

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission	:	R-2020-3015251
Office of Consumer Advocate	:	C-2020-3016657
Office of Small Business Advocate	:	C-2020-3016944
	:	
v.	:	
	:	
National Fuel Gas Distribution Corporation	:	

RECOMMENDED DECISION

Before
Conrad A. Johnson
Administrative Law Judge

INTRODUCTION

This decision recommends approval of the Stipulation in Settlement of the Rate Investigation Pursuant to 66 Pa.C.S. § 1307(f) (Settlement) submitted in this proceeding by National Fuel Gas Distribution Corporation, the Bureau of Investigation and Enforcement of the Pennsylvania Public Utility Commission, the Office of Consumer Advocate, and the Office of Small Business Advocate (the Parties). The Settlement is in the public interest and is consistent with the requirements of the Public Utility Code, 66 Pa.C.S. §§ 1307(f) and 1318.

HISTORY OF THE PROCEEDING

The 1307(f) Filing and Complaints

On December 30, 2019, Respondent National Fuel Gas Distribution Corporation (NFG, Distribution or the Company) filed with the Pennsylvania Public Utility Commission (Commission) at Docket No. R-2020-3015251, in compliance with Sections 53.64 and 53.65 of

the Commission's regulations, 52 Pa.Code §§ 53.64-53.65, data and exhibits in advance of its annual Purchased Gas Costs (PGC) filing under Section 1307(f) of the Public Utility Code (Code), 66 Pa.C.S. § 1307(f). The Company's filing indicated a \$0.3202 per Mcf increase in the projected gas cost to a rate of \$3.8961 per Mcf. The amount of the increase was based upon a comparison between rates for recovery of purchased gas cost proposed in the filing and rates effective on August 1, 2020.¹

On January 13, 2020, a Notice was issued to the Parties informing them the proceeding was assigned to the undersigned Administrative Law Judge (ALJ) and that a telephonic Prehearing Conference would be conducted by the ALJ from the Commission's Pittsburgh Hearing Room on February 5, 2020, at 1:00 p.m. On January 16, 2020, the ALJ issued a Prehearing Order concerning regulations pertaining to prehearing conferences, 52 Pa.Code §§ 5.221-5.224, and directed the Parties to submit their respective Prehearing Memorandums by February 3, 2020. The Parties timely filed their respective Prehearing Memorandums.

On January 14, 2020, the Commission's Bureau of Investigation & Enforcement (I&E) filed a Notice of Appearance.

On January 23, 2020, the Office of Consumer Advocate (OCA) filed a Notice of Appearance, Complaint, and Public Statement. OCA's Complaint was filed at Docket No. C-2020-3016657.

On January 28, 2020, the Office of Small Business Advocate (OSBA) filed a Notice of Appearance, Complaint, Public Statement, and Verification. OSBA's Complaint was filed at Docket No. C-2020-3016944.

¹ See Direct Testimony of Donald N. Koch at 19-23, NRG PGC Statement (St.) 6 and Exhibit 21, Schedule 1 at 4.

On January 31, 2020, pursuant to Section 1307(f) of the Code, NFG submitted its definitive filing, which included the prepared, written testimony of 9 witnesses in support of the Company's Supplement No. 216 to Tariff Gas — Pa. P.U.C. No. 9, to be effective for service rendered on and after August 1, 2020. NFG also submitted a Tariff Addendum. The Tariff Supplement and the Addendum set forth the specific rates proposed by NFG for recovery of PGC effective on August 1, 2020.

The Prehearing Conference proceeded as scheduled on February 5, 2020. Respective counsel for NFG, I&E, OCA, and OSBA participated in the Prehearing Conference, which resulted in the establishment of a litigation schedule.

On February 6, 2020, the ALJ issued a Prehearing Order confirming the litigation schedule and consolidating the Complaints filed in this proceeding with NFG's PGC filing at Docket No. R-2020-3015251.

Hearing Waiver, Protective Order and Stipulations

Under the litigation schedule, evidentiary hearings were to convene on April 2-3, 2020. However, on March 20, 2020, the Commission posted a notice on its website that all hearings were cancelled through April 10, 2020, due to the coronavirus emergency.² Consequently, on March 23, 2020, the ALJ convened a telephone conference to discuss rescheduling the hearings, deadlines and how the Parties might proceed in this case.

During the March 23, 2020, telephone conference the Parties waived the convening of a hearing. They agreed to stipulate to the submission of their exhibits and testimonies into the record, together with verified statements and to participate in a settlement

² On March 6, 2020, pursuant to subsection 7301(c) of the Emergency Management Services Code, 35 Pa.C.S. §§ 7101, *et seq.*, Governor Tom Wolf issued a Proclamation of Disaster Emergency proclaiming the existence of a disaster emergency throughout the Commonwealth for a period of up to ninety (90) days, unless renewed by the Governor. Shortly thereafter, on March 11, 2020, the World Health Organization declared COVID-19 – the coronavirus – a pandemic.

conference on March 26, 2020. Absent a full settlement, briefs would be due in accordance with the litigation schedule.

On April 1, 2020, via electronic mail, counsel for NFG, Anthony D. Kanagy, Esquire, (Attorney Kanagy) represented that the Parties had reached a full settlement. The Parties would submit a formal settlement petition and statements in support by April 21, 2020. Attorney Kanagy also represented that the Parties would submit a stipulation to admit the evidence into the record, and NFG would submit a motion for a protective order.

On April 2, 2020, NFG filed a Motion of National Fuel Gas Distribution Corporation for Protective Order (Motion). According to the Motion, the Parties have engaged in discovery. Thus, NFG asserted that proprietary information within the definition of 52 Pa.Code § 5.365 has been presented and requested during the course of this proceeding, which justifies the issuance of a Protective Order. NFG attached a proposed Protective Order to its Motion and represented that it had provided a draft of the Motion and proposed order to I&E, OCA and OSBA. NFG further represented that none of the opposing Parties objected to the form of the proposed Protective Order.

Upon due consideration of NFG's Motion and representation that the other Parties to this proceeding had indicated they had no objection to the granting of the Motion, on April 21, 2020, the ALJ issued a First Interim Order Granting Respondent's Motion for Protective Order.

On April 21, 2020, the Parties jointly filed a Stipulation for Admission of Evidence and a Stipulation in Settlement of the Rate Investigation Pursuant to 66 Pa.C.S. § 1307(f), together with the Parties' respective Statements in Support of Settlement Stipulation.

The Parties' Exhibits and Written Testimonies

Under their joint Stipulation for Admission of Evidence, the Parties agreed to the admission of the following documents into the record.

A. Distribution Statements and Exhibits

1. Information Contained in Distribution's Pre-Filing

Distribution Exhibit Nos. 1 - 27 (includes certain Confidential pages of PGC Exhibit Nos. 8, 9-A and 12). Exhibit Nos. 2, 3, 13-A, 21, 21-B, 23, 24-A 26-A and 26-B were subsequently revised.

2. Information Contained in Distribution's Definitive Filing

Distribution PGC Statement No. 1 – Direct Testimony of Christopher A. Cej, including Exhibit CAC-1.

Distribution PGC Statement No. 2 – Direct Testimony of Evan M. Crahen.

Distribution PGC Statement No. 3 – Direct Testimony of Sofia S. Cruz.

Distribution PGC Statement No. 4 – Direct Testimony of Wasyl Darmograi.

Distribution PGC Statement No. 5 – Direct Testimony of Caitlin A. DiGiore.

Distribution PGC Statement No. 6 – Direct Testimony of Donald N. Koch including Exhibit DNK-1.

Distribution PGC Statement No. 7 – Direct Testimony of Ken B. McAvoy including Exhibit KBM-1.

Distribution PGC Statement No. 8 – Direct Testimony of Lisa A. Petko including Exhibit Nos. LAP-1 through LAP-4.

Distribution PGC Statement No. 9 – Direct Testimony of Maryann Stankovski.

Distribution PGC Exhibit Nos. 28 - 34.

Exhibit Nos. 30 and 34 were subsequently revised.

Tariff Supplement No. 202, Addendum and Redline.

3. Distribution's Rebuttal Testimony

Distribution PGC Statement No. 6-R – Rebuttal Testimony of Donald N. Koch including Revised Exhibits 2, 3, 13-A, 21, 21-B, 23, 24-A, and 34 and Exhibits DNK-2, DNK-3, DNK-4, and DNK-5.

Distribution PGC Statement No. 7-R – Rebuttal Testimony of Ken B. McAvoy.

Distribution PGC Statement No. 8-R – Rebuttal Testimony of Lisa A. Petko including Revised Exhibit Nos. 26-B, 30, LAP-3 and LAP-4.

B. I&E Statements and Exhibits

1. I&E Direct Testimony

I&E Statement No. 1 – Direct Testimony of Brenton Grab including I&E Exhibit No. 1.

C. OCA Statements and Exhibits

1. OCA Direct Testimony

OCA Statement No. 1 – Direct Testimony of Jerome D. Mierzwa including Schedule JDM – 1.

2. OCA Surrebuttal Testimony

OCA Statement No. 1-SR – Surrebuttal Testimony of Jerome D. Mierzwa.

D. OSBA Statements and Exhibits

1. OSBA Direct Testimony

OSBA Statement No. 1 – Direct Testimony of Robert D. Knecht including Exhibit Nos. IEc-1 through IEc-3.

2. OSBA Rebuttal Testimony

OSBA Statement No. 1-R – Rebuttal Testimony of Robert D. Knecht including Exhibit No. IEC-R1.

3. OSBA Surrebuttal Testimony

OSBA Statement No. 1-SR – Surrebuttal Testimony of Robert D. Knecht including Exhibit No. IEC-SR1.

The Record

On April 27, 2020, the ALJ issued a Second Interim Order, which admitted into the record the Parties’ Stipulation For Admission of Evidence and Stipulation in Settlement of Rate Investigation Pursuant to 66 Pa.C.S. § 1307(f) (Settlement) and closed the record. The record includes the transcript of the prehearing conference, the orders issued herein, evidence and stipulation detailing the Parties’ exhibits and written testimonies and the Settlement. Accordingly, the case is procedurally ready for recommendation.

FINDINGS OF FACT

1. Effective on November 1, 2000, Distribution realigned its pipeline and storage capacity in order to identify specific capacity as being held for its New York customers and for its Pennsylvania customers. Generally, delivery points located in Pennsylvania were assigned to the Pennsylvania Division, and delivery points located in New York were assigned to the New York Division. The realignment was approved by the Commission in the Order entered on October 25, 2001, at Docket No. R-00994898.

2. Distribution relies primarily upon gas supplies transported by Tennessee Gas Pipeline, LLC (Tennessee), Columbia Gas Transmission, LLC (Columbia Transmission), Texas Eastern Transmission, LP (Texas Eastern or TETCO) and National Fuel Gas Supply Corporation (Supply) to meet the requirements of its sales customers in Pennsylvania (PGC Exhibit No. 8, pp. 2-5).

3. In most instances, Tennessee, Columbia Transmission, and Texas Eastern transport Distribution's gas supplies to Distribution's pipeline capacity on Supply. Supply, in turn, either delivers such gas supplies to Distribution for use by Distribution's sales customers or injects such supplies into storage fields for later delivery to Distribution for use by its sales customers (PGC Exhibit No. 4, p. 2, PGC Exhibit No. 8, pp. 4-5).

4. Supply is an affiliate of Distribution and is subject to the regulatory jurisdiction of the Federal Energy Regulatory Commission (FERC) (PGC Exhibit No. 4, p. 2). Supply owns and operates a transmission system and storage fields, and Supply charges Distribution for transportation and storage services under Supply's FERC-approved tariff (PGC Exhibit No. 4, pp. 2, 4-5).

5. Distribution's capacity on Supply, Tennessee, Columbia Transmission, and Texas Eastern is critical for the operation of the system, the provision of reliable service to customers and Distribution's least cost fuel procurement policy (PGC Exhibit No. 8, pp. 2-3).

6. Locally produced gas delivered directly to Distribution or transported by Supply to Distribution made up approximately 13 percent of gas supplies purchased by Distribution to meet Distribution's Pennsylvania sales requirements during the 12 months ended November 30, 2019. The remaining 87 percent of gas supplies for Distribution's sales customers was purchased from sources at Supply interconnects and sources upstream of Supply (PGC Exhibit No. 1, Schedule 1, Sheet 1).

7. The availability of storage enhances Distribution's ability to buy gas and to utilize its firm upstream transportation capacity at high load factors (PGC Exhibit No. 8, pp. 3-5, 8-10).

8. At least through July 31, 2021, the end of the application period in this proceeding, Distribution will continue to rely principally upon gas supplies transported through facilities of Tennessee, Columbia Transmission, Texas Eastern and Supply, as well as storage

(particularly on Supply), to meet the needs of its Pennsylvania sales customers (PGC Exhibit No. 8, pp. 2-5, PGC Exhibit No. 30).

9. Distribution has fully and vigorously represented the interests of its ratepayers in proceedings before the FERC. (PGC Exhibit No. 6; PGC Statement No. 9).

10. Distribution maintains capacity on interstate pipelines sufficient to meet the requirements of its firm customers on all days including Design Day and during peak season periods. Therefore, during a non-Design Day and non-peak season periods, if a portion of this capacity is not needed to serve firm customers, Distribution may attempt to release such capacity, pursuant to FERC Order 636, to other parties in order to mitigate the cost of maintaining such capacity to its PGC customers (PGC Exhibit 8, pp. 16-18).

11. Distribution attempts to mitigate the cost of natural gas supplies to its PGC customers through net revenues resulting from off-system sales activities (PGC Exhibit No. 8, pp. 18-21).

12. Distribution attempts to enter into asset management arrangements, pursuant to FERC Order 712, in order to mitigate the cost of providing gas supplies to its PGC customers (PGC Exhibit No. 8, p. 21).

13. Distribution participates in a sharing mechanism under which it retains 25 percent of the net revenues from off-system sales, capacity releases and asset management arrangements, including storage fill contracts (PGC Exhibit No. 8, pp. 18-21).

14. The remainder of Distribution's system supply that is not transported by pipelines upstream of Supply consists of Appalachian supplies directly attached to the systems of Supply or Distribution and a small volume of gas from Peoples Gas Company LLC, formerly Peoples TWP LLC (PGC Exhibit No. 1, Schedule 1, Sheet 1).

15. During the twelve months ended November 30, 2019, Distribution purchased 2,578,661 Mcf of locally produced gas to serve customers in Pennsylvania (PGC Exhibit No. 1, Schedule 1, Sheet 1).

16. Locally-produced gas continues to be a useful resource in meeting the requirements of Distribution's sales customers, and Distribution expects to continue to purchase local gas at prices that will not increase the weighted average cost of gas supplies that it sells to its customers (PGC Exhibit No. 8, p. 15).

a. Distribution purchases dedicated, non-firm, life of reserves locally produced gas from Appalachian producers that is priced at an Appalachian Index ("AI"). The AI is the simple average of the first of the month spot prices for gas delivered to Dominion Energy Transmission, Inc. and Columbia Transmission (PGC Exhibit No. 4, pp. 13-14).

b. Distribution purchases excess non-firm local production gas at 80 percent of the AI rate (PGC Exhibit No. 4, p. 14).

17. Distribution has implemented, with the Commission's approval, a system-wide customer choice program throughout its Pennsylvania service territory under which all customers, except those served under Distribution's Low Income Residential Assistance Program, may choose a natural gas supplier other than Distribution (PGC Statement No. 3, pp. 5-6).

18. To maintain service to several remote pockets of customers without constructing additional pipeline facilities, Distribution has entered into two exchange agreements – one with UGI Central Penn Gas, Inc. and one with Columbia Gas of Pennsylvania, Inc. Under the agreements, each company takes from the other volumes of gas needed to provide service. The agreements do not contemplate purchases of gas; instead they contemplate that each company will receive approximately the same volumes of gas from the other over time. If needed, additional deliveries are arranged to eliminate any balance that has built up over time. The companies do not charge each other for this service (PGC Exhibit 4, pp. 5-6).

DESCRIPTION AND TERMS OF SETTLEMENT

The 18-page Settlement includes seventy-eight numbered paragraphs, a request for relief, and Appendices A through E. Appendix A (also referred to as Attachment “A”) is the proposed Tariff Supplement to Gas-PA P.U.C. No. 9. Appendices B, C, D and E are the Supporting Statements of Distribution, I&E, OCA and OSBA, respectively. The principal terms of the Settlement are as follows:

A. Standards and Findings

1. Historic Reconciliation Period Standards

With respect to Distribution’s gas purchases and gas purchasing practices during the twelve-month historic reconciliation period ended November 30, 2019, it is requested that the ALJ and the Commission find that Distribution has met the standards of Section 1318 of the Public Utility Code, 66 Pa.C.S. § 1318, as required by Section 1307(f)(5) of the Public Utility Code, 66 Pa.C.S. § 1307(f)(5), as to all actual purchased gas costs in the historic period. It is requested that the Commission find that, during the twelve months ended November 30, 2019:

a. Distribution met the requirements of Section 1318(a) of the Public Utility Code by pursuing a least-cost fuel procurement policy, consistent with its obligation to provide safe, adequate and reliable service to its customers; and

b. Distribution met the requirements of Section 1318(b) of the Public Utility Code relating to purchases from and services provided by affiliates.

B. Projected Period Findings

With respect to the eight-month interim period beginning on December 1, 2019, and with respect to the twelve-month period beginning August 1, 2020, when rates established under this Settlement will be in effect, it is requested that the Commission find, based upon information presently available and based upon evidence of record in this proceeding concerning

Distribution's projected purchases and purchasing policies, that the rates to be adopted by the Commission result from Distribution's compliance with the provisions of Section 1318 of the Public Utility Code, including Sections 1318(a)(1), 1318(a)(2), 1318(a)(3), 1318(a)(4), 1318(b)(1), 1318(b)(2) and 1318(b)(3), 66 Pa.C.S. §§ 1318(a)(1), 1318(a)(2), 1318(a)(3), 1318(a)(4), 1318(b)(1), 1318(b)(2) and 1318(b)(3).

The Parties agree that, based upon evidence of record in this proceeding concerning Distribution's projected gas purchases and gas purchasing policies, Distribution's projected gas purchases and projected gas purchasing policies may comply with the standards of Section 1318 of the Public Utility Code. Nevertheless, it is expressly understood and agreed that this Section of the Settlement, Section IV.B., is made solely for the purpose of setting prospective rates that shall be subject to the standards of Section 1318 of the Public Utility Code, 66 Pa.C.S. § 1318, and further review in an appropriate future proceeding. Section IV.B. of the Settlement is not intended in any way to limit or prevent I&E, OCA and OSBA from reviewing, after such projected gas purchases actually have been made and gas purchasing practices actually have been implemented, whether Distribution's gas purchases and gas purchasing practices complied with Section 1318. If, in an appropriate future proceeding, gas purchases and gas purchasing practices from December 1, 2019, through July 31, 2020, and the twelve-month application period commencing August 1, 2020, and ending on July 31, 2021, were challenged, the Commission's findings based upon Section IV of the Settlement shall not bar the examination of such purchases and practices, including, but not limited to, disallowance of, or reductions to, such costs during the eight-month interim period commencing December 1, 2019, and ending on July 31, 2020, and the twelve-month application period commencing August 1, 2020, and ending on July 31, 2021.

C. Other Terms and Conditions of Settlement

1. PGC Rates

The Parties request that the ALJ and the Commission approve the form of tariff supplement provided as Attachment "A" hereto, including the rates set forth therein. The rates in

Attachment “A” are subject to further updates for actual over/under recoveries of purchased gas costs through June 30, 2020, for updates related to the calculation of the MMT balancing charge and for updates to the forecasts of wellhead prices.

2. Design Day Requirements

The design day requirements are set forth in Paragraphs 44 through 46 and read as follows:

Rates established in this proceeding are based on a contracted-for level of pipeline and storage capacity of 340,690 Dth/day. The Parties agree to use the throughput and capacity amounts projected by the Company to calculate rates in this proceeding. The acceptance by the Parties of this level of throughput and capacity to calculate rates does not indicate their acceptance of, and the Commission’s approval of the settlement will not indicate its approval of, the procedures or methodologies used to calculate these levels of throughput and capacity.

In Distribution’s 2021 Section 1307(f) proceeding, any party may contend that Distribution should adjust its capacity to a different level. If the Commission issues a determination concerning the appropriate level of capacity for Distribution, Distribution will undertake all reasonable and appropriate actions, after the determination becomes final, to adjust its level of capacity to the level determined to be appropriate.

No party to this Settlement may contend that there should be a disallowance of recovery by Distribution of its cost of capacity for any period prior to Distribution’s first reasonable opportunity to adjust its capacity after the determination of the appropriate level of capacity has become final.

3. MMT Balancing Charge

The MMT Balancing Charge Rate will be set at \$0.31 per Mcf. The resulting PGC revenue requirement will be updated in the August 1, 2020 Compliance filing. The

Company agrees to update the MMT rate in future quarterly PGC filings to reflect changes in the rates of NFG Supply when final rates are approved by the Federal Energy Regulatory Commission.

4. Quarterly Rate Calculations

Distribution agrees to evaluate its quarterly PGC rate calculations and present any proposed changes in its 2021 Section 1307(f) filing, including:

- a) Providing an analysis demonstrating the impact on PGC rates/customers of not adjusting the MMT rate effective February 1, 2020 to reflect NFG Supply's final rates that were effective February 1, 2020; and
- b) Providing an analysis demonstrating the impact on PGC rates/customers of designing the Demand Charge Gas Cost ("DCGC") rate based on actual costs for the 2019 PGC period versus adopting a DCGC rate effective February 1, 2020 reflecting an annualization of costs based on NFG Supply's final February 1, 2020 rates.

Distribution is not required to propose any changes to its quarterly PGC rate calculations. In addition, all parties reserve the right to propose changes to Distribution's quarterly PGC rate calculations in the 2021 Section 1307(f) proceeding and present adjustments to the proposed 2021 PGC period rates, including but not limited to the PGC rate, the MMT Balancing Charge and the DCGC rate.

5. Pipeline Penalty Credits

The Company will identify pipeline penalty credits received as a separate Exhibit in the annual filing to include amount, source, and month in which the pipeline penalty credit was received as a credit on its invoice. The Company will be permitted to continue to flow pipeline penalty credits back to customers through purchased gas costs as reflected in the invoices from the pipelines and will not be required to separately account for them in its calculation of PGC costs or over/under collections.

6. Storage Fill Contracts

The Company will share in the savings associated with storage fill contracts pursuant to its Commission-approved sharing mechanism.

7. Contract Renewals and Changes

The Parties agree that the Commission should approve the renewals, extensions and changes in pipeline and storage capacity contracts that are explained in PGC Exhibits 4 and 8 and in PGC Statements 1, 7 and 8. Settlement ¶52.

8. Tariff Changes

The Parties request that the Commission approve the tariff changes that are set forth in the form of tariff supplement provided as Attachment A hereto. The tariff changes are identified in the List of Changes that is included at pages 2-3 of Appendix A hereto. Settlement ¶53.

D. Additional Conditions of Settlement

The Parties acknowledge and agree that this Settlement shall have the same force and effect as if the Parties had fully litigated this proceeding with regard to the historic period ended November 30, 2019.

The Settlement is conditioned upon the Commission's approval of terms and conditions contained herein without modification. If the Commission modifies the Settlement, any of the Parties may elect to withdraw from this Settlement and may proceed with litigation. 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 Parties within five (5) business days after the entry of an order modifying the Settlement.

The Settlement is proposed by the Parties to settle certain issues in the instant proceeding and is made without any admission against, or prejudice to, any position which any Party to this Settlement may adopt during any subsequent litigation of this or any other proceeding if the Commission disapproves this Settlement or if the Commission modifies the Settlement and one or more of the Parties elect to withdraw from the Settlement and proceed to litigation.

If the Commission does not approve the Settlement and the proceedings continue to hearings on the issues that are the subjects of this Settlement, the Parties reserve their respective rights to conduct full cross-examination, briefing and argument on these subjects.

The Commission's approval of this 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 this Settlement in this and future proceedings involving Distribution.

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

This Settlement is being presented in this Section 1307(f) proceeding in an effort to resolve outstanding issues in a manner which is fair and reasonable. The Settlement is the product of compromise. This Settlement is presented without prejudice to any position which any of the Parties may have advanced and without prejudice to the position any of the Parties may advance in the future on the merits of the issues in future proceedings. This Settlement does not preclude the Parties from taking other positions in proceedings under Section 1307(f) concerning the recovery of purchased gas costs by other natural gas distribution companies.

DISCUSSION

A. Commission Policy on Settlements

It is the policy of the Commission to encourage parties to contested on-the-record proceedings to settle the dispute. *See* 52 Pa.Code § 5.231(a). Settlements eliminate the time, effort and expense of litigating a matter to conclusion, which may include review of the Commission's decision by the appellate courts of Pennsylvania. Such savings not only benefit the individual parties, but also the Commission and ratepayers of the utility.

Concerning rate case litigation, the Commission's policy states as follows:

[T]he results achieved from a negotiated settlement or stipulation, or both, in which the interested Parties have had an opportunity to participate are often preferable to those achieved at the conclusion of a fully litigated proceeding.

52 Pa.Code § 69.401.

The general benchmark guiding approval of a settlement is whether the proposed terms of the settlement promote the public interest. *See Warner v. GTE North, Inc.*, Docket No. C-00902815 (Order entered April 1, 1996); *Pennsylvania Public Utility Commission v. CS Water and Sewer Associates*, 74 Pa. PUC 767 (1991). The Commission has explained, as a compromise of the signatory parties' position, a settlement arguably fosters the public interest. *Pennsylvania Public Utility Commission v. Philadelphia Electric Co.*, 60 Pa. PUC 1 (1985).

Here, the Parties benefit from an amicable resolution of this proceeding in several ways:

1. The Settlement allows the Parties to avoid the vagaries and uncertainties associated with full litigation of the issues.
2. The Settlement allows the Parties to rededicate their resources to other matters and to save the cost of litigation.

3. The Settlement provides for the recovery of natural gas costs that are just and reasonable.
4. The Settlement promotes administrative ease and efficiency for the undersigned ALJ and the Commission by reducing litigation and decision-making time.

Additionally, as discussed below, the Parties have submitted separate Statements in Support of the Settlement, providing specific reasons from each Party's position for approval of the Settlement.

B. The Parties Respective Positions on the Settlement

1. PGC Rates

a. NFG's Position

Distribution submits the Settlement was achieved after a comprehensive investigation of Distribution's natural gas procurement policies and operations. In addition to informal discovery, Distribution responded to numerous formal discovery requests. The Statutory Parties have years of experience in evaluating Distribution's annual PGC filings and evaluated the Company's 2020 filing.

Distribution contends that the proposed Settlement rates, effective as of August 1, 2020, are supported by record evidence. Distribution's witness, Kenneth B. McAvoy, explained the development of its natural gas supply rates utilizing cost projections, sales projections, and the reconciliation process.³ Distribution contends that Mr. McAvoy's testimony and exhibits provided full support for the rates and their underlying calculations. See Distribution PGC St. 7, PGC Exhibit 21.

³ Mr. McAvoy is an assistant general manager with NFG. His duties include developing and implementing NFG's procurement and gas planning policies. He has a Bachelor of Science in Mechanical Engineering and a Master's in Business Administration.

In Distribution's pre-filing, it provided 27 exhibits detailing its gas purchases, gas contracts, peak day requirements and provided other information required by the Commission's regulations. In its annual filing made on January 31, 2020, Distribution provided the testimony of 9 witnesses explaining the filing and why the filing was reasonable, along with additional exhibits supporting the filing. The information contained in Distribution's exhibits and testimony demonstrate the reasonableness of Distribution's gas purchase and gas purchasing practices. Additional detail regarding the Company's gas purchasing practices is also provided in the Proposed Findings of Fact set forth in Paragraphs 22-39 of the Settlement.

Distribution notes that the Settlement rates also reflect the adjustments that were agreed to by the Parties in this proceeding.

Thus under the terms of the Settlement, Distribution contends the Parties agree that on August 1, 2020, NFG may place into effect the natural gas rates set forth in Appendix A of the Settlement, subject to updates for actual over/under recoveries of purchased gas costs through June 30, 2020, for updates related to the calculation of the MMT balancing charge and for updates to the forecasts of wellhead prices. Settlement ¶ 43.

b. I&E's Position

I&E agrees that the terms and conditions of the Settlement are in the public interest and represent a reasonable resolution of the issue for the following reasons.

I&E submits that it analyzed the Company's E-factor and found that the E-factor was calculated in accordance with established Commission practices. I&E explained an E-factor is the experienced over/under collections. The E-factor reconciles variations between the projected gas costs and actual gas costs as well as variances between projected and actual sales. The E-factor also serves as the vehicle to pass through miscellaneous revenues and to calculate interest. I& E contends this review is critical because the proper calculation of the E-factor ensures that rates are adjusted appropriately. I&E is satisfied that the Company's E-factor calculation is appropriate and accurate. *See* I&E St. in Support of Settlement ¶ 8. Additionally,

I&E reviewed the Company's projected gas costs and determined that it appears those costs are consistent with a least cost fuel procurement policy.

NGF in its 1307(f) filing projected a \$0.3202/Mcf increase in the projected gas cost for all classes of retail customers for a projected cost of gas of \$3.8961/Mcf, notes I&E. While those costs are subject to review in a future PGC proceeding, I&E maintains that ratepayers are protected in that NFG gains no unwarranted financial advantages through its projected gas purchases and projected gas purchasing policies. *Id.* I&E further states that the Settlement maintains the proper balance of the interests of all parties. Based upon its analysis of the filing, I&E maintains that NFG is pursuing a least cost fuel procurement policy consistent with its obligation to provide safe, adequate and reliable service to its customers.

c. OCA's Position

OCA submits that the proposed Settlement is in the public interest and should be approved. OCA was assisted in its review of the Company's filing by its witness and consultant, Jerry Mierzwa.⁴ OCA contends that Mr. Mierzwa identified several errors in the Company's PGC filing. According to Mr. Mierzwa, generally, the Company's PGC rates did not appropriately reflect the rates of National Fuel Gas Supply Corporation (NFG Supply) that will be in effect during the Company's 2020 PGC period. OCA St. 1 at 2-3. Mr. Mierzwa notes that at the time of the Company's filing, NFG Supply, the primary interstate supplier of NFG, was in the midst of a rate case at the Federal Energy Regulatory Commission (FERC) docketed at RP19-1426-000, seeking to increase rates by approximately \$77 million to be effective February 1, 2020. OCA St. 1 at 6-7. The projected rates reflected in NFG's initial filing, however, were based upon NFG Supply's pre-filing rates. OCA St. 1 at 7. Instead, the rate

⁴ Mr. Mierzwa has a Bachelor of Science in Marketing and a Master's in Business Administration, with a concentration in finance. As a principal and vice president with Exeter Associates, Inc, he provides consulting services in evaluating the gas purchasing practices and policies of natural gas distribution companies (NGDCs), utility class cost of service and rate design analysis, sales and rate forecasting, performance-based incentive regulation, revenue requirement analysis, the unbundling of utility services and evaluation of customer choice natural gas transportation programs. He has testified on more than 350 occasions before utility regulatory bodies. OCA St. 1 at 1-2.

projections should have been based on the best estimate of NFG Supply's rates to be in effect during the 2020 PGC period. OCA St. 1 at 7. Mr. Mierzwa noted that NFG Supply had already entered into a settlement agreement in the FERC proceeding and received FERC approval to place into effect the settlement rates on an interim basis. Thus, OCA states that the interim settlement rates represented the best estimate of NFG Supply rates to be in effect during the 2020 PGC period. OCA St. 1 at 6-7.

d. OSBA's Position

OSBA maintains that the Settlement sets forth a comprehensive list of issues that were resolved through the negotiation process. Certain issues of significance to OSBA were resolved, through the Settlement, in the best interest of NFG's small business customers, according to OSBA. Concerning the latest version of NFG's Gas Cost Management Plan, OSBA contends that the Plan, which is designed to reduce exposure to first-of-the-month prices, has been problematic in the past, but appears to be working as intended. Nevertheless, OSBA will continue to monitor the success of this program in future gas cost proceedings. OSBA St. in Support at 2.

2. Design Day Requirements

There was no challenge to NFG's overall design day requirements. NFG remarks that the rates set in this proceeding will be based on a contracted-for level of pipeline and storage capacity of 340,690 Dth/day. NFG Supporting Statement at 3. NFG acknowledges that approval of the Settlement and the rates set forth therein will not constitute approval of the specific methodologies used by the Company to calculate design peak day requirements. Settlement ¶44.

OSBA agrees that approval of the Settlement does not constitute approval of NFG's design methodologies. In NFG's past four proceedings, OSBA contends that it has conducted an independent evaluation of design day demand levels, based on statistical analysis of daily loads. In general, the Company's proposed design day demand levels are reasonably consistent with the OSBA's analysis. OSBA St. in Support at 2.

3. MMT Balancing Charge

a. NFG's Position

NFG's Monthly Metered Transportation (MMT) balancing charge recovers the Company's costs for balancing the difference between MMT customers' daily deliveries and daily usage. NFG St. No. 6, pp. 36-37. In determining the MMT charge, NFG calculates the estimated capacity costs required to provide this service and develops the MMT rate based upon projected MMT customer volumes. In its initial filing, NFG proposed an MMT Balancing Charge rate of \$0.23 per Mcf.

NFG notes that OCA and OSBA proposed revisions to the balancing charge. OCA St. No. 1, p. 9; OSBA St. No. 1. OCA proposed a balancing charge of \$0.36 per Mcf and that the MMT balancing charge be reconciled for volume differences. OCA further proposed that the MMT balancing charge be updated to reflect changes in National Fuel Gas Supply capacity charges. OCA St. No. 1, p. 3. NFG continues that OSBA questioned the volumes used to calculate the MMT balancing charge. OSBA St. No. 1, p. 2.

According to NFG over the course of the litigation, an error in the volumes used to calculate the MMT balancing charge was identified. In Rebuttal Testimony, NFG presented the corrected balancing charge of \$0.31 per Mcf. NFG St. No. 6-R, at 2. NFG explained that it opposed OCA's proposal to reconcile the balancing charge for volume differences. NFG noted that reconciliation of the MMT balancing charge was eliminated in a settlement of the 2001 PGC proceeding. NFG St. No. 6-R, at 4. OSBA submitted Rebuttal Testimony opposing OCA's proposal to reconcile the MMT Balancing charge for volumes. OSBA St. No. 1-R, at. 3-4.

NFG offers that the Settlement reflects a compromise of the Parties' positions. Under the Settlement, the MMT Balancing Charge will be set at \$0.31 per Mcf, which is the rate set forth in the Company's Rebuttal Testimony. The MMT balancing charge also will be updated in future quarterly PGC filings to reflect changes in the NFG supply rates. Settlement ¶ 47. NFG emphasizes that the Settlement provision reflects the OCA's position on this issue.

However, the Settlement does not adopt the volume reconciliation provision proposed by the OCA, but rather adopts the Company's and OSBA's position on this issue. NFG St. in Support at 4-5.

Thus, NFG argues that the MMT Balancing Charge provisions of the Settlement reflect a compromise of the Parties' positions in this proceeding, are in the public interest and should be adopted without modification.

b. I&E's Position

I&E's Statement in Support of the Settlement is silent on the issue of NFG's MMT Balancing Charge.

c. OCA's Position

OCA's Mr. Mierzwa identified issues regarding the MMT Balancing Charge, as it was also not based on the NFG Supply settlement rates in FERC Docket No. RP19-1426-000. OCA St. 1 at 9-10. Mr. Mierzwa identified the MMT Balancing Charge as being designed on MMT volumes which Mr. Mierzwa claimed were higher than appropriate. *Id.* OCA proffers that Mr. Mierzwa calculated an adjustment to the MMT Balancing Charge and recommended in future annual PGC proceedings that MMT Balancing Charge revenues and costs be reconciled for differences between actual and projected MMT volumes. *Id.*; *see also* OCA St. 1, Schedule JDM-1.

OCA points out that in its Rebuttal Testimony, the Company agreed with the OCA and corrected its filing to incorporate NFG Supply's interim settlement rates, which represent the best estimate of the actual costs the Company will incur over the 2020 PGC period. *See* NFG PGC St. 6R at 1-2. OCA asserts that the Settlement reflects those changes, thereby seeking approval of the Company's 2020 1307(f) filing, as updated in its Rebuttal Testimony and agreeing to set the MMT Balancing Charge Rate at \$0.31 per Mcf, instead of \$0.23 Mcf as originally requested. Settlement ¶ 43, 45. The Company, notes OCA, also agreed to update the

MMT Balancing Charge in future quarterly filings to reflect changes in the rates of NFG Supply if approved by FERC. Settlement ¶ 45. Thus, OCA argues that these provisions of the Settlement are in the public interest. OCA St. in Support at 3-5.

d. OSBA's Position

In his Direct Testimony, OSBA witness and consultant, Robert D. Knecht, identified an error in the Company's calculation of the MMT balancing charge.⁵ Mr. Knecht explained the error, as follows:

In reviewing the Company's filed calculations, I noticed that, compared to last year, MMT volumes increased by nearly 15 percent, while the MMT storage deliverability requirements increased by only 3 percent. This appeared to result from an anomalous calculation in PGC Exhibit 26-A, in which MMT customer peak requirements are split between the 52 HDDs [heat degree days⁶] (provided by the customer) and the remaining 22 HDDs (supplied by the Company). Unlike prior years, the Company's calculation this year reported negative deliverability requirements for the 22 HDD portion for some MMT customers.

* * *

In an apparent response to an OSBA interrogatory on this subject, the Company submitted a revised version of Exhibit 26-A on March 6, 2020, in which the peak requirements for 22 HDDs were materially increased (and the requirements for 52 HDD correspondingly decreased).

OSBA St. 1, at 4-5 (footnote omitted). This correction by NFG resulted in a recalculation of the MMT load balancing charge. Mr. Knecht explained, as follows:

⁵ Mr. Knecht is a principal of the consulting firm, Industrial Economics. He specializes in the economic analysis of basic industries. He has provided expert testimony in a variety of utility regulatory proceedings. Mr. Knecht has a Bachelor of Science in Economics and a Master's in Management with concentrations in Applied Economics and Finance. OSBA St. 1 at 1.

⁶ An HDD represents the difference between 65 Fahrenheit degrees and the actual daily average temperature. Thus, 52 HDDs implies an average daily temperature of 13° F. OSBA St. 1 at 2, n. 1.

I note that these revised figures imply that the deliverability requirement for MMT increases about 15.5 percent from last year, which is consistent with the overall increase in MMT annual volumes. Based on my calculations, the MMT rate should remain at 25 cents per mcf.

Id., at 5.

As additional information became available during the proceeding, it became clear that the Company's error in the filed Exhibit 26-A had implications not only for setting the MMT rate, but also for the Company's overall MMT volume forecast, its overall system design day demand, and its overall system contingency capacity. These errors propagated through several exhibits that the Company did not update, notably Exhibits 15 and 24. OSBA St. 1-SR, at 1-2. However, OSBA determined that these corrections would not require any change in the Company's upstream supply requirements in this proceeding.

OSBA further remarks that OCA's consultant, Mr. Mierzwa proposed an MMT balancing charge of 36 cents. Mr. Knecht explained Mr. Mierzwa's proposal, as follows:

Mr. Mierzwa recommends that the MMT charge be adjusted to reflect (a) National Fuel Gas Supply ('NFGS') upstream storage and deliverability charges based on a tentative settlement in NFGS's rate case before the FERC, and (b) a lower MMT volume forecast than that presented by the Company. Mr. Mierzwa calculates that these changes would increase the MMT charge from the 23 cents per mcf proposed by the Company to 36 cents per mcf.

OSBA St. 1-R, at 1-2 (footnote omitted). However, Mr. Knecht observed, as follows:

In his calculations, Mr. Mierzwa modifies the Company's calculations to reflect a change in the storage capacity requirements (Exhibit JDM-1, Tables II, III and IV), but he does not modify the Company's storage deliverability requirement (Exhibit JDM-1, Tables I and V).

Id., at 2. Mr. Knecht concluded:

As I explained in my direct testimony, the MMT storage deliverability requirement has three components: (a) the capacity

necessary to provide the last 22 heating degree days (“HDD”) of design day load, (b) a balancing requirement for local production deliveries upon which MMT customers rely, and (c) a share of the contingency capacity that NFGD retains related to its overall design day capacity requirements. Both the HDD and contingency items are directly dependent on the overall MMT load, and thus should be adjusted when the MMT volume forecast is changed. Instead, Mr. Mierzwa relied on the Company’s deliverability requirements as presented in Exhibits 24 and 24A. Had Mr. Mierzwa adjusted the Company’s forecast deliverability requirements in proportion to the volume reduction, I estimate that his calculations would imply *an MMT rate of approximately 30.5 cents per mcf.*

Id. (emphasis in original).

OSBA remarks that the Settlement generally adopts the calculations performed by Mr. Knecht, by adopting the updated NFG Supply rates and correcting for the original error from Exhibit 26-A. The Settlement therefore sets the MMT balancing rate at 31 cents per mcf. Settlement ¶45. The Company has also indicated that the necessary corrections to the filed exhibits related to the error in Exhibit 26-A will be incorporated into its compliance filing in this matter. Thus, OSBA supports this rate as a just and reasonable conclusion to this issue.

Concerning the MMT reconciliation, Mr. Knecht explained OSBA’s disagreement with OCA as follows:

Conceptually, Mr. Mierzwa raises a reasonable argument, namely that PGC customers are implicitly bearing all the risks of swings in MMT volumes. Thus, for example, in a winter that is much warmer than normal, actual volume and revenues for both PGC and MMT customers will likely come in well below forecast, leaving the (mostly) fixed capacity costs unrecovered. These unrecovered costs, however, are subsequently reconciled in the PGC E-factor charge, with none of the unrecovered costs flowing back to MMT customers.

OSBA St. 1-R, at 3. Mr. Knecht explained OSBA’s disagreement with OCA’s proposal:

In practice, however, reconciling the MMT charge only for volume effects has some problems.

First, if volumes are higher or lower than expected, these variances will affect the Company's ability to earn additional revenues through capacity release and off-systems sales. Lower MMT volumes may allow the Company to earn additional third-party revenues, and therefore should be reasonably credited back to MMT customers.

Second, MMT volume variances can result from unanticipated shifts between sales and volume service, which would affect the amount of the overall capacity that is actually used by the MMT customers.

For example, suppose MMT volumes significantly exceed the forecast because more customers than expected moved from PGC to MMT service. In that event, the Company would have the necessary capacity to meet that higher MMT capacity requirement, because it had planned to serve that load through the regular PGC rates. However, under Mr. Mierzwa's reconciliation proposal, the MMT customers would benefit from a credit associated with the higher volumes but would face no additional costs associated with the higher capacity from which they benefited.

Similarly, this mechanism would then open up the potential for gamesmanship in PGC proceedings, with MMT customers having an economic interest in setting MMT volumes (and implied MMT shopping rates) low, thereby setting the fixed capacity requirements low, and allowing MMT customers to benefit from higher volumes.

OSBA St. 1-R, at 3-4 (formatting added).

OSBA submits that the Settlement follows the recommendation of Mr. Knecht and does not implement the OCA proposal to reconcile the MMT charge. Thus, OSBA supports this result. OSBA St. in Support at 6.

4. Quarterly Rate Calculations

a. NFG's Position

NFG's witness, Donald H. Koch, challenged OCA's arguments regarding quarterly rate calculations.⁷ Distribution St. 6-R at 5. OCA proposed certain changes to the way that NFG calculates quarterly rate changes and that the cost implications of Distribution's methods for calculating certain quarterly rate changes be evaluated in the Company's 2021 PGC proceeding. OCA St. 1 at 3-4. Mr. Koch asserts that the Company has performed its quarterly rate calculations in the same manner for many years and before considering whether to change its methodology, would need to evaluate the impacts on other rates and impacts on customers, including rate volatility. Distribution St. 6-R, p. 6.

NFG argues that the Settlement provisions reflect a compromise of the Parties' positions on these issues. The Settlement provides that Distribution will evaluate its quarterly PGC rate calculations and provide certain analyses in the Company's 2021 PGC proceeding. The Settlement further provides that all Parties have the right to either propose or not propose changes to the Company's quarterly rate change calculation methodology in that proceeding. Settlement ¶¶ 48 – 49.

Thus, NFG contends these Settlement provisions are in the public interest because they allow all Parties time to evaluate how changes to quarterly rate calculations might impact rates and customers and whether such changes may or may not be in the public interest. NFG St. in Support at 6.

b. OCA's Position

OCA notes that Mr. Mierzwa identified an issue with the NFG's February 1, 2020 quarterly PGC Filing (Quarterly PGC Filing) for PGC rates applicable for the period February -

⁷ Mr. Koch is a rate analyst with NFG. He has a Bachelor Science in Business Administration and Master's in Business Administration with a specialization in Accounting and Finance. NRG PGC St. 6 at 1.

April 2020. OCA St. 1 at 13-14. Specifically, Mr. Mierzwa identified that the Company did not fully reflect NFG Supply's rate increase in certain projected rates that were to take effect on February 1, 2020, for the Demand Charge Gas Cost (DCGC) and the MMT Balancing Charge. *Id.* Mr. Mierzwa noted, however, that the impact of the Company's failure to properly reflect NFG Supply's rate increase would not be known for some time. OCA St. 1 at 15. Mr. Mierzwa ultimately recommended that the parties evaluate the impact of whether customers were assessed improper charges in the Company's 2021 PGC proceeding. *Id.*

Accordingly, OCA remarks that under the Settlement, NFG agreed to evaluate its quarterly PGC rate calculation and present any proposed changes in its 2021 Section 1307(f) filing. The Company will provide an analysis of the impact on PGC rates/customers of not adjusting the MMT rate effective February 1, 2020, to reflect NFG Supply's final rates that were effective February 1, 2020. Settlement ¶ 46. Moreover, the Company agreed to provide an analysis demonstrating the impact on PGC rates/customers of designing the DCGC rate based on actual costs for the 2019 PGC period versus adopting a DCGC rate effective February 1, 2020, reflecting an annualization of costs based on NFG Supply's final February 1, 2020 rates. *Id.*

Thus, OCA submits that this provision of the Settlement is in the public interest because it will allow the parties to analyze the full impact of the Company's Quarterly PGC filing in the next 1307(f) proceeding.

As a result of its review, the OCA concludes that NFG's PGC filing meets the requirements of 66 Pa.C.S. § 1307(f) generally and specifically with regard to showing that the Company's natural gas costs are consistent with a least cost fuel procurement policy required by 66 Pa.C.S. § 1318. As such, the OCA submits that the Commission should approve NFGD's proposed PGC rate in accordance with the Settlement.

c. I&E's and OSBA's Positions

I&E's and OSBA's respective Statements in Support of the Settlement are silent on the issue of NFG's PGC Quarterly Rate Calculations.

5. Pipeline Penalty Credits

a. NFG's Position

NFG addressed I&E's argument that the Company did not clearly identify where pipeline penalty credits are reflected in the PGC filing and that the pipeline penalty credits to ratepayers should include interest from the receipt date. I&E St. No. 1, pp. 2-8. NFG's rate analyst, Mr. Koch explained that pipeline penalty credits are reflected on the invoices received from the pipelines and that the Company reflects the benefit of the credit to customers, including interest, from the receipt date. Distribution St. No. 6-R, p. 8.

NFG submits that in order to address I&E's concerns, the Settlement provides that the Company will identify pipeline penalty credits received as a separate Exhibit in the annual filing to include amount, source, and month in which the pipeline penalty credit was received as a credit on its invoice. Settlement ¶ 50. This will make it easier for the Parties to identify pipeline penalty credits in future PGC filings. The Settlement also clarifies that the Company will be permitted to continue to flow pipeline penalty credits back to customers through purchased gas costs as reflected in the invoices from the pipelines and will not be required to separately account for them in its calculation of PGC costs or over/under collections. NFG St. in Support at 6.

Thus, NFG submits that the Settlement provisions relative to the pipeline penalty credits reflect a compromise of the Parties' positions and are in the public interest.

b. I&E's Position

I&E notes that NFG has agreed as part of its next PGC filing to identify pipeline penalty credits received as a separate exhibit to include the amount, source and month in which the pipeline penalty credit was received as a credit on its invoice. This is in the public interest as this will result in pipeline penalty credits being more easily identifiable and reviewable in future

PGC proceedings. As such, it will be easier for the parties to this proceeding to review and determine that the information provided is accurate and appropriate.

Based upon its analysis of the filing, I&E concludes that acceptance of the Settlement is in the public interest because resolution of this case by settlement rather than litigation will avoid the substantial time and effort involved in continuing to formally pursue all issues in this proceeding at the risk of accumulating excessive expense.

c. OCA's and OSBA's Positions

OCA's and OSBA's respective Statements in Support of the Settlement are silent on the issue of NFG's Pipeline Penalty Credits.

6. Contracts and Tariff Changes

Noting there was essentially no challenge to the remaining provisions of NFG's PGC filing, NFG summarized its position as follows:

a. Storage Fill Contracts

In Direct Testimony, OCA commented that the Company was retaining the entire discount of \$57,000 for a storage fill agreement and argued that the discount should be subject to the Company's sharing mechanism which provides that 75% of savings go to customers and 25% are retained by the Company. OCA St. 1, p. 11. In Rebuttal Testimony, Distribution clarified that it did not retain the discount of \$57,000 but had credited the entire discount to customers. Distribution St. No. 7-R, p. 3. Distribution also noted that it intended to apply the sharing mechanism to savings generated from future storage fill contracts. The Settlement clarifies that the Company will share in the savings associated with storage fill contracts pursuant to its Commission-approved sharing mechanism. Settlement ¶ 51.

b. Contract Renewals and Changes

The Settlement requests that the Commission approve the renewals, extensions and changes in pipeline and storage capacity contracts that are explained in Distribution's PGC Statement Nos. 1, 7 and 8 and in Distribution's PGC Exhibits 4 and 8. Settlement ¶ 52. These contracts are in the public interest for the reasons explained in the Company's testimony and exhibits, and these contracts should be approved.

c. Tariff Changes

In its filing made on January 31, 2020, Distribution identified the tariff changes that it was proposing to make in this proceeding. These tariff changes relate to changes in rates related to changes in purchased gas costs. NFG submits that no party in this proceeding objected to the changes. NFG concludes that the Parties request that the Commission approve the tariff changes set forth in Appendix A. Settlement ¶53.

RECOMMENDATION

The Settlement represents the unanimous agreement of the Parties proposing a resolution of this proceeding. The Settlement is the result of compromises. The Commission encourages compromises between the Parties. Compromises dispense with costly litigation and promote judicial economy.

Upon due consideration of the terms and conditions of the Stipulation in Settlement of the Rate Investigation Pursuant to 66 Pa.C.S. § 1307(f), including the Statements in Support of the Settlement of the Parties, this Settlement constitutes a fair, just and reasonable resolution of the Commission's investigation for the reasons the Parties identify as noted above. Therefore, the Settlement is in the public interest and should be approved.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the subject matter and the Parties to this proceeding. 66 Pa.C.S. §§ 1307(f), 1317-18.

2. National Fuel Gas Distribution Corporation is pursuing a least cost fuel procurement policy during the relevant time period consistent with its obligation to provide safe, adequate and reliable service to its customers in compliance with Section 1318 of the Public Utility Code, 66 Pa.C.S. § 1318.

3. National Fuel Gas Distribution Corporation's rates for purchased gas costs, as the Parties have agreed upon in this proceeding, during the relevant time period are just and reasonable and in compliance with Section 1318 of the Public Utility Code, 66 Pa.C.S. § 1318.

4. National Fuel Gas Distribution Corporation has fully and vigorously represented the interests of its ratepayers in proceedings before the FERC and other relevant non-PUC proceedings during the relevant time period in compliance with Section 1318(a)(1) of the Public Utility Code, 66 Pa.C.S. § 1318(a)(1).

5. National Fuel Gas Distribution Corporation has taken all prudent steps necessary to negotiate favorable gas supply contracts and to relieve itself from terms in existing contracts with its gas suppliers, which are or may be adverse to the interests of its ratepayers, during the relevant time period in compliance with Section 1318(a)(2) of the Public Utility Code, 66 Pa.C.S. § 1318(a)(2).

6. National Fuel Gas Distribution Corporation has taken all prudent steps necessary during the relevant time period to obtain lower cost gas supplies on both short-term and long-term bases both within and outside the Commonwealth, including the use of gas transportation arrangements with pipelines and other distribution companies in compliance with Section 1318(a)(3) of the Public Utility Code, 66 Pa.C.S. § 1318(a)(3).

7. National Fuel Gas Distribution Corporation has not withheld from the market or caused to be withheld from the market during the relevant time period any gas supplies, which should have been used as part of a least cost fuel procurement policy in compliance with Section 1318(a)(4) of the Public Utility Code, 66 Pa.C.S. § 1318(a)(4).

8. National Fuel Gas Distribution Corporation has fully and vigorously attempted to obtain less costly gas supplies on both short-term and long-term bases from nonaffiliated interests during the relevant time period in compliance with Section 1318(b)(1) of the Public Utility Code, 66 Pa.C.S. § 1318(b)(1).

9. Neither National Fuel Gas Distribution Corporation nor any affiliated interest during the relevant time period has withheld from the market any gas supplies, which should have been used as part of a least cost fuel procurement policy in compliance with Section 1318(b)(3) of the Public Utility Code, 66 Pa.C.S. § 1318(b)(3).

10. The Stipulation in Settlement of the Rate Investigation Pursuant to 66 Pa.C.S. § 1307(f) that National Fuel Gas Distribution Corporation, I&E, OCA, and OSBA have executed and submitted at this docket is in the public interest and, therefore, should be approved without modification.

ORDER

THEREFORE,

IT IS RECOMMENDED:

1. That the Stipulation in Settlement of the Rate Investigation Pursuant to 66 Pa.C.S. § 1307(f) (Settlement) that National Fuel Gas Distribution Corporation, the Pennsylvania Public Utility Commission's Bureau of Investigation and Enforcement, the Office

of Consumer Advocate, and the Office of Small Business Advocate executed and submitted at Docket No. R-2020-3012705 be approved.

2. That National Fuel Gas Distribution Corporation be permitted to file a tariff supplement, incorporating the terms of the Settlement and changes to its rates, rules and regulations as set forth in Appendix A of the Settlement on at least one day's notice after entry of the Commission's Order approving the Settlement. Said tariff supplement shall be accompanied by a red-lined version that shall fully set forth all changes that will be made to National Fuel Gas Distribution Corporation's current tariffs.

3. That upon National Fuel Gas Distribution Corporation's filing of a tariff supplement as conforming with this order and the Settlement and the Commission's approval thereof, the purchased gas rates established therein shall become effective for service rendered on and after August 1, 2020.

4. That the Complaint of the Office of Consumer Advocate at Docket No. C-2020-3016657 be deemed satisfied.

5. That the Complaint of the Office of Small Business Advocate at Docket No. C-2020-3016944 be deemed satisfied.

Date: May 15, 2020

/s/
Conrad A. Johnson
Administrative Law Judge