



**National Fuel**

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February 18, 2011

**VIA ELECTRONIC FILING & U.S. MAIL**

Ms. Rosemary Chiavetta, Secretary  
Pennsylvania Public Utility Commission  
P. O. Box 3265  
Harrisburg, PA 17105-3265

RE: American Recovery and  
Reinvestment Act Investigation  
Docket No. I-2009-2099881

Dear Secretary Chiavetta:

Enclosed please find National Fuel Gas Distribution Corporation's Comments regarding the above-referenced Investigation.

Very truly yours,

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CMT/cjc

Enclosures

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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American Recovery and  
Reinvestment Act Investigation

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**COMMENTS**

DOCKET NO. I-2009-2099881

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**COMMENTS OF  
NATIONAL FUEL GAS DISTRIBUTION CORPORATION**

On January 24, 2011, the Commission entered an Order in this proceeding to issue for public comment the American Recovery and Reinvestment Act Investigation Working Group Report. The Working Group was given the task of meeting with stakeholders and crafting a report that discusses whether existing Commission policies, regulations and state laws address the goals outlined in Section 410 (a) of the American Recovery and Reinvestment Act of 2009 (“Recovery Act”)<sup>1</sup> and the steps that need to be taken to ensure Pennsylvania’s compliance with the Recovery Act. The Order invites comments regarding any appropriate actions, orders, policy statements, or regulations that the Commission should adopt to ensure compliance with Section 410(a) of the Recovery Act, including the issue of rate decoupling and measures that may encourage utility energy efficiency and conservation while ensuring the financial viability of utilities. For its response to the Order, National Fuel Gas Distribution Corporation (“National Fuel”) submits the following comments:

- Pennsylvania is far behind other states regarding elimination of financial disincentives of natural gas utilities to promote energy conservation. Of the

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<sup>1</sup> *American Recovery and Reinvestment Act of 2009*, Pub. L. No. 111-5 § 410(a), 123 Stat. 115 (2009).

largest natural gas consuming states, Pennsylvania stands alone in its refusal to adopt increasingly commonplace rate designs that align utility financial incentives with helping customers conserve energy.

- The Recovery Act does not represent the Federal government's acquiescence of the status quo regarding ratemaking policies and customer energy conservation. On the contrary, the Recovery Act is a call for States, like Pennsylvania, to change their historical ratemaking rules and policies that couple rates to the volume of energy consumed by utility customers. Because the cost of fuel is by far the most significant component of a customer's natural gas bill the consumer benefits from usage reduction are obvious. Furthermore, utilities can be effective providers of both conservation services and information to customers. Congress recognized this when it required that States remove the financial disincentive to utilities to provide energy efficiency services to their customers.
- Under the Energy Policy Act of 2005, the Department of Energy recommended that "regulators should consider modifying ratemaking practices to promote energy efficiency among consumers, while recognizing that this goal must be balanced with other ratemaking objectives" including "addressing the typical utility throughput incentive and removing other regulatory and management disincentives to energy efficiency." *Working Group Report* at pg 6 quoting United States Department of Energy, *State and Regional Policies that Promote Energy Efficiency Programs Carried Out by Energy and Gas Utilities: A Report to the United States Congress Pursuant to Section 139 of the Energy Policy Act of 2005* (March 2007).
- Electric and natural gas unbundling has little or no relevance to the goals and objectives set forth in the Recovery Act. There is simply no data or analysis that shows that unbundling of rates has directly resulted in increased customer conservation or in any way eliminated utility financial disincentives to promote customer energy conservation.
- Act 129<sup>2</sup> does not comply with the Recovery Act and instead represents a major obstacle to accomplishing the goals and objectives of the Recovery Act as to electric utilities.
- Low Income Usage Reduction Programs ("LIURP") achieve partial compliance with the Recovery Act, but only low-income customers are eligible. Also, because LIURP does not address revenue losses that utilities experience as a result of implementation the end result is financial harm to utilities, which is contrary to the goals and objectives of the Recovery Act.
- No statute in the Pennsylvania Public Utility Code restricts or limits the recovery of costs related to implementation of conservation programs (e.g., lost revenues)

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<sup>2</sup> 66 Pa. C.S. §§ 2806.1 *et seq.*

to base rates. Those in favor of the status quo will argue that 66 Pa. C.S. § 523(b)(4), 66 Pa. C.S. § 1319, and 66 Pa. C.S. § 1505(b) require costs to be recovered only in a base rate case. However, the plain language of these statutory provisions states nothing about base rates being the sole vehicle for cost recovery.

- As the Commission proceeds with designing and implementing programs to accomplish the goals and objectives of the Recovery Act, it is crucial that the design of these programs allow sufficient flexibility to account for various differences among the utilities, their service territories, and customers. A “one-size fits all” approach to program design will not work in Pennsylvania.
- Decoupling, formula based rates, straight fixed-variable, and annual rate adjustments can be designed in a manner to remove a utility’s financial disincentive to promote conservation consistent with the goals and objectives of the Recovery Act.
- Modified straight fixed-variable, inclining block rates, flat block rates, time of use rates, seasonal rates, and base rate case adjustments for lost revenues do not and cannot align a utility’s financial incentives with customer conservation and therefore do not comply with the requirements of the Recovery Act. With these rate designs, the utility stands to maximize its financial benefit only through *increases*, not decreases in customer consumption.
- Revenue decoupling separates the link between increased customer energy consumption and increased profit thereby removing the financial disincentive to a utility promoting energy conservation. *Working Group Report* at pg 50. Revenue decoupling is a proven successful rate design. Twenty (20) States have already adopted revenue decoupling, including large gas consuming States such as California, Illinois, New York, Michigan, Indiana, New Jersey, Wisconsin and Minnesota. See, *Working Group Report*, NFG Attachment 1.
- The Office of Small Business Advocate (“OSBA”) argues that revenue decoupling will only increase rates and consumers will not conserve if they don’t see lower bills in return. *Working Group Report* at pg 55. This argument is a canard. A revenue decoupling mechanism will be one feature of a larger, comprehensive program to promote energy efficiency and conservation. Customers who take advantage of well designed conservation programs will realize savings on the supply portion of their bills that far outweigh any revenue decoupling charge included in rates. On average, approximately 60% of a gas customer’s bill is for supply charges. Therefore the customer’s best opportunity for savings is to reduce total energy consumption, and the best way to promote that kind of change in consumer behavior is through programs administered and promoted by the utility. But with rate designs that reward utilities when customers consumer more gas, there is no incentive for utilities to partner with their customers to help them conserve. This is exactly the conundrum the Recovery Act seeks to resolve.

- In its New York service territory, National Fuel is currently experiencing the success of a revenue decoupling mechanism that includes a detailed and comprehensive Conservation Incentive Program for its customers.
- 66 Pa. C.S. § 1307(a) is an established procedural tool that the Commission can immediately utilize to modify its ratemaking policies and structures to allow ratemaking mechanisms, like decoupling, that would ensure that the financial incentives of gas utilities are aligned with customer conservation.
- Base rate case filings are insufficient to eliminate a utility's financial disincentives to promote customer conservation. It is ironic that the Industrials argue that decoupling would be costly and time consuming to implement and maintain and yet they point to base rate cases as the "polestar" for ratemaking and the rate design of choice. *Working Group Report* at pgs 55-58. The reality is that, with few exceptions, a base rate case filing is the most expensive and time consuming filing a utility can submit and litigate with the Commission. Furthermore the regulatory lag inherent in base rate cases would preclude timely recovery of conservation costs in violation of the Recovery Act.

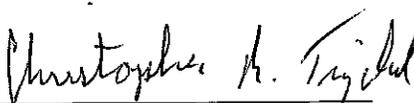
If Pennsylvania embraces the ratemaking status quo, it will *not* be compliant with the Recovery Act, and the mere expression of various points of view in the Report does not achieve compliance. The Recovery Act expressly requires the Commission to "seek to implement . . . a general policy that ensures that utility financial incentives are aligned with helping their customers use energy more efficiently and that provide timely cost recovery and a timely earnings opportunity for utilities associated with cost-effective measurable and verifiable efficiency savings, in a way that sustains or enhances utility customers' incentives to use energy more efficiently." *American Recovery and Reinvestment Act of 2009*, Pub. L. No. 111-5 § 410(a), 123 Stat. 115 (2009). As described in National Fuel's comments in the Working Group Report and the above summary, Pennsylvania's current ratemaking policies and structures, particularly base rate design, are contrary to the objectives of the Recovery Act because they perpetuate the historical financial disincentives for utilities to promote customer conservation. The Recovery Act clearly calls for change, and in order to fully comply, Pennsylvania must

adopt new and creative ratemaking policies and structures, such as a revenue decoupling mechanism, which will create the financial incentives for utilities to partner with their customers to promote and achieve energy conservation.

Respectfully submitted,

NATIONAL FUEL GAS  
DISTRIBUTION CORPORATION

Dated: February 18, 2011

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