



National Fuel

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May 31, 2012

VIA ELECTRONIC FILING & U.S. MAIL

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

Re: Implementation of Act 11 of 2012
Docket Number: M-2012-2293611

Dear Secretary Chiavetta:

Enclosed for filing are the comments of National Fuel Gas Distribution Corporation in the above-referenced matter.

Please contact me at 814-871-8060 if you have any questions.

Sincerely,

Christopher M. Trejchel

CMT/cjc

Enclosure

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Implementation of Act 11 of 2012 :
: **COMMENTS**
:
:
:
: **Docket Number: M-2012-2293611**
:

**COMMENTS OF
NATIONAL FUEL GAS DISTRIBUTION CORPORATION**

TO THE PENNSYLVANIA PUBLIC UTILITY COMMISSION:

I. INTRODUCTION.

On February 14, 2012, Act 11 of 2012 (“Act 11”) was signed into law by Governor Tom Corbett. Act 11 amends Chapters 3, 13 and 33 of the Pennsylvania Public Utility Code. On May 11, 2012, the Pennsylvania Public Utility Commission (the “Commission”) entered a *Tentative Implementation Order* in this matter recommending procedures and guidelines regarding the implementation of Act 11 and allowing interested parties to file comments by May 31, 2012.

National Fuel Gas Distribution Corporation (“National Fuel” or “the Company”) submits the following Comments regarding the *Tentative Implementation Order*. National Fuel also supports the Comments of the Energy Association of Pennsylvania, of which National Fuel is a member, filed contemporaneously at this docket.

II. COMMENTS.

A. Section 1352 – Long-Term Infrastructure Improvement Plan

i. Eligible Property

The Commission should require utilities to only provide information regarding DSIC eligible property as part of their long-term infrastructure improvement plans (“LTII Plan”).

Pursuant to 66 Pa. C.S. § 1352(a) a LTII Plan must include 6 specific elements. The first required element is “identification of the types and age of **eligible property** owned or operated by the utility for which the utility would seek recovery under this subchapter.” 66 Pa. C.S. § 1352(a)(1) (emphasis added). In its *Tentative Implementation Order*, the Commission significantly expands the statutory requirement of identifying the types and age of *eligible property* to “include a review of all distribution plant, including its inventory, age, functionalities, reliability and performance.” *Tentative Implementation Order* at 8. Such broad and extensive information regarding all of a utility’s distribution plant is not relevant to an analysis of eligible property included in a LTII Plan. Consistent with the purpose of and requirements of Act 11, the Commission’s focus should be on the evaluation of eligible property rather than the entire distribution system. Furthermore, to the extent the Commission desires information on a system-wide basis, the natural gas utilities already provide a detailed analysis of all of their distribution plant in their distribution integrity management plans (“DIMP”), which specifically address plant functionality, reliability and performance.¹ To require natural gas utilities to provide information about all distribution plant in the LTII Plan would be duplicative of DIMP, would add a vast amount of unnecessary information to the LTII Plan, would delay the review of the LTII Plan, may unintentionally detract focus from the eligible property in question, and is likely to raise concerns regarding confidentiality.

ii. Construction Notices

¹ Notably, the PUC Gas Safety Division is currently in the process of completing its initial audits of all PA gas utilities’ DIMP plans. For the requirements of DIMP, see, 49 CFR §§ 192.1001 *et seq* (Subpart P).

In footnote 2 on page 8 of the *Tentative Implementation Order*, the Commission invites comments regarding how gas utilities will comply with the requirements of 52 Pa. Code § 59.38 while implementing a LTII Plan. As the rules currently stand, if a natural gas utility plans a project involving expenditures in excess of \$300,000, it should comply with the filing requirements for major construction reports, regardless of whether the project was included in a previously approved LTII Plan. However, for efficiency purposes, the Commission should consider granting a blanket waiver of the separate filing requirements of § 59.38 for projects that are included in the natural gas utility's approved LTII Plan.

B. Section 1353 – Distribution System Improvement Charge

The Commission should eliminate the account numbers for eligible property from its draft model tariff.

The Commission's model tariff attached as Appendix A to its *Tentative Implementation Order* includes the same list of eligible property as provided for in Act 11. The Commission also includes the FERC account numbers for the eligible property referenced in the list "because of the specificity the account numbers provides." *Tentative Implementation Order* at 12. However, for natural gas utilities, the inclusion of the account numbers does not provide for greater clarification and actually could lead to complexity and confusion especially during an audit. For example, anyone reviewing this provision of the tariff may likely question why piping, couplings, valves, excess flow valves, and risers all have the same account number (376) and they would certainly question a DSIC that includes any plant with an account number not appearing in the tariff (*e.g.*, transmission plant account numbers). Hence, listing the account numbers may unintentionally give the impression that the list is in some way an exclusive list that is limited to only those items falling within the few account numbers referenced. Of course, such an interpretation would be completely contrary to Act 11 and is a result that the

Commission certainly does not intend. However, due to this potential for confusion the Commission should reconsider including the account numbers in the tariff, especially since the statute clearly recognizes that there are other capital costs that are not listed but are eligible property for purposes of DSIC.² National Fuel recommends that the Commission not require listing of account numbers for eligible property in gas utility DSIC tariffs. However, if the Commission desires some reference to accounts, a more accurate way of outlining what plant constitutes eligible property for gas utilities for purposes of the DSIC is to simply include a reference in the tariff to the FERC uniform system of accounts prescribed for natural gas companies as defined in 18 CFR Part 201 together with the eligible property examples from the statute. Another alternative is for the Commission to include the full list of FERC accounts, using the FERC identifiers rather than the examples of eligible property provided in the Act 11. However, this latter proposal would add a significant amount of information to the tariff (*e.g.*, see Appendix A attached hereto).

C. Section 1354 – Customer Notice

The Commission should clarify the notice requirements set forth in the proposed model tariff.

The proposed model tariff provides that customers shall be notified “on the first bill they receive following any change” and that “an explanatory bill insert shall also be included with the first billing.” *Id.* and *Id.* at Appendix A p. 7. We presume the Commission’s intent is that the bill insert will only be required with the first billing after the DSIC is first initiated; however, as written, the customer notice provision could be read more broadly. Frequently providing routinely similar messages to customers can be counterproductive, especially information provided via bill inserts, which are typically reserved for important notifications. If utilities were

² For example, attached hereto as Appendix A is a listing of the numerous FERC accounts that will apply to couplings, depending on the type of natural gas facility being installed.

to utilize bill inserts for every change made to the DSIC, regardless of the actual impact to customers, customers may become desensitized to the bill inserts, and, therefore less likely to pay attention to the important information about DSIC being conveyed. To avoid this result, the Commission should clarify that “an explanatory bill insert shall also be included with the first billing *after implementation of the DSIC.*”

D. Section 1357 – Computation of Charge

i. Meaning of “Fully Litigated Base Rate Proceeding”

The legislature did not intend to preclude the application of an equity return rate established via a full or partial settlement of a base rate case.

Pursuant to 66 Pa. C.S. § 1357(b)(2), for purposes of computing a DSIC charge “the cost of equity shall be the equity return rate approved in the utility’s most recent fully litigated base rate proceeding for which a final order was entered.” This statutory provision raises the issue of whether the reference to a “fully litigated base rate proceeding” would preclude utilizing an equity return rate established in a base rate case that involved a partial or full settlement. In its *Tentative Implementation Order*, the Commission defines a fully litigated base rate case as “one in which all revenue requirement issues were addressed and adjudicated by the Commission in a final rate order;” but it also invited comments on this particular issue.

Initially, we note that “fully litigated base rate proceeding” is not a defined term under Act 11. As “fully litigated base rate proceeding” is not a term with an easily discernible plain ordinary meaning, we must attempt to interpret what the legislature intended by using this term.³

³ Section 1921 of the Statutory Construction Act, 1 Pa. C.S. § 1921, provides: (a) The object of all interpretation and construction of statutes is to ascertain and effectuate the intention of the General Assembly. Each statute shall be construed, if possible, to give effect to all its provisions. (b) When the words of a statute are clear and free from all ambiguity, the letter of it is not to be disregarded under the pretext of pursuing its spirit. (c) When the words of the statute are not explicit, the intention of the General Assembly may be ascertained by considering, among other matters: (1) The occasion and necessity for the statute. (2) The circumstances under which it was

National Fuel submits that the Commission correctly states that the legislature intended a fully litigated base rate proceeding to be one where the issues were addressed and adjudicated by the Commission *in a final rate order*; but the Commission mistakenly expands its interpretation to preclude full and partial settlements.

Current Commission policy encourages settlement and Commission precedent is to allow for a black box settlement in base rate cases. As is routinely recognized in settlement proposals submitted to the Commission, the acceptance of proposed settlement is in the public interest because resolution of cases by settlement rather than conducting a full hearing will avoid substantial time and expense involved in continuing to formally pursue all issues in the base rate proceeding. In base rate cases, one of the most contentious issues is the return on equity. If the Commission interprets “fully litigated base rate proceeding” as requiring a full hearing on all issues, then the return on equity established in the base rate case will rarely apply to the DSIC because a full hearing on all substantive issues is the exception and not the norm in base rate cases. As a result, the Commission’s strict interpretation will effectively preclude the application of a return on equity determined in a base rate case to a DSIC. This interpretation will have the negative effect of *discouraging* settlements contrary to the Commission’s long-standing policy of *encouraging* settlement.⁴

Additionally, it is surprising that the Commission would consider adopting a position that casts doubt on whether its final orders entered in base rate cases that involve full or partial settlement are anything but final adjudications of all issues, particularly concerning revenue requirements. A base rate case involves a significant amount of information to be produced by

enacted. (3) The mischief to be remedied. (4) The object to be attained. (5) The former law, if any, including, other statutes upon the same or similar subjects. (6) The consequences of a particular interpretation. (7) The contemporaneous legislative history. (8) Legislative and administrative interpretations of such statute.

⁴ See generally, *Settlement Guidelines and Procedures for Major Rate Cases – Statement of Policy*; 52 Pa. Code §§ 69.401 *et seq.*

the utility in its initial filing, through discovery, and through written testimony. This substantial exchange of information between the primary parties is precisely why most base rate cases settle in full or in part. Also, in a base rate case, agreements are not entered into between the parties outside the scrutiny of the Commission as all settlements and stipulations on substantive issues are subject to the final review/approval of the Commission.

Based on the above discussion, the Commission should consider full and partial settlements of base rate cases where a final order has been entered as “fully litigated base rate proceedings” for purposes of Act 11. Should the Commission choose to maintain a narrow interpretation of the meaning of “fully litigated base rate proceeding,” then the Commission should clarify that where a rate case is settled (in full or in part), the return on equity applied to the DSIC calculation for the first 2 years will be the method stated in 66 Pa. C.S. § 1357(b)(3), *i.e.*, the return on equity established by the Commission in the most recent quarterly report on earnings.

ii. Quarterly Earnings Report and Cost of Equity

The Commission should modify its cost of equity calculation in its quarterly earnings report to better reflect current market and industry conditions.

The mathematical model currently used in the Commission’s quarterly earnings report is not reflective of current market and industry conditions and should be modified for purposes of establishing a reasonable return on equity for use in quarterly DSIC calculations. Below is a table that summarizes the high and low returns on equity for natural gas companies in the quarterly earnings report, the water company DSIC return rate and the average return on equity awarded by US state regulators during the quarter as reported by SNL Financial LC.:

Year	Quarter Reported	Gas Distribution Company		Water Company DSIC Return Rate	SNL Average Awarded ROEs US Gas Utilities
		Market Indicated Common Equity Cost Rate Range – Low	Market Indicated Common Equity Cost Rate Range – High		
2012	March				9.63
2011	December	5.06	8.09	9.50	9.88
	September	5.72	7.64	9.50	9.65
	June	6.61	8.68	9.20	10.12
	March	6.81	9.03	9.20	10.10
2010	December	6.68	8.76	9.20	10.09
	September	6.77	8.83	9.50	10.43
	June	6.91	8.31	9.80	9.99
	March	NA	NA	9.80	10.24
2009	December	7.11	9.11	10.00	10.31

As shown in the table above, the *high* range of the calculated returns on equity for gas distribution companies is consistently lower than both the water company DSIC rate and the average return on equity awarded by state regulators across the nation for the quarter. Based on this information, it appears that staff’s current methodology for calculating the returns on equity for gas distribution companies is representative of neither a return on equity established in a base rate proceeding nor a standard market/industry accepted calculation.

As there is no legislative restriction on the methodology for calculating the equity return rate, the Commission has the flexibility to look beyond standard mathematical models and may use its sound judgment to modify its present method for calculating the equity return rate for gas distribution companies, thereby establishing a new method for calculating equity return rates that better reflects current market and industry conditions. Also, making the required changes to the equity return rate calculation would further show that the Commission recognizes the importance

of credit supportive ratemaking and would be consistent with the Commission's active support of best practices that reduce regulatory lag and allow for timely recovery of capital.

E. Section 1358 – Customer Protections

i. DSIC Charge Reset – Exceeding Return on Equity

The *Tentative Implementation Order* provides that, “For investor-owned utilities, reset is also required if, in any quarter, data filed with the Commission in the utility’s most recent quarterly earnings report shows that the utility **will earn** a rate of return that would exceed the allowable rate of return used to calculate its fixed costs under the DSIC.” *Tentative Implementation Order* at 17-18 citing 66 Pa. C.S. § 1358(b)(3) (emphasis added). In using the Commission’s quarterly earnings report to determine if a DSIC is under the cap, clarification is needed to specify that the cap is aligned to the “Adjusted Results” column (5) found at the far right hand of the report. A copy of the report page is provided in Appendix B. The Adjusted Results column more accurately represents what the company *will earn* as prescribed above. Utilizing the adjusted results is also consistent with 52 Pa Code §71.6(a), which provides that, “A public utility shall make annualization, normalization and ratemaking adjustments to its intrastate data to reflect, to the extent practicable, its results of operations on a ratemaking basis.”

ii. Application of DSIC Charge to All Customers

Negotiated utility service agreements should be excluded from both the application of and calculation of the quarterly DSIC.

The Commission has initially interpreted 66 Pa. C.S. § 1358(d)(1) as requiring the DSIC charge to apply to all customers with no allowed variances based on customer class. *Tentative Implementation Order* at 18. Natural gas utilities compete with other energy suppliers such as coal, oil, geothermal, electricity, propane, landfill gas, and natural gas producers to serve the energy needs of large commercial and industrial customers in their respective service territories.

The Commission recognized that in order to remain competitive, it was necessary for natural gas utilities to be able to offer competitive negotiated rates to these typically large volume customers where competitive threats exist. Having the ability to deviate from tariff rates in competitive situations has allowed natural gas utilities to retain load and revenues to the benefit of the company and all its customers. However, because natural gas utilities can only negotiate rates in competitive situations, a new additional charge via a DSIC may change the financial conditions that initially allowed the natural gas utility to negotiate a favorable agreement with the customer. At a minimum, assessing DSIC charges on customers with negotiated service agreements will make negotiations much more difficult and may result in natural gas utilities losing a number of these important customers to alternative energy sources or suppliers.

In making its initial interpretation, it seems the Commission may have overlooked language in the statute that grants it the flexibility to exclude certain customers from DSIC charges. The language in 1358(d)(1) that the Commission references on page 18 of the *Tentative Implementation Order*, standing alone, would appear to be clear and open to no other interpretation. However, statutory interpretation requires a reading of the statute as a whole. “Each statute shall be construed, if possible, to give effect to **all its provisions.**” 1 Pa. C.S. § 1921(a) (emphasis added). Section 1358(d)(1) in its entirety reads: “That the distribution system improvement charge shall be applied equally to all customer classes as a percentage of each customer’s billed revenue, **consistently with subsection (a).**” This last phrase in § 1358(d)(1) cannot be overlooked and requires a review of the provisions of subsection (a). Section 1358(a)(1) states in its entirety:

(a) *Limitation.* --As follows:

(1) Except as provided under paragraph (2), the distribution system improvement charge may not exceed 5% of the amount billed to customers **under the applicable** rates of the wastewater utility or **distribution rates of the electric**

distribution company, **natural gas distribution company** or city natural gas distribution operation. The commission may upon petition grant a waiver of the 5% limit under this paragraph for a utility in order to ensure and maintain adequate, efficient, safe, reliable and reasonable service.

66 Pa. C.S. § 1358(a)(1) (emphasis added).

Notably, the statute does not define or otherwise dictate what the “applicable distribution rates of the natural gas distribution company” are; and therefore, that determination is left to the reasonable discretion of the Commission. Hence, the Commission has the flexibility under Act 11 to exclude from application of the DSIC rates charged to a natural gas distribution company’s customers having negotiated service agreements.

Due to the competitive factors involved with providing natural gas service to customers with negotiated service agreements, National Fuel strongly urges the Commission to adopt the interpretation of the statute set forth above and exercise its discretionary authority to exclude customers having negotiated agreements from the application of DSIC charges.

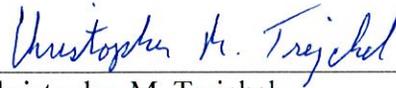
iii. Audit/Reconciliation

The proposed model tariff provides that, “Any cost determined by the Commission not to comply with any provision of 66 Pa C.S. §§ 1350, *et seq.*, shall be credited to customer accounts.” *Tentative Implementation Order* at Appendix A page 7. It is not clear that any credits that may be required will be applied through the DSIC rider, specifically in the e-factor, and not shown as a credit on individual customer account records. The Commission should clarify that credits will be addressed via the DSIC rider.

III. CONCLUSION.

National Fuel respectfully requests that the Commission take these comments into consideration in its final implementation order regarding Act 11.

Respectfully submitted,



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205. UTILITY PLANT IN SERVICE - Account No. 101.0		Couplings
	INTANGIBLE PLANT	
301	Organization	
302	Franchises & Consents	
303	Other Plant and Miscellaneous Equipment	
	MANUFACTURED GAS PRODUCTION PLANT	
304	Land and Land Rights	
305	Structures and Improvements	
306	Boiler Plant Equipment	x
307	Other Power Equipment	x
308	Coke Ovens	
309	Infiltration Galleries and Tunnels	
310	Producer Gas Equipment	x
311	Liquefied Petroleum Gas Equipment	x
312	Oil Gas Generating Equipment	x
313	Generating Equipment-Other Processes	x
314	Coal, Coke and Ash Handling Equipment	x
315	Catalytic Cracking Equipment	x
316	Other Reforming Equipment	x
317	Purification Equipment	x
318	Residential Refining Equipment	x
319	Gas Mixing Equipment	x
320	Other Equipment	x
	NATURAL GAS PRODUCTION & GATHERING PLANT	
325.1	Producing Lands	
325.2	Producing Leaseholds	
325.3	Gas Rights	
325.4	Rights of Way	
325.5	Other Land and Land Rights	
326	Other Plant and Miscellaneous Equipment	x
327	Field Compressor Station Structures	
328	Field Measuring & Regulating Station Structures	
329	Other Structures	
330	Producing Gas Wells-Well Construction	x
331	Producing Gas Wells-Well Equipment	x
332	Field Lines	x
333	Field Compressor Station Equipment	x
334	Field Measuring & Regulating Station Equipment	x
335	Drilling & Cleaning Equipment	x
336	Purification Equipment	x
337	Other Equipment	x
338	Unsuccessful Exploration & Development Costs	

205. UTILITY PLANT IN SERVICE - Account No. 101.0		Couplings
PRODUCTS EXTRACTION PLANT		
340	Land and Land Rights	
341	Other Plant and Miscellaneous Equipment	x
342	Extraction & Refining Equipment	x
343	Pipe Lines	x
344	Extracted Product Storage Equipment	x
345	Compressor Equipment	x
346	Gas Measuring and Regulating Equipment	x
347	Other Equipment	x
NATURAL GAS PRODUCTION & PROCESSING PLANT		
350.1	Land	
350.2	Rights of Way	
351	Structures and Improvements	
352	Wells	x
352.1	Storage Leaseholds and Rights	
352.2	Reservoirs	
352.3	Nonrecoverable Natural Gas	
353	Lines	x
354	Compressor Station Equipment	x
355	Measuring and Regulating Equipment	x
356	Purification Equipment	x
357	Other Equipment	x
OTHER STORAGE PLANT		
360	Land & Land Rights	
361	Structures and Improvements	
362	Gas Holders	x
363	Purification Equipment	x
363.1	Liquefaction Equipment	x
363.2	Vaporizing Equipment	x
363.3	Compressor Equipment	x
363.4	Measuring and Regulating Equipment	x
363.5	Other Equipment	x
BASE LOAD LIQUEFIED NATURAL GAS TERMINATING AND PROCESSING PLANT		
364.1	Land and Land Rights	
364.2	Structures and Improvements	
364.3	LNG Processing Terminal Equipment	x
364.4	LNG Transportation Equipment	x
364.5	Measuring and Regulating Equipment	x
364.6	Compressor Station Equipment	x
364.7	Communication Equipment	

205. UTILITY PLANT IN SERVICE - Account No. 101.0		Couplings
364.8	Other Equipment	x
	TRANSMISSION PLANT	
365.1	Land and Land Rights	
365.2	Rights of Way	
366	Structures and Improvements	
367	Mains	x
368	Compressor Station Equipment	x
369	Measuring and Regulating Station Equipment	x
370	Communication Equipment	
371	Other Equipment	x
	DISTRIBUTION PLANT	
374	Land & Land Rights	
375	Structures and Improvements	
376	Mains	x
377	Compressor Station Equipment	x
378	Measuring & Regulating Station Equipment-General	x
379	Measuring & Regulating Station Equipment-City Gate C. St.	x
380	Services	x
381	Meters	x
382	Meter Installations	x
383	House Regulators	
384	House Regulatory Installations	x
385	Industrial Measuring and Regulating Station Equipment	x
386	Other Property on Customers' Premises	
387	Other Equipment	x
	GENERAL PLANT	
389	Land & Land Rights	
390	Structures and Improvements	
391	Office Furniture & Equipment	
392	Transportation Equipment	
393	Stores Equipment	
394	Tools & Garage Equipment	
395	Laboratory Equipment	
396	Power Operated Equipment	
397	Communication Equipment	
398	Miscellaneous Equipment	
399	Other Tangible Property	

Appendix B

SCHEDULE A

Company Name:
Financial Report for Twelve Months Ended

(Thousands of Dollars)

	Actual per <u>Books</u> (1)	Intrastate <u>Percent</u> (2)	Intrastate <u>per books</u> (3)	<u>Adjustments (a)</u> (4)	<u>Adjusted Results</u> (5)
(1) Original Cost of Plant In Service			\$0		\$0
(2) Less: Depreciation Reserve			0		0
(3) Net Plant in Service	0		0	0	0
<u>Additions:</u>					
(4) Land/Plant Held for Future Use			0		0
(5) Materials & Supplies & Fuel Stocks			0		0
(6) Cash Working Capital (b)			0		0
(7) Other			0		0
<u>Deductions:</u>					
(8) Accumulated Deferred Income Taxes			0		0
(9) Liberalized Depreciation			0		0
(10) Investment Tax Credit			0		0
(11) Other			0		0
(12) Customer Deposits			0		0
(13) Customer Advances			0		0
(14) Contributions in Aid of Construction			0		0
(15) Other			0		0
(16) RATE BASE	\$0		\$0	0	\$0
(17) <u>Operating Revenues</u>			0		\$0
<u>Operating Expenses</u>					
(18) Operation & Maintenance			0		0
(19) Annual Depreciation			0		0
(20) Taxes - Other than Income			0		0
(21) State Income Tax - Current			0		0
(22) Federal Income Tax - Current			0		0
(23) Deferred Income Taxes			0		0
(24) Investment Tax Credit (Net)			0		0
(25) Total Operating Expenses	0		0	0	0
(26) INCOME AVAILABLE FOR RETURN	\$0		\$0	\$0	\$0
RATE OF RETURN - OVERALL	0.00%		0.00%		0.00%

(a) Schedule B and Schedule C

(b) As adjudicated in last rate case
or as currently calculated

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Implementation of Act 11 of 2012 :
: **CERTIFICATE OF SERVICE**
:
:
:
: **Docket Number: M-2012-2293611**
:

I hereby certify that I have this day served a true copy of the foregoing document upon the participants, listed below, in accordance with the requirements of § 1.54 (relating to service by a participant).

Via Electronic Copy To:

PUC Act 11 Resource Account
Ra-Act11@pa.gov

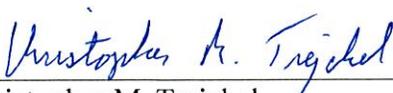
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NATIONAL FUEL GAS
DISTRIBUTION CORPORATION

Date: May 31, 2012



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