

**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	:	

**MAIN BRIEF OF
PENNSYLVANIA INDEPENDENT OIL & GAS ASSOCIATION**

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DATED: June 16, 2021

TABLE OF CONTENTS

TABLE OF CONTENTS i

TABLE OF AUTHORITIES ii

I. INTRODUCTION AND STATEMENT OF THE CASE..... 1

II. STATEMENT OF QUESTIONS INVOLVED..... 1

III. SUMMARY OF THE ARGUMENT 1

IV. ARGUMENT..... 2

 A. Burden of Proof. 2

 B. The Cybersecurity Insurance Provisions of Supplement No. 207 are Unreasonable, Unlawful, Unjust and Not in the Public Interest..... 2

 a. Supplement No. 207 cybersecurity insurance requirement is unreasonable because it adds cost with no additional benefit. 2

 b. NFGD’s witness Mr. Grice’s opinion testimony amounts to unqualified testimony which should not be given any weight as Mr. Grice lacks specialized knowledge, skill, experience, training, or education to opine on expert topics outside his direct personal knowledge..... 3

 c. The insurance requirement, by NFGD’s own admission, is an attempt by NFGD to impose additional financial security requirements on suppliers operating on its system which are not authorized by the Commission’s Regulations that address such requirements..... 3

 C. NFGD misrepresented the Substance and Status of the Data Security Agreement Before the NYPSC to the Commission, and the Commission should find the NYPSC Decision Persuasive Regarding the rejection of Cybersecurity Insurance Requirements. 3

 a. NFGD misrepresented the substance and status of the NYPSC DSA approval when it filed Tariff Supplement No. 207..... 3

 b. The Commission should find consistent with the NYPSC holding on cybersecurity insurance. 3

 D. The Tariff Provisions are Cost Prohibitive and Act as a Market Barrier. 4

 E. The Tariff Provides NFGD the Ability to Regulate NGSs on its System in Violation of the Commission’s Exclusive Authority to do so..... 5

V. CONCLUSION 5

TABLE OF AUTHORITIES

The Pennsylvania Independent Oil & Gas Association hereby adopts the Table of Authorities in the Main Brief of the Joint Complainants.

I. INTRODUCTION AND STATEMENT OF THE CASE

The Pennsylvania Independent Oil & Gas Association (PIOGA) hereby adopts the Introduction and Statement of the Case in the Main Brief of the Joint Complainants. PIOGA offers the following additional facts.

On January 15, 2021, PIOGA petitioned to intervene in this matter in support of the Joint Complainants. On March 5, 2012, PIOGA served the Direct Testimony of Dan Weaver, PIOGA Statement No. 1, on the parties and Administrative Law Judge Dennis J. Buckley, and on April 16, 2021, likewise served the Surrebuttal Testimony of Dan Weaver, PIOGA Statement No. 1-SR.¹

PIOGA participated in the evidentiary hearing held April 29, 2012, during which PIOGA's Statements were admitted into the record and Mr. Weaver was cross-examined.

II. STATEMENT OF QUESTIONS INVOLVED

PIOGA hereby adopts the Statement of Questions Involved in the Main Brief of the Joint Complainants.

III. SUMMARY OF ARGUMENT

PIOGA hereby adopts the Summary of Argument in the Main Brief of the Joint Complainants.

¹ PIOGA is a trade association representing oil and natural gas interests throughout Pennsylvania. PIOGA was formed by the April 1, 2010 merger of the Pennsylvania Oil and Gas Association, known as POGAM, into the Independent Oil and Gas Association of Pennsylvania, known as IOGA of PA, and the name changed to its present name. PIOGA's members include oil and natural gas producers and Commission-licensed natural gas suppliers and marketers (NGSs) that produce, transport and market natural gas, including production from Pennsylvania conventional and unconventional formations, on the pipelines of Pennsylvania natural gas distribution companies, including NFGD. PIOGA Statement No. 1 at 1:5-13.

In addition, PIOGA presented substantial evidence that the cybersecurity requirements in NFGD's Supplement No. 207 are unjust, unreasonable and unduly burdensome for the same reasons asserted by the Joint Complainants as well as additional reasons.

IV. ARGUMENT

A. Burden of Proof

PIOGA hereby adopts the Burden of Proof argument in the Main Brief of the Joint Complainants.

B. The Cybersecurity Insurance Provisions of Supplement No. 207 are Unreasonable, Unlawful, Unjust and Not in the Public Interest.

PIOGA hereby adopts this section of argument in the Main Brief of the Joint Complainants.

In addition, the arbitrary \$5,000,000 per incident cybersecurity insurance requirement is unjust, unlawful, unreasonable and unduly burdensome as shown by PIOGA witness Mr. Weaver. PIOGA Statement No. 1 at 4:9-5:2; PIOGA Statement No. 1-SR at 2:5-3:11.

a. Supplement No. 207 cybersecurity insurance requirement is unreasonable because it adds cost with no additional benefit.

PIOGA hereby adopts this section of argument in the Main Brief of the Joint Complainants.

In addition, the testimony of PIOGA witness Mr. Weaver explained that PIOGA member NGSs have acquired cybersecurity insurance and adopted other measures that each member independently determined, based on each member's particular circumstances, are narrowly tailored to fit their needs and are cost-effective. Statement No. 1-SR at 2:5-9; PIOGA Statement No. 1 at 4:14-5:2; Notes of Testimony at hearing (N.T.) 13:6-14:8. Moreover, Mr. Weaver also explained that an NGS's decision to acquire cybersecurity insurance should not be mandated by

a utility that is likely unaware of the circumstances and needs of each NGS serving customers on the utility's system. PIOGA Statement No. 1-SR at 3:1-7.

- b. **NFGD's witness Mr. Grice's opinion testimony amounts to unqualified testimony which should not be given any weight as Mr. Grice lacks specialized knowledge, skill, experience, training, or education to opine on expert topics outside his direct personal knowledge.**

PIOGA hereby adopts this section of argument in the Main Brief of the Joint

Complainants.

- c. **The insurance requirement, by NFGD's own admission, is an attempt by NFGD to impose additional financial security requirements on suppliers operating on its system which are not authorized by the Commission's Regulations that address such requirement.**

PIOGA hereby adopts this section of argument in the Main Brief of the Joint

Complainants.

- C. **NFGD misrepresented the Substance and Status of the Data Security Agreement Before the NYPSC to the Commission, and the Commission should find the NYPSC Decision Persuasive Regarding the rejection of Cybersecurity Insurance Requirement.**

PIOGA hereby adopts this section of argument in the Main Brief of the Joint

Complainants.

- a. **NFGD misrepresented the substance and status of the NYPSC DSA approval when it filed Tariff Supplement No. 207.**

PIOGA hereby adopts this section of argument in the Main Brief of the Joint

Complainants.

- b. **The Commission should find consistent with the NYPSC holding on cybersecurity insurance.**

PIOGA hereby adopts this section of argument in the Main Brief of the Joint

Complainants.

D. The Tariff Provisions are Cost Prohibitive and Act as a Market Barrier.

PIOGA hereby adopts this section of argument in the Main Brief of the Joint Complainants.

In addition, PIOGA witness Mr. Weaver explained that one PIOGA member on NFGD's system estimated that the cost of a cybersecurity insurance policy with coverage of \$5 million per incident would cost between \$25,000-\$30,000 per year. PIOGA Statement No. 1 at 4:12-14. Moreover, Mr. Weaver explained that NFGD's blanket tariff requirement of \$5 million per incident cybersecurity insurance significantly exceeds the level of coverage acquired by the PIOGA member NGSs operating on NFGD's system that are not part of a larger corporate family. PIOGA Statement No. 1-SR at 2:9-12. At the hearing, Mr. Weaver testified that the range of coverage for PIOGA members' policies ranges from \$10,000 to \$1,000,000. N.T. 16:4-9. Mr. Weaver further explained that, contrary to NFGD's suggestion, per incident. PIOGA members' independently acquiring cybersecurity insurance does not indicate that they recognize the value of \$5 million per incident cybersecurity insurance, the value in making the acquisition of \$5 million per incident cybersecurity insurance mandatory, or that they see this tariff requirement as anything but a market barrier and attempt to exercise authority NFGD does not have. PIOGA Statement No. 1-SR at 2:8-16. Mr. Weaver supported this written testimony on cross-examination. N.T. 12:8-15; 12:25-14:8; 16:10-18.

Finally, Mr. Weaver supported Mr. Lacey's testimony that NFGD's requirement that NGSs purchase cybersecurity insurance serves little purpose besides acting as a market barrier, and explained that NFGD's rebuttal testimony does not refute his or Mr. Lacey's testimony that NFGD's tariff provisions are unjust, unreasonable, and unduly burdensome. PIOGA Statement No. 1-SR at 3:7-11.

E. The Tariff Provides NFGD the Ability to Regulate NGSs on its System in Violation of the Commission's Exclusive Authority to do so.

PIOGA hereby adopts this section of argument in the Main Brief of the Joint

Complainants.

V. CONCLUSION

For the reasons set forth above and in the Main Brief of the Joint Complainants, PIOGA respectfully requests that Your Honor (1) conclude that the cybersecurity insurance and audit provisions contained in NFGD's Tariff Supplement No. 207 are unjust, unreasonable, unlawful, unduly burdensome, and discriminatory under the Commission's governing statutes and regulations, and (2) overturn the cybersecurity insurance and audit provisions in NFGD's Supplement No. 207.

Respectfully submitted,



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DATED: June 16, 2021

PROPOSED FINDINGS OF FACT

PIOGA hereby adopts the Proposed Findings of Fact in the Main Brief of the Joint Complainants. PIOGA offers the following additional proposed findings.

1. PIOGA member NGSs have acquired cybersecurity insurance and adopted other measures that each member independently determined, based on each member's particular circumstances, are narrowly tailored to fit their needs and are cost-effective. Statement No. 1-SR at 2:5-9; PIOGA Statement No. 1 at 4:14-5:2; Notes of Testimony at hearing (N.T.) 13:6-14:8.
2. NFGD is likely unaware of the circumstances and needs of each NGS serving customers on the utility's system concerning the NGS's decision to acquire cybersecurity insurance. PIOGA Statement No. 1-SR at 3:1-7.
3. One PIOGA member on NFGD's system estimated that the cost of a cybersecurity insurance policy with coverage of \$5 million per incident would cost between \$25,000-\$30,000 per year. PIOGA Statement No. 1 at 4:12-14.
4. NFGD's tariff requirement of \$5 million per incident cybersecurity insurance significantly exceeds the level of coverage acquired by the PIOGA member NGSs operating on NFGD's system that are not part of a larger corporate family. PIOGA Statement No. 1-SR at 3:1-7.
5. The range of coverage for PIOGA members' cybersecurity insurance policies ranges from \$10,000 to \$1,000,000 per incident. N.T. 16:4-9.

PROPOSED CONCLUSIONS OF LAW

PIOGA hereby adopts the Proposed Conclusions of Law in the Main Brief of the Joint Complainants.

PROPOSED ORDERING PARAGRAPHS

PIOGA hereby adopts the Proposed Ordering Paragraphs in the Main Brief of the Joint Complainants.

CERTIFICATE OF SERVICE

I hereby certify that this day I served copies of the foregoing PIOGA Main Brief on the persons listed below in the manner indicated in accordance with the requirements of 52 Pa. Code § 1.54.

Via Email only

THE HONORABLE DENNIS J. BUCKLEY, Administrative Law Judge
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