

**PENNSYLVANIA  
PUBLIC UTILITY COMMISSION  
Harrisburg, PA 17105-3265**

Act 127 of 2011 – The Gas and Hazardous ) M-2012-2282031  
Liquids Pipeline Act; Assessment of Pipeline )  
Operators – Jurisdiction over Class 1 Transmission )

COMMENTS OF  
NATIONAL FUEL GAS SUPPLY CORPORATION  
ON  
TENTATIVE ORDER DATED MAY 24, 2012

National Fuel Gas Supply Corporation (the “Company”) hereby submits its comments on the Tentative Order (the “Order”) issued in this matter by the Pennsylvania Public Utility Commission (the “Commission”) on May 24, 2012. The Order’s stated purpose is:

to modify the Act 127 Implementation Order to clarify that  
*transmission* pipelines in Class 1 locations are subject to federal  
pipeline safety laws and therefore are within the jurisdiction of the  
Commission under Act 127. [*emphasis in original*]

The Company is a Pennsylvania corporation which owns and operates facilities in Pennsylvania for the purpose of transmission, storage and gathering of natural gas. The Company has registered as a Pipeline Operator under Act 127 of 2011 (the “Act”) with respect to the Company’s 21.6 miles of regulated onshore gathering pipelines located in Pennsylvania.

The Company is a Natural Gas Company for purposes of the federal Natural Gas Act (the “NGA”)<sup>1</sup>, engaged in the transportation (including both transmission and storage) of natural gas in interstate commerce. Under the NGA, the natural gas transportation facilities of all Natural

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<sup>1</sup> 15 U.S.C. §§ 717 *et seq.*

Gas Companies including the Company are regulated by the Federal Energy Regulatory Commission (“FERC”), which occupies the field of regulation of interstate natural gas transmission pipelines, and preempts inconsistent state and local laws and regulations.<sup>2</sup>

The Pennsylvania Legislature recognized federal preemption by including several key provisions in the Act. Most importantly, the Act’s definition of “pipeline” includes the following:

“Pipeline.” ... The term only includes pipeline regulated by Federal pipeline safety laws. *The term does not include a pipeline subject to the exclusive jurisdiction of the Federal Energy Regulatory Commission. [emphasis supplied]*

Accordingly, none of the transmission pipelines of FERC-regulated Natural Gas Companies, including the Company, are “pipelines” for purposes of the Act, and therefore for purposes of the Order, which was issued under the Act.

The Order clarifies the Commission’s intent to regulate some transmission pipelines, presumably those transmission pipelines that are engaged in the intrastate transmission of natural gas. The Company respectfully submits that the Commission could not, by the Order or otherwise, extend its jurisdiction over FERC-regulated interstate transmission pipelines beyond what was authorized in the Act, or indeed beyond the limits imposed by the federal preemption of state regulation.

The Order should therefore be modified to clarify that the Commission has jurisdiction over intrastate Class 1 transmission pipelines.

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<sup>2</sup> *Schneidewind v. ANR Pipeline Co.*, 485 U.S. 293 (1988); *National Fuel v. Public Service Com'n of State of N.Y.*, 894 F.2d 571 (2d Cir. 1990).

Respectfully submitted,

NATIONAL FUEL GAS SUPPLY CORPORATION

Dated: June 1, 2012

By:   
James R. Peterson  
Secretary and General Counsel  
6363 Main Street  
Williamsville, NY 14221  
716.857.7702