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**National Fuel**

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INDEPENDENT REGULATORY  
ENERGY COMMISSION

Lee E. Hartz  
Assistant General Counsel

June 3, 2009

**VIA NEXT DAY UPS**

Secretary James J. McNulty  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Bldg.  
400 North Street  
Harrisburg, PA 17120

**Re: Licensing Requirements for Natural Gas Suppliers, Proposed Rulemaking**  
**Pa P.U.C. Docket Number: L-2008-206115/57-266**

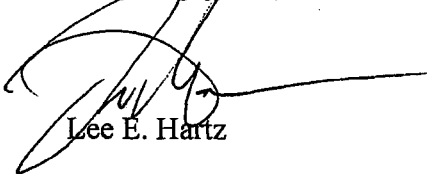
Dear Secretary McNulty:

Pursuant to the December 8, 2008 Order entered by the Pennsylvania Public Utility Commission at the above Docket, enclosed for filing are an original and 15 copies of the Comments of National Fuel Gas Distribution Corporation.

Electronic service is also being effectuated as required by the Commission's 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: (w/ encl.) **VIA E-Mail:**  
Ms. Patricia Krise Burket  
Ms. Annunciata Marino  
Ms. Cyndi Page

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**Licensing Requirements For Natural Gas :  
Supplies; *SEARCH Final Order and* : COMMENTS  
*Action Plan: Natural Gas Supplier Issues* :  
:  
:  
:  
: Docket Numbers: L-2008-2069115  
: I-00040103F0002**

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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**

In its September 11, 2008 Final Order and Action Plan regarding the Commission's Investigation into the Natural Gas Supply Market: Report on Stakeholder's Working Group, the Commission determined that one way to increase effective competition in the retail natural gas market was to revise the natural gas supplier licensing regulations in regard to the level of security needed and the forms of security that could be used to satisfy statutory security requirements. Subsequently, a Proposed Rulemaking Order was entered by the Commission on December 8, 2008 and then published in the Pennsylvania Bulletin for Comment on April 4, 2009.

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 comment on this Proposed Rulemaking. In general, it is NFGDC's contention that, while revising the level of security a natural gas supplier ("NGS") must maintain in order to satisfy statutory requirements may lead to greater NGS participation and enhanced competition, this should not occur to the potential

detriment of ratepayers whether they choose to shop or not. That is, existing security requirements are intended and appropriate to ensure that NGSs have the necessary financial foundation to provide continuing and reliable services and will not adversely impact a natural gas distribution company's ("NGDC") distribution system or its customers. The Commission must walk a fine line when reducing ratepayer protections in the sole interest of competition. NFGDC believes that several of the additions to the security requirements in the proposed rulemaking cross that line and expose both the NGDCs and their end-users to unnecessary risk. Unnecessary because, under the current security rules, an NGS with any amount of financial wherewithal had no problem operating and meeting applicable security requirements.

## **II. Comments to specific sections.**

### **A. 52 Pa. Code § 62.111(c)(1)(ii)(A).**

This section of the Proposed Rulemaking provides criteria for when the required amount of security posted by an NGS may be adjusted. The change in Subsection A is inappropriate as it predicates a change in security on the happening of a material event that impacted an NGDC's system operation or reliability. This is problematic as it lies contrary to the concept of security as a whole. Security is intended to prevent or ensure protection in the event of an occurrence that materially impacts system reliability. Predicating a change in security only if an event materially affects system operations or reliability potentially subjects all customers to unnecessary risk that could have been avoided if a NGS was required to post appropriate security before they materially impacted system operations. Allowing a change in security only after such an event would come too late. In other words, it is appropriate to have sufficient security to cover material impacts on system operations before, not after, the event occurs. Also, the Company may receive an "early warning" from a pattern of operating violations that may not, at the time, been material, but provided an indicator of potential exposure that should be secured.

### **B. 52 Pa. Code § 62.111(c)(1)(ii)(C).**

The proposed change to this section defines a change in the number of customers by stating that “[a]n increase of 25% in the number of customers would represent a significant change that would justify an NGDC directing that additional security be provided.” This proposed change misses the mark in that the potential impact of an NGS default is not necessarily related to the number of customers but rather the volume of gas that NGS is responsible for bringing to the system. As such, this proposed language should be removed or, at the least, changed to better reflect the importance of volumetric concerns over a basic number of customers.

Furthermore, a more accurate depiction of the risk of a NGS default is based on the financial exposure generated by the NGS activity. This financial exposure is directly tied to commodity prices and is impacted whether the price of the commodity is rising or falling. That is, rising commodity prices correlate to higher risk and falling commodity prices correlate to lower risk. In times of extreme commodity price volatility, an increase or decrease of 25% in the number of customers can be irrelevant to the change in risk associated with the change in commodity price. The Commission should evaluate a means of tying the ability to adjust security requirements to commodity prices.

**C. 52 Pa. Code § 62.111(c)(1)(ii)(E).**

Again, this section of the proposed rulemaking inserts a sort of “look-back” provision in that, as written, it may preclude a change in security until an event affecting NGDC system reliability occurs. This section is a key component of protecting end-users as it speaks directly to reliability concerns and the ability of an NGS to provide the necessary gas to meet its customer’s needs. In order to rectify the backwards-looking nature of the proposed language, NFGDC suggests changing the language as follows (only the proposed language is shown; NFGDC suggested additions are underlined and removals are struck):

- (E) A change in the licensee’s demonstrated capability to provide the volume of natural gas for its customers’ needs that would, in the opinion of the NGDC, materially affects NGDC system operation or reliability.

The protection intended by this section goes beyond only providing financial assurance to the NGDC and its ratepayers, rather, it helps to ensure that an NGS will not impact system stability. Put another way, the ability of an NGS to meet the needs of its customers seems fundamental to their competence in providing reliable supplies. Adding a "materiality" clause appears to be a loophole that would only benefit potentially unreliable NGSs.

**D. 52 Pa. Code § 62.111(c)(1)(ii)(A-E).**

As a whole, these sections provide guidance as to when adjustments in security requirements by an NGDC are proper. The regulatory language provides that changes must be reasonable and can only be made every six months. NFGDC proposed eliminating the six-month requirement to provide necessary fluidity and relying on the reasonableness requirement to protect against rapid and random changes in security. In some instances, NGSs may be able to provide different amounts of security for service in the winter months as opposed to the summer months. Allowing changes to occur more than once every six months will allow an NGDC to provide this option without fear of being locked into a security amount in the event of a change in circumstances. NFGDC believes that removing the six-month limitation would not be unnecessarily burdensome on NGSs and may actually increase competition as it would provide greater flexibility, in both directions, on security requirements.

In the alternative, if the six-month limitation is not removed, the Commission should consider adding a regulation that would enable NGDCs to freeze or limit an NGS's customer enrollments. Without such a mechanism it would be possible for an NGS to take on more load requirements than they are securitized for. For example, an NGS has its security requirements set on fictional day one. Over the course of the next month, the NGS increases its volumetric load by 200%. Under the proposed rulemaking, while the risk to the NGDC and its customers has significantly increased, the NGS may not have to post security to match its new load for five more months.

In addition, NFGDC objects to the proposed language in so far as it adds qualifiers, such as "significant changes" or "materially affects", to the types of events that would allow for a change in security. These phrases are too broad and ambiguous for a regulation and will lead to confusion and difficulty in application.

**E. 52 Pa. Code § 62.111(c)(2).**

In general, the items in this subsection list and describe the types of legal and financial instruments or property that shall be acceptable as security. As a general note, NFGDC believes that "cash" should be added as an acceptable form of security. Not including it on the list may lead to its preclusion.

**F. 52 Pa. Code § 62.111(c)(2)(ii).**

In light of the current financial and economic situation and the status of many financial institutions and banks, NFGDC recommends changing this subsection as follows:

(ii) An irrevocable standby letter of credit issued by a financial institution acceptable to the NGDC.

**G. 52 Pa. Code § 62.111(c)(2)(iv).**

This proposed section seeks to add an "Escrow Account" to the available forms of security. For the following reasons, NFGDC believes that Escrow Accounts should not be available forms of security and that cash, held by the NGDC, should be inserted in their stead. First, there are administrative costs associated with an escrow account when held by a third party. The regulation is unclear as to who should pay those costs. Second, it is unclear who would actually hold the escrow account and who would be responsible for monitoring the account. These questions lead to increased costs and potential legal actions involving escrow accounts. There should be no fundamental difference, from an NGS perspective, in posting cash to an escrow account and posting cash with the NGDC.

**H. 52 Pa. Code § 62.111(c)(2)(v).**

This proposed section purports to allow as security "accounts receivable pledged to the NGDC or sold by a supplier participating in a NGDC purchase of receivables program ..."

There is a fundamental problem with this concept. Something that is **sold** by an NGS cannot subsequently be used as security. Once the account receivable is sold and paid for by the NGDC the NGDC owns that asset and it ceases to be an asset of the NGS that the NGS could use as security. This would essentially leave an NGDC holding nothing as security.

Furthermore, it is fundamental that an NGDC's purchase of receivables program will contain separate legal contracts and mechanisms relative to the purchase, transfer, chargeback and collection of accounts receivable. In many instances, these will be inconsistent with the concept of using the same receivable as security to ensure a NGS's obligations of operating on a system. The notion that an entity could use something it has sold or pledged as security is fundamentally flawed and this section should be removed. This is not to say that a purchase of receivable program will not impact financial exposure. The financial exposure imposed by an NGS on an NGDC may be reduced by a purchase of receivable program. The impact however, will not be a security instrument, it will however lower exposure through the ability of a utility to 'off-set' any potential liabilities incurred by the NGS with payments due under the POR.

**I. 52 Pa. Code § 62.111(c)(6).**

The Proposed Rulemaking suggests adding this Section to address an NGS's options when there is a dispute related to the form or amount of security. There are several problems with this proposed language.

First, there is no mention of the newly created Office of Competitive Market Oversight ("OCMO"). It would seem that these are the types of disputes that the OCMO was specifically designed to mediate or attempt to resolve. Attempting to resolve disputes through this Office should be required before an NGS can attempt to obtain other Commission intervention by filing a formal complaint.

Second, in NFGDC's opinion, there should be a requirement that any NGS with a dispute relating to the form or amount of security must affirmatively attempt to resolve that dispute first with the relevant NGDC before approaching the Commission. This is similar to the

requirement found in Chapter 14 of the Public Utility Code dealing with residential customer disputes. This will ensure that NGS's bring disputes to the NGDC and that the NGDC has an attempt to discuss and resolve disputes. This will enhance efficiency at the Commission.

Third, while this section describes what courses an NGS can take to challenge the form or amount of security, it does not mention how the situation should be handled during the time it takes for the dispute to be resolved. NFGDC suggests that, in order to protect system reliability and NGDC ratepayers, an NGS must post the required security in order to provide (or continue to provide) service on an NGDC's system while a dispute is pending. Since protecting the individual ratepayers, both from a reliability and financial standpoint, must take precedence over enhancing competition, NGDCs should have the benefit of the doubt in the time that such disputes are pending.

### III. Conclusion.

National Fuel Gas Distribution Corporation appreciates the opportunity to provide comments regarding the proposed modifications to 52 Pa. Code, Chapter 62 and looks forward to working with the Commissioners and their staff to implement rules that effectuate the intent of this Order.

Dated: June 3, 2009

Respectfully submitted,



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Pa. I.D. No. 87675

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