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April 20, 2022

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: Pennsylvania Public Utility Commission, et al. v. National Fuel Gas Distribution Corporation Section 1307(f) - 2022 Proceeding
Docket Nos. R-2022-3030235, et al.**

Dear Secretary Chiavetta:

Attached for filing, please find the National Fuel Gas Distribution Corporation's Reply Brief in the above-referenced proceeding. Copies will be provided per the attached Certificate of Service.

Respectfully submitted,



Nicholas A. Stobbe

NAS/dmc
Attachments

cc: Honorable Mark A. Hoyer
Honorable Charece Z. Collins
Certificate of Service

CERTIFICATE OF SERVICE

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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Date: April 20, 2022



Nicholas A. Stobbe

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission, <i>et al.</i>	:	
	:	
	:	Docket Nos. R-2022-3030235
v.	:	C-2022-3030573
	:	C-2022-3030730
National Fuel Gas Distribution Corporation	:	
	:	

**REPLY BRIEF OF
NATIONAL FUEL GAS DISTRIBUTION CORPORATION**

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TABLE OF CONTENTS

I. INTRODUCTION..... 1

II. STATEMENT OF THE CASE 1

III. LEGAL STANDARDS..... 1

IV. SUMMARY OF REPLY ARGUMENT 3

V. REPLY ARGUMENT..... 6

A. DESCRIPTION OF DISTRIBUTION’S PROPOSED RENEWABLE NATURAL GAS PILOT PROGRAM 6

B. DISTRIBUTION’S PROPOSED RENEWABLE NATURAL GAS PILOT PROGRAM MEETS THE APPLICABLE LEGAL STANDARDS 6

1. I&E’s Argument that Distribution’s RNG Pilot Program Violates Section 1318 of the Public Utility Code Should Not Be Accepted..... 6

2. I&E’s Argument that Distribution’s RNG Pilot Program Could Result in Unjust and Unreasonable Rates Should Not be Accepted..... 8

3. OSBA’s Proposed Sharing Mechanism Should Not be Accepted. 9

C. DISTRIBUTION’S PROPOSED RENEWABLE NATURAL GAS PILOT PROGRAM IS IN THE PUBLIC INTEREST AND SHOULD NOT BE MODIFIED 10

VI. CONCLUSION 11

TABLE OF AUTHORITIES

Page(s)

Pennsylvania Appellate Court Decisions

Samuel J. Lansberry, Inc. v. Pa. Public Utility Comm’n.,
578 A.2d 600 (Pa. Cmwlth. 1990)1

Pennsylvania Administrative Agency Decisions

*Joint Petition for Settlement of Section 1307(f) Rate
Investigation*, Docket No. R-2021-3025652, et al. (Order adopting
Recommended Decision approving settlement entered Oct. 7, 2021.)8

Pa. Public Utility Comm’n, et al. v. The Peoples Natural Gas Co., et al., Docket
Nos. R-009738965

Pennsylvania Statutes

66 Pa. C.S. § 315 (a)1

66 Pa. C.S. § 1301(a)1

66 Pa. C.S. § 1318(a)2, 3

66 Pa. C.S. § 1317.....11

66 Pa. C.S. § 1318.....4, 6, 8, 11

I. INTRODUCTION

National Fuel Gas Distribution Corporation (“Distribution” or the “Company”) herein submits its Reply Brief in the above-captioned 2022 Purchased Gas Cost (“PGC”) proceeding. As explained at length in the Company’s Main Brief submitted on April 13, 2022, and the Joint Petition for Partial Settlement (“Partial Settlement”) being concurrently filed on April 20, 2022, all issues in this PGC proceeding have been resolved other than the issues reserved for litigation related to Distribution’s proposal to implement a pilot program to procure Renewable Natural Gas (“RNG”). Therefore, this Reply Brief is focused on the issues related to the Company’s RNG pilot program proposal, and the issues and recommendations contained in the Pennsylvania Public Utility Commission’s (“Commission’s”) Bureau of Investigation and Enforcement’s (“I&E”) Main Brief and the Office of Small Business Advocate’s (“OSBA”) Main Brief.¹

II. STATEMENT OF THE CASE

Distribution’s Statement of the Case was provided in the Company’s Main Brief (*See* Distribution M.B., Section II.) As such, the Statement of the Case will not be restated here.

III. LEGAL STANDARDS

A. BURDEN OF PROOF

In their Main Briefs, I&E, OSBA, and OCA argue that Distribution has the burden to prove its proposed RNG pilot program is lawful and in the public interest by a preponderance of the evidence. *Samuel J. Lansberry, Inc. v. Pa. Public Utility Comm’n.*, 578 A.2d 600, 602 (Pa. Cmwlth. 1990); 66 Pa. C.S. § 1301(a); *See also* 66 Pa. C.S. § 315 (a). Distribution agrees with the characterizations of the other parties’ relating to the Company’s burden of proof, and

¹ Distribution notes that the Office of Consumer Advocate (“OCA”) is supportive of the Company’s proposed RNG pilot program, as-filed, and recommended it be approved in its Main Brief.

acknowledges that the Company must carry its burden, by a preponderance of the evidence, in order for the Commission to approve the RNG pilot program.

Distribution has carried its burden in this case and has demonstrated that its RNG pilot program is lawful and in the public interest.

B. LEGAL STANDARDS APPLICABLE TO DISTRIBUTION'S PROPOSED RENEWABLE NATURAL GAS PILOT PROGRAM

Distribution agrees with the other parties over the governing legal standard for approval of the Company's proposed RNG pilot program, specifically, that the RNG pilot program should be approved if the Commission finds that the utility is pursuing a "least cost fuel procurement policy, consistent with the Utility's obligation to provide safe, adequate and reliable service to its customers." 66 Pa. C.S. § 1318(a). Distribution also agrees with I&E, OSBA, and OCA that, in order for the Commission to reach that conclusion, the Commission must make four specific findings:

- (1) The utility has fully and vigorously represented the interests of its ratepayers in proceedings before the Federal Energy Regulatory Commission.
- (2) The utility has taken all prudent steps necessary to negotiate favorable gas supply contracts and to relieve the utility from terms in existing contracts with its gas suppliers which are or may be adverse to the interests of the utility's ratepayers.
- (3) The utility has taken all prudent steps necessary to obtain lower cost gas supplies on both short-term and long-term bases both within and outside the Commonwealth, including the use of gas transportation arrangements with pipelines and other distribution companies.
- (4) The utility has not withheld from the market or caused to be withheld from the market any gas supplies which should have been utilized as part of a least cost fuel procurement policy.

66 Pa.C.S. § 1318(a)(1)-(4).

Distribution has met the above-described standards, and expressly disagrees with I&E's contention that the Company has failed to adhere to factors (2) and (3). Similarly, OSBA's

contention that the Company's proposed RNG pilot program is violative of factor (3) is without merit and should be rejected.

IV. SUMMARY OF REPLY ARGUMENT

Distribution has reviewed I&E's, OSBA's, and OCA's Main Briefs regarding the Company's proposed RNG pilot program. Distribution agrees with the OCA's position that the RNG pilot program should be approved without modification. Distribution disagrees with both I&E's and OSBA's position(s) that the proposed RNG pilot program violates a least cost gas procurement policy. The Company's Reply to both I&E's and OSBA's Main Briefs are set forth herein.

I&E opposes the proposed RNG pilot program as it believes it is inconsistent with the Company's requirement to negotiate favorable gas supply contracts. In turn, I&E also argues that Distribution has not taken all prudent steps necessary to obtain lower cost gas supplies on both short-term and long-term bases both within and outside the Commonwealth. (I&E M.B. at 7); *See also* 66 § 1318 (a)(2), (a)(3). I&E bases its position on the fact that Distribution has not proposed any specific contracts for RNG supply at this point and the allegation that without actual or tentative RNG contracts for the parties to review the Company's proposed RNG pilot program fails at the outset. There appears to be a misunderstanding between Distribution and I&E as to what the Company is requesting as to Commission approval of its RNG pilot program. I&E is correct that the Company has not set forth specific contracts for approval as part of its RNG pilot program, and the Company is not requesting that the Commission approve any specific contracts. Rather, the Company has set forth a proposal and a structure for how it will seek to acquire RNG supplies for its system. The Company is proposing to issue Requests for Proposals ("RFPs") for up to 0.5% of its total gas supplies at a fixed price for 1-year, 2-year or 3-year terms. The Company has explained how it will evaluate the RFP results to ensure that they meet the statutory least cost

standards and has committed to selling the Renewable Identification Numbers (“RINs”) to generate revenues to offset the RNG price premium. The Company has also proposed a sharing mechanism that would provide customers with 75% of any remaining revenues. The Company is requesting that the Commission approve the RNG pilot program structure and parameters. However, the Company is not requesting that the Commission determine at this time that all RNG contracts that the Company enters into in the future under the pilot program meet the least-cost standard. After the Company enters into a contract under the RNG pilot, the specific terms RNG contract will still be subject to a statutory prudence review by the parties and the Commission based on whether the Company reasonably followed the parameters of the RNG pilot program, including an evaluation of the RNG contract price, the estimated RIN revenues at the time of contracting, and the Company’s Weighted Average Cost of Gas (“WACOG”). This is substantially different than the RNG program that was proposed by Philadelphia Gas Works, which did not include these parameters and did not propose to sell RINs to offset any RNG price premium.

Moreover, in this proceeding I&E proposed 3 specific conditions if the Commission approved the RNG pilot program, including that the Company: (1) show how the purchase of RNG complies with least cost procurement of all gas, (2) sell RINs to offset any RNG price premium and (3) provide a report in future 1307(f) proceedings describing the details of the pilot program. Distribution has agreed to all of 3 of I&E’s proposed conditions. As such, I&E’s arguments for denial of the Company’s RNG pilot program should not be accepted.

Similarly, OSBA has taken the position that the RNG pilot program, as filed, violates the Company’s requirement to pursue a least cost gas procurement policy. *See* 66 § 1318 (a)(4). OSBA bases this contention on the argument that “no one has any idea of what RNG prices are

going to be...” (OSBA M.B. at 5.) This argument should not be accepted because the same argument applies to all gas supplies that are acquired by the Company. When the Company enters into a contract to purchase gas, an evaluation of whether the contract price meets the least-cost standards is based on a comparison of prices at the time that the contract is entered into. Future prices may go up or go down, but that does not impact the least-cost analysis. The least-cost analysis is based upon market conditions at the time that the contract is entered into. *See Pa. Public Utility Comm’n., et al. v. The Peoples Natural Gas Co., et al.*, Docket Nos. R-00973896, *et al.*, 1997 Pa. PUC LEXIS 117, 21-22 (Order Entered Sept. 30, 1997) (Holding that adherence to least cost principles could not be reviewed in hindsight by the Commission in the context of supply management and storage.) However, OSBA also notes that it does not have any objection to the Company conducting an RNG pilot program, as such program appears “reasonable.” (OSBA M.B. at 5.) OSBA’s primary grievance with the Company’s RNG pilot program is related to the pilot’s sharing mechanism, that would distribute any revenues and/or shortfalls resulting from the sale of RIN credits to offset any potential premium paid for RNG. The OSBA’s position is that Distribution should be at risk if RIN revenues do not cover the RNG price premium, even if the Company prudently entered into the RNG contract and at the time the contract was entered into it was reasonably projected that RIN revenues would cover or exceed the RNG price premium. The OSBA’s proposal is inconsistent with the Company’s existing sharing mechanism and, indeed, inconsistent with other sharing mechanisms approved by the Commission for other Natural Gas Distribution Companies (“NGDCs”). As such, the OSBA’s contentions regarding the Company’s proposed sharing mechanism should be rejected.

For the reasons more fully explained in Distribution’s Main Brief, and below, Distribution’s RNG pilot program should be approved as filed.

V. REPLY ARGUMENT

A. DESCRIPTION OF DISTRIBUTION'S PROPOSED RENEWABLE NATURAL GAS PILOT PROGRAM

Distribution's description of its proposed RNG pilot program was contained, at length, in the Section V(A) of the Company's Main Brief and will not be recited here. With that said, the Company maintains that its proposed RNG pilot program is wholly consistent with applicable legal standards, Commission precedent, and Commission policy goals and should be approved without modification.

B. DISTRIBUTION'S PROPOSED RENEWABLE NATURAL GAS PILOT PROGRAM MEETS THE APPLICABLE LEGAL STANDARDS

1. I&E's Argument that Distribution's RNG Pilot Program Violates Section 1318 of the Public Utility Code Should Not Be Accepted.

In its Main Brief, I&E argues that the Company's RNG pilot program violates Section 1318's second and third prongs, i.e., that Distribution has failed to show that:

(2) The utility has taken all prudent steps necessary to negotiate favorable gas supply contracts and to relieve the utility from terms in existing contracts with its gas suppliers which are or may be adverse to the interests of the utility's ratepayers.

(3) The utility has taken all prudent steps necessary to obtain lower cost gas supplies on both short-term and long-term bases both within and outside the Commonwealth, including the use of gas transportation arrangements with pipelines and other distribution companies

I&E bases this position on the fact that Distribution has yet to enter into any RNG supply contracts for I&E to review. (I&E M.B., p. 8.) As noted above, there appears to be a misunderstanding between the Company and I&E as to what approvals the Company is seeking with respect to its RNG pilot program. The Company is seeking approval of the structure of an RNG acquisition process. The specific terms of each RNG contract will be subject to prudence

review by the parties and the Commission to ensure compliance with the RNG pilot program structure and parameters and the statutory least-cost standards after the RNG contract is executed (based upon market conditions at the time that the contract is entered into).

The proposed RNG pilot program structure and parameters are as follows:

1. Distribution will evaluate whether a contract will meet the statutory least cost standards by comparing the RNG contract price, offset by the estimated revenues from the sale of RINs, to the Company's WACOG. The specific methodology is set forth in Exhibit CAC-2.
2. Distribution will sell the RINs to offset the RNG premium.
3. Distribution will limit the purchase quantity to 0.5% of its annual purchases, which is approximately 200 Dth/day.
4. The Pilot program will be limited to a term of 3 years.
5. All RIN sale revenues in excess of the RNG price premium will be shared with 75% going to PGC customers and 25% to the Company.
6. Distribution agrees to I&E's proposed reporting requirements.

(Distribution Statement Nos. 1, pp 8-10; 1-R, pp. 5-6; PGC Exhibit CAC-2.)

Further, Company Witness Christopher A. Cej explained in his Rejoinder Testimony:

[T]he Company would evaluate offers for RNG supplies without RINS, similar to offers for traditional gas supplies. Receipt locations, supplier performance and experience, in addition to price are factors considered by the Company. Historically, purchase price differentials for traditional gas supplies with similar commercial terms and various circumstances could vary by as much as \$0.05. Unless there are extenuating circumstances, a higher price differential for RNG without RINs would likely be considered unacceptable.

(Distribution Statement No. 1-R, pp. 4-5.)

Distribution also made clear that it would not enter into an RNG contract if it was determined that forecasted RIN sales revenues would not exceed the RNG price premium.

(Distribution Statement Nos. 1-R, pp. 4-5; 1-RJ, pp. 3-4.) The Company’s RNG pilot program does not mandate the introduction of RNG into its system. Should RNG become prohibitively expensive as compared to traditional gas supplies, or the value of RIN credits fall to the point of not meaningfully offsetting or entirely eliminating the premium for RNG, the Company would simply not enter into a purchase agreement for RNG at that time. (Distribution M.B., Section (V)(B)(2); Distribution Statement No. 1-RJ, pp. 7-8.)

2. I&E’s Argument that Distribution’s RNG Pilot Program Could Result in Unjust and Unreasonable Rates Should Not be Accepted.

In its Main Brief, I&E also argues that the Company’s proposed RNG pilot program could result in rates that violate the Public Utility Code’s requirement that rates be “just and reasonable.” (I&E M.B., pp. 10-11.) This fear is unwarranted and should be rejected as a basis for denying the Company’s proposed RNG pilot program.

Much like I&E’s arguments relating to the Company’s purported inconsistencies with Section 1318 of the Public Utility Code, I&E’s concerns on this front stem from Distribution not having RNG supply contracts in place. (I&E M.B., p. 11.) I&E’s primary basis for this point is in the Commission’s approval of an RNG pilot program proposed and implemented by UGI Utilities, Inc. – Gas Division (“UGI Gas”).² What I&E fails to note, however, are the parameters that Distribution has agreed to and the prudence review that Distribution will undertake prior to entering into any RNG contract. (Distribution M.B., p. 9; Distribution Statement No. 1, pp. 7-8.) Distribution’s prudence review and compliance with the RNG pilot program parameters will be subject to review by the parties and the Commission.

² See *Joint Petition for Settlement of Section 1307(f) Rate Investigation*, Docket Nos. R-2021-3025652, et al. (Order adopting Recommended Decision approving settlement entered Oct. 7, 2021.) (“*UGI Gas RNG Order*”).

Further, I&E seems to believe that the Commission's approval of UGI Gas's RNG pilot, via settlement, was conditioned on the UGI Gas's existing contract for RNG supply. That is not the case. While it is true that UGI Gas's RNG pilot program differs from Distribution's proposal in that respect, there is substantial record evidence to prove that Distribution's RNG proposal is otherwise consistent with UGI Gas's program and will meet the statutory least-cost standards.

3. OSBA's Proposed Sharing Mechanism Should Not be Accepted.

Through its Main Brief, OSBA argues that the Company's RNG pilot program should be modified to reflect a "symmetrical" sharing mechanism for the distribution of revenues and/or losses related to the sale of RIN credits. (OSBA M.B., p. 6.) OSBA's position on this issue is without support and should not be accepted.

As explained more fully in the Company's Main Brief, the Commission has evaluated various sharing mechanisms employed by NGDCs in the past. Distribution's proposed mechanism related to its RNG pilot program is wholly consistent with other, similar mechanisms approved by the Commission. (Distribution M.B., pp. 15-16.) Further, the proposed sharing mechanism mirrors other sharing mechanisms currently employed by the Company. (Distribution M.B., p. 15.) The rationale for approving sharing mechanisms for off-system sales and capacity release mechanisms – to maximize management efforts to reduce overall PGC costs – is the same rationale that applies to the Company's proposed sharing mechanism for its RNG pilot program. The sharing mechanism will encourage the Company to seek RNG purchases that lower PGC rates when the Company can sell RINs to more than offset any RNG price premium.

Further, the OSBA's concerns over ratepayer risk are significantly overstated. As outlined throughout the Company's testimony and Main Brief, Distribution has taken meaningful and significant steps to mitigate the risk of procuring RNG supply to ratepayers, including: (1) making the program a limited 3-year pilot; (2) limiting the purchase quantity of RNG to 0.5% of the annual

purchases, which is approximately 200 Dth/day; (3) conducting a thorough review of market conditions at the time of the contract to avoid non-economic contracts to the extent possible; and (4) selling the RINs to offset any RNG premium. (Distribution M.B., p. 14; Distribution Statement No. 1-RJ, pp. 1-2.)

As such, and consistent with the Company's position outlined in its Main Brief, the OSBA's contentions regarding Distribution's proposed sharing mechanism should be rejected.

C. DISTRIBUTION'S PROPOSED RENEWABLE NATURAL GAS PILOT PROGRAM IS IN THE PUBLIC INTEREST AND SHOULD NOT BE MODIFIED

Distribution's proposed RNG pilot program is in the public interest and should be approved, as filed. For the reasons noted above, and explained in more detail in the Company's Main Brief, Distribution's RNG pilot program presents an opportunity for Distribution to introduce a limited amount of RNG into its system in a way that presents very limited risk for ratepayers, is consistent with least cost procurement standards, complies with Commission precedent and policy, and furthers carbon emission reduction goals in the Commonwealth.

VI. CONCLUSION

WHEREFORE, as explained above and more fully in National Fuel Gas Distribution Corporation's Main Brief, the Company respectfully requests that the Commission: (1) conclude that Distribution's proposed Renewable Natural Gas pilot program is consistent with the Company's obligations set forth under Sections 1317 and 1318 of the Public Utility Code; and (2) approve Distribution's proposed Renewable Natural Gas pilot program without modification.

Respectfully submitted,



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