**BEFORE THE**

**PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission : R-2022-3035730

Office of Small Business Advocate : C-2022-3036655

Office of Consumer Advocate : C-2022-3036725

:

:

v. :

:

:

National Fuel Gas Distribution Corporation :

**PREHEARING ORDER**

On October 28, 2022, National Fuel filed Supplement No. 248 to National Fuel Gas Distribution Corporation Gas Tariff – PA P.U.C. No. 9 with the Pennsylvania Public Utility Commission. Supplement No. 248 was issued to be effective for service rendered on or after December 27, 2022. It proposed changes to National Fuel’s base retail distribution rates designed to produce an increase in revenues of approximately $28.1 million (9.2%). NFG also proposed an Energy Efficiency (“EE”) pilot program that would recover an additional $1.2 million from residential customers annually in a separate rider, based upon data for a fully projected future test year ending July 31, 2024. NFG’s proposals would result in the total bill for a residential customer, using 84 ccf per month, increasing from $99.93 to $109.67 per month or about 9.7%.

On November 8, 2022, the Office of Small Business Advocate (OSBA) filed a formal complaint, C-2022-3036655. On November 9, 2022, the Office of Consumer Advocate (OCA) filed a formal complaint, C-2022-3036725. The Commission’s Bureau of Investigation and Enforcement (BIE) entered its appearance on November 15, 2022. The Coalition for Affordable Utility Service and Energy Efficiency in Pennsylvania (CAUSE-PA) and the Pennsylvania Weatherization Providers Task Force filed petitions to intervene on November 15, 2022, and December 1, 2022, respectively.

By order entered on December 8, 2022, the Commission suspended the rate filing until July 27, 2023, and directed an investigation to determine the lawfulness, justness, and reasonableness of the rates, rules, and regulations contained in the rate filings.

By notice dated December 8, 2022, this matter was assigned to me and scheduled for a prehearing conference on December 14, 2022. A prehearing conference order was also served on the parties on December 8, 2022.

The prehearing conference convened as scheduled. Counsel for NFG BIE, OCA and OSBA appeared. Additionally, counsel representing intervenor CAUSE-PA and the Pennsylvania Weatherization Providers Task Force appeared and participated. This prehearing order memorializes the matters decided and agreed upon by the parties attending the conference.

Consolidation

The complaints of the statutory advocates are consolidated with their respective dockets. Any additional complaints filed following the December 14, 2022, Prehearing Conference are deemed consolidated without further order.

Petition to Intervene

The petitions to intervene of CAUSE-PA and Pennsylvania Weatherization Providers Task Force are granted.

Service List

A service list of the parties is attached to this order.

Any party that did not appear at the December 14, 2022 Prehearing Conference will be treated as an inactive participant to this proceeding. Inactive participants will receive the presiding officer’s written orders, notices of hearings and copies of any Commission decisions and orders. Inactive participants will not participate in discovery, testify at the evidentiary hearing, or cross-examine witnesses. Inactive participants will not receive copies of the hearing exhibits or briefs filed by the active participants. Any participant entering their appearance after the December 14, 2022 Prehearing Conference must designate whether they want to be treated as an active participant in writing to the presiding officer and the current participants of record..

Litigation Schedule

|  |  |
| --- | --- |
| Date | Event |
| January 19, 2023 | Public Input Hearings – by telephone 1:00 p.m. and 6:00 p.m. |
| January 24, 2023 | Service of written Direct Testimony of Non-Company Parties |
| February 21, 2023 | Service of written rebuttal testimony |
| March 3, 2023 | Service of written surrebuttal testimony |
| March 6, 2023 (best efforts by 3:00 p.m.) | Written rejoinder outline and witness matrix listing the parties intending to cross-examine each witness and the extent of any cross-examination |
| March 7-9, 2023 | Technical evidentiary hearings in Harrisburg |
| March 30, 2023 | Filing and service of main briefs |
| April 13, 2023 | Filing and service of reply briefs or submission of joint settlement petition executed by representatives of parties thereto, together with all parties’ statements in support of joint petition/settlement |

The parties are reminded of the Commission’s requirements for the preparation and filing of written testimony. 52 Pa.Code § 5.412. Written testimony must be accompanied by all exhibits to which it relates. **Excel tables must be provided in Excel format by email to the presiding ALJ and other parties within two business days of the testimony being served.** Technical terms and concepts are to be clearly defined and explained in the testimonies and briefs. **The parties are to agree on a list of common acronyms and use them consistently in all written testimony and briefs.**

The above-stated dates are in-hand dates for service on the parties and the presiding Administrative Law Judge (ALJ). The parties at the prehearing conference and the presiding ALJ agree to accept electronic service of such material,[[1]](#footnote-1) so long as the subject email is received by the date due. Please send one hard copy of the same material via first-class mail postage prepaid to the presiding ALJ. The email address of the presiding ALJ: [malong@pa.gov](mailto:malong@pa.gov).

Hearings will begin promptly each day at 9:00 a.m. The parties must confer before commencement of the hearings to schedule their witnesses so as to avoid “holes” or “dead time” during the hearings. In the event that a partial settlement is achieved the parties should be prepared to proceed on the first scheduled day of hearing to present evidence on the non-resolved issues.

Public Input Hearings

The parties have agreed that two public input hearings will be conducted by telephone.

Public input hearings shall be held on **January 19, 2023 at 1:00 p.m. and 6:00 p.m.** NFG is hereby ordered to publish notice of the date, time and registration instructions for the public input hearings in newspapers of general circulation in NFG’s service territory, weekly, for two consecutive weeks, beginning no later **Tuesday January 3, 2023,** if possible, in consideration of necessary lead time for publication. NFG is further ordered to file proof of publication with the Commission’s Secretary’s Bureau. NFG is further ordered to publish notice of the public input hearings on its website, social media and through any other electronic means available.

Issues

In their respective prehearing memoranda, the parties identified various issues they may wish to pursue. The reader is directed to these documents to review a recitation of these issues. Additional issues may arise as the discovery process develops.

## Discovery

The parties shall engage in informal discovery whenever and wherever possible in an attempt to resolve any discovery disputes amicably. 52 Pa.Code § 5.322. If this process fails, the parties have recourse to the Commission’s procedures for formal discovery, as herein modified. 52 Pa.Code §§ 5.321, *et* *seq*. The parties must not send the presiding ALJ discovery material or cover letters, unless attached to a motion to compel. **All motions to compel must contain a certification of counsel of the informal discovery undertaken and their efforts to resolve their discovery disputes informally.** If a motion to compel fails to contain such certification, the presiding ALJs will contact the parties and direct them to pursue informal discovery.

The parties must endeavor to complete discovery upon the filing of surrebuttal testimony absent extraordinary circumstances. Motions to compel discovery filed after March 3, 2023 may not be ruled upon in advance of the evidentiary hearings.

NFG and OCA proposed modification of the Commission’s procedures for formal discovery. Following a discussion with the parties, the following modified discovery procedure applies to this case:

(a) Answers to written interrogatories shall be served in-hand within ten (10) calendar days of service.

(b) Responses to requests for document production, entry for inspection, or other purposes must be served in-hand within ten (10) calendar days.

(c) Requests for admissions will be deemed admitted unless answered within ten (10) calendar days or objected to within five (5) calendar days of service.

(d) Objections to interrogatories shall be communicated orally within three (3) calendar days of service of the interrogatories, and unresolved objections shall be served in writing within five (5) days of service of the interrogatories. Objections to interrogatories served on a Friday shall be communicated orally within four (4) calendar days, and unresolved objections shall be served in writing within six (6) days of service of the interrogatories.

(e) Motions to dismiss objections and/or direct the answering of interrogatories shall be filed within three (3) calendar days of service of the written objections.

(f) Answers to motions to dismiss objections and/or direct the answering of interrogatories shall be filed within three (3) calendar days of service of such motions.

(g) Discovery and discovery-related pleadings propounded after 12:00 noon on a Friday or after 12:00 noon on any business day immediately preceding a state holiday will be deemed served on the next business day for purposes of determining the due date of the responses and responsive pleadings.

All discovery due dates shall be “in-hand” and electronic or fax service on the due date will satisfy the “in-hand” requirement.

Pre-Served Testimony and Exhibits

No written testimony will be admitted into evidence unless accompanied by a verification or affidavit of the witness.

Confidential Security Information (CSI) as defined by 35 P.S. § 2141 *et seq.* should not be transmitted by email or other electronic means. The parties are to avoid introducing CSI into the record and should develop alternative means, such as joint stipulations or redaction when proposing testimony or exhibits. If there is no other alternative to establish a material fact other than by CSI, the parties are to contact the presiding ALJ immediately and in advance of the evidentiary hearing.

Settlement and Stipulations

The parties are reminded it is the Commission’s policy to encourage settlements. 52 Pa.Code § 5.231(a). The parties are strongly urged to seriously explore this possibility. Submission of a fully executed joint settlement petition, together with all parties’ statements in support of the joint petition/settlement, must be filed with the Secretary for the Commission and received in-hand by the presiding ALJ no later than the close of business on **April 13, 2023**.

A settlement petition must include an appendix table which sets for the following information: the current rates for each customer class, the rate increase proposed in the initial filing for each customer class and the rates proposed for each customer class in the petition for settlement. All of these costs and comparisons shall be stated in dollar/cents amounts and in percentages.

If settlement is not feasible, the parties are encouraged to stipulate to any matters they reasonably can to expedite this proceeding, lessen the burden of time and expenses in litigation on all parties and conserve precious administrative hearing resources. 52 Pa.Code §§ 5.232 and 5.234. All stipulations entered into by the parties must be reduced to writing, signed by the parties to be bound thereby, and moved into the record during the hearings in this case. An exception to this requirement may occur when circumstances of time and expediency warrant. If so, an oral presentation of a stipulation is permissible, if it is followed by a reduction to writing as herein directed.

Cross-Examination

Friendly cross-examination or cumulative cross-examination during hearings will not be permitted. 52 Pa.Code §§ 5.76; 5.243.

Briefs and Reply Briefs

The parties must comply with 52 Pa.Code §§ 5.501, et seq., regarding the preparation and filing of briefs. Briefs must include proposed conclusions of law and proposed ordering paragraphs. Page limitations on briefs will be discussed on or before the last day of hearing. The parties shall submit to the presiding ALJ one copy by email. The electronic version of a brief must be prepared in Microsoft Office Word format. If in doubt, please email the presiding ALJ for clarification.

IMPORTANT NOTICE: All briefs must conform to the “Instructions for Briefs” attached hereto as Appendix A and made a part of this order. **Also, Rate Case Tables will be electronically provided to the parties. These Tables must be used by NFG and all parties in this proceeding.** If any party fails to follow these instructions in the smallest detail that party’s position will not be considered, regardless of where the record may support it or the position of any other party to this proceeding. Your anticipated cooperation will be appreciated.

Modification

Any of the provisions of this Prehearing Order may be modified upon motion and good cause shown by any party in interest.

Date: December 19, 2022 /s/

Mary D. Long

Administrative Law Judge

Special Instructions for Briefs and Exceptions

in Major General Rate Increase Proceedings

1. Each brief shall follow the general organization shown in the attached standardized format.

2. Each brief shall contain a table of contents with page references to a summary of argument and to each topic addressed in the argument.

3. Adjustments contained in each brief shall:

a. be based on a specific test year, to be selected before the close of the record;

b. be complete and self contained, include accurate reference to the appropriate record sources, be on a before-income-tax basis (never on a net income or revenue requirement basis) and be on a consistent jurisdictional basis (if record support cannot be located, the adjustment may/will be rejected);

c. be detailed to demonstrate the step-by-step calculation of that adjustment together with appropriate accurate record references (once again, if the record support cannot be located for the necessary steps, the adjustment may/will be rejected);

d. include concomitant rate base, revenue, expense, depreciation expense, and tax (i.e., taxes other, State Income, and federal Income) adjustments set forth, together with the details of their calculation;

e. include within the brief calculations which are the basis for proposed adjustments, but which are incomplete in the record.

4. Tables showing all proposed rate base and income adjustments, organized as shown in the attached Table I and Table II, shall be submitted with each brief which includes such adjustments.

a. The starting point of Table I “Income Summary” shall be the utility’s final pro forma showing at present rates. The ALJ shall specify the starting point to be the most recent update admitted into evidence. The update, admission, and ALJ ruling shall be cited on the table.

b. The effect of deferred or accrued taxes on the various tax adjustments presented in Table II “Summary of Adjustments” shall be indicated by a footnote.

5. The following schedules shall be submitted with each brief.

a. A schedule showing the precise derivation of any adjustment to proposed cash working capital allowance.

i. The schedule describing an adjustment to a Utility’s claim for Cash Working Capital shall separately list (1) adjustments originating from Table II “Summary of Adjustments” and (2) adjustments resulting from the proposed revenue increase. Any effect on deferred and/or accrued taxes shall be shown in a separate column or footnote.

ii. Net Revenue and Expense Lag Days for all Cash Working Capital Adjustments shall be calculated to at least one decimal place.

b. A schedule showing all tax and jurisdictional allocation factors utilized (any deviations from standard or obvious factors should be explained on the schedule on in the brief).

c. A schedule listing, for the party or parties filing the brief, each exhibit or other document admitted into the record, along with the date the document was identified and the date the document was admitted.

6. Rate structure proposals shall be reasonably specific and explicit, shall, as appropriate, refer accurately to record support and shall be summarized at the end of the “Rate Structure” topic heading of each brief.

7. Parties shall, as feasible and appropriate, discuss alternative rate design proposals for overall rate increases at and below the requested increase

8. Regarding the filing of exceptions, the following instructions are provided:

a. Each exception shall be separately identified and, as necessary, discussed.

b. Each exception shall include, before any discussion is provided, the following elements (see examples attached):

i. a reference to the relevant part of the Recommended Decision, at least to the relevant pages;

ii. a reference to related discussions in the excepting party’s brief and, as appropriate, to other briefs; and

iii. a concise statement of the exception.

c. The exceptions shall follow the order of presentation provided in the table of contents to the Recommended Decision.

d. If a party takes exception concerning a topic not included within the Recommended Decision or the table of contents thereto, the appropriate exception shall be included at the end of the appropriate major topic heading (such as “Rate Base” or “Expenses”).

e. If a party seeks to correct computations associated with the Recommended Decision, replacement computations, with source references to briefs or the record, shall be provided.

Standardized Brief Format for

General Rate Increase Proceedings

I. Introduction

II. Summary of Argument

III. Rate Base

A. Fair Value

B. Plant in Service

C. Depreciation Reserve

D. Additions to Rate Base

E. Deductions from Rate Base

F. Conclusion

IV. Revenues

V. Expenses

VI. Taxes

VII. Rate of Return

VIII. Miscellaneous Issue

IX. Rate Structure

A. Cost of Service

B. Revenue Allocation

C. Tariff Structure

D. Summary and Alternatives

X. Conclusion

Note: Appropriate modifications may be made. For instance, a party might add “Affiliated Interest Expenses” as a major topic heading or might brief only rate structure and not use other topic headings. A summary and alternatives should be provided under “Rate Structure” but the “Rate Base” and “Rate Structure” formats shown may be modified, as appropriate. Additional subheadings should be used, as appropriate.

TABLE I

Income Summary

($000)

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
|  | Pro Forma  Present  Rates | Recommended  Adjustments | Adjusted  Present  Rates | Revenue  Adjustment | Total  Allowable  Revenues |
|  | $ | $ | $ | $ | $ |

Operating Revenues

Deductions:

O&M Expenses

Depreciation

Taxes:

State

Federal

Other

Total Deductions

Net Income Available for Return

Rate Base

Recommended Rate of Return

TABLE II

Summary of Adjustments

($000)

|  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- |
| Recommended  Adjustments | Exhibit  Reference | Rate  Base  Effect | Revenue  Effect | Expense  Effect | Depreciation  Effect | Effect  Upon  Taxes -  Other | State  Tax  Effect | Federal  Tax  Effect |
|  |  | $ | $ | $ | $ | $ | $ | $ |

Total Adjustments

Company Rate Base

Recommended Rate Base

Examples of Specific Exceptions

1. Staff excepts to the ALJ’s rejection of the Staff (and OCA) rate case expense adjustment. See R.D., pp. 31-2; Staff brief, pp. 54-5; OCA brief, pp. 98-9. The $128,000 adjustment, based on a filing once every four years and on disallowance of certain expenses, should be accepted.

2. The Company excepts to the adoption of the OCA revenue adjustment. See R.D., pp. 28-30; Company brief, pp. 56-9; Company reply brief, p. 12. This adjustment was based on unreasonable projections of industrial consumption (see OCA brief, p. 84). The Company projection, as modified at Company St. 14, pp. 11-12, should be used.

3. OCA excepts to the ALJ’s failure to address, and accept, its weather adjustment to revenues. See OCA brief, pp. 21-4; OCA reply brief, p. 12.

4. Corrections to calculations underlying salary increases (R.D., p. 41), force reductions (R.D., pp. 48-9) and tax normalization (R.D., pp. 81-2) are offered and explained at Appendix B.

**R-2022-3035730 - PA PUBLIC UTILITY COMMISSION et al v. NATIONAL FUEL GAS DISTRIBUTION CORPORATION**

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1. For parties accepting electronic service, the documents are to be served electronically on the date indicated, by 4:00 p.m. unless otherwise indicated. [↑](#footnote-ref-1)