

**PENNSYLVANIA  
PUBLIC UTILITY COMMISSION  
Harrisburg, PA 17105-3265**

Public Meeting held July 14, 2022

Commissioners Present:

Gladys Brown Dutrieuille, Chairman  
John F. Coleman, Jr., Vice Chairman  
Ralph V. Yanora

National Fuel Gas Distribution Corporation's  
Universal Service and Energy Conservation Plan for  
2022-2026 Submitted in Compliance with  
52 Pa. Code § 62.4

Docket No. M-2021-3024935

**ORDER ON RECONSIDERATION**

**BY THE COMMISSION**

On May 3, 2022, the Public Utility Commission (Commission) entered an Order (May 3 Order) approving the 2022-2026 universal service and energy conservation plan (2022 USECP) for National Fuel Gas Distribution Corporation (NFG). In the May 2022 Order, we required NFG to, *inter alia*, make modifications to its Low Income Rate Assistance program (LIRA, NFG's Customer Assistance Program or CAP) involving information system modifications (LIRA IT Changes). On May 18, 2022, NFG filed a Petition for Clarification and Reconsideration (May 2022 Petition) seeking, *inter alia*, expedited approval of a temporary stay of the LIRA IT Changes to allow NFG to propose a Percentage of Income Program (PIP) Design within 90 days. In addition to the stay, NFG also requested clarification of several points in the May 3 Order. There is no opposition to the Petition. This Order grants the May 2022 Petition and addresses NFG's requests for clarifications of the May 3 Order.

## BACKGROUND

On March 31, 2021, NFG Filed its Proposed 2022-2026 USECP (Proposed 2022 USECP) at Docket No. M-2021-3024935. On July 15, 2021, the Commission entered an Order (July 2021 Order) requesting additional information and stakeholder comment. On August 24, 2021, NFG filed Supplemental Information. The Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (CAUSE-PA) and the Office of Consumer Advocate (OCA) individually filed comments on September 14, 2021. CAUSE-PA, OCA, and NFG individually filed reply comments on October 13, 2021. The May 3 Order approved the proposed 2022 USECP, with modifications. In the May 3 Order, we required NFG to, *inter alia*, amend the LIRA payment methodology by rounding-up when determining the rate discount tier and eliminating the 36-month time limit for customers to receive pre-program arrearage forgiveness within six months. May 3 Order at 76, 78, OP #5(a-b), OP#7.

On May 18, 2022, NFG filed its May 2022 Petition. On May 23, 2022, OCA filed a letter in lieu of an answer (OCA Letter). On May 25, 2022, the Commission entered an Order granting a stay of the LIRA IT Changes pending review of, and consideration on, the merits of the May 2022 Petition.

On June 2, 2022, NFG filed clean and redlined versions of its revised 2022 USECP (June 2 Compliance Filing). On June 13, 2022, the Commission's Bureau of Consumer Services (BCS) issued a Secretarial Letter identifying an issue with the June 2 Compliance Filing. On June 14, 2022, NFG filed a further revised 2022 USECP (June 14 revised Compliance Filing).

## SUMMARY OF MAY 2022 PETITION<sup>1</sup>

NFG requests that the Commission, on an expedited basis, reconsider and temporarily stay the requirements in the May 3 Order that require NFG to make the LIRA IT Changes. These LIRA IT Changes include:

- Revising payment rounding methodology;
- Adjusting the LIRA customer's discount rate on a monthly basis; and
- Establishing a 90% rate discount tier.

NFG requests this stay in order to submit an expedited filing within 90 days proposing implementation of a LIRA PIP design. A specific proposal to implement a LIRA PIP in lieu of the changes approved in the May 3 Order and reflected in the 2022 USECP Compliance Filing constitute a proposed amendment to the 2022 USECP.

NFG asserts that the level of IT complexities involved in implementing the Commission's LIRA modifications are significant. NFG also opines that, based on recent positions of the Commission and stakeholders in the 2022 USECP proceeding, it may ultimately be required to move to a PIP or another CAP payment design in the future. NFG contends that it would be prudent to use ratepayer funds to implement a PIP now, rather than incur costs to amend its current LIRA rate discount design and then implement a PIP later. Moreover, NFG notes that a PIP design would provide LIRA

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<sup>1</sup> NFG also requested that the answer period for its May 2022 Petition be shortened to five days. May 2022 Petition Cover Letter at 1, May 2022 Petition at ¶15. That request is now moot as the time for answering the May 2022 Petition passed by operation of law on June 7, 2022, 20 days from the date that the Petition was filed and served. 52 Pa. Code § 5.61 (relating to answers to complaints, petitions, motions and preliminary objections).

customers with the same general benefits of the approved rate discount design but would be clearer and easier to understand. May 2022 Petition at ¶11-¶12.

NFG reports that it has shared its plan to propose a LIRA PIP and a copy of the May 2022 Petition with CAUSE-PA and OCA and that neither party opposed NFG's proposals. NFG states that it intends to work collaboratively with CAUSE-PA and OCA on the development of the PIP and to confer with them during the 90-day period. May 2022 Petition at ¶18.

If the request for a stay of the LIRA IT Changes is not approved, NFG requests that the Commission extend the timeframe for implementing the LIRA IT Changes to nine months, and to clarify that, under the approved LIRA Design, LIRA customers' discount rate will be adjusted monthly. NFG also states that if it is required to incur the costs necessary to implement the LIRA IT Changes, it may elect not to propose a PIP design. May 2020 Petition at ¶21-¶23.

In addition to the above request for reconsideration, NFG also asks the Commission to clarify:

- That, under the approved LIRA design, discount rates will be adjusted monthly. May 2022 Petition at ¶22.
- The timeframe during which the 2022 USECP will be effective. May 2022 Petition at ¶25-¶26.

## **STAKEHOLDER RESPONSE**

On May 23, 2022, OCA filled a letter in lieu of comments in response to NFG's May 2022 Petition. OCA affirms that it does not oppose NFG's May 2022 Petition and

that it reserves the right to file comments or other appropriate filings in response to NFG’s subsequent filing of its PIP design. OCA Letter at 1. There are no other answers or responses to the May 2022 Petition.

### STANDARD FOR RECONSIDERATION

NFG timely filed its Petition requesting reconsideration of the May 3 Order. Commission jurisdiction in this matter was preserved by the May 25, 2022 Order, pursuant to Pennsylvania Rules of Appellate Procedure, Rule 1701.

Before reaching the substantive issues raised in NFG’s Petition, we must address the standard for rehearing, reargument, reconsideration, clarification, rescission, amendment, supersedeas, or the like. Petitions for reconsideration are reviewed pursuant to 66 Pa. C.S. § 703(g), relating to rescission and amendment of orders,<sup>2</sup> and 52 Pa. Code § 5.572, relating to petitions for relief.<sup>3</sup>

The Commission in *Duick v. PGW*, 56 Pa. P.U.C. 553 (1982) (*Duick*) elaborated on the application of Section 703(g) and Section 5.572. “A petition for reconsideration, under the provisions of 66 Pa. C.S. § 703(g), may properly raise any matters designed to convince the Commission that it should exercise its discretion . . . to rescind or amend a prior order in whole or in part.” A party may not raise the same questions in a petition for reconsideration that were raised in a prior pleading. Such questions raised ought to be

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<sup>2</sup> Section 703(g) provides that “[t]he commission may, at any time, after notice and after opportunity to be heard as provided in this chapter, rescind or amend any order made by it. Any order rescinding or amending a prior order shall, when served upon the person, corporation, or municipal corporation affected, and after notice thereof is given to the other parties to the proceedings, have the same effect as is herein provided for original orders.”

<sup>3</sup> Section 5.572(a) provides that “[p]etitions for rehearing, reargument, reconsideration, clarification, rescission, amendment, supersedeas or the like must be in writing and specify, in numbered paragraphs, the findings or orders involved, and the points relied upon by petitioner, with appropriate record references and specific requests for the findings or orders desired.”

those that “appear to have been overlooked or not addressed by the Commission.” If “new and novel” questions are not raised, a party will not succeed in persuading the Commission that the “initial decision on a matter or issue was either unwise or in error.” *Duick* at 558.

## DISCUSSION

### *Request for a Stay of LIRA IT Changes*

In the May 3 Order, we directed NFG to implement modifications within its LIRA program to ensure that its customers do not pay more than the targeted energy burdens. These modifications include, *inter alia*, amending the LIRA payment methodology to ensure a household’s calculated discount rate is always rounded up and implementing a 90% rate discount. We note that implementing a PIP design should also ensure that a LIRA customer’s bill will not exceed its energy burden target. Moreover, we note that CAUSE-PA recommended that NFG implement a PIP during NFG’s 2022 USECP proceeding<sup>4</sup> and that OCA did not oppose it.<sup>5</sup>

*Resolution:* In an Order entered on November 5, 2019 (November 2019 Order), at Docket No. M-2019-3012599, the Commission recommended that public utilities ensure a household’s CAP bill does not exceed the Commission’s energy burden thresholds. November 2019 Order at 31. In the May 3 Order, we directed NFG to modify its LIRA design – which provides rate discounts based on 10% tiers (10%-80%)<sup>6</sup> – to ensure the LIRA payment does not exceed its proposed energy burden thresholds by rounding up to the nearest 10% when determining a rate discount. May 3 Order at 76, OP #5(a). This change would allow LIRA customers needing a rate discount of 41% through 49% to

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<sup>4</sup> CAUSE-PA Reply Comments at 10.

<sup>5</sup> OCA Reply Comments at 5

<sup>6</sup> As mentioned above, a 90% rate discount was approved in the May 3 Order.

automatically receive a discount of 50%. While this change would ensure LIRA customer bills would not exceed the energy burden targets, it may also result in customers receiving larger discounts than needed to meet those targets. A PIP design would help to address this potential over-subsidization of LIRA bills funded by residential ratepayers.

This is a new and novel proposal from NFG, and thus it meets the standard for reconsideration. We also find it reasonable to consider NFG's PIP design before requiring it to implement the directed LIRA IT Changes. We agree with NFG that it would be an inefficient use of ratepayer funds to make system modifications to a rate discount design that might be replaced by a PIP in the near future.

Accordingly, we approve NFG's request for a stay on the implementation of the LIRA IT Changes, pending the filing and consideration of a proposed LIRA PIP design. NFG is directed to file its PIP design within 90 days from the entry date of this Order.

#### *Monthly adjustment of the LIRA rate discount*

NFG asserts that the May 3 Order "mischaracterizes" one of the primary modifications in its Proposed 2022 USECP. NFG asserts that it proposed to make *monthly* adjustments to the LIRA discount rate. NFG further asserts that it reiterated its proposal that the LIRA discount rate be adjusted monthly in its Reply Comments.<sup>7</sup> NFG states that the May 3 Order refers to "annual" adjustments to the LIRA rate discount. NFG requests that the Commission clarify that these rate discount adjustments be made monthly. May 2022 Petition at ¶5, ¶24.

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<sup>7</sup> See Proposed 2022 USECP at 15 and NFG Reply Comments at 6.

*Resolution:* We note that monthly adjustments to the rate discount was not identified as a proposed change in NFG’s Proposed 2022 USECP. Proposed 2022 USECP at 12-13. Nevertheless, as NFG points out in the May 2022 Petition, this process was described in the Proposed 2022 USECP and highlighted in NFG’s reply comments. Although not specifically addressed in the May 3 Order, NFG’s proposal to establish the monthly adjustment for LIRA rate discounts was approved as part of its 2022 USECP.<sup>8</sup>

We note that references to an “annual discount amount” or a “required annual discount” in the May 3 Order referred to how NFG calculates a LIRA rate discount. May 3 Order at 9-11. This description was based on the explanation in the Proposed 2022 USECP on how LIRA rate discounts are calculated, including steps on how to determine the “Annual Required Discount Amount” and the “Total Discounts for the Upcoming 12 Months.” Proposed 2022 USECP at 22-23. The description of how the LIRA “annual” discount amounts are calculated in the May 3 Order does not invalidate NFG’s proposal to establish adjustments of rate discounts on a monthly basis. Accordingly, we clarify that NFG’s proposal to establish adjustments of the LIRA rate discounts on a monthly basis was approved in the May 3 Order. The implementation of this change, however, is stayed, pending consideration by the Commission of NFG’s proposal to implement a PIP.

*Clarification on 2022 USECP Effective Dates*

NFG asserts that the May 3 Order indicates that the 2022 USECP will be effective through 2026 but notes the May 3 Order also states that NFG’s next USECP will be due on April 1, 2027, and cover the five year period starting on January 1, 2028. NFG also notes that the May 3 Order directs its next third-party independent evaluation is to be filed with the Commission on April 1, 2026. In its May 2022 Petition, NFG seeks

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<sup>8</sup> Consistent with the basis for reconsideration and clarification, we note that it is appropriate to clarify this point that was not specifically addressed in our May 3 Order.

clarification as to the timeframe during which its 2022 USECP will be effective and confirmation of the filing deadlines for its next third-party independent evaluation and next proposed USECP. May 2022 Petition at ¶¶25-26.

*Resolution:* The period covered by a proposed USECP establishes parameters for required projections of enrollments and spending related to the USECP. This period is not meant to establish firm beginning and end dates for a USECP as finally approved. For various reasons, USECPs may not be approved until after the proposed first year has begun or has passed, and a USECP may remain effective after its proposed last year (*i.e.*, until a new USECP is approved).<sup>9</sup>

In particular, Ordering Paragraph 1 in the May 3 Order states that:

National Fuel Gas Distribution Corporation’s Universal Service and Energy Conservation Plan for 2022-2026 is approved, subject to the conditions established in this Order, as consistent with Title 66 of the Pennsylvania Consolidated Statutes, Title 52 of the Pennsylvania Code, and Commission practice.

The reference to “2022-2026” in OP # 1 is a reference to both the name of this docket and the name of the proposed USECP. That reference is augmented by the additional phrase “subject to the conditions established in this Order” in OP # 1. The established conditions include, *inter alia*, the duration of the USECP and the due dates for filing the next proposed USECP (as specified in OP # 16) and the third-party independent evaluation (as specified in OP # 15). Thus, the phrase “2022-2026” is not one of limitation or restriction, but rather one of identification.

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<sup>9</sup> While NFG is not the first energy public utility to have a specifically named USECP approved for longer than the duration specified in the name of the docket and the name of the proposed USECP, NFG is the first to question the implications of the name *vis-à-vis* the directives regarding duration and future due dates. NFG’s question, having been raised for the first time, falls squarely within the parameters required for clarification as noted in footnote 5 above.

Section 62.4 (52 Pa. Code § 62.4 (relating to universal service and energy conservation plans for natural gas public utilities) provides that USECPs cover three years. In an Order entered on October 3, 2019 (October 2019 Order),<sup>10</sup> we established, *inter alia*, that USECPs are to be effective for at least five years after they are approved by the Commission. The October 2019 Order further provides that an order approving a USECP will specify the deadlines for the filing of the public utility’s next proposed USECP and its next third-party independent evaluation of universal service programs. October 2019 Order at OP #6. Ordering Paragraphs 15 and 16 are predicated on the October 19 Order.

NFG’s 2022 USECP is effective, in whole or in part, depending upon implementation of the various provisions of the Commission-approved USECP, from the filing date of its revised 2022 USECP and shall remain in effect until a new USECP is approved and implemented, in whole or in part. Furthermore, we confirm that the filing deadline for NFG’s third-party independent evaluation is April 1, 2026, and the filing of its next proposed USECP is due on or before April 1, 2027, covering the five-year period starting January 1, 2028.

#### *Clarification on Implementation of Modifications*

Although NFG does not request clarification on this matter, it asserts that the May 3 Order “does not explicitly specify the time period when the [2022 USECP] shall be fully implemented” and, instead, asserts an implication that the Commission intended NFG to fully implement the 2022 USECP within six months. May 2022 Petition at ¶7.

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<sup>10</sup> *Universal Service and Energy Conservation Plan (USECP) Filing Schedule and Independent Evaluation Filing Schedule*, Docket No. M-2019-3012691 (order entered on October 3, 2010). <https://www.puc.pa.gov/docket/M-2019-3012601>

In the June 2 Compliance Filing, NFG also proposed to implement all the modifications in the 2022 USECP, except for those requiring LIRA IT Changes, within six months from the date that it receives “compliance approval” of its revised 2022 USECP. June 2 Compliance Filing Cover Letter at 1.

In the May 3 Order, we directed NFG to implement all approved or directed modifications in its 2022 USECP as of the filing date of its Revised 2022 USECP (*i.e.*, by June 2, 2022), unless otherwise indicated:

[W]e shall direct NFG to file a Revised 2022 USECP reflecting the changes directed herein within 30 days of the date of entry of this Order. With these changes, NFG’s 2022 USECP is approved and shall take effect unless otherwise indicated, as of the filing date of its Revised 2022 USECP.

May 3 Order at 74.

*Resolution:* While the Commission may establish implementation timeframes on modifications deviating from a proposed USECP, if appropriate, it does not routinely establish such timeframes for universal service program modifications proposed by the public utility. NFG did not request or propose timeframes for implementing modifications in its Proposed 2022 USECP. Therefore, we directed NFG to implement all approved or directed modifications in its 2022 USECP as of the filing date of its Revised 2022 USECP (*i.e.*, by June 2, 2022), unless otherwise indicated. The six-month implementation timeframe referenced by NFG only applies to the modifications specified in Ordering Paragraph #7 in the May 3 Order.

We expected that NFG would be able to implement all the other approved or directed modifications by the filing date of the Revised 2022 USECP (*i.e.*, June 2, 2022). However, as we noted in the May 3 Order, the procedure for approving USECPs was

changed with the May 3 Order.<sup>11</sup> The process for review of compliance filings and approval was shortened. We are, therefore, not opposed to the maximum six-month timeline proposed by NFG to complete implementation of these modifications, if NFG requires this additional time, but implementation of these modifications must be completed as soon as possible.<sup>12</sup>

Accordingly, NFG is directed to implement the modifications to its 2022 USECP not subject to the May 2022 Petition no later than six months from the entry date of this Order and to file and serve a letter at this docket to confirm when these modifications are fully implemented. NFG is also directed to provide a proposed implementation timeframe for its proposed PIP design as part of the filing due 90 days from the entry date of this Order.

## CONCLUSION

Accordingly, the Commission hereby approves NFG's request for a temporary stay of the LIRA IT Changes specified in the May 3 Order. NFG is directed to file and serve a Petition to implement a PIP, with a proposed timeline for implementation, within 90 days from the entry date of this Order. NFG is also directed to implement all other changes approved or directed in the May 3 Order within six months from the entry date of this Order and file and serve a letter at this docket to confirm when these modifications are fully implemented.

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<sup>11</sup> The change in procedure was also implemented in *Duquesne's 2022-2026 USECP*, Docket No. M-2021-3024935 (order entered on April 21, 2022). Duquesne's USECP and NFG's USECP were addressed by motions adopted by the Commission at a Public Meeting on the same day. We also take this opportunity to remind interested persons that it is essential that proposed timelines for proposed USECP provisions be articulated so that stakeholders and the Commission have the opportunity to review and address them in conjunction with the review and consideration of the proposed USECP provisions.

<sup>12</sup> NFG's question, having been raised for the first time, falls squarely within the parameters required for clarification.

We also find NFG's June 14 revised Compliance Filing consistent with the May 3 Order, and the modifications approved by this Order.; **THEREFORE,**

**IT IS ORDERED:**

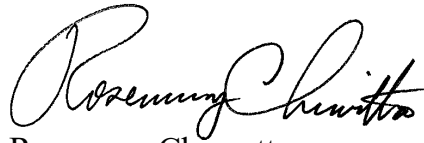
1. The Petition for Clarification and Reconsideration pursuant to 66 Pa. C.S. § 703(g) and 52 Pa. Code § 5.572 filed by National Fuel Gas Distribution Corporation on May 18, 2022 is granted, consistent with this Order.

2. That National Fuel Gas Distribution Corporation shall file and serve a Petition to adopt a Percent of Income Payment design for its Low Income Rate Assistance Program within 90 days from the entry date of this Order, with a proposed timeline for implementation.

3. That National Fuel Gas Distribution Corporation shall implement all modifications to its 2022 USECP approved in or directed by the May 3 Order, except for those granted a temporary stay, within six months of the entry date of this Order. NFG must file and serve a letter at Docket No. M-2021-3024935 when these modifications are fully implemented.

4. That a copy of this Order be served on parties to Docket No. M-2021-3024935.

**BY THE COMMISSION,**

A handwritten signature in black ink, appearing to read "Rosemary Chiavetta". The signature is written in a cursive, flowing style.

Rosemary Chiavetta  
Secretary

(SEAL)

ORDER ADOPTED: July 14, 2022

ORDER ENTERED: July 14, 2022