national fuel

Lee E. Hartz
Assistant General Counsel

December 1, 2009

VIA Electronic Filing &
NEXT DAY UPS
Secretary James J. McNulty
Pennsylvania Public Utility Commission
Commonwealth Keystone Bldg.
400 North Street
Harrisburg, PA 17120

Re: Proposed Rulemaking: Natural Gas Distribution Company Business Practices; 52 Pa. Code §§ 62.181-62.185 – Docket No. L-2009-2069117
Comments of National Fuel Gas Distribution Corporation

Dear Secretary McNulty:

Pursuant to the Order entered on May 1, 2009 by the Pennsylvania Public Utility Commission, enclosed for filing are an original and 15 copies of the Comments of National Fuel Gas Distribution Corporation ("Comments"). This document is also being electronically filed.

An electronic copy of these Comments is being sent as requested in the Order.

If you should have any questions regarding this filing, please contact me anytime at (814) 871-8060. Many thanks for your assistance in this matter.

Very truly yours,

Lee E. Hartz

Enclosures

cc: *VIA E-Mail:*
Patricia Krise Burket
Annunciata Marino
Cyndi Page

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Proposed Rulemaking: Natural Gas Distribution Company Business Practices; 52 Pa. Code §§ 62.181 – 62.185	:	**COMMENTS**
	:	Docket Number: L-2008-2069114
SEARCH Final Order and Action Plan for Increasing Effective Competition in Pennsylvania's Retail Natural Gas Supply Services Market	:	Docket Number: I-00040103F0002

COMMENTS OF
NATIONAL FUEL GAS DISTRIBUTION CORPORATION
TO THE PROPOSED RULEMAKING ORDER

TO THE PENNSYLVANIA PUBLIC UTILITY COMMISSION:

I. Introduction.

On May 1, 2009 the Pennsylvania Public Utility Commission (the "Commission") entered a Proposed Rulemaking Order (the "Order") in this matter containing proposed regulations to be added to 52 Pa. Code §§ 62.181 – 62.185 (the "Proposed Regulations"). The Order, along with an "Annex A" containing the actual Proposed Regulations was subsequently published in the *Pennsylvania Bulletin* on October 17, 2009. The Order provides that interested parties may submit written Comments within 45 days.

For its response to the Order, National Fuel Gas Distribution Corporation ("Distribution" or "the Company") submits the instant Comments. Herein, Distribution will provide, in the 'General Comments' Section, some overall thoughts on this Rulemaking process, the applicability of these proposed regulations and comments on the Discussion section of the Proposed Rulemaking. Then, in the 'Specific Comments on Proposed Regulations' Section, Distribution will provide specific comments, by proposed regulation section, to the actual language provided by the Commission in 'Annex A' to the Proposed Rulemaking Order. Where

appropriate, Distribution has provided suggested alternative language for the Commission to consider. Unless specifically noted, where alternative language is provided, the language of the Proposed Regulation is given with NFGDC's proposed additions underlined and proposed redactions struck.

II. General Comments.

A. Proposed Stakeholder Process / NAESB Technical Subgroup

Distribution notes that the Proposed Rulemaking Order, at several points, mentions the Commission's intent to establish a stakeholder process that was to be concurrent with this rulemaking procedure and function as an avenue for additional public input. According to the proposed rulemaking the "stakeholder process will be used to develop a standard SCT, and will make recommendations for the adoption of standard business practices for the retail natural gas market." Order at 2. The Proposed Rulemaking also references a draft SCT that would be issued for comment as well as the creation of a separate technical working group for the purpose of establishing communication standards.

As to the stakeholder process, the Proposed Rulemaking states an intention to complete that process by August 1, 2009. Obviously, since the stakeholder group has yet to be convened, that deadline has come and gone. Likewise, no draft SCT has been issued nor has there been any information regarding the additional technical subgroup.

Distribution agrees with the Proposed Rulemaking that "the most efficient way to develop a standard SCT and best business practices is through the use of a stakeholder process." Order at 7. Thus, Distribution requests that these groups be initiated as soon as possible so that meritorious input can be provided in conjunction with this rulemaking process.

In addition, the Proposed Rulemaking mentions that a subgroup of the SEACH Inter-Company Activity Subgroup identified issues with respect to 9 specific retail areas. Distribution points out that, since the time this subgroup completed its work, NAESB has developed additional standards in the nine listed areas as well as related process flow diagrams and other

technical work products. In addition, NAESB's current Annual Plan envisions standards development on other customer choice related topics such as supplier marketing practices, supplier certification and NAESB certification checklist criteria. The Commission should clarify whether the envisioned stakeholder process will consider standards development issues identified and addressed by NAESB since the conclusion of the technical subgroup.

B. Applicability of this Rulemaking.

Distribution points out that neither the Proposed Rulemaking Order nor Annex A containing the Commission's proposed regulations address the issue of to which classes of customers these proposed rules are applicable. The notion of applicability is directly tied to the potential costs that these proposed regulations will create for customers.

Distribution submits that these proposed regulations should clarify that they are only applicable to residential and small commercial customers as these are the general customer classes the Commission's overall Customer Choice Regulations have focused on. Moreover, in Distribution's opinion, it is unnecessary for the Proposed Regulations to apply to large commercial and industrial customers as a vast majority of those customers have already chosen to receive natural gas from alternative suppliers. There is no evidence that "leveling the playing field" is necessary for these classes of customers. Distribution is unaware of any party submitting evidence at any point in any customer choice proceeding or otherwise that would suggest that there is not already viable and efficient competition among natural gas suppliers at the large commercial and industrial levels.

Expanding the scope of these Proposed Regulations to include large commercial or industrial customers is thus, unnecessary, and will potentially result in significantly increased costs to NGDCs and customers. If these Proposed Regulations were to be applicable to large commercial and industrial customers, then NGDCs would be forced to make unnecessary changes to already existing documents, systems, procedures and practices that have proven to be effective in supporting competition among those customer classes. Furthermore, these

Proposed Regulations would expand existing concepts for those customer classes, such as tolerance bands and capacity, and potentially increase overall costs.

III. Specific Comments on Proposed Regulations.

A. § 62.181. General.

NFGDC suggests removing the first sentence of the language proposed for this Section. This sentence, "The use of a common set of business practices, including standard supplier tariffs, facilitates the participation of NGSs in the retail market, reduces the potential for mistakes or misunderstandings between NGSs and NGDCs, and increases the efficiency in industry operations", is a statement of opinion and improper for a set of regulations. Moreover, to Distribution's knowledge, there is no concrete evidence that exists to support this absolute statement. The remaining proposed sentences of this Section are sufficient to describe the purpose and extent of the Subchapter.

B. § 62.182. Definitions.

1. Asset management.

The term 'Asset Management' already has an accepted use and definition on the federal level that is different from the definition supplied in the Proposed Rulemaking. To avoid any potential confusion with the Commission's definition and the way it is currently used by NGDCs, NGSs, NAESB or FERC, Distribution suggests using the term 'System Operations Assets Reliability Management." Distribution suggests adding the word 'Reliability' to the term in order to stress the importance of providing safe and reliable gas service as stated in the definition. Ultimately, system reliability is the crux of this term.

2. Balancing.

Distribution suggests adding the phrase 'as appropriate' to this Proposed Definition as follows:

> *Balancing*- The act of equalizing receipts and deliveries of gas into or withdrawals from an interstate gas pipeline or a NGDC's distribution system. Balancing may be accomplished daily, monthly or seasonally, as appropriate, with fees or penalties generally assessed for excessive imbalances.

Adding this phrase will clarify that not every time period of balancing is appropriate for each situation. In many instances, balancing must, due to contractual or other reasons, be performed over a specified time.

3. Business Practices.

This phrase is self-evident and does not need to be defined. The definition should be removed.

4. Capacity.

Distribution recommends inserting the word 'contractual' between "The" and "maximum" in the beginning of this Proposed Definition. This is because, in the wholesale natural gas industry, the maximum quantity of natural gas that can be produced, transported, stored, distributed or used in a given period of time is usually defined within a contract. Anything in excess of the contractual amount is referred to as an overrun. Adding the word 'contractual' will clarify this definition and avoid confusion.

5. Cash Out.

As proposed, this definition is overly broad and implies that a "cash out" is the only corrective measure that can be used to address an imbalance. Also, the proposed definition ignores the fact that a true "cash out" is understood to be a financial transaction made to correct an imbalance situation. For these reasons, Distribution suggests amending the definition as follows:

> *Cash Out*- A generic term used to describe an NGDC purchase from, or sale of natural gas to, an NGS as a ~~the~~ corrective measure~~s~~ taken when a NGS's imbalance of natural gas supply in the system exceeds the prescribed tolerance.

6. Gas Daily Average.

Distribution recommends using a different term for this concept because, when used in the proposed context, it is implied that Platts Gas Daily should be the sole provider of such information. Published daily index pricing is often used a basis for determining cash out pricing and NGDCs are required to report volumes purchased and sold at rates using published price indices on FERC Form 552. To avoid any confusion that could lead to a reporting error on the federal level, it would be better to align the Pennsylvania terminology with the federal terminology. Distribution suggests: **Daily Price Index**.

Furthermore, Distribution believes that any reference to Platts Gas Daily should be removed from the definition. Publication of price indices is a competitive market and numerous credible sources exist to obtain this information.[1] For the Commission to espouse Platts Gas Daily over these other sources in this Proposed Rulemaking gives that specific publisher an improper competitive edge. Further, there may exist complex copyright issues in using Platts Gas Daily in this fashion that could lead to unnecessary incremental costs to NGDCs. Likewise, standardizing the use of one particular source would put that publisher in a dominant position in any future negotiations with an NGDC or NGS attempting to license that publication for use in the proposed fashion.

For these reasons, Distribution recommends that this definition be changed entirely to read as follows:

> **Daily Price Index** – An index price for daily natural gas as published by an index provider that has met applicable federal requirements to have a particular price index location used in a FERC jurisdictional tariff.

[1] The Federal Energy Regulatory Commission (FERC) issued a Policy Statement in Docket No. PL03-3 addressing, amongst other things, the requirements that must be met to use a publishers price index for a price index location to be used in a FERC jurisdictional tariff. See, Price Discovery in Natural Gas and Electric Markets, "Order Regarding Future Monitoring of Voluntary Price Formation, Use of Price Indices in Jurisdictional Tariffs, and Closing Certain Tariff Dockets," 109 FERC ¶ 61,184 at P 39 (2004).

7. Nominations.

Distribution recommends striking the word 'precise' from the second sentence. While the listing of the quantities of gas to be transported may be precise, the route of gas through a pipeline network or an NGDC's system is not. Physical receipts at other locations often displace receipts at the nominated location when a transporter delivers a shipper's gas. In turn, the initial nominated receipts are physically delivered to other shippers. Failing to modify this definition as Distribution recommends could limit system flexibility and supply alternatives available to customers.

In addition, the word "any" in the first paragraph should be changed to "a". Finally, the last sentence of the proposed definition should be stricken, it is not the province of a regulation to determine whether or not a contract right or liability is created and it is improper to mention something that is "often" created in a regulation.

8. SCT- Supplier Coordination Tariff.

Distribution is not aware of any current requirement that the components of the proposed SCT be maintained in a document separate and distinct from a NGDC's standard tariff. However, as proposed, this definition could be read to create such a requirement. Requiring companies who currently maintain SCT-type rules as part of their overall tariffs to break these rules out into a separate volume or document would cause them to incur unnecessary costs. For this reason, Distribution recommends changing this proposed definition as follows:

> ***SCT – Supplier Coordination Tariff*** – The formal rules and regulations of a NGDC for providing NGS service to customers, <u>including</u> ~~it contains~~ a compilation of all of the effective rate schedules of a particular company and the general terms and conditions of service.

9. Storage.

This proposed definition is problematic for several reasons. First, the second and third sentences of the proposed definition are unnecessary, potentially misleading and restrictive. They should be stricken from the definition. Second, the first sentence is not well drafted and

potentially confusing. That is, does the phrase "in underground reservoirs" refer to the original location of the gas or the storage site? Also, it seems that the intent of the definition is to refer to the capacity to store gas, not the act of storing it but the proposed definition is unclear. For these reasons, Distribution recommends striking the entire proposed definition and using the following:

> ***Storage*** – A facility where natural gas is injected, usually an underground reservoir, and stored for withdrawal at a later date.

10. Timely Cycle.

The phrase "eastern time" should be added after "12:30 p.m." for specificity.

11. Additional Proposed Definition.

The proposed language of § 62.185 indicates that an NGDC shall support all four NAESB nomination cycles. The definitions, as proposed, only define three of the nomination cycles: Timely and Intraday (2 cycles). The Company proposes that a definition for the fourth or Evening Cycle be added as follows:

> **Evening Cycle**— Under NAESB pipeline standards, the nomination cycle following the Timely cycle which is due 6:00 p.m. eastern time prior to the day of gas flow.

C. § 62.183. NGDC Customer Choice System Operations Plan.

It is unclear from the proposed language of this section whether the Commission intends the Customer Choice System Operations Plan ("CCSOP") to be a one-time filing or a document that is maintained and updated as appropriate. If it is the intent for this to be a fluid document then the proposed regulations should indicate the method of updating the CCSOP.

In addition to the elements listed in proposed § 62.183(c), Distribution envisions that the CCSOP would contain routine information such as contact information, plain language explanations of business processes and other administrative details, standard agreements, forms and or contracts to be used by NGSs. Such information undergoes a natural evolution

over time and a routine process for updating should be in place. To treat such changes as if they were tariff changes would be overkill and create an unnecessary expense.

Distribution suggests that, with the exception of changes to a SCT (the change process for the SCT is defined in proposed § 62.185(b)), other changes to the CCSOP would be made deemed effective upon 30 days notice provided such changes are: (1) served as directed in proposed § 62.183(b); (2) consistent with proposed §62.185(c)(2); and, (3) not inconsistent with the NGDC's SCT, the standard SCT and or applicable Pennsylvania regulations.[2]

Apart from this suggestion, Distribution recommends clarifying the language used in proposed § 62.183(c)(4) as follows to eliminate confusion as that language is poorly drafted:

> (4) Copies of standard agreements, forms or contracts that ~~will be used by NGSs~~ define the relationship between the NGDC and NGSs.

D. § 62.184. NGDC Cost Recovery.

Distribution supports the voluntary nature of this proposed regulation as proposed § 62.184(a) clearly states that "a NGDC may include a proposed tariff rider to establish a non-bypassable reconcilable surcharge . . . [.]" This voluntary requirement must remain, otherwise, when read in conjunction with the remainder of this proposed section, the proposed regulation has the potential to mandate a base rate case for each NGDC within 5 years. Mandating a company to incur the costs of a base rate case in order to implement a non-bypassable reconcilable surcharge is an inefficient use of customer, state and intervenor resources. Thus, in Distribution's opinion the voluntary nature of this proposed regulation is important. In the same regard, the word "Until" at the beginning of subparagraph E should be changed to "When."

Furthermore, for Distribution, if the changes Distribution suggests in the Comments are made to the Proposed Rulemaking (specifically the changes to tolerance bands, imbalance trading, nominations and capacity access), Distribution may be able to implement these

[2] Distribution employs essentially the same process to make changes to its Gas Transportation Operating Procedures Manual (GTOP). The GTOP, which includes many of the same items as the proposed CCSOP, was developed as a result of Distribution's Restructuring Order in 2000.

proposed rules without significant costs. However, if Distribution's suggested changes are not made, significant costs could result – especially with respect to tolerance bands as described below. In this regard, the Statement of Vice Chairman Christy and his concern whether savings are possible in the residential retail natural gas sector, rings true.

For instance, this Proposed Rulemaking neglects the fact that, for Distribution and presumably the other Pennsylvania NGDCs, a tariff rider already exists for costs related to the promotion of competition related activities. Thus, promotion related costs could be addressed, without a time consuming and costly rate case, by way of a method that has already received Commission approval. Rather than pointing this out, proposed § 62.184 states that NGDCs need to file another rider with respect to "costs of implementing and promoting natural gas competition within the Commonwealth." This is the type of duplicity that unnecessarily increases costs for all Pennsylvania consumers. Distribution proposes amending this proposed language to allow NGDCs to recover costs related to promotion activities through already existing means.

With respect to § 62.184(c), Distribution questions how the requirement that any cost recovery surcharge will be recovered from all customers and not just customers who choose to use alternative suppliers is consistent with unbundling proposals where certain NGDC costs are recommended to be recovered only from sales customers. Minimally, cost recovery should only flow from the classes of customers to which these proposed rules would be applicable. Further, the proposed language of this subsection neglects to realize that, while limited, there do exist negotiated rate contracts between NGDCs and end users that cannot legally be modified through this rulemaking process.

E. § 62.185. Supplier Coordination Tariff, Business Practices and Standards.

1. § 62.185(c)(3)(ii) – Tolerance Bands

In this Subsection, the Proposed Regulations purport to establish a tolerance band for a deviation in the volume of gas delivered of no less than 10% of the volume nominated by an

NGS. Effectively, this would permit a NGS to over or under deliver from 90% to 110% of the amount they initially nominate. In Distribution's opinion, creation of such a wide tolerance band is unnecessary, threatens system reliability, is subject to gamesmanship by NGSs, and could dramatically impact customer costs.

First, a 10% tolerance band is overly generous and unnecessary. This is especially true in light of the remainder of the Proposed Regulations that require NGDCs to support all four NAESB nomination cycles. Distribution currently provides a daily delivery requirement to all NGSs delivering supplies under Rates Schedules SATS and MMNGS in advance of the Timely Nomination Cycle. Hence, suppliers are provided four separate nomination opportunities[3] to make that nomination. In theory, with four daily opportunities to make that number, suppliers should not need any tolerance band. Distribution's experience shows that NGSs are clearly capable of operating within a smaller tolerance band. In Pennsylvania, Distribution currently has a 2% tolerance bandwidth for SATS and 5% for MMNGS. Distribution rarely is forced to issue penalties for deliveries outside this tolerance band despite having over 40% of its annual throughput delivered by various natural gas suppliers.

Second, in Distribution's opinion, a tolerance band as wide as 10% would unnecessarily jeopardize system reliability. This becomes especially true as a NGDC adds new NGSs to its system. For instance, if a NGDC with many NGSs operating on its system experiences a cold weather event and each NGS in turn delivers only 90% of its nominated gas for that day it is easy to see how this could lead to system reliability issues. Narrower tolerance bands will help ensure that proper amounts of gas are available on an NGDC's system and allow for continued safety as greater numbers of NGSs participate.

Third, a tolerance band as large as 10% provides an opportunity for NGSs to game the system and could significantly increase costs to customers. On the coldest days, with higher gas prices, the proposed tolerance band would allow an NGS to supply only 90% of its

[3] Distribution currently supports all four NAESB nomination cycles.

nominated customer requirements. Conversely, on days with lower gas prices, the proposed tolerance band would permit an NGS to park 10% of its customer requirements for future use. Weekends during low demand periods are prime opportunities for such gaming. Particularly during shoulder months when storage injection rights are limited, a 10% or greater tolerance band could force an NGDC to cut gas purchases for its sales customers in order to balance its system. This will result in higher costs for all customers. In either scenario, a 10% tolerance band would effectively provide an NGS with an unduly discriminatory gas procurement advantage.

Rather than specify a Pennsylvania-wide tolerance band, Distribution recommends that the proposed regulation be changed so that each NGDC be permitted to develop a tolerance band that corresponds to the balancing assets available on each NGDC's system. Particularly if a NGS has access to storage capacity and all NAESB nomination cycles, lower tolerance bands are more appropriate. Alternatively, if the Commission remains adamant that a state-wide tolerance band is appropriate, Distribution suggests, for the reasons stated above, that it should be set at the lowest NGDC approved tolerance with an "at least" qualifier. As such, Distribution proposes the following language:

> ***Tolerance Band.*** A tolerance band shall provide for a deviation in the volume of gas delivered of at least 2% of the volume nominated by the NGS, thus establishing a tolerance band that spans 98% to 102% of the volume of gas nominated.

2. § 62.185(c) – Business Practices and Standards.

The language appearing at the beginning of this subsection should be removed as follows:

> (c) *Business practices and standards.* ~~The Commission may establish best business practices and standards as necessary to implement the Act, and may direct their implementation by NGDCs and NGSs.~~

The language suggested for removal is unnecessary. This entire rulemaking is the Commission's opportunity to establish practices and regulations, the additional language makes it appear that the Commission could enact further rules or regulations without following proper rulemaking procedures.

3. § 62.185(c)(3)(iii) Cash Out and Penalties.

In Distribution's opinion, the Cash Out and Penalty level tolerance band should vary by NGDC and correspond to the tolerance band determined as a result of proposed §62.185 (c)(3)(ii). Additionally, there should be a significantly punitive second pricing tier for imbalances that deviate by more than 20%. Otherwise, an NGS that does not deliver within tolerance has no incentive to deliver any gas if the penalty rate is only 10% higher. This could lead to significant system reliability issues and has the potential to create a large cost-risk for customers.

Distribution also reads proposed § 62.185 (c)(3)(iii) to contemplate that different published price index locations may be applicable to each NGDC although more than one NGDC may reference the same published price index location. Unless there is a published gas price index located at an NGDC's city gate, there are variable costs associated with transporting the gas from a price index location to the NGDC's city gate such as fuel retainage, commodity charge or applicable surcharges. To ignore these costs provides an NGS with further incentive to under deliver gas to the system, particularly during high price periods such as those experienced during Spring/Summer 2008.

In effect, while multiple NGDC's may reference pricing at the same published index point, the cost of delivering that gas to a particular NGDC's city gate will vary. As a result, each NGDC could have its own unique Cash Out Index. In recognition of these factors and consistent with other changes proposed by Distribution, the following suggested language is offered to wholly replace that in the Proposed Rulemaking:

> ***Cash out and penalties.*** An NGDC shall cash out imbalances that fall within the 2% tolerance band at 100% of the NGDC's Cash out index for the pool level. Above the 2% tolerance band and up to a 20% tolerance band, a multiplier of 110% for under-deliveries and 90% for over deliveries shall apply. Outside the 20% tolerance band, a multiplier of 140% for under-deliveries and 60% for over deliveries shall apply. In any event, during periods of gas shortage or periods of diminished balancing system asset availability, an NGDC may issue an OFO to protect the safe and reliable operation of the NGDC system.

4. § 62.185(c)(3)(iv). Nominations.

The proposed language of this subsection is contradictory and appears to be a drafting error. The referenced Timely Cycle and Intraday Cycle are two of the four NAESB nomination cycles, not additional cycles. The Proposed language could be interpreted to mean there are six total cycles. The language should be changed to the following:

> ***Nominations.*** A NGDC shall support all four NAESB nomination cycles.

5. § 62.185(c)(3)(v). Capacity.

The language of this proposed section is inappropriate for this proposed rulemaking. Capacity issues have already been addressed in the proposed rulemaking at Docket No. L-2008-2069114, specifically proposed § 62.225 of that proposed rulemaking. To include additional language in this proposed regulation invites confusion and potentially contradictory regulations. As such, this subsection should be entirely removed from this proposed regulation. In any event, Distribution hereby incorporates its comments filed at Docket No. L-2008-2069114 that address capacity issues.

6. § 62.185(d). Communication Standards and Formats.

a. § 62.185(d).

Distribution does not object to this proposed regulation with regard to customer enrollment, usage and billing and payments as these are the items covered in the NAESB retail standards to be reviewed through the stakeholder process. Similarly, development of

communication standards pertaining to NGS delivery requirements is worthy of consideration. Distribution does, however, object to the proposed applicability of such standards and formats to nominations. Such standards, which should not be confused with the NAESB nomination cycles, create the potential for conflict with NAESB wholesale gas business practices employed by interstate pipelines delivering gas to NGDCs at the city gate. This could lead to a decrease in reliability. The communications between NGDCs and interstate pipelines are and should continue to be invisible to NGSs. So long as the results of the nomination scheduling process is reliable, standardization of the process and data formats is not necessary. For these reasons, Distribution proposes removing the phrase "nominations and" from the language of proposed § 62.185(d).

Distribution is also concerned that the separate working group of technical experts that will be convened to establish electronic data communication standards and formats will mandate a one-size-fits all Pennsylvania Gas EDI standard simply because such a standard already exists for Pennsylvania EDCs.

Distribution supports proposed § 62.185(d) as it is not specific as to the means of communication. Standardization of the customer choice related data elements and specification of timing (deadlines, lead times, turnaround times, etc.) can be accomplished without mandating EDI. Other technologies exist, e.g. ACSII flat files, web-based data entry/transactions, XML providing non-EDI alternatives to accomplish the same business result. The choice of a format should be scalable to the size and technical capabilities of the NGDC and the NGSs serving those markets. A state-wide EDI requirement could provide an advantage to mass-market NGSs over those NGSs that wish to focus upon a limited number of NGDC markets.

Theses comments should not be interpreted as being anti-EDI but rather as a request for latitude. Distribution currenly accommodates customer choice related data exchange via web-

based data entry/transactions and EDI corresponding to standards applicable to New York[4] customer choice. Many of the NGSs operating in the Company's Pennsylvania service territory are also active in the Company's New York service territory. While a prospective Pennsylvania EDI Standard would likely be very similar to the New York EDI Standard, additional resources would be required on the part of both NGDCs and NGSs to make systems changes reflecting differences without actually enhancing data exchange.

Distribution recognizes that some combination utilities already employing the Pennsylvania EDI Standards for their EDCs might prefer to implement that standard for the same reason Distribution would prefer to continue offering New York EDI and web-based data entry/transactions. Other NGDCs may wish to employ other non-EDI means of exchanging data – Distribution believes that electronic data communication standards and formats can be implemented most cost-effectively if NGDCs are given latitude to chose the means best suited to their operations.

In any event, the Commission should clarify that any establishment of standards and formats under §62.185(d) will be subject to notice to the NGDC and an opportunity for NGDC comments to be heard.

b. § 62.185(d)(1).

Distribution supports the concept of NGDCs being responsible for NGS testing and certification. However, it is important to provide broad discretion in the testing requirements. First, an NGDC should not be required to test an NGS that is not licensed in Pennsylvania nor that has not applied to serve NGDC customers under the NGDC's tariff or SCT. Additionally, NGDCs should have the discretion to scale back testing under circumstances such as, but not limited, to those listed below:

- An NGS already conducts comparable data exchange with the NGDC in another jurisdiction;

[4] New York EDI standards are mostly derived from the EDI standards required for used by PA EDCs. While they are "close cousins", they are sufficiently different so as to be considered distinct standards.

- An NGS uses the same vendor as other NGSs that are already tested and certified with the NGDC; or,
- An NGS has been tested and certified by another NGDC with a certification and testing process acceptable to the NGDC responsible for the instant testing and certification.

Distribution believes this approach is not unduly discriminatory – experienced NGSs likely merit a less rigorous testing and certification process than inexperienced NGSs. Further, this approach is less taxing on NGDC resources.

The Company observes the Commission has not yet established the electronic data communications standards envisioned in §62.185 (d)(3), therefore it may be more appropriate to address this issue during the process that establishes such standards.

c. §62.185(d)(2).

If adopted, this proposed subsection would give the Commission the authority to mandate that an NGDC "install and upgrade a billing system, electronic bulletin board, software and other communication or data transmission equipment and facilities to implement established electronic data communications standards and formats." For the following reasons, this notion is inappropriate and should be removed from the Proposed Rulemaking.

Such a regulation would clearly give the Commission improper power to influence the management discretion of an NGDC. It is the province of the Commission to make and enforce regulations and the province of the management of the NGDC to decide how to meet those regulations. It is within the managerial responsibility of the NGDC to ensure that proper equipment or software is in place to meet any final form regulations. This proposed regulation would permit the Commission to overstep its bounds and make managerial decisions for an NGDC.

In addition, if the Commission were to require a certain system, software or device to be installed over another, this would give an improper competitive edge to the supplier of such a system or software or device. This should be avoided. Again, the role of the Commission is to

establish a general standard and then ensure that an NGDC makes that standard, not to tell the NGDC how best to meet the regulation.

IV. Conclusion.

Distribution respectfully requests that the Commission consider the foregoing comments in its deliberations over the Proposed Regulations.

Respectfully submitted,

Dated: Decmber 1, 2009

Lee E. Hartz

Pa. I.D. No. 87675

Assistant General Counsel
National Fuel Gas Distribution Corporation
P.O. Box 2081
Erie, PA 16512
(814) 871-8060
(814) 871-8061 *fax*
hartzl@natfuel.com