NATIONAL ENERGY MARKETERS ASSOCIATION

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The Honorable Jaclyn Brilling
Secretary
New York Public Service Commission
Three Empire State Plaza
Albany, NY 12223-1350
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**RE: Case 10-G-0474 – Proposed Tariff Revisions of National Fuel Gas Distribution Corporation**

Dear Secretary Brilling:

The National Energy Marketers Association ("NEM")[1] hereby submits these letter comments on the December 3, 2010, filing by National Fuel Gas Distribution Corporation (NFGDC) proposing revisions to its tariff, P.S.C. No. 8 – GAS. The filing is a revision to NFGDC's September 24, 2010, proposal to change from its current rollover method for gas imbalances to the mandatory cash out of imbalances. The proposed tariff revisions originally had an effective date of January 1, 2011, but NFGDC subsequently

[1] NEM is a non-profit trade association representing both leading suppliers and major consumers of natural gas and electricity as well as energy-related products, services, information and advanced technologies throughout the United States, Canada and the European Union. NEM's membership includes independent power producers, suppliers of distributed generation, energy brokers, power traders, global commodity exchanges and clearing solutions, demand side and load management firms, direct marketing organizations, billing, back office, customer service and related information technology providers. NEM members also include inventors, patent holders, systems integrators, and developers of advanced metering, solar, fuel cell, lighting and power line technologies.

filed to utilize a February 1, 2011, effective date,[2] and the Commission approved the postponement of the effective date.[3]

NEM previously filed comments on November 29, 2010, expressing concerns about NFG's original proposal. NEM's comments suggested that: 1) the proposed tiered penalty mechanism would be burdensome and punitive to marketers and consumers; 2) the penalties that NFG is proposing to charge should be applied to the delivery rate in a competitively neutral manner;[4] and 3) the use of Dominion South Point as the cash-out index should be changed and/or explained.

In NFGDC's December 3rd filing it incorporated the following proposed revisions to the cash-out of imbalances mechanism:

- a safe harbor from the pricing tier structure such that when the system imbalances for the month are within the range 5% long to 5% short, then all imbalance holders would be subject to market pricing. (NFGDC Filing Letter at 1)(Proposed Revision to Leaf 148.14).

- "a safe harbor under which an individual Imbalance Holder would be assigned to the Market Pricing Tier without regard to its imbalance position. If the Imbalance Holder's allocated deliveries for each of the pools for which it is responsible are

[2] Case 10-G-0474, Postponement of Proposed Tariff Revisions by National Fuel Gas Distribution Corporation to Revise the Cash-Out Provisions for Gas Transportation Service, NFGDC Filing of Supplement No. 40 to P.S.C. No. 8 – GAS, November 23, 2010.
[3] Case 10-G-0474, Postponement of a Tariff Filing by National Fuel Gas Distribution Corporation to Revise the Cash Out Provisions for its Gas Transportation Service, Order, issued and effective December 1, 2010.
[4] NFGDC's revised filing does not address this issue.

> within 2% of the ADDQs provided by the Company, then the safe harbor will apply." (NFGDC Filing Letter at 2)(Proposed Revision to Leaf 148.15).

Although we remain concerned with the tiered penalty structure mechanism, NFGDC's proposal to utilize the safe harbor mechanisms as part of this mechanism represents an improvement to its originally filed proposal. Indeed, as NEM noted in its initial comments, NFGDC instructs marketers what they are required to deliver. Moreover, to the extent that one marketer over-delivers and one marketer under-delivers, system balance may be maintained in any given month. Under the original proposed tiered penalty mechanism NFG could penalize <u>both</u> of those marketers even when the net effect is for the system to be in balance.

NEM would however offer certain further modifications of NFGDC's subsequent proposed safe harbors from the penalty pricing tiers. Specifically, Proposed Leaf 148.15 should be revised so that the 2% tolerance is a 5% tolerance. Indeed, if a marketer were to be within 2% for each day of the month, it stands to reason that the marketer will be within 5% for the month. Accordingly, an alignment of both safe harbor provisions to 5% would be reasonable.

Additionally, the proposed safe harbor in Leaf 148.15 would require that, "the Imbalance Holder's **<u>total receipt volumes</u>** are within 2% of the total monthly ADDQ for each pool," (emphasis added) in order to be assigned to the Market Pricing Tier. NEM suggests that the language "total receipt volumes" be replaced with "total nominated volumes." The reasoning behind this recommendation is premised on the amount of local production tied to the NFGDC system. NFGDC has many local wells tied directly to its distribution system, and NFGDC reads the meters of many of these local production wells only once a month, allocating delivery variances (after-the-fact) back to marketers that purchase such local production. Hence, there is the potential for NFGDC to allocate local production volumes variances back to marketers so that even if a marketer's nominations met NFGDC's required ADDQ for a given day, but due to variances between local production estimates (the nomination) and actual local production volumes (the meter read), NFGDC may nonetheless deem the marketer out of tolerance.

Although proposing to move to a cash-out of imbalances methodology, NFGDC in both its original and revised proposal would also resolve imbalances through rollover under certain circumstances. NFGDC's December 3rd filing modified the proposed tariff language describing the situation under which rollover of imbalances would be utilized instead of cash out.

> **Should industry events lead to circumstances under which resolution of imbalances via cash-out is detrimental to the integrity of the Company's system**, as operating conditions permit or require, the Company may suspend the cash-out and resolve imbalances through rollover. In this case, **the Company will post notice on its web site as soon as practicable and no later than the beginning of imbalance trading**. After imbalance trading is complete, the Company shall adjust the applicable ADDQ for the next following month that operating conditions permit, upward to reconcile a net STBA deficiency in the billing month, or downward to reconcile a net STBA surplus in the billing month." (NFGDC Proposed Tariff Leaf 266.2). (Emphasis indicates revised language in December 3rd filing from original proposal).

The utility's revised filing and tariff language was meant to, "provide certainty in the procedures to apply if the cash-out were suspended," and demonstrate that it, "would not be administered arbitrarily." (NFGDC Filing Letter at 2). NFGDC states that, "It does not anticipate that this provision would be routinely implemented, if ever." (Id). NEM appreciates NFGDC's attempt to clarify the situations under which it would utilize the rollover of imbalances. However, NEM is concerned that the revised tariff language would still appear to grant NFGDC a large amount of discretion as to when to make such a determination leaving marketers with a significant degree of operational uncertainty. NEM questions whether it may be more appropriate for NFGDC to submit an emergency tariff filing or petition when it may seek to use utilize rollover for system integrity reasons rather than retain the option under Proposed Leaf 266.2. Alternatively, at a minimum, to better resolve the ambiguity as to the application of rollover and cash-out of imbalances, NEM suggests that the specific circumstances under which NFGDC envisions it would utilize the rollover method be delineated in the tariff to provide marketers with increased certainty that rollover of imbalances not be employed when it would be punitive or unreasonable in nature.

NEM appreciates the opportunity to offer further comment on NFGDC's revised proposal to change from the rollover method of gas imbalances to the mandatory cash out of imbalances.

Respectfully submitted,

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