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File #: 174994

April 2, 2020

***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: Pennsylvania Public Utility Commission, et al. v. National Fuel Gas Distribution Corporation**  
**Docket Nos. R-2020-3015251, C-2020-3016657 & C-2020-3016944**

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Dear Secretary Chiavetta:

Enclosed for filing is the Motion for Protective Order of National Fuel Gas Distribution Corporation in the above-referenced proceeding. Copies will be provided as indicated on the Certificate of Service.

Respectfully submitted,

Anthony D. Kanagy

ADK/kl  
Enclosures

cc: Honorable Conrad A. Johnson  
Certificate of Service

**CERTIFICATE OF SERVICE**

**Docket No. R-2020-3015251**

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 E-MAIL**

Steven C. Gray, Esquire  
Office of Small Business Advocate  
555 Walnut Street  
Forum Place, 1<sup>st</sup> Floor  
Harrisburg, PA 17101

Phillip D. Demanchick, Esquire  
Santo G. Spataro, Esquire  
Aron J. Beatty, Esquire  
Office of Consumer Advocate  
555 Walnut Street  
Forum Place, 5<sup>th</sup> Floor  
Harrisburg, PA 17101-1923

Carrie Wright, Esquire  
Bureau of Investigation & Enforcement  
Commonwealth Keystone Building  
400 North Street, 2nd Floor West  
P.O. Box 3265  
Harrisburg, PA 17105-3265

Robert D. Knecht  
Industrial Economics Incorporated  
2067 Massachusetts Avenue  
Cambridge, MA 02140

Jerome D. Mierzwa  
Exeter Associates, Inc.  
10480 Little Patuxent Parkway, Suite 300  
Columbia, MD 21044

Date: April 2, 2020



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Anthony D. Kanagy

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission	:	Docket Nos. R-2020-3015251
Office of Small Business Advocate	:	
Office of Consumer Advocate	:	
	:	
v.	:	
	:	
National Fuel Gas Distribution Corporation	:	

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**MOTION OF NATIONAL FUEL GAS  
DISTRIBUTION CORPORATION  
FOR A PROTECTIVE ORDER**

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**TO: ADMINISTRATIVE LAW JUDGE CONRAD A. JOHNSON:**

National Fuel Gas Distribution Corporation (“Distribution”) hereby requests that the attached Protective Order be entered in the above-captioned proceeding pursuant to 52 Pa. Code § 5.365(a). In support thereof, Distribution states as follows:

1. On December 30, 2019, Distribution filed data required by 52 Pa. Code §§ 53.64 and 53.65 to be filed before annual tariff filings for changes in rates for recovery of purchased gas costs.
2. On January 31, 2020, Distribution, pursuant to 66 Pa.C.S. § 1307(f) and 52 Pa. Code §§ 53.61 through 53.65, filed with the Pennsylvania Public Utility Commission (“Commission”) its annual Purchased Gas Cost (“PGC”) tariff filing, along with supporting information to adjust rates for recovery of purchased gas costs.
3. The proceeding has been assigned to Administrative Law Judge Conrad A. Johnson (the “ALJ”) for hearings and issuance of a Recommended Decision. A prehearing conference was held on February 5, 2020.
4. The parties have engaged in discovery in this proceeding.

5. Proprietary Information within the definition of 52 Pa. Code § 5.365 has been presented during the course of this proceeding, which justifies the issuance of a Protective Order. For example, Distribution has filed information that is customarily treated as sensitive, proprietary, or highly confidential. Therefore, treatment of such information as set forth in the attached proposed Protective Order is justified because unrestricted disclosure of such information would not be in the public interest. These considerations constitute cause for the restrictions specified in 52 Pa. Code § 5.365 and in Administrative Law Judge or Commission Orders granting relief pursuant to said regulation.

6. Under 52 Pa. Code §§ 5.362(a)(7) and 5.365, the Administrative Law Judge or the Commission may issue a Protective Order to limit or prohibit disclosure of confidential information where the potential harm to a participant would be substantial and outweighs the public's interest in having access to the confidential information. In applying this standard, relevant factors to be considered include: the extent to which disclosure would cause unfair economic or competitive damage; the extent to which the information may already be known by others; and the potential value of such information to the participant and the participant's competitors and trade partners. 52 Pa. Code §§ 5.365(a)(1) – (3).

7. Paragraph 3 of the attached proposed Protective Order defines “Proprietary Information” as “those materials which customarily are treated by that party as sensitive or proprietary, which are not available to the public, and which, if disclosed freely, would subject that party or its clients to risk of competitive disadvantage or other business injury.” Clearly, protecting this type of information from disclosure is appropriate.

8. Paragraph 12 of the attached proposed Protective Order protects against overly broad designations of protected information by giving all parties the right to question or challenge the confidential or proprietary nature of the “Proprietary Information.”

9. Limitation on the disclosure of “Proprietary Information” will not prejudice the rights of the participants, nor will such limitation frustrate the prompt and fair resolution of this proceeding. The proposed Protective Order balances the interests of the parties, the public, and the Commission.

10. The attached proposed Protective Order will protect the confidential information while allowing the parties to use such information for purposes of the instant litigation.

11. Distribution has provided a draft of this Motion and accompanying form of Protective Order to the Bureau of Investigation & Enforcement, Office of Consumer Advocate and Office of Small Business Advocate. No party objects to the accompanying form of Protective Order.

WHEREFORE, for all the foregoing reasons, National Fuel Gas Distribution Corporation respectfully requests that Administrative Law Judge Conrad A. Johnson grant this Motion and issue the attached Protective Order.

Respectfully submitted,



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Anthony D. Kanagy (ID # 85522)  
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Of Counsel:

Post & Schell, P.C.

Date: April 2, 2020

Counsel for National Fuel Gas Distribution Corporation

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission	:	Docket Nos. R-2020-3015251
Office of Small Business Advocate	:	
Office of Consumer Advocate	:	
	:	
v.	:	
	:	
National Fuel Gas Distribution Corporation	:	

**PROTECTIVE ORDER**

Upon consideration of the Motion for a Protective Order that was filed by National Fuel Gas Distribution Corporation on April 2, 2020;

IT IS ORDERED THAT:

1. The Motion is hereby granted with respect to all materials and information identified in Paragraphs 2 and 3 below, which have been or will be filed with the Commission, produced in discovery, or otherwise presented during the above-captioned proceeding and all proceedings consolidated therewith. All persons previously or hereafter granted access to the materials and information identified in Ordering Paragraphs 2 and 3 of this Protective Order shall use and disclose such information only in accordance with this Protective Order.

2. The materials or information subject to this Protective Order are all correspondence, documents, data, information, studies, methodologies, and other materials furnished in this proceeding, which are believed by a party to be of a proprietary or confidential nature and which are so designated by being stamped "CONFIDENTIAL." Such materials will be referred to below as "Proprietary Information." When a statement or exhibit is identified for the record, the portions thereof that constitute Proprietary Information shall be appropriately designated as such for the record.

3. The parties may designate as “CONFIDENTIAL” those materials which customarily are treated by that party as sensitive or proprietary, which are not available to the public, and which, if disclosed freely, would subject that party or its clients to risk of competitive disadvantage or other business injury.

4. Proprietary Information produced in this proceeding shall be made available to counsel for the non-producing party, subject to the terms of this Protective Order. Such counsel shall use or disclose the Proprietary Information only for purposes of preparing or presenting evidence, cross examination or argument in this proceeding. To the extent required for participation in this proceeding, counsel for a party may afford access to Proprietary Information only to a party’s expert(s), subject to the conditions set forth in this Protective Order. However, said expert(s) may not be a “Restricted Person.” Additionally, Counsel for the Office of Consumer Advocate, Bureau of Investigation & Enforcement, and Office of Small Business Advocate may share Proprietary Information with the Consumer Advocate, Chief Prosecutor and Small Business Advocate, respectively, without the need for execution of Appendix A, provided that the Consumer Advocate, Chief Prosecutor and Small Business Advocate otherwise abide by the terms of the Protective Order.

5. Proprietary Information shall not be made available to a “Restricted Person.”

(a) For the purpose of this Protective Order, “Restricted Person” shall mean:

(a) an officer, director, stockholder, partner, owner, or employee of any competitor of National Fuel Gas Distribution Corporation (“Distribution”); (b) an officer, director, stockholder, partner, owner or employee of any affiliate of a competitor of Distribution (including any association of competitors of Distribution); (c) an officer, director, stockholder, owner, or employee of a competitor of a customer of Distribution if the Proprietary Information concerns a specific,

identifiable customer of Distribution; and (d) an officer, director, stockholder, owner, or employee of an affiliate of a competitor of a customer of Distribution if the Proprietary Information concerns a specific, identifiable customer of Distribution; provided, however, that no expert shall be disqualified on account of being a stockholder, partner, or owner unless that expert's interest in the business would provide a significant motive for violation of the limitations of permissible use of the Proprietary Information. For purposes of this Stipulated Protective Agreement, stocks, partnership, or other ownership interests valued at more than \$10,000 or constituting more than a 1% interest in a business establish a significant motive for violation.

(b) If an expert for the party, another member of the expert's firm, or the expert's firm generally also serves as an expert for, or as a consultant or advisor to, a Restricted Person, said expert must: (1) identify each Restricted Person and each expert or consultant; (2) make reasonable attempts to segregate those personnel assisting in the expert's participation in this proceeding from those personnel working on behalf of a Restricted Person; and (3) if segregation of such personnel is impractical the expert shall give to the producing party written assurances that the lack of segregation will in no way jeopardize the interests of Distribution or its customers. Distribution shall have the right to challenge the adequacy of the written assurances that it or its customers' interests will not be jeopardized. No other persons may have access to the Proprietary Information except as authorized by order of the Commission or the Administrative Law Judge.

(c) The Office of Small Business Advocate's ("OSBA") consultant, Mr. Robert D. Knecht, will not be considered to be a Restricted Person, and Paragraphs 5(a) and 5(b)

will not apply to Mr. Knecht, provided that Mr. Knecht does not share or discuss the Proprietary Information with any person except authorized OSBA representatives.

6. Prior to making Proprietary Information available to any person as provided in Paragraph 4 of this Protective Order, counsel shall deliver a copy of this Protective Order to such person and shall receive a written acknowledgment from that person in the form attached to this Protective Order and designated as “Appendix A.” A party’s expert(s) shall not be permitted to inspect, participate in discussions regarding, or otherwise be permitted access to Proprietary Information pursuant to this Protective Order unless and until the expert has executed a copy of the form provided as “Appendix A” hereto and a copy of the executed “Appendix A” has been provided to the producing party. Attorneys and outside experts are responsible for ensuring that persons under their supervision or control comply with this Protective Order.

7. A producing party shall designate data or documents as constituting or containing Proprietary Information by stamping the documents “CONFIDENTIAL.” Where only part of data compilations or multi-page documents constitutes or contains Proprietary Information, the producing party, insofar as reasonably practicable within discovery and other time constraints imposed in this proceeding, shall designate only the specific data or pages of documents which constitute or contain Proprietary Information. The Proprietary Information shall be served upon the nonproducing party hereto only in an envelope separate from the nonproprietary materials, and the envelope shall be conspicuously marked “CONFIDENTIAL.”

8. For purposes of filing, to the extent that Proprietary Information is placed in the Commission’s report folders, such information shall be handled in accordance with routine Commission procedures inasmuch as the report folders are not subject to public disclosure. To the extent that Proprietary Information is placed in the Commission’s testimony or document

folders, such information shall be separately bound, conspicuously marked, and accompanied by a copy of this Protective Order. Public inspection of Proprietary Information shall be permitted only in accordance with this Protective Order.

9. The parties will consider and treat the Proprietary Information as within the exemptions from disclosure provided in the Pennsylvania Right to Know Law, Act of February 14, 2008, P.L. 6, 65 P.S. §§ 67.101-67.3104, and Section 335(d) of the Public Utility Code, 66 Pa. C.S. § 335(d), if applicable, until such time as the information is found to be a public record.

10. Any public reference to Proprietary Information by counsel or persons afforded access thereto shall be to the title or exhibit reference in sufficient detail to permit persons with access to the Proprietary Information to fully understand the reference and not more. The Proprietary Information shall remain a part of the record, to the extent admitted, for all purposes of administrative or judicial review.

11. Part of any record of this proceeding containing Proprietary Information, including but not limited to all exhibits, writings, testimony, cross examination, argument and responses to discovery shall be maintained in a secure place and sealed for all purposes, including administrative and judicial review, unless such Proprietary Information is released from the restrictions of this Protective Order, either through the agreement of the parties or pursuant to order of the Administrative Law Judge, the Commission or appellate court.

12. The parties affected by the terms of this Protective Order shall retain the right to question or challenge the confidential or proprietary nature of Proprietary Information; to question or challenge the admissibility of Proprietary Information; to refuse or object to the production of Proprietary Information on any proper ground, including but not limited to relevance, materiality, or undue burden; to seek an order permitting disclosure of Proprietary

Information beyond that allowed in this Protective Order; and to seek additional measures of protection of Proprietary Information beyond those provided in this Protective Order. If a challenge is made to the designation of a document or information as Proprietary Information, the party claiming that the information is Proprietary Information retains the burden of demonstrating that the designation is necessary and appropriate.

13. Unresolved challenges arising under Paragraph 12 shall be decided upon petition by the presiding officer or the Commission as provided by 52 Pa. Code § 5.365(a). All such challenges will be resolved in conformity with existing rules, regulations, orders, statutes, precedent, etc., to the extent that such guidance is available.

14. Within thirty (30) days from completion of this proceeding, including any administrative or judicial review, upon request of the producing party, all copies of all documents and other materials, including notes, which contain any Proprietary Information shall be either immediately returned to the party furnishing such Proprietary Information or destroyed. Further, all electronic communications containing information marked as “CONFIDENTIAL” shall immediately be deleted by all recipients. Parties shall provide an affidavit of counsel affirming that the materials containing or reflecting Proprietary Information have been returned or destroyed and that all electronic communications containing Proprietary Information have been deleted.

Dated: \_\_\_\_\_

\_\_\_\_\_  
Administrative Law Judge Conrad A. Johnson

**APPENDIX A  
BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission : Docket Nos. R-2020-3015251  
Office of Small Business Advocate :  
Office of Consumer Advocate :  
 :  
v. :  
 :  
National Fuel Gas Distribution Corporation :

TO WHOM IT MAY CONCERN:

The undersigned is the \_\_\_\_\_ of \_\_\_\_\_ (the retaining party).

The undersigned has read and understands the Protective Order issued in the above-captioned proceeding, which Order deals with the treatment of information designated as “PROPRIETARY INFORMATION” or “CONFIDENTIAL INFORMATION.” The undersigned agrees that any Proprietary or Confidential Information shall be used or disclosed only for purposes of preparation for, and conduct of the above captioned proceedings, and any administrative or judicial review thereof, and shall not be disclosed or used for any other purposes whatsoever.

\_\_\_\_\_  
SIGNATURE

\_\_\_\_\_  
PRINT NAME

\_\_\_\_\_  
ADDRESS

\_\_\_\_\_  
EMPLOYER

DATE: \_\_\_\_\_