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File #: 180345

January 14, 2021

***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: EnergyMark LLC, Vineyard Oil & Gas Company, Mid American Natural Resources LLC, and Total Energy Resources LLC v. National Fuel Gas Distribution Corporation - Docket No. C-2020-3019621**

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Dear Secretary Chiavetta:

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

Respectfully submitted,



Garrett P. Lent

GPL/jl  
Enclosures

cc: Honorable Dennis J. Buckley  
Certificate of Service

**CERTIFICATE OF SERVICE**

**C-2020-3019621**

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 EMAIL ONLY**

Todd S. Stewart, Esquire  
Bryce R. Beard, Esquire  
100 North 10<sup>th</sup> Street  
Harrisburg, PA 17101  
[tsstewart@hmslegal.com](mailto:tsstewart@hmslegal.com)  
[brbeard@hmslegal.com](mailto:brbeard@hmslegal.com)

Date: January 14, 2021



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Garrett P. Lent

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

EnergyMark LLC, Vineyard Oil & Gas :  
Company, Mid American Natural Resources :  
LLC, and Total Energy Resources LLC, : Docket No. C-2020-3019621  
:  
Complainants, :  
:  
v. :  
:  
National Fuel Gas Distribution Corporation, :  
:  
Respondent. :

**PREHEARING MEMORANDUM OF  
NATIONAL FUEL GAS DISTRIBUTION CORPORATION**

**TO THE HONORABLE ADMINISTRATIVE LAW JUDGE DENNIS J. BUCKLEY:**

Pursuant to 52 Pa. Code § 5.222(d) of the Pennsylvania Public Utility Commission’s (“Commission”) regulations and the November 23, 2020 Call-In Telephone Prehearing Conference Notice<sup>1</sup> issued on behalf of the Administrative Law Judge Dennis J. Buckley (the “ALJ”), National Fuel Gas Distribution Corporation (“Distribution” or the “Company”) hereby submits this Prehearing Conference Memorandum.

**I. SERVICE OF DOCUMENTS**

1. The Company requests that all documents be served on:

Garrett P. Lent (ID # 321566)  
Post & Schell, P.C.  
17 North Second Street  
12<sup>th</sup> Floor  
Harrisburg, PA 17101-1601  
Phone: 717-731-1970  
Fax: 717-731-1985  
E-mail: glent@postschell.com

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<sup>1</sup> The notice did not establish a deadline for the filing of a Prehearing Conference Memorandum, and no Prehearing Order setting forth such deadline has been issued at this time.

Please be advised that Anthony D. Kanagy will speak as the lead attorney for Distribution for purposes of the telephonic prehearing conference. However, other counsel for Distribution will be participating and available during the telephonic prehearing conference as needed.

2. Distribution agrees to receive service of documents electronically in this proceeding. Further, to the extent that materials are available electronically, it is requested that copies be served upon Anthony D. Kanagy at [akanagy@postschell.com](mailto:akanagy@postschell.com).

## **II. PROCEDURAL HISTORY**

3. On April 27, 2020, EnergyMark LLC, Vineyard Oil and Gas Company, Mid American Natural Resources LLC, and Total Energy Resources LLC (collectively the “Complainants” or the “NFG NGSs”) filed the above-captioned Complaint against Distribution. The Complaint alleged, *inter alia*, that Distribution violated the Public Utility Code and the Commission’s regulations by filing and obtaining Commission approval of a data security requirement tariff (*i.e.*, Supplement No. 207 to Tariff Gas – PA PUC No 9), including cyber-security insurance requirements, applicable to natural gas suppliers (“NGSs”) in Pennsylvania.

4. On May 20, 2020, Distribution filed and served its Answer and New Matter to the Complaint, and denied the material allegations advanced in the Complaint. Distribution explained that neither its tariff nor the Data Security Agreement at issue violated any provision of the Public Utility Code, the Commission’s regulations or any Commission order. Distribution further explained that its implementation of the cyber-security requirements set forth in its tariff and the DSA is a reasonable response to recent cyber-attacks on electronic data interchange (“EDI”) service providers, which could harm customers through the unauthorized release of confidential and personal customer information.

5. On September 16, 2020, I&E filed a Notice of Appearance.

6. On November 23, 2020, the Commission issued a Call-In Telephone Prehearing Conference Notice, which scheduled a prehearing conference to occur at 10:00 a.m. on January 19, 2021.<sup>2</sup>

7. Distribution hereby submits this Prehearing Conference Memorandum pursuant to Section 5.222(d) the Commission's regulations.

### **III. ISSUES**

8. Distribution will demonstrate that it has not violated any provision of the Public Utility Code, the Commission's regulations or any Commission order, by filing and obtaining Commission approval of a data security requirement tariff.

9. Distribution will demonstrate that implementation of these the cyber-security requirements in its tariff and DSA is a reasonable response to recent cyber-attacks on EDI service providers, which could harm customers through the unauthorized release of confidential and personal customer information.

10. Distribution will demonstrate that it engaged in reasonable and responsible dialogue with Pennsylvania NGSs prior to seeking approval of these requirements and obtained approval to implement these requirements in Pennsylvania from the Commission. Relatedly, contrary to the assertions made by the Complainants, Distribution did not deceive the Commission or Pennsylvania NGSs in seeking and obtaining approval to implement cyber-security requirements at issue.

11. Distribution will demonstrate that the relief sought by the Complainants is neither warranted nor reasonable under the circumstances presented. Specifically, Distribution will show that the Complainants' specific request that Distribution be required to implement a "Pennsylvania

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<sup>2</sup> See footnote 1 *supra*.

only” credential for its data systems” is not reasonable because Distribution’s data systems such as the Transportation Scheduling System and marketer specific website data files under Secure Transactions currently do not allow for a State specific login. In addition, this type of functionality would be a significant undertaking for Distribution and the incremental administrative burden that would be placed on marketers and producers that operate in both New York and Pennsylvania would be significant.

12. Distribution reserves its rights to raise additional issues and respond to additional issues raised by the Complainants throughout the course of this proceeding.

**IV. WITNESSES**

13. Distribution presently intends to offer the following witness to testify in this proceeding on the following subject matters:

Statement No.	Witness	Subjects Addressed
1.	Christopher Cej 6363 Main Street Williamsville, NY 14221	<ul style="list-style-type: none"> <li>• Filing And Implementation Of Pennsylvania Tariff and DSA</li> <li>• Reasonableness Of Distribution’s Tariff And DSA</li> </ul>
2.	Jeffrey Grice 1100 State Street Erie, PA 16501	<ul style="list-style-type: none"> <li>• Impacts of Complainant’s Proposed Relief as it Relates to Cybersecurity Insurance</li> </ul>

14. The Company further reserves the right to call and present additional witnesses to address any issues that may arise during the course of the proceeding. To the extent that the Company determines it is necessary to call and present additional witnesses, it will provide appropriate notice to the Complainants and Your Honor.

**V. LITIGATION SCHEDULE**

15. Distribution has discussed the schedule with the Complainants at the time of this writing. Based on these discussions, the Parties have jointly agreed upon the following procedural schedule, subject to the availability of Your Honor:

Complaint Filed	April 27, 2020
Prehearing Conference	January 19, 2021
Direct Testimony	March 5, 2021
Rebuttal Testimony	March 25, 2021
Surrebuttal Testimony	April 16, 2021
Rejoinder Outlines	April 26, 2021
Evidentiary Hearings	April 29, 2021
Main Briefs	June 2, 2021
Reply Briefs	June 23, 2021

The Company is also willing to work with the parties to accommodate potential scheduling conflicts for the parties' witnesses to attend and testify at the evidentiary hearings.

**VI. DISCOVERY**

16. The Parties have been actively engaged in discovery during the course of this proceeding.

17. Based upon the litigation schedule jointly proposed by the Parties, the Parties have also agreed to the following modifications to the standard timelines for discovery set forth in the Commission's regulations as necessary and appropriate:

- a) Answers to written interrogatories shall be served in-hand within ten (10) calendar days of service.

- b) Objections to interrogatories shall be communicated orally within three (3) calendar days of service of the interrogatories; unresolved objections shall be served in writing within five (5) calendar days of service of the interrogatories.
  - c) Motions to dismiss objections and/or direct the answering of interrogatories shall be filed within three (3) calendar days of service of the written objections.
  - d) Answers to motions to dismiss objections and/or direct the answering of interrogatories shall be filed within three (3) calendar days of service of such motions.
  - e) Rulings over such motions shall be issued, if possible, within seven (7) calendar days of the filing of the motion.
  - f) Responses to requests for document production, entry for inspection, or other purposes must be served in-hand within ten (10) calendar days.
  - g) Requests for admissions will be deemed admitted unless answered within seven (7) calendar days or objected to within five (5) calendar days of service.
  - h) Discovery and discovery-related pleadings propounded after 12:00 noon on a Friday or after 12:00 noon on any business day immediately preceding a state holiday will be deemed served on the next business day for purposes of determining the due date of the responses and responsive pleadings.
18. Distribution also encourages use of informal discovery to expedite the discovery process.
19. The Parties have also filed a Joint Motion for Protective Order and that motion has not yet been addressed.

**VII. SETTLEMENT**

20. Distribution has hosted a collaborative with the Complainants and other interested NGSs to discuss potential changes to the DSA. Distribution remains open and available for further settlement discussions.

**VIII. CONCLUSION**

WHEREFORE, National Fuel Gas Distribution Corporation respectfully submits this Prehearing Conference Memorandum.

Respectfully submitted,



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Date: January 14, 2021

*Counsel for National Fuel Gas Distribution Corporation*