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File #: 180345

March 1, 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:

Attached for filing is the Answer to Joint Complainants' Motion to Dismiss Objections and Compel Responses to Set III, No. 1 Discovery 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  
Attachment

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**

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Garrett P. Lent

Date: March 1, 2021

**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. :

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**ANSWER OF NATIONAL FUEL GAS DISTRIBUTION CORPORATION TO THE  
JOINT COMPLAINANTS’ MOTION TO DISMISS OBJECTIONS AND COMPEL  
RESPONSES TO SET III, NUMBER 1 DISCOVERY**

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

National Fuel Gas Distribution Corporation (“Distribution” or the “Company”) hereby files this Answer, pursuant to Section 5.342 of the Pennsylvania Public Utility Commission’s (“Commission”) regulations, 52 Pa. Code § 5.342, to the Motion to Dismiss Objections and Compel Responses to Joint Complainants’ Interrogatories, Set III, No. 1 (“Motion”) filed by EnergyMark LLC, Vineyard Oil and Gas Company, Mid American Natural Resources LLC, and Total Energy Resources LLC (collectively the “Joint Complainants” or the “NFG NGs”) on February 25, 2021. As explained below, the Joint Complainants’ Motion should be denied because the disputed interrogatory set forth in NFG NGs’ Set III, No. 1 is not relevant and is not likely to lead to the discovery of relevant or admissible evidence in this proceeding.

In support thereof, Distribution states as follows:

## **I. BACKGROUND**

1. On April 27, 2020, the Joint Complainants 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.

2. 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.

3. On February 15, 2021, the Joint Complainants served Set III, No. 1. The disputed request sought the following information:

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?

4. On February 18, 2021, consistent with the modifications to the Commission's discovery regulations agreed upon by the parties to this proceeding, counsel for Distribution called counsel for the NFG NGSs and orally objected to this discovery request.

5. On February 22, counsel for Distribution served its written objections to the discovery request. It objected as follows:

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.

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?"

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.

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.

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.

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.

As discussed more fully herein, Distribution has demonstrated that the information sought by this interrogatory is irrelevant and not reasonably calculated to lead to the discovery of evidence that is admissible in this proceeding.

6. Distribution hereby files this Answer to the Joint Complainants' Motion with respect to NFG NGSs Set III, No. 1.

## **II. ANSWER TO THE MOTION TO COMPEL**

7. The Commission's regulations and precedent limit discovery to information that is relevant to the subject matter involved in the pending proceeding. Section 5.321(c) of the Commission's regulations states that:

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 a 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.

52 Pa. Code § 5.321(c) (emphasis added). In addition, the information sought by discovery must be “reasonably calculated to lead to the discovery of admissible evidence.” *Id.*

8. Discovery seeking information outside the scope of a pending proceeding is impermissible. *See, e.g., Petition of the Borough of Cornwall for a Declaratory Order*, 2015 Pa. PUC LEXIS 433, at \*19-21 (Order Denying Motion to Compel, Sept. 11, 2015) (“*Cornwall*”); *Re Structural Separation of Bell Atlantic-Pennsylvania, Inc. Retail and Wholesale Operations*, 2000 Pa. PUC LEXIS 49, at \*18-19 (July 20, 2000) (holding a presiding officer correctly determined discovery related to the *need* for structural separation was outside the scope of proceeding regarding the *form, nature and details* of the separation). Indeed, the question is whether this issue is relevant to the subject matter of this proceeding. *See Cornwall*, 2015 Pa. PUC LEXIS, at \* 20-21.

9. Importantly, the Complainants’ Motion sets forth the scope of the subject matter of this proceeding and explained “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.” Motion ¶ 4 (emphasis added).

10. The fundamental disconnect between Set III, No. 1, and the subject matter of this proceeding, however, is that the Complaint (a) did not allege that Distribution's own cybersecurity insurance policy was unreasonable, (b) did not allege that the costs of Distribution's own cybersecurity insurance policy were not prudent, and (c) did not allege that Distribution's accounting or recovery of the costs of its own cybersecurity insurance policy were unreasonable. Rather, the Complaint raised specific allegations regarding 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). In this regard, the subject matter of the Complaint and the information sought by Set III, No. 1 is apples to oranges. The Joint Complainants' attempt to expand the subject matter of the allegations raised in their Complaint to attempt to discover information that is wholly irrelevant to and outside the scope of the allegations they raised should be rejected.

11. In addition, the Joint Complainants effectively admit that the information sought by Set III, No. 1 is speculative and, therefore, irrelevant. They acknowledge that NFGD has not sought recovery of the costs of its policy to date, and further attempt to justify the request by arguing "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." Motion ¶ 7 (emphasis added).

12. Distribution has clearly stated that it “has not determined how it will seek recovery in the future or when it might seek recovery in the future.” *See* Response to Set II, No. 1 (quoted in Motion ¶ 7, n.1). Or, in the Joint Complainants’ words, Distribution has made no determination how “it intends to apply...[cybersecurity insurance expense] to customers in a future rate case.” *See* Motion ¶ 7. Faced with this unequivocal response, the Joint Complainants’ request simply asks the Company to speculate regarding how its accounting for the expense may affect its future recoverability (at some unspecified future date) and whether Distribution may or may not transfer the balance to a different account in order to seek recovery (in some unspecified way) from customers in a future rate case (at some unspecified future date). The discovery request does nothing more than request Distribution to speculate as to future actions it may or may not take. Such speculation is not relevant to any of the material issues of this proceeding.

13. For the reasons more fully explained above, the NFG NGSs’ Motion should be denied because the information sought by Set III, No. 1 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 respectfully requests that Administrative Law Judge Dennis J. Buckley deny the Motion to Compel of the NFG NGs dated February 25, 2021.

Respectfully submitted,



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Date: March 1, 2021

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