



COMMONWEALTH OF PENNSYLVANIA

September 21, 2021

E-FILED

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120

**Re: National Fuel Gas Distribution Corporation Supplement No. 228 to Tariff Gas - Pa.
P.U.C. No. 9 / Docket No. R-2021-3027406**

Dear Secretary Chiavetta:

Enclosed please find the Complaint, Public Statement, and Verification, on behalf of the Office of Small Business Advocate (“OSBA”), in the above-captioned proceeding.

Copies will be served on all known parties in this proceeding, as indicated on the attached Certificate of Service.

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

Sincerely,

/s/ Steven C. Gray

Steven C. Gray
Senior Supervising
Assistant Small Business Advocate
Attorney I.D. No. 77538

Enclosures

cc: Robert D. Knecht
Parties of Record

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

National Fuel Gas Distribution : Docket No. R-2021-3027406
Corporation Supplement No. 228 to Tariff :
Gas - Pa. P.U.C. No. 9 :
:

**COMPLAINT OF THE
SMALL BUSINESS ADVOCATE**

1. The Complainant is:

The Small Business Advocate
555 Walnut Street
Forum Place, 1st Floor
Harrisburg, PA 17101
(717) 783-2525
(717) 783-2831 (fax)

2. The name and address of the Complainant's attorney is:

Steven C. Gray
Assistant Small Business Advocate
Office of Small Business Advocate
555 Walnut Street
Forum Place, 1st Floor
Harrisburg, PA 17101
(717) 783-2525
(717) 783-2831 (fax)
sgray@pa.gov

3. The respondent utility is:

National Fuel Gas Company
6363 Main Street
Williamsville, NY 14221

4. The Complainant is authorized and directed by the Small Business Advocate Act, Act 181 of 1988, 73 P.S. §§ 399.41 - 399.50, to represent the interests of small business consumers of utility services in matters before the Pennsylvania Public Utility Commission (“Commission”).

5. This Complaint is filed against the rates, terms, and other provisions of Supplement No. 228 to Tariff Gas - Pa. P.U.C. No. 9 (“Supplement No. 228”) which was filed on July 22, 2021, by National Fuel Gas Distribution Corporation (“NFG” or the “Company”). Supplement No. 228 modifies the treatment of Other Post-Employment Benefits (“OPEB”) from that agreed to in the settlement of the Company’s last base rate proceeding at Docket No. R-00061493. That settlement was approved by the Commission. Specifically, Supplement No. 228:

a. Reduces the Company’s base rates by \$7,704,085 by halting the Company’s claim of the magnitude of OPEB expenses reflected in rates, notwithstanding the \$10,005,305 gross OPEB cost reflected in the settlement.

b. Refunds \$50,000,000 of the OPEB expenses in the Company’s OPEB regulatory liability account that are held in a grantor trust that were paid for by customers but are not needed for future OPEB costs. More specifically, NFG proposes to refund \$25,000,000 of the \$50,000,000 through a one-time bill credit to all customers and the remaining \$25,000,000 through a non-reconcilable “sur-credit” over a 5-year period.

c. Cease all regulatory deferral accounting relating to OPEB expenses because the Company claims the OPEB costs reflected in rates would be zero. NFG Statement No. 2, at 13.

d. Removes \$53,402,051 from the current regulatory liability balance. Of that, record \$17,617,453 as a reduction to OPEB expense, which would appear to be income to the Company. The remaining \$35,784,598 is transferred to a separate regulatory liability account “that will be used to reduce the cost of labor charged to rate base and affiliates over a period of 5 years.” NFG Statement No. 2, at 13-14.

The OSBA has conducted an initial review of Supplement No. 228, and believes, and therefore avers, that the Company has not adequately demonstrated that Supplement No. 228 is just and reasonable. The OSBA commends the Company for proactively addressing the burgeoning balance in the OPEB regulatory liability account and for providing timely rate reductions and refunds to customers. However, the following attributes of Supplement 228 merit a more careful evaluation:

a. Whether the rate reduction should reflect the gross OPEB cost of \$10.0 million reflected in the settlement of the base rates proceeding or be limited to the \$7.7 million in Supplement No. 228.

b. Whether a portion of the regulatory liability account established in the last base rate proceeding should be recorded as a reduction to OPEB expense.

c. Whether a portion of the regulatory liability account should be moved to a separate regulatory liability account to be used to reduce the cost of labor charged to rate base and affiliates.

d. Whether cessation of the regulatory deferral accounting procedure established in the last base rate case is just and reasonable and does not constitute improper single-issue ratemaking, at a time when the Company is incurring negative OPEB costs.

e. Whether the allocation of the rate reductions, rate sur-credits and one-time bill credits among rate classes and individual customers is just and reasonable. OSBA observes, for example, that the rate reduction shown in Exhibit DNK-2 (page 2) is 7.69 percent of non-gas revenues for the Residential class, but only 1.32 percent for the Small Commercial and Public Authority (“SC&PA”) class (over 250 mcf per year). Similarly, for the sur-credit mechanism, Exhibit DNK-3 shows that Supplement No. 228 assigns a rate credit of 20.402 cents per mcf for Residential sales customers and 26.167 cents per mcf for Large Commercial and Public Authority

sales customers, but only 2.319 cents per mcf for SC&PA (greater than 250 mcf per year) customers.

6. Complainant believes, and therefore avers, that Supplement No. 228's proposed refund mechanism is unjust, unreasonable, and unlawfully discriminatory in violation of, *inter alia*, Sections 1301 and 1304 of the Public Utility Code, 66 Pa.C.S. §§1301 and 1304, and contrary to appropriate public policy and sound ratemaking considerations.

7. In view of the foregoing, and pursuant to Ordering Paragraph 2 of the Commission's September 15, 2021, Order at this Docket, the Small Business Advocate respectfully requests that the Pennsylvania Public Utility Commission:

- A. Immediately suspend and investigate the operation of Supplement No. 228;
- B. At the conclusion of such investigation, reject the proposed refund mechanism and other tariff changes in Supplement No. 228 to the extent required to ensure that Company's resulting rates are lawful, just, reasonable and not unduly discriminatory; and
- C. Grant such other relief as may be necessary or appropriate.

Respectfully submitted,

/s/ Steven C. Gray

Steven C. Gray
Senior Supervising
Assistant Small Business Advocate
Attorney ID No. 77538

For:
The Small Business Advocate

Office of Small Business Advocate
555 Walnut Street
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(717) 783-2525
(717) 783-2831 (fax)

Dated: September 21, 2021

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

National Fuel Gas Distribution : Docket No. R-2021-3027406
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**PUBLIC STATEMENT OF
THE OFFICE OF SMALL BUSINESS ADVOCATE**

The Small Business Advocate is authorized and directed to represent the interest of small business consumers of utility services in Pennsylvania under the provisions of the Small Business Advocate Act, Act 181 of 1988, 73 P.S. §§ 399.41 - 399.50 (“Act”). The Act further provides that the Small Business Advocate is to issue publicly a written statement stating concisely the specific interest of small business consumers to be protected by his initiation of or intervention in any proceeding involving those interests before the Public Utility Commission (“Commission”) or any other agency or court. This public statement relates to the filing today by the Small Business Advocate of a complaint against Supplement No. 228 to Tariff Gas - Pa. P.U.C. No. 9 (“Supplement No. 228”) which was filed on July 22, 2021, by National Fuel Gas Distribution Corporation (“NFG” or the “Company”). Supplement No. 228 modifies the treatment of Other Post-Employment Benefits (“OPEB”) from that agreed to in the settlement of the Company’s last base rate proceeding at Docket No. R-00061493.

The Small Business Advocate files this formal complaint against Supplement No. 228 in order to protect the interests of the Company’s small business customers. A thorough inquiry by the Commission into all the elements of Supplement No. 228 is necessary to ensure that the proposed changes are lawful, just, reasonable, and not unduly discriminatory.

In view of the foregoing, the Small Business Advocate will participate in proceedings before the Commission to investigate the reasonableness of Supplement No. 228. The Small

Business Advocate will ask the Commission to deny any tariff changes that apply to small business customers that are not proven by NFG to be lawful, just, reasonable, and not unduly discriminatory to the Company's small business customers.

Dated: September 21, 2021

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PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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VERIFICATION

I, Steven C. Gray, hereby state that the facts set forth herein above are true and correct to the best of my knowledge, information and belief and that 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).

Date: September 21, 2021

/s/ Steven C. Gray

(Signature)

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PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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CERTIFICATE OF SERVICE

I hereby certify that true and correct copies of the foregoing have been served via email (*unless other noted below*) upon the following persons, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant).

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The Honorable Charles E. Rainey Jr.
Chief Administrative Law Judge
Pennsylvania Public Utility Commission
400 North Street
Commonwealth Keystone Building
Harrisburg, PA 17120
crainey@pa.gov

DATE: September 21, 2021

/s/ Steven C. Gray

Steven C. Gray
Senior Supervising
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