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June 3, 2022

VIA ELECTRONIC FILING

Rosemary Chiavetta, Secretary
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**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 National Fuel Gas Distribution Corporation's Exceptions to the Recommended Decision in the above-referenced proceeding. Copies will be provided per the attached Certificate of Service.

Respectfully submitted,



Nicholas A. Stobbe

NAS/kl
Attachments

cc: Honorable Mark A. Hoyer (w/att.; via email)
Honorable Charece Z. Collins (w/att.; via email)
Office of Special Assistants (w/att.; via email)
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: June 3, 2022



Nicholas A. Stobbe

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

**EXCEPTIONS OF NATIONAL FUEL GAS DISTRIBUTION
CORPORATION TO THE RECOMMENDED DECISION OF
DEPUTY CHIEF ADMINISTRATIVE LAW JUDGE MARK A. HOYER
AND ADMINISTRATIVE LAW JUDGE CHARECE Z. COLLINS**

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I. INTRODUCTION

These Exceptions are filed by National Fuel Gas Distribution Corporation (“Distribution” or the “Company”), with regard to the Recommended Decision (“RD”) issued by Deputy Chief Administrative Law Judge Mark A. Hoyer and Administrative Law Judge Charece Z. Collins (collectively, the “ALJs”).

The above-captioned proceeding concerns Distribution’s annual proceeding under Section 1307(f) of the Public Utility Code (“Code”), 66 Pa.C.S. § 1307(f) (Docket No. R-2022-3030235). A complete procedural history is provided in the Company’s Statement of the Case in its Main Brief, which is incorporated herein by reference.

II. SUMMARY OF ARGUMENT

The RD in this proceeding, while certainly well-intentioned, incorrectly recommends the rejection of Distribution’s Renewable Natural Gas (“RNG”) Pilot Program (“RNG Pilot”) for failing to adhere to the least-cost gas procurement standards contained in Section 1318 of the Code, 66 Pa.C.S. § 1318(a)(1)-(4). The RD denies the RNG Pilot because Distribution does not have an RNG contract in place and effectively holds that Distribution must have entered into such contract in order to meet the least cost standards. This reasoning is flawed because Distribution is seeking approval of the structure of the RNG Pilot in this proceeding. To be clear, after Distribution enters into an RNG contract, Parties and the Commission will have the opportunity to review the RNG contract to ensure that it meets the least cost standards and to ensure that Distribution followed the RNG Pilot terms and structure. Distribution is not asking for a “blank check” to enter into any RNG contract that it wants and avoid Commission and Parties’ review. Parties will be able to review the contract to determine whether Distribution reasonably estimated that the contract price, offset by the sale of Renewable Identification Numbers (“RINs”), meets the least cost standards based upon the market conditions at the time that the contract was entered into. Natural Gas

Distribution Companies (“NGDCs”) frequently purchase gas pursuant to contracts, and these contracts are then subject to subsequent review in annual purchased gas cost (“PGC”) proceedings. This is the same process that Distribution will follow when procuring RNG supplies. It will evaluate whether the purchase of RNG, when offsetting for the estimated sale of RINs, is consistent with least cost purchases as compared to the Weighted Average Cost of Gas (“WACOG”).

By proposing an extremely limited RNG Pilot, Distribution will gather the information that the RD requires. The RNG Pilot, if approved, will give Distribution the opportunity to collect data regarding the limited purchase of RNG. Moreover, Distribution has explicitly acknowledged that, at the end of the three-year RNG Pilot, the parties or the Company may recommend not to extend the approved program or agree to an alternative RNG program based on lessons learned from the initial RNG Pilot. This review following the conclusion of the RNG Pilot will present another opportunity, on top of the Company’s annual PGC proceedings, for the parties and Distribution to evaluate the efficacy of RNG from a least-cost procurement perspective.

The RD incorrectly compares Distribution’s RNG Pilot to that proposed in *Pa. Pub. Util. Comm’n v. Phila. Gas Works*, Docket No. R-2021-3023970 (Opinion and Order Entered August 26, 2021), in which the Commission rejected Philadelphia Gas Works’ (“PGW”) proposed RNG program. Distribution’s RNG Pilot and the program introduced in the PGW 1307(f) proceeding are not analogous, and Distribution’s RNG Pilot should not be tethered to the shortcomings of PGW’s 2021 RNG proposal. PGW’s RNG pilot proposal differed from Distribution’s RNG Pilot significantly. Most notably, PGW did not commit to selling RINs to offset the purchase premium of RNG. Additionally, unlike Distribution, PGW did not commit to review the procurement of RNG supplies using the least cost standards. As such, Distribution’s RNG Pilot is markedly more

protective of ratepayers than PGW's proposal and, unlike PGW's proposal, is consistent with least cost procurement standards.

Further, Distribution's RNG Pilot is consistent with the RNG program approved in UGI Utilities, Inc. – Gas Division ("UGI Gas") 2021 1307(f) proceeding. Indeed, Distribution modelled its RNG Pilot after UGI Gas's Commission approved RNG Pilot. For instance, both programs have limits on procurement. Distribution's program proposes to procure approximately 200 Dth/day of RNG, while UGI Gas's program procures 909 Dth/day. Both programs have limited duration. Distribution's RNG Pilot is limited to 3-years while UGI Gas's program has a 5-year term. Additionally, much like UGI Gas's RNG program, Distribution proposes to sell RINs associated with RNG to offset any purchase premium.

Additionally, the RD did not discuss the Company's proposed RNG Pilot sharing mechanism. As explained in the Company's Main Brief, the sharing mechanism proposed by the Company for its RNG Pilot is consistent with other sharing mechanisms employed by the Company. Further, it is well established that the Commission has the authority to approve the sharing mechanism proposed by the Company. As such, to the extent the RD is modified, Distribution's proposed sharing mechanism for its RNG Pilot should be adopted.

Lastly, the RD incorrectly contravenes the well-established policy stance of the Commission to encourage the introduction of RNG into NGDCs' systems. Chairman Dutrieulle has recognized the value of RNG, explaining that it is in the public interest that NGDCs avail themselves of knowledge and experience in the RNG supply space. Commissioners Yanora and Coleman Jr. similarly lauded UGI Gas's RNG program, which is substantially similar to Distribution's RNG Pilot. Through its RNG Pilot, Distribution is seeking the knowledge and data

necessary to evaluate future options to incorporate – or not incorporate – more RNG into its supply going forward. This intent is wholly consistent with Commission policy.

III. EXCEPTIONS

A. EXCEPTION NO. 1: THE RD ERRED IN DETERMINING DISTRIBUTION’S RNG PILOT IS INCONSISTENT WITH LEAST-COST GAS PROCUREMENT STANDARDS.

The RD concluded that Distribution’s RNG Pilot is inconsistent with the least-cost procurement standards contained in Section 1318 of the Code. 66 Pa.C.S. § 1318(a)(1)-(4). Those criteria are:

- 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.

The RD addressed the Company’s compliance with Section 1318 of the Code, finding that “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.” (RD, p. 36.) The RD goes on to explain “[i]n 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...” (RD, p. 37.)

Distribution respectfully disagrees with the RD's conclusion. The Pilot Program structure will ensure that the RNG Pilot is consistent with a least-cost procurement policy and actual contracts will be subject to review in subsequent PGC proceedings. Company witness Christopher A. Cej addressed and rebutted concerns over the RNG Pilot's consistency with least-cost procurement. Among the steps the Company has committed to take are: 1) committing to the sale of RINs to offset RNG price premiums (Distribution St. No. 1R, p. 4); 2) evaluating the contract price, offset by the sale of RINs, to WACOG (Distribution St. No. 1R, p. 4); and 3) agreeing to the annual reporting requirements proffered by the Commission's Bureau of Investigation and Enforcement ("I&E"). (Distribution St. No. 1R, pp. 4-5.)

Beyond the sale of RIN credits, the Company designed its RNG Pilot to limit risk to its customers. Distribution intends to only issue requests for proposals ("RFP") to source approximately 0.5%, the equivalent of approximately 200 Dth/day, of the Company's annual gas supplies at a fixed price for one year, two year, and/or three-year terms. (MB, p. 1.) Further, the specific terms of each RNG contract that the Company enters into will be subject to prudence and least-cost review by the parties and the Commission during the Company's annual PGC proceeding. (RB, pp. 6-7.) Thus, any least-cost procurement concerns can be raised over the specific RNG contracts entered into in the future at the time they are entered into. (RB, pp. 3-4.) Further, the Company explained that it will evaluate RNG supplies without RINs similar to offers for traditional gas supplies, but these contracts would also be required to meet least cost standards. (Distribution St. No. 1R, p. 4.) Moreover, the Company agreed to not oppose I&E witness Sakaya's annual reporting recommendations on the RNG Pilot. (Distribution St. No. 1R, p. 5.) I&E's reporting recommendations would: 1) require the Company show how the purchase of RNG complies with least cost procurement for all gas, not just RNG; 2) require the Company to sell any

RINs at the maximum value to offset the potentially higher cost of RNG; and 3) require the Company to provide a report in a future 1307(f) case describing the details of the program for the duration of the pilot. (*See* MB, pp. 12-13; I&E Statement No. 2, pp. 7-8.)

The Company believes that its RNG Pilot is wholly consistent with the least-cost procurement standards in Section 1318 of the Code. The RD incorrectly based the rejection of the RNG Pilot on the fact that Distribution has not presented actual or tentative contracts for Parties and Commission review prior to the implementation of the structural RNG Pilot. (RD, p. 35.) This recommendation is an over-expansive reading of Section 1318, and does not account for future least-cost prudence review for RNG contracts once the RNG Pilot is instituted. Further, the RD apparently failed to consider that Distribution's introduction of RNG into its system will be evaluated similarly to how the Company procures all of its gas supplies. However, the RNG procurement strategy will include an extra step to review whether the RIN sales revenue can reasonably be forecasted to offset the RNG price premium. (MB, pp. 18-19.) Distribution's RNG Pilot does not require the Company to purchase RNG should said purchase be uneconomic. (MB, p. 20.)

The RD expresses concern that under the RNG Pilot there is a possibility that the Company could enter into "non-economic RNG purchase contracts." (RD, pp. 31, 35.) As noted above, Distribution will compare the RNG contract price, off-set by the estimated sale of RINs, at the time the contract is entered into to ensure that it meets the least cost standards.

The RD also expresses concern about the potential of an RNG contract resulting in a substantial cost to customers. (RD, p. 37.) The RD's concerns are overstated and have been mitigated by the terms of the RNG Pilot. The risk of an uneconomic contract is remote given the short term of the Pilot Program and the limits on supply purchased. Mr. Cej also explained that

subsequent significant decreases in RIN prices would have a *de minimis* impact on Distribution's customers' bills, if any impact at all. (Distribution St. No. 1RJ, p. 3.)

As such, the Company has demonstrated that the structure of its RNG Pilot is consistent with least-cost gas procurement standards and should be approved.

B. EXCEPTION NO. 2: THE RD ERRED WHEN EVALUATING THE COMMISSION'S TREATMENT OF OTHER NGDC'S RNG PROPOSALS

The RD takes note of several RNG programs introduced by other NGDCs in Pennsylvania. (RD, pp. 35-36.) In doing so, the RD compares Distribution's RNG Pilot to an RNG program introduced by PGW as part of its 2021 1307(f) annual filing.¹ (RD, p. 36.) In that discussion, the RD explained:

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). 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.

(RD, p. 35 (*internal citations omitted*)).

Distribution discussed PGW's RNG program at length in its Main Brief and will not recite the entirety of that argument here. However, the RD's reliance on the Commission's denial of PGW's RNG program is inappropriate in this proceeding for a number of reasons. First, Distribution's RNG Pilot is very different from the PGW RNG proposal. (MB, p. 18.) In its proposal, PGW did not commit to reviewing the procurement of RNG supplies through a least cost standard and did not commit to selling RINs to offset the RNG price premium. (MB, p. 18.) Further, PGW contended that it was not obligated to only seek the least expensive gas without

¹ *Pa. PUC v. Philadelphia Gas Works*, Docket Nos. R-2021-3023970, et al. (Opinion and Order Entered Aug. 26, 2021) ("PGW RNG Order").

other considerations.² Due to the lack of RIN sales to offset any price premium associated with RNG, it was held in PGW's 1307(f) proceeding that RNG would certainly cost more than conventional gas supply.³ Conversely, Distribution has committed to complying with the least-cost procurement standard by agreeing to not enter into contracts that are more than the Company's weighted-average cost of gas ("WACOG") when including the offset for selling RINs. (MB, p. 18). As noted in the Company's Main Brief, this resolves the statutory least-cost concerns present in the PGW case. (MB, p. 18.)

Relatedly, the Company has addressed the lack of actual or tentative contracts, or descriptions of contract terms presented for review. (MB, p. 18.) The Company has described the prudence review process it will undertake when procuring RNG supplies, and how procurement of those RNG supplies will comport with least-cost principals and mitigate risk to ratepayers. (MB, pp. 18-19.) This differs from PGW's proposal, as PGW did not provide a detailed overview of its procurement strategy, or how responses to its RNG RFP(s) would be evaluated. (MB, pp. 18-19.) Moreover, Distribution's introduction of RNG into its system will be evaluated similarly to how the Company procures all of its gas supplies; it will just include an extra step to review whether the RIN sales revenue reasonably offsets the RNG price premium. (MB, pp. 18-19.)

While drawing on purported similarities between the rejected PGW RNG program, the RD also compares the RNG pilot program to the program approved as part of UGI Gas's 2021 1307(f) proceeding at Docket Nos. R-2021-3025652, *et al.* (RD, p. 35.)⁴ The RD explains that:

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

² PGW RNG Order, p. 24.

³ PGW RNG Order, p. 40.

⁴ 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").

have been entered into the record to allow the parties and the Commission to review concrete figures upon which to base a determination

(RD, p. 35.)

The RD appears to suppose that approval of UGI Gas's pilot was only granted because UGI Gas had an existing contract for RNG supply. (RD, p. 35.) Distribution disagrees with this premise. As explained above, Distribution has committed to only enter into contracts if they meet the least cost standards as compared to Distribution's WACOG. Furthermore, Distribution's RNG Pilot is otherwise largely consistent with UGI Gas's RNG program. (MB, p. 9.) As noted previously, Distribution modelled its RNG Pilot after UGI Gas's program. Like UGI Gas, Distribution's RNG Pilot would introduce a very limited amount of RNG into its system. Both Programs have limited terms – UGI Gas's RNG program is a five-year pilot and Distribution's RNG Pilot is three-years. (MB, p. 14.) This limited duration mitigates risk to Distribution's customers. Lastly, much like UGI Gas's RNG program, Distribution proposes to sell the RINs associated with RNG to offset any purchase premium. (MB, p. 14.)

As such, the RD's reliance on the rejection of PGW's RNG program is misplaced, as Distribution has taken significant and concrete steps to avoid the pitfalls recognized by the Commission with PGW's RNG proposal. As such, the RD's recommendation on this point should be reversed.

C. EXCEPTION NO. 3: THE RD FAILED TO CONSIDER DISTRIBUTION'S PROPOSED SHARING MECHANISM.

Distribution believes the sharing mechanism proposed within the RNG Pilot should be adopted, as it is consistent with other sharing mechanisms employed by the Company. Moreover, Distribution is unaware of, and the Office of Small Business Advocate ("OSBA") did not cite, any instance in which the Commission has required a utility to implement a "symmetrical" sharing

mechanism like the one promoted by the OSBA. It is well established that the Commission can adopt the Company's proposed sharing mechanism. (MB, pp. 14-15.)

The RD did not contain any discussion on the dueling sharing mechanisms proposed by the Company and OSBA, respectively. Distribution's proposed sharing mechanism is consistent with the Company's existing sharing mechanism for its off-system sales and capacity releases. (MB, p. 15.) Further, the sharing mechanism proposed by Distribution appropriately incentivizes the Company to pursue RNG purchase opportunities that will benefit ratepayers by encouraging the Company to seek RNG purchases that lower PGC rates when the Company can sell RINs to more than offset any RNG price premium. (MB, p. 15; RB, p. 9.)

While the OSBA expressed concerns over the RNG Pilot's proposed sharing mechanism, those concerns are significantly overstated. As previously noted, the Company has taken significant and meaningful steps to mitigate the risk to its customers as part of the RNG Pilot. Beyond mitigation measures, the potential monthly risk to ratepayers assuming extreme RNG and RIN market conditions under the proposed sharing mechanism is low. (MB, pp. 16-17; Distribution St. No. 1-RJ, p. 3.) Moreover, the Company has made clear that it would not enter into a contract for RNG should the market conditions present an extreme scenario resulting in significant bill increases to customers as compared to traditional gas. (MB, pp. 16-17; Distribution St. No. 1-RJ, pp. 3-4.) As such, to the extent the RD is modified to approve the Company's RNG Pilot, the sharing mechanism proposed by Distribution should be adopted.

D. EXCEPTION NO. 4: THE RD INCORRECTLY DEPARTED FROM WELL-ESTABLISHED COMMISSION POLICY ENCOURAGING THE INTRODUCTION OF RNG.

As explained in the Company's Main Brief, the Commission has expressed its approval of RNG pilot programs in the past. (MB, pp. 20-21.) Specifically, in response to UGI Gas's RNG pilot program, Chairman Dutrieuille explained:

The RNG industry remains in its youth, continuing to show signs of growth and interest throughout the Commonwealth and the nation. As such, it is in the public interest for natural gas distribution companies (NGDCs) to avail themselves knowledge and experience in this arena through prudently implemented tariffs and procurements.

Statement of Chairman Dutrieuille, Docket Nos. R-2021-3025652, et al. (October 7, 2021); (MB, p. 20.)

Similarly, Commissioners Yanora and Coleman Jr. lauded UGI Gas for its introduction of an RNG pilot program, noting that it “represents an innovative economic model that balances environmental, customer, and gas supply requirements consistent with the Commonwealth’s least cost gas supply requirements.” *Statement of Commissioners Yanora and Coleman Jr.*, Docket Nos. R-2021-3025652, et al. (October 7, 2021).

Distribution witness Christopher A. Cej echoed much of the policy stance of the Commission, explaining that the Company believes “leveraging the nation’s existing pipelines and storage infrastructure to deliver new sources of low carbon fuels, such as RNG... is critical to maintaining reliable and safe service to customers while reducing greenhouse gas emissions.” (Distribution St. No. 1, p. 4.) Further, Mr. Cej noted the various RNG supplies currently available across the United States, generally, and in Pennsylvania, specifically. (Distribution St. No. 1, pp. 4-5.) There are 17 such RNG producing facilities in Pennsylvania, including the largest RNG landfill production facility in the country. (Distribution St. No. 1, pp. 4-5.)

By over-reading Section 1318 of the Code, the RD contravenes the clear policy goals of the Commission – to allow for NGDCs to “avail themselves knowledge and experience in this [RNG] area...” *Statement of Chairman Dutrieuille*, Docket Nos. R-2021-3025652, et al. (October 7, 2021). Indeed, that is precisely what Distribution is attempting to do through its RNG Pilot.

IV. CONCLUSION

WHEREFORE, for all the foregoing reasons, the Commission should accept these Exceptions and modify the RD accordingly.

Respectfully submitted,



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