

Docket No.: C—2020—3019621

Hearing Date: April 29, 2021

PIOGA Exhibits:

Statement No. 1: Testimony of Dan Weaver

Statement No. 1—SR: Testimony of Dan Weaver

Respondent NFGD Exhibits:

NFGD Statement No. 1—R: Rebuttal Testimony of Chris Cej (corrected)

NFGD CC—1: Press Release

NFGD CC—2: Revised Data Security Agreement (clean)

NFGD CC—3: NFGD Teleconference Agenda, 10/09/2018

NFGD CC—4: NFGD Teleconference Agenda, 03/21/2019

NFGD CC—5: NFGD Teleconference, 10/10/2019

NFGD CC—6: Pennsylvania Data Security Agreement and Self—Attestation Email

NFGD CC—7: Data Security Agreement

NFGD CC—8: NFGD Teleconference, 03/19/2020

NFGD CC—9: PA NFGD Tarriff Request Email

NFGD CC—10: Responses, Set III

NFGD CC—11: Responses, Set III

NFGD CC—12: Interrogatories and Requests, Set II, PIOGA

NFGD Statement No. 2—R: Rebuttal Testimony of Jeff Grice

JG—1: Interrogatories and Requests, Set I

JG—2: Responses, Set II

JG—3: Responses, Set II

JG—4: Interrogatories and Requests, Set I

CONFIDENTIAL NFGD JG—5:

NFGD JG-6: Response to NFG, Set IV, No. 5

CONFIDENTIAL NFGD JG-7:

Joint Complainants' Exhibits:

Statement No. 1: Direct Testimony and Exhibits of Frank Lacey

Statement No. 1-SR: Surrebuttal Testimony of Frank Lacey

FPL-1: Resume of Frank Lacey

FPL-2: Detailed List of Testimony, Speeches and Paper

Statement No. 2: Direct Testimony of Timothy D. Wright

Statement No. 2-SR: Surrebuttal Testimony of Timothy D. Wright

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

EnergyMark LLC, Vineyard Oil & Gas	:	
Company, Mid American Natural	:	
Resources LLC, and Total Energy	:	
Resources LLC,	:	C-2020-3019621
Complainants	:	
v.	:	
	:	
National Fuel Gas Distribution Corporation	:	
Respondent	:	

**DIRECT TESTIMONY
OF
DAN WEAVER**

on behalf of the

**PENNSYLVANIA INDEPENDENT
OIL & GAS ASSOCIATION**

National Fuel Gas Distribution Corporation Data Service Agreement for NGSs

Dated: March 5, 2021

1 **Q. WHAT IS YOUR NAME AND OCCUPATION.**

2 A. I am Dan Weaver, President and Executive Director of the Pennsylvania Independent Oil
3 & Gas Association (PIOGA).

4 **Q. WHAT IS PIOGA?**

5 A. PIOGA is a trade association representing oil and natural gas interests throughout
6 Pennsylvania. PIOGA was formed by the April 1, 2010 merger of the Pennsylvania Oil
7 and Gas Association, known as POGAM, into the Independent Oil and Gas Association
8 of Pennsylvania, known as IOGA of PA, and the name changed to its present name.
9 PIOGA's members include oil and natural gas producers and Commission-licensed
10 natural gas suppliers and marketers (NGSs) that produce, transport and market natural
11 gas, including production from Pennsylvania conventional and unconventional
12 formations, on the pipelines of Pennsylvania natural gas distribution companies,
13 including the National Fuel Gas Distribution Corporation (NFGD).

14 **Q. WHAT IS YOUR EDUCATIONAL AND PROFESSIONAL BACKGROUND?**

15 A. I am a Penn State University graduate with a degree in History. I was born and raised in
16 in the heart of the historic oil industry, Oil City, Pennsylvania. I served 11 years as a
17 Museum Educator at the Drake Well Museum in Titusville and one two-year term as the
18 Manager of the Friends of Drake Well Museum. I was instrumental in the creation of the
19 Drake Well Museum Mobile Energy Education Training Unit (MEET-U trailer), a
20 portable classroom that has traveled over 200,000 miles to provide information about
21 energy to students and the public in Pennsylvania, Ohio, West Virginia, and New York.
22 Prior to becoming PIOGA President and Executive Director in 2016, I was Director of
23 Public Outreach at PIOGA where I was responsible for communications and public
24 education. I launched the PIOGA Energy Education Program (PEEP), a “teach-the-

1 teachers” program for educators in grades 5 through 8, to provide age-appropriate energy
2 curriculum for future generations.

3 **Q. WHAT DO YOU DO AS PRESIDENT AND EXECUTIVE DIRECTOR OF**
4 **PIOGA?**

5 A. I work closely with elected leaders, regulators and the civic community to advance
6 responsible development of Pennsylvania oil and natural gas and to promote a favorable
7 environment for the success of the exploration and production, transportation and
8 downstream use of Pennsylvania natural gas. To support these efforts I direct and
9 participate in PIOGA’s lobbying and educational outreach activities, committees,
10 preparation of public comments, and technical training workshops. I also provide
11 information in support of our litigation, including participating in negotiations with
12 natural gas distribution companies (gas utilities) regarding matters affecting the
13 operations of our producer and NGS members as well as providing testimony in
14 Pennsylvania Public Utility Commission (PUC) proceedings, which may involve gas
15 utilities’ rates, terms and conditions of service to producers, NGSs and customers.

16 **Q. WHAT IS YOUR EXPERIENCE IN THE OIL AND NATURAL GAS**
17 **INDUSTRY?**

18 A. I consider myself the conductor of the orchestra – I may not have played every
19 instrument but I know what they should look and sound like. I have been intimately
20 involved with the oil and gas industry for nearly two decades, including conventional and
21 unconventional. I have spent time on both rotary and percussion drillings, while making
22 hole and servicing wells. I have been on completion jobs including sand notching,
23 nitrogen fracs and high volume multistage lateral stimulations. I have had the
24 opportunity to work with and learn from some of the most technically proficient leaders

1 and operators in the industry as to how our industry works, including the relationships
2 between and among producers, marketers, gas utilities and customers.

3 **Q. ON WHOSE BEHALF ARE YOU TESTIFYING IN THIS PROCEEDING?**

4 A. I am testifying on behalf of PIOGA. .

5 **Q. WHAT ARE PIOGA’S INTERESTS IN THIS PROCEEDING?**

6 A. PIOGA’s primary interest in this proceeding is the increased and unnecessary cost that
7 would be imposed on PIOGA member NGSs and possibly on PIOGA member producers
8 by NFGD’s tariff requirement that “Energy Service Entities” (ESEs) accessing NFGD’s
9 customer information enter into a Data Security Agreement (DSA), which requires the
10 ESEs to purchase and carry cybersecurity insurance with coverage of no less than \$5
11 million per incident. ESEs include NGSs under the DSA. PIOGA is also interested in
12 the DSA’s authorization of NFGD oversight of NGSs’ businesses, including the ability to
13 audit and inspect NGSs’ compliance with the DSA.

14 **Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?**

15 A. The purpose of my testimony is to support the NGS complainants’ (Gas Supplier
16 Companies) opposition to the inclusion of the DSA requirements in NFGD’s tariff, and
17 NFGD’s enforcement of these requirements, as unjust, unreasonable and unduly
18 burdensome.

19 **Q. WHAT IS YOUR UNDERSTANDING OF HOW THE DSA REQUIREMENTS
20 BECAME PART OF NFGD’S TARIFF?**

21 A. My understanding is that in June 2019 NFGD submitted to the Pennsylvania Public
22 Utility Commission (PUC or Commission) Supplement No. 207 to its PUC-approved gas
23 tariff requiring, among other things, NGSs to enter into the DSA described above,
24 patterned after the DSA NFGD was then currently using in its New York service

1 territory, which had already been executed by the majority of NGSs active in the NFGD's
2 New York territory. I understand that the Commission approved the DSA requirement
3 for inclusion in NFGD's tariff effective August 30, 2019, "without prejudice to any
4 issues that may be raised by any party with respect to the tariff changes implemented by
5 Supplement No. 207 to Tariff Gas Pa. P.U.C. No. 9 in future proceedings," as the tariff
6 change proposals had been uncontested.

7 **Q. WHY ARE THE DSA TARIFF PROVISIONS UNJUST, UNREASONABLE AND**
8 **UNDULY BURDENSOME?**

9 In addition to the reasons set forth in the Gas Supplier Companies' testimony, these
10 provisions would unnecessarily impose increased costs on NGSs that, under some
11 circumstances, the NGSs may be able to pass onto their producers, in whole or in part.
12 One PIOGA member on NFGD's system estimated that the cost of a cybersecurity
13 insurance policy with coverage of \$5 million per incident would cost between \$25,000-
14 \$30,000 per year. Most of the PIOGA member NGSs on NFGD's system already have
15 cybersecurity insurance policies and, as Gas Supplier Companies witness Frank Lacey
16 explains, cybersecurity insurance does not prevent a cyber incident and an NGSs' policy
17 would not provide coverage to NFGD; instead, NFGD's cybersecurity insurance would
18 provide the coverage for NFGD. In addition, PIOGA producer and NGS members that
19 provide natural gas to end-users on NFDC's system also have various measures in place
20 to protect their information technology systems from cyber-attacks, including: firewalls;
21 virtual private networks (VPNs) for direct connect external users; anti-virus software;
22 regular data back-ups and offsite copy; password protected systems; directory domain
23 services to control gateway access; third-party scanning of incoming and outgoing email
24 for viruses and malware. PIOGA is not aware of any of its NGS or producer members

1 suffering a successful cyber-attack, meaning an attempt that breached a company's
2 firewall.

3 **Q. DOES THIS CONCLUDE YOUR DIRECT TESTIMONY?**

4 **A. Yes, but I reserve the right to address issues raised by NFGD that may affect the interests**
5 of PIOGA and its members.

VERIFICATION

I, Dan Weaver, hereby state that:

The foregoing testimony, marked as PIOGA St. No. 1, was prepared by me or at my direction and under my direct supervision and, if at hearing I were asked the same questions set forth in this testimony, my responses would be the same as set forth above.

The facts set forth above are true and correct to the best of my knowledge, information and belief, and I expect to be able to prove the same at a hearing held in this matter.

I understand that the statements herein are made subject to the penalties of 18 Pa. C.S. § 4904 (relating to unsworn falsification to authorities).



Dan Weaver

Dated: March 5, 2021

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

EnergyMark LLC, Vineyard Oil & Gas	:	
Company, Mid American Natural	:	
Resources LLC, and Total Energy	:	
Resources LLC,	:	C-2020-3019621
Complainants	:	
v.	:	
	:	
National Fuel Gas Distribution Corporation	:	
Respondent	:	

**SURREBUTTAL TESTIMONY
OF
DAN WEAVER**

on behalf of the

**PENNSYLVANIA INDEPENDENT
OIL & GAS ASSOCIATION**

National Fuel Gas Distribution Corporation Data Service Agreement for NGSs

Dated: April 16, 2021

1 **Q. PLEASE STATE YOUR NAME AND OCCUPATION.**

2 A. I am Dan Weaver, President and Executive Director of the Pennsylvania Independent Oil
3 & Gas Association (PIOGA).

4 **Q. HAVE YOU TESTIFIED PREVIOUSLY IN THIS PROCEEDING?**

5 A. Yes. I have provided direct written testimony marked as PIOGA Statement No. 1 in this
6 proceeding.

7 **Q. ARE YOU FAMILIAR WITH OTHER TESTIMONY IN THIS MATTER?**

8 A Yes, I am familiar with Gas Supplier Companies witness Frank Lacey's direct testimony
9 (Joint Complainants' Statement No. 1) concerning the unreasonableness of NFGD's tariff
10 provisions, including the assertion of authority beyond the scope allowed for utilities. I
11 am also familiar with NFGD's rebuttal testimony (Chris Cej, Statement 1-R) contesting
12 assertions of the tariff's unreasonableness in my written direct testimony and Mr. Lacey's
13 written direct testimony.

14 **Q. WHAT IS THE PURPOSE OF YOUR SURREBUTTAL TESTIMONY?**

15 A. The purpose of my surrebuttal testimony is to respond to issues raised by Mr. Cej in his
16 rebuttal testimony.

17 **Q. WHAT ISSUES THAT CONCERN PIOGA ARE RAISED BY MR. CEJ'S**
18 **REBUTTAL TESTIMONY?**

19 A. Mr. Cej asserts that PIOGA member natural gas suppliers (NGSs) and producers have
20 recognized the value of NFGD's tariff cybersecurity insurance requirements through their
21 independent acquisition of cybersecurity insurance and that this contradicts Mr. Lacey's
22 testimony that these requirements mostly serve as a market barrier. Mr. Cej has also
23 asserted that the tariff provisions are not unreasonable.

24

1 **Q. IS MR. CEJ ACCURATE IN STATING THAT PIOGA MEMBERS’**
2 **INDEPENDENTLY ACQUIRING CYBERSECURITY INSURANCE**
3 **CONSTITUTES SUPPORT, AND RECOGNITION OF, THE VALUE OF NFGD’S**
4 **TARIFF REQUIREMENTS?**

5 A. No. PIOGA members have acquired cybersecurity insurance and adopted other measures
6 that each member independently determined, based on each member’s circumstances, are
7 narrowly tailored to fit their needs and are cost-effective, as Mr. Lacey’s direct testimony
8 explains generally. But not all of the PIOGA member producers delivering into NFGD’s
9 system have acquired cybersecurity insurance. The NFGD’s blanket tariff requirement of
10 \$5 million per incident cybersecurity insurance significantly exceeds the level of
11 coverage acquired by the PIOGA member NGSs operating on NFGD’s system that are
12 not part of a larger corporate family. PIOGA members’ independently acquiring
13 cybersecurity insurance does not indicate that they recognize the value of \$5 million per
14 incident cybersecurity insurance, the value in making the acquisition of \$5 million per
15 incident cybersecurity insurance mandatory, or that they see this tariff requirement as
16 anything but a market barrier and attempt to exercise authority NFGD does not have. As
17 a result, PIOGA members’ independently acquiring cybersecurity insurance should not
18 be viewed as approval or support of NFGD’s tariff provisions involved in this
19 proceeding.

20 **Q. IS MR. CEJ ACCURATE IN DESCRIBING THE TARIFF PROVISIONS AS NOT**
21 **UNREASONABLE?**

22 A. No. As I explained in my direct testimony, the tariff requirements would unnecessarily
23 impose increased costs on NGSs and possibly their producers, some of whom have
24 already established cybersecurity measures that fit their needs. These increased costs
25 would be imposed for a product that, as Mr. Lacey’s direct testimony explains, ultimately
26 does nothing to prevent cyberattacks and merely provides a means for the insured to

1 recoup losses. Additionally, per my testimony above, I agree with the reasoning set forth
2 in Mr. Lacey’s testimony that the choice to acquire cybersecurity insurance is best made
3 by the Energy Service Entities themselves based on an evaluation of their particular
4 situations. Mr. Lacey explains that risk management is an area where energy supply
5 companies have a significant level of expertise. This is not a decision that should be
6 mandated by a utility that is likely unaware of the circumstances and needs of each
7 Energy Service Entity. It becomes clear that the requirement to purchase cybersecurity
8 insurance serves little purpose besides acting as a market barrier, for the reasons stated in
9 Mr. Lacey’s direct testimony. Mr. Cej’s rebuttal testimony does not refute my or Mr.
10 Lacey’s testimony that NFGD’s tariff provisions are unjust, unreasonable, and unduly
11 burdensome.

12 **Q. DOES THIS CONCLUDE YOUR REBUTTAL TESTIMONY?**

13 A. Yes, but I reserve the right to address issues raised by other parties concerning the issues
14 addressed in my testimony.

VERIFICATION

I, Dan Weaver, hereby state that:

The foregoing testimony, marked as PIOGA St. No. 1-SR, was prepared by me or at my direction and under my direct supervision and, if at hearing I were asked the same questions set forth in this testimony, my responses would be the same as set forth above.

The facts set forth above are true and correct to the best of my knowledge, information and belief, and I expect to be able to prove the same at a hearing held in this matter.

I understand that the statements herein are made subject to the penalties of 18 Pa. C.S. § 4904 (relating to unsworn falsification to authorities).



Dan Weaver

Dated: April 16, 2021

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

National Fuel Gas Distribution Corporation

Statement No. 1-R

Rebuttal Testimony of Christopher Cej

**Topics Addressed: Filing And Implementation Of Pennsylvania
Tariff And DSA
Reasonableness of Distribution's Tariff And DSA**

Dated: March 25, 2021

1 **I. INTRODUCTION**

2 **Q. Please state your name and business address.**

3 A. My name is Christopher Cej. My business address is 6363 Main Street, Williamsville, NY
4 14221.

5

6 **Q. By whom are you employed and in what capacity?**

7 A. I am the General Manager of the Gas Supply Administration Department for National Fuel
8 Gas Distribution Corporation (“Distribution” or the “Company”).

9

10 **Q. What are your primary duties and responsibilities as General Manager of the Gas
11 Supply Administration Department for Distribution?**

12 A. I am responsible for overseeing several functional areas within the Gas Supply
13 Administration Department, including gas procurement, gas accounting, gas planning, and
14 transportation services. These functional areas manage the Company’s gas trading
15 activities, pipeline and storage asset acquisition and utilization activities, as well as the
16 transportation activities conducted on the Company’s system. More specifically, for the
17 purpose of this testimony, the Gas Supply Administration Department is responsible for
18 managing the activities of NGS and local producers operating on the Company’s system
19 and enforcing their responsibilities and obligations as specified in the Company’s approved
20 tariff and Gas Transportation Operating Procedures (“GTOP”). Such responsibilities
21 include interfacing with the Company electronic systems including the Transportation
22 Scheduling System (“TSS”) and Consumer Business System that among other functions,
23 transmits and receives customer account and usage information.

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Q. What is your educational and professional background?

A. I graduated from the State University of New York at Buffalo with a Bachelor of Science degree in Civil Engineering in 1991. I have worked in the natural gas industry and, in particular, for Distribution in various roles since 1992. In January 1992, I started my career with Distribution as a Management Trainee in the Risk Management-Environmental Affairs Department. In this role, I received Certified Hazardous Materials Manager (“CHMM”) certification through the Institute of Hazardous Materials Management. In 2000, I was transferred to the Energy Services Department and received certification as a Chartered Industrial Gas Consultant through the Gas Research Institute. In October 2004 was again transferred to Gas Supply Administration. I was promoted to my current position in February 2018.

Q. Have you previously testified before the Pennsylvania Public Utility Commission (“Commission”) or any other regulatory commission?

A. Yes. I have testified on behalf of Distribution before the Commission in several purchased gas cost proceedings initiated under Section 1307(f) of the Public Utility Code, 66 Pa.C.S. § 1307(f), and Sections 53.64 and 53.65 of the Commission’s regulations, 52 Pa. Code §§ 53.64 and 53.65, including at the following dockets: 2018: R-2018-2641577, R-2019-3006858, R-2020-3015251, and R-2021-3023541.

In addition, I have offered testimony in a management audit matter before the New York Public Service Commission (“NYPSC”) at NYPSC Docket No. 18-G-0394, and in a gas planning order matter at NYPSC Docket No. 20-G-0131.

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Q. Please provide a summary of your rebuttal testimony.

A. In my testimony, I will respond to certain of the arguments and issues raised in: (1) the Direct Testimony of Frank Lacey on behalf of EnergyMark LLC, Vineyard Oil and Gas Company, Mid American Natural Resources LLC, and Total Energy Resources LLC (collectively the “NFG NGSS” or “Joint Complainants”) served on March 5, 2021 (“Joint Compl. St. 1”); (2) Direct Testimony of Timothy D. Wright the Joint Complainants served on March 5, 2021 (“Joint Compl. St. 2”); and (3) the Direct Testimony of Dan Weaver on behalf of the Pennsylvania Independent Oil & Gas Association (“PIOGA”) served on March 5, 2021 (“PIOGA St. 1”).

With respect to the testimony offered by the Joint Complainants, I also respond to certain claims made by the Joint Complainants and PIOGA regarding the reasonableness of the cybersecurity requirements set forth in Supplement No. 207 to Tariff Gas – PA PUC No 9 (“Supplement No. 207”) and the associated Pennsylvania Data Security Agreement (“DSA”) and Self-Attestation (“SA”). Contrary to the Joint Complainants’ and PIOGA’s claims, the cybersecurity requirements that were proposed by Distribution and approved by the Commission are just, reasonable and in the public interest.

In addition, I respond to the claims made by the Joint Complainants’ witnesses regarding the process by which Distribution notified natural gas suppliers (“NGSS”) on its system of its intent to implement Supplement No. 207 and the associated DSA and SA in Pennsylvania and the relationship of this process to the process by which Distribution and several other utilities in New York sought to implement cybersecurity requirements before the NYPSC. As explained below, the Joint Complainants’ misrepresent Distribution’s

1 presentations and statements to Pennsylvania NGSs and the Commission, and attempt to
2 argue the NYPSC can lawfully supplant the authority of the Commission to regulate
3 Distribution's operations in Pennsylvania.

4
5 **Q. Is Distribution offering the rebuttal testimony of any other witnesses?**

6 A. Yes. Distribution is also offering the following piece of Rebuttal Testimony:

- 7 • **NFGD Statement No. 2 – Rebuttal Testimony of Jeff Grice.** Distribution witness
8 Mr. Grice testifies regarding the impacts of the Joint Complainants' proposed relief and
9 also addresses their claims regarding the benefits of being required to obtain
10 cybersecurity insurance.

11
12 **Q. Are you sponsoring exhibits associated with your rebuttal testimony?**

13 A. Yes. Attached to my Rebuttal Testimony are NFGD Exhibits CC-1 through CC-12.

14
15 **II. BACKGROUND REGARDING DISTRIBUTION'S FILING AND**
16 **IMPLEMENTATION OF TARIFF SUPPLEMENT NO. 207 AND THE**
17 **ASSOCIATED DSA**

18 **Q. Before addressing the specific issues raised in the other parties' direct testimony, is**
19 **there any additional background information that would be helpful to the**
20 **Administrative Law Judge and the Commission regarding the Joint Complainants'**
21 **allegations?**

22 A. Yes. Although Joint Complainants' witness Mr. Lacey offers testimony regarding the
23 process that occurred before the NYPSC regarding the implementation of a data security
24 agreement patterned after the DSA proposed for implementation by Distribution in

1 Pennsylvania (*see* Joint Compl. St. 1 at 12-19) and Joint Complainants’ witness Mr. Wright
2 testifies regarding the Joint Complainants’ failure to participate in proceedings before the
3 Commission regarding the implementation of Supplement No. 207 and the DSA (*see* Joint
4 Compl. St 2 at 4-7), neither of these witnesses provides credible testimony regarding
5 Distribution’s motivation for filing Supplement No. 207 and obtaining approval of it in
6 *National Fuel Gas Distribution Corporation, Supplement No. 207 Tariff Gas Pa. P.U.C.*
7 *No. 9, Docket No. R-2019-3010744, at Ordering Paragraph No. 2 (Order entered Aug. 29,*
8 *2019) (“PAPUC Approval Order”).*
9

10 **Q. Why is it important for the Administrative Law Judge and the Commission to be**
11 **provided this additional background information?**

12 A. This background information is necessary to refute the misleading and speculative claims
13 raised by the Joint Complainants. Specifically, Joint Complainants’ witness Mr. Lacey
14 claims that the primary effect of requiring that NGSs obtain a cybersecurity insurance
15 policy with minimum coverage of \$5 million dollars will be to “pad” Distribution’s
16 advantage in the gas supply market by creating a barrier to market entry (Joint Compl. St.
17 1 at 11-12). However, Mr. Lacey’s testimony fails to accurately describe the basis for
18 Distribution seeking to implement specific cybersecurity protection requirements through
19 its Pennsylvania tariff. Furthermore, while Mr. Lacey’s testimony attempts to discredit the
20 importance of cybersecurity insurance by suggesting it’s merely a market entry barrier, Mr.
21 Weaver’s testimony appears to contradict Mr. Lacey’s claim. Mr. Weaver suggests certain
22 PIOGA members recognize the importance and value of such protection by stating that
23 most of the PIOGA members on Distribution’s system currently have cybersecurity

1 insurance.

2

3 **Q. Do public utilities, such as Distribution, regularly maintain confidential and sensitive**
4 **customer information that requires protection?**

5 A. Yes. As a condition to receive service from Distribution, customers are required to provide
6 Distribution with sensitive information that is deemed confidential that is stored in the
7 Company's computer systems. For example, applicants requesting gas service from
8 Distribution will provide personal information that includes name, address, phone
9 numbers, employment information and Social Security Number, although the provision of
10 employment information and a SSN is voluntary. Also, existing customers may utilize the
11 Company's electronic services to submit payments or meter reading.

12

13 **Q. When Distribution obtains this information, is it required to subject it to specific**
14 **treatments and/or protections?**

15 A. Yes. Distribution has strict policies and procedures for acquiring, accessing, storing and
16 disposing of confidential information that includes customer personal identifiable/health
17 information and sensitive company business information. As an example, Distribution
18 policy requires that all confidential or non-public information must be securely managed
19 and accessible to only approved company employees with a legitimate business reason.

20

21 **Q. Has Distribution, or one of its external vendors, been the subject of a cyber-attack?**

22 A. Yes. Distribution's Information Technology ("IT") department is aware of attempted
23 cyber-attacks upon Distribution's Information Systems. However, Distribution is not

1 aware of a successful cyber-attack on its Information Systems.

2 In addition, as explained in Distribution’s New Matter, a cyber-attack occurred on
3 a prominent electronic data interchange (“EDI”) Service Provider that acts as an external
4 vendor for Distribution in March 2018. Although this event did not result in a successful
5 cyber-attack of Distribution’s Information Systems, it precipitated Distribution taking
6 several actions to respond to the attack and also prevent future attacks. Distribution: (a)
7 discussed the event internally, with New York DPS Staff and with other public utilities;
8 (b) notified billing contacts by e-mail and posting on the Company’s website impacted by
9 the event; (c) provided notice when the EDI service was restored; and (d) began
10 coordinating with other utilities regarding the development of a DSA and cyber-security
11 insurance requirements.

12
13 **Q. What other steps did Distribution take following the March 2018 event?**

14 A. In 2018, a group of utilities, including Distribution, that provide service in New York (the
15 “Joint Utilities”) notified energy service companies (“ESCOs”) that they planned to require
16 ESCOs to submit a data security agreement and a self-attestation of information security
17 controls. Distribution provided such notice to ESCOs in New York on June 8, 2018.

18 Thereafter, on June 14, 2018, the NYPSC issued an Order instituting *Proceeding*
19 *on Motion of the Commission Regarding Cyber Security Protocols and Protections in the*
20 *Energy Market Place*, Case 18-M-0376 (“June 2018 Order”). This proceeding dealt with
21 the review and consideration of a data security agreement and self-attestation applicable to
22 ESCOs in New York, before the NYPSC, which was the subject of discussion by the Joint
23 Complainants’ witnesses.

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Q. Was Distribution motivated to take proactive steps to implement cybersecurity protections and requirements through its Pennsylvania tariff in any other way?

A. Yes. As noted in paragraph 13 of Distribution’s New Matter, on September 20, 2018, the Commission announced the creation of a new Office of Cybersecurity Compliance and Oversight (“OCCO”) and the appointment of a Director, Michael C. Holko. The press release issued by the Commission indicated that Director Holko and OCCO would advise the Executive Director and Commissioners on policy issues and procedural improvements involving cybersecurity oversight functions of regulated utilities; draft proposed cyber-related regulations; and oversee the preparation of orders, rulemakings, policy statements, Secretarial Letters and memoranda related to cybersecurity policies and procedures of those regulated utilities. Distribution further understood that, although OCCO was not immediately prepared to implement industrywide cybersecurity actions, the Commission was actively encouraging utilities to consider and implement various cybersecurity measures to protect their systems from attack. Distribution’s filing of Supplement No. 207 with the Commission on June 14, 2019 was further motivated by the Commission’s increased interest in the implementation and improvement of cybersecurity protections at the utility level.

Q. Has the Commission recently issued any additional statements regarding cybersecurity issues?

A. Yes. On March 10, 2021, the Commission issued a cybersecurity advisory on threats to utility systems to water utilities across Pennsylvania with specific cybersecurity

1 information following a recent cyberattack on a water system in Florida and also
2 encouraged all other utilities to maintain good cyber hygiene and remain vigilant in a press
3 release.¹ A copy of the press release and advisory is attached to my testimony as NFGD
4 Exhibit CC-1.

5
6 **Q. Do you agree with Joint Complainants’ witness Mr. Lacey’s claims that Distribution**
7 **sought to implement a requirement that NGSs obtain a cybersecurity insurance**
8 **policy with minimum coverage of \$5 million dollars to “pad” its advantage in the gas**
9 **supply market by creating a barrier to market entry (Joint Compl. St. 1 at 11-12)?**

10 A. No. As described above, Distribution’s proposed cybersecurity requirements, including
11 the \$5 million dollar minimum insurance coverage requirement, were considered and
12 proposed in direct response to a cyber-attack on an external vendor to Distribution. As
13 explained below and in Jeff Grice’s rebuttal testimony (NFGD St. 2-R), this requirement
14 increases cybersecurity protections implemented by suppliers that interface with
15 Distribution’s system and also provides additional protection for Distribution and its
16 customers, including from the financial impacts of restoring systems damaged from a
17 cyber-attack.

18
19 **Q. Do any of the Joint Complainants’ witnesses admit that the New York process was**
20 **prompted by the March 2018 breach?**

21 A. Yes. Although Mr. Lacey and Mr. Wright both levy inaccurate claims regarding
22 Distribution’s motivation for proposing specific cybersecurity requirements, Mr. Wright

¹ <https://www.puc.pa.gov/press-release/2021/puc-issues-cybersecurity-advisory-on-threats-to-utility-systems>

1 admits that “During the first quarter of 2018 there was a security breach at a large utility.
2 This breach prompted all NY utilities, NYPSC and NY energy suppliers to review and
3 work together to strength cybersecurity protections.” Joint Compl. St. 2 at 2 (emphasis
4 added). It is simply disingenuous for the Joint Complainants to assert that Distribution’s
5 proposals were motivated by anything other than the well-known, actual cyber-attack that
6 occurred in 2018.

7
8 **III. REBUTTAL TO OTHER PARTIES’ TESTIMONY REGARDING THE**
9 **REASONABLENESS OF DISTRIBUTION’S TARIFF AND THE ASSOCIATED**
10 **DSA**

11 **Q. Do any of the other parties assert that the cybersecurity requirements set forth in**
12 **Supplement No. 207 and the DSA and SA referenced therein are unjust and**
13 **unreasonable?**

14 A. Yes. Joint Complainants’ witness Mr. Lacey claims that: (a) Distribution’s cybersecurity
15 requirements improperly dictate to NGSs how they manage their businesses and exposures
16 to outside risks (Joint Compl. St. 1 at 6); (b) the SA applicable to Pennsylvania entities is
17 “vague” and should be clarified (Joint Compl. St. 1 at 7-8); (c) the \$5 million minimum
18 coverage requirement does not prevent cybersecurity incidents or “enhance cybersecurity
19 protections” (Joint Compl. St. 1 at 6-9; (d) “it would be bad policy to allow the insurance
20 requirement to stay in the tariff” (Joint Compl. St. 1 at 11); and (e) the DSA impermissibly
21 allows Distribution to audit and oversee the operations of NGSs (Joint Compl. St. 1 at 19-
22 23). In addition, Joint Complainants witness Mr. Wright claims that the cybersecurity
23 insurance requirement would subject EnergyMark LLC (and other of the NFG NGSs) to
24 unreasonable costs that it could not pass on to customers or producers. Joint Compl. St. 2

1 at 8-9.

2 Finally, PIOGA witness Mr. Weaver references and incorporates the Joint
3 Complainants' testimony and further asserts the cybersecurity insurance requirements
4 would impose increased costs on NGSs that may be passed onto producers. PIOGA St. 1
5 at 4. Mr. Weaver further indicates that most of the PIOGA producer and NGS members
6 that provide natural gas to end-users on Distribution's system have various other measures
7 in place to protect their systems from cyber-attacks. PIOGA St. 1 at 4.

8
9 **Q. Does the Company agree with these assertions?**

10 A. No. As explained in my testimony and the rebuttal testimony of Distribution witness Mr.
11 Jeff Grice (NFGD St. 2-R) the cybersecurity requirements set forth in Supplement No. 207
12 and the Pennsylvania DSA are just, reasonable and in the public interest.

13 Below, I will respond to Mr. Lacey's claims that Distribution's cybersecurity
14 requirements improperly dictate to NGSs how they manage their businesses and exposures
15 to outside risks, that it would be bad policy to allow the insurance requirement to stay in
16 the tariff, and that the DSA impermissibly allows Distribution to audit and oversee the
17 operations of NGSs. I note that Distribution witness Mr. Grice responds to Mr. Lacey's
18 claims that the SA applicable to Pennsylvania entities is vague that the \$5 million minimum
19 coverage requirement does not prevent cybersecurity incidents or enhance cybersecurity
20 protections.

21
22 **Q. Before responding to the specific claims raised in Mr. Lacey's testimony, has**
23 **Distribution taken any steps since the Joint Complainants' filed their Complaint to**

1 **attempt to address their concerns?**

2 A. Yes.

3

4 **Q. What steps has Distribution taken?**

5 A. Distribution has hosted a collaborative with Pennsylvania NGSs that provide service in
6 Pennsylvania on Distribution’s system to discuss and evaluate possible revisions to the
7 Pennsylvania DSA and SA. The collaborative was initiated on September 22, 2020. A
8 number of NGSs, including NRG Energy, Inc., EnergyMark LLC, Vineyard Oil and Gas
9 Company (PIOGA member), Direct Energy Business Marketing LLC (PIOGA member),
10 MidAmerican Natural Resources LLC and Total Energy Resources, LLC, participated and
11 provided the Company with feedback regarding the DSA. Based upon the feedback
12 received, Distribution provided the participating NGSs with a redline version of the DSA,
13 and requested further feedback by December 18, 2020, and indicated that it would hold
14 another collaborative meeting to review and discuss any additional feedback if necessary.
15 NRG Energy, Inc., Direct Energy Business Marketing LLC, Vineyard Oil and Gas
16 Company and Stand Energy Corporation provided their comments related to the redline
17 version to the Company. The Company provided additional edits to Pennsylvania NGSs
18 on February 26, 2021, and further indicated it would hold another collaborative if
19 necessary.

20

21 **Q. As a result of the feedback received from NGSs, has Distribution agreed to adopt and**
22 **propose changes to Supplement No. 207 and the associated Pennsylvania DSA and**
23 **SA?**

1 A. Yes. Importantly, Distribution accepted many of the substantive changes proposed by the
2 NGSs, that result in the DSA and SA more closely aligning with the versions of those
3 documents that apply in New York, which the NGSs have indicated are preferable. Among
4 these revisions are: a revision to the auditing requirements that confirms a third-party
5 auditor will be used; an affirmation that the NGS (included in the term “ESE”) will
6 determine and implement the necessary Data Protection Requirements needed to be in
7 compliance with the DSA and SA; elimination of the requirement that an NGS will require
8 a third-party representative that is not connected to Distribution’s system to abide by the
9 DSA and SA; and a confirmation that no encryption in transit is required for email
10 communications. Attached to my rebuttal testimony as NFGD Exhibit CC-2 is an updated
11 version of the DSA, which reflects these changes. Importantly, as explained below, the
12 updated version of the DSA reflected in NFGD Exhibit CC-2 already addresses many of
13 Mr. Lacey’s concerns by revising certain provisions to align with the data security
14 agreement used in New York.

15

16 **Q. Has Distribution agreed to remove the minimum cybersecurity insurance**
17 **requirement as a part of this process?**

18 A. No. As explained by Distribution witness Mr. Grice (NFGD St. 2-R), the minimum
19 cybersecurity insurance requirement provides important additional cybersecurity
20 protections and benefits that cannot adequately be addressed by other means.

21

22 **Q. Mr. Lacey goes on to claim that the SA is vague. Joint Compl. St. 1 at 7-8. Do you**
23 **agree?**

1 A. No.

2

3 **Q. Please explain why not.**

4 A. Distribution believes the proposed changes to the SA that resulted from the collaborative
5 process described earlier clarifies the concerns cited by Mr. Lacey.

6

7 **Q. Have the provisions identified in Mr. Lacey's testimony as being vague been revised
8 to reflect similar provisions in the New York data security agreement?**

9 A. Yes. As reflected in NFGD Exhibit CC-2, Distribution has agreed to revise these
10 provisions as follows. With respect to the term "Third Party Representatives" or
11 "Representatives" that Mr. Lacey claims is undefined, the SA as revised makes clear that
12 the ESE is attesting to its own compliance with the requirements. In addition, Mr. Lacey's
13 claim that the SA is contradictory in requiring parties executing to comply with all
14 requirements, but permits parties to leave blank requirements that do not apply or indicate
15 plans to comply with the Requirement is misplaced. The SA simply recognizes that certain
16 of the Requirements included are specific to the systems an ESE has in place and how it
17 may interface with Distribution's system. Furthermore, the statement that non-compliance
18 "may" result in termination of access recognizes that the termination process must proceed
19 pursuant to the Governing Documents, which include the Company's tariff, the
20 Commission's regulations and any applicable Commission orders. As such, Mr. Lacey's
21 claims that the Pennsylvania SA is vague should be rejected.

22

23 **Q. Please respond to Mr. Lacey's claim that the DSA impermissibly allows Distribution**

1 **to audit and oversee the operations of NGSs. Joint Compl. St. 1 at 19-23.**

2 A. The revised DSA allows a third-party auditor, presumably qualified to conduct such audit,
3 to complete an audit, to review a NGS’s practices, and share the generic results of the audit
4 with Distribution. This proposed revision should fully address the Joint Complainants’
5 concerns. As reflected in NFGD Exhibit CC-2, the audit provision now contemplates a
6 third-party auditor, which will be selected by Distribution by a competitive solicitation and
7 agreed to by the NGS, will be the entity to audit and inspect the ESE. Second, the audit
8 report prepared by the auditor that is transmitted to Distribution will no include confidential
9 information of the NGS. These changes make the audit requirements contained in the
10 Pennsylvania DSA and SA consistent with the audit requirements applied in New York
11 and, importantly, require that the audit be conducted by a third-party auditor rather than
12 Distribution.

13
14 **Q. Please respond to the Joint Complainants’ claim that Distribution’s proposed audit**
15 **requirements would “usurp the authority of the Commission to...monitor the**
16 **practices of the companies it regulates” (Joint Compl. St. 1 at 22).**

17 A. Contrary to Mr. Lacey’s claim, it is reasonable for Distribution to impose this condition on
18 entities that desire to interface with its systems and confidential customer information. I
19 am advised by counsel that public utilities regularly propose, and the Commission regularly
20 approves, rules and regulations that govern the relationship between public utilities and
21 energy suppliers consistent with the Public Utility Code. *See, e.g., Petition of PECO*
22 *Energy Company for Approval of its Default Service Program for the Period from June 1,*
23 *2015 through May 31, 2017, Docket No. P-2014-2409362, 2014 Pa. PUC LEXIS 501*

1 (Recommended Decision Sept. 19, 2014) (recommending approval of settlement to revise
2 portions of EDC's supplier tariff); *Pennsylvania Public Utility Commission v. Peoples*
3 *Natural Gas Company*, Docket No. R-2012-2285985, 2012 Pa. PUC LEXIS 665 (Order
4 dated Sept. 27, 2012) (approving modifications to NGDC supplier tariff in the context of a
5 base rate proceeding); *Petition of PECO Energy Company for Approval of its Natural Gas*
6 *Supplier Purchase of Receivables Program*, Docket No. P-2009-2143588, 2010 Pa. PUC
7 LEXIS 1208 (Order dated Nov. 8, 2010) (approving NGDC NGS POR program and
8 associated modifications to NGDC supplier tariff). Here, Distribution's cyber-security
9 requirements were filed, noticed and approved by the Commission consistent with the
10 Public Utility Code and the Commission's regulations. As such, Mr. Lacey's claim that
11 Distribution's tariff somehow usurps the authority of the Commission is simply incorrect.

12 I further note that Distribution witness Mr. Grice responds to similar assertions on
13 page 6 of Mr. Lacey's testimony, as a part of Mr. Grice's rebuttal testimony (NFGD St. 2-
14 R).

15
16 **Q. Are there any other reasons why the Commission should reject the other parties'**
17 **claims that the cybersecurity requirements in Supplement No. 207 and the DSA are**
18 **unjust and unreasonable and re-affirm the approvals granted in its August 20, 2019**
19 **Order?**

20 **A.** Yes. Neither of the Joint Complainants' witnesses nor PIOGA's witness are being offered
21 to provide expert testimony regarding information technology and/or cybersecurity issues
22 or insurance issues. *See* NFGD Exhibits CC-10 (regarding Mr. Lacey), CC-11 (regarding
23 Mr. Wright) and CC-12 (regarding Mr. Weaver). In this regard, none of these witnesses is

1 qualified to opine on whether the cybersecurity requirements in Supplement No. 207 and
2 the DSA, including the minimum cyber insurance requirements, are just and reasonable.
3 On the other hand, Distribution witness Jeff Grice (NFGD St. 2-R), possesses specific
4 experience regarding the acquisition, management and benefits of obtaining insurance for
5 Distribution. Mr. Grice provides additional reasons why the Commission should reject the
6 claims raised by the other parties.

7
8 **IV. REBUTTAL TO THE OTHER PARTIES' TESTIMONY REGARDING**
9 **DISTRIBUTION'S FILING AND IMPLEMENTATION OF TARIFF**
10 **SUPPLEMENT NO. 207 AND THE ASSOCIATED DSA**

11 **Q. Do any of the other parties address the process by which Distribution filed**
12 **Supplement No. 207 and the DSA with the Commission and ultimately obtain**
13 **approval from the Commission?**

14 A. Yes. Joint Complainants' witness Mr. Lacey broadly testifies regarding the review of the
15 New York utilities' data security agreement and self attestation form that occurred before
16 the NYPSC. *See* Joint Compl. St. 1 at 12-19. He further suggests that Distribution should
17 have revised Supplement No. 207 and the DSA—after they were approved by the
18 Commission—based upon the findings and determinations made by the NYPSC with
19 respect to the New York utilities' proposed data security agreement and self attestation.
20 *See* Joint Compl. St. 1 at 18-19. In addition, Joint Complainants' witness Mr. Wright
21 testifies regarding EnergyMark LLC's participation in the New York process and lack of
22 participation in the Commission's review and approval of Supplement No. 207 and the
23 DSA. *See* Joint Compl. St. 2 at 2-7.

24

1 **Q. Is the review of the data security agreements and self attestation applicable to New**
2 **York utilities and New York suppliers by the NYPSC relevant to the Commission’s**
3 **review of Supplement No. 207 and the DSA?**

4 A. I am advised by counsel that the Commission is not bound by the NYPSC’s review of
5 cybersecurity requirements that are only applicable to New York entities providing services
6 in New York. I am further advised by counsel that the NYPSC does not have the authority
7 to regulate Pennsylvania entities providing services in Pennsylvania. Distribution will
8 address these issues further in its briefs. Nevertheless, I will respond to the specific claims
9 by each witness regarding the New York and Pennsylvania processes below.

10

11 **Q. What does Mr. Lacey claim was Distribution’s justification for including the DSA**
12 **and cybersecurity insurance requirements in Supplement No. 207 (Joint Compl. St. 1**
13 **at 12)?**

14 A. Mr. Lacey claims that Distribution’s Supplement No. 207 filing stated “The proposed DSA
15 (which includes the Self-Attestation form) is patterned after the DSA [NFGD] is currently
16 using in its New York service territory but is modified to reflect Pennsylvania rules and
17 regulations.” Joint Compl. St. 1 at 12. He further asserts that although New York utilities,
18 including Distribution, had received signed data security agreements applicable to New
19 York ESE, the NYPSC had not approved the New York data security agreement when
20 Distribution filed Supplement No. 207 and the DSA in Pennsylvania. Joint Compl. St. 1
21 at 12.

22

23 **Q. Does Joint Complainants’ witness Mr. Wright make similar claims regarding**

1 **Distribution’s justification for including the DSA and cybersecurity requirements in**
2 **Supplement No. 207?**

3 A. Yes. Mr. Wright states that in March 2019 Distribution informed its Pennsylvania NGSs
4 that it would “follow / track the NY DSA process.” Joint Compl. St. 2 at 4. He goes on to
5 claim that EnergyMark LLC was “informed by Distribution that it would not need to file”
6 comments regarding Supplement No. 207 before the Commission in July 2019 because
7 “NFGD intended to follow the outcome of the NYPSC proceeding.” Joint Compl. St. 2 at
8 4.

10 **Q. Does Mr. Wright further describe meetings and communications between**
11 **Distribution and the NFG NGSs in 2019?**

12 A. Yes. Mr. Wright describes marketer meetings held by Distribution on March 21, 2019 and
13 October 10, 2019, and describes presentations made by Distribution. *See* Joint Compl. St.
14 2 at 5-6. In addition, Mr. Wright describes further conversations between representatives
15 from Distribution and EnergyMark LLC that occurred on the phone, over email and in
16 teleconference. *See* Joint Compl. St. 2 at 6-7. Based on these interactions he claims that
17 “NFGD was going against their statements” and suggests that “this is becoming a troubling
18 trend by NFGDC as that they make statements that their actions don’t follow.” Joint
19 Compl. St. 2 at 7.

21 **Q. Do you agree with Mr. Lacey’s or Mr. Wright’s characterizations of the processes**
22 **that occurred before the NYPSC and the Commission, or Mr. Wright’s**
23 **characterizations of Distribution’s communications with its suppliers in**

1 **Pennsylvania?**

2 A. No, I do not. As shown below, these statements are incomplete and omit the details of the
3 actual conversations that occurred. My testimony supplies this missing information.

4
5 **Q. Please explain why you disagree with Mr. Lacey’s description of the process that**
6 **occurred before the NYPSC.**

7 A. As an initial matter, Mr. Lacey’s testimony actually touches on an important point: the
8 timing of the applicable orders issued by the NYPSC and the Commission. On page 19,
9 Mr. Lacey admits that the Commission approved Supplement No. 207, the DSA and the
10 applicable cybersecurity requirements *before* the NYPSC issued its order regarding the
11 New York agreement between New York entities. Joint Compl. St. 1 at 19. Indeed, the
12 Commission approved Supplement No. 207 and the DSA on August 29, 2019, and the
13 NYPSC did not issue its order until October 17, 2019. Furthermore, I note that the
14 Commission’s order approving Supplement No. 207 and the DSA did not contain a
15 condition or requirement that Distribution modify or revise the DSA in accordance with
16 the outcome of the NYPSC proceeding.

17 In this regard, it is clear that the Commission approved Supplement No. 207 and
18 the DSA applicable to Pennsylvania entities providing service in Pennsylvania on the basis
19 of the record before it, as applied to, and the NYPSC subsequently approved the data
20 security agreement and cybersecurity requirements applicable to New York entities
21 providing service in New York on the basis of the record before it. In addition, although
22 the NYPSC declined to adopt a generic cybersecurity insurance provision in its October
23 17, 2019 Order, it explicitly stated that it “may revisit this issue at a future date.” *Order*

1 *Establishing Minimum Cybersecurity and Privacy Protections and Making Other*
2 *Findings*, Case 18-M-0376 (Order dated Oct. 17, 2019). The NYPSC order makes clear
3 that, with respect to the New York agreement affecting New York entities providing
4 service in New York, a cybersecurity insurance requirement was not completely out of the
5 question.

6
7 **Q. Please explain why you disagree with Mr. Lacey’s and Mr. Wright’s descriptions of**
8 **the Commission’s review and approval of Supplement No. 207 and the Pennsylvania**
9 **DSA.**

10 A. Mr. Lacey’s further claim that the DSA referenced in Supplement No. 207 was “patterned”
11 after the data security agreement used in New York also glosses over this point. Joint
12 Compl. St. 1 at 12. At the time the Distribution filed Supplement No. 207 and the DSA
13 with the Commission, the DSA was, in fact, patterned after the agreement that was being
14 used, and had been executed by several New York ESEs, as Mr. Lacey and Mr. Wright
15 both admit. Joint Compl. St. 1 at 15; Joint Compl. St. 2 at 4.

16
17 **Q. Did Distribution ever state that the cybersecurity requirements established by**
18 **Supplement No. 207 and the Pennsylvania DSA would be identical to the New York**
19 **agreement?**

20 A. No. In fact, the tariff filing itself recognized that Supplement No. 207 and the Pennsylvania
21 DSA were “modified to reflect Pennsylvania rules and regulations.” Joint Compl. St. 1 at
22 12 (quoting tariff filing).

1 **Q. Did the Commission approve Supplement No. 207 and the Pennsylvania DSA on the**
2 **condition that they were identical to the New York agreement?**

3 A. No.

4

5 **Q. Did the Commission condition its approval of Supplement No. 207 and the**
6 **Pennsylvania DSA upon Distribution filing revised versions of these documents that**
7 **were identical to the agreement used in New York?**

8 A. No.

9

10 **Q. Mr. Cej, do the Joint Complainants admit that they did not intervene in, or comment**
11 **upon, the Commission’s review of Supplement No. 207 and the Pennsylvania DSA?**

12 A. Yes. Joint Compl. St. 2 at 4. Mr. Wright tries to salvage this admission by constructing a
13 narrative where Distribution is responsible for the decisions of the Joint Complainants’ to
14 participate (or not) in the Commission’s review and consideration of Supplement No. 207
15 and the Pennsylvania DSA. Importantly, Mr. Wright cites an October 10, 2019
16 presentation and a March 21, 2019 presentation, neither of which states the requirements
17 would be identical in both states and both of which were issued prior to Distribution’s filing
18 in July 2019. Joint Compl. St. 2 at 5-6. If the Joint Complainants believed that the as-filed
19 Supplement No. 207 and the Pennsylvania DSA were unreasonable, they could have and
20 should have participated in the proceeding before the Commission.

21

22 **Q. Do the Joint Complainants accurately describe all of Distribution’s communications**
23 **with Pennsylvania suppliers regarding its plans to implement cybersecurity**

1 **requirements?**

2 A. No. While the Joint Complainants focus on two supplier meetings in March and October
3 2019, they do not discuss or reference any of the other applicable supplier/marketer
4 meetings that occurred regarding the cybersecurity requirements.

5
6 **Q. Please summarize the meetings.**

7 A. On October 8, 2018, Distribution made a posting on its website and sent an e-mail to energy
8 marketers in New York providing materials for the marketer/supplier teleconference
9 scheduled for October 9, 2018. On October 9, 2018, Distribution held its Fall 2018
10 Marketer/Supplier Teleconference. A true and correct copy of the associated presentation
11 is attached hereto as NFGD Exhibit CC-3. On slide 38 of the presentation, Distribution
12 stated:

- 13 • “The proposed requirements would follow the NY requirements;”
14 • “PUC Staff is aware of this proposal;”
15 • “PUC Cybersecurity Initiatives – At the 9/20/18, the Commission announced the
16 creation of a new Office of Cybersecurity Compliance and Oversight (‘OCCO’) and the
17 appointment of a Director, Michael C. Holko.”
18 • “A 9/20/18 press release issued concerning this latest step states that Holko will ‘advise
19 the Executive Director and Commissioners on policy issues and procedural
20 improvements involving cybersecurity oversight functions of regulated utilities; draft
21 proposed cyber-related regulations; and oversee the preparation of orders, rulemakings,
22 policy statements, Secretarial Letters and memoranda related to cybersecurity policies
23 and procedures of those regulated utilities.”

24
25 Distribution did not state that the proposed Pennsylvania requirements and the New York
26 requirements were or would be identical or uniform. Moreover, at the time of the
27 presentation, the New York requirements included the cyber-security insurance
28 requirement.

29 On March 20, 2019, Distribution made a posting on its website and sent an e-mail

1 to energy marketers in New York providing materials for the marketer/supplier
2 teleconference scheduled for March 21, 2019. On March 21, 2019, Distribution held its
3 Spring 2019 Marketer/Supplier Teleconference. A true and correct copy of the associated
4 presentation is attached hereto as NFGD Exhibit CC-4. On slide 28 of the presentation,
5 Distribution stated that a Pennsylvania Tariff Filing was planned for May-June, and would
6 include “Cyber-Security requirements” that “would track the New York requirements.”
7 NFGD Exhibit CC-4 at 28. However, Distribution did not state that the proposed
8 Pennsylvania requirements and the New York requirements were or would be identical or
9 uniform. And, again, at this time, the New York requirements included the cyber-security
10 insurance requirement. Distribution also did not state that it would amend the requirements
11 in one state in response to changes made in the other state.

12 On June 14, 2019, Distribution filed Supplement No. 207 with the Commission at
13 Docket No. R-2019-3010744. In its Statement in Support, Distribution stated that the
14 proposed Pennsylvania requirements were “patterned” after the New York requirements.
15 Distribution did not represent in its Statement in Support that the proposed Pennsylvania
16 requirements and the New York requirements were or would be identical or uniform. Both
17 the Statement in Support and the Tariff filed in Pennsylvania clearly identified the cyber-
18 security insurance requirement. Notice of the June 14, 2019 filing was also provided to
19 NGSs via the Company’s website and a copy of the filing was e-mailed to all NGSs
20 operating in the Company’s service territory, including the Complainants. No complaints
21 or interventions were filed, and Supplement No. 207 was approved on August 20, 2019.

22 On October 9, 2019, Distribution made a posting on its website and sent an e-mail
23 to energy marketers in New York providing materials for the marketer/supplier

1 teleconference scheduled for October 10, 2019. On October 10, 2019, Distribution held its
2 Fall 2019 Marketer/Supplier Teleconference. A true and correct copy of the associated
3 presentation is attached hereto as A NFGD Exhibit CC-5. Once again, Distribution did not
4 state that the approved Pennsylvania requirements and the New York requirements were
5 or would be identical or uniform. Distribution also did not state that it would amend its
6 Pennsylvania PA PUC approved tariff if New York revised the filing that was made in New
7 York.

8 On March 17, 2020, Distribution e-mailed copies of the Pennsylvania DSAs and
9 SAs to NGSs operating in its Pennsylvania service territory. The DSAs and SAs were
10 identical in form and content to the DSA and SA approved by the Commission. A true and
11 correct copy of the e-mail and attached DSA and SA are each attached hereto as NFGD
12 Exhibits CC-6 and CC-7, respectively.

13 On March 18, 2020, Distribution made a posting on its website and sent an e-mail
14 to energy marketers in New York providing materials for the marketer/supplier
15 teleconference scheduled for March 19, 2020. On March 19, 2020, Distribution held its
16 Spring 2020 Marketer/Supplier Teleconference. A true and correct copy of the associated
17 presentation is attached hereto as NFGD Exhibit CC-8. Distribution did not state that the
18 approved Pennsylvania requirements and the New York requirements were or would be
19 identical or uniform.

20
21 **Q. What do these meetings and presentations show?**

22 A. They demonstrate that Distribution engaged in consistent communication with its suppliers
23 regarding the implementation of cybersecurity requirements in Pennsylvania, and

1 implemented cybersecurity requirements consistent with its representations and the tariff
2 approved by the Commission.

3
4 **Q. Mr. Wright also notes several other communications between EnergyMark LLC and**
5 **Distribution. Joint Compl. St. 6-7. Please respond.**

6 A. Although Distribution does not have records of the phone call referenced by Mr. Wright, I
7 do recall a single telephone call occurring with former EnergyMark LLC employee, Mr.
8 Cragg Chaffee, and a separate phone call occurring between the Commission and
9 EnergyMark LLC. However, I was able to obtain copies of the e-mails exchanged between
10 myself, Mr. Chaffee, and Commission staff on this subject matter. These e-mails are
11 attached hereto as NFGD Exhibit CC-9.

12 These e-mails reveal that Mr. Wright's statements beginning on Page 6, line 16
13 through Page 7, line 4 contain inaccuracies and warrant correction. He states, "On 3/18/20,
14 we sent an email to NFGDC confused that they were not following/tracking the NY final
15 outcome in PA after NY was finalized." Distribution has no record of receiving an email
16 related to this matter on 3/18/2020. However, Mr. Chaffee forwarded an email to myself
17 and Mr. Daniel Mumford (Commission staff) on March 19, 2020 with an email previously
18 forwarded to the Secretary of the Commission, Rosemary Chiavetta, and others on March
19 18, 2020, as an attachment.

1 Lastly, Mr. Wright states, “We also asked if NFGD had the ability to follow the
2 NY proceedings and file an amendment to the tariff to remove the insurance. Dan
3 Mumford stated NFGD had the ability to do so. Chris Cej stated that he’d be happy to look
4 at anything the commission would like them to.” I refer to my email response, dated
5 3/20/20, for the full context of my response to Mr. Chaffee’s email, dated 3/19/20.
6 Additionally, Mr. Chaffee failed to recognize Mr. Mumford’s comment that Distribution
7 is obligated to enforce the provisions of its approved tariff. Indeed, Mr. Mumford
8 unequivocally states “Tariff provisions have the force of regulation – and failure to comply
9 can lead to being restricted from access to NFG’s system.” See NFGD Exhibit CC-9 at 4.

10
11 **Q. Please summarize your response to the Joint Complainants’ testimony regarding the**
12 **process that occurred before the NYPSC and the Commission’s review and approval**
13 **of Supplement No. 207 and the Pennsylvania DSA.**

14 A. Overall, the Joint Complainants’ testimony leaves out key information regarding the events
15 that prompted Distribution to initiate the processes before the NYPSC and the Commission.
16 In addition, the Joint Complainants’ claims regarding the steps taken by Distribution to
17 protect its information systems and its customers through the implementation of
18 Supplement No. 207 and the Pennsylvania DSA fail to further reflect the collaborative
19 process the Distribution subsequently implemented with respect to the Pennsylvania DSA.

20
21 **V. CONCLUSION**

22 **Q. Does this conclude your rebuttal testimony?**

23 A. Yes. I reserve the right to supplement my testimony as additional issues arise during the

1 course of the proceeding. Thank you.

NFGD Exhibit CC-1
04/29/21 C-2020-3019621



Press Release

PUC Issues Cybersecurity Advisory on Threats to Utility Systems

Published on 3/10/2021

Filed under: [Electric](#) [Gas](#) [Telecommunications](#) [Water and Wastewater](#)

Encourages Steps to Address Vulnerabilities Highlighted by Recent Utility Cyber Attack in Florida and Importance of Strong Cyber Hygiene

HARRISBURG –The Pennsylvania Public Utility Commission (PUC) has issued a Cybersecurity Advisory to water utilities across Pennsylvania with specific cybersecurity information following a recent cyberattack on a water system in Florida – and continues to encourage all other utilities to maintain good cyber hygiene and remain vigilant.

“A PUC-regulated utility is required to have a cybersecurity plan for their operations, and we have regular conversations with our utility community about cybersecurity and developing cyberthreats,” noted PUC Chair Gladys Brown Dutrieuille, who leads the Committee on Critical Infrastructure for NARUC – the national organization for state utility commissioners – and is also a member of NARUC’s national Task Force on Emergency Preparedness, Recovery and Resiliency.

A great deal of the PUC’s time and attention is focused on information-sharing about developing cyber threats, connecting utilities with cybersecurity

resources, and improving communication between different groups of utilities – because a cyberthreat that appears in one sector may be part of a broader effort to penetrate another type of utility or business.

The Commission noted that cyber issues impact every size and type of utility, along with other businesses – further underscoring the importance of strong cybersecurity practices.

Cyber Tips Following Florida Incident

Based on preliminary information about the Florida incident, the PUC's Office of Cybersecurity Compliance and Oversight has issued a [Cybersecurity Advisory](#) - reaching out to regulated water utilities in Pennsylvania about the importance of strong cyber hygiene.

Key recommendations in the PUC Cybersecurity Advisory include:

- **Operating Systems** - Update all computers operating software.
- **Passwords** - Use strong passwords and multiple-factor authentication.
- **Other Safeguards** - Ensure that anti-virus, spam filters and firewalls are updated, properly configured and secure.
- **Training** - Users should be trained to identify and report attempts at social engineering.
- **Respond Quickly** - Identify and suspend access of users exhibiting unusual activity.
- **Study Risks** – Conduct regular physical and cybersecurity risk assessments on critical infrastructure.

Most of these tips are also excellent cyber hygiene practices for every business and every personal computer user, especially with the dramatic increase in remote work since the beginning of the COVID-19 pandemic. The larger number of people now working remotely has expanded the number of possible avenues for cyberattacks and further emphasized the need for constant vigilance by everyone.

Cyber Careers at Utilities

As utilities work to address these new potential threats, the Commission encouraged cyber professionals and young people learning about cybersecurity to consider career opportunities in the utility sector.

“There is a massive state, national and global demand for job candidates with strong cybersecurity skills, and we hope that many will explore possible #UtilityCareers,” PUC Chairman Dutrieuille said. “While our utilities can often ‘hide in plain sight,’ – unnoticed by many unless there is a problem with service – the work of ensuring the safety and reliability of these essential community services can be very rewarding.”

For a new generation searching for opportunities to start their careers, as well as other skilled candidates, like our veterans, looking for new possibilities, utilities represent tens-of-thousands of community-oriented jobs, combining good wages with the satisfaction of knowing that you are serving your neighbors.

About the PUC

The Pennsylvania Public Utility Commission balances the needs of consumers and utilities; ensures safe and reliable utility service at reasonable rates; protects the public interest; educates consumers to make independent and informed utility choices; furthers economic development; and fosters new technologies and competitive markets in an environmentally sound manner.

Visit the PUC’s website at www.puc.pa.gov for recent news releases and video of select proceedings. You can also follow us on Twitter, Facebook, LinkedIn, Instagram and YouTube. Search for the “Pennsylvania Public Utility Commission” or “PA PUC” on your favorite social media channel for updates on utility issues and other helpful consumer information.

#

Contact:

Nils Hagen-Frederiksen

Press Secretary

[717-783-6152](tel:717-783-6152)

nhagen-fre@pa.gov

Need More Help?

If you can't find what you're looking for here, please contact the PA Public Utility Commission. Call us at [1-800-692-7380](tel:1-800-692-7380) or [contact us online](#).

Customer Hotline 1-800-692-7380

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COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
400 North Street, Harrisburg, Pennsylvania 17120

February 25, 2021

Dear Pennsylvania Public Water Company:

On Feb. 5, 2021, a water treatment plant in Oldsmar, Florida, experienced a cyberattack which was intended to gain control over the Supervisory Control and Data Acquisition (SCADA) systems used to monitor and regulate the amount of sodium hydroxide within the water supply. Sodium hydroxide is used for pH adjustment and can be harmful at high concentrations.

The threat actor accessed the water treatment plant's SCADA controls via remote access software called TeamViewer. TeamViewer was installed on several computers to conduct system status checks and to respond to alarms and issues that arose during the water treatment process. The threat actor used this software to access the SCADA systems to increase the sodium hydroxide levels in the water to harmful levels.

Fortunately, water treatment plant personnel were present during the cyberattack and were able to change the dosing amounts back to the proper levels before any harm/damage was done. As a result, the water treatment process remained unaffected and continues to operate as normal.

This incident is still under investigation, but preliminary investigatory information released from the U.S. Department of Homeland Security (DHS), Critical Infrastructure Security Agency (DHS-CISA) and the Federal Bureau of Investigation (FBI) point to a lack of cybersecurity controls being the root cause of the incident. Specifically, the plant's computers running the SCADA system used the 32-bit version of the Windows 7 operating system, which is no longer supported by Microsoft. Furthermore, all computers shared the same password for remote access and appeared to be connected directly to the Internet without any type of firewall protection installed.

Recommended Mitigation

Based on the information released by DHS-CISA and the FBI, the Pennsylvania Public Utility Commission (PUC) recommends that Pennsylvania water utilities apply the following cyber hygiene measures to help them protect against cyberattacks:

- Update all Microsoft computers and laptops to Windows 10.
- Use multiple-factor authentication.
- Use strong passwords to protect Remote Desktop Protocol (RDP) credentials.
- Ensure anti-virus, spam filters, and firewalls are up to date, properly configured and secure.
- Audit network configurations and isolate computer systems that cannot be updated.
- Audit your network for systems using RDP, closing unused RDP ports, applying multiple-factor authentication wherever possible, and logging RDP login attempts.

- Audit logs for all remote connection protocols; and if possible, create alerts when unauthorized attempts are made to gain access to your networks and SCADA devices.
- Train users to identify and report attempts at social engineering.
- Identify and suspend access of users exhibiting unusual activity.

In addition to these cyber hygiene measures, the PUC strongly recommends that water utilities conduct physical and cybersecurity risk assessments on their critical infrastructure. This can be accomplished by an internal risk assessment team that would use SCADA and cybersecurity standards from the National Institute of Standards and Technology (NIST) or using a third-party risk assessment consultant.

You also can request that DHS-CISA conduct a free risk assessment of your facilities and Information Technology/Operations Technology (IT/OT) infrastructure. For more information about this assessment, please reference the following URL:

<https://www.cisa.gov/cyber-resource-hub>.

For more information on how to schedule an assessment, please contact the DHS-CISA Regional Cybersecurity Coordinator:

Franco Cappa, CISSP
Cybersecurity Advisor
Cybersecurity and Infrastructure Security Agency
Email: franco.cappa@cisa.dhs.gov

Additional Information and Resources

- National Institute of Standards: <https://www.nist.gov/>
- AA21-042A: Compromise of U.S. Water Treatment Facility: <https://us-cert.cisa.gov/ncas/alerts/aa21-042a>
- American Water Works Association (AWWA) Water Sector Cybersecurity Risk Management Tool: <https://www.awwa.org/Resources-Tools/Resource-Topics/Risk-Resilience/Cybersecurity-Guidance>
- CISA & NSA Alert on Immediate Actions to Reduce Exposure Across Operational Technologies and Control Systems: <https://us-cert.cisa.gov/ncas/alerts/aa20-205a>
- CISA Industrial Control Systems Advisories and Reports: <https://us-cert.cisa.gov/ics>
- EPA Incident Action Checklist for Cybersecurity: https://www.epa.gov/sites/production/files/2017-11/documents/171013-incidentactionchecklist-cybersecurity_form_508c.pdf
- EPA Water Sector Cybersecurity Sector Brief for States: https://www.epa.gov/sites/production/files/2018-06/documents/cybersecurity_guide_for_states_final_0.pdf
- EPA Cybersecurity Best Practices for the Water Sector: <https://www.epa.gov/waterriskassessment/epa-cybersecurity-best-practices-water-sector>
- WaterISAC's 15 Cybersecurity Fundamentals: <https://www.waterisac.org/system/files/articles/15%20Cybersecurity%20Fundamentals%20%28WaterISAC%29.pdf>

Cybersecurity Incident Reporting

- Local Law Enforcement or 911 Center
- Pennsylvania Public Utility Commission, Bureau of Technical Utility Services, Emergency Agency Representative 717-941-0003
- Pennsylvania State Police, Pennsylvania Criminal Intelligence Center (PaCIC):
<https://www.homelandsecurity.pa.gov/ReportSuspiciousActivity/Pages/default.aspx>
- DHS-CISA Cybersecurity Incident Reporting: <https://us-cert.cisa.gov/report>
- FBI CyWatch - Contact your local FBI field office at www.fbi.gov/contact-us/field, or the FBI's 24/7 Cyber Watch (CyWatch) at 855-292-3937 or by e-mail at CyWatch@fbi.gov

Please let me know if you have any questions regarding this notification. I can be reached at 717- 425-5327 or via email at miholko@pa.gov.

Sincerely,

Michael Holko, Director, Office of Cybersecurity Compliance and Oversight
Pennsylvania Public Utility Commission
400 North Street, 3rd Floor North
Commonwealth Keystone Building, Harrisburg, PA 17120
717-425-5327 | miholko@pa.gov
www.puc.pa.gov | Consumer Hotline 1-800-692-7380



Follow us on:  

NFGD Exhibit CC-2

04/29/21 C-2020-3019621

Revised Data Security Agreement (Clean)

DATA SECURITY AGREEMENT

This Data Security Agreement ("Agreement") effective _____ is made and entered into this _____ day of _____, 2021 by and between National Fuel Gas Distribution Corporation, 6363 Main Street, Williamsville, NY 14221 ("Company") and _____, an Energy Service Entity ("ESE"), with offices at _____; and together with Company the ("Parties") and each, individually, a "Party").

RECITALS

WHEREAS, ESE desires to have access to certain Company customer information, either customer-specific or aggregated customer information, the Company is obligated to provide information under 52 Pa. Code § 62.76 and/or the Pennsylvania Public Utility Commission ("Commission") has ordered Company to provide to ESE customer information; and

WHEREAS, ESE has obtained consent from all customers for whom the ESE intends to obtain information from Company; and

WHEREAS, Natural Gas Supplier ("NGS"), may utilize a third party to fulfill its Service obligations, including but not limited to, Electronic Data Interchange ("EDI") communications with Company, schedule gas supplies for DMT Service Customer(s), DMLMT Service Customer(s), MMT Customer(s) and/or SATC Customer(s) via Company's Transportation Scheduling System ("TSS") and/or access Confidential Information via Company issued accounts/passwords ; and

WHEREAS, a DMT Service Customer, DMLMT Service Customer or MMT Customer (individually, "Standalone Customer") may schedule its own gas supplies via Company's TSS without an NGS; and

WHEREAS, a Standalone Customer with daily metering and communications equipment which enable the Company to obtain each day meter readings of the volume of gas delivered to the Company for the Customer's account and the volume of gas from the Company used by the Customer each day may access to such information via Company issued accounts/passwords; and

WHEREAS, NGS or Standalone Customer utilization of a third party provider does not relieve NGS or Standalone Customer of their transactional obligation such that they must ensure that the third party provider must comply with all NGS or Standalone Customer obligations; and

WHEREAS, Company and ESE also desire to enter into this Agreement to establish, among other things, the full scope of ESE's obligations of security and confidentiality with respect to the Confidential Information in a manner consistent with the rules and regulations of the Commission and requirements of Company; and

NOW, THEREFORE, in consideration of the premises and of the covenants herein contained, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties, intending to be legally bound, hereby agree as follows:

1. Definitions.

- a. “Confidential ESE Information” means information that ESE is: (A) required by 52 PA Code §§ 59.91-59.99 or Governing Documents to receive from the end use customer and provide to the Company to enroll the customer or (B) any other information provided by ESE to Company and marked confidential by the ESE, but excludes (i) information which is or becomes generally available to the public other than as a result of a disclosure by Receiving Party or its Representatives; (ii) information which was already known to Receiving Party on a non-confidential basis prior to being furnished to Receiving Party by Disclosing Party; (iii) information which becomes available to Receiving Party on a non-confidential basis from a source other than Disclosing Party or a representative of Disclosing Party if such source was not subject to any prohibition against transmitting the information to Receiving Party and was not bound by a confidentiality agreement with Disclosing Party; (iv) information which was independently developed by the Receiving Party or its Representatives without reference to, or consideration of, the Confidential Information; or (v) information provided by the customer with customer consent where the customer expressly agrees that the information is public.
- b. “Confidential Company Information” means information that Company is: (A) required by 52 Pa. Code § 62.76 to provide to NGS or Standalone Customer or (B) any other information provided to ESE by Company and marked confidential by the Company at the time of disclosure, but excludes (i) information which is or becomes generally available to the public other than as a result of a disclosure by Receiving Party or its Representatives; (ii) information which was already known to Receiving Party on a non-confidential basis prior to being furnished to Receiving Party by Disclosing Party; (iii) information which becomes available to Receiving Party on a non-confidential basis from a source other than Disclosing Party or a representative of Disclosing Party if such source was not subject to any prohibition against transmitting the information to Receiving Party and was not bound by a confidentiality agreement with Disclosing Party; (iv) information which was independently developed by the Receiving Party or its Representatives without reference to, or consideration of, the Confidential Information; or (v) information provided by the customer with customer consent where the customer expressly agrees that the information is public.
- c. “Confidential Information” means, collectively, Confidential Company Information or Confidential ESE Information.
- d. “Data Protection Requirements” means, collectively, (A) all national, state, and local laws, regulations, or other government standards relating to the protection of information that identifies or can be used to identify an individual that apply with respect to ESE or its Representative’s Processing of Confidential Company Information; (B) industry best practices or frameworks to secure information, computer systems, network, and devices using a defense-in-depth approach, such as and including, but not limited to, NIST SP 800-53, ISO 27001 / 27002, COBIT, CIS Security Benchmarks, Top 20 Critical Controls as best industry

practices and frameworks may evolve over time; and (C) Commission rules, regulations, and guidelines relating to confidential customer data. Subject to the above, ESE will determine and implement the necessary Data Protection Requirements to be in compliance with the Governing Documents.

- e. "Data Security Incident" means a situation when Company or ESE reasonably believes that there has been: (A) the loss or misuse (by any means) of Confidential Information; (B) the unauthorized acquisition of computerized data that compromises the security, confidentiality, or integrity of Confidential Information, computer systems, network and devices used by a business; (C) any other act or omission that compromises the security, confidentiality, or integrity of Confidential Information, or (D) any material breach of any Data Protection Requirements in relation to the Processing of Confidential Information, including by any current or former Representatives.
- f. "Customer Agent" is a third party that has access to Confidential Information via Company issued accounts/passwords and/or schedules gas on behalf of a NGS. Customer Agent includes, but is not limited to, third party Brokers Non-selling marketer and Nontraditional marketer as defined 52 PA Code §62.101 that access Confidential Information via Company issued accounts/passwords."
- g. "Standalone Customer" is a customer eligible for natural gas transportation service under 52 PA Code § 60.3 defined in Company's Tariff as a DMT Service Customer, DMLMT Service Customer or MMT Customer, that schedules its own gas supplies via Company's TSS without an NGS.
- h. "NGS" has the meaning set forth in 52 PA Code § 62.72 and as it may be amended from time to time, which is "An entity other than an NGDC, but including NGDC marketing affiliates, which provides natural gas supply services to retail gas customers utilizing the jurisdictional facilities of an NGDC."
- i. "ESE" shall have the meaning set forth in the Recitals and for the avoidance of doubt, includes but is not limited to NGSs or Standalone Customers, Customer Agents and contractors of such entities with which Company electronically exchanges data other than by email and any other entities with which Company electronically exchanges data other than by email or by a publicly available portal.
- j. "PUC" or "Commission" shall have the meaning attributed to it in the Recitals.
- k. "Processing" (including its cognate, "process") means any operation, action, error, omission, negligent act, or set of operations, actions, errors, omissions, or negligent acts that is performed using or upon Confidential Information or Company Data, whether it be by physical, automatic or electronic means, including, without limitation, collection, recording, organization, storage, access, adaptation, alteration, retrieval, use, transfer, hosting, maintenance, handling, retrieval, consultation, use, disclosure, dissemination, exfiltration, taking, removing, copying, processing, making available, alignment, combination, blocking, deletion, erasure, or destruction.

- l. "Third-Party Representatives" or "Representatives" means those agents, including Customer Agents, acting on behalf of NGSs or Standalone Customers, that are contractors or subcontractors and that store, transmit or process Confidential Company Information. For the avoidance of doubt, Third-Party Representatives do not include ESEs and their members, directors, officers or employees who need to know Confidential Company Information for the purposes of providing Services.
 - m. "Services" mean any assistance in the competitive markets provided by ESEs to end use customers or NGSs or Standalone Customers that also require interaction with a Company, including but not limited to the electronic exchange of information with a Company, and must be provided in accordance with the Governing Documents where applicable. Governing Documents may not apply to Third Party Representatives that are not electronically interconnected with Company other than by email.
 - n. "Company Data" means data held by Company, whether produced in the normal course of business or at the request of ESE.
 - o. "Tariff" means (Gas--Pa. P.U.C. No. 9 or any superseding tariff).
 - p. "DMT Service Customer" means, unless redefined in any superseding tariff, any entity that has executed a DMT Service Agreement with the Company for transportation of gas by the Company under Tariff Rate Schedule For Daily Metered Transportation Service.
 - q. "DMLMT Service Customer" means, unless redefined in any superseding tariff, any entity that has executed a DMLMT Service Agreement with the Company for transportation of gas by the Company under Tariff Rate Schedule For Daily Metered Transportation Service.
 - r. "MMT Customer" means, unless redefined in any superseding tariff, a customer that receives transportation service from the Company under this rate schedule and receives gas supply from a Monthly Metered Natural Gas Supplier.
 - s. "SATC Customer" means, unless redefined in any superseding tariff, a customer that has enrolled to receive gas supply service from a qualified supplier under the Company's Small Aggregation Transportation Supplier Service.
2. **Scope of the Agreement.** This Agreement shall govern security practices of ESEs that electronically receive or exchange Confidential Company Information, other than by email, with the Company IT Systems and security practices that apply to all Confidential Company Information disclosed to ESE or to which ESE is given access by Company, including all archival or back- up copies of the Confidential Company Information held or maintained by ESE (or its Representatives) and Confidential ESE Information. No financial information, other than billing information, will be provided pursuant to this Agreement. If any information is inadvertently sent to ESE or Company, ESE or Company will immediately notify the Company/ESE and destroy any such information in the appropriate manner.

3. **ESE Compliance with all Applicable Regulatory Requirements.** The Parties agree that 52 PA Code §§ 62.71-62.81, Company's Tariff and Commission Orders set forth rules governing the protection of Confidential Information (collectively, "Governing Documents") and electronic exchange of information between the Parties, including but not limited to EDI.
4. **Customer Consent.** The Parties agree that the Governing Documents govern an ESE's obligation to obtain informed consent from all customers about whom ESE requests Confidential Company Information from Company. The ESE agrees to comply with the Governing Documents regarding customer consent.
5. **Provision of Information.** Company agrees to provide to ESE or its Representatives, certain Confidential Company Information, as requested, provided that: (A) ESE and its Representatives with an electronic connection to Company other than by email are in compliance with the terms of this Agreement in all material respects; (B) if required by Company due to the identification of a potential or actual Data Security Incident, ESE shall undergo an audit, at the ESE's expense¹; (C) ESE (and its Third-Party Representatives with an electronic connection to the Company other than by email) shall have and maintain throughout the term, systems and processes in place and as detailed in the Self Attestation to protect Company IT systems, data privacy protections and Confidential Company Information. Provided the foregoing prerequisites have been satisfied, ESE shall be permitted access to Confidential Company Information and/or Company shall provide such Confidential Company Information to ESE. Nothing in this Agreement will be interpreted or construed as granting either Party any license or other right under any patent, copyright, trademark, trade secret, or other proprietary right or any right to assert any lien over or right to withhold from the other Party any Data and/or Confidential Information of the other Party. Company will comply with the security requirements set forth in its assessment.
6. **Confidentiality.** ESE shall: (A) hold all Confidential Company Information in strict confidence pursuant to the Governing Documents; except as otherwise expressly permitted by Section 7 herein; (B) not disclose Confidential Company Information to any Third-Party Representatives, or affiliates, except as set forth in Section 7(a) of this Agreement; (C) not Process Confidential Company Information other than for the Services defined in the Recitals as authorized by this Agreement; (D) limit reproduction of Confidential Company Information; (E) store Confidential Company Information in a secure fashion at a secure location that is not accessible to any person or entity not authorized to receive the Confidential Company Information under the provisions hereof; and (F) otherwise use at least the same degree of care to avoid publication or dissemination of the Confidential Company Information as ESE employs (or would employ) with respect to its own confidential information that

¹ An audit related to a Data Security Incident is used to verify that the necessary Information Security Control Requirements set forth in Exhibit A are in place for the Company to provide certain Confidential Company Information to the ESE or its Third-Party Representatives with an electronic connection to the utility, other than by email. The same audit requirements will apply as in Section 9. However, the ESE will be responsible for the cost of the audit in order to be re-authorized to receive data from the Company.

it does not (or would not) desire to have published or disseminated, but in no event less than reasonable care. At all times, Company shall have the right for cause to request reasonable further assurances that the foregoing restrictions and protections concerning Confidential Company Information are being observed and ESE shall be obligated to promptly provide Company with the requested assurances. An ESE may provide Confidential Company Information to a Third-Party representative without a direct electronic connection with the Utility, to assist the ESE in providing permitted Services, but an ESE utilizing such Third party Representative shall be solely responsible and fully liable for the actions of the Third Party Representative.

Company shall: (A) hold all Confidential ESE Information in strict confidence; except as otherwise expressly permitted by Section 7 herein; (B) not disclose Confidential ESE Information to any other person or entity except as set forth in Section 7(a) of this Agreement; (C) not Process Confidential ESE Information other than for the Services defined in the Recitals as authorized by this Agreement; (D) limit reproduction of Confidential ESE Information; (E) store Confidential ESE Information in a secure fashion at a secure location that is not accessible to any person or entity not authorized to receive the Confidential ESE Information under the provisions hereof; (F) otherwise use at least the same degree of care to avoid publication or dissemination of the Confidential ESE Information as Company employs (or would employ) with respect to its own confidential information that it does not (or would not) desire to have published or disseminated, but in no event less than reasonable care; and (G) to the extent required by ESE, each Representative with a need to know the Confidential ESE Information shall sign the Third-Party Representative Agreement set forth as Exhibit B to this Agreement. At all times, ESE shall have the right for cause to request reasonable further assurances that the foregoing restrictions and protections concerning Confidential ESE Information are being observed and Company shall be obligated to promptly provide ESE with the requested assurances.

This Section 6 supersedes prior non-disclosure agreements between the Parties pertaining to Confidential Information.

7. Exceptions Allowing ESE to Disclose Confidential Company Information.

- a. **Disclosure to Representatives.** Notwithstanding the provisions of Section 6 herein, the Parties may disclose Confidential Information to their Third-Party Representatives who have a legitimate need to know or use such Confidential Information for the purposes of providing Services in accordance with the Governing Documents, provided that each such Third-Party Representative is advised by the disclosing Party of the sensitive and confidential nature of such Confidential Information. Notwithstanding the foregoing, the ESE shall be liable for any act or omission of its Third-Party Representative, including without limitation, those acts or omissions that would constitute a breach of this Agreement.

- b. **Disclosure if Legally Compelled.** Notwithstanding anything herein, in the event that a Party or any of its Third-Party Representatives receives notice that it has, will, or may become compelled, pursuant to applicable law or regulation or legal process to disclose any Confidential Information (whether by receipt of oral questions, interrogatories, requests for information or documents in legal proceedings, subpoenas, civil investigative demands, other similar processes, or otherwise), that Party shall, except to the extent prohibited by law, within one (1) business day, notify the other Party, orally and in writing, of the pending or threatened compulsion. To the extent lawfully allowable, the Parties shall have the right to consult and the Parties will cooperate, in advance of any disclosure, to undertake any lawfully permissible steps to reduce and/or minimize the extent of Confidential Information that must be disclosed. The Parties shall also have the right to seek an appropriate protective order or other remedy reducing and/or minimizing the extent of Confidential Information that must be disclosed. In any event, the Party and its Third-Party Representatives shall disclose only such Confidential Information which they are advised by legal counsel that they are legally required to disclose in order to comply with such applicable law or regulation or legal process (as such may be affected by any protective order or other remedy obtained by the Party) and the Party and its Third-Party Representatives shall use all reasonable efforts to ensure that all Confidential Information that is so disclosed will be accorded confidential treatment.
8. **Return/Destruction of Information.** Within thirty (30) days after Company's written demand, ESE shall (and shall cause its Third-Party Representatives to) cease to access and Process Confidential Company Information and shall at the Company's option: (A) return such Confidential Company Information to Company in such manner, format, and timeframe as reasonably requested by Company or, if not so directed by Company, (B) shred, permanently erase and delete, degauss or otherwise modify so as to make unreadable, unreconstructible and indecipherable ("Destroy") all copies of all Confidential Company Information (including any and all extracts, compilations, studies, or other documents based upon, derived from, or containing Confidential Company Information) that has come into ESE's or its Third-Party Representatives' possession, including Destroying Confidential Company Information from all systems, records, archives, and backups of ESE and its Third-Party Representatives, and all subsequent access, use, and Processing of the Confidential Company Information by ESE and its Third-Party Representatives shall cease provided any items required to be maintained by governmental administrative rule or law or necessary for legitimate business or legal needs will not be destroyed until permitted and will remain subject to confidentiality during the retention period. Company, when making a written demand of ESE for the return or destruction of Confidential Company Information will specify the reason for the demand. ESE agrees that upon a customer revocation of consent, ESE warrants that it will no longer access through Company Confidential Company Information and that it will Destroy any Confidential Company Information in its or its Third-Party Representative's possession. Notwithstanding the foregoing, ESE and its Third-Party Representatives shall not be obligated to erase Confidential Company Information contained in an archived computer system backup maintained in accordance with their respective security or disaster recovery procedures, provided

that ESE and its Third-Party Representatives shall: (1) not have experienced an actual Data Security Incident; (2) maintain data security protections to limit access to or recovery of Confidential Company Information from such computer backup system and; (3) keep all such Confidential Company Information confidential in accordance with this Agreement. ESE shall, upon request, certify to Company that the destruction by ESE and its Third-Party Representatives required by this Section has occurred by (A) having a duly authorized officer of ESE complete, execute, and deliver to Company a certification and (B) obtaining substantially similar certifications from its Third-Party Representatives and maintaining them on file. Compliance with this Section 8 shall not relieve ESE from compliance with the other provisions of this Agreement. The written demand to Destroy or return Confidential Company Information pursuant to this Section may occur if the ESE has been decertified pursuant to the Governing Documents, the Company has been notified of a potential or actual Data Security Incident and Company has a reasonable belief of potential ongoing harm or the Confidential Company Information has been held for a period in excess of its retention period. The obligations under this Section shall survive any expiration of termination of this Agreement. Subject to applicable federal, state and local laws, rules, regulations and orders, at ESE's written demand and termination of electronic exchange of data with Company, Company will Destroy or return, at ESE's option, Confidential ESE Information.

9. **Audit.** Upon thirty (30) days' notice to ESE, ESE shall permit a reputable third party auditor selected by the Company through a competitive solicitation and agreed to by the ESE, such agreement not to be unreasonably withheld, (the "CSA") to audit and inspect ESE, at Company's sole expense (except as otherwise provided in this Agreement), and provided that the audit may occur no more often than once per twelve (12) month period (unless otherwise required by Company's regulators). The audit may include (A) the facilities of ESE and ESE's Third-Party Representatives where Confidential Company Information is Processed by or on behalf of ESE; (B) any computerized or paper systems used to Process Confidential Company Information; and (C) ESE's security practices and procedures, facilities, resources, plans, procedures, and books and records relating to the privacy and security of Confidential Company Information. Such audit rights shall be limited to verifying ESE's compliance with this Agreement, including all applicable Data Protection Requirements. If the ESE provides a SOC II report or its equivalent to the Company, or commits to complete an independent third-party audit of ESE's compliance with this Agreement acceptable to the Company at ESE's sole expense, within one hundred eighty (180) days, no audit by a third party auditor selected by the Company through a CSA and conducted at Company's sole expense is necessary absent a Data Security Incident. Any audit must be subject to confidentiality and non-disclosure requirements set forth in Section 6 of this Agreement. The auditor will audit the ESE's compliance with the Agreement and provide those results to the Company and ESE. The audit report sent to the Company shall not include any ESE confidential information, it will simply provide an assessment as to the ESE's compliance with the terms of this Agreement. In the event of a "failed" audit dispute, the dispute resolution processes outlined in the Governing Documents can be utilized or a complaint can be brought to the Commission. Company shall provide

ESE with a report of the findings as a result of any audit carried out by an auditor selected through the CSA. ESE shall, within thirty (30) days, or within a reasonable time period agreed upon in writing between the ESE and Company, correct any deficiencies identified in the audit, and provide the SOC II audit report or its equivalent or the report produced by the independent auditor to the Company and provide a report regarding the timing and correction of identified deficiencies to the Company.

- 10. Investigation.** Upon notice to ESE, ESE shall assist and support Company in the event of an investigation by any regulator or similar authority, if and to the extent that such investigation relates to Confidential Company Information processed by ESE on behalf of Company. Such assistance shall be at Company's sole expense, except where such investigation was required due to the acts or omissions of ESE or its Representatives, in which case such assistance shall be at ESE's sole expense.
- 11. Data Security Incidents.** ESE is responsible for any and all Data Security Incidents involving Confidential Company Information that is Processed by, or on behalf of, ESE. ESE shall notify Company in writing immediately (and in any event within forty-eight (48) hours) whenever ESE reasonably believes that there has been a Data Security Incident. After providing such notice, ESE will investigate the Data Security Incident, and immediately take all necessary steps to eliminate or contain any exposure of Confidential Company Information and keep Company advised of the status of such Data Security Incident and all matters related thereto. ESE further agrees to provide, at ESE's sole cost: (1) reasonable assistance and cooperation requested by Company and/or Company's designated representatives, in the furtherance of any correction, remediation, or investigation of any such Data Security Incident; (2) and/or the mitigation of any damage, including any notification required by law or that Company may determine appropriate to send to individuals impacted or potentially impacted by the Data Security Incident; and (3) and/or the provision of any credit reporting service required by law or that Company deems appropriate to provide to such individuals. In addition, within thirty (30) days of confirmation of a Data Security Incident, ESE shall develop and execute a plan, subject to Company's approval, which approval will not be unreasonably withheld, that reduces the likelihood of a recurrence of such Data Security Incident. ESE agrees that Company may at its discretion and without penalty immediately suspend performance hereunder and/or terminate the Agreement if a Data Security Incident occurs and it has a reasonable belief of potential ongoing harm. Any suspension made by Company pursuant to this paragraph 11 will be temporary, lasting until the Data Security Incident has ended, the ESE security has been restored to the reasonable satisfaction of the Company so that Company IT systems and Confidential Company Information are safe and the ESE is capable of maintaining adequate security once electronic communication resumes. Actions made pursuant to this paragraph, including a suspension will be made, or subject to dispute resolution and appeal as applicable, pursuant to the Governing Documents processes as approved by the Commission.
- 12. Cybersecurity Insurance Required.** ESE shall carry and maintain Cybersecurity

insurance in an amount of no less than \$5,000,000 per incident. Company will maintain at least \$5,000,000 of Cybersecurity insurance.

13. No Intellectual Property Rights Granted. Nothing in this Agreement shall be construed as granting or conferring any rights, by license, or otherwise, expressly, implicitly, or otherwise, under any patents, copyrights, trade secrets, or other intellectual property rights of Company, and ESE shall acquire no ownership interest in the Confidential Company Information. No rights or obligations other than those expressly stated herein shall be implied from this Agreement.

14. Additional Obligations.

- a. ESE shall not create or maintain data which are derivative of Confidential Company Information except for the purpose of performing its obligations under this Agreement or as authorized by the Governing Documents or as expressly authorized by the customer, unless that use violates Federal, State, or local laws, tariffs, rules and/or regulations. For purposes of this Agreement, the following shall not be considered Confidential Company Information or a derivative thereof: (i) any customer contracts, customer invoices, or any other documents created by ESE that reference estimated or actual measured customer usage information, which ESE needs to maintain for any tax, financial reporting or other legitimate business purposes consistent with the Governing Documents; and (ii) Data collected by ESE from customers through its website or other interactions based on those customers' interest in receiving information from or otherwise engaging with ESE or its partners.
- b. ESE shall comply with all applicable privacy and security laws to which it is subject, including without limitation all applicable Data Protection Requirements and not, by act or omission, place Company in violation of any privacy or security law known by ESE to be applicable to Company.
- c. ESE shall have in place appropriate and reasonable processes and systems, including an Information Security Program, defined as having completed an accepted Attestation as reasonably determined by the Company in its discretion, to protect the security of Confidential Company Information and protect against a Data Security Incident, including, without limitation, a breach resulting from or arising out of ESE's internal use, processing, or other transmission of Confidential Company Information, whether between or among ESE's Third-Party Representatives, subsidiaries and affiliates or any other person or entity acting on behalf of ESE, including without limitation Third-Party Representatives. The Company's determination is subject to the dispute resolution process under the Governing Documents. In the event the Company and ESE are unable to resolve the dispute by mutual agreement within thirty (30) days of said referral, the dispute shall be referred for mediation through the Commission's Office of Administrative Law Judge. A party may request mediation prior to that time if it appears that informal resolution is not productive.
- d. ESE and Company shall safely secure or encrypt during storage and encrypt during transmission all Confidential Information, except that no encryption in

transit is required for email communications.

- e. ESE shall establish policies and procedures to provide reasonable and prompt assistance to Company in responding to any and all requests, complaints, or other communications received from any individual who is or may be the subject of a Data Security Incident involving Confidential Company Information Processed by ESE to the extent such request, complaint or other communication relates to ESE's Processing of such individual's Confidential Company Information.
 - f. ESE shall establish policies and procedures to provide all reasonable and prompt assistance to Company in responding to any and all requests, complaints, or other communications received from any individual, government, government agency, regulatory authority, or other entity that is or may have an interest in the Confidential Company Information, data theft, or other unauthorized release of Confidential Company Information, disclosure of Confidential Company Information, or misuse of Confidential Company Information to the extent such request, complaint or other communication relates to ESE's accessing or Processing of such Confidential Company Information.
 - g. ESE will not process Confidential Company Information outside of the United States or Canada absent a written agreement with Company. For the avoidance of doubt, Confidential Company Information stored in the United States or Canada, or other countries as agreed upon in writing will be maintained in a secure fashion at a secure location pursuant to the terms and conditions of this Agreement.
- 15. Specific Performance.** The Parties acknowledge that disclosure or misuse of Confidential Company Information in violation of this Agreement may result in irreparable harm to Company, the amount of which may be difficult to ascertain and which may not be adequately compensated by monetary damages, and that therefore Company shall be entitled to specific performance and/or injunctive relief to enforce compliance with the provisions of this Agreement. Company's right to such relief shall be in addition to and not to the exclusion of any remedies otherwise available under this Agreement, at law or in equity, including monetary damages, the right to terminate this Agreement for breach and the right to suspend the provision or Processing of Confidential Company Information under the Governing Documents. ESE agrees to waive any requirement for the securing or posting of any bond or other security in connection with Company obtaining any such injunctive or other equitable relief.
- 16. Indemnification.** To the fullest extent permitted by law, ESE shall indemnify and hold Company, its affiliates, and their respective officers, directors, trustees, shareholders, employees, and agents, harmless from and against any and all loss, cost, damage, or expense of every kind and nature (including, without limitation, penalties imposed by the Commission or other regulatory authority or under any Data Protection Requirements, court costs, expenses, and reasonable attorneys' fees) arising out of, relating to, or resulting from, in whole or in part, the breach or non-compliance with this Agreement by ESE or any of its Third-Party

Representatives except to the extent that the loss, cost, damage or expense is caused by the negligence, gross negligence or willful misconduct of Company.

- 17. Notices.** With the exception of notices or correspondence relating to potential or pending disclosure under legal compulsion, all notices and other correspondence hereunder shall be sent by first class mail, by personal delivery, or by a nationally recognized courier service. Notices or correspondences relating to potential or pending disclosure under legal compulsion shall be sent by means of Express Mail through the U.S. Postal Service or other nationally recognized courier service which provides for scheduled delivery no later than the business day following the transmittal of the notice or correspondence and which provides for confirmation of delivery. All notices and correspondence shall be in writing and addressed as follows:

If to ESE, to:

ESE Name:
Name of Contact:
Address:
Phone:
Email:

If to Company, to:

Company Name: National Fuel Gas Distribution Corporation
Name of Contact: Rates and Regulatory Affairs Department
Address: 6363 Main Street, Williamsville, NY 14221
Phone: 716-857-6824
Email: NFGratesPAD@natfuel.com

A Party may change the address or addressee for notices and other correspondence to it hereunder by notifying the other Party by written notice given pursuant hereto.

- 18. Term and Termination.** This Agreement shall be effective as of the date first set forth above and shall remain in effect until terminated in accordance with the provisions of the service agreement, if any, between the Parties or the Governing Documents and upon not less than thirty (30) days' prior written notice specifying the effective date of termination, provided, however, that any expiration or termination shall not affect the respective obligations or rights of the Parties arising under this Agreement prior to the effective date of termination. Company may terminate this Agreement if the ESE loses its status as a Licensed Supplier, has not served customers for two (2) years, or has not had electronic communication, other than by email, with Company for one (1) year. Further, Company may terminate this Agreement immediately upon notice to ESE in the event of a material breach hereof by ESE or its Third-Party Representatives. For the purpose of clarity, a breach of Sections 3-4, 6-11, 13, 14, 16, and 24 shall be a material breach hereof. The Breaching Party will provide the non-breaching Party with a written description and notice of the material breach. Upon the expiration or termination hereof, neither ESE

nor its Third-Party Representatives shall have any further right to Process Confidential Company Information, unless the customer has given written or electronic consent to do so shall immediately comply with its obligations under Section 8 and the Company shall not have the right to process Confidential ESE Information and shall immediately comply with its obligations under Section 8.

- 19. Consent to Jurisdiction; Selection of Forum.** ESE irrevocably submits to the jurisdiction of the Commission and courts located within the Commonwealth of Pennsylvania with regard to any dispute or controversy arising out of or relating to this Agreement. ESE agrees that service of process on it in relation to such jurisdiction may be made by certified or registered mail addressed to ESE at the address for ESE pursuant to Section 11 hereof and that such service shall be deemed sufficient even under circumstances where, apart from this Section, there would be no jurisdictional basis for such service. ESE agrees that service of process on it may also be made in any manner permitted by law. ESE consents to the selection of the Pennsylvania and United States courts within Erie County, Pennsylvania as the exclusive forums for any legal or equitable action or proceeding arising out of or relating to this Agreement.
- 20. Governing Law.** This Agreement shall be interpreted and the rights and obligations of the Parties determined in accordance with the laws of the Commonwealth of Pennsylvania, without recourse to such state's choice of law rules.
- 21. Survival.** The obligations of ESE under this Agreement shall continue for so long as ESE and/or ESE's Third-Party Representatives continue to have access to, are in possession of or acquire Confidential Company Information even if all Agreements between ESE and Company have expired or been terminated.
- 22. Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which shall together constitute one and the same instrument. Copies of this Agreement and copies of signatures on this Agreement, including any such copies delivered electronically as a .pdf file, shall be treated for all purposes as originals.
- 23. Amendments; Waivers.** Except as directed by the Commission, this Agreement may not be amended or modified except if set forth in writing signed by the Party against whom enforcement is sought to be effective. No forbearance by any Party to require performance of any provisions of this Agreement shall constitute or be deemed a waiver of such provision or the right thereafter to enforce it. Any waiver shall be effective only if in writing and signed by an authorized representative of the Party making such waiver and only with respect to the particular event to which it specifically refers.
- 24. Assignment.** This Agreement (and the Company's or ESE's obligations hereunder) may not be assigned by Company, ESE or Third Party Representatives without the prior written consent of the non-assigning Party, and any purported assignment without such consent shall be void. Consent will not be unreasonably withheld.
- 25. Severability.** Any provision of this Agreement which is determined by any court or regulatory body having jurisdiction over this Agreement to be invalid or

unenforceable will be ineffective to the extent of such determination without invalidating the remaining provisions of this Agreement or affecting the validity or enforceability of such remaining provisions.

26. **Entire Agreement.** This Agreement (including any Exhibits hereto) constitutes the entire Agreement between the Parties with respect to the subject matter hereof and any prior or contemporaneous oral or written Agreements or understandings with respect to such subject matter are superseded hereby, including all Data Security Agreements between ESE and the Company that were executed prior to the effective date of this Agreement. This Agreement may not be amended without the written Agreement of the Parties.
27. **No Third-Party Beneficiaries.** This Agreement is solely for the benefit of, and shall be binding solely upon, the Parties and their respective agents, successors, and permitted assigns. This Agreement is not intended to benefit and shall not be for the benefit of any party other than the Parties and the indemnified parties named herein, and no other party shall have any right, claim, or action as a result of this Agreement.
28. **Force Majeure.** No Party shall be liable for any failure to perform its obligations in connection with this Agreement, where such failure results from any act of God or governmental action or order or other cause beyond such Party's reasonable control (including, without limitation, any mechanical, electronic, or communications failure) which prevents such Party from performing under this Agreement and which such Party is unable to prevent or overcome after the exercise of reasonable diligence. For the avoidance of doubt a Data Security Incident is not a force majeure event.
29. **Relationship of the Parties.** Company and ESE expressly agree they are acting as independent contractors and under no circumstances shall any of the employees of one Party be deemed the employees of the other for any purpose. Except as expressly authorized herein, this Agreement shall not be construed as authority for either Party to act for the other Party in any agency or other capacity, or to make commitments of any kind for the account of or on behalf of the other.
30. **Construction.** This Agreement shall be construed as to its fair meaning and not strictly for or against any party.
31. **Binding Effect.** No portion of this Agreement is binding upon a Party until it is executed on behalf of that Party in the space provided below and delivered to the other Party. Each Party agrees that this Agreement and any other documents to be delivered in connection herewith may be electronically signed, and that any electronic signatures appearing on this Agreement or such other document are the same as handwritten signatures for the purposes of validity, enforceability, and admissibility. Prior to such execution and delivery, neither the submission, exchange, return, discussion, nor the negotiation of this document, whether or not this document is then designated as a "draft" document, shall have any binding effect on a Party.

[signature page follows]

IN WITNESS WHEREOF, the Parties have executed and delivered this Agreement as of the date first above written.

NATIONAL FUEL GAS DISTRIBUTION CORPORATION

By: _____ By: _____

Name: John J. Polka, Jr. Name: _____

Title: Assistant Vice President Title: _____

SELF-ATTESTATION OF INFORMATION SECURITY CONTROLS

National Fuel Gas Distribution Corporation (“Company”) represents that for all information received from ESE or its Third Party Representatives in response or pursuant to this Self-Attestation that is marked CONFIDENTIAL by ESE or its Third Party Representatives (Confidential Self-Attestation Information) Company shall: (A) hold such Confidential Self-Attestation Information in strict confidence; (B) not disclose such Confidential Self-Attestation Information to any other person or entity; (C) not Process such Confidential Self-Attestation Information outside of the United States or Canada; (D) not Process such Confidential Self-Attestation Information for any purpose other than to assess the adequate security of ESE or its Third Party Representatives pursuant to this Self-Attestation and to work with ESE or its Third Party Representatives to permit it to achieve adequate security if it has not already done so; (E) limit reproduction of such Confidential Self-Attestation Information; (F) store such Confidential Self-Attestation Information in a secure fashion at a secure location in the United States or Canada that is not accessible to any person or entity not authorized to receive such Confidential Self-Attestation Information under the provisions hereof; (G) otherwise use at least the same degree of care to avoid publication or dissemination of such Confidential Self-Attestation Information as Company employs (or would employ) with respect to its own confidential information that it does not (or would not) desire to have published or disseminated, but in no event less than reasonable care.

The Requirements to complete the Self-Attestation are as follows (check all that apply to ESE's computing environment, leave blank all that do not apply to ESE's computing environment. For items that do not apply, if there are plans to address items that do not currently apply within the next 12 months, place an asterisk in the blank and the month/year the requirement is projected to apply to the ESE's computing environment), comments regarding plans for compliance are encouraged:

This SELF-ATTESTATION OF INFORMATION SECURITY CONTROLS
 (“Attestation”), is made as of this _____ day of _____, 2021 by
 _____, an ESE.

WHEREAS, ESE desires to retain access to certain Confidential Company Information¹ (as defined in this Data Security Agreement), ESE must THEREFORE self- attest to ESE's compliance with the Information Security Control Requirements ("Requirements") as listed herein. ESE acknowledges that non-compliance with any of the Requirements may result in the termination of Company data access as per the discretion of Company, in whole or part, for its or their system(s). Any termination process will proceed pursuant to the Governing Documents.

- _____ An Information Security Policy is implemented across the ESE corporation which includes officer level approval.
- _____ An Incident Response Procedure is implemented that includes notification within 48 hours of knowledge of a potential incident alerting utilities when Confidential Company Information is potentially exposed, or of any other potential security breach.
- _____ Role-based access controls are used to restrict system access to authorized users and limited on a need-to-know basis.
- _____ Multi-factor authentication is used for all remote administrative access, including, but not limited to, access to production environments.
- _____ All production systems are properly maintained and updated to include security patches on a periodic basis. Where a critical alert is raised, time is of the essence, and patches will be applied as soon as practicable.
- _____ Antivirus software is installed on all servers and workstations and is maintained with up-to-date signatures.
- _____ All Confidential Company Information is encrypted in transit utilizing industry best practice encryption methods, except that Confidential Information does not need to be encrypted during email communications.
- _____ All Confidential Company Information is secured or encrypted at rest utilizing industry best practice encryption methods, or is otherwise physically secured.

¹ "Confidential Company Information" means, information that Company is: (A) required by 52 Pa. Code § 62.76 to provide to ESE or (B) any other Data provided to ESE by Company and marked confidential by the Company at the time of disclosure, but excludes (i) information which is or becomes generally available to the public other than as a result of a disclosure by Receiving Party or its Representatives; (ii) information which was already known to Receiving Party on a non-confidential basis prior to being furnished to Receiving Party by Disclosing Party; (iii) information which becomes available to Receiving Party on a non-confidential basis from a source other than Disclosing Party or a representative of Disclosing Party if such source was not subject to any prohibition against transmitting the information to Receiving Party and was not bound by a confidentiality agreement with Disclosing Party; (iv) information which was independently developed by the Receiving Party or its Representatives without reference to, or consideration of, the Confidential Information; or (v) information provided by the customer with customer consent where the customer expressly agrees that the information is public.

- _____ It is prohibited to store Confidential Company Information on any mobile forms of storage media, including, but not limited to, laptop PCs, mobile phones, portable backup storage media, and external hard drives, unless the storage media or data is encrypted.
- _____ All Confidential Company Information is stored in the United States or Canada only, including, but not limited to, cloud storage environments and data management services.
- _____ ESE monitors and alerts their network for anomalous cyber activity on a 24/7 basis.
- _____ Security awareness training is provided to all personnel with access to Confidential Company Information.
- _____ Employee background screening occurs prior to the granting of access to Confidential Company Information.
- _____ Replication of Confidential Company Information to non-company assets, systems, or locations is prohibited.
- _____ Access to Confidential Company Information is revoked when no longer required, or if employees separate from the ESE or Third Party Representative.

Additionally, the attestation of the following item is requested, but is NOT part of the Requirements:

- _____ ESE maintains an up-to-date SOC II Type 2 Audit Report, or other security controls audit report.

IN WITNESS WHEREOF, ESE has delivered accurate information for this Attestation as of the date first above written.

Signature: _____

Name: _____

Title: _____

Date: _____

Revised Data Security Agreement (Compare)

DATA SECURITY AGREEMENT

This Data Security Agreement ("Agreement") effective _____ is made and entered into this _____ day of _____, ~~2020~~2021 by and between National Fuel Gas Distribution Corporation, 6363 Main Street, Williamsville, NY 14221 ("Company") and _____, an Energy Service Entity ("ESE"), with offices at _____; and together with Company the ("Parties" and each, individually, a "Party").

RECITALS

WHEREAS, ESE desires to have access to certain Company customer information, either customer-specific or aggregated customer information, the Company is obligated to provide information under 52 Pa. Code § 62.76 and/or the Pennsylvania Public Utility Commission ("Commission") has ordered Company to provide to ESE customer information; and

WHEREAS, ESE has obtained consent from all customers for whom the ESE intends to obtain information from Company; and

WHEREAS, Natural Gas Supplier ("NGS"), may utilize a third party to fulfill its Service obligations, including but not limited to, Electronic Data Interchange ("EDI") communications with Company, schedule gas supplies for DMT Service Customer(s), DMLMT Service Customer(s), MMT Customer(s) and/or SATC Customer(s) via Company's Transportation Scheduling System ("TSS") and/or access Confidential Information via Company issued accounts/passwords ; and

WHEREAS, a DMT Service Customer, DMLMT Service Customer or MMT Customer (individually, "Standalone Customer") may schedule its own gas supplies via Company's TSS without an NGS; and

WHEREAS, a Standalone Customer with daily metering and communications equipment which enable the Company to obtain each day meter readings of the volume of gas delivered to the Company for the Customer's account and the volume of gas from the Company used by the Customer each day may access to such information via Company issued accounts/passwords; and

WHEREAS, NGS or Standalone Customer utilization of a third party provider does not relieve NGS or Standalone Customer of their transactional obligation such that they must ensure that the third party provider must comply with all NGS or Standalone Customer obligations; and

WHEREAS, Company and ESE also desire to enter into this Agreement to establish, among other things, the full scope of ESE's obligations of security and confidentiality with respect to the Confidential Information in a manner consistent with the rules and regulations of the Commission and requirements of Company; and

NOW, THEREFORE, in consideration of the premises and of the covenants herein contained, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties, intending to be legally bound, hereby agree as follows:

1. Definitions.

- a. “Confidential ESE Information” means information that ESE is: (A) required by 52 PA Code §§ 59.91-59.99 or Governing Documents to receive from the end use customer and provide to the Company to enroll the customer or (B) any other information provided by ESE to Company and marked confidential by the ESE, but excludes (i) information which is or becomes generally available to the public other than as a result of a disclosure by Receiving Party or its Representatives; (ii) information which was already known to Receiving Party on a non-confidential basis prior to being furnished to Receiving Party by Disclosing Party; (iii) information which becomes available to Receiving Party on a non-confidential basis from a source other than Disclosing Party or a representative of Disclosing Party if such source was not subject to any prohibition against transmitting the information to Receiving Party and was not bound by a confidentiality agreement with Disclosing Party; (iv) information which was independently developed by the Receiving Party or its Representatives without reference to, or consideration of, the Confidential Information; or (v) information provided by the customer with customer consent where the customer expressly agrees that the information is public.
- b. “Confidential Company Information” means information that Company is: (A) required by 52 Pa. Code § 62.76 to provide to NGS or Standalone Customer or (B) any other information provided to ESE by Company and marked confidential by the Company at the time of disclosure, but excludes (i) information which is or becomes generally available to the public other than as a result of a disclosure by Receiving Party or its Representatives; (ii) information which was already known to Receiving Party on a non-confidential basis prior to being furnished to Receiving Party by Disclosing Party; (iii) information which becomes available to Receiving Party on a non-confidential basis from a source other than Disclosing Party or a representative of Disclosing Party if such source was not subject to any prohibition against transmitting the information to Receiving Party and was not bound by a confidentiality agreement with Disclosing Party; (iv) information which was independently developed by the Receiving Party or its Representatives without reference to, or consideration of, the Confidential Information; or (v) information provided by the customer with customer consent where the customer expressly agrees that the information is public.
- c. “Confidential Information” means, collectively, Confidential Company Information or Confidential ESE Information.
- d. “Data Protection Requirements” means, collectively, (A) all national, state, and local laws, regulations, or other government standards relating to the protection of information that identifies or can be used to identify an individual that apply with respect to ESE or its Representative’s Processing of Confidential Company Information; (B) industry best practices or frameworks to secure information, computer systems, network, and devices using a defense-in-depth approach, such as and including, but not limited to, NIST SP 800-53, ISO 27001 / 27002, COBIT, CIS Security Benchmarks, Top 20 Critical Controls as best industry

practices and frameworks may evolve over time; and (C) Commission rules, regulations, and guidelines relating to confidential ~~data~~customer data. Subject to the above, ESE will determine and implement the necessary Data Protection Requirements to be in compliance with the Governing Documents.

- e. "Data Security Incident" means a situation when Company or ESE reasonably believes that there has been: (A) the loss or misuse (by any means) of Confidential Information; (B) the unauthorized acquisition of computerized data that compromises the security, confidentiality, or integrity of Confidential Information, ~~or Private Information~~, computer systems, network and devices used by a business; (C) any other act or omission that compromises the security, confidentiality, or integrity of Confidential Information, or (D) any material breach of any Data Protection Requirements in relation to the Processing of Confidential Information, including by any current or former Representatives.
- f. "Customer Agent" is a third party that has access to Confidential Information via Company issued accounts/passwords and/or schedules gas on behalf of a NGS. Customer Agent includes, but is not limited to, third party Brokers Non-selling marketer and Nontraditional marketer as defined 52 PA Code §62.101 that access Confidential Information via Company issued accounts/passwords."
- g. "Standalone Customer" is a customer eligible for natural gas transportation service under 52 PA Code § 60.3 defined in Company's Tariff as a DMT Service Customer, DMLMT Service Customer or MMT Customer, that schedules its own gas supplies via Company's TSS without an NGS.
- h. "NGS" has the meaning set forth in 52 PA Code § 62.72 and as it may be amended from time to time, which is "An entity other than an NGDC, but including NGDC marketing affiliates, which provides natural gas supply services to retail gas customers utilizing the jurisdictional facilities of an NGDC."
- i. "ESE" shall have the meaning set forth in the Recitals and for the avoidance of doubt, includes but is not limited to NGSs or Standalone Customers, Customer Agents and contractors of such entities with which Company electronically exchanges data other than by email and any other entities with which Company electronically exchanges data other than by email or by a publicly available portal.
- j. "PUC" or "Commission" shall have the meaning attributed to it in the Recitals.
- k. "Processing" (including its cognate, "process") means any operation, action, error, omission, negligent act, or set of operations, actions, errors, omissions, or negligent acts that is performed using or upon Confidential Information or Company Data, whether it be by physical, automatic or electronic means, including, without limitation, collection, recording, organization, storage, access, adaptation, alteration, retrieval, use, transfer, hosting, maintenance, handling, retrieval, consultation, use, disclosure, dissemination, exfiltration, taking, removing, copying, processing, making available, alignment, combination, blocking, deletion, erasure, or destruction.

- l. “Third-Party Representatives” or “Representatives” means those agents, including Customer Agents, acting on behalf of NGSs or Standalone Customers, that are contractors or subcontractors and that store, transmit or process Confidential Company Information. For the avoidance of doubt, Third-Party Representatives do not include ESEs and their members, directors, officers or employees who need to know Confidential Company Information for the purposes of providing Services.
 - m. “Services” mean any assistance in the competitive markets provided by ESEs to end use customers or NGSs or Standalone Customers that also require interaction with a Company, including but not limited to the electronic exchange of information with a Company, and must be provided in accordance with the Governing Documents where applicable. Governing Documents may not apply to Third Party Representatives that are not electronically interconnected with Company other than by email.
 - n. “Company Data” means data held by Company, whether produced in the normal course of business or at the request of ESE.
 - o. “Tariff” means (Gas--Pa. P.U.C. No. 9 or any superseding tariff).
 - p. “DMT Service Customer” means, unless redefined in any superseding tariff, any entity that has executed a DMT Service Agreement with the Company for transportation of gas by the Company under Tariff Rate Schedule For Daily Metered Transportation Service.
 - q. “DMLMT Service Customer” means, unless redefined in any superseding tariff, any entity that has executed a DMLMT Service Agreement with the Company for transportation of gas by the Company under Tariff Rate Schedule For Daily Metered Transportation Service.
 - r. “MMT Customer” means, unless redefined in any superseding tariff, a customer that receives transportation service from the Company under this rate schedule and receives gas supply from a Monthly Metered Natural Gas Supplier.
 - s. “SATC Customer” means, unless redefined in any superseding tariff, a customer that has enrolled to receive gas supply service from a qualified supplier under the Company’s Small Aggregation Transportation Supplier Service.
2. **Scope of the Agreement.** This Agreement shall govern security practices of ESEs that ~~have electronic communications~~ electronically receive or exchange Confidential Company Information, other than by email, with the Company IT Systems and security practices that apply to all Confidential Company Information disclosed to ESE or to which ESE is given access by Company, including all archival or back-up copies of the Confidential Company Information held or maintained by ESE (or its Representatives) and Confidential ESE Information⁴. No financial information, other than billing information, will be provided pursuant to this Agreement. If any information is inadvertently sent to ESE or Company, ESE or Company will immediately notify the Company/ESE and destroy any such information in the appropriate manner.

3. **ESE Compliance with all Applicable Regulatory Requirements.** The Parties agree that ~~the~~ 52 PA Code §§ 62.71-62.81, Company's Tariff and Commission Orders set forth rules governing the protection of Confidential Information (collectively, "Governing Documents") and electronic exchange of information between the Parties, including but not limited to EDI.

~~NGS or Standalone Customer utilizes a Third-Party Representative as a vendor, agent or other entity to provide electronic exchange of information, other than by email, with Company. ESE will require Third-Party Representative to abide by the applicable Governing Documents.~~

4. **Customer Consent.** The Parties agree that the Governing Documents govern an ESE's obligation to obtain informed consent from all customers about whom ESE requests data Confidential Company Information from Company. The ESE agrees to comply with the Governing Documents regarding customer consent.

~~5. Provision of Information.~~ Company agrees to provide to ESE or its Representatives, certain Confidential Company Information, as requested, provided that: (A) ESE and its Representatives with an electronic connection to Company other than by email are in compliance with the terms of this Agreement in all material respects; (B) if required by Company, ~~ESE has provided and has required its Representatives to provide, to the satisfaction of Company any Vendor Product/Service Security Assessments or self-attestations (attached hereto as Exhibit A) or such other risk assessment forms as Company may require from time to time ("Assessment") and ESE will comply with the Company Assessment requirements as approved by the Company;~~ (C) ESE (and its Representatives, as applicable due to the identification of a potential or actual Data Security Incident, ESE shall undergo an audit, at the ESE's expense¹; (C) ESE (and its Third-Party Representatives with an electronic connection to the Company other than by email) shall have and maintain throughout the term, systems and processes in place and as detailed in the Assessment acceptable to Company Self Attestation to protect system security Company IT systems, data privacy protections and Confidential Company Information; ~~and;~~ (D) ~~ESE complies and shall require its Third-Party Representatives who process Confidential Information to comply with Company's Assessment requirements as approved by the Company.~~ Provided the foregoing prerequisites have been satisfied, ESE shall be permitted access to Confidential Company Information and/or Company shall provide such Confidential Company Information to ESE. Nothing in this Agreement will be interpreted or construed as granting either Party any license or other right under any patent, copyright, trademark, trade secret, or other proprietary right or any right to assert any lien over or right to withhold from the other Party any Data and/or

¹ An audit related to a Data Security Incident is used to verify that the necessary Information Security Control Requirements set forth in Exhibit A are in place for the Company to provide certain Confidential Company Information to the ESE or its Third-Party Representatives with an electronic connection to the utility, other than by email. The same audit requirements will apply as in Section 9. However, the ESE will be responsible for the cost of the audit in order to be re-authorized to receive data from the Company.

~~⁴ Where an ESE exclusively uses a Third Party Representative(s) to communicate electronically with a utility other than by email and the ESE's Third Party Representative executes a DSA with the utility, a DSA is not required of the ESE.~~

6.5. _____ Confidential Information of the other Party. Company will comply with the security requirements set forth in its ~~Assessment~~assessment.

7.6. Confidentiality. ESE shall: (A) hold all Confidential Company Information in strict confidence pursuant to the Governing Documents ~~and Commission's orders~~; except as otherwise expressly permitted by Section 7 herein; (B) not disclose Confidential Company Information to any Third-Party Representatives, or affiliates, except as set forth in Section 7(a) of this Agreement; (C) not Process Confidential Company Information other than for the Services defined in the Recitals as authorized by this Agreement; (D) limit reproduction of Confidential Company Information; (E) store Confidential Company Information in a secure fashion at a secure location that is not accessible to any person or entity not authorized to receive the Confidential Company Information under the provisions hereof; and (F) otherwise use at least the same degree of care to avoid publication or dissemination of the Confidential Company Information as ESE employs (or would employ) with respect to its own confidential information that it does not (or would not) desire to have published or disseminated, but in no event less than reasonable care; ~~and (G) to the extent required by the Company, each Representative with a need to know the Confidential Company Information shall sign the Third-Party Representative Agreement set forth as Exhibit B to this Agreement.~~ At all times, Company shall have the right for cause to request reasonable further assurances that the foregoing restrictions and protections concerning Confidential Company Information are being observed and ESE shall be obligated to promptly provide Company with the requested assurances. An ESE may provide Confidential Company Information to a Third-Party representative without a direct electronic connection with the Utility, to assist the ESE in providing permitted Services, but an ESE utilizing such Third party Representative shall be solely responsible and fully liable for the actions of the Third Party Representative.

Company shall: (A) hold all Confidential ESE Information in strict confidence; except as otherwise expressly permitted by Section 7 herein; (B) not disclose Confidential ESE Information to any other person or entity except as set forth in Section 7(a) of this Agreement; (C) not Process Confidential ESE Information other than for the Services defined in the Recitals as authorized by this Agreement; (D) limit reproduction of Confidential ESE Information; (E) store Confidential ESE Information in a secure fashion at a secure location that is not accessible to any person or entity not authorized to receive the Confidential ESE Information under the provisions hereof; (F) otherwise use at least the same degree of care to avoid publication or dissemination of the Confidential ESE Information as Company employs (or would employ) with respect to its own confidential information that it does not (or would not) desire to have published or disseminated, but in no event less than reasonable care; and (G) to the extent required by ESE, each Representative with a need to know the Confidential ESE Information shall sign the Third-Party Representative Agreement set forth as Exhibit B to this Agreement. At all times, ESE shall have the right for cause to request reasonable further assurances that the foregoing restrictions and protections concerning Confidential ESE Information are being observed and Company shall be obligated to promptly provide ESE with the requested assurances.

This Section 6 supersedes prior non-disclosure agreements between the Parties pertaining to Confidential Information.

8-7. Exceptions Allowing ESE to Disclose Confidential Company Information.

- a. **Disclosure to Representatives.** Notwithstanding the provisions of Section 6 herein, the Parties may disclose Confidential Information to their Third-Party Representatives who have a legitimate need to know or use such Confidential Information for the purposes of providing Services in accordance with the Governing Documents, provided that each such Third-Party Representative ~~first: (A) is advised by the disclosing Party of the sensitive and confidential nature of such Confidential Information; (B) agrees to comply with the provisions of this Agreement, provided that with respect to Third-Party Representatives and this subsection (B), such Third-Party Representatives must agree in writing to be bound by and observe the provisions of this Agreement as though such Third-Party Representatives were a Party/ESE; and (C) signs the Third-Party Representative Agreement. All such written Agreements with Third-Party Representatives shall include direct liability for the Third-Party Representatives towards Company/ESE for breach thereof by the Third-Party Representatives, and a copy of such Agreement and each Third-Party Representative Agreement shall be made available to Company/ESE upon request. Notwithstanding the foregoing, the Parties shall be liable for any act or omission of a. Notwithstanding the foregoing, the ESE shall be liable for any act or omission of its Third-Party Representative, including without limitation, those acts or omissions that would constitute a breach of this Agreement.~~
- b. **Disclosure if Legally Compelled.** Notwithstanding anything herein, in the event that a Party or any of its Third-Party Representatives receives notice that it has, will, or may become compelled, pursuant to applicable law or regulation or legal process to disclose any Confidential Information (whether by receipt of oral questions, interrogatories, requests for information or documents in legal proceedings, subpoenas, civil investigative demands, other similar processes, or otherwise), that Party shall, except to the extent prohibited by law, within one (1) business day, notify the other Party, orally and in writing, of the pending or threatened compulsion. To the extent lawfully allowable, the Parties shall have the right to consult and the Parties will cooperate, in advance of any disclosure, to undertake any lawfully permissible steps to reduce and/or minimize the extent of Confidential Information that must be disclosed. The Parties shall also have the right to seek an appropriate protective order or other remedy reducing and/or minimizing the extent of Confidential Information that must be disclosed. In any event, the Party and its Third-Party Representatives shall disclose only such Confidential Information which they are advised by legal counsel that they are legally required to disclose in order to comply with such applicable law or regulation or legal process (as such may be affected by any protective order or other remedy obtained by the Party) and the Party and its Third-Party Representatives shall use all reasonable efforts to ensure that all Confidential Information that is so disclosed will be accorded confidential treatment.

9.8. Return/Destruction of Information. Within thirty (30) days after Company's written demand, ESE shall (and shall cause its Third-Party Representatives to) cease to access and Process Confidential Company Information and shall at the Company's option: (A) return such Confidential Company Information to Company in such manner, format, and timeframe as reasonably requested by Company or, if not so directed by Company, (B) shred, permanently erase and delete, degauss or otherwise modify so as to make unreadable, unreconstructible and indecipherable ("Destroy") all copies of all Confidential Company Information (including any and all extracts, compilations, studies, or other documents based upon, derived from, or containing Confidential Company Information) that has come into ESE's or its Third-Party Representatives' possession, including Destroying Confidential Company Information from all systems, records, archives, and backups of ESE and its Third-Party Representatives, and all subsequent access, use, and Processing of the Confidential Company Information by ESE and its Third-Party Representatives shall cease provided any items required to be maintained by governmental administrative rule or law or necessary for legitimate business or legal needs will not be destroyed until permitted and will remain subject to confidentiality during the retention period. Company, when making a written demand of ESE for the return or destruction of Confidential Company Information will specify the reason for the demand. ESE agrees that upon a customer revocation of consent, ESE warrants that it will no longer access through Company Confidential Company Information and that it will Destroy any Confidential Company Information in its or its Third-Party Representative's possession. Notwithstanding the foregoing, ESE and its Third-Party Representatives shall not be obligated to erase Confidential Company Information contained in an archived computer system backup maintained in accordance with their respective security or disaster recovery procedures, provided that ESE and its Third-Party Representatives shall: (1) not have experienced an actual Data Security Incident; (2) maintain Data Security Protections data security protections to limit access to or recovery of Confidential Company Information from such computer backup system and; (3) keep all such Confidential Company Information confidential in accordance with this Agreement. ESE shall, upon request, certify to Company that the destruction by ESE and its Third-Party Representatives required by this Section has occurred by (A) having a duly authorized officer of ESE complete, execute, and deliver to Company a certification and (B) obtaining substantially similar certifications from its Third-Party Representatives and maintaining them on file. Compliance with this Section 8 shall not relieve ESE from compliance with the other provisions of this Agreement. The written demand to Destroy or return Confidential Company Information pursuant to this Section may occur if the ESE has been decertified pursuant to the Governing Documents, the Company has been notified of a potential or actual Data Security Incident and Company has a reasonable belief of potential ongoing harm or the Confidential Company Information has been held for a period in excess of its retention period. The obligations under this Section shall survive any expiration of termination of this Agreement. Subject to applicable federal, state and local laws, rules, regulations and orders, at ESE's written demand and termination of electronic exchange of data with Company, Company will Destroy or return, at ESE's option, Confidential ESE Information.

10.9. Audit. Upon thirty (30) days notice to ESE, ESE shall, ~~and shall require its~~

~~Third-Party Representatives to~~ permit a reputable third party auditor selected by the Company, its auditors, designated representatives, through a competitive solicitation and agreed to by the ESE, such agreement not to be unreasonably withheld, (the "CSA") to audit and inspect ESE, at Company's sole expense (except as otherwise provided in this Agreement), and provided that the audit may occur no more often than once per twelve (12) month period (unless otherwise required by Company's regulators).-The audit may include (A) the facilities of ESE and ESE's Third-Party Representatives where Confidential Company Information is Processed by or on behalf of ESE; (B) any computerized or paper systems used to Process Confidential Company Information; and (C) ESE's security practices and procedures, facilities, resources, plans, procedures, and books and records relating to the privacy and security of Confidential Company Information. Such audit rights shall be limited to verifying ESE's compliance with this Agreement, including all applicable Data Protection Requirements. If the ESE provides a SOC II report or its equivalent to the Company, or commits to complete an independent third-party audit of ESE's compliance with this Agreement acceptable to the Company at ESE's sole expense, within one hundred eighty (180) days, no ~~Company audit~~audit by a third party auditor selected by the Company through a CSA and conducted at Company's sole expense is necessary absent a Data Security Incident. Any audit must be subject to confidentiality and non-disclosure requirements set forth in Section 6 of this Agreement. ~~Company shall provide ESE with a report of its findings as a result of any audit carried out by or on behalf of Company. The auditor will audit the ESE's compliance with the Agreement and provide those results to the Company and ESE. The audit report sent to the Company shall not include any ESE confidential information, it will simply provide an assessment as to the ESE's compliance with the terms of this Agreement. In the event of a "failed" audit dispute, the dispute resolution processes outlined in the Governing Documents can be utilized or a complaint can be brought to the Commission. Company shall provide ESE with a report of the findings as a result of any audit carried out by an auditor selected through the CSA.~~ ESE shall, within thirty (30) days, or within a reasonable time period agreed upon in writing between the ESE and Company, correct any deficiencies identified ~~by Company in the audit~~, and provide the SOC II audit report or its equivalent or the report produced by the independent auditor to the Company and provide a report regarding the timing and correction of identified deficiencies to the Company.

11.10. Investigation. Upon notice to ESE, ESE shall assist and support Company in the event of an investigation by any regulator or similar authority, if and to the extent that such investigation relates to Confidential Company Information processed by ESE on behalf of Company. Such assistance shall be at Company's sole expense, except where such investigation was required due to the acts or omissions of ESE or its Representatives, in which case such assistance shall be at ESE's sole expense.

12.11. Data Security Incidents. ESE is responsible for any and all Data Security Incidents involving Confidential Company Information that is Processed by, or on behalf of, ESE. ESE shall notify Company in writing immediately (and in any event within forty-eight (48) hours) whenever ESE reasonably believes that there has been a Data

Security Incident. After providing such notice, ESE will investigate the Data Security Incident, and immediately take all necessary steps to eliminate or contain any exposure of Confidential Company Information and keep Company advised of the status of such Data Security Incident and all matters related thereto. ESE further agrees to provide, at ESE's sole cost: (1) reasonable assistance and cooperation requested by Company and/or Company's designated representatives, in the furtherance of any correction, remediation, or investigation of any such Data Security Incident; (2) and/or the mitigation of any damage, including any notification required by law or that Company may determine appropriate to send to individuals impacted or potentially impacted by the Data Security Incident; and (3) and/or the provision of any credit reporting service required by law or that Company deems appropriate to provide to such individuals. In addition, within thirty (30) days of confirmation of a Data Security Incident, ESE shall develop and execute a plan, subject to Company's approval, which approval will not be unreasonably withheld, that reduces the likelihood of a recurrence of such Data Security Incident. ESE agrees that Company may at its discretion and without penalty immediately suspend performance hereunder and/or terminate the Agreement if a Data Security Incident occurs and it has a reasonable belief of potential ongoing harm. Any suspension made by Company pursuant to this paragraph 11 will be temporary, lasting until the Data Security Incident has ended, the ESE security has been restored to the reasonable satisfaction of the Company so that Company IT systems and Confidential Company Information are safe and the ESE is capable of maintaining adequate security once electronic communication resumes. Actions made pursuant to this paragraph, including a suspension will be made, or subject to dispute resolution and appeal as applicable, pursuant to the Governing Documents processes as approved by the Commission.

13-12. Cybersecurity Insurance Required. ESE shall carry and maintain Cybersecurity insurance in an amount of no less than \$5,000,000 per incident. Company will maintain at least \$5,000,000 of Cybersecurity insurance.

14-13. No Intellectual Property Rights Granted. Nothing in this Agreement shall be construed as granting or conferring any rights, by license, or otherwise, expressly, implicitly, or otherwise, under any patents, copyrights, trade secrets, or other intellectual property rights of Company, and ESE shall acquire no ownership interest in the Confidential Company Information. No rights or obligations other than those expressly stated herein shall be implied from this Agreement.

15-14. Additional Obligations.

- a. ESE shall not create or maintain data which are derivative of Confidential Company Information except for the purpose of performing its obligations under this Agreement or as authorized by the Governing Documents: or as expressly authorized by the customer, unless that use violates Federal, State, or local laws, tariffs, rules and/or regulations. For purposes of this Agreement, the following shall not be considered Confidential Company Information or a derivative thereof: (i) any customer contracts, customer invoices, or any other documents created by ESE that reference estimated or actual measured

customer usage information, which ESE needs to maintain for any tax, financial reporting or other legitimate business purposes consistent with the Governing Documents; and (ii) Data collected by ESE from customers through its website or other interactions based on those customers' interest in receiving information from or otherwise engaging with ESE or its partners.

- b. ESE shall comply with all applicable privacy and security laws to which it is subject, including without limitation all applicable Data Protection Requirements and not, by act or omission, place Company in violation of any privacy or security law known by ESE to be applicable to Company.
- c. ESE shall have in place appropriate and reasonable processes and systems, including an Information Security Program, defined as having completed an accepted Attestation as reasonably determined by the Company in its discretion, to protect the security of Confidential Company Information and ~~prevent~~protect against a Data Security Incident, including, without limitation, a breach resulting from or arising out of ESE's internal use, processing, or other transmission of Confidential Company Information, whether between or among ESE's Third-Party Representatives, subsidiaries and affiliates or any other person or entity acting on behalf of ESE, including without limitation Third-Party Representatives. The Company's determination is subject to the dispute resolution process ~~satisfactory to~~under the Company Governing Documents. In the event the Company and ESE are unable to resolve the dispute by mutual agreement within thirty (30) days of said referral, the dispute shall be referred for mediation through the Commission's Office of Administrative Law Judge. A party may request mediation prior to that time if it appears that informal resolution is not productive.
- d. ESE and Company shall safely secure or encrypt during storage and encrypt during transmission all Confidential Information, except that no encryption in transit is required for email communications.
- e. ESE shall establish policies and procedures to provide reasonable and prompt assistance to Company in responding to any and all requests, complaints, or other communications received from any individual who is or may be the subject of a Data Security Incident involving Confidential Company Information Processed by ESE to the extent such request, complaint or other communication relates to ESE's Processing of such individual's Confidential Company Information.
- f. ESE shall establish policies and procedures to provide all reasonable and prompt assistance to Company in responding to any and all requests, complaints, or other communications received from any individual, government, government agency, regulatory authority, or other entity that is or may have an interest in the Confidential Company Information, data theft, or other unauthorized release of Confidential Company Information, disclosure of Confidential Company Information, or misuse of Confidential Company Information to the extent such request, complaint or other communication relates to ESE's accessing or Processing of such Confidential Company Information.

- g. ESE will not process Confidential Company Information outside of the United States or Canada absent a written agreement with Company. For the avoidance of doubt, Confidential Company Information stored in the United States or Canada, or other countries as agreed upon in writing will be maintained in a secure fashion at a secure location pursuant to the terms and conditions of this Agreement.

16.15. Specific Performance. The Parties acknowledge that disclosure or misuse of Confidential Company Information in violation of this Agreement may result in irreparable harm to Company, the amount of which may be difficult to ascertain and which may not be adequately compensated by monetary damages, and that therefore Company shall be entitled to specific performance and/or injunctive relief to enforce compliance with the provisions of this Agreement. Company's right to such relief shall be in addition to and not to the exclusion of any remedies otherwise available under this Agreement, at law or in equity, including monetary damages, the right to terminate this Agreement for breach and the right to suspend the provision or Processing of Confidential Company Information ~~hereunder~~under the Governing Documents. ESE agrees to waive any requirement for the securing or posting of any bond or other security in connection with Company obtaining any such injunctive or other equitable relief.

17.16. Indemnification. To the fullest extent permitted by law, ESE shall indemnify and hold Company, its affiliates, and their respective officers, directors, trustees, shareholders, employees, and agents, harmless from and against any and all loss, cost, damage, or expense of every kind and nature (including, without limitation, penalties imposed by the Commission or other regulatory authority or under any Data Protection Requirements, court costs, expenses, and reasonable attorneys' fees) arising out of, relating to, or resulting from, in whole or in part, the breach or non-compliance with this Agreement by ESE or any of its Third-Party Representatives except to the extent that the loss, cost, damage or expense is caused by the negligence, gross negligence or willful misconduct of Company.

18.17. Notices. With the exception of notices or correspondence relating to potential or pending disclosure under legal compulsion, all notices and other correspondence hereunder shall be sent by first class mail, by personal delivery, or by a nationally recognized courier service. Notices or correspondences relating to potential or pending disclosure under legal compulsion shall be sent by means of Express Mail through the U.S. Postal Service or other nationally recognized courier service which provides for scheduled delivery no later than the business day following the transmittal of the notice or correspondence and which provides for confirmation of delivery. All notices and correspondence shall be in writing and addressed as follows:

If to ESE, to:

ESE Name:
Name of Contact:
Address:
Phone:

Email:

If to Company, to:

Company Name: National Fuel Gas Distribution Corporation
Name of Contact: Rates and Regulatory Affairs Department
Address: 6363 Main Street, Williamsville, NY 14221
Phone: 716-857-6824
Email: NFGratesPAD@natfuel.com

A Party may change the address or addressee for notices and other correspondence to it hereunder by notifying the other Party by written notice given pursuant hereto.

19-18. Term and Termination. This Agreement shall be effective as of the date first set forth above and shall remain in effect until terminated in accordance with the provisions of the service agreement, if any, between the Parties or the Governing Documents and upon not less than thirty (30) days' prior written notice specifying the effective date of termination, provided, however, that any expiration or termination shall not affect the respective obligations or rights of the Parties arising under this Agreement prior to the effective date of termination. Company may terminate this Agreement if the ESE loses its status as a Licensed Supplier, has not served customers for two (2) years, or has not had electronic communication, other than by email, with Company for one (1) year. Further, Company may terminate this Agreement immediately upon notice to ESE in the event of a material breach hereof by ESE or its Third-Party Representatives. For the purpose of clarity, a breach of Sections 3-4, 6-11, 13, 14, 16, and 24 shall be a material breach hereof. The Breaching Party will provide the non-breaching Party with a written description and notice of the material breach. Upon the expiration or termination hereof, neither ESE nor its Third-Party Representatives shall have any further right to Process Confidential Company Information ~~or Customer Information and, unless the customer has given written or electronic consent to do so~~ shall immediately comply with its obligations under Section 8 and the Company shall not have the right to process Confidential ESE Information and shall immediately comply with its obligations under Section 8.

20-19. Consent to Jurisdiction; Selection of Forum. ESE irrevocably submits to the jurisdiction of the Commission and courts located within the Commonwealth of Pennsylvania with regard to any dispute or controversy arising out of or relating to this Agreement. ESE agrees that service of process on it in relation to such jurisdiction may be made by certified or registered mail addressed to ESE at the address for ESE pursuant to Section 11 hereof and that such service shall be deemed sufficient even under circumstances where, apart from this Section, there would be no jurisdictional basis for such service. ESE agrees that service of process on it may also be made in any manner permitted by law. ESE consents to the selection of the Pennsylvania and United States courts within Erie County, Pennsylvania as the exclusive forums for any legal or equitable action or proceeding arising out of or relating to this Agreement.

21-20. Governing Law. This Agreement shall be interpreted and the rights and obligations of the Parties determined in accordance with the laws of the Commonwealth of Pennsylvania, without recourse to such state's choice of law rules.

22-21. Survival. The obligations of ESE under this Agreement shall continue for so long as ESE and/or ESE's Third-Party Representatives continue to have access to, are in possession of or acquire Confidential Company Information even if all Agreements between ESE and Company have expired or been terminated.

23-22. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which shall together constitute one and the same instrument. Copies of this Agreement and copies of signatures on this Agreement, including any such copies delivered electronically as a .pdf file, shall be treated for all purposes as originals.

24-23. Amendments; Waivers. Except as directed by the Commission, this Agreement may not be amended or modified except if set forth in writing signed by the Party against whom enforcement is sought to be effective. No forbearance by any Party to require performance of any provisions of this Agreement shall constitute or be deemed a waiver of such provision or the right thereafter to enforce it. Any waiver shall be effective only if in writing and signed by an authorized representative of the Party making such waiver and only with respect to the particular event to which it specifically refers.

25-24. Assignment. This Agreement (and the Company's or ESE's obligations hereunder) may not be assigned by Company, ESE or Third Party Representatives without the prior written consent of the non-assigning Party, and any purported assignment without such consent shall be void. Consent will not be unreasonably withheld.

26-25. Severability. Any provision of this Agreement which is determined by any court or regulatory body having jurisdiction over this Agreement to be invalid or unenforceable will be ineffective to the extent of such determination without invalidating the remaining provisions of this Agreement or affecting the validity or enforceability of such remaining provisions.

27-26. Entire Agreement. This Agreement (including any Exhibits hereto) constitutes the entire Agreement between the Parties with respect to the subject matter hereof and any prior or contemporaneous oral or written Agreements or understandings with respect to such subject matter are ~~merged herein, superseded hereby, including all Data Security Agreements between ESE and the Company that were executed prior to the effective date of this Agreement.~~ This Agreement may not be amended without the written Agreement of the Parties.

28-27. No Third-Party Beneficiaries. This Agreement is solely for the benefit of, and shall be binding solely upon, the Parties and their respective agents, successors, and permitted assigns. This Agreement is not intended to benefit and shall not be for the benefit of any party other than the Parties and the indemnified parties named herein, and no other party shall have any right, claim, or action as a result of this Agreement.

29-28. Force Majeure. No Party shall be liable for any failure to perform its obligations in

connection with this Agreement, where such failure results from any act of God or governmental action or order or other cause beyond such Party's reasonable control (including, without limitation, any mechanical, electronic, or communications failure) which prevents such Party from performing under this Agreement and which such Party is unable to prevent or overcome after the exercise of reasonable diligence. For the avoidance of doubt a Data Security Incident is not a force majeure event.

30-29. Relationship of the Parties. Company and ESE expressly agree they are acting as independent contractors and under no circumstances shall any of the employees of one Party be deemed the employees of the other for any purpose. Except as expressly authorized herein, this Agreement shall not be construed as authority for either Party to act for the other Party in any agency or other capacity, or to make commitments of any kind for the account of or on behalf of the other.

31-30. Construction. This Agreement shall be construed as to its fair meaning and not strictly for or against any party.

32-31. Binding Effect. No portion of this Agreement is binding upon a Party until it is executed on behalf of that Party in the space provided below and delivered to the other Party. Each Party agrees that this Agreement and any other documents to be delivered in connection herewith may be electronically signed, and that any electronic signatures appearing on this Agreement or such other document are the same as handwritten signatures for the purposes of validity, enforceability, and admissibility. Prior to such execution and delivery, neither the submission, exchange, return, discussion, nor the negotiation of this document, whether or not this document is then designated as a "draft" document, shall have any binding effect on a Party.

[signature page follows]

IN WITNESS WHEREOF, the Parties have executed and delivered this Agreement as of the date first above written.

NATIONAL FUEL GAS DISTRIBUTION CORPORATION

By: _____ By: _____

Name: John J. Polka, Jr. Name: _____

Title: Assistant Vice President Title: _____

SELF-ATTESTATION OF INFORMATION SECURITY CONTROLS

National Fuel Gas Distribution Corporation ("Company") represents that for all information received from ESE or its Third Party Representatives in response or pursuant to this Self-Attestation that is marked CONFIDENTIAL by ESE or its Third Party Representatives (Confidential Self-Attestation Information) Company shall: (A) hold such Confidential Self-Attestation Information in strict confidence; (B) not disclose such Confidential Self-Attestation Information to any other person or entity; (C) not Process such Confidential Self-Attestation Information outside of the United States or Canada; (D) not Process such Confidential Self-Attestation Information for any purpose other than to assess the adequate security of ESE or its Third partyParty Representatives pursuant to this Self-Attestation and to work with ESE or its Third partyParty Representatives to permit it to achieve adequate security if it has not already done so; (E) limit reproduction of such Confidential Self-Attestation Information; (F) store such Confidential Self-Attestation Information in a secure fashion at a secure location in the United States or Canada that is not accessible to any person or entity not authorized to receive such Confidential Self-Attestation Information under the provisions hereof; (G) otherwise use at least the same degree of care to avoid publication or dissemination of such Confidential Self-Attestation Information as Company employs (or would employ) with respect to its own confidential information that it does not (or would not) desire to have published or disseminated, but in no event less than reasonable care.

The Requirements to complete the Self-Attestation are as follows (check all that apply to Third Party's ESE's computing environment, leave blank all that do not apply to Third Party's ESE's computing environment. For items that do not apply ~~-If, if~~ there are plans to address items that do not currently apply within the next 12 months, place an asterisk in the blank and the month/year the requirement is projected to apply to the Third Party's ESE's computing environment), comments regarding plans for compliance are encouraged:

This SELF-ATTESTATION OF INFORMATION SECURITY CONTROLS ("Attestation"), is made as of this _____ day of _____, ~~2020~~2021 by _____, ~~a third party ("Third Party") to Company~~an ESE.

WHEREAS, Third Party ESE desires to retain access to certain Confidential Company Information¹ (as defined in this Data Security Agreement), Third Party ESE must THEREFORE self- attest to Third Party's ESE's compliance with the Information Security Control Requirements ("Requirements") as listed herein. Third Party ESE acknowledges that non-compliance with any of the Requirements may result in the termination of Company data access as per the discretion of Company, in whole or part, for its or their system(s). Any termination process will proceed pursuant to the Company's Tariff Governing Documents.

- _____ An Information Security Policy is implemented across the Third Party ESE corporation which includes officer level approval.
- _____ An Incident Response Procedure is implemented that includes notification within 48 hours of knowledge of a potential incident alerting utilities when Confidential Company Information is potentially exposed, or of any other potential security breach.
- _____ Role-based access controls are used to restrict system access to authorized users and limited on a need-to-know basis.
- _____ Multi-factor authentication is used for all remote administrative access, including, but not limited to, access to production environments.
- _____ All production systems are properly maintained and updated to include security patches on a periodic basis. Where a critical alert is raised, time is of the essence, and patches will be applied as soon as practicable.
- _____ Antivirus software is installed on all servers and workstations and is maintained with up-to-date signatures.
- _____ All Confidential Company Information is encrypted in transit utilizing industry best practice encryption methods-, except that Confidential Information does not need to be encrypted during email communications.
- _____ All Confidential Company Information is secured or encrypted at rest utilizing industry best practice encryption methods, or is otherwise physically secured.

¹ "Confidential Company Information" means, ~~collectively, aggregated and customer specific~~ information that Company is: (A) required by 52 Pa. Code § 62.76 and to provide to ESE or (B) any other Data provided to ESE by Company and marked confidential by the Company at the time of disclosure, ~~or (C) a Company's operations and/or systems, including but not limited to log-in credentials,~~ but excludes (i) information which is or becomes generally available to the public other than as a result of a disclosure by Receiving Party or its Representatives; (ii) information which was already known to Receiving Party on a non-confidential basis prior to being furnished to Receiving Party by Disclosing Party; (iii) information which becomes available to Receiving Party on a non-confidential basis from a source other than Disclosing Party or a representative of Disclosing Party if such source was not subject to any

prohibition against transmitting the information to Receiving Party and was not bound by a confidentiality agreement with Disclosing Party; (iv) information which was independently developed by the Receiving Party or its Representatives without reference to, or consideration of, the Confidential Information; or (v) information provided by the customer with customer consent where the customer expressly agrees that the information is public.

- _____ It is prohibited to store Confidential Company Information on any mobile forms of storage media, including, but not limited to, laptop PCs, mobile phones, portable backup storage media, and external hard drives, unless the storage media or data is encrypted. ~~phones, portable backup storage media, and external hard drives, unless the storage media or data is encrypted.~~
- _____ All Confidential Company Information is stored in the United States or Canada only, including, but not limited to, cloud storage environments and data management services.
- _____ Third Party ESE monitors and alerts their network for anomalous cyber activity on a 24/7 basis.
- _____ Security awareness training is provided to all personnel with access to Confidential Company Information.
- _____ Employee background screening occurs prior to the granting of access to Confidential Company Information.
- _____ Replication of Confidential Company Information to non-company assets, systems, or locations is prohibited.
- _____ Access to Confidential Company Information is revoked when no longer required, or if employees separate from the ESE or Third Party Representative.

Additionally, the attestation of the following item is requested, but is NOT part of the Requirements:

- _____ Third Party ESE maintains an up-to-date SOC II Type 2 Audit Report, or other security controls audit report.

IN WITNESS WHEREOF, Third Party ESE has delivered accurate information for this Attestation as of the date first above written.

Signature: _____

Name: _____

Title: _____

Date: _____

THIRD-PARTY REPRESENTATIVE AGREEMENT

~~This Third Party Agreement to be provided to the Company upon request.~~

~~I, _____, have read the Agreement between _____, (“Company”) and _____, (“Company”) dated _____, 20 (the “Agreement”) and agree to the terms and conditions contained therein. My duties and responsibilities on behalf of _____ require me to have access to the Confidential Information disclosed by Company to the ESE pursuant to the Agreement.~~

~~Signature~~ ~~Date~~

NFGD Exhibit CC-3

04/29/21 C-2020-3019621



National Fuel Gas Distribution Corporation
Fall 2018 Marketer/Supplier Teleconference
October 9, 2018

AGENDA

2:00 pm	Welcome and Introduction	Joanne Maciok
2:05 pm	Operational Update	Joanne Maciok
2:20 pm	Capacity Update	Bob Michalski
2:30 pm	Rates & Regulatory Update <ul style="list-style-type: none">○ Federal Regulatory Update○ NY Regulatory Update○ PA Regulatory Update	Mike Novak
3:00 pm	General Discussion	All
3:15 pm	Closing	Joanne Maciok



National Fuel Gas Distribution Corporation Fall 2018 Marketer/Supplier Teleconference

Operational Update

Presentation by: Joanne Maciok

October 9, 2018



Transportation Customers

October 2018

STAND-ALONE CUSTOMERS

MONTHLY (MMT) –

New York	1
Pennsylvania	0

DAILY (DMT) –

New York	0
Pennsylvania	79

TOTAL	80
--------------	-----------

AGGREGATION CUSTOMERS

New York (STBA)	76,155
New York (DMT)	35

Pennsylvania (MMNGS)	3,503
Pennsylvania (SATS)	24,591

TOTAL	104,284
--------------	----------------

TOTAL NFGDC	104,364
--------------------	----------------



Marketer/Supplier Operations Support

- NFGDC provides a full range of business tools and support services:
 - NFGDC Website:
 - <http://www.nationalfuelgas.com/marketers/default.aspx>
 - Operating Procedures Manuals:
 - GTOP, TSS, TSS Reports, Aggregator, Market Pool, Production Pool
 - Transportation Scheduling System – TSS
 - Training
 - Help Desks
 - Scheduling: (716)-857-7232
 - Hours: 7:30 am – 5:00 pm on business days
 - email: TSSSupport@natfuel.com
 - Billing: (716)-857-7432
 - Hours: 8:00 am – 4:30 pm on business days
 - email: TSD-Billing@natfuel.com
 - After Hours Scheduling Support: (716)-857-7232



New York & Pennsylvania Operations

- Meet daily delivery requirements (DDQs) to serve market
- Manage storage inventories
 - Required end of month storage inventory percentages are minimums, not targets
- Deliver upstream supplies at primary firm or acceptable alternate delivery points
- Customer usage and local production estimates need to be as accurate as possible
- Keep contact information up to date in TSS
 - Contact ranking functionality is available in TSS under the Rank Contact Method on the ECNTM shortcut



New York & Pennsylvania Operations

- **Daily Delivery Quantities (DDQs)**
 - DDQs are customer usage estimates based on usage history, weather forecasts, actual measurement
- **Production Daily Quantities (PDQs)**
 - PDQs are estimates of local production based on production volume history
- **Market Pool and Production Pool operators are responsible for monitoring actual flowing volumes and adjusting DDQs and PDQs via TSS**



Holiday DDQ Averaging

Dec 2018						
20	21	22	23	24	25	26
Thu	Fri	Sat	Sun	Mon	Tue	Wed
				NFG Closed	NFG Closed	

- Thu: Notice given if DDQs will not be averaged
- Fri: DDQs posted for Sat-Wed



ESS End of Month Inventory Levels Current Minimum Percentage Full

		NY	PA
Injection	April	0%	0%
	May	12%	12%
	June	29%	29%
	July	46%	46%
	August	63%	63%
	September	80%	80%
	October	95%	95%
Withdrawal	November	89%	86%
	December	71%	68%
	January	46%	45%
	February	28%	28%
	March	0%	0%



Pipeline Critical Notices are Important

- NFGDC reminds ESCO's to consider their business and regularly review the appropriate pipeline notices.
 - Subscribe to receive emails of critical notices from each pipeline that they operate on.
 - Review and assess potential impacts on their business
 - Contact the appropriate pipeline for notice clarification
 - Contact NFGDC for assistance
- To receive critical notice emails directly from:
 - NFG Supply- contact your internal SBS Security Administrator. If unknown, contact NFG Supply T&E Help Desk at 716-827-2385.
 - TGP- Update DART user setting in “Business Preferences” to receive email notifications.



Pennsylvania DMT Operations

- REMINDER: National Fuel provides PA DMT pool operators, and requesting customers, with official notification of instances of missing or incomplete customer telemetered readings via the daily Customer Transportation Statements (CTS).

– The following statement appears at the bottom of each CTS:

NOTE:WHEN 'USAGE EST.' IS SHOWN UNDER THE STMT BASIS COLUMN ON THIS REPORT, IT IS THE MARKET POOL OPERATOR'S RESPONSIBILITY TO OBTAIN A 10:00 A.M. READ DIRECTLY FROM THE CUSTOMER. THIS READ SHOULD BE E-MAILED TO TSSSUPPORT@NATFUEL.COM. THIS IS A PA GTOP REQUIREMENT.



SYSTEM MAINTENANCE ORDERS

***TO MAINTAIN SYSTEM OPERATIONAL INTEGRITY ***

- SYSTEM ALERT
- OPERATIONAL FLOW ORDER
- UNAUTHORIZED OVERRUN
- CURTAILMENT



Questions?





National Fuel Gas Distribution Corporation Fall 2018 Marketer/Supplier Teleconference

Capacity Update
Presentation by: Bob Michalski
October 9, 2018

Discussion Topics

New York

Supplier Transportation Balancing and Aggregation (STBA)

- Mandatory Upstream Transmission Capacity (MUTC)
- Intermediate NFGSC ESS Capacity

Pennsylvania

Small Aggregation Transportation Supplier (SATS)

- Released Transmission Capacity (RTC)
- Intermediate NFGSC ESS Capacity



NY STBA Capacity

Serves Requirements for up to 62 HDD

67% MUTC

Released at Weighted Average Cost of Capacity (WACOC)

- 30% NFGSC ESS, released at maximum rate
- 70% Upstream Pipeline Capacity, released at a rate, that blended with the ESS component, achieves the WACOC rate:
 - Tennessee Gas Pipeline (TGP) Zone 4 to Rose Lake

33% Intermediate ESS Capacity

Released at maximum rate



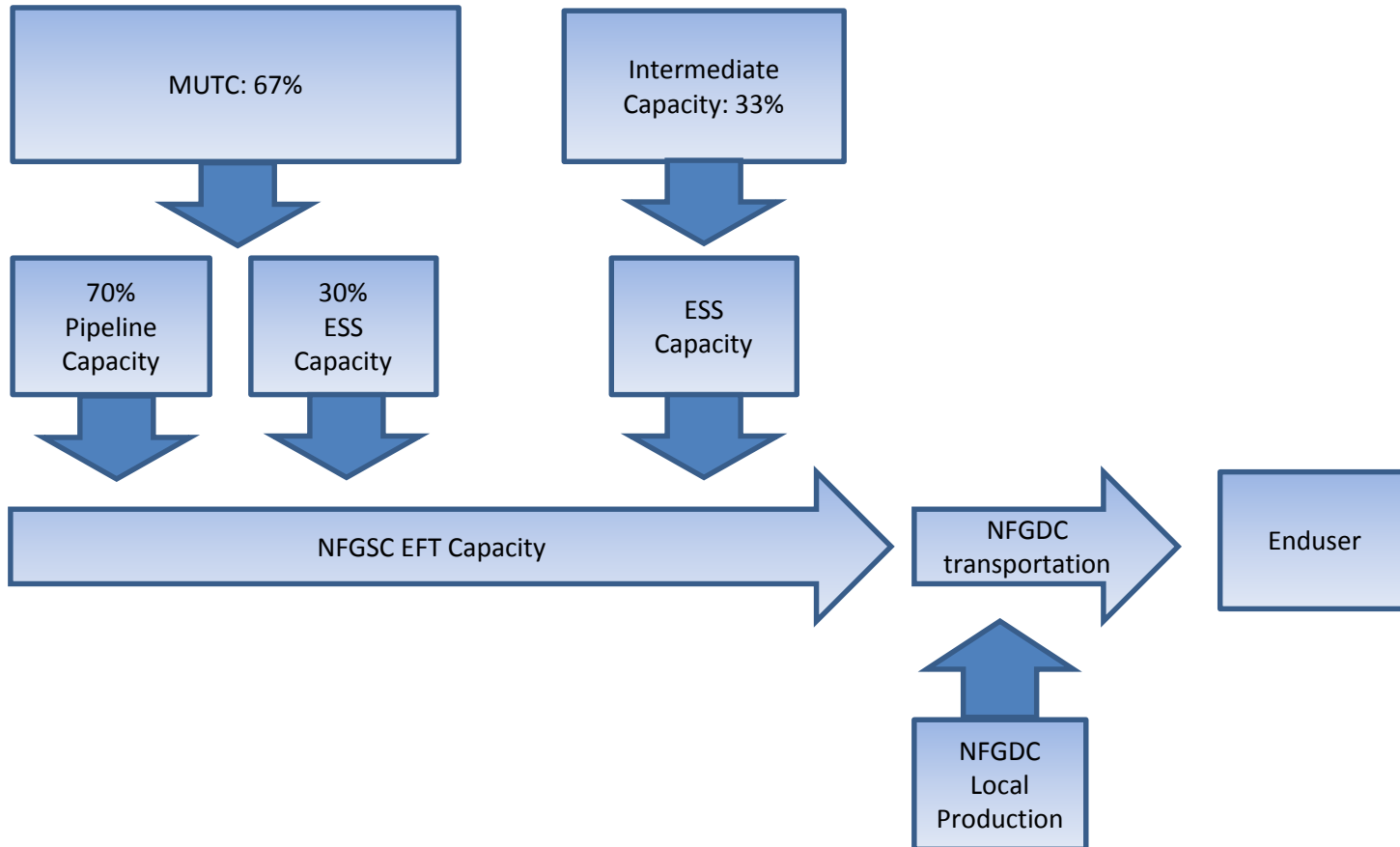
MUTC Upstream Capacity Releases

MUTC Capacity Release Methodology

- Up to 34,000 Dth/day:
 - TGP Z4-Z4 path up to 34,000
- Above 34,000 Dth/day to 48,000 Dth/day
 - A proportional mix:
 - 71% - TGP Z4-Z4
 - 29% - DETI North Point to Ellisburg



NY STBA Capacity





NY MUTC WACOC & Release Rates

Date	WACOC	WACOC Change Since Apr 2012	ESS Max Rate/Dth	TGP Release Rate/Dth
Apr 2012	\$10.8359	-	\$4.1649	\$11.9219
Apr 2013	\$10.5102	(3%)	\$4.4947	\$11.4895
Apr 2014	\$9.8099	(10%)	\$4.4817	\$10.6773
Apr 2015	\$9.4025	(13%)	\$4.4817	\$10.2709
Apr 2016	\$10.045	(7%)	\$4.3924	\$11.0425
Apr 2017	\$9.4851	(12%)	\$4.3032	\$10.3996
Apr 2018	\$8.6034	(21%)	\$4.4765	\$10.3721



PA SATS Capacity

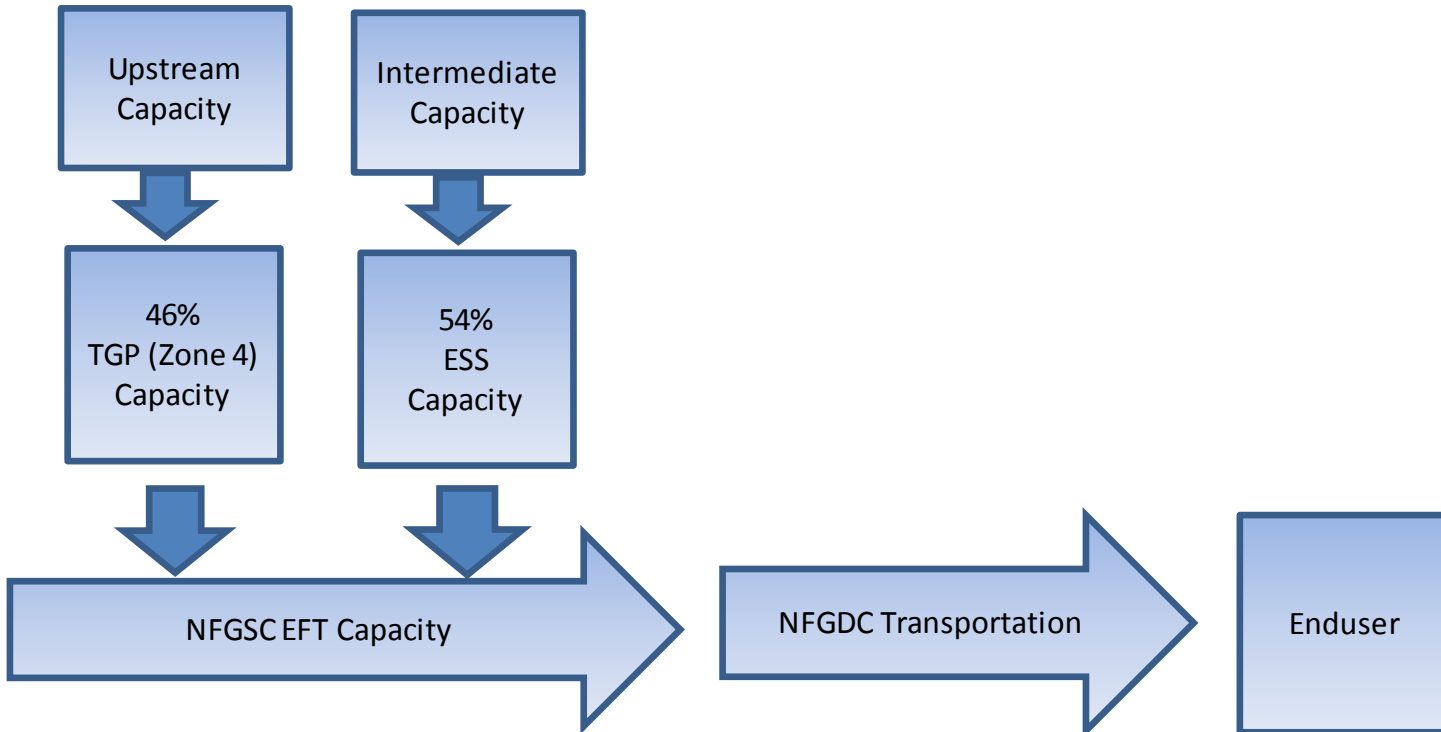
Serves Requirements for up to 62 HDD

Capacity mix:

- 46% RTC - TGP Z4 - Z4 released at WACOC
(11-1-18 changes to Z4 - Z4 from Z0 - Z4)
- 54% Intermediate ESS released at max rate



PA SATS Capacity





PA SATS TGP Release Rate

Date	TGP Release Rate/Dth*	Change
Aug 2012	\$14.9823	-
Aug 2013	\$13.8762	(7%)
Aug 2014	\$11.7962	(21%)
Aug 2015	\$10.1388	(32%)
Aug 2016	\$9.6257	(36%)
Aug 2017	\$9.5746	(36%)
Aug 2018	\$8.9412	(40%)

* PA TGP Release Rate = PA WACOC Rate.



Questions?





National Fuel Gas Distribution Corporation

Fall 2018 Marketer/Supplier Teleconference

Rates & Regulatory Update
Presentation by: Michael Novak
October 9, 2018



Rates & Regulatory Update

Federal Update

FERC Order 849

Issued on 7/18/2018, Order 849:

- Adopts procedures for determining which jurisdictional natural gas pipelines may be collecting unjust and unreasonable rates in light of (1) the income tax reductions provided by the Tax Cuts and Jobs Act (TCJA) and (2) the Revised Policy Statement on Treatment of Income Taxes and Opinion No. 511-C concerning income tax allowances following the decisions of the United States Court of Appeals for the D.C. Circuit in United Airlines.
- Establishes a requirement that all interstate natural gas companies, with cost-based stated rates, that filed a 2017 Form No. 2 or 2-A, must file the Form No. 501-G informational filing for the purpose of evaluating the impact of the TCJA and the United Airlines related issuances on interstate natural gas pipelines' revenue requirements.
- Provides four options for each interstate natural gas pipeline to make a filing to address the changes to the pipeline's recovery of tax costs or explain why no action is needed.

In short, FERC provided significant incentive for pipeline to file general Section 4 rate cases.



Rates & Regulatory Update

Federal Update

Pipeline Rate Events

- **RP18-940 – Empire Pipeline, Inc. (“Empire”)**
 - Empire filed a general Section 4 Rate Case on 6/29/2018 proposing a rate increase between 20% and 40% depending upon whether a roll-in of incremental facilities takes place;
 - Proposed rates reflect lower federal rate;
 - New rates likely to go into effect 1/1/2019.
- **RP18-1126 – Transcontinental Gas Pipe Line Company, LLC . (“Transco”)**
 - Transco filed a general Section 4 Rate Case filed on 8/31/2018 proposing a 40% rate increase;
 - Proposed rates reflect lower federal rate;
 - New rates likely to go into effect 4/1/2019.



Rates & Regulatory Update

Federal Update

Pipeline Rate Events

- **RP19-??? – Texas Eastern Transmission, LP (“TETCO”)**
 - TETCO announced they would file a rate case on 7/31/2018 but subsequently announced they would defer filing until they had time to evaluate FERC guidance concerning tax treatment for MLPs in FERC Docket PL17-1.

Empire and Transco rate increases will impact NY capacity rates and a TETCO rate increase will impact PA capacity rates.

- **Additionally...**
 - Several pipelines have or will file various tracker filings with changes to become effective starting 11/1/2018; most of these deal with fuel retention or pipeline safety/greenhouse gas surcharges.



Rates & Regulatory Update

New York Update

Case 12-M-0476 - Proceeding on Motion of the Commission to Assess Certain Aspects of the Residential and Small Non-Residential Retail Energy Markets in New York State (“NY Retail Energy Markets Case”)

12/15/2016 - PSC issues Order Adopting a Prohibition on Service to Low-Income Customers by Energy Service Companies (“LI Prohibition”)

- ESCOs, unless they have a waiver to serve Assistance Program Participant (APP) customers, are required to de-enroll any such customer accounts identified by the utilities when existing contracts with such customers expire;
- Utilities communicate to ESCOs serving Assistance Program Participant (APP) customers which accounts they are no longer eligible to serve;
 - Currently J2 web-file but will be transitioned 814C EDI transactions beginning 12/1/2018.
- NFGDC will perform its annual APP customer re-evaluation prior to the start of the HEAP application season (likely October).



Rates & Regulatory Update

New York Update

Case 15-M-0127 - In the Matter of Eligibility Criteria for Energy Services Companies

2/23/2016 - PSC issues Order Resetting Retail Energy Markets and Establishing Further Process (“Reset Order”)

- For gas customers with consumption less than 750 Mcf/year, the Order extended the general provisions set forth in 12-M-0476 for APP Customers to all mass-market (residential and small non-residential) customers.

12/2/2016 – PSC issues Notice of Evidentiary and Collaborative Tracks and Deadline for Initial Testimony and Exhibits

- December 2017 Evidentiary Hearing Concluded
- April 2018 Briefs Filed
- May 2018 Reply Briefs Filed
- Next Step ALJ’s Recommended Decision



Rates & Regulatory Update

New York Update

Case 17-M-0815 – Proceeding on Motion of the Commission on Changes in Law that May Affect Rates (“NY TCJA”)

- **8/9/2018 - PSC issued Order Determining Rate Treatment of Tax Changes.**
 - The Order requires utilities to continue to defer and reconcile the net benefits of the Tax Cuts and Jobs Act of 2017 until fully reflected in rates;
 - Indicated utilities are ordered to file tariff revisions to institute a sur-credit to commence on 10/1/2018;
 - The sur-credit will reflect current net tax benefits, with tax savings for the period prior to 10/1/2018 to be passed back to customers on a three year amortization period;
 - Allocation of the sur-credit is to be based on annual delivery revenues;
 - The Order establishes requirements for annual reconciliation filings.



Rates & Regulatory Update

New York Update

Case 17-M-0815 – Proceeding on Motion of the Commission on Changes in Law that May Affect Rates (“NY TCJA”)

- **9/26/2018 - NFGDC filed its NY TCJA Sur-Credit Filing.**
 - See Tariff Section 0 Leaf 150 – Regulatory Tracking Charge (RTC)
 - The sur-credit shall be calculated annually with rates effective each October until such time as the impacts of the TCJA can be reflected in a base rate filing or until such other time as may be ordered by the Commission.
 - Work papers that provide an update of the sur-credit rate shall be provided to DPS Staff on or before June 1st of each year.



Rates & Regulatory Update

New York Update

Case 18-G-0493 – Tariff filing by National Fuel Gas Distribution Corporation to add a definition and include provisions for use of Renewable Natural Gas (RNG)

- **7/31/2018 – A tariff change and GTOP modifications, including an RNG Interconnect Agreement, to provide RNG producers access to NFGDC’s system.**
 - The goal of the filings is to provide physical access to the NFGDC system provided that enhanced gas quality specifications are satisfied, i.e., effectively processed and upgraded into merchantable RNG;
 - Gas Technology Institute’s Interconnect Guide for Renewable Natural Gas (RNG) in New York State serves as a guidance document for the procedures applicable to RNG in the GTOP;
 - RNG Producers may form Production Pools within TSS; and ESCO or Direct Customer will have access to RNG on the same basis as traditional production gas.
- **NFGDC proposed a 12/1/2018 effective date in its filings.**



Rates & Regulatory Update

New York Update

Case 18-M-0376 – Proceeding on Motion of the Commission Regarding Cyber Security Protocols and Protections in the Energy Market Place

- **Late March 2018 – Cyber Attack on prominent EDI Service Provider.**
- **6/14/2018 - Order Instituting Proceeding issued.**
- **7/27-28/2018 – Technical Conference.**
- **Business-to-Business Collaborative outcomes:**
 - For each utility (or utilities) with whom an Energy Services Entity (ESE) does business, it is expected to (1) submit a completed Self-Attestation of information security controls and (2) execute a Data Security Agreement (DSA);
 - ESE cyber insurance obligation.
- **9/24/2018 - Department Of Public Service Staff Report on the Status of the Business-to-Business Collaborative to Address Cyber Security in the Retail Access Industry filed.**
 - DPS Staff believes the business-to-business process has enabled a productive dialogue and has resulted in a balanced DSA;
 - To the extent there are ESEs that do not provide Self-Attestations or execute DSAs, utilities have the ability to initiate the discontinuance process under the UBPs.



Rates & Regulatory Update

New York Update

New York GTOP

- GTOP Version 2.81 was filed on 8/31/2018
 - RNG Procedures and Interconnect Agreement;
 - New Supplier Billing sub-section
 - Language clarifying refund policy for invoices to ESCOs and Direct Customers.
 - Personnel/contact information updates.

- The next GTOP filing is planned for late 2018/early 2019.
 - Additional updates regarding RNG-related Procedures.
 - Updates to Upstream Agency Form and Procedures.

Otherwise, no Distribution-initiated tariff changes affecting STBA service are anticipated, however....



Rates & Regulatory Update

Pennsylvania Update

2019 Annual 1307(f) filing

- Gas cost recovery for Sales and Transportation Service
 - December 31, 2018 – Exhibits filed.
 - February 1, 2019 – Tariff, Testimony and Additional Exhibits filed.

- To intervene in the filing send a letter or request form to:

Pennsylvania Public Utility Commission
Post Office Box 3265
Harrisburg, PA 17105-3265

- Implementation to be effective August 1, 2019.
- Change to Storage Gas Inventory Purchase Rate may be proposed



Rates & Regulatory Update

Pennsylvania Update

M-2018-2641242 – Tax Cuts and Jobs Act of 2017 (“PA TCJA”)

- 3/15/2018 – Order issued declaring that the current rates and riders are temporary rates pursuant to Section 1310 (d) of the Public Utility Code, 66 Pa. C.S. § 1310(d) for a trial period ending 9/15/2018.

- **7/1/2018 - R-2018-3000527 – Negative Surcharge Implemented**
 - see Tariff Page 170.

- **10/1/2018 - M-2018-3004401 – PA TCJA Surcharge Adjustment effective date**

- **Going forward – TCJA Reconciliation Filings**
 - Upon determination that the negative surcharge, if left unchanged, would result in a material over or under collection:
 - the Company may file for an interim revision upon 10 days’ notice;
 - the Company will file an annual reconciliation September 1 of each year to become effective the following October 1, reflecting estimated TCJA savings for the fiscal year.



Rates & Regulatory Update

Pennsylvania Update

Natural Gas Retail Markets Investigation (RMI)

Capacity Assignment/ Use of Storage	System Balancing, Tolerances and Penalties	Access to Local Production
Seamless Moves & Instant Connects	Accelerated Switching	Creditworthiness Requirements
Standard Offer Program	Account Number Lookup Mechanisms	Low Income Shopping
Customer Education	Migration Riders	Purchase of Receivables Programs
Disclosure Statements	Electronic Data Protocols	Joint NGDC – NGS Bill



Rates & Regulatory Update

Pennsylvania Update

- **L-2016-2577413 – Advance Notice of Proposed Rulemaking (ANOPR) - Rulemaking to Amend the Provisions of 52 Pa. Code, Chapter 59 Regulations Regarding Standards For Changing a Customer’s Natural Gas Supplier.**
- **L-2018-2619223 – Advance Notice of Proposed Rulemaking (ANOPR) to solicit comments about amending/adding to regulations addressing the release, assignment and transfer of capacity among Natural Gas Distribution Companies (NGDCs) and Natural Gas Suppliers (NGSs).**
 - Technical Conference held on March 29, 2018.
 - Next Step – The PUC may issue a Notice of Proposed Rulemaking later this year.



Rates & Regulatory Update

Pennsylvania Update

Pennsylvania GTOP

- GTOP Version 2.81 was filed on 7/31/2018
 - Revisions reflecting implementation of 2018 1307(f), e.g. Upstream Capacity Cost Analysis & Capacity Allocation example;
 - New Supplier Billing sub-section added
 - language clarifying refund policy for invoices to NGSs;
 - Company contact information for submission of NGS Door-to-Door marketing plans has been provided;
 - Personnel/contact information updates.

- The next GTOP filing is planned for early 2019
 - RNG-related Procedures;
 - Updates to Upstream Agency Form and Procedures.

No Distribution-initiated tariff changes affecting SATS or MMNGS services are anticipated, however...



Rates & Regulatory Update

Pennsylvania Update

- **Other Potential Tariff/GTOP Changes for Pennsylvania**

1. **Cyber-Security requirements**

- The proposed requirements would follow the NY requirements;
- PUC Staff is aware of this proposal;
- PUC Cybersecurity Initiatives – At the 9/20/18 Public Meeting, the Commission announced the creation of a new Office of Cybersecurity Compliance and Oversight (“OCCO”) and the appointment of a Director, Michael C. Holko.
 - » A 9/20/18 press release issued concerning this latest step states that Holko will “advise the Executive Director and Commissioners on policy issues and procedural improvements involving cybersecurity oversight functions of regulated utilities; draft proposed cyber-related regulations; and oversee the preparation of orders, rulemakings, policy statements, Secretarial Letters and memoranda related to cybersecurity policies and procedures of those regulated utilities.”

2. **Renewable Natural Gas (RNG)**

- The proposed changes would be analogous to those filed in New York;
- PUC Staff is aware of this proposal.



Rates & Regulatory Update

General

Unauthorized Use of National Fuel Gas Company Trademarks

- National Fuel Gas Company ("National Fuel") is the sole owner of rights in the trademark NATIONAL FUEL, and is the owner of U.S. Registration No. 3,019,335 for the NATIONAL FUEL mark.
- This trademark registration is valid, subsisting, and incontestable.
- National Fuel has used the NATIONAL FUEL mark in connection with utility services and related goods and services since at least as early as 1974.
- National Fuel also owns exclusive rights in its logo mark consisting of the design of a flame.

ESCOs and NGSs that use National Fuel trademarks in an unauthorized manner will be sent Cease and Desist letters.



Questions?



NFGD Exhibit CC-4
04/29/21 C-2020-3019621



National Fuel Gas Distribution Corporation
Spring 2019 Marketer/Supplier Teleconference
March 21, 2019

AGENDA

2:00 pm	Welcome and Introduction	Joanne Maciok
2:05 pm	Operational Update	Dan Czechowicz/ Joanne Maciok
2:20 pm	Rates & Regulatory Update <ul style="list-style-type: none">○ Federal Regulatory Update○ NY Regulatory Update○ PA Regulatory Update	Mike Novak
2:40 pm	Capacity Update	Ken McAvoy
2:50 pm	General Discussion	All
3:00 pm	Closing	Joanne Maciok



National Fuel Gas Distribution Corporation

Spring 2019 Marketer/Supplier Teleconference

Operational Update
Presentation by: Dan Czechowicz
March 21, 2019



National Fuel

Transportation Customers

STAND-ALONE CUSTOMERS

MONTHLY (MMT) –

New York	1
Pennsylvania	0

DAILY (DMT) –

New York	0
Pennsylvania	79

TOTAL 80

AGGREGATION CUSTOMERS

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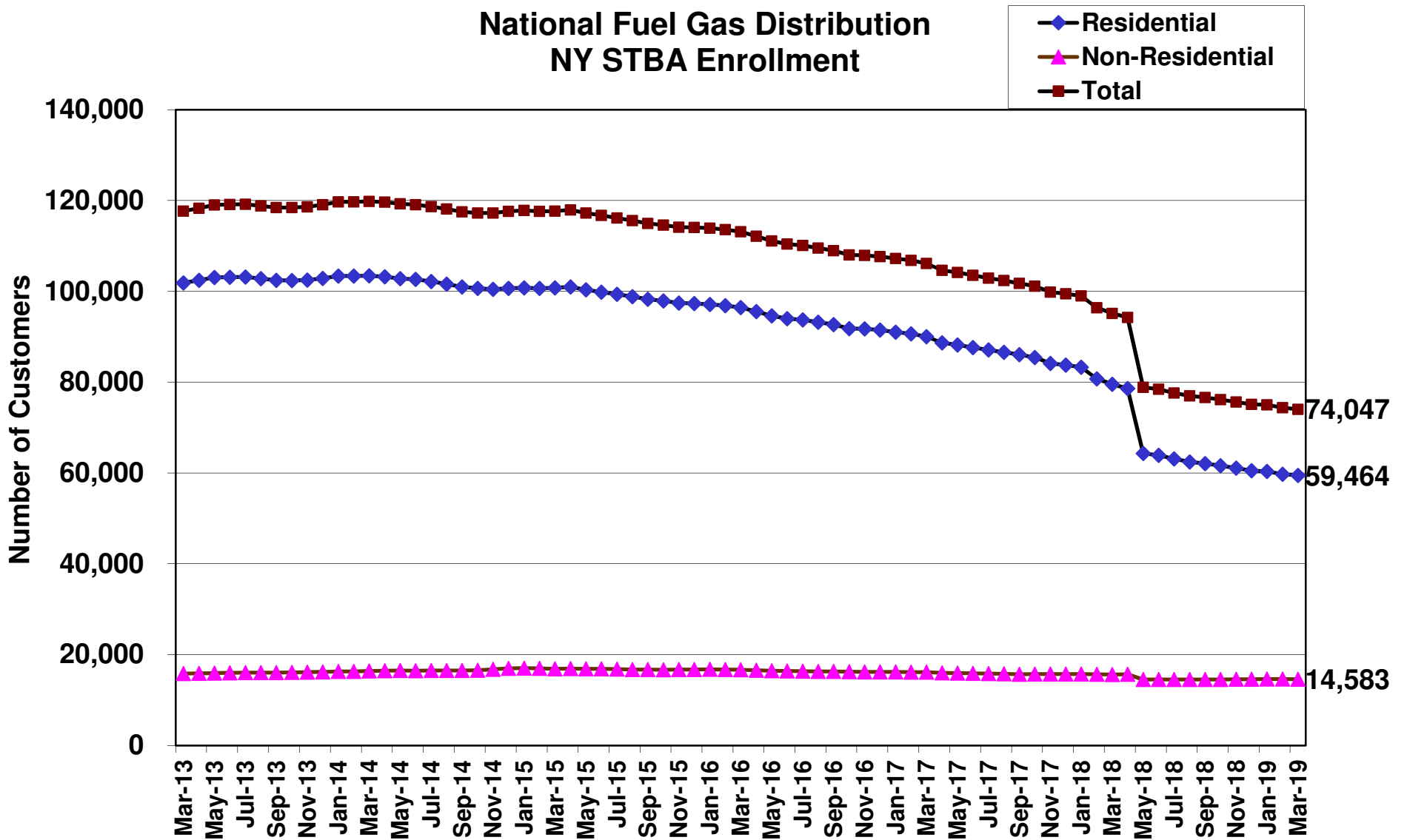
Pennsylvania (MMNGS)	3,617
Pennsylvania (SATS)	26,653

TOTAL 104,317

TOTAL NFGDC 104,397



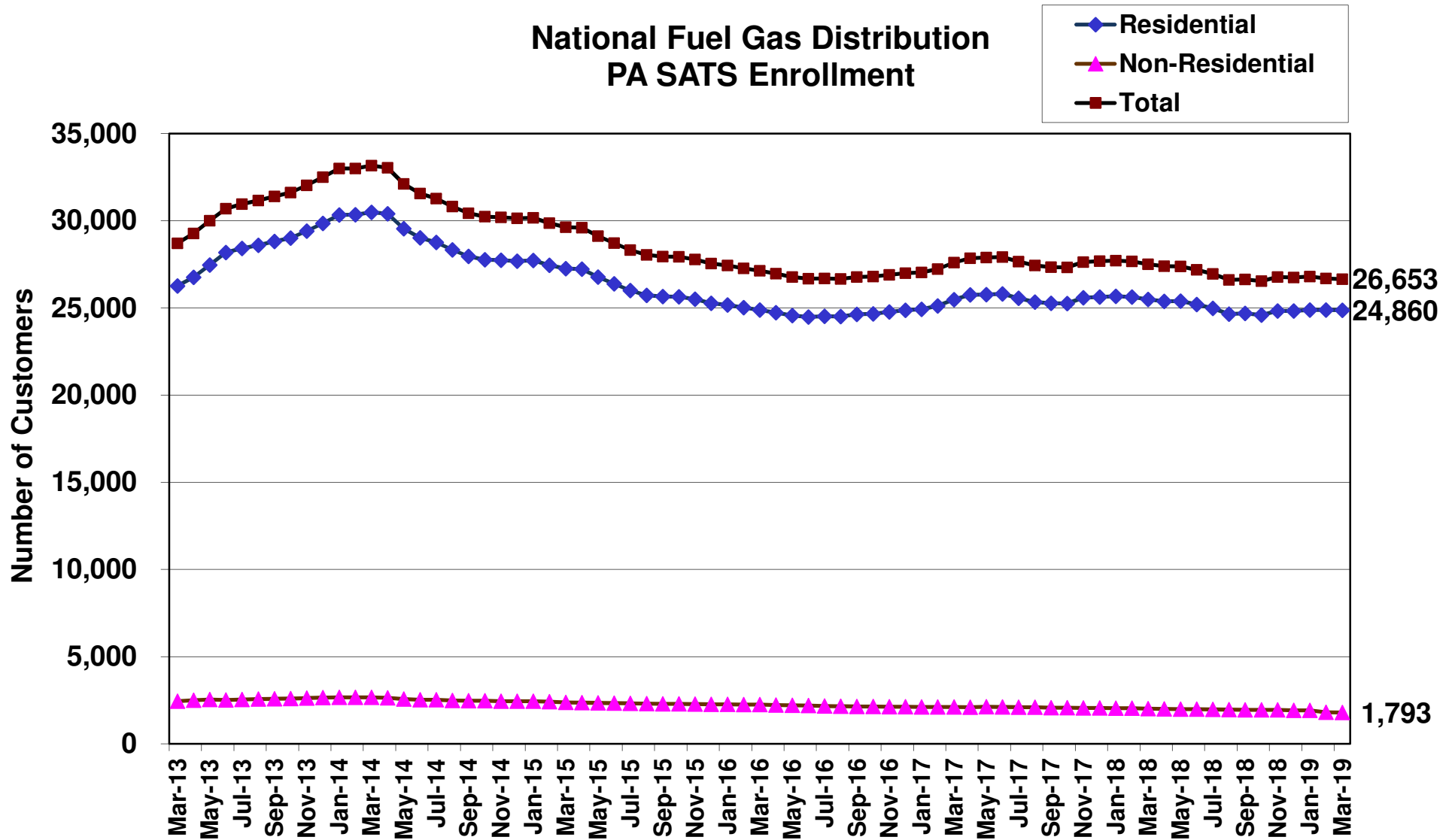
National Fuel Gas Distribution NY STBA Enrollment





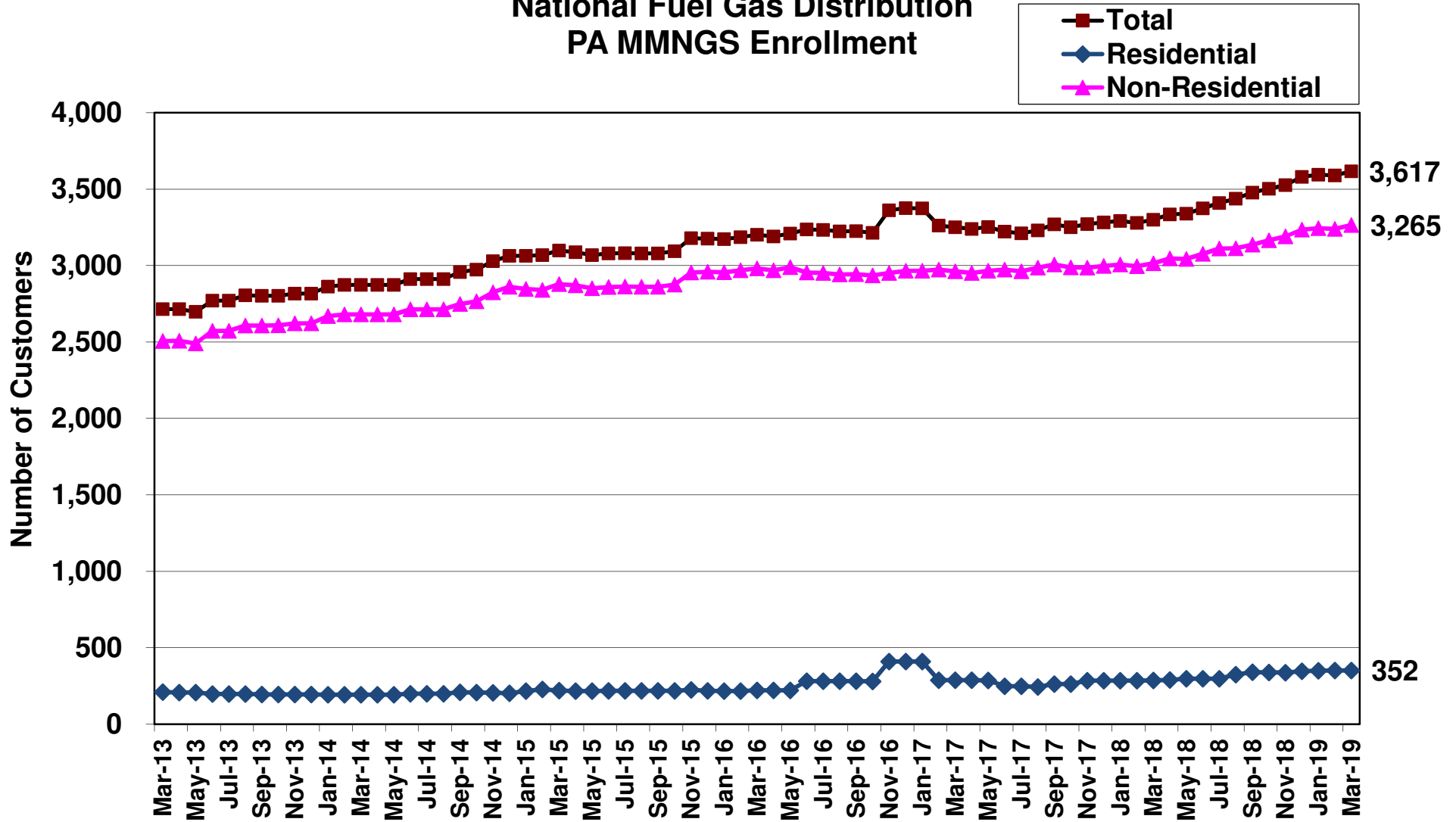
National Fuel

National Fuel Gas Distribution PA SATS Enrollment





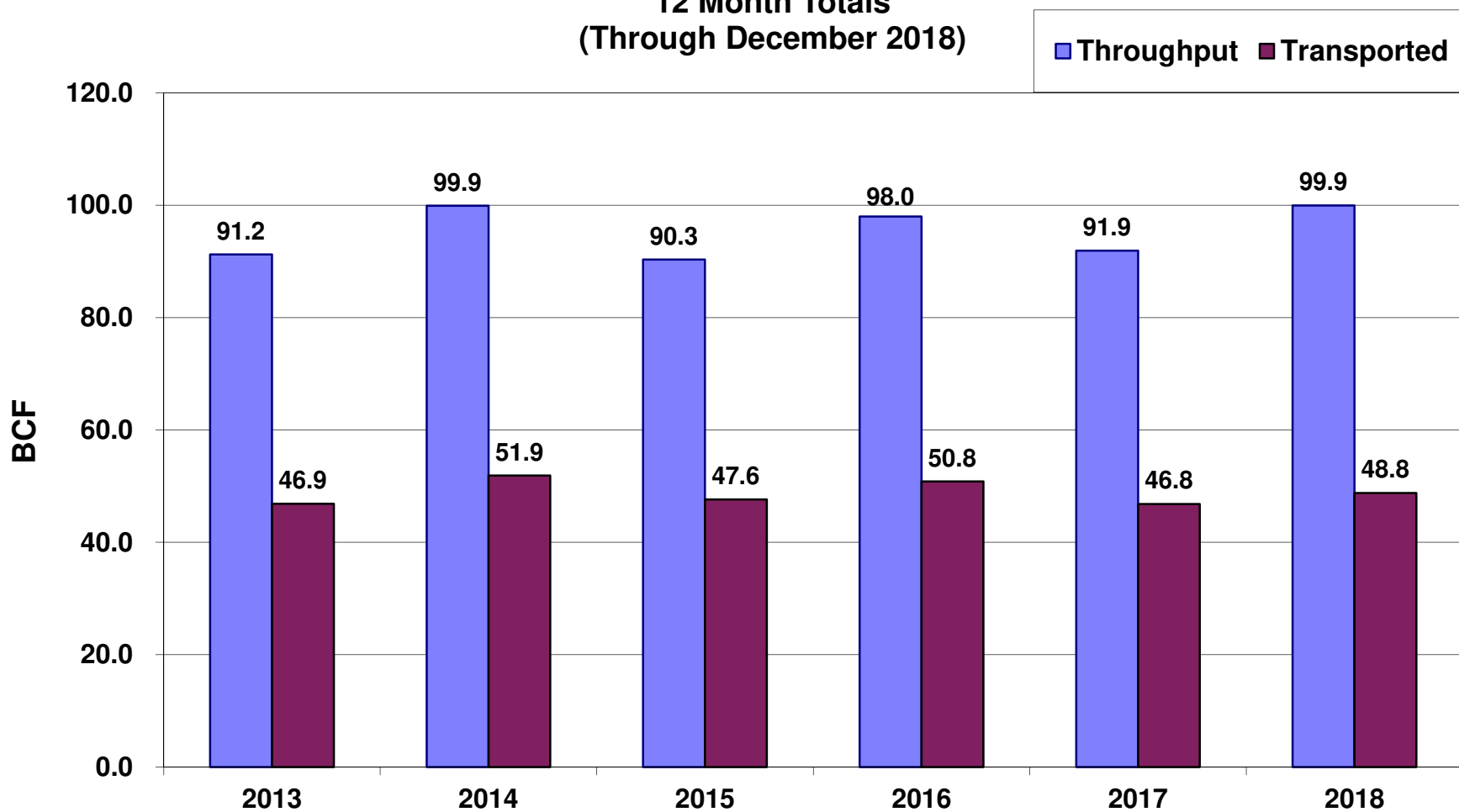
National Fuel Gas Distribution PA MMNGS Enrollment





National Fuel

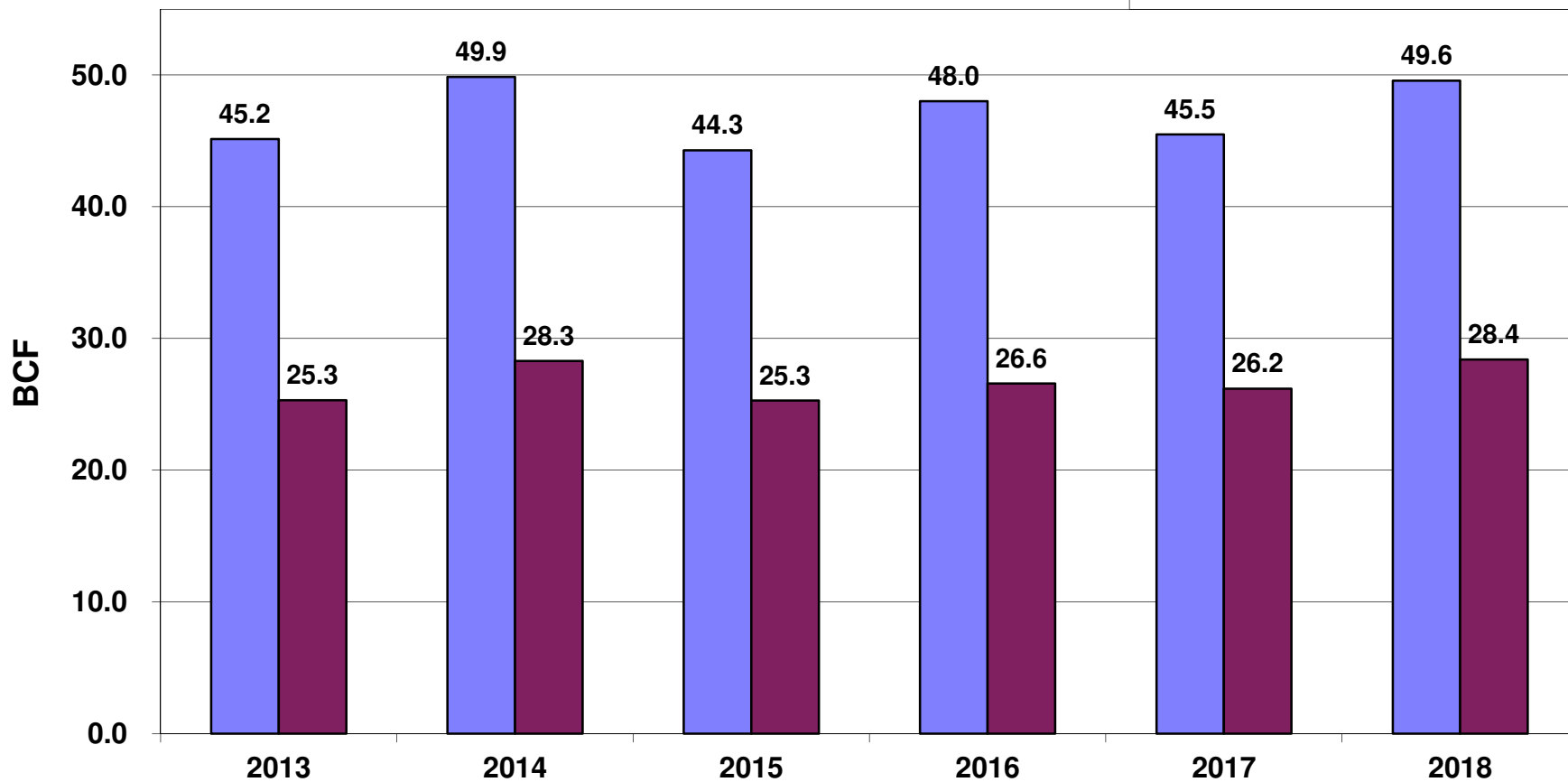
NEW YORK 12 Month Totals (Through December 2018)





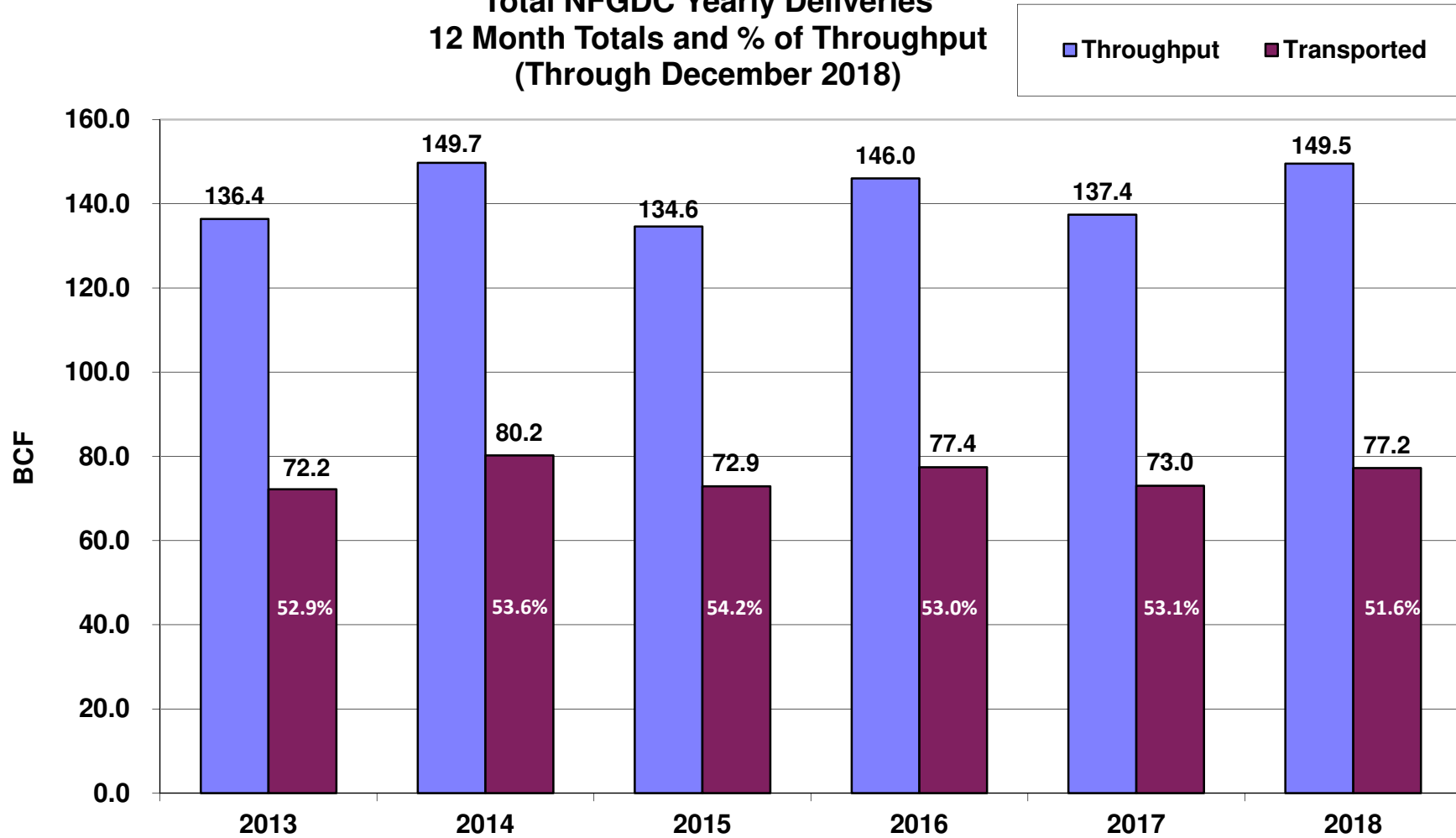
National Fuel

PENNSYLVANIA 12 Month Totals (Through December 2018)





Total NFGDC Yearly Deliveries 12 Month Totals and % of Throughput (Through December 2018)





National Fuel

Marketer/Supplier Operations Support

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National Fuel Gas Distribution Corporation

Spring 2019 Marketer/Supplier Teleconference

Operational Update - Continued

Presentation by:

Joanne Maciok

March 21, 2019



National Fuel

New York & Pennsylvania Operations

- Meet daily delivery requirements (DDQs) to serve market
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- Customer usage and local production estimates need to be as accurate as possible
- Manage storage inventories
 - Required end of month storage inventory percentages are **minimums**, not targets



ESS End of Month Inventory Levels Current Minimum Percentage Full

		NY	PA
Injection	April	0%	0%
	May	12%	12%
	June	29%	29%
	July	46%	46%
	August	63%	63%
	September	80%	80%
	October	95%	95%
Withdrawal	November	89%	86%
	December	71%	68%
	January	46%	45%
	February	28%	28%
	March	0%	0%



National Fuel

New York & Pennsylvania Operations

- **Daily Delivery Quantities (DDQs)**
 - DDQs are customer usage estimates based on usage history, weather forecasts, actual measurement – mid course correction
- **Production Daily Quantities (PDQs)**
 - PDQs are estimates of local production based on production volume history
- **Market Pool and Production Pool operators are responsible for monitoring actual flowing volumes and requesting DDQ and PDQ modifiers via TSS as necessary**



National Fuel

New York & Pennsylvania Operations

- Market Pool and Production Pool setup reminder
 - Calendar sent via email and posted on the web site
- Sharing of TSS user logins should not be done due to data security concerns – Data Security Agreement and Self Attestation
- At least one TSS user back-up is highly recommended
- Capacity release data files are under the Secure Transactions section of the Services for Marketers, Producers and Suppliers link on the NFG web site
- Contact the TSD Billing Help Desk at 716-857-7432 to obtain login credentials



National Fuel

Pipeline Critical Notices are Important

- NFGDC reminds ESCO's to consider their business and regularly review the appropriate pipeline notices.
 - Subscribe to receive emails of Critical Notices from each pipeline that they operate on
 - Review and assess potential impacts on their business
 - Contact the appropriate pipeline for notice clarification
 - Contact NFGDC for assistance
- To receive Critical Notice emails directly from:
 - NFG Supply- contact internal System Administrator to set up email notification preferences. Any issues should be reported to Tracey Williams at WilliamsT@natfuel.com
 - TGP- Update DART user setting in “Business Preferences” to receive email notifications



SYSTEM MAINTENANCE ORDERS

*** TO MAINTAIN SYSTEM OPERATIONAL INTEGRITY ***

- SYSTEM ALERT
- Operational Flow Order (OFO)
 - NY STBA 98-105% (cold);95-102% (warm)
 - PA SATS 100-102%(cold);98-100% (warm)
 - PA MMNGS 100-105% (cold);95-100% (warm)
 - Option to disallow use of PA DMT banks
 - Option to shrink NY DMT tolerance from 10% to as low as 2%
- Implemented ROBO text option
- UNAUTHORIZED OVERRUN
- CURTAILMENT



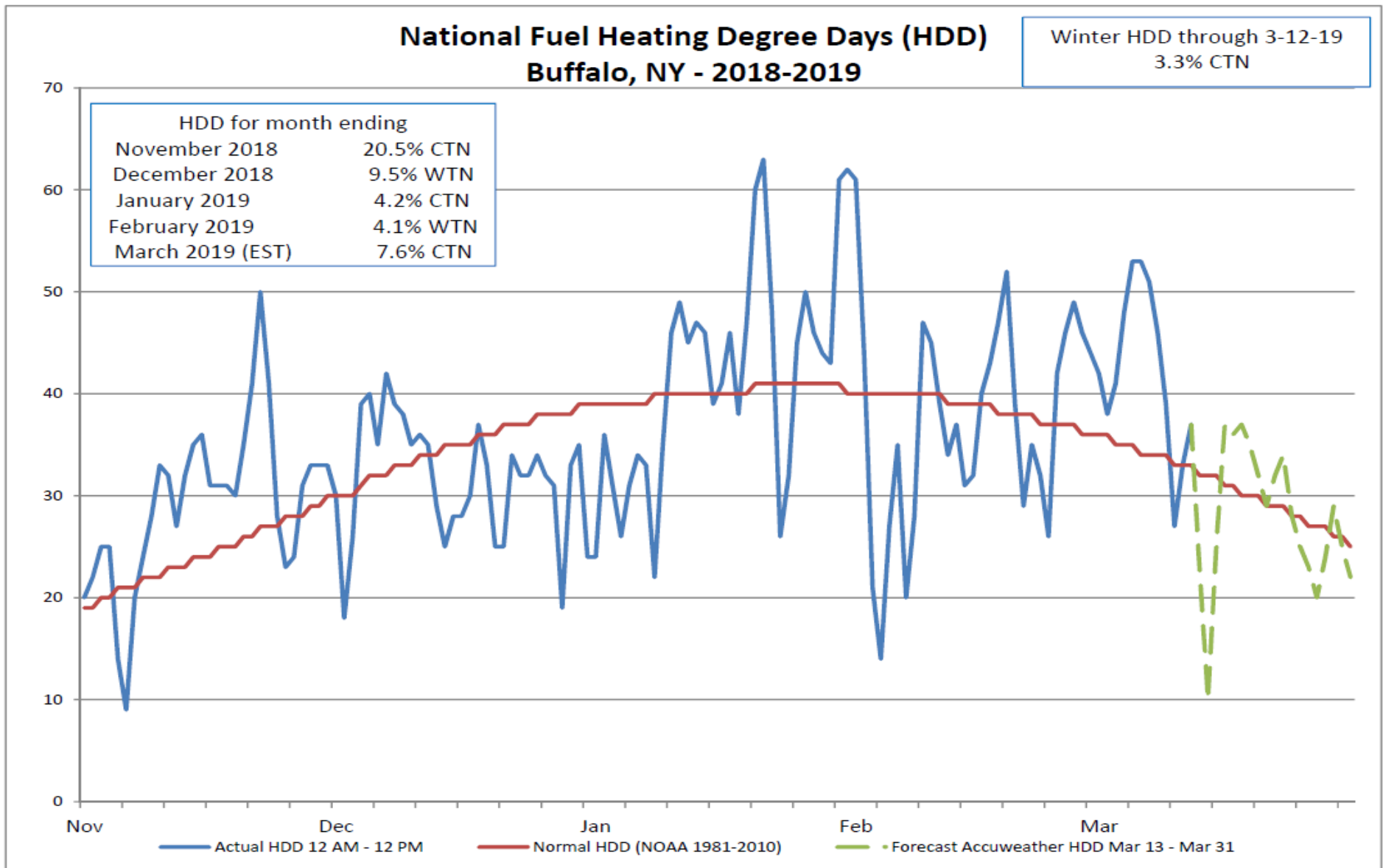
National Fuel

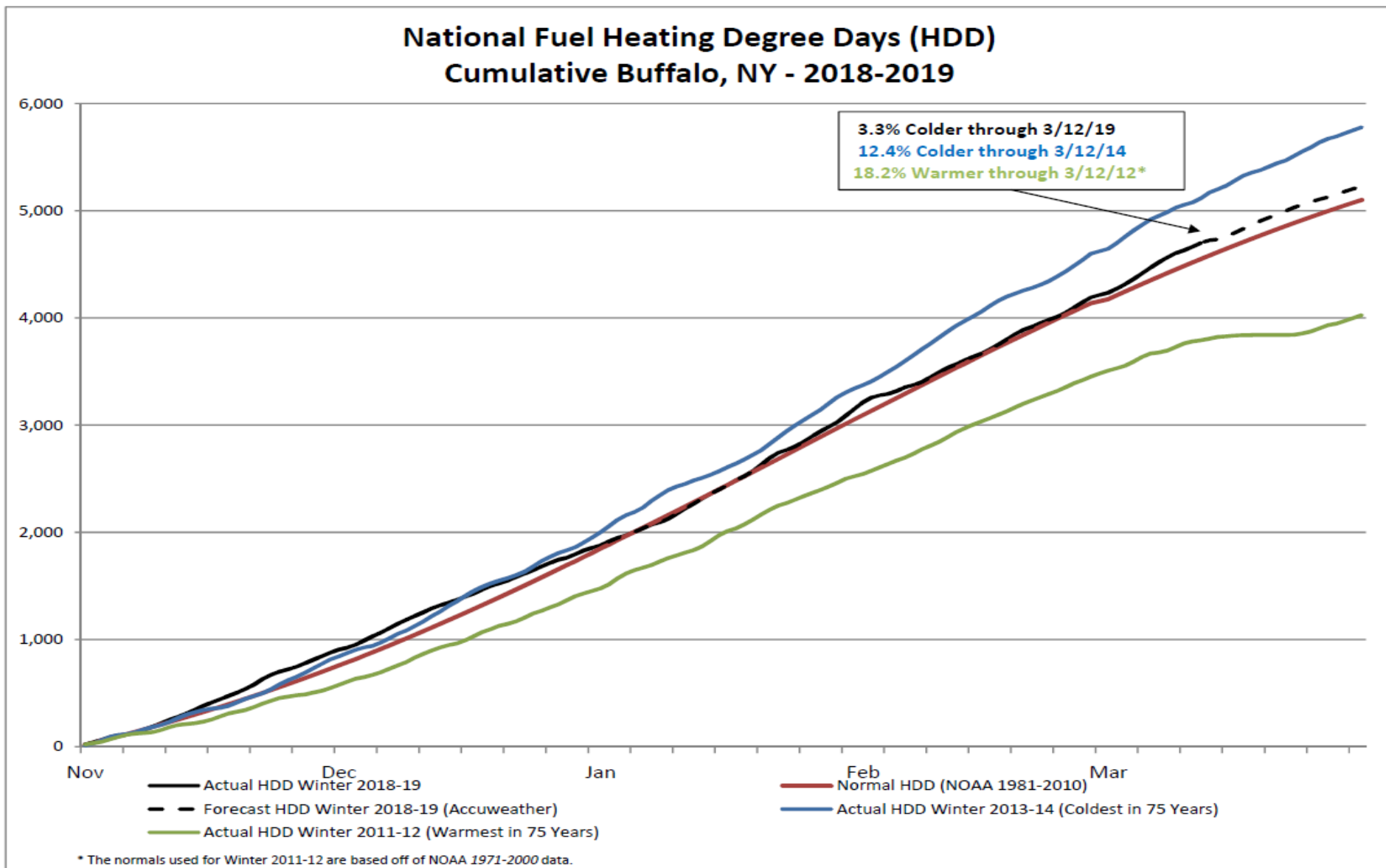
Operational Update

Winter 2018 – 2019

(Gas days inclusive. Applies to NY and PA)

- **System Alerts**
 - **5 Cold Weather**
 - **November 22-23**
 - **January 10-11**
 - **January 18-21**
 - **January 25-February 1**
 - **March 4-7**
 - **1 Warm Weather**
 - **December 27-28**
 - **4 DDQ Averaging Suspension**
 - **November 22-26**
 - **December 28-January 2**
 - **January 26-28**
 - **March 2-4**
- **OFOs**
 - **2 Under-delivery**
 - **January 19-21**
 - **January 29-February 1**



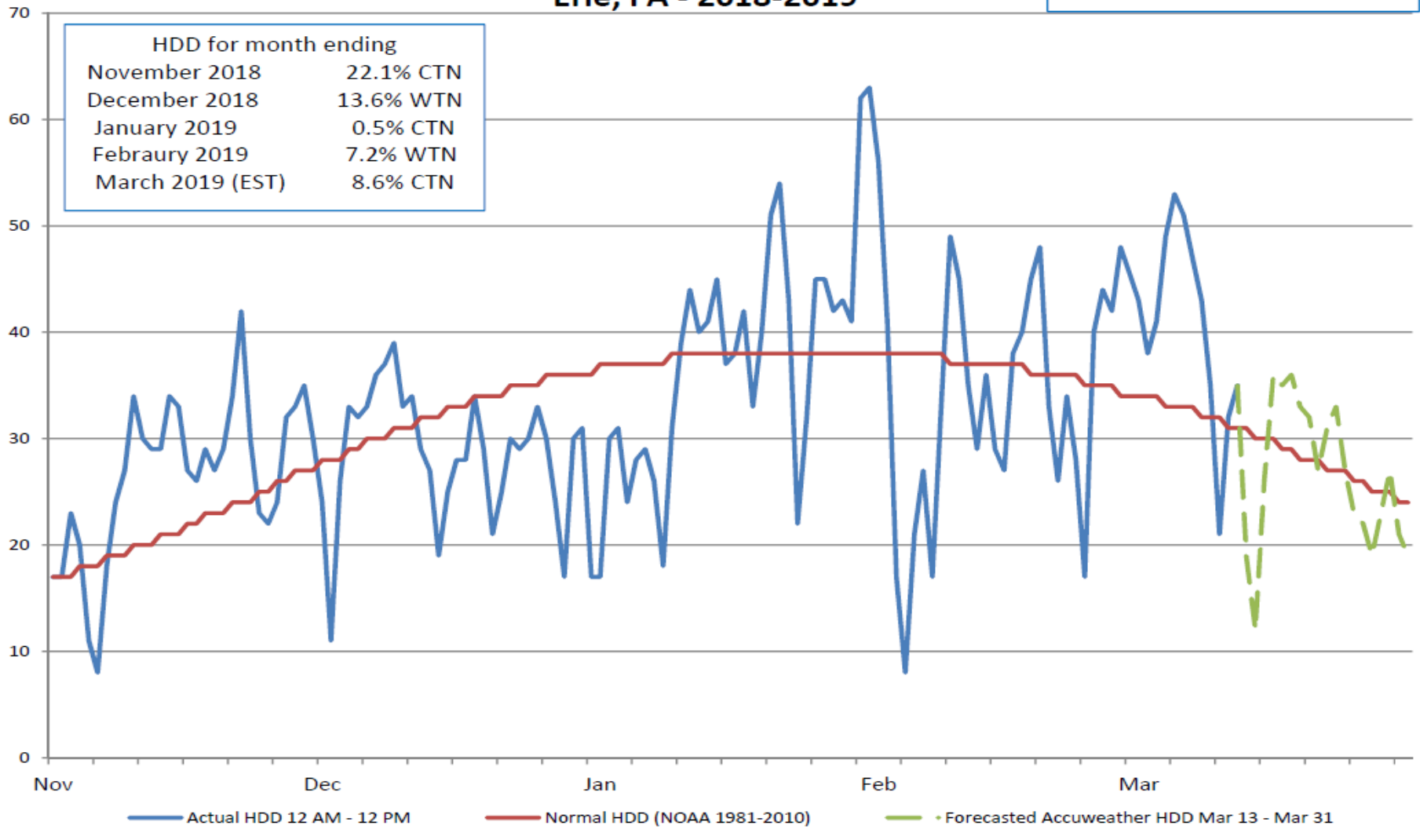




National Fuel Heating Degree Days (HDD) Erie, PA - 2018-2019

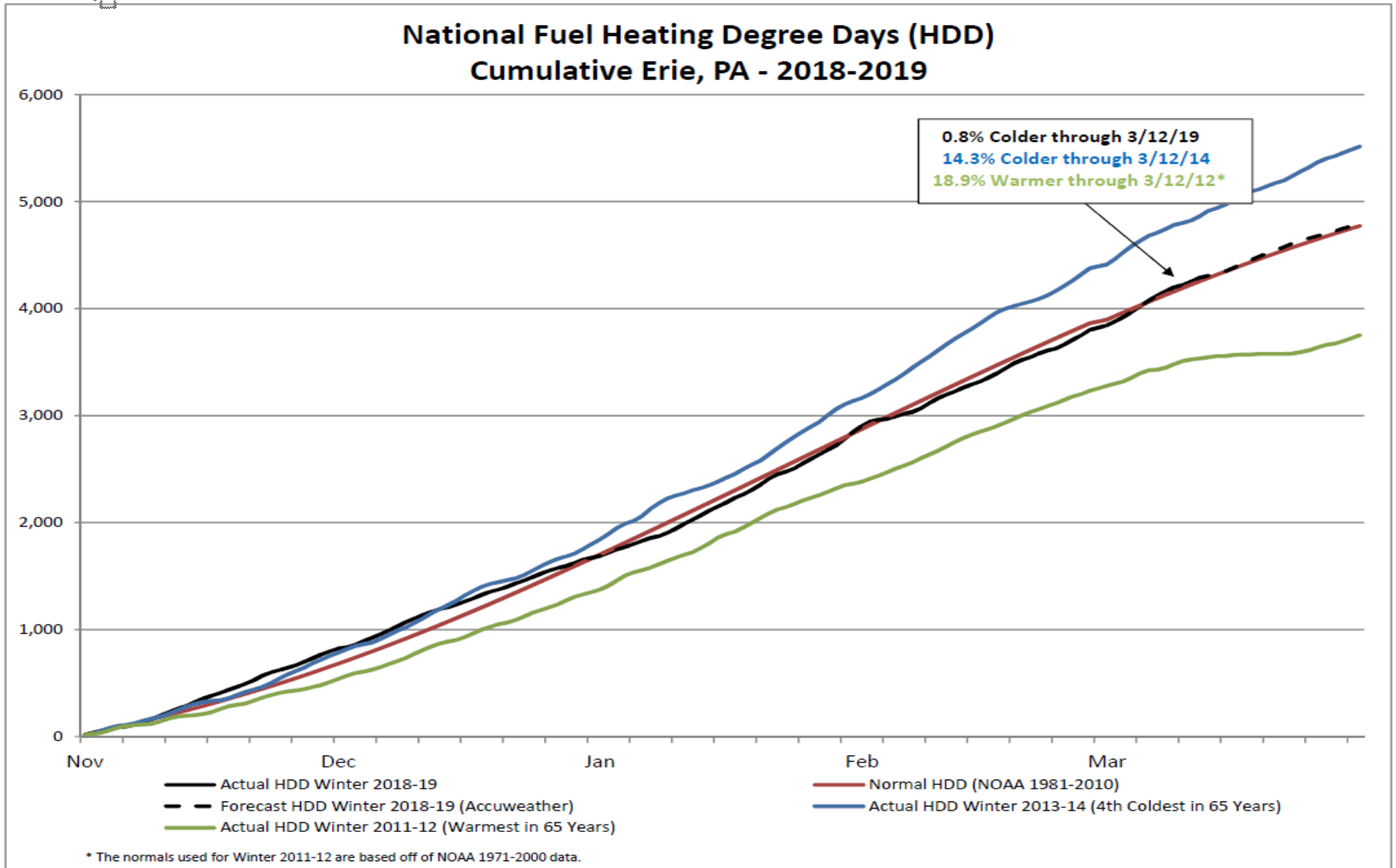
Winter HDD through 3-12-19
0.8% CTN

HDD for month ending	
November 2018	22.1% CTN
December 2018	13.6% WTN
January 2019	0.5% CTN
February 2019	7.2% WTN
March 2019 (EST)	8.6% CTN





National Fuel





Questions?





National Fuel Gas Distribution Corporation

Spring 2019 Marketer/Supplier Teleconference

Rates & Regulatory Update
Presentation by: Michael Novak
March 21, 2019



National Fuel

Rates & Regulatory Update

Federal Update

Pipeline Rate Events

- **RP18-940 – Empire Pipeline, Inc. (“Empire”)**
 - Empire Section 4 Rate Case Settlement was filed on 6/29/2018 proposing a rate increase between 20% and 40% depending upon whether a roll-in of incremental facilities takes place;
 - Proposed rates reflect lower Federal income tax rate;
 - New rates went into effect 1/1/2019 (impacts NY).
- **RP18-1126 – Transcontinental Gas Pipe Line Company, LLC . (“Transco”)**
 - Transco filed a general Section 4 Rate Case on 8/31/2018 proposing a 40% rate increase;
 - Proposed rates reflect lower Federal income tax rate;
 - New rates, reflecting a 37% increase, went into effect 4/1/2019 subject to refund (impacts NY).



National Fuel

Rates & Regulatory Update

Federal Update

Pipeline Rate Events

- **RP19-343 – Texas Eastern (“TET”)**
 - TET Section 4 Rate Case was filed on 11/30/2018;
 - Proposed rate increase of approximately 8.5%;
 - Proposed rates reflect lower Federal income tax rate;
 - New rates likely to go into effect 6/1/2019 subject to refund (impacts PA);
 - Settlement discussions have been scheduled.

- **RP19-429 – National Fuel Gas Supply Corporation (“NFGSC”)**
 - NFGSC filed its Form 501-G on 12/6/2018;
 - The form indicated that federal tax reduction would result in earnings above FERC’s Order 849 threshold;
 - NFGSC will file a Section 4 Rate Case on or before 7/31/2019 (impacts NY/PA).

- **RP19-351 – Tennessee Gas Pipeline (“TGP”)**
 - TGP received an extension for its Form 501-G (originally due 12/6/2018);
 - Settlement discussions concerning rate changes underway (impacts NY/PA);
 - If settlement discussions fail, TGP will file its 501-G on 4/4/2019.



National Fuel

Rates & Regulatory Update

Federal Update

Pipeline Rate Events

- **RP19-62 – Dominion (“DETI”)**
 - DETI filed its Form 501-G on 10/11/2018;
 - The form indicated that Federal income tax rate reduction would **not** result in earnings above FERC’s Order 849 threshold;
 - On 3/8/2019 FERC issued an order closing the 501-G investigation;
 - DETI is not required to file a general Section 4 Rate Case and FERC will not initiate a Section 5 rate investigation (impacts NY).

- **RP19-406 – Columbia Gas Transmission (“Columbia”)**
 - Columbia filed its Form 501-G on 12/6/2018;
 - The form indicated that federal tax reduction would **not** result in earnings above FERC’s Order 849 threshold;
 - Columbia began passing through tax reduction in early 2019 (impacts PA).

- Several pipelines have filed various tracker filings with changes to become effective 4/1/2019; most of these deal with fuel retention or other routine surcharges.



National Fuel

Rates & Regulatory Update

Pennsylvania Update

2019 Annual 1307(f) filing

- **Status Update**
 - Exhibits were filed January 2019;
 - Tariff and Testimony were filed February 2019;
 - No major non-gas cost tariff initiatives are being bundled with 1307F filing;
 - Change to Storage Gas Inventory Purchase Rate was proposed.
- **Filing Highlights – proposed rate* changes:**
 - MMT \$0.2500 (no change)
 - SATC from \$0.2232 to \$0.2158
 - PSB from \$1.0981 to \$0.9632
 - SB from \$0.5261 to \$0.4623
 - DTR [Nov. \$0.29 to \$0.28, Dec \$0.53 to \$0.50, Jan \$0.42 to \$0.43 & Feb \$0.01 to \$0.25]
 - RTC from \$8.8847/Dth to \$7.6443/Dth (weighted avg. demand cost of upstream capacity)
- **Implementation to be effective August 1, 2019**

* Relative to currently effective rates. All rates \$/mcf except as noted.



National Fuel

Rates & Regulatory Update

Pennsylvania Update

Pennsylvania Tariff Filing (Planned for May-June)

1. **Cyber-Security requirements**
 - The proposed requirements would track the New York requirements.
2. **Renewable Natural Gas (RNG)**
 - The proposed changes would be analogous to those filed in New York.
3. **Storage Inventory Levels**
 - Modifications to monthly minimum inventory levels consistent with the levels in place for the past two winters;
 - Modified limits would start November 2019.
4. **OFO Penalty Rate Alignment**
 - Alignment of DMT/DMLMT penalty rates with MMNGS/SATS penalty rates.
5. **Gas Emergency Procedures**
 - Updates.



National Fuel

Rates & Regulatory Update

Pennsylvania Update

Pennsylvania GTOP

- GTOP Version 2.90 to be filed on May-June 2019
 - RNG-related procedures;
 - Cyber-Security related modifications;
 - Storage inventory levels;
 - Updates to Upstream Agency Form and Procedures.

- Another GTOP filing is planned for late July 2019.
 - Revisions reflecting implementation of 2019 1307(f), e.g. Upstream Capacity Cost Analysis & Capacity Allocation example.

Otherwise, no other Distribution-initiated tariff changes affecting SATS or MMNGS services are anticipated, however...



National Fuel

Rates & Regulatory Update

Pennsylvania Update

Natural Gas Retail Markets Investigation (RMI)

Capacity Assignment/ Use of Storage	System Balancing, Tolerances and Penalties	Access to Local Production
Seamless Moves & Instant Connects	Accelerated Switching	Creditworthiness Requirements
Standard Offer Program	Account Number Lookup Mechanisms	Low Income Shopping
Customer Education	Migration Riders	Purchase of Receivables Programs
Disclosure Statements	Electronic Data Protocols	Joint NGDC – NGS Bill



National Fuel

Rates & Regulatory Update

Pennsylvania Update

- **L-2016-2577413 – Advance Notice of Proposed Rulemaking (ANOPR) - Rulemaking to Amend the Provisions of 52 Pa. Code, Chapter 59 Regulations Regarding Standards For Changing a Customer’s Natural Gas Supplier.**
- **L-2018-2619223 – Advance Notice of Proposed Rulemaking (ANOPR) to solicit comments about amending/adding to regulations addressing the release, assignment and transfer of capacity among Natural Gas Distribution Companies (NGDCs) and Natural Gas Suppliers (NGSs).**
 - Next Step – The PUC may issue a Notice of Proposed Rulemaking later this year – potentially before the end of the second quarter.



National Fuel

Rates & Regulatory Update

New York Update

Case 12-M-0476 - Proceeding on Motion of the Commission to Assess Certain Aspects of the Residential and Small Non-Residential Retail Energy Markets in New York State (“NY Retail Energy Markets Case”)

12/15/2016 - PSC issues Order Adopting a Prohibition on Service to Low-Income Customers by Energy Service Companies (“LI Prohibition”)

- ESCOs, unless they have a waiver to serve Assistance Program Participant (APP) customers, are required to de-enroll any such customer accounts identified by the utilities when existing contracts with such customers expire;
- ESCOs serving customers that become ineligible are now (since 12/1/2018) notified via 814C EDI transaction;
 - J0 web-file now includes a field indicating whether or not customer is eligible for ESCO service.
 - J2 web-file be discontinued after 4/1/2019.



National Fuel

Rates & Regulatory Update

New York Update

Case 15-M-0127 - In the Matter of Eligibility Criteria for Energy Services Companies

2/23/2016 - PSC issues Order Resetting Retail Energy Markets and Establishing Further Process (“Reset Order”)

- For gas customers with consumption less than 750 Mcf/year, the Order extended the general provisions set forth in 12-M-0476 for APP Customers to all mass-market (residential and small non-residential) customers.

12/2/2016 – PSC issues Notice of Evidentiary and Collaborative Tracks and Deadline for Initial Testimony and Exhibits

- Evidentiary Hearing Concluded; Briefs and Reply Briefs Filed
- Next Step – ALJs’ Recommended Decision

3/19/2019 - NY Court of Appeals – Oral Arguments

NATIONAL ENERGY MARKETERS ASSOCIATION, et al. v. NEW YORK STATE PUBLIC SERVICE COMMISSION
RETAIL ENERGY SUPPLY ASSOCIATION, et al. v. NEW YORK STATE PUBLIC SERVICE COMMISSION



National Fuel

Rates & Regulatory Update

New York Update

Case 18-M-0376 – Proceeding on Motion of the Commission Regarding Cyber Security Protocols and Protections in the Energy Market Place

- **Late March 2018 – Cyber Attack on prominent EDI Service Provider.**
- **9/24/2018 - Department Of Public Service Staff Report on the Status of the Business-to-Business Collaborative to Address Cyber Security in the Retail Access Industry filed.**
 - DPS Staff believes the business-to-business process has enabled a productive dialogue and has resulted in a balanced Data Security Agreement (DSA);
 - To the extent there are Energy Service Entities (ESEs)* that do not provide Self-Attestations or execute DSAs, utilities have the ability to initiate the discontinuance process under the UBPs.

* ESE is a term in the DSA describing the parties with which Utility electronically exchanges data other than by email and any other entities with which Utility electronically exchanges data other than by email or by a publicly available portal. Examples of ESEs include, but are not limited to, ESCOs, Direct Customers, Distributed Energy Resource Suppliers and contractors of such entities.



National Fuel

Rates & Regulatory Update

New York Update

Case 18-M-0376 – Proceeding on Motion of the Commission Regarding Cyber Security Protocols and Protections in the Energy Market Place

- **Status Update:**
 - While initial efforts have focused on ESCOs, any party with password access to Distribution’s business systems containing Confidential Utility Information will need to execute a DSA and submit a valid/unmodified Self-Attestation;
 - Distribution has executed a DSA with nearly all ESCOs but many of the Self-Attestations are deficient;
 - Valid/unmodified Self-Attestations need not indicate current compliance with each Information Security Control Requirement but where non-compliant, must indicate plans to remediate by a date before the end of 2019;

Self-Attestations should be submitted to Chris Gauch:

Cyber_Security@natfuel.com



National Fuel

Rates & Regulatory Update

New York Update

Case 18-M-0376 – Proceeding on Motion of the Commission Regarding Cyber Security Protocols and Protections in the Energy Market Place

- Distribution Cyber-Security Related Upgrades planned for 2019
 - EDM Upgrade from GISB 1.4 to GISB 1.6 (coming soon)
 - Implementation of 1024 bit PGP key (where necessary).
 - Implementation of a secured, encrypted communication channel for Distribution to exchange Confidential Utility Information
 - Encrypted Email.
 - Username/Password enhancements to existing Marketer Web Portal applications:
 - Supplier / Customer Download Files
 - Customer Information Inquiry
 - Transportation Scheduling System
 - Daily Metering Statements.



National Fuel

Rates & Regulatory Update

New York Update

New York Tariff Filing (Planned for May-June)

- Storage Inventory Levels
 - Modifications to monthly minimum inventory levels consistent with the levels in place for the past two winters;
 - Modified limits would start November 2019.

New York GTO

- GTO Version 2.90 to be filed May-June 2019
 - RNG-related procedures;
 - Storage inventory levels;
 - Updates to Upstream Agency Form and Procedures.

Otherwise, no Distribution-initiated tariff changes affecting STBA service are anticipated, however....



Questions?





National Fuel

National Fuel Gas Distribution Corporation

Spring 2019 Marketer/Supplier Teleconference

Capacity Update

Presentation by: Kenneth McAvoy

March 21, 2019



NY STBA Capacity

Release capacity serves requirements for up to 62 HDD

67% Mandatory Upstream Transmission Capacity (MUTC)

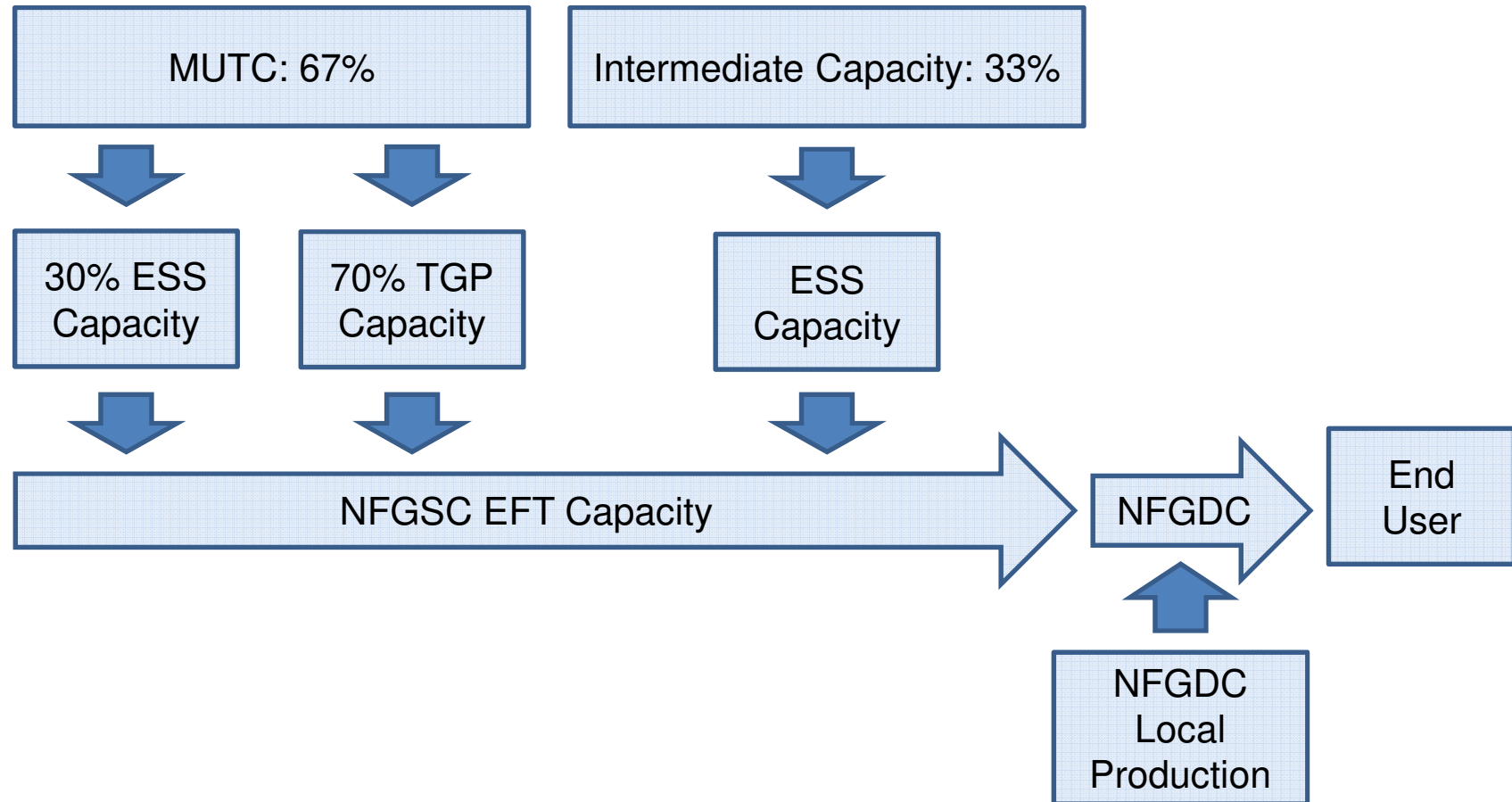
- 30% NFGSC ESS, released at maximum rate
- 70% TGP Z4-Z4, released at a rate that when blended with the ESS component achieves NY Weighted Average Cost of Capacity (WACOC)

33% Intermediate Capacity

- NFGSC ESS, released at maximum rate



NY STBA Capacity





NY MUTC WACOC & Release Rates

Date	WACOC Rate/Dth	WACOC Change Since April 2012	ESS Max Rate /Dth	TGP Release Rate/Dth
Apr 2012	\$10.8359	-	\$4.1649	\$11.9219
Apr 2013	\$10.5102	-3%	\$4.4947	\$11.4895
Apr 2014	\$9.8099	-9%	\$4.4817	\$10.6773
Apr 2015	\$9.4025	-13%	\$4.4817	\$10.2709
Apr 2016	\$10.0450	-7%	\$4.3924	\$11.0425
Apr 2017	\$9.4851	-12%	\$4.3032	\$10.3996
Apr 2018	\$8.6034	-21%	\$4.4765	\$10.3721
Apr 2019	\$8.8627	-18%	\$4.4919	\$10.7359



PA SATS Capacity

Release capacity serves requirements for up to 62 HDD

46% Released Transmission Capacity

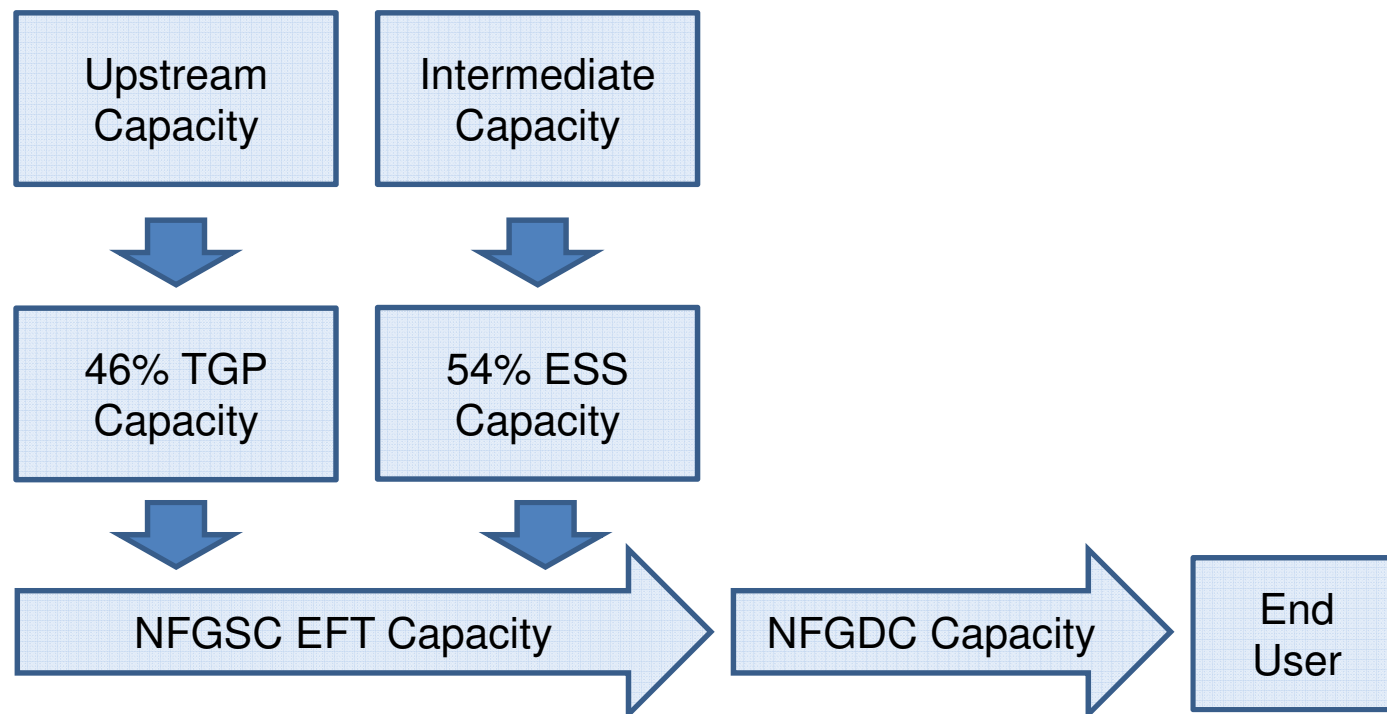
- TGP Z4-Z4, released at PA WACOC

54% Intermediate Capacity

- NFGSC ESS, released at maximum rate



PA SATS Capacity





PA SATS TGP Release Rate

Date	TGP Release Rate/Dth*	Change from April 2012
Apr 2012	\$14.9823	-
Apr 2013	\$13.8762	-7%
Apr 2014	\$11.7962	-21%
Apr 2015	\$10.1388	-32%
Apr 2016	\$9.6257	-36%
Apr 2017	\$9.5746	-36%
Apr 2018	\$8.9412	-40%
Apr 2019	\$7.6443	-49%

* PA TGP Release Rate = PA WACOC Rate



Questions?



NFGD Exhibit CC-5

04/29/21 C-2020-3019621



National Fuel Gas Distribution Corporation
Fall 2019 Marketer/Supplier Teleconference
October 10, 2019

AGENDA

2:00 pm	Welcome and Introduction	Joanne Maciok
2:05 pm	Operational Update	Dan Czechowicz
2:30 pm	Rates & Regulatory Update <ul style="list-style-type: none">○ Federal Regulatory Update○ PA Regulatory Update○ NY Regulatory Update	Maryann Stankovski
2:45 pm	Capacity Update	Ken McAvoy
2:55 pm	General Discussion	All
3:15 pm	Closing	Joanne Maciok



National Fuel Gas Distribution Corporation

Fall 2019 Marketer/Supplier Teleconference

Operational Update

Presentation by: Dan Czechowicz
October 10, 2019



Marketer/Supplier Operations Support

- NFGDC Website: <https://www.natfuel.com/marketers/default.aspx>
- Operating Procedures Manuals:
 - GTOP, TSS, TSS Reports, Aggregator, Market Pool, Production Pool
- Transportation Scheduling System – TSS
- Training
- Help Desks
 - Scheduling: (716)-857-7232
 - Hours: 7:30 am – 5:00 pm on business days
 - email: TSSSupport@natfuel.com
 - Billing: (716)-857-7432
 - Hours: 8:00 am – 4:30 pm on business days
 - email: TSD-Billing@natfuel.com
- After Hours Scheduling Support: (716)-857-7232



Transportation Customers

STAND-ALONE CUSTOMERS

MONTHLY (MMT)

New York	1
Pennsylvania	0

DAILY (DMT)

New York	0
Pennsylvania	79

TOTAL

80

AGGREGATION CUSTOMERS

New York (STBA)	69,522
New York (DMT)	35

Pennsylvania (MMNGS)	3,667
Pennsylvania (SATS)	26,168

TOTAL

99,392

TOTAL NFGDC

99,472



New York & Pennsylvania Operations

- Market Pool and Production Pool setup reminder
 - sent via email and posted on the web site
- Sharing of TSS user logins should not be done due to data security concerns – Data Security Agreement and Self Attestation
- At least one TSS user back-up is highly recommended
- Capacity release data files are under the Secure Transactions section of the Services for Marketers, Producers and Suppliers link on the NFG web site
 - Contact the TSD Billing Help Desk at 716-857-7432 to obtain login credentials



New York & Pennsylvania Operations

- Daily Delivery Quantities (DDQs)
 - DDQs are customer usage estimates based on usage history, weather forecasts, actual measurement – mid course correction
 - DDQ Requirements under normal operating conditions:
 - NY STBA and PA MMNGS = 95% - 105%
 - PA SATS = 98% - 102%
- Production Daily Quantities (PDQs)
 - PDQs are estimates of local production based on production volume history
- Market Pool and Production Pool operators are responsible for monitoring actual flowing volumes and requesting DDQ and PDQ modifiers via TSS as necessary



New York & Pennsylvania Operations

- Meet daily delivery requirements (DDQs) to serve market
- Daily Metered Transportation (DMT) customers, match daily deliveries to actual daily usage
- On the PA DMT statement, when 'USAGE EST.' is shown under the 'Stmt Basis' column, it is the market pool operator's responsibility to obtain a 10:00 am read directly from the customer
- Deliver upstream supplies at primary firm or acceptable alternate delivery points
- Customer usage and local production estimates need to be as accurate as possible
- Manage storage inventories
 - Required end of month storage inventory percentages are **minimums**, not targets



ESS End of Month Inventory Levels Current Minimum Percentage Full

		NY	PA
Injection	April	0%	0%
	May	12%	12%
	June	29%	29%
	July	46%	46%
	August	63%	63%
	September	80%	80%
	October	95%	95%
Withdrawal	November	89%	86%
	December	71%	68%
	January	46%	45%
	February	28%	28%
	March	0%	0%



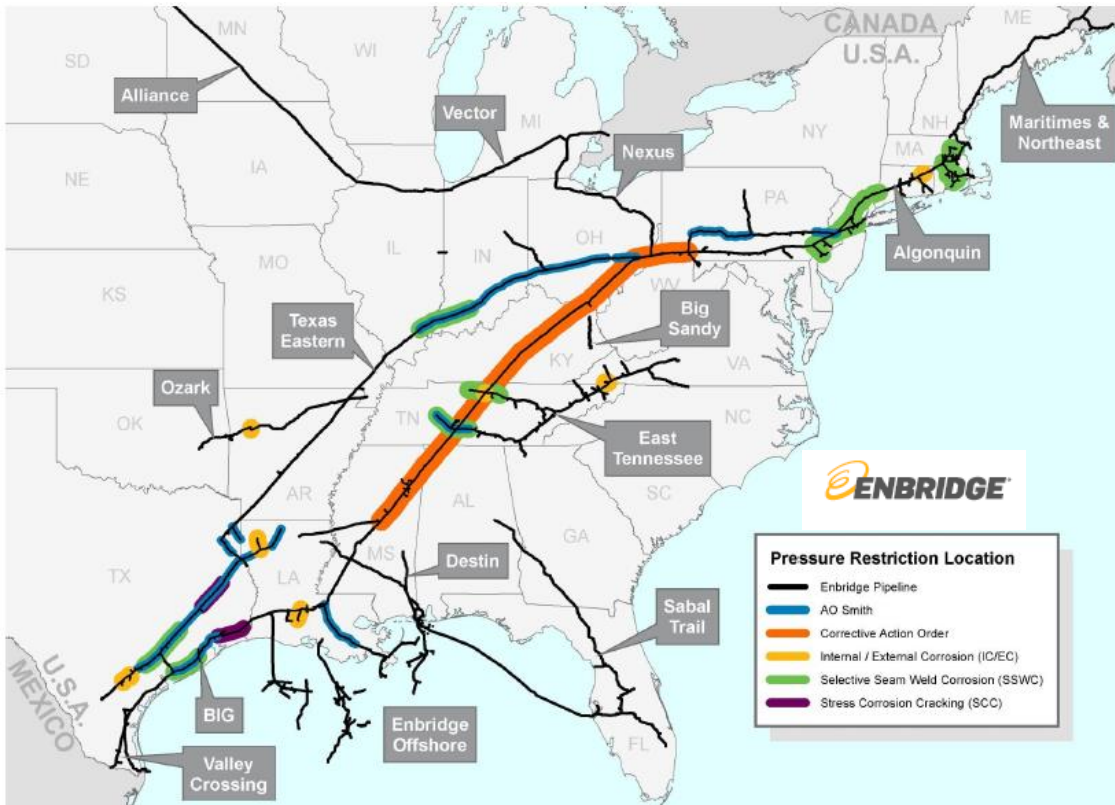
Pipeline Critical Notices are Important

- NFGDC reminds ESCO's to consider their business and regularly review the appropriate pipeline notices
 - Subscribe to receive emails of Critical Notices from each pipeline that they operate on
 - Review and assess potential impacts on their business
 - Contact the appropriate pipeline for notice clarification
 - Contact NFGDC for assistance
- To receive Critical Notice emails directly from:
 - NFG Supply- contact your internal System Administrator or Tracey Williams at NFGSC at WilliamsT@natfuel.com to set up email notification preferences.
 - TGP- Update DART user setting in "Business Preferences" to receive email notifications



Winter Operation Alert

Projected Pressure Restrictions: Early Winter



- Widespread MAOP derating throughout TETCO's system this year
- 5% - 20% pressure reductions
- Expected to impact firm deliveries across TETCO's system
- May impact TETCO's deliveries to NFG Supply interconnects at Holbrook and Leidy
- Review TETCO's posting for further information



SYSTEM MAINTENANCE ORDERS

* TO MAINTAIN SYSTEM OPERATIONAL INTEGRITY *

- SYSTEM ALERT

- Operational Flow Order (OFO)
 - NY STBA 98-105% (cold); 95-102% (warm)
 - PA SATS 100-102% (cold); 98-100% (warm)
 - PA MMNGS 100-105% (cold); 95-100% (warm)
 - Option to disallow use of PA DMT banks
 - Option to shrink NY DMT tolerance from 10% to as low as 2%

 - Communicate through ROBO text option
 - Marketers must opt-in to receive texts messages in the contact maintenance screen in TSS (ECNTM)
 - Conducting a test using ROBO text on 11/7/19

- UNAUTHORIZED OVERRUN

- CURTAILMENT



Factors Evaluated for System Maintenance Orders

- Weather
- Emergency Situations
- Pipeline Operations
- Storage Operations



TSS Outage Procedures

- Communication
- Email / Web posting
 - Keep contact maintenance in TSS up to date (ECNTM)
- TSS Emergency Forms (only to be used at National Fuel's direction)
 - Available online at:
https://www.natfuel.com/marketers/TSS/manuals_and_forms.aspx



Customer Information System (SAP) Upgrade

System down Friday, 10/18 at 11:30 a.m. – Sunday, 10/20

- No access to the Customer Information Inquiry (CII) during this time
- Transportation Billing Help Desk (716-857-7432) closed on Friday, 10/18 at 11:30 a.m.
- Price changes submitted for ESCO enrolled customers after 4 p.m. on Wednesday, 10/16 through Friday, 10/18 at 11:30 p.m. will be entered on Monday, 10/21
- Price changes submitted after 11:30 p.m. on 10/18 will not be entered until Tuesday, 10/22
- No batch processing on Friday, 10/18
 - EDI requests that ordinarily would be received/processed after midnight on Saturday morning, 10/19 will not be processed until after midnight on Tuesday morning, 10/22
 - Since there is no batch processing on 10/18, daily 810/867/820's will not be sent on Saturday morning, 10/19
- Transportation Services
 - NY DMT Intra-day usage will be manually sent out Friday, 10/18 – Sunday, 10/20



Customer Information System (SAP) Upgrade

System down Friday, 11/1 at 6:00 p.m. – Sunday, 11/3

- No access to the Customer Information Inquiry (CII) during this time
- Price changes submitted for ESCO enrolled customers after 4 p.m. on Friday, 10/25 through Wednesday, 10/30 at 4 p.m. will be entered on Thursday, 10/31
- Price changes submitted after 4 p.m. on Wednesday, 10/30 will be entered on Friday, 11/ 1
- EDI requests that ordinarily would be received/processed after midnight on Saturday, 11/2, will not be processed until Sunday, 11/3
- Daily outgoing EDI 810/867/820's normally sent on Saturday morning 11/2 will not be sent until Sunday, 11/3
- Web files normally posted to the secure section of the NFG website will not be posted until Sunday, 11/3
- Transportation Services
 - NY DMT Intra-day usage will be manually sent out Friday, 11/1 through Sunday, 11/3

Dates and times are subject to change. Please check the Announcements section of the 'Services for Marketers' NFG website for up to date information



TSS Enhancements

- Contact Maintenance Screen - (September 2019)
- Auto Production Pool Setup - (September 2019)
- Gas In Screen – (planned late Fall 2019)



Questions?





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Rates & Regulatory Update

Presentation by: Maryann Stankovski

October 10, 2019



Rates & Regulatory Update

Federal Update

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 - Settlement discussions still in progress
- **RP19-343 – Texas Eastern (“TET”)**
 - TET Section 4 Rate Case was filed on 11/30/2018
 - Proposed rate increase of approximately 8.5%
 - Proposed rates reflect lower Federal income tax rate
 - New rates went into effect 6/1/2019 subject to refund (impacts PA)
 - Settlement in principle
- **RP19-1426 – National Fuel Gas Supply Corporation (“NFGSC”)**
 - NFGSC filed Section 4 Rate Case on 7/31/2019 proposing a 48.5% rate increase (impacts NY/PA)
 - FERC issued a suspension order and rates will go into effect 2/1/20, subject to refund



Rates & Regulatory Update

Pennsylvania Update

2020 Annual 1307(f) filing

- Gas cost recovery for Sales and Transportation Service
 - 12/30/19 – Exhibits filed
 - 1/31/20 – Tariff, Testimony and Additional Exhibits filed
- To intervene in the filing send a letter or request form to:

Pennsylvania Public Utility Commission
Post Office Box 3265
Harrisburg, PA 17105-3265

- Implementation to be effective 8/1/20



Rates & Regulatory Update

Pennsylvania Update

Pennsylvania Tariff Filing (Approved 8/29/19)

1. Cyber-Security requirements
 - The proposed requirements would follow the New York requirements
2. Renewable Natural Gas (RNG)
 - The proposed changes would be analogous to those filed in New York
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 - Alignment of DMT/DMLMT penalty rates with MMNGS/SATS penalty rates
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 - Updates



Rates & Regulatory Update

Pennsylvania Update

Pennsylvania GTOP

- GTOP Version 2.91 to be filed October - November 2019
 - Key personnel changes
 - DSA and Self Attestation



Rates & Regulatory Update

New York Update

Case 15-M-0127 - In the Matter of Eligibility Criteria for Energy Services Companies

2/23/2016 - PSC issues Order Resetting Retail Energy Markets and Establishing Further Process ("Reset Order")

- Waiting on RD

5/9/2019 - NY Court of Appeals

NATIONAL ENERGY MARKETERS ASSOCIATION, et al., v. NEW YORK STATE PUBLIC SERVICE COMMISSION
RETAIL ENERGY SUPPLY ASSOCIATION, et al. v. NEW YORK STATE PUBLIC SERVICE COMMISSION

- Held PSC's statutory authority to regulate ESCO's charges to customers
- NEMA moved to re-argue the case before the Court of Appeals, waiting on decision from Court



Rates & Regulatory Update

New York Update

Case 18-M-0376 – Proceeding on Motion of the Commission Regarding Cyber Security Protocols and Protections in the Energy Market Place

- **Status Update: Still Pending Commission Order**
 - While initial efforts have focused on ESCOs, any party with password access to Distribution's business systems containing Confidential Utility Information will need to execute a DSA and submit a valid/unmodified Self-Attestation
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Self-Attestations should be submitted to Chris Gauch:

Cyber_Security@natfuel.com



Rates & Regulatory Update

New York Update

Case 18-M-0376 – In the Matter of Retail Access Business Rule

9/23/19 – Order on Rehearing and Providing Clarification

Commission issues order revising UBP's

1. ESCO marketers to identify themselves with first name and individualized identification numbers, no last name
2. ESCO's are prohibited from charging termination of cancellation fees due to customer death



Rates & Regulatory Update

New York Update

New York GTOP

- GTOP Version 2.91 to be filed October 2019
 - Key personnel changes
 - UBP Revisions



Questions?





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Presentation by: Kenneth McAvoy
October 10, 2019



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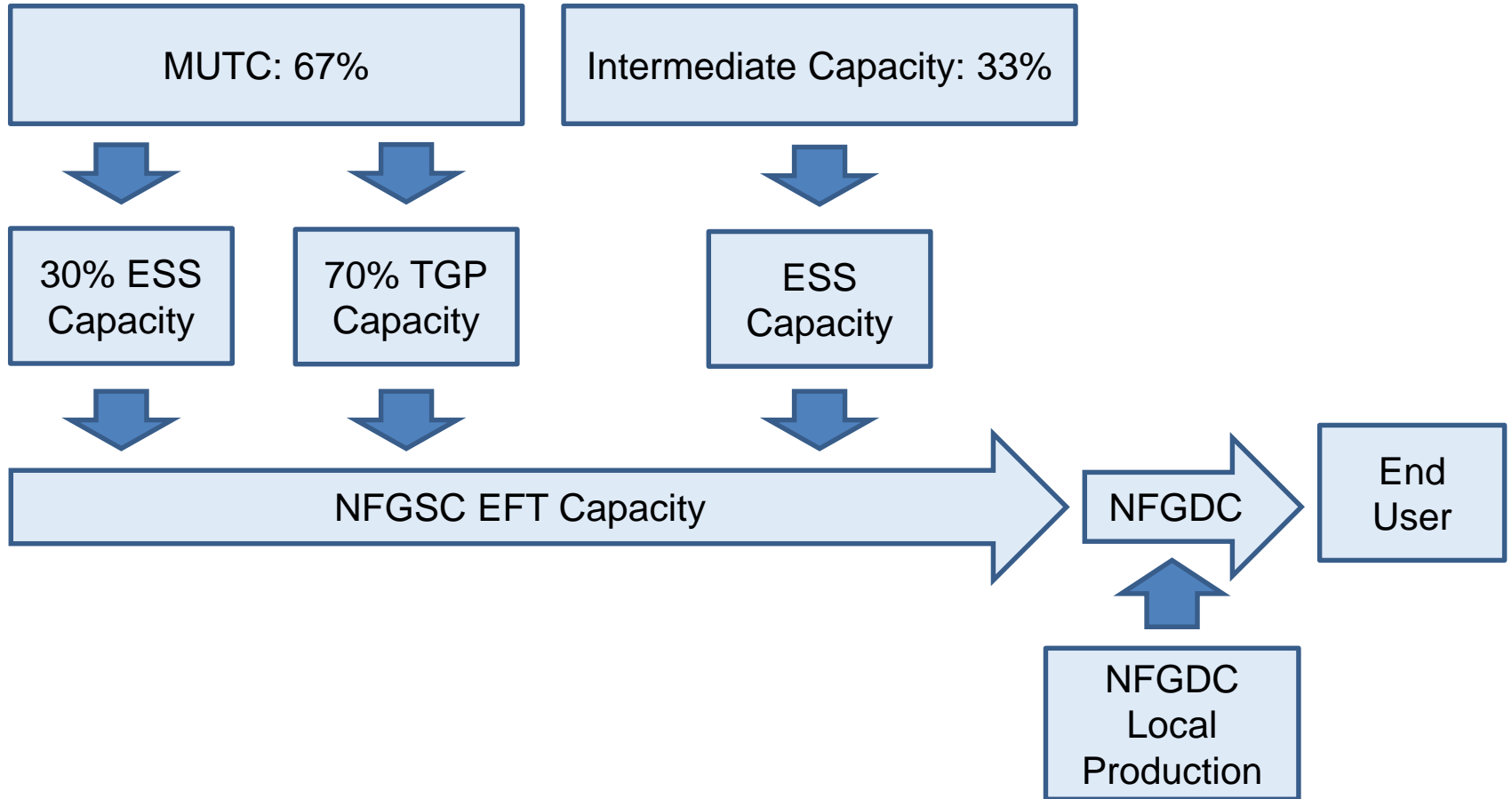
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33% Intermediate Capacity

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NY STBA Capacity





NY MUTC WACOC & Release Rates

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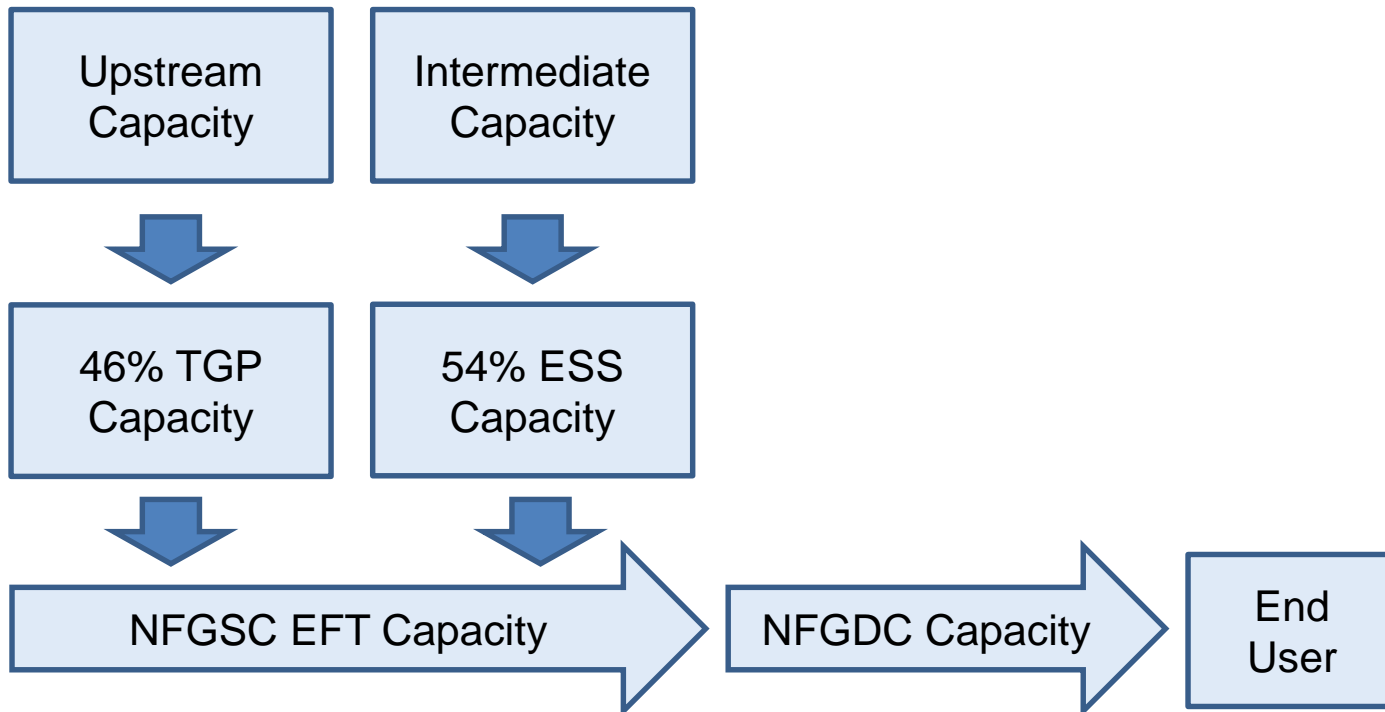
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54% Intermediate Capacity

- NFGSC ESS, released at maximum rate



PA SATS Capacity





PA SATS TGP Release Rate

Date	TGP Release Rate/Dth*	Change from April 2012
Aug 2012	\$14.9823	-
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Aug 2014	\$11.7962	-21%
Aug 2015	\$10.1388	-32%
Aug 2016	\$9.6257	-36%
Aug 2017	\$9.5746	-36%
Aug 2018	\$8.9412	-40%
Aug 2019	\$7.7838	-48%

* PA TGP Release Rate = PA WACOC Rate



Questions?



NFGD Exhibit CC-6

04/29/21 C-2020-3019621

From: [Beverly Hogan](#)
To: [Individual PA Marketer](#)
Bcc: [TSSsupport](#); [Daniel Czechowicz](#)
Subject: Pennsylvania Data Security Agreement (DSA) and Self-Attestation (SA) - Individual PA Marketer
Tuesday, March 17, 2020
Date: [Individual PA Marketer PA DSA - pdf document](#)
Attachments:

To All Pennsylvania Suppliers:

On June 14, 2019, National Fuel Gas Distribution Corporation (NFGDC), Utility Code 121850, filed Supplement No. 207 to Tariff Gas Pa. P.U.C. No. 9 to update its current tariff and to institute new tariff provisions, including the authority to require a Data Security Agreement (DSA) and Self-Attestation (SA) from parties accessing NFGDC's utility business systems. On August 29, 2019, the PA. P.U.C. approved NFGDC's tariff filing, including the DSA and SA provisions and the requirement that parties accessing NFGDC's utility business systems maintain cybersecurity insurance in an amount of no less than \$5,000,000 per incident.

Please have the DSA approved and signed by an authorized representative of the ESE, without changes of qualifications by Tuesday, March 31, 2020. In addition, if the "___" in the second paragraph of **3. ESE Compliance with all Applicable Regulatory Requirements** on page 5 is not checked and applies to your circumstances, please insert a check mark or an "X" in the blank. For example, if you utilize the services of an EDI Service Provider, this box should be checked.

The signed DSA/SA can be emailed to Bev Hogan at hoganb@natfuel.com and/or TSSsupport@natfuel.com. Once signed by our executive, a fully executed copy will be returned by email.

If you have any questions, please contact Bev Hogan at 716/857-7950 or 716/857-7232.

We appreciate your prompt reply to this request.

Thank you,

Jeffrey B. Same
Attorney
National Fuel Gas Distribution Corporation
6363 Main Street
Williamsville, NY 14221
(716) 857-7507
samej@natfuel.com

NFGD Exhibit CC-7

04/29/21 C-2020-3019621

DATA SECURITY AGREEMENT

This Data Security Agreement ("Agreement") effective _____ is made and entered into this _____ day of _____, 2020 by and between National Fuel Gas Distribution Corporation, 6363 Main Street, Williamsville, NY 14221 ("Company") and _____, an Energy Service Entity ("ESE"), with offices at _____; and together with Company the ("Parties" and each, individually, a "Party").

RECITALS

WHEREAS, ESE desires to have access to certain Company customer information, either customer-specific or aggregated customer information, the Company is obligated to provide information under 52 Pa. Code § 62.76 and/or the Pennsylvania Public Utility Commission ("Commission") has ordered Company to provide to ESE customer information; and

WHEREAS, ESE has obtained consent from all customers for whom the ESE intends to obtain information from Company; and

WHEREAS, Natural Gas Supplier ("NGS"), may utilize a third party to fulfill its Service obligations, including but not limited to, Electronic Data Interchange ("EDI") communications with Company, schedule gas supplies for DMT Service Customer(s), DMLMT Service Customer(s), MMT Customer(s) and/or SATC Customer(s) via Company's Transportation Scheduling System ("TSS") and/or access Confidential Information via Company issued accounts/passwords ; and

WHEREAS, a DMT Service Customer, DMLMT Service Customer or MMT Customer (individually, "Standalone Customer") may schedule its own gas supplies via Company's TSS without an NGS; and

WHEREAS, a Standalone Customer with daily metering and communications equipment which enable the Company to obtain each day meter readings of the volume of gas delivered to the Company for the Customer's account and the volume of gas from the Company used by the Customer each day may access to such information via Company issued accounts/passwords; and

WHEREAS, NGS or Standalone Customer utilization of a third party provider does not relieve NGS or Standalone Customer of their transactional obligation such that they must ensure that the third party provider must comply with all NGS or Standalone Customer obligations; and

WHEREAS, Company and ESE also desire to enter into this Agreement to establish, among other things, the full scope of ESE's obligations of security and confidentiality with respect to the Confidential Information in a manner consistent with the rules and regulations of the Commission and requirements of Company; and

NOW, THEREFORE, in consideration of the premises and of the covenants herein contained, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties, intending to be legally bound, hereby agree as follows:

1. Definitions.

- a. "Confidential ESE Information" means information that ESE is: (A) required by 52 PA Code §§ 59.91-59.99 to enroll the customer or (B) any other information provided by ESE to Company and marked confidential by the ESE, but excludes (i) information which is or becomes generally available to the public other than as a result of a disclosure by Receiving Party or its Representatives; (ii) information which was already known to Receiving Party on a non-confidential basis prior to being furnished to Receiving Party by Disclosing Party; (iii) information which becomes available to Receiving Party on a non-confidential basis from a source other than Disclosing Party or a representative of Disclosing Party if such source was not subject to any prohibition against transmitting the information to Receiving Party and was not bound by a confidentiality agreement with Disclosing Party; (iv) information which was independently developed by the Receiving Party or its Representatives without reference to, or consideration of, the Confidential Information; or (v) information provided by the customer with customer consent where the customer expressly agrees that the information is public.
- b. "Confidential Company Information" means information that Company is: (A) required by 52 Pa. Code § 62.76 to provide to NGS or Standalone Customer or (B) any other information provided to ESE by Company and marked confidential by the Company at the time of disclosure, but excludes (i) information which is or becomes generally available to the public other than as a result of a disclosure by Receiving Party or its Representatives; (ii) information which was already known to Receiving Party on a non-confidential basis prior to being furnished to Receiving Party by Disclosing Party; (iii) information which becomes available to Receiving Party on a non-confidential basis from a source other than Disclosing Party or a representative of Disclosing Party if such source was not subject to any prohibition against transmitting the information to Receiving Party and was not bound by a confidentiality agreement with Disclosing Party; (iv) information which was independently developed by the Receiving Party or its Representatives without reference to, or consideration of, the Confidential Information; or (v) information provided by the customer with customer consent where the customer expressly agrees that the information is public.
- c. "Confidential Information" means, collectively, Confidential Company Information or Confidential ESE Information.
- d. "Data Protection Requirements" means, collectively, (A) all national, state, and local laws, regulations, or other government standards relating to the protection of information that identifies or can be used to identify an individual that apply with respect to ESE or its Representative's Processing of Confidential Company Information; (B) industry best practices or frameworks to secure information, computer systems, network, and devices using a defense-in-depth approach, such as and including, but not limited to, NIST SP 800-53, ISO 27001 / 27002, COBIT, CIS Security Benchmarks, Top 20 Critical Controls as best industry

practices and frameworks may evolve over time; and (C) Commission rules, regulations, and guidelines relating to confidential data.

- e. "Data Security Incident" means a situation when Company or ESE reasonably believes that there has been: (A) the loss or misuse (by any means) of Confidential Information; (B) the unauthorized acquisition of computerized data that compromises the security, confidentiality, or integrity of Confidential Information, or Private Information, computer systems, network and devices used by a business; (C) any other act or omission that compromises the security, confidentiality, or integrity of Confidential Information, or (D) any material breach of any Data Protection Requirements in relation to the Processing of Confidential Information, including by any current or former Representatives.
- f. "Customer Agent" is a third party that has access to Confidential Information via Company issued accounts/passwords and/or schedules gas on behalf of a NGS. Customer Agent includes, but is not limited to, third party Brokers Non-selling marketer and Nontraditional marketer as defined 52 PA Code §62.101 that access Confidential Information via Company issued accounts/passwords."
- g. "Standalone Customer" is a customer eligible for natural gas transportation service under 52 PA Code § 60.3 defined in Company's Tariff as a DMT Service Customer, DMLMT Service Customer or MMT Customer, that schedules its own gas supplies via Company's TSS without an NGS.
- h. "NGS" has the meaning set forth in 52 PA Code § 62.72 and as it may be amended from time to time, which is "An entity other than an NGDC, but including NGDC marketing affiliates, which provides natural gas supply services to retail gas customers utilizing the jurisdictional facilities of an NGDC."
- i. "ESE" shall have the meaning set forth in the Recitals and for the avoidance of doubt, includes but is not limited to NGSs or Standalone Customers, Customer Agents and contractors of such entities with which Company electronically exchanges data other than by email and any other entities with which Company electronically exchanges data other than by email or by a publicly available portal.
- j. "PUC" or "Commission" shall have the meaning attributed to it in the Recitals.
- k. "Processing" (including its cognate, "process") means any operation, action, error, omission, negligent act, or set of operations, actions, errors, omissions, or negligent acts that is performed using or upon Confidential Information or Company Data, whether it be by physical, automatic or electronic means, including, without limitation, collection, recording, organization, storage, access, adaptation, alteration, retrieval, use, transfer, hosting, maintenance, handling, retrieval, consultation, use, disclosure, dissemination, exfiltration, taking, removing, copying, processing, making available, alignment, combination, blocking, deletion, erasure, or destruction.

- l. "Third-Party Representatives" or "Representatives" means those agents, including Customer Agents, acting on behalf of NGSs or Standalone Customers, that are contractors or subcontractors and that store, transmit or process Confidential Company Information. For the avoidance of doubt, Third-Party Representatives do not include ESEs and their members, directors, officers or employees who need to know Confidential Company Information for the purposes of providing Services.
 - m. "Services" mean any assistance in the competitive markets provided by ESEs to end use customers or NGSs or Standalone Customers that also require interaction with a Company, including but not limited to the electronic exchange of information with a Company, and must be provided in accordance with the Governing Documents.
 - n. "Company Data" means data held by Company, whether produced in the normal course of business or at the request of ESE.
 - o. "Tariff" means (Gas--Pa. P.U.C. No. 9 or any superseding tariff).
 - p. "DMT Service Customer" means, unless redefined in any superseding tariff, any entity that has executed a DMT Service Agreement with the Company for transportation of gas by the Company under Tariff Rate Schedule For Daily Metered Transportation Service.
 - q. "DMLMT Service Customer" means, unless redefined in any superseding tariff, any entity that has executed a DMLMT Service Agreement with the Company for transportation of gas by the Company under Tariff Rate Schedule For Daily Metered Transportation Service.
 - r. "MMT Customer" means, unless redefined in any superseding tariff, a customer that receives transportation service from the Company under this rate schedule and receives gas supply from a Monthly Metered Natural Gas Supplier.
 - s. "SATC Customer" means, unless redefined in any superseding tariff, a customer that has enrolled to receive gas supply service from a qualified supplier under the Company's Small Aggregation Transportation Supplier Service.
2. **Scope of the Agreement.** This Agreement shall govern security practices of ESEs that have electronic communications, other than email, with the Company and security practices that apply to all Confidential Company Information disclosed to ESE or to which ESE is given access by Company, including all archival or back-up copies of the Confidential Company Information held or maintained by ESE (or

its Representatives) and Confidential ESE Information.¹ No financial information, other than billing information, will be provided pursuant to this Agreement. If any information is inadvertently sent to ESE or Company, ESE or Company will immediately notify the Company/ESE and destroy any such information in the appropriate manner.

3. **ESE Compliance with all Applicable Regulatory Requirements.** The Parties agree that the 52 PA Code §§ 62.71-62.81, Company's Tariff and Commission Orders set forth rules governing the protection of Confidential Information (collectively, "Governing Documents") and electronic exchange of information between the Parties, including but not limited to EDI.

_____ NGS or Standalone Customer utilizes a Third-Party Representative as a vendor, agent or other entity to provide electronic exchange of information, other than by email, with Company. ESE will require Third-Party Representative to abide by the applicable Governing Documents.

4. **Customer Consent.** The Parties agree that the Governing Documents govern an ESE's obligation to obtain informed consent from all customers about whom ESE requests data from Company. The ESE agrees to comply with the Governing Documents regarding customer consent.
5. **Provision of Information.** Company agrees to provide to ESE or its Representatives, certain Confidential Company Information, as requested, provided that: (A) ESE and its Representatives are in compliance with the terms of this Agreement in all material respects; (B) if required by Company, ESE has provided and has required its Representatives to provide, to the satisfaction of Company any Vendor Product/Service Security Assessments or self-attestations (attached hereto as Exhibit A) or such other risk assessment forms as Company may require from time to time ("Assessment") and ESE will comply with the Company Assessment requirements as approved by the Company; (C) ESE (and its Representatives, as applicable) shall have and maintain throughout the term, systems and processes in place and as detailed in the Assessment acceptable to Company to protect system security and Confidential Company Information; and; (D) ESE complies and shall require its Third-Party Representatives who process Confidential Information to comply with Company's Assessment requirements as approved by the Company. Provided the foregoing prerequisites have been satisfied, ESE shall be permitted access to Confidential Company Information and/or Company shall provide such Confidential Company Information to ESE. Nothing in this Agreement will be interpreted or construed as granting either Party any license or other right under any patent, copyright, trademark, trade secret, or other proprietary right or any right to assert any lien over or right to withhold from the other Party any Data and/or

¹ Where an ESE exclusively uses a Third Party Representative(s) to communicate electronically with a utility other than by email and the ESE's Third Party Representative executes a DSA with the utility, a DSA is not required of the ESE.

Confidential Information of the other Party. Company will comply with the security requirements set forth in its Assessment.

6. **Confidentiality.** ESE shall: (A) hold all Confidential Company Information in strict confidence pursuant to the Governing Documents and Commission's orders; except as otherwise expressly permitted by Section 7 herein; (B) not disclose Confidential Company Information to any Third-Party Representatives, or affiliates, except as set forth in Section 7(a) of this Agreement; (C) not Process Confidential Company Information other than for the Services defined in the Recitals as authorized by this Agreement; (D) limit reproduction of Confidential Company Information; (E) store Confidential Company Information in a secure fashion at a secure location that is not accessible to any person or entity not authorized to receive the Confidential Company Information under the provisions hereof; (F) otherwise use at least the same degree of care to avoid publication or dissemination of the Confidential Company Information as ESE employs (or would employ) with respect to its own confidential information that it does not (or would not) desire to have published or disseminated, but in no event less than reasonable care; and (G) to the extent required by the Company, each Representative with a need to know the Confidential Company Information shall sign the Third-Party Representative Agreement set forth as Exhibit B to this Agreement. At all times, Company shall have the right for cause to request reasonable further assurances that the foregoing restrictions and protections concerning Confidential Company Information are being observed and ESE shall be obligated to promptly provide Company with the requested assurances.

Company shall: (A) hold all Confidential ESE Information in strict confidence; except as otherwise expressly permitted by Section 7 herein; (B) not disclose Confidential ESE Information to any other person or entity except as set forth in Section 7(a) of this Agreement; (C) not Process Confidential ESE Information other than for the Services defined in the Recitals as authorized by this Agreement; (D) limit reproduction of Confidential ESE Information; (E) store Confidential ESE Information in a secure fashion at a secure location that is not accessible to any person or entity not authorized to receive the Confidential ESE Information under the provisions hereof; (F) otherwise use at least the same degree of care to avoid publication or dissemination of the Confidential ESE Information as Company employs (or would employ) with respect to its own confidential information that it does not (or would not) desire to have published or disseminated, but in no event less than reasonable care; and (G) to the extent required by ESE, each Representative with a need to know the Confidential ESE Information shall sign the Third-Party Representative Agreement set forth as Exhibit B to this Agreement. At all times, ESE shall have the right for cause to request reasonable further assurances that the foregoing restrictions and protections concerning Confidential ESE Information are being observed and Company shall be obligated to promptly provide ESE with the requested assurances.

This Section 6 supersedes prior non-disclosure agreements between the Parties pertaining to Confidential Information.

7. Exceptions Allowing ESE to Disclose Confidential Company Information.

- a. **Disclosure to Representatives.** Notwithstanding the provisions of Section 6 herein, the Parties may disclose Confidential Information to their Third-Party Representatives who have a legitimate need to know or use such Confidential Information for the purposes of providing Services in accordance with the Governing Documents, provided that each such Third-Party Representative first: (A) is advised by the disclosing Party of the sensitive and confidential nature of such Confidential Information; (B) agrees to comply with the provisions of this Agreement, provided that with respect to Third-Party Representatives and this subsection (B), such Third-Party Representatives must agree in writing to be bound by and observe the provisions of this Agreement as though such Third-Party Representatives were a Party/ESE; and (C) signs the Third-Party Representative Agreement. All such written Agreements with Third-Party Representatives shall include direct liability for the Third-Party Representatives towards Company/ESE for breach thereof by the Third-Party Representatives, and a copy of such Agreement and each Third-Party Representative Agreement shall be made available to Company/ESE upon request. Notwithstanding the foregoing, the Parties shall be liable for any act or omission of a Third-Party Representative, including without limitation, those acts or omissions that would constitute a breach of this Agreement.
- b. **Disclosure if Legally Compelled.** Notwithstanding anything herein, in the event that a Party or any of its Third-Party Representatives receives notice that it has, will, or may become compelled, pursuant to applicable law or regulation or legal process to disclose any Confidential Information (whether by receipt of oral questions, interrogatories, requests for information or documents in legal proceedings, subpoenas, civil investigative demands, other similar processes, or otherwise), that Party shall, except to the extent prohibited by law, within one (1) business day, notify the other Party, orally and in writing, of the pending or threatened compulsion. To the extent lawfully allowable, the Parties shall have the right to consult and the Parties will cooperate, in advance of any disclosure, to undertake any lawfully permissible steps to reduce and/or minimize the extent of Confidential Information that must be disclosed. The Parties shall also have the right to seek an appropriate protective order or other remedy reducing and/or minimizing the extent of Confidential Information that must be disclosed. In any event, the Party and its Third-Party Representatives shall disclose only such Confidential Information which they are advised by legal counsel that they are legally required to disclose in order to comply with such applicable law or regulation or legal process (as such may be affected by any protective order or other remedy obtained by the Party) and the Party and its Third-Party Representatives shall use all reasonable efforts to ensure that all Confidential Information that is so disclosed will be accorded confidential treatment.
- 8. Return/Destruction of Information.** Within thirty (30) days after Company's written demand, ESE shall (and shall cause its Third-Party Representatives to)

cease to access and Process Confidential Company Information and shall at the Company's option: (A) return such Confidential Company Information to Company in such manner, format, and timeframe as reasonably requested by Company or, if not so directed by Company, (B) shred, permanently erase and delete, degauss or otherwise modify so as to make unreadable, unreconstructible and indecipherable ("Destroy") all copies of all Confidential Company Information (including any and all extracts, compilations, studies, or other documents based upon, derived from, or containing Confidential Company Information) that has come into ESE's or its Third-Party Representatives' possession, including Destroying Confidential Company Information from all systems, records, archives, and backups of ESE and its Third-Party Representatives, and all subsequent access, use, and Processing of the Confidential Company Information by ESE and its Third-Party Representatives shall cease provided any items required to be maintained by governmental administrative rule or law or necessary for legitimate business or legal needs will not be destroyed until permitted and will remain subject to confidentiality during the retention period. ESE agrees that upon a customer revocation of consent, ESE warrants that it will no longer access through Company Confidential Company Information and that it will Destroy any Confidential Company Information in its or its Third-Party Representative's possession. Notwithstanding the foregoing, ESE and its Third-Party Representatives shall not be obligated to erase Confidential Company Information contained in an archived computer system backup maintained in accordance with their respective security or disaster recovery procedures, provided that ESE and its Third-Party Representatives shall: (1) not have experienced an actual Data Security Incident; maintain Data Security Protections to limit access to or recovery of Confidential Company Information from such computer backup system and; (3) keep all such Confidential Company Information confidential in accordance with this Agreement. ESE shall, upon request, certify to Company that the destruction by ESE and its Third-Party Representatives required by this Section has occurred by (A) having a duly authorized officer of ESE complete, execute, and deliver to Company a certification and (B) obtaining substantially similar certifications from its Third-Party Representatives and maintaining them on file. Compliance with this Section 8 shall not relieve ESE from compliance with the other provisions of this Agreement. The written demand to Destroy or return Confidential Company Information pursuant to this Section may occur if the ESE has been decertified pursuant to the Governing Documents, the Company has been notified of a potential or actual Data Security Incident and Company has a reasonable belief of potential ongoing harm or the Confidential Company Information has been held for a period in excess of its retention period. The obligations under this Section shall survive any expiration of termination of this Agreement. Subject to applicable federal, state and local laws, rules, regulations and orders, at ESE's written demand and termination of electronic exchange of data with Company, Company will Destroy or return, at ESE's option, Confidential ESE Information.

9. **Audit.** Upon thirty (30) days notice to ESE, ESE shall, and shall require its Third-Party Representatives to permit Company, its auditors, designated

representatives, to audit and inspect, at Company's sole expense (except as otherwise provided in this Agreement), and provided that the audit may occur no more often than once per twelve (12) month period (unless otherwise required by Company's regulators). The audit may include (A) the facilities of ESE and ESE's Third-Party Representatives where Confidential Company Information is Processed by or on behalf of ESE; (B) any computerized or paper systems used to Process Confidential Company Information; and (C) ESE's security practices and procedures, facilities, resources, plans, procedures, and books and records relating to the privacy and security of Confidential Company Information. Such audit rights shall be limited to verifying ESE's compliance with this Agreement, including all applicable Data Protection Requirements. If the ESE provides a SOC II report or its equivalent to the Company, or commits to complete an independent third-party audit of ESE's compliance with this Agreement acceptable to the Company at ESE's sole expense, within one hundred eighty (180) days, no Company audit is necessary absent a Data Security Incident. Any audit must be subject to confidentiality and non-disclosure requirements set forth in Section 6 of this Agreement. Company shall provide ESE with a report of its findings as a result of any audit carried out by or on behalf of Company. ESE shall, within thirty (30) days, or within a reasonable time period agreed upon in writing between the ESE and Company, correct any deficiencies identified by Company, and provide the SOC II audit report or its equivalent or the report produced by the independent auditor to the Company and provide a report regarding the timing and correction of identified deficiencies to the Company.

10. **Investigation.** Upon notice to ESE, ESE shall assist and support Company in the event of an investigation by any regulator or similar authority, if and to the extent that such investigation relates to Confidential Company Information processed by ESE on behalf of Company. Such assistance shall be at Company's sole expense, except where such investigation was required due to the acts or omissions of ESE or its Representatives, in which case such assistance shall be at ESE's sole expense.
11. **Data Security Incidents.** ESE is responsible for any and all Data Security Incidents involving Confidential Company Information that is Processed by, or on behalf of, ESE. ESE shall notify Company in writing immediately (and in any event within forty-eight (48) hours) whenever ESE reasonably believes that there has been a Data Security Incident. After providing such notice, ESE will investigate the Data Security Incident, and immediately take all necessary steps to eliminate or contain any exposure of Confidential Company Information and keep Company advised of the status of such Data Security Incident and all matters related thereto. ESE further agrees to provide, at ESE's sole cost: (1) reasonable assistance and cooperation requested by Company and/or Company's designated representatives, in the furtherance of any correction, remediation, or investigation of any such Data Security Incident; (2) and/or the mitigation of any damage, including any notification required by law or that Company may determine appropriate to send to individuals impacted or potentially impacted by the Data Security Incident; and (3) and/or the provision of any credit reporting service required by law or that Company deems appropriate to provide to such individuals. In addition, within thirty (30) days of

confirmation of a Data Security Incident, ESE shall develop and execute a plan, subject to Company's approval, which approval will not be unreasonably withheld, that reduces the likelihood of a recurrence of such Data Security Incident. ESE agrees that Company may at its discretion and without penalty immediately suspend performance hereunder and/or terminate the Agreement if a Data Security Incident occurs and it has a reasonable belief of potential ongoing harm. Any suspension made by Company pursuant to this paragraph 11 will be temporary, lasting until the Data Security Incident has ended, the ESE security has been restored to the reasonable satisfaction of the Company so that Company IT systems and Confidential Company Information are safe and the ESE is capable of maintaining adequate security once electronic communication resumes. Actions made pursuant to this paragraph, including a suspension will be made, or subject to dispute resolution and appeal as applicable, pursuant to the Governing Documents processes as approved by the Commission.

12. **Cybersecurity Insurance Required.** ESE shall carry and maintain Cybersecurity insurance in an amount of no less than \$5,000,000 per incident. Company will maintain at least \$5,000,000 of Cybersecurity insurance.
13. **No Intellectual Property Rights Granted.** Nothing in this Agreement shall be construed as granting or conferring any rights, by license, or otherwise, expressly, implicitly, or otherwise, under any patents, copyrights, trade secrets, or other intellectual property rights of Company, and ESE shall acquire no ownership interest in the Confidential Company Information. No rights or obligations other than those expressly stated herein shall be implied from this Agreement.
14. **Additional Obligations.**
 - a. ESE shall not create or maintain data which are derivative of Confidential Company Information except for the purpose of performing its obligations under this Agreement or as authorized by the Governing Documents. For purposes of this Agreement, the following shall not be considered Confidential Company Information or a derivative thereof: (i) any customer contracts, customer invoices, or any other documents created by ESE that reference estimated or actual measured customer usage information, which ESE needs to maintain for any tax, financial reporting or other legitimate business purposes consistent with the Governing Documents; and (ii) Data collected by ESE from customers through its website or other interactions based on those customers' interest in receiving information from or otherwise engaging with ESE or its partners.
 - b. ESE shall comply with all applicable privacy and security laws to which it is subject, including without limitation all applicable Data Protection Requirements and not, by act or omission, place Company in violation of any privacy or security law known by ESE to be applicable to Company.
 - c. ESE shall have in place appropriate and reasonable processes and systems, including an Information Security Program, defined as having completed an accepted Attestation as reasonably determined by the Company in its

discretion, to protect the security of Confidential Company Information and prevent a Data Security Incident, including, without limitation, a breach resulting from or arising out of ESE's internal use, processing, or other transmission of Confidential Company Information, whether between or among ESE's Third-Party Representatives, subsidiaries and affiliates or any other person or entity acting on behalf of ESE, including without limitation Third-Party Representatives. The Company's determination is subject to the dispute resolution process satisfactory to the Company. In the event the Company and ESE are unable to resolve the dispute by mutual agreement within thirty (30) days of said referral, the dispute shall be referred for mediation through the Commission's Office of Administrative Law Judge. A party may request mediation prior to that time if it appears that informal resolution is not productive.

- d. ESE and Company shall safely secure or encrypt during storage and encrypt during transmission all Confidential Information.
 - e. ESE shall establish policies and procedures to provide reasonable and prompt assistance to Company in responding to any and all requests, complaints, or other communications received from any individual who is or may be the subject of a Data Security Incident involving Confidential Company Information Processed by ESE to the extent such request, complaint or other communication relates to ESE's Processing of such individual's Confidential Company Information.
 - f. ESE shall establish policies and procedures to provide all reasonable and prompt assistance to Company in responding to any and all requests, complaints, or other communications received from any individual, government, government agency, regulatory authority, or other entity that is or may have an interest in the Confidential Company Information, data theft, or other unauthorized release of Confidential Company Information, disclosure of Confidential Company Information, or misuse of Confidential Company Information to the extent such request, complaint or other communication relates to ESE's accessing or Processing of such Confidential Company Information.
 - g. ESE will not process Confidential Company Information outside of the United States or Canada absent a written agreement with Company. For the avoidance of doubt, Confidential Company Information stored in the United States or Canada, or other countries as agreed upon in writing will be maintained in a secure fashion at a secure location pursuant to the terms and conditions of this Agreement.
15. **Specific Performance.** The Parties acknowledge that disclosure or misuse of Confidential Company Information in violation of this Agreement may result in irreparable harm to Company, the amount of which may be difficult to ascertain and which may not be adequately compensated by monetary damages, and that therefore Company shall be entitled to specific performance and/or injunctive relief

to enforce compliance with the provisions of this Agreement. Company's right to such relief shall be in addition to and not to the exclusion of any remedies otherwise available under this Agreement, at law or in equity, including monetary damages, the right to terminate this Agreement for breach and the right to suspend the provision or Processing of Confidential Company Information hereunder. ESE agrees to waive any requirement for the securing or posting of any bond or other security in connection with Company obtaining any such injunctive or other equitable relief.

- 16. Indemnification.** To the fullest extent permitted by law, ESE shall indemnify and hold Company, its affiliates, and their respective officers, directors, trustees, shareholders, employees, and agents, harmless from and against any and all loss, cost, damage, or expense of every kind and nature (including, without limitation, penalties imposed by the Commission or other regulatory authority or under any Data Protection Requirements, court costs, expenses, and reasonable attorneys' fees) arising out of, relating to, or resulting from, in whole or in part, the breach or non-compliance with this Agreement by ESE or any of its Third-Party Representatives except to the extent that the loss, cost, damage or expense is caused by the negligence, gross negligence or willful misconduct of Company.
- 17. Notices.** With the exception of notices or correspondence relating to potential or pending disclosure under legal compulsion, all notices and other correspondence hereunder shall be sent by first class mail, by personal delivery, or by a nationally recognized courier service. Notices or correspondences relating to potential or pending disclosure under legal compulsion shall be sent by means of Express Mail through the U.S. Postal Service or other nationally recognized courier service which provides for scheduled delivery no later than the business day following the transmittal of the notice or correspondence and which provides for confirmation of delivery. All notices and correspondence shall be in writing and addressed as follows:

If to ESE, to:

ESE Name:
Name of Contact:
Address:
Phone:
Email:

If to Company, to:

Company Name: National Fuel Gas Distribution Corporation
Name of Contact: Rates and Regulatory Affairs Department
Address: 6363 Main Street, Williamsville, NY 14221
Phone: 716-857-6824
Email: NFGGratesPAD@natfuel.com

A Party may change the address or addressee for notices and other correspondence to it hereunder by notifying the other Party by written notice given pursuant hereto.

- 18. Term and Termination.** This Agreement shall be effective as of the date first set forth above and shall remain in effect until terminated in accordance with the provisions of the service agreement, if any, between the Parties or the Governing Documents and upon not less than thirty (30) days' prior written notice specifying the effective date of termination, provided, however, that any expiration or termination shall not affect the respective obligations or rights of the Parties arising under this Agreement prior to the effective date of termination. Company may terminate this Agreement if the ESE loses its status as a Licensed Supplier, has not served customers for two (2) years, or has not had electronic communication, other than by email, with Company for one (1) year. Further, Company may terminate this Agreement immediately upon notice to ESE in the event of a material breach hereof by ESE or its Third-Party Representatives. For the purpose of clarity, a breach of Sections 3-4, 6-11, 13, 14, 16, and 24 shall be a material breach hereof. Upon the expiration or termination hereof, neither ESE nor its Third-Party Representatives shall have any further right to Process Confidential Company Information or Customer Information and shall immediately comply with its obligations under Section 8 and the Company shall not have the right to process Confidential ESE Information and shall immediately comply with its obligations under Section 8.
- 19. Consent to Jurisdiction; Selection of Forum.** ESE irrevocably submits to the jurisdiction of the Commission and courts located within the Commonwealth of Pennsylvania with regard to any dispute or controversy arising out of or relating to this Agreement. ESE agrees that service of process on it in relation to such jurisdiction may be made by certified or registered mail addressed to ESE at the address for ESE pursuant to Section 11 hereof and that such service shall be deemed sufficient even under circumstances where, apart from this Section, there would be no jurisdictional basis for such service. ESE agrees that service of process on it may also be made in any manner permitted by law. ESE consents to the selection of the Pennsylvania and United States courts within Erie County, Pennsylvania as the exclusive forums for any legal or equitable action or proceeding arising out of or relating to this Agreement.
- 20. Governing Law.** This Agreement shall be interpreted and the rights and obligations of the Parties determined in accordance with the laws of the Commonwealth of Pennsylvania, without recourse to such state's choice of law rules.
- 21. Survival.** The obligations of ESE under this Agreement shall continue for so long as ESE and/or ESE's Third-Party Representatives continue to have access to, are in possession of or acquire Confidential Company Information even if all Agreements between ESE and Company have expired or been terminated.
- 22. Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which shall together constitute one

and the same instrument. Copies of this Agreement and copies of signatures on this Agreement, including any such copies delivered electronically as a .pdf file, shall be treated for all purposes as originals.

- 23. Amendments; Waivers.** Except as directed by the Commission, this Agreement may not be amended or modified except if set forth in writing signed by the Party against whom enforcement is sought to be effective. No forbearance by any Party to require performance of any provisions of this Agreement shall constitute or be deemed a waiver of such provision or the right thereafter to enforce it. Any waiver shall be effective only if in writing and signed by an authorized representative of the Party making such waiver and only with respect to the particular event to which it specifically refers.
- 24. Assignment.** This Agreement (and the Company's or ESE's obligations hereunder) may not be assigned by Company, ESE or Third Party Representatives without the prior written consent of the non-assigning Party, and any purported assignment without such consent shall be void. Consent will not be unreasonably withheld.
- 25. Severability.** Any provision of this Agreement which is determined by any court or regulatory body having jurisdiction over this Agreement to be invalid or unenforceable will be ineffective to the extent of such determination without invalidating the remaining provisions of this Agreement or affecting the validity or enforceability of such remaining provisions.
- 26. Entire Agreement.** This Agreement (including any Exhibits hereto) constitutes the entire Agreement between the Parties with respect to the subject matter hereof and any prior or contemporaneous oral or written Agreements or understandings with respect to such subject matter are merged herein. This Agreement may not be amended without the written Agreement of the Parties.
- 27. No Third-Party Beneficiaries.** This Agreement is solely for the benefit of, and shall be binding solely upon, the Parties and their respective agents, successors, and permitted assigns. This Agreement is not intended to benefit and shall not be for the benefit of any party other than the Parties and the indemnified parties named herein, and no other party shall have any right, claim, or action as a result of this Agreement.
- 28. Force Majeure.** No Party shall be liable for any failure to perform its obligations in connection with this Agreement, where such failure results from any act of God or governmental action or order or other cause beyond such Party's reasonable control (including, without limitation, any mechanical, electronic, or communications failure) which prevents such Party from performing under this Agreement and which such Party is unable to prevent or overcome after the exercise of reasonable diligence. For the avoidance of doubt a Data Security Incident is not a force majeure event.

- 29. Relationship of the Parties.** Company and ESE expressly agree they are acting as independent contractors and under no circumstances shall any of the employees of one Party be deemed the employees of the other for any purpose. Except as expressly authorized herein, this Agreement shall not be construed as authority for either Party to act for the other Party in any agency or other capacity, or to make commitments of any kind for the account of or on behalf of the other.
- 30. Construction.** This Agreement shall be construed as to its fair meaning and not strictly for or against any party.
- 31. Binding Effect.** No portion of this Agreement is binding upon a Party until it is executed on behalf of that Party in the space provided below and delivered to the other Party. Prior to such execution and delivery, neither the submission, exchange, return, discussion, nor the negotiation of this document, whether or not this document is then designated as a “draft” document, shall have any binding effect on a Party.

[signature page follows]

IN WITNESS WHEREOF, the Parties have executed and delivered this Agreement as of the date first above written.

NATIONAL FUEL GAS DISTRIBUTION CORPORATION

By: _____ By: _____

Name: John J. Polka, Jr. Name: _____

Title: Assistant Vice President Title: _____

SELF-ATTESTATION OF INFORMATION SECURITY CONTROLS

National Fuel Gas Distribution Corporation (“Company”) represents that for all information received from Third Party in response or pursuant to this Self-Attestation that is marked CONFIDENTIAL by Third Party (Confidential Self-Attestation Information) Company shall: (A) hold such Confidential Self-Attestation Information in strict confidence; (B) not disclose such Confidential Self-Attestation Information to any other person or entity; (C) not Process such Confidential Self-Attestation Information outside of the United States or Canada; (D) not Process such Confidential Self-Attestation Information for any purpose other than to assess the adequate security of Third party pursuant to this Self-Attestation and to work with Third party to permit it to achieve adequate security if it has not already done so; (E) limit reproduction of such Confidential Self-Attestation Information; (F) store such Confidential Self-Attestation Information in a secure fashion at a secure location in the United States or Canada that is not accessible to any person or entity not authorized to receive such Confidential Self-Attestation Information under the provisions hereof; (G) otherwise use at least the same degree of care to avoid publication or dissemination of such Confidential Self-Attestation Information as Company employs (or would employ) with respect to its own confidential information that it does not (or would not) desire to have published or disseminated, but in no event less than reasonable care.

The Requirements to complete the Self-Attestation are as follows (check all that apply to Third Party's computing environment, leave blank all that do not apply to Third Party's computing environment. For items that do not apply. If there are plans to address items that do not currently apply within the next 12 months, place an asterisk in the blank and the month/year the requirement is projected to apply to the Third Party's computing environment), comments regarding plans for compliance are encouraged:

This SELF-ATTESTATION OF INFORMATION SECURITY CONTROLS (“Attestation”), is made as of this _____ day of _____, 2020 by _____, a third party (“Third Party”) to Company.

WHEREAS, Third Party desires to retain access to certain Confidential Company Information¹ (as defined in this Data Security Agreement), Third Party must THEREFORE self- attest to Third Party's compliance with the Information Security Control Requirements ("Requirements") as listed herein. Third Party acknowledges that non-compliance with any of the Requirements may result in the termination of Company data access as per the discretion of Company, in whole or part, for its or their system(s). Any termination process will proceed pursuant to the Company's Tariff.

- _____ An Information Security Policy is implemented across the Third Party corporation which includes officer level approval.
- _____ An Incident Response Procedure is implemented that includes notification within 48 hours of knowledge of a potential incident alerting utilities when Confidential Company Information is potentially exposed, or of any other potential security breach.
- _____ Role-based access controls are used to restrict system access to authorized users and limited on a need-to-know basis.
- _____ Multi-factor authentication is used for all remote administrative access, including, but not limited to, access to production environments.
- _____ All production systems are properly maintained and updated to include security patches on a periodic basis. Where a critical alert is raised, time is of the essence, and patches will be applied as soon as practicable.
- _____ Antivirus software is installed on all servers and workstations and is maintained with up-to-date signatures.
- _____ All Confidential Company Information is encrypted in transit utilizing industry best practice encryption methods.
- _____ All Confidential Company Information is secured or encrypted at rest utilizing industry best practice encryption methods, or is otherwise physically secured.

¹ "Confidential Company Information" means, collectively, aggregated and customer-specific information that Company is: (A) required by 52 Pa. Code § 62.76 and or (B) any other Data provided to ESE by Company and marked confidential by the Company at the time of disclosure, or (C) a Company's operations and/or systems, including but not limited to log-in credentials, but excludes (i) information which is or becomes generally available to the public other than as a result of a disclosure by Receiving Party or its Representatives; (ii) information which was already known to Receiving Party on a non-confidential basis prior to being furnished to Receiving Party by Disclosing Party; (iii) information which becomes available to Receiving Party on a non-confidential basis from a source other than Disclosing Party or a representative of Disclosing Party if such source was not subject to any prohibition against transmitting the information to Receiving Party and was not bound by a confidentiality agreement with Disclosing Party; (iv) information which was independently developed by the Receiving Party or its Representatives without reference to, or consideration of, the Confidential Information; or (v) information provided by the customer with customer consent where the customer expressly agrees that the information is public.

- _____ It is prohibited to store Confidential Company Information on any mobile forms of storage media, including, but not limited to, laptop PCs, mobile phones, portable backup storage media, and external hard drives, unless the storage media or data is encrypted.
- _____ All Confidential Company Information is stored in the United States or Canada only, including, but not limited to, cloud storage environments and data management services.
- _____ Third Party monitors and alerts their network for anomalous cyber activity on a 24/7 basis.
- _____ Security awareness training is provided to all personnel with access to Confidential Company Information.
- _____ Employee background screening occurs prior to the granting of access to Confidential Company Information.
- _____ Replication of Confidential Company Information to non-company assets, systems, or locations is prohibited.
- _____ Access to Confidential Company Information is revoked when no longer required, or if employees separate from the Third Party.

Additionally, the attestation of the following item is requested, but is NOT part of the Requirements:

- _____ Third Party maintains an up-to-date SOC II Type 2 Audit Report, or other security controls audit report.

IN WITNESS WHEREOF, Third Party has delivered accurate information for this Attestation as of the date first above written.

Signature: _____

Name: _____

Title: _____

Date: _____

THIRD-PARTY REPRESENTATIVE AGREEMENT

This Third-Party Agreement to be provided to the Company upon request.

I, _____, have read the Agreement between _____, (“Company”) and _____, (“Company”) dated _____, 20 (the “Agreement”) and agree to the terms and conditions contained therein. My duties and responsibilities on behalf of _____ require me to have access to the Confidential Information disclosed by Company to the ESE pursuant to the Agreement.

Signature

Date

NFGD Exhibit CC-8
04/29/21 C-2020-3019621



National Fuel Gas Distribution Corporation
Spring 2020 Marketer/Supplier Teleconference
March 19, 2020
2:00 p.m. EST

AGENDA

Welcome and Introduction	Joanne Maciok
Operational Update	Dan Czechowicz
Rates & Regulatory Update	Maryann Stankovski
<ul style="list-style-type: none">○ Federal Regulatory Update○ PA Regulatory Update○ NY Regulatory Update	
Capacity Review	Ken McAvoy
General Discussion	All
Closing	Joanne Maciok



National Fuel Gas Distribution Corporation

Spring 2020 Marketer/Supplier Teleconference

Operational Update

Presentation by: Dan Czechowicz
March 19, 2020



Marketer/Supplier Operations Support

- NFGDC Website: <https://www.natfuel.com/marketers/default.aspx>
- Operating Procedures Manuals:
 - GTOP, TSS, TSS Reports, Aggregator, Market Pool, Production Pool
- Transportation Scheduling System – TSS
- Training
- Help Desks
 - **Scheduling: (716)-857-7232**
 - Hours: 7:30 am – 5:00 pm on business days
 - email: TSSSupport@natfuel.com
 - **Billing: (716)-857-7432**
 - Hours: 8:00 am – 4:30 pm on business days
 - email: TSD-Billing@natfuel.com
- **After Hours Scheduling Support: (716)-857-7232**



Transportation Scheduling System (TSS)

- Marketer Contact Information
 - Updated in TSS, under Contact Maintenance (**ECNTM**)
 - Important to keep this information current
 - System Alerts / OFOs
 - Scheduling cuts
 - Capacity Release
 - Announcements / Other Information
- TSS Users
 - Each user is required to have their own log in, **do not** share log in ID and passwords
 - Citrix Password must be at least 15 characters and contain 3 out of 4 of the following:
 - At least 1 lower case letter
 - At least 1 upper case letter
 - At least 1 numeral
 - At least 1 special character
 - At least one TSS user back-up is highly recommended



TSS Outage Procedures

- **Communication**
 - Call TSS Help Desk
- **Email / Web posting**
 - Keep contact maintenance in TSS up to date (ECNTM)
- **TSS Emergency Forms** (only to be used at National Fuel's direction)
 - Available online at:
https://www.natfuel.com/marketers/TSS/manuals_and_forms.aspx
 - Forgetting password or remote connection issues on local computer is not a TSS Outage



TSS Enhancements

- Auto Production Pool Setup (**EAPPS**)
 - Market Pool and Production Pool setup reminder
 - sent via email and posted on the web site
 - Set up all production pools, copy EPPSI and EPPSE for the month all in one screen
 - Market Pool setup through EAAMS must be completed **prior** to running EAPPS
 - Verify report, received via email, confirming pool setup
- Gas In Screen Enhancements (**EGASIN**)
 - Implemented in December 2019
 - See Market Pool Operator Manual or Call TSS Help Desk for assistance
 - Edit all noms at one time for gas day selected
 - Multi-Edit – edit multiple timely cycle noms for the over multiple days
 - Looking to disable Gas In (**EGASI**)
- Auto-Renom – under feasibility review



Transportation Customers

NEW YORK

	<u>March 2019</u>	<u>March 2020</u>
STBA (Aggregation)	74,047	67,147
DMT (Aggregation)	35	36
MMT (Stand Alone)	1	1
New York Total	74,083	67,184

PENNSYLVANIA

MMNGS (Aggregation)	3,617	3,724
SATS (Aggregation)	26,653	26,066
DMT (Stand Alone)	79	77
Pennsylvania Total	30,349	29,897

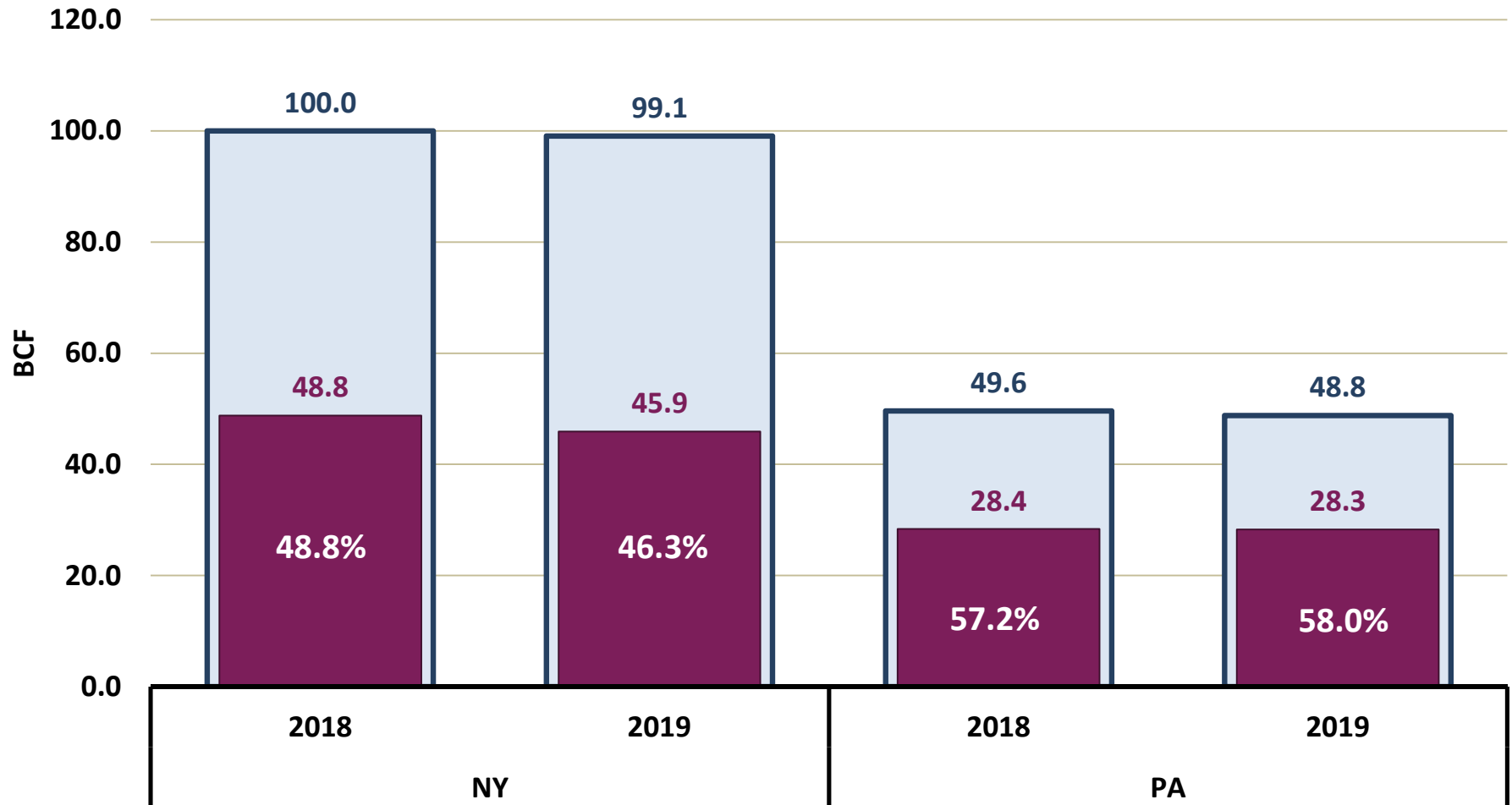
TOTAL NFGDC

	104,432	97,051
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NFGDC YEARLY DELIVERIES 12 Month Totals (Through December 2019)

Throughput Transported





New York & Pennsylvania Operations

- Daily Delivery Quantities (DDQs)
 - DDQs are customer usage estimates based on usage history, weather forecasts, actual measurement – mid course correction
 - DDQ Requirements under normal operating conditions:
 - NY STBA and PA MMNGS = 95% - 105%
 - PA SATS = 98% - 102%
- Production Daily Quantities (PDQs)
 - PDQs are estimates of local production based on production volume history
- Market Pool and Production Pool operators are responsible for monitoring actual flowing volumes and requesting DDQ and PDQ modifiers via TSS as necessary



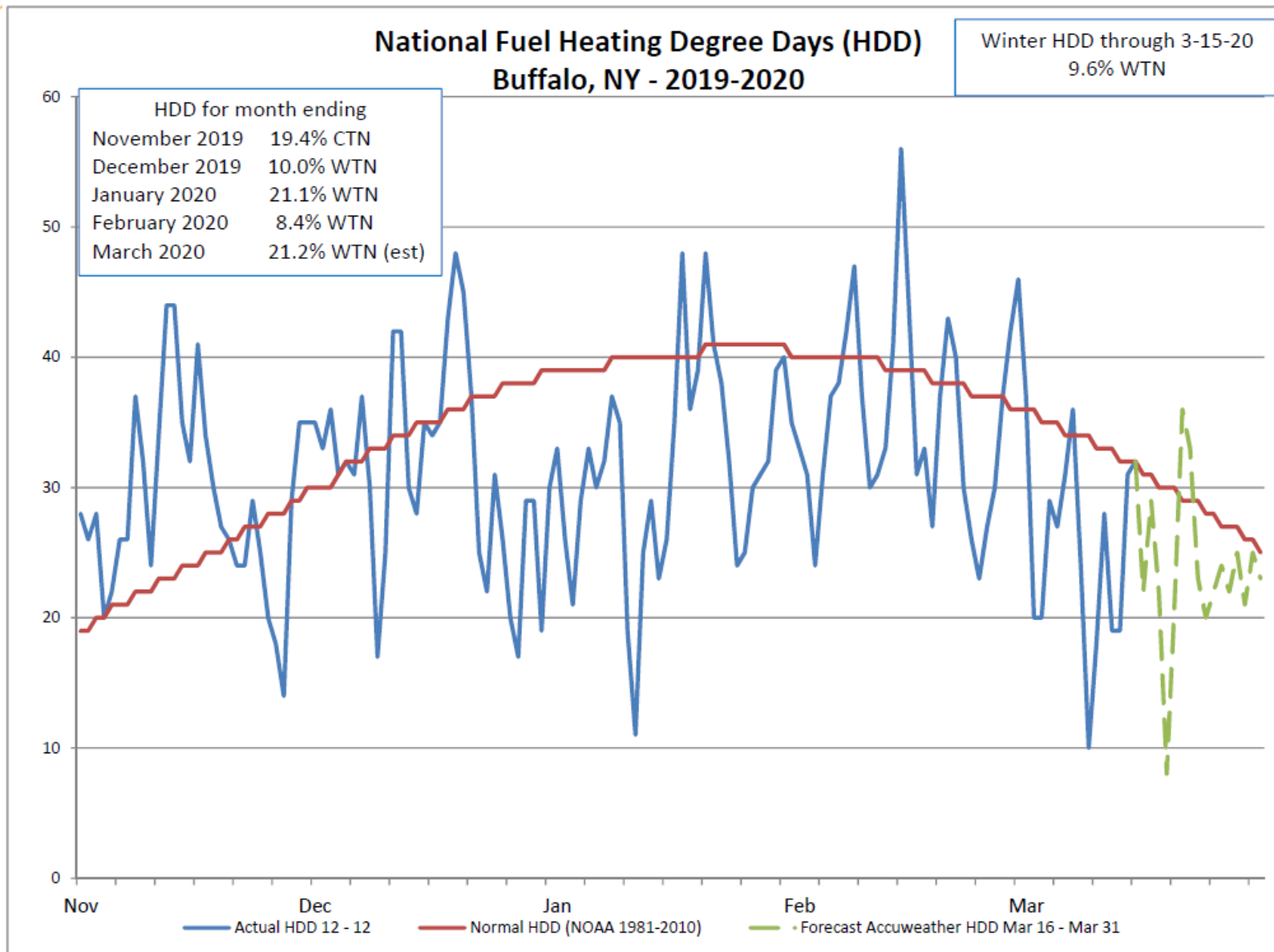
New York & Pennsylvania Operations

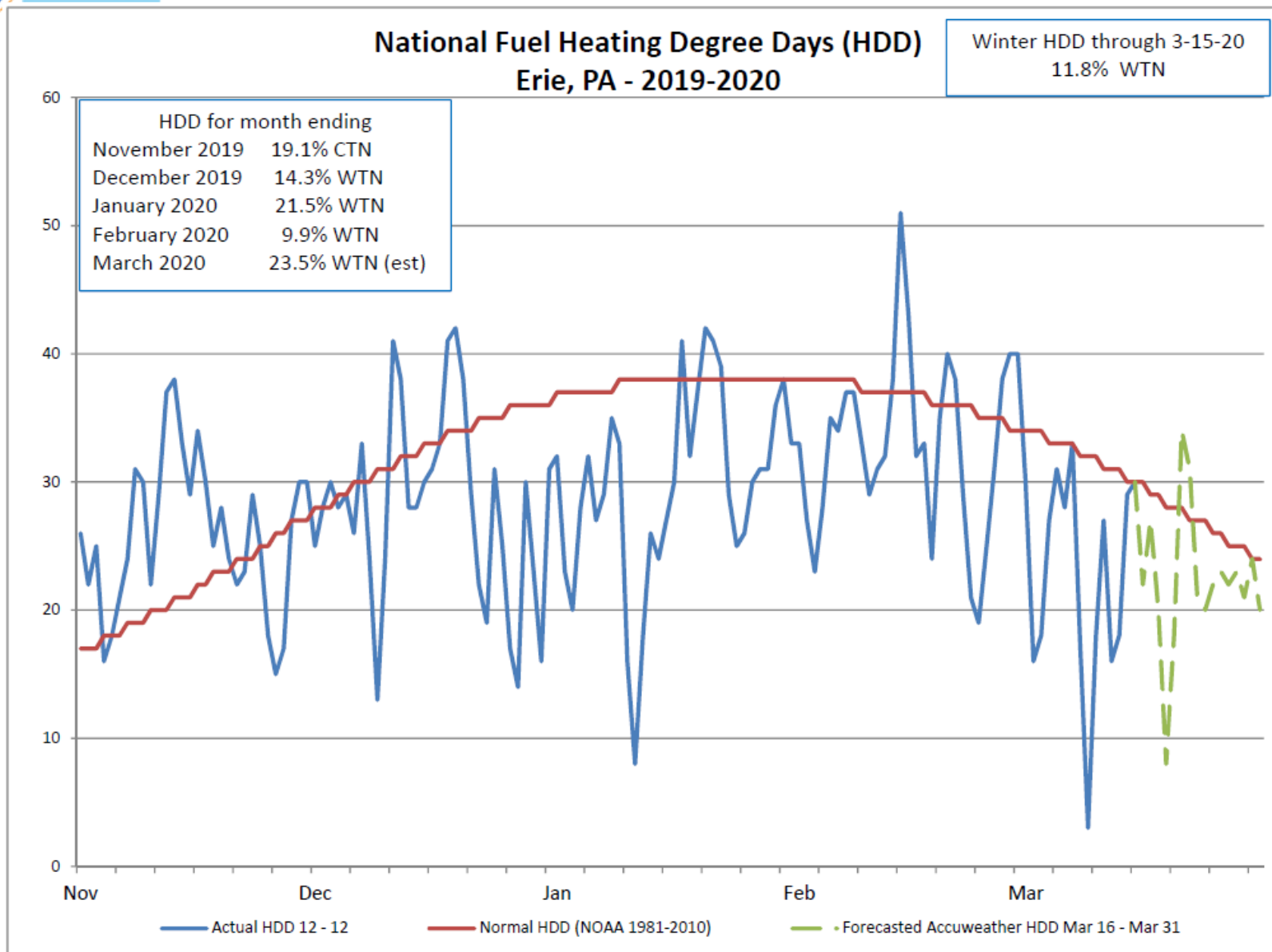
- Meet daily delivery requirements (DDQs) to serve market.
- Daily Metered Transportation (DMT) customers, match daily deliveries to actual daily usage
- On the PA DMT statement, when 'USAGE EST.' is shown under the 'Stmt Basis' column, it is the market pool operator's responsibility to obtain a 10:00 am read directly from the customer
- Deliver upstream supplies at primary firm or acceptable alternate delivery points
- Manage storage inventories
 - Required end of month storage inventory percentages are **minimums**, not targets



ESS End of Month Inventory Levels Current Minimum Percentage Full

		NY	PA
Injection	April	0%	0%
	May	12%	12%
	June	29%	29%
	July	46%	46%
	August	63%	63%
	September	80%	80%
	October	95%	95%
Withdrawal	November	89%	86%
	December	71%	68%
	January	46%	45%
	February	28%	28%
	March	0%	0%







SYSTEM MAINTENANCE ORDERS

* TO MAINTAIN SYSTEM OPERATIONAL INTEGRITY *

- SYSTEM ALERT

- Operational Flow Order (OFO)
 - NY STBA 98-105% (cold); 95-102% (warm)
 - PA SATS 100-102% (cold); 98-100% (warm)
 - PA MMNGS 100-105% (cold); 95-100% (warm)
 - Option to disallow use of PA DMT banks
 - Option to shrink NY DMT tolerance from 10% to as low as 2%

- Communicate through ROBO text option
 - Marketers must opt-in to receive texts messages in the contact maintenance screen in TSS (ECNTM)

- UNAUTHORIZED OVERRUN

- CURTAILMENT



Operational Update

Winter 2019 – 2020

(Gas days inclusive. Applies to NY and PA)

- **System Alerts**
 - **4 Cold Weather**
 - **December 18-20**
 - **January 18-21**
 - **February 7-11**
 - **February 13-15**
 - **2 Warm Weather**
 - **December 28-31**
 - **January 10-13**
 - **2 DDQ Averaging Suspension**
 - **January 18-21**
 - **February 8-10**
- **OFOs**
 - **None to date**

History of Operational Notices for NY and PA are posted on our website



National Fuel Gas Distribution Corporation – Buffalo, New York

Winter Season			OFO (Under-delivery)		Peak Day		
Colder (CTN) /Warmer (WTN) than Normal			Number issued	Total Days	Dates	Mean Temp (°F)	Throughput (Dth)
2019-2020	8.1%	WTN	0	0	2/14/2020	10	660,011
2018-2019	2.0%	CTN	2	7	1/30/2019	-1	874,658
2017-2018	1.5%	CTN	2	5	1/5/2018	1	845,535
2016-2017	11.8%	WTN	0	0	12/15/2016	14	681,532
2015-2016	17.8%	WTN	0	0	2/13/2016	-2	781,083
2014-2015	13.0%	CTN	1	15	2/23/2015	-2	836,714
2013-2014	13.3%	CTN	3	19	1/28/2014	4	845,309
2012-2013	6.1%	WTN	0	0	1/22/2013	8	743,338
2011-2012	21.6%	WTN	0	0	1/3/2012	11	672,998
2010-2011	5.7%	CTN	1	4	1/23/2011	-1	735,214
2009-2010	2.3%	WTN	0	0	1/30/2010	7	648,907

NOTE: 2019-2020 is an estimate



National Fuel Gas Distribution Corporation – Erie, Pennsylvania

Winter Season			OFO (Under-delivery)		Peak Day		
Colder (CTN) /Warmer (WTN) than Normal			Number issued	Total Days	Dates	Mean Temp (°F)	Throughput (Dth)
2019-2020	10.1%	WTN	0	0	2/14/2020	12	313,957
2018-2019	0.6%	WTN	2	7	1/30/2019	-2	426,677
2017-2018	2.0%	CTN	1	3	1/5/2018	7	389,018
2016-2017	13.6%	WTN	0	0	12/15/2016	16	327,562
2015-2016	19.1%	WTN	0	0	2/13/2016	8	336,218
2014-2015	14.7%	CTN	1	15	2/19/2015	-6	394,737
2013-2014	15.6%	CTN	3	19	1/7/2014	1	414,064
2012-2013	3.2%	WTN	0	0	1/22/2013	10	342,059
2011-2012	21.9%	WTN	0	0	1/3/2012	14	290,254
2010-2011	7.1%	CTN	1	4	1/23/2011	2	315,776
2009-2010	0.1%	WTN	0	0	1/28/2010	16	295,043

NOTE: 2019-2020 is an estimate



Pipeline Critical Notices are Important

- NFGDC reminds ESCO's to consider their business and regularly review the appropriate pipeline notices
 - Subscribe to receive emails of Critical Notices from each pipeline that they operate on
 - Review and assess potential impacts on their business
 - Contact the appropriate pipeline for notice clarification
 - Contact NFGDC for assistance
- To receive Critical Notice emails directly from:
 - NFG Supply- contact your internal System Administrator or Tracey Williams at NFGSC at WilliamsT@natfuel.com to set up email notification preferences.
 - TGP- Update DART user setting in "Business Preferences" to receive email notifications



Questions?





National Fuel Gas Distribution Corporation

Spring 2020 Marketer/Supplier Teleconference

Rates & Regulatory Update

Presentation by: Maryann Stankovski
March 19, 2020



Rates & Regulatory Update

Federal Update

Pipeline Rate Events

- **RP18-1126 – Transcontinental Gas Pipe Line Company, LLC**
 - Section 4 Rate Case was filed on 8/31/2018 proposing a 40% rate increase;
 - New rates, reflecting a 37% increase, went into effect 4/1/2019 subject to refund (impacts NY).
 - Stipulation & Agreement filed 12/31/19, approximately 10.5% rate increase
 - Certification of Uncontested Settlement issued on 2/13/20
- **RP19-343 – Texas Eastern**
 - Section 4 Rate Case was filed on 11/30/2018;
 - Proposed rate increase of approximately 8.5%
 - New rates went into effect 6/1/2019 subject to refund (impacts PA);
 - Stipulation & Agreement filed 10/28/19, approximately 13% rate decrease
 - Certification of Uncontested Settlement issued on 1/13/20
 - Settlement approved 2/25/20



Rates & Regulatory Update

Federal Update

Pipeline Rate Events (continued)

- **RP19-1426 – National Fuel Gas Supply Corporation**
 - Section 4 Rate Case filed on 7/31/2019 proposing a 48.5% rate increase (impacts NY/PA)
 - FERC issued a suspension order and rates will go into effect February 1, 2020, subject to refund
 - Settlement in principle reached
 - Interim settlement rates effective 2/1/20, approximately 19% rate increase
 - Stipulation & Agreement filed 3/13/20
- **Columbia Gas Transmission, LLC**
 - Anticipates filing a General NGA Section 4 rate case on July 1, 2020 with rates effective February 1, 2021



Rates & Regulatory Update

Pennsylvania Update

Data Security Agreement & Self-Attestation

- June 14, 2019 – NFGDC filed Supplement No. 207 to Tariff Gas Pa. P.U.C. No. 9 to update its current tariff and to institute new tariff provisions, including the authority to require a Data Security Agreement (DSA) and Self-Attestation (SA) from parties accessing NFGDC's utility business systems
- August 29, 2019, the Pa. P.U.C. approved NFG's tariff filing
- DSAs were sent out March 17, 2020 and are due **March 31, 2020**



Rates & Regulatory Update

Pennsylvania Update

Chapter 111 – Marketing and Sales Practices for the Retail Residential Energy Market, 52 Pa. Code §§ 111.1 – 111.14

- November 6, 2019 PUC Secretarial Letter
 - Announced an upcoming rulemaking to review and update the Chapter 111 Residential Supplier Marketing Regulations and inviting informal comments from stakeholders
 - Informal comments may be submitted on any topic related to residential supplier marketing, but the PUC is especially interested in obtaining advice and suggestions on the following topic areas:
 - Telemarketing rules – see 52 Pa. Code § 111.10; including a possible reporting requirement for telemarketing analogous to the reporting requirement for door-to-door marketing at 52 Pa. Code § 111.14, and potential limitations on caller ID spoofing and robocalls.
 - Updating the sales verification procedures at 52 Pa. Code § 111.7 to accommodate new and evolving technologies.
 - Quality control and oversight of marketing vendors – see 52 Pa. Code § 111.5.
 - Updating rules and guidance on the marketing of renewable energy products – see 52 Pa. Code § 54.6 and 52 Pa. Code § 75.68.
 - Rules for direct mail marketing and in-person marketing.

Informal comments were due February 21, 2020 to the Office of Competitive Market



Rates & Regulatory Update

Pennsylvania Update

Pennsylvania GTOP

- No planned updates



Rates & Regulatory Update

New York Update

Order Adopting Changes to the Retail Energy Market and Establishing Further Process

Issued and effective December 12, 2019

- Petitions for Rehearing, Motions for Stay filed January 13, 2020
 - Extension granted for Ordering Clauses 1,2,5 and 8 until May 11,2020
 - Extension granted for Ordering Clause 6 until June 9, 2020
- Technical Conference January 22, 2020
- Staff filed guidance document regarding Staff's review of ESCO eligibility on February 10, 2020
- Financial Assurance Stakeholder Meeting February 26, 2020
- Utilities have posted 12-month average supply rates

<https://nationalfuelgas.com/marketers/nyrates/NYSupplyRates.aspx>



Rates & Regulatory Update

New York Update

Order Establishing Minimum Cybersecurity and Privacy Protections and Making Other Findings Issued and effective October 17, 2019

- DSAs and SAs sent out January 13, 2020
- Due January 31, 2020



Rates & Regulatory Update

New York Update

New York GTOP

- GTOP Version 3.00 filed February 2020
 - NY DSA
 - Administrative Updates



Questions?





National Fuel Gas Distribution Corporation

Spring 2020 Marketer/Supplier Teleconference

Capacity Review

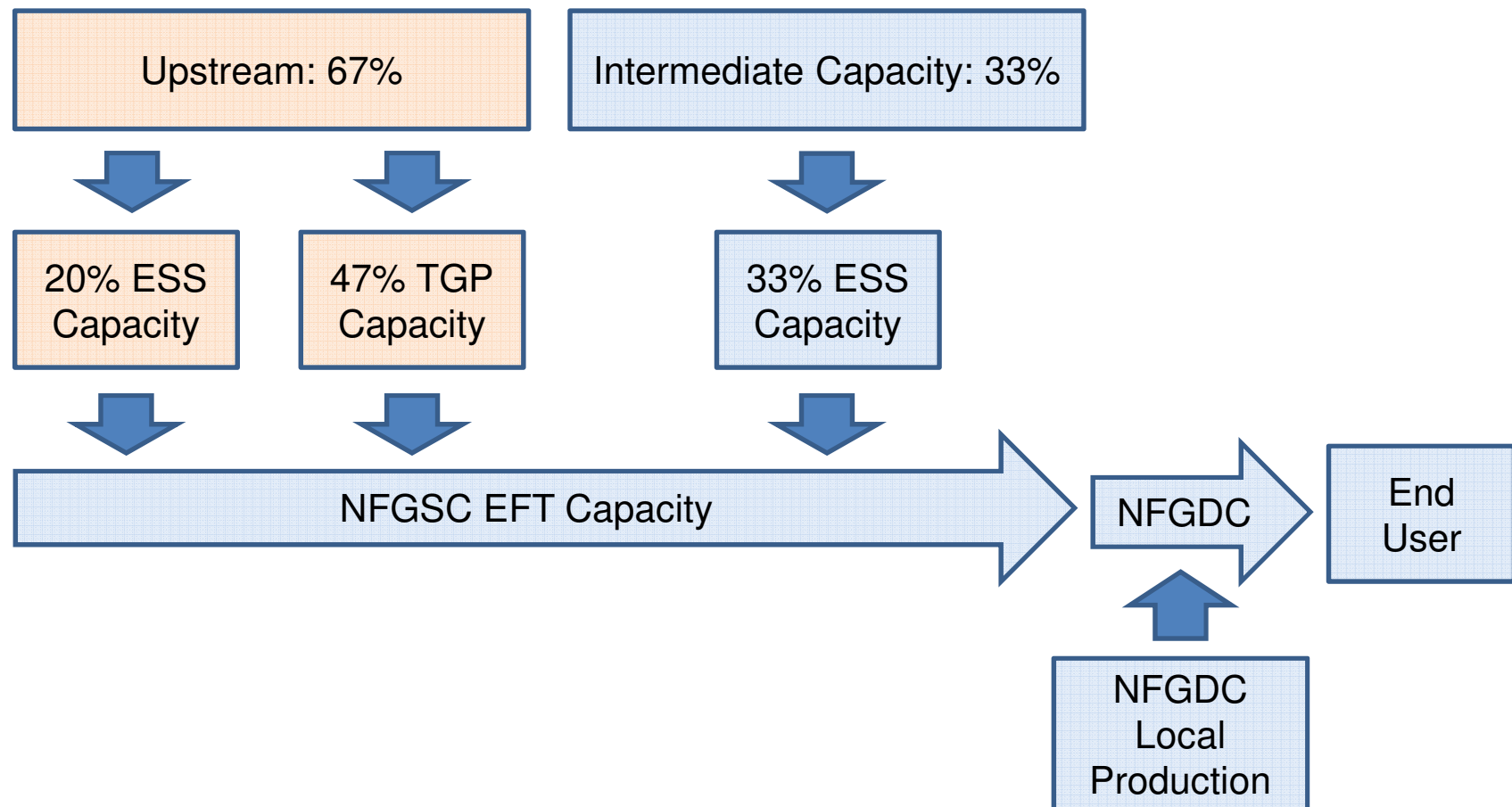
Presentation by: Kenneth McAvoy

March 19, 2020



NY Capacity Release

Serves requirements up to 62 HDD





New York

Upstream WACOC & Capacity Release Rate

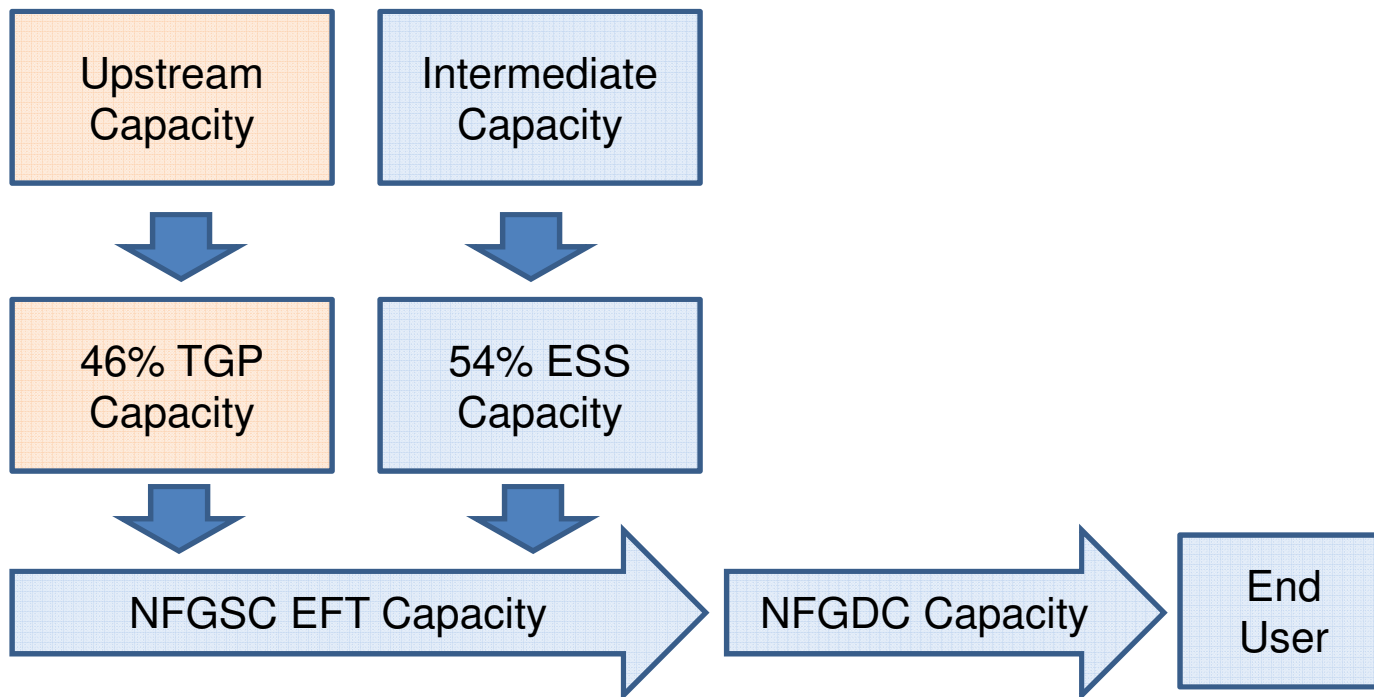
	WACOC		Upstream Release	
	Rate	Change from Apr-2012	NFGSC ESS Max Rate	TGP FT Rel. Rate
Apr 2012	\$10.84	-	\$4.16	\$11.92
Apr 2013	\$10.51	-3%	\$4.49	\$11.49
Apr 2014	\$9.81	-9%	\$4.48	\$10.68
Apr 2015	\$9.40	-13%	\$4.48	\$10.27
Apr 2016	\$10.05	-7%	\$4.39	\$11.04
Apr 2017	\$9.49	-12%	\$4.30	\$10.40
Apr 2018	\$8.60	-21%	\$4.48	\$10.37
Apr 2019	\$8.86	-18%	\$4.49	\$10.74
Apr 2020	\$8.96	-17%	\$4.91	\$10.69



Pennsylvania

A SATS Capacity Release

Serves requirements up to 62 HDD





Pennsylvania

WACOC & Capacity Release Rate

	WACOC		Upstream Release
	Rate	Change from Apr-2012	TGP FT Release Rate ¹
Aug 2012	\$14.98	-	\$14.98
Aug 2013	\$13.88	-7%	\$13.88
Aug 2014	\$11.80	-21%	\$11.80
Aug 2015	\$10.14	-32%	\$10.14
Aug 2016	\$9.63	-36%	\$9.63
Aug 2017	\$9.57	-36%	\$9.57
Aug 2018	\$8.94	-40%	\$8.94
Aug 2019	\$7.78	-48%	\$7.78
Aug 2020 ²	\$7.41	-51%	\$7.41

¹ PA TGP Release Rate = PA WACOC Rate

² Projected



Questions?



NFGD Exhibit CC-9

04/29/21 C-2020-3019621

Christopher Cej

From: Cragg Chaffee <CChaffee@energymarkllc.com>
Sent: Tuesday, March 24, 2020 1:47 PM
To: Christopher Cej
Subject: PA NFGD Tariff request
Attachments: NEM_Cmts_on_Cybersecurity_Policy,_DSA_and_Self_Attestation_Form_final.pdf

******* THIS IS AN EXTERNAL EMAIL, DO NOT OPEN LINKS OR ATTACHMENTS UNLESS YOU TRUST THE SENDER *******

Good Afternoon Chris,

Just thought you would like to know we will be filing our complaint with the Commission on 3/31. We will likely file two complaints, 1 on the DSA and SA and the 2nd on deceptive practices by NFGD to ESCO's.

In the 3/21/19 and 10/10/19 marketer meetings it stated in the presentation that NFGD would track/follow the NY requirements. Due to the statements from the 3/21/19 marketer meeting, we did not file a protest or send questions to Joanne based on the 7/19/19 email notice of changes to the PA GTOP. NFGD after this filing reiterated that they would follow the NY requirements in the 10/10/19 meeting, and now after NY is settled NFGD is going back on their word. Also interesting is that generally speaking Utilities like to have uniformity and in this case they don't.

I feel it is disingenuous and misleading that NFGD stated in their marketer meetings that they would follow the New York requirements, and now are not. The snips below are directly from NFGD's presentation and the dates of the presentation. We thought that once everything was completed in NY that NFGD would then amend their filing to update to the NY requirements. NFGD said they would follow the NY requirements and then did not. The timeline on the completion by NY was on October 17th the NY PSC Ordered Minimum Cybersecurity and Privacy Protections and Making Other Findings, on December 16th the Joint Utilities filed a revised DSA and SA, that was further updated and finally due on 1/31/2020.

Chris you have the opportunity to follow your word and make a revised filing to update to the NY requirements. I don't believe you need staff guidance to do this, I believe you have the ability to do this on your own. I hope you value your word and reputation, as the below painted a very clear picture and NFGD's actions have painted a very different one.

10/10/19



Rates & Regulatory Update

Pennsylvania Update

Pennsylvania Tariff Filing (Approved 8/29/19)

1. Cyber-Security requirements
 - The proposed requirements would follow the New York requirements

3/21/19



Rates & Regulatory Update

Pennsylvania Update

Pennsylvania Tariff Filing (Planned for May-June)

1. Cyber-Security requirements
 - The proposed requirements would track the New York requirements.

Cragg Chaffee
Vice President



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From: Mumford, Daniel <DMUMFORD@pa.gov>
Sent: Monday, March 23, 2020 12:16 PM
To: Cragg Chaffee <CChaffee@energymarkllc.com>
Subject: RE: [External] RE: PA NFGD Tariff request

FYI: here is the provision . If not complied with, NFG could restrict access to portals, etc....

As a condition of access to customer information via publicly available Company business systems, including but not limited to web portals, the Company will require parties requesting such access to sign a Data Security Agreement and require that parties carry and maintain Cybersecurity insurance in an amount no less than \$5,000,000 per incident. A standard form Data Security Agreement will be provided in the Company's Operational Procedures Manual.

Such requirement shall not apply to customers with usage less than 5,000 mcf per year that seek to access their own customer account information. Further, the Company may accept Cybersecurity insurance provided under another agreement, provided that such agreement is substantially identical in form and effect as the standard form Data Security Agreement.

In addition, if a customer wants to access their information, they must also execute an DSA:

Customers who elect to schedule their own gas supplies via Company's internet accessible Transportation Scheduling System and/or wish to access and/or obtain each day meter readings of the volume of gas delivered to the Company for the Customer's account and the volume of gas from the Company used by the Customer each day shall execute a Data Security Agreement pursuant to Tariff Rule 33.

-----Original Message-----

From: Mumford, Daniel
Sent: Monday, March 23, 2020 11:28 AM
To: Cragg Chaffee <CChaffee@energymarkllc.com>
Subject: RE: [External] RE: PA NFGD Tariff request

Hello Cragg,

Since it appears NFG does not intend to file anything and intends to maintain the status quo - it will take someone else (supplier, customer, whoever) to file a complaint with the Commission.

Tariff provisions have the force of regulation - and failure to comply can lead to being restricted from access to NFG's system.

Dan Mumford
PA PUC
Office of Competitive Market Oversight
717 525 2084

-----Original Message-----

From: Christopher Cej <CejC@natfuel.com>
Sent: Friday, March 20, 2020 11:40 AM
To: Cragg Chaffee <CChaffee@energymarkllc.com>
Cc: Tim Wright <twright@energymarkllc.com>; Mumford, Daniel <DMUMFORD@pa.gov>
Subject: [External] RE: PA NFGD Tariff request

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Hi Cragg,

NFGDC appreciates your continued diligent effort to ensure uninterrupted service to your customers, especially during these challenging times.

NFGDC intends to comply with its approved tariff and GTO, which include the cybersecurity insurance requirements in the DSA. NFGDC believes that the technical and insurance provisions specified in the current Pa. DSA/SA protect the Company and, importantly, its ratepayers from physical and financial damages that may result from cyberattack infiltration through external user activities.

As Mr. Mumford suggested during yesterday's teleconference, you are welcome to submit your comments to Pa. Staff for their consideration. Of course, NFGDC would welcome further discussion on this issue with Pa. Staff and the marketers operating on our system upon Pa. Staff's suggestion.

Sincerely,

Chris

Chris Cej
General Manager
Gas Supply Administration
National Fuel Gas Distribution Corporation
6363 Main Street
Williamsville, NY 14221
(716) 857-6985 Phone
NFGCEJ IM

-----Original Message-----

From: Cragg Chaffee [mailto:CChaffee@energymarkllc.com]
Sent: Thursday, March 19, 2020 3:33 PM
To: Christopher Cej <CejC@natfuel.com>; 'dmumford@pa.gov' <dmumford@pa.gov>
Cc: Tim Wright <twright@energymarkllc.com>
Subject: RE: PA NFGD Tariff request

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Good Afternoon Dan and Chris,

Thank you for the opportunity to propose our thoughts on the NFGD tariff and specifically the DSA & SA. Dan I believe you said on the call that NFGD could propose to change their tariff filing or we can petition for the change. I will defer to Chris, but I don't believe NFGD will change their tariff without staff or court order. I wish this wasn't the case as there was a full stakeholder process done in NY that sets precedent on the thoughts of all parties. I find it interesting that NFGD still believes their DSA is better than the one in NY. I go back to the heavy handed directing vs. actually wanting to negotiate a fair and reasonable document. To my knowledge there was not any outside collaboration with any ESCO's on the PA DSA and SA agreement.

That being said, If Chris states they will not change we will initiate the process of petitioning for change. In the meantime what is the penalty for not complying with the DSA, specially lack of cyber security insurance. To note, their system should not be any more vulnerable to attack because I don't have insurance. In fact, I would say it's the same as I have implemented all of the systems and protections that are requested in the DSA and SA. Further, I would request that the ability to remove an ESCO for failure to abide by this has to come from the commission, not the Utility.

The whole process in which we are about to go through is very well documented in NY. I wish that we didn't have to go through this all again, as the ratepayer will ultimately pay for it.

My last plea is for NFGD to revise the agreement to remove the cyber security requirement. In doing so, I can assure you the group of ESCO's I'm speaking on behalf of would drop this and sign the DSA and SA tomorrow.

On a side, if all utilities do start to come out with agreements I would hope that the Commission approves them so they are uniform in principal. If not all marketers are in favor I respect their opinion, however as a party that has instituted all of the requirements (except the insurance). I'm happy to abide by good measures aimed at protecting our critical infrastructure.

All the Utilities are doing a great job during this pandemic keeping the lights on and gas flowing, and we are doing our job to reliably schedule gas and electric to their delivery system.

Best,

Cragg Chaffee

Vice President

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<https://gcc01.safelinks.protection.outlook.com/?url=https%3A%2F%2Fenergymarkllc.com%2Fbills-offer%2F&data=02%7C01%7Cdmumford%40pa.gov%7C5c107b30b86644dc383108d7cce4e677%7C418e284101284dd59b6c47fc5a9a1bde%7C0%7C0%7C637203155809431154&sdata=5Rz2ZYVXxaAFu7iLX2yBrsdG2i4eBDfaes9X%2FTGum6l%3D&reserved=0>

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From: Cragg Chaffee
Sent: Wednesday, March 18, 2020 4:29 PM
To: rchiavetta@pa.gov
Cc: mreside@pa.gov; jmccracken@pa.gov; lyalcin@pa.gov; paumummert@pa.gov; 'dmumford@pa.gov' <dmumford@pa.gov>; Hrivnak, Matthew <MHRIVNAK@pa.gov>; kribrown@pa.gov; Tim Wright <twright@energymarkllc.com>; Noel Bartlo <nbartlo@vogmarketing.com>; Nathan Henry <nathan.henry@snydercos.com>; gdutrieuille@pa.gov
Subject: PA NFGD Tariff request

Good Afternoon Secretary Chiavetta,

I wanted to suggest a change to the NFGD Tariff filing, specifically the Data Security Agreement (DSA) and Self-Attestation (SA) that needs to be returned to NFGD by 3/31/2020. We feel NFGD's DSA and SA is on the right path in protecting customer information and the IT infrastructure from cyber security attacks, and a few changes will make it a reasonable agreement.

A group of ESCO's would like to see the DSA and SA revised from where it currently stands. In NY all Utilities filed a similar DSA and SA in 2018 due to a cyber security event. Through the process the DSA and SA was centralized into a document from the Joint Utilities (JU). The evolution of this document was lengthy. It started as a proposed document from the Utilities and ultimately was ordered by the NY PSC in case 18-M-0376. To note, this document was finally required on 1/31/2020 after starting back in 2018.

This process involved a lot of Esco's, lawyers, NY PSC staff, and Utility personnel. Though there are still some disagreements in the document, we feel it is fair. The current DSA and SA in NFG's PA tariff we do not feel is fair and should be amended to the one approved in NYS. Further we believe that this document for uniformity across Utilities should be governed by the Commonwealth of PA. By PA managing it, we can ensure that a fair and reasonable document is maintained rather than heavy handed directives.

Ultimately it is the cyber security insurance that we would like removed. With precedent established in NY, I believe if this is removed this will help alleviate a lengthy proceeding or litigation.

There is a NFGD conference call tomorrow at 2pm and I hope the Commission will be present for the call. I have provided the dial-in information below.

1. Dial the conference phone number (1-800-747-5150 or 1-303-248-1290)
2. Enter the Conference ID (0082206) followed by the # key.
3. When prompted, state your name followed by the # key.

Respectfully,

Cragg Chaffee

Vice President

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[13FdDweypbyeNyZ!iL5eWBI9UWkQjoJYO_QUw1d2HzglyZHhJjGvkZUh1qZNYKNgaQDeSpSgt8F2%24&data=02%7C01%7Cdmumford%40pa.gov%7C5c107b30b86644dc383108d7cce4e677%7C418e284101284dd59b6c47fc5a9a1bde%7C0%7C0%7C637203155809431154&data=7uvjESzEi8kOvJil9PcyFFaP6EqXGWVOo5Nie0Dq9zU%3D&reserved=0](https://gcc01.safelinks.protection.outlook.com/?url=https%3A%2F%2Furldefense.com%2Fv3%2F__http%3A%2F%2Fwww.energymarkllc.com%2F__%3B!!OMcDCRJQ-13FdDweypbyeNyZ!iL5eWBI9UWkQjoJYO_QUw1d2HzglyZHhJjGvkZUh1qZNYKNgaQDeSpSgt8F2%24&data=02%7C01%7Cdmumford%40pa.gov%7C5c107b30b86644dc383108d7cce4e677%7C418e284101284dd59b6c47fc5a9a1bde%7C0%7C0%7C637203155809431154&data=7uvjESzEi8kOvJil9PcyFFaP6EqXGWVOo5Nie0Dq9zU%3D&reserved=0)>

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[13FdDweypbyeNyZ!iL5eWBI9UWkQjoJYO_QUw1d2HzglyZHhJjGvkZUh1qZNYKNgaQDeSk6ZgZ08%24&data=02%7C01%7Cdmumford%40pa.gov%7C5c107b30b86644dc383108d7cce4e677%7C418e284101284dd59b6c47fc5a9a1bde%7C0%7C0%7C637203155809431154&data=mVuLn1oSQWpjp3ptAUftQOGtMkD6QOrL7NdHur%2BXvi0%3D&reserved=0](https://gcc01.safelinks.protection.outlook.com/?url=https%3A%2F%2Furldefense.com%2Fv3%2F__https%3A%2F%2Fenergymarkllc.com%2Fbills-offer%2F__%3B!!OMcDCRJQ-13FdDweypbyeNyZ!iL5eWBI9UWkQjoJYO_QUw1d2HzglyZHhJjGvkZUh1qZNYKNgaQDeSk6ZgZ08%24&data=02%7C01%7Cdmumford%40pa.gov%7C5c107b30b86644dc383108d7cce4e677%7C418e284101284dd59b6c47fc5a9a1bde%7C0%7C0%7C637203155809431154&data=mVuLn1oSQWpjp3ptAUftQOGtMkD6QOrL7NdHur%2BXvi0%3D&reserved=0)>

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NFGD Exhibit CC-10

04/29/21 C-2020-3019621

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DOCKET NO. C-2020-3019621

7. Please state whether the NFG NGSs intend to offer Mr. Lacey as an expert witness regarding information technology and/or cybersecurity issues.

RESPONSE:

Mr. Lacey has been offered as a witness on the negative market impacts of cybersecurity insurance, not as a technical expert on cybersecurity. His testimony does not address technical cybersecurity requirements, nor are such requirements at issue in this case. Mr. Lacey is an energy markets expert. He has testified numerous times before the Pennsylvania Public Utility Commission and other state-level utility commissions across the country. He has testified as an energy market expert at the Federal Energy Regulatory Commission and in judicial proceedings. He has also provided energy market-related testimony to numerous legislative bodies across the country. The testimony in this proceeding is focused on the market impacts of NFGD's insurance requirements, the discriminatory nature of the cybersecurity insurance requirements and the New York Commission's rejection of a similar requirement.

Provided By: Frank Lacey

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DOCKET NO. C-2020-3019621

8. Please state whether the NFG NGSs intend to offer Mr. Lacey as an expert witness regarding insurance issues.

RESPONSE:

See response to 7.

Provided By: Frank Lacey

NFGD Exhibit CC-11

04/29/21 C-2020-3019621

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DOCKET NO. C-2020-3019621

25. Please state whether the NFG NGSs intend to offer Mr. Wright as an expert witness regarding information technology and/or cybersecurity issues.

RESPONSE:

No.

Provided By: EnergyMark

Tim Wright

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DOCKET NO. C-2020-3019621

26. Please state whether the NFG NGSs intend to offer Mr. Wright as an expert witness regarding insurance issues.

RESPONSE:

No.

Provided By: EnergyMark

Tim Wright

NFGD Exhibit CC-12
04/29/21 C-2020-3019621

**INTERROGATORIES AND REQUESTS FOR
PRODUCTION OF DOCUMENTS PROPOUNDED BY
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UPON PIOGA – SET II**

7. Please state whether PIOGA intends to offer Mr. Weaver as an expert witness regarding information technology and/or cybersecurity issues.

No.

Respondent: Dan Weaver

Date: March 19, 2021

**INTERROGATORIES AND REQUESTS FOR
PRODUCTION OF DOCUMENTS PROPOUNDED BY
NATIONAL FUEL GAS DISTRIBUTION CORPORATION
UPON PIOGA – SET II**

8. Please state whether PIOGA intends to offer Mr. Weaver as an expert witness regarding insurance issues.

No.

Respondent: Dan Weaver

Date: March 19, 2021

1 **I. INTRODUCTION**

2 **Q. Please state your name and business address.**

3 A. My name is Jeff Grice. My business address is 1100 State Street, Erie, PA 16501.

4

5 **Q. By whom are you employed and in what capacity?**

6 A. I am a Risk Manager in the Risk Management Department for National Fuel Gas
7 Distribution Corporation (“Distribution” or the “Company”).

8

9 **Q. What are your primary duties and responsibilities as a Risk Manager for**
10 **Distribution?**

11 A. I am responsible for protecting the Company’s assets through active management of
12 corporate insurance and bond programs, verification of contract insurance requirements of
13 the Company’s contractors, investigation and management of claims, and loss prevention
14 strategies. Corporate insurance includes securing all policies required to protect the
15 Company’s assets, including cybersecurity insurance.

16

17 **Q. What is your educational and professional background?**

18 A. I received a Bachelor’s of Science degree in Management from Penn State Erie in 1998. I
19 was hired by Distribution in July of 2008 as a Supervisor in the Land Department. In 2017
20 was transferred to the Risk Management department. I was promoted to my current
21 position in the Risk Management Department in February of 2019.

22

23 **Q. Have you previously testified before the Pennsylvania Public Utility Commission**

1 (“Commission”)?

2 A. No.

3

4 **Q. Are you sponsoring exhibits associated with your rebuttal testimony?**

5 A. Yes. Attached to my Rebuttal Testimony are NFGD Exhibits JG-1 through JG-4.

6

7 **II. REBUTTAL TO OTHER PARTIES’ TESTIMONY REGARDING THE**
8 **CYBERSECURITY INSURANCE REQUIREMENTS IMPOSED BY**
9 **SUPPLEMENT NO. 207 AND THE DSA.**

10 **Q. Do any of the other parties assert that the cybersecurity requirements set forth in**
11 **Supplement No. 207 and the DSA and SA referenced therein are unjust and**
12 **unreasonable?**

13 A. Yes, as described in the rebuttal testimony of Distribution witness Mr. Christopher Cej
14 (NFGD St. 1-R) the other parties raise a number of arguments to attempt to support their
15 position that the cybersecurity requirements set in Supplement No. 207 to Tariff Gas – PA
16 PUC No 9 (“Supplement No. 207”) and the associated Data Security Agreement (“DSA”) and
17 Self-Attestation (“SA”) are unjust and unreasonable.

18 As noted by Mr. Cej, my rebuttal testimony specifically responds to Mr. Lacey’s
19 claims that the SA applicable to Pennsylvania entities is vague, and that the \$5 million
20 minimum coverage requirement does not prevent cybersecurity incidents or enhance
21 cybersecurity protections. In addition, I also provide additional background and policy
22 reasons in support of the requirement in Supplement No. 207 and the associated DSA and
23 SA that requires Pennsylvania natural gas suppliers (“NGSs”) to confirm that they have
24 obtained cybersecurity insurance.

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Q. Mr. Grice, by way of background, what is the purpose of obtaining insurance?

A. There are several purposes. Insurance is purchased as a means of protection from a financial loss. It ensures financial obligations can be met in the event of an accident or other unforeseen incident to the insured. In addition, purchasing insurance mitigates against the risk of a successful cyber-attack due to a review of policies and procedures by the insurance underwriter. Typically, insurance underwriters will perform a review of systems and exposures of the party seeking insurance before coverage is issued to ensure an acceptable standard is being followed. For example, our cybersecurity insurance underwriters perform an annual survey of our policies and procedures, and our property insurance underwriters conduct periodic engineering loss control reviews of our compressor stations and other large value facilities. In this regard, the underwriting process (which occurs prior to the issuance of a policy) may result in the implementation of additional protections by the insured, so that they can obtain the coverage they seek at an acceptable price.

Q. Are you aware of any documents produced by the other parties' in this proceeding that demonstrate that the process of obtaining cyber insurance, in particular the underwriting process, can result in additional protections being implemented?

A. Yes. PIOGA's response to NFGD-PIOGA-I-4, which is attached hereto as NFGD Exhibit JG-1, included correspondence between a PIOGA member producer and an underwriter regarding the costs of cyber insurance. Importantly, the underwriter noted that "[t]he premium, limit and retention are all subject to change based on the underwriting

1 information they provide. Subject [to] a satisfactory, completed Cyber application.”
2 NFGD Exhibit JG-1 at 1 (emphasis added). This response from the underwriter is
3 consistent with Distribution’s experience and makes clear that the underwriting involves
4 an evaluation of the systems and processes the insured has in place, and the key terms of
5 the policy are subject to change based on those systems and processes. As such, obtaining
6 cyber insurance can result in additional protections and procedures beyond what may
7 already be in place.

8
9 **Q. Do any of the other parties’ witnesses acknowledge that Distribution has valid**
10 **concerns regarding cybersecurity events?**

11 A. Yes. Joint Complainants’ witness Mr. Lacey states that “cybersecurity is an issue that is
12 causing strain on computer systems, data and networked infrastructure nationwide.” Joint
13 Compl. St. 1 at 5. He further acknowledges that “[t]he threat of cybersecurity events is
14 very real” and that “it is very untestable that NFGD has cause to be concerned about
15 cybersecurity and related risks.” Joint Compl. St. 1 at 5-6.

16
17 **Q. What specific cybersecurity risks does a public utility like Distribution face?**

18 A. I am aware that as a general matter for any business, both the frequency and severity of
19 cybersecurity incidents and resulting claims continue to increase. Distribution maintains
20 cybersecurity insurance to address both first party risks (*e.g.*, damaged equipment, business
21 interruption coverage, cyber extortion coverage, breach response services, failure to supply
22 coverage, etc.), and like other businesses who maintain Personally Identifiable Information
23 (“PII”) of its customers, Distribution also looks to address the risks to its customers

1 (including notices, credit monitoring, and other losses) should any of Distribution's data
2 be exfiltrated during a cyber incident.

3
4 **Q. Given these risks, is it reasonable and prudent for Distribution to obtain
5 cybersecurity insurance?**

6 A. Yes. Given the nature of Distribution's business and the amount of PII it manages,
7 protections need to be in place to protect customers and Distribution from the impacts of a
8 cyber-attack.

9
10 **Q. The Joint Complainants' specifically contest the requirement in Supplement No. 207
11 and the DSA that would require Pennsylvania NGSs to attest that they possess
12 cybersecurity insurance with \$5 million in coverage. Is it reasonable for Distribution
13 to require Pennsylvania NGSs to attest that they possess minimum cybersecurity
14 insurance before interfacing with Distribution's information technology systems?**

15 A. Yes. As mentioned above, the frequency and severity of cyber incidents continues to
16 increase, and our insurance brokers and underwriters feel as though this trend will continue.
17 As the NGSs will not only interface with Distribution's systems, but will also be in
18 possession of Distribution's customers' PII, it is reasonable to ensure that NGSs that
19 interface with Distribution have financial resources available to help protect the customer
20 in the event of a cyber incident.

21
22 **Q. Joint Complainants' witness Mr. Lacey states that Distribution includes a "self-
23 attestation (that presumably applies to NGSs) that outlines a series of 15 different**

1 **policies, procedures and practices that it identifies as “Information Security Control**
2 **Requirements (‘Requirements’).” Joint Compl. St. 1 at 6. Does the self-attestation**
3 **apply to NGSs in Pennsylvania?**

4 A. Yes.

5
6 **Q. Mr. Lacey further claims that “Presumably this list of Requirements is a list that**
7 **NFGD deems to be sufficient practices to protect confidential information of it and**
8 **its customers.” Joint Compl. St. 1 at 6. Please respond.**

9 A. I disagree with Mr. Lacey’s attempt to claim that Distribution feels that these Requirements
10 act as an adequate substitute for insurance. The list of Requirements reflected were never
11 intended to stand alone as sufficient protections. The New York Public Service
12 Commission noted in the *Proceeding on Motion of the Commission Regarding Cyber*
13 *Security Protocols and Protections in the Energy Market Place*, Case 18-M-0376 (“*June*
14 *2018 Order*”) that the self attestations were developed in the context of “business-to-
15 business” discussions between utilities and ESCOS. *June 2018 Order* at 2. It also
16 explained that the self-attestations “are designed to expeditiously identify any material gaps
17 in current best practice cyber security controls. Any material gaps will need to be promptly
18 remedied. Additional protections, including liability assurance, indemnification, audits,
19 and cyber insurance, are being addressed in the DSAs. Joint Utilities’ proposed DSA is
20 modeled after the DSA approved by the Commission in the CCA DSA Order.” *June 2018*
21 *Order* at 2-3. In this regard, the self attestation was contemplated to work in tandem with
22 additional protections imposed by the data security agreement. Moreover, as explained
23 below, cybersecurity insurance provides important incremental benefits in addition to the

1 benefits provided by the other Requirements.

2
3 **Q. Does Mr. Lacey also claim that Distribution could require specific system designs by**
4 **NGSs that interface with Distribution’s information technology systems?**

5 A. Yes. Mr. Lacey’s testimony on pages six and eight of his direct testimony appears to assert
6 that Distribution could require specific system designs by NGSs that interface with
7 Distribution’s information technology systems to stop cyber-attacks. *See also* Joint Compl.
8 St. 1 at 8. As an initial matter, I note that this position is contrary to Mr. Lacey’s claim that
9 “NFGD is not in a position to dictate to suppliers how they manage their businesses and
10 their exposure to outside risks.” Joint Compl. St. 1 at 6.

11 In addition, any suggestion by Mr. Lacey that Distribution or its representatives is
12 able to dictate specific cyber security practices adopted by the NGSs and whether those
13 practices comply with the SA is disingenuous. Distribution is not in the business of
14 designing information technology systems for third parties to withstand cyber-attacks; it is
15 a public utility and not a cybersecurity firm or consultant. It is up to the NGS to work with
16 a cybersecurity firm or consultant to design sufficient systems, and determine whether
17 those systems comply with the requirements set forth in the SA and comply with any
18 requirements set forth by an insurance underwriter. Indeed, I note that many of the NFG
19 NGSs have already retained outside IT consultants that consult them on these matters. *See*
20 NFGD Exhibit JG-2 (NFG NGSs response to NFGD-NFG NGS-II-8); *see also* NFGD
21 Exhibit JG-3 (NFG NGSs PUBLIC response to NFGD-NFG NGS-II-10).

1 **Q. Joint Complainants’ witness Mr. Lacey testifies regarding the differences between**
2 **“First-Party” and “Third-Party” coverage. Joint Compl. St. 1 at 8-9. Do you agree**
3 **with his description?**

4 A. While the technical definitions of these terms provided by Mr. Lacey are correct, his
5 attempt to differentiate the two misses the point. If Distribution and/or its customers were
6 harmed due to a cyber incident targeting an NGS, Distribution would be able to tender its
7 damage claim to the NGS and its insurers, pursuant to the indemnification clause included
8 in the DSA. The NGS would then be able to seek coverage for these expenses owed to
9 Distribution and/or its customers under the terms of its policy. If the NGS does not possess
10 cyber insurance, however, there is a greater risk that customers and/or Distribution would
11 not be able to recover the costs of the damage suffered as a result of a cyber incident
12 targeting an NGS.

13
14 **Q. Joint Complainants’ witness Mr. Lacey further claims that the requirement for an**
15 **NGS to have insurance provides no incremental security protections to Distribution.**
16 **Joint Compl. St. 1 at 8. Please respond.**

17 A. It has been Distribution’s experience with cyber insurance that the underwriting process
18 includes an initial review followed up by an annual survey conducted by a third party expert
19 to assess the cybersecurity readiness of its systems and processes with improvements
20 suggested where necessary. In this regard, the underwriting process (which is a necessary
21 prerequisite to obtaining insurance coverage) may lead to the party seeking coverage to
22 implement additional systems and process, or improve existing systems and processes to
23 obtain and maintain coverage that would not otherwise occur.

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Q. Mr. Lacey further asserts that cybersecurity insurance purchased by an NGS would not cover any of Distribution’s costs. Joint Compl. St. 1 at 9. Is this accurate?

A. As noted above, if Distribution and/or its customers were harmed due to a cyber incident targeting an NGS, Distribution would be able to tender its damage claim to the NGS and its insurers, pursuant to the indemnification clause contained in the DSA. The NGS would then be able to seek coverage for these expenses owed Distribution and/or its customers under the terms of its policy. In the scenario where Distribution’s customers’ PII is exfiltrated, an applicable NGSs’ cybersecurity policy would likely come into play to address costs associated with items such as a forensic investigation to determine the scope of the data affected by the exfiltration, notification of affected customers, credit monitoring to watch for any fraudulent activity stemming from the incident, and payment for other losses stemming from the incident. Without this policy in place, Distribution and ultimately its customers could be subject to these expenses despite the NGS being the target of the attack.

Q. Does the requirement that an NGS obtain cybersecurity insurance offer additional protections to Distribution and Pennsylvania consumers?

A. Yes. It assures both Distribution and its Pennsylvania customers that the NGS will have financial resources to address expenses and losses that it would be contractually obligated to pay if associated with a cyberattack that impacts the Pennsylvania customers’ PII.

Q. Mr. Lacey also claims that there is nothing inherent in an insurance policy that will

1 **improve the protections implemented by an NGS. Joint Compl. St. 1 at 10. Please**
2 **respond.**

3 A. As noted above, it has been Distribution's experience with cyber insurance that the
4 underwriting process includes an initial systems review followed up by an annual survey
5 conducted by a third party expert to assess the cybersecurity readiness of its systems and
6 processes with improvements required where necessary. As mentioned above, the rapid
7 increase in cyber events puts both businesses and individuals at risk; we believe that cyber
8 insurance, like auto insurance, is now part of the normal cost of doing business and is
9 critically important when customer PII is involved. The policy will: (a) involve an
10 underwriting process that ensures reasonable systems and processes; (b) offer financial
11 protections to any of Distribution's customers affected by an attack; and (c) ensure that the
12 NGS has financial means toward meeting its indemnification obligations.

13
14 **Q. Please respond to Mr. Lacey's claim that "it would be bad policy to allow the**
15 **insurance requirement to stay in the tariff." Joint Compl. St. 1 at 11.**

16 A. For all of the reasons I identify above, obtaining cyber insurance is a reasonable and
17 prudent business expense in today's environment.

18
19 **Q. Please respond to Mr. Wright's and Mr. Weaver's respective claims that requiring**
20 **the NFG NGSs and PIOGA's members to obtain cybersecurity insurance would**
21 **subject these entities to unreasonable costs. Joint Compl. St. 2 at 8-9; PIOGA St. 1 at**
22 **4.**

23 A. Mr. Wright's and Mr. Weaver's claims that obtaining cyber insurance would subject either

1 the NFG NGSs and PIOGA's members to unreasonable costs should be rejected for all of
2 the reasons explained above. The costs of cyber insurance are reasonable and prudent
3 business expenses in today's environment. Moreover, I note certain of PIOGA's members
4 appear to agree with this assessment, as they have already obtained cyber insurance. It is
5 my understanding that certain of PIOGA's member producers and PIOGA's member
6 NGSs' already have cyber insurance policies in place.

7 Furthermore, only one PIOGA member believes the cost to obtain cyber insurance
8 consistent with the DSA and SA is cost prohibitive. However, the document that they base
9 this assertion on is for a maximum coverage amount of \$10 million, which is double the
10 requirement set forth in the DSA and SA. *See* NFGD Exhibit JG-4 at 1 (PIOGA's response
11 to NFGD-PIOGA-I-5 and attachment).

12
13 **Q. Please summarize PIOGA witness Mr. Weaver's testimony regarding the Company's**
14 **cybersecurity insurance requirement.**

15 A. Mr. Weaver references and incorporates the testimony of Joint Complainants' witness Mr.
16 Lacey and asserts that "cybersecurity insurance does not prevent a cyber incident and an
17 NGSs' policy would not provide coverage to NFGD." PIOGA St. 1 at 4.

18
19 **Q. Do you agree with Mr. Weaver's testimony?**

20 A. No. For the reasons explained above and in response to Mr. Lacey's testimony,
21 cybersecurity insurance does afford additional protections and further insulates
22 Distribution and its customers from the impacts of a cyber incident resulting from an NGS
23 interfacing with its systems.

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III. CONCLUSION

Q. Mr. Grice, in summary, is the cybersecurity insurance requirement set forth in Supplement No. 207 and the DSA just, reasonable and in the public interest?

A. Yes. Cyber insurance ensures that while the NGSs are in possession of Pennsylvania customers PII they have financial resources to indemnify customers and/or Distribution in the event of a cyber incident, including notifying, providing for monitoring services, and addressing financial losses for customers who are affected by a cyber incident. Additionally, this coverage traditionally entails a system review by the insurer prior to coverage being issued. These reviews often will result in suggestions or requirements to improve controls before coverage will be issues, further protecting all parties from impacts associated from a cyber incident.

Q. Does this conclude your rebuttal testimony?

A. Yes. I reserve the right to supplement my testimony as additional issues arise during the course of the proceeding. Thank you.

NFGD Exhibit JG-1
04/29/21 C-2020-3019621

**INTERROGATORIES AND REQUESTS FOR
PRODUCTION OF DOCUMENTS PROPOUNDED ON
PIOGA – SET I**

4. Please reference paragraph 13 of the Petition to Intervene. Please identify the referenced “PIOGA producer that provides natural gas to end-users on NFDC’s[sic] system through an NGS.” Also provide all Documents upon which the statement that “the cost to obtain \$5 million per incident cybersecurity insurance at \$25,000 per year” is based.

Response:

The referenced PIOGA member producer is **[BEGIN CONFIDENTIAL]**

[END CONFIDENTIAL] and the document upon which the cost statement is based is the following redacted email below from an underwriter to this company’s insurance agent:

HI Mike,

Our initial, non-binding indication is \$25K-\$30K in premium for a \$5M limit with a \$35K retention. The premium, limit and retention are all subject to change based on the underwriting information they provide. Subject a satisfactory, completed Cyber application.

Also, please note if the underwriting information is poor, we could decline to offer the increased limit. We ideally would not provide a \$5m limit on this due to the size (amount of revenues) of the account. Really providing more for a guideline per your request as Royal needs some guidance while considering the contract.

Please call with questions. Thanks, ----

Sr. Underwriter, North America Financial Lines

120 Fifth Avenue; Suite 2200, Pittsburgh, PA 15090, USA

O -----M -----

E -----@chubb.com

Respondent: Dan Weaver

Date: March 1, 2021

NFGD Exhibit JG-2
04/29/21 C-2020-3019621

**RESPONSES OF ENERGYMARK LLC, ET AL
INTERROGATORIES AND REQUESTS
FOR PRODUCTION OF DOCUMENTS PROPOUNDED BY
NATIONAL FUEL GAS DISTRIBUTION CORPORATION, SET II**

DOCKET NO. C-2020-3019621

8. Please reference the NFG NGSs' response to NFGD-NFG NGSs-I-12. Please identify the "outside IT consultants" retained by the NFG NGSs.

RESPONSE:

EnergyMark:

Prime Services, Inc.
6400 Sheridan Drive
Buffalo, NY 14221

Also use EC Infosystems for EDI Processing

Total Energy Resources:

e-merge, inc.
84 Walter Long Road
Finleyville, PA 15337

Also use EC Infosystems for EDI Processing

Vineyard Oil & Gas Company:

Szymanski Consulting
8127 Nathan Circle
Erie, PA 16509

Mid American Natural Resources:

Szymanski Consulting
8127 Nathan Circle
Erie, PA 16509

Provided By:

EnergyMark
MidAmerican Natural Resources
Vineyard Oil & Gas Company
Total Energy Resources, LLC

Tim Wright
Erika Fischer
Noel Bartlo
Ryan Williams

NFGD Exhibit JG-3

04/29/21 C-2020-3019621

**RESPONSES OF ENERGYMARK LLC, ET AL
INTERROGATORIES AND REQUESTS
FOR PRODUCTION OF DOCUMENTS PROPOUNDED BY
NATIONAL FUEL GAS DISTRIBUTION CORPORATION, SET II**

DOCKET NO. C-2020-3019621

10. Please reference the NFG NGSs' response to NFGD-NFG NGSs-I-12. Please identify and provide copies of all agreements between the NFG NGSs and the "outside IT consultants" retained by the NFG NGSs.

RESPONSE:

Energy Mark: EnergyMark's contract is month to month and has not been reduced to writing.

Total Energy Resources: See, **HIGHLY CONFIDENTIAL** Exhibit 2.10.1.

Vineyard Oil & Gas Company: See, **HIGHLY CONFIDENTIAL** Exhibit 2.10.2.

Mid American Natural Resources: See, **HIGHLY CONFIDENTIAL** Exhibit 2.10.3.

Provided By:

EnergyMark
MidAmerican Natural Resources
Vineyard Oil & Gas Company
Total Energy Resources, LLC

Tim Wright
Erika Fischer
Noel Bartlo
Ryan Williams

NFGD Exhibit JG-4
04/29/21 C-2020-3019621

**INTERROGATORIES AND REQUESTS FOR
PRODUCTION OF DOCUMENTS PROPOUNDED ON
PIOGA – SET I**

5. Please reference paragraph 13 of the Petition to Intervene. Please identify the referenced “other producer and NGS members that provide natural gas to end-users on NFGDC’s system through an NGS.” Also provide all Documents upon which the statement that “the cost to obtain \$5 million per incident cybersecurity insurance to be prohibitive” is based.

Response:

Other PIOGA producer and NGS members that that provide natural gas to end-users on NFGDC’s system through an NGS are [BEGIN CONFIDENTIAL]
[END CONFIDENTIAL].

Upon further investigation, the only PIOGA member that believes the cost to obtain \$5 million per incident cybersecurity insurance to be prohibitive is [BEGIN CONFIDENTIAL] [END CONFIDENTIAL], and the document upon which that statement is based is attached as Attachment NFG-PIOGA I-5.

Respondent: Dan Weaver

Date: March 1, 2021

Attachment NFG-PIOGA I-5

evolve

Industry Leading Coverage Highlights

1. No Risk Management Warranties

Evolve does not have any risk management warranties.

Risk management warranties are intended to remove coverage in the event of a claim. Unfortunately, it has become common practice in cyber wording and applications to include risk management warranties where claims are hitting the hardest. The major warranties circulating in the market include, but are not limited to, "confirming a wire transfer request by a secondary means, restoring data subject to scheduled back ups, and any incorrect information in an application that has been warranted as material to the policy."

2. Unlimited 1st Party Reinstatement

Evolve's 1st party policy limits reload every claim.

All of the 1st party limits that sit within Insuring Clauses 1 – 3 automatically reload "each and every" new claim. Meaning, Insuring Clauses 1 – 3 do not have an aggregate limit. The majority of modern day claim costs are going to be 1st party costs.

3. All-Inclusive Business Interruption

Evolve offers "System Failure" & "Dependent Business Interruption (including Supply Chain Partners)"

Evolve's business interruption now covers accidental system failure, in addition to malicious hack attacks. Meaning, income loss coverage can be triggered by a standard system failure, without the occurrence of a hack attack. Coverage has been further enhanced to automatically extend to technology supply chain partners with an option to add named non-technology providers.

4. Hardware Replacement

Evolve will replace computer hardware or tangible equipment damaged in a hack attack.

In the event of a critical hack attack rendering hardware obsolete, Evolve will replace the computer hardware or tangible equipment. This coverage is critical on day to day operations, as most cyber policies will only cover the cost to install new software onto existing damaged hardware.

Additional Enhancements:

- Full Prior Acts
- Free Incident Response Advice (\$0 deductible)
- Professional Costs (Forensics, Attorneys, PR Firms)
- Notification Costs & Credit Monitoring
- Data Re-Entry Costs
- Additional Extra Expense Cover
- Reputational Harm Cover
- Cyber Triggered D&O Cover
- Regulatory Body Fines
- Cyber & Privacy Liability

Appetite:

- Retailers
- Healthcare
- Financial & Professional Services
- Manufacturers
- Distributors
- Wholesalers
- Education
- Public Utilities
- Transportation & Logistics
- Much more!

Limits, Deductibles, and Premiums:

Maximum Limit	\$10,000,000
Minimum Deductible	\$2,500
Minimum Premium	\$1,000

NFGD Exhibit JG-6
04/29/21 C-2020-3019621

5. On Page 9, beginning at line 3, Mr. Grice testified that: [I]t has been Distribution's experience with cyber insurance that the underwriting process includes an initial systems review followed up by an annual survey conducted by a third-party expert to assess the cybersecurity readiness of its systems and processes with improvements required where necessary.
 - a. Identify each and every document in NFGD's possession that tends to support this contention.
 - b. Provide a copy of every document identified in response to 5a.

RESPONSE:

- a. Distribution is required by its cyber insurance carrier, AEGIS, to complete annual surveys to confirm cybersecurity readiness and system capabilities as part of the underwriting process. The surveys are completed and submitted to the policy underwriter for review before its insurance policy can be renewed. Distribution has in its possession emails from its insurance brokers for calendar years 2019, 2020, and 2021 requesting Distribution to complete a survey so that the Company's policy can be renewed. Distribution also has in its possession blank and completed annual surveys for the aforementioned calendar years.
- b. The emails identified in response to 5a are attached hereto as CONFIDENTIAL Attachment NFG NGS-NFGD-IV-5. The blank annual surveys provided by Distribution's insurers to Distribution are not industry standard forms, were developed solely by Distributions insurers and their consultants, and are considered proprietary. Distribution is not authorized to share these forms at this time. In addition, the completed surveys are not being provided because the responses provided therein by Distribution are irrelevant to the material question of what would potentially be required of a natural gas supplier during their individual cyber security underwriting process and because the responses contain critical cybersecurity information that is protected from disclosure under the Public Utility Confidential Security Information Disclosure Protection Act (35 P.S. §§ 2141.1 to 2141.6) and PUC Regulations at 52 Pa. Code §§ 102.1-102.4.

SPONSOR: Jeff Grice

Date: April 9, 2021

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

EnergyMark LLC, Vineyard Oil and 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	:	

**DIRECT TESTIMONY
OF FRANK LACEY
ON BEHALF OF ENERGYMARK LLC,
VINEYARD OIL AND GAS COMPANY, MID AMERICAN NATURAL RESOURCES
LLC, AND TOTAL ENERGY RESOURCES LLC**

Joint Complainants' Statement No. 1
March 4, 2021

04/29/21 C-2020-3019621

1 **I. INTRODUCTION**

2 **Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.**

3 A. My name is Frank Lacey. My business address is 3 Traylor Drive, West Chester, PA
4 19382.

5
6 **Q. WHAT IS YOUR CURRENT POSITION?**

7 A. I am the founding principal of Electric Advisors Consulting, LLC, which is a consulting
8 firm focused on providing market and policy advisory services to participants in
9 competitive energy markets including energy companies and end-use customers.

10

11 **Q. ON WHOSE BEHALF ARE YOU TESTIFYING?**

12 A. I am an independent consultant submitting this testimony on behalf of EnergyMark LLC,
13 Vineyard Oil and Gas Company, Mid American Natural Resources LLC, and Total Energy
14 Resources LLC (collectively, the "Gas Supplier Companies"). The Gas Supplier
15 Companies provide competitive retail gas services to residential and commercial &
16 industrial ("C&I") customers in Pennsylvania, including in the National Fuel Gas
17 Distribution ("NFGD" or "Utility") service territory.

18

19 **Q. PLEASE SUMMARIZE YOUR EDUCATIONAL BACKGROUND AND**
20 **PROFESSIONAL EXPERIENCE.**

21 A. As a consultant, I provide policy- and market-related consulting services to advanced
22 energy management companies and end-use customers. I have worked in the energy
23 industry for approximately 28 years, beginning immediately after earning my graduate
24 degree. I have focused almost exclusively on competitive market issues. Early in my

1 career, I was employed as a consultant to industry participants, first by Putnam, Hayes &
2 Bartlett, Inc. and then by Arthur Andersen Business Consulting. Within the industry, I
3 have worked for Strategic Energy, a retail electricity and natural gas services company,
4 and Direct Energy, a retail electric and gas supplier that acquired Strategic Energy in 2008.
5 I created Electric Advisors Consulting LLC in 2015. I hold a Bachelor of Science degree
6 in Transportation and Logistics from the University of Maryland and a Master of Science
7 in Industrial Administration with concentrations in finance and environmental
8 management from the Tepper School of Business at Carnegie Mellon University. My
9 resume is provided as Exhibit FPL-1.

10
11 **Q. HAVE YOU EVER TESTIFIED BEFORE THE PENNSYLVANIA PUBLIC**
12 **UTILITY COMMISSION OR ANY OTHER UTILITY REGULATORY AGENCY?**

13 **A.** Yes. I have testified before the Pennsylvania Public Utility Commission (“Commission”
14 or “PUC”) on numerous occasions. I have also testified numerous times before other state
15 regulatory agencies, legislatures, and twice as a technical conference witness at the Federal
16 Energy Regulatory Commission (“FERC”). I have also filed expert reports in judicial
17 proceedings in the Superior Court of New Jersey in Bergen County and in the Supreme
18 Court of the State of New York in New York County. In addition to Pennsylvania, I have
19 provided expert testimony before the utility commissions in New York, Ohio, Maryland,
20 New Jersey, Massachusetts, Illinois, Delaware, Rhode Island, Virginia, Utah and
21 California. I have presented oral testimony in less formal proceedings before the
22 Commissions in Pennsylvania, Maryland, Delaware and Texas. I have presented
23 legislative testimony in New York, Maryland, Pennsylvania, Delaware, Connecticut,
24 Michigan, California and Texas. I have also spoken at numerous trade shows, conferences

1 and other industry and corporate events as an expert on energy market issues. A detailed
2 listing of my prior testimony is contained in Exhibit FPL-2.

3
4 **Q. WHAT ARE GAS SUPPLIER COMPANIES' INTERESTS IN THIS**
5 **PROCEEDING?**

6 A. The Gas Supplier Companies operate competitive retail gas supply businesses in The
7 NFGD service territory. As such, they are bound to certain tariff provisions implemented
8 by NFGD. In NFGD's Supplement No. 207 to Tariff Gas PA PUC No. 9, NFGD submitted
9 a requirement that all energy service entities ("ESE"), which is a group that includes,
10 among others, natural gas suppliers ("NGS"), be required to enter into a Data Security
11 Agreement ("DSA"), which includes many one-sided and onerous business terms. Most
12 notably, however, the DSA requires each ESE to purchase and carry a cybersecurity
13 insurance policy with coverage of no less than \$5 million. This requirement is unjust,
14 unreasonable and unduly burdensome. Additionally, the tariff and the DSA grant NFGD
15 authority to supervise and regulate NGS business practices. NFGD has no authority to
16 exercise these practices, which are the sole authority of the PUC.

17
18 **II. SUMMARY AND CONCLUSIONS**

19 **Q. HAVE YOU READ THE COMPLAINT AND OTHER RELEVANT DOCUMENTS**
20 **IN THIS PROCEEDING?**

21 A. I have read the relevant documents in this proceeding. I have reviewed NFGD's June 14,
22 2019 submission to the Commission in the underlying tariff proceeding and several of the
23 documents entered in that docket. I have also reviewed several documents in New York
24 PSC Case No. 18-M-0376. NFGD used its positions in that New York proceeding (which

1 were ultimately rejected by the New York Commission) to justify some of the requirements
2 it imposed in its Pennsylvania Tariff.

3
4 **Q. COULD YOU PLEASE SUMMARIZE THE MATERIALS THAT YOU HAVE**
5 **REVIEWED?**

6 A. Yes. On June 14, 2019, NFGD filed with the Commission, its Tariff Supplement No. 207,
7 proposing updates in five general areas of the tariff: 1) Minimum Storage inventory level
8 requirements; 2) System access for Renewable Natural Gas (“RNG”); 3) Cybersecurity
9 issues; 4) Gas emergency plan; and 5) Operational Flow Order non-performance penalty
10 rates. The scope of my testimony is limited to item 3, the cybersecurity issues.

11 Based on a review of the docket entries on the PUC website¹, there were no market
12 stakeholders participating in the tariff docket. Gas Supplier Company witness Mr. Wright
13 is providing testimony in this proceeding that explains the circumstances why the Gas
14 Supplier Companies did not participate in the regulatory process related to the NFGD tariff
15 filing.

16 As the tariff filing was uncontested at the time, the Commission approved the tariff changes
17 “without prejudice to any issues that may be raised by any party with respect to the tariff
18 changes implemented by Supplement No. 207 to Tariff Gas Pa. P.U.C. No. 9 in future
19 proceedings.”² This approval included the provisions discussed, including the requirement of
20 a cybersecurity insurance policy with a minimum of \$5 million in coverage and the authority
21 that NFGD has provided itself to investigate and audit some of the internal operations of ESEs.

22

¹ <https://www.puc.pa.gov/search/document-search>, then enter docket No. R-2019-3010744

² Commission Order, *National Fuel Gas Distribution Corporation Supplement No. 207 to Tariff Gas Pa. P.U.C. No. 9*, Docket Number R-2019-3010744, Issued August 29, 2019.

1 Q. WHAT ARE YOUR CONCLUSIONS WITH RESPECT TO THE DOCUMENTS
2 YOU HAVE READ?

3 A. I conclude that NFGD's requirements for ESEs to maintain \$5 million in cybersecurity
4 insurance is unreasonable and will not provide any incremental cybersecurity benefit to
5 any consumer or business entity in the Commonwealth. I also conclude that NFGD's
6 requirement that they be allowed to "audit and inspect . . . the facilities of an ESE [NGS]
7 and third-party representatives . . . and any equipment used to process confidential
8 information, the ESE's security practices, facilities, books and records, etc" is significantly
9 beyond any utility's authority. Such authority could have tremendously negative
10 ramifications on the gas markets in Pennsylvania.

11 III. THE INSURANCE REQUIREMENT

12 Q. COULD YOU PLEASE EXPLAIN THE INSURANCE REQUIREMENT
13 PROPOSED BY NFGD?

14 A. Yes. NFGD added a Section 33 to its tariff in this filing. The section is entitled "Data
15 Security Agreement". The tariff now states, "As a condition of access to customer
16 information ... [NFGD] will require parties requesting such access to sign a Data Security
17 Agreement and require that parties carry and maintain cybersecurity insurance in an
18 amount no less than \$5,000,000 per incident." Of course, access to customer information
19 is a requirement of operating a NGS business as that information is required for enrolling
20 and billing a customer.

21

22 Q. DO YOU UNDERSTAND WHY NFGD IS SEEKING THAT KIND OF
23 COVERAGE?

24 A. I understand that cybersecurity is an issue that is causing strain on computer systems, data
25 and networked infrastructure nationwide. The threat of cybersecurity events is very real,

1 and they range from identity theft to terrorist attacks on technology facilities. With that
2 knowledge, it is very understandable that NFGD has cause to be concerned about
3 cybersecurity and related risks. However, those concerns are better managed with other
4 tools than with an insurance policy. An insurance policy is a tool to pay for damages after
5 the fact if they occur. Insurance policies do not in any way prevent damages from occurring
6 in the first place.

7
8 **Q. CAN NFGD IMPOSE SYSTEMS REQUIREMENTS ON THE COMPANIES THAT**
9 **INTERFACE WITH ITS SYSTEMS?**

10 A. NFGD is well within its rights to impose reasonable data security standards on any
11 company with which it interfaces and shares data, if those standards are established in good
12 faith to protect the data of NFGD and its customers. Those standards should require that
13 the systems be designed to minimize opportunities for malicious actors to penetrate
14 NFGD's systems and data. However, NFGD is not in a position to dictate to suppliers how
15 they manage their businesses and their exposure to outside risks.

16
17 **Q. HAS NFGD IDENTIFIED ANY STANDARDS THAT IT BELIEVES ITS**
18 **BUSINESS PEERS SHOULD BE FOLLOWING?**

19 A. Yes. As part of the DSA, NFGD includes a self-attestation (that presumably applies to
20 NGSs) that outlines a series of 15 different policies, procedures and practices that it
21 identifies as "Information Security Control Requirements ('Requirements')." Presumably,
22 this list of Requirements is a list that NFGD deems to be sufficient practices to protect
23 confidential information of it and its customers.

24

1 **Q. HOW CAN NFGD ENSURE THAT AN ESE IS MEETING THE REQUIREMENTS**
2 **IT NEEDS FOR DATA SECURITY?**

3 A. First, it should be noted that the Gas Supplier Companies themselves have thousands of
4 customer relationships and they, too, have data security concerns and have implemented
5 data security practices of their own. Nothing in this testimony should be interpreted as
6 anything other than a commitment to data security from the Gas Supplier Companies.
7 Notably, the Gas Supplier Companies are not contesting the Requirements outlined by
8 NFGD in the self-attestation. While the self-attestation provided in the DSA is not clear
9 that it applies to NGSs, I believe that to be the intent and the Gas Supplier Companies
10 support these types of Requirements.

11
12 **Q. CAN YOU EXPLAIN WHY YOU BELIEVE THE SELF-ATTESTATION IS**
13 **VAGUE?**

14 A. Yes. While I am not trained as an attorney, I am often expected to read complex tariff
15 requirements and assist my clients in understanding them and implementing and complying
16 with them. I find this set of requirements confusing for a few different reasons. At first
17 glance, the DSA, to which the self-attestation is an exhibit, defines "Third Party
18 Representatives" and "Representatives". It never defines "Third Parties". The Third Party
19 Representatives are defined as agents acting on behalf of ESEs. Exhibit A of the DSA,
20 entitled "Self-attestation of Information Security Controls" is a document between NFGD
21 and a "Third Party" and not an ESE or NGS.

22 Additionally, the document contradicts itself in that it allows "Third Parties" to not meet
23 all of the requirements on the self-attestation. Discussing the checklist of Requirements,
24 the attestation states that ESEs can "leave blank all that do not apply to Third Party's
25 computing environment" and further stating "comments regarding plans for compliance

1 are encouraged.” However, the following paragraph says, “Third party acknowledges that
2 non-compliance with any of the Requirements may result in the termination of Company
3 data access as per the discretion of Company.” In addition to the confusion about whom
4 the document is intended to bind, on one hand, the document shows flexibility, but on the
5 other, there is not flexibility in adhering to the Requirements.

6
7 **Q. IF THE SELF-ATTESTATION WAS CLEARER, DO YOU BELIEVE THAT IS**
8 **COMPELLING ENOUGH TO ENSURE NFGD THAT THE DATA**
9 **TRANSFERRED BETWEEN ESES AND NFGD WOULD BE SECURE?**

10 A. The DSA states that the ESEs “shall have in place appropriate and reasonable processes
11 and systems, including an Information Security Program...” NFGD identifies completion
12 of the Attestation as meeting the requirement to have those processes and systems in place.
13 I have no basis for which to suggest that further and more rigorous standards are needed or
14 possible.

15
16 **Q. DOES THE ADDITION OF A \$5 MILLION INSURANCE POLICY SUPPLEMENT**
17 **THE SECURITY OF DATA TRANSFERRED BETWEEN NFGD AND AN ESE?**

18 A. No. Cybersecurity insurance does not enhance cybersecurity protections. Insurance is a
19 mechanism for the insured to recoup losses in the event the losses were incurred. The
20 requirement for an ESE to have insurance provides no incremental security protections to
21 NFGD.

22
23 **Q. CAN YOU EXPLAIN WHAT A CYBERSECURITY INSURANCE POLICY**
24 **COVERS?**

25 A. Yes. The National Association of Insurance Commissioners (“NAIC”), along with the US
26 Federal Trade Commission (“FTC”) have put together a short educational document about

1 cybersecurity insurance (“NAIC/FTC Document”). The NAIC/FTC Document identifies
2 coverages called “First-Party Coverage” and “Third-Party” coverage. Third-Party
3 Coverage does not cover the actions/inactions by Third Parties, as that term is being used
4 in this proceeding. According to the NAIC/FTC Document, First-Party Coverage:

5 “protects your data, including employee and customer information. This coverage
6 typically includes your business’s costs related to:

- 7 • Legal counsel to determine your notification and regulatory obligations
- 8 • Recovery and replacement of lost or stolen data
- 9 • Customer notification and call center services
- 10 • Lost income due to business interruption
- 11 • Crisis management and public relations
- 12 • Cyber extortion and fraud
- 13 • Forensic services to investigate the breach
- 14 • Fees, fines, and penalties related to the cyber incident”

15
16 According to the same document, Third-Party coverage “protects you from liability if a
17 third party brings claims against you.” In other words, if NFGD’s systems were breached
18 and a consumer was harmed, if that consumer brought a claim against NFGD, its insurance
19 would cover its costs related to that claim. Nothing is noted in the NAIC/FTC Document
20 that would suggest that NFGD could access an ESE’s insurance coverage in the event of a
21 cyber incident.

22 Based on these descriptions, if NFGD was to purchase this insurance, the policy would
23 cover the costs it incurs to recover from the incident (although it does not appear to cover
24 any systems improvements or other similar types of costs). It would also cover NFGD if
25 customers or other Third Parties brought a claim against NFGD.

26 If a Gas Supplier Company or other ESE purchased the insurance, it would provide the
27 ESE with the same benefits, but there is nothing to suggest that an ESE’s policy would
28 cover any of NFGD’s costs. It is reasonable for NFGD to set technology standards on the

1 companies with which it shares data. It is not, however, within NFGD's authority to dictate
2 to those businesses how they manage their own potential business exposures.

3
4 **Q. WOULD IT BE PRUDENT FOR ESES TO OWN CYBERSECURITY**
5 **INSURANCE?**

6 A. Risk management is one of the areas that energy supply companies have some level of
7 expertise. Insurance is one of many risk management tools available in the market.
8 However, the Requirements presented in the Self-attestation form are also, individually
9 and collectively, risk management tools protecting against cybersecurity risks. In this
10 tariff, NFGD has proposed a classic "belt and suspenders" approach. In the competitive
11 markets, the ESEs including the Gas Supplier Companies should be able to identify and
12 utilize risk management tools of their choosing, managing risks as they choose. Compelled
13 insurance will do nothing to prevent a cybersecurity incident. Similarly, if an incident
14 occurs, an ESE's insurance coverage may do nothing to protect NFGD.

15
16 **Q. WILL THE PURCHASE OF INSURANCE IN ANY WAY IMPROVE THE DATA**
17 **PROTECTIONS IMPLEMENTED WITHIN AN ESE'S BUSINESS**
18 **OPERATIONS?**

19 A. There is nothing inherent in an insurance policy that will improve the protections
20 implemented. For example, those with car insurance still get into accidents. Those with
21 homeowner's insurance still suffer thefts, fires and other losses. Insurance companies may
22 offer benefits like a premium discount to customers that implement certain protections.
23 For example, I am aware that insurance companies will provide discounts on homeowner's
24 policies for active protections like monitored smoke detectors or burglar alarms. While the
25 insurance companies might offer the discount, they are not in the practice of inspecting the

1 homes they insure. Similarly, insurance companies are not going to monitor data
2 communications tools and data security tools of the customers they insure.

3
4 **Q. ARE THERE ANY VALID POLICY REASONS FOR REQUIRING**
5 **CYBERSECURITY INSURANCE?**

6 A. No. In fact, just the opposite. It would be bad policy to allow the insurance requirement
7 to stay in the tariff. As an initial matter, it is not in anyone's interest to allow a utility to
8 compel risk management practices of any of the companies it interfaces with. NFGD states
9 that it will carry a similar, albeit larger insurance policy. This is a false equivalent,
10 however. NFGD will likely recover the cost of the insurance in its base distribution rates,
11 from all customers, including its customers taking gas supply from NGSs including the
12 Gas Supplier Companies' customers. The Gas Supplier Companies are operating in a
13 competitive market and may or may not be able to add the incremental cost of insurance to
14 its customer's costs in order to recover the premiums paid. Even if allowed by contract, or
15 policy, the customers might not accept that outcome and might move to another supplier
16 or to NFGD for supply. The requirement is not a bilateral requirement. It will increase
17 costs of competitive gas supply and not increase the costs of NFGD gas supply.

18 Incumbent utilities already have tremendous unearned advantages³ in the competitive
19 energy markets. Imposition of the \$5 million insurance requirement will allow NFGD to
20 pad its unearned market advantage – allowing the utility to collect insurance premiums in
21 non-competitive rates while compelling ESEs to collect the same costs, if they are able to
22 collect them at all, in the price of competitive products. This requirement creates one more

³ Hempling, Scott, *No Anticompetitive Conduct, No Unearned Advantage: Effective Competition Depends on Merit*, (Effective Regulation of Public Utilities) January 2021.

1 barrier to effective gas competition in the Commonwealth, disincentivizing market entry
2 of competitors and potentially creating incentives for supplier exit from the market.
3 Further, as shown above, the coverage does not necessarily protect NFGD. The policies
4 do not flow from an ESE to NFGD.

5 **IV. THE NEW YORK PROCESS**

6 **Q. WHAT WAS NFGD'S JUSTIFICATION FOR INCLUDING THE DSA AND**
7 **CYBERSECURITY INSURANCE REQUIREMENTS IN ITS PENNSYLVANIA**
8 **TARIFF?**

9 A. According to NFGD's Supplement No. 207 tariff filing, "The proposed DSA (which
10 includes the Self-Attestation form) is patterned after the DSA [NFGD] is currently using
11 in its New York service territory but is modified to reflect Pennsylvania rules and
12 regulations."⁴

13
14 **Q. WAS NFGD USING THE DSA IN NEW YORK AT THE TIME IT SUBMITTED**
15 **IT'S PENNSYLVANIA FILING?**

16 A. As discussed below, the New York utilities had received some signed DSAs and were
17 attempting to enforce the DSA requirements on the ESEs serving in New York, even
18 though the form and its requirements were being contested at the New York Commission
19 and had not been approved for use at the time NFGD made its Pennsylvania filing.

20
21 **Q. HAS THE NEW YORK COMMISSION RULED ON THAT CASE YET?**

22 A. Yes. It has issued a ruling on the DSA and cybersecurity insurance requirements.

⁴ Statement of National Fuel Gas Distribution Corporation in Support of tariff Supplement No. 207 to Tariff Gas – PA. P.U.C. No. 9, p. 3.

1 **Q. DOES NFGD REQUIRE A SIGNED DSA IN ITS NEW YORK SERVICE**
2 **TERRITORY?**

3 A. NFGD of New York includes a DSA as a Standard Form Agreement in its Gas
4 Transportation Operations Procedures (“GTOP”).

5
6 **Q. DOES THAT DSA INCLUDE A REQUIREMENT FOR ESES OR NGSS TO**
7 **PURCHASE AND MAINTAIN CYBERSECURITY INSURANCE IN AN AMOUNT**
8 **OF NO LESS THAN \$5 MILLION?**

9 A. It does not.

10

11 **Q. DOES THAT DSA INCLUDE ANY CYBERSECURITY INSURANCE**
12 **REQUIREMENT?**

13 A. It does not. The New York Commission rejected the utilities’ proposal for imposing a
14 cybersecurity insurance requirement on ESEs.

15

16 **Q. CAN YOU EXPLAIN WHY YOU BELIEVE THE NFGD’S PENNSYLVANIA AND**
17 **NEW YORK DSAS ARE DIFFERENT ON THIS ISSUE?**

18 A. Yes. This issue was contested in New York as it is being contested here. The New York
19 Commission declined the New York utilities’ (including NFG) request to impose the same
20 burden on suppliers in that market. The relevant New York Order stated that the utilities
21 “have not established that cybersecurity insurance would be an efficient and effective
22 means of mitigating cybersecurity risks and financial costs associated with security
23 breaches.” They opined that “the insurance requirement would serve to act as little more
24 than a market barrier to entry.” The New York Commission understood the need for
25 cybersecurity protection, but recognized that “a cybersecurity insurance requirement.

1 which is mainly intended to address damages after an incident occurs” was not the
2 “appropriate means” of providing those protections.⁵

3
4 **Q. IS IT REASONABLE FOR NFGD TO ASSUME THAT THE NEW YORK**
5 **COMMISSION WAS GOING TO ALLOW THE INSURANCE REQUIREMENT**
6 **WHEN IT FILED ITS PENNSYLVANIA TARIFF CHANGES?**

7 A. No. For the reasons stated above and as was eventually reasoned by the New York
8 Commission, cybersecurity insurance does not aid in preventing cybersecurity incidents.
9 Additionally, NFGD should have been aware that this issue was extremely contentious in
10 the New York proceeding. The New York proceeding had at least 14 non-utility
11 intervenors and several of those intervenors were groups or trade organizations that
12 represented dozens, if not hundreds of individual companies opposed to the insurance
13 requirement, among other issues.

14 The New York Commission issued an Order opening the relevant New York proceeding
15 on June 14, 2018, exactly one year before NFGD filed its tariff petition in Pennsylvania.
16 In the order, the New York Commission noted that parties had been working on the issue
17 of cybersecurity concerns for several months. The New York Commission noted its goals
18 for the proceeding were “to ensure that adequate cyber security protections are in place to
19 protect utility systems and confidential and sensitive customer information, and to explore
20 whether insurance is an efficient and effective vehicle for mitigating any potential financial
21 risks.”⁶ From the outset of that proceeding, the New York Commission had made it clear

⁵ New York Public Service Commission, Order Establishing Minimum Cybersecurity and Privacy Protections and Making Other Findings, NYPSC Case Nos. 18-M-0376, 15-M-0180, and 98-M-1343, p. 58, October 17, 2019.

⁶ New York Public Service Commission, Order Instituting Proceeding, NYPSC Case No. 18-M-0376, p. 3, June 14, 2018.

1 that it had not pre-determined any conclusions regarding the imposition of a cybersecurity
2 insurance requirement.

3
4 **Q. DID THE CYBERSECURITY INSURANCE ISSUE EVER BECOME AN**
5 **IMMATERIAL ISSUE DURING THE COURSE OF THE NEW YORK**
6 **PROCEEDING?**

7 A. No. It remained a heavily contested issue for the entire proceeding. The New York
8 Commission Staff ("NY Staff") filed a status report updating the New York Commission
9 on the progress of the stakeholder negotiations in August 2018. The NY Staff report noted
10 that by the time of the report, most of the parties in New York had signed the Self-
11 Attestation and/or the DSA, but many had signed under protest. Some others had not
12 signed the documents. The staff report hypothesized that the reasons that companies that
13 signed under protest or did not sign at all were because: "1) absence of PSC review and
14 approval of the terms, and 2) inadequate justification for cyber insurance."⁷

15
16 **Q. WHY DID SOME COMPANIES SIGN THE DSA AND SELF-ATTESTATION IN**
17 **ADVANCE OF THE PROCEEDING BEING CONCLUDED?**

18 A. According to the NY Staff Report, after a couple of rounds of red-lining and negotiations,
19 "[t]he revised DSA was circulated to ESEs on August 16, 2018 with a submission deadline
20 of August 31, 2018."⁸ Similarly, "[t]he Self-Attestation was circulated to ESEs on August
21 3, 2018, with a submission deadline of August 20, 2018."⁹

22

⁷ Department of Public Service Staff Report on the Status of the Busines-to-Busines Collaborative to Address Cyber Security in the Retail Access Industry, NYPSC Case No. 18-M-0376, September 24, 2018, pp. 5-6 (emphasis added) (footnotes omitted).

⁸ *Id.*, p. 4.

⁹ *Id.*

1 **Q. WHY WOULD THE NEW YORK ESES SIGN THE DOCUMENTS IN ADVANCE**
2 **OF A COMMISSION ORDER APPROVING THEM?**

3 A. I believe it was under a threat of being kicked out of the market by the utilities. The NY
4 Staff Report stated:

5 "To that end, the Joint Utilities have asked that all energy services entities
6 (ESEs): (1) complete a Self-Attestation of information security controls;
7 and (2) execute a Data Security Agreement (DSA) with the utility (or
8 utilities) with whom the ESE does business. The Joint Utilities assert
9 authority under the Uniform Business Practices (UBP) to require these basic
10 level cyber security requirements of ESEs that interface with the utilities'
11 systems. Under the UBP, the utility may discontinue an ESCO's
12 participation in its retail access program for a number of reasons including
13 '[f]ailure to act that is likely to cause, or has caused, a significant risk or
14 condition that compromises the safety, system security, or operational
15 reliability of the distribution utility's system...' The utilities claim that the
16 failure to maintain adequate cyber controls constitutes such a failure."¹⁰
17
18

19 **Q. DO YOU BELIEVE THAT THE NEW YORK UTILITIES WOULD HAVE**
20 **DISALLOWED MARKET PARTICIPANTS FROM PARTICIPATING IN THEIR**
21 **RETAIL PROGRAMS FOR NOT SIGNING AN AGREEMENT THAT WAS**
22 **BEING ACTIVELY NEGOTIATED IN A COMMISSION-ENDORSED PROCESS**
23 **AND THAT HAD NOT YET BEEN APPROVED BY THE COMMISSION?**

24 A. I am confident that the New York utilities wanted to do exactly that. In February 2019, the
25 New York utilities filed a petition in that same docket that would allow them to enforce
26 execution of the DSA. The petition stated "the Joint Utilities request that the Commission
27 affirm their authority to require the ESEs to execute a DSA and to prohibit ESEs that fail
28 to do so from obtaining data from or access to the applicable utility's IT systems. Pursuant
29 to the UBP and UBP DERS, the Joint Utilities have authority to require ESEs to execute a
30 DSA and have the right to prohibit non-compliant ESEs from accessing customer data and
31 utility IT systems."¹¹

¹⁰ *Id.*, p. 2.

¹¹ Joint Utilities' Petition for Approval of the Business-to-Business Process used to Formulate a Data Security Agreement and for Affirming the Joint Utilities' Authority to Require and Enforce

1 Q. WAS THE CYBERSECURITY INSURANCE REQUIREMENT ADDRESSED AS
2 AN ISSUE IN THE NEW YORK UTILITIES' PETITION TO ENFORCE THE
3 DSA?

4 A. Yes, it was. The New York utilities acknowledged in their petition that “many commenters
5 objected to the cyber security proposed in the DSA and to the provision of cyber security
6 insurance.”¹²

7
8 Q. WHAT WAS THE STATUS OF THE NEW YORK UTILITIES' PETITION ON
9 JUNE 14, 2019, THE DAY THAT NFGD FILED ITS PROPOSED TARIFF
10 CHANGES IN PENNSYLVANIA?

11 A. On May 17, 2019, less than one month before NFGD made its Pennsylvania filing, the
12 New York utilities filed a reply brief in support of their original petition to enforce the
13 DSA. In that reply brief, the insurance issue was still front of mind for the utilities, who
14 stated that during the stakeholder process that they “also agreed to reduce the necessary
15 cyber insurance requirement by half, from \$10 million to \$5 million.”¹³ By virtue of this
16 statement and by their action of reducing the insurance requirement, I surmise that the New
17 York utilities had a low degree of certainty that the New York Commission would approve
18 the cybersecurity insurance requirement. This reply brief was the last item docketed in the
19 DSA proceeding before NFGD filed its tariff in Pennsylvania. Nothing tangible was
20 presented in the New York Docket prior to NFGD's Pennsylvania filing to indicate that the

Execution of the Data Security Agreements by Entities Seeking Access to Utility Customer Data or Utility Systems, NYPSC Case No. 18-M-0376, p. 3, February 4, 2019.

¹² *Id.*, p. 11.

¹³ Joint Utilities Reply to Comments from Parties on Petition for Approval of the Business-to-Business Process Used to Formulate a Data Security Agreement and Self-Attestation and for Declaratory Ruling Affirming the Joint Utilities Authority to Require Certain Entities to Execute the Data Security Agreement and Self-Attestation or be Prohibited from Transacting with the Applicable Utility, NYPSC Case No 18-M-0376, p. 13, May 17, 2019.

1 parties opposing the requirement, or the New York Commission were inclined to accept
2 the insurance requirement.

3
4 **Q. IN ITS REPLY BRIEF, THE NEW YORK UTILITIES CITED TO A NATIONAL**
5 **INSTITUTE OF STANDARDS AND TECHNOLOGY (“NIST”) FRAMEWORK**
6 **AND USED IT TO SUPPORT THE INSURANCE REQUIREMENT SAYING THAT**
7 **THE FRAMEWORK SUGGESTS THAT CYBER INSURANCE IS**
8 **APPROPRIATE. DO YOU AGREE WITH THE UTILITIES’ INTERPRETATION**
9 **OF THE NIST REQUIREMENT?**

10 A. No. The New York utilities cite to the NIST language which is quite clear:

11 “[w]here a sufficient level of trust cannot be established in the external
12 services and/or providers, organizations can: (i) mitigate the risk by
13 employing compensating controls; (ii) accept the risk within the level of
14 organizational risk tolerance; (iii) *transfer risk by obtaining insurance to*
15 *cover potential losses*; or (iv) avoid risk by choosing not to obtain the
16 services from certain providers (resulting in performance of
17 missions/business operations with reduced levels of functionality or
18 possibly no functionality at all).”¹⁴

19
20 The New York utilities point to number (iii), the transfer of risk clause, as support to impose
21 an insurance requirement on ESEs. That is not at all what this Framework says. This
22 Framework suggests that an organization (a utility, for example), can mitigate the risk,
23 accept the risk, insure the risk, or avoid it altogether by not utilizing others’ services. This
24 Framework, cited by the New York utilities, suggests that NFGD could transfer its risk by
25 the purchase of its own insurance policy. It does not remotely suggest that NFGD should
26 require its counterparties to purchase insurance.

27
28 **Q. ARE YOU AWARE OF ANY ELECTRICITY OR GAS RETAIL CHOICE**
29 **PROGRAM IN THE US THAT REQUIRES A CYBERSECURITY INSURANCE**
30 **POLICY AS A CONDITION OF PARTICIPATION?**

¹⁴ *Id.*, at 5, fn. 11, citing NIST Special Publication 800-53 Revision 4 at 20 (April 2013) (emphasis in Reply Brief).

1 A. I am not.

2

3 **Q. WHAT WAS THE FINAL RESOLUTION OF THE PROCEEDING IN NEW**
4 **YORK?**

5 A. The New York Commission has allowed the DSA and the Self-Attestation, but it rejected
6 the cybersecurity insurance requirement that was proposed by NFG and the other New
7 York utilities.

8

9 **Q. WHEN WAS THAT ORDER ENTERED?**

10 A. October 17, 2019.

11

12 **Q. DID NFGD EVER FORMALLY COMMUNICATE THE RESULTS OF THAT**
13 **ORDER TO THE PENNSYLVANIA COMMISSION?**

14 A. It did not file any notice or other documents in the tariff Docket. The last entry in the
15 Pennsylvania Tariff docket is the Commission Order approving the tariff changes, entered
16 on August 29, 2019.

17 **V. NFGD OVERSIGHT OF ESE BUSINESSES.**

18 **Q. COULD YOU PLEASE EXPLAIN THE BASIS FOR YOUR BELIEF THAT NFGD**
19 **IS ATTEMPTING TO EXERCISE MANAGEMENT OVERSIGHT OVER THE**
20 **OPERATIONS OF ESES?**

21 A. Yes. The DSA states that "Upon thirty (30) days' notice to ESE, ESE shall, and shall
22 require its Third-Party Representatives to permit [NFGD], its auditors, designated
23 representatives, to audit and inspect, at [NFGD's] sole expense (except as otherwise
24 provided in this Agreement), and provided that the audit may occur no more often than

1 once per twelve (12) month period (unless otherwise required by [NFGD's] regulators)."¹⁵

2 While this sentence is very vague about the scope of the audit, it is at the same time very
3 broad in its authority to "audit" the ESE and go beyond the ESE and into the ESE's Third-
4 Party Representatives' businesses.

5
6 **Q. ARE YOU AWARE OF ANY PARTICULAR AUDITING SKILLS THAT ARE**
7 **INHERENT TO A GAS UTILITY SUCH AS NFGD?**

8 A. No. To my knowledge, they have no particular auditing experience or expertise.

9
10 **Q. DOES NFGD INDICATE THE SCOPE OF A POTENTIAL AUDIT?**

11 A. The DSA says that the scope "shall be limited to verifying ESE's compliance" with the
12 DSA, "including all applicable Data Protection Requirements."¹⁶ "Data Protection
13 Requirements" are defined as:

14 "(A) all national, state, and local laws, regulations, or other government
15 standards relating to the protection of information that identifies or can be
16 used to identify an individual that apply with respect to ESE or its
17 Representative's Processing of Confidential Company Information;

18
19 (B) industry best practices or frameworks to secure information, computer
20 systems, network, and devices using a defense-in-depth approach, such as
21 and including, but not limited to, NIST SP 800-53, ISO 27001 / 27002,
22 COBIT, CIS Security Benchmarks, Top 20 Critical Controls as best
23 industry practices and frameworks may evolve over time; and

24
25 (C) the Commission rules, regulations, and guidelines relating to
26 confidential data, including the Commission-approved UBP and UBP
27 DERS."¹⁷

28

¹⁵ DSA, Paragraph 9, p. 8.

¹⁶ *Id.*

¹⁷ DSA, Para 1.d., pp. 2-3

1 Generally, the scope of the audit is very broad. Some ESEs operate in multiple localities,
2 states and even nationally (even internationally). I am not aware of any statute, regulation
3 or business precedent that would give NFGD the audit authority it seeks, nor am I aware
4 of any skill set embedded within NFGD that would allow them to fulfil an audit of national,
5 state and local laws and regulations related to the protection of data, industry best practices
6 for data security or Commission rules and regulations regarding confidential information.
7

8 **Q. HAS NFGD STATED ANY STANDARDS AGAINST WHICH IT WILL AUDIT**
9 **THE ESES' PRACTICES?**

10 A. Not explicitly. As described above, the DSA references best practices, commission rules,
11 and other legal standards under the definition of Data Protection Requirements, it has not
12 however, defined a set of standards against which it will audit a company's "compliance"
13 with the DSA. Similarly, NFGD has not disclosed how it would audit against state
14 standards if the standards across states conflicted with one another.
15

16 **Q. DOES NFGD HAVE THE AUTHORITY TO AUDIT A COMPANY'S**
17 **COMPLIANCE WITH THE "COMMISSION RULES, REGULATIONS, AND**
18 **GUIDELINES RELATING TO CONFIDENTIAL DATA, INCLUDING THE**
19 **COMMISSION-APPROVED UBP AND UBP DERS?"**

20 A. I understand that NFGD has modified its DSA from what it filed in its tariff docket to
21 remove all references to New York-specific terms.¹⁸ The important aspect is whether or
22 not NFGD has the authority to audit another company's compliance with Commission
23 rules. The clear answer is no.
24

¹⁸ NFGD Responses to Gas Supplier Companies' Interrogatories 1-2, 1-3, 1-13, 1-14, 1-15 and 1-16.

1 **Q. WHY WOULD ALLOWING NFGD TO AUDIT THE DATA SECURITY**
2 **PRACTICES BE BAD POLICY.**

3 A. First, it usurps the authority of the Commission to do exactly that – monitor the practices
4 of the companies it regulates. Perhaps more importantly, it would provide NFGD access
5 to the operations of its competitors into areas that are in many instances extremely
6 sensitive, proprietary and potentially, a source of competitive advantage.

7
8 **Q. DOES THE DSA INCLUDE PROVISIONS THAT WOULD GOVERN AN ESE'S**
9 **DATA MANAGEMENT PRACTICES?**

10 A. Yes. The DSA obligates ESE's: to "comply with all applicable privacy and security
11 laws;"¹⁹ to "have in place appropriate processes and systems" to protect Confidential
12 Information;²⁰ to use data encryption during storage and transmission of data;²¹ to limit the
13 geographic transmission of data;²² and to sign a Self-Attestation outlining 15 separate
14 Information Security Control Requirements.²³

15
16 **Q. ARE THESE PROVISIONS SUFFICIENT TO SAFEGUARD CONFIDENTIAL**
17 **INFORMATION?**

18 A. NFGD has presumably established standards that it believes are sufficient to safeguard
19 confidential information and has included those standards in its DSA. While I am not in a
20 position to testify about NFGD's definition of sufficient data protection practices, I can
21 only conclude that they believe that the standards are sufficient since they proffered the
22 DSA and supported it at the Commission.

¹⁹ DSA Section 14.b, p. 10.

²⁰ DSA Section 14.c, p. 10.

²¹ DSA Section 14.d, p. 10.

²² DSA Section 14.g, p. 11

²³ DSA Exhibit A.

1

2 **Q. SHOULD THE PENNSYLVANIA COMMISSION GRANT TO NFGD A RIGHT**
3 **TO AUDIT THE GAS SUPPLIERS SERVING CUSTOMERS IN ITS SERVICE**
4 **TERRITORY.**

5 A. No. NFGD has not in any way justified their need or desire to audit the ESEs serving
6 customers behind their distribution network. It has not shown an audit to be a reasonable
7 requirement. It has not elaborated any standards against which it will audit an ESE data
8 management practices. Finally, NFGD has not proven that it has any audit capabilities.

9

10 **VI SUMMARY**

11 **Q. COULD YOU PLEASE SUMMARIZE YOUR TESTIMONY?**

12 A. Yes. NFGD's requirements for ESEs to maintain \$5 million in cybersecurity insurance is
13 neither just nor reasonable. The requirement will not provide any incremental benefit to
14 any consumer or business entity in the Commonwealth. Additionally, it will result in a less
15 competitive market for gas services in the Commonwealth. Similarly, NFGD's
16 requirement that they be allowed to "audit and inspect . . . the facilities of an ESE [NGS]
17 and third-party representatives . . . and any equipment used to process confidential
18 information, the ESE's security practices, facilities, books and records, etc" is significantly
19 beyond any utility's authority. Such authority could have negative ramifications on the gas
20 markets in Pennsylvania.

21

22 **Q. DOES THIS CONCLUDE YOUR TESTIMONY?**

23 A. Yes.

EXHIBIT FPL-1

Frank Lacey

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West Chester, PA 19382
724-413-0849

<https://www.linkedin.com/in/fplacelectricityleadership/>

Summary

Recognized energy industry executive and leader known for implementing innovative regulatory and business strategies empowering clients to benefit from emerging policies. Successful in achieving business growth and value through regulatory strategy.

Experience

Board of Directors

Advanced Energy Management Alliance (Founding member and Chairman); Formerly served: Smart Electric Power Alliance (f/k/a Solar Electric Power Association) (finance committee); Association for Demand Response and Smart Grid (finance chair); Electric Power Supply Association (finance committee); ERCOT (finance committee); Retail Energy Supply Association.

Electric Advisors Consulting, LLC

2015- Present

Founder and President

Advise senior leadership on utilizing analytics to develop strategies to address legislative and regulatory change in the energy industry. Also advise and assist entities on facilitating legislative and regulatory change to accommodate evolving business strategies and technologies. Active participation in rate cases and other regulatory initiatives focused on correcting cost allocations and other biases embedded in partially restructured energy markets.

Comverge, Inc./CPower Corporation

2011- 2015

Senior Vice President, Regulatory and Market Strategy

Develop and implement corporate regulatory strategy, including new market entry plans for a \$150 million company performing demand response services in the electricity markets.

Direct Energy

2006 - 2011

Director, Products and Complex Transactions (2008-2011)

For a multi-billion dollar retail electric and gas company, managed Complex Transaction team consisting of four direct reports and eight functional leaders from across the organization, facilitating development of over \$50 million in incremental gross margin sold, while operating within risk management framework.

Director, Government and Regulatory Affairs (2006-2008)

Managed regulatory strategy and regulatory risk in Mid-Atlantic region of US, participating in multiple rate proceedings and regulatory initiatives, securing approximately \$100 million in value.

Starlight Energy

2004 - 2006

President

Led the development of business plan and pro formas for venture seeking \$20 million in equity financing and other financial relationships. Successes included securing \$100 million credit relationship and working capital financing to enable launch of retail Electricity Company.

Strategic Energy

2001- 2004

Director, Regulatory Affairs,

Served on the company's Leadership team, managing a regulatory group of 15 people, leading the development of regulatory strategy, the oversight of regulatory risk and the attainment of desired regulatory results, advocating across 13 states and at FERC.

Arthur Andersen 1998 - 2001
Senior Manager

Responsibility for development and growth of Andersen's transmission restructuring business in Eastern half of US market.

Putnam, Hayes and Bartlett, Inc 1995 - 1998
Associate Consultant

Associate consultant in firm's energy practice with expertise in environmental asset valuation.

Education

Carnegie Mellon University, Tepper School of Business

MSIA (MBA) with concentrations in finance, entrepreneurship and environmental management

Self-designed major with supplemental coursework taken in Public Policy and Engineering Schools.

- Entrepreneur of the Year Award, Don Jones Center for Entrepreneurship.
- Thomas M. Kerr Ethics in Business Award.

University of Maryland

B.S. in Transportation and Logistics

Programs for Life

Certified Leadership Development Trainer

EXHIBIT FLP-2

Prepared Direct Testimony of Frank Lacey On Behalf of Strategic Energy, LLC, before the Public Utilities Commission of the State of California in the matter of the Order Instituting Rulemaking Regarding the Implementation of the Suspension of Direct Access Pursuant to Assembly Bill 1X and Decision 01-09-060. Docket No. R. 02-01-011. June 6, 2002.

Prepared Rebuttal Testimony of Frank Lacey On Behalf of Strategic Energy, LLC before the Public Utilities Commission of the State of California in the matter of the Order Instituting Rulemaking Regarding the Implementation of the Suspension of Direct Access Pursuant to Assembly Bill 1X and Decision 01-09-060. Docket No. R. 02-01-011. June 20, 2002

Cross Examination testimony of On Behalf of Strategic Energy, LLC before the Public Utilities Commission of the State of California in the matter of the Order Instituting Rulemaking Regarding the Implementation of the Suspension of Direct Access Pursuant to Assembly Bill 1X and Decision 01-09-060. Docket No. R. 02-01-011. July 2002.

Prepared Testimony of Frank Lacey on the subject of truing up the CERS Fee On Behalf of Strategic Energy, LLC before the Public Utilities Commission Of the State Of California in the matter of the Order Instituting Rulemaking Regarding the Implementation of the Suspension of Direct Access Pursuant to Assembly Bill 1X and Decision 01-09-060. Docket No. R. 02-01-011. March 19, 2003

Prepared Direct Testimony of Frank Lacey on behalf of Strategic Energy L.L.C. before the Pennsylvania Public Utility Commission in the matter Pennsylvania Public Utility Commission, et al. v. Duquesne Light Company, Docket Nos. R-00038092, R-00038092C0001 and R-00038092C0002. January 2003.

Prepared Rebuttal Testimony of Frank Lacey on behalf of Strategic Energy L.L. C. Before the Pennsylvania Public Utility Commission in the matter Pennsylvania Public Utility Commission, et al. v. Duquesne Light Company Docket Nos. R-00038092, R-00038092C0001 and R-00038092C0002. February 2003.

Prepared Supplemental Testimony of Frank Lacey on behalf of Strategic Energy L.L.C. before the Pennsylvania Public Utility Commission in the matter Pennsylvania Public Utility Commission, et al. v. Duquesne Light Company Docket Nos. R-00038092, R-00038092C0001, R-00038092C0002. November 2003

Cross Examination testimony of Frank Lacey on behalf of Strategic Energy L.L.C. before the Pennsylvania Public Utility Commission in the matter Pennsylvania Public Utility Commission, et al. v. Duquesne Light Company Docket Nos. R-00038092, R-00038092C0001, R-00038092C0002. July 1, 2003.

Prepared Direct Testimony of Frank Lacey submitted on behalf of Strategic Energy L.L.C. and Dominion Retail, Inc. before the Public Utilities Commission of Ohio in the matters of the *Continuation of the Rate Freeze and Extension of the Market Development Period for The Dayton Power and Light Company* Case No. 02-2779-EL-ATA and the *Application of The Dayton Power and Light Company for Certain Accounting Authority Pursuant to Section 4905.13, Ohio Revised Code* Case No. 02-2879-EL-AAM. May 19, 2003.

Prepared Supplemental Testimony of Frank Lacey submitted on behalf of Strategic Energy L.L.C. and Dominion Retail, Inc. before the Public Utilities Commission of Ohio in the matters of the *Continuation of the Rate Freeze and Extension of the Market Development Period for The Dayton Power and Light Company* Case No. 02-2779-EL-ATA and the *Application of The Dayton Power and Light Company for Certain Accounting Authority Pursuant to Section 4905.13, Ohio Revised Code* Case No. 02-2879-EL-AAM. June 12, 2003.

Deposition Testimony of Frank Lacey submitted on behalf of Strategic Energy L.L.C. and Dominion Retail, Inc. before the Public Utilities Commission of Ohio in the matters of the *Continuation of the Rate Freeze and Extension of the Market Development Period for The Dayton Power and Light Company* Case No. 02-2779-EL-ATA and the *Application of The Dayton Power and Light Company for Certain Accounting Authority Pursuant to Section 4905.13, Ohio Revised Code* Case No. 02-2879-EL-AAM. May 2003 and June 2003.

Cross Examination testimony of Frank Lacey on behalf of Strategic Energy L.L.C. and Dominion Retail, Inc. before the Public Utilities Commission of Ohio in the matters of the *Continuation of the Rate Freeze and Extension of the Market Development Period for The Dayton Power and Light Company* Case No. 02-2779-EL-ATA and the *Application of The Dayton Power and Light Company for Certain Accounting Authority Pursuant to Section 4905.13, Ohio Revised Code* Case No. 02-2879-EL-AAM. June 2003.

Oral Testimony of Frank Lacey before the Standing Committee on Energy of the New York State Assembly on the issue of Ensuring a Reliable Supply of Electricity to the People of New York, Chairman Paul D Tonko, presiding. March 6, 2003

Prepared Direct Testimony of Frank Lacey on behalf of Strategic Energy, L.L.C. before the Pennsylvania Public Utility Commission in the matter of the *Petition of Duquesne Light Company for Approval of Plan for Post-Transition Period Provider of Last Resort Service.* Docket No. P-00032071. February 2004.

Prepared Rebuttal Testimony of Frank Lacey on behalf of Strategic Energy, L.L.C. before the Pennsylvania Public Utility Commission in the matter of the *Petition of Duquesne Light Company for Approval of Plan for Post-Transition Period Provider of Last Resort Service.* Docket No. P-00032071. February 2004.

Cross Examination testimony of Frank Lacey on behalf of Strategic Energy, L.L.C. before the Pennsylvania Public Utility Commission in the matter of the *Petition of Duquesne Light Company for Approval of Plan for Post-Transition Period Provider of Last Resort Service.* Docket No. P-00032071. April 1, 2004.

Oral Testimony of Frank Lacey at the *POLR Roundtable* before the Pennsylvania Public Utility Commission re: Optimal Future POLR Design models. May 3, 2004.

Prepared Direct Testimony of Frank Lacey on behalf of Strategic Energy, L.L.C. and Mid-American Energy Company before the Public Utilities Commission of Ohio in the matters of *The Application of the Cincinnati Gas & Electric Company to Modify its Non-Residential Generation Rates to Provide for Market-Based Standard Service Offer Pricing and to Establish a Pilot Alternative Competitively-Bid Service Rate Option Subsequent to Market Development Period,* Case No. 03-93-EL-ATA, *The Application of the Cincinnati Gas & Electric Company for Authority to Modify Current Accounting Procedures for Certain Costs Associated with the Midwest ISO,* Case No. 03-2079-EL-AAM, and *The Application of the Cincinnati Gas & Electric Company for Authority to Modify Current Accounting Procedures for Capital Investment in its Electric Transmission and Distribution System and to Establish a Capital Investment Reliability Rider to be Effective After the Market Development Period,* Case Nos. 03-2080-EL-AAM and 03-2080-EL-ATA. May 6, 2003.

Deposition of Frank Lacey in the matters of *The Application of the Cincinnati Gas & Electric Company to Modify its Non-Residential Generation Rates to Provide for Market-Based Standard Service Offer Pricing and to Establish a Pilot Alternative Competitively-Bid Service Rate Option Subsequent to Market Development Period,* Case No. 03-93-EL-ATA, *The Application of the Cincinnati Gas & Electric Company for Authority to Modify Current Accounting Procedures for Certain Costs Associated with the Midwest ISO,* Case No. 03-2079-EL-AAM, and *The Application of the Cincinnati Gas & Electric Company for Authority to Modify Current Accounting Procedures for Capital Investment in its Electric Transmission and Distribution System and to Establish a Capital Investment Reliability Rider to be Effective After the Market Development Period,* Case Nos. 03-2080-EL-AAM and 03-2080-EL-ATA. May 2003.

Cross Examination Testimony of Frank Lacey on behalf of Strategic Energy, L.L.C. and Mid-American Energy Company before the Public Utilities Commission of Ohio in the matters of *The Application of the Cincinnati Gas & Electric Company to Modify its Non-Residential Generation Rates to Provide for Market-Based Standard Service Offer Pricing and to Establish a Pilot Alternative Competitively-Bid Service Rate Option Subsequent to Market Development Period,* Case No. 03-93-EL-ATA, *The Application of the Cincinnati Gas & Electric Company for Authority to Modify Current Accounting Procedures for Certain Costs Associated with the Midwest ISO,* Case

No. 03-2079-EL-AAM, and *The Application of the Cincinnati Gas & Electric Company for Authority to Modify Current Accounting Procedures for Capital Investment in its Electric Transmission and Distribution System and to Establish a Capital Investment Reliability Rider to be Effective After the Market Development Period*, Case Nos. 03-2080-EL-AAM and 03-2080-EL-ATA. May 18, 2003.

Oral Testimony of Frank Lacey before the Michigan Senate Committee on Technology and Energy on the subject of revision to Public Act 141, the Michigan Electricity Choice and Restructuring Act, Chairman Bruce Patterson, Presiding. May 19, 2004.

Oral Testimony of Frank Lacey on behalf of Direct Energy Services, LLC before the Maryland Senate Finance Committee on Senate Bill 561 on the subject of communications between electric companies and suppliers to enhance the development of competitive electric markets, Chairman Thomas Middleton, Presiding. March 7, 2006.

Oral Testimony of Frank Lacey on behalf of Direct Energy Services, LLC before the Maryland Senate Finance Committee on Senate Bills 814, 1048, 1051 and 1078 on the subject of retail electricity market design, Chairman Thomas Middleton, Presiding. March 14, 2006.

Oral Testimony of Frank Lacey on behalf of Direct Energy Services, LLC before the Maryland House of Delegates Economic Matters Committee on House Bills 1334, 1654 and 1712 on the subject of retail electricity market design, Chairman Dereck Davis, Presiding. March 14, 2006.

Oral Testimony of Frank Lacey on behalf of Direct Energy Services, LLC before the Pennsylvania Public Utility Commission in the Matter of *Petition of Direct Energy Services, LLC for Emergency Order*, Docket No. P-00062205, April 11, 2006.

Oral Testimony of Frank Lacey on behalf of Direct Energy Services, LLC before the Pennsylvania Public Utility Commission in the Matter of *Policies to Mitigate Potential Electricity Price Increases*, Docket No. M-00061957, June 22, 2006.

Prepared Direct Testimony of Frank Lacey on behalf of Direct Energy Services, LLC before the Pennsylvania Public Utilities Commission in the Matter of *Duquesne Light Company Base Rate Case*, Docket No. R-00061346, July 7, 2006. (Case Settled)

Prepared Rebuttal Testimony of Frank Lacey on behalf of Direct Energy Services, LLC before the Pennsylvania Public Utilities Commission in the Matter of *Duquesne Light Company Base Rate Case*, Docket No. R-00061346, August 2, 2006. (Case Settled)

Prepared Surrebuttal Testimony of Frank Lacey on behalf of Direct Energy Services, LLC before the Pennsylvania Public Utilities Commission in the Matter of *Duquesne Light Company Base Rate Case*, Docket No. R-00061346, August 16, 2006. (Case Settled)

Prepared Direct Testimony of Frank Lacey on behalf of Direct Energy Services, LLC before the Pennsylvania Public Utilities Commission in the Matter of Petition of PPL Electric Utilities Corporation for Approval of Competitive Bridge Plan, Docket No. P-00062227, November 15, 2006.

Prepared Rebuttal Testimony of Frank Lacey on behalf of Direct Energy Services, LLC before the Pennsylvania Public Utilities Commission in the Matter of Petition of PPL Electric Utilities Corporation for Approval of Competitive Bridge Plan, Docket No. P-00062227, December 6, 2006.

Prepared Surrebuttal Testimony of Frank Lacey on behalf of Direct Energy Services, LLC before the Pennsylvania Public Utilities Commission in the Matter of Petition of PPL Electric Utilities Corporation for Approval of Competitive Bridge Plan, Docket No. P-00062227, December 15, 2006.

Oral Rejoinder Testimony and Cross-examination of Frank Lacey on behalf of Direct Energy Services, LLC before the Pennsylvania Public Utilities Commission in the Matter of Petition of PPL Electric Utilities Corporation for Approval of Competitive Bridge Plan, Docket No. P-00062227, December 15, 2006.

Oral Testimony of Frank Lacey on behalf of Direct Energy Services, LLC before the Pennsylvania House of Representatives, Consumer Affairs Committee, Honorable Joseph Preston Jr., Chairman, March 15, 2007.

Prepared Direct Testimony of Frank Lacey on behalf of Direct Energy Services, LLC and the Retail Energy Supply Association before the Pennsylvania Public Utilities Commission in the Matter of Petition of Duquesne Light Company for Approval of Default Service Plan for the Period January 1, 2008 through December 31, 2010, Docket No. P-00072247, March 29, 2007. (case settled)

Prepared Rebuttal Testimony of Frank Lacey on behalf of Direct Energy Services, LLC and the Retail Energy Supply Association before the Pennsylvania Public Utilities Commission in the Matter of Petition of Duquesne Light Company for Approval of Default Service Plan for the Period January 1, 2008 through December 31, 2010, Docket No. P-00072247, April 12, 2007. (case settled)

Prepared Surrebuttal Testimony of Frank Lacey on behalf of Direct Energy Services, LLC and the Retail Energy Supply Association before the Pennsylvania Public Utilities Commission in the Matter of Petition of Duquesne Light Company for Approval of Default Service Plan for the Period January 1, 2008 through December 31, 2010, Docket No. P-00072247, April 20, 2007. (case settled)

Prepared Direct Testimony of Frank Lacey on behalf of Direct Energy Services, LLC before the Pennsylvania Public Utilities Commission in the Matter of *Petition of Pike County Light & Power Company for Expedited Approval of its Default Service Implementation Plan, Docket No. P-00072245*, March 28, 2007.

Prepared Rebuttal Testimony of Frank Lacey on behalf of Direct Energy Services, LLC before the Pennsylvania Public Utilities Commission in the Matter of *Petition of Pike County Light & Power Company for Expedited Approval of its Default Service Implementation Plan, Docket No. P-00072245*, April 11, 2007.

Oral Surrebuttal Testimony and Cross-examination Testimony of Frank Lacey on behalf of Direct Energy Services, LLC before the Pennsylvania Public Utilities Commission in the Matter of *Petition of Pike County Light & Power Company for Expedited Approval of its Default Service Implementation Plan, Docket No. P-00072245*, April 19, 2007.

Prepared Direct Testimony of Frank Lacey on behalf of Direct Energy Services, LLC, before the Maryland Public Service Commission *In the Matter of the Commission's Investigation of Investor-owned Electric Companies' Standard Offer Service for Residential and Small Commercial Customers in Maryland*, Case No. 9117, September 14, 2007.

Prepared Reply Testimony of Frank Lacey on behalf of Direct Energy Services, LLC, before the Maryland Public Service Commission *In the Matter of the Commission's Investigation of Investor-owned Electric Companies' Standard Offer Service for Residential and Small Commercial Customers in Maryland*, Case No. 9117, September 28, 2007.

Oral Testimony of Frank Lacey on behalf of Direct Energy Services, LLC, before the Maryland Public Service Commission *In the Matter of the Commission's Investigation of Investor-owned Electric Companies' Standard Offer Service for Residential and Small Commercial Customers in Maryland*, Case No. 9117, October 2007.

Oral Testimony of Frank Lacey on behalf of Direct Energy Services, LLC before the Pennsylvania House of Representatives Republican Policy Committee, Honorable Michael Turzai, Chairman, March 17, 2008.

Prepared Direct Testimony of Frank Lacey on behalf of Direct Energy Services, LLC and the Retail Energy Supply Association before the Pennsylvania Public Utilities Commission in the Matter of *Petition of West Penn Power Company dba Allegheny Power for Approval of its Retail Electric Default Service Program and Competitive Procurement Plan for Service at the Conclusion of the Restructuring Transition Period, Docket No. P-00072342*, February 12, 2008.

Prepared Rebuttal Testimony of Frank Lacey on behalf of Direct Energy Services, LLC and the Retail Energy Supply Association before the Pennsylvania Public Utilities Commission in the Matter of *Petition of West Penn Power Company dba Allegheny Power for Approval of its Retail Electric Default Service Program and Competitive Procurement Plan for Service at the Conclusion of the Restructuring Transition Period, Docket No. P-00072342, March 11, 2008.*

Prepared Surrebuttal Testimony of Frank Lacey on behalf of Direct Energy Services, LLC and the Retail Energy Supply Association before the Pennsylvania Public Utilities Commission in the Matter of *Petition of West Penn Power Company dba Allegheny Power for Approval of its Retail Electric Default Service Program and Competitive Procurement Plan for Service at the Conclusion of the Restructuring Transition Period, Docket No. P-00072342, March 25, 2008.*

Oral Cross-examination Testimony of Frank Lacey on behalf of Direct Energy Services, LLC and the Retail Energy Supply Association before the Pennsylvania Public Utilities Commission in the Matter of *Petition of West Penn Power Company dba Allegheny Power for Approval of its Retail Electric Default Service Program and Competitive Procurement Plan for Service at the Conclusion of the Restructuring Transition Period, Docket No. P-00072342, April 2, 2008.*

Prepared Direct Testimony of Frank Lacey on behalf of Direct Energy Services, LLC, before the Pennsylvania Public Utility Commission in the matter of the *Joint Application of West Penn Power Company d/b/a Allegheny Power, Trans-Allegheny Interstate Line Company and FirstEnergy Corp. for a Certificate of Public Convenience under Section 1102(a)(3) of the Public Utility Code approving a change of control of West Penn Power Company And Trans-Allegheny Interstate Line Company, Docket Nos. A-2010-2176520 and A-2010-2176732, August 17, 2010*

Prepared Sur-Rebuttal Testimony of Frank Lacey on behalf of Direct Energy Services, LLC, before the Pennsylvania Public Utility Commission in the matter of the *Joint Application of West Penn Power Company d/b/a Allegheny Power, Trans-Allegheny Interstate Line Company and FirstEnergy Corp. for a Certificate of Public Convenience under Section 1102(a)(3) of the Public Utility Code approving a change of control of West Penn Power Company And Trans-Allegheny Interstate Line Company, Docket Nos. A-2010-2176520 and A-2010-2176732, October 1, 2010.*

Oral Cross-examination Testimony of Frank Lacey on behalf of Direct Energy Services, LLC, before the Pennsylvania Public Utility Commission in the matter of the *Joint Application of West Penn Power Company d/b/a Allegheny Power, Trans-Allegheny Interstate Line Company and FirstEnergy Corp. for a Certificate of Public Convenience under Section 1102(a)(3) of the Public Utility Code*

approving a change of control of West Penn Power Company And Trans-Allegheny Interstate Line Company, Docket Nos. A-2010-2176520 and A-2010-2176732, October 5, 2010.

Oral Testimony of Frank Lacey on behalf of Comverge, Inc. at FERC Technical Conference in the Matter of PJM Interconnection, L.L.C., Docket No. ER11-3322-000, July 29, 2011, discussing the topic of appropriate methodologies to estimate load reductions during a demand response curtailment event.

Prepared Direct Testimony of Frank Lacey on behalf of Comverge, Inc., before the Illinois Commerce Commission in the matter of Commonwealth Edison Company Petition for Statutory Approval of Smart Grid Advanced Metering Infrastructure Deployment Plan Pursuant to Section 16-108.6 of the Public Utilities Act, Docket No. 12-0298, May 11, 2012.

Oral Cross-examination Testimony of Frank Lacey on behalf of Comverge, Inc., before the Illinois Commerce Commission in the matter of Commonwealth Edison Company Petition for Statutory Approval of Smart Grid Advanced Metering Infrastructure Deployment Plan Pursuant to Section 16-108.6 of the Public Utilities Act, Docket No. 12-0298, May 23, 2012.

Prepared Direct Testimony of Frank Lacey On Behalf of Comverge, Inc., before the Illinois Commerce Commission in the matter of Ameren Illinois Company Petition for Statutory Approval of a Smart Grid Advanced Metering Infrastructure Deployment Plan Pursuant to Section 16-108.6 of the Public Utilities Act, Docket No. 12-0244 on rehearing, August 24, 2012.

Oral Cross-examination Testimony of Frank Lacey On Behalf of Comverge, Inc., before the Illinois Commerce Commission in the matter of Ameren Illinois Company Petition for Statutory Approval of a Smart Grid Advanced Metering Infrastructure Deployment Plan Pursuant to Section 16-108.6 of the Public Utilities Act, Docket No. 12-0244 on rehearing, September 20, 2012.

Prepared Direct Testimony of Frank Lacey on Behalf of Comverge, Inc., before the Illinois Commerce Commission in the matter of Commonwealth Edison Company's Petition for Approval of Tariffs Implementing ComEd's Proposed Peak Time Rebate Program, Docket No. 12-0484, October 25, 2012.

Oral Cross-examination Testimony of Frank Lacey on Behalf of Comverge, Inc., before the Illinois Commerce Commission in the matter of Commonwealth Edison Company's Petition for Approval of Tariffs Implementing ComEd's Proposed Peak Time Rebate Program, Docket No. 12-0484, December 7, 2012.

Prepared Direct Testimony of Frank Lacey on Behalf of Comverge, Inc., before the Maryland Public Service Commission in the matter of The Investigation of the Process and Criteria for Use in Development

of Requests for Proposal by the Maryland Investor-Owned Utilities for New Generation to Alleviate Potential Short-Term Reliability Problems in the State of Maryland, Case No. 9149, January 31, 2013.

Prepared Supplemental Direct Testimony of Frank Lacey on Behalf of Comverge, Inc., before the Maryland Public Service Commission in the matter of The Investigation of the Process and Criteria for Use in Development of Requests for Proposal by the Maryland Investor-Owned Utilities for New Generation to Alleviate Potential Short-Term Reliability Problems in the State of Maryland, Case No. 9149, February 25, 2013.

Prepared Direct Testimony of Frank Lacey on Behalf of Comverge, Inc., before the Illinois Interstate Commerce Commission in the matter of Ameren Illinois Company, d/b/a Ameren Illinois, Peak Time Rebate Program, Docket No. 13-0105, May 30, 2013.

Oral Testimony of Frank Lacey on behalf of Comverge, Inc. at FERC Technical Conference in the Matter of PJM Interconnection, L.L.C., Docket No. ER13-2108-000, October 11, 2013, discussing the appropriate information requirements for demand response offers made three years prior to a delivery year.

Oral Testimony and Cross Examination of Frank Lacey on behalf of Comverge, Inc, before the Utah Public Service Commission, In the Matter of Rocky Mountain Power for Approval to Cancel Schedule 194, Docket No. 13-035-136, September 12, 2013.

Prepared Direct Testimony of Frank Lacey on behalf of Direct Energy before the Massachusetts Department of Public Utilities in the Investigation as to the Propriety of Proposed Tariff Change in response to the Petition of Massachusetts Electric Company and Nantucket Electric Company each d/b/a National Grid, Docket Number DPU 15-155, March 18, 2016.

Prepared Rebuttal Testimony of Frank Lacey on behalf of Direct Energy before the Massachusetts Department of Public Utilities in the Investigation as to the Propriety of Proposed Tariff Change in response to the Petition of Massachusetts Electric Company and Nantucket Electric Company each d/b/a National Grid, Docket Number DPU 15-155, April 28, 2016.

Oral Cross-examination Testimony of Frank Lacey on behalf of Direct Energy before the Massachusetts Department of Public Utilities in the Investigation as to the Propriety of Proposed Tariff Change in response to the Petition of Massachusetts Electric Company and Nantucket Electric Company each d/b/a National Grid, Docket Number DPU 15-155, May 18, 2016.

Expert Rebuttal Report and Damage Summary of Frank Lacey, Response to the Review Submitted by Nathan Katzenstein, prepared on behalf of Astral Energy in the matter of Treetop Development, et

al. v. Astral Energy, et al., Docket #: BER-L-9414-13, Superior Court of New Jersey, Bergen County, December 9, 2016.

Expert Reply (Sur-rebuttal) of Frank Lacey, Reply to the Response Submitted by Nathan Katzenstein, prepared on behalf of Astral Energy in the matter of *Treetop Development, et al. v. Astral Energy, et al.*, Docket #: BER-L-9414-13, Superior Court of New Jersey, Bergen County, April 28, 2017.

Deposition of Frank Lacey on the topic of his Expert Rebuttal Report and Damage Summary prepared on behalf of Astral Energy in the matter of *Treetop Development, et al. v. Astral Energy, et al.*, Docket #: BER-L-9414-13, Superior Court of New Jersey, Bergen County, May 17, 2017.

Oral Testimony and Cross-examination Testimony on behalf of Astral Energy in the matter of *Treetop Development, et al. v. Astral Energy, et al.*, Docket #: BER-L-9414-13, Superior Court of New Jersey, Bergen County, June 5, 2017.

Prepared Rebuttal Testimony of Frank Lacey on behalf of Clearview Energy before the Pennsylvania Public Utilities Commission in *Pennsylvania PUC v. Clearview Electric, Inc.*, Docket No. C-2016-2543592, January 9, 2017.

Prepared Direct Testimony of Frank Lacey on behalf of the Cape Light Compact before the Massachusetts Department of Public Utilities in the *Petition of NSTAR Electric Company and Western Massachusetts Electric Company d/b/a Eversource Energy for Approval of their Grid Modernization Plans*, Docket No. D.P.U. 15-122/123, March 10, 2017.

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Prepared Direct Testimony of Frank Lacey on behalf of the Retail Energy Supply Association before the Massachusetts Department of Public Utilities in the *Petition of NSTAR Electric Company and Western Massachusetts Electric Company each d/b/a Eversource Energy for Approval of an Increase in Base Distribution Rates for Electric Service Pursuant to G.L. C. 164, § 94 and 220 C.M.R. § 5.00*, Docket No. D.P.U. 17-05, April 28, 2017.

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Prepared Direct Testimony of Frank Lacey on behalf of Direct Energy Services and its Affiliates before the Virginia State Commerce Commission in the *Application of Virginia Electric and Power Company for Approval of 100% Renewable Energy Tariffs Pursuant to Subsection 56-577 A 5 and 56-234 of the Code of Virginia*, Docket No. PUR-2017-00060, August 23, 2017.

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Prepared Direct Testimony of Frank Lacey on behalf of Direct Energy and Direct Energy Solar before the Rhode Island Public Utilities Commission in the matter of *The Narragansett Electric Co. d/b/a National Grid's Proposed Power Sector Transformation (PST) Vision and Implementation Plan*, Docket No. 4780, April 25, 2018, (Case Settled).

Oral Testimony on behalf of the Advanced Energy Management Alliance before the Pennsylvania Public Utilities Commission *En Banc Hearing for Supplier Consolidated Billing*, Docket No. M-2018-2645254, June 14, 2018.

Prepared Supplemental Direct Testimony of Frank Lacey on behalf of Direct Energy and its affiliates before the Commonwealth of Virginia State Corporate Commission in the *Application of Virginia Electric and Power Company for Approval of 100 Percent Renewable Energy Tariffs for Residential and Non-residential Customers Pursuant to SS 56-577 A 5 and 56-234 of the Code of Virginia*, Case No. PUR-2017-00157, June 19, 2018.

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Prepared Direct Testimony of Frank Lacey on behalf of Direct Energy *In the Matter of the Long-Term Forecast Report of Ohio Power Company and Related Matters; In the Matter of the Application Seeking Approval of Ohio Power Company's Proposal to Enter Into Renewable Energy Purchase Agreements for Inclusion in the Renewable Generation Rider; In the Matter of the Application of Ohio Power Company to Amend its Tariffs*, Case Nos. 18-501-EL-FOR; 18-1392-EL-RDR and 18-1393-EL-ATA, January 2, 2019.

Oral rebuttal testimony and cross-examination of Frank Lacey on behalf of Direct Energy *In the Matter of the Long-Term Forecast Report of Ohio Power Company and Related Matters; In the Matter of the Application Seeking Approval of Ohio Power Company's Proposal to Enter Into Renewable Energy Purchase Agreements for Inclusion in the Renewable Generation Rider; In the Matter of the Application of Ohio Power Company to Amend its Tariffs*, Case Nos. 18-501-EL-FOR; 18-1392-EL-RDR and 18-1393-EL-ATA, January 23, 2019.

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Oral direct testimony and cross examination of Frank Lacey on behalf of Direct Energy Business before the Virginia State Corporation Commission on the *Motion of Direct Energy Business for Temporary Injunctive Relief and Request for Expedited Action*, Case No. PUR-2019-00117, August 7, 2019.

Oral direct testimony and cross examination of Frank Lacey on behalf of Direct Energy Business before the Virginia State Corporation Commission in the joint hearing in the *Petition of Virginia Electric and Power Company for a Declaratory Judgement* against Direct Energy and the *Petition of Virginia Electric and Power Company for a Declaratory Judgement* against Calpine Energy Solutions, Case Nos. PUR-2019-00117 and PUR-2019-00118, August 20, 2019.

Prepared Direct Testimony of Frank Lacey on behalf of the Energy Supplier Coalition before the Maryland Public Service Commission in the *Application of Baltimore Gas & Electric Company to Adjust Electric and Gas Base Rates*, Case No. 9610, September 10, 2019.

Prepared Rebuttal Testimony of Frank Lacey on behalf of the Energy Supplier Coalition before the Maryland Public Service Commission in the *Application of Baltimore Gas & Electric Company to Adjust Electric and Gas Base Rates*, Case No. 9610, October 4, 2019.

Prepared Direct Testimony of Frank Lacey on behalf of Direct Energy before the Virginia State Corporate Commission in *the Application of Virginia Electric and Power Company For Approval of a 100 Percent Renewable Energy Tariff, Designated Rider TRG, Pursuant to 56-577 A 5 and 56-234 of the Code of Virginia*, Case No. PUR-2019-00094, October 17, 2019.

Prepared Surrebuttal Testimony of Frank Lacey on behalf of the Energy Supplier Coalition before the Maryland Public Service Commission in the *Application of Baltimore Gas & Electric Company to Adjust Electric and Gas Base Rates*, Case No. 9610, October 22, 2019.

Prepared Rejoinder Testimony of Frank Lacey on behalf of the Energy Supplier Coalition before the Maryland Public Service Commission in the *Application of Baltimore Gas & Electric Company to Adjust Electric and Gas Base Rates*, Case No. 9610, November 8, 2019.

Oral testimony and cross-examination of Frank Lacey on behalf of the Energy Supplier Coalition before the Maryland Public Service Commission in the *Application of Baltimore Gas & Electric Company to Adjust Electric and Gas Base Rates*, Case No. 9610, November 14, 2019.

Oral Rebuttal Testimony of Frank Lacey on behalf of Direct Energy before the Virginia State Corporate Commission in *the Application of Virginia Electric and Power Company For Approval of a 100 Percent Renewable Energy Tariff, Designated Rider TRG, Pursuant to 56-577 A 5 and 56-234 of the Code of Virginia*, Case No. PUR-2019-00094, November 21, 2019.

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Direct Testimony of Frank Lacey on behalf of the Supplier Companies (IGS Energy and Direct Energy) before the Public Utility Commission of Ohio In the Matter of the Application of Ohio Power Company for an increase in Electric Distribution Rates, In the Matter of the Application of Ohio Power Company for Tariff Approval, and In the Matter of the Application of Ohio Power Company for Approval to Change Accounting Methods, Case Nos. 20-585-EL-AIR, 20-586-EL-ATA, and 20-587-EL-AAM, February 2021.

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Dozens of industry and client-specific presentations on the topics of industry transformation in the areas of transmission restructuring, retail restructuring, demand response, rate design, cost allocation and the energy industry ramifications of FERC Order 745 and FERC jurisdiction over demand response.

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

EnergyMark LLC, Vineyard Oil and 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	:	

**SURREBUTTAL TESTIMONY
OF FRANK LACEY
ON BEHALF OF ENERGYPARK LLC,
VINEYARD OIL AND GAS COMPANY, MID AMERICAN NATURAL RESOURCES
LLC, AND TOTAL ENERGY RESOURCES LLC**

Joint Complainants' Statement No. 1-SR
April 16, 2021

04/29/21 C-2020-3019621

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1 **I. INTRODUCTION**

2 **Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.**

3 A. My name is Frank Lacey. My business address is 3 Traylor Drive, West Chester, PA
4 19382.

5
6 **Q. ON WHOSE BEHALF ARE YOU TESTIFYING?**

7 A. I am submitting this testimony on behalf of EnergyMark LLC, Vineyard Oil and Gas
8 Company, Mid American Natural Resources LLC, and Total Energy Resources LLC
9 (collectively, the "Gas Supplier Companies").

10

11 **Q. ARE YOU THE SAME FRANK LACEY WHO FILED DIRECT TESTIMONY IN**
12 **THIS PROCEEDING ON MARCH 5, 2021?**

13 A. I am.

14

15 **II. SUMMARY AND CONCLUSIONS**

16 **Q. HAVE YOU READ THE TESTIMONY SUBMITTED BY THE OTHER PARTIES**
17 **IN THIS PROCEEDING?**

18 A. I have.

19

20 **Q. COULD YOU PLEASE PROVIDE AN OVERVIEW OF YOUR REACTION TO**
21 **THAT TESTIMONY?**

22 A. Yes. Mr. Cej and Mr. Grice both have made some erroneous statements and critically,
23 have not added any meaningful support to their request to require suppliers operating on
24 their network to acquire cybersecurity insurance.

25

1 **III. RESPONSE TO MR. CEJ**

2 **Q. MR. CEJ STATED THAT YOU DID NOT PROVIDE CREDIBLE TESTIMONY**
3 **REGARDING NFGD'S MOTIVATION FOR FILING SUPPLEMENT NO. 207¹.**
4 **DO YOU AGREE WITH THAT?**

5 A. I did not claim to understand NFGD's motivation for filing Supplement No. 207. My
6 testimony was focused on the flawed rationale underlying the filing, the discriminatory
7 nature of the requirement and unreasonableness of NFGD acting as a rule enforcer,
8 usurping the authority of the Commission.

9

10 **Q. MR. CEJ STATED THAT YOU CLAIMED THE PRIMARY EFFECT OF THE**
11 **CYBERSECURITY INSURANCE REQUIREMENT WAS TO PAD NFGD'S**
12 **MARKET ADVANTAGE IN THE GAS SUPPLY MARKET². WHAT IS YOUR**
13 **RESPONSE TO THAT?**

14 A. I testified that one of the impacts of the insurance requirement would be to pad NFGD's
15 unearned market advantage in the gas supply market. Notably, Mr. Cej did not disagree
16 with my statement. He only stated that I failed to accurately describe the basis for NFGD
17 seeking to implement cybersecurity protection requirements. Because he raised the issue,
18 but did not refute the testimony, I conclude therefore that he agrees that the requirement
19 will pad NFGD's market advantage in the gas supply market.

20

21 **Q. MR. CEJ STATED THAT YOU ATTEMPT TO DISCREDIT THE IMPORTANCE**
22 **OF CYBERSECURITY INSURANCE ³. DO YOU AGREE WITH HIS**
23 **CHARACTERIZATION?**

¹ Cej Rebuttal Testimony, pp. 5, 9.

² Cej Rebuttal Testimony, pp 5, 9.

³ Cej Rebuttal Testimony, p. 5.

1 A. No. I never stated that cybersecurity insurance was not important. Risk management is an
2 important business function. I described the insurance as one of many potential risk
3 management tools available to a supplier. I also pointed out that the other technological
4 requirements in the DSA were also risk management tools⁴. Suppliers, as experts in risk
5 management should be able to manage their business risks independently as fiduciaries to
6 their companies.

7

8 **Q. IF IT IS TRUE THAT MOST PIOGA MEMBERS HAVE CYBERSECURITY**
9 **INSURANCE, AS MR. CEJ STATES⁵, DOES THAT DIMINISH YOUR OPINION?**

10 A. Not in the least. Those PIOGA members might have concluded that cybersecurity
11 insurance coverage was best for themselves. That testimony does not, however, describe
12 the breadth of the businesses that have the insurance, the magnitude of data they possess,
13 the breadth of the use of data, the sensitivity of the data, the technological expertise of their
14 in-house employee pool, or any of the other characteristics of the business that would have
15 led them to purchase insurance. He did not explore any possible reasons for those firms to
16 have purchased the insurance. Notably, Mr. Cej did not testify that a regulatory
17 requirement was the reason for those firms to purchase insurance. He has offered no
18 information to support a regulatory requirement to compel the purchase of insurance. In
19 the absence of such a discussion, I cannot conclude anything other than companies with
20 significant expertise in risk management should not be compelled to enlist a risk

⁴ Lacey Direct Testimony, p. 11.

⁵ Cej Rebuttal Testimony, p. 5.

1 management tool prescribed by a utility company with significantly less expertise in risk
2 management.

3
4 **Q. MR. CEJ TESTIFIED THAT A COLLABORATIVE PROCESS HAS BEEN ON-**
5 **GOING THAT HAS ADDRESSED MANY OF THE CONCERNS YOU**
6 **ARTICULATED WITH THE OTHER ISSUES IN THE DSA, INCLUDING THE**
7 **AUDIT RIGHTS⁶. WHAT IS YOUR RESPONSE TO HIS TESTIMONY ON THAT**
8 **ISSUE?**

9 A. I am not a party to the collaborative process so cannot testify to the accuracy of his
10 statements. I have no reason to believe his testimony on this issue is wrong or exaggerated.
11 It is encouraging that NFGD has acknowledged and corrected some of the errors I
12 identified with the DSA. However, those corrections and Mr. Cej's testimony does not
13 change my opinions on the issues I testified about, including the auditing issue. The
14 suppliers may be negotiating an audit framework that is better than what was proposed, but
15 that outcome may not be ideal. I testified that the scope of the audit provision was very
16 broad. Mr. Cej did not state that the scope has been narrowed to any set of requirements
17 within reason. I testified that I am not aware of any statute, regulation or business precedent
18 that would give NFGD the audit authority it seeks. Mr. Cej did not counter that claim with
19 testimony about the existence of any such rule or precedent. NFGD has agreed to outsource
20 the audit, if it is required. That is not really a concession because NFGD did not refute my
21 testimony that it does not have audit capabilities and confirmed that it "is not a
22 cybersecurity firm."⁷ NFGD is not equipped to audit any firm's technical capabilities. It
23 was likely going to outsource the audit function anyway. Perhaps more importantly than

⁶ Cej Rebuttal Testimony, pp. 12-13.

⁷ Grice Rebuttal Testimony, p. 7:15.

1 its lack of qualifications is its lack of direction with respect to the proposed audit
2 requirement. I testified that NFGD has not defined a set of standards against which it will
3 audit a company's "compliance" with the DSA. It offered nothing in response. I assume
4 the audit standards are still non-existent. Similarly, NFGD did not address my concern
5 about how it would audit against state standards if the standards across states conflicted
6 with one another. Perhaps the suppliers in negotiations are accepting of an audit because
7 it is so poorly defined or perhaps the audit standards are being designed in the collaborative,
8 but Mr. Cej did not mention those. As such, I can only conclude that those conversations
9 are not part of the collaborative. My testimony thus stands firm. For the reasons outlined
10 in my Direct Testimony, I do not believe that this Commission should grant NFGD the
11 right to audit the security practices (or any other business practices) of any other company,
12 much less the companies it competes with. NFGD has not in any way justified their need
13 or desire to audit the NGSs serving customers behind their distribution network. It has not
14 shown an audit to be a reasonable requirement. It has not elaborated any standards against
15 which it will audit an NGS's data management practices. It has not defined any criteria for
16 determining which companies will be audited and when, leaving much room for
17 competitive abuses. Bestowing NFGD with these audit rights would simply be bad public
18 policy.

19
20 **Q. MR. CEJ DISAGREES WITH YOUR ASSERTION THAT BESTOWING NFGD**
21 **WITH AUDIT RIGHTS USURPS THE COMMISSION'S AUTHORITY TO**
22 **MONITOR THE COMPANIES IT REGULATES⁸. WHAT IS YOUR RESPONSE**
23 **TO THIS TESTIMONY?**

⁸ Cej Rebuttal Testimony, p. 15.

1 A. Mr. Cej correctly notes that the Commission is fully empowered to approve rules and
2 regulations that govern the relationship between public utilities and energy suppliers. My
3 concern is not with the Commission's authority. My concern is that NFGD is trying to
4 usurp that authority by taking these audit rights upon themselves. As I stated in my Direct
5 Testimony, stakeholders were not engaged in the process of reviewing NFGD's Tariff
6 Supplement No. 207 filing, so I cannot be assured that all of the potential issues received
7 appropriate attention from the Commission. In fact, it is possible that the Commission's
8 approval of that filing "without prejudice" is an indicator that they recognized that some of
9 the issues were not fully vetted by the stakeholders. The Commission is fully empowered
10 to give these rights to NFGD or any other utility if they so choose. Such a concession by
11 the Commission would be bad public policy. The Commission will ultimately make a
12 decision on the breadth of NFGD's oversight powers in this proceeding.

13

14 **Q. MR. CEJ STATES THAT BECAUSE YOUR TESTIMONY IS NOT BEING**
15 **PROVIDED AS AN EXPERT IN CYBERSECURITY OR TECHNOLOGY ISSUES,**
16 **YOU ARE NOT QUALIFIED TO OPINE ON THE JUSTNESS AND**
17 **REASONABLENESS OF THE CYBERSECURITY INSURANCE**
18 **REQUIREMENTS⁹. WHAT IS YOUR RESPONSE TO THAT ASSESSMENT?**

19 A. As Mr. Cej correctly notes in NFGD Exhibit CC-10, I am an energy markets expert. I have
20 testified in dozens of proceedings before regulators in several states and at the Federal
21 Energy Regulatory Commission regarding energy market issues. I have not taken a
22 position any of the technological requirements outlined in the DSA. I have not taken a
23 position on any of the terms, prices, or actuarial issues related to the cybersecurity

⁹ Cej Rebuttal Testimony, p. 16.

1 insurance policies themselves. Rather, my testimony is about the discriminatory nature
2 and detrimental market impacts of the requirements in the DSA, including the
3 cybersecurity insurance requirements and audit provisions. I am inherently qualified to
4 provide an expert opinion on the justness and reasonableness of tariff terms and conditions,
5 especially those that impact the competitive energy markets. I have articulately asserted
6 that the cybersecurity requirements create an unfair economic barrier to competition¹⁰, and
7 that opinion was not refuted in any way by either of the NFGD witnesses. The
8 cybersecurity insurance requirement is unjust and unreasonable. Similarly, NFGD has not
9 provided any rationale for its request for audit oversight capabilities other than that the
10 suppliers are negotiating about that topic in a collaborative process. NFGD's only defense
11 of the provision is a statement that the Commission can regulate the relationship between
12 utilities and suppliers¹¹.

13
14 **Q. MR. CEJ TESTIFIED THAT HE IS ADVISED BY COUNSEL THAT THE**
15 **COMMISSION IS NOT BOUND BY NYPSR REVIEW OF THE**
16 **CYBERSECURITY REQUIREMENTS APPLICABLE IN NEW YORK¹². HOW**
17 **DO YOU RESPOND?**

18 **A.** Of course, the Pennsylvania Commission is not bound by the New York decisions. It is
19 quite ironic that they are making this argument now since NFGD is the entity that made
20 New York relevant to this proceeding. In its original tariff filing, NFGD stated:

21 "The proposed DSA ... is patterned after the DSA [NFGD] **is**
22 **currently using in its New York service territory** but is modified
23 to reflect Pennsylvania rules and regulations. Because they are

¹⁰ Lacey Direct Testimony, p. 13.

¹¹ Cej Rebuttal Testimony, p. 15.

¹² Cej Rebuttal Testimony, p. 18.

1 active in the Company's New York territory, the majority of NGSs
2 and Customer Agents have already executed the New York DSA.
3 [NFGD] will require these parties to execute a Pennsylvania DSA
4 but does not expect that it would require additional Cybersecurity
5 insurance provided that the data interconnect between [NFGD] and
6 these parties is identical."¹³

7 The clear implication in this statement is "New York did it, Pennsylvania should too." This
8 reasoning is common. States often look to what other states have done and stakeholders
9 often point out what other states have done to support advocacy positions. The problem
10 with this statement and NFGD's position is that New York had not adopted the provisions
11 it implied were adopted and when the New York Commission ultimately rejected the
12 cybersecurity insurance requirement, NFGD never informed the Commission of that
13 development. NFGD is now backing off of its implied position that Pennsylvania should
14 follow New York's lead on this issue and taking the opposite position. New York looked
15 at this issue for over a year before it made its ultimate decision on the insurance
16 requirement. It had input from numerous stakeholders (representing hundreds of different
17 companies) from across all of the utilities and utility markets (many more stakeholder than
18 are being heard from in this proceeding in Pennsylvania). After a full review of a
19 voluminous docket, the New York Commission rejected the insurance requirement. While
20 Pennsylvania is not bound to that decision, I believe it represents the best policy outcome.

21
¹³ Statement of National Fuel Gas Distribution Corporation in Support of Tariff Supplement No. 207 to Tariff Gas – PA P.U.C. No. 9, 52 PA. Code § 53.52, p. 3 (emphasis added).

1 **Q. MR. CEJ INDICATED THAT HE DISAGREES WITH YOUR DESCRIPTION OF**
2 **THE PROCESS THAT OCCURRED BEFORE THE NYPSC¹⁴. WHAT IS YOUR**
3 **RESPONSE TO HIS TESTIMONY ON THIS ISSUE?**

4 A. Based on his testimony, I do not think we disagree at all. I affirmatively testified (for some
5 reason, Mr. Cej says “I admitted”) that the Pennsylvania Commission issued its order in
6 the tariff proceeding before the NYPSC issued its order in the cybersecurity docket in New
7 York¹⁵. I affirm that statement here. The Pennsylvania Commission issued its order in the
8 tariff proceeding before the NYPSC issued its order rejecting the cybersecurity insurance
9 requirement. Mr. Cej noted that “it is clear that the Commission approved Supplement No.
10 207 and the DSA applicable to Pennsylvania entities providing service in Pennsylvania on
11 the basis of the record before it.” I agree with that statement also. Mr. Cej, however, did
12 not state that the record before the Commission was slightly, if not more so, misleading.
13 Mr. Cej did not refute any of my testimony regarding the New York process, including my
14 presumption that “the New York utilities had a low degree of certainty that the New York
15 Commission would approve the cybersecurity insurance requirement.”¹⁶ The NFGD tariff
16 filing said that the Pennsylvania DSA was “patterned” after the “DSA [NFGD] is currently
17 using in its New York service territory...”¹⁷ As I explained in detail in my Direct
18 Testimony, at the time of the Pennsylvania filing, NFGD was compelling the use of the
19 DSA in New York over the objection of the participants in the market. NFGD was
20 attempting to remove suppliers from the market if they did not sign the DSA, all while the

¹⁴ Cej Rebuttal Testimony, p. 19.

¹⁵ Lacey Direct Testimony, pp. 19-21.

¹⁶ Lacey Direct Testimony, p. 19.

¹⁷ Lacey Direct Testimony, p. 9.

1 topic of the DSA and its component requirements were being vigorously litigated and not
2 yet approved by the NYPSC¹⁸.

3
4 **IV. RESPONSE TO MR. GRICE**

5 **Q. MR. GRICE TESTIFIES ABOUT THE PURPOSE FOR OBTAINING**
6 **INSURANCE¹⁹. WHAT IS YOUR RESPONSE TO THAT TESTIMONY?**

7 A. Insurance can be purchased as a means of protection from a financial loss. I disagree with
8 his statements beyond that, to the extent that they are anything more than hypotheticals.
9 For example, after his discussion of various reviews and annual surveys, Mr. Grice
10 concludes that “the underwriting process (which occurs prior to the issuance of a policy)
11 may result in the implementation of additional protections by the insured, so that they can
12 obtain the coverage they seek at an acceptable price.”²⁰ Stated differently, Mr. Grice is
13 saying that an underwriter might tell a potential insured, “If you do X, the premium for this
14 coverage might be more appealing.” Mr. Grice did not testify that a certain set of systems
15 and processes are conditions precedent to obtain cybersecurity insurance.

16
17 **Q. MR. GRICE HAS TESTIFIED THAT THE REQUIREMENT FOR NGSS TO**
18 **HAVE CYBERSECURITY INSURANCE PROVIDES ADDITIONAL**
19 **PROTECTIONS TO NFGD AND PENNSYLVANIA CUSTOMERS²¹. HOW DO**
20 **YOU RESPOND?**

21 A. In making this argument, Mr. Grice says that the insurance requirement “assures both
22 Distribution and its Pennsylvania customers that the NGS will have financial resources to

¹⁸ Lacey Direct Testimony, p. 18.

¹⁹ Grice Rebuttal Testimony, p. 3.

²⁰ Grice Rebuttal Testimony, p. 3.

²¹ Grice Rebuttal Testimony, p. 11.

1 address expenses and losses that it would be contractually obligated to pay if associated
2 with a cyberattack that impacts the Pennsylvania Customers' PII.”²² If an NGS has a
3 contractual (or legal) obligation to pay costs, it is up to the NGS to determine how to pay
4 those costs. It is unnecessary and unreasonable to have a host utility impose its preferred
5 method of assurance on those obligations.
6

7 **Q. DOES A GAS DISTRIBUTION COMPANY HAVE THE LEGAL AUTHORITY TO**
8 **REQUEST FINANCIAL ASSURANCE FROM THE SUPPLIERS OPERATING**
9 **ON ITS DISTRIBUTION NETWORK?**

10 A. I am informed by counsel that under 66 Pa.C.S.A. § 2208(c)(1)(i), the Commonwealth of
11 Pennsylvania allows NFGD to impose financial security requirements on NGSs and that
12 the scope of those requirements are set out in 52 Pa. Code § 62.111. These regulations
13 limit the dollar amount of financial assurance that NFGD can require of the suppliers
14 operating behind its network and also articulate the types of security instruments that can
15 be used to meet the financial security requirements.
16

17 **Q. WHAT IS THE PURPOSE OF THE FINANCIAL SECURITY REQUIREMENTS?**

18 A. According to the regulations, “The purpose of the security requirement is to ensure the
19 licensee’s financial responsibility.”²³
20

21 **Q. WHAT IS THE LIMIT OF THE FINANCIAL SECURITY REQUIREMENT?**

²² Grice Rebuttal Testimony, p. 9.

²³ 52 Pa. Code § 62.111(b).

1 A. According to the regulations, "The amount of security should reflect the difference between
2 the cost of gas incurred by [NFGD] and the amount payable by the licensee's retail gas
3 customers during one billing cycle."²⁴

4
5 **Q. WHAT ARE THE FORMS OF FINANCIAL SECURITY ALLOWED UNDER THE**
6 **REGULATIONS?**

7 A. According to the regulations, "The following legal and financial instruments and property
8 shall be acceptable as security: (i) Bond; (ii) Irrevocable letter of credit; (iii) Corporate,
9 parental or other third-party guaranty; (iv) Escrow account; (v) Accounts receivable
10 pledged ...; (vi) Calls on capacity, ... or other operational offsets...: (vii) Cash."²⁵

11
12 **Q. WHOSE DISCRETION IS IT TO DETERMINE THE AMOUNT OF SECURITY?**

13 A. The amount should be mutually agreeable to the parties, but if not, the regulations outline
14 metrics to determine the amount.

15
16 **Q. IS THE AMOUNT OF SECURITY A STATIC NUMBER FOR ALL NGSS?**

17 A. No. The amount of security required is tied to the size of the NGS's business.

18
19 **Q. WHOSE DISCRETION IS IT TO DETERMINE THE FORM OF SECURITY?**

20 A. The form should be mutually agreeable to the parties, but if not, the regulations outline
21 certain instruments that must be acceptable.

²⁴ 52 Pa. Code § 62.111(c)(1).

²⁵ 52 Pa. Code § 62.111(c)(2)(i) through (vii).

1 **Q. IS INSURANCE LISTED AS ONE OF THE TYPES OF FINANCIAL SECURITY**
2 **THAT IS OUTLINED IN THE REGULATIONS?**

3 A. It is not.
4

5 **Q. DO THE REGULATIONS ALLOW NFGD TO IMPOSE A FINANCIAL**
6 **SECURITY REQUIREMENT IN THE AMOUNT OF \$5 MILLION ON**
7 **SUPPLIERS OPERATING ON ITS DISTRIBUTION NETWORK?**

8 A. No.
9

10 **Q. DO THE REGULATIONS ALLOW NFGD TO IMPOSE ANY TYPE OF**
11 **INSURANCE REQUIREMENT ON THE NGSS OPERATING ON ITS**
12 **DISTRIBUTION NETWORK?**

13 A. No.
14

15 **Q. MR. GRICE STATED THAT THE NFGD CYBERSECURITY UNDERWRITERS**
16 **“PERFORM AN ANNUAL SURVEY OF OUR POLICIES AND PROCEDURES,**
17 **AND OUR PROPERTY INSURANCE UNDERWRITERS CONDUCT PERIODIC**
18 **ENGINEERING LOSS CONTROL REVIEWS OF OUR COMPRESSOR**
19 **STATIONS AND OTHER LARGE VALUE FACILITIES.”²⁶ WHAT IS YOUR**
20 **RESPONSE TO THAT?**

21 A. I have reviewed the cybersecurity insurance policy provided by NFGD in response to Gas
22 Supplier Companies data request 2-9. That policy includes no requirement for any type of
23 annual review or survey requirements. I understand that the underwriting process is
24 different from the insurance contract itself, but the contract is the legally binding document.
25 Given the speculative nature of Mr. Grice's conclusion and the lack of support for any type
26 of requirement in the policy itself, I find Mr. Grice's testimony to be unconvincing.

²⁶ Grice Rebuttal Testimony, p. 3.

1 **Q. MR. GRICE TESTIFIED THAT ONE OF PIOGA'S UNDERWRITERS NOTED**
2 **THAT PREMIUMS, LIMITS AND RETENTIONS ARE ALL SUBJECT TO**
3 **CHANGE "BASED ON THE UNDERWRITING INFORMATION THEY**
4 **PROVIDE." ²⁷ HE STATES THAT THIS MAKES CLEAR THAT**
5 **"UNDERWRITING INVOLVES AN EVALUATION OF THE SYSTEMS AND**
6 **PROCESS THE INSURED HAS IN PLACE..." DO YOU AGREE WITH THAT**
7 **STATEMENT?**

8 **A.** I am confident that underwriting involves an evaluation of the systems and processes of a
9 potential insured. This is vastly different from saying that cybersecurity insurance will
10 improve a company's defenses against a cybersecurity issue or will diminish a threat. One
11 only needs to think about their own experiences with home or auto insurance to understand
12 the fallacy of Mr. Grice's argument. Insurance companies are competitive, so they all have
13 different thresholds for risk. They have different underwriting standards, and they price
14 different risks differently. For example, the same homeowner could get vastly different
15 quotes for insuring the same home. Similarly, an automobile insurance provider may
16 charge more than another for the same car and same driver. They both employ underwriters
17 and evaluate risks, yet they reach different conclusions about the same set of facts.
18 However, the underwriting review of a driver does not change a driver's likelihood of being
19 in an accident. Similarly, the underwriter's review of a home does not decrease the
20 likelihood of a theft, fire or other loss.

21
22 **Q. MR. GRICE DISAGREES WITH YOU THAT THE INFORMATION SECURITY**
23 **CONTROL REQUIREMENTS ("REQUIREMENTS") ARE AN ADEQUATE**
24 **SUBSTITUTE FOR INSURANCE²⁸. WHAT IS YOUR RESPONSE TO THAT?**

²⁷ Grice Rebuttal Testimony, pp. 3-4.

²⁸ Grice Rebuttal Testimony, p 6.

1 A. I do not believe I testified that they are substitutes for one another. In fact, I testified that
2 I presumed NFGD believed the Requirements to be sufficient data protection²⁹. Otherwise,
3 they could have proposed other protections. Additionally, I testified that cybersecurity
4 insurance offers no incremental data security protections³⁰, which is why the requirement
5 is meaningless and imposes unnecessary costs on gas suppliers. I am not sure how that is
6 interpreted as me suggesting they are adequate substitutes for one another. Based on Mr.
7 Grice's testimony, I still hold my opinions strongly. Mr. Grice has neither identified any
8 shortfalls in the NFGD list of Requirements, nor has he shown how insurance improves
9 data security.

10

11 **Q. MR. GRICE BELIEVES THAT YOU CONTRADICT YOURSELF BY SAYING**
12 **THAT NFGD CAN REQUIRE SPECIFIC SYSTEM DESIGNS TO INTERFACE**
13 **WITH NFGD YET AT THE SAME TIME SAY THAT NFGD IS NOT IN A**
14 **POSITION TO DICTATE TO SUPPLIERS HOW THEY MANAGE THEIR**
15 **BUSINESS PRACTICES AND THEIR EXPOSURE TO RISKS³¹. WHAT IS YOUR**
16 **REACTION TO THAT TESTIMONY?**

17 A. I disagree that the statements are contradictory. To clarify, NFGD can build its systems in
18 the manner it chooses. It does not need to build multiple systems to interface with different
19 suppliers that have different systems. So, from that perspective, NFGD can prescribe
20 needed technological requirements in order to access the customers' data. Beyond that,
21 NFGD should have no authority over how a supplier manages its business, including how
22 the supplier will manage its business risks.

23

²⁹ Lacey Direct Testimony, p. 25.

³⁰ Lacey Direct Testimony, p. 9.

³¹ Grice Rebuttal Testimony, p. 7.

1 **Q. MR. GRICE STATES THAT NFGD “IS NOT IN THE BUSINESS OF DESIGNING**
2 **INFORMATION TECHNOLOGY SYSTEMS FOR THIRD PARTIES TO**
3 **WITHSTAND CYBER-ATTACKS; IT IS A PUBLIC UTILITY NOT A**
4 **CYBERSECURITY FIRM OR CONSULTANT.”³² WHAT DOES THAT**
5 **STATEMENT MEAN TO YOU?**

6 A. I interpret that statement as a clear admission that NFGD is asking NGSs to implement
7 tools, systems, technologies, and other management practices with which it is not familiar.
8 This of course, begs the question of how NFGD designed its Requirements detailed in the
9 Self Attestation of the DSA in the first place. And why, with no knowledge in building
10 systems to withstand cyberattacks, is it requiring suppliers to build those systems? This
11 statement alone should give the Commission great concern about all of the demands in the
12 DSA. Mr. Grice further states that it is “up to the NGS to work with a cybersecurity firm
13 or consultant to design sufficient systems...” It should be up to the NGS to manage all of
14 its business operations the ways it believes are in the NGS' best interest, including the risk
15 management and insurance function.

16

17 **Q. MR. GRICE AGREES WITH YOUR DESCRIPTION OF “FIRST-PARTY” AND**
18 **“THIRD-PARTY” COVERAGE. HOWEVER, HE CLAIMS YOU MISSED THE**
19 **POINT ON DIFFERENTIATING THE TWO³³. HOW DO YOU RESPOND TO**
20 **THAT CRITICISM?**

21 A. Mr. Grice reveals a giant truth in this statement. On the chance that NFGD is harmed by a
22 data breach at an NGS, NFGD wants to be able to sue (or otherwise bring a claim against)
23 the NGS and wants to ensure that the NGS has the resources to pay for the damages³⁴.
24 NFGD concludes that without a policy in place, “[NFGD] and ultimately its customers

³² Grice Rebuttal Testimony, p. 7.

³³ Grice Rebuttal Testimony, p. 8.

³⁴ Grice Rebuttal Testimony, p. 8.

1 could be subject to these expenses despite the NGS being the target of the attack.”³⁵ His
2 argument does not pass the logical smell test, however.

3 In this exercise, NFGD is making a broad set of assumptions to get to a point where it
4 “could be” harmed and leaves a lot of blank space between the steps of its arguments. First,
5 it assumes an NGS will be the victim of a successful cyberattack. Then it assumes NFGD’s
6 customers’ PII will be compromised. Then it assumes that the NGS will not have the
7 resources to pay the required costs associated with the cyberattack on its facilities. Then it
8 assumes that NFGD “could be” responsible for the costs of the cyberattack on the NGS,
9 without explaining how a breach at an NGS would bring liability to NFGD. It also fails to
10 explain why, if it is liable for damages from a breach, its own insurance coverage, paid for
11 by ratepayers, would not be accessible. Based on this string of assumptions and non-
12 explanations, NFGD wants to compel the purchase of cybersecurity insurance on all of the
13 suppliers operating on its system. Allowing a utility like NFGD to compel suppliers
14 operating on its network to purchase cybersecurity insurance makes no sense. The only
15 benefit that NFGD was able to articulate from this policy is that the supplier would have
16 the resources to compensate NFGD if it was forced to seek compensation from a supplier.
17 Interestingly, NFGD did not attempt to investigate or show the Commission that in the
18 absence of such a policy, the resources would not be available.

19
20 **V. CONCLUSION**

21 **Q. COULD YOU PLEASE SUMMARIZE YOUR SURREBUTTAL TESTIMONY?**

³⁵ Grice Rebuttal Testimony, p. 9 (Emphasis added).

1 A. Yes. NFGD largely ignored the substance of my Direct Testimony, and instead of
2 addressing the concerns, merely mentioned them and shifted to another topic. NFGD has
3 failed to show why the compulsion of cybersecurity insurance for suppliers on its network
4 is in the public interest, just and reasonable; or even allowed under the current regulatory
5 framework in Pennsylvania. NFGD has not refuted that the cybersecurity insurance policy
6 will enhance their unearned market advantage in the gas market. Similarly, NFGD has
7 failed to identify any rational basis for its completely arbitrary audit requirement. It has
8 not defined the scope of the audit, any standards against which it will audit a supplier, nor
9 the frequency or justification for undertaking any particular audit of any particular NGS.

10

11 **Q. DOES THIS CONCLUDE YOUR TESTIMONY?**

12 A. Yes.

EXHIBIT FPL-1

04/29/21 C-2020-3019621

Frank Lacey

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Summary

Recognized energy industry executive and leader known for implementing innovative regulatory and business strategies empowering clients to benefit from emerging policies. Successful in achieving business growth and value through regulatory strategy.

Experience

Board of Directors

Advanced Energy Management Alliance (Founding member and Chairman); Formerly served: Smart Electric Power Alliance (f/k/a Solar Electric Power Association) (finance committee); Association for Demand Response and Smart Grid (finance chair); Electric Power Supply Association (finance committee); ERCOT (finance committee); Retail Energy Supply Association.

Electric Advisors Consulting, LLC

2015- Present

Founder and President

Advise senior leadership on utilizing analytics to develop strategies to address legislative and regulatory change in the energy industry. Also advise and assist entities on facilitating legislative and regulatory change to accommodate evolving business strategies and technologies. Active participation in rate cases and other regulatory initiatives focused on correcting cost allocations and other biases embedded in partially restructured energy markets.

Comverge, Inc./CPower Corporation

2011- 2015

Senior Vice President, Regulatory and Market Strategy

Develop and implement corporate regulatory strategy, including new market entry plans for a \$150 million company performing demand response services in the electricity markets.

Direct Energy

2006 - 2011

Director, Products and Complex Transactions (2008-2011)

For a multi-billion dollar retail electric and gas company, managed Complex Transaction team consisting of four direct reports and eight functional leaders from across the organization, facilitating development of over \$50 million in incremental gross margin sold, while operating within risk management framework.

Director, Government and Regulatory Affairs (2006-2008)

Managed regulatory strategy and regulatory risk in Mid-Atlantic region of US, participating in multiple rate proceedings and regulatory initiatives, securing approximately \$100 million in value.

Starlight Energy

2004 - 2006

President

Led the development of business plan and pro formas for venture seeking \$20 million in equity financing and other financial relationships. Successes included securing \$100 million credit relationship and working capital financing to enable launch of retail Electricity Company.

Strategic Energy

2001- 2004

Director, Regulatory Affairs,

Served on the company's Leadership team, managing a regulatory group of 15 people, leading the development of regulatory strategy, the oversight of regulatory risk and the attainment of desired regulatory results, advocating across 13 states and at FERC.

Arthur Andersen 1998 - 2001
Senior Manager

Responsibility for development and growth of Andersen's transmission restructuring business in Eastern half of US market.

Putnam, Hayes and Bartlett, Inc 1995 - 1998
Associate Consultant

Associate consultant in firm's energy practice with expertise in environmental asset valuation.

Education

Carnegie Mellon University, Tepper School of Business
MSIA (MBA) with concentrations in finance, entrepreneurship and environmental management
Self-designed major with supplemental coursework taken in Public Policy and Engineering Schools.

- Entrepreneur of the Year Award, Don Jones Center for Entrepreneurship.
- Thomas M. Kerr Ethics in Business Award.

University of Maryland
B.S. in Transportation and Logistics

Programs for Life
Certified Leadership Development Trainer

EXHIBIT FLP-2

04/29/21 C-2020-3019621

Prepared Direct Testimony of Frank Lacey On Behalf of Strategic Energy, LLC, before the Public Utilities Commission of the State of California in the matter of the Order Instituting Rulemaking Regarding the Implementation of the Suspension of Direct Access Pursuant to Assembly Bill 1X and Decision 01-09-060. Docket No. R. 02-01-011. June 6, 2002.

Prepared Rebuttal Testimony of Frank Lacey On Behalf of Strategic Energy, LLC before the Public Utilities Commission of the State of California in the matter of the Order Instituting Rulemaking Regarding the Implementation of the Suspension of Direct Access Pursuant to Assembly Bill 1X and Decision 01-09-060. Docket No. R. 02-01-011. June 20, 2002

Cross Examination testimony of On Behalf of Strategic Energy, LLC before the Public Utilities Commission of the State of California in the matter of the Order Instituting Rulemaking Regarding the Implementation of the Suspension of Direct Access Pursuant to Assembly Bill 1X and Decision 01-09-060. Docket No. R. 02-01-011. July 2002.

Prepared Testimony of Frank Lacey on the subject of truing up the CERS Fee On Behalf of Strategic Energy, LLC before the Public Utilities Commission Of the State Of California in the matter of the Order Instituting Rulemaking Regarding the Implementation of the Suspension of Direct Access Pursuant to Assembly Bill 1X and Decision 01-09-060. Docket No. R. 02-01-011. March 19, 2003

Prepared Direct Testimony of Frank Lacey on behalf of Strategic Energy L.L.C. before the Pennsylvania Public Utility Commission in the matter Pennsylvania Public Utility Commission, et al. v. Duquesne Light Company, Docket Nos. R-00038092, R-00038092C0001 and R-00038092C0002. January 2003.

Prepared Rebuttal Testimony of Frank Lacey on behalf of Strategic Energy L.L. C. Before the Pennsylvania Public Utility Commission in the matter Pennsylvania Public Utility Commission, et al. v. Duquesne Light Company Docket Nos. R-00038092, R-00038092C0001 and R-00038092C0002. February 2003.

Prepared Supplemental Testimony of Frank Lacey on behalf of Strategic Energy L.L.C. before the Pennsylvania Public Utility Commission in the matter Pennsylvania Public Utility Commission, et al. v. Duquesne Light Company Docket Nos. R-00038092, R-00038092C0001, R-00038092C0002. November 2003

Cross Examination testimony of Frank Lacey on behalf of Strategic Energy L.L.C. before the Pennsylvania Public Utility Commission in the matter Pennsylvania Public Utility Commission, et al. v. Duquesne Light Company Docket Nos. R-00038092, R-00038092C0001, R-00038092C0002. July 1, 2003.

Prepared Direct Testimony of Frank Lacey submitted on behalf of Strategic Energy L.L.C. and Dominion Retail, Inc. before the Public Utilities Commission of Ohio in the matters of the *Continuation of the Rate Freeze and Extension of the Market Development Period for The Dayton Power and Light Company* Case No. 02-2779-EL-ATA and the *Application of The Dayton Power and Light Company for Certain Accounting Authority Pursuant to Section 4905.13, Ohio Revised Code* Case No. 02-2879-EL-AAM. May 19, 2003.

Prepared Supplemental Testimony of Frank Lacey submitted on behalf of Strategic Energy L.L.C. and Dominion Retail, Inc. before the Public Utilities Commission of Ohio in the matters of the *Continuation of the Rate Freeze and Extension of the Market Development Period for The Dayton Power and Light Company* Case No. 02-2779-EL-ATA and the *Application of The Dayton Power and Light Company for Certain Accounting Authority Pursuant to Section 4905.13, Ohio Revised Code* Case No. 02-2879-EL-AAM. June 12, 2003.

Deposition Testimony of Frank Lacey submitted on behalf of Strategic Energy L.L.C. and Dominion Retail, Inc. before the Public Utilities Commission of Ohio in the matters of the *Continuation of the Rate Freeze and Extension of the Market Development Period for The Dayton Power and Light Company* Case No. 02-2779-EL-ATA and the *Application of The Dayton Power and Light Company for Certain Accounting Authority Pursuant to Section 4905.13, Ohio Revised Code* Case No. 02-2879-EL-AAM. May 2003 and June 2003.

Cross Examination testimony of Frank Lacey on behalf of Strategic Energy L.L.C. and Dominion Retail, Inc. before the Public Utilities Commission of Ohio in the matters of the *Continuation of the Rate Freeze and Extension of the Market Development Period for The Dayton Power and Light Company* Case No. 02-2779-EL-ATA and the *Application of The Dayton Power and Light Company for Certain Accounting Authority Pursuant to Section 4905.13, Ohio Revised Code* Case No. 02-2879-EL-AAM. June 2003.

Oral Testimony of Frank Lacey before the Standing Committee on Energy of the New York State Assembly on the issue of Ensuring a Reliable Supply of Electricity to the People of New York, Chairman Paul D Tonko, presiding. March 6, 2003

Prepared Direct Testimony of Frank Lacey on behalf of Strategic Energy, L.L.C. before the Pennsylvania Public Utility Commission in the matter of the *Petition of Duquesne Light Company for Approval of Plan for Post-Transition Period Provider of Last Resort Service.* Docket No. P-00032071. February 2004.

Prepared Rebuttal Testimony of Frank Lacey on behalf of Strategic Energy, L.L.C. before the Pennsylvania Public Utility Commission in the matter of the *Petition of Duquesne Light Company for Approval of Plan for Post-Transition Period Provider of Last Resort Service.* Docket No. P-00032071. February 2004.

Cross Examination testimony of Frank Lacey on behalf of Strategic Energy, L.L.C. before the Pennsylvania Public Utility Commission in the matter of the *Petition of Duquesne Light Company for Approval of Plan for Post-Transition Period Provider of Last Resort Service.* Docket No. P-00032071. April 1, 2004.

Oral Testimony of Frank Lacey at the *POLR Roundtable* before the Pennsylvania Public Utility Commission re: Optimal Future POLR Design models. May 3, 2004.

Prepared Direct Testimony of Frank Lacey on behalf of Strategic Energy, L.L.C. and Mid-American Energy Company before the Public Utilities Commission of Ohio in the matters of *The Application of the Cincinnati Gas & Electric Company to Modify its Non-Residential Generation Rates to Provide for Market-Based Standard Service Offer Pricing and to Establish a Pilot Alternative Competitively-Bid Service Rate Option Subsequent to Market Development Period,* Case No. 03-93-EL-ATA, *The Application of the Cincinnati Gas & Electric Company for Authority to Modify Current Accounting Procedures for Certain Costs Associated with the Midwest ISO,* Case No. 03-2079-EL-AAM, and *The Application of the Cincinnati Gas & Electric Company for Authority to Modify Current Accounting Procedures for Capital Investment in its Electric Transmission and Distribution System and to Establish a Capital Investment Reliability Rider to be Effective After the Market Development Period,* Case Nos. 03-2080-EL-AAM and 03-2080-EL-ATA. May 6, 2003.

Deposition of Frank Lacey in the matters of *The Application of the Cincinnati Gas & Electric Company to Modify its Non-Residential Generation Rates to Provide for Market-Based Standard Service Offer Pricing and to Establish a Pilot Alternative Competitively-Bid Service Rate Option Subsequent to Market Development Period,* Case No. 03-93-EL-ATA, *The Application of the Cincinnati Gas & Electric Company for Authority to Modify Current Accounting Procedures for Certain Costs Associated with the Midwest ISO,* Case No. 03-2079-EL-AAM, and *The Application of the Cincinnati Gas & Electric Company for Authority to Modify Current Accounting Procedures for Capital Investment in its Electric Transmission and Distribution System and to Establish a Capital Investment Reliability Rider to be Effective After the Market Development Period,* Case Nos. 03-2080-EL-AAM and 03-2080-EL-ATA. May 2003.

Cross Examination Testimony of Frank Lacey on behalf of Strategic Energy, L.L.C. and Mid-American Energy Company before the Public Utilities Commission of Ohio in the matters of *The Application of the Cincinnati Gas & Electric Company to Modify its Non-Residential Generation Rates to Provide for Market-Based Standard Service Offer Pricing and to Establish a Pilot Alternative Competitively-Bid Service Rate Option Subsequent to Market Development Period,* Case No. 03-93-EL-ATA, *The Application of the Cincinnati Gas & Electric Company for Authority to Modify Current Accounting Procedures for Certain Costs Associated with the Midwest ISO,* Case

No. 03-2079-EL-AAM, and *The Application of the Cincinnati Gas & Electric Company for Authority to Modify Current Accounting Procedures for Capital Investment in its Electric Transmission and Distribution System and to Establish a Capital Investment Reliability Rider to be Effective After the Market Development Period*, Case Nos. 03-2080-EL-AAM and 03-2080-EL-ATA. May 18, 2003.

Oral Testimony of Frank Lacey before the Michigan Senate Committee on Technology and Energy on the subject of revision to Public Act 141, the Michigan Electricity Choice and Restructuring Act, Chairman Bruce Patterson, Presiding. May 19, 2004.

Oral Testimony of Frank Lacey on behalf of Direct Energy Services, LLC before the Maryland Senate Finance Committee on Senate Bill 561 on the subject of communications between electric companies and suppliers to enhance the development of competitive electric markets, Chairman Thomas Middleton, Presiding. March 7, 2006.

Oral Testimony of Frank Lacey on behalf of Direct Energy Services, LLC before the Maryland Senate Finance Committee on Senate Bills 814, 1048, 1051 and 1078 on the subject of retail electricity market design, Chairman Thomas Middleton, Presiding. March 14, 2006.

Oral Testimony of Frank Lacey on behalf of Direct Energy Services, LLC before the Maryland House of Delegates Economic Matters Committee on House Bills 1334, 1654 and 1712 on the subject of retail electricity market design, Chairman Dereck Davis, Presiding. March 14, 2006.

Oral Testimony of Frank Lacey on behalf of Direct Energy Services, LLC before the Pennsylvania Public Utility Commission in the Matter of *Petition of Direct Energy Services, LLC for Emergency Order*, Docket No. P-00062205, April 11, 2006.

Oral Testimony of Frank Lacey on behalf of Direct Energy Services, LLC before the Pennsylvania Public Utility Commission in the Matter of *Policies to Mitigate Potential Electricity Price Increases*, Docket No. M-00061957, June 22, 2006.

Prepared Direct Testimony of Frank Lacey on behalf of Direct Energy Services, LLC before the Pennsylvania Public Utilities Commission in the Matter of *Duquesne Light Company Base Rate Case*, Docket No. R-00061346, July 7, 2006. (Case Settled)

Prepared Rebuttal Testimony of Frank Lacey on behalf of Direct Energy Services, LLC before the Pennsylvania Public Utilities Commission in the Matter of *Duquesne Light Company Base Rate Case*, Docket No. R-00061346, August 2, 2006. (Case Settled)

Prepared Surrebuttal Testimony of Frank Lacey on behalf of Direct Energy Services, LLC before the Pennsylvania Public Utilities Commission in the Matter of *Duquesne Light Company Base Rate Case*, Docket No. R-00061346, August 16, 2006. (Case Settled)

Prepared Direct Testimony of Frank Lacey on behalf of Direct Energy Services, LLC before the Pennsylvania Public Utilities Commission in the Matter of *Petition of PPL Electric Utilities Corporation for Approval of Competitive Bridge Plan*, Docket No. P-00062227, November 15, 2006.

Prepared Rebuttal Testimony of Frank Lacey on behalf of Direct Energy Services, LLC before the Pennsylvania Public Utilities Commission in the Matter of *Petition of PPL Electric Utilities Corporation for Approval of Competitive Bridge Plan*, Docket No. P-00062227, December 6, 2006.

Prepared Surrebuttal Testimony of Frank Lacey on behalf of Direct Energy Services, LLC before the Pennsylvania Public Utilities Commission in the Matter of *Petition of PPL Electric Utilities Corporation for Approval of Competitive Bridge Plan*, Docket No. P-00062227, December 15, 2006.

Oral Rejoinder Testimony and Cross-examination of Frank Lacey on behalf of Direct Energy Services, LLC before the Pennsylvania Public Utilities Commission in the Matter of *Petition of PPL Electric Utilities Corporation for Approval of Competitive Bridge Plan*, Docket No. P-00062227, December 15, 2006.

Oral Testimony of Frank Lacey on behalf of Direct Energy Services, LLC before the Pennsylvania House of Representatives, Consumer Affairs Committee, Honorable Joseph Preston Jr., Chairman, March 15, 2007.

Prepared Direct Testimony of Frank Lacey on behalf of Direct Energy Services, LLC and the Retail Energy Supply Association before the Pennsylvania Public Utilities Commission in the Matter of *Petition of Duquesne Light Company for Approval of Default Service Plan for the Period January 1, 2008 through December 31, 2010*, Docket No. P-00072247, March 29, 2007. (case settled)

Prepared Rebuttal Testimony of Frank Lacey on behalf of Direct Energy Services, LLC and the Retail Energy Supply Association before the Pennsylvania Public Utilities Commission in the Matter of *Petition of Duquesne Light Company for Approval of Default Service Plan for the Period January 1, 2008 through December 31, 2010*, Docket No. P-00072247, April 12, 2007. (case settled)

Prepared Surrebuttal Testimony of Frank Lacey on behalf of Direct Energy Services, LLC and the Retail Energy Supply Association before the Pennsylvania Public Utilities Commission in the Matter of *Petition of Duquesne Light Company for Approval of Default Service Plan for the Period January 1, 2008 through December 31, 2010*, Docket No. P-00072247, April 20, 2007. (case settled)

Prepared Direct Testimony of Frank Lacey on behalf of Direct Energy Services, LLC before the Pennsylvania Public Utilities Commission in the Matter of *Petition of Pike County Light & Power Company for Expedited Approval of its Default Service Implementation Plan, Docket No. P-00072245*, March 28, 2007.

Prepared Rebuttal Testimony of Frank Lacey on behalf of Direct Energy Services, LLC before the Pennsylvania Public Utilities Commission in the Matter of *Petition of Pike County Light & Power Company for Expedited Approval of its Default Service Implementation Plan, Docket No. P-00072245*, April 11, 2007.

Oral Surrebuttal Testimony and Cross-examination Testimony of Frank Lacey on behalf of Direct Energy Services, LLC before the Pennsylvania Public Utilities Commission in the Matter of *Petition of Pike County Light & Power Company for Expedited Approval of its Default Service Implementation Plan, Docket No. P-00072245*, April 19, 2007.

Prepared Direct Testimony of Frank Lacey on behalf of Direct Energy Services, LLC, before the Maryland Public Service Commission *In the Matter of the Commission's Investigation of Investor-owned Electric Companies' Standard Offer Service for Residential and Small Commercial Customers in Maryland*, Case No. 9117, September 14, 2007.

Prepared Reply Testimony of Frank Lacey on behalf of Direct Energy Services, LLC, before the Maryland Public Service Commission *In the Matter of the Commission's Investigation of Investor-owned Electric Companies' Standard Offer Service for Residential and Small Commercial Customers in Maryland*, Case No. 9117, September 28, 2007.

Oral Testimony of Frank Lacey on behalf of Direct Energy Services, LLC, before the Maryland Public Service Commission *In the Matter of the Commission's Investigation of Investor-owned Electric Companies' Standard Offer Service for Residential and Small Commercial Customers in Maryland*, Case No. 9117, October 2007.

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Prepared Direct Testimony of Frank Lacey on behalf of Direct Energy Services, LLC and the Retail Energy Supply Association before the Pennsylvania Public Utilities Commission in the Matter of *Petition of West Penn Power Company dba Allegheny Power for Approval of its Retail Electric Default Service Program and Competitive Procurement Plan for Service at the Conclusion of the Restructuring Transition Period, Docket No. P-00072342*, February 12, 2008.

Prepared Rebuttal Testimony of Frank Lacey on behalf of Direct Energy Services, LLC and the Retail Energy Supply Association before the Pennsylvania Public Utilities Commission in the Matter of *Petition of West Penn Power Company dba Allegheny Power for Approval of its Retail Electric Default Service Program and Competitive Procurement Plan for Service at the Conclusion of the Restructuring Transition Period, Docket No. P-00072342, March 11, 2008.*

Prepared Surrebuttal Testimony of Frank Lacey on behalf of Direct Energy Services, LLC and the Retail Energy Supply Association before the Pennsylvania Public Utilities Commission in the Matter of *Petition of West Penn Power Company dba Allegheny Power for Approval of its Retail Electric Default Service Program and Competitive Procurement Plan for Service at the Conclusion of the Restructuring Transition Period, Docket No. P-00072342, March 25, 2008.*

Oral Cross-examination Testimony of Frank Lacey on behalf of Direct Energy Services, LLC and the Retail Energy Supply Association before the Pennsylvania Public Utilities Commission in the Matter of *Petition of West Penn Power Company dba Allegheny Power for Approval of its Retail Electric Default Service Program and Competitive Procurement Plan for Service at the Conclusion of the Restructuring Transition Period, Docket No. P-00072342, April 2, 2008.*

Prepared Direct Testimony of Frank Lacey on behalf of Direct Energy Services, LLC, before the Pennsylvania Public Utility Commission in the matter of the *Joint Application of West Penn Power Company d/b/a Allegheny Power, Trans-Allegheny Interstate Line Company and FirstEnergy Corp. for a Certificate of Public Convenience under Section 1102(a)(3) of the Public Utility Code approving a change of control of West Penn Power Company And Trans-Allegheny Interstate Line Company, Docket Nos. A-2010-2176520 and A-2010-2176732, August 17, 2010*

Prepared Sur-Rebuttal Testimony of Frank Lacey on behalf of Direct Energy Services, LLC, before the Pennsylvania Public Utility Commission in the matter of the *Joint Application of West Penn Power Company d/b/a Allegheny Power, Trans-Allegheny Interstate Line Company and FirstEnergy Corp. for a Certificate of Public Convenience under Section 1102(a)(3) of the Public Utility Code approving a change of control of West Penn Power Company And Trans-Allegheny Interstate Line Company, Docket Nos. A-2010-2176520 and A-2010-2176732, October 1, 2010.*

Oral Cross-examination Testimony of Frank Lacey on behalf of Direct Energy Services, LLC, before the Pennsylvania Public Utility Commission in the matter of the *Joint Application of West Penn Power Company d/b/a Allegheny Power, Trans-Allegheny Interstate Line Company and FirstEnergy Corp. for a Certificate of Public Convenience under Section 1102(a)(3) of the Public Utility Code*

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Oral Testimony of Frank Lacey on behalf of Comverge, Inc. at FERC Technical Conference in the Matter of PJM Interconnection, L.L.C., Docket No. ER11-3322-000, July 29, 2011, discussing the topic of appropriate methodologies to estimate load reductions during a demand response curtailment event.

Prepared Direct Testimony of Frank Lacey on behalf of Comverge, Inc., before the Illinois Commerce Commission in the matter of Commonwealth Edison Company Petition for Statutory Approval of Smart Grid Advanced Metering Infrastructure Deployment Plan Pursuant to Section 16-108.6 of the Public Utilities Act, Docket No. 12-0298, May 11, 2012.

Oral Cross-examination Testimony of Frank Lacey on behalf of Comverge, Inc., before the Illinois Commerce Commission in the matter of Commonwealth Edison Company Petition for Statutory Approval of Smart Grid Advanced Metering Infrastructure Deployment Plan Pursuant to Section 16-108.6 of the Public Utilities Act, Docket No. 12-0298, May 23, 2012.

Prepared Direct Testimony of Frank Lacey On Behalf of Comverge, Inc., before the Illinois Commerce Commission in the matter of Ameren Illinois Company Petition for Statutory Approval of a Smart Grid Advanced Metering Infrastructure Deployment Plan Pursuant to Section 16-108.6 of the Public Utilities Act, Docket No. 12-0244 on rehearing, August 24, 2012.

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Prepared Direct Testimony of Frank Lacey on Behalf of Comverge, Inc., before the Illinois Commerce Commission in the matter of Commonwealth Edison Company's Petition for Approval of Tariffs Implementing ComEd's Proposed Peak Time Rebate Program, Docket No. 12-0484, October 25, 2012.

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Prepared Direct Testimony of Frank Lacey on Behalf of Comverge, Inc., before the Maryland Public Service Commission in the matter of The Investigation of the Process and Criteria for Use in Development

of Requests for Proposal by the Maryland Investor-Owned Utilities for New Generation to Alleviate Potential Short-Term Reliability Problems in the State of Maryland, Case No. 9149, January 31, 2013.

Prepared Supplemental Direct Testimony of Frank Lacey on Behalf of Comverge, Inc., before the Maryland Public Service Commission in the matter of The Investigation of the Process and Criteria for Use in Development of Requests for Proposal by the Maryland Investor-Owned Utilities for New Generation to Alleviate Potential Short-Term Reliability Problems in the State of Maryland, Case No. 9149, February 25, 2013.

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Oral Testimony of Frank Lacey on behalf of Comverge, Inc. at FERC Technical Conference in the Matter of PJM Interconnection, L.L.C., Docket No. ER13-2108-000, October 11, 2013, discussing the appropriate information requirements for demand response offers made three years prior to a delivery year.

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Prepared Direct Testimony of Frank Lacey on behalf of Direct Energy before the Massachusetts Department of Public Utilities in the Investigation as to the Propriety of Proposed Tariff Change in response to the Petition of Massachusetts Electric Company and Nantucket Electric Company each d/b/a National Grid, Docket Number DPU 15-155, March 18, 2016.

Prepared Rebuttal Testimony of Frank Lacey on behalf of Direct Energy before the Massachusetts Department of Public Utilities in the Investigation as to the Propriety of Proposed Tariff Change in response to the Petition of Massachusetts Electric Company and Nantucket Electric Company each d/b/a National Grid, Docket Number DPU 15-155, April 28, 2016.

Oral Cross-examination Testimony of Frank Lacey on behalf of Direct Energy before the Massachusetts Department of Public Utilities in the Investigation as to the Propriety of Proposed Tariff Change in response to the Petition of Massachusetts Electric Company and Nantucket Electric Company each d/b/a National Grid, Docket Number DPU 15-155, May 18, 2016.

Expert Rebuttal Report and Damage Summary of Frank Lacey, Response to the Review Submitted by Nathan Katzenstein, prepared on behalf of Astral Energy in the matter of Treetop Development, et

al. v. Astral Energy, et al., Docket #: BER-L-9414-13, Superior Court of New Jersey, Bergen County, December 9, 2016.

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Prepared Rebuttal Testimony of Frank Lacey on behalf of Clearview Energy before the Pennsylvania Public Utilities Commission in *Pennsylvania PUC v. Clearview Electric, Inc.*, Docket No. C-2016-2543592, January 9, 2017.

Prepared Direct Testimony of Frank Lacey on behalf of the Cape Light Compact before the Massachusetts Department of Public Utilities in the *Petition of NSTAR Electric Company and Western Massachusetts Electric Company d/b/a Eversource Energy for Approval of their Grid Modernization Plans*, Docket No. D.P.U. 15-122/123, March 10, 2017.

Oral Cross-examination Testimony of Frank Lacey (as part of the Cape Light Compact Panel of Witnesses) before the Massachusetts Department of Public Utilities in the *Petition of NSTAR Electric Company and Western Massachusetts Electric Company d/b/a Eversource Energy for Approval of their Grid Modernization Plans*, Docket No. D.P.U. 15-122/123, May 31, 2017.

Prepared Direct Testimony of Frank Lacey on behalf of the Retail Energy Supply Association before the Massachusetts Department of Public Utilities in the *Petition of NSTAR Electric Company and Western Massachusetts Electric Company each d/b/a Eversource Energy for Approval of an Increase in Base Distribution Rates for Electric Service Pursuant to G.L. C. 164, § 94 and 220 C.M.R. § 5.00*, Docket No. D.P.U. 17-05, April 28, 2017.

Oral Cross-examination Testimony of Frank Lacey on behalf of the Retail Energy Supply Association before the Massachusetts Department of Public Utilities in the *Petition of NSTAR Electric Company and Western Massachusetts Electric Company each d/b/a Eversource Energy for Approval of an Increase in Base Distribution*

Rates for Electric Service Pursuant to G.L. C. 164, § 94 and 220 C.M.R. § 5.00, Docket No. D.P.U. 17-05, June 27, 2017.

Prepared Direct Testimony of Frank Lacey on behalf of the Retail Energy Supply Association before the New York Public Service Commission in the *Matter of Eligibility Criteria for Energy Service Companies*, Case No. 15-M-0127, in the *Proceeding on the Motion of the Commission to Assess Certain Aspects of the Residential and Small Non-Residential Retail Energy Markets in New York State*, Case No. 12-M-0476, and in the *Matter of Retail Access Business Rules*, Case No. 98-M-1343, September 15, 2017.

Prepared Rebuttal Testimony of Frank Lacey on behalf of the Retail Energy Supply Association before the New York Public Service Commission in the *Matter of Eligibility Criteria for Energy Service Companies*, Case No. 15-M-0127, in the *Proceeding on the Motion of the Commission to Assess Certain Aspects of the Residential and Small Non-Residential Retail Energy Markets in New York State*, Case No. 12-M-0476, and in the *Matter of Retail Access Business Rules*, Case No. 98-M-1343, October 27, 2017.

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Prepared Direct Testimony of Frank Lacey on behalf of Direct Energy Services and its Affiliates before the Virginia State Commerce Commission in the *Application of Virginia Electric and Power Company for Approval of 100% Renewable Energy Tariffs Pursuant to Subsection 56-577 A 5 and 56-234 of the Code of Virginia*, Docket No. PUR-2017-00060, August 23, 2017.

Oral Surrebuttal and Cross-examination Testimony of Frank Lacey on behalf of Direct Energy Services and its Affiliates before the Virginia State Commerce Commission in the *Application of Virginia Electric and Power Company for Approval of 100% Renewable Energy Tariffs Pursuant to Subsection 56-577 A 5 and 56-234 of the Code of Virginia*, Docket No. PUR-2017-00060, December 4, 2017.

Prepared Direct Testimony of Frank Lacey on behalf of Direct Energy and its affiliates before the Commonwealth of Virginia State Corporate Commission in the *Application of Virginia Electric and Power Company for Approval of 100 Percent Renewable Energy Tariffs for Residential and Non-residential Customers Pursuant to SS 56-577 A 5 and 56-234 of the Code of Virginia*, Case No. PUR-2017-00157, April 17, 2018

Oral Direct and Cross-examination Testimony of Frank Lacey on behalf of the Retail Energy Supply Association before the Public Service Commission of the State of Delaware, *In the Matter of the Review of Customer Choice in the State of Delaware*, Docket No. 15-1693, April 19, 2018.

Prepared Direct Testimony of Frank Lacey on behalf of Direct Energy and Direct Energy Solar before the Rhode Island Public Utilities Commission in the matter of *The Narragansett Electric Co. d/b/a National Grid's Proposed Power Sector Transformation (PST) Vision and Implementation Plan*, Docket No. 4780, April 25, 2018, (Case Settled).

Oral Testimony on behalf of the Advanced Energy Management Alliance before the Pennsylvania Public Utilities Commission *En Banc Hearing for Supplier Consolidated Billing*, Docket No. M-2018-2645254, June 14, 2018.

Prepared Supplemental Direct Testimony of Frank Lacey on behalf of Direct Energy and its affiliates before the Commonwealth of Virginia State Corporate Commission in the *Application of Virginia Electric and Power Company for Approval of 100 Percent Renewable Energy Tariffs for Residential and Non-residential Customers Pursuant to SS 56-577 A 5 and 56-234 of the Code of Virginia*, Case No. PUR-2017-00157, June 19, 2018.

Prepared Direct Testimony of Frank Lacey on behalf of Direct Energy and its affiliates before the New Jersey Board of Public Utilities, *In the Matter of the Petition of Public Service Electric and Gas Company for Approval of an Increase in Electric and Gas Rates and for Changes in the Tariffs for Electric and Gas Service, B.P.U.N.J. No. 16 Electric and B.P.U.N.J. No. 16 Gas, and for Changes in Depreciation Rates, Pursuant to N.J.S.A. 48:2-18, N.J.S.A. 48:2-21 and N.J.S.A. 48:2-21.1, and for Other Appropriate Relief*, BPU Docket Nos. ER18010029 and GR18010030, OAL Docket No. PUC 01151-18, August 6, 2018, (Case Settled).

Oral Testimony and Cross Examination of Frank Lacey (as part of Direct Energy Panel) before the Rhode Island Public Utilities Commission in the matter of *The Narragansett Electric Co. d/b/a National Grid's 2018 Standard Offer Service (SOS) Procurement Plan and 2018 Renewable Energy Standard (RES) Procurement Plan*, Docket No. 4692, August 27, 2018.

Oral surrebuttal testimony and cross examination of Frank Lacey on behalf of Direct Energy and its affiliates before the Commonwealth of Virginia State Corporate Commission in the *Application of Virginia Electric and Power Company for Approval of 100 Percent Renewable Energy Tariffs for Residential and Non-residential Customers Pursuant to SS 56-577 A 5 and 56-234 of the Code of Virginia*, Case No. PUR-2017-00157, September 18, 2018.

Prepared Direct Testimony of Frank Lacey on behalf of Direct Energy *In the Matter of the Long-Term Forecast Report of Ohio Power Company and Related Matters; In the Matter of the Application Seeking Approval of Ohio Power Company's Proposal to Enter Into Renewable Energy Purchase Agreements for Inclusion in the Renewable Generation Rider; In the Matter of the Application of Ohio Power Company to Amend its Tariffs*, Case Nos. 18-501-EL-FOR; 18-1392-EL-RDR and 18-1393-EL-ATA, January 2, 2019.

Oral rebuttal testimony and cross-examination of Frank Lacey on behalf of Direct Energy *In the Matter of the Long-Term Forecast Report of Ohio Power Company and Related Matters; In the Matter of the Application Seeking Approval of Ohio Power Company's Proposal to Enter Into Renewable Energy Purchase Agreements for Inclusion in the Renewable Generation Rider; In the Matter of the Application of Ohio Power Company to Amend its Tariffs*, Case Nos. 18-501-EL-FOR; 18-1392-EL-RDR and 18-1393-EL-ATA, January 23, 2019.

Prepared Direct Testimony of Frank Lacey on behalf of Direct Energy Services and Direct Energy Business before the Virginia State Corporation Commission in the *Application of Virginia Electric and Power Company for Approval to Establish Rate Schedule, Designated Rate Schedule MBR, Pursuant to §§ 56-234 A of the Code of Virginia*, Case No. PUR-2018-00192, June 13, 2019.

Oral surrebuttal testimony and cross examination of Frank Lacey on behalf of Direct Energy Services and Direct Energy Business before the Virginia State Corporation Commission in the *Application of Virginia Electric and Power Company for Approval to Establish Rate Schedule, Designated Rate Schedule MBR, Pursuant to §§ 56-234 A of the Code of Virginia*, Case No. PUR-2018-00192, July 26, 2019.

Oral direct testimony and cross examination of Frank Lacey on behalf of Direct Energy Business before the Virginia State Corporation Commission on the *Motion of Direct Energy Business for Temporary Injunctive Relief and Request for Expedited Action*, Case No. PUR-2019-00117, August 7, 2019.

Oral direct testimony and cross examination of Frank Lacey on behalf of Direct Energy Business before the Virginia State Corporation Commission in the joint hearing in the *Petition of Virginia Electric and Power Company for a Declaratory Judgement* against Direct Energy and the *Petition of Virginia Electric and Power Company for a Declaratory Judgement* against Calpine Energy Solutions, Case Nos. PUR-2019-00117 and PUR-2019-00118, August 20, 2019.

Prepared Direct Testimony of Frank Lacey on behalf of the Energy Supplier Coalition before the Maryland Public Service Commission in the *Application of Baltimore Gas & Electric Company to Adjust Electric and Gas Base Rates*, Case No. 9610, September 10, 2019.

Prepared Rebuttal Testimony of Frank Lacey on behalf of the Energy Supplier Coalition before the Maryland Public Service Commission in the *Application of Baltimore Gas & Electric Company to Adjust Electric and Gas Base Rates*, Case No. 9610, October 4, 2019.

Prepared Direct Testimony of Frank Lacey on behalf of Direct Energy before the Virginia State Corporate Commission in *the Application of Virginia Electric and Power Company For Approval of a 100 Percent Renewable Energy Tariff, Designated Rider TRG, Pursuant to 56-577 A 5 and 56-234 of the Code of Virginia*, Case No. PUR-2019-00094, October 17, 2019.

Prepared Surrebuttal Testimony of Frank Lacey on behalf of the Energy Supplier Coalition before the Maryland Public Service Commission in the *Application of Baltimore Gas & Electric Company to Adjust Electric and Gas Base Rates*, Case No. 9610, October 22, 2019.

Prepared Rejoinder Testimony of Frank Lacey on behalf of the Energy Supplier Coalition before the Maryland Public Service Commission in the *Application of Baltimore Gas & Electric Company to Adjust Electric and Gas Base Rates*, Case No. 9610, November 8, 2019.

Oral testimony and cross-examination of Frank Lacey on behalf of the Energy Supplier Coalition before the Maryland Public Service Commission in the *Application of Baltimore Gas & Electric Company to Adjust Electric and Gas Base Rates*, Case No. 9610, November 14, 2019.

Oral Rebuttal Testimony of Frank Lacey on behalf of Direct Energy before the Virginia State Corporate Commission in *the Application of Virginia Electric and Power Company For Approval of a 100 Percent Renewable Energy Tariff, Designated Rider TRG, Pursuant to 56-577 A 5 and 56-234 of the Code of Virginia*, Case No. PUR-2019-00094, November 21, 2019.

Affidavit of Frank Lacey in opposition to Plaintiffs' Motion for Class Certification before the Supreme Court of New York, County of New York, IAS Part 17, in *BLT Steak, LLC and BLT Fish LLC v. Liberty Power Corp., LLC, d/b/a Liberty Power New York and Liberty Power Holdings LLC*, Index No 151293/2013 (S Hagler, J.S.C.) Mot. Seq. 11, February 20, 2020.

Direct Testimony of Frank Lacey on behalf of Direct Energy before the Virginia State Corporate Commission in *Commonwealth of Virginia, ex rel. State Corporation Commission, Ex parte: Allocation of RPS Costs to Certain Customers of Virginia Electric and Power Company*, Case No. PUR-2020-00164, November 2, 2020.

Direct Testimony of Frank Lacey on behalf of Direct Energy before the Virginia State Corporate Commission in *Commonwealth of Virginia, ex rel., State Corporation Commission, Ex Parte:*

Establishing 2020 RPS Proceeding for Virginia Electric and Power Company, Case No. PUR-2020-00134, January 4, 2021.

Direct Testimony of Frank Lacey on behalf of the Supplier Companies (IGS Energy and Direct Energy) before the Public Utility Commission of Ohio In the Matter of the Application of Ohio Power Company for an increase in Electric Distribution Rates, In the Matter of the Application of Ohio Power Company for Tariff Approval, and In the Matter of the Application of Ohio Power Company for Approval to Change Accounting Methods, Case Nos. 20-585-EL-AIR, 20-586-EL-ATA, and 20-587-EL-AAM, **February 2021**.

Lacey, Frank, *FERC Order No. 745 – Problems and Solutions to the "EPSA" Problem*, Presentation to National Regulatory Conference, Williamsburg, VA, May 21, 2015.

Panel Discussion, *The State of Demand Response in Organized Markets – The uncertainty created by EPSA v. FERC*, Energy Bar Association, Northeast Chapter Annual Meeting, Newark, NJ, June 11, 2015.

Lacey, Frank, *The Supreme Court on Energy in 2016, What it Means to Your Business*, Presentation to Solar Power International, Las Vegas, NV, September 14, 2016.

Lacey, Frank, *Electric Storage Participation in Markets Operated by Regional Transmission Organizations and Independent System Operators*, Presentation to Solar Power International, Las Vegas, NV, September 11, 2017.

Lacey, Frank, *Update: Electric Storage Participation in Markets Operated by Regional Transmission Organizations and Independent System Operators* Solar Power Northeast, February 5, 2018.

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Lacey, Frank, *Default Service Pricing – the Flaw and the Fix*, The Electricity Journal, Volume 32 (April 2019).

Lacey, Frank and Travis Kavulla, *Financial and Governance Protections for Electric Cooperatives*, R Street Institute, R Street Policy Study No. 181, September 2019.

Lacey, Frank and Rob Gramlich, *Who's the Buyer? Retail Electric Market Structure Reforms in Support of Resource Adequacy and Clean Energy Deployment*, Prepared for the Wind Solar Alliance, March 2020.

Webinar Presenter, *Retail Market Structure Reforms Critical to Improving Wholesale Markets*, Presentation to members of the Maryland Legislature and their respective staff members, November 19, 2020.

Webinar Participant/Panelist, *The Future of Demand Response*, hosted by Power Markets Today, October 17, 2017.

Webinar Participant/Panelist, *Rethinking Demand Response - The Evolution from Simple to Sophisticated*, Hosted by Smart Electric Power Alliance, December 14, 2017.

Lacey, Frank and Taff Tschamler, *Implementing Principles of Default Service: A Roadmap for Competitive Retail Power Markets*, Paper released at PA POLR Roundtable, May 2004.

Building a for-profit Transmission Operation; Key Business Parameters, Presentation to the EEI Transmission Planning Task Force, Kansas City, MO.

Dozens of industry and client-specific presentations on the topics of industry transformation in the areas of transmission restructuring, retail restructuring, demand response, rate design, cost allocation and the energy industry ramifications of FERC Order 745 and FERC jurisdiction over demand response.

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

EnergyMark LLC, Vineyard Oil and 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	:	

**DIRECT TESTIMONY
OF TIMOTHY D. WRIGHT
ON BEHALF OF ENERGYMARK LLC,
VINEYARD OIL AND GAS COMPANY, MID AMERICAN NATURAL RESOURCES
LLC, AND TOTAL ENERGY RESOURCES LLC**

Joint Complainants' Statement No. 2
March 4, 2021

04/29/21 C-2020-3019621

1 Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS FOR THE RECORD.

2 A. My name is Timothy D. Wright. My office is located at 6653 Main Street, Williamsville,
3 NY 14221.

4
5 Q. BY WHOM ARE YOU EMPLOYED AND IN WHAT CAPACITY?

6 A. I am employed by EnergyMark, LLC. as Vice President.

7
8 Q. FOR WHOM ARE YOU APPEARING IN THIS PROCEEDING?

9 A. I am appearing here today on behalf of EnergyMark, Mid-American, Vineyard Oil & Gas,
10 and Total Energy.

11

12 Q. BRIEFLY DESCRIBE YOUR EDUCATIONAL EXPERIENCE AND RELEVANT
13 QUALIFICATIONS.

14

15 A. I hold a Bachelor of Arts degree in Political Science, from Niagara University, and a Master
16 of Business Administration from Niagara University. Additionally, I hold a Registered
17 Commercial Gas Consultant Certificate from the Illinois Institute of Gas Technology. In
18 1988 I started my energy career at National Fuel Gas Distribution in the Energy Services
19 Department. In 1996 I transferred to National Fuel Resources, as an Energy Trader. In
20 1998 I joined Texaco Natural Gas as Northeast Regional Trader of Natural Gas. In 2002,
21 I became a partner in NOCO Energy Marketing (NEM). In 2006, Constellation Energy
22 (CNEG) purchased NEM and I became a CNEG Regional Manager. In 2010 I partnered
23 with Gary A. Marchiori to form EnergyMark.

24

1 Q. **HAVE YOU PARTICIPATED PREVIOUSLY IN REGULATORY CASES IN**
2 **PENNSYLVANIA?**

3
4 A. No.

5

6 Q. **HAVE YOU PROVIDED TESTIMONY IN UTILITY REGULATORY**
7 **PROCEEDINGS IN OTHER STATES?**

8
9 A. Yes. 8/26/16 NY PSC Proceeding on motion of the Commission as to the rates, charges,
10 rules, and regulations of National Fuel Gas Distribution (“NFGD”) for gas service.

11

12 Q. **WHAT IS THE PURPOSE OF YOUR DIRECT TESTIMONY?**

13 A. To address the process that the utilities in New York used to try to force natural gas
14 suppliers and electricity suppliers to comply with cyber security requirements and NFGD
15 brought the unfinished result of that process to Pennsylvania and represented that it was
16 complete, to gain approval in Pennsylvania, and the impacts of those requirements.

17

18 Q. **CAN YOU EXPLAIN AT A HIGH LEVEL WHAT HAPPENED IN NEW YORK?**

19 A. During the first quarter of 2018 there was a security breach at a large utility. This breach
20 prompted all NY utilities, NY PSC and NY energy suppliers to review and work together
21 to strengthen cybersecurity protections. All parties agreed with the need for appropriate
22 cyber security protections. This process led to requiring all energy suppliers to complete a
23 Self -Attestation of Information Security controls by the end of June 2018. The utilities
24 also requested that energy suppliers review and comment on a proposed utility Data
25 Security Agreement (“DSA”). EnergyMark participated in the review process in
26 conjunction with the National Energy Marketers Association (“NEM”). NEM supported

1 the Retail Energy Supply Association's request to do a formal collaborative process in NY
2 with all utilities and the PSC. NEM, among other parties, opposed several provisions in
3 the Utility drafted DSA including the "unjustified and burdensome cyber insurance
4 requirement". In October 2019, the NY PSC agreed with NEM that the utilities did not
5 establish that Cybersecurity insurance would be an efficient and effective means of
6 mitigating cybersecurity risks and financial costs associated with security breaches.
7 Consequently, the NY PSC declined to adopt a generic cybersecurity insurance provision
8 in the DSA. On December 16th, 2019, the utilities filed an updated DSA and SA for energy
9 suppliers to sign that did not require a cybersecurity insurance policy.

10

11 **Q. DID THE ELECTRIC AND GAS UTILITIES IN NEW YORK ALSO SEEK TO**
12 **REQUIRE CYBER SECURITY INSURANCE?**

13

14 A. Originally the Joint Utilities in NY requested insurance from all energy suppliers.

15

16 **Q. WAS THE INSURANCE REQUIREMENT APPROVED IN NEW YORK?**

17 A. No. The NY PSC declined to adopt a generic cybersecurity insurance provision in the
18 DSA.

19

20 **Q. DID THE NEW YORK PUBLIC SERVICE COMMISSION APPROVE ANY**
21 **CYBER SECURITY REQUIREMENTS?**

22

23 A. Yes. The utilities required energy suppliers to file a Self-Attestation and a Data Security
24 Agreement in order to continue operating behind the utility systems.

25

1 **Q. DO THE JOINT COMPLAINANTS' OPPOSE THOSE MEASURES?**

2 A. No. In order to continue supplying customers in NYS the Joint Complainants agreed to
3 the provisions stipulated in the SA and DSA.

4

5 **Q. DID YOUR COMPANY COMPLETE THE PROCESS IN NEW YORK?**

6 A. Yes, except the insurance, EnergyMark submitted the DSA and SA to NFG on 8/31/18
7 with the following statement. This Self-Attestation of Information Security Controls is
8 contingent upon the final outcome of the NYS PSC Data Security Agreement (DSA)
9 process, EnergyMark, LLC has provided the best available information as it pertains to
10 current compliance standards and reserves the right to modify or rescind this form upon
11 final outcome and approval by the NY PSC of the DSA process. NFG Continually pushed
12 back stating they would not accept a modified DSA or SA with the above statement, even
13 though the process with the commission was not complete. I am aware that other
14 companies also signed the DSA and submitted the Self-Attestation.

15

16 **Q. WERE YOU INVOLVED WITH YOUR COMPANY'S REVIEW OF THE NFGD**
17 **FILING IN PA?**

18

19 A. In a supervisory role. In March 2019 NFGD informed all their PA suppliers that it would
20 follow / track the NY DSA process. In July 2019 comments were due to the PA PUC
21 however we were informed by NFGD that we would not need to file because NFGD
22 intended to follow the outcome of the NY PSC proceeding. The NY outcome occurred in
23 October 2019, after the approval of NFGD's PA rate case by the PUC.

24 **Q. WHAT DID NFGD REPRESENT TO SUPPLIERS IN PA ABOUT THE FILING**
25 **WHEN IT WAS FIRST MADE?**

26

1 A. In the 3/21/19 and 10/10/19 NFGD marketer meetings they stated in their presentation that
2 NFGD would track/follow the NY requirements. Due to the statements from the 3/21/19
3 marketer meeting, we did not file a protest or send questions to NFGD based on the 7/19/19
4 email notice of changes to the PA GTOP. NFGD after this filing reiterated that they would
5 follow the NY requirements in the 10/10/19 meeting, and now after NY is settled NFGD
6 is going back on their word.

7 I feel it is disingenuous and misleading that NFGD stated in their marketer meetings that
8 they would follow the New York requirements, and now are not. The snips below are
9 directly from NFGD's presentation and the dates of the presentation. We thought that once
10 everything was completed in NY that NFGD would then amend their filing to update to the
11 NY requirements. . The timeline on the completion by NY was on October 17th, 2019 the
12 NY PSC Ordered Minimum Cybersecurity and Privacy Protections and Making Other
13 Findings. On December 16th, 2019 the Joint Utilities filed a revised DSA and SA, that was
14 further updated and finally due on 1/31/2020.

15

16 10/10/19



Rates & Regulatory Update

Pennsylvania Update

Pennsylvania Tariff Filing (Approved 8/29/19)

1. Cyber-Security requirements

- The proposed requirements would follow the New York requirements

18

19 3/21/19



National Fuel

Rates & Regulatory Update

Pennsylvania Update

Pennsylvania Tariff Filing (Planned for May-June)

1. Cyber-Security requirements

- The proposed requirements would track the New York requirements.

1

2 Q. HOW DID ENERGMARK INTERPRET NFGD'S REPRESENTATIONS?

3 A. We were under the impression that NFGD would follow the New York requirements as
4 they stated on their PowerPoint slide 20 in their Fall 2019 Marketer/Supplier
5 Teleconference on 10/10/19.

6

7 Q. DID ENERGMARK SPEAK WITH NFGD?

8 A. Yes. EnergyMark communicated with NFGD through phone calls, emails, and
9 teleconference. Our former employee had phone conversations with Chris Cej from NFGD
10 and Dan Mumford from the PA PUC. We also have emails between the parties. To note
11 EnergyMark didn't have extensive conversations with NFGD regarding the PA Tariff as
12 we had relied on their comments on following/tracking NY and believed the two states
13 DSA's and SA's would be the same.

14 On 3/17/20, NFGD sent out an email with the DSA and SA and noted among other things
15 that cyber security insurance in the amount of \$5,000,000 was included.

16 On 3/18/20, we sent an email to NFGD confused that they were not following/tracking the
17 NY final outcome in PA after NY was finalized. EnergyMark notified NFGD and PA Staff
18 of the NFGD Teleconference on 3/19/20 and that EnergyMark would like to discuss the
19 issue. On 3/19/20, at the NFGD Spring Teleconference, we brought up that NFGD stated

1 they would track/follow NY and are not doing so now. We also asked if NFGD had the
2 ability to follow the NY proceedings and file an amendment to the tariff to remove the
3 insurance. Dan Mumford stated NFGD had the ability to do so. Chris Cej stated that he'd
4 be happy to look at anything the commission would like them to.

5
6 **Q. WHEN DID ENERGYMARK REALIZE THAT NFGD DID NOT INTEND TO**
7 **MODIFY ITS PENNSYLVANIA TARIFF TO LOOK LIKE WHAT HAD BEEN**
8 **APPROVED IN NEW YORK?**

9
10 A. On 3/20/20 Chris Cej in an email between EnergyMark and Dan Mumford, Chris stated,
11 "that NFGDC intends to comply with its approved tariff and GTOP." He further stated,
12 "of course NFGDC would welcome further discussion on this issue with PA Staff for their
13 consideration." On 3/24/20 Dan Mumford stated that since NFGDC wasn't going to
14 change, we would have to file a complaint with the Commission.

15
16 **Q. WHAT WAS THE REACTION?**

17 A. We were taken aback that NFGD was going against their statements and we were forced
18 to file a complaint against NFGDC. Our further reaction is this is becoming a troubling
19 trend by NFGDC as that they make statements that their actions don't follow. First with
20 track/follow in their meetings, and then with Chris stating they welcome a discussion.

21 Our final reaction is that we view these actions by NFGD as heavy-handed directives
22 placed on a competitor and are unacceptable, unfair, and unreasonable.

23
24 **Q. DID ENERGYMARK MAKE AN EFFORT TO COMPLY?**

1 A. Yes, we sought insurance quotes and realized it was far too expensive for the number of
2 customers that we supplied gas to in the state. This prompted us to file a formal complaint
3 against NFGD.

4

5 **Q. EXPLAIN HOW THE INSURANCE PRODUCT IS PRICED?**

6 A. The cost covers the company everywhere we operate so this, in my opinion, is a backdoor
7 effort for NFGD to get in PA what they were denied in New York.

8

9 **Q. HOW DOES THE COST OF THE INSURANCE COMPARE WITH THE SIZE OF
10 YOUR OPERATIONS IN PA?**

11
12 A. It is a significant cost based on the number of customers and volumetric throughput we
13 have in PA.

14

15 **Q. HOW WOULD THAT EXPENSE IMPACT ENERGYMARK'S BUSINESS?**

16 A. We would have to calculate the cost vs the benefit of maintaining a customer base in PA.

17

18 **Q. IS ENERGYMARK ABLE TO PASS ON THIS COST?**

19 A. We are contractually able to pass this cost on to our residential and small commercial
20 customers, however, the additional costs will make us less competitive with larger
21 suppliers and the utility. The majority of EnergyMark's customers in PA are on a
22 Guaranteed Savings rate, adding this cost will likely force this product line to be
23 discontinued. Once discontinued, those customers will be returned to the Utility where
24 they will no longer enjoy this savings. Further as we lose business, the cost would continue

1 to increase on a per unit basis to remaining customers and eventually we would not have
2 any customers in PA.

3

4 **Q. ARE YOU ABLE TO PASS THESE COSTS ON TO YOUR NATURAL GAS**
5 **PRODUCERS?**

6

7 **A.** EnergyMark does not have contracts that allow us to pass such costs on to producers, I do
8 not know if other suppliers do, although, even if they did, it would be a difficult business
9 decision to weigh harming and potentially losing the relationship with a supplier versus
10 seeking to recover the extra cost.

11

12 **Q. DOES THIS CONCLUDE YOUR TESTIMONY?**

13 **A.** Yes.

14

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

EnergyMark LLC, Vineyard Oil and 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	:	

**SURREBUTTAL TESTIMONY
OF TIMOTHY D. WRIGHT
ON BEHALF OF ENERGYMARK LLC,
VINEYARD OIL AND GAS COMPANY, MID AMERICAN NATURAL RESOURCES
LLC, AND TOTAL ENERGY RESOURCES LLC**

Joint Complainants' Statement No. 2-SR
April 16, 2021

04/29/21 C-2020-3019621

1 **Q. Are you the same Tim Wright that offered Direct Testimony in this proceeding?**

2 A. Yes.

3

4 **Q. What is the purpose of your Surrebuttal Testimony?**

5 A. To respond to several incorrect or misleading assertions in the Rebuttal Testimony of
6 National Fuel Gas Distribution (“NFGD”) witnesses Mr. Cej and Mr. Grice.

7

8 **Q. Have you reviewed the Rebuttal Testimony offered by NFGD witnesses Mr. Cej and
9 Mr. Grice?**

10 A. Yes.

11

12 **Q. On pages 4 and 5 of his Rebuttal Testimony, Mr. Cej claims that you don’t credibly
13 address NFGD’s motivation for: 1) filing a tariff in Pennsylvania that is practically
14 identical to its New York tariff; and then 2) telling the PUC and suppliers that the
15 Pennsylvania tariff tracks the New York requirements. How do you respond?**

16 A. It may be true that I don’t know exactly what NFGD’s internal “thought process” was on
17 why it insisted on jumping the gun and filing a tariff (Supplement 207) in Pennsylvania
18 before it was approved in New York, and yet still claim that one will track the other. I also
19 don’t know why NFGD ultimately failed to live up to that representation when New York
20 disapproved of important aspects of the tariff. Based upon NFGD’s subsequent refusal to
21 adjust the Pennsylvania DSA to “track” what was approved in New York, however, I can
22 only judge NFGD by its actions. It appears to me to be an effort for NFGD to hedge its
23 bet, and impose a condition on suppliers through its Pennsylvania filing that it failed to

1 receive approval for in New York; namely, for all suppliers who operate in both states to
2 be forced to carry cyber security insurance. Its own statements in the rejected New York
3 tariff, that suppliers need only purchase the insurance in New York because it will cover
4 both states, make it clear that NFGD knew that the premiums in one state would necessarily
5 reflect operations in both. What's more, the manner in which NFGD has configured its
6 system exposes suppliers to the risk of two states even if they don't operate in both.¹
7

8 **Q. In his rebuttal testimony, Mr. Cej mentions the Pennsylvania Public Utility**
9 **Commission's ("Commission") recent creation of an Office of Cybersecurity**
10 **Compliance on September 20, 2018. What rules has the Commission since enacted**
11 **with regard to cybersecurity for natural gas suppliers?**

12 **A.** I am not aware that the Commission has yet enacted any specific requirements for cyber
13 security for natural gas suppliers or for any utilities. I am also not aware of the PUC
14 imposing any new requirements on water companies or providers as a result of the recent
15 attacks on water companies as suggested by Mr. Cej, or otherwise. Likewise, there is no
16 cyber security insurance requirement for suppliers that I know of.
17

18 **Q. Mr. Cej discusses a collaborative process in his Rebuttal Testimony and claims that**
19 **NFG has received comments from many suppliers and that it has adopted changes**
20 **proposed by suppliers. How do you respond?**

¹ I am aware that suppliers from Pennsylvania have access to the customer information of New York customers, even if they are not operating in New York, and I must assume that the reverse also is true.

1 A. EnergyMark and other suppliers in this group have participated in NFG's "collaborative
2 process", which began after we filed this complaint. I am aware of NFG appearing to have
3 adopted some of the changes proposed by participants. However, NFGD has refused to
4 address the primary changes that we requested regarding the insurance requirements.

5
6 **Q. Mr. Cej states at p. 19 that your testimony left out important details of NFGD's**
7 **communications with suppliers regarding its filing of Supplement No. 207, can you**
8 **explain?**

9 A. It is true that Mr. Cej claims on page 20 to supply the "details" that he contends that I left
10 out, but he never offers any "detail", let alone one that refutes my conclusion.

11

12 **Q. Did EnergyMark execute the DSA and other documents in New York?**

13 A. Yes.

14

15 **Q. Did EnergyMark agree with all the requirements in the New York DSA?**

16 A. No. We did not agree with and contested the cyber security insurance requirement.

17

18 **Q. Did you claim anywhere in your direct testimony that NFGD said the DSA in New**
19 **York and PA would be "identical"?**

20 A. No, however NFGD indicated several times leading up to the final NY DSA and SA that
21 they would "track/follow" the outcome of the NY PSC process.

22

1 **Q. Do you consider the inclusion of the cybersecurity insurance requirement in**
2 **Pennsylvania when there is not one in New York to be a material difference in the two**
3 **sets of requirements?**

4 A. Absolutely. I feel it was very misleading to all marketers operating on the NFGD system.

5
6 **Q. Did the Pennsylvania Commission approve the Pa Cybersecurity requirements based**
7 **on a representation made by NFG in its filing stating that PA was patterned after**
8 **NY?**

9 A. I believe that the PUC relied on, at least in part, the NFG representation that DSA
10 provisions were filed in New York, because the Commission repeated NFGD's
11 representation in the Order approving Supplement 207.

12
13 **Q. On page 22 of his Rebuttal, Mr. Cej takes issue with your suggestion that NFGD**
14 **mislead your company into not participating in the tariff filing. How do you respond?**

15 A. As a starting place, know that EnergyMark does not generally participate in NFGD matters
16 before the Pa Commission. For Mr. Cej to now suggest that EnergyMark should have
17 participated in the proceeding that approved Supplement 207 is contrary to his company's
18 strong suggestion at the time, that we not participate, which is borne out by the fact that no
19 suppliers participated in the proceeding in Pennsylvania when many suppliers opposed the
20 Joint Utilities' similar effort in New York.

21

1 **Q. Did you have conversations with insurance carriers about cyber insurance? If so, in**
2 **any of those conversations did the insurance carrier state that you would be subject**
3 **to their review of your systems as Mr. Cej claims?**

4 A. Yes, we discussed it with insurance carriers, but they did not indicate that if we purchased
5 insurance, we would be subject to a review of our hardware or software systems.

6

7 **Q. Mr. Cej describes a series of supplier meetings in his testimony (Exhibits CC-3,**
8 **October 9, 2018, CC-4, March 21, 2019, CC-5, October 10, 2019, and CC-8, March**
9 **19, 2020) and concludes that NFGD's messaging on the cyber-security provisions of**
10 **Supplement 207 were "consistent". How do you respond?**

11 A. To the extent that those meeting agendas reflect a consistent message, it is that the
12 Pennsylvania requirements would track the New York filing. Otherwise, there is no
13 discernable consistent message.

14

15 **Q. On pages 26 and 27 of his Rebuttal Testimony, Mr. Cej points out the that the dates**
16 **of emails you refer to were incorrect. How do you respond?**

17 A. I think Mr. Cej is dissembling. He admits that the email was originally sent to the
18 Commission on March 18, 2020 and yet suggests that same email forwarded to him a day
19 later means that I am mis-remembering – that is silly. Mr. Cej is the one who mis-stated
20 the date of the March 2020 Supplier Teleconference rather than me on page 26, lines 20-
21 23. The March 2020 supplier conference was indeed held on March 19, 2020 (March 21,
22 2020 was a Saturday). In fact, in his own testimony, at page 25, Lines 15-16, Mr. Cej
23 references the correct date of the teleconference. It is ironic and sad that he accuses me of

1 making the mistake that was indeed his own, for the sake of slinging mud instead of any
2 good reason.

3

4 **Q. At the bottom of page 9 and onto page 10, Mr. Grice opines that the costs of cyber
5 insurance are reasonable and prudent business expenses. Do you have any response?**

6 A. The annual premium to carry the proposed cyber insurance may seem relatively small to
7 NFGD, but it is a significant expense for smaller suppliers. This is a recurring expense that
8 will need to be incorporated into our sales price, which could put our Guaranteed Savings
9 program for our residential and small commercial accounts in jeopardy. Consequently, we
10 would then have to make a management decision to continue to operate in PA or transfer
11 all of our accounts back to the utility.

12

13 **Q. Does this conclude your surrebuttal testimony?**

14 A. Yes, it does.