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February 25, 2021

VIA ELECTRONIC FILING

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
400 North Street, 2nd Floor
Harrisburg, PA 17120

Re: EnergyMark LLC, Vineyard Oil and Gas Company, Mid American Natural Resources LLC, and Total Energy Resources LLC v. National Fuel Gas Distribution, Docket No. C-2020-3019621; **ENERGYMARK LLC, VINEYARD OIL AND GAS COMPANY, MID AMERICAN NATURAL RESOURCES LLC, AND TOTAL ENERGY RESOURCES LLC MOTION TO DISMISS OBJECTIONS AND COMPEL RESPONSES TO NATIONAL FUEL GAS DISTRIBUTION CORPORATION, SET III, NO. 1**

Dear Counsel:

Please find enclosed EnergyMark LLC, Vineyard Oil and Gas Company, Mid American Natural Resources LLC, and Total Energy Resources LLC (the "Joint Complainants") Motion to Dismiss Objections and Compel Responses to National Fuel Gas Distribution Corporation, Set III, No.1 in the above-captioned matter. Copies of the Motion have been served in accordance with the attached Certificate of Service.

If you have any questions, please do not hesitate to contact me.

Very truly yours,

Todd S. Stewart
Bryce R. Beard
Counsel for the Joint Complainants

TSS/jld

Enclosures

cc: Administrative Law Judge Dennis J. Buckley (via electronic mail)
Per Certificate of Service

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing document upon the parties, listed below, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a party)

VIA ELECTRONIC MAIL

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A handwritten signature in blue ink, appearing to be 'Todd S. Stewart', written over a horizontal line.

Todd S. Stewart
Bryce R. Beard

DATED: February 25, 2021

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**MOTION TO DISMISS OBJECTIONS
AND COMPEL RESPONSES
TO NATIONAL FUEL GAS DISTRIBUTION CORPORATION
SET III, NO. 1**

As discussed more completely herein, EnergyMark LLC, Vineyard Oil and Gas Company, Mid American Natural Resources LLC, and Total Energy Resources LLC, (collectively “Joint Complainants”) hereby move the Presiding Administrative Law Judge, Dennis J. Buckley, and the Pennsylvania Public Utility Commission (“Commission”) to dismiss the objections of National Fuel Gas Distribution Corporation (“Respondent” or “NFGD”) to Joint Complainants’ Interrogatories, Set III, No. 1, pursuant to 52 Pa. Code § 5.342(g). In support thereof, the Joint Complainants state as follows:

I. BACKGROUND AND PROCEDURAL HISTORY

1. On April 27, 2020, Joint Complainants filed the above-captioned complaint against Respondent to address, among other things, that NFGD has implemented a tariff that contains unreasonable provisions regarding data security by requiring competitive suppliers to maintain cybersecurity insurance under their data security agreement. Central to the Complaint is the

allegation that the requirement of a \$5 million per incident insurance coverage is prohibitively expensive when compared to the Complainants operations and functions as nothing more than an anti-competitive barrier to providing service.

2. On February 15, 2021, Complainants served on NFGD interrogatory Set III which contained a single interrogatory. Set III, No. 1 requested:

1. With regard to NFGD's response to NGS parties Set II, No. 10, wherein NFGD states that to date it has not sought rate recovery for the costs of its \$20 million cyber security insurance policy; explain the accounting for the expense of the policy; that is, in what account in its books did NFGD record the expense, and will it be necessary to transfer that balance to a different account in order to seek recovery from customers in a future rate case?

3. On February 22, 2021, Respondent interposed the attached Objection to Set III, No. 1, arguing that the request is irrelevant, not reasonably calculated to lead to the discovery of admissible evidence, and outside the scope of the proceeding. See Attachment A.

II. MOTION TO COMPEL

4. Complainants' Set III, No. 1 is relevant, reasonably calculated to lead to the discovery of admissible evidence, and wholly within the scope of this proceeding. In the Complaint, Complainants expressly raised the issue that NFGD's cyber security insurance requirements in its tariff Supplement No. 207 are unreasonable, anti-competitive, and function as nothing more than a market barrier to the NGSs in providing competitive service.

5. Set III, No. 1 explores the true extent of NFGD's anti-competitive aspirations revolving the implementation of Supplement No. 207 and seeks to understand how NFGD will pass the costs of its own cybersecurity insurance policy onto rate payers, which is wholly relevant to the anti-competitive allegations of the Complaint.

6. According to the Commission's Regulations, 52 Pa. Code § 5.321, the scope of discovery is broad:

(c) *Scope.* Subject to this subchapter, a party may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of another party, including the existence, description, nature, content, custody, condition and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of a discoverable matter. It is not ground for objection that the information sought will be inadmissible at hearing if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

52 Pa. Code § 5.321 (emphasis added)

7. This interrogatory seeks to understand how NFGD is currently accounting for the expense of its own \$20 million cyber security insurance policy.¹ While NFGD may not have sought recovery of the costs of its cyber security insurance policy in a rate case to date, how NFGD is accounting for its cyber security insurance expense and how it intends to apply it to customers in a future rate case is critical to both the competitive market and the competitive safeguards which promote competitive supplier access and wholly within the scope of this proceeding. If, for instance, NFGD intends to recover an appropriate allocation of the costs of its \$20 million cyber security insurance policy through its default service charge, those expenses would not negatively impact the competitive market and competitive suppliers, as those costs would be rightly borne by

¹ This question was a follow-up to previously produced discovery response to NFG NGSs Set II, No. 10 which requested "How does NFGD expect to seek recovery for the cost of the \$20 million cybersecurity insurance policy" to which NFGD responded:

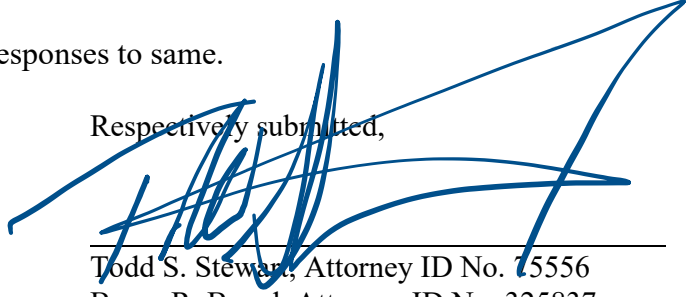
To date, Distribution has not sought recovery of the cost of its cybersecurity insurance policy from customers. Distribution has not determined how it will seek recovery in the future or when it might seek recovery in the future. Distribution believes, however, that the costs of obtaining cybersecurity insurance are prudent and necessary costs for every business in Pennsylvania that has access to and/or maintains confidential utility customer information.

those who benefit from NFGD's decision to acquire its \$20 million cyber security insurance policy. Recovering an appropriate allocation through default service charges would have no interplay with the allegations of this Complaint or the anti-competitive nature of Supplement No. 207. If, however, NFGD intends to recover the costs of its cyber security insurance policy solely through its distribution charges, that: 1) directly impacts the Complainants' competitive pricing by making default service relatively more attractive than competitive offers; 2) is anti-competitive which would artificially inflate the costs of NGSs competitive service; and 3) would ultimately function as an anti-competitive cost assignment that would assign the costs of NFGD's cyber security insurance to customers who chose to shop for their supply in the competitive market who would ultimately also be charged for Supplier's cybersecurity insurance under the terms of Supplement No. 207. The costs for Complainants to maintain the cyber security insurance enshrined in NFGD's tariff must be directly recovered through customer charges – the expense cannot be recovered under any rate recovery mechanism such as those available to NFGD. In sum, if NFGD intends to recover its cyber security insurance costs solely through distribution rates, Complainants customers would be forced to pay both NFGD's and Complainants' cyber security expenses which would ultimately harm the competitive market by the anti-competitive, and unreasonable provisions enshrined in NFGD's Tariff Supplement No. 207.

8. Simply put, the information sought in Set III., No. 1 is relevant and falls within the scope this proceeding and the anti-competitive, market barrier allegations regarding Supplement No. 207 raised in the Complaint. Accordingly, the Joint Complainants contend that the Objections cannot stand and must be dismissed.

WHEREFORE the Joint Complainants respectfully move the Honorable Presiding Administrative Law Judge, to dismiss Respondent's Objections to Set III, No. 1 and to Compel Respondent to provide complete and timely responses to same.

Respectively submitted,

A large, stylized handwritten signature in blue ink, consisting of several overlapping loops and lines, positioned above the typed name and contact information.

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Counsel for the Joint Complainants

DATED: February 25, 2021

Attachment A

**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. :

**OBJECTIONS OF NATIONAL FUEL GAS DISTRIBUTION CORPORATION TO
INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS OF
ENERGYMARK LLC, VINEYARD OIL AND GAS COMPANY,
MID AMERICAN NATURAL RESOURCES LLC,
AND TOTAL ENERGY RESOURCES LLC’S – SET III**

I. INTRODUCTION

Pursuant to 52 Pa. Code § 5.342(c), National Fuel Gas Distribution Corporation (“Distribution” or the “Company”), by and through its attorneys, hereby serves these objections to Question No. 1 of the third set of interrogatories of EnergyMark LLC, Vineyard Oil and Gas Company, Mid American Natural Resources LLC, and Total Energy Resources LLC (collectively the “Complainants” or the “NFG NGSs”) served on February 15, 2021, by email only (“NFG NGSs Set III”).¹

As explained below, Distribution objects to this interrogatory on the grounds that it seeks irrelevant information and is not reasonably calculated to lead to the discovery of admissible evidence, and seeks information that is outside the scope of this proceeding.

¹ Consistent with the modifications to the Pennsylvania Public Utility Commission’s (“Commission”) discovery regulations agreed upon by the parties to this proceeding, counsel for Distribution called counsel for the NFG NGSs and orally objected to NFG NGSs Set III, Question 1 on February 18, 2021.

In support, Distribution states as follows:

II. OBJECTIONS

A. OBJECTION TO NFG NGS-NFGD-III-1

1. NFG NGSs Set III, Question 1 requests the following:

With regard to NFGD's response to NGS parties Set II, No. 10, wherein NFGD states that to date it has not sought rate recovery for the costs of its \$20 million cyber security insurance policy; explain the accounting for the expense of the policy; that is, in what account in its books did NFGD record the expense, and will it be necessary to transfer that balance to a different account in order to seek recovery from customers in a future rate case?

2. The Company objects to NFG NGSs Set III, Question 1 on the grounds that it seeks irrelevant information and is not reasonably calculated to lead to the discovery of admissible evidence, and seeks information that is outside the scope of this proceeding.

3. This interrogatory involves a prior discovery request issued by the NFG NGSs, and Distribution's full and complete response to this request. The referenced request (NFG NGSs-NFGD-II-10) requested "How does NFGD expect to seek recovery for the cost of the \$20 million cybersecurity insurance policy?"

4. Distribution timely responded to this request as follows:

To date, Distribution has not sought recovery of the cost of its cybersecurity insurance policy from customers. Distribution has not determined how it will seek recovery in the future or when it might seek recovery in the future. Distribution believes, however, that the costs of obtaining cybersecurity insurance are prudent and necessary costs for every business in Pennsylvania that has access to and/or maintains confidential utility customer information.

5. Distribution has not yet sought recovery of the costs of its cybersecurity insurance policy from customers and has not yet determined how it will seek recovery in the future. The accounting information for the costs of Distribution's cybersecurity insurance policy are irrelevant when the Company does not know how or when it might seek recovery. In this regard, NFG NGSs

Set III, Question 1 not only seeks irrelevant information, but information that, based on the Company's prior response, would be speculative at this time.

6. Furthermore, how Distribution accounts for the costs of its cybersecurity insurance policy is not relevant to the material issues in this proceeding and is not reasonably calculated to lead to the discovery of admissible evidence. The NFG NGSs Complaint challenges the requirement that natural gas suppliers affirm they carry cybersecurity insurance with minimum coverage of \$5 million per incident, consistent with Distribution's Commission-approved tariff and DSA approved by the Commission's Order *National Fuel Gas Distribution Corporation, Supplement No. 207 Tariff Gas Pa. P.U.C. No. 9*, Docket No. R-2019-3010744 (Order entered Aug. 29, 2019). The Complaint does not allege or otherwise challenge (a) Distribution's own cybersecurity insurance policy, (b) the reasonableness or prudence of Distribution's own cybersecurity insurance policy, and/or (c) the recoverability of any costs associated with Distribution's cybersecurity insurance policy. Therefore, this discovery request, which specifically focus on the accounting of the costs of Distribution's cybersecurity insurance policy, is irrelevant, not reasonably calculated to lead to the discovery of admissible evidence, and outside the scope of this proceeding.

7. For these reasons, this interrogatory is irrelevant, not reasonably calculated to lead to the discovery of admissible evidence, and outside the scope of the proceeding.

III. CONCLUSION

WHEREFORE, National Fuel Gas Distribution Corporation objects to NFG NGSs Set III, Question No. 1 on the grounds that it seeks irrelevant information and is not reasonably calculated to lead to the discovery of admissible evidence, and seeks information that is outside the scope of this proceeding. Moreover, the Company reserves the right to object to future interrogatories, requests for admissions, and requests for production of documents, including any instructions and definitions contained therein.

Respectfully submitted,



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Date: February 22, 2021

Counsel for National Fuel Gas Distribution Corporation