

188 FERC ¶ 61,100  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Willie L. Phillips, Chairman;  
Mark C. Christie and David Rosner.

Central Hudson Gas & Electric Corporation  
New York Independent System Operator, Inc.

Docket No. ER24-1434-001

ORDER ACCEPTING AND SUSPENDING FILING, SUBJECT TO REFUND, AND  
ESTABLISHING HEARING AND SETTLEMENT JUDGE PROCEDURES

(Issued August 2, 2024)

1. On March 8, 2024, pursuant to section 205 of the Federal Power Act (FPA)<sup>1</sup> and Part 35 of the Commission's regulations,<sup>2</sup> New York Independent System Operator, Inc. (NYISO), on behalf of Central Hudson Gas and Electric Corporation (Central Hudson), submitted a new proposed Rate Schedule 21<sup>3</sup> to provide for Central Hudson's recovery of costs associated with the provision of Wholesale Distribution Service (WDS) to customers who own electric resources connected to Central Hudson's distribution system and sell the output of those resources through NYISO wholesale markets, as well as customers charging electric energy storage systems for the purposes of making wholesale sales in NYISO wholesale markets. As discussed below, we accept proposed Rate Schedule 21, effective May 8, 2024, suspend it for a nominal period, subject to refund, and set this proceeding for hearing and settlement judge procedures.

**I. Background**

2. In 2018, the Commission issued Order No. 841, which required each Regional Transmission Organization or Independent System Operator (RTO/ISO) to revise its tariff to establish market rules that facilitate the participation of electric storage

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<sup>1</sup> 16 U.S.C. § 824d.

<sup>2</sup> 18 C.F.R. pt. 35 (2023).

<sup>3</sup> New York Independent System Operator, Inc., NYISO Tariffs, NYISO OATT, § 6 (Rate Schedules), § 6.21 (Schedule 21) (1.0.0). Capitalized terms not defined herein shall have the meaning set forth in the NYISO Open Access Transmission Tariff (OATT).

resources in RTO/ISO markets.<sup>4</sup> On December 20, 2019, and August 3, 2020, the Commission accepted proposed revisions to NYISO's Market Administration and Control Area Services Tariff and OATT that would enable electric storage resources to participate more fully in NYISO's markets.<sup>5</sup>

3. In Order No. 841, the Commission found that it had jurisdiction over the rates charged for the sale of energy for resale from the grid to storage resources.<sup>6</sup> The Commission also noted that "it may be appropriate, on a case-by-case basis, for distribution utilities to assess a charge on electric storage resources."<sup>7</sup> In 2020, the Commission issued Order No. 2222, in which the Commission adopted reforms to remove barriers to the participation of distributed energy resource aggregations in the RTO/ISO markets.<sup>8</sup> The Commission, consistent with its conclusion in Order Nos. 841 and 841-A, found that "it may also be appropriate, on a case-by-case basis, for distribution utilities to assess a wholesale distribution charge on distributed energy resource aggregators."<sup>9</sup>

4. Central Hudson is a New York corporation that: (1) distributes natural gas for residential, commercial, and industrial use; (2) transmits and distributes electric power to wholesale and retail customers; and (3) transmits electric power on behalf of third

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<sup>4</sup> *Elec. Storage Participation in Mkts. Operated by Reg'l Transmission Orgs. & Indep. Sys. Operators*, Order No. 841, 162 FERC ¶ 61,127 (2018), *order on reh'g*, Order No. 841-A, 167 FERC ¶ 61,154 (2019), *aff'd sub nom. Nat'l Ass'n of Regul. Util. Comm'rs v. FERC*, 964 F.3d 1177 (D.C. Cir. 2020) (*NARUC v. FERC*).

<sup>5</sup> *N.Y. Indep. Sys. Operator, Inc.*, 169 FERC ¶ 61,225 (2019), *order on compliance*, 172 FERC ¶ 61,119 (2020).

<sup>6</sup> Order No. 841, 162 FERC ¶ 61,127 at P 289. This finding was subsequently affirmed by the U.S. Court of Appeals for the District of Columbia Circuit. *NARUC v. FERC*, 964 F.3d at 1188.

<sup>7</sup> Order No. 841, 162 FERC ¶ 61,127 at P 301; *see also* Order No. 841-A, 167 FERC ¶ 61,154 at P 123 (stating the Commission will "consider" a rate filing for distribution service to an energy storage resource "on a case-by-case basis in light of the record evidence").

<sup>8</sup> *Participation of Distributed Energy Res. Aggregations in Mkts. Operated by Reg'l Transmission Orgs. & Indep. Sys. Operators*, Order No. 2222, 172 FERC ¶ 61,247, at P 1 (2020), *order on reh'g*, Order No. 2222-A, 174 FERC ¶ 61,197 (2021).

<sup>9</sup> Order No. 2222, 172 FERC ¶ 61,247 at P 62.

parties.<sup>10</sup> Central Hudson is a participant in NYISO's electricity markets and holds market-based rate tariff authority under the FPA.

## II. Filing

5. Central Hudson states that its new proposed Rate Schedule 21 will enable Central Hudson to provide WDS to generation or storage resources interconnected to Central Hudson's distribution system that seek to participate in NYISO-administered wholesale markets.<sup>11</sup> Central Hudson states that, pursuant to proposed section 6.21.3 of Rate Schedule 21, WDS will be available to any Central Hudson customer who: (1) owns an electric generator, including an electric energy storage system that is connected to Central Hudson's distribution system; (2) proposes to directly engage in wholesale energy and other market transactions; and (3) signs a separate agreement with Central Hudson for the interconnection and parallel operation of its generator.<sup>12</sup>

6. Central Hudson states that, under proposed Rate Schedule 21, eligible customers will pay Central Hudson to deliver electric energy at wholesale over Central Hudson's distribution facilities, which is referred to as Wholesale Energy Export Service.<sup>13</sup> Central Hudson states that, under proposed Rate Schedule 21, customers with an electric energy storage system charging to sell through NYISO's wholesale markets will pay Central Hudson for the provision of service over Central Hudson's distribution facilities necessary to facilitate that charging, which is referred to as Wholesale Charging Service. Central Hudson asserts that the rates for Central Hudson's Wholesale Energy Export Service and Wholesale Charging Services have been established in accordance with the calculation methodologies for Central Hudson's standby and buyback rates approved by the New York State Public Service Commission (New York Commission).

7. Central Hudson explains that it submitted draft tariff amendments to the New York Commission on July 14, 2022, to update its standby and buyback service rates, in compliance with a March 2022 order issued by the New York Commission requiring New York utilities to update standby and buyback rates to incorporate the allocated cost of service (ACOS) methodology.<sup>14</sup> Central Hudson explains that standby rates

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<sup>10</sup> Filing, Transmittal Letter at 2.

<sup>11</sup> *Id.* at 4.

<sup>12</sup> *Id.* at 5.

<sup>13</sup> *Id.* In the proposed tariff language for Rate Schedule 21, delivery of electric energy over Central Hudson's distribution facilities to the transmission system is referred to as Wholesale Distribution Export Service.

compensate a utility for being available in case a customer's on-site distributed generation does not fully offset a customer's load, and buyback rates account for the utility's payment to the customer for its export power, based on wholesale prices for energy and capacity in the NYISO market. Central Hudson states that, on October 13, 2023, the New York Commission approved the tariff amendments to Central Hudson's state retail tariff, subject to further compliance.<sup>15</sup> Specifically, Central Hudson states that the New York Commission directed Central Hudson to submit a further compliance filing with updated tariff revisions to become effective on a temporary basis as of January 1, 2024.

8. Central Hudson states that it prepares an embedded cost of service study (ECOS Study) as a preliminary step to developing its electric retail rates, including the standby and buyback rates.<sup>16</sup> Central Hudson explains that the ECOS Study apportions Central Hudson's total revenue requirement among the retail service classes. Central Hudson further explains that it uses an updated ACOS methodology to allocate Central Hudson's costs between shared and local components, using the decision tree methodology prescribed by the New York Commission (ACOS Study).<sup>17</sup> The ACOS Study's allocation of shared versus local costs is the basis for the revenue requirements associated with the As-Used Daily Demand Charges and the Contract Demand Charges in Central Hudson's standby rate design, which also form the basis for establishing WDS rates as adjusted to exclude transmission revenue, as shown in the WDS revenue requirement and rate design calculations in Attachment C to the filing.<sup>18</sup>

9. Central Hudson states that the rate design for the Wholesale Charging Service as described in proposed section 6.21.5.2 of Rate Schedule 21 is based on the calculation methodology for Central Hudson's approved retail standby rates.<sup>19</sup> The retail standby

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<sup>14</sup> *Id.* at 4 (citing Order Establishing Updated Standby Service Rates and Implementing Optional Mass Market Demand Rates, *In the Matter of the Value of Distributed Energy Resources*, Case No. 15-E-0751 (N.Y. Pub. Serv. Comm'n Mar. 16, 2022) (New York Commission ACOS Order)).

<sup>15</sup> *Id.* (citing Order Establishing Updated Standby Service Rates and Implementing Optional Mass Market Demand Rates, *In the Matter of the Value of Distributed Energy Resources*, Case No. 15-E-0751 (N.Y. Pub. Serv. Comm'n Oct. 13, 2023) (New York Commission Standby Rates Order)).

<sup>16</sup> *Id.*

<sup>17</sup> *Id.* (citing New York Commission Standby Rates Order).

<sup>18</sup> *Id.* at 5-6.

rates' components include a Customer Charge, the As-Used Daily Demand Charges, Contract Demand Charges, and if applicable, a Reactive Demand Charge. Central Hudson states that the Wholesale Charging Service rates are calculated from the revenue requirements for each standby rate component, with the transmission costs removed. Central Hudson explains that the net revenue requirements of each rate component are blended and divided by the respective billing determinants to develop rates that are based on voltage delivery service level, rather than only service class. Central Hudson states that proposed sections 6.21.5.2.1.1 and 6.21.5.2.1.2 of Rate Schedule 21 set forth the requirements for determining each customer's Contract Demand. Central Hudson states that proposed section 6.21.7 of Rate Schedule 21 specifies the monthly rates customers with electric energy storage systems charging to sell to NYISO or to a third party for wholesale purposes will pay to Central Hudson.

10. Central Hudson states that the Wholesale Energy Export Demand rates are outlined in proposed section 6.21.6 of Rate Schedule 21.<sup>20</sup> Central Hudson explains that, pursuant to proposed section 6.21.5.1.1, the Wholesale Energy Demand Charge will be based on the demand quantity and the Wholesale Energy Export Demand rates.<sup>21</sup> Central Hudson states that the demand rates were developed using the same local revenue requirements as Central Hudson's retail standby rates, with the exception of certain costs not applicable to exports of electric energy and transmission costs, which were excluded.<sup>22</sup> Central Hudson states that the resulting net revenue requirements were blended by voltage delivery service level and then divided by the applicable billing determinants to develop a blended Wholesale Energy Export Service Demand Charge for each voltage delivery service level. Finally, Central Hudson explains that Wholesale Energy Export Service customers will also pay a Customer Charge, if they do not already pay a Customer Charge for Wholesale Charging Service.<sup>23</sup>

11. Central Hudson argues that proposed Rate Schedule 21 reflects rates, terms, and conditions of service determined by those already found to be reasonable and approved for inclusion in Central Hudson's retail tariff by the New York Commission.<sup>24</sup> Central

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<sup>19</sup> *Id.* at 6.

<sup>20</sup> *Id.*

<sup>21</sup> *Id.* Proposed section 6.21.5.1.2 defines demand quantity as the lesser of the nameplate rating of the customer's generator and the maximum delivery capacity as defined in the interconnection agreement. Proposed Rate Schedule 21, § 6.21.5.1.1.2.

<sup>22</sup> Filing, Transmittal Letter at 6.

<sup>23</sup> *Id.* at 6-7.

Hudson asserts that the Commission has previously found that deferring to the New York Commission's findings regarding rate calculations underlying WDS rates satisfies the Commission's regulatory responsibility under the FPA, while also serving the ends of comity and administrative efficiency, and fostering parity of rates between customers.<sup>25</sup> Central Hudson argues that there is an acute interest in ensuring parity between retail and wholesale distribution rates because distribution-connected customers may engage in both retail and wholesale transactions. Central Hudson asserts that it is appropriate for the Commission to defer to the findings of the New York Commission for its standby rates, and notes that Central Hudson's retail tariff amendments for its standby rates went into effect on a temporary basis on January 1, 2024, pending final review by the New York Commission. Central Hudson also states that its proposed Rate Schedule 21 is modelled on Attachment O of Consolidated Edison's tariff, which contains the rates, terms, and conditions of Consolidated Edison's existing WDS.

12. Central Hudson requests an effective date of May 8, 2024, for proposed Rate Schedule 21.<sup>26</sup>

### **III. Notice and Responsive Pleadings**

13. Notice of the filing was published in the *Federal Register*, 89 Fed. Reg. 18,634 (Mar. 8, 2024), with interventions and protests due on or before March 29, 2024. The New York Commission filed a timely notice of intervention and a protest. Timely motions to intervene and protests were filed by Aypa Power LLC (Aypa Power), Key Capture Energy, LLC (Key Capture), Catskill Grid, LLC (Catskill Grid), New York Battery and Energy Storage Technology Consortium (NY-BEST),<sup>27</sup> and MicroGrid Networks, LLC (MicroGrid). On April 15, 2024, Central Hudson submitted an answer to the protests. On April 22, 2024, Key Capture submitted an answer to Central Hudson's answer.

14. On May 6, 2024, Commission staff issued a letter informing Central Hudson that its filing was deficient and requesting additional information necessary to process the

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<sup>24</sup> *Id.* at 7.

<sup>25</sup> *Id.* at 4, 7 (citing *Consol. Edison Co. of N.Y., Inc.*, 15 FERC ¶ 61,174, at 61,405 (1981)).

<sup>26</sup> *Id.* at 7.

<sup>27</sup> NY-BEST is a not-for-profit trade association representing the energy storage industry in New York with more than 180 member organizations which include global corporations, start-ups, project develops, leading research institutions and universities, and numerous companies involved in the electricity and transportation sectors.

filing (Deficiency Letter). On June 5, 2024, Central Hudson filed a response (Deficiency Response).

15. Notice of Central Hudson's Deficiency Response was published in the *Federal Register*, 89 Fed. Reg. 49,165 (June 11, 2024), with interventions and protests due on or before June 26, 2024. Key Capture and NY-BEST filed protests to Central Hudson's Deficiency Response. On July 12, 2024, Central Hudson submitted an answer to the protests (Central Hudson Answer to Deficiency Response Protests).

**A. Protests and Answers**

**1. Central Hudson Has Not Provided Sufficient Support for Rate Schedule 21**

16. Protesters argue that Central Hudson's filing lacks sufficient support. The New York Commission argues that the Commission should determine that Central Hudson's filing lacks sufficient detail and requests that the Commission hold a technical conference.<sup>28</sup> Key Capture requests that the Commission either reject the filing as deficient or, if the Commission does not dismiss the filing, suspend Central Hudson's filing for the maximum period and establish hearing and settlement judge procedures.<sup>29</sup>

17. Key Capture argues that Central Hudson neither provides the necessary detailed cost support information required by section 35.13 of the Commission's regulations nor requests waiver of the requirements to submit workpapers and cost-of-service statements in sections 35.13(a)(2)(iv), 35.13(d)(1) and (d)(2), and 35.13(h) of the Commission's regulations.<sup>30</sup> Key Capture states that Central Hudson neither provides any workpapers to support the calculations in Attachment C of its filing nor files an attestation as required under section 35.13(d)(6) of the Commission's regulations that the data submitted is true, accurate, and a current representation of its books and records.<sup>31</sup> Key Capture further argues that Central Hudson's generic incorporation by reference of the New York

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<sup>28</sup> New York Commission Protest at 2.

<sup>29</sup> Key Capture Protest at 1. Aypa Power, Catskill Grid, and NY-BEST each state that they adopt and incorporate the entirety of Key Capture's protest by reference. Aypa Power Protest at 2; Catskill Grid Protest at 3; NY-BEST Protest at 2. MicroGrid also states that it supports Key Capture's protest, including the requested relief. MicroGrid Protest at 2.

<sup>30</sup> Key Capture Protest at 2-3.

<sup>31</sup> *Id.* at 3.

Commission's orders does not establish sufficient information and cost-of-service data to support its proposed WDS rates.

18. The New York Commission argues that Central Hudson's Attachment C does not provide enough detail to verify that the base delivery revenue requirement and transmission revenue requirement included in the development of its WDS rates align with those authorized by the New York Commission.<sup>32</sup> The New York Commission and Key Capture request that Central Hudson be required to provide workpapers used to develop the rates in proposed sections 6.21.6 and 6.21.7 of Rate Schedule 21.<sup>33</sup>

19. In its answer, Central Hudson responds that it provided the same information that Orange and Rockland Utilities, Inc. (Orange and Rockland) and Consolidated Edison Co. of New York, Inc. (Consolidated Edison) provided in their WDS rate filings, which the Commission accepted, and Central Hudson therefore did not believe it necessary to file any other documents or seek waiver.<sup>34</sup> Central Hudson states that, if the Commission disagrees, it now seeks waiver of section 35.13 of the Commission's regulations to the extent those filing requirements are applicable and Central Hudson's filing failed to comply. Central Hudson states that the Commission allows for filing cost support derived from New York Commission approved rates that are applicable to the service provided, and that information is set out in the New York Commission orders and enclosed workpapers provided with Central Hudson's filing.<sup>35</sup> Central Hudson asserts that waiver is justified and an attestation is not required because proposed Rate Schedule 21 and the cost of service information are derived from New York Commission orders.<sup>36</sup>

20. Central Hudson states that it is attaching a Microsoft Excel spreadsheet version of previously filed Attachment C with all formulas and links intact and commits to make any other workpapers available as required to substantiate the values in Attachment C.<sup>37</sup>

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<sup>32</sup> New York Commission Protest at 3-4 (citing *Order Adopting Terms of Joint Proposal and Establishing Electric and Gas Rate Plan*, Case No. 20-E-0428 (N.Y. Pub. Serv. Comm'n Nov. 18, 2021) (2021 Rate Order)).

<sup>33</sup> *Id.* at 4; Key Capture Protest at 3-4.

<sup>34</sup> Central Hudson Answer at 2, 6.

<sup>35</sup> *Id.* at 2-3.

<sup>36</sup> *Id.* at 7.

<sup>37</sup> *Id.* at 6.



21. In its answer, Key Capture asserts that Central Hudson's answer still does not provide interested parties with the information required to evaluate the implementation of proposed Rate Schedule 21, such as the necessary information to match Central Hudson's base delivery revenue requirement or transmission revenue requirement with Central Hudson's 2021 Rate Case or detail regarding the source of the revenue requirements, revenues, demand (kW), and billing units numbers in Attachment C.<sup>38</sup>

**2. Rate Schedule 21 Contains Ambiguous Tariff Provisions**

22. The New York Commission argues that proposed Rate Schedule 21 contains language that is ambiguous and requests that the Commission direct Central Hudson to provide clarifications.<sup>39</sup> The New York Commission states that there are two groups of rates included in section 6.21.6 of proposed Rate Schedule 21 that are labeled as being applicable to "Primary in Excess of 1,000 kW." The New York Commission asserts that there is a similar issue in section 6.21.7 of proposed Rate Schedule 21, where the rates are labelled as "Primary up to 1,000 kW," but should likely be labelled as "Primary up to and Including 1,000 kW."

23. The New York Commission and Key Capture also assert that the use of the term "Minimum Charges" in proposed section 6.21.6 is ambiguous because it is unclear if customers will be charged the Minimum Charge in addition to Contract Demand Charges and Customer Charges.<sup>40</sup>

**3. Rate Schedule 21 is Inconsistent with Order Nos. 841 and 2222 and Creates a Barrier to Entry**

24. Key Capture asserts that proposed Rate Schedule 21 appears to create barriers with respect to the deployment of battery storage in wholesale markets and therefore has not been shown to be just and reasonable and in the public interest.<sup>41</sup> MicroGrid argues that, in contrast with Order No. 841, Central Hudson's proposed Rate Schedule 21 will impose unjust and unreasonable rates for both energy storage developers and ratepayers in Central Hudson's service territory.<sup>42</sup> MicroGrid asserts that, if proposed Rate Schedule 21 is accepted, then the applicable rates for bulk storage facilities will be set by Central

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<sup>38</sup> Key Capture Answer at 2-4.

<sup>39</sup> New York Commission Protest 4.

<sup>40</sup> *Id.* at 4-5; Key Capture Protest at 6.

<sup>41</sup> Key Capture Protest at 4 (citing Order No. 841, 162 FERC ¶ 61,127).

<sup>42</sup> MicroGrid Protest at 6.

Hudson's New York Commission-approved standby and buyback rates, which are intended to compensate the utility for the obligation to meet the customer's demand in the event that its generation is not available, whereas energy storage resources have unique and flexible operating characteristics.<sup>43</sup> MicroGrid also argues that subjecting energy storage resources to the standby and buyback rates contravenes the requirement in Order No. 841 that RTOs and ISOs not allow the assessment of identical transmission charges to energy storage resources providing ancillary services in the RTO/ISO markets and to load.<sup>44</sup>

25. MicroGrid asserts that proposed Rate Schedule 21 is inconsistent with New York State's policy of ensuring consistency between tariffs that facilitate dual participation in wholesale and retail markets.<sup>45</sup> MicroGrid asserts that, by subjecting every interconnecting project in Central Hudson's service territory seeking to sell into NYISO's markets to distribution rates, including those interconnected at 69 kV, 115 kV and 345 kV, proposed Rate Schedule 21 will have a significant chilling effect on energy storage development in Central Hudson's service territory, and likely statewide.<sup>46</sup> MicroGrid argues that proposed Rate Schedule 21 will result in approximately \$14 million in charges annually for a 200 MW bulk storage facility in Central Hudson's service territory, while a similarly sized facility in another New State service territory would not pay any charging rate.<sup>47</sup> MicroGrid contends that Rate Schedule 21 would have the unintended consequence of Central Hudson's ratepayers paying for resources through the state's energy incentive programs from which they will not benefit, because energy storage development in Central Hudson's territory would come to a halt.<sup>48</sup> MicroGrid requests that, if the Commission approves proposed Rate Schedule 21, then

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<sup>43</sup> *Id.* at 7-8.

<sup>44</sup> *Id.* at 8 (citing Order No. 841, 162 FERC ¶ 61,127 at P 298).

<sup>45</sup> *Id.* at 2, 9 (citing *In the Matter of the Federal Energy Regulatory Commission (FERC) Order Nos. 2222 and 841, to Modify Rules Related to Distributed Energy Resources*, Order Approving Tariff Modifications, Case No. 22-E-0549, at 2 (N.Y. Pub. Serv. Comm'n March 17, 2023)).

<sup>46</sup> *Id.* at 9.

<sup>47</sup> *Id.* at 10.

<sup>48</sup> *Id.* at 10-11.

the Commission should direct Central Hudson to exempt those energy storage projects interconnecting at 69 kV or higher.<sup>49</sup>

26. In its answer, Central Hudson responds that proposed Rate Schedule 21 is just and reasonable because it leverages an ACOS Study and rate design methodology that the New York Commission found just and reasonable and uses that retail rate to formulate wholesale rates, consistent with Order No. 841's requirements.<sup>50</sup> Central Hudson asserts that protesters fail to recognize that the proposal, for purposes of calculating the Wholesale Charging Service rates, removed transmission costs to ensure compliance with Order No. 841. Central Hudson states that the same methodology was used by Consolidated Edison and Orange and Rockland in their accepted WDS filings. Central Hudson also asserts that Order No. 841 explained that it may be appropriate for distribution utilities to assess a wholesale distribution charge when electric storage resources participate in wholesale markets.<sup>51</sup>

#### **4. Rate Schedule 21 Is Inconsistent with Just and Reasonable Rates**

27. Key Capture asserts that proposed Rate Schedule 21 is inconsistent with just and reasonable rates because, in the Wholesale Charging Service rate, the Contract Demand Charge for transmission customers is inexplicably higher than in its retail rate.<sup>52</sup> Key Capture explains that, because the ACOS Study divides rates up into local costs (recovered via the Contracted Demand Charge) and shared costs (recovered through the Daily-As-Used Charges), one would expect that the removal of transmission costs in developing Rate Schedule 21 would result in lower Daily-As-Used Charges and lower (or at minimum, the same) Contract Demand Charge for transmission customers.<sup>53</sup> In response, Central Hudson explains that its current retail tariff is incorrect and that it has filed corrections with the New York Commission.<sup>54</sup> In its answer, Key Capture contends

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<sup>49</sup> *Id.* at 2.

<sup>50</sup> Central Hudson Answer at 7-8.

<sup>51</sup> *Id.* at 8 (citing Order No. 841, 162 FERC ¶ 61,127 at P 301).

<sup>52</sup> Key Capture Protest at 5.

<sup>53</sup> *Id.* Key Capture notes that this was the case when Orange and Rockland filed its own WDS rate. *Id.* (citing Orange and Rockland Utilities, Inc., Open Access Transmission Tariff, Volume No. 3 (WDS Tariff), at app. D, Docket No. ER24-967-000 (filed Jan. 22, 2024) (O&R WDS Tariff)).

<sup>54</sup> Central Hudson Answer at 10.

that Central Hudson's admission that its current retail tariff is incorrect demonstrates the need for Central Hudson to make its full workpapers available for review.<sup>55</sup>

28. Key Capture argues that Central Hudson does not support the inclusion of a Merchant Function Charge in proposed Rate Schedule 21 because the Merchant Function Charge is associated with the provision of default supply service and when a WDS customer takes supply service directly from NYISO.<sup>56</sup> In response, Central Hudson argues that there is an administrative Merchant Function Charge, which differs from the supply Merchant Function Charge, that was established in Central Hudson's New York Commission tariff and is applicable to all delivery service customers.<sup>57</sup>

29. Key Capture argues that proposed Rate Schedule 21 may be very volatile because the customer classes used to determine Central Hudson's rates are very small.<sup>58</sup> In response, Central Hudson states that the New York Commission has found that the underlying service class is acceptable for purposes of rate design in state rate proceedings.<sup>59</sup>

30. Key Capture asserts that there is ambiguity as to whether Central Hudson's WDS rates will be outside of retail cost of service, given that Central Hudson proposed in testimony to the New York Commission that the revenues from WDS service will be passed back to other delivery service customers.<sup>60</sup> Key Capture argues that, if the WDS rates are outside of the retail cost of service and the revenues will be passed back to other delivery customers instead of contributing to the distribution revenue requirement of the utility, then it does not make sense to derive the WDS rates using retail billing determinants.<sup>61</sup> In response, Central Hudson argues that the practice of passing revenues

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<sup>55</sup> Key Capture Answer at 3.

<sup>56</sup> Key Capture Protest at 6. Key Capture also notes that neither Consolidated Edison nor Orange and Rockland Utilities included a Merchant Function Charge in their WDS rates. *Id.* (citing Consolidated Edison Co. of New York, Inc., Open Access Transmission Tariff, Volume No. 1 (WDS Tariff), Docket No. ER24-760-000 (filed Dec. 27, 2023) and O&R WDS Tariff).

<sup>57</sup> Central Hudson Answer at 10.

<sup>58</sup> Key Capture Protest at 7.

<sup>59</sup> Central Hudson Answer at 8

<sup>60</sup> Key Capture Protest at 7 (citing *In the Matter of Central Hudson Gas & Elec. Corp.*, Direct Testimony of the Accounting and Tax Panel, at 36, Case Nos. 23-E-0418 & 23-G-0419 (N.Y. Pub. Serv. Comm'n filed July 31, 2023)).

received for use of the utility's transmission and distribution system back to retail customers is common practice and, because it is a New York Commission ratemaking item, outside the scope of this proceeding.<sup>62</sup>

31. MicroGrid argues that, because bulk storage facilities are not retail customers, and therefore not end users of bulk charging energy, it is inappropriate, contrary to the underlying rationale of standby rates, and unjust and unreasonable to subject energy storage resources to such rates through a WDS tariff.<sup>63</sup>

**5. The Commission Should Not Afford Any Deference to the WDS Rates**

32. Key Capture contends that, although the Commission has previously accepted the rate determinations of the New York Commission, Central Hudson's filing does not provide a sufficient basis for the Commission to provide such deference in this instance.<sup>64</sup> Key Capture explains that Central Hudson's rate base is currently being litigated before the New York Commission, and asserts that Central Hudson has stated to the New York Commission that its WDS tariff is subject to the Commission's review and approval and outside the scope of the rate proposal at issue in the New York Commission proceeding.<sup>65</sup> Additionally, Key Capture argues that deference is not warranted because the New York Commission ACOS Order approved a methodology, not actual rates, and the New York Commission determined that issues related to utilities' cost of service studies and methodologies were outside the scope of that proceeding.<sup>66</sup> Key Capture further asserts that the Commission should not defer to Central Hudson's rate calculations underlying proposed Rate Schedule 21 because Central Hudson's ACOS Study has not been submitted on a by FERC account-basis.<sup>67</sup>

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<sup>61</sup> *Id.* at 8.

<sup>62</sup> Central Hudson Answer at 8.

<sup>63</sup> MicroGrid Protest at 8.

<sup>64</sup> Key Capture Protest at 8.

<sup>65</sup> *Id.* (referring to *In the Matter of Central Hudson Gas & Elec. Corp.*, Case Nos. 23-E-0418 and 23-G-0419 (N.Y. Pub. Serv. Comm'n)).

<sup>66</sup> *Id.* at 9 (citing New York Commission ACOS Order at 85-86).

<sup>67</sup> *Id.* at 10.

33. In its answer, Central Hudson asserts that its filing and request for deference is consistent with the WDS filings submitted by Orange and Rockland and Consolidated Edison and accepted by the Commission.<sup>68</sup> Central Hudson contends that Key Capture's argument that deference is not warranted fails to recognize that Central Hudson's WDS filing is premised on Central Hudson's currently effective retail rates, not those pending before the New York Commission.<sup>69</sup> Central Hudson also clarifies that proposed Rate Schedule 21 will not apply to customers connected to Central Hudson's transmission system that is considered part of the Commission-regulated bulk transmission system.<sup>70</sup>

**B. Deficiency Letter**

34. In the deficiency letter, Commission staff asked Central Hudson to show how the proposed WDS rates are derived from or relate to Central Hudson's New York Commission-approved rates and explain how the transmission revenue requirement is derived. Commission staff also asked Central Hudson to clarify certain ambiguities in proposed Rate Schedule 21, such as when the Minimum Charge is applied to customers, whether the service level categories are incorrectly labeled, how Contract Demand for new customers will be determined, and how to define Merchant Function Charge and related terms.

**C. Deficiency Response**

35. Central Hudson explains that the base delivery requirement reflects the revenue requirement, excluding Merchant Function Charges, established under Central Hudson's current New York Commission rate plan and rates, and was the result of the revenue allocation, which is shown in the joint proposal adopted by the New York Commission.<sup>71</sup> Central Hudson provides new Attachment 2 that reconciles the base delivery requirement used to establish the New York Commission base delivery rates, excluding Merchant Function Charges.<sup>72</sup>

36. Central Hudson states that the revenue numbers provided on page 2 of Attachment C to the initial filing represent the final allocated revenue requirement determined in the ACOS Study.<sup>73</sup> Central Hudson explains that, as shown in new

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<sup>68</sup> Central Hudson Answer at 7.

<sup>69</sup> *Id.* at 10.

<sup>70</sup> *Id.* at 10-11.

<sup>71</sup> Deficiency Response at 2 (citing 2021 Rate Order, at app. L sheet 3 of 6).

<sup>72</sup> *Id.* (citing 2021 Rate Order, at app. K).

Attachment 4, the transmission revenue requirement was determined by comparing the results of the ACOS Study with and without transmission costs and the WDS revenue requirement was determined by applying the resulting percentage of the ACOS revenue requirement comprised of transmission costs to the base delivery requirement. Central Hudson states that the WDS revenue requirement was then allocated to the Daily-As-Used Demand, Contract Demand, and Customer Charge revenue requirements using the results of the ACOS Study's allocation of shared versus local costs.<sup>74</sup>

37. In response to questions about ambiguities in the tariff, Central Hudson proposes tariff amendments to clarify that the Minimum Charge for Wholesale Distribution Export Service is: (1) applied in addition to the Contract Demand Charge; and (2) waived if service is also taken for Wholesale Distribution Charging Service through the same service connection.<sup>75</sup> Central Hudson also proposes tariff amendments to correct certain incorrectly labeled service categories in section 6.21.6 of Rate Schedule 21. Central Hudson explains that Contract Demand is either determined by the customer or by using existing metered demand, but where neither is available, Central Hudson will estimate using nameplate capacity of the connected equipment and projecting coincidence and diversity of the new customer's load.<sup>76</sup> Central Hudson explains that the proposed ten-day timeframe for providing new customers with a determined Contract Demand was selected to be consistent with the same retail tariff provisions.<sup>77</sup>

38. Finally, Central Hudson explains that the Merchant Function Charge reflects the costs it incurs in the delivery and supply of electricity and includes an administrative charge and a supply charge.<sup>78</sup> Central Hudson asserts that the administrative charge reflects the costs it incurs when third party suppliers bill their customers through Central Hudson and includes the commodity related credit and collections component and 50 percent of the call center costs determined to be commodity related, plus administrative

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<sup>73</sup> *Id.* Central Hudson provides the ACOS Study as Attachment 3 to its response.

<sup>74</sup> *Id.* at 2-3.

<sup>75</sup> *Id.* at 4.

<sup>76</sup> *Id.* at 4-5.

<sup>77</sup> *Id.* at 5 (citing *Proceeding on Motion of the Commission as to Central Hudson Gas & Electric Corporation's Electric Tariff Filing to Establish a New Standby Service in Accordance with Commission Order issued October 26, 2001 in Case 99-E-1470*, Order Establishing Electric Standby Rates, Case No. 02-E-1108 (N.Y. Pub. Serv. Comm'n Dec. 4, 2023)).

<sup>78</sup> *Id.*

and general costs and rate base items associated with each component. Central Hudson explains that the administrative charge is applicable to all energy deliveries, excluding energy delivered by Central Hudson to customers purchasing their electricity requirements from a retail supplier that is not participating in its purchase of accounts receivable program.

**D. Deficiency Response Protests and Answers**

39. Key Capture argues that Central Hudson still does not provide all information required to evaluate proposed Rate Schedule 21 and highlights several examples where Central Hudson's filing remains deficient.<sup>79</sup> Key Capture argues that new Attachment 4 (Determination of WDS Revenue Requirement) is incomplete because Central Hudson fails to explain how certain columns were developed and references non-existent columns that are relevant to showing how and why transmission costs were removed from the base delivery requirement.<sup>80</sup> Key Capture also contends that new Attachment 3 (the ACOS Study) contains certain unexplained and inconsistent hardcoded values.<sup>81</sup> In response, Central Hudson explains that it determined the revenue requirement by comparing the results of the ACOS Study with and without transmission costs, that it now provides a corrected Attachment 4, and that the hardcoded values in the Attachment 3 worksheet are for presentation purposes only.<sup>82</sup>

40. Key Capture asserts that proposed Rate Schedule 21 is inconsistent with and much higher than WDS rates in neighboring Orange and Rockland.<sup>83</sup> Key Capture argues this difference is unjustified and not based on any difference in the two systems. Key Capture also argues that, from a ratemaking perspective, it does not make sense for the Contract Demand Charge to be higher for transmission customers than subtransmission customers because, on a per kilowatt basis, higher voltage customers use less of the distribution system.<sup>84</sup> In response, Central Hudson explains that any differences between its rates and other utilities' rates are due to the fact that retail utility rates and service classifications

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<sup>79</sup> Key Capture Deficiency Response Protest at 2. NY-BEST states that it adopts and incorporates the entirety of Key Capture's protest by reference. NY-BEST Deficiency Response Protest at 2.

<sup>80</sup> Key Capture Deficiency Response Protest at 2-3.

<sup>81</sup> *Id.* at 3-4.

<sup>82</sup> Central Hudson Answer to Deficiency Response Protests at 2-3.

<sup>83</sup> Key Capture Deficiency Response Protest at 4.

<sup>84</sup> *Id.* at 4-5.



can differ from one utility to another and that differences between customer costs and the resulting Customer Charge are re-allocated to the Contract Demand Charge.<sup>85</sup>

41. Key Capture contends that Central Hudson fails to adequately explain and justify certain costs it proposes to recover through its transmission customer rates, such as the allocation of the total revenue requirement between different Demand Charges.<sup>86</sup> In response, Central Hudson reiterates that it followed the New York Commission ACOS methodology in determining how to allocate the revenue requirement.<sup>87</sup>

42. Key Capture argues that Central Hudson has not justified including the administrative component of the Merchant Function Charge and asserts that this charge is unduly discriminatory.<sup>88</sup>

#### **IV. Discussion**

##### **A. Procedural Matters**

43. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2023), the notice of intervention and timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

44. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2), prohibits an answer to a protest or answer unless otherwise ordered by the decisional authority. We accept Central Hudson's and Key Capture's answers because they have provided information that assisted us in our decision-making process.

##### **B. Substantive Matters**

45. Our preliminary analysis indicates that Central Hudson's proposed Rate Schedule 21 has not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. Central Hudson's filing raises issues of material fact that cannot be resolved based on the record before us. For that reason, we accept proposed Rate Schedule 21, effective May 8, 2024, suspend it for a nominal period, subject to refund, and establish hearing and settlement judge procedures.

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<sup>85</sup> Central Hudson Answer to Deficiency Response Protests at 3-4.

<sup>86</sup> Key Capture Deficiency Response Protest at 5.

<sup>87</sup> Central Hudson Answer to Deficiency Response Protests at 4-5.

<sup>88</sup> Key Capture Deficiency Response Protest at 8-9.

46. While we are setting these matters for a trial-type evidentiary hearing,<sup>89</sup> we encourage efforts to reach settlement before hearing procedures commence. To aid settlement efforts, we will hold the hearing in abeyance and direct that a settlement judge be appointed, pursuant to Rule 603 of the Commission's Rules of Practice and Procedure.<sup>90</sup> If parties desire, they may, by mutual agreement, request a specific judge as the settlement judge in the proceeding. The Chief Judge, however, may not be able to designate the requested settlement judge based on workload requirements which determine judges' availability.<sup>91</sup> The settlement judge shall report to the Chief Judge and the Commission within 60 days of the date of the appointment of the settlement judge, concerning the status of settlement discussions. Based on this report, the Chief Judge shall provide additional time to continue settlement discussions or provide for commencement of a hearing by assigning the case to a presiding judge.

47. The Commission has previously stated that, where there is a strong local interest, such as a "historical link" and "ongoing complementary relationship" between retail and wholesale rates, and the New York Commission has approved a rate on which the utility relies, the Commission will exercise its authority to review wholesale rates by accepting the New York Commission's rate determination in the absence of a showing of abuse of discretion or violation of public policy.<sup>92</sup> Therefore, the Commission allows a utility to file cost support data derived from the New York Commission-approved rate; however, the Commission must still conduct its own independent analysis.<sup>93</sup> Utilities must adequately demonstrate how the retail rates accepted by the New York Commission are the basis for the wholesale distribution rates and reasonably reflect the costs of providing the service at issue.<sup>94</sup> While we agree that there is a relationship between the cost of

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<sup>89</sup> Trial Staff is a participant in the hearing and settlement judge procedures. See 18 C.F.R. § 385.102(b), (c) (2023).

<sup>90</sup> 18 C.F.R. § 385.603.

<sup>91</sup> If parties decide to request a specific judge, they must make their joint request to the Chief Judge by telephone at (202) 502-8500 within five days of this order. The Commission's website contains a list of Commission judges available for settlement proceedings and a summary of their background and experience. (<https://www.ferc.gov/available-settlement-judges>).

<sup>92</sup> *Consol. Edison Co. of N.Y., Inc.*, 15 FERC ¶ 61,174, at 61,404 (1981).

<sup>93</sup> See *id.* (noting that the Commission will conduct its own independent analysis of the New York Commission-approved rates).

<sup>94</sup> *Consol. Edison Co. of N.Y., Inc.*, 184 FERC ¶ 61,189, at PP 31-33 (2023) (finding reasonable Consolidated Edison's explanation that the cost of providing wholesale distribution service is based on the type of distribution facilities to which

providing wholesale distribution service and the New York Commission-approved rate, Central Hudson's filing raises issues of material fact regarding how it has relied on the New York Commission-approved rate that cannot be resolved based on the record before the Commission.

48. Despite our finding of unresolved issues of material fact, we disagree with protesters' arguments that implementation of a wholesale distribution service charge for distribution-sited energy storage resources is inconsistent with Order No. 841. While the Commission in Order No. 841 directed RTOs/ISOs to eliminate certain barriers to participation in wholesale markets for energy storage resources, Order Nos. 841 and 841-A expressly found that "it may be appropriate, on a case-by-case basis, for distribution utilities to assess a charge on electric storage resources."<sup>95</sup> The hearing and settlement judge procedures established above will further develop the record with respect to Central Hudson's proposal in this case to assess that charge.

The Commission orders:

(A) Central Hudson's proposed OATT revisions are hereby accepted for filing, effective May 8, 2024, and suspended for a nominal period, subject to refund, as discussed in the body of this order.

(B) Pursuant to the authority contained in and subject to the jurisdiction conferred on the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act and the FPA, particularly sections 205 and 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the FPA (18 C.F.R. Chapter I), a public hearing shall be held

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the customer interconnects and the amount of wholesale distribution service provided, and that the proposed wholesale distribution rates reflects these costs because the retail rates on which they are based are likewise based on type of distribution facilities and amount of service, and clarifying that because these New York Commission-approved retail rates are grounded in the cost to serve customers, Consolidated Edison is not required to provide further cost evidence).

<sup>95</sup> Order No. 841, 162 FERC ¶ 61,127 at P 301 (citing *PJM Interconnection L.L.C.*, 149 FERC ¶ 61,185, at P 12 (2014) (accepting wholesale distribution charge that Commonwealth Edison Company will assess to Energy Vault, LLC for its use of the distribution system for its storage facility charging load), *order on reh'g*, 151 FERC ¶ 61,231, at PP 16-18 (2015)); Order No. 841-A, 167 FERC ¶ 61,154 at P 123 (stating the Commission will "consider" a rate filing for wholesale distribution service to an energy storage resource for its charging "on a case-by-case basis in light of the record evidence").

concerning the justness and reasonableness of Central Hudson's proposed tariff revisions, as discussed in the body of this order. However, the hearing will be held in abeyance to provide time for settlement judge procedures, as discussed in Ordering Paragraphs (C) and (D) below.

(C) Pursuant to Rule 603 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.603 (2023), the Chief Judge is hereby directed to appoint a settlement judge in this proceeding within 45 days of the date of this order. Such settlement judge shall have all powers and duties enumerated in Rule 603 and shall convene a settlement conference as soon as practicable after the Chief Judge designates the settlement judge. If parties decide to request a specific judge, they must make their request to the Chief Judge within five days of the date of this order.

(D) Within 60 days of the appointment of the settlement judge, the settlement judge shall file a report with the Commission and the Chief Judge on the status of the settlement discussions. Based on this report, the Chief Judge shall provide participants with additional time to continue their settlement discussions, if appropriate, or assign this case to a presiding judge for a trial-type evidentiary hearing, if appropriate. If settlement discussions continue, the settlement judge shall file a report at least every 60 days thereafter, informing the Commission and the Chief Judge of participants' progress toward settlement.

(E) If settlement judge procedures fail and a trial-type evidentiary hearing is to be held, a presiding judge, to be designated by the Chief Judge, shall, within 45 days of the date of the presiding judge's designation, convene a prehearing conference in these proceedings in a hearing room of the Commission, 888 First Street, NE, Washington, DC 20426, or remotely (by telephone or electronically), as appropriate. Such a conference shall be held for the purpose of establishing a procedural schedule. The presiding judge is authorized to establish procedural dates, and to rule on all motions (except motions to dismiss) as provided in the Commission's Rules of Practice and Procedure.

By the Commission. Commissioner See is not participating.  
Commissioner Chang is not participating.

( S E A L )

Debbie-Anne A. Reese,  
Acting Secretary.