national fuel

April 9, 2008

Hon. Jaclyn A. Brilling
Secretary
Public Service Commission
Three Empire State Plaza
Albany, New York 12223-1350

Re: Case 07-M-0548, Energy Efficiency Portfolio Standard

Dear Secretary Brilling:

Enclosed for filing in the above-referenced proceeding is an original and five (5) copies of the Initial Brief Submitted by National Fuel Gas Distribution Corporation. Copies are being served (via first-class mail, postage prepaid) on the parties identified on the Active Party Service List dated April 8, 2008, and electronically via the e-mail distribution list.

Thank you for your attention to this matter.

Respectfully submitted,

Michael W. Reville

Enc.
cc: Active Parties

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

CASE 07-M-0548 - Proceeding on Motion of the Commission Regarding an Energy Efficiency Portfolio Standard

INITIAL BRIEF
SUBMITTED BY
NATIONAL FUEL GAS DISTRIBUTION CORPORATION

In a ruling issued by Administrative Law Judges Eleanor Stein and Rudy Stegemoeller on March 20, 2008, parties were invited to file briefs on four issues identified on pages 10-11 therein.[1] National Fuel Gas Distribution Corporation ("Distribution" or the "Company") is a gas-only local distribution company serving a number of communities in western New York State. Although the instant Initial Brief is submitted in response to the ALJs' invitation, the points addressed below primarily address expectations regarding the administration of Distribution's current, comprehensive conservation and efficiency program in the context of the Energy Efficiency Portfolio Standard ("EEPS") administration models identified in the March 20 Ruling.

A. The Company's Existing Conservation Program Meets Proposed EEPS Requirements.

Distribution also submits this Initial Brief for the additional purpose of identifying an oversight, or mistake of fact, included in the March 2008 DPS Staff Report on Recommendations for the EEPS Proceeding ("Report").[2] On page 18 of the Report, Staff describes the natural gas efficiency program currently in effect in Distribution's service territory as having been approved only "for one year." The implication of Staff's remark is that Distribution's program was

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[1] The briefing schedule was extended by two days in a later ruling issued on April 3, 2008.
[2] Distribution notified Staff counsel of the oversight via telephone, who agreed with the Company's characterization at the time. It was agreed that the Company would address the oversight in the instant filing.

designed for replacement by the generic gas EEPS program after only one year of operation. This is incorrect.

Distribution's Conservation Incentive Program ("CIP") was approved by the Commission in an order issued on September 20, 2007 ("NFG Order").[3] The program was approved for two phases. The first phase required implementation on an expedited basis for winter 2007-08. For the second phase, the Company was directed to address, through collaboration with interested parties, a CIP "that the Company will implement for the 2008-09 program years." NFG Order at 12. With respect to the second phase, the Commission said, "we expect NYSERDA to play a substantial role in the design, development and implementation of the 2008-09 CIP program." Id.

The Commission described the CIP proposal as follows:

> The CIP calls for the more efficient use of natural gas resources and it is consistent with the State's policy to encourage energy conservation. The CIP provides customers several means to reduce their bills, individually and in the aggregate. It consists of residential and non-residential rebate programs to promote the use of high-efficiency appliances and set-back thermostats. To assist economically disadvantaged customers achieve greater energy efficiency, the CIP provides a program for low-income homeowners and renters. The Company also proposes a broad-based, multi-media communications program to increase customer awareness and to change public attitudes about energy conservation.
> NFG Order at 2.

In approving the CIP, the Commission made several modifications, but the basic framework remained unchanged. It was important to the Commission that the CIP be implemented for winter 2007-08, in order to provide customers with opportunities to achieve savings for the then-approaching winter season. For the longer run, however, the Commission

[3] Case 07-G-0141, Proceeding on Motion of the Commission as to the Rates, Charges, Rules and Regulations of National Fuel Gas Distribution Corporation for Gas Service, Order Adopting Conservation Incentive Program (issued September 20, 2007).

made clear its intent that the CIP be further refined with the input of the New York State Energy Research and Development Agency ("NYSERDA").

Upon approval of the CIPs, Distribution undertook to involve NYSERDA in program design and refinement for implementation beginning in winter 2007-08, instead of employing a two-phased approach that would delay NYSERDA's involvement until collaboration for the CIPs' winter 2008-09 iteration. Distribution and NYSERDA were successful in their joint efforts, producing a program for winter 2007-08 that includes a number of existing NYSERDA "best practices" conservation and efficiency programs, including the following:

- Home Performance with ENERGY STAR® comprehensive home audit program;
- EmPower New York℠ low income energy efficiency and weatherization program;
- Enhanced Commercial/Industrial Performance Program - Tier II (Custom Path Technical Study)

Notably, each of the above programs is identified in the Report as "programs with a proven track record for energy efficiency savings that can be implemented quickly and cost effectively." Report, Attachment 5, p. 1. Staff recommends these programs because "Staff's method builds up from a based of existing, effective NYSERDA program" (sic), Report at 2.

In addition to its portfolio of NYSERDA programs, Distribution's CIP includes an ambitious equipment replacement program recognized by Staff as one "that could be emulated by other gas utilities."[4] While primarily an appliance rebate program, the Company also uses the rebate application process to promote NYSERDA's Home Performance with ENERGY STAR® audit. Distribution believes that the CIP, by combining NYSERDA's established programs and

[4] Distribution has been advised that customer response for the rebate program has been among the highest levels that the contractor, a firm that has performed a similar service for New England utilities for over a decade, has experienced.

Distribution's appliance rebate component, meets or exceeds Staff's expectations in the Report, in addition to the requirements established by the Commission in the NFG Order.

Distribution also believes that its CIP would conform to the ALJs' straw proposal, were it adopted as proposed or in substantially similar form,[5] across all of its features that are already consistent with Staff's revised model in the Report. A central feature of the Straw Proposal is that, for fast track programs in particular, significant reliance is placed on the existing NYSERDA program infrastructure, as is the case with the CIP. Also, the CIP would fit the Straw Proposal's "Hybrid Model" insofar as Distribution (through its contractor) is the administrator for program components not administered by NYSERDA. Ultimately the CIP programs are administered by NYSERDA where its experience is greatest, and otherwise by Distribution. We believe that this is a model that not only meets "fast track" objectives, but also is well suited for the longer run.

Importantly, the Straw Proposal recognizes that "disruption of ongoing programs should be avoided unless the need to do so is clearly indicated." Straw Proposal at 6. The CIP, through heavy advertising and grass-roots outreach and education, is rapidly gaining acceptance in the metro Buffalo market. Given that the CIP, like any conservation effort, is designed to alter consumer attitudes about energy use, any change in the direction of the CIP needs to be "clearly indicated" to avoid customer confusion or a loss in public acceptance of the program's goals.

Pursuant to the requirements of the NFG Order, Distribution intends to schedule a collaborative session in April or May 2008 for the purpose of designing program changes, if any, for implementation prior to winter 2008-09. As explained above, the CIP was modified to incorporate the above NYSERDA programs prior to the schedule anticipated in the NFG Order. For this reason, Distribution believes that the CIP is positioned to continue for its second year of

[5] Case 07-G-0548, Corrected Ruling Presenting Straw Proposal (issued February 13, 2008) ("Straw Proposal").

operation through winter 2008-09, as intended by the Commission. Although the upcoming collaboration might yield additional program changes, the Company envisions that the general framework for the CIP – including the integration of NYSERDA programs – will remain largely unchanged.

Based on the text of the NFG Order, it is clear that Staff's suggestion that the CIP "was only approved for one year" is erroneous. For sound reasons, the Commission intended that the CIP extend for two years through winter 2008-09, at a minimum. Indeed, as structured in the Company's tariff, the CIP is designed to continue indefinitely until modified (or terminated) by the Commission. The Company also believes that in substance, the CIP currently meets or exceeds Staff's expectations in the Report. Therefore, the Company believes that its program should be afforded the same treatment provided other utilities where, "if the utility's current program expenditures exceed what its proportional share of the statewide fast track program would be, the higher amount should prevail." Report at pp. 17-18. The Company believes further that the CIP would comply with the ALJs' "Straw Proposal" were it adopted as issued. For all of these reasons, the program design developed in this proceeding, being based on any of the methods presented to date, should not disturb Distribution's CIP. For the period after the CIP's initial two-year period, program changes to conform to the generic EEPS requirements might reasonably be justified, so long as such change in direction is clearly indicated.

B. Development of Energy Efficiency Targets Should Not Slow Program Implementation.

As explained above, the CIP is a conservation program that leverages the unique strengths of NYSERDA and Distribution as program administrators. At this early stage of the process, CIP is performing better than expected, to the direct benefit of customer participants and indirectly, the Company's service territory. Care should be taken, however, in developing specific energy efficiency targets. While it is true that a comprehensive program that includes target incentives might lead to better performance on the part of all participants, it is equally true that any efficiency gains achieved in the short run, using the current conservation program infrastructure, will produce permanent benefits. Those benefits can be measured and utilized by the Commission and program administrators to inform the development of future programs, or refinement of existing programs. For example, low-income usage reduction programs have been universally recognized as being an important energy efficiency tool. The implementation of such programs should not await development of specific targets. Instead, these kinds of established initiatives, with a proven track record, should be commenced sooner rather than later, with performance targets added while the programs are in progress.

Respectfully submitted,

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Dated: April 9, 2008
Buffalo, New York