



17 North Second Street  
12th Floor  
Harrisburg, PA 17101-1601  
717-731-1970 Main  
717-731-1985 Fax  
www.postschell.com

Michael W. Gang

mgang@postschell.com  
717-612-6026 Direct  
File #: 2272-128560

October 12, 2006

ORIGINAL

VIA HAND DELIVERY

James J. McNulty  
Secretary  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
400 North Street, 2nd Floor North  
PO Box 3265  
Harrisburg, PA 17105-3265

SECRETARY'S BUREAU  
OCT 12 PM 4:05

**RE: Pennsylvania Public Utility Commission v.  
National Fuel Gas Distribution Corporation  
Docket No. R-00061493**

Dear Secretary McNulty:

Enclosed, for filing, are an original and three (3) copies of the Joint Petition for Settlement of All Issues in the above-referenced proceeding. As indicated on the certificate of service, copies have been served on all active parties in the manner indicated. Consistent with the Settlement, customer complainants will be served separately and a second certificate of service will be filed.

Respectfully submitted,

*Michael W. Gang*  
Michael W. Gang

MWG/jl  
Enclosures  
cc: Certificate of Service

DOCUMENT  
COLLECTED

DOCKETED  
OCT 13 2006

46

ORIGINAL

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Pennsylvania Public Utility Commission, :  
et al. :

Docket Nos. R-00061493, et al

v. :

National Fuel Gas Distribution Corporation :

SECRETARY'S BUREAU

2006 OCT 12 PM 4:06

---

**JOINT PETITION FOR SETTLEMENT OF ALL ISSUES**

---

**TO ADMINISTRATIVE LAW JUDGES JOHN H. CORBETT, JR. AND  
MARK A. HOYER:**

**INTRODUCTION**

The Office of Trial Staff ("OTS") of the Pennsylvania Public Utility Commission ("Commission"), the Office of Consumer Advocate ("OCA"), the Office of Small Business Advocate ("OSBA"), the Community Action Association of Pennsylvania ("CAAP") and National Fuel Gas Distribution Corporation ("Distribution" or "Company"), being all of the parties who submitted prepared, written testimony and exhibits for the evidentiary hearing in the above-captioned proceeding (hereinafter collectively referred to as the ("Joint Petitioners")), hereby join in this Joint Petition for Settlement of All Issues ("Settlement") and respectfully request that Administrative Law Judges John H. Corbett, Jr. and Mark A. Hoyer ("ALJs") recommend and the Commission approve all terms and conditions of this Settlement as set forth below.

Specifically, the Joint Petitioners request that the ALJs issue a Recommended Decision that requests the Commission to: (1) approve all terms and conditions of this Settlement,

DOCUMENT  
FILED

**DOCKETED**

OCT 13 2006

including the rates to become effective for service furnished on and after January 1, 2007, that are set forth in the form of tariff supplement provided as Appendix "A" hereto and which are shown in the proof of revenues, Appendix "B" hereto; (2) include in the Order in this proceeding the provisions concerning Other Post Employment Benefits ("OPEB") that are set forth in Paragraph No. 18.A.2 of this Settlement below; (3) include in the Order in this proceeding the provisions concerning the research funding set forth in Paragraph No. 18.A.3 of this Settlement below; (4) include in the Order in this proceeding the provisions concerning LIURP funding that are set forth in Paragraph No. 18.A.4 of this Settlement below; and (5) terminate this proceeding. Under this Settlement, as fully set forth and explained below, the Joint Petitioners agree to resolve all issues by authorizing Distribution to increase its base rates by amounts designed to produce a \$14.3 million increase in annual operating revenues, in lieu of the increase of \$25.892 million originally proposed by Distribution in this proceeding. The terms and conditions of this Settlement are set forth in their entirety hereinafter.

### **BACKGROUND**

In support of this Settlement, the Joint Petitioners state the following:

1. Distribution is a public utility subject to the Commission's regulatory jurisdiction with regard to its Pennsylvania operations. Distribution provides retail gas sales and transportation services to customers in fourteen counties in northwestern Pennsylvania. Distribution also provides natural gas services in western New York, subject to the regulatory jurisdiction of the New York Public Service Commission.

2. On May 31, 2006, Distribution filed with the Commission Supplement No. 61 to Tariff Gas – Pa. P.U.C. No. 9 together with supporting written testimony and exhibits, which were designated Docket No. R-00061493. In Supplement No. 61, Distribution proposed a general increase in base rates designed to produce \$25.892 million of additional annual operating

revenues based upon the level of operations for the twelve months ending January 31, 2007 (the "Future Test Year"). The proposed rate increase was submitted pursuant to Section 1308(d) of the Public Utility Code, 66 Pa.C.S. § 1308(d).

3. On July 20, 2006, the Commission entered an Order in which it noted that the proposed increase in base rates had been suspended by operation of law pursuant to Section 1308(d) of the Public Utility Code, 66 Pa.C.S. § 1308(d), for up to seven months, or until March 2, 2007, unless permitted by the Commission to become effective at an earlier date, and initiated an investigation of Supplement No. 61.

4. OTS entered an appearance in these proceedings. OCA and OSBA filed complaints against the proposed general rate increase, and CAAP filed its Petition to Intervene.

5. On July 20, 2006, Distribution filed an Answer and New Matter to CAAP's petition to intervene.

6. A significant number of Formal Complaints were filed in these proceedings by individual consumers. Distribution timely answered a number of the complaints in these proceedings. However, with the Commission's institution of an investigation, Distribution suspended filing Answers on August 10, 2006.

7. An initial prehearing conference was scheduled for August 3, 2006. Prior to the initial prehearing conference, the parties agreed to a procedural schedule. Parties participating in the prehearing conference filed their respective prehearing memoranda identifying potential issues and their expected witnesses.

8. The initial prehearing conference was held August 3, 2006. At the prehearing conference, the ALJs adopted the schedule agreed to by the parties. Prior to the prehearing conference, the parties agreed to discovery rules for the proceeding, which included shorter

response times than those provided in the Commission's regulations, that were so implemented by the ALJs. *See* 52 Pa. Code §§ 5.321 *et seq.* At the prehearing conference, the ALJs modified these rules to provide that parties attempt to resolve discovery disputes by telephone, and that in the event the parties were unsuccessful in resolving their disputes, they were to send interrogatories and objections to the ALJs for a further telephone discussion.

9. Also on August 3, 2006, the ALJs issued a Prehearing Order. In the Prehearing Order, the ALJs listed the parties that had filed notices of intervention and petitions to intervene through that date. The ALJs specifically noted and granted the CAAP Petition to Intervene. The ALJs further set forth the rules regarding electronic service of documents, discovery, scheduling of witnesses and common brief outline, and instructions for briefs.

10. On August 9, 2006, Distribution filed with the Commission a Motion for a Protective Order. No party opposed this Motion. The ALJs granted the Motion for a Protective Order on August 21, 2006

11. Public input hearings were held in Erie, Pennsylvania, the largest city in Distribution's Pennsylvania service territory, on the afternoon and evening of August 28, 2006. 43 persons testified in the afternoon public input hearing, and 43 persons testified in the evening public input hearings.

12. On August 29, 2006 public input hearings were held during the afternoon in Meadville and in evening in Farrell, Pennsylvania. A public input hearing was held the afternoon of August 30, 2006 in Franklin, Pennsylvania 2006. In total, 82 persons testified at these public input hearings.

13. The Joint Petitioners undertook substantial formal and informal discovery in this proceeding. Pursuant to the procedural schedule adopted by the ALJs, OTS, OCA, OSBA, and

CAAP submitted direct testimony on September 6, 2006. Distribution, OCA and OSBA submitted rebuttal testimony on September 28, 2006.

14. In addition, Distribution submitted supplemental testimony to provide updated information on certain topics.

15. The Joint Petitioners held multiple settlement conferences to attempt to amicably resolve all outstanding issues in the proceeding. As a result of these conferences and the efforts of the Joint Petitioners to examine and resolve the issues in the proceeding, a settlement in principle of all issues was achieved by the Joint Petitioners prior to the dates scheduled for evidentiary hearings.

16. The Joint Petitioners have been able to agree to this instant Settlement covering all issues. Joint Petitioners have agreed to a base rate increase and have also agreed to a rate design to implement said increase. The Joint Petition provides for the continuation and expansion of Distribution's Low Income Usage Reduction ("LIURP") Program. The Joint Petitioners are in agreement that the Settlement is in the public interest as being in the best interests of both Distribution and its customers.

17. The Settlement is set forth in the following Section.

### **SETTLEMENT PROVISIONS**

18. The Joint Petitioners agree as follows:

A. Distribution will be permitted to file a tariff supplement increasing rates in amounts designed to produce \$14.3 million in increased revenues, before late payments, based upon sales and transportation volumes for the twelve months ended January 31, 2007. The Joint Petitioners agree that increased rates are to become effective on January 1, 2007, and agree to make best efforts to obtain Commission approval of this Settlement prior to that date.

1. The Enhanced Energy Efficiency (“EEE”) Rider and associated \$1.8M EEE outreach program proposed by Distribution will not be implemented. (Revenue de-coupling proposal.)

2. Deferral treatment shall continue for Other Post Retirement Benefits (“OPEBs”) costs. The Joint Petitioners will accept the OCA’s amortization of R-00061493 deferred OPEB costs of \$1,642,905 over 4 years (\$410,726 per year). The previously approved amortizations (\$2,228,176 from R-00038168 and \$502,673 from R-00049656) will continue per their respective settlement agreements.

Distribution will continue to account for the difference between the OPEB cost determined annually by the actuary in accordance with SFAS 106 and the \$6,863,730 of annual OPEB cost included in rates. That difference will continue to be recorded as a regulatory asset or liability and will be expensed or credited in future rate proceedings in determining periodic OPEB costs. After the conclusion of the amortization periods discussed above, the amortization amounts will be added to the \$6,863,730 of OPEB cost used to calculate the OPEB regulatory asset or liability.

The total amount of OPEB costs is \$10,005,305 (\$6,863,730 + \$2,228,176 + \$502,673 + \$410,726). Of that amount, \$7,704,085 will be charged to operation and maintenance expense (\$10,005,305 x 77.00%).

Distribution will continue to fund OPEBs through irrevocable external trusts, into which will be deposited the \$6,863,730 of current annual OPEB cost and, for the remainder of the amortization periods, the \$2,228,176, \$502,673 and

\$410,726 ( $\$1,642,905 \div 4$ ) amortization amounts. Retiree OPEBs and administrative costs of maintaining the trusts will continue to be paid from amounts deposited in the trusts.

The amortization period for any deferred asset or liability that has not been previously recovered or refunded prior to the effective date of rates in any future proceeding under Section 1308(d) of the Public Utility Code shall be determined in such proceeding.

3. The Joint Petitioners agree to \$526,466 to fund the Delta research and development program pursuant to the Statement of Scott E. Swarzfager No. 14. The deferral treatment and review process outlined in R-00049656 will continue. The company will not expend these dollars on additional customer outreach for enhanced energy efficiency.

Distribution will be permitted to record a regulatory asset or liability for differences between the annual rate allowance and annual expenditures. However, Distribution will not be permitted to retroactively recover in a future proceeding any expenditures in excess of the annual rate allowance and any deferred balance from the previous year's Delta funding. Distribution will provide for review of research projects as described in its testimony. In order to implement this Settlement, the Joint Petitioners request that the Commission's Final Order in this proceeding include the following language to allow Distribution to qualify for deferred accounting under SFAS 71:

"National Fuel Gas Distribution Corporation's accounting policies conform to the Statement of Financial Accounting Standards No. 71 'Accounting for the Effect of Certain Type of Regulations' which are in accordance with the accounting

requirements and ratemaking practices of regulatory authorities. The application of these accounting policies allows the Company to defer expenses and income on the balance sheet as regulatory assets and liabilities when it is probable that those expenses and income will be allowed in the rate-setting process in a period different from the period in which they would have been reflected in the income statement by an unregulated Company.

“Because research and development projects often require a commitment over multiple years and because the expenditures for such projects may not match on an annual basis revenues for funding of research and development projects, deferred accounting is appropriate and is approved. The regulatory deferral treatment sought for the Research and Development expenditures and rate relief requested in the case are in accordance with SFAS No. 71.

“The Company will manage the costs of the Research and Development expenditures to match revenues deferred pursuant to this Order to eliminate any differences between deferred costs and deferred revenues at the end of a five-year period commencing on the day after the R-00049656 Order was entered.”

Distribution will file with the Commission and serve upon other Parties on or before December 31 an annual report for the preceding twelve month period ended September 30, setting forth revenues for the Delta Fund for research and development projects and expenditures for such projects. In addition, Distribution will describe in the annual report projects that have been funded.

4. The Company’s LIURP funding will be increased from \$1,183,566 to \$1,300,000. Both amounts are greater than the 0.2% of revenue minimum.

5. The Company agrees not to file a tariff proposing a general increase to base rates prior to January 28, 2008, unless there are substantial changes in regulations, regulatory rulings or federal tax policy.

6. The Capital Stock Tax rate reflected in the test year was 0.489 percent, which is the rate for Distribution effective on October 1, 2006. Therefore, the State Tax Adjustment Surcharge will be reset to zero when base

rates are effective. The Company agrees to withdraw the proposed addendum to the STA that would include the PUC Assessment.

**Revenue Allocation And Rate Design**

B. The allocation of \$14.3 million to the rate classes represents a compromise of the various revenue allocation positions filed by the Joint Petitioners. The Joint Petitioners explicitly agree that this Settlement is not based on any particular methodology for allocating costs among the various rate classes, nor may this Settlement be used as precedent by any of the Joint Petitioners in support of a particular cost allocation methodology in a future regulatory proceeding.

1. The revenue allocation proposal is presented on page 1 of the proof of revenues which is attached as Appendix B.

2. The Joint Petitioners agree that the proposed revenue allocation represents a reasonable compromise the various filed positions.

3. The revenue increase to the residential class will be recovered through an equal percentage increase to the rate blocks. There will be no increase to the residential customer charge.

4. The Company agrees to withdraw its seasonal purchased gas demand charge recovery proposal.

5. The rate design for the Commercial and Public Authority classes that the Company will use to recover the revenue increase for those classes will be as proposed by the OSBA.

6. The Company will recover the revenue increases for the Industrial rate classes as follows:

(a) For the SVIS class the increase will be recovered through the volumetric usage rates of the class.

(b) For the IVIS rate class the customer charge will be increased to \$201.91 and the remaining increase will be recovered as an equal percentage increase to the volumetric usage rates exclusive of negotiated rate volumes.

(c) For the LVIS rate class the customer charge will be increased to \$809.00 and the remaining increase will be recovered as an equal percentage increase to the volumetric usage rates exclusive of negotiated rate volumes.

(d) For the LIS rate class the customer charge will be increased to \$1,029.00 and the remaining increase will be recovered as an equal percentage increase to the volumetric usage rates exclusive of negotiated rate volumes.

7. The Joint Petitioners agree with the Company's proposal to roll-in the transportation administrative fee revenue into the base rates of the rate classes as proposed by the Company.

8. The Joint Petitioners agree to the Company's proposal to equalize the interstate and intrastate transportation rates for each rate class.

**Other**

C. The Joint Petitioners will agree to all other proposed tariff changes included in Exhibit No. 14 of the Company's filing.

D. The Company withdraws its proposals for a merchant function charge and for a purchase of receivables pilot program

### **THE PUBLIC INTEREST**

19. This Settlement was achieved by the Joint Petitioners after a thorough investigation of Distribution's filing, including extensive informal and formal discovery and the filing of direct testimony by a number of parties and rebuttal testimony by Distribution.

20. Acceptance of the Settlement will avoid the necessity of further administrative and potential appellate proceedings at what would have been a substantial cost to the Joint Petitioners and Distribution's customers.

21. The rates reflected in this Settlement will allocate the agreed-upon revenue requirement to each customer class in a manner that is reasonable in light of the rate structure and cost of service positions advanced in the testimony and exhibits of the various parties.

22. Attached to this Settlement document are the respective Statements in Support of a number of the Joint Petitioners setting forth the basis upon which they consider the Settlement to be fair, just and reasonable and therefore in the public interest. The Joint Petitioners respective Statements in Support are attached hereto as Appendix C.

### **SETTLEMENT CONDITIONS**

23. This Settlement is conditioned upon Commission approval of all terms and conditions contained herein without modification. If the Commission modifies the Settlement, then any Joint Petitioner may elect to withdraw from this Settlement and may proceed with litigation and, in such event, this Settlement shall be void and of no effect. Such election to withdraw must be made in writing, filed with the Secretary of the Commission and served upon

all Joint Petitioners within five (5) business days after the entry of an order modifying the Settlement.

24. This Settlement shall be considered to have the same effect as full litigation of this proceeding resulting in the establishment of rates that are Commission-made, just and reasonable rates.

25. This Settlement is proposed by the Joint Petitioners to settle all issues in the instant proceeding. If the Commission does not approve the Settlement and the proceedings continue to further hearings, the Joint Petitioners reserve their respective rights to present additional testimony and to conduct full cross-examination, briefing and argument. The Settlement is made without any admission against, or prejudice to, any position which any Joint Petitioner may adopt in the event of any subsequent litigation of this proceeding.

26. This Settlement may not be cited as precedent in any future proceeding, except to the extent required to implement this Settlement.

27. The Commission's approval of the Settlement shall not be construed to represent approval of any party's position on any issue, except to the extent required to effectuate the terms and agreements of the Settlement in this and future proceedings involving Distribution.

28. It is understood and agreed among the parties that the Settlement is the result of compromise, and does not necessarily represent the position(s) that would be advanced by any party in this proceeding if it were fully litigated.

29. This Settlement is being presented only in the context of this proceeding in an effort to resolve the proceeding in a manner which is fair and reasonable. This Settlement is the product of compromise. This Settlement is presented without prejudice to any position which any of the Joint Petitioners may have advanced and without prejudice to the position any of the

Joint Petitioners may advance in the future on the merits of the issues in future proceedings except to the extent necessary to effectuate the terms and conditions of this Settlement. This Settlement does not preclude the Joint Petitioners from taking other positions in proceedings of other public utilities under Section 1308 of the Public Utility Code, 66 Pa.C.S. § 1308, or any other proceeding.

30. A copy of this Settlement will be served upon the customer complainants without the tariff supplement. The tariff supplement will be posted on Distribution's and OCA's websites.

31. If the ALJs adopt this Settlement without modification, the Joint Petitioners waive their rights to file Exceptions.

### **CONCLUSION**

**WHEREFORE**, the Joint Petitioners, by their respective counsel, respectfully request as follows:

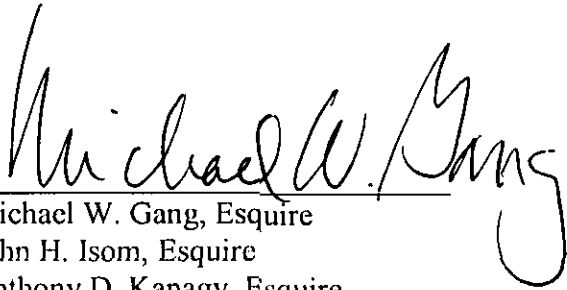
1. That Administrative Law Judges John H. Corbett, Jr. and Mark A. Hoyer recommend and the Commission approve this Settlement including all terms and conditions thereof;

2. That the Commission's Investigation at R-00061493, *et al* be marked closed;

3. That all other Complaints associated with this proceeding, including all Complaints consolidated with the Commission's investigation at R-00061493, be dismissed; and,

4. That the Commission enter an Order consistent with this Settlement, terminating the proceeding and authorizing National Fuel Gas Distribution Corporation to file the tariff attached as Appendix "A" effective for service rendered on and after January 1, 2007.

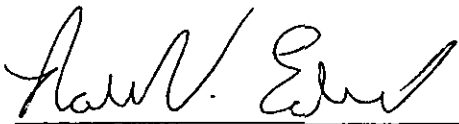
Respectfully submitted,



Michael W. Gang, Esquire  
John H. Isom, Esquire  
Anthony D. Kanagy, Esquire  
Michael Reville, Esquire  
For: *National Fuel Gas Distribution Corporation*

Date:

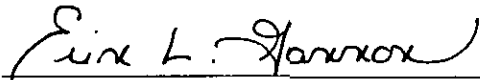
10/11/06



Robert V. Eckenrod, Esquire  
Allison A. Curtin, Esquire  
For: *Office of Trial Staff*

Date:


10/11/06



Erin L. Gannon, Esquire  
Darryl Lawrence, Esquire  
For: *Office of Consumer Advocate*

Date:

10/11/06



Sharon E. Webb, Esquire  
For: *Office of Small Business Advocate*

Date:

10/11/06

Date:

Joseph L. Vullo, Esquire  
For: *Community Action Association of Pennsylvania*

Date: \_\_\_\_\_

\_\_\_\_\_  
Michael W. Gang, Esquire  
John H. Isom, Esquire  
Anthony D. Kanagy, Esquire  
Michael Reville, Esquire  
For: *National Fuel Gas Distribution Corporation*

Date: \_\_\_\_\_

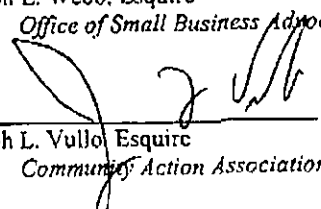
\_\_\_\_\_  
Robert V. Eckenrod, Esquire  
Allison A. Curtin, Esquire  
For: *Office of Trial Staff*

Date: \_\_\_\_\_

\_\_\_\_\_  
Erin L. Gannon, Esquire  
Darryl Lawrence, Esquire  
For: *Office of Consumer Advocate*

Date: \_\_\_\_\_

\_\_\_\_\_  
Sharon E. Webb, Esquire  
For: *Office of Small Business Advocate*



Date: 10/11/06

\_\_\_\_\_  
Joseph L. Vullo, Esquire  
For: *Community Action Association of Pennsylvania*