

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission	:	R-2023-3037428
Office of Small Business Advocate	:	C-2023-3037705
Office of Consumer Advocate	:	C-2023-3037866
	:	
v.	:	
	:	
National Fuel Gas Distribution Corporation	:	

RECOMMENDED DECISION

Before
Charece Z. Collins
Administrative Law Judge

INTRODUCTION

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

HISTORY OF THE PROCEEDING

On December 30, 2022, NFG filed with the Commission a purchase gas cost recovery pre-filing pursuant to Sections 53.64 and 53.65 of Title 52 of the Pennsylvania Code. 52 Pa. Code §§ 53.64, 53.65.

On January 9, 2023, I&E filed a Notice of Appearance through its attorney, Carrie B. Wright, Esquire.

On January 19, 2023, OSBA filed a Notice of Appearance through its attorney, Steven C. Gray, Esquire.

Also on January 19, 2023, OSBA filed a complaint through its attorney, Steven C. Gray, Esquire.

On January 26, 2023, Mackenzie C. Battle, Esquire and Aron J. Beatty, Esquire entered a Notice of Appearance on behalf of OCA.

Also on January 26, 2023, OCA filed a complaint through its attorney, Mackenzie C. Battle, Esquire.

Also on January 26, 2023, NFG filed a letter advising that it would not file an answer to OSBA's complaint pursuant to 52 Pa. Code § 5.61(d).

On January 27, 2023, Nicholas A. Stobbe, Esquire entered a Notice of Appearance on behalf of NFG.

Also on January 27, 2023, NFG filed a letter advising that it would not file an answer to OCA's complaint pursuant to 52 Pa. Code § 5.61(d).

On January 31, 2023, NFG filed with the Commission a definitive purchase gas cost recovery request pursuant to Section 1307(f) of Title 66 of the Pennsylvania Public Utility Code. 66 Pa.C.S. § 1307(f).

Also on January 31, 2023, the Commission served a notice establishing an initial telephonic prehearing conference for this matter for February 7, 2023, at 1:30 p.m. and assigning me as the presiding officer.

I served a prehearing conference order on January 31, 2023, setting forth the rules and expectations for the conference.

No other complaints or petitions to intervene have been filed in this matter.

The telephonic prehearing conference was held as scheduled on February 7, 2023.

The participants were:

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

Also on February 7, 2023, the Commission served a notice establishing telephonic evidentiary hearings for this matter for April 3, 4 and 5, 2023, at 10:00 a.m. I issued a prehearing order on February 7, 2023, setting forth the procedural matters addressed at the prehearing conference, hearing information and the rules that would govern the proceedings.

On February 22, 2023, Anthony Kanagy, Esquire, and Nicholas Stobbe, Esquire, attorneys for NFG, filed a Petition for Protective Order. The parties did not oppose the Petition.

By Order dated February 23, 2023, I granted NFG's Petition for Protective Order.

On March 30, 2023, the parties advised that they had achieved a settlement in principle and requested the cancellation of the April 2023 evidentiary hearings, with permission to instead submit a Joint Stipulation for the Admission of Evidence (Evidence Stipulation). The parties further advised that they would submit a Joint Petition for Settlement by April 19, 2023. I granted the parties' request via email dated March 31, 2023 and advised the parties to submit their Evidence Stipulation by April 4, 2023, and submit any admitted evidence by April 7, 2023.

On March 31, 2023, the Commission served a notice cancelling the evidentiary hearings scheduled for April 3, 4 and 5, 2023, at 10:00 a.m.

On April 4, 2023, the parties requested, and I granted, permission to submit its stipulation for the admission of evidence by April 5, 2023.

On April 5, 2023, the parties filed their Evidence Stipulation. I adopted the Evidence Stipulation via Order dated April 5, 2023.

On April 6, 2023, I&E filed its pre-served testimony and related exhibit.

On April 7, 2023, NFG and OCA filed their respective pre-served testimony and related exhibits.

On April 19, 2023, NFG, I&E, OCA and OSBA (hereinafter referred to as Joint Petitioners or Parties) filed a Joint Petition for Settlement of the Section 1307(f) Rate Investigation (Joint Petition or Settlement) with accompanying Statements in Support.¹

The record in this proceeding consists of the transcript of the prehearing conference, and the written testimonies and exhibits of the parties which were admitted into the record via stipulation. The record closed on April 19, 2023, which is the date that the Joint Petition was filed by the parties. This proceeding is now ready for ruling. For the reasons discussed below, the settlement will be recommended for approval without modification.

FINDINGS OF FACT

After having duly considered the evidence of record in this proceeding and as required by Section 1318(a) and (b) of the Code, 66 Pa.C.S. § 1318(a) and (b), the findings of fact are made as follows:²

¹ The Joint Petition includes updated rate information, which will again be updated on June 30, 2023, in the tables reflected on pages 2 and 3 of the Joint Petition.

² The following findings of fact regarding the Settlement were proposed by the Joint Petitioners and are adopted herein in their entirety (with only slight modifications made for clarity of this Decision).

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

2. Distribution relies primarily upon gas supplies transported by Tennessee Gas Pipeline, LLC (Tennessee), Columbia Gas Transmission, LLC (Columbia Transmission), Texas Eastern Transmission, LP (Texas Eastern or TETCO) and National Fuel Gas Supply Corporation (Supply) to meet the requirements of its sales customers in Pennsylvania. Distribution PGC Exhibit No. 8 at pp. 2-5; Joint Petition at p. 6.

3. In most instances, Tennessee, Columbia Transmission, and Texas Eastern transport Distribution's gas supplies to Distribution's pipeline capacity on Supply. Supply, in turn, either delivers such gas supplies to Distribution for use by Distribution's sales customers or injects such supplies into storage fields for later delivery to Distribution for use by its sales customers. Distribution PGC Exhibit No. 4 at pp. 2-3; Distribution PGC Exhibit No. 8, pp. 4-5; Joint Petition at p. 7.

4. Supply is an affiliate of Distribution and is subject to the regulatory jurisdiction of the Federal Energy Regulatory Commission (FERC). Distribution PGC Exhibit No. 4 at p. 2; Joint Petition at p. 7. Supply owns and operates a transmission system and storage fields, and Supply charges Distribution for transportation and storage services under Supply's FERC-approved tariff. Distribution PGC Exhibit No. 4 at pp. 2, 4; Joint Petition at p. 7.

5. Distribution's capacity on Supply, Tennessee, Columbia Transmission, and Texas Eastern is critical for the operation of the system, the provision of reliable service to customers and Distribution's least cost fuel procurement policy. Distribution PGC Exhibit No. 8 at pp. 2-4; Joint Petition at p. 7.

6. Locally produced gas delivered directly to Distribution or transported by Supply to Distribution made up approximately 0.99 percent of gas supplies purchased by Distribution to meet Distribution's Pennsylvania sales requirements during the 12 months ended November 30, 2022. The remaining roughly 99.01 percent of gas supplies for Distribution's sales customers was purchased from sources at Supply interconnects and sources upstream of Supply. Distribution PGC Exhibit No. 1 at p. 1; Joint Petition at p. 7.

7. The availability of storage enhances Distribution's ability to buy gas and to utilize its firm upstream transportation capacity at high load factors. Distribution PGC Exhibit No. 8 at pp. 3-5, 8-11; Joint Petition at p. 7.

8. At least through July 31, 2024, the end of the application period in this proceeding, Distribution will continue to rely principally upon gas supplies transported through facilities of Tennessee, Columbia Transmission, Texas Eastern and Supply, as well as storage (particularly on Supply), to meet the needs of its Pennsylvania sales customers. Distribution PGC Exhibit No. 8 at pp. 2-5, PGC Exhibit No. 30; Joint Petition at p. 8.

9. Distribution has fully and vigorously represented the interests of its ratepayers in proceedings before the FERC. Distribution PGC Exhibit No. 6; Distribution PGC Statement No. 3; Joint Petition at p. 8.

10. Distribution maintains capacity on interstate pipelines sufficient to meet the requirements of its firm customers on all days including Design Day and during peak season periods. Therefore, during a non-Design Day and non-peak season periods, if a portion of this capacity is not needed to serve firm customers, Distribution may attempt to release such capacity, pursuant to FERC Order 636, to other parties in order to mitigate the cost of maintaining such capacity to its PGC customers. Distribution PGC Exhibit No. 8 at p. 14; Joint Petition at p. 8.

11. Distribution attempts to mitigate the cost of natural gas supplies to its PGC customers through net revenues resulting from off-system sales activities. Distribution PGC Exhibit No. 8 at pp. 26-27; Joint Petition at p. 8.

12. Distribution attempts to enter into asset management arrangements, pursuant to FERC Order 712, in order to mitigate the cost of providing gas supplies to its PGC customers. Distribution PGC Exhibit No. 8 at p. 28; Joint Petition at p. 8.

13. Distribution participates in a sharing mechanism under which it retains 25 percent of the net revenues from off-system sales, capacity releases and asset management arrangements, including storage fill contracts. Distribution PGC Exhibit No. 8 at pp. 26-27; Joint Petition at p. 8.

14. The remainder of Distribution's system supply that is not transported by pipelines upstream of Supply consists of Appalachian supplies directly attached to the systems of Supply or Distribution and a small volume of gas from T.W. Phillips. Distribution PGC Exhibit No. 1, Schedule 1, Sheet 1; Joint Petition at p. 9.

15. During the twelve months ended November 30, 2022, Distribution purchased 206,175 Mcf of locally produced gas to serve customers in Pennsylvania. Distribution PGC Exhibit No. 1, Schedule 1, Sheet 3; Joint Petition at p. 9.

16. Locally produced gas continues to be a useful resource in meeting the requirements of Distribution's sales customers, and Distribution expects to continue to purchase local gas at prices that will not increase the weighted average cost of gas supplies that it sells to its customers. Distribution PGC Exhibit No. 8 at p. 15; Joint Petition at p. 9.

a. Distribution purchases dedicated, non-firm, life of reserves locally produced gas from Appalachian producers that is priced at an Appalachian Index ("AI"). The AI is the simple average of the first of the month spot prices for gas delivered to Dominion Energy Transmission, Inc. and Columbia Transmission. Distribution PGC Exhibit No. 4 at p. 13; Joint Petition at p. 9.

b. Distribution purchases excess non-firm local production gas at 80 percent of the AI rate. Distribution PGC Exhibit No. 4 at p. 13; Joint Petition at p. 9.

17. Distribution has implemented, with the Commission's approval, a system-wide customer choice program throughout its Pennsylvania service territory under which all customers, except those served under Distribution's Low Income Residential Assistance Program, may choose a natural gas supplier other than Distribution. Distribution PGC Statement No. 6 at pp. 2-3; Distribution PGC Exhibit No. 13; Joint Petition at p. 9.

18. To maintain service to several remote pockets of customers without constructing additional or replacing pipeline facilities, Distribution has entered into various agreements or tariff sales purchase agreements. Distribution has two exchange agreements – one with UGI Central Penn Gas, Inc (formerly PPL Gas Utilities Corporation and North Penn Gas Company) and one with Columbia Gas of Pennsylvania, Inc. Under the agreements, each company takes from the other volumes of gas needed to provide service. The agreements do not contemplate purchases of gas; instead, they contemplate that each company will receive approximately the same volumes of gas from the other over time. If needed, additional deliveries are arranged to eliminate any balance that has built up over time. The companies do not charge each other for this service. Distribution also serves some customers via two interconnects with People's Natural Gas Company (Peoples) where Distribution is receiving firm gas supplies, subject to Peoples' tariff provisions. Distribution PGC Exhibit No. 4 at pp. 4-5; Joint Petition at p. 10.

DESCRIPTION AND TERMS OF SETTLEMENT

The 19-page Settlement includes 80 numbered paragraphs, a request for relief, and Appendices A through E. Appendix A (also referred to as Attachment A) is the proposed Tariff Supplement to Gas — Pa. P.U.C. No. 9. Appendices B through D are the Supporting Statements of NFG, I&E, OCA and OSBA, respectively. The principal terms of the Settlement are as follows³:

³ Formatting and numbering are kept the same as in the Joint Petition.

A. Historic Reconciliation Period Standards.

45. With respect to Distribution's gas purchases and gas purchasing practices during the twelve-month historic reconciliation period ended November 30, 2022, it is requested that the ALJ and the Commission find that Distribution has met the standards of Section 1318 of the Public Utility Code, 66 Pa.C.S. § 1318, as required by Section 1307(f)(5) of the Public Utility Code, 66 Pa.C.S. § 1307(f)(5), as to all actual purchased gas costs in the historic period. It is requested that the Commission find that, during the twelve months ended November 30, 2022:

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

B. Projected Period Findings.

46. With respect to the eight-month interim period beginning on December 1, 2022, and with respect to the twelve-month period beginning August 1, 2023, when rates established under this Settlement will be in effect, it is requested that the Commission find, based upon information presently available and based upon evidence of record in this proceeding concerning Distribution's projected purchases and purchasing policies, that the rates to be adopted by the Commission result from Distribution's compliance with the provisions of Section 1318 of the Public Utility Code, including Sections 1318(a)(1), 1318(a)(2), 1318(a)(3), 1318(a)(4), 1318(b)(1), 1318(b)(2) and 1318(b)(3), 66 Pa.C.S. §§ 1318(a)(1), 1318(a)(2), 1318(a)(3), 1318(a)(4), 1318(b)(1), 1318(b)(2) and 1318(b)(3).

47. The Parties agree that, based upon evidence of record in this proceeding concerning Distribution's projected gas purchases and gas purchasing policies, Distribution's projected gas purchases and projected gas purchasing policies may comply with the standards of Section 1318 of the Public Utility Code. Nevertheless, it is expressly understood and agreed that this Section of the Settlement, Section V.B., is made solely for the purpose of setting prospective rates that shall be subject to the standards of Section 1318 of the Public Utility Code, 66 Pa.C.S. § 1318, and further review in an appropriate future proceeding. Section IV.B. of the Settlement is not intended in any way to limit or prevent I&E, OCA and OSBA from reviewing, after such projected gas purchases actually have been made and gas purchasing practices actually have been implemented, whether Distribution's gas purchases and gas purchasing practices complied with Section 1318. If, in an appropriate future proceeding, gas purchases and gas purchasing practices from December 1, 2022, through July 31, 2023, and the twelve-month application period commencing August 1, 2023, and ending on July 31, 2024, were challenged, the Commission's findings based upon Section IV of the Settlement shall not bar the examination of such purchases and practices, including, but not limited to, disallowance of, or reductions to, such costs during the eight-month interim period commencing

December 1, 2022, and ending on July 31, 2023, and the twelve-month application period commencing August 1, 2023, and ending on July 31, 2024.

VI. OTHER TERMS AND CONDITIONS OF SETTLEMENT

A. PGC Rates

48. The Joint Petitioners request that the ALJ and the Commission approve the form of tariff supplement provided as Attachment “A” hereto, including the rates set forth therein. The rates in Attachment “A” are subject to further updates for actual over/under recoveries of purchased gas costs through June 30, 2023, for updates related to the calculation of the MMT balancing charge and for updates to the forecasts of wellhead prices.

B. Design Day Requirements

49. Rates established in this proceeding are based on a contracted-for level of pipeline and storage capacity of 350,774 Dth/day. Distribution PGC Statement No. 7, p. 14; Joint Petition at p. 12. The Parties agree to use the throughput and capacity amounts projected by the Company to calculate rates in this proceeding. The acceptance by the Parties of this level of throughput and capacity to calculate rates does not indicate their acceptance of, and the Commission’s approval of the settlement will not indicate its approval of, the procedures or methodologies used to calculate these levels of throughput and capacity.

50. In Distribution’s 2024 Section 1307(f) proceeding, any party may contend that Distribution should adjust its capacity to a different level. If the Commission makes a determination concerning the appropriate level of capacity for Distribution, Distribution will undertake all reasonable and appropriate actions, after the determination becomes final, to adjust its level of capacity to the level determined to be appropriate.

51. No party to this Settlement may contend that there should be a disallowance of recovery by Distribution of its cost of capacity for any period prior to Distribution’s first reasonable opportunity to adjust its capacity after the determination of the appropriate level of capacity has become final.

C. Contract Renewals and Changes

52. The Parties agree that the Commission should approve the renewals, extensions and changes in pipeline and storage capacity contracts that are explained in PGC Exhibits 4 and 8 and in Distribution Statement No. 7.

D. E-Factor Interest Rate Calculation

53. Distribution will use an interest rate of 7.0% for the purposes of calculating its E-Factor for the twelve-month period ending July 31, 2023, resulting in a Total Gas Cost Rate per Mcf of \$5.9649.

E. Summer Purchases

54. Distribution will purchase approximately 15% to 20% of its summer purchases at predetermined fixed prices during the summer period preceding the summer delivery period. For example, approximately 15% to 20% of the projected summer purchases for the delivery period from April 1, 2025, through October 31, 2025, will be purchased at fixed prices on predetermined trigger dates during the April 1, 2024, through October 31, 2024, summer period. The Joint Petitioners request that the Commission approve the tariff changes that are set forth in the form of tariff supplement provided as Attachment A hereto. The tariff changes are identified in the List of Changes that is included at pages 2-3 of Appendix A hereto.

F. Tariff Changes

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

G. Approval of Filing

56. Distribution's 2023 Section 1307(f) filing is approved as modified herein.

As explained below, the Parties have agreed to a settlement on all of the issues in this proceeding.

The Joint Petitioners agreed to conditions with respect to the Settlement which are contained in paragraph numbers 73-80 of the Settlement.

DISCUSSION

A. Settlement is in the Public Interest

It is the policy of the Commission to encourage parties to settle contested on-the-record proceedings. *See* 52 Pa. Code § 5.231(a). Settlements eliminate the time, effort and expense of litigating a matter to conclusion, which may include review of the Commission's decision by the appellate courts of Pennsylvania. Such savings not only benefit the individual parties, but also the Commission and ratepayers of the utility.

In the Settlement, the Joint Petitioners agree that the Settlement provides for the recovery of natural gas costs that are just and reasonable given the positions advanced in the expert testimony and exhibits of the Joint Petitioners. According to the Joint Petitioners, the Settlement was achieved after a comprehensive investigation of NFG's filing, including extensive formal discovery requests and the service of written direct testimony by NFG, I&E, OCA and OSBA. The Joint Petitioners further agree that acceptance of the Settlement reduces the necessary costs of litigation and conserves the Commission's resources. NFG Statement in Support at pp. 1-2. I&E specifically stated after reviewing the filing in this matter and all discovery, that it agrees that the information provided by NFG indicates that its gas purchasing practices have satisfied its least cost procurement obligation under the Public Utility Code. 66 Pa.C.S. § 1318; I&E Statement in Support at p. 3. I&E averred that adhering to a least cost procurement policy benefits ratepayers and is in the public interest because least cost gas directly impacts customer gas bills while ensuring that customers receive safe, adequate and reliable service. I&E Statement in Support at p. 3. I&E specifically noted that based on its analysis of NFG's filing, acceptance of the proposed Settlement is in the public interest because it appropriately resolves the issue raised by I&E in testimony (concerning the E-Factor calculation) in a way that is mutually agreeable to NFG and I&E, and resolution of this case by settlement rather than litigation will avoid the substantial time and effort involved in continuing to formally pursue all issues in this proceeding at the risk of accumulating excessive expense. I&E Statement in Support at pp. 4-5.

OCA also submitted that NFG's PGC filing meets the requirements of 66 Pa.C.S. § 1307(f) with regard to showing that NFG's natural gas costs are consistent with a least cost fuel procurement policy required by 66 Pa.C.S. § 1318. OCA St. No. 1 at p. 12; OCA Statement in Support at p. 5. OCA has stated that the proposed Settlement is in the public interest and NFG's proposed PGC rate and tariff changes should be approved. OCA Statement in Support at pp. 3, 5.

OSBA also averred that it participated in the negotiations that led to the proposed Settlement and it is a signatory to the Joint Petition for Settlement. OSBA noted that while it did not submit testimony in this proceeding, it reviewed the filing, discovery responses and other

party testimony and agreed with the compromises and outcomes of the negotiations. OSBA Statement in Support at pp. 1-2. OSBA has therefore requested that the Settlement be approved in its entirety. OSBA Statement in Support at p. 4.

1. PGC Rates

In its Statement in Support of the Settlement, NFG advises that the Settlement rates reflect the adjustments that were agreed to by the Parties in this proceeding. Under the terms of the Settlement, the Parties agree that, on August 1, 2023, NFG will place into effect the natural gas rates set forth in Appendix A of the Settlement, as modified by the Settlement, and subject to updates for actual over/under recoveries of purchased gas costs through June 30, 2023, for updates related to the calculation of the Monthly Metered Transportation (MMT) balancing charge and for updates to the forecasts of wellhead prices. Settlement at p. 12, ¶ 48; NFG Statement in Support at p. 3.

NFG submits that the Settlement rates that it proposes to place into effect on August 1, 2023, are supported by record evidence. NFG explained in detail the development of its natural gas supply rates utilizing cost projections, sales projections, and the reconciliation process. Distribution contends that its testimony and exhibits provided full support for the rates and their underlying calculations. *See* Distribution PGC St. No. 5; PGC Exhibit No. 21; NFG Statement in Support at pp. 2-3.

In NFG's pre-filing, filed on December 30, 2022, it provided 27 exhibits detailing its gas purchases, gas contracts, peak day requirements and other information required by the Commission's regulations. In its annual filing (made on January 31, 2023), NFG offered the testimony of seven witnesses explaining the filing and why, according to NFG, it was reasonable. NFG also offered additional exhibits supporting the filing. Further detail regarding the Company's gas purchasing practices was also provided in the Parties' Proposed Findings of Fact set forth in Paragraphs 27-44 of the Settlement. NFG Statement in Support at p. 3.

In discussing its analysis of the Settlement (detailed in the E-Factor section below), I&E has also concluded that the Settlement maintains the proper balance of the interest of all Parties, and that NFG is pursuing a least cost fuel procurement policy consistent with its obligation to provide safe, adequate and reliable service. I&E Statement in Support at p. 4.

OCA also concluded that this settlement term represents a reasonable compromise of the Parties' positions, and that the Settlement is in the public interest and should be approved (further detailed in the Summer Purchases section below). OCA Statement in Support at p. 5.

2. Design Day Requirements

NFG avers that no party disputed its overall design day forecasting model or requirements. Through its Direct Testimony, its witness, Lisa A. Petko, detailed its forecasted design day model, noting that "Distribution expects its design day capacity for the winter of 2023-2024 to be 350,774 Dth/day." Distribution St. No. 7 at p. 14; NFG Statement in Support at p. 3. Ms. Petko further testified that "Distribution will review its design day firm capacity requirements again after analyzing its system usage during this winter of 2023." Distribution St. No. 7 at p. 11; NFG Statement in Support at pp. 3-4.

NFG noted the agreed-upon terms in paragraphs 49-51 of the Settlement and stated that the Settlement on issues related to its Design Day forecasting model reflects NFG's position in this proceeding. *See* Settlement at pp. 12-13, ¶¶ 49-51. NFG further noted that the Settlement does not prohibit the Parties from challenging NFG's Design Day forecasting model in future PGC proceedings. NFG therefore asserted that the Settlement provisions are in the public interest and should be approved.

The other Parties did not specifically address the Design Day requirements in their respective Statements in Support but agreed that these terms should be approved in the Settlement.

3. Contract Renewals and Changes

NFG notes that the Settlement requests that the Commission approve the renewals, extensions and changes in pipeline and storage capacity contracts that are explained in its Distribution PGC Statement No. 7, and in its Distribution PGC Exhibits 4 and 8. Settlement at p. 13, ¶ 52. NFG avers that these contracts are in the public interest for the reasons explained in the Company's testimony and exhibits, and these contracts should be approved. NFG Statement in Support at p. 5. The other Joint Petitioners, I&E, OCA and OSBA did not specifically address this Settlement paragraph in their respective Statements in Support, but they agreed in the Settlement that the aforementioned contract renewals and changes should be approved by the Commission.

4. E-Factor Interest Rate Calculation

NFG Witness Nicholas J. Hewa presented Direct Testimony regarding the Company's use of the prime interest rate for the purposes of calculating refunds to, and recoveries from, customers. Mr. Hewa testified that the interest rate to be applied to the over/under collection of purchase gas costs and storage injections/withdrawals is based on Act 47 of the Public Utility Code. Under this methodology, refunds to customers shall be made with, and recoveries from customers shall include, interest at the prime rate for commercial borrowing in effect 60 days prior to the tariff filing and as reported in a publicly available source identified by the Commission or at an interest rate which may be established by the Commission or regulation. Distribution PGC St. No. 5 at p. 9; NFG Statement in Support at p. 5. For the purposes of NFG's January 31, 2023 Main Filing, Mr. Hewa used a prime interest rate of 7.5% for the twelve-month period ending July 31, 2023, when calculating the interest component of its E-Factor. Distribution PGC Exhibit 21, Schedules 3 and 6; NFG Statement in Support at p. 5.

NFG noted that I&E's witness, Vanessa Okum, disputed NFG's E-Factor interest rate calculation. Specifically, Ms. Okum asserted that the prime interest rate for commercial borrowing in effect 60 days prior to the tariff filing was 7.0% rather than 7.5%. I&E St. No. 1, pp. 2-3; NFG Statement in Support at p. 5. In applying an interest rate of 7.0%, Ms. Okum

recommended that the E-Factor be modified to reflect a Total Gas Cost Rate per Mcf of \$5.9649, rather than \$5.9652, as calculated by NFG. I&E St. No. 1, pg. 3; NFG Statement in Support at p. 5.

NFG submitted Rebuttal Testimony in which Witness Hewa acknowledged that the 7.0% interest rate recommended by Ms. Okum was correct and followed the methodology mandated by 66 Pa.C.S. § 1307(f)(5). PGC Distribution St. No. 5R at p. 1; NFG Statement in Support at p. 6. Ms. Hewa also agreed that by implementing Ms. Okum's recommendation of the 7.0% interest rate would result in a Gas Cost Rate of \$5.9649 per Mcf. Distribution PGC St. No. 5R at p. 2; NFG Statement in Support at p. 6. NFG also agrees that the interest rate used to calculate its Total Gas Cost Rate should have been 7.0% , and it will use that interest rate for the purposes of calculating its E-Factor for the twelve-month period ending July 31, 2023. Settlement at p. 13, ¶ 53; NFG Statement in Support at p. 6. NFG noted that no other party presented testimony on this issue and averred that its interest rate application for calculating its E-Factor should therefore be approved. NFG Statement in Support at p. 6.

In its Statement in Support of the Settlement, I&E also averred that it analyzed NFG's E-Factor and in testimony recommended that NFG use an interest rate of 7.0% to calculate its E-Factor for the twelve-month period ending July 31, 2023, resulting in a total gas cost rate per Mcf of \$5.9649. I&E St. No. 1 at p. 3; I&E Statement in Support at p. 3. I&E's witness Okum explained that while NFG used an interest rate of 7.5% for the twelve-month period ending July 31, 2023, when calculating the interest component of its E-Factor, the prime interest rate for commercial borrowing in effect 60 days prior to the current filing, or December 2, 2022, was 7.0%. I&E St. No. 1 at pp. 2-3; I&E Statement in Support at p. 3. I&E asserted that 66 Pa.C.S. § 1307(f)(5) requires use of the prime interest rate for commercial borrowing in effect 60 days prior to a tariff filing, and that 7.0% was therefore the correct interest rate to use to calculate the E-Factor for the twelve months ending July 31, 2023. I&E therefore stated that it has agreed to use 7.0% for purposes of calculating NFG's E-Factor for the twelve-month period ending July 31, 2023. I&E Statement in Support at p. 3.

I&E further explained that an E-Factor is the experienced over/under collection; it reconciles variations between the projected gas costs and actual gas costs as well as variances between projected and actual sales. I&E explained that the E-Factor also serves as the vehicle to pass through miscellaneous revenues and to calculate interest. I&E maintains that this review is critical because the proper calculation of the E-Factor ensures that rates are adjusted appropriately. I&E confirmed that with the correction to the interest rate as agreed to in the settlement, it is satisfied that NFG's E-Factor calculation is appropriate and accurate. I&E further confirmed that it believes that NFG's projected gas costs are consistent with a least cost fuel procurement policy. I&E acknowledged that while those costs are subject to review in a future PGC proceeding, it maintains that ratepayers are protected in that NFG gains no unwarranted financial advantages through its projected gas purchases and projected gas purchasing policies. I&E therefore concluded that the Settlement maintains the proper balance of the interest of all Parties, and that NFG is pursuing a least cost fuel procurement policy consistent with its obligation to provide safe, adequate and reliable service. I&E Statement in Support at p. 4.

The other Parties, OCA and OSBA, did not specifically address this Settlement paragraph in their respective Statements in Support, but they agreed that these terms, as agreed upon by NFG and I&E, should be approved in the Settlement.

5. Summer Purchases

In its December 30, 2022 Pre-filing, NFG included an evaluation of potential modifications to its Gas Cost Management Plan (Plan). Under the Settlement reached in NFG's 2022 1307(f) proceeding, NFG agreed to investigate modifications to its Gas Cost Management Plan that may mitigate future potential rate volatility. NFG agreed to evaluate whether its current 12% purchasing target for winter supplies remains appropriate. NFG also agreed to review its timing and layering of purchases as a part of hedging a plan that could benefit customers by distributing cost changes over multiple quarters. NFG agreed to provide a copy of its review and present its findings to the parties in its 2023 PGC pre-filing. NFG noted that it would not be required to propose any changes to its Gas Cost Management Plan as a result of

this review. *See Pa. Pub. Util. Comm'n v. Nat'l Fuel Gas Dist. Corp.*, Docket No. R-2022-3030235 (Opinion and Order entered July 25, 2022) (Commission approval of partial settlement); NFG Statement in Support at p. 6.

NFG submits that in compliance with the 2022 partial settlement, in the pre-filing for the instant proceeding, NFG presented its evaluation regarding whether its 12% purchasing target for winter supplies remained appropriate, reviewed its timing and layering of purchases to assess whether distributing cost changes over multiple quarters may benefit customers. Distribution PGC Exhibit No. 8 at pp. 17-24; NFG Statement in Support at p. 7. NFG confirms that it did not make any changes to the Plan, wherein it reallocated 25% of its forward priced purchases from the current summer to the previous winters, such practice would have resulted in net savings for each of the three years. Distribution PGC Exhibit No. 8, p. 22; NFG Statement in Support at p. 7. NFG further explained that the 25% reallocation would represent approximately 515,000 Dth over the five winter months. The cost savings for Winter 2020-2021 when taking the average winter strip from the previous Winter 2019-2020 versus the Summer 2020 would have been approximately \$200,000. For Winter 2021-2022, it is approximately \$540,000, and Winter 2022-2023 would be approximately \$1,600,000. *See OCA St. No. 1* at p. 12. NFG also projected pricing for Winter 2023-2024 at the time that forward deals were triggered for Winter 2022-2023 to see the impact of extending the time periods. Distribution PGC Exhibit No. 8 at pp. 22-23; NFG Statement in Support at p. 7.

NFG avers that it also evaluated the effects of hedging winter purchases for the projected winter year, *i.e.*, winter 2022-2023. Under that evaluation, the result of the increased hedging was estimated at an increased cost to NFG's customers of approximately \$1,100,000. Distribution PGC Exhibit No. 8 at pp. 20-21; NFG Statement in Support at p. 7. Moreover, NFG explained that "in today's current pricing environment that is trading in the \$5 to \$7 range, it is unclear in which direction pricing will ultimately settle. NFG therefore believes that its diversified approach with 52% of winter supplies with predetermined prices will allow for a hedge to the majority of supplies, and it will allow NFG to handle operational requirements while still maintaining price diversification to daily and monthly indices with the other 48% of supplies." Distribution PGC Exhibit No. 8 at pp. 23-24; NFG Statement in Support at pp. 7-8.

NFG noted that in response, OCA presented the Direct Testimony of Jerome D. Mierzwa. Mr. Mierzwa testified that the Plan “currently provides for no price diversification for [NFG’s] summer gas supply purchases.” OCA St. No. 1 at p. 13; NFG Statement in Support at p. 8. Mr. Mierzwa recommended that NFG “consider purchasing 25% to 50% of the purchases it currently conducts in the summer months at predetermined fixed prices one year prior to the month of delivery.” OCA St. No. 1 at pp. 13-14; NFG Statement in Support at p. 8. Mr. Mierzwa explained that “if enough purchasing is spread through various times of the year, short term market price volatility will have a reduced impact on rates, while customers will pay market prices spread throughout the year.” OCA St. No. 1 at p. 14; NFG Statement in Support at p. 8.

NFG’s witness, Marc T. Cuthbertson, presented Rebuttal Testimony in response to Mr. Mierzwa’s recommendations. Mr. Cuthbertson testified that “purchasing summer gas a year prior to delivery would be a way to provide for price diversification and a hedge to [NFG’s] summer gas supply purchases predominantly injected into storage.” Distribution PGC St. No. 2R at pp. 1-2; NFG Statement in Support at p. 8. However, Mr. Cuthbertson further testified that NFG could instead “agree to enter into two physical fixed price hedge[s] between 15%-20% of its total summer purchase quantity.” Distribution PGC St. No. 2R at p. 2; NFG Statement in Support at p. 8. Mr. Cuthbertson explained that the ratio would be calculated off of two main factors that determine NFG’s summer purchase requirements: (1) the projected summer retail demand requirements; and (2) NFG’s storage fill requirements. Distribution PGC St. No. 2R at p. 2; NFG Statement in Support at p. 8. Mr. Cuthbertson also proposed two fixed price triggers that would occur in the months of April and June prior to the delivery during the subsequent summer season. Distribution PGC St. No. 2R at p. 3; NFG Statement in Support at p. 9.

NFG noted that under the Settlement, the Parties agreed that NFG “will purchase approximately 15% to 20% of its summer purchases at predetermined fixed prices during the summer period preceding the summer delivery period. For example, approximately 15% to 20% of the projected summer purchases for the delivery period from April 1, 2025, through October 31, 2025, will be purchased at fixed prices on predetermined trigger dates during the April 1, 2024, through October 31, 2024, summer period.” Settlement at p. 13, ¶ 54; NFG Statement in Support at p. 9. NFG averred that the Settlement regarding its summer purchases

reflects a middle-ground between its initial proposal and OCA's recommendation. NFG further noted that OCA and NFG were the only Parties to present testimony on this issue and argued that its Plan, as modified by the Settlement, should be approved as being in the public interest.

OCA also noted that it conducted discovery in this proceeding with the assistance of its witness, Mr. Mierzwa. OCA confirmed that Mr. Mierzwa recommended that NFG diversify its summer purchases by locking in 25% to 50% of those purchases at fixed prices to be set one year prior to the month of delivery. OCA St. No. 1 at pp. 13-14; OCA Statement in Support at p. 3. Mr. Mierzwa testified that natural gas prices had been particularly volatile in recent years. Specifically, the prices increased in 2022 more than had been expected at the time of NFG's 2022 PGC proceeding, while prices in 2023 were lower than expected at the same time last year. OCA St. No. 1 at p. 10; OCA Statement in Support at p. 3. Mr. Mierzwa also testified that residential customers had seen tremendous volatility in their PGC rates in recent years, with rates in early autumn of 2022 being approximately 80% higher than rates in autumn 2021. OCA St. No. 1 at p. 11; OCA Statement in Support at p. 3. OCA stated that Mr. Mierzwa's proposal for NFG to diversify its summer prices would help address this volatility and provide customers with greater stability by capturing market prices over a longer period of time. OCA Statement in Support at p. 3.

OCA also emphasized Mr. Mierzwa's testimony that NFG's own volatility study of its Gas Cost Management Plan provided support for diversifying its summer purchases. OCA St. No. 1 at pp. 11-14; OCA Statement in Support at p. 3. Mr. Mierzwa explained that under the current Plan, NFG locks in a portion of its winter gas supplies at prices fixed prior to the winter season but does not diversify its summer purchases. In its volatility study, NFG evaluated the impact of modifying its current layering of purchases to assess whether distributing cost changes over multiple quarters would benefit customers. Specifically, NFG evaluated the impact of reallocating 25% of its predetermined price summer purchases to the previous winter period for each of the two previous and the current winter season and found that for the winter of 2020-2021, the reallocation would have resulted in customer savings of approximately \$200,000. OCA St. No. 1 at p. 12; OCA Statement in Support at pp. 3-4. Mr. Mierzwa further explained that for the winter of 2021-2022, customer savings would have been approximately \$540,000,

and for the winter of 2022-2023, the savings would have been approximately \$1,600,000. OCA St. No. 1 at p. 12; OCA Statement in Support at p. 4.

Mr. Mierzwa testified that NFG also found that the savings that NFG's customers saw in winter 2022-2023 were attributable to the avoidance of a portion of NFG's predetermined price summer purchases for the winter of 2022-2023 at the high prices which existed during the summer of 2022. OCA St. No. 1 at p. 12; OCA Statement in Support at p. 4. Based on these findings, Mr. Mierzwa testified that NFG should diversify its summer purchases to help account for potential future volatility in summer gas prices and help stabilize prices for its customers. OCA Statement in Support at p. 4.

OCA stated that the Settlement provides that NFG will purchase approximately 15% to 20% of its summer purchases at predetermined prices to be fixed during the summer period preceding the summer delivery period. Settlement at p. 13, ¶ 54; OCA Statement in Support at p. 4. OCA averred that although this is a lower portion of the summer purchases to be fixed than what OCA had recommended in testimony, it helps to address OCA's concerns about continuing gas price volatility in the summer months. OCA emphasized that, as NFG pointed out in rebuttal testimony, typically summer gas prices and volatility do not increase to the rates that they did in summer of 2022, and fixing a lower percentage of summer purchases will help provide customers with greater stability while allowing NFG to maintain sufficient operational delivery flexibility and preserve price diversity. Distribution St. 2R at p. 3; OCA Statement in Support at p. 4.

OCA noted Mr. Mierzwa's testimony that while gas price increases such as those seen in summer 2022 are not unprecedented, and gas prices may remain volatile as the climate becomes increasingly unpredictable, NFG's agreement to fix 15% to 20% of its summer purchases at prices to be locked-in approximately a year beforehand represents a reasonable compromise in this proceeding. OCA St. No. 1 at p. 13; OCA Statement in Support at pp. 4-5. OCA averred that this compromise will allow OCA and NFG to evaluate how much this price-fixing helps stabilize prices for customers, and it will provide flexibility for the parties to determine whether NFG should increase the fixed portion of its summer purchases at its next

PGC proceeding or in later years. OCA Statement in Support at p. 5. OCA therefore concluded that this settlement term represents a reasonable compromise of the Parties' positions, and that the Settlement is in the public interest and should be approved. OCA Statement in Support at p. 5.

The other Parties, I&E and OSBA, did not specifically address this Settlement paragraph in their respective Statements in Support, but they agreed that these terms, as agreed upon by NFG and OCA, should be approved in the Settlement.

6. Tariff Changes

NFG stated that in its annual filing (submitted on January 31, 2023), NFG identified the tariff changes that it was proposing in this proceeding. The majority of the proposed tariff changes related to changes in rates associated with changes in purchased gas costs. No Party to this proceeding objected to the changes; however, I&E did raise issues related to the calculation of NFG's E-Factor, which have been discussed above. NFG therefore averred that the Settlement approves its Tariff, as filed, with the exception of the E-Factor calculation and interest rate used in that calculation which has been modified consistent with the Settlement. Settlement at p. 13, ¶ 53; NFG Statement in Support at p. 9.

The other Parties, OCA and OSBA, did not specifically address this Settlement paragraph in their respective Statements in Support, but they agreed that these changes should be approved in the Settlement.

7. Additional OSBA Considerations

As noted above, OSBA stated that it did not submit testimony in this proceeding, but it reviewed the filing, discovery and testimony and focused on various issues. OSBA Statement in Support at p. 2. Regarding lost and unaccounted for gas, OSBA reviewed NFG's 60-month average lost and unaccounted for gas rate for the period ending August 2022. *See* NFG St. No. 4 at p. 14. OSBA noted that NFG's lost and unaccounted for gas historically has

been low, while the average ending August 2022 was 0.12%. OSBA averred that it is satisfied that this low rate is just and reasonable. OSBA Statement in Support at p. 2. Regarding retainage rates, OSBA stated that retainage rates for transportation customers remains at the historical rate of 0.15%, which includes company use. *See* NFG St. No. 4 at p. 17. OSBA averred that it is satisfied that this retainage rate is just and reasonable. OSBA Statement in Support at p. 2.

Regarding natural gas supply mix, OSBA stated that it reviewed NFG's strategy for basin diversification. OSBA noted that NFG continues to purchase 100% of supply from the northeast market area (Marcellus and Utica Shale). OSBA stated that while not particularly diverse, such purchases are local and comparatively cheap. OSBA averred that it therefore finds NFG's supply mix to be just and reasonable. OSBA Statement in Support at p. 3.

Regarding the MMT Transportation Rate, OSBA noted that the rate for these monthly metered customers includes a purchased gas cost component designed to recover the costs of balancing daily deliveries and usage. OSBA observed that NFG proposed to keep the proposed rate the same as the current rate, or \$0.36/mcf. *See* NFG St. No. 6 at p. 16. OSBA further observed that the Joint Petition adopts this rate. *See* Joint Petition at p. 3. OSBA averred that this is an acceptable result. OSBA Statement in Support at p. 3.

OSBA further observed that NFG proposed no changes from prior practice regarding DMT Customer Imbalances, *see* NFG St. No. 6 at p. 21, and finds that this is an acceptable result for this proceeding. Lastly, OSBA noted that NFG has not proposed any changes to its sharing mechanism for off-system sales and capacity release (75% ratepayer, 25% shareholder) in this proceeding. OSBA averred that it supports the continuation of this mix of 75%/25% in favor of NFG ratepayers. OSBA Statement in Support at p. 3. OSBA therefore requested that the Settlement be approved in its entirety. OSBA Statement in Support at p. 4.

8. Recommendation – Approval of Settlement

The Settlement represents the agreement of the Parties proposing a resolution of all the issues in this proceeding. The Settlement is the result of compromises. The Commission encourages parties in contested, on-the-record proceedings to settle cases. *See* 52 Pa. Code § 5.231. Compromises dispense with costly litigation and promote judicial economy.

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

CONCLUSIONS OF LAW

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

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

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

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

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

6. National Fuel Gas Distribution Corporation has taken all prudent steps necessary during the relevant time period to obtain lower cost gas supplies on both short-term and long-term bases both within and outside the Commonwealth, including the use of gas transportation arrangements with pipelines and other distribution companies in compliance with Section 1318(a)(3) of the Public Utility Code. 66 Pa.C.S. § 1318(a)(3).

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

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

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

10. The Joint Petition for Settlement of the Rate Investigation Pursuant to 66 Pa.C.S. § 1307(f) that National Fuel Gas Distribution Corporation, the Pennsylvania Public Utility Commission's Bureau of Investigation and Enforcement, the Office of Consumer Advocate and the Office of Small Business Advocate have executed and submitted at this docket

is in the public interest and, therefore, should be approved without modification. *Pa. Pub. Util. Comm'n v. City of Lancaster – Bureau of Water*, Docket No. R-2010-2179103 (Opinion and Order entered July 14, 2011); *citing, Warner v. GTE North, Inc.*, Docket No. C-00902815 (Opinion and Order entered Apr. 1, 1996); *Pa. Pub. Util. Comm'n v. CS Water and Sewer Associates*, 74 Pa.P.U.C. 767 (1991).

ORDER

THEREFORE,

IT IS RECOMMENDED:

1. That the Joint Petition for Settlement of the Rate Investigation Pursuant to 66 Pa.C.S. § 1307(f) that National Fuel Gas Distribution Corporation, the Pennsylvania Public Utility Commission's Bureau of Investigation and Enforcement, the Office of Consumer Advocate and the Office of Small Business Advocate executed and submitted at Docket No. R-2023-3037428 be approved without modification.
2. That National Fuel Gas Distribution Corporation be permitted to file a tariff supplement, incorporating the terms of the Settlement and changes to its rates, rules and regulations as set forth in Appendix A of the Settlement on at least one day's notice after entry of the Commission's Order approving the Settlement. Said tariff supplement shall be accompanied by a red-lined version that shall fully set forth all changes that will be made to National Fuel Gas Distribution Corporation's current tariffs.
3. That upon National Fuel Gas Distribution Corporation's filing of a tariff supplement as conforming with this Order and the Joint Petition for Settlement and the Commission's approval thereof, the purchased gas rates established therein shall become effective for service rendered on or after August 1, 2023.

4. That the Complaint of the Office of Small Business Advocate at Docket No. C-2023-3037705 be deemed satisfied.

5. That the Complaint of the Office of Consumer Advocate at Docket No. C-2023-3037866 be deemed satisfied.

6. That upon acceptance and approval by the Commission of the tariff supplement and supporting data filed by the National Fuel Gas Distribution Corporation as being consistent with the Joint Petition for Settlement of the Rate Investigation, the investigation at Docket Number R-2023-3037428 shall be terminated and the case marked closed.

Date: May 18, 2023

/s/
Charece Z. Collins
Administrative Law Judge