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July 9, 2021

VIA ELECTRONIC FILING

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor North
P.O. Box 3265
Harrisburg, PA 17105-3265

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

Dear Secretary Chiavetta:

Attached please find the Reply Brief filed on behalf of National Fuel Gas Distribution Corporation in the above-referenced proceeding. Copies will be provided as indicated on the Certificate of Service.

Respectfully submitted,

Garrett P. Lent

GPL/kls
Attachment

cc: The Honorable Dennis J. Buckley
Certificate of Service

CERTIFICATE OF SERVICE

C-2020-3019621

I hereby certify that a true and correct copy of the foregoing has been served upon the following persons, in the manner indicated, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant).

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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

REPLY BRIEF OF NATIONAL FUEL GAS DISTRIBUTION CORPORATION

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I. INTRODUCTION

National Fuel Gas Distribution Corporation ("Distribution" or the "Company") hereby files this Reply Brief in response to the Main Briefs of EnergyMark LLC, Vineyard Oil and Gas Company, Mid American Natural Resources LLC, and Total Energy Resources LLC (collectively the "Joint Complainants" or the "NFG NGSs") and the Pennsylvania Independent Oil and Gas Association ("PIOGA").[1] In its Main Brief, Distribution explained why the Complaint filed by the NFG NGSs on April 27, 2020, at the above-captioned docket should be denied, and that, as a part of its resolution of the issues in this proceeding, the Pennsylvania Public Utility Commission ("Commission") should approve the revised Data Security Agreement ("DSA") and Self-Attestation ("SA") admitted into the record in this proceeding as NFGD Exhibit CC-2.

Distribution fully addressed in its Main Brief that Supplement No. 207, the DSA and the SA, which include cybersecurity insurance requirements applicable to natural gas suppliers ("NGSs") in Pennsylvania, are just and reasonable and in full compliance with the Pennsylvania Public Utility Code. As explained in Distribution's Main Brief, the DSA and SA are necessary to protect confidential customer information, protect Distribution's information technology ("IT") systems from cyber-attack and ensure that if an NGS IT system is breached and confidential customer information is disclosed, there will be funds available to reimburse customers for disclosure of their sensitive information.

The Joint Complainants' Main Brief asks Administrative Law Judge Dennis J. Buckley (the "ALJ") and the Commission to ignore these facts and absolve NGSs that connect with Distribution's system of certain of the data security requirements that are necessary to ensure

[1] PIOGA's Main Brief primarily references and adopts the arguments set forth in the Joint Complainants' Main Brief. As such, Distribution's replies to the Joint Complainants' Main Brief should also be understood to apply to PIOGA's Main Brief.

Distribution's customers and their sensitive information are protected. As explained herein, none of the arguments raised in the Joint Complainants' and PIOGA's Main Briefs have any merit. Therefore, Distribution respectfully requests that the above-captioned Complaint be denied.

II. COUNTER-STATEMENT OF THE QUESTIONS INVOLVED

1. Is the cybersecurity insurance requirement contained in Distribution's Tariff Supplement No. 207 just and reasonable service under 66 Pa.C.S. §§ 102, 1501?

   Suggested Answer: Yes

2. Does the cybersecurity insurance requirement contained in Distribution's Tariff Supplement No. 207 constitute a reasonable rule or regulation governing the conditions under which Distribution shall be required to render service authorized by 66 Pa.C.S. § 1501?

   Suggested Answer: Yes

3. Is the auditing provision contained in Distribution's Tariff Supplement No. 207 just, reasonable and not unduly discriminatory under 66 Pa.C.S. §§ 102, 1501, 1502?

   Suggested Answer: Yes

4. Have the Joint Complainants failed to meet their heavy burden of proving that the circumstances revolving around the Commission's approval of Supplement No. 207 on August 29, 2019 have changed so drastically to as to render the application of the tariff provisions unreasonable?

   Suggested Answer: Yes

III. SUMMARY OF REPLY ARGUMENT

The Main Briefs submitted by the Joint Complainants and PIOGA further highlight the fundamental flaws in the Complaint, and the Joint Complainants dispute of the data security requirements contained in Supplement No. 207, the DSA and the SA. Although the Joint Complainants admit that cybersecurity is a critical issue, that utilities are frequent targets of cybersecurity attacks and that it is prudent for businesses to establish data security requirements and standards to protect confidential and sensitive information, the Joint Complainants attempt to evade any responsibility for acquiring cybersecurity insurance as a condition of connecting to Distribution's IT systems and obtaining access to confidential customer information. The Joint Complainants attempt to evade the issue by arguing that cybersecurity insurance does not enhance cybersecurity protections. This argument is demonstrably false as evidenced by the Joint Complainants' own testimony. The Joint Complainants contend that Distribution's minimum cybersecurity insurance requirement is unjust and unreasonable and that the audit requirements contained in the DSA are unreasonable and unduly discriminatory. The Joint Complainants have failed to carry their burden of proof with respect to these contentions and the Complaint should be denied.

Initially, Distribution reiterates the undisputed point that the Joint Complainants bear the burden of proof in this proceeding. Moreover, as the Joint Complainants are challenging an existing Commission-approved tariff and the data security requirements contained therein,[2] they have a "very heavy burden" in this matter. As explained in Distribution's Main Brief and below, the Joint Complainants have failed to meet this very heavy burden.

[2] *See National Fuel Gas Distribution Corporation, Supplement No. 207 Tariff Gas Pa. P.U.C. No. 9*, Docket No. R-2019-3010744 (Order entered Aug. 29, 2019) ("*PA DSA Order*").

The Joint Complainants' arguments regarding the minimum cybersecurity insurance requirement should be denied for several reasons. As noted below and in Distribution's Main Brief, the Joint Complainants have failed to present any evidence on the record in this proceeding of the actual costs they would incur to obtain cybersecurity insurance or any evidence comparing the actual costs of cybersecurity insurance to their revenues. Rather, their claims regarding the unreasonableness of these costs are based on unsupported assertions that cannot act as substantial evidence supporting any finding of fact in this proceeding.

In addition, the Joint Complainants attempt to take issue with the qualifications of Distribution witness Mr. Grice, who provided credible expert testimony regarding insurance issues, including the underwriting process for and acquisition of cybersecurity insurance. Contrary to the Joint Complainants' claims, Distribution witness Mr. Grice possesses substantial knowledge and experience in the acquisition and management of insurance policies on behalf of a large business, having personally overseen the acquisition of approximately 200 policies on behalf of Distribution (including its cybersecurity insurance policy). Mr. Grice's expertise will assist the ALJ in understanding the process to obtain insurance, including cybersecurity insurance, which goes directly to the heart of the Joint Complainants' claims. Distribution further submits that by attempting to discredit Mr. Grice, the Joint Complainants have instead exposed the lack of qualifications possessed by their own witness to testify regarding insurance issues.

The Joint Complainants' claim that the cybersecurity insurance requirement is an impermissible form of financial security is also unavailing. The purpose of a financial security fundamentally differs from cybersecurity insurance; the latter both enhances cybersecurity protections by incentivizing NGSs to adopt cybersecurity practices that meet insurance underwriter

requirements and offers financial protections to customers in the event of a breach of Distribution's IT systems as a result of the NGS' interconnection to those systems.

Distribution has further shown that the Joint Complainants' description of the Company's statements to NGSs and the Commission is incomplete and misleading. Furthermore, contrary to the Joint Complainants' claims, the New York Public Service Commission's ("NYPSC") disposition of a minimum cybersecurity insurance requirement applicable to suppliers providing service in New York is not relevant to the Commission's disposition of a minimum cybersecurity insurance requirement applicable to suppliers providing service in Pennsylvania. And, even if it were relevant, the NYPSC did not permanently foreclose the issue as the Joint Complainants have suggested.

Finally, the Joint Complainants' claims that the audit provision contained in the DSA usurps the Commission's authority to regulate NGSs are flawed. The Joint Complainants rely on inapplicable law, and simply ignore the fact that the Public Utility Code authorizes Distribution to impose reasonable rules and regulations governing the conditions under which it shall be required to render service. Distribution was well within its rights to seek and obtain Commission approval of the data security requirements contained in Supplement No. 207, the DSA and the SA, which it has done. Relatedly, the revisions to the audit provision contained in NFGD Exhibit CC-2 resolve the Joint Complainants' assertions that the provision is somehow vague and, in fact, more closely align the DSA with the agreement in place in New York that the Joint Complainants have favored throughout this proceeding.

For these reasons set forth herein, and the reasons more fully explained in Distribution's Main Brief, the Complaint should be denied in its entirety and, as a part of its denial of the Complaint and resolution of the issues in this proceeding, the ALJ and the Commission should

approve the revised DSA and SA proposed by Distribution and entered into the record as NFGD Exhibit CC-2.

IV. ARGUMENT

A. THE JOINT COMPLAINANTS HAVE FAILED TO CARRY THEIR BURDEN OF PROOF.

The Joint Complainants admit that they bear the burden of proof in this proceeding. *See* 66 Pa.C.S. § 332(a); *see also* NFGD MB at 17-18 and Joint Compl. MB at 7-8. Furthermore, the Joint Complainants agree that they carry a "very heavy burden" to demonstrate that the data security requirements contained in Supplement No. 207, the DSA and the SA are unjust and unreasonable. Joint Compl. MB at 8 ("a complainant seeking to evade the effect of an existing tariff provision carries a very heavy burden to prove that the facts and circumstances have changed so drastically as to render the application of the tariff provision unreasonable."). Contrary to the Joint Complainants' and PIOGA's claims, however, they have failed to carry this heavy burden.

B. THE DATA SECURITY REQUIREMENTS SET FORTH IN THE DSA AND SA ARE JUST AND REASONABLE.

The Joint Complainants first argue that the cybersecurity insurance provisions contained in Supplement No. 207 are unreasonable, unlawful, unjust and not in the public interest. Joint Compl. MB, Section IV.B. In support of this claim, they raise three arguments in their Main Brief. First, they assert that the cybersecurity insurance requirement is unreasonable because it adds costs while providing no additional benefits. Joint Compl. MB, Section IV.B.a. Second, they unavailingly argue that Mr. Grice—despite clearly satisfying the standard to provide expert testimony regarding insurance issues, including the underwriting process for and acquisition of cybersecurity insurance—lacks the qualifications needed to testify regarding cybersecurity insurance matters. Joint Compl. MB, Section IV.B.b. Third, they argue that the cybersecurity insurance requirement is intended "to function as a financial security for NFGD." Joint Compl. MB, Section IV.B.c. Each of these arguments should be rejected.

1. The Joint Complainants Failed To Meet Their Burden Of Proof That The Cost Of Obtaining Cybersecurity Insurance Is Unreasonable.

At its core, the Joint Complainants' claim that the cybersecurity insurance requirement "adds cost with no additional benefit" (Joint Compl. MB at 9) is untenable because there is no evidence of the actual costs the Joint Complainants would incur (individually or collectively) to obtain cybersecurity insurance that satisfies the minimum coverage requirement set forth in Distribution's tariff. NFGD MB at 33-37. Indeed, neither the Joint Complainants nor PIOGA have presented any studies, analyses, valuations, comparative costs estimates, or any other type of substantive evidence in the record in this proceeding that supports their claims regarding the costs of obtaining cybersecurity insurance or the impacts of those costs on their members' businesses.[3] This evidentiary gap constitutes a fatal flaw in the Joint Complainants' case; once it is recognized that the Joint Complainants have presented no evidence of actual costs for complying with the DSA cybersecurity insurance requirements and did not evaluate the effects of such costs on their businesses, it becomes clear that the Joint Complainants cannot meet their very heavy burden of demonstrating that they would be subject to unreasonable costs.

The Joint Complainants also assert that insurance, "no matter its purpose, is meant only to compensate parties up to insurance limits after an insured event and does not reduce or eliminate

[3] Distribution anticipates that the Joint Complainants may argue that Mr. Lacey provided an expert opinion regarding the unreasonableness of the costs that the Joint Complainants will allegedly incur to obtain cybersecurity insurance that satisfies the minimum coverage amounts contained in Distribution's tariff. However, Mr. Lacey presents no actual study, analyses, valuations, comparative cost estimates, or any other type of substantive evidence that shows the actual costs that would be incurred by the Joint Complainants. Any evidence of actual costs would, therefore, be extrajudicial.

Although Pennsylvania law may permit an expert to rely upon extrajudicial evidence, it does not permit the expert to act as a conduit for that evidence. Appellate courts have clearly explained that "the expert actually acting as an expert and not as a mere conduit or transmitter of the content of an extrajudicial source. An 'expert' should not be permitted simply to repeat another's opinion or data without bringing to bear on it his own expertise and judgment." *Primavera v. Celotex Corp.*, 608 A.2d 515, 521 (Pa. Super. 1992) (emphasis added). *See, also, Rafter v. Raymark Industries, Inc.*, 632 A.2d 897 (Pa. Super. 1993). To the extent that the Joint Complainants argue that Mr. Lacey provided an expert opinion regarding the unreasonableness of the costs that the Joint Complainants will allegedly incur to obtain cybersecurity insurance, Mr. Lacey cannot be permitted to act as a conduit for any extrajudicial cost evidence he may or may not have relied upon.

exposures to risk." Joint Compl. M.B. at 9 (emphasis added). The Joint Complainants rely exclusively upon the testimony of their witness, Mr. Lacey, regarding this point.

Mr. Lacey, however, lacks experience beyond that of an average lay person regarding the acquisition and management of insurance policies (including cybersecurity insurance) for a company. There is no evidence regarding the number of insurance policies Mr. Lacey has procured on behalf of a business. More specifically, Mr. Lacey admitted that he has never acquired cybersecurity insurance for any company. Tr. 58 ("Q. [ATTORNEY KANAGY] Sure. Okay, so have you ever acquired cyber security insurance for any company? A. [MR. LACEY] I have not."). Rather, when it comes to the acquisition and management of insurance policies, it appears that Mr. Lacey attempts to rely upon his experience as a lay person. Tr. 58 ("And then, as an owner and homeowner, owner of my own business, I deal with business liability insurance and obviously the home/auto stuff that, I think, everyone deals with."). Moreover, the Joint Complainants simply ignore the fact that Distribution witness Mr. Grice credibly testified that insurance also (a) "ensures financial obligations can be met in the event of an accident or other unforeseen incident to the insured" and (b) "mitigates against the risk of a successful cyber-attack due to a review of policies and procedures by the insurance underwriter." NFGD St. 2-R at 3. Mr. Lacey's testimony regarding the purpose of obtaining insurance has been fully rebutted.[4]

The Joint Complainants' further reliance on Mr. Lacey's testimony that "insurance, for whatever purpose, should be within a supplier's management consideration" should also be rejected. Joint Compl. MB at 9-10. Distribution has already explained in detail the contradictory nature of Mr. Lacey's testimony regarding Distribution's ability to impose data security

[4] In Section IV.B.2.a. *infra.*, Distribution refutes the Joint Complainants' argument that Distribution witness Mr. Grice is not qualified to provide expert testimony regarding the acquisition and management of insurance policies on behalf of a business.

requirements or standards for companies that interface with it. *See* NFGD MB at 26-28. In addition, Distribution notes the Joint Complainants ignore that, in this instance, the insurance requirement is imposed because when NGSs interface with Distribution's system to provide natural gas supply service to customers served by Distribution, sensitive and confidential customer information is at risk of exposure. NFGD MB at 26-27. For this reason, it is undisputed that Distribution "is well within its rights to impose reasonable data security standards on any company with which it interfaces and shares data." Joint Compl. St. 1 at 6.

The Joint Complainants attempt to distract from the critical role that cybersecurity insurance plays in the protection of sensitive and confidential customer information. *See* Joint Compl. MB at 10. Distribution has already shown that that the underwriting involves an evaluation of the systems and processes the insured has in place, the key terms of the policy are subject to change based on those systems and processes and, therefore, obtaining cybersecurity insurance can result in additional protections and procedures beyond what may already be in place. NFGD MB at 19-21. However, the Company reiterates that Mr. Lacey's conclusions ignore that the underwriting process incentivizes companies to increase cybersecurity protections in order to reduce policy costs. NFGD MB at 22. Both Mr. Lacey and Mr. Weaver (on behalf of PIOGA) conceded this point during cross examination. *See* Tr. 62-63 (Mr. Lacey testifying that additional protections would lower the premiums quoted during the underwriting process), Tr. 13-14 (Mr. Weaver testifying that PIOGA members purchase insurance because "they thought that would benefit them" and that "they are not going to spend money on something that they didn't feel that they would benefit from.").[5]

[5] PIOGA attempts to obfuscate this point in its Main Brief. PIOGA MB at 2-3. However, PIOGA's argument should be rejected. It is clear that PIOGA's members view cybersecurity insurance as being beneficial or, as Mr. Weaver concedes, they would not have purchased it.

Finally, the Joint Complainants assert that the cybersecurity insurance requirement is not necessary because "NGSs already have a contractual obligation to pay costs to a host utility" in the event of a breach resulting in expenses and/or losses. Joint Compl. MB at 11. This argument confuses the point. The cybersecurity insurance requirement is not meant to account for "the financial impact on the natural gas distribution company or an alternative supplier or last resort of a default of subsequent bankruptcy of a natural gas supplier." *See* 66 Pa.C.S. § 2208(c)(1)(i). Rather, the cybersecurity insurance requirement contained in the DSA is designed to protect Distribution's customers in the event of a cyber-attack targeting an NGS. NFGD MB at 42-43.

In conclusion, the Joint Complainants' claims that the cybersecurity insurance requirements impose additional costs with no incremental benefit should be rejected. The Joint Complainants did not introduce into the record any evidence or analysis of, or support for, the actual costs of obtaining cybersecurity insurance compared to the actual revenue streams of any one of their businesses. Moreover, Distribution rebutted their claims regarding the benefits of cybersecurity insurance, and fully explained the important role the minimum cybersecurity insurance requirement in the DSA plays in protecting the confidential and sensitive information of Distribution's customers. Therefore, and for the reasons more fully explained in Distribution's Main Brief, the Complaint should be denied.

2. Distribution Provided Credible Expert Testimony Regarding The Benefits Of Obtaining Cybersecurity Insurance And The Joint Complainants Did Not.

The Joint Complainants' second argument is that Mr. Grice's testimony "cannot be considered substantial evidence under well settled law and are nothing more than unqualified opinions from a witness who lacks any specialized knowledge, education, training, or experience to opine on these technical topics under Pennsylvania and the Commission's expert witness standards." Joint Compl. MB at 12. The Joint Complainants' arguments misconstrue the law,

misrepresent Mr. Grice's substantial experience and, in fact, expose the lack of qualifications possessed by Mr. Lacey to testify regarding insurance issues, including the acquisition and management of insurance policies. Therefore, this argument should be rejected.

a. Distribution Witness Mr. Grice Is Qualified To Testify, And Credibly Testified, About The Process To Obtain Cybersecurity Insurance And The Benefits Of Obtaining Cybersecurity Insurance.

Mr. Grice's testimony constitutes admissible expert testimony under Pennsylvania Rule of Evidence 702. Under the Pennsylvania Rules of Evidence:

> A witness who is qualified as an expert by knowledge, skill, experience, training, or education may testify in the form of an opinion or otherwise if:
>
> (a) the expert's scientific, technical, or other specialized knowledge is beyond that possessed by the average layperson;
>
> (b) the expert's scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue; and
>
> (c) the expert's methodology is generally accepted in the relevant field.

Pa. R.E. 702. The Official Comment to Rule 702 quotes *Miller v. Brass Rail Tavern, Inc.*, 541 Pa. 474, 480-81, 664 A.2d 525, 528 (Pa. 1995), where the Supreme Court of Pennsylvania stated: "The test to be applied when qualifying a witness to testify as an expert witness is whether the witness has any reasonable pretension to specialized knowledge on the subject under investigation. If he does, he may testify and the weight to be given to such testimony is for the trier of fact to determine."

It cannot reasonably be disputed that Mr. Grice has specialized knowledge related to obtaining insurance, including cybersecurity insurance, that exceeds the knowledge of an average layperson. Mr. Grice has participated in the underwriting process on behalf of Distribution

approximately 200 times, including the underwriting of its cybersecurity insurance policy. Tr. 53 (confirming Mr. Grice has gone through the underwriting process approximately 200 times on behalf of Distribution), 54. Furthermore, he has described his duties and responsibilities as Risk Manager for Distribution as follows:

> I am responsible for protecting the Company's assets through active management of corporate insurance and bond programs, verification of contract insurance requirements of the Company's contractors, investigation and management of claims, and loss prevention strategies. Corporate insurance includes <u>securing all policies required to protect the Company's assets, including cybersecurity insurance</u>.

NFGD St. 2-R at 1 (emphasis added). Mr. Grice's possesses substantial experience in navigating the underwriting process, acquiring insurance and management insurance policies. Moreover, it cannot be disputed that this specialized experience and knowledge is beyond that possessed by the average layperson.

Mr. Grice's specialized knowledge will also help the ALJ to understand evidence related to the purpose of the cybersecurity insurance requirement and also the benefits of this requirement. Importantly, Mr. Grice is the only witness that testified in this proceeding that is actually tasked with obtaining cybersecurity insurance on behalf of any party. He is the only witness that provided firsthand knowledge of the process to acquire corporate insurance policies, including cybersecurity insurance policies. Similarly, he is the only witness that provided firsthand knowledge of the underwriting process associated with obtaining corporate insurance policies, including cybersecurity insurance policies. Testimony of the only witness to have actually obtained cybersecurity insurance will undoubtedly aid the ALJ in determining that Distribution's minimum cybersecurity insurance requirement is reasonable.

Finally, Mr. Grice's testimony makes clear that his statements regarding the process to acquire insurance are based upon generally accepted methods. Mr. Grice has obtained insurance

policies (including cybersecurity insurance) on behalf of a business over 200 times (Tr. 53), and was able to testify regarding the differences between the process to obtain cybersecurity insurance and the process to obtain other types of insurance. *See* Tr. 44 (testifying that the underwriting process to obtain cybersecurity insurance is more detailed and more involved than the underwriting process to obtain home or auto insurance).

As it is clear that Mr. Grice satisfies the criteria of Rule 702, the Joint Complainants attempt to narrow the scope of his testimony and argue that he lacks "the requisite knowledge, skill, experience, training or education to testify in the form of any opinion on the benefits and implications of cybersecurity insurance on the Joint Complainants, or any other topic except for his job responsibilities and duties on behalf of NFGD." Joint Compl. at 14. These arguments are meritless and should be denied.

The Joint Complainants specifically rely upon *Bergdoll v. York Water Co.*, No. 2169 C.D. 2006, 2008 Pa. Commw. Unpub. LEXIS 291 (Pa. Cmwlth. 2008) (unreported) ("*Bergdoll*") and *Application of Shenango Valley Water Co.*, No. A-212750F0002, 1994 Pa. PUC LEXIS 111 (Recommended Decision dated Jan. 25, 1994) ("*Shenango*"). However, each of these cases demonstrates that Mr. Grice is qualified to provide expert testimony.

In *Bergdoll*, the Commonwealth Court concluded that a trial court did not err by precluding specific witnesses from testifying as to the source of water which had damaged a building. *Bergdoll*, 2008 Pa. Commw. Unpub. LEXIS 291, at *24-26. However, the Commonwealth Court permitted a witness to testify that "had sufficient skill, knowledge and experience to assist the ultimate fact-finder regarding the extent of damage, the costs of repair, the cause of the damage in general terms and that the damage was caused by water." *Id.*, at *25. The court reached this conclusion because the witness "had worked as an insurance estimator and an independent

contractor for over thirty years, but almost exclusively on carpentry and home improvements" even though the extent of the damage went beyond the woodwork of the subject home. *Id.* Here, Mr. Grice similarly has sufficient knowledge and experience based upon the number of policies he has acquired on behalf of Distribution. Moreover, contrary to the Joint Complainants' claims, this substantial experience provides him with the sufficient expertise to testify regarding the acquisition of insurance, including cybersecurity insurance, by NGSs and not just Distribution. *See id.*

In *Shenango*, the Commission determined that a witness was not qualified to provide expert testimony regarding the ratemaking value of utility property, based upon his lack of experience and knowledge. *Shenango*, 1994 Pa. PUC LEXIS 111, at *49. Unlike the witness in *Shenango*, however, Mr. Grice possesses knowledge regarding standard insurance acquisition practices and conventions and the underwriting process. Mr. Grice also possesses knowledge and experience greater than the average lay person's regarding the underwriting and acquisition process for cybersecurity insurance. *See* CONFIDENTIAL NFGD Exhibit JG-7 (showing Mr. Grice has been involved in the annual renewal and underwriting process related to the Company's cybersecurity insurance policy for 2019, 2020 and 2021).

Contrary to the Joint Complainants' claims, Mr. Grice possesses the requisite knowledge and experience that enables him to provide expert testimony regarding the purpose of insurance (including cybersecurity insurance), the underwriting process to obtain insurance (including cybersecurity insurance) on behalf of a business, and the management of corporate insurance programs. Mr. Grice's knowledge and experience will also aid the ALJ in evaluating the reasonableness of the cybersecurity requirement. Therefore, the Joint Complainants' arguments should be rejected.

b. Joint Complainants' Witness Mr. Lacey Is Not Qualified To Provide Expert Testimony Regarding The Costs Or Benefits Of Obtaining Cybersecurity Insurance.

The Joint Complainants' arguments regarding the qualifications of Mr. Grice highlight the fact that Mr. Lacey does not actually possess the requisite knowledge or experience to testify regarding cybersecurity or insurance issues.

Mr. Lacey admitted he has no work experience or formal education regarding cybersecurity issues. Tr. 57. In this regard, there is no evidence in the record to suggest Mr. Lacey is qualified to offer an opinion on any issues related to cybersecurity, including the policies and practices businesses could or should implement to protect confidential and sensitive information from cyberattacks.

His experience and knowledge regarding insurance (and specifically cybersecurity insurance) issues is similarly lacking. While Mr. Lacey attempts to rely on his experience as a paralegal, and consultant, he did not acquire insurance in either of these roles or manage insurance policies on behalf of any company. Indeed, Mr. Lacey has never acquired cybersecurity insurance for any company. Tr. 58 ("Q. [ATTORNEY KANAGY] Sure. Okay, so have you ever acquired cyber security insurance for any company? A. [MR. LACEY] I have not."). Moreover, Mr. Lacey specifically attempts to rely his experience as a layperson, and admits to doing so. *See* Tr. 58 ("And then, as an owner and homeowner, owner of my own business, I deal with business liability insurance and obviously the home/auto stuff <u>that, I think, everyone deals with</u>."). Mr. Lacey does not possess any knowledge or experience regarding the acquisition of insurance and/or the underwriting process that exceeds that of the average layperson. *See* Pa. R.E. 702.

Furthermore, Mr. Lacey makes clear that his testimony regarding insurance issues will not actually assist the trier of fact. His testimony specifically regarding cybersecurity insurance issues is based solely on his reading of Distribution's policy and "research that I did in preparation for

this testimony," rather than his experience actually obtaining such insurance. Tr. 59. In addition, as noted in Distribution's Main Brief, Mr. Lacey's knowledge of the underwriting process was limited solely "[t]o the extent that I was able to find some questionnaires, some underwriting questionnaires online." Tr. 59-60; *see* NFGD MB at 21.

In this regard, the Joint Complainants' arguments regarding Mr. Grice's qualifications to provide expert testimony regarding insurance issues actually expose the lack of qualifications Mr. Lacey has to provide on these issues. Distribution has shown that Mr. Grice is qualified to provide expert testimony regarding insurance issues, including the underwriting process for and acquisition of cybersecurity insurance on behalf of a company, whereas the Joint Complainants did not and cannot show Mr. Lacey is similarly qualified.

3. Cybersecurity Insurance Is Not An Impermissible Form Of Financial Security.

The Joint Complainants next attempt to argue that the cybersecurity insurance requirement is an attempt by Distribution to impose additional financial security requirements on NGSs operating on its system. Joint Compl. MB, Section IV.B.c. However, this claim is based upon the flawed premise that the purpose of the cybersecurity insurance requirement is the same as the purpose of financial security requirements, *i.e.*, "[t]he purpose of the security requirement is to ensure the [NGS's] financial responsibility." Joint Compl. St. 1-SR at 11 (quoting 52 Pa. Code § 62.111(b)).

The Joint Complainants' argument fails because it ignores the plain language of Section 1501 of the Public Utility Code, which states that "every public utility may have reasonable rules and regulations governing the conditions under which it shall be required to render service…" 66 Pa.C.S. § 1501. Distribution demonstrated that the purpose of the cybersecurity insurance requirement is twofold. First, it enhances cybersecurity protections by incentivizing the insured

to adopt additional policies, procedures and protections that it might not otherwise put in place, in order to obtain a better price. *See* NFGD MB at 19-22. Second, it offers financial protections to Distribution's customers in the event of an attack. *See* NFGD MB at 22.

Section 2208(c)(1)(i) of the Public Utility Code makes clear that a bond or other financial security is meant to account for "the financial impact on the natural gas distribution company or an alternative supplier or last resort of a default of subsequent bankruptcy of a natural gas supplier." NFGD MB at 42-43 (quoting 66 Pa.C.S. § 2208(c)(1)(i) and associated case law). On the other hand, the purpose of the cybersecurity insurance requirement is two-fold as noted above. The purpose of cybersecurity insurance is different than the purpose of the financial security provisions under the Public Utility Code. Once it is recognized that the cybersecurity insurance requirement fulfills a separate purpose than the financial security requirements permitted under 66 Pa.C.S. § 2208 and 52 Pa. Code § 62.111, the remainder of the Joint Complainants' arguments are exposed as unavailing. Therefore, this argument should be rejected.

4. Conclusion Regarding The Minimum Cybersecurity Insurance Requirement.

As explained above and in Distribution's Main Brief, the record evidence in this case demonstrates that the cybersecurity insurance requirement contained in the DSA provides important incremental benefits and protections to Distribution and its customers, and that obtaining cybersecurity insurance is rapidly becoming a normal cost of doing business. Moreover, the record reveals that the Joint Complainants failed to present evidence of the actual costs to obtain cybersecurity insurance that satisfies the requirement in the DSA. For these reasons, the Joint Complainants' and PIOGA's claims that the cybersecurity insurance requirement is unreasonable and does not provide any incremental benefits should be denied.

C. DISTRIBUTION DID NOT MISREPRESENT THE SUBSTANCE OF THE DSA AND SA TO THE COMMISSION OR PENNSYLVANIA NGSS.

The Joint Complainants next assert that Distribution has violated Section 1501 of the Public Utility Code, 66 Pa.C.S. § 1501, by allegedly misrepresenting the status of the data security agreement applicable to New York suppliers doing business on Distribution's system in New York in its submission of Supplement No. 207, the DSA and the SA applicable to Pennsylvania NGSs doing business on Distribution's system in Pennsylvania before the Commission. In order to weave a web of false implications, the Joint Complainants make two arguments. First, they assert that Distribution misrepresented the substance and the status of the NYPSC's review of the New York data security agreement and self attestation in Distribution's filing of Supplement No. 207 before the Commission. Joint Compl. MB, Section IV.C.a. Second, they argue that the Commission's decision should follow the NYPSC's decision with respect to the cybersecurity insurance requirement. Joint Compl. MB, Section IV.C.b. Neither of these arguments have any merit and both should be rejected.

1. The Joint Complainants' Timeline Of Events Is Inaccurate And Incomplete.

Distribution fully explained the context of the proceedings before the NYPSC and the Commission, including the events leading up to its development of the data security agreement in New York and the timing surrounding specific actions before each agency in its Main Brief. NFGD MB, Sections II, V.E. and V.G; *see also* NFGD St. 1-R at 4-10, 17-27. As explained therein, the Joint Complainants' alleged timeline of events and representation of statements made by Distribution are incomplete and misrepresentative. They fail to recognize the timing of independent actions taken by independent agencies that are tasked by independent state legislatures to independently regulate the public utilities and energy suppliers that do business in their respective states. Indeed, the Commission has repeatedly rejected parties' attempts to rely

upon the decisions of other states' regulatory commissions because of the significant differences that may exist between such states' statutes, regulations and precedent and Pennsylvania's statutes, regulations and precedent. *See* NFGD MB at 45-47.

Furthermore, contrary to the Joint Complainants' claims, Distribution did not misrepresent its intentions with regard to the Pennsylvania DSA to its suppliers. Joint Compl. MB at 21. The Joint Complainants simply fail to detail all of the supplier meetings or quote the actual presentations made at them, *see* NFGD MB at 38-40, and instead rely upon the perceptions of an individual that was not personally involved in numerous of the communications that the Joint Complainants claim were deceptive. NFGD MB at 40-41.

The simple fact remains that the Joint Complainants could have, but did not, participate in the Commission's prior review and approval of Supplement No. 207, the DSA and the SA. A cursory review of Docket No. R-2019-3010744 reveals the undisputed fact that no parties intervened or otherwise participated in the review of Supplement No. 207. If the Joint Complainants believed that the as-filed Supplement No. 207 and the Pennsylvania DSA were unreasonable, they could have and should have participated in that proceeding. However, they did not, and the Commission reviewed and approved Supplement No. 207, the DSA and the SA without condition. The result is that the tariff, and the incorporated DSA and SA, "have the force of regulation – and failure to comply can lead to being restricted from access to NFG's system." NFGD Exhibit CC-9 at 4; *see also* NFGD MB, Section V.A.

For these reasons, and the reasons more fully explained in Distribution's Main Brief and testimony, the ALJ and the Commission should reject the Joint Complainants' attempts to misconstrue Distribution's statements in its filings before the Commission and statements in presentations made to its marketers.

2. The Joint Complainants' Reliance On The NYPSC's Findings And Conclusions Is Misplaced.

The Joint Complainants further attempt to rely upon the record before and determinations by the NYPSC in the *Order Establishing Minimum Cybersecurity and Privacy Protections and Making Other Findings*, Case 18-M-0376 (Order dated Oct. 17, 2019) ("*NYPSC October 2019 Order*"). Joint Compl. MB at 22-23. They further attempt to argue that Distribution "made New York relevant to this proceeding." Joint Compl. MB at 22. These arguments lack merit for three reasons.

First, the Joint Complainants' claim that the NYPSC examined the issue of a minimum cybersecurity insurance requirement for over a year, including "…a full review of a voluminous docket" is irrelevant. Joint Compl. MB at 22. The Commission's review and approval of Supplement No. 207, the DSA and the SA applicable to Pennsylvania NGSs was based upon the record before it. *See* NFGD MB, Section V.A; *see also PA DSA Order*. Similarly, the Commission's review of the Joint Complainants' Complaint in this proceeding is based on the record developed in this case. In neither instance is the record developed before the NYPSC relevant.

Second, the Joint Complainants' contention that Distribution present no evidence to refute that "cybersecurity insurance is costly, does not provide incremental cybersecurity enhancements, and is a barrier to market entry" is incorrect. Joint Compl. MB at 23. Distribution demonstrated that cybersecurity insurance has become a normal cost of doing business, and that most of PIOGA's members have already acquired it. NFGD MB at 23-24. In addition, Distribution showed that the underwriting process specifically incentivizes the insured to implement additional enhancements in order to obtain a better price for the insurance. NFGD MB at 19-22.

On the other hand, as explained in Section IV.B.1 *supra*, and in Section V.D. of Distribution's Main Brief, neither the Joint Complainants nor PIOGA admitted into the record any documents or other evidence that substantiates the actual costs that would be incurred to obtain cybersecurity insurance.[6] With no evidence of actual costs or a comparison or analysis of actual costs to actual revenues in the record, there is no basis upon which the Commission could determine "cybersecurity insurance is costly" for the Joint Complainants to obtain. Distribution also demonstrated that there are important, incremental benefits provided by cybersecurity insurance, which includes incentivizing the implementation of enhanced cybersecurity protections. NFGD MB, Section V.B.2.; *see also* Section IV.B.1*supra*. Furthermore, Distribution refuted the Joint Complainants' claims that cybersecurity insurance acts as a barrier to market entry. NFGD MB, Section V.D.; *see also* Section IV.D *infra*.

Finally, the Joint Complainants ignore that, even if the *NYPSC October 2019 Order* were relevant to the Commission's considerations in this case, the *NYPSC October 2019 Order* did not even foreclose the imposition of a cybersecurity insurance requirement in New York. *See* NFGD MB at 47-48.

D. THE MINIMUM CYBERSECURITY INSURANCE REQUIREMENT IS NOT COST-PROHIBITIVE AND IS NOT A MARKET BARRIER.

The Joint Complainants make a number of claims in support of their assertion that the data security requirements—and specifically the cybersecurity insurance requirement—contained in Supplement No. 207, the DSA and the SA are cost prohibitive and act as a market barrier. None of these claims have any merit.

[6] Here, it once again appears that the Joint Complainants are attempting to use Mr. Lacey's testimony regarding the record developed before the NYPSC as a conduit for extrajudicial evidence that was not admitted into the record in this proceeding. *See* Joint Compl. MB at 22 (citing Mr. Lacey's surrebuttal testimony, regarding the actions and findings of the NYPSC). As explained in footnote 3 *supra*, Pennsylvania law is clear that an expert witness cannot act as a conduit for extrajudicial evidence.

The Joint Complainants' claim that Distribution "believes that it is prudent for NGSs to maintain cybersecurity insurance, because it views itself as the primary beneficiary if the need to make a claim ever arises" is false. Joint Compl. MB at 23. Distribution has made clear that the cybersecurity insurance requirement is an important part of its approach to protect confidential and sensitive customer information from cyber-attacks. *See* NFGD MB, Sections V.B.2.

In addition, Distribution again reiterates that there is no record support for the Joint Complainants' claims that "forcing NGSs to purchase such insurance at premiums that will severely and negatively affect an NGS' bottom line, does not make such an expense necessarily prudent for the NGS." Joint Compl. MB at 23-24. There is no record evidence of the actual costs that the Joint Complainants would incur to obtain cybersecurity insurance, and no record evidence of a comparison or analysis of actual costs to actual revenues. The Joint Complainants' "[m]ere bald assertions, personal opinions or perceptions do not constitute evidence." *See* NFGD MB at 34-37.

Furthermore, the Joint Complainants' claims regarding the method of recovery of the costs of cybersecurity insurance by NGSs versus the method of recovery of those costs by Distribution are should also be rejected. Distribution witness Mr. Cej specifically responded to these claims in his rejoinder testimony at the hearings. Regarding the Joint Complainants' claim that Distribution has an "unearned market advantage" he explained:

> A. We don't view the NGSs as its [Distribution's] competitors or market advantage. I'd like to just take a moment to talk about the company's perspective and as it relates to this matter, and it really boils down to a simple concept of the company's allegation to provide liable and safe service to our customers. The state's commission mandate it, and our customers expect it. The company and its employees are proud of a long history of providing reliable safe service to our customers, and our mission has always been to provide that reliable, safe service. It's woven throughout all aspects of our business including operating and maintaining the pipe lines,

> responding to customer emergencies, and now protecting data systems and the customer's information that is contained within those systems.
>
> Our employees are experts at identifying and mitigating reliability and safety risks to our system's operation. The company believes cyber attacks on utility systems have risen to a level of a significant risk level to the reliability and safety and believe measures contained in our approved tariff supplement to mitigate the risk of our systems and our customers are reasonable and just…
>
> Q. And with that explaining why you do not believe that distribution has an unearned market advantage in the gas supply market, do you agree, then, with Mr. Lacey's testimony that the company is using a DSA in the minimum cyber security insurance requirements…[to pad] an unearned market advantage?
>
> A. No. It's not for that purpose.

Tr. 22-23 (emphasis added).

In addition, the Joint Complainants' claims regarding how Distribution may or may not recover the costs of its cybersecurity insurance, and how this compares to the method by which they may or may not recover the costs of cybersecurity insurance, are irrelevant. Importantly, the ALJ previously explained that:

> The potential impact of the resolution of a possible issue in a future rate case is not relevant to an allegation of anti-competitive behavior on the part of NFGD, today. While Complainants' issue might be the basis for a hypothetical argument in a future rate case, it is not relevant to the issue at hand; that is, that NFGD is engaging in anti-competitive behavior. Likewise, this is not the proceeding in which a re-litigation of issues decided in 2019 by the Commission may occur.

Order Denying The Motion To Dismiss Objections And Compel Responses Submitted By The Joint Complainants, EnergyMark LLC, Vineyard Oil and Gas Company, Mid American Natural Resources LLC, And Total Energy Resources LLC, Docket No. C-2020-3019621 (Order dated Mar. 10, 2021) ("March 10 Order"). Once again, in brief, the Joint Complainants are attempting

to litigate an issue that was found to be irrelevant to this proceeding, *i.e.*, how Distribution may recover certain costs in a future rate case. This claim is not relevant and should be rejected.

Finally, the costs of obtaining cybersecurity insurance are increasingly becoming the cost of doing business. Mr. Grice explained that "cyber insurance…is now part of the normal cost of doing business and is critically important when customer PII is involved." NFGD St. 2-R at 10. His testimony was further corroborated by the statements of PIOGA's members, most of whom have already obtained cybersecurity insurance. NFGD MB at 24.

For these reasons, and the reasons more fully explained in Distribution's Main Brief, the Joint Complainants' assertion that cybersecurity insurance is cost prohibitive and acts as a barrier to market entry should be denied.

E. THE AUDIT REQUIREMENT UNDER THE DSA IS LAWFUL.

The Joint Complainants further argue that the Public Utility Code and the Commission's regulations do not permit a public utility to require a supplier on its system to submit to an audit of its IT systems and data. Joint Compl. MB, Section IV.E. The Joint Complainants claim the audit requirement should be removed for several reasons. First, they assert it is contrary to the Commission's exclusive authority to regulate NGSs. Joint Compl. MB at 24-25. They relatedly attempt to refute Distribution's reliance on several cases where the Commission has reviewed and approved tariff provisions that govern the relationship between utilities and energy suppliers. Joint Compl. MB at 29-30. Second, they claim that the audit requirement is a one-way obligation and unbalanced. *See* Joint Compl. MB at 25-28. Third, they assert that the audit requirement's scope is vague and overbroad. *See* Joint Compl. MB at 25-28. Fourth, they argue that the imposition of this requirement is also premature. *See* Joint Compl. MB at 28-29. Each of these arguments lacks merit and should be rejected.

1. The Audit Provision Does Not Usurp The Commission's Authority To Regulate NGSs.

The Joint Complainants first cite to a number of cases that they claim stand for the proposition that "the Commission alone has the authority to regulate public utilities." Joint Compl. MB at 24. Distribution anticipated and addressed the Joint Complainants' reliance on these cases in its Main Brief. NFGD MB, Section V.C. None of the cited cases address whether a public utility may establish reasonable rules and regulations governing its relationship with energy suppliers operating on its system. Indeed, the Public Utility Code states "every public utility may have reasonable rules and regulations governing the conditions under which it shall be required to render service…" 66 Pa.C.S. § 1501. Here, Distribution sought and obtained Commission approval of the data security requirements contained in Supplement No. 207, the DSA and the SA, and notified the suppliers of the change. Therefore, Distribution's Commission-approved tariff and the incorporated audit provisions do not usurp the Commission's authority.

The Joint Complainants further attempt to refute several cases cited in Mr. Cej's rebuttal testimony and claim that "the cases cited do NOT stand for the proposition for which they were cited, namely, that NGDCs have ever been authorized to supervise via an audit, the internal operations of an NGS." Joint Compl. MB at 29. This argument misses the point. Each of the cited cases stands for, and fully supports, the proposition that the Commission can approve tariff provisions that govern the relationship between public utilities and energy suppliers. Here, the Commission has done just that. The Joint Complainants simply attempt to avoid this truth, because if they failed to participate in the Commission's review and approval of Supplement No. 207 and the DSA and SA.

2. The Audit Provision Is Consistent With Distribution's Authority To Require NGSs That Connect With Its System To Have Reasonable Data Security Requirements And Standards In Place.

The Joint Complainants further argue that the audit provision is a discriminatory "one-way obligation" that permits Distribution to "peer[] into the very heart of a supplier's operation," and provides Distribution an anticompetitive advantage is without merit. *See* Joint Compl. MB at 25-28. As an initial matter, Distribution notes that it has implemented data security standards in direct response to unsuccessful cybersecurity attacks on Distribution's system, and a cyber-attack against an EDI service provide that acts as an external vendor for NFGD, consistent with Section 1501 of the Public Utility Code and the Commission's increased attention to cybersecurity issues. NFGD MB at 26-28; *see also* 66 Pa.C.S. § 1501 ("every public utility may have reasonable rules and regulations governing the conditions under which it shall be required to render service…"). This authority was also conceded by Joint Complainants' witness Mr. Lacey statement that Distribution is well within its rights to impose reasonable data security standards on any company it interfaces with. NFGD MB at 27 (citing Joint Compl. St. 1 at 6 and Tr. 63).

In addition, as explained in Distribution's Main Brief, the DSA and the SA have been revised to address many NGS' concerns. *See* NFGD MB, Section V.B.3.b. Specifically, these revisions directly address the Joint Complainants' concerns regarding who will conduct the audit[7] and more clearly specify the standards that the audit will be evaluated against. NFGD MB at 29 (citing NFGD St. 1-R at 13, 15; Tr. 24-25; NFGD Exhibit CC-2 at 10, 31-32). The Joint Complainants simply attempt to brush off the revised DSA and SA in NFGD Exhibit CC-2 and claim that these revisions "makes little difference in this proceeding." Joint Compl. M.B. at 25-

[7] Under the revisions, a third-party auditor selected through a competitive solicitation process, and not Distribution, will conduct any audit at the Company's expense to confirm compliance with the standards set forth in the DSA.

26. However, it is important to recognize that the Joint Complainants concerns regarding Distribution's ability to audit for compliance with the DSA would be mooted by the Commission's approval of the revised DSA contained in NFGD Exhibit CC-2.

The audit requirement is also not discriminatory simply because it is non-reciprocal. The Joint Complainants argue that "[t]he mere imposition of such unbalanced terms is de facto discrimination" and cite the Commission's Opinion and Order in *Pa. PUC et al v. Columbia Gas of Pennsylvania, Inc.,* Docket No. R-2018-2647577, 2018 Pa. PUC LEXIS 431 (Order entered December 6, 2018) ("*Columbia*"). Joint Compl. R.B. at 27. They also assert that the "Service will be discriminatory as between NFGD and suppliers because it will not be reciprocal" and that a lack of reciprocity creates "a clear unbalance" between the parties. Joint Compl. R.B. at 27-28 (also referencing 66 Pa.C.S. §§ 1502 and 2203(4)).

The Commission's order in *Columbia* is distinguishable on several grounds. First, *Columbia* dealt with the provision of a billing service by Columbia to third-parties (which were former affiliates of Columbia) and not to NGSs that serve on its system. *See Columbia*, 2018 Pa. PUC LEXIS 431, at 77. The Commission explained discrimination can be allowable "so long as it is not undue" and that "[i]n order for the discrimination to be reasonable in the circumstances, the discrimination between the parties must be based on facts which warrant the distinction, and not simply preferential treatment." *Id.*, at *78 (emphasis added). It further held that the practice was discriminatory because "all the reasons Columbia gives for providing its former affiliates 'on bill' billing service point to a preferential relationship and weigh against any justifiable distinction between Columbia's former affiliates and the NGS Parties for billing purposes." *Id.*, at *78.

Unlike the facts in *Columbia*, the data security requirements—including the audit requirement—are uniformly imposed upon all Pennsylvania NGSs that connect with Distribution's

system. The Joint Complainants have presented no evidence that the data security requirements are anything but standard terms and conditions for Distribution to provide service to these entities. *See* 66 Pa.C.S. § 1501 ("Subject to the provisions of this part and the regulations or orders of the commission, every public utility may have reasonable rules and regulations governing the conditions under which it shall be required to render service."). Furthermore, the audit requirement does not provide preferential treatment as between any Pennsylvania NGSs that connect with Distribution's system; all of them are subject to the same audit requirement, and evaluation against the same.

The only "discrimination" that the Joint Complainants allege would occur is a denial of access to Distribution's system for NGSs who are audited and found to not be in compliance with the data security requirements contained in the DSA and SA. Given that the data security requirements contained in the DSA and SA are put in place to protect confidential and sensitive customer information, non-adherence to these requirements provides a basis upon which discrimination between NGSs could is reasonable. Therefore, the Joint Complainants' claims that the audit provision constitutes undue discrimination should be rejected.

3. The Audit Provision Is Neither Vague Nor Overbroad.

The Joint Complainants' further assertions that the audit provision is "overbroad," "vague" and/or "very broad," and that it has "unstated standards" should also be denied. *See* Joint Compl. MB at 25-28.

Distribution witness Mr. Cej addressed the Joint Complainants' claims that the DSA and SA were vague. Importantly, each aspect of the DSA and SA that have been identified as "vague" or "overbroad" by the Joint Complainants are subject to the revisions being proposed by Distribution in NFGD Exhibit CC-2. In addition, Mr. Cej explained:

> With respect to the term "Third Party Representatives" or "Representatives" that Mr. Lacey claims is undefined, the SA as revised makes clear that the ESE is attesting to its own compliance with the requirements. In addition, Mr. Lacey's claim that the SA is contradictory in requiring parties executing to comply with all requirements, but permits parties to leave blank requirements that do not apply or indicate plans to comply with the Requirement is misplaced. The SA simply recognizes that certain of the Requirements included are specific to the systems an ESE has in place and how it may interface with Distribution's system. Furthermore, the statement that non-compliance "may" result in termination of access recognizes that the termination process must proceed pursuant to the Governing Documents, which include the Company's tariff, the Commission's regulations and any applicable Commission orders. As such, Mr. Lacey's claims that the Pennsylvania SA is vague should be rejected.

NFGD St. 1-R at 14. In addition, Mr. Cej further explained that there are specific provisions of the DSA which identify the standards against which an NGS will be audited. Tr. 24-25; NFGD Exhibit CC-2 at 10, 31-32.

The Joint Complainants' further speculation that the standards set forth in the DSA and SA are intentionally vague and broad, and designed to permit Distribution to impose an audit requirement on a competitor are similarly without merit. As explained by Mr. Cej, Distribution does not view NGSs as its competitors. Tr. 22. Furthermore, the data security requirements are intended to protect Distribution's and its customers from cyber-attacks; they are not designed to create or "pad" a market advantage. *See* Tr. 22-23. As such, the Joint Complainants' claims should be denied.

4. The Imposition Of The Audit Provision Is Not Premature.

The Joint Complainants further argue that the audit requirement is also premature. Joint Compl. MB at 28-29. However, Distribution explained that its proposal to implement the data security requirements contained in Supplement No. 207, the DSA and the SA was prompted, in part, by a March 2018 cyber-attack of an EDI service provider that acts as an external vendor for

Distribution. NFGD St. 1-R at 7. Furthermore, the Commission has recently advised utilities to maintain good cyber hygiene and remain vigilant in a press release. NFGD St. 1-R at 8-9; *see also* NFGD Exhibit CC-1. In addition, Mr. Grice explained that "as a general matter for any business, both the frequency and severity of cybersecurity incidents and resulting claims continue to increase." NFGD St. 2-R at 4.

In this regard, Distribution filing and obtaining approval of the data security requirements contained in Supplement No. 207, the DSA and the SA is not premature. Distribution sought to implement these data security requirements, including the audit provision, in direct response to increased risks of cyber-attacks. Distribution has taken timely, reasonable and prudent steps to protect it's the confidential and sensitive information of its customers by requiring NGSs that connect with its systems to adhere to specific data security requirements and by requiring NGSs to be subject to audit for compliance with these requirements.

F. THE COMMISSION SHOULD APPROVE THE REVISED DSA AND SA ENTERED INTO THE RECORD AS NFGD EXHIBIT CC-2 AS A PART OF ITS RESOLUTION OF THIS PROCEEDING.

Distribution can impose reasonable security standards for entities that interface with its information technology systems. NFGD MB at 29-30. Distribution initially did so by seeking and obtaining Commission approval of Supplement No. 207 and the associated DSA and SA. Nevertheless, the Company initiated a collaborative that has resulted in numerous revisions to the DSA and SA, with the primary exception related to the cybersecurity insurance provision, and agreed to adopt the revisions set forth in NFGD Exhibit CC-2. Importantly, the revisions proposed in NFGD Exhibit CC-2 would make these documents more consistent with the documents in place for the Company's New York footprint, which has appeared to be the Joint Complainants' and PIOGA's desire, and also resolve many of their concerns as noted above, in Distribution's Main Brief and in Distribution's testimony. Therefore, and for the reasons more fully explained in

Distribution's Main Brief, the Commission should approve the revised version of the Pennsylvania DSA and SA set forth in NFGD Exhibit CC-2 as a part of its resolution of this proceeding.

V. CONCLUSION

WHEREFORE, National Fuel Gas Distribution Corporation respectfully requests that the Pennsylvania Public Utility Commission: (a) deny the Complaint of EnergyMark LLC, Vineyard Oil & Gas Company, Mid American Natural Resources LLC, and Total Energy Resources LLC; and (b) approve the use of the Revised Data Security Agreement and Self-Attestation admitted into the record in this proceeding as NFGD Exhibit CC-2; and (c) close the above-captioned docket.

Respectfully submitted,

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Date: July 9, 2021

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