporation that executed the foregoing instrument, and he/she acknowledged that he/she executed said instrument as the free and voluntary act and deed of said corporation for the uses and purposes therein mentioned, and that he/she was authorized to execute said instrument.

WITNESS my official hand and seal the day and year in this certificate first hereinabove written.

Notary Public in and for Alaska
My commission expires: 9/6/95

WHEN RECORDED RETURN TO:

William G. Tonkin
Foster Pepper & Shefelman PLLC
1111 Third Avenue, Suite 3400
Seattle, WA 98101-3299

STATE BUSINESS NO CHARGE FOR RECORDING

EXHIBIT A

COPY

SNETTISHAM HYDROELECTRIC PROJECT

PROJECT SALE AGREEMENT

between

ALASKA INDUSTRIAL DEVELOPMENT AND EXPORT AUTHORITY
A Public Corporation of the State of Alaska
("Authority")

and

SNETTISHAM ELECTRIC COMPANY
An Alaska Corporation
("Affiliate or "Project Purchaser")

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PROJECT SALE AGREEMENT

THIS AGREEMENT is executed this ____ day of _____, _____, by the ALASKA INDUSTRIAL DEVELOPMENT AND EXPORT AUTHORITY, a public corporation of the State of Alaska (the "Authority"), and SNETTISHAM ELECTRIC COMPANY, an Alaska corporation (referred to herein as the "Affiliate" or the "Project Purchaser").

RECITALS

A. Pursuant to its Snettisham Power Revenue Bond Resolution, Resolution No. G98-09, as supplemented by and Resolution No. G98-10, each adopted on July 22, 1998 (together, the "Resolution"), the Authority issued its Power Revenue Bonds, First Series (Snettisham Hydroelectric Project), in the principal amount of $100,000,000 to finance the acquisition and certain capital improvements to the Snettisham hydroelectric project (the "Project").

B. Pursuant to that certain Agreement for the Sale and Purchase of the Electric Capability of the Snettisham Hydroelectric Project dated _____, 1998 (the "Power Sales Agreement"), between the Authority and Alaska Electric Light and Power Company (the "Power Purchaser"), the Authority has agreed to sell, and the Power Purchaser has agreed to buy, all of the Capability of the Project as defined in the Power Sales Agreement. The Power Sales Agreement, among other things, secures the payment of debt service on all Bonds and Parity Obligations issued to finance the Costs of Acquisition and Construction of the Project and Capital Improvements (as such terms are defined in the Resolution) and has been collaterally assigned to the Trustee appointed pursuant to the Resolution as security for payment of such Bonds and Parity Obligations.

C. Pursuant that certain Snettisham Option Agreement dated July 15, 1998 (the "Option Agreement"), between the Authority and Affiliate and approved by the Power Purchaser, the Authority granted to Affiliate an option to purchase the Project at any time after five years after the issue date of the First Series Bonds subject to the requirements of the Resolution and the terms and conditions of the Option Agreement.

D. Affiliate has delivered written notice to the Authority of its election to exercise its option to purchase the Project on _____, ____ and has executed and delivered to the Authority this Project Sale Agreement, all in accordance with the Option Agreement.

E. The parties intend that a sale of the Project to the Project Purchaser pursuant to this Agreement shall not, by itself, constitute a default under, or require mandatory redemption of, or result in a change in the payment terms and conditions of Outstanding Bonds and Parity Obligations or in a change in the payment expectations of the Holders of such Bonds and Parity Obligations, and that such Bonds and Parity Obligations shall continue to be subject to redemption (including redemptions pursuant to any defeasance plan pursuant to this Agreement) only in accordance with their terms.

F. Any capitalized term used and not otherwise defined in this Agreement has the meaning given such term in the Power Sales Agreement or the Resolution.

NOW, THEREFORE, the parties agree as follows:

Section 1. Definitions.

"Accountant" shall mean a nationally recognized firm of certified public accountants selected by the Authority.

"Accountant's Certificate" shall mean a certificate signed by a firm of independent certified public accountants of recognized national standing, selected by the Authority, which may be the firm of accountants which regularly audits the books of the Authority.

"Act" shall mean Title 44, Chapter 88 of the Alaska Statutes (AS 44.88) and 1996 SLA, Ch. 111, Section 25, as the same may be amended or supplemented from time to time.

"Additional Bonds" shall mean Bonds other than the First Series Bonds authenticated and delivered pursuant to the Resolution.

"Additional Payments" means the amounts required to be paid by the Project Purchaser pursuant to the provisions of Section 2.4 hereof.

"Affiliate" shall mean Snettisham Electric Company, an Alaska corporation.

"Aggregate Debt Service" for any period shall mean, as of any date of calculation, the sum of the amounts of Debt Service for such period with respect to the Outstanding Bonds and Parity Obligations of all Series.

"Annual Budget" shall mean the annual budget, as amended or supplemented, adopted or in effect for a particular Fiscal Year as provided in Section 7.5.

"Authority" shall mean the Alaska Industrial Development and Export Authority organized and existing under the Act.

"Average Aggregate Debt Service" shall mean, as of any date of calculation, the sum of the remaining Aggregate Debt Service divided by the number of Bond Years such Bonds and Parity Obligations are scheduled to remain Outstanding.

"Bond" or "Bonds" shall mean any bond or bonds, note or notes, or evidence of indebtedness or evidences of indebtedness, as the case may be, issued by the Authority and authenticated and delivered under and pursuant to, and entitled to the benefit and security of, the Resolution.

"Bond Year" shall mean each period of 12 calendar months ending on December 31; except, however, that the first Bond Year for any Series of Bonds shall begin on the issue date of that Series and shall end on the immediately succeeding December 31.

"Capital Improvements" shall mean Project Repairs and/or Project Expansions.

"Code" shall mean the Internal Revenue Code of 1986, as amended, including applicable Treasury regulations thereunder.

"Debt Service" for any period shall mean, as of any date of calculation and with respect to any Series, an amount equal to the sum of (i) interest accruing during such period on Bonds or Parity Obligations of such Series, except to the extent that such interest is to be paid from deposits in the Interest Account in the Debt Service Fund made from proceeds of Bonds or Parity Obligations and (ii) that portion of each Principal Installment for such Series which would accrue during such period if such Principal Installment were deemed to accrue daily in equal amounts from the next preceding Principal Installment due date for such Series (or, if there shall be no such preceding Principal Installment due date, from a date one year preceding the due date of such Principal Installment or from the date of issuance of the Bonds or Parity Obligations of such Series, whichever date is later). Such interest and Principal Installments for such Series shall be calculated on the assumption that no Bonds or Parity Obligations of such Series Outstanding at the date of calculation will cease to be Outstanding except by reason of the payment of each Principal Installment on the due date thereof. For the purposes of this definition (x) interest and Principal Installments with respect to interest accreting on compound interest or zero coupon or like interest paying Bonds shall be deemed to accrue in the twelve (12) months immediately prior to the final maturity of such Bonds; and (y) the Authority may determine that interest will accrue on variable rate Bonds at a rate equal to the actual rate during a prior period.

"Debt Service Reserve Requirement" shall mean an amount equal to the least of (i) Maximum Aggregate Debt Service, (ii) 125% of Average Aggregate Debt Service, or (ii) 10% of proceeds of the Bonds and Parity Obligations.

"Deed of Trust" means the Deed of Trust on the Project dated as of July 15, 1998, granted by the Authority for the benefit of the Trustee to secure all Bonds and Parity Obligations issued or secured under the terms of the Resolution.

"Event of Default" shall have the meaning given to such term in Section 9.1.

"Fiscal Year" means that twelve-month period starting January 1 of a calendar year through and including December 31 of the same calendar year. The initial Fiscal Year for purposes of this Agreement is that portion of the twelve-month period starting on the Purchase Date through and including the following December 31. If that portion of the calendar year is shorter than ninety (90) days the parties shall determine the initial Fiscal Year, which must end on a December 31 and may not be longer than 456 days. The last Fiscal Year for purposes of this Agreement shall be that portion of the twelve-month period between the end of the last full (i.e., 12-month) Fiscal Year and the expiration of this Agreement.

"Holder" or "Holders" shall mean any person or persons who shall be the registered owner of any Bonds or Parity Obligations.

"Independent Consultant" shall mean an independent individual or firm of engineers or any other consultant that is nationally recognized and has expertise with respect to electric power projects comparable to the Project at the time retained pursuant to Section 7.4 to carry out the duties and responsibilities given to such Independent Consultant by this Agreement. For purposes hereof, "independent" means a person who is in fact independent and does not have any substantial interest, direct or indirect, in the Authority, Affiliate or the Power Purchaser.

"Installment Payments" shall mean the amounts payable by the Project Purchaser to the Authority pursuant to Section 2.3 of this Agreement.

"Maximum Aggregate Debt Service" shall mean, as of any date of calculation, the greatest amount of Aggregate Debt Service payable in any unexpired Bond Year.

"Operating Expenses" shall mean (i) the operation, maintenance, administrative and general expenses of the Project, and shall include, without limiting the generality of the foregoing, costs of investigations, insurance, ordinary repairs of the Project which do not entail the acquisition and installation of a unit of property (as generally prescribed by the Federal Energy Regulatory Commission), fuel costs, rents, engineering expenses, legal and financial advisory expenses, salaries and required employee costs, any taxes or payments in lieu of taxes pursuant to the Act or otherwise pursuant to law and Reimbursable Administrative Costs and Reimbursable Extraordinary Administrative Costs (as such terms are defined in the Power Sales Agreement), (ii) any other current expenses or obligations required to be paid by the Authority under the provisions of the Resolution or by law, all to the extent properly allocable to the Project, or required to be incurred under or in connection with the performance of the Power Sales Agreement or the O & M Agreement, and (iii) the fees and expenses of the Fiduciaries. Operating Expenses shall not include any costs or expenses for new construction or any allowance for depreciation.

"O & M Agreement" shall mean the Operations and Maintenance Agreement dated as of July 15, 1998 between Affiliate, as assignee of the Authority on and after the Purchase Date, and the Power Purchaser, as the same may be amended.

"Parity Obligations" shall mean any bonds, notes or other evidences of indebtedness (including any such indebtedness issued to refund Outstanding Parity Obligations) issued by the Power Purchaser, or by any issuer other than the Authority for the Power Purchaser, that are authenticated and delivered by the Trustee and are to be secured by the Project and Revenues on a parity of lien with Outstanding Bonds.

"Permitted Encumbrances" means, as of any particular time, the following liens and encumbrances against the Project: the reversionary interest of the Alaska Department of Natural Resources described in Section 4, the Deed of Trust and all other liens and encumbrances permitted under the Deed of Trust.

"Power Purchaser" shall mean Alaska Electric Light and Power Company and its permitted successors and assigns under the Power Sales Agreement.

"Power Sales Agreement" shall mean the Agreement for the Sale and Purchase of the Electric Capability of the Snettisham Hydroelectric Project dated as of July 15, 1998 between Affiliate, as assignee of the Authority on and after the Purchase Date, and the Power Purchaser, as the same may be amended.

"Principal Installment" shall mean, as of any date of calculation and with respect to any Series, so long as any Bonds or Parity Obligations thereof are Outstanding, (i) the principal amount of Bonds or Parity Obligations of such Series due on a certain future date for which no Sinking Fund Installments have been established, or (ii) the unsatisfied balance of any Sinking Fund Installments due on a certain future date for Bonds or Parity Obligations of such Series, plus the amount of the sinking fund redemption premiums, if any, which would be applicable upon redemption of such Bonds or Parity Obligations on such future date in a principal amount equal to said unsatisfied balance of such Sinking Fund Installments, or (iii) if such future dates coincide as to different Bonds or Parity Obligations of such Series, the sum of such principal amount of Bonds or Parity Obligations and of such unsatisfied balance of Sinking Fund Installments due on such future date plus such applicable redemption premiums, if any.

"Project" means the Project as defined in the Power Sales Agreement.

"Project Capability" shall mean the entire capability of the Project to generate and transmit electric energy at any and all times, including periods when the Project may not be operating or may be inoperable or the operation thereof is curtailed, in each case in whole or in part for any reason whatsoever.

"Project Costs" shall have the meaning given it in the Power Sales Agreement.

"Project Expansions" shall mean Project improvements, betterments, additions and expansions (other than Project Repairs) that are consistent with Prudent Utility Practice.

"Project Note" shall mean the promissory note in substantially the form attached hereto as Exhibit A given by the Project Purchaser to the Authority to evidence the Project Purchaser's obligation to pay the Purchase Price in accordance with this Agreement.

"Project Purchaser" shall mean the Affiliate.

"Project Repairs" shall mean repairs, maintenance or replacements of existing parts, fixtures or equipment with respect to the Project, which (i) are required by federal or state law or the Power Sales Agreement or are otherwise necessary to keep the Project in good and efficient operating condition, consistent with Prudent Utility Practice, and (ii) are chargeable to the capital account of the Project under the Code. Repairs, maintenance or replacements of existing parts, fixtures of equipment which result in improvement of the Project are not excluded from this definition.

"Project Sale Agreement" or "Agreement" shall mean this Project Sale Agreement.

"Property" shall mean, collectively, the real and personal property comprising the Project described on Exhibit A attached hereto.

"Prudent Utility Practice" shall mean at a particular time any of the practices, methods and acts engaged in or approved by a significant portion of the electric utility industry at such time, or which, in the exercise of reasonable judgment in light of facts known at such time, could have been expected to accomplish the desired results at the lowest reasonable cost consistent with good business practices, reliability, safety and reasonable expedition. Prudent Utility Practice is not required to be the optimum practice, method or act to the exclusion of all others, but rather to be a spectrum of possible practices, methods or acts which could have been expected to accomplish the desired result at the lowest reasonable cost consistent with reliability, safety and expedition. Prudent Utility Practice includes due regard for manufacturers' warranties and the requirements of governmental agencies of competent jurisdiction and shall apply not only to functional parts of the Project, but also to appropriate structures, landscaping, painting, signs, lighting and other facilities. In evaluating whether any matter conforms to Prudent Utility Practices, there shall be taken into account, among other things, (a) the nature of the Authority and the Power Purchaser under the laws of the State of Alaska and their statutory duties and responsibilities and (b) the objectives of (i) complying with environmental and safety regulations and management agreements, (ii) minimizing the financial risk of the Authority and the Power Purchaser and (iii) providing the Power Purchaser with flexibility in the conduct of its business affairs. For purposes of the Resolution, "national standards for the industry" shall mean Prudent Utility Practice.

"Purchase Date" shall mean _____, _____, or such earlier or later date selected by the parties, by mutual agreement, on which the purchase and sale of the Project is completed.

"Purchase Price" shall mean the amount determined in accordance with Section 2.2 of this Agreement.

"Rebate Amount" shall mean the rebate amount, if any, payable to the United States of America in respect of any Series of Bonds or tax-exempt Parity Obligations pursuant to section 148(f) of the Code.

"Redemption Price" shall mean, with respect to any Bond or Parity Obligation, the principal amount thereof plus the applicable premium, if any, payable upon redemption thereof pursuant to such Bond or Parity Obligation or the Resolution.

"Renewal and Replacement Fund Contribution" shall mean the amount required to be contributed annually to the Renewal and Replacement Fund by the Project Purchaser pursuant to this Agreement from payments made by the Power Purchaser for that purpose pursuant to the Power Sales Agreement.

"Resolution" shall mean the Authority's Snettisham Power Revenue Bond Resolution, Resolution No. G98-09, as supplemented by Resolution No. G98-10, each adopted on July 22,

1998, and as from time to time amended or supplemented by other Supplemental Resolutions in accordance with the terms thereof.

"Revenue Fund" shall mean the Revenue Fund established by the Authority pursuant to Section 5.2 of the Resolution.

"Revenues" shall mean all revenues, income, rents and receipts, derived or to be derived by the Project Purchaser from, or attributable to the ownership, operation and/or sale of, the Project, including all revenues attributable to the Project or to payment of the costs thereof including, without limitation, all revenues received or to be received by the Project Purchaser under the Power Sales Agreement or under any other contract for the sale of power, energy, transmission or other service from the Project or any part thereof, any contractual arrangement with respect to the use of the Project or any portion thereof or the services, output or capacity thereof.

"Sinking Fund Installment" means, as of any particular date of determination and with respect to the Outstanding Bonds or Parity Obligations of any Series, the amount required by a Supplemental Resolution or Parity Obligation Instrument to be paid in any event by the Authority or the issuer of the Parity Obligations on a single future date for the retirement of Bonds or Parity Obligations of such Series which mature after said future date, but does not include any amount payable by the Authority or the issuer of the Parity Obligations by reason only of the maturity of a Bond or Parity Obligation.

"State" shall mean the State of Alaska.

"Supplemental Resolution" shall mean any resolution supplemental to or amendatory of the Resolution, adopted by the Authority in accordance with the Resolution.

"Trustee" shall mean the trustee appointed pursuant to the Resolution, initially U.S. Bank Trust National Association and its successor or successors and any other corporation or association which may at any time be substituted in its place pursuant to the Resolution.

"Unassigned Authority Rights" means all of the rights of the Authority to receive Additional Payments under Section 2.4 hereof, to be held harmless and indemnified under Section 7.20 hereof, to be reimbursed for attorney's fees and expenses under Section 9.4 hereof, and to give or withhold consent to amendments, changes, modifications, alterations and termination of this Agreement to the extent required or permitted hereunder.

Section 2. Sale and Purchase of Project; Purchase Price and Payment Terms.

2.1 Sale and Purchase of Project. Subject to the terms and conditions of this Agreement, on the Purchase Date the Authority shall sell, assign and transfer the Project to the Project Purchaser, and the Project Purchaser shall purchase the Project from the Authority. In conjunction with such sale and purchase, effective on the Purchase Date, the Authority also transfers and assigns to the Project Purchaser and shall be released from, and the Project Purchaser accepts, assumes and agrees to be bound by, all of the Authority's rights and obligations in, to and under the Power Sales Agreement and the O & M Agreement, subject to a

first priority lien and security interest in favor of the Trustee on all amounts payable by the Power Purchaser for Project Costs pursuant to the Power Sales Agreement and the O & M Agreement.

2.2 Purchase Price of Project. The purchase price of the Project (the "Purchase Price") shall be an amount equal to the sum of (a) (i) the aggregate total principal amount of all outstanding Bonds and Parity Obligations on the Purchase Date, plus (ii) all unpaid interest to accrue thereon (including, with respect to any Additional Bonds issued by the Authority, the Margin) from and after the Purchase Date to the date that all Outstanding Bonds and Parity Obligations have been paid, redeemed and retired in full, whether upon redemption or prepayment prior to maturity or at the scheduled maturity thereof, plus (iii) any premium payable on any such redemption or prepayment date, plus (iv) all unpaid liabilities accrued and to accrue after the Purchase Date for all Rebate Amounts or other costs related to or otherwise payable in respect of tax-exempt Bonds and Parity Obligations to the date that all Outstanding Bonds and Parity Obligations have been paid, redeemed and retired in full, whether upon redemption or prepayment prior to maturity or at the scheduled maturity thereof, and (b) any accrued and unpaid Project Costs payable to the Authority as of the Purchase Date. The Project Purchaser shall receive a credit against the Purchase Price for the aggregate total amount of all money and Investment Securities on deposit with and held by the Trustee in all Funds under the Resolution on the Purchase Date.

2.3 Payment Terms; Project Note. In consideration of the sale of the Project to the Project Purchaser, the Project Purchaser shall make or cause to be made, in accordance with Section 2.3 and the Project Note, payments of the Purchase Price in installments, payable to the Trustee for the account of the Revenue Fund, as follows:

(a) Commencing on the tenth (10^{th}) day of the month following the Purchase Date, and on the tenth (10^{th}) day of each month thereafter:

(i) An amount equal to one-sixth (1/6) of the interest due on all Bonds and Parity Obligations on the next succeeding interest payment date plus an amount equal to one-twelfth (1/12) of the Principal Installment(s) due on the next succeeding principal payment date for all Bonds and Parity Obligations; provided, that semiannually on each January 1 and July 1 the monthly amounts payable pursuant to this clause (a)(i) shall be adjusted to give the Project Purchaser credit for the income earned during the immediately preceding six months on amounts on deposit in the Debt Service Fund; and provided, further, that the monthly amount payable pursuant to this clause (a)(i) in respect of interest prior to the initial interest payment date for a Series of Bonds or Parity Obligations shall be the amount determined by dividing the interest due on the initial interest payment date by the number of complete months to elapse from the delivery date of such Series to the initial interest payment date for such Series, and the monthly amount payable pursuant to this clause (a)(i) in respect of the initial Principal Installment for a Series of Bonds or Parity Obligations shall be the amount determined by dividing the amount of such initial Principal Installment by the

number of complete months to elapse from the delivery date of such Series to the date for payment of the initial Principal Installment for such Series.

(ii) For deposit in the Renewal and Replacement Fund, an amount equal to 1/12 of the Renewal and Replacement Fund Contribution for the then current Fiscal Year.

(iii) Any additional amount required so that the amount available to the Authority in the Fiscal Year to be deposited with the Trustee as Revenues will not be less than the debt service coverage percentage required by Section 7.12.1 of the Resolution.

(b) The amount, if any, required to increase the amount on deposit in the Debt Service Reserve Fund to an amount not less than the Debt Service Reserve Requirement not later than the date specified by the Resolution and/or to reimburse the provider of any Reserve Fund Credit Facility for any draws thereon as required by the terms thereof.

(c) The amount, if any, required to increase the amount on deposit in the Renewal and Replacement Fund to an amount not less than the Minimum R&R Fund Requirement not later than the end of any Fiscal Year in which the amount on deposit in the Renewal and Replacement Fund shall be less than the Minimum R&R Fund Requirement.

(d) On any redemption or prepayment date for Bonds or Parity Obligations as a result of an optional or extraordinary optional redemption of such Bonds or Parity Obligations pursuant to Section 8.1 or a mandatory redemption of such Bonds or Parity Obligations in the event of a Determination of Taxability as required by Section 8.2 and applicable provisions of the Bonds and the Resolution, the principal amount of such Bonds or Parity Obligations, together with any applicable redemption or prepayment premium, and accrued interest to the redemption date.

(e) Annually, not later than 45 days after the end of each Bond Year, or on a date or dates to be determined by Supplemental Resolution, for deposit in the Rebate Fund, such amount as is necessary to cause the amount on deposit in the Rebate Fund (after a deposit, if any, therein from excess earnings in the Project Fund and/or the Debt Service Reserve Fund) to be equal to the estimated Rebate Amount for that Bond Year.

(f) The amount necessary to discharge any Project-related liens on Project assets and to pay all other reasonable costs and expenses as may be incurred by the Authority or the Trustee under the Resolution in connection with the Bonds and Parity Obligations, including but not limited to costs of calculation and payment of arbitrage rebate amounts and fees and expenses of the Trustee for acting as such under the Resolution.

(g) The Project Purchaser agrees that, during any time that (i) the amount on deposit in the Debt Service Reserve Fund is less than the Debt Service Reserve Requirement, (ii) the Project Purchaser has failed to make a required deposit to the Renewal and Replacement Fund, or (iii) an Event of Default has occurred and is continuing for more than 30

days under this Agreement, the Power Sales Agreement or the Resolution, Project Purchaser shall cause all Revenues to be paid to the Trustee within one (1) Business Day of receipt by the Project Purchaser. The Project Purchaser acknowledges and agrees that, under the terms of the Resolution, the Trustee will deposit all Revenues received from the Project Purchaser in the Revenue Fund and will transfer money on deposit in the Revenue Fund to the Debt Service Fund, the Debt Service Reserve Fund, the Renewal and Replacement Fund and the Rebate Fund, all in accordance with Section 5.5 of the Resolution, and each such deposit by the Trustee shall constitute an "Installment Payment." The Trustee will, under the terms of the Resolution, deposit in the Surplus Account of the Revenue Fund any of such payments and other revenues in excess of the amount required for the deposits to be made under Section 5.5 of the Resolution, and release to the Project Purchaser free and clear of the lien and pledge of the Resolution.

(h) The Project Purchaser's obligation to pay the Purchase Price by making the Installment Payments required by this Section 2.3 shall be evidenced by the Project Note, and all Installment Payments shall be held and disbursed in accordance with the Resolution and this Agreement. Upon payment in full, in accordance with the Resolution, of all Principal Installments and interest accrued on all Bonds and Parity Obligations, whether at maturity or by redemption or otherwise, or upon provision for the payment thereof having been made in accordance with the provisions of the Resolution, and upon payment by the Project Purchaser of any other amounts required to be paid hereunder, the Project Note shall be deemed fully paid, the obligations of the Project Purchaser thereunder shall be terminated and the Project Note shall be surrendered by the Trustee to the Project Purchaser for cancellation. Unless the Project Purchaser is entitled to a credit under express terms of this Agreement or the Project Note, all payments on the Project Note shall be in the full amount required thereunder.

2.4 Additional Payments. In addition to payment of the Purchase Price, the Project Purchaser shall (i) pay to or reimburse the Authority for (i) all reasonable costs and expenses incurred by it in connection with the sale of the Project, including without limitation all attorneys' fees, fees and expenses of the Trustee, transfer taxes and title insurance premiums, which amounts shall be paid on or before the Purchase Date, and (ii) the Margin with respect to any issue of Additional Bonds, which shall be paid in equal monthly installments on the tenth (10^{th}) day of each month. The amounts payable under this Section 2.4 shall be referred to herein as "Additional Payments."

2.5 Obligations Unconditional. The obligations of the Project Purchaser to make Installment Payments, Additional Payments and any other payments required of the Project Purchaser hereunder or under the Resolution shall be absolute and unconditional, and the Project Purchaser shall make such payments without abatement, diminution or deduction regardless of any cause or circumstances whatsoever including, without limitation, any suspension or reduction in the Capability of the Project, any interruption, interference or curtailment in whole or in part of Power supplied by the Project, or any defense, set-off, recoupment or counterclaim which the Project Purchaser may have or assert against the Authority, the Trustee or any other person.

2.6 Place of Payments. Project Purchaser shall make all Installment Payments directly to the Trustee in accordance with the payment instructions of the Trustee. Additional Payments shall be made directly to the person or entity to whom or to which they are due.

2.7 Term of Agreement. The term of this Agreement shall commence on the Purchase Date and shall terminate on the later of December 31, 2038, or the date on which no Bond or Parity Obligation remains Outstanding under the terms of the Resolution.

Section 3. Security

3.1 Pledge Agreement. To secure payment of the Purchase Price and payment and performance of all other obligations of the Project Purchaser under this Agreement and the Project Note, the Project Purchaser has previously caused Alaska Energy and Resources Company to have executed and delivered to the Authority on the issue date of the Authority's Power Revenue Bonds, First Series (Snettisham Hydroelectric Project) that certain Pledge Agreement dated as of July 15, 1998, by and between Alaska Energy and Resources Company as Pledgor for the benefit of the Authority, which Pledge Agreement has been assigned by the Authority to the Trustee, pledging all of the outstanding stock of the Project Purchaser. To further secure payment of the Purchase Price and payment and performance of all other obligations of the Project Purchaser under this Agreement and the Project Note, the Project Purchaser assigns to the Authority and grants a perfected security interest in (i) the Revenues, (ii) all of its rights under the Power Sales Agreement to receive payments from the Power Purchaser, and (iii) all of its rights under the O & M Agreement.

3.2 Prior Mortgage and Security Interests of Trustee; Assignment of Agreement, Project Note. The Project Purchaser acknowledges that the Project is subject to the Deed of Trust, that Project Purchaser is purchasing the Project subject to the Deed of Trust, and that the Authority pursuant to the Resolution has granted and assigned to the Trustee for the benefit of the Holders of all Bonds and Parity Obligations a prior security interest in all Revenues of the Project, including without limitation Authority's rights under the Power Sales Agreement to receive payments from the Power Purchaser, and all of its rights under the O & M Agreement, this Agreement, the Project Note and the Pledge Agreement. The Project Purchaser accepts and agrees to such assignment.

3.3 Action on Project Note. The Project Purchaser will be personally obligated and fully liable for the amounts due under the Project Note and this Agreement. To the extent, if any, that the Deed of Trust is deemed to secure this Agreement and the Project Note, the Trustee as beneficiary of the Deed of Trust shall have the right to sue on the Project Note and this Agreement and obtain a personal judgment against the Project Purchaser for satisfaction of the amount due under the Project Note and this Agreement either before or after a judicial foreclosure of the Deed of Trust under AS 09.45.170-09.45.220.

3.4 Other Instruments. The Project Purchaser shall, at the request of the Authority or the Trustee, execute and cause to be filed on the Purchase Date in accordance with the requirements of the UCC, financing statements in form and substance satisfactory to the Authority and the Trustee, and, from time to time thereafter, shall execute and deliver such other

documents (including, but not limited to, continuation statements as required by the UCC) as may be necessary or reasonably requested by the Authority or the Trustee in order to perfect or maintain perfected security interests in the Project and the Revenues granted by the Authority or the Project Purchaser or give public notice thereof.

Section 4. Conveyance of Title to Property.

The Authority covenants that it is lawfully seized of the estate in the Property and has the right to convey and assign the Property. On the Purchase Date, the Authority shall execute, acknowledge and deliver to Project Purchaser a special warranty deed and bill of sale to convey title to the Property to Project Purchaser, through recordation, free and clear of any defects or encumbrances except for Permitted Encumbrances. The Project Purchaser expressly acknowledges that the Authority's title to any real property that has been acquired by the Authority under conveyances from the Alaska Department of Natural Resources and that is included in the Property may be encumbered with a condition that such real property be used for purposes of generating electric power, that the grantor Alaska Department of Natural Resources has a reversionary interest in such real property to the extent that it is not used for that purpose, and that failure to meet that condition could result in the reverter of title to such real property to the Alaska Department of Natural Resources according to the laws of the State of Alaska.

Section 5. Condition of Property; Disclaimer of Warranties.

5.1 Condition of Property. The Authority sells the Property to the Project Purchaser, and the Project Purchaser purchases the Property from the Authority "as is" without any warranties or indemnities from the Authority (other than those described in Section 4) or the State of Alaska, including without limitation, without any warranties or indemnities regarding Pollution or Hazardous Substances, as such terms are defined in the O&M Agreement.

5.2 Disclaimer of Warranties. EXCEPT AS TO ANY WARRANTIES OF TITLE TO BE PROVIDED IN THE AUTHORITY'S WARRANTY DEED, THE AUTHORITY MAKES NO REPRESENTATIONS OR WARRANTIES, AND HEREBY DISCLAIMS ALL WARRANTIES, WITH RESPECT TO, AND SHALL HAVE NO LIABILITY FOR: (1) THE CONDITION OF THE PROPERTY OR ANY BUILDING, STRUCTURE OR IMPROVEMENTS THEREON OR THE SUITABILITY, HABITABILITY, MERCHANTABILITY OR FITNESS OF THE PROPERTY AND PROJECT FOR PROJECT PURCHASER'S INTENDED USE OR FOR ANY USE WHATSOEVER; (2) COMPLIANCE WITH ANY BUILDING, ZONING OR FIRE LAWS OR REGULATIONS OR WITH RESPECT TO THE EXISTENCE OF OR COMPLIANCE WITH ANY REQUIRED PERMITS, OF ANY GOVERNMENTAL AGENCY; (3) THE PRESENCE OF ANY HAZARDOUS SUBSTANCES IN, ON, OR ABOUT THE PROPERTY OR IN ANY IMPROVEMENTS ON THE PROPERTY, INCLUDING WITHOUT LIMITATION ASBESTOS OR UREA-FORMALDEHYDE, OR THE PRESENCE OF ANY ENVIRONMENTALLY HAZARDOUS WASTES OR MATERIALS ON OR UNDER THE PROPERTY; (4) THE ACCURACY OR COMPLETENESS OF ANY PLANS AND SPECIFICATIONS, REPORTS, OR OTHER MATERIALS PROVIDED TO PROJECT PURCHASER; OR (5) ANY OTHER MATTER RELATING TO THE CONDITION OF THE PROPERTY OR USE OR OPERATION OF THE

PROJECT. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, THE AUTHORITY SHALL HAVE NO LIABILITY TO PROJECT PURCHASER WITH RESPECT TO THE CONDITION OF THE PROPERTY UNDER COMMON LAW, OR ANY FEDERAL, STATE, OR LOCAL LAW OR REGULATION, INCLUDING BUT NOT LIMITED TO LAWS RELATED TO POLLUTION OR HAZARDOUS SUBSTANCES, AS SUCH TERMS ARE DEFINED IN THE O&M AGREEMENT, AND PROJECT PURCHASER HEREBY WAIVES ANY AND ALL CLAIMS WHICH THE PROJECT PURCHASER HAS OR MAY HAVE AGAINST THE AUTHORITY WITH RESPECT TO THE CONDITION OF THE PROPERTY. PROJECT PURCHASER ACKNOWLEDGES TO AUTHORITY THAT PROJECT PURCHASER HAS FULLY INSPECTED THE PROPERTY AND ASSUMES THE RESPONSIBILITY AND RISKS OF ALL DEFECTS AND CONDITIONS OF THE PROPERTY, INCLUDING SUCH DEFECTS AND CONDITIONS, IF ANY, THAT CANNOT BE OBSERVED BY CASUAL INSPECTION. AUTHORITY AND PROJECT PURCHASER ACKNOWLEDGE THAT THIS DISCLAIMER HAS BEEN SPECIFICALLY NEGOTIATED. THE PROVISIONS OF THIS PARAGRAPH SHALL SURVIVE THE CLOSING OF THIS AGREEMENT AND SALE OF THE PROPERTY TO THE PROJECT PURCHASER AND NOT MERGE INTO THE WARRANTY DEED AND BILL OF SALE.

Section 6. Representations of Project Purchaser. The Project Purchaser represents to the Authority as follows:

6.1 Corporate Existence. Project Purchaser has been duly incorporated and validly exists as a corporation in good standing under the laws of the State, is duly qualified to do business as a corporation in the State, has all corporate powers, authorizations, consents, and approvals required to carry on its various businesses as now conducted, and is not in violation of any provision of its Articles of Incorporation or its Bylaws, each as amended, which violation would affect its obligations under this Agreement and the Project Note or any of the transactions contemplated hereby or thereby.

6.2 Authority to Execute Agreement. It has full power and authority to execute, deliver and perform this Agreement and the Project Note and to enter into and carry out the transactions contemplated by those documents. Execution, delivery and performance under this Agreement and the Project Note do not violate any provision of law applicable to the Project Purchaser or the Project Purchaser's Articles of Incorporation or its Bylaws, each as amended, and do not materially conflict with or result in a default under any agreement or instrument to which the Project Purchaser is a party or by which it is bound (or, to the extent of any such conflict or default, the same has been waived). This Agreement and the Project Note have been duly authorized, executed and delivered by the Project Purchaser and all steps necessary have been taken to constitute this Agreement and the Project Note valid binding obligations of the Project Purchaser in accordance with their respective terms except as those terms may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws relating to or affecting the enforcement of creditors' rights generally or by the effect of general principles of equity (regardless of whether enforceability is considered in a proceeding in equity or at law) or in the case of rights in the nature of indemnity thereunder, as may be limited by applicable law and principles of public policy.

6.3 Licenses and Approvals. By the Purchase Date, the Project Purchaser shall have received and shall then hold all regulatory approvals legally required for the Project Purchaser to own the Project.

6.4 Assignment and Assumption of Power Sales Agreement and O & M Agreement. Project Purchaser has full power and authority to accept the Authority's assignment of the Authority's rights and obligations under the Power Sales Agreement and the O & M Agreement, and all steps necessary have been taken to constitute the Power Sales Agreement and the O & M Agreement valid binding obligations of the Project Purchaser and the Power Purchaser in accordance with their respective terms, except as those terms may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws relating to or affecting the enforcement of creditors' rights generally or by the effect of general principles of equity (regardless of whether enforceability is considered in a proceeding in equity or at law) or in the case of rights in the nature of indemnity thereunder, as may be limited by applicable law and principles of public policy. Acceptance of the assignment of the Authority's rights and obligations under the Power Sales Agreement and the O & M Agreement does not violate any provision of law applicable to the Project Purchaser or the Project Purchaser's Articles of Incorporation or its Bylaws, each as amended, and does not materially conflict with or result in a default under any agreement or instrument to which the Project Purchaser is a party or by which it is bound (or, to the extent of any such conflict or default, the same has been waived).

Section 7. Affirmative Covenants of Project Purchaser.

Project Purchaser covenants and agrees to observe and perform the following covenants as owner of the Project from and after the Purchase Date until the date on which all Bonds and Parity Obligations have been retired:

7.1 Creation of Liens. Project Purchaser shall not create or permit any liens or encumbrances on or against the Project, other than the Deed of Trust and any Permitted Encumbrance thereunder and any lien in favor of the Trustee securing the Bonds and Parity Obligations, and shall take all actions necessary to promptly remove any such lien or encumbrance from the Project.

7.2 Sale of Property. The Project Purchaser shall not sell, transfer or otherwise dispose of any Property constituting the Project, except that the Project Purchaser may sell or exchange at any time and from time to time any property or facilities constituting part of the Project provided (i) it shall determine that such property or facilities are not useful in the operation of the Project, or (ii) it shall file with the Trustee a certificate of an Authorized Officer of the Project Purchaser stating that the fair market value of the Property sold or exchanged does not exceed $500,000, or (iii) if such or fair market value exceeds $500,000, it shall file with the Authority and the Trustee an opinion of the Independent Consultant stating that the sale or exchange of such Property will not impair the ability of the Project Purchaser during the current or any future Fiscal Year to pay the Installment Payments required by Section 2.3. The proceeds of any such sale or exchange not used to acquire other property necessary or desirable for the safe or efficient operation of the Project shall forthwith be paid to the Trustee for deposit in the

Renewal and Replacement Fund and shall be credited against any Renewal and Replacement Fund Contribution required for the current and any future Fiscal Year.

7.3 Lease or Grant of Use of Project. Except as provided in the Power Sales Agreement and the O & M Agreement, the Project Purchaser shall not permit any other person to use any property or facilities constituting the Project under any contract, lease, license, easement or other use arrangement, except the Project Purchaser also may lease or make contracts or grant licenses for the operation of, or make arrangements for the use of, or grant easements or other rights with respect to, any part of the Project, provided that any such lease, contract, license, arrangement, easement or right (i) does not impede the operation by the Project Purchaser or the Power Purchaser or their respective agents of the Project, (ii) does not relieve the Project Purchaser from its obligations under this Agreement or the Project Note; (iii) does not materially impair the purposes of the Act to be accomplished by the operation of the Project as provided in the Power Sales Agreement; (iv) does not in any manner impair or adversely affect the rights or security of the Holders under the Resolution; and (v) does not adversely affect the exemption from federal income taxation of the interest on the Bonds; and provided, further, that if the depreciated cost of the property to be covered by any such lease, contract, license, arrangement, easement or other right is in excess of $500,000 the Project Purchaser shall first file with the Authority and Trustee an opinion of the Independent Consultant that such action does not impair the ability of the Project Purchaser during the current or any future Fiscal Year to pay the Installment Payments required by Section 2.3. Any payments received by the Project Purchaser under or in connection with any such lease, contract, license, arrangement, easement or right in respect of the Project or any part thereof shall constitute Revenues.

7.4 Independent Consultant. The Project Purchaser shall cause an independent individual or firm of engineers or any other consultants or corporation that meets the requirements of the definition of Independent Consultant herein to be selected and employed to carry out the duties imposed on the Independent Consultant under this Agreement, the Power Sales Agreement, the O & M Agreement and the Resolution.

7.5 Annual Budget. The Project Purchaser shall prepare and file (or cause to be prepared and filed) with the Authority and the Trustee at least ten (10) days prior to each Fiscal Year an Annual Budget for the Project for such Fiscal Year. Each Annual Budget shall set forth in reasonable detail the estimated Revenues and Operating Expenses, including Project Costs and Installment Payments for the Fiscal Year, and including provision for the estimated amount to be deposited in and expended from each Fund and Account established under the Resolution. If the Project Purchaser or the Purchaser is required to incur extraordinary unanticipated Operating Expenses or to make unanticipated expenditures for Project Repairs not reflected in the Annual Budget then in effect, the Project Purchaser shall cause to be prepared, adopted and filed with the Authority and the Trustee not later than 30 days following the incurrence of such expenses or expenditures on amended Annual Budget reflecting all required adjustments in estimated Revenues and Operating Expenses.

7.6 Operation and Maintenance of Project. The Project Purchaser shall be solely responsible for the operation and maintenance of the Project and shall use its best efforts to operate and maintain the Project (or cause the Project to be operated and maintained) in an

efficient and economical manner consistent with Prudent Utility Practice, the Power Sales Agreement and the O & M Agreement, and applicable federal and state laws and regulations relating to the licensing, use and operation of the Project. The Project Purchaser shall use its best efforts to cause the Project to be so maintained, preserved, reconstructed and kept, with the appurtenances and every part and parcel thereof, in good repair, working order and good condition, and shall from time to time use its best efforts to cause to be made all necessary and proper repairs, replacements and renewals so that at all times the operation of the Project may be properly and advantageously conducted.

7.7 Limitation on Operating Expenses and Other Costs. The Project Purchaser shall not incur or permit the incurrence of Project Operating Expenses or expenditures from the Renewal and Replacement Fund in excess of the reasonable and necessary amounts of such expenses or costs, respectively, and shall not expend or permit to be expended any amount for Operating Expenses or from the Renewal and Replacement Fund for costs payable therefrom for such Fiscal Year in excess of the respective amounts provided therefor in the Annual Budget or amended Annual Budget as then in effect; provided, that the foregoing shall not prohibit the Project Purchaser from incurring or expending any Operating Expenses or any costs for Project Repairs that, in accordance with Prudent Utility Practice, are necessary or appropriate to be made in connection with or as a result of any emergency involving the Project or any portion thereof endangering life or property. Nothing in this Section contained shall limit the amount which the Project Purchaser or the Purchaser may expend for Operating Expenses or other costs payable from the Renewal and Replacement Fund in any Fiscal Year provided any amounts expended therefor in excess of such Annual Budget shall be received by the Project Purchaser or the Purchaser from some source other than the Revenues, which source shall not be reimbursable out of Revenues.

7.8 Collection of Revenues. The Project Purchaser shall collect or otherwise cause the Project to produce, and pay or cause to be paid to the Trustee, revenues at least sufficient to pay the Purchase Price of the Project and all Installment Payments in full when due, including but not limited to Debt Service on all Outstanding Bonds and Parity Obligations, amounts required to maintain the Debt Service Reserve Fund at the Debt Service Reserve Requirement or reimburse the provider of any Reserve Fund Credit Facility for draws thereon, amounts required to maintain the Renewal and Replacement Fund at the level recommended by the Independent Consultant and in any event not less than the Minimum R & R Fund Requirement, and all other Installment Payments payable in respect of the Project and Outstanding Bonds and Parity Obligations.

7.9 No Free Service. The Project Purchaser shall not furnish or supply (or permit to be furnished or supplied) any use, output, capacity or service of the Project free of charge to any person, firm or corporation, public or private, except to the extent ordered by the Alaska Public Utilities Commission or other regulatory authority, and shall enforce payment of all amounts owing therefor.

7.10 Performance of this Agreement, Power Sales Agreement, O & M Agreement and Deed of Trust. The Project Purchaser shall perform its obligations under this Agreement, the Power Sales Agreement, the O & M Agreement and the Deed of Trust, shall

enforce performance by Power Purchaser of its obligations under the Power Sales Agreement and the O & M Agreement, and shall not permit or agree to any termination or amendment of or action thereunder that would in any manner lessen, postpone or restrict payment obligations thereunder or that otherwise would materially impair or materially adversely affect the ability of the Project Purchaser to make or cause to be made the Installment Payments required by Section 2.3 of materially impair or materially adversely affect the rights or security of the Holders of Bonds and Parity Obligations.

7.11 Insurance.

(a) The Project Purchaser shall insure the Project (or cause the Project to be insured) at all times against such risks and in such amounts, with such deductible provisions, or provide for a source of self insurance, as is customary in connection with the operation of facilities of a type and size comparable to the Project and as may reasonably and economically be obtained or secured. The determination of what is "customary" and what may be "reasonably and economically obtained or secured" within the meaning of the prior sentence shall be made by a nationally recognized, independent insurance broker or consultant with expertise in insuring projects comparable to the Project selected and retained by the Project Purchaser (the "insurance consultant").

(b) Each insurance policy required by this Section (i) shall be issued or written by a financially responsible insurer (or insurers), or by an insurance fund established by the United States of America or State of Alaska or an agency or instrumentality thereof, (ii) shall be in such form and with such provisions (including, without limitation and where applicable, loss payable clauses payable to the Trustee, waiver of subrogation clauses, provisions relieving the insurer of liability to the extent of minor claims and the designation of the named assureds) as are generally considered standard provisions for the type of insurance involved, and (iii) shall prohibit cancellation or substantial modification by the insurer without at least thirty days' prior written notice to the Trustee and the Authority. Without limiting the generality of the foregoing, all insurance policies, and other arrangements to the extent feasible, carried pursuant to this Section shall name the Trustee, the Authority and the Project Purchaser as parties insured thereunder as the respective interest of each of such parties may appear, and loss thereunder shall be made payable and shall be applied as provided in this Agreement and the Resolution.

(c) The Project Purchaser covenants to the extent feasible and economically prudent, to carry insurance insuring against the risks and hazards to the Project Purchaser and the Project to the same extent that other entities comparable to the Project Purchaser and owning or operating facilities of the size and type comparable to the Project, and taking into account any special circumstances of the Project, carry such insurance. If the Project Purchaser determines that the insurance required by this Section in not available to the Project Purchaser at reasonable cost, and, in any case, every five years, from and after the Purchase Date, the Project Purchaser shall cause the insurance consultant to review the insurance coverage of, and the insurance required for, the Project Purchaser and the Project and make recommendations respecting the types, amounts and provisions of insurance that should be carried with respect to the Project Purchaser and the Project and their operation, maintenance and administration. A signed copy of the report of the insurance consultant shall be filed with the

Trustee and copies thereof shall be sent to the Authority, and the insurance requirements specified thereunder, including any and all of the dollar amounts set forth in this Section, shall be deemed modified or superseded as necessary to conform with the recommendations contained in that report of the insurance consultant.

(d) Insurance maintained pursuant to this Section may be part of one or more master policies maintained by the Project Purchaser so long as the form of such policy and the coverage is the same as if a separate policy was in effect.

(e) The Project Purchaser shall on or before January 1 of each year submit to the Trustee and the Authority a certificate verifying that all minimum insurance coverages required by this Agreement are in full force and effect as of the date of such certificate.

7.12 Reconstruction; Application of Insurance Proceeds. If any useful portion of the Project shall be damaged or destroyed, the Project Purchaser shall, as expeditiously as possible, continuously and diligently prosecute or cause to be prosecuted the reconstruction or replacement thereof, unless a determination has been made to end the Project pursuant to Section 15 of the Power Sales Agreement, or unless the Independent Consultant in an opinion or report filed with the Trustee and the Authority shall state that such reconstruction and replacement is not consistent with Prudent Utility Practice or is not in the best interests of the Project Purchaser and the Holders. The proceeds of any insurance paid on account of such damage or destruction shall be paid to and held by the Trustee in a special account in the Project Fund and made available for, and to the extent necessary be applied to, the cost of such reconstruction or replacement. Pending such application, such proceeds may be invested at the direction of the Project Purchaser in Investment Securities which mature not later than such time as shall be necessary to provide moneys when needed to pay such costs of reconstruction or replacement. The proceeds of any insurance not applied by the Project Purchaser within 36 months after receipt thereof to repairing or replacing damaged or destroyed property, or in respect to which notice in writing of intention to apply the same to the work of repairing or replacing the property damaged or destroyed shall not have been given to the Trustee by the Project Purchaser within such 36 months, or which the Project Purchaser shall at any time notify the Trustee are not to be so applied, in excess of $5,000,000 shall be used to retire Bonds and Parity Obligations on a pro rata basis in proportion to the Outstanding principal amount of each Series by purchase or redemption to the extent provided by the Supplemental Resolution and Parity Obligation Instrument authorizing the Bonds and Parity Obligations and the terms thereof. Notwithstanding the foregoing, in the event that payments are made from the Renewal and Replacement Fund for any such repairing of property damaged or destroyed prior to the availability of insurance proceeds, such proceeds when received by the Trustee shall be deposited in the Renewal and Replacement Fund to the extent of such payments therefrom. If the proceeds of insurance authorized by this Section to be applied to the reconstruction or replacement of any portion of the Project are insufficient for such purpose, the deficiency may be supplied out of moneys in the Renewal and Replacement Fund.

7.13 Books and Records.

(a) The Project Purchaser shall keep or cause to be kept proper books and records of all transactions relating to the Project, the Power Sales Agreement, the O & M Agreement and this Agreement, subject to inspection by the Authority and the Trustee and by the Holders of Bonds and Parity Obligations as required by the Resolution, and to timely provide the Authority and the Trustee with the financial and operating reports and notices of events as required by the Resolution.

(b) The Project Purchaser shall annually, within 120 days after the close of each Fiscal Year, file with the Trustee and the Authority a copy of its audited financial statements for such Fiscal Year, including the following, setting forth in reasonable detail:

(i) a balance sheet for the Project Purchaser showing assets, liabilities and equity at the end of such Fiscal Year;

(ii) a statement of the Project Purchaser's revenues and expenses for such Fiscal Year; and

(iii) a statement of cash flows as of the end of such Fiscal Year.

The financial statements shall be accompanied by an opinion of an Accountant stating that the financial statements audited present fairly the financial position of the Project Purchaser at the end of the Fiscal Year, the results of its operations and its cash flows for the period examined, in conformity with generally accepted accounting principles. Any such audited financial statement may be presented on a consolidated or combined basis with other reports of the Project Purchaser, but only to the extent that such basis of reporting shall be consistent with that required hereunder.

(c) The Project Purchaser shall file with the Trustee and the Authority (i) forthwith upon becoming aware of any Event of Default or default in the performance by the Project Purchaser of any covenant, agreement or condition contained in this Resolution, a certificate signed by an Authorized Officer of the Project Purchaser and specifying such Event of Default or default and (ii) within 120 days after the end of each Fiscal Year, a certificate signed by an Authorized Officer of the Project Purchaser stating that, to the best of his knowledge and belief, the Project Purchaser has kept, observed, performed and fulfilled each and every one of its covenants and obligations contained in this Agreement and there does not exist at the date of such certificate any default by the Project Purchaser under this Agreement or any Event of Default or other event which, with the lapse of time specified in Section 9.1, would become an Event of Default, or, if any such default or Event of Default or other event shall so exist, specifying the same and the nature and status thereof.

7.14 Tax Covenants. So long as any tax-exempt Bonds or tax-exempt Parity Obligations are outstanding, the Project Purchaser shall do or cause to be done all things required to maintain the exclusion of interest on tax-exempt Bonds and any tax-exempt Parity Obligations from gross income of the Holders thereof for federal income tax purposes, and not to use or permit the use of the Project or proceeds of tax-exempt Bonds or tax-exempt Parity Obligations or other amounts treated as proceeds thereof or take any other action that would cause interest on tax-exempt Bonds or any tax-exempt Parity Obligations to cease to be excluded from gross

income of the Holders thereof for federal income tax purposes, except for Bonds held by a person who, within the meaning of Section 147(a) of the Code, is a "substantial user" of the Project or "related person." In particular, but without limitation of the generality of the foregoing covenant, so long as any tax-exempt Bonds or tax-exempt Parity Obligation are outstanding, the Project Purchaser shall use and operate the Project as facilities for the local furnishing of electric energy within the meaning of Section 142(a)(8) of the Code as and to the extent applicable to tax-exempt Bonds and Parity Obligations.

7.15 Payment of Taxes and Charges. The Project Purchaser shall timely pay and discharge (or cause to be paid and discharged) all taxes, assessments and other governmental charges, or required payments in lieu thereof, imposed on the Project and the revenues thereof, and all lawful claims for labor and materials and supplies, except such as are contested in good faith by proper legal proceedings.

7.16 Renewal and Replacement Fund. Pursuant to the Resolution, the Authority has established the Renewal and Replacement Fund held by the Trustee exclusively for Project purposes, including payment or reimbursement of the cost of Project Repairs and associated engineering, construction and administration costs, into which all Renewal and Replacement Fund Contributions have been deposited. The Project Purchaser shall continue to maintain (or cause to be maintained) the Renewal and Replacement Fund with respect to the Project as required by the Resolution, this Agreement and the Power Sales Agreement. Upon the retirement of all Bonds and Parity Obligations, the amount remaining in the Renewal and Replacement Fund shall be paid first to the Authority for any accrued and unpaid Installment Payments and then to the Project Purchaser.

7.17 Maintenance of Power Purchaser's System. The Project Purchaser, pursuant to the Power Sales Agreement, shall cause the Power Purchaser to maintain its electric utility system within the City and Borough of Juneau, Alaska, together with any other system directly interconnected therewith for the distribution, transmission and generation of Electric Power that is owned by the Power Purchaser, in good standing under the Power Purchaser's certificate of public convenience and necessity issued by APUC, and to operate and maintain such system in accordance with Prudent Utility Practice in such manner as will permit the Power Purchaser to timely pay in full all Project Costs required to be paid under the Power Sales Agreement and O & M Agreement and as will permit the Project Purchaser to timely pay in full all Installment Payments and Additional Payments required by this Agreement.

7.18 Assignment of Rights under Agreement. Except as provided in the Power Sales Agreement and the O & M Agreement and in Section 7 hereof, the Project Purchaser agrees that it shall not assign its rights, interests, or obligations hereunder.

7.19 Indemnification by Project Purchaser. The Project Purchaser releases the Authority from, agrees that the Authority shall not be liable for, and indemnify the Authority against, all liabilities, claims, costs and expenses imposed upon, incurred by or asserted against the Authority, without gross negligence or intentional misconduct on the part of the Authority relating to any of the following: (a) any loss or damage to property or injury to or death of or loss by any person that may be occasioned by any cause whatsoever pertaining to the construction,

maintenance, operation and use of the Project; (b) any breach or default on the part of the Project Purchaser in the performance of any covenant or agreement of the Project Purchaser under this Agreement, the Project Note or any related document, or arising from any act or failure to act by the Project Purchaser, or any of its agents, contractors, servants, employees or licensees; (c) any violation by the Project Purchaser of any contract, agreement or restriction relating to the Project; (d) any fraud or misrepresentation or omission contained in the information relating or pertaining to the financial condition of the Project Purchaser which, if known to a purchaser of Bonds might be considered a material factor in a decision whether or not to purchase Bonds; (e) the performance of this Agreement and the Resolution; (f) the trading, redemption or servicing of Bonds, and the provision of any information or certification furnished in connection therewith concerning the Bonds, the Project or the Project Purchaser (including, without limitation, the Resolution, this Agreement and any information furnished by the Project Purchaser for, and included in, or used as a basis for preparation of, any certifications, information statements or reports furnished by the Authority), and any other information or certification obtained from the Project Purchaser to assure the exclusion of the interest on the Bonds from gross income for federal income tax purposes; (g) the Project Purchaser's failure to comply with any requirement of this Agreement or the Code pertaining to such exclusion of that interest including the covenants in Section 7.14 hereof; (h) any law, ordinance or regulation (including any environmental law or hazardous waste law) violation in connection with the Project; and (i) any claim, action or proceeding brought with respect to the matters set forth in (a), (b), (c), (d), (e), (f), (g) and (h) above.

The Project Purchaser agrees to indemnify the Trustee for and to hold it harmless against all liabilities, claims, costs and expenses incurred without negligence or bad faith on the part of the Trustee, on account of any action taken or omitted to be taken by the Trustee in accordance with the terms of this Agreement, the Bonds, the Project Note or the Resolution or any action taken at the request of or with the consent of the Project Purchaser, including the costs and expenses of the Trustee in defending itself against any such claim, action or proceeding brought in connection with the exercise or performance of any of Is powers or duties under this Agreement, the Bonds, the Resolution or the Project Note.

In case any action or proceeding is brought against the Authority or the Trustee in respect of which indemnity may be sought hereunder, the party seeking indemnity promptly (but in any event within thirty (30) days of learning of such action or proceeding) shall give notice (the "Project Purchaser Notice") of that action or proceeding to the Project Purchaser, and the Project Purchaser upon receipt of that notice shall have the right to assume the defense of the action or proceeding; provided, however that if the party seeking indemnity has been advised in an opinion of counsel that there may be legal defenses available to it which are adverse to or in conflict with those available to the Project Purchaser or other indemnified parties, which in the opinion of counsel should be handled by separate counsel, the Project Purchaser shall not have the right to assume the defense of such action on behalf of the indemnified party, but the Project Purchaser shall be responsible for the reasonable fees and expenses of the indemnified party in conducting its defense; provided, further, that failure of a party to give that notice shall not relieve the Project Purchaser from any of its obligations under this Section unless that failure prejudices the defense of the action or proceeding by the Project Purchaser; and provided further that the Company shall not be obligated to make any payments with respect to fees and expenses incurred prior to the giving of the Project Purchaser

Notice. At its own expense, an indemnified party may employ separate counsel and participate in the defense. The Project Purchaser shall not be liable for any fees and expenses incurred without the consent of the Project Purchaser, which consent shall not be unreasonably withheld. The Project Purchaser shall not be liable for any settlement made without the consent of the Company, which consent may be withheld at the Project Purchaser's sole discretion.

The indemnification set forth above is intended to and shall include the indemnification of all affected officials, directors, board members, officers, legal counsel, staff and employees of the Authority and the Trustee, respectively. This indemnification is intended to and shall be enforceable by the Authority and the Trustee, respectively, to the full extent permitted by law, and shall survive the payment in full of the Bonds, the termination of this Agreement, and the resignation or removal of the Trustee.

Section 8. Prepayment and Redemption Provisions.

8.1 Redemptions General.

(a) So long as no Event of Default shall have occurred and be continuing, the Project Purchaser shall have the right, but only upon the request and direction of the Power Purchaser, to direct the Authority to redeem Bonds or Parity Obligations pursuant to any provisions of the Resolution that permit the Authority to direct the Trustee to redeem Bonds or Parity Obligations in an optional or extraordinary optional redemption.

(b) Any such direction by the Project Purchaser to the Authority pursuant to Section 8.1(a) shall be subject to the limitations that (i) any excess proceeds of tax-exempt Bonds or tax-exempt Parity Obligations transferred from the Project Fund to the Revenue Fund pursuant to Section 5.3.6 of the Resolution that are required by an Opinion of Counsel to be used to redeem such Bonds or Parity Obligations shall be used only for that purpose; and (ii) the Project Purchaser shall not direct that any funds held by the Trustee in the Rebate Fund or in other Funds under the Resolution reasonably expected to be required to pay any Rebate Amount be used to carry out any optional or extraordinary optional redemption.

8.2 Optional Prepayment of Purchase Price. The Project Purchaser, at its option, may pay the remaining balance of the Purchase Price or any portion thereof in advance at the times and Redemption Prices and after notice to the Authority and the Trustee in the manner provided in the Resolution. The Project Purchaser shall pay the Redemption Price of any Bonds or Parity Obligations so called for redemption at the times and in the manner required by the Resolution.

8.3 Extraordinary Optional Redemption. The Project Purchaser may direct the redemption of the unpaid principal balance of all Outstanding Bonds and Parity Obligations in accordance with the applicable provisions of the Resolution upon the occurrence of any of the following events:

(a) The Project shall have been damaged or destroyed to such an extent that, in the Project Purchaser's reasonable judgment, (1) the Project cannot reasonably be

expected to be restored, within a period of twelve (12) months, to the condition immediately preceding such damage or destruction, or (2) the normal use and operation of the Project are reasonably expected to be prevented for a period of twelve (12) consecutive months.

(b) Title to, or the temporary use of, all or a significant part of the Project shall have been taken under the exercise of the power of eminent domain (1) to such extent that the Project cannot, in the Project Purchaser's reasonable judgment reasonably be expected to be restored within a period of twelve (12) months to a condition of usefulness comparable to that existing prior to the taking, or (2) as a result of the taking, normal use and operation of the Project are reasonably expected, in the Project Purchaser's reasonable judgment, to be prevented for a period of twelve (12) consecutive months.

(c) As a result of any changes in the Constitution of the State, the Constitution of the United States of America, or state or federal laws or as a result of legislative or administrative action (whether state or federal) or by final decree, judgment or order of any court or administrative body (whether state or federal) entered after the contest thereof by the Authority or the Project Purchaser in good faith, this Agreement shall have become void or unenforceable or impossible of performance in accordance with the intent and purpose of the parties as expressed in this Agreement, or if unreasonable burdens or excessive liabilities shall have been imposed with respect to the Project or the operation thereof including, without limitation, federal state or other ad valorem, property, income or other taxes not being imposed on the date of this Agreement other than ad valorem taxes presently levied upon privately owned property used for the same general purpose as the Project or the facility of which it is a part.

(d) The Project Purchaser shall have delivered to the Authority and the Trustee an Opinion of Counsel to the effect that, as a result of a change in federal tax law that applies to any outstanding tax-exempt Bonds or tax-exempt Parity Obligations, interest on such Bonds or Parity Obligations is no longer excluded from gross income of the Holders thereof for federal income tax purposes.

If the Project Purchaser determines to direct any such extraordinary optional redemption of Bonds and Parity Obligations, the Project Purchaser shall, within ninety (90) days following the event permitting the redemption of the Bonds and Parity Obligations, give notice to the Authority and to the Trustee specifying the date on which the Project Purchaser will deliver the funds required for that redemption to the Trustee, which date shall be not more than ninety (90) days from the date that notice is mailed and shall make arrangements satisfactory to the Trustee for the giving of the required notice of redemption.

8.4 Mandatory Redemption in Event of a Determination of Taxability. If, as provided in the Bonds and the Resolution, the Bonds or any Parity Obligations become subject to mandatory redemption because a Determination of Taxability (as such term is defined in the Resolution) shall have been made with respect thereto, the Project Purchaser shall deliver to the Trustee, upon the date requested by the Trustee, the amount needed to pay the Redemption Price of the Bonds or Parity Obligations in accordance with the mandatory redemption provisions relating thereto set forth in the Bonds and the Resolution.

8.5 Amounts Payable on Prepayment. The amount payable by the Project Purchaser to the Trustee in the event of an optional, extraordinary optional or mandatory redemption shall be the sum of the following:

(i) An amount of money which, when added to the money and investments held to the credit of the Debt Service Fund and, in the case of a redemption of all Outstanding Bonds and Parity Obligations, the Debt Service Reserve Fund and the Renewal and Replacement Fund, will be sufficient pursuant to the provisions of the Resolution to pay, at the applicable Redemption Price, and discharge all then Outstanding Bonds and Parity Obligations to be redeemed on the earliest applicable redemption date, that amount to be paid to the Trustee, plus

(ii) An amount of money equal to the Additional Payments relating to the Bonds or Parity Obligations accrued and to accrue until actual final payment and redemption of the Bonds or Parity Obligations, that amount or applicable portions thereof to be paid to the Trustee or to the persons to whom those Additional Payments are or will be due, plus

(iii) Any other amounts due and payable by Project Purchaser to Authority or Trustee under this Agreement or the Resolution.

Section 9. Events of Default and Remedies.

9.1 Events of Default. Each of the following shall be an Event of Default under this Agreement:

(a) Any Installment Payment or Additional Payment shall not be paid on or prior to the date on which that Installment Payment or Additional Payment is due and payable;

(b) The Project Purchaser shall fail to deliver to the Trustee, or cause to be delivered on its behalf, the money needed to redeem any outstanding Bonds or Parity Obligations in the manner and upon the date requested in writing by the Trustee as provided in Section 8.2 of this Agreement;

(c) The Project Purchaser shall fail to observe and perform any other agreement, term or condition contained in this Agreement, and the continuation of such failure for a period of thirty (30) days after notice thereof shall have been given to the Project Purchaser by the Authority or the Trustee, or for such longer period as the Authority and the Trustee may agree to in writing; provided, that if the failure is other than the payment of money and is of such nature that it can be corrected but not within the applicable period, that failure shall not constitute an Event of Default so long as the Project Purchaser institutes curative action within the applicable period and diligently pursues that action to completion;

(d) The Project Purchaser shall: (i) admit in writing its inability to pay its debts generally as they become due; (ii) have an order for relief entered in any case

commenced by or against it under the federal bankruptcy laws, as now or hereafter in effect; (iii) commence a proceeding under any other federal bankruptcy, insolvency, reorganization or similar law, or have such a proceeding commenced against it and either have an order of insolvency or reorganization entered against it or have the proceeding remain undismissed and unstayed for ninety (90) days; (iv) make an assignment for the benefit of creditors; or (v) have a receiver or trustee appointed for it or for the whole or any substantial part of its property;

(e) Any material representation or warranty made by the Project Purchaser herein or any statement in any report, certificate, financial statement or other instrument furnished in connection with this Agreement or with the purchase of the Bonds shall at any time prove to have been false or misleading in any material respect when made or given;

(f) The Project Purchaser shall fail to enforce the Power Sales Agreement in accordance with its terms and shall fail to charge and collect amounts due under the Power Sales Agreement; and

(g) The occurrence of an Event of Default under the Resolution.

Notwithstanding the foregoing, if, by reason of Force Majeure, the Project Purchaser is unable to perform or observe any agreement term or condition hereof which would give rise to an Event of Default under subsection (c) hereof, the Project Purchaser shall not be deemed in default during the continuance of such inability. However, the Project Purchaser shall promptly give notice to the Trustee and the Authority of the existence of an event of Force Majeure and shall use commercially reasonable efforts to remove the effects thereof provided that the settlement of strikes, lockouts, or other industrial disturbances shall be entirely within its discretion.

The term Force Majeure shall mean, without limitation, the following:

(i) acts of God; strikes, lockouts or other industrial disturbances acts of public enemies; orders or restraints of any kind of the government of the United States of America or of the State or any of their departments, agencies, political subdivisions or officials, or any civil or military authority; insurrections; civil disturbances; riots; epidemics; landslides; lightning; earthquakes; fires; hurricanes; tornadoes; storms; droughts; floods; arrests; restraint of government and people; explosions; breakage, malfunction or accident to facilities, machinery, transmission pipes or canals; partial or entire failure of utilities; shortages of labor, materials, supplies or transportation; or

(ii) any cause, circumstance or event not reasonably within the control of the Project Purchaser that has a material adverse effect on the business, operations, assets, financial condition or business prospects of the Project Purchaser.

The occurrence of an Event of Default under subsection (d) above, and the exercise of remedies upon any such default, shall be subject to any applicable limitations of federal bankruptcy law affecting or precluding that default or exercise during the pendency of or immediately following any bankruptcy, liquidation or reorganization proceedings.

9.2 Remedies on Default. Whenever an Event of Default shall have happened and be continuing, any one or more of the following remedial steps may be taken:

(a) If acceleration of the principal amount of the Bonds has been declared pursuant to the Resolution, the Trustee shall declare all Installment Payments and Additional Payments to be immediately due and payable;

(b) The Authority or the Trustee may have access to, inspect, examine and make copies of the books, records, accounts and financial data of the Project Purchaser pertaining to the Project; and

(c) The Authority or the Trustee may pursue all remedies now or hereafter existing at law or in equity to collect all amounts then due and thereafter to become due under this Agreement or the Project Note or to enforce the performance and observance of any other obligation or agreement of the Project Purchaser under those instruments.

Any amounts collected as Installment Payments or applicable to Installment Payments and any other amounts which would be applicable to payment of principal of and interest on the Bonds collected pursuant to action taken under this Section shall be applied first to payment of the fees and expenses of the Trustee and the Authority in connection with such Event of Default and the collection of Installment Payments, and then shall be paid into the Debt Service Fund and applied in accordance with the provisions of the Resolution or, if the outstanding Bonds have been paid and discharged in accordance with the provisions of the Resolution, shall be paid as provided in the Resolution for transfers of remaining amounts in the Debt Service Fund.

The provisions of this Section are subject to the further limitation that the rescission by the Trustee of its declaration that all of the Bonds are immediately due and payable also shall constitute an annulment of any corresponding declaration made pursuant to paragraph (a) of this Section and a waiver and rescission of the consequences of that declaration and of the Event of Default with respect to which that declaration has been made, provided that no such waiver or rescission shall extend to or affect any subsequent or other default or impair any right consequent thereon.

9.3 No Remedy Exclusive. No remedy conferred upon or reserved to the Authority or the Trustee by this Agreement is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement or the Project Note, or now or hereafter existing at law, in equity or by statute. No delay or omission to exercise any right or power accruing upon any default shall impair that night or power or shall be construed to be a waiver thereof but any such night and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the Authority or the Trustee to exercise any remedy reserved to it in this Section, it shall not be necessary to give any notice, other than any notice required by law or for which express provision is made herein.

9.4 Agreement to Pay Attorneys' Fees and Expenses. If an Event of Default occurs and the Authority or the Trustee incurs expenses, including reasonable attorneys' fees, in

connection with the enforcement of this Agreement or the Project Note or the collection of sums due thereunder, the Project Purchaser shall reimburse the Authority and the Trustee, as applicable, for the reasonable expenses so incurred upon demand.

9.5 No Waiver. No failure by the Authority or the Trustee to insist upon the strict performance by the Project Purchaser of any provision hereof shall constitute a waiver of their right to strict performance and no express waiver shall be deemed to apply to any other existing or subsequent right to remedy the failure by the Project Purchaser to observe or comply with any provision hereof.

9.6 Notice of Default. The Project Purchaser shall provide written notice to the Trustee immediately if it becomes aware of the occurrence of any Event of Default hereunder or of any fact, condition or event which, with the giving of notice or passage of time or both, would become an Event of Default.

Section 10. Successors; Assignment.

This Agreement shall be binding upon and inure to the benefit of the Authority and any governmental successor thereto, and also shall be binding upon and inure to the benefit of Project Purchaser and its corporate successors. This Agreement shall not be assignable by Project Purchaser to any other person or entity, and any such purported assignment shall be void.

Section 11. Assignment of Authority's Rights.

To secure the payment of the Bonds and Parity Obligations in accordance with their terms the Authority hereby assigns to the Trustee, for the benefit of the Holders, without recourse, all of its rights, title and interest in this Agreement and the Project Note, except for the Unassigned Authority Rights. The Authority's duties hereunder are not assigned. By such assignment, the Trustee shall succeed to all the rights and privileges of the Authority hereunder to the extent of such assignment. ALL REFERENCES TO THE AUTHORITY HEREIN SHALL BE TREATED AS REFERENCES TO THE TRUSTEE, ACTING AS ASSIGNEE AND DELEGATEE OF THE AUTHORITY TO THE EXTENT THAT THE RIGHTS OF THE AUTHORITY HAVE BEEN ASSIGNED TO THE TRUSTEE, EXCEPT THAT THOSE REFERENCES CONTAINED IN THE AUTHORITY UNASSIGNED AUTHORITY RIGHTS SECTIONS SHALL BE TREATED AS REFERRING TO THE AUTHORITY ONLY.

The Project Purchaser hereby consents to the assignment of rights set forth in this Section 11 and agrees to faithfully render the performance of all of its duties and obligations hereunder to the Trustee except for the Unassigned Authority Rights, which shall be rendered only to or at the direction of the Authority.

When all principal of and premium, if any, and interest due on the Bonds and the Parity Obligations and all amounts owed to the Trustee under the Resolution are fully paid, all obligations of the Trustee hereunder shall terminate, and the Trustee shall release and assign to the Authority any remaining interest it has in the Deed of Trust, the Project Note and this Agreement.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed the day and year first above written.

ALASKA INDUSTRIAL DEVELOPMENT AND EXPORT AUTHORITY

By: _____

Its: _____

SNETTISHAM ELECTRIC COMPANY

By: _____

Its: _____

The undersigned, as Trustee, hereby accepts the assignment by the Authority of the Authority's rights, title and interests in this Agreement and the Project Note (with certain reservations and exceptions noted in Section 11), without recourse, as of the above date.

_____, as Trustee

By _____

Its: Authorized Officer

EXHIBIT B

COPY

FORM OF PROJECT NOTE

Snettisham Electric Company (the "Company"), a corporation for profit duly organized and validly existing under the laws of the State of Alaska and qualified to transact business in the state of Alaska, for value received, promises to pay to the Alaska Industrial Development and Export Authority (the "Authority"), or its assigns, the principal sum of _____ DOLLARS ($_____) and to pay interest on the unpaid balance of such principal sum from and after the date hereof in such amounts and representing such annual interest rate or rates as may be necessary to provide for payment of the Purchase Price of the Project as described herein.

This Project Note has been executed and delivered by the Company to the Authority pursuant to a certain Project Sale Agreement (the "Agreement") dated as of _____, ____, between the Authority and the Company. Pursuant to the Agreement, the Authority has sold to the Company, and the Company has purchased from the Authority, the Project financed with proceeds received from the sale of the Authority's Power Revenue Bonds, First Series (Snettisham Hydroelectric Project) (the "Bonds") [to be supplemented on the Purchase Date for other then-outstanding Bonds or Parity Obligations, if any], in the outstanding aggregate principal amount of $_____, in consideration of payment by the Company of the Purchase Price (as defined in the Agreement) of the Project in Installment Payments at the times and in the amounts set forth in the Agreement and in this Project Note. The Bonds were issued pursuant to and are secured by the Authority's Snettisham Power Revenue Bond Resolution, Resolution No. G98-09, as supplemented by a First Series Resolution, Resolution No. G98-10, each adopted by the Authority on July 22, 1998 (together, the "Resolution"), and a Deed of Trust on the Project granted by the Authority to U.S. Bank Trust National Association, as trustee (the "Trustee"). Pursuant to the Resolution, the Authority has assigned all of its right, title and interest (except Unassigned Authority Rights) in and to the Agreement and this Project Note to the Trustee as additional security for the Bonds, and the Company hereby acknowledges and consents to such assignment. Pursuant to the Agreement, the Company has purchased the Project subject to the Deed of Trust. All capitalized terms not otherwise defined in this Project Note shall have the meanings set forth in the Resolution and the Agreement.

To provide funds to pay the principal of and redemption premium, if any, and interest on the Bonds as and when due as specified in the Resolution and the Bonds, the Company hereby agrees to and shall make Installment Payments of the Purchase Price in immediately available funds by 9:00 a.m. Seattle time on the dates and in the amounts specified in Section 2.3 of the Agreement.

If payment or provision for payment in accordance with the Resolution is made in respect of the principal of and redemption premium, if any, and interest on the Bonds from moneys other than Installment Payments, this Project Note shall be deemed paid to the extent such payments or provision for payment of Bonds has been made. Subject to the foregoing, all Installment Payments shall be in the full amount required hereunder.

The obligation of the Company to make the payments required hereunder shall be absolute and unconditional and the Company shall make such payments without abatement, diminution or deduction regardless of any cause or circumstances whatsoever including, without limitation, any defense, set-off, recoupment or counterclaim which the Company may have or assert against the Authority, the Trustee or any other person.

The Company may prepay this Project Note, subject to applicable notice and other requirements set forth in the Agreement and the Resolution, (i) in whole or in part on any date on which the Bonds are subject to optional redemption pursuant to Section 401 of the First Series Resolution; provided that any such prepayment shall include payment of premium, if any, applicable to the redemption of the Bonds; and (ii) in whole on any date on which the Bonds are subject to redemption pursuant to Section 402 of the First Series Resolution if any of the events described in Section 8.3 of the Agreement shall have occurred.

The Company shall prepay this Project Note in whole or in part upon a Determination of Taxability at the earliest practicable date selected by the Trustee, but in no event later than one hundred and eighty (180) days following the Trustee's receipt of notification of the Determination of Taxability, on which Bonds are subject to mandatory redemption pursuant to Section 403 of the First Series Resolution.

Whenever an Event of Default under Section 8.1 of the Resolution (other than an Event of Default as defined in Section 8.1(iii) thereof) shall have occurred and, as a result thereof, the principal of and any premium on all Bonds then outstanding, and interest accrued thereon, shall have been declared to be immediately due and payable pursuant to Section 8.3 of the Resolution, the unpaid principal amount of and any prepayment penalty and accrued interest on this Project Note shall also be due and payable on the date on which the principal of and premium and interest on the Bonds shall have been declared due and payable; provided that the annulment of a declaration of acceleration with respect to the Bonds shall also constitute an annulment of any corresponding declaration with respect to this Project Note.

The Company is personally obligated and fully liable for the amount due under this Project Note. To the extent, if any, that this Project Note is deemed to be secured by the Deed of Trust, the Trustee as assignee of this Project Note and beneficiary of the Deed of Trust has the right to sue on this Project Note and obtain a personal judgment against the Company either before or after a judicial foreclosure of the Deed of Trust under AS 09.45.170—09.45.220.

IN WITNESS WHEREOF, the Company has caused this Project Note to be executed in its name by its duly authorized officer as of _____, ____.

SNETTISHAM ELECTRIC COMPANY.

By_____
Title:

EXHIBIT C

COPY

PLEDGE AGREEMENT

THIS PLEDGE AGREEMENT, dated as of July 15, 1998, is by ALASKA ENERGY AND RESOURCES COMPANY, an Alaska corporation ("Pledgor") for the benefit of the ALASKA INDUSTRIAL DEVELOPMENT AND EXPORT AUTHORITY, a public corporation of the State of Alaska (the "Authority").

RECITALS

A. Snettisham Electric Company, an Alaska corporation ("Affiliate") and Alaska Electric Light and Power Company, an Alaska corporation ("Power Purchaser") have requested the Authority to execute and deliver an Option Agreement dated as of July 15, 1998 (the "Option Agreement") pursuant to which the Authority will grant to the Affiliate an option to purchase certain improved real property and associated personal property commonly known as the "Snettisham Hydroelectric Project" on certain terms and conditions described therein;

B. The Authority is prepared to execute and deliver the Option Agreement if Pledgor executes and delivers this Agreement;

C. Pledgor is the sole shareholder of Affiliate and a majority shareholder of Power Purchaser and will materially benefit from the grant of the option described in the Option Agreement.

AGREEMENT

It is mutually agreed as follows:

1. **Defined Terms.** Capitalized terms not otherwise defined herein shall have the meanings given them in the Option Agreement and the Project Sale Agreement.

"Pledged Stock" means the shares of Affiliate's common stock which are pledged hereunder as provided in Section 2.

"Project Sale Agreement" means that certain Project Sale Agreement executed and delivered by Affiliate and the Authority after exercise of the option pursuant to the Option Agreement and the Resolution, as it may be thereafter amended.

"Project Note" means that certain promissory note executed and delivered by Affiliate to evidence its obligations to pay the Purchase Price for the Project, as it

may be thereafter amended.

Security Interest. Pledgor hereby pledges, assigns and grants to the Authority a security interest in all of its right, title and interest in and to the following personal property, whether now owned or hereafter acquired (the "Collateral"):

(a) Initial Shares of Stock. One thousand shares of Common Stock of Affiliate which is registered in the name of Pledgor and shall be evidenced by the share certificate described on Schedule 1.

(b) Additional Shares of Affiliate's Stock. Such additional shares of common stock of Affiliate as are delivered to the Authority from time to time to be held in pledge under this Agreement as required hereunder;

(c) Related Rights. All securities and stock powers delivered by Pledgor in substitution for or in addition to any of the foregoing, all certificates and instruments representing or evidencing such securities, and all stock and other non-cash dividends, including liquidating dividends, stock rights, warrants and other rights to subscribe at any time and from time to time received, receivable or otherwise distributed in respect of or in exchange for any or all thereof; and in the event Pledgor receives any such property, Pledgor will immediately deliver it to the Authority to be held hereunder; and

(d) Proceeds and Products. All cash and non-cash proceeds and products of all of the foregoing property;

3. **Transfer of Instruments, Etc.** Pledgor agrees to deliver to the Authority all instruments and stock certificates pertaining to the Collateral now owned and to deliver to the Authority promptly upon receipt thereof all instruments and stock certificates pertaining to the Collateral hereafter acquired. Without limiting the foregoing, if Pledgor shall become entitled to receive or shall receive, in connection with any of the Collateral, any: (i) stock certificate, including without limitation any certificate representing a stock dividend or in connection with any increase or reduction of capital, reclassification, merger, consolidation, sale of assets, combination of shares, stock split, spin-off, split-off or split-up, or liquidation; (ii) option, warrant, or right, whether as an addition to or in substitution or in exchange for any of its securities, or otherwise; or (iii) dividend (provided that Pledgor shall be entitled to retain any cash dividend declared and paid at a time when no Event of Default has occurred and is continuing) or distribution payable in property, including securities issued by other than the issuer of any of its securities; then Pledgor shall accept the same as the Authority's agent, in trust for the Authority, and shall deliver them forthwith to the Authority in the exact form received, with, as applicable, Pledgor's endorsement when necessary, or appropriate

stock powers duly executed in blank, to be held by the Authority, subject to the terms hereof, as part of the Collateral. Pledgor represents and warrants that (i) Pledgor is not entering into this Agreement in order to circumvent the reporting requirements of subsections 13(d) or 13(g) of the Securities and Exchange Act of 1934; (ii) to the extent required, Pledgor will report the securities as beneficially owned by Pledgor on Pledgor's Schedule 13D or 13G filings with the SEC, if any; and (iii) if applicable, Pledgor will timely inform the Authority and keep the Authority current as to all information needed to permit timely preparation and filing by the Authority of any statement on Schedule 13D or 13G that may be required after default.

4. **Obligations Secured.** This Pledge Agreement is given to secure the full and timely payment and performance by Affiliate of all indebtedness, liabilities and obligations owing to the Authority pursuant to the terms of the Project Sale Agreement, the Project Note, and any other agreement now or hereafter entered into by Affiliate in favor of the Authority in connection with the Project Sale Agreement or the Project Note or the transactions contemplated thereby, and payment of all costs and expenses to be paid hereunder and thereunder, whether now existing or hereafter incurred, matured or unmatured, direct or contingent, joint or several, including any renewals, extensions or modifications thereof and replacements or substitutions therefor (collectively, the "Obligations").

5. **Certain Agreements Regarding the Collateral.** Pledgor represents and warrants to the Authority that:

5.1 Pledgor is the legal and beneficial owner of all of the Collateral and is not prohibited by contract or otherwise from subjecting the same to the pledge and security interest created hereby;

5.2 The Collateral is free and clear of all liens;

5.3 No governmental approval or filing or registration with any governmental authority is required for the making and performance by Pledgor of this Agreement;

5.4 All shares of Pledged Stock have been duly and validly issued, are fully paid and nonassessable and are endorsed and in good order for transfer;

5.5 Pledgor will neither create nor suffer to exist any lien on the Collateral, nor sell, transfer, lease or otherwise dispose of any item of Collateral; and

5.6 Pledgor will fully and punctually perform any duty required of it in connection with the Collateral and will not take any action which will impair, damage or destroy the Authority's rights with respect to the Collateral or hereunder

or the value thereof.

Pledgor's Voting Rights. So long as no Event of Default has occurred and is continuing, Pledgor shall be entitled to exercise, or permit others to exercise, any voting rights incident to the Collateral. Upon the occurrence and continuation of an Event of Default, at the option of the Authority and upon notice to Pledgor, Pledgor's right to exercise, or permit others to exercise, such voting rights shall immediately cease and terminate and all voting rights with respect to the Collateral shall thereupon rest solely and exclusively in the Authority. The foregoing sentence shall constitute and grant to the Authority an irrevocable proxy coupled with an interest to vote the Collateral upon the occurrence and continuation of such an Event of Default, and any officer of any corporation whose voting stock constitutes Collateral, including without limitation any inspectors of elections or tellers, may rely hereon and on any written notice from the Authority as to the existence of an Event of Default and the Authority's right to vote such Collateral.

7. **Appointment of Agent.** During the term of the Option Agreement and so long as any Obligation remains unpaid, Pledgor does hereby designate and appoint the Authority its true and lawful attorney with power irrevocable, for it and in its name, place and stead, whether or not an Event of Default shall have occurred, to ask, demand, receive, receipt and give acquittance for any and all amounts which may be or become due or payable to Pledgor with respect to the Collateral, and in the Authority's sole discretion to file any claim or take any action or proceeding, or either, in its own name or in the name of Pledgor, or otherwise, which the Authority deems necessary or desirable in order to collect or enforce payment of any and all amounts which may become due or owing with respect to the Collateral. The acceptance of this appointment and the appointment set forth in Section 6 above by the Authority shall not obligate it to perform any duty, covenant or obligation required to be performed by Pledgor under or by virtue of the Collateral. The Authority may also execute, on behalf of Pledgor, any financing statements or other instruments that in its opinion or the opinion of the Authority may be necessary or desirable to perfect or protect the Authority's position with respect to the Collateral. Without limiting the generality of the foregoing, the Authority is authorized at any time to exercise any right of Pledgor or enforce any obligation owed to Pledgor pertaining to the Collateral, and any expenses incurred by the Authority in connection therewith shall bear interest from the date incurred until repaid by Pledgor at a per annum rate (the "Default Interest Rate") equal to the interest rate otherwise then in effect with respect to the Project Note. Any such amount shall be secured hereby and shall be repaid by Pledgor on demand.

8. **Taxes.** Pledgor will pay before delinquency any taxes which are or may become through assessment or distraint or otherwise a lien on the Collateral and will pay any tax which may be levied on any Obligation secured hereby.

9. **Release of Collateral, Etc.** The obligations of Pledgor hereunder shall not be affected by the release or substitution of any Collateral or by the release of or any renewal or extension of time to any party to any instrument, obligation or liability secured hereby. The Authority shall not be bound to resort to or exhaust its recourse or to take any action against other parties or other collateral. Beyond the exercise of reasonable care to assure the safe custody of the Collateral while held hereunder, the Authority shall have no duty or liability to preserve rights pertaining thereto and shall be relieved of all responsibility for the Collateral upon surrendering it or tendering surrender of it to Pledgor.

10. **Further Assurances.** Pledgor, at its sole cost and expense, will at any time and from time to time hereafter (a) execute such financing statements and other instruments and perform such other acts as the Authority may reasonably request to establish and maintain the security interests herein granted by Pledgor to the Authority and the priority and continued perfection thereof; (b) obtain and promptly furnish to the Authority evidence of all such government approvals as may be required to enable Pledgor to comply with its obligations hereunder; and (c) execute and deliver all such other instruments and perform all such other acts as the Authority may reasonably request to carry out the transactions contemplated hereunder.

11. **Expenses Incurred by Secured Party.** The Authority is not required to, but may, at its option, pay any tax, filing or recording fees, or other charges payable by Pledgor hereunder, and any such amount shall bear interest from the date of payment until repaid at the Default Interest Rate. Such amounts shall be repayable by Pledgor on demand, and Pledgor's obligation to make such repayment shall constitute an additional Obligation secured hereby.

12. **Remedies Upon Default.** If an Event of Default (as defined in the Project Sale Agreement) shall occur, the Authority shall have all of the remedies provided by law or equity and, without limiting the generality of the foregoing, or the remedies provided in any other Section hereof, shall have the following remedies:

(a) The remedies of a secured party under the Uniform Commercial Code;

(b) Exercise all voting rights incident to the Collateral as provided in Section 6 above;

(c) Receive all dividends and all other distributions of any kind on all or any of the Collateral;

(d) Exercise any and all rights of collection, conversion or exchange,

Anchorage, Alaska, in any action or proceeding brought to enforce or otherwise arising out of or relating to this Agreement and hereby waives any objection to venue in any such court, and waives any claim that such forum is an inconvenient forum. Pledgor agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law. Nothing herein shall impair the right of the Authority to bring any action or proceeding against Pledgor, or any of its property, in the courts of any other jurisdiction.

18. **Notices.** All notices and other communications provided for in this Agreement shall be in writing (unless otherwise specified) and may be personally served, telecopied or sent by United States mail and shall be deemed to have been given when delivered in person, receipt of telecopy or three business days after deposit in the United States mail, with first class postage prepaid and properly addressed. For the purposes hereof, Pledgor's address (until notice of a change thereof is delivered as provided in this Section 18) shall be as set forth under its signature to this Agreement.

19. **Assignment.** This Agreement shall be binding upon and inure to the benefit of the parties and their respective successors, except that Pledgor may not make an assignment or transfer of all or any part of its rights or obligations hereunder without the prior written consent of the Authority, and any such assignment or transfer purported to be made without such consent shall be ineffective. Pledgor specifically consents to the Authority's assignment of any or all of its rights, duties and obligations hereunder to the Trustee of the Authority's $100,000,000 Power Revenue Bonds, First Series (Snettisham Hydroelectric Project) for the benefit of all holders of Bonds and Parity Obligations. Pledgor further agrees not to amend or modify this Agreement without the consent of the Authority and such Trustee.

20. **Severability.** Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction shall as to such jurisdiction be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof or affecting the validity or enforceability of such provision in any other jurisdiction. To the extent permitted by applicable law, Pledgor waives any provision of law which renders any provision hereof prohibited or unenforceable in any respect.

21. **Entire Agreement; Amendment.** This Agreement comprises the entire agreement between Pledgor and the Authority and may not be amended or modified except in writing. No provision of this Agreement may be waived except in writing and then only in the specific instance and for the specific purpose for which given.

Schedule I

DESCRIPTION OF INITIAL SHARES OF PLEDGED STOCK

One thousand shares of common stock of Snettisham Electric Company, as evidenced by that certain Stock Certificate No. 1 dated July 23, 1998.

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EXHIBIT D COPY

Thane Substation

Tracts 100-1, 100-2, 100-3, 102, and Parcels 100E-2, 108P and 110P

Tract Index and Segment No. 1, Project Map

Title Interest:

Fees simple interest in Tracts 100-1, 100-2, 100-3 , 102 and 100M, described in the Quitclaim Deed and quitclaimed by the United States of America to the Alaska Industrial Development and Export Authority as a part of the Snettisham Project transfer. Thane Substation is within the boundaries of the City and Borough of Juneau.

Easement and right-of-way for roadway and buried cableline across adjacent property within Mexico Mill Site (USMS 71-B), Parcel 100E-2, granted to the United States of America by A.J. Land Company, grantor, on August 17, 1971, and recorded September 20, 1971, in Deed Book 99 at Page 39, Juneau Recording District and corrected by Correction Easement by AJT Mining Properties, Inc., grantor, as successor in interest to A.J. Land Company, dated March 23, 1989, and recorded May 31, 1990, in Book 331, Page 642, Juneau Recording District. So long as the Authority complies with the terms of the easement and right-of-way, the permit remains in effect and is assignable.

Together with:

ADL 55980, Water Rights Certificate 1151, issued November 6, 1973, to the United States of America, Corps of Engineers, Department of the Army, Alaska District, for Thane Substation at Sheep Creek and transferred June 1, 1995, to the U.S. Department of Energy, Alaska Power Administration. So long as the Authority complies with the terms of the permit, it remains in effect, and any subsequent assignment is subject to grantor's consent and approval.

State of Alaska, Department of Highways, driveway permit, issued June 8, 1971, to U.S. Army Corps of Engineers, for construction of a driveway at the intersection of Thane Highway and Snettisham Project Substation Road, located within USMS 979, Homestead No. 3 Lode. Assigned to Alaska Industrial Development and Export Authority as part of the Snettisham Project transfer. So long as the Authority complies with the terms of the permit, it remains in effect, and any subsequent assignment is subject to grantor's consent and approval. The Alaska Industrial Development and Export Authority will also

thence North 44° 40' 54" East, 132.34 feet to the northerly boundary line of Jumbo Mill Site;

Thence along said boundary, South 35° 54' 01" East, 308.30 feet to corner No. 4 of said Mill Site; said corner being on the westerly boundary line of Mexico Mill Site;

Thence along said boundary, North 47° 00' 20" East, 135.57 feet to Corner No. 3 of Mexico Mill Site;

Thence along the northerly boundary of said Mill Site, South 44° 27' 17" East, 213.15 feet to the westerly boundary of said Tract 102;

Thence along said boundary, South 34° 34' 07" West, 106.89 feet to Corner No. 2 of said Tract;

Thence South 13° 46' 54" West, 127.12 feet to the Point of Beginning.

The above parcel herein described contains 1.97 acres, more or less.

Tract 100-2

A parcel of land being a portion of Jumbo Mill Site (U.S. Mineral Survey No. 260) and Homestead No. 3 Lode (U.S. Mineral Survey No. 979) within protracted Section 5, Township 42 South, Range 68 East, Copper River Meridian, Harris Mining District, Juneau Recording District, First Judicial District, State of Alaska; said parcel being more particularly described in two (2) parts as follows:

Part 1

COMMENCING at Corner No. 4 of said Jumbo Mill Site; said corner having U.T.M. Grid Coordinates of N. 21,187,311.96 and E. 1,770,501.28;

Thence along the northerly boundary line thereof, North 35° 54' 01" West, 308.30 feet to THE POINT OF BEGINNING;

Thence leaving said boundary, North 57° 05' 21" West, 208.01 feet;
Thence North 32° 54' 39" East, 19.99 feet;

Thence North 57° 05'23" West, 85.99 feet;
thence South 32° 54' 55" West, 39.99 feet;

Thence North 48° 04' 48" West, 80.41 feet to a point on the easterly boundary line of said Homestead No. 3 Lode;

Thence along said boundary, North 43° 42' 37" East, 144.25 feet to Corner No. 3 of said Jumbo Mill Site;

Thence along the northerly boundary of said Jumbo Mill Site, South 35° 54' 01" East, 371.51 feet to the Point of Beginning.

Part 2

Beginning at Corner No. 6 of said Homestead No. 3 Lode; said corner having U.T.M. Grid Coordinates of N. 21,187,862.63 and E. 1,770,102.66;

Thence along the northerly boundary line thereof North 63° 08' 02" West, 556.66 feet to the beginning of a curve to the left; said curve having a central angle of 60° 00' 57", a radius of 204.43 feet, for an arc distance of 214.13 feet;
Thence South 56° 45' 10" West, 43.43 feet to the northerly Right-of-Way of the Thane Highway;

Thence along said Right-of-Way, South 63° 58' 15" East, 469.54 feet to the beginning of a curve to the right; said curve having a central angle of 7° 51' 10", a radius of 597.73, for an arc distance of 81.92 feet;

Thence North 33° 53'19" East, 8.00 feet;

Thence on a curve to the right having a central angle of 14° 54' 01", a radius of 605.72 feet, for an arc distance of 157.52 feet to a point on the easterly boundary line of said Homestead No. 3 Lode;

Thence along said boundary, North 43° 42' 37" East, 176.25 feet to Corner No. 6 of said Lode and the Point of Beginning.

The above parts 1 and 2 herein described contain an aggregate acreage of 2.71 acres, more or less.

Tract 100-3
A parcel of land being a portion of Mexico Mill Site (U.S. Mineral Survey No. 71-B), within protracted Section 5, Township 42 South, Range 68 East, Copper River Meridian, Harris Mining District, Juneau Recording District, First Judicial District, State of Alaska; said parcel being more particularly described as follows:

COMMENCING at Corner No. 3 of said Mexico Mill Site; said corner having U.T.M. Grid Coordinates of N. 21,187,404.41 and E. 1,770,600.44;

Thence along the northerly boundary line thereof, South 44° 27' 17" East, 437.38 feet to THE POINT OF BEGINNING;

Thence continuing on said line, South 44° 27' 17" East, 32.97 feet to a point being North 44° 27' 17" West, 6.99 feet from Corner No. 4 of said Mexico Mill Site;

Thence leaving said boundary, South 47° 49' 40" West, 0.13 of a foot to Corner No. 4 of Tract 102;

Thence North 44° 13' 13" West, 32.97 feet to the Point of Beginning.

The above parcel herein described contains 2.14 square feet, more or less.

Tract 102

A parcel of land being a portion of Mexico Mill Site (U.S. Mineral Survey No. 71-B) within protracted Section 5, Township 42 South, Range 68 East, Copper River Meridian, Harris Mining District, Juneau Recording District, First Judicial District, State of Alaska; said parcel being more particularly described as follows:

COMMENCING at Corner No. 1 of said Mexico Mill Site; said corner having U.T.M. Grid Coordinates of N. 21,186,753.85 and E. 1,770,592.33;

Thence North 12° 46' 28" East, 225.36 feet to Corner No. 1 of this tract and THE POINT OF BEGINNING;

Thence North 13° 46' 54" East, 196.54 feet to Corner No. 2;

Thence North 34° 34' 07" East, 106.89 feet to a point on the northerly boundary line of said Mexico Mill Site and being Corner No. 3 of this tract;

Thence along said boundary, South 44° 27' 17" East, 224.23 feet;

Thence leaving said boundary, South 44° 13' 13" East, along the southerly boundary line of Tract 100-3, a distance of 32.97 feet to Corner No. 4 of this tract;

Thence South 47° 49' 40" West, 294.25 feet to Corner No. 5;

Thence North 51° 23' 02" West, 41.08 feet to Corner No. 6;

Thence North 12° 55' 27" East, 74.98 feet to Corner No. 7;

Thence North 86° 15' 42" West, 54.30 feet to Corner No. 1, the Point of Beginning.

The above parcel herein described contains 1.24 acres, more or less.

Tract 100E-2 (Appurtenant Easement for Roadway and Buried Cableline)
A parcel of land being a portion of Mexico Mill Site (U.S. Mineral Survey No. 71-B), within protracted Section 5, Township 42 South, Range 68 East, Copper River Meridian, Harris Mining District, Juneau Recording District, First Judicial District, State of Alaska; said parcel being more particularly described as follows:

COMMENCING at Corner No. 4 of said Mexico Mill Site; said corner having U.T.M. Grid Coordinates of N. 21,187,068.65 and E. 1,770,929.84;

Thence along the northerly boundary line thereof, North 44° 27' 17" West, 6.99 feet;

Thence leaving said boundary line, South 47° 49' 40" West, 0.13 of a foot to Corner No. 4 of Tract 102;

Thence continuing South 47° 49' 40" West, 294.25 feet to Corner No. 5 of said Tract 102 and THE POINT OF BEGINNING;

Thence continuing South 47° 49' 40" West, 92 feet, more or less, to the northerly Right-of-Way line of the Thane Highway;

Thence along said Right-of-Way, northwesterly, 42 feet, more or less; thence North 47° 49' 40" East 89 feet, more or less, to Corner No. 6 of Tract 102;

Thence South 51° 23' 02" East, 41.08 feet to Corner No. 5, the Point of Beginning.

The above parcel herein described contains 0.09 of an acre, more or less.

EXHIBIT D

TRANSMISSION LINE

Tract C, Parcel 4

Segment No. 1, Project Map

Title Interest:

Snettisham Power Project Right-of-Way Grant, AA-79908, recorded April 3, 1998, in Book 491, Page 156, in the Juneau Recording District, for 138 kV overhead power transmission line and the Thane Substation, issued by the U.S. Department of the Interior, Bureau of Land Management, effective March 17, 1998, to U.S. Department of Energy, Alaska Power Administration. Assigned to the Alaska Industrial Development and Export Authority on the transfer of the Snettisham Project. So long as the Authority complies with the terms of the permit, it remains in effect for the life of the Snettisham Project. Any subsequent assignment is subject to grantor's consent and approval, and may subject the assignee to rental and other fees.

The underlying lands are under the jurisdiction of the United States of America under the management of the Department of the Interior, Bureau of Land Management. Tract C, Parcel 4 is within the boundaries of the City and Borough of Juneau.

Easement Description:

Township 42 South, Range 68 East, Copper River Meridian, Alaska
Section 5.

Tract C, Parcel 4
A parcel of land lying in the Juneau Townsite, State of Alaska.
Said parcel more particularly described as follows:

Commencing at corner C3 from the Mexico Mill Site U.S. Mineral Survey No. 71-B (as shown on drawing AK-RE-101 sheet 2 of 8 Department of Army, Office of the Alaska District Engineer, North Pacific Division, last revised 2-2-89), the POINT OF BEGINNING;

Thence South 47°00'20" West 135.57 feet to corner C4 of said Survey No. 71-B;

thence North 35°54'01" West 593.62 feet;

thence South 56°55'41" East 502.92 feet;

thence North 45°32'40" East 244.10 feet;

thence South 44°27'22" East 569.79 feet;

thence South 45°32'52" West 305.53 feet;

thence North 44°27'17" West 470.35 feet to corner C3 of said Survey No. 71-B, the POINT OF BEGINNING.

Contains 5.31 acres more or less.

EXHIBIT D

TRANSMISSION LINE

Tract 100E

Tract Index and Inset B, Segment No. 1, Project Map

Title Interest:

Snettisham Power Project electric transmission line easement, to the United States of America, grantee, executed by A.J. Land Company, grantor, on August 17, 1971, and recorded September 20, 1971, in Deed Book 99, Page 37 of the Juneau Recording District, and corrected by that Correction Easement executed by AJT Mining Properties, Inc., grantor, and successor in interest to A.J. Land Company, on March 29, 1976, and recorded May 31, 1990, in Book 331, Page 640 of the Juneau Recording District. Tract 100E is within the boundaries of the City and Borough of Juneau. So long as the Authority complies with the terms of the easement and right-of-way, the permit remains in effect and is assignable.

Easement Description:

Township 42 South, Range 68 East, Copper River Meridian, Alaska
U.S. Mineral Surveys 71B and 72B.

Tract 100E

A parcel of land being a portion of Belvedere Mill Site (Mineral Survey No. 72-B) and Mexico Mill Site (Mineral Survey 71-B) within protracted Section 5, Township 42 South, Range 68 East, Copper River Meridian, Harris Mining District, Juneau Recording District, First Judicial District, State of Alaska; said parcel being a portion of a 300.00 foot wide Powerline Right-of-Way and being more particularly described as follows:

COMMENCING at Corner No. 3 of said Belvedere Mill Site; said corner having U.T.M. Grid Coordinates of N. 21,186,722.94 and E. 1,771,269.06; thence along the northerly boundary line thereof, North 44° 27' 17" West, 406.02 feet to a point on the southerly Right-of-Way of said powerline and THE POINT OF BEGINNING; thence along said Right-of-Way, North 63° 34' 19" West, 84.05 feet to the easterly boundary line of Tract No. 102;
thence along said boundary, North 47° 49' 40" East, 27.55 feet to Corner No. 4 of said Tract 102;
thence continuing North 47° 49' 40" East, 0.13 of a foot to a point on the northerly boundary line of Mexico Mill Site; said point being North 44° 27' 17" West, 6.99 feet from Corner No. 4 of said Mill Site;

thence along the northerly boundaries of Mexico and Belvedere Mill Sites, South 44° 27' 17" East, 78.32 feet to the Point of Beginning.

The above parcel herein described contains 0.03 of an acre, more or less.

EXHIBIT D

TRANSMISSION LINE

Tract C, Parcel 1

Segment No. 1, Project Map

Title Interest:

Snettisham Power Project Right-of-Way Grant, AA-79908, recorded April 3, 1998, in Book 491, Page 156, in the Juneau Recording District, for 138 kV overhead power transmission line and the Thane Substation, issued by the U.S. Department of the Interior, Bureau of Land Management, effective March 17, 1998, to U.S. Department of Energy, Alaska Power Administration. Assigned to the Alaska Industrial Development and Export Authority on the transfer of the Snettisham Project. So long as the Authority complies with the terms of the permit, it remains in effect for the life of the Snettisham Project. Any subsequent assignment is subject to grantor's consent and approval, and may subject the assignee to rental and other fees.

The underlying lands are under the jurisdiction of the United States of America under the management of the Department of the Interior, Bureau of Land Management. Tract C, Parcel 1 is within the boundaries of the City and Borough of Juneau.

Easement Description:

Township 42 South, Range 68 East, Copper River Meridian, Alaska
Section 5.

Tract C, Parcel 1
A parcel of land lying in the Juneau Townsite, State of Alaska.
Said parcel more particularly described as follows:

Commencing at tower T-57 of the Snettisham Power Project Transmission Line (as shown on drawing AK-RE-101 sheet 2 of 8 Department of the Army, Office of the Alaska District Engineer, North Pacific Division, last revised 2-2-89); thence South 50°40'34" East along the centerline of said transmission line 244.93 feet to the POINT OF BEGINNING;

Thence South 45°47'34" West 150.97 feet to the westerly right-of-way of the said transmission line;

thence North 50°40'34" West along said westerly right-of-way 211.00 feet;

thence North 63°34'19" West along said westerly right-of-way 695.76 feet;

thence North 44°27'17" West 78.32 feet;

thence North 45°32'52" East 305.53 feet;

thence South 44°27'22" East 43.77 feet to the easterly right-of-way of the said transmission line;

thence South 63°34'19" East along said easterly right-of-way 662.29 feet;

thence South 50°40'34" East along said easterly right-of-way 278.85 feet to the northerly line of U.S. Survey No. 3269 (as shown on said drawing AK-RE-101);

thence South 45°47'34" West along said northerly line 150.96 feet to the POINT OF BEGINNING;

Contains 6.79 acres more or less.

EXHIBIT D

TRANSMISSION LINE

Tract 101E

Tract Index and Segment No. 1, Project Map

Title Interest:

Snettisham Project electric transmission line and facilities right-of-way permit, ADL 53247, issued by the State of Alaska Department of Natural Resources, Division of Lands, on May 17, 1971, to the Corps of Engineers, Department of the Army, for an overhead electrical transmission line, 300 feet in width, across Tract 101E. The permit was transferred to Alaska Industrial Development and Export Authority on the transfer of the Snettisham Project. So long as the Authority complies with the terms of the easement and right-of-way, the permit remains in effect, and any subsequent assignment is subject to grantor's consent and approval.

The underlying lands are under the jurisdiction of the State of Alaska by virtue of U.S. Patent Number 1226913 issued on May 16, 1962, for Mental Health selection J 012161 and are managed by the Department of Natural Resources, Division of Lands. Tract 101E is within the boundaries of the City and Borough of Juneau.

Location:

Township 42 South, Range 68 East, Copper River Meridian, Alaska
Section 5: U.S. Survey 3269, Lot 2A

EXHIBIT D

TRANSMISSION LINE

Tract 103E

Tract Index and Segment No. 1, Project Map

Title Interest:

Snettisham Power Project electric transmission line easement, to the United States of America, grantee, executed by Dirk Dykstra and Nettie L. Dykstra, grantors, on April 14, 1971, and recorded April 26, 1971, in Deed Book 96, Page 200 of the Juneau Recording District. Assigned to AIDEA as part of the Snettisham Transfer. Tract 103E is within the boundaries of the City and Borough of Juneau. So long as the Authority complies with the terms of the easement and right-of-way, the permit remains in effect and is assignable.

Easement Description:

Township 42 South, Range 68 East, Copper River Meridian, Alaska
U.S. Survey 3269, Lot 2B.

Tract 103E

A strip of land over and across Lot 2B of United States Survey No. 3269 located on the northeasterly side of Gastineau Channel approximately 5 miles southeast of Juneau, Alaska; being within the Harris Mining District of the Juneau Recording District, First Judicial District, State of Alaska; said strip being 300.00 feet wide lying 150.00 feet on each side of the following described center line:

COMMENCING at Corner No. 3 of said Survey;
thence on the west boundary line thereof, South 45° 47' 27" West, a distance of 296.80 feet to said center line;
thence leaving said boundary line and on said center line South 50° 38' 41" East, a distance of 320.10 feet, more or less, to the west boundary line of said Lot 2B and the TRUE POINT OF BEGINNING.
Thence continuing on said center line South 50° 38' 41" East, a distance of 305.00 feet, more or less, to the east boundary line of said Lot 2B and the terminus of said center line.

The side lines of said strip are to be prolonged or shortened so as to terminate on said west and east boundary lines of said Lot 2B.

The above bearings are based on the U.T.M. Grid System with Corner No. 3 of said Survey having Grid Coordinates of N. 21,186,881.71 and E. 1,772,092.04.

The said strip of land above described contains 2.13 acres, more or less.

EXHIBIT D

TRANSMISSION LINE

Tract 104E

Tract Index and Segment No. 1, Project Map

Title Interest:

Snettisham Power Project electric transmission line easement, to the United States of America, grantee, executed by Celesta N. McGee, grantor, on June 10, 1971, and recorded June 11, 1971, in Deed Book 97, Page 101 of the Juneau Recording District. Assigned to AIDEA as part of the Snettisham Transfer. Tract 104E is within the boundaries of the City and Borough of Juneau.

Easement Description:

Township 42 South, Range 68 East, Copper River Meridian, Alaska
U.S. Survey 3269, Lot 3.

Tract 104E
A parcel of land being a portion of Lot 3 of United States Survey No. 3269 located on the northeasterly side of Gastineau Channel approximately 5 miles southeast of Juneau, Alaska; being within the Harris Mining District of the Juneau Recording District, First Judicial District, State of Alaska; said portion being described as follows:

COMMENCING at Corner No. 3 of said Survey;
thence on the west boundary line thereof, South 45° 47' 27" West, a distance of 296.80 feet;
thence leaving said line South 50° 38' 41" East, a distance of 625.10 feet to the west boundary line of said Lot 3 and the TRUE POINT OF BEGINNING;

Thence on the boundary line thereof, North 40° 32' 27" East, a distance of 150.03 feet;

Thence leaving said line South 50° 38' 41" East, a distance of 200.00 feet, more or less, to the north boundary line of said Lot;
thence on said line South 40° 47' 33" East, a distance of 90.00 feet, more or less, to the northeast corner thereof;

Thence on the east boundary line of said Lot, South 40° 22' 47" West, a distance of 289.05 feet;

thence leaving said line North 50° 38' 41" West, a distance of 300.00 feet, more or less, to said west boundary line;

Thence on said line North 40° 32' 27" East, a distance of 150.03 feet to said POINT OF BEGINNING.

The above bearings are based on the U.T.M. Grid System with Corner No. 3 of said Survey having Grid Coordinates of N. 21,186,881.71 and E. 1,772,092.04.

The parcel of land above described contains 1.97 acres, more or less.

EXHIBIT D

TRANSMISSION LINE

Tract 105E

Tract Index and Segment No. 1, Project Map

Title Interest:

Snettisham Power Project electric transmission line easement, to the United States of America, grantee, executed by Walter Jackinsky and Alice Jackinsky, grantors, on April 12, 1971, and recorded April 23, 1971, in Deed Book 96, Page 198 of the Juneau Recording District. Assigned to AIDEA as part of the Snettisham Transfer. Tract 105E is within the boundaries of the City and Borough of Juneau. So long as the Authority complies with the terms of the easement and right-of-way, the permit remains in effect and is assignable.

Easement Description:

Township 42 South, Range 68 East, Copper River Meridian, Alaska
U.S. Survey 3269, Lot 4.

Tract 105E

A parcel of land being a portion of Lot 4 of United States Survey No. 3269 located on the northeasterly side of Gastineau Channel approximately 5 miles southeast of Juneau, Alaska; being within the Harris Mining District of the Juneau Recording District, First Judicial District, State of Alaska; said portion being described as follows:

COMMENCING at Corner No. 3 of said Survey;
thence on the west boundary line thereof, South 45° 47' 27" West, a distance of 296.80 feet;
thence leaving said line South 50° 38' 41" East, a distance of 920.10 feet to the west boundary line of said Lot and the TRUE POINT OF BEGINNING;
thence on the boundary lines thereof, North 40° 22' 47" East, a distance of 139.03 feet, more or less, to the northwest corner thereof;
thence South 40° 47' 33" East, a distance of 316.80 feet, more or less, to the northeast corner of said lot;
thence South 41° 15' 27" West, a distance of 234.93 feet;
thence leaving said boundary line North 50° 38' 41" West, a distance of 309.50 feet, more or less, to said west boundary line;
thence on said line North 40° 22' 47" East, a distance of 150.02 feet to said POINT OF BEGINNING.

The above bearings are based on the U.T.M. Grid System with Corner No. 3 of said Survey having Grid Coordinates of N. 21,186,881.71 and E. 1,772,092.04.

The parcel of land above described contains 1.91 acres, more or less.

EXHIBIT D

TRANSMISSION LINE

Tract 106E

Tract Index and Segment No. 1, Project Map

Title Interest:

Snettisham Power Project electric transmission line easement, to the United States of America, grantee, executed by Betty I. Crouse, grantor, on July 16, 1971, and recorded August 16, 1971, in Deed Book 98, Page 181 of the Juneau Recording District. Assigned to AIDEA as part of the Snettisham Transfer. Tract 106E is within the boundaries of the City and Borough of Juneau. So long as the Authority complies with the terms of the easement and right-of-way, the permit remains in effect and is assignable.

Easement Description:

Township 42 South, Range 68 East, Copper River Meridian, Alaska
U.S. Survey 3269, Lot 5.

Tract 106E

A parcel of land being a portion of Lot 5 of United States Survey No. 3269 located on the northeasterly side of Gastineau Channel approximately 5 miles southeast of Juneau, Alaska; being within the Harris Mining District of the Juneau Recording District, First Judicial District, State of Alaska; said portion being described as follows:

COMMENCING at Corner No. 3 of said Survey;
thence on the west boundary line thereof, South 45° 47' 27" West, a distance of 296.80 feet;
thence leaving said line South 50° 38' 41" East, a distance of 1,230.10 feet to the west boundary line of said Lot 5 and the TRUE POINT OF BEGINNING;
thence on the boundary lines thereof, North 41° 15' 27" East, a distance of 84.85 feet, more or less, to the northwest corner thereof;
thence South 40° 47' 33" East, a distance of 332.64 feet, more or less, to the northeast corner of said Lot;
thence South 43° 33' 27" West, a distance of 180.11 feet;
thence leaving said boundary lines North 50° 38' 41" West, a distance of 312.45 feet, more or less, to said west boundary line;
thence on said line North 41° 15' 27" East, a distance of 150.08 feet to said POINT OF BEGINNING.

The above bearings are based on the U.T.M. Grid System with Corner No. 3 of said Survey having Grid Coordinates of N. 21,186,881.71 and E. 1,772,092.04.

The parcel of land above described contains 1.53 acres, more or less.

EXHIBIT D

TRANSMISSION LINE

Tract 107E

Tract Index and Segment No. 1, Project Map

Title Interest:

Snettisham Power Project electric transmission line easement, to the United States of America, grantee, executed by Carl F. Hagerup and Agnes M. Hagerup, grantors, on April 7, 1971, and recorded April 26, 1971, in Deed Book 96, Page 202 of the Juneau Recording District. Assigned to AIDEA as part of the Snettisham Transfer. Tract 107E is within the boundaries of the City and Borough of Juneau. So long as the Authority complies with the terms of the easement and right-of-way, the permit remains in effect and is assignable.

Easement Description:

Township 42 South, Range 68 East, Copper River Meridian, Alaska
U.S. Survey 3269, Lot 6.

Tract 107E

A parcel of land being a portion of Lot 6 of United States Survey No. 3269 located on the northeasterly side of Gastineau Channel approximately 5 miles southeast of Juneau, Alaska; being within the Harris Mining District of the Juneau Recording District, First Judicial District, State of Alaska; said portion being described as follows:

COMMENCING at Corner No. 3 of said Survey;
thence on the west boundary line thereof, South 45° 47' 27" West, a distance of 296.80 feet;
thence leaving said line South 50° 38' 41" East, a distance of 1,555.10 feet to the west boundary line of said Lot 6 and the TRUE POINT OF BEGINNING;
thence on the boundary lines thereof, North 43° 33' 27" East, a distance of 29.71 feet, more or less, to the northwest corner thereof;
thence South 40° 47' 33" East, a distance of 332.64 feet, more or less, to the northeast corner of said Lot 6;
thence South 45° 47' 27" West, a distance of 123.04 feet;
thence leaving said boundary lines, North 50° 38' 41" West, a distance of 317.05 feet, more or less, to said west boundary line;
thence on said line North 43° 33' 27" East, a distance of 150.40 feet to said POINT OF BEGINNING.

The above bearings are based on the U.T.M. Grid System with Corner No. 3 of said Survey having Grid Coordinates of N. 21,186,881.71 and E. 1,772,092.04.

The parcel of land above described contains 1.13 acres, more or less.

EXHIBIT D

TRANSMISSION LINE

Tract C, Parcel 3

Segment No. 1, Project Map

Title Interest:

Snettisham Power Project Right-of-Way Grant, AA-79908, recorded April 3, 1998, in Book 491, Page 156, in the Juneau Recording District, for 138 kV overhead power transmission line and the Thane Substation, issued by the U.S. Department of the Interior, Bureau of Land Management, effective March 17, 1998, to U.S. Department of Energy, Alaska Power Administration. Assigned to the Alaska Industrial Development and Export Authority on the transfer of the Snettisham Project. So long as the Authority complies with the terms of the permit, it remains in effect for the life of the Snettisham Project. Any subsequent assignment is subject to grantor's consent and approval, and may subject the assignee to rental and other fees.

The underlying lands are under the jurisdiction of the United States of America under the management of the Department of the Interior, Bureau of Land Management. Tract C, Parcel 3 is within the boundaries of the City and Borough of Juneau.

Easement Description:

Township 42 South, Range 68 East, Copper River Meridian, Alaska
U.S. Survey 3269, Lot 8.

Tract C, Parcel 3
A parcel of land being a portion of a strip of land 300.00 feet in width, lying in the Juneau Townsite, State of Alaska. Said parcel more particularly described as follows:

Commencing at corner C4 from the U.S. Survey No. 3269 (as shown on drawing AK-RE-101 sheet 2 of 8 Department of the Army, Office of the Alaska District Engineer, North Pacific Division, last revised 2-2-89), the POINT OF BEGINNING;

Thence South 44°12'33" East along the easterly line of said survey 399.48 feet;

thence South 45°48'33" West 77.53 feet to the westerly right-of-way of a strip of land 300.00 feet wide known as the Snettisham

Power Project Transmission Line (as shown on said drawing AK-RE-101);

thence North 50°40'34" West along said westerly right-of-way 402.05 feet;

thence North 45°48'33" East 122.81 feet to corner C4 of said U.S. Survey No. 3269, the POINT OF BEGINNING.

Contains 0.92 acres more or less.

EXHIBIT D

TRANSMISSION LINE

Tract 201E

Tract Index and Inset C, Segment No. 2, Project Map

Title Interest:

Snettisham Power Project electric transmission line easement, to the United States of America, grantee, executed by Lester L. Linehand and Carolyn E. Linehan, grantors, on May 4, 1971, and recorded May 17, 1971, in Deed Book 96, Page 392 of the Juneau Recording District. Assigned to AIDEA as part of the Snettisham Transfer. Tract 201E is within the boundaries of the City and Borough of Juneau. So long as the Authority complies with the terms of the easement and right-of-way, the permit remains in effect and is assignable.

Easement Description:

Township 42 South, Range 68 East, Copper River Meridian, Alaska
U.S. Survey 3269, Lot 9.

Tract 201E

A parcel of land being a portion of Lot 9 of United States Survey No. 3269 located on the northeasterly side of Gastineau Channel approximately 5 miles southeast of Juneau, Alaska; being within the Harris Mining District of the Juneau Recording District, First Judicial District, State of Alaska; said portion being described as follows:

COMMENCING at Corner No. 4 of said Survey;
thence on the north boundary line thereof, South 44° 12' 33" East, a distance of 399.68 feet to the northwest corner of said Lot 9 and the TRUE POINT OF BEGINNING.
Thence continuing South 44° 12' 33" East, a distance of 399.68 feet to the northeast corner thereof; said corner also being Corner No. 5 of said Survey;
thence on the east boundary line of said Lot, South 45° 47' 27" West, a distance of 32.89 feet;
thence leaving said line North 50° 38' 41" West, a distance of 402.16 feet to the west boundary line thereof;
thence on said line North 45° 47' 27" East, a distance of 77.96 feet to said POINT OF BEGINNING.

The above bearings are based on the U.T.M. Grid System with Corner No. 4 of said Survey having Grid Coordinates of N. 21,185,456.69 and E. 1,773,321.76.

The parcel of land described above contains 0.99 of an acre, more or less.

EXHIBIT D

TRANSMISSION LINE

Tract 202E

Tract Index and Inset C, Segment No. 2, Project Map

Title Interest:

Snettisham Power Project electric transmission line easement, to the United States of America, grantee, executed by Warren W. Wiley, Donna J. Wiley, Kenneth Lee Wiley, and Jeannine A. Wiley, grantors, on May 25, 1971, and recorded January 24, 1972, in Miscellaneous Book 35, Page 288 of the Juneau Recording District. Assigned to AIDEA as part of the Snettisham Transfer. Tract 202E is within the boundaries of the City and Borough of Juneau. So long as the Authority complies with the terms of the easement and right-of-way, the permit remains in effect and is assignable.

Easement Description:

Township 42 South, Range 68 East, Copper River Meridian, Alaska
U.S. Survey 3269, Lot 11.

Tract 202E

A parcel of land being a portion of Lot 11 of United States Survey No. 3269 located on the northeasterly side of Gastineau Channel approximately 5 miles southeast of Juneau, Alaska; being within the Harris Mining District of the Juneau Recording District, First Judicial District, State of Alaska; said portion being described as follows:

COMMENCING at Corner No. 4 of said Survey;
thence on the north boundary line thereof, South 44° 12' 33" East, a distance of 799.36 feet to Corner No. 5 of said Survey; said corner also being the northwest corner of said Lot 11 and the TRUE POINT OF BEGINNING;
thence continuing on said line South 40° 41' 33" East, a distance of 189.09 feet;
thence leaving said line North 50° 38' 41" West, a distance of 189.45 feet to the west boundary line of said Lot 11;
thence on said line North 45° 47' 27" East, a distance of 32.89 feet to said POINT OF BEGINNING.

The above bearings are based on the U.T.M. Grid System with Corner No. 4 of said Survey having Grid Coordinates of N. 21,185,456.69 and E. 1,773,321.76.

The parcel of land described above contains 0.05 of an acre, more or less.

EXHIBIT D

TRANSMISSION LINE

Tract 101PT

Segment No. 2, Project Map
Exhibit 1, Page 5, BLM Right-of-Way Grant, AA-79908

Title Interest:

Snettisham Power Project Right-of-Way Grant, AA-79908, recorded April 3, 1998, in Book 491, Page 156, in the Juneau Recording District, for 138 kV overhead power transmission line and the Thane Substation, issued by the U.S. Department of the Interior, Bureau of Land Mangement, effective March 17, 1998, to U.S. Department of Energy, Alaska Power Administration. Assigned to the Alaska Industrial Development and Export Authority on the transfer of the Snettisham Project. So long as the Authority complies with the terms of the permit, it remains in effect for the life of the Snettisham Project. Any subsequent assignment is subject to grantor's consent and approval, and may subject the assignee to rental and other fees.

The underlying lands are under the jurisdiction of the United States of America under the management of the Department of the Interior, Bureau of Land Management. Tract 101PT is within the boundaries of the City and Borough of Juneau.

Easement Description:

Township 42 South, Range 68 East, Copper River Meridian, Alaska
Sections 4, 9, 10, and 11.

Tract 101PT

A tract of land being a portion of a strip of land 300.00 feet in width, lying in the Juneau Townsite, State of Alaska. Said tract more particularly described as follows:

Commencing at corner C3 from the U.S. Survey No. 3269; thence South 40º47'33" East along the easterly line of U.S. Survey No. 3269 a distance of 1719.20 feet to the centerline of a 300.00 foot wide right-of-way for the Snettisham Power Project, the POINT OF BEGINNING;

Thence North 40º47'33" West along the easterly line of said U.S. Survey No. 3269 distance of 873.89 feet to the easterly right-of-

way of the Snettisham Power Project;

Thence along said easterly right-of-way South 50º40'34" East a distance of 3377.94 feet;

Thence South 63º59'52" East 9.59 feet;

Thence South 43º20'27" East 857.02 feet;

Thence North 63º59'52" West 857.02 feet;

Thence North 43º30'27" West 17.87 feet to the westerly riht-of-way of the Snettisham Power Project; thence North 50º40'34" West along said westerly right-of-way 1388.47 feet to the easterly line of said U.S. Survey No. 3269;

Thence North 40º41'33" West along the easterly line of said U.S. Survey 3269 a distance of 184.83 feet to corner C5 of said survey;

Thence North 40º41'33" West along said easterly line of said U.S. Survey 3269 a distance of 798.95 feet to corner C4 of said survey;

Thence North 40º47'33" West along said easterly line of U.S. Survey No. 3269 a distance of 163.04 feet to the POINT OF BEGINNING.

Contains 19.92 acres more or less.

All above bearings are referenced to the Universal Traverse Mercator (UTM) grid coordinate system. Distances are shown as ground distance. Compiled from record data from the Army Corps of Engineers.

EXHIBIT D

TRANSMISSION LINE

Tract 102PT

Segment No. 2, Project Map
Exhibit 1, Page 3, BLM Right-of-Way Grant, AA-79908

Title Interest:

Snettisham Power Project Right-of-Way Grant, AA-79908, recorded April 3, 1998, in Book 491, Page 156, in the Juneau Recording District, for 138 kV overhead power transmission line and the Thane Substation, issued by the U.S. Department of the Interior, Bureau of Land Management, effective March 17, 1998, to U.S. Department of Energy, Alaska Power Administration. Assigned to the Alaska Industrial Development and Export Authority on the transfer of the Snettisham Project. So long as the Authority complies with the terms of the permit, it remains in effect for the life of the Snettisham Project. Any subsequent assignment is subject to grantor's consent and approval, and may subject the assignee to rental and other fees.

The underlying lands are under the jurisdiction of the United States of America under the management of the Department of the Interior, Bureau of Land Management. Tract 102PT is within the boundaries of the City and Borough of Juneau.

Easement Description:

Township 42 South, Range 68 East, Copper River Meridian, Alaska
Sections 4, 9, 10, and 11.

A tract of land being a portion of a strip of land 300.00 feet in width lying 150.0 feet on each side of a centerline, in the Juneau Townsite, State of Alaska. Said centerline more particularly described as follows:

Commencing at corner C3 from the U.S. Survey No. 3269; thence South 40° 47' 33" East along the easterly line of said U.S. Survey 3269 a distance of 1719.20 feet to the centerline of said 300.00 foot wide right-of-way for the Snettisham Power Project;

Thence South 50° 40' 34" East along said centerline 2534.54 feet to tower no. T-56A; thence South 43° 30' 27" East along said centerline 428.52 feet to the POINT OF BEGINNING;

Thence continuing South 43° 30' 27" East along said centerline 4743.08 feet to tower T-56D; thence South 43° 26' 21" East along said centerline 3345.87 feet from whence corner C2 of U.S. Survey 249 bears South 46° 33' 39" West a distance of 60.62 feet; thence continuing South 43° 26' 21" East along said centerline 135.47 feet to the Juneau Townsite Boundary, the POINT OF TERMINATION.

The side lines of said strip are lengthened or shortened to intersect at angle points, begin at the old right-of-way prior to relocation which had a centerline bearing of South 63° 59' 52" East, and terminate on the Juneau Townsite Boundary.

Contains 56.64 acres more or less.

Bearings are referenced to the Universal Traverse Mercator (UTM) grid coordinate system. Distances are shown as ground distance. Compiled from record data.

Excepting therefrom, two parcels more particularly described as follows:

Parcel I

A parcel of land being a portion of U.S. Survey No. 4675, lying within protracted Section 10, T. 42 S., R. 68 E., CRM; said parcel being more particularly described as follows:

Commencing at corner no. 1 and the POINT OF BEGINNING of said survey;

Thence North 47° 03' 47" West, along that boundary line lying between corner no. 1 and corner no. 20 of said survey, for a distance of 1,413.97 feet, to a point on the southerly boundary of the previously described right-of-way;

Thence South 43° 26' 21" East, along said right-of-way line a distance of 1,328.21 feet to a point on the boundary line common to U.S. Survey No. 4675 and U.S. Survey 249;

Thence North 89° 25' 12" East, along said common boundary line, 121.93 feet to the POINT OF BEGINNING.

Parcel I contains approximately 1.36 acres.

Parcel II

A parcel of land being a portion of U.S. Survey No. 249, lying within protracted Section 10, T. 42 S., R. 68 E., CRM; said parcel being more particularly described as follows:

Commencing at corner no. 2 and the POINT OF BEGINNING of said U.S. Survey No. 249, and identical to corner no. 1 of U.S. Survey No. 4675;

Thence South 89° 25' 12" West, along common boundary line of U.S. Survey No. 4675 and U.S. Survey No. 249, a distance of 121.93 feet, to a point on the southerly boundary of the previously described right-of-way line;

Thence South 43° 26' 21" East, along said right-of-way line a distance of 179.28 feet to a point on the boundary line lying between corner no. 1 and corner no. 2 of U.S. Survey No. 249;

Thence North 00° 35' 14" West, along said boundary line, a distance of 131.41 feet to the POINT OF BEGINNING.

Parcel II contains approximately 0.19 acre.

EXHIBIT D

TRANSMISSION LINE

Tract 204P

Tract Index and Segment No. 2, Project Map

Title Interest:

Snettisham Project electric transmission line and facilities right-of-way permit, ADL 53247, issued by the State of Alaska Department of Natural Resources, Division of Lands, on May 17, 1971, to the Corps of Engineers, Department of the Army, for an overhead electrical transmission line, 300 feet in width, across Tract 101E. By first endorsement to right-of-way permit ADL 53427, dated November 9, 1976, Tract 204-P was added to the permit. Assigned to the Alaska Industrial Development and Export Authority on the transfer of the Snettisham Project. So long as the Authority complies with the terms of the easement and right-of-way, the permit remains in effect.

The underlying lands are owned by the Alaska Mental Health Trust Authority by virtue of Quitclaim Deed 80-00005 dated September 20, 1996. Any subsequent assignment is subject to the consent and approval of the Alaska Mental Health Trust Authority, which has reserved the right to request a rental fee upon subsequent assignment to a private entity.

Location:

Township 42 South, Range 68 East, Copper River Meridian, Alaska
U.S. Survey 4675

EXHIBIT D

TRANSMISSION LINE

Tract 205E-1

Tract Index and Inset A, Segment No. 2, Project Map

Title Interest:

Snettisham Power Project electric transmission line easement, to the United States of America, grantee, executed by One-Nine Company, Inc., grantor, on November 11, 1976, and recorded November 12, 1976, in Book 127, Page 249 of the Juneau Recording District. A Correction Deed dated January 18, 1978 from One-Nine Company, Inc. was recorded February 1, 1978, in Book 138, page 952. Assigned to AIDEA as part of the Snettisham Transfer. Tract 205E-1 is within the boundaries of the City and Borough of Juneau. So long as the Authority complies with the terms of the easement and right-of-way, the permit remains in effect and is assignable.

Easement Description:

Township 42 South, Range 68 East, Copper River Meridian, Alaska
U.S. Survey 249.

Tract 205E-1
A parcel of land located within U.S. Survey 249, in protracted Sections 10, 11, 14 and 15 of Township 42 South, Range 68 East of the Copper River Meridian, First Judicial District, State of Alaska; said parcel being more particularly described as follows:

Beginning at Corner No. 2 of U.S. Survey 249, said corner being the most northerly corner of said survey;

Thence South 89° 18' 50" West along that boundary line lying between Corner No. 2 and Corner No. 3 of said survey, a distance of 120.76 feet;

Thence South 43° 26' 21" East, a distance of 177.90 feet to a point on that boundary line lying between Corner No. 1 and Corner No. 2 of said U.S. Survey 249;

Thence North 00° 41' 10" West along said boundary line, a distance of 130.63 feet to said Corner No. 2 and the point of beginning.

Contains 0.18 acres, more or less.

EXHIBIT D

TRANSMISSION LINE

Tract A, Parcel 1

Attachment D-7 of the U.S. Forest Service Transmission Line Easement
Tract Index and Segment No. 2, Project Map

Title Interest:

Snettisham Power Project electric transmission line and facilities right of way easement, issued by the U.S. Forest Service, Tongass National Forest, to Alaska Industrial Development and Export Authority. The right of way across Tract A, Parcel 1 is 300 feet wide, 150 feet each side of the centerline of the project as constructed. Interim Conveyance No. 1264, AA-10518 to Sealaska Corporation is excluded. So long as the Authority complies with the terms of the permit, it remains in effect for the life of the Snettisham Project; provided that Grantor shall review the terms and conditions of the easement each thirty year period, and may incorporate into the easement such new terms, conditions or stipulations as existing or prospective conditions may warrant. Any subsequent assignment is subject to grantor's consent and approval, and may subject the assignee to rental and other fees.

The underlying lands are under the jurisdiction of the United States of America by virtue of Proclamation 846, 35 Stat. 2226, for the withdrawal of the Tongass National Forest lands, dated February 16, 1909. The land is managed by the U.S. Department of Agriculture, National Forest Service, Tongass National Forest. Tract A, Parcel 1 is within the boundaries of the City and Borough of Juneau.

Location:

Township 42 South, Range 68 East, Copper River Meridian, Alaska
Sections 10, 15, 23, 24, and 25.

Township 42 South, Range 69 East, Copper River Meridian, Alaska
Section 19.

EXHIBIT D

TRANSMISSION LINE

Tract 205E-2

Tract Index and Inset A, Segment No. 2, Project Map

Title Interest:

Snettisham Power Project electric transmission line easement, to the United States of America, grantee, executed by One-Nine Company, Inc., grantor, on November 11, 1976, and recorded November 12, 1976, in Book 127, Page 249 of the Juneau Recording District. A Correction Deed dated January 18, 1978 from One-Nine Company, Inc. was recorded February 1, 1978, in Book 138, page 952. Assigned to AIDEA as part of the Snettisham Transfer. Tract 205E-2 is within the boundaries of the City and Borough of Juneau. So long as the Authority complies with the terms of the easement and right-of-way, the permit remains in effect and is assignable.

Easement Description:

Township 42 South, Range 68 East, Copper River Meridian, Alaska
U.S. Survey 2278.

Tract 205E-2

A parcel of land located within a portion of U.S. Surveys 2958 and 2278 in protracted Sections 10, 11, 14 and 15 of Township 42 South, Range 68 East of the Copper River Meridian, First Judicial District, State of Alaska; said parcel being more particularly described as follows:

Beginning at Corner No. 4 of U.S. Survey 2958, said corner being common with Corner No. 3 of U.S. Survey 2278;

Thence North 60° 42' 45" West along that boundary line lying between Corner No. 4 and Corner No. 3 of said U.S. Survey 2958, a distance of 111.66 feet;

Thence South 43° 26' 21" East, a distance of 119.81 feet to a point on the common boundary line between said U.S. Surveys 2958 and 2278;

Thence continuing South 43° 26' 21" East, a distance of 194.79 feet to a point on that boundary line lying between Corner No. 3 and Corner No. 2 of said U.S. Survey 2278;

Thence North 34° 22' 53" West along said boundary line, a distance of 210.60 feet to the point of beginning.

Contains 0.12 acres, more or less.

EXHIBIT D

TRANSMISSION LINE

Tract 205E-3

Tract Index and Inset B, Segment No. 2, Project Map

Title Interest:

Snettisham Power Project electric transmission line easement, to the United States of America, grantee, executed by One-Nine Company, Inc., grantor, on November 11, 1976, and recorded November 12, 1976, in Book 127, Page 249 of the Juneau Recording District. A Correction Deed dated January 18, 1978 from One-Nine Company, Inc. was recorded February 1, 1978, in Book 138, page 952. Assigned to AIDEA as part of the Snettisham Transfer. Tract 205E-3 is within the boundaries of the City and Borough of Juneau. So long as the Authority complies with the terms of the easement and right-of-way, the permit remains in effect and is assignable.

Easement Description:

Township 42 South, Range 68 East, Copper River Meridian, Alaska
U.S. Survey 256.

Tract 205E-3

A parcel of land located within a portion of U.S. Survey 324 in protracted Sections 10, 11, 14 and 15 of Township 42 South, Range 68 East of the Copper River Meridian, First Judicial District, State of Alaska; said parcel being more particularly described as follows:

Commencing at Corner No. 3 of U.S. Survey 324;

Thence South 89° 30' 42" West along that boundary line lying between Corner No. 3 and Corner No. 2 of said U.S. Survey 324, a distance of 1,098.45 feet to the TRUE POINT OF BEGINNING;

Thence continuing South 89° 30' 42" West along said boundary line for a distance of 409.88 feet;

Thence South 43° 26' 21" East, a distance of 1,428.89 feet to a point on the westerly boundary line of that parcel of land conveyed to the United States of America by deed recorded 17 April 1951 in Book 43 at Page 242;

Thence North 26° 40' 26" East, along said boundary line of said parcel of land, a distance of 320.28 feet;

Thence North 43° 26' 21" West, a distance of 1,037.49 feet to the point of beginning.

Contains 8.49 acres, more or less.

EXHIBIT D

TRANSMISSION LINE

Tract A, Parcel 2

Attachment D-7 of the U.S. Forest Service Transmission Line Easement
Tract Index and Segment No. 2, Project Map

Title Interest:

Snettisham Power Project electric transmission line and facilities right of way easement, issued by the U.S. Forest Service, Tongass National Forest, to Alaska Industrial Development and Export Authority. The right of way across Tract A, Parcel 2 is 300 feet wide, 150 feet each side of the centerline of the project as constructed. Interim Conveyance No. 1264, AA-10518 to Sealaska Corporation is excluded. So long as the Authority complies with the terms of the permit, it remains in effect for the life of the Snettisham Project; provided that Grantor shall review the terms and conditions of the easement each thirty year period, and may incorporate into the easement such new terms, conditions or stipulations as existing or prospective conditions may warrant. Any subsequent assignment is subject to grantor's consent and approval, and may subject the assignee to rental and other fees.

The underlying lands are under the jurisdiction of the United States of America by virtue of Proclamation 846, 35 Stat. 2226, for the withdrawal of the Tongass National Forest lands, dated February 16, 1909. The land is managed by the U.S. Department of Agriculture, National Forest Service, Tongass National Forest. Tract A, Parcel 2 is within the boundaries of the City and Borough of Juneau.

Location:

Township 42 South, Range 69 East, Copper River Meridian, Alaska
Sections 19, 20, 21, 28, 29, and 30.

EXHIBIT D

TRANSMISSION LINE

Tract 203P

Tract Index and Segments Nos. 2 and 3, Project Map

Title Interest:

Snettisham Project electric transmission line and facilities right-of-way permit, ADL 30442, issued by the State of Alaska Department of Natural Resources, Division of Lands, on January 1, 1995, to the Department of the Army, Corps of Engineers, U. S. Army Engineering District, Alaska, for power transmission lines and related facilities necessary for the transmission of electrical power from the Snettisham Hydropower Facility to Juneau, 1,600 feet in width across Tract 203P. The permit was originally issued January 13, 1966, for a right of way 50 feet wide on each side of centerline of the submarine power cable and was superceeded by the January 1, 1995 permit. Assigned to Alaska Industrial Development and Export Authority on the transfer of the Snettisham Project. So long as the Authority complies with the terms of the easement and right-of-way, the permit remains in effect, and any subsequent assignment is subject to grantor's consent and approval.

The tidelands are under the jurisdiction of the State of Alaska by virtue of the Alaska Statehood Act, Public Law 85-508, 72 Stat. 339, Section 6(m) and are managed by the Department of Natural Resources, Division of Lands. Tract 203P is within the boundaries of the City and Borough of Juneau.

Location:

Township 42 South, Range 69 East, Copper River Meridian
Sections 21, 26, 27, 28, and 35.

EXHIBIT D

TRANSMISSION LINE

Tract A, Parcel 3

Attachment D-6 of the U.S. Forest Service Transmission Line Easement
Tract Index and Segment No. 3, Project Map

Title Interest:

Snettisham Power Project electric transmission line and facilities right of way easement, issued by the U.S. Forest Service, Tongass National Forest, to Alaska Industrial Development and Export Authority. The right of way across Tract A, Parcel 3 is 300 feet wide, 150 feet each side of the centerline of the project as constructed. So long as the Authority complies with the terms of the permit, it remains in effect for the life of the Snettisham Project; provided that Grantor shall review the terms and conditions of the easement each thirty year period, and may incorporate into the easement such new terms, conditions or stipulations as existing or prospective conditions may warrant. Any subsequent assignment is subject to grantor's consent and approval, and may subject the assignee to rental and other fees.

The underlying lands are under the jurisdiction of the United States of America by virtue of Proclamation 846, 35 Stat. 2226, for the withdrawal of the Tongass National Forest lands, dated February 16, 1909. The land is managed by the U.S. Department of Agriculture, National Forest Service, Tongass National Forest. Tract A, Parcel 3 is within the boundaries of the City and Borough of Juneau.

Location:

Township 42 South, Range 69 East, Copper River Meridian, Alaska
Sections 26 and 35.

Township 43 South, Range 69 East, Copper River Meridian, Alaska
Sections 2, 11, 12, 13, 14, and 24.

EXHIBIT D

TRANSMISSION LINE

Tract 300P

Tract Index and Segment No. 3, Project Map

Title Interest:

Snettisham Project electric transmission line and facilities right-of-way permit, ADL 58098, issued by the State of Alaska Department of Natural Resources, Division of Lands, on October 1, 1994, to the Department of the Army, Corps of Engineers, U. S. Army Engineering District, Alaska, up to 300 feet in width, across Tract 300P. Assigned to Alaska Industrial Development and Export Authority on the transfer of the Snettisham Project. So long as the Authority complies with the terms of the easement and right-of-way, the permit remains in effect, and any subsequent assignment is subject to grantor's consent and approval.

The tidelands are under the jurisdiction of the State of Alaska by virtue of the Alaska Statehood Act, Public Law 85-508, 72 Stat. 339, Section 6(m) and are managed by the Department of Natural Resources, Division of Lands. Tract 300P is within the boundaries of the City and Borough of Juneau.

Location:

Township 43 South, Range 69 East, Copper River Meridian, Alaska
Section 24.

Township 43 South, Range 70 East, Copper River Meridian, Alaska
Section 19.

EXHIBIT D

TRANSMISSION LINE

Tract A, Parcel 4

Attachments D-6 and D-5 of the U.S. Forest Service Transmission Line Easement
Tract Index and Segments No. 3 and 4, Project Map

Title Interest:

Snettisham Power Project electric transmission line and facilities right of way easement, issued by the U.S. Forest Service, Tongass National Forest, to Alaska Industrial Development and Export Authority. The right of way across Tract A, Parcel 4 is 300 feet wide, 150 feet each side of the centerline of the project as constructed. Excluded from the grant are all non National Forest System lands, including approved native allotment A-002867. So long as the Authority complies with the terms of the permit, it remains in effect for the life of the Snettisham Project; provided that Grantor shall review the terms and conditions of the easement each thirty year period, and may incorporate into the easement such new terms, conditions or stipulations as existing or prospective conditions may warrant. Any subsequent assignment is subject to grantor's consent and approval, and may subject the assignee to rental and other fees.

The underlying lands are under the jurisdiction of the United States of America by virtue of Proclamation 846, 35 Stat. 2226, for the withdrawal of the Tongass National Forest lands, dated February 16, 1909. The land is managed by the U.S. Department of Agriculture, National Forest Service, Tongass National Forest. Tract A, Parcel 4 is within the boundaries of the City and Borough of Juneau.

Location:

Township 43 South, Range 70 East, Copper River Meridian, Alaska
Sections 19, 30, and 31.

Township 44 South, Range 70 East, Copper River Meridian, Alaska
Sections 6, 17, 20, and 21.

EXHIBIT D

TRANSMISSION LINE

Tract 401E

Tract Index and Inset A, Segment No. 4, Project Map

Title Interest:

Snettisham Power Project electric transmission line easement, to the United States of America, grantee, executed by Curtis E.R. Bach and Dolores H. Bach, grantors, on April 8, 1971, and recorded April 9, 1971, in Deed Book 96, Page 104 of the Juneau Recording District. Assigned to AIDEA as part of the Snettisham Transfer. Tract 401E is within the boundaries of the City and Borough of Juneau. So long as the Authority complies with the terms of the easement and right-of-way, the permit remains in effect and is assignable.

Easement Description:

Township 44 South, Range 70 East, Copper River Meridian, Alaska
U.S. Survey 1544.

Tract 401E

A parcel of land being a portion of a tract of land known as Homestead Entry Survey No. 163, United States Survey No. 1544, located approximately 23 miles southeast of Juneau, Alaska at Taku Harbor; being within the Harris Mining District of the Juneau Recording District, First Judicial District, State of Alaska; said portion being described as follows:

COMMENCING at United States Land Monument No. 163; thence North 85° 08' 36" East, a distance of 181.17 feet to Corner No. 1 of said Survey;

Thence on the northeast boundary line thereof, North 01° 10' 24" West, a distance of 757.21 feet to the TRUE POINT OF BEGINNING;

Thence leaving said line North 56° 52' 49" West, a distance of 356.61 feet to the northwest boundary line of said Survey; thence on said line North 86° 36' 36" East, a distance of 294.84 feet to Corner No. 2 thereof;

Thence on said northeast boundary line South 01° 10' 24" East, a distance of 212.33 feet to the said POINT OF BEGINNING.

The above bearings are based on the U.T.M. Grid System; said U.S.L.M. No. 163 having Grid Coordinates of N. 21,120,333.66 and E. 1,830,979.57.

The parcel of land above described contains 0.72 of an acre, more or less.

EXHIBIT D

TRANSMISSION LINE

Tract 400E

Tract Index and Inset B, Segment No. 4, Project Map

Title Interest:

Snettisham Power Project electric transmission line easement, to the United States of America, grantee, executed by CWC Fisheries, Inc., grantor, on August 31, 1971, and recorded October 11, 1971, in Miscellaneous Book 34, Page 418 of the Juneau Recording District. Assigned to AIDEA as part of the Snettisham Transfer. Tract 400E is within the boundaries of the City and Borough of Juneau.

Easement Description:

Township 44 South, Range 70 East, Copper River Meridian, Alaska
U.S. Mineral Survey 610.

Tract 400E

A strip of land over and across a parcel of land known as Taku Lode Mineral Survey No. 610, located approximately 25 miles southeast of Juneau, Alaska at Taku Harbor; being within the Harris Mining District of the Juneau Recording District, First Judicial District, State of Alaska; said strip being 300.00 feet wide lying 150.00 feet on each side of the following described centerline:

COMMENCING at a point being called T-46 for this description; said point having U.T.M. Grid Coordinates of N. 21,120,030.00 and E. 1,832,970.00;

thence from said point South 08° 32' 22" East, a distance of 208.00, more or less, to the northwest boundary line of said Taku Lode; said point being South 84° 49' 36" West, a distance of 457.18 feet, more or less, as measured on said line from Corner No. 3 thereof and being the TRUE POINT OF BEGINNING of said centerline.

Thence continuing South 08° 32' 22" West, a distance of 616.10 feet, more or less to the southeast boundary line of said Taku Lode; said point being South 84° 49' 36" West, a distance 561.37 feet, more or less from Corner No. 4 thereof and the terminus of said centerline.

The side lines of said strip are to be prolonged or shortened so as to terminate on said Taku Load boundary lines.

The above bearings are based on the U.T.M. Grid System.

The strip of land above described contains 4.24 acres, more or less.

EXHIBIT D

TRANSMISSION LINE

Tract 402P

Tract Index and Segment No. 4, Project Map

Title Interest:

Snettisham Project electric transmission line and facilities right-of-way permit, ADL 58098, issued by the State of Alaska Department of Natural Resources, Division of Lands, on October 1, 1994, to the Department of the Army, Corps of Engineers, U. S. Army Engineering District, Alaska, up to 300 feet in width, across Tract 402P, within protracted Sections 21 and 28. Assigned to Alaska Industrial Development and Export Authority on the transfer of the Snettisham Project. So long as the Authority complies with the terms of the easement and right-of-way, the permit remains in effect, and any subsequent assignment is subject to grantor's consent and approval.

The tidelands are under the jurisdiction of the State of Alaska by virtue of the Alaska Statehood Act, Public Law 85-508, 72 Stat. 339, Section 6(m) and are managed by the Department of Natural Resources, Division of Lands. Tract 402P is within the boundaries of the City and Borough of Juneau.

Location:

Township 44 South, Range 70 East, Copper River Meridian, Alaska
Sections 21 and 28.

EXHIBIT D

TRANSMISSION LINE

Tract A, Parcel 5

Attachments D-5, D-4 and D-3 of the U.S. Forest Service Transmission Line Easement
Tract Index and Segments No. 4, 5 and 6, Project Map

Title Interest:

Snettisham Power Project electric transmission line and facilities right of way easement, issued by the U.S. Forest Service, Tongass National Forest, to Alaska Industrial Development and Export Authority. The right of way across Tract A, Parcel 5 is 300 feet wide, 150 feet each side of the centerline of the project as constructed. Excluded from the grant are all non National Forest System lands, including approved native allotment A-002867. Included in the grant is assignment of the federal reservation for the transmission line in Tentative Approval for State of Alaska selection AA-18005 (Taku Harbor), dated October 22, 1980. So long as the Authority complies with the terms of the permit, it remains in effect for the life of the Snettisham Project; provided that Grantor shall review the terms and conditions of the easement each thirty year period, and may incorporate into the easement such new terms, conditions or stipulations as existing or prospective conditions may warrant. Any subsequent assignment is subject to grantor's consent and approval, and may subject the assignee to rental and other fees.

The underlying lands are under the jurisdiction of the United States of America by virtue of Proclamation 846, 35 Stat. 2226, for the withdrawal of the Tongass National Forest lands, dated February 16, 1909. The land is managed by the U.S. Department of Agriculture, National Forest Service, Tongass National Forest. Tract A, Parcel 5 is within the boundaries of the City and Borough of Juneau.

Location:

Township 44 South, Range 70 East, Copper River Meridian, Alaska
Sections 28, 33, and 34.

Township 45 South, Range 71 East, Copper River Meridian, Alaska
Sections 1, 2, 4, 5, 9, 10, and 11.

T. 45 S., R. 72 E., CRM
Section 6.

Township 44 South, Range 71 East, Copper River Meridian, Alaska

Sections 21, 28, and 33.

EXHIBIT D

TRANSMISSION LINE

Tract 600P

Segment No.6, Project Map

Title Interest:

Snettisham Project electric transmission line and facilities right-of-way permit, ADL 58098, issued by the State of Alaska Department of Natural Resources, Division of Lands, on October 1, 1994, to the Department of the Army, Corps of Engineers, U. S. Army Engineering District, Alaska, up to 300 feet in width, across Tract 600P, within protracted Sections 16 and 21. Assigned to Alaska Industrial Development and Export Authority on the transfer of the Snettisham Project. So long as the Authority complies with the terms of the easement and right-of-way, the permit remains in effect, and any subsequent assignment is subject to grantor's consent and approval.

The tidelands are under the jurisdiction of the State of Alaska by virtue of the Alaska Statehood Act, Public Law 85-508, 72 Stat. 339, Section 6(m) and are managed by the Department of Natural Resources, Division of Lands. Tract 600P is within the boundaries of the City and Borough of Juneau.

Location:

Township 44 South, Range 71 East, Copper River Meridian, Alaska
Sections 16 and 21.

EXHIBIT D

TRANSMISSION LINE

Tract A, Parcel 6

Attachment D-3 of the U.S. Forest Service Transmission Line Easement
Tract Index and Segment No.6, Project Map

Title Interest:

Snettisham Power Project electric transmission line and facilities right of way easement, issued by the U.S. Forest Service, Tongass National Forest, to Alaska Industrial Development and Export Authority. The right of way across Tract A, Parcel 6 is 300 feet wide, 150 feet each side of the centerline of the project as constructed. So long as the Authority complies with the terms of the permit, it remains in effect for the life of the Snettisham Project; provided that Grantor shall review the terms and conditions of the easement each thirty year period, and may incorporate into the easement such new terms, conditions or stipulations as existing or prospective conditions may warrant. Any subsequent assignment is subject to grantor's consent and approval, and may subject the assignee to rental and other fees.

The underlying lands are under the jurisdiction of the United States of America by virtue of Proclamation 846, 35 Stat. 2226, for the withdrawal of the Tongass National Forest lands, dated February 16, 1909. The land is managed by the U.S. Department of Agriculture, National Forest Service, Tongass National Forest. Tract A, Parcel 6 is within the boundaries of the City and Borough of Juneau.

Location:

Township 44 South, Range 71 East, Copper River Meridian, Alaska
Sections 2, 3, 9, 10, 15, 16, and 21.

Township 43 South, Range 71 East, Copper River Meridian, Alaska
Sections 25, 26, 34, and 35.

EXHIBIT D

TRANSMISSION LINE

Tract 7B

Attachment D-1 of the U.S. Forest Service Transmission Line Easement
Inset A Segment No.7, Project Map (Previously Identified as Project Lands --Tract 7B is not specifically identified on the Project Map.)

Title Interest:

Snettisham Power Project electric transmission line and facilities right of way easement, issued by the U.S. Forest Service, Tongass National Forest, to Alaska Industrial Development and Export Authority. The right of way across Tract 7B is 300 feet wide, 150 feet each side of the centerline of the project as constructed. So long as the Authority complies with the terms of the permit, it remains in effect for the life of the Snettisham Project; provided that Grantor shall review the terms and conditions of the easement each thirty year period, and may incorporate into the easement such new terms, conditions or stipulations as existing or prospective conditions may warrant. Any subsequent assignment is subject to grantor's consent and approval, and may subject the assignee to rental and other fees.

The underlying lands are under the jurisdiction of the United States of America by virtue of Proclamation 846, 35 Stat. 2226, for the withdrawal of the Tongass National Forest lands, dated February 16, 1909. The land is managed by the U.S. Department of Agriculture, National Forest Service, Tongass National Forest. Tract 7B is within the boundaries of the City and Borough of Juneau.

Location:

Township 43 South, Range 71 East, Copper River Meridian, Alaska
Section 24.

EXHIBIT D

TRANSMISSION LINE

Tract 700P-2

Inset A Segment No.7, Project Map

Title Interest:

Snettisham Project electric transmission line and facilities right-of-way permit, ADL 58098, issued by the State of Alaska Department of Natural Resources, Division of Lands, on October 1, 1994, to the Department of the Army, Corps of Engineers, U. S. Army Engineering District, Alaska, up to 300 feet in width, across Tract 700P-2, within protracted Sections 23 and 24. Assigned to Alaska Industrial Development and Export Authority on the transfer of the Snettisham Project. So long as the Authority complies with the terms of the easement and right-of-way, the permit remains in effect, and any subsequent assignment is subject to grantor's consent and approval.

The tidelands are under the jurisdiction of the State of Alaska by virtue of the Alaska Statehood Act, Public Law 85-508, 72 Stat. 339, Section 6(m) and are managed by the Department of Natural Resources, Division of Lands. Tract 700P-2 is within the boundaries of the City and Borough of Juneau.

Location:

Township 43 South, Range 71 East, Copper River Meridian, Alaska
Sections 23, and 24.

EXHIBIT D

TRANSMISSION LINE

Tract 7A

Attachment D-2 of the U.S. Forest Service Transmission Line Easement Inset A Segment No.7, Project Map (Previously Identified as Project Lands -- Tract 7A is not specifically identified on the Project Map.)

Title Interest:

Snettisham Power Project electric transmission line and facilities right of way easement, issued by the U.S. Forest Service, Tongass National Forest, to Alaska Industrial Development and Export Authority. The right of way across Tract 7A is 300 feet wide, 150 feet each side of the centerline of the project as constructed. So long as the Authority complies with the terms of the permit, it remains in effect for the life of the Snettisham Project; provided that Grantor shall review the terms and conditions of the easement each thirty year period, and may incorporate into the easement such new terms, conditions or stipulations as existing or prospective conditions may warrant. Any subsequent assignment is subject to grantor's consent and approval, and may subject the assignee to rental and other fees.

The underlying lands are under the jurisdiction of the United States of America by virtue of Proclamation 846, 35 Stat. 2226, for the withdrawal of the Tongass National Forest lands, dated February 16, 1909. The land is managed by the U.S. Department of Agriculture, National Forest Service, Tongass National Forest. Tract 7A is within the boundaries of the City and Borough of Juneau.

Location:

Township 43 South, Range 71 East, Copper River Meridian, Alaska
Sections 23 and 24.

EXHIBIT D

TRANSMISSION LINE

Tract 700P-1

Inset A Segment No.7, Project Map

Title Interest:

Snettisham Project electric transmission line and facilities right-of-way permit, ADL 58098, issued by the State of Alaska Department of Natural Resources, Division of Lands, on October 1, 1994, to the Department of the Army, Corps of Engineers, U. S. Army Engineering District, Alaska, up to 300 feet in width, across Tract 700P-1, within protracted Sections 13, 14, 23 and 24. Assigned to the Alaska Industrial Development and Export Authority on the transfer of the Snettisham Project. So long as the Authority complies with the terms of the easement and right-of-way, the permit remains in effect, and any subsequent assignment is subject to grantor's consent and approval.

The tidelands are under the jurisdiction of the State of Alaska by virtue of the Alaska Statehood Act, Public Law 85-508, 72 Stat. 339, Section 6(m) and are managed by the Department of Natural Resources, Division of Lands. Tract 700P-1 is within the boundaries of the City and Borough of Juneau.

Location:

Township 43 South, Range 71 East, Copper River Meridian, Alaska
Sections 13, 14, 23, and 24.

EXHIBIT D

Project Area

Alaska Tidelands Survey 1551, and Right-of-Way to Crater Cove

ATS 1551 Survey Plat, and Right-of-way to Crater Cove

Title Interest:

Tidelands Lease Agreement, ADL No. 106392, issued by the State of Alaska, Department of Natural Resources, to Alaska Industrial Development and Export Authority for the operation and maintenance of boat basin and channel, docks, airstrip and related facilities for the Snettisham Project. So long as the Authority complies with the terms of the tideland lease, it has a term of 54 years. The lease may be assigned to Alaska Electric Light and Power Company or its affiliate Snettisham Electric Company, without additional public notice, but subject to imposition of specified conditions to convert the lease from a public to a private lease, including but not limited to payment of fair market rental.

The tidelands are under the jurisdiction of the State of Alaska by virtue of the Alaska Statehood Act, Public Law 85-508, 72 Stat. 339, Section 6(m) and are managed by the Department of Natural Resources, Division of Lands. ATS 1551 is within the boundaries of the City and Borough of Juneau.

Together with:

Access Road Right-of-Way, ADL 106418, issued by the State of Alaska, Department of Natural Resources, to Alaska Industrial Development and Export Authority for Snettisham Power Project access across tidelands to Crater Cove. The right-of-way may be assigned to Alaska Electric Light and Power Company or its affiliate Snettisham Electric Company, without additional public notice, but subject to imposition of specified conditions to convert the it from a public to a private easement, including but not limited to payment of fair market rental.

Location:

Township 43 South, Range 71 East, Copper River Meridian, Alaska
Sections 13, 14, 23, and 24.

EXHIBIT D

Project Area

Tract 37 and Tract 38

Tract Index and Segment No. 7, Project Map

Title Interest:

Fees simple on condition subsequent by virtue of Patent No. 106410 issued by the State of Alaska, Department of Natural Resources, to Alaska Industrial Development and Export Authority. Tract 37 and Tract 38 are within the boundaries of the City and Borough of Juneau. So long as the Authority complies with the terms of the patent, it remains in effect, and the parcel may be conveyed to Alaska Electric Light and Power Company or Snettisham Electric Company.

Together with:

ADL 43058, Water Rights Certificate 1467, applied for and issued effective October 31, 1974, to the United States of America, Corps of Engineers, Department of the Army, Alaska District, for Long Lake hydro, transferred June 1, 1995, to the U.S. Department of Energy, Alaska Power Administration, and assigned to Alaska Industrial Development Authority upon the Snettisham Project transfer. So long as the Authority complies with the terms of the permit, it remains in effect, and any subsequent assignment is subject to grantor's consent and approval.

ADL 65772 Water Rights permit, applied for January 22, 1975, and issued August 18, 1992, to the United States of America, Corps of Engineers, Department of the Army, Alaska District, for Crater Lake hydro, transferred June 1, 1995, to the U.S. Department of Energy, Alaska Power Administration, and assigned to Alaska Industrial Development Authority upon the Snettisham Project transfer. So long as the Authority complies with the terms of the permit, it remains in effect, and any subsequent assignment is subject to grantor's consent and approval.

ADL 65773, Water Rights Certificate 1151, applied for January 30, 1975, and issued effective January 30, 1975, to the United States of America, Corps of Engineers, Department of the Army, Alaska District, for Snettisham Power Project facilities, transferred June 1, 1995, to the U.S. Department of Energy, Alaska Power Administration, and assigned to Alaska Industrial Development Authority upon the Snettisham Project transfer. So long as the Authority complies with the terms of the permit, it remains in effect, and any subsequent assignment is subject to grantor's consent and approval.

Tract Description:

Township 42 South, Range 71 East, Copper River Meridian, Alaska:

Tract 37,

Containing 1,568.29 Acres, more or less

According to the survey plat accepted by the United States Department of the Interior, Bureau of Land Management in Anchorage, Alaska on February 17, 1998

Township 43 South, Range 71 East, Copper River Meridian, Alaska:

Tract 37 and 38,

Containing 2,064.84 Acres, more or less

According to the survey plat accepted by the United States Department of the Interior, Bureau of Land Management in Anchorage, Alaska on February 17, 1998

Aggregating 3,633.13 Acres, more or less

Note:
The submerged lands under the navigable waters of Long and Crater Lakes at the time of statehood are under the Jurisdiction of the State of Alaska by virtue of the Alaska Statehood Act, Public Law 85-508, 72 Stat. 339, Section 6(m). By virtue of ADL 43058, Water Rights Certificate 1467, ADL 65772 Water Rights permit, and ADL 65773, Water Rights Certificate 1151, Alaska Industrial Development and Export Authority has the right to appropriate water from these lakes.

EXHIBIT D

COMMUNICATION SITE LEASE

Parcel 8

Tract Register and Parcel 8, Segment No. 7, Project Map

Title Interest:

Snettisham Power Project communication site lease, issued by the U.S. Forest Service, Tongass National Forest, to Alaska Industrial Development and Export Authority. The lease is for the radio repeater, communication site facilities as constructed on approximately 0.1 acres. So long as the Authority complies with the terms of the tideland lease, it has a term until December 31, 2018. Any subsequent assignment is subject to grantor's prior approval, and may subject the assignee to rental and other fees.

The underlying lands are under the the jurisdiction of the United States of America and within the Tongass National Forest by virtue of Proclamation 846, 35 Stat. 2226, dated February 16, 1909. Public Law 96-487, of December 21, 1980, Section 503(b) established the Admiralty Island National Monument and Wilderness. Pursuant to Section 503(c) of the Act, the land is managed by the National Forest Service, Tongass National Forest.

Location:

Township 47 South, Range 71 East, Copper River Meridian, Alaska
Section 5.

005777 N/C cc
JUNEAU
RECORDING DISTRICT
1998 AU 18 AM 9:31
REQUESTED BY
TT

Exhibit 4

AGREEMENT BETWEEN

THE CITY & BOROUGH OF JUNEAU

AND

ALASKA ELECTRIC LIGHT AND POWER

A. Recitals

1. The Government of the United States, acting by and through the Alaska Power Administration, built and currently owns the Snettisham Hydroelectric Project ("Snettisham"), which the Government of the United States has decided to sell to the Alaska Industrial Development & Export Authority ("AIDEA").

2. Alaska Electric Light And Power Company ("AELP") purchases electric power from Snettisham for resale to customers within the City & Borough of Juneau ("CBJ"), for whom Snettisham represents the primary source of electric power.

3. AIDEA will finance its purchase of Snettisham by issuing bonds that will be secured by AELP's take-or-pay commitment to purchase Snettisham power from AIDEA and pay the costs of AIDEA's Snettisham debt, including in potential circumstances in which Snettisham is not producing power.

4. AELP's Snettisham power purchase commitment to AIDEA and the Bond Trustee is set forth in a Power Sales Agreement ("PSA") and other documents related to the financing of AIDEA's proposed purchase of Snettisham.

5. The PSA requires the approval of the Alaska Public Utilities Commission ("APUC"), and AELP has requested that the CBJ adopt a resolution asking the APUC to grant such approval.

B. Agreement

1. CBJ support. The CBJ will promptly express to the APUC its support for approval of the PSA, and take such other steps as AELP or AIDEA may reasonably request to help assure AIDEA's ability to complete successfully the acquisition of Snettisham.

2. Ratemaking treatment of Snettisham power costs. So long as the PSA and the APUC's authority over AELP retail ratemaking both remain in effect, AELP as the purchaser of Snettisham power under the PSA will request that the APUC continue to treat as "purchased power expense" for retail ratemaking purposes all of AELP's costs of buying Snettisham power. If AELP purchases Snettisham and the APUC continues to regulate AELP's retail rates, then for ratemaking purposes AELP will seek to have the APUC treat Snettisham in the same manner as other generating resources that AELP owns.

3. Preservation of Snettisham benefits. So long as AELP ratepayer loads within the CBJ continue to require Snettisham power, AELP will dedicate Snettisham power to meet those loads. If AELP or an affiliate acquires Snettisham from AIDEA, then neither AELP nor the affiliate will thereafter sell Snettisham to any unaffiliated third party unless that third party also agrees to dedicate Snettisham power to meet ratepayer loads within the CBJ.

4. CBJ's right of first refusal. If AELP or an affiliate, having acquired Snettisham from AIDEA, ever agrees to sell Snettisham to any unaffiliated third party, then the CBJ shall have a right of first refusal to purchase Snettisham instead, under the same terms and conditions (including any assumption of risks and any refunding of outstanding debt) as

agreed to by such third party; provided that (a) such right shall be exercised within ninety (90) days, and the CBJ's purchase of Snettisham shall be completed within eighteen (18) months, of notification to the CBJ of a proposed sale of Snettisham to such third party, unless AELP and the CBJ agree to extend these deadlines; and (b) the CBJ's exercise of such right is consistent with then-existing Snettisham debt and AELP's then-existing obligations; provided further, that AELP shall consult with the CBJ from time to time with respect to AELP's plans regarding ownership of Snettisham.

5. Enforcement. This Agreement may be enforced only by the parties, and only through binding arbitration in accordance with rules of the American Arbitration Association. Each party shall bear its own costs in any such arbitration, unless the arbitration panel orders otherwise. The parties shall use their reasonable best efforts and shall cooperate in good faith to agree upon such procedures as may be necessary to allow the arbitration to proceed with promptness and efficiency.

C. Effectiveness

1. This Agreement shall become effective on the first date when (a) the Agreement has been executed by both parties, and (b) the CBJ has adopted for purposes of Alaska Statutes 44.88 a resolution substantially in the form of Attachment A hereto.

2. This Agreement shall cease to be effective if AIDEA has not acquired Snettisham on or before August 20, 1998, the deadline for this transaction established by Federal statute.

3. This Agreement shall be governed by the laws of the State of Alaska.

Monday March 16 version

ALASKA ELECTRIC LIGHT AND POWER

William A. Corbus, President

Date: March 16, 1998

CITY AND BOROUGH OF JUNEAU, ALASKA

Donna B. Pierce
Acting City Manager

Date: March 16, 1995

Exhibit 5

NUVEEN
John Nuveen & Co. Incorporated
Investment Bankers
333 West Wacker Drive
Chicago, Illinois 60606-1286
Telephone 312 917 77

MEMORANDUM

March 3, 1997

TO: JUNEAU ENERGY ADVISORY COMMITTEE
FROM: Bob LeResche
Re: Snettisham Power Sales Agreement

I wanted to clarify a couple of matters that perhaps continue to be confusing to the Committee.

RATEPAYER PROTECTION
The approved Power Sales Agreement will establish the wholesale cost of energy from the project for at least the next 30 years. That is its purpose, and that is the reason the APUC is reviewing the agreement at this time.

SALE TO AFFILIATE
The PSA and related documents allow AELP or an affiliate to purchase the project from AIDEA during the term of the PSA and the bonds. An "affiliate" is a sister company or subsidiary of AELP, and, if created, would probably be a separate corporation owned by AELP's parent. "Affiliate" does not include Pacific Corp. or any other non-related company.
Regardless of whether or not ownership transfers, the Power Sales Agreement remains in effect. This means that the wholesale cost of energy remains the same.

APUC REGULATION OF WHOLESALE POWER COSTS
The APUC does effectively regulate wholesale power costs. They do not directly regulate the selling price of wholesale power, but do explicitly and carefully regulate what the buyer can pay, by regulating how much of the contract cost of power the buyer can put into its rates. This is the very exercise they are engaged in as they review the Snettisham Power Sales Agreement.

A recent example illustrates how this works in Alaska:

The Goat Lake (Haines & Skagway) Hydroelectric Project: This project was financed in December 1997 in a structure very similar to Snettisham's. The project was financed by "Goat Lake Hydro, Inc.," a subsidiary of AP&T, which owns both Haines Light & Power and Alaska Power Company (Skagway). The APUC reviewed and approved the Power Sales Agreement between Goat Lake Hydro and Haines L&P and APC, as part of their ratemaking authority over Haines and APC. Haines and APC were required to demonstrate to the APUC that purchase of Goat Lake Hydro energy would have a beneficial effect on rates, and that the cost of the energy was not being marked up by the affiliate beyond the level APUC ratemaking procedures would allow.

SALE OF SNETTISHAM AT AN INFLATED PRICE TO INCREASE RATE BASE

There is a well-established utility regulatory doctrine known as "acquisition adjustment," under which the APUC has found the following:

> Principles of regulatory accounting dictate that when utility properties are purchased for more than their net book value, the premium is to be accounted for as an "acquisition adjustment." Whether that premium may be included in the utility's rate base for rate making purposes depends on whether the utility can establish a clear, tangible benefit that accrued to the rate payers as the direct result of and at least equivalent to the amount of the acquisition adjustment. In the absence of such tangible benefit, to include acquisition adjustment in rate base would be to make the utility's subscribers pay for a mere change of ownership.

Just recently, the APUC expressly disapproved an arrangement whereunder AVEC would have acquired the assets of Bethel Utilities Corp., Inc. on the grounds that the transaction would result in an $8 million "acquisition adjustment" (the seller's profit over net book value). The APUC would not allow AVEC to recover that extra cost through their rate structure.

GRANTING THE CBJ AN OPTION TO PURCHASE SNETTISHAM

Such an option would make financing AIDEA's acquisition very problematic. I believe that neither AIDEA nor AELP would agree to such a change in the PSA, and the project would remain in Federal hands.

- Were the CBJ granted an option exercisable at the time AELP would purchase the project from AIDEA, the CBJ's credit would have to be reviewed by the bond rating agencies and the bond insurance companies. This would be necessary because the bonds are being sold backed by a PSA that allows transfer to AELP or an affiliate during the term of the bonds, and AELP's operating ability and credit are therefore critical matters to the bond holders. Giving a third party (CBJ) AELP's right to purchase, would require making the bond holders equally comfortable with the CBJ's ability to operate the project and with CBJ's credit-worthiness.
- An option granted to CBJ exercisable at such time as AELP, having purchased the project from AIDEA, transferred the project to another party, would terminally confuse the credit being offered the bond holders. These bondholders will have a first lien on the project at such time as AELP purchases it, and clouding that lien with a CBJ option would, again, serve to require that they be comfortable with the CBJ's credit and operating ability.

PRAGMATIC EFFECT OF CBJ OPTION IN POWER SALES AGREEMENT

- In actual fact, the CBJ has an on-going option to acquire all the assets of AELP, through condemnation. Writing an option into the PSA would not only probably de-rail the entire Snettisham acquisition by AIDEA, but would provide CBJ with nothing we do not already have.

• If the PSA included an option, such an option would expire when the PSA's term had run -- in 30 years. CBJ's only perpetual option is the right to condemn.

PRAGMATIC EFFECT OF CBJ OWNERSHIP

• The CBJ would shoulder a large debt burden.

• Depending on how the CBJ Assembly decided to regulate the cost of Snettisham energy, the burden of paying for the facility could be shifted greatly from the electricity user to the property tax payer, from the property tax payer to the electricity user, from the electricity user to the sales tax payer, from the sales tax payer to the electricity user or in all manner of directions.

• Regulation of electric rates would be moved from a regulatory body (APUC) to a political body (CBJ assembly). In other communities around Alaska, such political regulation has led to high rates (THREA, Ketchikan), run-down systems (Fairbanks), and major political debates (Anchorage).

INVESTOR-OWNED UTILITIES INCENTIVES

It is important that we not lose track of the incentives under which investor-owned utilities are operated, especially in light of recent nation-wide movements to bring competition to the industry.

An investor-owned utility succeeds by selling power at the lowest rate it can, within constraints of ratemaking and its capital structure. There is a large price-elasticity to electric energy -- when rates get too high, sales decline. When sales decline, profit declines.

In the coming era of competition, the distributor of energy from a high-cost energy source will be driven from the market by the utility with access to low-cost energy. This is exactly the reason that AELP has no incentive whatsoever to buy or to sell the Snettisham project if it would lead to higher rates

In simple terms, any assertion that it is in a utility's best interests to increase rates, cannot be based upon a valid understanding of the industry.

LOSS OF LOCAL CONTROL

In its 101 year history, AELP has never shown any remote interest in selling out and leaving town. The company has been an important part of our community since long before the State of Alaska or the CBJ even existed. However, were AELP ever acquired by a utility headquartered outside of Juneau, our local rates would continue to be regulated exactly as they are now, and the CBJ would continue to have the rights we have today relating to the utility assets within our municipality.

Exhibit 6

AEL&P
ALASKA ELECTRIC LIGHT AND POWER COMPANY
(907) 780-2222 FAX (907) 463-3304
5601 Tonsgard Court, Juneau, AK 99801-7201

Large Generator Interconnection Request Flow Chart

Exhibit 7

From: Jerry Patterson [mailto:sparkyinak@alaska.com]
Sent: Monday, August 17, 2009 5:42 PM
To: Darrell Wetherall <Darrell.Wetherall@aelp.com<mailto:Darrell.Wetherall@aelp.com>>
Subject: RE: Requesting information

Thank you for the info and your time. You have given me plenty to work with.

-----Original Message-----
From: Darrell Wetherall [mailto:Darrell.Wetherall@aelp.com]
Sent: Monday, August 17, 2009 11:12 AM
To: sparkyinak@alaska.com<mailto:sparkyinak@alaska.com>
Subject: FW: Requesting information

Jerry,

ER met with us and we brainstormed several ideas: extending our line, a run of the river hydro project, and barging out bottled hydrogen from an AEL&P pilot installation that would make hydrogen from excess Snettisham spill water. The line did not appear to make financial sense and the hydrogen conversion wasn't technologically efficient or cost effective.

As far as line pricing, we installed roughly 5 miles of 3 phase 12.47KV distribution line up to Eaglecrest last year. It looks like that came in about $1.55 million and included permitting, surveying, environmental, materials and contract labor. It also included a 1,000' run of underground and a 750kva transformer. 3 miles of URD would be extremely expensive. We were estimating a 3,800' run of 3 phase URD at $400K to bring power to the new mid mountain chairlift at Eaglecrest.

I have not heard of any talk about Couer asking to extend the line out that way, despite the recent approval of the permit. It would have to be a 69kv line extension; my understanding is that it too would have been cost prohibitive.

Let me know if you need any more info.

Darrell Wetherall
Assistant Transmission & Distribution Engineer
Alaska Electric Light & Power
5601 Tonsgard Court
Juneau, AK 99801
(907) 463-6316 Office
(907) 723-2602 Cell
(907) 463-4833 Fax
Darrell.Wetherall@aelp.com<mailto:Darrell.Wetherall@aelp.com>

From: Scott Novak
Sent: Monday, August 17, 2009 8:22 AM
To: Darrell Wetherall
Cc: Gayle Wood
Subject: FW: Requesting information

-----Original Message-----
From: Jerry Patterson [mailto:sparkyinak@alaska.com]
Sent: Sunday, August 16, 2009 11:24 PM
To: Gayle Wood; Scott Novak
Subject: Requesting information
Hello,

My name is Jerry Patterson and I am an electrician in Petersburg and I am currentlyassisting the staff of Echo Ranch to find ways to reduce their energy costs. Currently given their location, they are dependent on local diesel generation for their compound. I have several options for them to reduce their fuel costs from simple thing like reducing use would reduce their demand and can reduce the size of generators, to more expensive but plausible options like extending your lines all the way out to their camp. This is why I am writing to you now.

I did a sight visit here about a month ago and documented bit of data. One of the discussion we had was that a few years ago, a contingency from Echo Ranch met with AEL&P and talked extending a line all they way out to their camp. I would like to respectfully request from you is and educated guess on what it would cost to extend the line 14.5 miles from the end of your line to the beginning of their trailhead. I am guessing it would be a 12.4k line overhead. From the trailhead, an underground line of three miles would be more expensive but would likely be a better option giving its location and route.

I am just looking for ballpark estimates for talking points with them. I know how the numbers can bounce around from day to day and between one world crisis to another. There are many unknowns however I would imagine you have per mile cost for SWAG estimating and that is all I am interested in. You also know of potential line extensions likely to be built to Kensington Mine that could offset costs for such a project. That might allow for a 69K line through that could follow the proposed Juneau Highway into BC to intertied with them. In your response I kindly ask for a brief narrative so I can pass the info on in my report. I know these can be years down the road even if they were fast tracked but to get started, it starts with questions so here I am.

If you have any questions, you can try my cell at 518 - 0661 or your best bet is via email. Thank you for your time.

Jerry Patterson
Petersburg, Alaska