

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission	:	R-2022-3030235
Office of Consumer Advocate	:	C-2022-3030573
Office of Small Business Advocate	:	C-2022-3030730
	:	
v.	:	
	:	
National Fuel Gas Distribution Corporation	:	

**RECOMMENDED DECISION**

Before  
Mark A. Hoyer  
Deputy Chief Administrative Law Judge

and

Charece Z. Collins  
Administrative Law Judge

**INTRODUCTION**

This Recommended Decision recommends approval of the Joint Petition for Partial Settlement of the Rate Investigation Pursuant to 66 Pa.C.S. § 1307(f) (Joint Petition or Partial Settlement) submitted in this proceeding by National Fuel Gas Distribution Corporation (NFG, Distribution or Company), the Bureau of Investigation and Enforcement (I&E) of the Pennsylvania Public Utility Commission (Commission), and the Office of Consumer Advocate (OCA). This decision finds that the Joint Petition is supported by substantial evidence and is in the public interest. This Recommended Decision further recommends denial of Distribution’s Renewable Natural Gas Pilot Program.

## HISTORY OF THE PROCEEDING

On December 30, 2021, NFG filed with the Commission its prefiling information in support of its annual purchase gas cost recovery pursuant to Sections 53.64 and 53.65 the Pennsylvania Public Utility Code (Code), 52 Pa. Code §§ 53.64, 53.65.

On January 6, 2022, I&E filed a Notice of Appearance through its attorney, Carrie B. Wright, Esquire.

On January 25, 2022, Mackenzie C. Battle, Esquire and Aron J. Beatty, Esquire entered a Notice of Appearance on behalf of OCA.

On January 26, 2022, OCA filed a complaint through its attorney, Mackenzie C. Battle, Esquire.

Also on January 26, 2022, Nicholas A. Stobbe, Esquire entered a Notice of Appearance on behalf of NFG.

On January 31, 2022, NFG filed with the Commission its definitive purchase gas cost recovery request pursuant to Section 1307(f) of the Code, 66 Pa.C.S. § 1307(f), at Docket Number R-2022-3030235.

On February 1, 2022, the Commission served a notice establishing an initial telephonic prehearing conference for this matter for February 10, 2022, at 9:00 a.m. and assigning Deputy Chief Administrative Law Judge (DCALJ) Mark A. Hoyer and Administrative Law Judge (ALJ) Charece Z. Collins as the presiding officers.

The Presiding Officers served a prehearing conference order on February 1, 2022, setting forth the rules and expectations for the conference.

On February 3, 2022, Steven C. Gray, Esquire, entered his appearance and filed a complaint on behalf of OSBA.

Also on February 3, 2022, NFG filed a letter advising that it would not file an answer to OCA's complaint pursuant to 52 Pa. Code § 5.61(d).

On February 4, 2022, NFG filed a letter advising that it would not file an answer to OSBA's complaint pursuant to 52 Pa. Code § 5.61(d).

No other complaints or petitions to intervene have been filed.

The telephonic prehearing conference was held as scheduled on February 10, 2022. The participants were:

NFG	Anthony D. Kanagy, Esquire and Nicholas A. Stobbe, Esquire
I&E	Carrie B. Wright, Esquire
OCA	Mackenzie C. Battle, Esquire and Aron J. Beatty, Esquire
OSBA	Steven C. Gray, Esquire

On March 24, 2022, Anthony Kanagy, Esquire, and Nicholas Stobbe, Esquire, attorneys for NFG, filed a Petition for Protective Order. The parties did not oppose the Petition.

By Order dated March 28, 2022, the Presiding Officers granted NFG's Petition for Protective Order.

On March 31, 2022, the parties advised that they had achieved a partial settlement with one outstanding issue preserved for litigation.

On April 1, 2022, NFG emailed a cross-examination matrix to the Presiding Officers, and later advised that the parties had agreed to waive cross-examination of all party witnesses.

The evidentiary hearing was held as scheduled on April 4, 2022. All party witnesses were excused from appearing at the hearing, as cross-examination was waived by all parties. NFG, I&E, OCA and OSBA each moved to have their witnesses' testimonies and exhibits entered into the record. As there were no objections, all parties' testimony and exhibits were admitted into the record during the hearing. The parties further discussed a procedural schedule for the submission of Main Briefs, Reply Briefs, and the Joint Petition for Partial Settlement with accompanying Statements in Support. The April 5, 2022 hearing was cancelled on the record at the hearing. The participants at the hearing were:

NFG	Anthony D. Kanagy, Esquire and Nicholas A. Stobbe, Esquire
I&E	Carrie Wright, Esquire
OCA	Mackenzie C. Battle, Esquire and Aron J. Beatty, Esquire
OSBA	Steven C. Gray, Esquire

On April 6, 2022, a Briefing Order was issued.

On April 13, 2022, NFG, I&E, OCA and OSBA each filed a main brief. On April 20, 2022, reply briefs were filed by NFG, I&E and OSBA. OCA filed a letter on April 20, 2022, advising that it would not be filing a reply brief.

Also on April 20, 2022, a Partial Settlement and accompanying Statements in Support from NFG, I&E and OCA (hereinafter referred to as Joint Petitioners) were filed.

On April 22, 2022, OSBA filed a letter indicating it did not oppose the Partial Settlement.

On May 2, 2022, an interim order was issued closing the hearing record.

## FINDINGS OF FACT

After having duly considered the evidence of record in this proceeding and as required by Section 1318(a) and (b) of the Code, 66 Pa.C.S. § 1318(a) and (b), the findings of fact are made as follows:

1. Effective on November 1, 2000, Distribution realigned its pipeline and storage capacity in order to identify specific capacity as being held for its New York customers and for its Pennsylvania customers. Generally, delivery points located in Pennsylvania were assigned to the Pennsylvania Division, and delivery points located in New York were assigned to the New York Division. The realignment was approved by the Commission in the Order entered on October 25, 2000, at Docket No. R-00994898.

2. Distribution relies primarily upon gas supplies transported by Tennessee Gas Pipeline, LLC (Tennessee), Columbia Gas Transmission, LLC (Columbia Transmission), Texas Eastern Transmission, LP (Texas Eastern or TETCO) and National Fuel Gas Supply Corporation (Supply) to meet the requirements of its sales customers in Pennsylvania. (PGC Exhibit LAP-1).

3. In most instances, gas supplies are transported to facilities of Supply by the other pipelines and redelivered by Supply to Distribution for its customers. (PGC Exhibit No. 4, pp. 2-3; PGC Exhibit No. 8, pp. 3-5).

4. Supply is an affiliate of Distribution and is subject to the regulatory jurisdiction of the Federal Energy Regulatory Commission (FERC) (NFG PGC Exhibit No. 4, p. 2; PGC Exhibit No. 8, pp. 2-3). Supply owns and operates a transmission system and storage fields, and Supply charges Distribution for transportation and storage services under Supply's FERC-approved tariff. (PGC Exhibit No. 4, pp. 2).

5. Distribution's capacity on Supply, Tennessee, Columbia Transmission, and Texas Eastern is critical for the operation of the system, the provision of reliable service to customers and Distribution's least cost fuel procurement policy. (PGC Exhibit No. 8, pp. 2-3).

6. Most of Distribution's gas requirements during the 12 months ended November 30, 2021, were satisfied through interstate pipeline-delivered purchases from suppliers. Distribution uses its upstream pipeline transportation and storage capacity year-round to serve its firm market requirements on a reliable basis. Generally, during the winter season Distribution meets its sales requirements by purchasing gas and transporting it via upstream and Supply pipelines to Distribution's system, and by withdrawing gas from storage. In the summer, when prices historically have tended to be lower and less volatile, Distribution can use upstream capacity that is otherwise not needed to serve market requirements to inject gas into storage, to be withdrawn in the winter when prices historically have tended to be higher and more volatile. (PGC Exhibit No. 8, pp. 4-5.)

7. The availability of storage and the consequent increase in load factor on the upstream pipelines has reduced Distribution's need to rely on peak day pipeline capacity or other peak shaving facilities typically relied upon by other LDCs, e.g., propane and liquefied natural gas. (PGC Exhibit No. 8, p. 9-10).

8. Distribution has fully and vigorously represented the interests of its ratepayers in proceedings before the FERC. (PGC Exhibit No. 6; PGC Statement No. 6).

9. Distribution maintains capacity on interstate pipelines sufficient to meet the requirements of its firm customers on all days including Design Day and during peak season periods. Therefore, during a non-Design Day and non-peak season periods, if a portion of this capacity is not needed to serve firm customers, Distribution may attempt to release such capacity to other parties, pursuant to FERC Order 636, in order to mitigate the cost of maintaining such capacity to its PGC customers. (PGC Exhibit 8, pp. 18-20).

10. Distribution attempts to mitigate the cost of natural gas supplies to its PGC customers through net revenues resulting from off-system sales activities. (PGC Exhibit No. 8, pp. 20-21).

11. Distribution attempts to enter into asset management arrangements, pursuant to FERC Order 712, in order to mitigate the cost of providing gas supplies to its PGC customers. (PGC Exhibit No. 8, pp. 22-23).

12. Distribution participates in a sharing mechanism under which it retains 25 percent of the net revenues from off-system sales, capacity releases and asset management arrangements, including storage fill contracts. (PGC Exhibit No. 8, pp. 19-20).

13. The remainder of Distribution's system supply that is not transported by pipelines upstream of Supply consists of Appalachian supplies directly attached to the systems of Supply or Distribution and a small volume of gas from Peoples Gas Company LLC, formerly Peoples TWP LLC. (PGC Exhibit No. 1, Schedule 1, Sheet 1).

14. During the twelve months ended November 30, 2021, Distribution purchased 1,835,931 Mcf of locally-produced gas to serve customers in Pennsylvania. (PGC Exhibit No. 1, Schedule 1, Sheet 3).

15. Locally-produced gas continues to be a useful resource in meeting the requirements of Distribution's sales customers, and Distribution expects to continue to purchase local gas at prices that will not increase the weighted average cost of gas supplies that it sells to its customers. (PGC Exhibit No. 8, p. 17).

- a. Distribution purchases dedicated, non-firm, life of reserves locally produced gas from Appalachian producers that is priced at an Appalachian Index (AI). The AI is the simple average of the first of the month spot prices for gas delivered to Dominion Energy Transmission, Inc. and Columbia Transmission (PGC Exhibit No. 4, pp. 13-14).

b. Distribution purchases excess non-firm local production gas at 80 percent of the AI rate (PGC Exhibit No. 4, p. 13). During the twelve months ended November 30, 2017, Distribution purchased 2,970,794 Mcf of locally-produced gas to serve customers in Pennsylvania. (PGC Exhibit No. 1, Schedule 1, Sheet 1).

16. Distribution has implemented, with the Commission's approval, a system wide customer choice program throughout its Pennsylvania service territory under which all customers, except those served under Distribution's Low Income Residential Assistance Program, may choose a natural gas supplier other than Distribution (PGC Statement No. 6, pp. 2-3; *Pa. Public Utility Comm'n., et al, v. Nat'l Fuel Gas Distrib. Corp., et al.*, Docket Nos. R-00994785, *et al.* (Order Entered Jun. 29, 2000, Adopting Recommended Decision in part).

17. To maintain service to several remote pockets of customers without constructing additional pipeline facilities, Distribution has entered into two exchange agreements – one with UGI Central Penn Gas, Inc (formerly PPL Gas Utilities Corporation and North Penn Gas Company) and one with Columbia Gas of Pennsylvania, Inc. Under the agreements, each company takes from the other volumes of gas needed to provide service. The agreements do not contemplate purchases of gas; instead they contemplate that each company will receive approximately the same volumes of gas from the other over time. If needed, additional deliveries are arranged to eliminate any balance that has built up over time. The companies do not charge each other for this service (PGC Exhibit 4, pp. 5-6).

#### Renewable Natural Gas Pilot Program

18. NFG proposes to implement a three-year Renewable Natural Gas (RNG) pilot program. NFG PGC Statement No. 1, p. 9.

19. RNG is a biogas captured from otherwise freely emitting methane sources, such as agricultural and food waste streams, landfill gases, and wastewater treatment processes. NFG PGC Statement No. 1, p. 5.

20. Within NFG's RNG pilot program, NFG would issue requests for proposals (RFPs) to suppliers to purchase an amount of RNG equivalent to 0.5% of its existing supply (approximately 200 Dth per day) at a fixed price for one, two and/or three-year terms. NFG PGC Statement No. 1, p. 9.

21. The proposed RFP process would request offers for RNG supplies that either contain the associated environmental attributes via renewable identification number (RIN) credits or RNG supplies that do not contain environmental attributes. NFG PGC Statement No. 1, p. 9.

22. The Environmental Protection Agency (EPA) and certain states have established programs to recognize the varying environmental attributes of different RNG sources as a lower emission fuel source by assigning carbon offset values. EPA's Renewable Fuel Standard qualifies RNG as a biofuel and allocates valuation credits known as renewable identification numbers (RINs). RINs function as a commodity that may be retained by the RNG buyer or separated from the RNG commodity and sold in the RIN market. NFG PGC Statement No. 1, pp.7-8.

23. NFG would consider all submitted RFP proposals to determine "NFG's best, most economic option to procure RNG supplies." NFG Main Brief, p. 9.

24. If the RNG did not have RINs, the potential purchase would be treated similarly to traditional gas supplies and evaluated consisted with existing gas procurement standards. NFG PGC Statement No. 1, p. 8.

25. Unless there are extenuating circumstances, paying a higher price for RNG without RINs would likely be considered unacceptable. NFG Main Brief, p. 9; NFG Statement No. 1-R, pp. 4-5.

26. Regarding RNG that includes RINs, NFG would sell the RINs to offset a potential price premium for RNG. Revenues obtained through the sale of RINs may exceed the premium for RNG and would be used to offset the premium. Any revenues that exceeded the premium would be shared with ratepayers under NFG’s sharing mechanism. NFG PGC Statement No. 1, pp. 8.

27. If the RIN revenues prove to be less than the price premium for RNG supplies, the shortfall must be borne by ratepayers. OSBA Statement No. 1, pp. 3-4.

28. NFG has committed to “conduct a thorough review of market conditions at the time of entering into RNG contracts to avoid non-economic RNG purchase contracts to the extent possible.” NFG Main Brief, p. 7.

29. The potential purchase of higher cost RNG is a concern as it is potentially inconsistent with NFG’s obligation to pursue a least cost fuel procurement strategy. I&E Statement No. 2, p. 5.

30. At the time of the execution of an RNG contract, if NFG believes that the RNG supply would be uneconomic for its ratepayers, it will not enter into the contract. NFG Main Brief, p. 11.

31. NFG has not yet entered any actual or proposed contracts into the record in this proceeding.

#### DESCRIPTION AND TERMS OF SETTLEMENT

The 20-page Partial Settlement includes 88 numbered paragraphs, a request for relief, and Appendices A through D. Appendix A (also referred to as Attachment A) is the proposed Tariff Supplement to Gas — Pa. P.U.C. No. 9. Appendices B through D are the Supporting Statements of Distribution, I&E, and OCA, respectively. The principal terms of the Partial Settlement are as follows:

**A. Historic Reconciliation Period Standards.**

43. The Commission has jurisdiction over the Joint Petitioners and subject matter of this proceeding. 66 Pa.C.S. §§ 1307(f), 1317-18.

44. With respect to Distribution's gas purchases and gas purchasing practices during the twelve-month historic reconciliation period ended November 30, 2021, it is requested that the ALJs and the Commission find that Distribution has met the standards of Section 1318 of the Public Utility Code, 66 Pa.C.S. § 1318, as required by Section 1307(f)(5) of the Public Utility Code, 66 Pa.C.S. § 1307(f)(5), as to all actual purchased gas costs in the historic period. It is requested that the Commission find that, during the twelve months ended November 30, 2021:

a. Distribution met the requirements of Section 1318(a) of the Public Utility Code by pursuing a least-cost fuel procurement policy, consistent with its obligation to provide safe, adequate and reliable service to its customers; and

b. Distribution met the requirements of Section 1318(b) of the Public Utility Code relating to purchases from and services provided by affiliates.

**B. Projected Period Findings.**

45. With respect to the eight-month interim period beginning on December 1, 2021, and with respect to the twelve-month period beginning August 1, 2022, when rates established under this Partial Settlement will be in effect, it is requested that the Commission find, based upon information presently available and based upon evidence of record in this proceeding concerning Distribution's projected purchases and purchasing policies, that the rates to be adopted by the Commission result from Distribution's compliance with the provisions of Section 1318 of the Public Utility Code, including Sections 1318(a)(1), 1318(a)(2), 1318(a)(3), 1318(a)(4), 1318(b)(1), 1318(b)(2) and 1318(b)(3), 66 Pa.C.S. §§ 1318(a)(1), 1318(a)(2), 1318(a)(3), 1318(a)(4), 1318(b)(1), 1318(b)(2) and 1318(b)(3).

46. The Joint Petitioners agree that, based upon evidence of record in this proceeding concerning Distribution's projected gas purchases and gas purchasing policies, Distribution's projected gas purchases and projected gas purchasing policies may comply with the standards of Section 1318 of the Public Utility Code. Nevertheless, it is expressly understood and agreed that this Section of the Partial Settlement, Section V.B., is made solely for the purpose of setting prospective rates that shall be subject to the standards of Section 1318 of the Public Utility Code, 66 Pa.C.S. § 1318, and further review in an appropriate future proceeding. Section IV.B. of the Partial Settlement is not intended in any way to limit or prevent I&E, OCA and OSBA from reviewing, after such projected gas purchases actually have been made and gas purchasing practices actually have been implemented, whether Distribution's gas purchases and gas purchasing practices complied with Section 1318. If, in an appropriate future proceeding, gas purchases and gas purchasing

practices from December 1, 2021, through July 31, 2022, and the twelve-month application period commencing August 1, 2022, and ending on July 31, 2023, were challenged, the Commission's findings based upon Section III of the Partial Settlement shall not bar the examination of such purchases and practices, including, but not limited to, disallowance of, or reductions to, such costs during the eight-month interim period commencing December 1, 2021, and ending on July 31, 2022, and the twelve-month application period commencing August 1, 2022, and ending on July 31, 2023.

**V. OTHER TERMS AND CONDITIONS OF PARTIAL SETTLEMENT**

**A. PGC Rates**

47. The Joint Petitioners request that the ALJs and the Commission approve the form of tariff supplement provided as Attachment "A" hereto, including the rates set forth therein, as modified in Section V(E) of this Partial Settlement. The rates in Attachment "A" are subject to further updates for actual over/under recoveries of purchased gas costs through June 30, 2022, for updates related to the calculation of the MMT balancing charge and for updates to the forecasts of wellhead prices.

**B. Design Day Requirements**

48. Rates established in this proceeding are based on a contracted-for level of pipeline and storage capacity of 350,705 Dth/day. (PGC Statement No. 8, Exhibit LAP-4). The Joint Petitioners agree to use the throughput and capacity amounts projected by the Company to calculate rates in this proceeding. The acceptance by the Petitioners of this level of throughput and capacity to calculate rates does not indicate their acceptance of, and the Commission's approval of the partial settlement will not indicate its approval of, the procedures or methodologies used to calculate these levels of throughput and capacity.

49. In Distribution's 2023 Section 1307(f) proceeding, any party may contend that Distribution should adjust its capacity to a different level. If the Commission makes a determination concerning the appropriate level of capacity for Distribution, Distribution will undertake all reasonable and appropriate actions, after the determination becomes final, to adjust its level of capacity to the level determined to be appropriate.

50. No Joint Petitioner may contend that there should be a disallowance of recovery by Distribution of its cost of capacity for any period prior to Distribution's first reasonable opportunity to adjust its capacity after the determination of the appropriate level of capacity has become final.

**C. MMT Balancing Charge.**

51. The MMT Balancing Charge Rate will be updated on May 1, 2022, to reflect Supply's firm transportation rates that became effective on April 1, 2022.

52. The MMT Balancing Charge Rate to become effective on August 1, 2022, will be updated to reflect the Company's Supply ESS Deliverability Charge, Capacity Charge, Injection/Withdrawal Charges and Shrinkage Factor as of August 1, 2022; (2) MMT billing determinants based on actual MMT volumes experience by the Company for the 12-month period ending June 30, 2022; and (3) average MMT balancing storage inventories for the 12 months ending July 31, 2021.

**D. Contract Renewals And Changes**

53. The Joint Petitioners agree that the Commission should approve the renewals, extensions and changes in pipeline and storage capacity contracts that are explained in PGC Exhibits 4 and 8 and in PGC Statements 1, 7 and 8.

**E. Tariff Changes.**

54. The Joint Petitioners request that the Commission approve the tariff changes that are set forth in the form of tariff supplement provided as Attachment A hereto. The tariff changes are identified in the List of Changes that is included at pages 2-3 of Appendix A hereto.

55. The Company will add the following language to page 152 of its tariff: Pipeline penalty credits will be included in the calculation of "CE" as a credit to purchased gas costs from the month they are received to the effective month "CE" is refunded or collected.

56. Supplier commodity refunds will continue to be accounted for as set forth on page 152 of the Company's tariff.

**F. Gas Cost Management Plan**

57. Distribution will investigate modifications to its Gas Cost Management Plan that may mitigate future potential rate volatility. The Company will evaluate whether its current 12% purchasing target for winter supplies remains appropriate. The Company will also review its timing and layering of purchases as part of a hedging plan that could benefit customer by distributing cost changes over multiple quarters. The Company will provide a copy of its review and present its findings to the parties in its 2023 PGC pre-filing. The Company will not be required to propose any changes to its Gas Cost Management Plan as a result of this review.

**G. Pipeline Penalty Credits**

58. The Company will continue to identify pipeline penalty credits received as a separate Exhibit in the annual filing to include amount, source, and month in which the pipeline penalty credit was received as a credit on its invoice. The Company will be permitted to continue to flow pipeline penalty credits back to customers through purchased gas costs as reflected in the invoices from the pipelines, and due to the low amount of credits received will not be required to separately account for them in its calculation of PGC costs or over/under collections.

**H. Renewable Natural Gas Pilot Program**

59. Issues related to Distribution's proposed RNG pilot program in this proceeding are reserved for litigation.

**I. Approval of Filing**

60. The Company's 2022 Section 1307(f) filing is approved as modified herein, noting that issues related to the RNG pilot program are reserved for litigation

Joint Petition for Partial Settlement, pp. 9-14.

As explained below, the Joint Petitioners have agreed to a settlement on all but one of the issues in this proceeding. The issue reserved for litigation in this proceeding concerns Distribution's proposal to implement a Renewable Natural Gas (RNG) pilot program.

The Joint Petitioners agreed to conditions with respect to the Partial Settlement which are contained in paragraph nos. 81 – 87 of the Partial Settlement.

**DISCUSSION**

**A. Partial Settlement – Is In The Public Interest**

It is the policy of the Commission to encourage parties to contested on-the-record proceedings to settle the dispute. *See* 52 Pa. Code § 5.231(a). Settlements eliminate the time, effort and expense of litigating a matter to conclusion, which may include review of the

Commission's decision by the appellate courts of Pennsylvania. Such savings not only benefit the individual parties, but also the Commission and ratepayers of the utility.

In the Partial Settlement, the Joint Petitioners agree that the Partial Settlement provides for the recovery of natural gas costs that are just and reasonable given the positions advanced in the testimony and exhibits of the Joint Petitioners. According to the Joint Petitioners, the Partial Settlement was achieved after an extensive investigation of Distribution's filing, including extensive informal and formal discovery and the service of written direct testimony by Distribution, I&E, OCA, and OSBA, written rebuttal testimony by Distribution, written surrebuttal testimony by OSBA, OCA, and I&E, and written rejoinder testimony by Distribution. The Joint Petitioners further agree that acceptance of the Partial Settlement avoids the necessity and costs of further administrative and potential appellate proceedings as to the settled issues. Partial Settlement, p. 16.

1. PGC Rates

According to NFG, the Partial Settlement rates reflect the adjustments that were agreed to by the Parties in this proceeding. Under the terms of the Partial Settlement, the Parties agree that, on August 1, 2022, NFG will place into effect the natural gas rates set forth in Appendix A of the Partial Settlement, as modified by paragraphs 47, 54, and 55 of the Partial Settlement, and subject to updates for actual over/under recoveries of purchased gas costs through June 30, 2022, for updates related to the calculation of the Monthly Metered Transportation (MMT) balancing charge and for updates to the forecasts of wellhead prices. Partial Settlement, p. 11, ¶ 47; NFG Statement in Support, p. 3.

Distribution submits that the Partial Settlement rates that it proposes to place into effect on August 1, 2022, are supported by record evidence. Distribution explained in detail the development of its natural gas supply rates utilizing cost projections, sales projections, and the reconciliation process. Distribution contends that its testimony and exhibits provided full support for the rates and their underlying calculations. *See* Distribution PGC St. No. 5, PGC Exhibit No. 21; NFG Statement in Support, p. 3.

In Distribution's pre-filing, filed on December 30, 2021, it provided 27 exhibits detailing its gas purchases, gas contracts, peak day requirements and other information required by the Commission's regulations. In its annual filing made on January 31, 2022, Distribution, along with additional exhibits supporting the filing, offered the testimony of eight witnesses explaining the filing and why, according to Distribution, it was reasonable. Additional detail regarding the Company's gas purchasing practices was also provided in the Proposed Findings of Fact set forth in Paragraphs 26-42 of the Partial Settlement. NFG Statement in Support, p. 3.

According to I&E, the Company projected a \$1.0675/Mcf decrease in the projected gas cost for all classes as compared to the rates in effect as of November 1, 2021. While those costs are subject to review in a future PGC proceeding, I&E maintains that ratepayers are protected in that NFG gains no unwarranted financial advantages through its projected gas purchases and projected gas purchasing policies. Accordingly, I&E represents that the Partial Settlement maintains the proper balance of the interests of all parties. I&E Statement in Support, p. 4.

For these reasons, I&E maintains that NFG is pursuing a least cost fuel procurement policy consistent with its obligation to provide safe, adequate and reliable service to its customers. I&E Statement in Support, p. 4.

OCA submits that NFG's PGC filing meets the requirements of 66 Pa.C.S. § 1307(f) generally and specifically with regard to showing that the Company's natural gas costs are consistent with a least cost fuel procurement policy required by 66 Pa.C.S. § 1318. As such, the OCA submits that the Commission should approve NFG's proposed PGC rate in accordance with the Partial Settlement. OCA Statement in Support, p. 8.

## 2. Design Day Requirements

OCA witness Jerry Mierzwa recommended that the Company evaluate its design day forecasting model to address whether it is overestimating the Company's design day requirements. OCA Statement 1SR, p. 1; OCA Statement in Support, p. 6. Mr. Mierzwa also

recommended that the Company not acquire additional interstate pipeline capacity until it performs this evaluation. OCA Statement 1SR, p. 4; OCA Statement in Support, p. 6. Further, Mr. Mierzwa recommended that the Company use daily usage, rather than monthly usage, to forecast design day demands. OCA Statement No. 1, pp. 8-11; NFG Statement in Support, p. 4.

In Rebuttal Testimony, Company witness Janine M. Ward disagreed with Mr. Mierzwa's contentions that the existing design day forecasting model overestimates the Company's design day requirements. Distribution Statement No. 8-R, pp. 1-2. Ms. Ward explained that Mr. Mierzwa's conclusion was inaccurate as it was based on a linear extrapolation of the peak day usage from the prior 2020-2021 winter "which overall was 11.5% warmer than normal." Distribution Statement No. 8-R, pp. 1-2. Ms. Ward went on to explain that "the relationship between usage and [Heating Degree Day] is not linear, thus estimating actual design day usage from a seasonably warm peak day from a single winter significantly understates the forecast design day." Distribution Statement No. 8-R, p. 2. Further, Ms. Ward explained that the design day forecast model is not intended to forecast usage for days that are significantly lower than 74 HDD. Rather, "it is intended to forecast usage when temperatures are extremely cold, so that the Company can ensure that it has sufficient supply to provide reliable service to customers." Distribution Statement No. 8-R, pp. 2-3. With that in mind, Ms. Ward noted the accuracy of the current model, indicating that:

A review of the actual design day estimates from the prior (seven) winters demonstrates that the Company's design day forecast is reasonably in-line with historical actuals. In fact, the design day estimate from the winter of 2013-2014, which experienced peak day usage at 68 HDDs on January 7, 2014, resulted in a peak day requirement that exceeded the Company's forecast and contract pipeline capacity at the time, as noted in Exhibit LAP-2. This demonstrates the reasonableness of the Company's model.

Distribution Statement No. 8-R, p. 2; NFG Statement in Support, p. 4.

Ms. Ward also explained that Mr. Mierzwa's recommendation to use daily usage was unreasonable, as "[t]he Company does not obtain daily meter read data for the vast majority

of customers... As a result, historical daily consumption data is not available to be utilized for forecasting purposes.” Distribution Statement No. 8-R, p. 4; NFG Statement in Support, pp. 4-5.

According to Distribution, in Surrebuttal Testimony, OCA witness Mierzwa continued to argue that daily data, rather than monthly data, should be used by the Company to produce its design day forecast model. OCA Statement No. 1-SR, pp. 2-3. Further, Mr. Mierzwa continued to recommend that the Company not acquire additional interstate pipeline capacity until it performs an evaluation of its design day forecasting model. OCA Statement No. 1-SR, pp. 3-4; NFG Statement in Support, p. 5.

According to Distribution, after the rounds of testimony noted above, the Company and the Joint Petitioners – including OCA – were able to reach a resolution of the issues related to Distribution’s design day forecasting model. Under the Partial Settlement, the Joint Petitioners agreed that:

1. Rates established in this proceeding are based on a contracted-for level of pipeline and storage capacity of 350,705 Dth/day. (PGC Statement No. 8, Exhibit LAP-4). The Joint Petitioners agree to use the throughput and capacity amounts projected by the Company to calculate rates in this proceeding. The acceptance by the Petitioners of this level of throughput and capacity to calculate rates does not indicate their acceptance of, and the Commission’s approval of the partial settlement will not indicate its approval of, the procedures or methodologies used to calculate these levels of throughput and capacity.

2. In Distribution’s 2023 Section 1307(f) proceeding, any party may contend that Distribution should adjust its capacity to a different level. If the Commission makes a determination concerning the appropriate level of capacity for Distribution, Distribution will undertake all reasonable and appropriate actions, after the determination becomes final, to adjust its level of capacity to the level determined to be appropriate.

3. No Joint Petitioner may contend that there should be a disallowance of recovery by Distribution of its cost of capacity for any period prior to Distribution’s first reasonable opportunity

to adjust its capacity after the determination of the appropriate level of capacity has become final.

Partial Settlement ¶¶ 48-50.

Distribution asserts that the settlement on issues related to the Company's Design Day forecasting model reflects the Company's position in this proceeding. However, the Partial Settlement does not prohibit Parties from challenging Distribution's Design Day forecasting model in future PGC proceedings. As such, Distribution submits that these settlement provisions are in the public interest and should be approved.

I&E did not specifically address the design day requirements issue in its Statement in Support.

3. Monthly Metered Transportation (MMT) Balancing Charge

In its initial filing, Distribution proposed an MMT Balancing Charge rate of \$0.36 per Mcf. This represented a \$0.02 decrease from the current MMT Balancing Charge rate of \$0.38. Distribution's MMT Balancing Charge recovers the Company's costs for balancing the difference between MMT customers' daily deliveries and daily usage. Distribution PGC St. No. 6, pp. 28-31. In determining the MMT charge, Distribution calculates the estimated capacity costs required to provide this service and develops the MMT rate based upon projected MMT customer volumes. NFG Statement in Support, p. 6.

According to Distribution, after extensive settlement discussions, all Parties have agreed that the new MMT Balancing Charge Rate will be updated on May 1, 2022, to reflect NFG Supply's firm transportation rates that will become effective on April 1, 2022. Further, all Parties agree that the MMT Balancing Charge Rate to become effective on August 1, 2022, will be updated to reflect the Company's Supply ESS Deliverability Charge, Capacity Charge, Injection/Withdrawal Charges and Shrinkage Factor as of August 1, 2022; (2) MMT billing determinants based on actual MMT volumes experienced by the Company for the 12-month

period ending June 30, 2022; and (3) average MMT balancing storage inventories for the 12 months ending July 31, 2021. Partial Settlement ¶¶ 51-52; NFG Statement in Support, p.7.

OCA witness Mierzwa identified issues with the Company's proposed MMT Balancing Charge in this proceeding. OCA Statement No. 1, pp. 11-12. First, Mr. Mierzwa noted that on February 22, 2022, National Fuel Gas Supply Corporation (NFG Supply or Supply) increased its firm transportation rates pursuant to a settlement approved by the FERC in its most recent base rate proceeding in Docket No. RP19-1426. *Id.* at 11. OCA argued that the MMT balancing charge initially presented in this proceeding, as well as other rates presented by NFG in this proceeding, should be adjusted to reflect the increase in NFG's firm transportation rates. *Id.* at 11-12. According to OCA, the difference between the costs associated with providing the MMT balancing service and the revenues collected through the MMT balancing charge are the responsibility of PGC customers. By adjusting the MMT charge to reflect NFG Supply's rate increase, PGC customers will be charged for costs properly recovered from MMT customers. *Id.* at 12. Mr. Mierzwa noted that in addition to increasing the MMT balancing charge proposed in this proceeding, NFG should increase the MMT balancing charge in its May 1, 2022 quarterly PGC filing to reflect the increase in NFG Supply's rates. *Id.*; OCA Statement in Support, p. 5.

Mr. Mierzwa also identified an issue with respect to the appropriate storage capacity requirement used to calculate the MMT Balancing Charge. The storage capacity quantity is the amount of gas in storage inventory, which can be withdrawn to provide balancing service to MMT customers. OCA Statement No. 1, pp. 12-13. The Company initially reflected a storage capacity requirement of 68,368 Mcf. OCA Statement No. 1, p. 13. According to OCA, however, through discovery in this proceeding it became apparent that the Company has been and has the capability of using storage capacity well in excess of that amount to provide balancing service. *See* OCA Statement No. 1, p. 13, *see also* NFG Statement No. 6R, p. 4. Mr. Mierzwa recommended using a storage capacity requirement of 150,000 Mcf to calculate the MMT Balancing Charge. Mr. Mierzwa recognized that, altogether, these changes would increase the MMT Balancing Charge from the Company's proposed rate of \$0.36/Mcf to \$0.39/Mcf. *See* OCA Statement No. 1, p. 13, Sch. JDM-2; OCA Statement in Support, pp. 5-6.

In Rebuttal Testimony, Distribution witness Donald N. Koch agreed with Mr. Mierzwa's contention that the MMT balancing charge rate should be updated to account for changes in Supply's rates. With that in mind, Mr. Koch confirmed that Distribution would agree to update the MMT rate whenever there were new rates approved by the FERC for Supply. Distribution PGC Statement No. 1-R, p. 2; NFG Statement in Support, p. 6.

Regarding Mr. Mierzwa's contention that Distribution should update its balancing charge to be based on a storage capacity component of 150,000 Mcf, rather than the 68,268 Mcf proposed by the Company, Mr. Koch refuted Mr. Mierzwa's recommendation, explaining that "[t]he effect of [Mr. Mierzwa's] proposal is to significantly overstate costs for MMT customers." Distribution Statement No. 6-R, p. 2. Further, Mr. Koch also explained that Mr. Mierzwa's recommendations regarding the MMT transportation charge should be rejected, as the proposed \$0.38 was derived using the historic average capacity rate. Distribution Statement No. 6-R, p. 3; NFG Statement in Support, p.7.

OCA submitted Surrebuttal Testimony on this issue, through which Mr. Mierzwa continued to argue that the storage capacity component of the MMT balancing charge should be based upon the maximum storage capacity usage. OCA Statement No. 1-SR, p. 5; NFG Statement in Support, p. 7.

NFG asserts that the MMT Balancing Charge provisions of the Partial Settlement reflect a compromise of the OCA's and Distribution's respective positions in this proceeding, are in the public interest and should be adopted without modification. NFG Statement in Support, p. 7.

OCA submits that the Partial Settlement reasonably addresses the concerns raised by Mr. Mierzwa and represents a compromise among the parties. The Partial Settlement states that MMT Balancing Charge Rate will be updated to reflect the Company's Supply ESS Deliverability Charge, Capacity Charge, Injection/Withdrawal Charges and Shrinkage Factor as of August 1, 2022. Moreover, the actual MMT volumes experience by the company for the 12-month period ending June 30, 2022 and average MMT balancing storage inventories for the 12

months ending July 31, 2021, will be used to calculate the MMT Balancing Charge. OCA Statement in Support, p. 7.

I&E did not specifically address the MMT Balancing Charge in its Statement in Support.

4. Contract Renewals and Changes

The Partial Settlement requests that the Commission approve the renewals, extensions and changes in pipeline and storage capacity contracts that are explained in Distribution's PGC Statement Nos. 1, 7, and 8 and in Distribution's PGC Exhibits 4 and 8. Partial Settlement ¶ 53. Distribution asserts these contracts are in the public interest for the reasons explained in the Company's testimony and exhibits, and these contracts should be approved. NFG Statement in Support, p. 8. The other Joint Petitioners, I&E and OCA did not specifically address this Partial Settlement paragraph in their respective statements in support, but they agreed in the Partial Settlement that the aforementioned contract renewals and changes should be approved by the Commission.

5. Tariff Changes

In the Partial Settlement, the Joint Petitioners request that the Commission approve the tariff changes that are set forth in the form of a tariff supplement provided as Attachment A to the Partial Settlement. The tariff changes are identified in the List of Changes that is included at pages 2-3 of Appendix A of the Partial Settlement. Partial Settlement ¶ 54.

Joint Petitioners agreed that the Company will add the following language to page 152 of its tariff: Pipeline penalty credits will be included in the calculation of "CE" as a credit to purchased gas costs from the month they are received to the effective month "CE" is refunded or collected. Supplier commodity refunds will continue to be accounted for as set forth on page 152 of the Company's tariff. Partial Settlement ¶¶ 55-56.

In its main filing made on January 31, 2022, Distribution identified the tariff changes that it was proposing to make in this proceeding. The majority of the proposed tariff changes related to changes in rates associated with changes in purchased gas costs. No party in this proceeding objected to the changes, however, issues were raised relating to the calculation and accounting of pipeline penalty credits and supplier commodity refunds. Issues related to the calculation of pipeline penalty credits are further discussed in subsection 7 of this Discussion of the Partial Settlement below. NFG Statement in Support, p. 8.

According to NFG, with respect to supplier commodity refunds, I&E witness LaTorre recommended that the Company amend its tariff to include “language regarding the methodology of calculation for pass-back of supplier refunds...” I&E Statement No. 1, pp. 3-4. In Rebuttal, Mr. Koch noted that the Company’s tariff does currently specify the methodology of the pass-back of supplier refunds, as contained on Leaf 152 of the Company’s tariff. Distribution Statement No. 6-R, p. 3. In Surrebuttal, I&E Witness LaTorre acknowledged that the Company’s current tariff contains language regarding the methodology of the pass-back of supplier refunds. I&E Statement No. 1-SR, pp. 2-3; NFG Statement in Support, p. 8.

As such, NFG points out that the Partial Settlement maintains the Company’s existing methodology for the calculation of supplier commodity refunds, as currently explained in the Company’s tariff. NFG Statement in Support, p. 8.

#### 6. Gas Cost Management Plan

OCA witness Mierzwa presented testimony regarding NFG’s failure to consider modifying its Gas Cost Management Plan (Plan) to address recent price increases and future potential volatility. *See* OCA Statement No. 1, p. 18. In essence, according to Mr. Mierzwa, NFG’s Plan aimed to reduce price volatility through price diversification. *Id.* The Plan would have NFG purchase 12% of its forecasted PGC requirements prior to the upcoming winter (November through March) at fixed or capped prices during the months of April through October. *Id.* 40% of the winter requirements of NFG’s PGC customers would be served with gas withdrawn from storage, and the price for storage supplies would be based on the summer

prices. *Id.* Mr. Mierzwa noted that while the Company should continue this Plan to mitigate price volatility, it should also consider modifications to better address recent price increases and the potential for future volatility. *Id.*; OCA Statement in Support, p. 4.

Specifically, Mr. Mierzwa recommended that the Company study its 12% purchasing target for upcoming winter supplies and review the timing and layering of its purchases as part of a comprehensive hedging plan that could benefit customers by distributing costs over multiple quarters. OCA Statement No. 1, p. 18. The Company could extend the time horizon for fixed and capped price purchases for the upcoming winter period beyond the prior summer period. *Id.* at 18-19. OCA recommended that the Company should provide a copy of its analysis and present its findings and conclusions to the parties within six months of the Commission's issuance of an order in this proceeding. *Id.* at 19; OCA Statement in Support, p. 4.

In Rebuttal Testimony, Company witness Marc T. Cuthbertson provided testimony responding to Mr. Mierzwa's claims and recommendations, noting that the "[Gas Cost Management] Plan is to provide a structured, disciplined approach to mitigating volatility without compromising reliability or price." Distribution Statement No. 3-R, p. 2. Further, Mr. Cuthbertson explained that the goal of the "[Gas Cost Management] Plan is not only to reduce volatility, but first and foremost to accommodate operational requirements and satisfy best cost purchases obligations." Distribution Statement No. 3-R, p. 2. Mr. Cuthbertson also confirmed that the Gas Cost Management Plan is reviewed by the Company every year and modified as necessary to ensure the goals noted above are met. Distribution Statement No. 3-R, p. 2. As a result of one of these reviews in 2016, the base-loaded hedge purchases were reduced from 20% to 12% to accommodate operational flexibility necessitated by reductions in flexibility offered by pipelines. Distribution Statement No. 3-R, pp. 2-3; NFG Statement in Support, p. 9.

In Surrebuttal Testimony, Mr. Mierzwa continued to disagree with the Company and requested that the Company "revisit the current hedging parameters to ensure that the [Gas Cost Management] Plan continue to meet its objective of stabilizing prices in this new market. OCA Statement No. 1-SR, pp. 9; NFG Statement in Support, pp. 9-10. Mr. Mierzwa noted that

there is no indication that the recent increase in market volatility is a short-term event. OCA Statement No. 1SR at 6. Mr. Mierzwa further explained that the Company's Plan was developed to address price volatility in a natural gas market during a period of relatively low prices, and that market has changed substantially in the last year. *Id.* at 8. Given the significant changes that have occurred in the market recently, OCA asserted it is appropriate to revisit and possibly revise the Company's current hedging parameters. *Id.* at 8-9; OCA Statement in Support, pp. 4-5.

Under the Partial Settlement, the Parties have agreed that Distribution will investigate modifications to its Gas Cost Management Plan that may mitigate future potential rate volatility. Partial Settlement ¶ 57. Further, the Parties agreed that the Company will evaluate whether its current 12% purchasing target for winter supplies remains appropriate. Partial Settlement ¶ 57. Moreover, the Company will review its timing and layering of purchases as part of a hedging plan that could benefit customers by distributing cost changes over multiple quarters, and provide a copy of the previously mentioned review(s) to the Statutory Parties in the Company's 2023 PGC pre-filing. Partial Settlement ¶ 57. The Company will not be required to propose changes to its Gas Cost Management Plan as a result of the review. Partial Settlement ¶ 57. According to Distribution, these settlement provisions reflect the product of a robust and substantive discussion over the efficacy of the Company's proposed Gas Cost Management Plan. In doing so, the Company agreed to incorporate many of the OCA's recommendations. As such, Distribution submits that the Company's Gas Cost Management Plan, as modified by the Partial Settlement, should be approved as being in the public interest. NFG Statement in Support, p. 10.

#### 7. Pipeline Penalty Credits

I&E witness Brian LaTorre raised concerns over the Company's methodology for calculating pipeline penalty credits and flowing them back to customers. I&E Statement No. 1, pp. 3-4. Specifically, Mr. LaTorre argued that the Company's existing tariff does not specify the methodology of the calculation for the pass-back of pipeline penalty credits to ratepayers. I&E Statement No. 1, pp. 3-4. Further, Mr. LaTorre recommended that the Company change its

methodology for calculating the flow-back of pipeline penalty credits. Specifically, Mr. LaTorre recommended that the Company add the following language to its tariff:

[s]upplier refunds and pipeline penalty credits received that are specifically identifiable as refunds of commodity costs will be adjusted as credits in the calculation of gas adjustment cost/purchased gas cost rates with interest added at the annual rate of six percent (6%) calculated from the month received to the effective month such refunds and credits are refunded.

I&E Statement No. 1, pp. 3-4; NFG Statement in Support, pp. 10-11.

In Rebuttal Testimony, Company witness Donald N. Koch testified addressing Mr. LaTorre's contentions regarding the Company's methodology of calculating the pass-back of pipeline penalty credits. Specifically, Mr. Koch explained that:

[p]ipeline penalty credits are typically credited to the gas cost invoice received from the supplier and are generally an immaterial amount. Purchased gas costs are compiled each month from the paid supplier invoices and compared to the revenue collected from customers for that month. Any differences between the purchased gas costs and revenues collected from customers is tracked through the over/under collection of purchased gas costs. Therefore, any pipeline penalty credit that was reflected on the supplier invoice would be included in the over/under collection of purchased gas costs. Pulling these credits out of purchased gas costs and accounting for them separately would unnecessarily complicate the over/under reconciliation process.

Distribution Statement No. 6-R, pp. 3-4; NFG Statement in Support, p. 11.

In Surrebuttal, Mr. LaTorre continued to argue that the Company should update its tariff to include language regarding the methodology of calculation for pass-back of pipeline penalty credits. I&E Statement No. 1-SR, pp. 3-4. However, in response to Mr. Koch's Rebuttal, Mr. LaTorre conceded that the Company's current method of calculating pipeline

penalty credits is less complicated than his proposal and is acceptable to I&E. I&E Statement No. 1-SR, pp. 4-5; NFG Statement in Support, p. 11.

The Company is receptive to Mr. LaTorre's recommendation to include language regarding its existing methodology for calculating the pass-back of pipeline penalty credits. As such, through the Partial Settlement, the Company has agreed to add the following language to page 152 of its tariff:

Pipeline penalty credits will be included in the calculation of "CE" as a credit to purchased gas costs from the month they are received to the effective month "CE" is refunded or collected.

Partial Settlement ¶ 55; NFG Statement in Support, pp. 11-12.

Under the Partial Settlement, Distribution maintains its current methodology for the calculation for pass-back of pipeline penalty credits. However, the Partial Settlement accounts for the above-referenced language that will be added to the Company's tariff, consistent with I&E's recommendation. NFG Statement in Support, p. 12.

I&E witness Brian LaTorre recommended "...adding language to the tariff that reflects the Company's current methodology of passing back pipeline penalty credits to customers in the month they are received."<sup>1</sup> I&E asserts that the language proposed to be added to the tariff accurately addresses I&E's concern as having this information available is important for customer information and transparency and I&E therefore supports this Partial Settlement provision. I&E Statement in Support, p. 4-5.

According to OCA, the Partial Settlement reasonably addresses the concerns raised by its witness, Mr. Mierzwa, and represents a compromise among the Parties. The Partial Settlement allows the Company to continue to flow pipeline penalty credits back to customers through purchased gas costs. OCA Statement in Support, p. 7.

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<sup>1</sup> I&E Statement No. 1-SR, p. 4.

8. Recommendation – Approval of Partial Settlement

The Partial Settlement represents the agreement of the Joint Petitioners proposing a resolution of all the issues in this proceeding with the exception of the Renewable Gas Pilot Program proposed by NFG. The Partial Settlement is the result of compromises. The Commission encourages compromises between the Parties. Compromises dispense with costly litigation and promote judicial economy.

Upon due consideration of the terms and conditions of the Partial Settlement, including the Supporting Statements of the Joint Petitioners, the Partial Settlement constitutes a fair, just and reasonable resolution of the Commission’s investigation for the reasons the Parties identify as noted above. Therefore, the Partial Settlement is in the public interest and should be approved without modification.

B. Renewable Natural Gas Pilot Program

The parties reserved one remaining issue for litigation, namely, whether the Commission should approve NFG’s proposed Renewable Natural Gas (RNG) pilot program. OCA supported the proposed program; OSBA supported the proposed program with added modifications; and I&E opposed the proposed program, but it suggested modifications in the event that the Commission approved the program. We find that NFG failed to meet its burden that its proposed RNG pilot program is consistent with the requirements in Section 1318 of the Public Utility Code. 66 Pa.C.S. § 1318. Consequently, this decision recommends that NFG’s RNG program be denied.

Legal Standard

Section 332(a) of the Public Utility Code provides that the party seeking relief from the Commission has the burden of proof. 66 Pa.C.S. § 332(a). As a matter of law, “[a] litigant’s burden of proof before administrative tribunals as well as before most civil proceedings is satisfied by establishing a preponderance of evidence which is substantial and legally

credible.” *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm’n*, 578 A.2d 600, 602 (Pa. Cmwlth. 1990). “Burden of proof” means a duty to establish a fact by a preponderance of the evidence, or evidence more convincing, by even the smallest degree, than the evidence presented by the other party. *Se-Ling Hosiery v. Margulies*, 70 A.2d 854 (Pa. 1950).

If the party seeking a rule or order from the Commission sets forth a *prima facie* case, then the burden shifts to the opponent. *MacDonald v. Pa. R.R. Co.*, 36 A.2d 492 (Pa. 1944). Establishing a *prima facie* case requires either evidence sufficient to make a finding of fact permissible or evidence to create a presumption against an opponent which, if not met, results in an obligatory decision for the proponent. If the opponent does not rebut that evidence, the proponent will prevail. If the opponent rebuts the proponent's evidence, the burden of going forward with the evidence shifts back to the proponent, who must rebut the opponent's evidence by a preponderance of the evidence. The burden of going forward with the evidence may shift from one party to another, but the burden of proof never shifts; it always remains on the proponent. *Milkie v. Pa. Pub. Util. Comm’n*, 768 A.2d 1217 (Pa. Cmwlth. 2001); *see also*, *Burleson v. Pa. Pub. Util. Comm’n*, 443 A.2d 1373 (Pa. Cmwlth. 1982).

Moreover, the Commission’s decision must be supported by “substantial evidence,” which consists of evidence that a reasonable mind might accept as adequate to support a conclusion. *Norfolk & W. Ry. Co. v. Pa. Pub. Util. Comm’n*, 413 A.2d 1037 (Pa. 1980). A mere trace of evidence or a suspicion of the existence of a fact is insufficient. *Erie Resistor Corp. v. Unemployment Comp. Bd. of Review*, 166 A.2d 96 (Pa. Super. 1960).

In determining whether NFG is pursuing a least cost fuel procurement policy under Section 1318 of the Code, specific findings in Section 1318(a)(1)-(4) must be made as follows:

- (1) that the utility has fully and vigorously represented its ratepayers’ interests before the Federal Energy Regulatory Commission (FERC);
- (2) that 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 averse to ratepayer interests;

(3) that 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; and,

(4) that 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.

*See* 66 Pa.C.S. § 1318(a)(1)-(4).

Furthermore, NFG purchases various transportation and storage services from an affiliate, and, therefore, with respect to purchases from affiliates, the Commission is required to make the following specific findings pursuant to Section 1318(b):

(1) that the utility has fully and vigorously attempted to obtain less costly gas supplies on both short-term and long-term bases from nonaffiliated interests;

(2) that each contract for the purchase of gas from an affiliated interest is consistent with a least cost fuel procurement policy; and,

(3) that neither the utility nor its affiliated interest has withheld from the market any gas supplies which should have been utilized as part of a least cost fuel procurement policy.

*See* 66 Pa.C.S. § 1318(b)(1)-(3).

Section 1317 of the Public Utility Code requires the submission of certain information to enable the Commission to make a least cost fuel procurement finding. 66 Pa.C.S. § 1317. The Commission has promulgated regulations pursuant to these statutes that include extensive filing requirements that also govern such filings. *See*, 52 Pa. Code §§ 53.64 (Filing requirements for natural gas distributors with gross intrastate annual operating revenues in excess of \$40 million) and 53.65 (Special provisions relating to natural gas distributors with gross intrastate annual operating revenues in excess of \$40 million with affiliated interests).

## Analysis

NFG requests permission to incorporate RNG into its supply portfolio. Specifically, NFG seeks to implement a three-year pilot program in which it would issue requests for proposals (RFPs) to suppliers to purchase an amount of RNG equivalent to 0.5% of its existing supply (approximately 200 Dth per day) at a fixed price for one, two and/or three-year terms. NFG PGC Statement No. 1, p. 9.

NFG's witness, Christopher A. Cej, testified that the Environmental Protection Agency (EPA) and certain states have established programs to recognize the varying environmental attributes of different RNG sources as a lower emission fuel source by assigning carbon offset values. EPA's Renewable Fuel Standard qualifies RNG as a biofuel and allocates valuation credits known as renewable identification numbers (RINs). RINs function as a commodity that may be retained by the RNG buyer or separated from the RNG commodity and sold in the RIN market. NFG PGC Statement No. 1, p. 7-8. NFG averred in its main brief that it would consider all submitted RFP proposals to determine "NFG's best, most economic option to procure RNG supplies." NFG Main Brief, p. 9.

NFG explained that its proposed RFP process would request offers for RNG supplies that either contain the associated environmental attributes via renewable identification number (RIN) credits, or RNG supplies that do not contain environmental attributes. NFG PGC Statement No. 1, p. 9. When asked if the purchase of RNG supplies would result in higher gas cost rates to customers, NFG Witness Cej replied, "not necessarily." NFG PGC Statement No. 1, p. 7. NFG witness Cej testified that the question of whether the purchase of RNG supplies would result in higher gas cost rates to customers partially depended on whether the RNG is purchased with or without the associated environmental attributes. It further depended on the treatment of the environmental attributes if they are acquired with the purchase of the RNG. NFG PGC Statement No. 1, p. 7.

NFG witness Cej also testified that if the RNG did not have RINs, the potential purchase would be treated similarly to traditional gas supplies and evaluated consistent with

existing gas procurement standards. NFG PGC Statement No. 1, p. 8. Witness Cej further testified that “unless there are extenuating circumstances, paying a higher price for RNG without RINs would likely be considered unacceptable.” NFG Main Brief, p. 9; NFG Statement No. 1-R, pp. 4-5.

Regarding RNG that includes RINs, NFG averred that it would sell the RINs to offset a potential price premium for RNG. Witness Cej testified that revenues obtained through the sale of RINs may exceed the premium for RNG and would be used to offset the premium, and any revenues that exceeded the premium would be shared with ratepayers under NFG’s sharing mechanism. NFG PGC Statement No. 1, p. 8. If the RIN revenues prove to be less than the price premium for RNG supplies, the shortfall must be borne by ratepayers. OSBA Statement No. 1 pp. 3-4.

NFG averred in its main brief that, when it is time to execute an RNG contract, if NFG believes that the RNG supply would be uneconomic for its ratepayers, it will not enter into the contract. NFG Main Brief, p. 11. NFG has not yet entered any actual or proposed contracts into the record in this proceeding.

In its main brief, the OCA supported the arguments of NFG and requested that the Commission approve the proposed RNG pilot program. OCA did not file a reply brief in this matter.

While OSBA’s witness, Robert Knecht, expressed concerns with NFG’s proposed RNG pilot program, OSBA ultimately did not oppose the RNG pilot program. OSBA did take issue with NFG’s proposed sharing mechanism within the pilot program, and it suggested modifications. OSBA Main Brief, pp. 6-7. However, as the pilot program is being denied in its entirety, the sharing mechanism will not be addressed in this recommended decision.

In his testimony, OSBA witness Knecht distinguished NFG’s proposal from an RNG proposal in a prior case before the Commission in which the proposed RNG program was approved. *See Pa. Pub. Util. Comm’n v. UGI Utils. Inc.*, Docket No. R-2021-3025652

(Recommended Decision issued September 14, 2021, Commission Order entered October 7, 2021) (1307(f) case) (*UGI*). Witness Knecht explained, “unlike the UGI Gas example, Distribution has no specific proposal for a supply source or contract for RNG, but it is investigating various options within its service territory.” OSBA Statement No. 1, p. 3. In the *UGI* case, UGI presented evidence of a specific plan that it would have an RNG facility, owned by Archaea Energy, LLC, directly connected to its system beginning in the fall of 2021. *UGI* at pp. 21-22.

I&E argued in its main brief that NFG’s proposed RNG pilot program does not meet the requirements under Section 1318. 66 Pa. C.S. § 1318; I&E Main Brief, p. 4. I&E specifically argued that NFG’s RNG pilot program has not met the standard under Section 1318(a)(2) and 1318(a)(3). I&E Main Brief, p. 7. I&E averred that the record is “devoid of any actual or tentative RNG contracts for review,” and as a result, “NFG has not provided the Commission with the information necessary to analyze any RNG contracts and . . . determine that a least cost fuel procurement strategy is being followed.” I&E Main Brief, p. 8.

I&E’s witness, Esyan Sakaya, testified, “the cost of RNG is unknown; the value of the RINs is unknown; and the Company provided no estimate of the difference between the cost to procure RNG versus traditional gas supplies.” I&E Statement No. 2, p. 6. I&E also notes that “NFG does not identify the factors it will use to select RNG suppliers.” I&E Main Brief, p. 9.

I&E witness Sakaya also testified that “the potential purchase of higher cost RNG is a concern as it is potentially inconsistent with the Company’s obligation to pursue a least cost fuel procurement strategy. The Company’s explanation that RNG will ‘not necessarily’ result in higher cost gas fails to ensure that the pilot program adheres to this obligation.” I&E Statement No. 2, p. 5; *See* NFG PGC Statement No. 1, p. 7.

I&E further noted that in the *UGI* case cited by OSBA’s witness Knecht, UGI sought and received 13 RFP responses from nine different suppliers as of the filing of its 1307(f) case. The RFP responses were also presented with a variety of environmental attributes,

depending on the type of RNG facility that was proposed to service the supply, *UGI*; UGI Gas Statement No. 2, p. 37, thereby providing concrete evidence as to the costs associated with RNG. I&E Main Brief, p. 11. The information presented in the *UGI* case allowed the Commission to confidently determine that the least cost procurement policy was being followed. I&E Main Brief, p. 11.

I&E witness Sakaya testified that it is unclear whether the RNG pilot program would adhere to NFG's least cost procurement obligations. I&E Statement No. 2, p. 5. Witness Sakaya testified that the program lacks specific commitments and details that are necessary to ensure NFG is pursuing a least cost procurement policy. I&E Statement No. 2, p. 6. I&E suggested that if the RNG program is approved, the Commission require NFG to show how the purchase of RNG complies with the least cost procurement for all gas, not just RNG; require NFG to sell RINs at the maximum value to offset the potentially higher cost of RNG and require that NFG report in future 1307(f) cases details of the program for the duration of the pilot. I&E Statement No. 2, 7-8.

We agree with I&E that the record is deplete of sufficient evidence to support a finding that NFG has taken all prudent steps necessary to negotiate favorable gas supply contracts; that NFG has taken all steps necessary to obtain lower cost gas supplies on both short-term and long-term bases both within and outside of the Commonwealth; and that NFG's RNG contracts would be pursued consistent with a least cost fuel procurement policy. 66 Pa.C.S. §§ 1318(a)(2), 1318(a)(3), 1318(b). NFG's witness Cej testified that NFG would entertain RFP offers for RNG supplies that either do or do not contain the associated environmental attributes, though the higher cost of RNG depends on whether or not it is purchased with environmental attributes. NFG PGC Statement No. 1, pp. 7, 9.

Witness Cej further testified that "unless there are extenuating circumstances, paying a higher price for RNG without RINs would likely be considered unacceptable." NFG Main Brief, p. 9; NFG Statement No. 1-R, pp. 4-5. As "extenuating circumstances" is not defined by the witness, the non-committal language of this statement is far from a guarantee that a least cost procurement policy would be followed. Similarly, NFG stated that at the time of the

execution of an RNG contract, if NFG believes that the RNG supply would be uneconomic for its ratepayers, it will not enter into the contract. NFG Main Brief, p. 11. The Commission was not provided with any criteria that NFG would use to determine whether an RNG supply was uneconomic, and it therefore is not possible to determine if this falls within the least cost procurement policy.

Moreover, I&E Witness Sakaya testified that the potential purchase of higher cost RNG is a concern as it is potentially inconsistent with NFG's obligation to pursue a least cost fuel procurement strategy. I&E Statement No. 2, p. 5. When asked if the purchase of RNG supplies would result in higher gas cost rates to customers, NFG Witness Cej replied, "not necessarily." NFG PGC Statement No. 1, p. 7. Moreover, as OSBA has pointed out, if the RIN revenues prove to be less than the price premium for RNG supplies, the shortfall must be borne by ratepayers. OSBA Statement No. 1, pp. 3-4. No information was provided in the record to enable the Commission to properly analyze the likelihood of ratepayers incurring higher costs as a result of RNG supply purchases. *See* NFG PGC Statement No. 1, pp. 7-8; OSBA Statement No. 1, pp. 3-4; I&E Statement No. 2, p. 5.

Furthermore, unlike in the *UGI* case in which the Commission approved the proposed RNG program, *See Pa. Pub. Util. Comm'n v. UGI Utils. Inc.*, Docket No. R-2021-3025652, UGI Gas Statement No. 2, p. 37, no actual or tentative contracts have been entered into the record to allow the parties and the Commission to review concrete figures upon which to base a determination.

Additionally, within its RNG proposal, NFG has committed to "conduct a thorough review of market conditions at the time of entering into RNG contracts to avoid non-economic RNG purchase contracts to the extent possible." NFG Main Brief, p. 7. It would not be responsible of the Commission to approve a proposal that includes the possibility of "non-economic RNG purchase contracts."

I&E argued that it is not possible to make a determination that NFG's RNG pilot program adheres to a least cost fuel procurement policy because it has not produced any

contracts in this case. I&E argued that without the contracts, which would show the costs of the RNG, it is not possible to show what the price disparity between RNG and traditional gas supply could be. I&E Main Brief, p. 5.

This case is similar in nature to *Pa. Pub. Util. Comm'n v. Phila. Gas Works* (1307(f) case), Docket No. R-2021-3023970 (Opinion and Order Entered August 26, 2021). In that case, the Commission found that PGW did not meet its burden of proof that the proposed RNG purchases satisfy the least cost gas procurement requirements under Section 1318 of the Code, 66 Pa.C.S. 1318(a). *Id.* at 39. Similar to the Philadelphia Gas Works case, we do not have enough information in this proceeding, including contracts, or descriptions of contract terms, for review, to make a determination that the proposed RNG would be economically efficient. *Id.* at 43.

Even further, the fact that NFG uses language in its proposal such as “absent extenuating circumstances, paying a higher price for RNG without RINs would likely be considered unacceptable,” NFG Main Brief, p. 9; NFG Statement No. 1-R, pp. 4-5, and “[it] will avoid non-economic contracts to the extent possible,” NFG Main Brief, p. 7, indicates that not enough information has been obtained to ensure that the RNG pilot program will meet the least cost gas procurement requirements of Section 1318. 66 Pa.C.S. § 1318. NFG is commended for its plan to seek to incorporate RNG into its supply portfolio, but the Commission will need more specific information before it can make the findings necessary to approve such a plan.

In its brief in support of the proposed RNG pilot program, the OCA argued that NFG’s pilot program would help to inform NFG about how best to ensure continued least-cost procurement to customers as the markets change. OCA Main Brief, p. 5. However, the burden is to provide objective evidence to prove that least-cost procurement would be followed prior to the approval of the RNG program. 66 Pa.C.S. § 1318(b). OCA further argued that NFG’s RNG contracts could have positive financial impacts for consumers, since any revenues from RIN sales would be distributed to consumers. OCA Main Brief, pp. 10, 13; OCA Statement No. 1, p. 14. There is no objective evidence in the record to confirm RIN sales would cover the premium purchase costs of the RNG, and without contracts or contract terms to review, it is not yet clear if

such contracts could have a negative financial impact on the customers. *See* NFG PGC Statement No. 1, pp. 7-8; OSBA Statement No. 1, pp. 3-4; I&E Statement No. 2, p. 5.

In its Proposed Finding of Fact number 19 of its Main Brief, NFG states that “it will take time for Distribution to acquire the knowledge and information pertaining to the contractual terms and conditions that are unique to RNG suppliers, and Distribution is attempting to be proactive in these efforts.” It is our position that these efforts should be accomplished prior to seeking the Commission’s approval to undertake a pilot program that has the potential of resulting in substantial cost to the customer. We also acknowledge that while it opposes the proposed RNG plan, I&E did suggest certain modifications if the Commission chose to approve the program. *See* I&E Statement No. 2, pp. 7-8. However, we believe that the Commission should have the information that would be obtained by I&E’s proposed modifications prior to approving the RNG program. In reviewing a proposed RNG program for potential approval, the Commission should have the information necessary to ensure that the RNG program is consistent with a least cost fuel procurement policy, as required by Section 1318 of the Public Utility Code. 66 Pa.C.S. § 1318(a) and (b).

NFG correctly noted in its brief that the Commission has approved an RNG program in the past and commended parties in the past for settling a case that included an RNG Program. *See UGI (Statement of Chairman Dutrieuille, October 7, 2021)*. However, that settlement included contracts and information necessary to determine whether the program would meet the least cost gas procurement requirements under Section 1318 of the Public Utility Code. NFG is commended for seeking to enter the RNG market and incorporate it into its system, but the Commission will need additional information prior to making a finding that the proposed program meets the requirements under Section 1318 of the Public Utility Code. 66 Pa.C.S. § 1318(a) and (b). Therefore, we recommend that the RNG program proposed by NFG be denied.

## CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the subject matter and the Parties to this proceeding. 66 Pa.C.S. §§ 1307(f), 1317, 1318.

2. National Fuel Gas Distribution Corporation is pursuing a least cost fuel procurement policy during the relevant time period consistent with its obligation to provide safe, adequate and reliable service to its customers in compliance with Section 1318 of the Public Utility Code. 66 Pa.C.S. § 1318.

3. National Fuel Gas Distribution Corporation's rates for purchased gas costs during the relevant time period are just and reasonable and in compliance with Section 1318 of the Public Utility Code. 66 Pa.C.S. § 1318.

4. National Fuel Gas Distribution Corporation has fully and vigorously represented the interests of its ratepayers in proceedings before the FERC and other relevant non-PUC proceedings during the relevant time period in compliance with Section 1318(a)(1) of the Public Utility Code. 66 Pa.C.S. § 1318(a)(1).

5. National Fuel Gas Distribution Corporation has taken all prudent steps necessary to negotiate favorable gas supply contracts and to relieve itself from terms in existing contracts with its gas suppliers, which are or may be averse to the interests of its ratepayers, during the relevant time period in compliance with Section 1318(a)(2) of the Public Utility Code. 66 Pa.C.S. § 1318(a)(2).

6. National Fuel Gas Distribution Corporation has taken all prudent steps necessary during the relevant time period 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 in compliance with Section 1318(a)(3) of the Public Utility Code. 66 Pa.C.S. § 1318(a)(3).

7. National Fuel Gas Distribution Corporation has not withheld from the market or caused to be withheld from the market during the relevant time period any gas supplies, which should have been used as part of a least cost fuel procurement policy in compliance with Section 1318(a)(4) of the Public Utility Code. 66 Pa.C.S. § 1318(a)(4).

8. National Fuel Gas Distribution Corporation has fully and vigorously attempted to obtain less costly gas supplies on both short-term and long-term bases from nonaffiliated interests during the relevant time period in compliance with Section 1318(b)(1) of the Public Utility Code. 66 Pa.C.S. § 1318(b)(1).

9. Neither National Fuel Gas Distribution Corporation nor any affiliated interest during the relevant time period has withheld from the market any gas supplies, which should have been used as part of a least cost fuel procurement policy in compliance with Section 1318(b)(3) of the Public Utility Code, 66 Pa.C.S. § 1318(b)(3).

10. The Joint Petition for Partial Settlement of the Rate Investigation Pursuant to 66 Pa.C.S. § 1307(f) that National Fuel Gas Distribution Corporation, the Pennsylvania Public Utility Commission's Bureau of Investigation and Enforcement, and the Office of Consumer Advocate have executed and submitted at this docket is in the public interest and, therefore, should be approved without modification. *Pa. Pub. Util. Comm'n v. City of Lancaster – Bureau of Water*, Docket No. R-2010-2179103 (Opinion and Order entered July 14, 2011); *citing*, *Warner v. GTE North, Inc.*, Docket No. C-00902815 (Opinion and Order entered April 1, 1996); *Pa. Pub. Util. Comm'n v. CS Water and Sewer Associates*, 74 Pa. PUC 767 (1991).

11. Section 332(a) of the Public Utility Code provides that the party seeking relief from the Commission has the burden of proof. 66 Pa.C.S. § 332(a).

12. "Burden of proof" means a duty to establish a fact by a preponderance of the evidence, or evidence more convincing, by even the smallest degree, than the evidence presented by the other party. *Se-Ling Hosiery v. Margulies*, 70 A.2d 854 (Pa. 1950).

13. If the party seeking a rule or order from the Commission sets forth a prima facie case, then the burden shifts to the opponent. *MacDonald v. Pa. R.R. Co.*, 36 A.2d 492 (Pa. 1944). If the opponent does not rebut that evidence, the proponent will prevail. If the opponent rebuts the proponent's evidence, the burden of going forward with the evidence shifts back to the proponent, who must rebut the opponent's evidence by a preponderance of the evidence. The burden of going forward with the evidence may shift from one party to another, but the burden of proof never shifts; it always remains on a proponent. *Milkie v. Pa. Pub. Util. Comm'n*, 768 A.2d 1217 (Pa. Cmwlth. 2001); see also, *Burleson v. Pa. Pub. Util. Comm'n*, 443 A.2d 1373 (Pa. Cmwlth. 1982).

14. The decision of the Commission must be supported by substantial evidence. 2 Pa.C.S. § 704.

15. "Substantial evidence" is such relevant evidence that a reasonable mind might accept as adequate to support a conclusion. More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. *Norfolk & W. Ry. Co. v. Pa. Pub. Util. Comm'n*, 413 A.2d 1037 (Pa. 1980); *Erie Resistor Corp. v. Unemployment Comp. Bd. of Review*, 166 A.2d 96 (Pa. Super. 1961); and *Murphy v. Pa. Dep't of Pub. Welfare, White Haven Ctr.*, 480 A.2d 382 (Pa. Cmwlth. 1984).

16. In determining whether NFG is pursuing a least cost fuel procurement policy under Section 1318 of the Code, specific findings in Section 1318(a)(1)-(4) must be made. 66 Pa.C.S. § 1318(a)(1)-(4).

17. NFG purchases various transportation and storage services from an affiliate, and, therefore, with respect to purchases from affiliates, the Commission is required to make specific findings pursuant to Section 1318(b). 66 Pa.C.S. § 1318(b)(1)-(3).

18. National Fuel Gas Distribution Company has failed to meet its burden to prove that its proposed Renewable Natural Gas pilot program meets the requirements of Section 1318 of the Public Utility Code. 66 Pa.C.S. § 1318.

ORDER

THEREFORE,

IT IS RECOMMENDED:

1. That the Joint Petition for Partial Settlement of the Rate Investigation Pursuant to 66 Pa.C.S. § 1307(f) that National Fuel Gas Distribution Corporation, the Pennsylvania Public Utility Commission's Bureau of Investigation and Enforcement, and the Office of Consumer Advocate executed and submitted at Docket No. R-2022-3030235 be approved without modification.

2. That National Fuel Gas Distribution Corporation be permitted to file a tariff supplement, incorporating the terms of the Partial Settlement and changes to its rates, rules and regulations as set forth in Appendix A of the Partial Settlement on at least one day's notice after entry of the Commission's Order approving the Partial Settlement. Said tariff supplement shall be accompanied by a red-lined version that shall fully set forth all changes that will be made to National Fuel Gas Distribution Corporation's current tariffs.

3. That upon National Fuel Gas Distribution Corporation's filing of a tariff supplement as conforming with this order and the Joint Petition for Partial Settlement and the Commission's approval thereof, the purchased gas rates established therein shall become effective for service rendered on or after August 1, 2022.

4. That the Renewable Natural Gas pilot program proposed by National Fuel Gas Distribution Corporation is denied.

5. That the Complaint of the Office of Consumer Advocate at Docket No. C-2022-3030573 be deemed satisfied.

6. That the Complaint of the Office of Small Business Advocate at Docket No. C-2022-3030730 be deemed satisfied.

7. That upon acceptance and approval by the Commission of the tariff supplement and supporting data filed by the National Fuel Gas Distribution Corporation as being consistent with the Joint Petition for Partial Settlement of the Rate Investigation, the investigation at Docket Number R-2022-3030235 shall be terminated and the case marked closed.

Date: May 24, 2022

\_\_\_\_\_/s/  
Mark A. Hoyer  
Deputy Chief Administrative Law Judge

\_\_\_\_\_/s/  
Charece Z. Collins  
Administrative Law Judge