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November 28, 2018

VIA ELECTRONIC FILING

Hon. Kathleen H. Burgess
Secretary
New York State Public Service Commission
Three Empire State Plaza
Albany, New York 12223-1350

Re: Case 18-G-0553 – National Fuel Gas Distribution Corporation – Petition for Enhanced Safety Pilot Program and Energy Efficiency Initiatives

Dear Secretary Burgess:

Multiple Intervenors hereby submits this letter to clarify its position in the above-referenced proceeding. Multiple Intervenors is concerned that its positions have been misinterpreted and/or mischaracterized by National Fuel Gas Distribution Corporation ("NFG").

On August 27, 2018, NFG filed a verified petition with the New York State Public Service Commission ("Commission") (hereinafter, the "Petition"). Pursuant to notice of the Petition in the *New York State Register* (I.D. No. PSC-39-18-00007-P), Multiple Intervenors submitted a response to the Petition on October 29, 2018 (hereinafter, the "Response"). Thereafter, NFG has replied twice to Multiple Intervenors' Response – the first time in comments filed on November 9, 2018 (hereinafter, "Reply #1") and the second time in a letter filed on November 27, 2018, which also replied to comments filed by the Public Utility Law Project of New York (hereinafter, "Reply #2").

In Reply #1, NFG asserts, *inter alia*, that: (a) Multiple Intervenors "conceded the merits of the Company's proposed programs" (Reply #1 at 2); and (b) Multiple Intervenors "previously acknowledged [the proposed programs'] benefits" and perhaps "is opposing these programs merely for argument's sake" (*id.* at 4). In Reply #2, NFG asserts, *inter alia*, that: (a) the gist of Multiple Intervenors' Response is that "the programs proposed by the Petition, although meritorious, should have been presented in a base rate case" (Reply #2 at 1); and (b) Multiple Intervenors "recognize[s] the clear benefits of the programs" (*id.* at 2).

What Multiple Intervenors actually stated in its Response, however, is materially different. Multiple Intervenors addressed, initially and "in concept," the objectives sought to be achieved by NFG, not the proposed programs themselves:

> Initially, Multiple Intervenors emphasizes that it either supports or has no objection to, in concept, efforts to, *inter alia*, reduce third-party excavation damage, increase public education about the need to contact utilities before excavating to determine underground utility locations, repairing pipeline leaks, enhancing the safety of first responders with respect to the presence of natural gas, the replacement of [leak-prone pipe], and/or the implementation of cost-effective energy efficiency programs for different types of customers (provided that interclass equity is maintained).

(Response at 5.) What apparently was lost on NFG is that in the above passage Multiple Intervenors was addressing the claimed objectives, *in concept*, and not the specific programs proposed in the Petition or the utility's attempt to bypass the rate case process. Reducing excavation damage, for example, does appear to be a meritorious objective … in concept. Whether expensive new spending programs should be authorized now, outside of a rate proceeding, to attempt to accomplish such objective is another matter entirely.

Lest there be any confusion, the remainder of Multiple Intervenors' Response identified numerous, specific concerns regarding NFG's proposed spending programs, including, but not limited to, the following:

1. "the Petition essentially calls for the Commission to engage in single-issue ratemaking, outside of a rate proceeding, and outside of a context where potential alternative uses of customer funds can be considered" (Response at 5);
2. "the spending proposed in the Petition is significant, and would eliminate a potential source of funds that could be used to moderate any delivery rate increases awarded to NFG in its next rate proceeding" (*id.*);
3. "Commitments of customer funds of this type – and magnitude – should be made in the context of rate proceedings, where competing uses of customer funds and associated rate impacts can be considered holistically …" (*id.* at 6);
4. "There is insufficient information provided as to whether some or all of the proposed expenditures are meritorious, whether the amounts attributed to each program are reasonable and/or not excessive …" (*id.*);
5. "even if, *arguendo*, some or all of NFG's proposed programs appear meritorious in isolation, it is difficult to ascertain whether they represent the best use of limited customer funds as compared to other, potential uses that would be addressed in a rate proceeding but are not discussed in the Petition" (*id.* at 7); and
6. "It would make no sense for the Commission to evaluate and rule upon the five new spending programs proposed in the Petition outside of a rate proceeding, only to have a new rate proceeding be instituted shortly thereafter" (*id.*).

The materiality of NFG's proposed spending is beyond question. The utility is seeking authorization to spend $6,945,003 out of an existing deferral balance of $6,948,554, or over 99.9% of said balance. (*See* Response at 2-4 and 9.) Indeed, the proposed spending is greater than the rate relief awarded to NFG in its last fully-litigated rate proceeding. (*See id.* at 8-9.) That rate relief was authorized by the Commission following, *inter alia*, (a) the filing of a full rate case by NFG, consisting of pre-filed testimony, exhibits and proposed tariff leaves; (b) extensive discovery by Department of Public Service Staff ("Staff") and intervener parties; (c) the submission of responsive testimony and exhibits by Staff and intervener parties; (d) the submission of rebuttal testimony by multiple parties; (e) a multi-day evidentiary hearing, during which parties' positions were scrutinized under cross-examination; (f) the filing of initial and reply briefs by interested parties; (g) the issuance of a Recommended Decision; and (h) the filing of briefs on exceptions and briefs opposing exceptions by interested parties. The record in this proceeding stands in stark contrast thereto.

Multiple Intervenors' positions in response to the Petition are set forth in its Response. In evaluating those positions, the Commission should rely on the Response itself and not NFG's descriptions thereof which, as demonstrated above, misinterpret and/or mischaracterize Multiple Intervenors' positions.

Respectfully submitted,

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cc: Active Parties (via E-Mail)
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