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August 5, 2019

VIA ELECTRONIC FILING

Rosemary Chiavetta
Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor North
P.O. Box 3265
Harrisburg, PA 17105-3265

Re: Application of National Fuel Gas for Approval of the Abandonment of Gas Service to Three (3) Natural Gas Service Customers Located in Scrubgrass Township, Venago County, Pennsylvania
Docket No. A-2018-3005258; C-2018-3003081; C-2018-3006007

Dear Ms. Chiavetta:

Enclosed please find the Main Brief of National Fuel Gas Distribution Corporation in connection with the above-referenced matter. Copies will be provided per the attached Certificate of Service.

Respectfully yours,


Anthony D. Kanagy

ADK/kl
Enclosures

cc: Honorable Mary D. Long
Certificate of Service

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Application of National Fuel Gas for Approval of the Abandonment of Gas Service to Three (3) Natural Gas Service Customers Located in Scrubgrass Township, Venago County, Pennsylvania	:	Docket No. A-2018-3005258
	:	
	:	Docket No. C-2018-3003081
	:	
	:	Docket No. C-2018-3006007
	:	
John Smith, Jr. v. National Fuel Gas Distribution Corporation	:	
	:	
	:	
Dennis Kemery v. National Fuel Gas Distribution Corporation	:	
	:	

**MAIN BRIEF OF
NATIONAL FUEL GAS DISTRIBUTION CORPORATION**

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Date: August 5, 2019

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TABLE OF CONTENTS

	Page
I. INTRODUCTION AND STATEMENT OF THE CASE.....	1
II. QUESTION PRESENTED	2
A. Whether NFG’s proposed abandonment of service to three (3) natural gas customers located in Scrubgrass Township, Venago County, Pennsylvania, is in the public interest and should be approved.....	2
III. LEGAL STANDARDS	2
IV. SUMMARY OF ARGUMENT	4
V. ARGUMENT	5
A. BACKGROUND	5
B. THE PROPOSED ABANDONMENT IS IN THE PUBLIC INTEREST AND SHOULD BE APPROVED	7
1. Replacing Line T is Not Cost Justified.....	7
2. The Overall Number of Customers is Limited	8
3. Availability of Alternative Fuels or Suppliers	9
4. Costs of Converting to Alternate Fuels or Suppliers and the Allocation of Such Costs	7
5. Other Factors.....	8
VI. CONCLUSION.....	11

TABLE OF AUTHORITIES

Page

Pennsylvania Statutes

66 Pa. C.S. § 332(a)4
66 Pa. C.S. § 1102(a)3
66 Pa. C.S. § 1103(a)3

Pennsylvania Court Decisions

Able Co., 1996 Pa. P.U.C. LEXIS 108 (1996) (Initial Decision)3
Brown v. Commonwealth, 940 A.2d 610 (Pa. Cmwlth. 2008).....4
Canal Township, 2006 Pa. P.U.C. LEXIS 319
Commonwealth v. Williams, 557 Pa. 207, 732 A.2d 1167 (1999).....4
Groff v. North Penn Gas Co., 77 Pa. P.U.C. 203 (1992).....9
Samuel J. Lansberry, Inc. v. Pa. P.U.C., 578 A.2d 600 (Pa. Cmwlth. 1990).....4
Borough of Grove City v. Pa. P.U.C., 505 A.2d 346 (Pa. Cmwlth. 1986)3
Re Leechburg Gas Co., 66 Pa. P.U.C. 29 (1988).....3, 9
Norfolk & Western Ry. Co. v. Pa. P.U.C., 413 A.2d 1037 (Pa. 1980)4
In Re Pennsylvania Electric Co., 70 Pa. P.U.C. 148 (1989).....9
Re Victor Gas Co., 49 Pa. P.U.C. 649 (1976).....3, 9
Yellow Cab Co. v. Pa. P.U.C., 524 A.2d 1069 (Pa. Cmwlth. 1987).....4

Pennsylvania Administrative Agency Decisions

Application of Equitable Gas Co., a Division of Equitable Resources, Inc., for Approval of the Abandonment of Service to Two (2) Field Gathering Customers and One (1) Vacant Field Gathering Line Meter Tap Location in Whitely Township, Greene County, PA, Docket No. A-2008-20277167, 8, 9
Application of NFG for Approval of the Abandonment of Natural Gas Service to Nine (9) Natural Gas Customers Located in Canal Township, Venango County, PA, Docket No. A-121850F20118, 9

*Application of National Fuel Gas Distribution Corp. for Approval of the Abandonment of Natural Gas Service to Six (6) Natural Gas Service Customers Located in Washington Township, Armstrong County, Pennsylvania, Docket No. A-121850F2041, 2009 Pa. P.U.C. LEXIS 213 at *14 (May 7, 2009) (Initial Decision) (“Washington Township”), became final without further Comm’n action, (Order Entered July 15, 2009).....3, 9*

Application of National Fuel Gas Distribution Corporation for Approval of the Abandonment of Natural Gas Service to Six (6) Natural Gas Service Customers Located in Washington Township, Armstrong County, PA, Docket No. A-121850F20418

C.E. Dunmire Gas Co., Application for Abandonment of Service to a Single Customer, Docket No. A-2011-2278280 at p. 5 (Order Entered Dec. 5, 2012).....3

Lucey v. Columbia Gas of Pa., Inc., Docket Nos. C-2011-2248370, A-2011-2276780 at p. 7 (Order Entered Feb. 6, 2014) (citation omitted)3

I. INTRODUCTION AND STATEMENT OF THE CASE

On October 9, 2018, National Fuel Gas Distribution Corporation (“NFG” or the “Company”) filed the above-captioned Application with the Pennsylvania Public Utility Commission (“Commission”) requesting authority to abandon service to three natural gas customers located in Scrubgrass Township, Venango County, Pennsylvania. In the Application, NFG explained that in order to continue providing service to these customers, it would have to replace over 10,000 feet of aged and deteriorated main line at an approximate cost of \$400,000. The Company further explained that it was uneconomic to replace this line for three customers, and further offered to compensate the three customers for their costs to convert to propane.

NFG published notice of the Application in *The News-Herald* and *The Derrick* on November 2, 2018.

The Application was assigned to Administrative Law Judge Mary D. Long (the “ALJ”).

On June 14, 2018, Mr. Smith filed a Complaint at Docket No. C-2018-3003081 against NFG alleging that NFG intended to abandon gas service to his residence. Mr. Smith’s Complaint was consolidated with the above-captioned Application on November 7, 2018.

On or about November 14, 2018, Mr. Kemery filed a complaint against the Application at Docket No. C-2018-3006007. On November 16, 2018, NFG filed a Motion to Consolidate Mr. Kemery’s complaint with the above-captioned Application.

A prehearing conference was held on November 27, 2018.

An evidentiary hearing was held on February 6, 2019. At the hearing, NFG presented the testimony of Mr. Brett Leuschen and Mr. Eric Lynde. Mr. John Smith, Jr., Mr. Dennis Kemery and Mr. Anthony Ricciardella presented testimony on their own behalf.

At the hearing, the ALJ directed NFG to provide copies of certain tariff provisions for the record. NFG provided these copies on February 14, 2019. On February 17, 2019, Mr. Smith filed additional exhibits.

On March 15, 2019, the ALJ issued an Interim Order Scheduling a Further Evidentiary Hearing for May 28, 2019.

The Further Evidentiary Hearing was held as scheduled. Mr. Barber and Mr. Leuschen testified on behalf of NFG. Mr. Ricciardella, Mr. Smith and Mr. Kemery testified on their own behalf.

On June 24, 2019, the ALJ issued a Briefing Order directing that Main Briefs be filed on August 5, 2019 and providing that complainants could file written responses to NFG's Main Brief on August 19, 2019.

Pursuant to the Briefing Order, NFG hereby submits its Main Brief. Proposed Findings of Fact, Conclusions of Law and Ordering Paragraphs are provided in Appendix A hereto.

II. QUESTION PRESENTED

- A. WHETHER NFG'S PROPOSED ABANDONMENT OF SERVICE TO THREE (3) NATURAL GAS CUSTOMERS LOCATED IN SCRUBGRASS TOWNSHIP, VENAGO COUNTY, PENNSYLVANIA, IS IN THE PUBLIC INTEREST AND SHOULD BE APPROVED.**

Suggested answer: *in the affirmative.*

III. LEGAL STANDARDS

Under Section 1102(a)(2) of the Pennsylvania Public Utility Code, a public utility must obtain a certificate of public convenience from the Commission prior to abandoning or

surrendering, in whole or in part, any “service.”¹ 66 Pa. C.S. § 1102(a); *see Borough of Grove City v. Pa. P.U.C.*, 505 A.2d 346 (Pa. Cmwlth. 1986). The Commission shall grant a certificate of public convenience only after finding that “the granting of such certificate is necessary or proper for the service, accommodation, convenience or safety of the public.” 66 Pa. C.S. § 1103(a); *see C.E. Dunmire Gas Co., Application for Abandonment of Service to a Single Customer*, Docket No. A-2011-2278280, at p. 5 (Order Entered Dec. 5, 2012) (approving application to abandon natural gas service after finding that the request was “reasonable and consistent with the public interest”).

“The touchstone for the Commission’s approval of a public utility’s voluntary relinquishment of its franchise right is the public interest.” *Lucey v. Columbia Gas of Pa., Inc.*, Docket Nos. C-2011-2248370, A-2011-2276780, at p. 7 (Order Entered Feb. 6, 2014) (citation omitted). Among the factors the Commission considers when assessing whether it is in the public interest for a public utility to abandon service are the following: (1) the availability of supply; (2) the economics of maintaining the system; (3) the number of customers affected; (4) the availability of alternative fuels and/or suppliers; (5) the costs of converting to alternate fuels or suppliers; and (6) the allocation of such costs. *Able Co.*, 1996 Pa. P.U.C. LEXIS 108, at *23 (1996) (Initial Decision); *Re Leechburg Gas Co.*, 66 Pa. P.U.C. 29 (1988); *Re Victor Gas Co.*, 49 Pa. P.U.C. 649 (1976); *Application of National Fuel Gas Distribution Corp. for Approval of the Abandonment of Natural Gas Service to Six (6) Natural Gas Service Customers Located in Washington Township, Armstrong County, Pennsylvania*, Docket No. A-121850F2041, 2009 Pa.

¹ “Service” is defined “in its broadest and most inclusive sense,” and “includes any and all acts done, rendered, or performed, and any and all things furnished or supplied, and any and all facilities used, furnished, or supplied by public utilities...in the performance of their duties under this part to their patrons, employees, other public utilities, and in the public, as well as the interchange of facilities between two or more of them. . . .” 66 Pa. C.S. § 1102.

P.U.C LEXIS 213, at *14 (May 7, 2009) (Initial Decision) (“*Washington Township*”), became final without further Comm’n action, (Order Entered July 15, 2009).

Under Section 332(a) of the Pennsylvania Public Utility Code, the proponent of a rule or order has the burden of proof. 66 Pa. C.S. § 332(a). It is well established that “[a] litigant’s burden of proof before administrative tribunals as well as before most civil proceedings is satisfied by establishing a preponderance of evidence which is substantial and legally credible.” *Samuel J. Lansberry, Inc. v. Pa. P.U.C.*, 578 A.2d 600, 602 (Pa. Cmwlth. 1990). The preponderance of evidence standard requires proof by a greater weight of the evidence. *Commonwealth v. Williams*, 557 Pa. 207, 732 A.2d 1167 (1999). This standard is satisfied by presenting evidence that makes the existence of a contested fact is more likely than its nonexistence. *Brown v. Commonwealth*, 940 A.2d 610, 614 n.14 (Pa. Cmwlth. 2008) (citation omitted).

Further, the Commission’s decisions must be supported by substantial evidence in the record. *Yellow Cab Co. v. Pa. P.U.C.*, 524 A.2d 1069, 1070 (Pa. Cmwlth. 1987). “Substantial evidence is that quantum of evidence which a reasonable mind might accept as adequate to support a conclusion.” *Norfolk & Western Ry. Co. v. Pa. P.U.C.*, 413 A.2d 1037, 1047 (Pa. 1980).

For the reasons set forth below, NFG has successfully met its burden; therefore, its Application should be approved.

IV. SUMMARY OF ARGUMENT

In this proceeding, NFG proposes to abandon natural gas service to three (3) customers that are located in a remote area of Venango County, Pennsylvania. The line in question, Line T, was installed in 1919 and is severely deteriorated. It has multiple leaks and is beyond repair. In

order to continue providing natural gas service to these three (3) customers, NFG would have to replace over 10,000 feet of Line T.

The costs to replace Line T are estimated to be \$400,000. In order to be economic, annual distribution revenues from Line T would need to be approximately \$87,000. The three (3) customers that are currently on Line T generate approximately \$1,000 per year in distribution revenues, leaving a revenue deficiency of \$86,000 per year.

NFG has evaluated whether there are other customers that could connect to the line and the line is not near additional potential customers. In addition, NFG has evaluated whether their customers could be connected to Columbia's system which is located nearby; however, this is not an economic option.

As a result, it is in the public interest to abandon service to these three (3) customers so that other customers are not required to pay the uneconomic costs for replacing Line T. The abandonment of natural gas service to these three (3) customers is consistent with prior Commission precedent and should be approved.

NFG has offered to pay these three (3) customers their full conversion costs for converting to propane. In prior cases, the Commission has not required utilities to pay the full amount of customers' conversion costs. However, NFG is willing to do so in this case.

NFG's proposed abandonment of natural gas service to these three (3) customers is in the public interest for the reasons explained herein, and should be approved.

V. ARGUMENT

A. BACKGROUND

As explained in its Application, NFG seeks to abandon approximately 10,244 feet of aged and deteriorated eight-inch bare steel mainline, 77 feet of coated steel and 423 feet of plastic pipe (hereinafter referred to as "Line T") which currently provides service to three (3)

customers. The majority of Line T was originally installed in 1919. (NFG Exh. D, p. 2.) There are currently multiple leaks on the pipeline and various sections of the pipeline are exposed to the elements. (Tr. 37.)

When determining whether to replace an existing line, the Company performs an economic analysis of the costs to replace the line compared to the projected annual revenues of the line. The formula that the Company uses to prepare the economic analysis is set forth in the Company's tariff. (See Exhibit F, p. 2; Tr. 142.) Under the formula, the Company determines a justified investment based upon the annual dollars of estimated revenue from customers on the line. The cost to replace Line T and continue providing service to the three (3) customers is estimated to be approximately \$400,000. In order to support \$400,000 of investment under the tariff formula, the annual distribution revenues would need to be approximately \$87,000. (Tr. 143.)

In this case, the estimated annual distribution revenues from the three (3) customers on Line T is approximately \$920. As a result, the revenue deficiency that would have to be borne by other customers if the Company replaced Line T would be over \$86,000 per year. (Tr. 42, 151; NFG Exh. D, p. 4.)

Line T is in a remote area. NFG does not anticipate additional customers would take service from Line T either now or in the future. (NFG Exh. D, p. 4.) In addition, NFG evaluated the possibility of arranging for these three (3) customers to be connected to the Columbia system. (Tr. 70.) However, that option was also not economically viable due to the low number of customers and the distance from Columbia's system. (Tr. 70.)

B. THE PROPOSED ABANDONMENT IS IN THE PUBLIC INTEREST AND SHOULD BE APPROVED.

1. Replacing Line T is Not Cost Justified.

The abandonment of Line T is in the public interest because it is uneconomical to replace the line. The annual distribution revenues from the three (3) affected customers does not justify the capital expenditures necessary to continue providing natural gas service.

As explained above, the estimated cost to replace the over 10,000 feet of deteriorated and leaking line is approximately \$400,000. (Tr. 38, 143; NFG Exh. D, p. 2.) The annual distribution revenues from the three (3) customers is less than \$1,000. (Tr. 148; NFG Exh. G.) In order to be economical, the annual distribution revenues would need to be approximately \$87,000. (Tr. 143.) If NFG replaced Line T, other customers would have to bear the annual uneconomic costs of replacing Line T. (Tr. 151.)

As also explained above, NFG has evaluated whether there are other economic options for maintaining service to these customers. NFG evaluated whether other customers could connect to Line T and does not anticipate other customers will connect due to the remote location. In addition, in order to be economical, many more customers would be required to connect. It would require enough new customers to support \$86,000 of annual distribution revenue. (Tr. 42.)

NFG further evaluated whether these customers could connect to Columbia's system and determined that this option would also not be economical. (Tr. 70; NFG Exh. D, p. 4.)

Abandoning service to these three (3) customers due to an annual economic deficiency of \$86,000 per year is consistent with prior PUC precedent: *In Application of Equitable Gas Co., a Division of Equitable Resources, Inc., for Approval of the Abandonment of Service to Two (2) Field Gathering Customers and One (1) Vacant Field Gathering Line Meter Tap Location in*

Whitely Township, Greene County, PA, the Commission authorized the abandonment of service to customers based upon an annual revenue deficiency of approximately \$21,000. *See* Initial Decision of ALJ Corbett issued on January 13, 2009, at Docket No. A-2008-2027716; Final Order without Commission action entered March 9, 2009. In *Application of NFG for Approval of the Abandonment of Natural Gas Service to Nine (9) Natural Gas Customers Located in Canal Township, Venango County, PA*, the Commission authorized the abandonment of service to nine (9) customers based upon an annual revenue deficiency of less than \$50,000. *See* Order entered March 17, 2006, adopting Initial Decision of ALJ Corbett. (*See* Finding of Fact No. 12.) Likewise, in *Application of National Fuel Gas Distribution Corporation for Approval of the Abandonment of Natural Gas Service to Six (6) Natural Gas Service Customers Located in Washington Township, Armstrong County, PA*, at Docket No. A-121850F2041, the Commission authorized abandonment of service to six (6) customers based on an annual revenue deficiency of approximately \$55,000 per year. Initial Decision of ALJ Hoyer dated May 7, 2009. (*See* Finding of Fact No. 14; Final Order without Commission action entered July 15, 2009.)

The annual revenue deficiency of \$86,000 per year for replacing Line T is more than the annual revenue deficiency in the cases cited above and supports abandonment of Line T.

2. The Overall Number of Customers is Limited.

The proposed abandonment is limited to three (3) natural gas customers. The Commission has previously approved abandonments for more than three (3) customers. (*See* the cases cited in Subsection 1 above.)

Therefore, the abandonment of service to the three (3) customers is consistent with prior abandonments approved by the Commission in this regard.

3. Availability of Alternative Fuels or Suppliers.

The proposed abandonment is in the public interest because alternative fuel sources are available to each of the three (3) affected customers after their natural gas service is abandoned. (Tr. 68-69; NFG Exh. No. D, p. 5.) Alternative heating fuels, including propane, electricity, oil and wood are readily available to these customers. (NFG Exh. D, p. 5.) Both propane and electricity have been accepted by the Commission as acceptable alternatives to natural gas in past abandonment cases. *See, e.g., Re Leechburg Gas Co.*, 66 Pa. P.U.C. 29 (1988); *Re Victor Gas Co.*, 49 Pa. P.U.C. 649 (1976). Mr. Lynde testified that propane is the most reasonable alternative because it is readily available, safe, reliable and has the closest relative cost to natural gas. (Tr. 68-69.) Alternative fuel sources are readily available to the three (3) affected customers.

4. Costs of Converting to Alternate Fuels or Suppliers and the Allocation of Such Costs.

The proposed abandonment also is in the public interest because NFG has agreed to compensate the three (3) affected customers to offset their costs for converting to propane. (Tr. 69.) As noted in *Canal Township*, “The Commission generally requires a utility seeking to abandon service to provide some contribution to its affected customers to convert to an alternate fuel supply.” *Canal Township*, 2006 Pa. P.U.C. LEXIS 31, at *53.

The Commission has not required utilities to compensate customers for full conversion costs in many cases. *See Application of Equitable Gas Company* at Docket No. A-2008-2027716, Initial Decision dated January 13, 2009, p.17; *Groff v. North Penn Gas Co.*, 77 Pa. P.U.C. 203 (1992); *In Re Pennsylvania Electric Co.*, 70 Pa. P.U.C. 148 (1989); *see also Application of NFG* at Docket No. A-121850F2011 and *Application of NFG* at Docket No. A-121850F2014 cited by ALJ Corbett in *Application of Equitable Gas Co.*

However, in this case, NFG has agreed to pay these three (3) customers their full conversion costs. NFG notes that it obtained estimates from a reputable contractor that it has used in the past. (NFG Exh. No. 5.) These estimates were \$6,700 for Mr. Ricciardella, \$7,000 for Mr. Kemery and \$7,750 for Mr. Smith. (NFG Exh. D, p. 5.) The customers argued that these estimates were too low and obtained their own estimates. The customer estimates were approximately \$16,175 for Mr. Ricciardella, \$11,000 for Mr. Kemery and \$11,000 for Mr. Smith.² (Tr. 117, 185, 201.) These estimates are substantially higher than the estimates received by the Company, however, the Company is willing to pay the customers these higher amounts. The amounts that NFG has agreed to pay are favorable to the customers as compared to amounts previously awarded by the Commission and should be approved.

5. Other Factors.

Additional factors support abandonment of Line T. As explained in the Company's Application, Line T is deteriorated and leaking gas in certain places. In addition, certain portions of Line T are exposed to the elements. Abandonment of Line T is in the public interest because it will eliminate the sections of Line T that are leaking and exposed to the elements.

At the hearing, the customer complainants argued that NFG had not properly maintained the line. (Tr. 186.) This argument was not supported by any evidence and should be denied. Mr. Leuschen testified that NFG properly maintained its distribution lines and follows all PUC regulations with respect to line maintenance and repair. (Tr. 172-173.) Line T is approximately 100 years old and is aged beyond repair. NFG has properly maintained Line T.

The customers also argued that if the abandonment is approved, NFG should remove the old line. (Tr. 171.) This request should not be approved. It is cost prohibitive to remove a

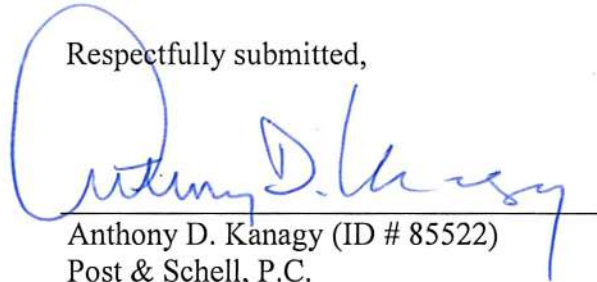
² The \$11,000 of conversion costs for Mr. Smith does not include the cost for a new stove. (Tr. 117.)

pipeline, as it can cost just as much to replace a line. (Tr. 172.) It is both NFG's and industry practice to abandon lines in place and NFG should not be required to remove line T after it is abandoned. (Tr. 172.)

VI. CONCLUSION

WHEREFORE, National Fuel Gas Distribution Corporation respectfully requests that Administrative Law Judge Mary D. Long recommend and that the Pennsylvania Public Utility Commission approve the above-captioned application.

Respectfully submitted,



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Date: August 5, 2019

Counsel for National Fuel Gas Distribution Corporation

PROPOSED FINDINGS OF FACT

1. NFG seeks to abandon approximately 10,244 feet of aged and deteriorated eight-inch bare steel mainline, 77 feet of coated steel and 423 feet of plastic pipe (hereinafter referred to as "Line T") which currently provides service to three (3) customers. The majority of Line T was originally installed in 1919. (NFG Exh. D, p. 2.)
2. There are currently multiple leaks on the pipeline and various sections of the pipeline are exposed to the elements. (Tr. 37.)
3. When determining whether to replace an existing line, the Company performs an economic analysis of the costs to replace the line compared to the projected annual revenues of the line. The formula that the Company uses to prepare the economic analysis is set forth in the Company's tariff. (See Exhibit F, p. 2; Tr. 142.)
4. In order to support \$400,000 of investment under the tariff formula, the annual distribution revenues would need to be approximately \$87,000. (Tr. 143.)
5. The revenue deficiency that would have to be borne by other customers if the Company replaced Line T would be over \$86,000 per year. (Tr. 42, 151; NFG Exh. D, p. 4.)
6. NFG does not anticipate additional customers would take service from Line T either now or in the future. (NFG Exh. D, p. 4.)
7. NFG evaluated the possibility of arranging for these three (3) customers to be connected to the Columbia system. (Tr. 70.) However, that option was also not economically viable due to the low number of customers and the distance from Columbia's system. (Tr. 70.)
8. Alternative heating fuels, including propane, electricity, oil and wood are readily available to these customers. (NFG Exh. D, p. 5.)

PROPOSED CONCLUSIONS OF LAW

1. The Commission shall grant a certificate of public convenience only after finding that “the granting of such certificate is necessary or proper for the service, accommodation, convenience or safety of the public.” 66 Pa. C.S. § 1103(a);

2. “The touchstone for the Commission’s approval of a public utility’s voluntary relinquishment of its franchise right is the public interest.” *Lucey v. Columbia Gas of Pa., Inc.*, Docket Nos. C-2011-2248370, A-2011-2276780, at p. 7 (Order Entered Feb. 6, 2014)

3. Among the factors the Commission considers when assessing whether it is in the public interest for a public utility to abandon service are the following: (1) the availability of supply; (2) the economics of maintaining the system; (3) the number of customers affected; (4) the availability of alternative fuels and/or suppliers; (5) the costs of converting to alternate fuels or suppliers; and (6) the allocation of such costs. *Able Co.*, 1996 Pa. P.U.C. LEXIS 108, at *23 (1996) (Initial Decision); *Re Leechburg Gas Co.*, 66 Pa. P.U.C. 29 (1988); *Re Victor Gas Co.*, 49 Pa. P.U.C. 649 (1976); *Application of National Fuel Gas Distribution Corp. for Approval of the Abandonment of Natural Gas Service to Six (6) Natural Gas Service Customers Located in Washington Township, Armstrong County, Pennsylvania*, Docket No. A-121850F2041, 2009 Pa. P.U.C. LEXIS 213, at *14 (May 7, 2009) (Initial Decision) (“*Washington Township*”), *became final without further Comm’n action*, (Order Entered July 15, 2009).

4. Under Section 332(a) of the Pennsylvania Public Utility Code, the proponent of a rule or order has the burden of proof. 66 Pa. C.S. § 332(a).

5. It is well established that “[a] litigant’s burden of proof before administrative tribunals as well as before most civil proceedings is satisfied by establishing a preponderance of evidence which is substantial and legally credible.” *Samuel J. Lansberry, Inc. v. Pa. P.U.C.*, 578 A.2d 600, 602 (Pa. Cmwlth. 1990).

6. The Commission's decisions must be supported by substantial evidence in the record. *Yellow Cab Co. v. Pa. P.U.C.*, 524 A.2d 1069, 1070 (Pa. Cmwlth. 1987).

7. "Substantial evidence is that quantum of evidence which a reasonable mind might accept as adequate to support a conclusion." *Norfolk & Western Ry. Co. v. Pa. P.U.C.*, 413 A.2d 1037, 1047.

8. Both propane and electricity have been accepted by the Commission as acceptable alternatives to natural gas in past abandonment cases. *See, e.g., Re Leechburg Gas Co.*, 66 Pa. P.U.C. 29 (1988); *Re Victor Gas Co.*, 49 Pa. P.U.C. 649 (1976).

9. "The Commission generally requires a utility seeking to abandon service to provide some contribution to its affected customers to convert to an alternate fuel supply." *Canal Township*, 2006 Pa. P.U.C. LEXIS 31.

10. The Commission has not required utilities to compensate customers for full conversion costs in many cases. *See Application of Equitable Gas Company* at Docket No. A-2008-2027716, Initial Decision dated January 13, 2009, p.17; *Groff v. North Penn Gas Co.*, 77 Pa. P.U.C. 203 (1992); *In Re Pennsylvania Electric Co.*, 70 Pa. P.U.C. 148 (1989); *see also Application of NFG* at Docket No. A-121850F2011 and *Application of NFG* at Docket No. A-121850F2014 cited by ALJ Corbett in *Application of Equitable Gas Co.*

PROPOSED ORDERING PARAGRAPHS

1. That the Application of National Fuel Gas Distribution Corporation for Approval of the Abandonment of Gas Service to Three (3) Natural Gas Service Customers Located in Scrubgrass Township, Venango County, PA, is approved.

CERTIFICATE OF SERVICE

A-2018-3005258; C-2018-3003081; C-2018-3006007

I hereby certify that a true and correct copy of the foregoing has been served upon the following persons, in the manner indicated, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant).

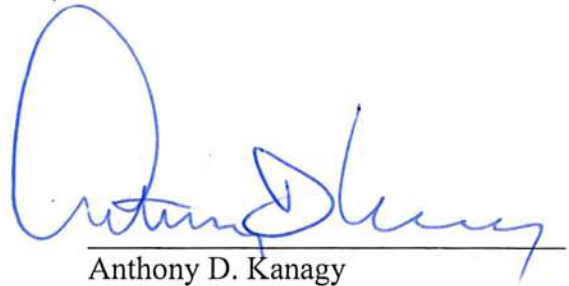
VIA OVERNIGHT DELIVERY

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Dennis Kemery
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Date: August 5, 2019



Anthony D. Kanagy