



COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
COMMONWEALTH KEYSTONE BUILDING
400 NORTH STREET, HARRISBURG, PA 17120

BUREAU OF
INVESTIGATION
&
ENFORCEMENT

December 27, 2022

Via Electronic Filing

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120

Re: Pennsylvania Public Utility Commission, Bureau of Investigation and Enforcement's Investigation of National Fuel Gas Distribution Corporation's November 1 and 2, 2020 Incident at 1202 Brown Avenue, Erie, Pennsylvania
Docket No. M-2022-3024040

Joint Petition for Approval of Settlement

Dear Secretary Chiavetta:

Enclosed for electronic filing please find the Joint Petition for Approval of Settlement in the above-referenced proceeding as well as the following Appendices: (1) Appendix A – Joint Proposed Ordering Paragraphs; (2) Appendix B – Statement in Support of the Bureau of Investigation and Enforcement; and (3) Appendix C – Statement in Support of National Fuel Gas Distribution Corporation.

Copies have been served on the parties of record in accordance with the Certificate of Service.

Should you have any questions, please do not hesitate to contact me.

Sincerely,

Emily A. Farren
Prosecutor
Bureau of Investigation and Enforcement
PA Attorney ID No. 322910
(717) 783-6150
efarren@pa.gov

EAF/ac
Enclosures

cc: Kathryn G. Sophy, OSA (*via email only – Word Version*)
Kimberly A. Hafner, Deputy Director – Legal, OSA (*via email only – Word Version*)
Richard A. Kanaskie, Director, I&E (*via email only*)
Per Certificate of Service

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission, :
Bureau of Investigation and Enforcement’s :
Investigation of National Fuel Gas : Docket No. M-2022-3024040
Distribution Corporation’s November 1 :
and 2, 2020 Incident at 1202 Brown :
Avenue, Erie, Erie County, Pennsylvania :

**JOINT PETITION
FOR APPROVAL OF SETTLEMENT**

TO THE HONORABLE PENNSYLVANIA PUBLIC UTILITY COMMISSION:

Pursuant to 52 Pa. Code §§ 5.41 and 5.232, the Bureau of Investigation and Enforcement (“I&E”) of the Pennsylvania Public Utility Commission (“Commission”) and National Fuel Gas Distribution Corporation (“NFGDC”, “National Fuel” or “Respondent”), hereby submit this Joint Petition for Approval of Settlement (“Settlement” or “Settlement Agreement”) to resolve all issues related to the fire that occurred on November 2, 2020, at 1202 Brown Avenue. in Erie, Erie County, Pennsylvania. As part of this Settlement Agreement, I&E and NFGDC (hereinafter referred to collectively as the “Parties” or “Joint Petitioners”) respectfully request that the Commission enter a Final Opinion and Order approving the Settlement, without modification, for the compelling public interest reasons set forth, *infra*. Proposed Ordering Paragraphs are attached hereto as **Appendix A**. Statements in Support of the Settlement expressing the views of I&E and NFGDC are attached hereto as **Appendix B** and **Appendix C**, respectively.

I. INTRODUCTION

1. The Parties to this Settlement Agreement are the Pennsylvania Public Utility Commission's Bureau of Investigation and Enforcement, by its prosecuting attorney, 400 North Street, Harrisburg, PA 17120 and NFGDC, a natural gas utility with a primary mailing address of P.O. Box 2081, Erie, Pennsylvania 16512.

2. The Pennsylvania Public Utility Commission is a duly constituted agency of the Commonwealth of Pennsylvania empowered to regulate public utilities within this Commonwealth, as well as other entities subject to its jurisdiction, pursuant to the Public Utility Code ("Code"), 66 Pa.C.S. §§ 101, *et seq.*

3. I&E is the entity established to prosecute complaints against public utilities and other entities subject to the Commission's jurisdiction pursuant to 66 Pa.C.S. § 308.2(a)(11); *See Implementation of Act 129 of 2008; Organization of Bureaus and Offices*, Docket No. M-2008-2071852 (Order entered August 11, 2011) (delegating authority to initiate proceedings that are prosecutory in nature to I&E).

4. NFGDC is a "public utility" as that term is defined at 66 Pa.C.S. § 102,¹ as it is engaged in providing public utility service as a natural gas distribution company to the public for compensation.

5. Section 3301(c) of the Code, 66 Pa.C.S. § 3301(c), authorizes the Commission to impose civil penalties on any person or corporation, defined as a public utility, who violates any provisions of the Code or any regulation or order issued thereunder governing

¹ At 66 Pa.C.S. § 102, "Public utility" is defined under that term at subsection (1)(i) as:

(1) Any person or corporations now or hereafter owning or operating in this Commonwealth equipment or facilities for:

(i) Producing, generating, transmitting, distributing or furnishing natural or artificial gas, electricity, or steam for the production of light, heat, or power to or for the public for compensation.

the safety of pipeline or conduit facilities in the transportation of natural gas, flammable gas, or gas which is toxic or corrosive. Section 3301(c) further provides that a civil penalty of up to Two Hundred Thousand Dollars (\$200,000.00) per violation for each day that the violation persists may be imposed, except that for any related series of violations, the maximum civil penalty shall not exceed Two Million Dollars (\$2,000,000.00) or the penalty amount provided under Federal pipeline safety laws, whichever is greater.

6. Civil penalties for violations of Federal pipeline safety laws and regulations are adjusted annually to account for changes in inflation pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, Pub. L. 114-74, § 701, 129 Stat. 599, 28 U.S.C. § 2461 note (Nov. 2, 2015) (amending the Federal Civil Penalties Inflation Adjustment Act of 1990). The most recent adjustment made by the U.S. Department of Transportation’s Pipeline and Hazardous Materials Safety Administration (“PHMSA”) occurred on July 31, 2019, and revises the maximum civil penalty to Two Hundred and Eighteen Thousand, Six Hundred and Forty-Seven Dollars (\$218,647.00) for each violation for each day the violation continues, with a maximum penalty not to exceed Two Million, One Hundred Eighty-Six Thousand, Four-Hundred and Sixty-Five Dollars (\$2,186,465.00) for a related series of violations. 84 Fed. Reg. 37071 (July 31, 2019).

7. Pursuant to Section 59.33(b) of the Commission’s regulations, 52 Pa. Code § 59.33(b), I&E’s Safety Division has the authority to enforce Federal pipeline safety laws and regulations set forth in 49 U.S.C.A. §§ 60101-60503 and as implemented at 49 CFR Parts 191-193, 195 and 199, and to apply the federal civil penalty. The federal pipeline safety laws and regulations proscribe the minimum safety standards for all natural gas and hazardous liquid public utilities in the Commonwealth.

8. NFGDC, in providing natural gas distribution service to the public for compensation, is subject to the power and authority of this Commission pursuant to Section 501(c) of the Code, 66 Pa.C.S. § 501(c), which requires a public utility to comply with Commission regulations and orders, including Federal pipeline safety laws and regulations.

II. BACKGROUND

A. Chronology of the Events

9. On Sunday, November 1, 2020, at approximately 9:28 p.m., Parkside Utility Construction, LLC (“Parkside”) placed an Emergency One Call Ticket (“Emergency Ticket”) with the Pennsylvania One Call System (“POCS”), at Serial No. 20203060219, to replace a fallen utility pole located in front of the residential property at 1202 Brown Avenue, Erie, Erie County, Pennsylvania.

10. NFGDC responded to the Emergency Ticket at approximately 10:22 p.m., on November 1, 2020, and marked out NFGDC’s underground facilities around the area of 1202 Brown Avenue.

11. During the utility pole replacement installation, Parkside damaged NFGDC's medium pressure main at approximately 12:30 a.m. on Monday, November 2, 2020.

12. The main was 2-inch plastic with a maximum allowable operating pressure (“MAOP”) of 48 psig. The operating pressure at the time of the damage was 27 psig.

13. NFGDC responded to the damaged main and arrived on site at approximately 12:45 a.m. on November 2, 2020.

14. NFGDC found high gas readings in bar holes at the northeast corner of the four-unit apartment building at 1202 Brown Ave.

15. NFGDC elected to isolate the damaged main by squeezing off the main on each side of the damage.

16. The nearest isolation valves to the damaged main were located at Cranberry and 20th Streets., Plum and 26th Streets, Elmwood and 26th Streets, and on Greengarden Avenue.

17. At approximately 1:30 a.m. on November 2, 2020, before the flow of gas could be stopped, gas migrated into the basement of the apartment building, where a fire ignited, and the apartment building residents were evacuated.

18. Fortunately, the fire was quickly contained, and there were no fatalities or injuries.

19. On November 2, 2020, Pennsylvania Emergency Management Agency (“PEMA”) Report No. 27402 was received at approximately 3:50 a.m., notifying the Pennsylvania Public Utility Commission’s Bureau of Investigation & Enforcement’s Safety Division (“I&E Safety Division”) of a gas line hit in front of 1202 Brown Avenue, Erie, Pennsylvania.

20. NFGDC completed the squeeze off at 4:32 a.m. on November 2, 2020.

B. The Distribution System

21. The plastic pipe along Brown Avenue involved in the incident was manufactured and installed in 2001.

22. The main was 2-inch, SDR 11, Polyethylene, medium density pipe. There was 36 inches of cover over the main.

23. The MAOP of the damaged main was 48 psig and was operating at 27 psig at the time of the incident.

C. Impact of Incident

24. NFGDC reported a gas loss of 285 MCF (One Thousand Cubic Feet).

25. The total cost of the incident was reported at One Hundred Thirty-Six Thousand Fifty-Four Dollars (\$136,054.00), which included private, public, and operator damages, as well as NFGDC's replacement of the damaged section of main with new plastic pipe utilizing electrofusion couplings.

D. NFG's Alleged Deficiencies

26. It is the position of I&E that this incident was due to the gas main being mismarked by the NFGDC locator, as the paint marks were off by approximately seven (7) feet in some areas. NFGDC Map No. CE015 was inaccurate and was a causable factor for the inaccurate paint marks; however, there was tracer wire in the ditch with the plastic main. The I&E Safety Division concluded that the line locator did not utilize the tracer wire to locate the gas main.

27. It is the position of I&E that the Operator did not follow its own Procedural manual for operations, maintenance, and emergencies ("O&M Procedures"). The line locator utilized NFGDC's maps to locate NFGDC's buried facilities in the area to be excavated; however, the line locator failed to follow Section 6.8(c) in Chapter 8 of NFGDC's O&M Procedures by not utilizing the tracer wire located along the damaged main line.

28. It is the position of I&E that the maps provided to the line locator did not accurately represent the actual location of the Respondent's underground facilities.

29. It is the position of I&E that locating the plastic main inaccurately was a causable factor in the main being damaged. Further, by failing to stop the flow of gas in a

timely manner, the operator was also a factor in the fire that occurred at 1202 Brown Avenue, causing the evacuation of its occupants.

III. ALLEGED VIOLATIONS

30. Had this matter been fully litigated, I&E would have proffered evidence and legal arguments to support its allegations that NFGDC committed the following violations:

- a. NFGDC inaccurately marked the gas main line as far as seven (7) feet off in some areas, which prevented their ability to protect the system from damage during excavation activity.

If proven, I&E alleges that such conduct violated 49 CFR § 192.614(c)(5) (relating to providing temporary marking of buried pipelines in the area of excavation activity) and 73 P.S. § 177(5)(i) (relating to locating the position of underground lines at a work site within eighteen inches horizontally of such line).

- b. NFGDC failed to follow its procedural manual by not utilizing the tracer wire located along the damaged main.

If proven, I&E alleges that such conduct violated 49 CFR § 192.605(a) (relating to procedural manual for operations, maintenance, and emergencies) and 52 Pa. Code § 59.33(b) (adopting the Federal pipeline safety regulations as the minimum safety standards for natural gas public utilities).

- c. NFGDC provided maps to the line locator that did not accurately represent the actual location of its underground facilities.

If proven, I&E alleges that such conduct violated 49 CFR § 192.603(b) (relating to operator record keeping necessary to administer procedures established under § 192.605) with respect to 49 CFR § 192.605(a) (relating to procedural manual for operations, maintenance, and emergencies) and 52 Pa. Code § 59.37 (relating to public utility record keeping of complete maps and plans of its entire distribution system).

- d. NFGDC failed to stop the flow of gas in a timely manner, a factor in the fire that occurred at 1202 Brown Avenue on November 2, 2020.

If proven, I&E alleges that such conduct violated 52 Pa. Code § 59.33(a) (relating to the responsibility of every public utility to always

use every reasonable effort to protect the public and exercise reasonable care to reduce hazards of its equipment and facilities).

- e. NFGDC failed to alert the NRC of the incident within one hour, as the fire ignited at approximately 1:34 a.m. and NFG reported the incident at approximately 3:28 a.m.

If proven, I&E alleges that such conduct violated 49 CFR § 191.5(a) (relating to the duty of each operator to provide immediate notice of certain incidents).

IV. SETTLEMENT TERMS

31. Pursuant to the Commission's policy of encouraging settlements that are reasonable and in the public interest,² I&E and NFGDC held a series of discussions that culminated in this Settlement. I&E and NFGDC desire to: (i) terminate I&E's informal investigation; and (ii) settle this matter completely without litigation. Although NFGDC may dispute or disagree with the alleged deficiencies and alleged violations described above, NFGDC fully acknowledges the seriousness of the alleged deficiencies and recognizes the need to prevent similar alleged allegations from recurring. Moreover, the Parties recognize that this is a disputed claim, and given the inherent unpredictability of the outcome of a contested proceeding, the Parties further recognize the significant and more immediate benefits of amicably resolving the disputed issues through settlement as opposed to time-consuming and expensive litigation. The terms and conditions of the Settlement, for which the Parties seek Commission approval, are set forth below.

32. I&E and NFGDC, intending to be legally bound and for consideration given, desire to fully and finally conclude this matter and agree that a Commission Order approving the Settlement without modification shall create the following rights and obligations:

² See 52 Pa. Code § 5.231(a)

A. Civil Penalty:

NFGDC will pay a civil penalty in the amount of One Hundred Twenty-Five Thousand Dollars (\$125,000.00) pursuant to 66 Pa.C.S. § 3301(c). Said payment shall be made within thirty (30) days of the entry date of the Commission’s Final Order approving the Settlement Agreement and shall be made by certified check or money order payable to the “Commonwealth of Pennsylvania.” The docket number of this proceeding shall be indicated on the certified check or money order and the payment shall be sent to:

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120

NFGDC will not seek recovery of any portion of the total civil penalty amount in any future ratemaking proceeding and agrees that it shall not be tax deductible pursuant to Section 162(f) of the Internal Revenue Code, 26 U.S.C.S. § 162(f).

B. Voluntary Modification of Business Practices:

NFGDC continuously monitors and reviews its business practices and policies in a spirit of continuous improvement. In this regard, NFGDC has already implemented various practices/procedures that would mitigate the likelihood of a similar occurrence. NFGDC also recognizes the seriousness of this matter. In furtherance of the foregoing, NFGDC represents, warrants, agrees, and covenants (as the case may be) as specified below:

a. **Tracking of High Risk Excavations and Excavators.**

NFGDC represents and warrants that it has developed a means to categorize certain excavations into risk categories by developing a “Risk Score” to excavations based on, among other things, the following data points: (1) excavator’s history (or lack of history); (2) excavation type; (3) depth of excavation; (4) type of excavation project. Depending on the Risk Score assigned, NFGDC Operations Supervisors are immediately notified via text message.

Using this “Risk Score,” NFGDC can sort excavators in order of those who pose the most risk to those who pose the least risk to

its facilities (based on the excavators' history). NFGDC has several Damage Prevention trainings, which it already shares with excavators, and which it will share with those excavators deemed assigned a sufficiently high "Risk Score."

NFGDC will review this risk score on an annual basis for effectiveness, using but not limited to, hit, incident, and near miss data. This review shall include updates to training materials if they are found to be ineffective.

NFGDC shall create a program based on this risk review to assign inspectors and more frequent inspections on projects where these high risk excavators are known to be working.

- b. **GIS/Mapping Updates.** Within thirty (30) days of the entry date of the Commission's Final Order approving any Settlement Agreement in this matter, NFGDC shall work internally with its GIS/Mapping Departments to identify a list of line locations which may have suspected mapping issues ("Update List"). Within thirty (30) days of finalizing the Update List, National Fuel will notify its Operations personnel of the Update List (so as to apprise them of possible need for extra resources to timely conduct facility locates in these areas).

Within thirty (30) days of identifying the Update List, National Fuel will ensure that mapping updates are made to each facility location specified in the Update List.

- c. **Annual Line Locate Trainings for Employees and Contractors.** NFGDC represents and warrants that it has developed trainings on various damage prevention topics and that those Operations line locating field employees (the "**Line Locating Employees**").

On or before May 1, 2023, NFGDC shall develop a specific training session which shall be attended annually by its Line Locating Employees, construction contractors responsible for performing excavations and/or line locates, and other contracted line locators, highlighting common and uncommon issues found in the field that have led to line hits ("Annual Training"). In addition to the common and uncommon issues found, this

training shall include a lesson learned portion from damages that NFGDC deems as significant.

NFGDC shall incorporate this additional training into the training conducted for new employees performing locating tasks.

- d. **Use of Specialized Tools/Technology for Locates.** NFGDC represents and warrants that it has deployed and currently utilizes specialized line-locating technologies (such as a soft dig vacuum trucks for low confidence locates, and the use of inline inspected technology such as a Jamison tool, etc.) and has meaningfully taken steps to ensure its personnel knows of the availability of such specialized tools/technologies available for certain excavations.

Within thirty (30) days of the entry date of the Commission's Final Order approving any Settlement Agreement in this matter, NFGDC shall add the following language to Chapter 8 of its O&M Procedures Manual ("**Procedures Manual**") to ensure that its field personnel are aware of and using such specialized technology in the appropriate circumstances:

National Fuel has acquired specialized line-locating technologies (e.g., soft dig vacuum trucks for low confidence locates, and the use of inline inspected technology such as a Jamison tool, etc.).

When deemed appropriate by National Fuel employees and/or National Fuel's contractors performing line locates, such specialized technology may be utilized in connection with line locates.

Upon making such update to its Procedures Manual, NFGDC will communicate same to its field personnel. Additionally, NFGDC will ensure that its Annual Training (described *supra*) meaningfully discuss the availability and uses of such technologies. NFGDC shall track the use and effectiveness of specialized technologies and review the company's criteria for low confidence mark out classifications.

- e. **Damage Prevention – Quality Assurance/Quality Control.** NFGDC represents and warrants that it has established a “Quality Group” charged with, among other things, verifying that proper process/procedures with respect to line locating were followed by NFGDC employees/contractors. In this regard, the Quality Group serves an “audit” function.

In addition, NFGDC represents and warrants that it has a full-time employee whose sole responsibility is acting as a “Damage Prevention Supervisor” (“DPS”). Among other things, the DPS reviews trends with respect to damage to facilities, evaluates the overall effectiveness of NFGDC’s damage prevention programs, and proposes enhancements to same.

Beginning in calendar year 2023, NFGDC agrees that it will require its DPS to meet on a Quarterly Basis with the Pennsylvania Operations Superintendent and the Executive overseeing Pennsylvania Operations Department. At such meetings, the Damage Prevention Supervisor will, among other things, discuss trends and findings resulting from the Company’s Damage Prevention Program such that the Superintendent/Executive can make meaningful changes in real-time, as needed.

The QA/QC program shall include a field review of a representative sample, defined as at least twenty-five percent (25%) in each service territory, of employees performing locates, at least once a calendar year. If a damage occurs on NFGDC’s system as a result of a line locator’s error, a process shall be created to field audit the employee’s past and present work to insure that employee is performing his duties as required.

- f. NFGDC represents and warrants that it has examined its emergency response to this line hit, reviewing same to ascertain whether the decisions and actions taken furthered the goal of protecting life and property.
- g. NFGDC represents and warrants that following the occurrence of this incident, it has reviewed its reporting procedures to

ensure it is notifying the proper regulatory agencies of incidents in the required time as outlined in 49 CFR § 191.5(a).

- h. Within thirty (30) days of the Company's completion of all items listed above, NFGDC shall file a report of compliance to verify that the Company performed each of the measures set forth in subparagraphs (b) through (g), *supra.*, pursuant to 52 Pa. Code § 5.591(a).

33. Upon Commission approval of the Settlement in its entirety without modification and payment of the civil penalty, NFGDC shall be deemed to have been released from all past claims that were made or could have been made by I&E for monetary and/or other relief based on allegations that are the subject of the instant I&E investigation.

34. I&E and NFGDC jointly acknowledge that approval of this Settlement Agreement is in the public interest and fully consistent with the Commission's Policy Statement regarding Factors and Standards for Evaluating Litigated and Settled Proceedings, 52 Pa. Code § 69.1201. The Parties submit that the Settlement Agreement is in the public interest because it effectively addresses I&E's allegations that are the subject of the I&E informal investigation, promotes public and facility safety, and avoids the time and expense of litigation, which entails hearings, travel for Respondent's witnesses, and the preparation and filing of briefs, exceptions, reply exceptions, as well as possible appeals. Attached as **Appendix B** and **Appendix C** are Statements in Support submitted by I&E and NFGDC, respectively, setting forth the bases upon which they believe the Settlement Agreement is in the public interest.

V. CONDITIONS OF SETTLEMENT

35. This document represents the Settlement Agreement in its entirety. No changes to obligations set forth herein may be made unless they are in writing and are

expressly accepted by the Parties. This Settlement Agreement shall be construed and interpreted under Pennsylvania law.

36. The benefits and obligations of this Joint Petition for Approval of Settlement shall be binding upon the successors and assigns of the parties to the Settlement.

37. This Joint Petition may be signed in counterparts and all signatures attached hereto will be considered as originals.

38. In order to effectuate the Parties' Joint Petition for Approval of Settlement, the undersigned Parties request that the Commission issue a Final Order approving the Petition without modification.

39. The Settlement is conditioned upon the Commission's approval of the terms and conditions contained in this Joint Petition for Approval of Settlement without modification. If the Commission modifies this Settlement Agreement, any party may elect to withdraw from the Settlement and may proceed with litigation and, in such event, this Settlement Agreement shall be void and of no effect. Such election to withdraw must be made in writing, filed with the Secretary of the Commission and served upon the other party within twenty (20) days after entry of an Order modifying the Settlement.

40. The Parties agree that the underlying allegations were not the subject of any hearing and that there has been no order, findings of fact or conclusions of law rendered in this proceeding. It is further understood that, by entering into this Settlement Agreement, NFGDC has made no concession or admission of fact or law and may dispute all issues of fact and law for all purposes in any other proceedings, including, but not limited to, any civil proceedings, that may arise as a result of the circumstances described in this Joint Settlement

Petition. Nor may this settlement be used by any other person or entity as a concession or admission of fact or law.

41. This Settlement Agreement is being presented only in the context of this investigation to resolve the proceeding in a manner that is fair and reasonable. This Settlement is presented without prejudice to any position that any of the Parties may have advanced and without prejudice to the position any of the Parties may advance in the future on the merits of the issues in any other proceedings, except to the extent necessary to effectuate or enforce the terms and conditions of this Settlement Agreement. This Settlement does not preclude the Parties from taking other positions in any other proceeding but is conclusive in this proceeding and may not be reasserted in any other proceeding or forum except for the limited purpose of enforcing the Settlement by a Party.

42. I&E and NFGDC jointly acknowledge that approval of this Settlement Agreement is in the public interest and is fully consistent with the Commission's Policy Statement for evaluating litigated and settled proceedings involving violations of the Code and Commission regulations, 52 Pa. Code § 69.1201. The Commission will serve the public interest by adopting this Joint Petition for Approval of Settlement.

43. Since the Parties agree to the terms of the Joint Petition for Approval of Settlement, adopting it will eliminate the possibility of any appeal from the Commission Secretarial Letter or Order, thus avoiding the additional time and expense that they might incur in such an appeal.

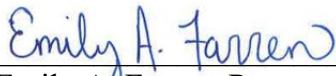
44. The terms and conditions of this Settlement Agreement constitute a carefully crafted package representing reasonably negotiated compromises on the issues addressed

herein. Thus, the Settlement Agreement is consistent with the Commission's rules and practices encouraging negotiated settlements set forth in 52 Pa. Code §§ 5.231 and 69.1201.

WHEREFORE, the Pennsylvania Public Utility Commission's Bureau of Investigation and Enforcement and the National Fuel Gas Distribution Corporation respectfully request that the Commission approve the terms of the Joint Petition for Approval of Settlement without modification and in their entirety as being in the public interest.

**Pennsylvania Public Utility Commission,
Bureau of Investigation and Enforcement**

By:



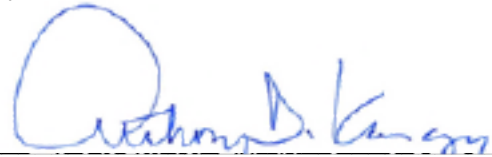
Emily A. Farren, Prosecutor
PA Attorney ID No. 322910
Pennsylvania Public Utility Commission
Bureau of Investigation and Enforcement
400 North Street
Harrisburg, PA 17120
efarren@pa.gov

Date: December 27, 2022

Respectfully Submitted,

**National Fuel Gas Distribution
Corporation**

By:



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*Counsel for National Fuel Gas
Distribution Corporation*

Date: December 27, 2022

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission, :
Bureau of Investigation and Enforcement's :
Investigation of National Fuel Gas : Docket No. M-2022-3024040
Distribution Corporation's November 1 and :
2, 2020 Incident at 1202 Brown Avenue, :
Erie, Erie County, Pennsylvania :

JOINT PROPOSED ORDERING PARAGRAPHS

1. That the Joint Settlement Petition filed on December 27, 2022 between the Pennsylvania Public Utility Commission's Bureau of Investigation and Enforcement and National Fuel Gas Distribution Corporation is approved in its entirety without modification.

2. That, pursuant to 66 Pa.C.S. § 3301(c) and 52 Pa. Code § 69.1201, within thirty (30) days of the date this Order becomes final, NFGDC shall pay a civil penalty of One Hundred Twenty-Five Thousand Dollars (\$125,000.00). Said payment shall be made by certified check or money order payable to "Commonwealth of Pennsylvania" and shall be sent to:

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120

3. That NFGDC will not seek recovery of any portion of the total civil penalty amount in any future ratemaking proceeding and the civil penalty shall not be tax deductible.

4. NFGDC will take the following corrective actions:

- a. **Tracking of High Risk Excavations and Excavators.** NFGDC represents and warrants that it has developed a means to categorize certain excavations into risk categories by developing a "Risk Score" to

excavations based on, among other things, the following data points: (1) excavator's history (or lack of history); (2) excavation type; (3) depth of excavation; (4) type of excavation project. Depending on the Risk Score assigned, NFG Operations Supervisors are immediately notified via text message.

Using this "Risk Score," NFGDC can sort excavators in order of those who pose the most risk to those who pose the least risk to its facilities (based on the excavators' history). NFGDC has several Damage Prevention trainings, which it already shares with excavators, and which it will share with those excavators deemed assigned a sufficiently high "Risk Score."

NFGDC will review this risk score on an annual basis for effectiveness, using but not limited to, hit, incident, and near miss data. This review shall include updates to training materials if they are found to be ineffective.

NFGDC shall create a program based on this risk review to assign inspectors and more frequent inspections on projects where these high risk excavators are known to be working.

- b. **GIS/Mapping Updates.** Within thirty (30) days of the entry date of the Commission's Final Order approving any Settlement Agreement in this matter, NFGDC shall work internally with its GIS/Mapping Departments to identify a list of line locations which may have suspected mapping issues ("Update List"). Within thirty (30) days of finalizing the Update List, National Fuel will notify its Operations personnel of the Update List (so as to apprise them of possible need for extra resources to timely conduct facility locates in these areas).

Within thirty (30) days of identifying the Update List, National Fuel will ensure that mapping updates are made to each facility location specified in the Update List.

- c. **Annual Line Locate Trainings for Employees and Contractors.** NFGDC represents and warrants that it has developed trainings on various damage prevention topics and that those Operations line locating field employees (the "**Line Locating Employees**").

On or before May 1, 2023, NFGDC shall develop a specific training session which shall be attended annually by its Line Locating Employees, construction contractors responsible for performing excavations and/or line locates, and other contracted line locators, highlighting common and uncommon issues found in the field that have led to line hits (“Annual Training”). In addition to the common and uncommon issues found, this training shall include a lesson learned portion from damages that NFGDC deems as significant.

NFGDC shall incorporate this additional training into the training conducted for new employees performing locating tasks.

- d. **Use of Specialized Tools/Technology for Locates.** NFGDC represents and warrants that it has deployed and currently utilizes specialized line-locating technologies (such as a soft dig vacuum trucks for low confidence locates, and the use of inline inspected technology such as a Jamison tool, etc.) and has meaningfully taken steps to ensure its personnel knows of the availability of such specialized tools/technologies available for certain excavations.

Within thirty (30) days of the entry date of the Commission’s Final Order approving any Settlement Agreement in this matter, NFGDC shall add the following language to Chapter 8 of its O&M Procedures Manual (“**Procedures Manual**”) to ensure that its field personnel are aware of and using such specialized technology in the appropriate circumstances:

National Fuel has acquired specialized line-locating technologies (e.g., soft dig vacuum trucks for low confidence locates, and the use of inline inspected technology such as a Jamison tool, etc.).

When deemed appropriate by National Fuel employees and/or National Fuel’s contractors performing line locates, such specialized technology may be utilized in connection with line locates.

Upon making such update to its Procedures Manual, NFGDC will communicate same to its field personnel. Additionally, NFGDC will ensure that its Annual Training (described *supra*) meaningfully discuss the availability and uses of such technologies. NFGDC shall track the

use and effectiveness of specialized technologies and review the company's criteria for low confidence mark out classifications.

- e. **Damage Prevention – Quality Assurance/Quality Control.** NFGDC represents and warrants that it has established a “Quality Group” charged with, among other things, verifying that proper process/procedures with respect to line locating were followed by NFGDC employees/contractors. In this regard, the Quality Group serves an “audit” function.

In addition, NFGDC represents and warrants that it has a full-time employee whose sole responsibility is acting as a “Damage Prevention Supervisor” (“DPS”). Among other things, the DPS reviews trends with respect to damage to facilities, evaluates the overall effectiveness of NFGDC's damage prevention programs, and proposes enhancements to same.

Beginning in calendar year 2023, NFGDC agrees that it will require its DPS to meet on a Quarterly Basis with the Pennsylvania Operations Superintendent and the Executive overseeing Pennsylvania Operations Department. At such meeting, the Damage Prevention Supervisor will, among other things, discuss trends and findings resulting from the Company's Damage Prevention Program such that the Superintendent/Executive can make meaningful changes in real-time, as needed.

The QA/QC program shall include a field review of a representative sample, defined as at least twenty-five percent (25%) in each service territory, of employees performing locates, at least once a calendar year. If a damage occurs on NFGDC system as a result of a line locator's error, a process shall be created to field audit the employees past and present work to insure that employee is performing his duties as required.

- f. NFGDC represents and warrants that it has examined its emergency response to this line hit, reviewing same to ascertain whether the decisions and actions taken furthered the goal of protecting life and property.
- g. NFGDC represents and warrants that following the occurrence of this incident, it has reviewed its reporting procedures to ensure it is

notifying the proper regulatory agencies of incidents in the required time as outlined in 49 CFR § 191.5(a).

- h. Within thirty (30) days of the Company's completion of all items listed above, NFGDC shall file a report of compliance to verify that the Company performed each of the measures set forth in subparagraphs (b) through (g), *supra.*, pursuant to 52 Pa. Code § 5.591(a).

5. A copy of this Opinion and Order shall be served upon the Financial and Assessment Chief, Bureau of Administration.

6. That the above-captioned matter shall be marked closed upon receipt of the civil penalty and Compliance Report.

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission, :
Bureau of Investigation and Enforcement’s :
Investigation of National Fuel Gas : Docket No. M-2022-3024040
Distribution Corporation’s November 1 and :
2, 2020 Incident at 1202 Brown Avenue, :
Erie, Erie County, Pennsylvania :

**THE BUREAU OF INVESTIGATION AND ENFORCEMENT’S
STATEMENT IN SUPPORT OF THE
JOINT PETITION FOR APPROVAL OF SETTLEMENT**

TO THE HONORABLE PENNSYLVANIA PUBLIC UTILITY COMMISSION:

Pursuant to 52 Pa. Code §§ 5.231 and 5.232, the Pennsylvania Public Utility Commission’s (“Commission”) Bureau of Investigation and Enforcement (“I&E”), a signatory party to the Joint Petition for Approval of Settlement (“Settlement” or “Settlement Agreement”) filed in the matter docketed above, submits this Statement in Support of the Settlement Agreement between I&E and National Fuel Gas Distribution Corporation (“NFGDC” or “Respondent”).¹ I&E avers that the terms and conditions of the Settlement are just and reasonable and in the public interest for the reasons set forth herein.

I. BACKGROUND

On Sunday, November 1, 2020, at approximately 9:28 p.m., Parkside Utility Construction (“Parkside”) placed an Emergency One Call Ticket (“Emergency Ticket”) with

¹ I&E and NFG are collectively referred to herein as the “Parties.”

the Pennsylvania One Call System (“POCS”), at Serial No. 20203060219, to replace a fallen utility pole located in front of residential property at 1202 Brown Avenue, Erie, Pennsylvania. NFGDC responded to the Emergency Ticket at approximately 10:22 p.m. and marked out NFGDC’s facilities around the area of 1202 Brown Avenue.

During the replacement utility pole installation, Parkside damaged NFGDC's medium pressure main at approximately 12:30 a.m. on Monday, November 2, 2020. The main was 2-inch plastic with a MAOP of 48 psig. The operating pressure at the time of the damage was 27 psig.

NFGDC responded to the damaged main and arrived on site at approximately 12:45 a.m. on November 2, 2020. NFGDC found high gas readings in bar holes at the northeast corner of 1202 Brown Avenue, a 4-unit apartment building. Before the flow of gas could be stopped via a squeezed off main, at approximately 1:30 a.m. on November 2, 2020, gas migrated into the basement of a nearby apartment building, where a fire ignited. The apartment building residents were evacuated. The fire department was on site quickly and the fire was contained. Fortunately, there were no fatalities or injuries.

The nearest isolation valves to the damaged main were located at Cranberry and 20th Streets, Plum and 26th Streets, Elmwood and 26th Streets, and on Greengarden Ave. NFGDC elected to isolate the damaged main by squeezing off the main on each side of the damage. NFGDC completed the squeeze off at 4:32 a.m. on November 2, 2020. NFGDC submitted an incident report, Report No. 1291212, to the National Response Center (“NRC”) at 3:28 a.m. on November 2, 2020.

Also on November 2, 2020, Pennsylvania Emergency Management Agency (“PEMA”) Report No. 27402 was received at approximately 3:50 a.m., notifying the Pennsylvania Public Utility Commission’s Bureau of Investigation & Enforcement’s Safety Division (“I&E Safety Division”) of the gas line hit in front of 1202 Brown Avenue, Erie, Pennsylvania. I&E’s Safety Division arrived on-site shortly thereafter to begin its investigation.

Upon I&E Safety Division’s investigation of the damage and the location of the damaged plastic main, it was clear that the main had been mismarked by the NFGDC locator, as the paint marks were off by approximately seven (7) feet in some areas. NFGDC Map No. CE015 was inaccurate and a causable factor for the inaccurate paint marks; however, there was tracer wire in the ditch with the plastic main. The I&E Safety Division concluded that the line locator did not utilize the tracer wire to locate the gas main.

The I&E Safety Division further concluded that the Operator did not follow its own Procedural manual for operations, maintenance, and emergencies (“O&M Procedures”). The line locator utilized company maps to locate NFGDC’s buried facilities in the area to be excavated; however, the line locator failed to follow Section 6.8(c) in Chapter 8 of NFGDC’s O&M Procedures by not utilizing the tracer wire located along the damaged main line.

The I&E Safety Division also concluded that the maps provided to the line locator did not accurately represent the actual location of the company’s underground facilities.

The I&E Safety Division noted that the operator called the National Response Center (“NRC”) at approximately 3:28 a.m. to report the incident, while the fire ignited at approximately 1:34 a.m.

Lastly, the I&E Safety Division determined that locating the plastic main inaccurately was a causable factor in the main being damaged and that by failing to stop the flow of gas in a timely manner, the operator was also a factor in the fire that occurred at 1202 Brown Avenue, causing the evacuation of its occupants, a temporary interruption in utility service, and property damage.

I&E and NFGDC subsequently engaged in negotiations regarding the resolution of I&E's investigation. On December 27, 2022, the Parties filed a Joint Petition for Approval of Settlement resolve all issues between I&E and NFGDC in the instant matter. This Statement in Support is submitted in conjunction with the Settlement Agreement.

II. THE PUBLIC INTEREST

Pursuant to the Commission's policy of encouraging settlements that are reasonable and in the public interest, the Parties held a series of settlement discussions. These discussions culminated in this Settlement Agreement, which, once approved, will resolve all issues related to I&E's instant investigation. This Settlement Agreement results from the compromise of the Parties.

Although I&E and NFGDC may disagree with respect to I&E's factual allegations, the Respondent recognizes the need to prevent a similar incident from reoccurring. I&E also recognizes that, given the inherent unpredictability of the outcome of a contested proceeding, the benefits to amicably resolving the disputed issues through settlement outweigh the risks and expenditures of litigation.

I&E submits that the Settlement constitutes a reasonable compromise of the issues presented, and is in the public interest, as it provides for additional training, further review

and implementation of damage prevention policies and procedures, facility mapping updates, acquisition of line-locating equipment, as well as a civil penalty. As such, I&E respectfully requests that the Commission approve the Settlement without modification, allowing these important public benefits to be realized expeditiously.

III. TERMS OF SETTLEMENT

Under the terms of the Settlement, I&E and NFGDC have agreed as follows:

A. Civil Penalty:

NFGDC will pay a civil penalty in the amount of One Hundred Twenty-Five Thousand Dollars (\$125,000.00) pursuant to 66 Pa.C.S. § 3301(c). Said payment shall be made within thirty (30) days of the entry date of the Commission’s Final Order approving the Settlement Agreement and shall be made by certified check or money order payable to the “Commonwealth of Pennsylvania.” The docket number of this proceeding shall be indicated on the certified check or money order and the payment shall be sent to:

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120

NFGDC will not seek recovery of any portion of the total civil penalty amount in any future ratemaking proceeding and agrees that it shall not be tax deductible pursuant to Section 162(f) of the Internal Revenue Code, 26 U.S.C.S. § 162(f).

B. Corrective Actions:

NFGDC recognizes the seriousness of this matter and has taken or will take the following steps to prevent a similar occurrence:

- a. **Tracking of High Risk Excavations and Excavators.** NFGDC represents and warrants that it has developed a means to categorize certain excavations into risk categories by developing a “Risk Score” to excavations based on, among other things, the following data points: (1) excavator’s history (or lack of history); (2) excavation type; (3) depth of excavation; (4) type of excavation project. Depending on the

Risk Score assigned, NFGDC Operations Supervisors are immediately notified via text message.

Using this “Risk Score,” NFGDC can sort excavators in order of those who pose the most risk to those who pose the least risk to its facilities (based on the excavators’ history). NFGDC has several Damage Prevention trainings, which it already shares with excavators, and which it will share with those excavators deemed assigned a sufficiently high “Risk Score.”

NFGDC will review this risk score on an annual basis for effectiveness, using but not limited to, hit, incident, and near miss data. This review shall include updates to training materials if they are found to be ineffective.

NFGDC shall create a program based on this risk review to assign inspectors and more frequent inspections on projects where these high risk excavators are known to be working.

- b. **GIS/Mapping Updates.** Within thirty (30) days of the entry date of the Commission’s Final Order approving any Settlement Agreement in this matter, NFGDC shall work internally with its GIS/Mapping Departments to identify a list of line locations which may have suspected mapping issues (“Update List”). Within thirty (30) days of finalizing the Update List, National Fuel will notify its Operations personnel of the Update List (so as to apprise them of possible need for extra resources to timely conduct facility locates in these areas).

Within thirty (30) days of identifying the Update List, National Fuel will ensure that mapping updates are made to each facility location specified in the Update List.

- c. **Annual Line Locate Trainings for Employees and Contractors.** NFGDC represents and warrants that it has developed trainings on various damage prevention topics and that those Operations line locating field employees (the “**Line Locating Employees**”).

On or before May 1, 2023, NFGDC shall develop a specific training session which shall be attended annually by its Line Locating Employees, construction contractors responsible for performing excavations and/or line locates, and other contracted line locators,

highlighting common and uncommon issues found in the field that have led to line hits (“Annual Training”). In addition to the common and uncommon issues found, this training shall include a lesson learned portion from damages that NFGDC deems as significant.

NFGDC shall incorporate this additional training into the training conducted for new employees performing locating tasks.

- d. **Use of Specialized Tools/Technology for Locates.** NFGDC represents and warrants that it has deployed and currently utilizes specialized line-locating technologies (such as a soft dig vacuum trucks for low confidence locates, and the use of inline inspected technology such as a Jamison tool, etc.) and has meaningfully taken steps to ensure its personnel knows of the availability of such specialized tools/technologies available for certain excavations.

Within thirty (30) days of the entry date of the Commission’s Final Order approving any Settlement Agreement in this matter, NFGDC shall add the following language to Chapter 8 of its O&M Procedures Manual (“**Procedures Manual**”) to ensure that its field personnel are aware of and using such specialized technology in the appropriate circumstances:

National Fuel has acquired specialized line-locating technologies (e.g., soft dig vacuum trucks for low confidence locates, and the use of inline inspected technology such as a Jamison tool, etc.).

When deemed appropriate by National Fuel employees and/or National Fuel’s contractors performing line locates, such specialized technology may be utilized in connection with line locates.

Upon making such update to its Procedures Manual, NFGDC will communicate same to its field personnel. Additionally, NFGDC will ensure that its Annual Training (described *supra*) meaningfully discuss the availability and uses of such technologies. NFGDC shall track the use and effectiveness of specialized technologies and review the company’s criteria for low confidence mark out classifications.

- e. **Damage Prevention – Quality Assurance/Quality Control.** NFGDC represents and warrants that it has established a “Quality Group” charged with, among other things, verifying that proper process/procedures with respect to line locating were followed by NFGDC employees/contractors. In this regard, the Quality Group serves an “audit” function.

In addition, NFGDC represents and warrants that it has a full-time employee whose sole responsibility is acting as a “Damage Prevention Supervisor” (“DPS”). Among other things, the DPS reviews trends with respect to damage to facilities, evaluates the overall effectiveness of NFGDC’s damage prevention programs, and proposes enhancements to same.

Beginning in calendar year 2023, NFGDC agrees that it will require its DPS to meet on a Quarterly Basis with the Pennsylvania Operations Superintendent and the Executive overseeing Pennsylvania Operations Department. At such meetings, the Damage Prevention Supervisor will, among other things, discuss trends and findings resulting from the Company’s Damage Prevention Program such that the Superintendent/Executive can make meaningful changes in real-time, as needed.

The QA/QC program shall include a field review of a representative sample, defined as at least twenty-five percent (25%) in each service territory, of employees performing locates, at least once a calendar year. If a damage occurs on NFGDC’s system as a result of a line locator’s error, a process shall be created to field audit the employee’s past and present work to insure that employee is performing his duties as required.

- f. NFGDC represents and warrants that it has examined its emergency response to this line hit, reviewing same to ascertain whether the decisions and actions taken furthered the goal of protecting life and property.
- g. NFGDC represents and warrants that following the occurrence of this incident, it has reviewed its reporting procedures to ensure it is notifying the proper regulatory agencies of incidents in the required time as outlined in 49 CFR § 191.5(a).

- h. Within thirty (30) days of the Company's completion of all items listed above, NFGDC shall file a report of compliance to verify that the Company performed each of the measures set forth in subparagraphs (b) through (g), *supra.*, pursuant to 52 Pa. Code § 5.591(a).

Upon Commission approval of the Settlement in its entirety without modification, I&E shall be deemed to have released NFGDC from all past claims that were made or could have been made by the Commission for monetary and/or other relief based on allegations that NFGDC failed to comply with the allegations that are the subject of the instant I&E informal investigation. I&E and NFGDC jointly acknowledge that approval of this Settlement Agreement is in the public interest and fully consistent with the Commission's Policy Statement regarding Factors and Standards for Evaluating Litigated and Settled Proceedings, 52 Pa. Code § 69.1201. The Parties submit that the Settlement Agreement is in the public interest because it effectively addresses I&E's allegations that are the subject of the I&E informal investigation, promotes public and facility safety, and avoids the time and expense of litigation, which entails hearings, travel for Respondent's witnesses, and the preparation and filing of briefs, exceptions, reply exceptions, as well as possible appeals.

IV. LEGAL STANDARD FOR SETTLEMENT AGREEMENTS

Commission policy promotes settlements. *See* 52 Pa. Code § 5.231. Settlements lessen the time and expense that the parties must expend litigating a case and, at the same time, conserve precious administrative resources. Settlement results are often preferable to those achieved at the conclusion of a fully litigated proceeding. "The focus of inquiry for determining whether a proposed settlement should be recommended for approval is not a 'burden of proof' standard, as is utilized for contested matters." *Pa. Pub. Util. Comm'n, et al. v. City of Lancaster – Bureau of Water*, Docket Nos. R-2010-2179103, et al. (Order entered

July 14, 2011) at p. 11. Instead, the benchmark for determining the acceptability of a settlement is whether the proposed terms and conditions are in the public interest. *Pa. Pub. Util. Comm'n v. Philadelphia Gas Works*, Docket No. M-00031768 (Order entered January 7, 2004).

I&E submits that approval of the Settlement Agreement in the above-captioned matter is consistent with the Commission's Policy Statement regarding Factors and Standards for Evaluating Litigated and Settled Proceedings Involving Violations of the Public Utility Code and Commission Regulations ("Policy Statement"), 52 Pa. Code § 69.1201; *See also Joseph A. Rosi v. Bell-Atlantic-Pennsylvania, Inc.*, Docket No. C-00992409 (Order entered March 16, 2000). The Commission's Policy Statement sets forth ten factors that the Commission may consider in evaluating whether a civil penalty for violating a Commission order, regulation, or statute is appropriate, as well as whether a proposed settlement for a violation is reasonable and in the public interest. 52 Pa. Code § 69.1201.

The Commission will not apply the factors as strictly in settled cases as in litigated cases. 52 Pa. Code § 69.1201(b). While many of the same factors may still be considered, in settled cases, the parties "will be afforded flexibility in reaching amicable resolutions to complaints and other matters as long as the settlement is in the public interest." *Id.*

The first factor considers whether the conduct at issue was of a serious nature, such as willful fraud or misrepresentation, or if the conduct was less egregious, such as an administrative or technical error. Conduct of a more serious nature may warrant a higher penalty. 52 Pa. Code § 69.1201(c)(1). I&E alleges that the Company's failure to follow its own procedures that were in place at the time of the incident were deficient in their failure to

accurately locate and mark the gas main near Brown Avenue, resulting in disastrous consequences. I&E submits that the alleged violations alleged as a result of I&E's Investigation are of a serious nature and were considered in arriving at the civil penalty and remedial safety measures set forth in the terms of the Settlement.

The second factor considered is whether the resulting consequences of the Company's alleged conduct were of a serious nature. When consequences of a serious nature are involved, such as personal injury or property damage, the consequences may warrant a higher penalty. 52 Pa. Code § 69.1201(c)(2). In this case, the gas line strike resulted in a residential basement fire, causing the evacuation of at least four (4) tenants. Fortunately, there were no injuries or fatalities. The terms and conditions of the Settlement acknowledge that serious consequences occurred and are designed to further enhance the safety of NFGDC's service, facilities, and facility-locating techniques.

The third factor to be considered under the Policy Statement is whether the alleged conduct was intentional or negligent. 52 Pa. Code § 69.1201(c)(3). "This factor may only be considered in evaluating litigated cases." *Id.* This factor does not apply to the present case since this matter is being resolved through a settlement of the Parties.

The fourth factor to be considered is whether the Company has made efforts to change its practices and procedures to prevent similar conduct in the future. 52 Pa. Code § 69.1201(c)(4). In response to the November 1 and 2, 2020 incident, NFGDC moved forward to adopt several changes to its policies and procedures. A comprehensive list of these changes is outlined in the Settlement Agreement. Some of the more significant changes include:

1. Develop procedures or a process to track high risk excavators and focus its efforts on outreach and education programs to bring greater awareness of gas facilities and the dangers of damaged facilities.
2. Develop and improve its GIS system for higher accuracy of maps and records available to field personnel as to provide all data necessary to correctly mark out gas facilities. Areas with suspected mapping issues must be identified on maps and provided to locating personnel to indicate the need for extra resources to timely conduct facility locates in these areas.
3. Develop a training session, to be held annually, for its employees, construction sub-contractors and line locators, highlighting common and uncommon issues found in the field that have led to line hits.
4. Implement and enhance the use of technologies to perform locates including but not limited to expanding the availability of soft dig vacuum trucks for low confidence locates, the use of inline inspected technology such as a Jamison tool, and other line-locating technology.
5. Take steps to enhance their damage prevention program by developing a Quality Assurance / Quality Control system to oversee all areas of damage prevention.
6. Examine its emergency response to this line hit to ensure all decisions and actions taken correctly protected life and property.
7. Review its reporting procedures to ensure it is notifying the proper regulatory agencies of incidents in the required time as outlined in 49 CFR § 191.5(a).

Each of these modifications to the Respondent's internal procedures and commitments address the alleged conduct at issue and are designed to prevent a similar incident from occurring again. Moreover, the improvements provide a significant benefit to public safety.

The fifth factor to be considered relates to the number of customers affected by the Company's actions and the duration of the violations. 52 Pa. Code § 69.1201(c)(5). In this case, at approximately 1:34 a.m. on November 2, 2020, a residential basement fire occurred

that resulted in the evacuation of its occupants at 1202 Brown Avenue and the temporary loss of gas service.

The sixth factor to be considered relates to the compliance history of the Company. 52 Pa. Code § 69.1201(c)(6). An isolated incident from an otherwise compliant company may result in a lower penalty, whereas frequent, recurrent violations by a company may result in a higher penalty. *Id.*

In addition to the line hit that occurred at 1202 Brown Avenue in Erie, NFGDC incurred a line hit on May 19, 2020, in Hermitage, PA. The damage resulted in 187 customers losing service, and NFGDC was issued Non-Compliance (“NC”) Letter, NC-13-20 as a result.

On May 7, 2019, NFGDC was issued NC Letter, NC-10-19, for a line hit at 45 East Townhall Road in Waterford, PA. NFGDC’s subcontractor mismarked a 2-inch plastic main, by 8 feet, resulting in 30 customers temporarily losing gas service.

The seventh factor to be considered relates to whether the Company cooperated with the Commission's investigation. 52 Pa. Code § 69.1201(c)(7). I&E submits that NFGDC cooperated in the investigation, by timely and appropriately responding to data requests and other correspondence from Commission staff, and during the settlement process in this matter and that such cooperation demonstrates a commitment consistent with public safety goals and objectives.

The eighth factor to be considered is the appropriate settlement amount necessary to deter future violations. 52 Pa. Code § 69.1201(c)(8). I&E submits that a civil penalty

amount of One Hundred Twenty-Five Thousand Dollars (\$125,000.00), which is not tax deductible, in combination with the monetary cost of the performance of all the remedial safety measures, *i.e.* the purchase of soft dig vacuum trucks, is sufficient to deter the Company from committing future violations of the nature alleged here.

The ninth factor to be considered relates to past Commission decisions in similar situations. 52 Pa. Code § 69.1201(c)(9). I&E submits that the instant Settlement provides comparable relief to prior enforcement matters involving similar pipeline safety violations.

Looking at the relevant factors that are comparable to other pipeline matters involving violations of pipeline safety violations that resulted in similarly serious consequences, the instant Settlement is consistent with past Commission actions in that a civil penalty will be paid and numerous corrective actions to address the alleged violations have been or will be taken.

The tenth factor considers “other relevant factors.” 52 Pa. Code § 69.1201(c)(10). I&E submits that an additional relevant factor – whether the case was settled or litigated – is of importance to this Settlement Agreement. Reasonable settlement terms can represent compromise while allowing the focus to be on implementing the agreed upon remedial safety measures. To that end, I&E’s review of NFGDC’s self-reported damage prevention statistics indicate a decrease in the number of gas line hits per 1,000 gas line locate tickets NFGDC marked for excavation activities, following this incident and NFGDC’s implementation of damage prevention measures as discussed above.

WHEREFORE, I&E supports the Settlement Agreement as being in the public interest and respectfully requests that the Commission approve the Settlement Agreement in its entirety without modification.

Respectfully submitted,



Emily A. Farren
Prosecutor
PA Attorney ID 322910

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Dated: December 27, 2022

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission, :
Bureau of Investigation and Enforcement’s :
Investigation of National Fuel Gas : Docket No. M-2022-3024040
Distribution Corporation’s November 1 and :
2 Incident at 1202 Brown Avenue, Erie, Erie :
County, Pennsylvania :

**NATIONAL FUEL GAS DISTRIBUTION CORPORATION
STATEMENT IN SUPPORT OF SETTLEMENT AGREEMENT**

TO THE HONORABLE PENNSYLVANIA PUBLIC UTILITY COMMISSION:

National Fuel Gas Distribution Corporation (“National Fuel” or the “Company”) hereby submits this Statement in Support of the Joint Petition for Approval of Settlement (“Settlement”) entered into by the Company and the Bureau of Investigation and Enforcement (“I&E”) of the Pennsylvania Public Utility Commission (“Commission”), hereinafter, collectively the “Joint Petitioners,” in the above-captioned proceeding. The Settlement, if approved, will fully resolve all issues related to I&E’s investigation regarding the events surrounding an incident that occurred on November 1 and 2, 2020 at 1202 Brown Avenue in Erie, Pennsylvania (“Incident”). National Fuel respectfully requests that the Commission approve the Settlement, including the terms and conditions thereof, without modification.

National Fuel undertook an extensive investigation of the events related to the Incident and cooperated with and assisted I&E with its investigation of the events surrounding the Incident. The Settlement is in the public interest because it addresses I&E’s alleged deficiencies and alleged violations, promotes public safety, and avoids the time and expense of litigation. For these reasons and the reasons set forth below, the Settlement is fair, just and reasonable and, therefore, the

Settlement should be approved without modification.

I. INTRODUCTION

A. PARTIES

I&E is the entity established by statute to prosecute complaints against public utilities pursuant to 66 Pa.C.S. § 308(b). The Commission has delegated its authority to initiate proceedings that are prosecutory in nature to I&E and other bureaus with enforcement responsibilities. *Implementation of Act 129 of 2008; Organization of Bureaus and Offices, Docket No. M-2008-2071852* (Aug. 11, 2011).

National Fuel is a “public utility” and a “natural gas distribution company” (“NGDC”) as those terms are defined in Sections 102 and 2202 of the Code, 66 Pa.C.S. §§ 102, 2202. National Fuel provides natural gas distribution, and supplier of last resort services to approximately 214,000 customers throughout its certificated service territory subject to the regulatory jurisdiction of the Commission.

B. BACKGROUND

For purpose of the within-described settlement, the chronology of events underlying this matter are set forth in Section II(A) of the Settlement, which National Fuel incorporates herein by reference.

II. COMMISSION POLICY FAVORS SETTLEMENT

Commission policy promotes settlements. *See* 52 Pa. Code § 5.231. Settlements reduce the time and expense that the parties must expend litigating a case and, at the same time, conserve precious administrative resources. Settlement results are often preferable to those achieved at the conclusion of a fully litigated proceeding. In order to accept a settlement, the Commission must determine that the proposed terms and conditions are in the public interest. *Pennsylvania Public*

Utility Commission v. Columbia Gas of Pennsylvania, Inc., Docket No. C-2010-2071433, 2012 Pa. PUC LEXIS 1377 at *6 (August 31, 2012).

The Commission has promulgated a Policy Statement that sets forth ten factors that the Commission may consider in evaluating whether a civil penalty for violating a Commission order, regulation, or statute is appropriate, as well as whether a proposed settlement for a violation is reasonable and in the public interest. 52 Pa. Code § 69.1201. These factors are: (i) Whether the conduct at issue was of a serious nature; (ii) Whether the resulting consequences of the conduct at issue were of a serious nature; (iii) Whether the conduct at issue was deemed intentional or negligent; (iv) Whether the regulated entity made efforts to modify internal policies and procedures to address the conduct at issue and prevent similar conduct in the future; (v) The number of customers affected and the duration of the violation; (vi) The compliance history of the regulated entity that committed the violation; (vii) Whether the regulated entity cooperated with the Commission's investigation; (viii) The amount of the civil penalty or fine necessary to deter future violations; (ix) Past Commission decisions in similar situations; and (x) Other relevant factors. 52 Pa. Code § 69.1201(c). The Commission will not apply the standards as strictly in settled cases as in litigated cases. 52 Pa. Code § 69.1201(b). While many of the same factors may still be considered, in settled cases the parties "will be afforded flexibility in reaching amicable resolutions to complaints and other matters so long as the settlement is in the public interest." 52 Pa. Code § 69.1201(b).

The substantial public benefits of the Settlement, as well as the ten factors that the Commission considers in reviewing a settlement of an alleged violation, are addressed in the section that follows. For the reasons explained below, the Settlement is in the public interest and should be approved.

III. THE SETTLEMENT IS IN THE PUBLIC INTEREST

A. SUMMARY

The Settlement, if approved, will resolve all issues related to the Incident. *See* Settlement ¶ 43. I&E alleges that National Fuel violated its Procedures Manual and Federal and State regulations related to the Incident. Based on these allegations, National Fuel has agreed to pay a civil penalty, and to implement a number of changes, including modifications to its business practices, employee training policies, practices and procedures and Procedures Manual. Had this matter been fully litigated, National Fuel would have raised defenses to many of these allegations, and defended against the same at hearing.

Throughout the investigative process, National Fuel cooperated with I&E and the Joint Petitioners engaged in several rounds of settlement discussions. Many of the agreed upon changes have already been initiated by National Fuel prior to the investigation in order to improve its safety processes after the Incident. These actions have been taken in the interest of continuous improvement to National Fuel’s safety performance.

Under the Settlement, National Fuel has agreed to pay a substantial civil penalty. Finally, the terms and conditions of the Settlement align with the ten factors that may be considered under the Commission’s Policy Statement. Accordingly, the Settlement should be approved.

B. DESCRIPTION OF THE SETTLEMENT

Among the terms and conditions of the Settlement, National Fuel has agreed to the following measures to be implemented upon approval of the Settlement:

A. Civil Penalty:

NFG will pay a civil penalty in the amount of One Hundred Twenty Five Thousand Dollars (\$125,000.00) pursuant to 66 Pa.C.S. § 3301(c). Said payment shall be made within thirty (30) days of the entry date of the Commission’s Final Order approving the Settlement Agreement and shall be made by certified check or money order payable to the

“Commonwealth of Pennsylvania.” The docket number of this proceeding shall be indicated on the certified check or money order and the payment shall be sent to:

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120

NFG will not seek recovery of any portion of the total civil penalty amount in any future ratemaking proceeding and agrees that it shall not be tax deductible pursuant to Section 162(f) of the Internal Revenue Code, 26 U.S.C.S. § 162(f).

B. Voluntary Modification of Business Practices:

NFG continuously monitors and reviews its business practices and policies in a spirit of continuous improvement. In this regard, NFG has already implemented various practices/procedures that would mitigate the likelihood of a similar occurrence. NFG also recognizes the seriousness of this matter. In furtherance of the foregoing, NFG represents, warrants, agrees, and covenants (as the case may be) as specified below:

- a. **Tracking of High Risk Excavations and Excavators.** NFG represents and warrants that it has developed a means to categorize certain excavations into risk categories by developing a “Risk Score” to excavations based on, among other things, the following data points: (1) excavator’s history (or lack of history); (2) excavation type; (3) depth of excavation; (4) type of excavation project. Depending on the Risk Score assigned, NFG Operations Supervisors are immediately notified via text message.

Using this “Risk Score,” NFGDC can sort excavators in order of those who pose the most risk to those who pose the least risk to its facilities (based on the excavators’ history). NFGDC has several Damage Prevention trainings, which it already shares with excavators, and which it will share with those excavators deemed assigned a sufficiently high “Risk Score.”

NFGDC will review this risk score on an annual basis for effectiveness, using but not limited to, hit, incident, and near

miss data. This review shall include updates to training materials if they are found to be ineffective.

NFGDC shall create a program based on this risk review to assign inspectors and more frequent inspections on projects where these high risk excavators are known to be working.

- b. **GIS/Mapping Updates.** Within thirty (30) days of the entry date of the Commission’s Final Order approving any Settlement Agreement in this matter, NFG shall work internally with its GIS/Mapping Departments to identify a list of line locations which may have suspected mapping issues (“Update List”). Within thirty (30) days of finalizing the Update List, National Fuel will notify its Operations personnel of the Update List (so as to apprise them of possible need for extra resources to timely conduct facility locates in these areas.)

Within thirty (30) days of identifying the Update List, National Fuel will ensure that mapping updates are made to each facility location specified in the Update List.

- c. **Annual Line Locate Trainings for Employees and Contractors.** NFG represents and warrants that it has developed trainings on various damage prevention topics and that those Operations line locating field employees (the “**Line Locating Employees**”).

On or before May 1, 2023, NFG shall develop a specific training session which shall be attended annually by its Line Locating Employees, construction contractors responsible for performing excavations and/or line locates, and other contracted line locators, highlighting common and uncommon issues found in the field that have led to line hits (“Annual Training”). In addition to the common and uncommon issues found, this training shall include a lesson learned portion from damages that NFGDC deems as significant.

NFGDC shall incorporate this additional training into the training conducted for new employees performing locating tasks.

- d. **Use of Specialized Tools/Technology for Locates.** NFG represents and warrants that it has deployed and currently utilizes specialized line-locating technologies (such as a soft dig

vacuum trucks for low confidence locates, and the use of inline inspected technology such as a Jamison tool, etc.) and has meaningfully taken steps to ensure its personnel knows of the availability of such specialized tools/technologies available for certain excavations.

Within thirty (30) days of the entry date of the Commission's Final Order approving any Settlement Agreement in this matter, NFG shall add the following language to Chapter 8 of its O&M Procedures Manual ("**Procedures Manual**") to ensure that its field personnel are aware of and using such specialized technology in the appropriate circumstances:

National Fuel has acquired specialized line-locating technologies (e.g., soft dig vacuum trucks for low confidence locates, and the use of inline inspected technology such as a Jamison tool, etc.).

When deemed appropriate by National Fuel employees and/or National Fuel's contractors performing line locates, such specialized technology may be utilized in connection with line locates.

Upon making such update to its Procedures Manual, NFG will communicate same to its field personnel. Additionally, NFG will ensure that its Annual Training (described *supra*) meaningfully discuss the availability and uses of such technologies. NFG shall track the use and effectiveness of specialized technologies and review the company's criteria for low confidence mark out classifications.

- e. **Damage Prevention – Quality Assurance/Quality Control.** NFG represents and warrants that it has established a "Quality Group" charged with, among other things, verifying that proper process/procedures with respect to line locating were followed by NFG employees/contractors. In this regard, the Quality Group serves an "audit" function.

In addition, NFG represents and warrants that it has a full-time employee whose sole responsibility is acting as a "Damage Prevention Supervisor" ("**DPS**"). Among other things, the DPS reviews trends with respect to damage to facilities, evaluates the overall effectiveness of NFG's damage prevention programs, and proposes enhancements to same.

Beginning in calendar year 2023, NFG agrees that it will require its DPS to meet on a Quarterly Basis with the Pennsylvania Operations Superintendent and the Executive overseeing Pennsylvania Operations Department. At such meetings, the Damage Prevention Supervisor will, among other things, discuss trends and findings resulting from the Company's Damage Prevention Program such that the Superintendent/Executive can make meaningful changes in real-time, as needed.

The QA/QC program shall include a field review of a representative sample, defined as at least twenty-five percent (25%) in each service territory, of employees performing locates, at least once a calendar year. If a damage occurs on NFGDC system as a result of a line locator's error, a process shall be created to field audit the employees past and present work to insure that employee is performing his duties as required.

- f. NFG represents and warrants that it has examined its emergency response to this line hit, reviewing same to ascertain whether the decisions and actions taken furthered the goal of protecting life and property.
- g. NFG represents and warrants that following the occurrence of this incident, it has reviewed its reporting procedures to ensure it is notifying the proper regulatory agencies of incidents in the required time as outlined in 49 CFR § 191.5(a).
- h. Within thirty (30) days of the Company's completion of all items listed above, NFG shall file a report of compliance to verify that the Company performed each of the measures set forth in subparagraphs (b) through (g), *supra.*, pursuant to 52 Pa. Code § 5.591(a).

As noted below, National Fuel has already initiated several of the terms included in the Settlement as a part of its continuous improvement efforts.

Importantly, as set forth in Paragraph 40 to the Settlement, the Parties agree that National Fuel has made no concession or admission of fact or law and may dispute all issues of fact and law for all purposes in all proceedings, including but not limited to any civil proceedings, that may arise as a result of the circumstances described in the Settlement. In addition, the Settlement may not be used by any other person or entity as a concession or admission of law or fact.

The terms of the Settlement fully resolve all of the issues raised in and relief requested by I&E's, including the payment of civil penalties. As explained below, National Fuel believes that approval of the Settlement is in the public interest. Further, acceptance of the Settlement will avoid the necessity of further administrative and potential appellate proceedings at what would have been a substantial cost to the parties.

C. PUBLIC BENEFITS OF THE SETTLEMENT

If approved, the Settlement will provide substantial and important benefits to the customers and communities served by National Fuel, including enhancements to National Fuel's standards, policies, practices and procedures related to line locating and marking. These enhancements and improvements are designed to decrease the likelihood of incidents similar to the November 1 and 2, 2020 Incident from occurring in the future.

National Fuel has already implemented many of the enhancements requested by I&E following the Incident. National Fuel continuously works to improve its safety in all areas, including line hits. The Company's line hit rate has decreased significantly over the years. Using one metric (*i.e.*, line hits per 1,000 tickets per calendar year), in 2021, National Fuel experienced 2.75 line hits per 1,000 tickets, compared to 9.67 line hits per 1,000 tickets in 2005. This translates

to a 62.7% reduction in line hits over that time period under said metric. Using another metric (*i.e.*, number of line hits per 1,000 tickets marked per year to date), in 2021 National Fuel experienced 4.83 line hits per 1,000 tickets marked, compared to 6.99 hits per 1,000 tickets marked in 2017. Using this metric, this translates to at 30.9% decrease in line hits over this time period. In addition, many of the line hits are due to contractor error. To address this, National Fuel has developed a Risk Score to identify high risk excavators, and under the Settlement has agreed to create a program to provide more oversight where high risk excavators are known to be working. Over the past several years, the Company has also implemented several initiatives to reduce the number of problem locates, including improving GIS mapping. The Settlement builds upon and further enhances the Company's recent efforts to improve safety related to line locating and marking.

The Settlement further defines and memorializes the Company's training program for employees and contractors. The Company's training program will highlight issues found and lessons learned from field situations. The Settlement further memorializes the Company's use of specialized tools for low confidence locates. The Settlement also memorializes and enhances the Company's damage prevention measures.

The Settlement provisions as a whole are in the public interest as they enhance public safety related to line locating and marking in the Company's service territory.

D. FACTORS UNDER THE COMMISSION'S POLICY STATEMENT

Under the Policy Statement, the Commission may consider ten specific factors when evaluating settlements of alleged violations of the Public Utility Code and the Commission's Regulations. 52 Pa. Code § 69.1201(c).

The first factor considers whether the conduct at issue was of a serious nature, such as willful fraud or misrepresentation, and, if so, whether the conduct may warrant a higher penalty.

There also was no willful fraud or misrepresentation related to the Incident. The alleged conduct in this case involves the mismarking of a gas line as a result of an Emergency Ticket due to a fallen utility pole. The gas line was struck and a fire occurred at a nearby residence. National Fuel recognizes the seriousness of providing safe and reliable gas service.

The second factor considers the seriousness of the consequences of the incident at issue. The fire that occurred at the residence was a serious consequence. Fortunately, there were no injuries or fatalities related to the Incident. When notified of the damage to the gas line, National Fuel responded promptly to the scene and took the actions that it deemed best to resolve the problems as quickly as possible. The terms and conditions of the Settlement recognize the seriousness of the Incident and are designed to enhance National Fuel's line locating and marking procedures and to minimize the likelihood that a similar incident occur in the future.

The third factor to be considered under the Policy Statement is whether the alleged conduct was intentional or negligent. This factor only applies in litigated cases and does not apply to the present case because this proceeding is a settled matter.

The fourth factor to be considered is whether National Fuel made efforts to modify internal policies and procedures to address the alleged conduct at issue and to prevent similar conduct in the future. By way of example, and as explicitly noted in the Settlement, National Fuel has agreed to, among other things, (a) make GIS/mapping updates to its distribution system; (b) conduct annual line locate trainings for employees and contractors; and (c) enhance its damage prevention quality assurance/quality control programs.¹

¹ The modifications described above are presented in summary form herein for purposes of providing the instant "Statement in Support." Complete modifications agreed to between National Fuel and I&E are as specified in Section IV(B) of the Settlement, which is incorporated herein by reference. In the case of conflict between the list specified above and said Section IV(B) of the Settlement, the latter shall prevail.

In addition, since the occurrence of the underlying incident which has given rise to the instant Settlement Agreement, National Fuel has proactively made adjustments to its practices on a voluntary basis in the spirit of continuous improvement. In this regard, among other things, National Fuel has: (a) implemented process to track high risk excavations and excavators; (b) invested in the use of specialized tools/technology for certain locates; (c) enhanced its damage prevention training efforts; (d) enhanced its quality assurance/quality control processes; and (e) has reviewed its emergency response protocols and procedures, as well as its procedures relative to making required reportings following incidents.² The terms and conditions of the Settlement properly acknowledge National Fuel's efforts to modify and adopt internal policies and procedures to address the alleged issues.

The fifth factor to be considered deals with the number of customers affected and the duration of the violation. With respect to the Incident giving rise to the Settlement, a total of two (2) customers were impacted, with service being impacted for approximately eight (8) hours. National Fuel acknowledges the impact that such service interruption can have on any customers, and has thoroughly reviewed this incident for purposes of understanding the Company's response and "lessons learned." As a result, among other things, National Fuel identified that one of the factors contributing to the response time was the length of time it took to call-in Company employees to come in, in the middle of the night to resolve same. In this regard, National Fuel has taken steps internally to enhance response time to such call-outs, including negotiating requirements for responding to call-outs in its most recent negotiations with the labor organizations for which its Operations field employees are members. The terms and conditions of the Settlement

² See, note 1, *supra*.

adequately consider the serious nature of the incident, the number of customers affected, as well as National Fuel's response under the circumstances.

The sixth factor considered is the compliance history of National Fuel. National Fuel has an excellent compliance history with the Commission. Over the past several years, the Company has significantly improved its line hit ratio as noted above.

The seventh factor considered is whether the regulated entity cooperated with the Commission's investigation. National Fuel fully supported and cooperated with I&E throughout its investigation.

The eighth factor is whether the amount of the civil penalty or fine will deter future violations. National Fuel submits that a civil penalty in the amount of \$125,000 is substantial and has significant deterrent weight. The civil penalty set forth in the Settlement appropriately recognizes the seriousness of the matter but also reflects a negotiated compromise by the parties that considers the efforts of the Company since the Incident occurred.

The ninth factor examines past Commission decisions in similar situations. When all relevant factors are evaluated, the Settlement is not inconsistent with past Commission actions. Moreover, since this is a settled matter, it should be considered on its own merits.

Relative to the tenth factor, National Fuel submits that additional relevant factors are also important to the Settlement. First, a settlement avoids the necessity for the prosecuting agency to prove elements of each allegation. In return, the opposing party in a settlement agrees to a lesser fine or penalty, or other remedial action. Both parties negotiated from their initial positions. The fines, penalties, and other remedial actions resulting from a fully litigated proceeding are difficult to predict and can differ from those that result from a settlement. Reasonable settlement terms can represent economic and programmatic compromise but allow the parties to move forward and to

focus on implementing the agreed upon remedial actions. National Fuel has demonstrated a commitment consistent with the Commission's public safety goals and objectives both in its corrective actions prior to I&E's investigation and in this Settlement.

Based on the foregoing, the Settlement should be considered fair, equitable and reasonable under the Commission's Policy Statement.

IV. CONCLUSION

WHEREFORE, National Fuel Gas Distribution Corporation submits that this Settlement is the result of the parties' cooperative efforts, and constitutes a fair, equitable, and reasonable resolution of this proceeding. The Settlement resolves all issues related to I&E's investigation and satisfies the ten factors set forth in the Pennsylvania Public Utility Commission's Policy Statement, 52 Pa. Code § 69.1201(c). National Fuel Gas Distribution Corporation supports the Settlement and respectfully requests that the Pennsylvania Public Utility Commission approve the Settlement in its entirety, without modification.

Respectfully submitted,



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Date: December 22, 2022

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

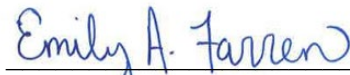
Pennsylvania Public Utility Commission, :
Bureau of Investigation and Enforcement's :
Investigation of National Fuel Gas : Docket No. M-2022-3024040
Distribution Corporation's November 1 :
and 2, 2020 Incident at 1202 Brown :
Avenue, Erie, Erie County, Pennsylvania :

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing **Joint Petition for Approval of Settlement** in the manner and upon the parties listed below, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a party).

Served via Electronic Mail

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