

Couch White, LLP 540 Broadway P.O. Box 22222 Albany, New York 12201-2222 (518) 426-4600 James S. King Partner

Carrier Co

1. Ch.

Direct Dial: (518) 320-3420 Telecopier: (518) 320-3492 email: jking@couchwhite.com

ORIGINAL

2008 JAN 22 FH 3:

January 22, 2007

#### <u>VIA HAND DELIVERY</u>

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

Re: Proposed Rule Making –Modification of Utility Tariffs and Interruptible Customer Fuel Inventory Requirements – New York State Register I.D. No.

PSC-49-07-00008-P

Case 00-G-0996 – In the Matter of Establishment of Criteria for Interruptible Gas Service

Dear Secretary Brilling:

Multiple Intervenors, an unincorporated association of approximately 50 industrial, large commercial and institutional energy consumers with manufacturing and other facilities located throughout New York State, hereby files an original and five (5) copies of this letter as its Comments in response to the Notice of Proposed Rulemaking, I.D. No. PSC-49-07-00008-P, which was published in the December 5, 2007 edition of the *New York State Register* ("Notice"). As set forth more fully below, it is Multiple Intervenors' position that no modifications to existing interruptible natural gas customer alternative fuel inventory requirements is either necessary or responsive to real or perceived operational or market problems.

#### **BACKGROUND**

In Orders dated August 24, 2000 and January 31, 2001, respectively, the New York State Public Service Commission ("Commission") required local distribution companies ("LDCs") to file tariff provisions requiring interruptible gas customers using distillate as an alternative fuel source (e.g., No. 2 oil, diesel, and kerosene) or those serving human needs customers, as a prerequisite of service, to maintain a minimum provable seven-to-ten days' supply of alternate fuel on-site for the heating season ("Alternative Fuel Supply Arrangement" or "AFSA"). Customers are required to switch over to the alternative fuel in the event of a gas interruption by the LDC. Customers not in compliance with this rule are charged a rate consisting of the fair market value for the alternative fuel plus ten percent.

In the August 2000 Order, the Commission held that if an interruptible customer lacks sufficient storage to hold ten days of supply, utilities will require these customers to enter the heating season with filled tanks and arrangements (e.g., contracts not dependant upon spot market purchases) for replenishment of storage tanks such that the initial storage plus replenishment equals ten days.<sup>3</sup>

Case 00-G-0996. In the Matter of Criteria for Interruptible Gas Service, Order Directing Utilities to File Revised Interruptible Gas Service Tariffs (August 24, 2000) [hereinafter August 2000 Order]; Case 00-G-0996, supra, Order Adopting Permanent Rule (January 31, 2001) [hereinafter January 2001 Order]. On April 4, 2001, the Commission exempted the St. Lawrence Gas Company, Inc. from the requirements set forth for utilities providing interruptible gas service. Case 00-G-0996, supra, Errata Notice (April 4, 2001).

<sup>&</sup>lt;sup>2</sup> The AFSA requirements are applicable to temperature control customers (i.e., customers that must switch to their alternative fuel supply at lower temperatures).

<sup>&</sup>lt;sup>3</sup> August 2000 Order at 7.

Moreover, the Commission held that the AFSA rule does not apply to direct transporters on interstate pipelines taking service through Federal Energy Regulatory Commission approved tariffs or contracts.<sup>4</sup> Importantly, the Commission also clarified that, "[i]f an individual customer elects, and such election is verifiable by the utility, to shut down an operation during a critical periods" the conditions of the AFSA rule will not apply.<sup>5</sup>

With respect to on-going replenishment, the Commission held that it does not require that customers replenish their fuel supplies on an ongoing basis to comply with the AFSA rule.<sup>6</sup> In addition, the Commission does not require customers to violate existing air permits in order to comply with the AFSA rule.<sup>7</sup>

In an Order issued November 4, 2003, the Commission held that based upon, among other things, a review of interruptible service and the comments received from interested parties, it would "not change interruptible alternative fuel inventory requirements now." However, the Commission did commence a limited study of the domestic heating industry infrastructure in New York City, Long Island and the Hudson Valley ("Study Area") to further examine potential constraints. In September 2006, ICF Consulting LCC submitted a

<sup>&</sup>lt;sup>4</sup> <u>Id</u>, at 5. The rule continues to apply to customers taking service under LDC tariffs.

<sup>&</sup>lt;sup>5</sup> Id. at 7.

<sup>&</sup>lt;sup>6</sup> <u>Id</u>. However, if the customer uses its alternative supply during periods of non-interruption, it is required to replenish fuels up to minimum levels. January 2001 Order at 26.

<sup>&</sup>lt;sup>7</sup> <u>Id</u>. at 13.

<sup>&</sup>lt;sup>8</sup> Case 00-G-0996, <u>supra</u>, Order Concerning Interruptible Gas Sales and Transportation Service (November 4, 2003) at 3 [hereinafter November 2003 Order].

Final Petroleum Infrastructure Study ("ICF Study"), which concluded that current storage capacity in these areas is adequate other than in severe extremes. Moreover, the Study confirmed that, in general, interruptible customers in the Study Area enter the heating season with adequate storage capacity.

In the Notice, the Commission requests comments in response to seven specific questions set forth in the Notice. As set forth more fully below, and in its various comments in the above-captioned proceeding, which are incorporated herein by reference, <sup>11</sup> Multiple Intervenors argues that no demonstration has been made that would necessitate modifications to the current AFSA requirements established by the Commission. It is Multiple Intervenors' position that the current AFSA requirements, coupled with the LDCs' authority to call an interruption under their respective interruptible transportation tariffs, provide sufficient protections to operational and reliability concerns.

In its "Policy Statement Concerning the Future of the Natural Gas Industry in New York State," the Commission stated that its vision for the future of the natural gas industry in New York includes, inter alia, lower gas rates and increased customer choice of service

<sup>&</sup>lt;sup>9</sup> ICF Consulting, LLC, <u>Petroleum Infrastructure Study – Final Report</u> (September 2006, p. ES-11, available at <a href="http://www.dps.state.ny.us/00G0996">http://www.dps.state.ny.us/00G0996</a> NYSERDA Final Report. <a href="http://www.dps.state.ny.us/00G0996">pdf</a> [hereinafter ICF Study].

<sup>10 &</sup>lt;u>Id</u>.

<sup>&</sup>lt;sup>11</sup> Multiple Intervenors has filed comments, *inter alia*, on July 21, 2003; December 3, 2003; and April 30, 2007 which are relevant to the issues in the Notice.

options.<sup>12</sup> As set forth below, increases to alternative fuel supply requirements will contradict the Commission's vision by imposing significant economic costs on both interruptible transportation and sales customers. Moreover, the proposed rule also limits the service options available to many consumers.

Finally, if, <u>arguendo</u>, the Commission does impose additional requirements, which it should not, such requirements should be limited to the specific geographic areas that have been conclusively shown to require remedial measures after a complete public analysis. Notwithstanding the foregoing, Multiple Intervenors supports action by the Commission to provide additional information and data to interruptible customers to assist them in preparing and planning for interruptions.

### MULTIPLE INTERVENORS RESPONSES TO THE COMMISSION'S QUESTIONS IN THE NOTICE

1. Should the Commission's Rules and Regulations Which Are Applicable to Interruptible Gas Customers Having Distillate Oil as Their Alternative Fuel Be Expanded to Include Residual Oil or All Alternate Fuel Users?

No. It is Multiple Intervenors' position that there has been no demonstration that expanding the current AFSA requirements to include residual oil and/or all other alternative fuels is necessary or warranted. In the ICF Study, the consultant concludes that, in general,

<sup>&</sup>lt;sup>12</sup> Cases 93-G-0932 et al., <u>Proceeding on Motion of the Commission to Address Issues Associated with the Restructuring of the Emerging Competitive Natural Gas Market</u>, Policy Statement Concerning the Future of the Natural Gas Industry in New York State and Order Terminating Capacity Assignment (November 3, 1998) at 4 [hereinafter Policy Statement].

both storage capacity and interruptible customer readiness in the Study Area were adequate. <sup>13</sup> Moreover, no evidence has been presented that existing AFSA requirements are inadequate elsewhere in the State. In particular, there has been no showing that the specific actions of interruptible customers utilizing residual oil as an alternative fuel have caused additional costs or operational problems for gas utilities or their customers. Accordingly, the status of the interruptible transportation market does not warrant expanding the applicability of existing AFSA requirements.

The Commission previously determined that extending the AFSA requirements to residual oil and/or other alternative fuels was unnecessary. Circumstances since such determination have not changed. In fact, the ICF Study found that "gas sales customers with residual fuel oil as backup had similar days of coverage [compared to those with distillate oil as backup]. The ICF Study determined that, before the beginning of the winter heating season, interruptible customers using residual oil had well in excess of the 7 or 10 days worth of fuel that the Commission mandates for interruptible customers using distillate oil. Thus, the ICF Study demonstrates that customers using residual oil already meet or exceed the existing AFSA requirements in place for distillate oil without applicable mandatory

<sup>&</sup>lt;sup>13</sup> ICF Study at ES-16.

<sup>&</sup>lt;sup>14</sup> November 2003 Order at 3.

<sup>&</sup>lt;sup>15</sup> ICF Study at 82.

<sup>&</sup>lt;sup>16</sup> Id.

requirements; thus, mandatory minimum standards for residual oil are unnecessary at this time.

# 2. Should On-Site Oil Storage Be Preferred, or Required, Versus Contract Commitments/Arrangements?

No. There has been no showing that the existing AFSA requirements, which allow the use of contractual commitments/arrangements, have caused additional cost or reliability issues for gas utilities or firm service customers. In fact, the ICF Study found that interruptible customers maintain adequate backup alternative fuel quantities necessary to meet the likely interruptions in gas supply.<sup>17</sup> Upon information and belief, the response of the interruptible customers, including those which utilize contractual arrangements, has been exemplary and the level of response from interruptible customers has not decreased as the severity and duration of winter increased.

It must be recognized that the imposition of any increased alternative fuel storage requirements and/or requiring interruptible customers to meet the AFSA requirements through only on-site oil storage is likely to have a chilling effect on the continued development of a competitive natural gas industry and result in significant adverse economic impacts to New York State natural gas consumers. At a minimum, if customers are required to have more than a minimum 10-day supply of provable storage capacity and/or maintain all storage on-site as a prerequisite of service, customers will be burdened with the added

<sup>&</sup>lt;sup>17</sup> ICF Study at 104.

financial responsibility of operating and maintaining oil fired equipment.<sup>18</sup> Furthermore, customers may be precluded from taking interruptible service due to the inability to acquire or maintain sufficient storage space to meet such on-site requirements.

If, in order to qualify for interruptible transportation service, customers are forced to operate and maintain dual-fuel facilities at increased levels of storage, depending on the cost of those facilities, customers may be forced to switch to more expensive firm transportation service and/or curtail or close operations in New York State. Significantly, however, firm transportation service may be unavailable for all customers seeking such service. Under either scenario, increased fuel storage requirements will impose significant additional costs on customers, which will hamper economic development in the State.

Significantly, the maintenance and operation of this equipment also will be subject to stringent environmental regulations that could adversely impact their overall operations, as well as result in an unmeasured societal impact.<sup>20</sup> The Commission previously has recognized in rejecting a proposal to require ten days of storage on-site that such a

<sup>&</sup>lt;sup>18</sup> To the extent that they are not already required to do so.

Interruptible transportation customers are, in general, the most cost sensitive consumers on the LDCs' systems. If additional alternative fuel storage requirements are imposed upon these customers, they may be forced to close, curtail or relocate operations in order to remain viable in the global economy.

<sup>&</sup>lt;sup>20</sup> Significantly, many dual fuel facilities already are subject to significant emission limitations. Even if increased environmental impacts could be avoided, it is highly improbably that the requisite permitting for increased storage capacity and emissions could be completed in a short timeframe.

requirement "is simply not practical."<sup>21</sup> "While it might indeed be helpful to have such storage, it is not clear that it is economic for many facilities to provide such storage, or even that they have the space to do so."<sup>22</sup>

Lastly, the Commission should refrain from imposing different requirements on customers based solely upon their term of service. For example, the application of more stringent requirements upon new interruptible service applicants places such customers at a competitive disadvantage with respect to existing interruptible service customers. Such discriminatory treatment may retard economic development in New York by forcing new businesses to locate elsewhere, where less restrictive rules for interruptible service exist, to conduct their business at a lesser cost.

Given that there has been no demonstration that modifications to the existing AFSA requirements are warranted, the Commission should not require or give preference to on-site storage. Instead, interruptible customers should continue to be afforded the same flexibility as currently exists to determine the most economic and least intrusive manner by which to meet the existing AFSA requirements.

<sup>&</sup>lt;sup>21</sup> August 2000 Order at 8.

<sup>&</sup>lt;sup>22</sup> <u>Id</u>.

#### 3. Should On-Site Oil Storage Requirements Differ by Geographical Location?

The ICF Study found that both interruptible storage requirements and the petroleum distribution network are adequate.<sup>23</sup> However, the ICF Study did note, but did not conclusively determine, that issues may exist with respect to distillate storage by interruptible customers on Long Island because of "the very low oil inventory carried by natural gas interruptible customers" in that region.<sup>24</sup> In addition, Long Island is the only area that the Commission has specifically referenced as having potential issues.<sup>25</sup> If. arguendo, the Commission determines that this scant evidence substantiates a need for modifications to the current rules, which it should not, such requirements should be limited to the specific geographic areas that have been conclusively shown to require remedial measures after a complete public analysis. Based on the existing record, no modifications should be made to the upstate regions.

# 4. Should Interruptible Gas Customers Be Required to Burn Their Alternate Fuel During Certain Specified Periods During the Winter Months?

No. Requiring customers to burn their alternative fuel during specified periods will create a new captive class of customers who will be dependent upon fuel oil supply during the winter months. Moreover, the timing of such a requirement – winter months – will

<sup>&</sup>lt;sup>23</sup> ICF Study at 104.

<sup>&</sup>lt;sup>24</sup> Id. at ES-12.

<sup>&</sup>lt;sup>25</sup> November 2003 Order at 9.

subject such customers to the market when prices are higher and more volatile. As such, interruptible customers may lose the economic value of interruptible service. Moreover, as demonstrated above, such a requirement may be inconsistent with applicable environmental regulations and could result in environmental harm. For example, many interruptible customers are subject to emissions limitations that may hamper or prevent their ability to abide by required burn periods. Thus, any such requirement would effectively force such customers to take more expensive firm transportation service, which may not be available, and/or curtail or close operations in New York State. In addition, required burning of alternative fuels may also have adverse environmental impacts due to increase emissions of harmful pollutants caused by such burning.

For all the foregoing reasons, Multiple Intervenors urges the Commission not to adopt required burning periods.

5. For New Applications For Interruptible Gas Service, Should On-Site Oil Storage Be Required, and If So, How Much?

See response to Question No. 2.

6. Should the Number of Days of Required On-Site Oil Storage, or Contracted Amounts, For Electric Generators That Burn Gas on an Interruptible Basis Be Modified?

As noted previously in the responses to Questions 2 and 3, the ICF Study found that current storage held by interruptible customers is adequate. There has be no demonstration

that the current AFSA requirements for electric generators is insufficient or led to increased costs or reliability issues for gas utilities or their firm service customers. Accordingly, no basis exists, at this time, to modify the existing requirements for electric generators.

### 7. Should There Be Regular/Periodic Reporting by Utilities and/or the Commission of the Price and Inventory Levels of Natural Gas?

The Commission has previously recognized that improved communications "help interruptible customers better prepare for interruptions." Regular reporting of price and inventory levels on a utility-specific basis will provide additional assistance to interruptible customers in preparing for interruptions. The ICF Study found that "interruptions are primarily weather sensitive and thus are highly correlated with price spikes [in natural gas cost]." Therefore, regular reporting of natural gas prices will allow interruptible customers to better prepare and plan for interruptions. Furthermore, information relating to inventory levels relates to the available supply of natural gas. Significant inventories indicate that additional supply is readily available and interruptions are less likely to occur. As the Commission has recognized "the ability to call upon resources and facilities used to serve interruptible customers is a critical element ensuring that service is safe and adequate."

<sup>&</sup>lt;sup>26</sup> November 2003 Order at 8.

<sup>&</sup>lt;sup>27</sup> ICF Study at 77.

<sup>&</sup>lt;sup>28</sup> January 2001 Order at 11.

important information will further increase the ability of such customers to provide their

critical service.

For the foregoing reasons, Multiple Intervenors requests that the Commission

maintain the existing AFSA requirements for interruptible customers set forth in the

respective utility tariffs. However, Multiple Intervenors urges the Commission to require

regular reporting of natural gas price and inventory levels to further assist interruptible

customers in preparing for interruptions.

Very truly yours,

COUCH WHITE, LLP

James S. King / 673/

James S. King

JSK/GEB/dp

J:\DATA\Client6 12456-\12996\Interruptible Gas 1-22-2008.doc

13