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**From:** Lee Hartz [HartzL@natfuel.com]

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**Sent:** Friday, April 18, 2008 10:41 AM

**To:** Page, Cyndi; Smith, Michael; Burket, Patricia

INDEPENDENT REGULATORY  
REVIEW COMMISSION

**Subject:** Docket L-00070186: Comments on Behalf of National Fuel GasDistribution Corporation

Hello:

As requested in the Proposed Rulemaking Order in Docket L-00070186, I am sending you the attached Comments which were today filed with the Commission on behalf of National Fuel Gas Distribution Corporation.

Please contact me if you encounter any problems with the attachment.

Many thanks for your assistance.

Lee Hartz

4/23/2008



***National Fuel***

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Lee E. Hartz  
Attorney

April 18, 2008

**VIA NEXT DAY UPS**

Secretary James J. McNulty  
Pennsylvania Public Utility Commission  
P.O. Box 3265  
Harrisburg, PA 17105-3265

**Re: Proposed Rulemaking Relating to Universal Service and Energy Conservation Reporting Requirements, 52 Pa. Code §§ 54.71 – 54.78 (electric); §§ 62.1 – 62.8 (natural gas) and Customer Assistance Programs, §§ 76.1 – 76.6; Pa. P.U.C. Docket No.: L-00070186**

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Dear Secretary McNulty:

Enclosed for filing in the above-captioned matter are an original and 15 Copies of the Comments of National Fuel Gas Distribution Corporation to the Proposed Rulemaking Order.

If you should have any questions regarding this filing, please contact me anytime at (814) 871-8060. Many thanks for your assistance in this matter.

Very truly yours,



Lee E. Hartz

Enclosures

cc: (via electronic mail) all w/encl.:  
Michael Smith ([michasmit@state.pa.us](mailto:michasmit@state.pa.us))  
Patricia Krise Burket ([pburket@state.pa.us](mailto:pburket@state.pa.us))  
Cyndi Page ([cpage@state.pa.us](mailto:cpage@state.pa.us))

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**Proposed Rulemaking Relating to** :  
**Universal Service and Energy** : **COMMENTS**  
**Conservation Reporting Requirements,** :  
**52 Pa. Code §§ 54.71 – 54.78 (electric); §§** :  
**62.1 – 62.8 (natural gas) and Customer** :  
**Assistance Programs, §§ 76.1 – 76.6** : **Docket Number: L-00070186**

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**COMMENTS OF  
NATIONAL FUEL GAS DISTRIBUTION CORPORATION  
TO THE PROPOSED RULEMAKING ORDER**

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**TO THE PENNSYLVANIA PUBLIC UTILITY COMMISSION:**

**I. INTRODUCTION**

On September 5, 2007 the Pennsylvania Public Utility Commission (the “Commission”) entered a Proposed Rulemaking Order (the “Order”) in this matter containing proposed revisions to the Commission’s Regulations regarding Universal Service and Energy Conservation Reporting Requirements and Customer Assistance Programs. (the “Proposed Rulemaking”). The Order requested that interested parties submit comments on the proposed revisions within 60 days from the date the Order was published in the Pennsylvania Bulletin (February 9, 2008). This date was subsequently extended to April 18, 2008 in an April 4, 2008 Secretarial Letter. National Fuel Gas Distribution Corporation (“NFGDC”), a certificated natural gas distribution company providing service to approximately 213,000 customers in Northwestern and North-central Pennsylvania, appreciates this opportunity to submit comments

on this important issue. These comments will generally follow the sections as delineated in Annex A of the Order and address the Order itself where relevant. As the Proposed Rulemaking addresses regulations concerning electric service as well as natural gas and Customer Assistance Programs (“CAP”) and NFGDC is a natural gas utility, these comments are limited to those sections dealing with natural gas service and CAPs: 52 Pa. Code §§ 62.1–62.8 and §§ 76.1–76.6.

## **II. GENERAL COMMENTS**

NFGDC initially notes that a review of the Proposed Rulemaking reveals that the term “payment troubled” has been removed from some of the definitions and eligibility criteria related to CAPs. This creates an inconsistency throughout the document and it appears that the Commission may require companies to enroll customers based on income criteria alone. This will, necessarily, lead to a greater number of participants, higher costs, greater cost recovery and a shifting of costs from one group of residential customers to another. Historically, universal service and CAP programs have been tailored for payment troubled customers. In fact, many existing programs include an arrearage forgiveness feature. Additionally, much of the language in the Order and proposed language in the related Commission’s Policy Statement on Customer Assistance Programs at 52 Pa. Code §§ 69.261 – 69.267 (M-0072036) support the notion that a CAP participant be “payment troubled” as an eligibility criteria.

NFGDC is also concerned that the Proposed Rulemaking will require utility companies to include a large amount of information and calculations in their respective tariffs that are not necessarily appropriate for those documents. Generally, the purpose of a tariff is to establish the basic rules under which a distribution company provides service and the rates the company will charge. Much of the information required by the proposed Section 62.4 is problematic for inclusion in a tariff as it will require frequent update, is cumbersome, has no

direct impact on the rates charged and does not define how service is to be provided to a customer.

### III. SPECIFIC COMMENTS BY SECTION

#### § 62.1. Statement of purpose and policy.

NFGDC has no comments to the language proposed for this section.

#### § 62.2 Definitions

NFGDC suggests two insertions to the new proposed definition of a Customer Assistance Program as seen in the underlined text below:

*CAP – Customer Assistance Program* – A plan implemented by a distribution company for the purpose of providing universal service and energy conservation services to low income, payment troubled, customer, in which the customers shall:

- (i) Make on-time, monthly payments based on household income and household size.
- (ii) Comply with specific responsibilities in order to remain eligible for the program.

First, as stated in the General Comments above, the phrase “payment troubled” was removed from the definition of a customer who is eligible to participate in a CAP. For the reasons stated above, NFGDC feels that a customer being payment troubled is a critical element of a CAP and, therefore, that language should remain.

Second, NFGDC suggests adding the phrase “on time” to the definition as requiring on-time payments by CAP participants is critically important. Historically, a facet of a CAP program has been to assist customers to develop a habit of timely bill payment. Moreover, the Pennsylvania legislature has stated that CAP payments must be **timely** in 66 Pa. C.S. § 1405(c) which states: “Customer Assistance program rates shall be timely paid.”

NFGDC also suggests that the definition of "Payment troubled" is made too broad by the proposed inclusion of the language "or has received a termination notice." Customers can receive termination notices for a number of reasons, many of which have nothing to do with whether or not a customer is "payment troubled". NFGDC suggests that the language regarding receiving a termination notice should be removed or, at the least, the word "or" should be changed to "and".

**§ 62.3. Universal service and energy conservation program goals.**

For the reasons stated above, NFGDC suggests that the phrase "payment troubled" be added after the words "low income".

In addition NFGDC believes that the addition of the phrase "in order to minimize program costs" to § 62.3(4) is unnecessary. First, this proposed addition is redundant to the remainder of the language of § 62.3(4) which requires programs to be operated in a cost-effective and efficient manner. Second, the concept of "minimizing" program costs is subjective and subject to a wide variety of interpretation.

**§ 62.4. Review of universal service and energy conservation plans, funding and cost recovery.**

For purposes of these comments, the Universal Service and Energy Conservation Plan, as contemplated by the Proposed Rulemaking, will be referred to as "the Plan" or "Plans".

**§ 62.4(a)(3).**

The first proposed sentence of § 62.4(a)(3) – "A NGDC shall file its universal service and energy conservation plan in the form of a tariff filing" is redundant and should be removed. This requirement is previously stated in § 62.4(a)(1), it does not need to be restated again.

**§ 62.4(a)(4).**

With respect to the proposed requirement in § 62.4(a)(4) that a NGDC consult with the Bureau of Consumer Services “BCS” at least 30 days prior to the submission of its Plan, there should be a counter requirement placed on BCS to provide any feedback within a reasonable timeframe. That way, the NGDC can consider or implement any such advice prior to the official filing date. NFGDC proposes that a sentence be added to this proposed language as follows; “At least 15 days prior to submission of the plan to the Commission for approval, the BCS shall provide its advice, if any, to the NGDC.”

**Proposed § 62.4(a)(7).**

In some instances, NGDC’s have seen the current approval process take up to 24 months which is longer than the time allotted for review and resolution of a base rate case. In order to standardize the timeline for program approval, NFGDC suggests that the Commission add § 62.4(a)(7) which would read:

“The Commission shall act on the plan within 180 days of the NGDC filing its revised tariff.”

This addition would establish a reasonable time limit for the Commission, the distribution company, and any other interested parties to review and resolve issues involving the components of the plan. This will also provide some concreteness for companies to plan and implement a system of plan updates.

**§ 62.4(b) – General.**

Historically, NGDCs were required to submit their Plans to the Commission every three years as a stand alone filing. The proposed changes to § 62.4 would now require NGDCs to submit their Plans in the form of a tariff filing. There is some inconsistency in the proposed language of § 62.4(a)(1) which requires a “tariff filing” and § 62.4(b) which states that “The

tariff shall contain the following information.” There is a significant difference between submitting information as part of a tariff filing and actually placing information in a tariff. For instance, currently, when a NGDC proposes a rate increase, 52 Pa. Code §53.53 requires a significant amount of information that, ultimately, is not published in the tariff itself. This is because much of that information, while important for the tariff filing and evaluation of a rate increase, is not appropriate for inclusion in the tariff itself.

Likewise, much of the information required in the Proposed Rulemaking, while appropriate for evaluation of a NGDC’s Plan, is not appropriate for wholesale inclusion in a published tariff. In fact, some of the information may be counter to the existing regulations at 52 Pa. Code §§ 53.1 – 53.101 regarding tariffs. An analysis should be completed to determine which aspects of the historical Plan filing would be appropriate for inclusion in a tariff.

Generally, as delineated by current existing regulations, the purpose of a tariff is to define a utility’s service territory, the rules and regulations which apply generally to all classes of service, and provide a schedule of rates. See 52 Pa. Code §§ 53.24 – 53.26. This information is fairly consistent and not subject to change. Much of the information that the Proposed Rulemaking would make part of the tariff does not fit this category of information. NFGDC proposes that the first sentence of § 62.4(b) should be changed (underlined) as follows: “Tariff filing contents. The tariff filing should contain the following information.” This will eliminate the inconsistency between § 62.4(a)(1) and § 62.4(b). These Comments will address each subsection of § 62.4(b) regarding whether or not specific information is appropriate for inclusion in a company’s tariff.



**§ 62.4(b)(1)(i) and (ii).**

The proposed language of these sections deals with general Plan descriptions and eligibility criteria for each plan. These general rules are appropriate for inclusion in a tariff and NFGDC has no comments with respect to these sections.

**§ 62.4(b)(1)(iii) – “Projected needs assessment”**

NFGDC submits that the information required under this section is not appropriate for inclusion in a tariff. Generally, this section seeks information regarding the number of low income and low income, payment troubled customers of a NGDC. This information does not involve the rules which apply to service or the rates an NGDC will charge. Also, this information is not constant and will change frequently. This information would be more appropriate if submitted only as part of the tariff filing or as part of the annual program reporting requirements found in § 62.5.

**§ 62.4(b)(1)(iv) – “Projected enrollment levels”**

This information is not appropriate for inclusion in a tariff. Projections or estimates should not be found in a tariff. This information would be more appropriate if submitted only as part of the tariff filing or as part of the annual program reporting requirements found in § 62.5.

**§ 62.4(b)(1)(v) –(vii)**

These three sections deal with program budgets, use of community based organizations, and the NGDCs staff responsible for universal service programs. All of this information relates to the implementation and execution of the Plan and not to service rules or rates charged. As such, this information is not appropriate for inclusion in a tariff. This

information would be more appropriate if submitted only as part of the tariff filing or as part of the annual program reporting requirements found in § 62.5.

**§ 62.4(b)(2) – Program rules.**

The information required in this section is a good example of what type of information should be included in a tariff. This information establishes the general rules and regulations that govern provision of utility service under an NGDC's Plan. NFGDC has no comments regarding this section.

**§ 62.4(b)(3) – Documentation in support of funding and cost recovery for universal service and energy conservation.**

This section specifically states that this information shall be submitted as part of the "tariff filing". Thus, the confusion found in § 62.4(b)(1) is not present.

**§62.4(b)(4) – Surcharge**

The proposed language of this section is inconsistent with the statements made in the Commission's Final Investigatory Order in *Customer Assistance Programs: Funding Levels and Cost Recovery Mechanisms* (Order entered December 18, 2006 at Docket No. M-00051923). Therein, the Commission stated "Accordingly, utilities are free to propose quarterly or annual reconciliation, and other parties are free to contest the proposal" (emphasis added). The proposed language for this section does not provide the ability to propose a quarterly reconciliation and should be modified to be consistent with the Investigatory Order.

**§ 62.6 Evaluation reporting requirements.**

NFGDC feels that, for years when impact evaluations and Plans are required to be submitted, the proposed time of 6 months is not sufficient to allow for review and potential implementation before the Plan is submitted. To accommodate a longer review period, NFGDC requests that the proposed language be changed as follows (proposed changes underlined):

A NGDC shall submit an impact evaluation report to the Commission at least once every 6 years. When a NGDC is required to submit an impact evaluation in the same year as it is required to file its universal service and energy conservation plan, the NGDC shall file the impact evaluation report at least 6 months but not more than 12 months prior to the filing date for the universal and energy conservation plan.

**§ 76.1. Purpose.**

Consistent with the General Comments above, NFGDC believes that the phrase “payment troubled” should be added after the phrase “low income” in the first sentence of the language proposed for this section.

**§ 76.2. Definitions.**

Consistent with the General Comments above, NFGDC believes that the phrase “payment troubled” should be added after the phrase “low income” in the definition of a CAP or Customer Assistance Program.

Again, NFGDC feels that requiring on-time payments by CAP participants is critically important. Historically, a facet of a CAP program has been to assist customers to develop a habit of timely bill payment. Moreover, the Pennsylvania legislature has stated that CAP payments must be timely in 66 Pa. C.S. § 1405(c) which states: “Customer Assistance program rates shall be timely paid.” Thus, NFGDC suggests adding the phrase “on time” before the phrase “monthly payments” in the CAP definition.

**§ 76.3. Approval Process.**

NFGDC has no comments regarding the proposed language of this section.

**§ 76.4. Recovery of costs of customer assistance programs.**

NFGDC believes that the language of § 76.4(b) should be changed as follows:  
“The following CAP costs are eligible for recovery, if prudently incurred ~~and reasonable in~~

amount.” NFGDC believes that the phrase “and reasonable in amount” is redundant. That is, if the costs were prudently incurred, they are, necessarily, reasonable in amount. Further, whether a cost is reasonable is a subjective notion and subject to a number of interpretations.

**§ 76.5 Default provisions for failure to comply with program rules.**

NFGDC has three comments regarding the proposed language of this section.

First, with respect to § 76.5(a)(1), NFGDC suggests that not all CAP customers will necessarily be eligible for LIHEAP. As written, this proposed language would require all customers to apply for LIHEAP regardless of their eligibility. NFGDC suggests changing this language to read:

“Failure to apply for LIHEAP, if applicable.”

Second, NFGDC suggests that customers should be required to provide an NGDC with access to an inside or not readily available meter as a condition of CAP participation. This is due to the fact that many of the benefits of a CAP program, such as budget counseling and usage reduction services, are dependent for maximum benefit, on obtaining timely meter readings. Customers who do not provide access to a meter cannot fully avail themselves of those benefits. NFGDC requests that an item be added to this proposed language as follows:

(6) Failure to provide reasonable access to metering equipment.

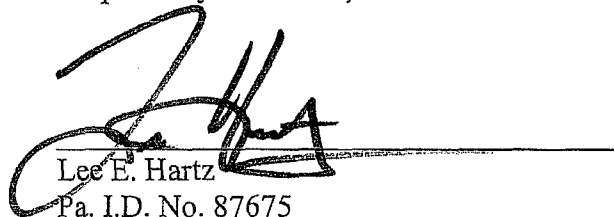
Third, NFGDC believes that § 76.5(b) is too restrictive and some leeway should be given to an NGDC regarding removal from a program. Thus, NFGDC suggests modifying the proposed language of this section as follows:

(b) The failure of a CAP customer to make payments ~~shall~~ may result in dismissal from CAP participation ~~and~~ or lead to termination of service.

**IV. CONCLUSION**

Once again, National Fuel Gas Distribution Corporation commends the Commission for its efforts in addressing this critical issue and appreciates the opportunity to provide comments on this very important subject.

Respectfully submitted,



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Pa. I.D. No. 87675

Dated: April 18, 2008

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