

**nationalgrid**

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Comments

May 29, 2007

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

RE: Case 06-G-0059 – In the Matter of Issues Associated with Gas Curtailment

Dear Secretary Brillling:

On behalf of Central Hudson Gas & Electric Corporation, Consolidated Edison Company of New York, Inc., KeySpan Energy Delivery New York and KeySpan Energy Delivery Long Island, New York State Electric & Gas Corporation, Niagara Mohawk Power Corporation d/b/a National Grid, National Fuel Gas Distribution Corporation, Orange and Rockland Utilities, Inc., and Rochester Gas and Electric Corporation, enclosed please find an original and five (5) copies of Reply Comments with regard to the above-referenced case.

If you have any questions regarding this filing, please contact me.

Very truly yours,

*Roxane E. Maywalt*  
Roxane E. Maywalt

Attorney for  
Niagara Mohawk Power Corporation  
d/b/a National Grid

Cc: Active Party Service List (via U.S. First Class mail and/or E-mail)

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NEW YORK STATE PUBLIC SERVICE COMMISSION

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In the Matter of Issues Associated with Gas :  
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Case 06-G-0059

**REPLY COMMENTS ON BEHALF OF CENTRAL HUDSON GAS & ELECTRIC CORPORATION, CONSOLIDATED EDISON COMPANY OF NEW YORK, INC., KEYSpan ENERGY DELIVERY NEW YORK AND KEYSpan ENERGY DELIVERY LONG ISLAND, NEW YORK STATE ELECTRIC & GAS CORPORATION, NIAGARA MOHAWK POWER CORPORATION d/b/a NATIONAL GRID, NATIONAL FUEL GAS DISTRIBUTION CORPORATION, ORANGE AND ROCKLAND UTILITIES, INC., AND ROCHESTER GAS AND ELECTRIC CORPORATION**

Dated: May 29, 2007

NEW YORK STATE PUBLIC SERVICE COMMISSION

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Central Hudson Gas & Electric Corporation ("Central Hudson"), Consolidated Edison Company of New York, Inc. ("ConEd"), KeySpan Energy Delivery New York and KeySpan Energy Delivery Long Island ("KeySpan"), New York State Electric & Gas Corporation ("NYSEG"), Niagara Mohawk Power Corporation d/b/a National Grid ("National Grid"), National Fuel Gas Distribution Corporation ("NFGD"), Orange and Rockland Utilities, Inc. ("O&R"), and Rochester Gas and Electric Corporation ("RG&E") (collectively, the "Joint Utilities" or the "Companies") hereby submit their reply comments in response to the "Comments of Multiple Intervenors," filed May 1, 2007,<sup>1</sup> in the above captioned proceeding. The Joint Utilities submit these Reply Comments to address certain issues raised by Multiple Intervenors to ensure that the Commission has before it a full and complete record of the facts and positions of the parties in this proceeding.

<sup>1</sup> See *In the Matter of Issues Associated with Gas Curtailment*, Case 06-G-0059, "Comments of Multiple Intervenors," filed May 1, 2007 (hereinafter referenced as "MI Comments").

## **Background**

On May 1, 2007, the Joint Utilities filed initial comments in the above captioned proceeding to address the questions raised in the March Order (the “Joint Utilities Initial Comments”).<sup>2</sup> As noted above, Multiple Intervenors filed their comments on the same day. No other party served initial comments in response to the March Order.

### **General Remarks Regarding Multiple Intervenors’ Comments**

Multiple Intervenors misunderstood the Commission’s intent in commencing this proceeding. The Commission already has determined that changed circumstances have revealed potential flaws in the current curtailment scheme. In its order addressing the tariff filings that formed the basis of this generic proceeding, the Commission declared:

NFGD and National Grid have demonstrated that, as increasing numbers of customers migrate to alternative suppliers under firm arrangements, the amount of gas LDCs control and can divert to serve the needs of core customers is shrinking. NFGD, National Grid and the commentators also have uncovered potential flaws in the existing curtailment policies. As a result, further proceedings may be necessary.<sup>[3]</sup>

Rather than supporting or proposing modifications to curtailment policies to resolve the “potential flaws” identified by the Commission, Multiple Intervenors argued not only for the status quo, but to further limit LDCs’ ability to allocate scarce gas supplies during periods of curtailment. In support of its argument, Multiple Intervenors rehashed positions advanced over a decade ago to adopt the curtailment policies – including what has now been revealed as the

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<sup>2</sup> See *In the Matter of Issues Associated with Gas Curtailment*, Case 06-G-0059, “Order Commencing Additional Proceedings” (March 26, 2007) (the “March Order”).

<sup>3</sup> *In the Matter of Issues Associated with Gas Curtailment*, Case 06-G-0059; *Ordinary Tariff Filing of Niagara Mohawk Power Corporation d/b/a National Grid to Make Revisions Regarding the Company’s Gas Curtailment Procedures*, Case 06-G-0004; and, *Ordinary Tariff Filing of National Fuel Gas Distribution Corporation to Make Tariff Revisions Regarding the Company’s Gas Curtailment Procedures*, Case 06-G-0005, “Order Approving Tariff Modifications in Part and Instituting Additional Proceedings,” at 16 (December 13, 2006).

“potential flaws” in those policies - that are now under review. In so doing, Multiple Intervenors failed to address the foremost issues in a debate over a matter of significant public interest.

Where consumer interests and Multiple Intervenors’ interests depart most significantly is in the suggestion that firm large volume commercial and industrial customers are entitled to the same level of service, during curtailment, as residential and human needs customers. At best, commercial and industrial uses may be entitled to a level of plant protection that is close in priority to residential and human needs use. Moreover, Multiple Intervenors’ predictions of “significant economic losses, including job losses” resulting from a change in curtailment policy are belied by the history of curtailment, and the existence of usage-based curtailment rules in other jurisdictions (e.g., Pennsylvania).

Multiple Intervenors’ accusation that LDCs will use the availability of transportation customers’ supplies to “backstop their own supply responsibilities” is the same argument that was used by Multiple Intervenors in response to the tariff amendments filed by National Fuel and National Grid. The argument demonstrates a misunderstanding of prudent LDC supply procurement practices. LDCs purchase supply assets to meet consumption needs on the assumption that the facilities and transactions under contract will operate. Curtailments happen when those facilities and transactions fail to operate. It is an extraordinary remedy designed to address severe, unexpected and unplanned supply outages. LDCs may hold modest levels of reserve capacity (in the event of a marketer failure), but they do not, and cannot reasonably, contract for supply redundancy to the extent that Multiple Intervenors’ argument would require.

Also remarkable is Multiple Intervenors’ accusation that the LDCs are seeking economic benefits via curtailment policies. LDCs seek no economic benefit from redirecting gas to higher priority customers (*i.e.*, no premium from customers to whom the gas is redirected and no discount from the customers whose gas is redirected). On the other hand, Multiple Intervenors

seek a windfall in these circumstances through a premium measured by the higher of contract price or 125% of the highest per Mcf cost of gas in the calendar month as compensation for gas redirected during a curtailment. The Commission should not endorse Multiple Intervenors' request to allow customers to possibly benefit economically via premium compensation for gas acquired by the LDC during curtailment.

Despite the foregoing differences, Multiple Intervenors' comments reveal that on several matters the parties' positions rest on common ground. In particular, Multiple Intervenors' proposed "criteria for determining whether an LDC should implement a curtailment and the order that customers should be curtailed" is generally reasonable, except as discussed in these reply comments in more detail below.

#### **Reply to Multiple Intervenors' Comments on Questions Contained in the March Order**

##### **Question 1 – Should the distinction between short-term and long-term curtailment be eliminated? If not, what definitions of short-term and long-term, and distinctions between them, should be adopted?**

In its comments, Multiple Intervenors asserted that the Commission should maintain the current distinction between short-and long-term curtailments. At the same time, Multiple Intervenors proposed that the definition of a short-term curtailment should be modified to include a requirement that short-term curtailments may not extend beyond twenty-four (24) hours.<sup>4</sup> Multiple Intervenors also asserted that the definition of short-term curtailments should not be expanded beyond *force majeure* events, arguing that opening the door to short-term curtailments based on economic or non-emergency circumstances would provide LDCs with too much discretion and would seriously erode the rights of firm transportation customers.<sup>5</sup>

Multiple Intervenors offered no evidence to support the suggestion that the LDCs somehow benefit economically from ordering curtailments. In fact, LDCs do not benefit

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<sup>4</sup> MI Comments, at 2, 3-4.

<sup>5</sup> MI Comments at 3.

economically, as any costs or savings related to acquiring gas supply during curtailment events are passed on to customers. Moreover, when an LDC declares a curtailment event, in all likelihood the LDC will see reduced local transportation revenues. Therefore, Multiple Intervenors' suggestion that expanding the LDCs right to declare curtailment events would open the door to economic or non-emergency circumstances is without merit.

The 24-hour time frame proposed by Multiple Intervenors to define short-term curtailments should not be accepted by the Commission because curtailments are event-based. That is, no one can anticipate each and every circumstance that could trigger a curtailment and, therefore, a time frame for a curtailment event cannot reasonably be predicted or the duration pre-determined. As noted on page 8 of the Joint Utilities Initial Comments, LDC tariffs should not distinguish between short- and long-term curtailments. Rather, curtailment rules should fully enable the utilities to protect public health and safety, as well as their distribution systems, regardless of the duration of the curtailment.

**Question 2 – What criteria should guide LDCs in determining whether to implement a curtailment, and what requirements should be met before ESCO and customer-owned gas may be acquired and diverted from non-core and lower priority customers to higher priority core customers?**

In response to this question, Multiple Intervenors proposed a series of seven criteria for determining whether an LDC should implement a curtailment and the order in which customers should be curtailed in such situations.<sup>6</sup> The Joint Utilities agree with certain of the criteria proposed by Multiple Intervenors, and, in fact, follow those criteria now in determining curtailment priorities. However, some points raised by Multiple Intervenors in their proposed criteria should be rejected by the Commission.

In its proposed first criterion, Multiple Intervenors asserted that “core customers” includes “firm transportation customers” and that such core customers should only be curtailed

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<sup>6</sup> MI Comments at 4-5.

after customers with lesser priority service have been curtailed.<sup>7</sup> Multiple Intervenors argued that the Commission should not adopt any position in this curtailment proceeding that would undermine, or reverse, the core customer status of firm core transportation customers.<sup>8</sup> The Joint Utilities agree that core customers – sales and transportation -- should be curtailed after lesser priority customers. For all firm service classifications, the focus should be on character of usage, and not on source of supply. Residential and human needs customers taking firm service, such as hospitals, fall within the definition of “core customers” whether they are transporters or not. To that end, the Joint Utilities support continuation of the practice that gives priority to residential and human needs customers and to plant protection. Once the LDC declares a curtailment of lower priority sales or transportation service, the LDC can then re-allocate the freed-up supply to higher priority customers. What is needed, and currently is unavailable, is the authority to acquire and re-allocate ESCO supply otherwise destined for lower-priority transportation customers.

Additionally, for the reasons given in our initial comments, the Joint Utilities do not agree that there should be a distinction made in curtailment rules based upon the duration of a curtailment.

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<sup>7</sup> MI Comments at 5.

<sup>8</sup> MI Comments at 6.

**Question 3 – When should competitive providers be directed to maintain city gate deliveries of gas at nomination quantities, and what reasons are sufficient to excuse ESCOs and other customers from such an obligation?**

**Question 4 – At what point in the transportation chain is it appropriate for an LDC to acquire gas owned by others, and how can it be determined who holds title to the gas at that point?**

In addressing the Commission questions 3 and 4 together, Multiple Intervenors asserted that allowing LDCs to use customer-owned gas to backstop the LDCs supply responsibilities is contrary to Commission precedent and potentially will have the effect of creating a disincentive for LDCs to procure adequate supplies.<sup>9</sup> Multiple Intervenors also asserted that the LDCs have an obligation to supply the needs of their core *sales* customers, and that the LDCs' current tariff requirements provide the LDCs with sufficient measures to deal with operational and reliability concerns.<sup>10</sup>

LDCs must maintain safe operation of their respective systems. The Joint Utilities would like to emphasize that the obligation to protect residential and human needs customers exists regardless of whether the customer is a sales customer or a transportation customer. Thus, if a marketer runs short of gas for its residential/human needs customers and the LDCs are serving lower priority sales customers, the LDCs will direct gas to the marketer's residential/human needs customers. In addition, to the extent that the LDC has the obligation to serve the delivery needs of its customers is separate from the order/priority of curtailment. Having to implement curtailment based on priority of use does not indicate that the LDC is not fulfilling its obligation to serve. The LDCs' respective systems are not physically structured to allow determination of whose gas is whose – all gas received into an LDC's system is commingled. LDCs must prioritize the use of any gas in their systems to protect residential and human needs customers and the integrity of their distribution systems before serving the needs of any other commercial

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<sup>9</sup> MI Comments at 7-8.

<sup>10</sup> MI Comments at 8 (emphasis added).

or industrial customers, even those who hold “firm” service on the LDC system. The Commission should affirm that the LDCs’ determination of the priority of curtailment must allow the LDCs to continue to meet the needs of their residential and human needs customers, and to commercial and industrial customers sufficient to ensure plant protection requirements, before serving the needs of lower-priority firm transportation (or sales) customers.

Multiple Intervenors also commented that expanding the authority of the LDCs to acquire gas owned by others could have “dramatic, detrimental economic impacts on firm transportation customers.”<sup>11</sup> This supposition has no basis in fact. Multiple Intervenors offer no evidence that such an impact can, or would, occur. The Joint Utilities urge the Commission to reject Multiple Intervenors argument.

**Question 5 – What is the appropriate compensation for the party that holds title to the gas when it is acquired and diverted?**

Multiple Intervenors stated that customers should be fairly compensated for any gas that is “confiscated by the LDC at a rate equal to the higher of the customer’s contract price per Mcf or 125% of the highest per Mcf cost of gas in the calendar month.”<sup>12</sup> Multiple Intervenors asserted that such a compensation methodology is necessary to prevent a customer from being compensated less than the customer is responsible for paying to an energy service company (“ESCO”).<sup>13</sup>

As noted in the Joint Utilities’ Initial Comments, the payment based upon the market price of gas provides adequate compensation. It would be difficult, if not impossible, for LDCs to administer customer requests to reimburse the customer’s contract price. LDCs are not privy to the customers’ supply contracts and the burden of determining individual customer prices for reimbursement would be significant. Moreover, Multiple Intervenors’ proposed 125% premium

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<sup>11</sup> MI Comments at 8.

<sup>12</sup> MI Comments at 8-9 (footnote in original omitted).

<sup>13</sup> MI Comments at 9.

has no basis and should not be used as a proxy for the market cost of gas in the month of curtailment. Contrary to Multiple Intervenors' assertion, that standard does not ensure adequate compensation to the customer or ESCO from which the LDC purchases gas during an emergency situation. Rather, it potentially would provide a windfall to the ESCOs or customers, precisely the opposite of the intended result to afford adequate compensation. In fact, as most curtailment events would likely occur during the winter, when prices are relatively high, it may be that payment of the market price, *i.e.*, "the highest per Mcf cost of gas in the calendar month," at the time of curtailment already provides customers/ESCOs with a premium over their contract price. Moreover, the "higher of" nature of Multiple Intervenors' requests belies its rationale for being fairly compensated.

Therefore, the Joint Utilities request that the Commission reject Multiple Intervenors proposal that a customer be compensated at the higher of the customer's contract price of gas or 125% of the highest cost of gas for the calendar month.

**Question 6 – What is the appropriate compensation for a firm service customer expecting delivery of competitively-supplied gas that is diverted, if the customer did not hold title to the gas at the time it was diverted?**

Multiple Intervenors stated that the LDC should "presume that its customer has title to the gas confiscated" during curtailment and payments should be directed to the customer rather than the ESCO serving the customer.<sup>14</sup> The Joint Utilities disagree with Multiple Intervenors. In the Joint Utilities' initial comments, the Companies argued that the LDC should compensate the entity that has title to the gas that is diverted. Upon further reflection, the Joint Utilities would like to clarify this point. Given that the LDCs do not know who possesses title to the gas at the city gate as between the ESCO and its customer, the Joint Utilities propose that compensation for diverted gas be made directly to ESCOs, rather than to a customer, in all instances where a

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<sup>14</sup> MI Comments at 9.

customer is served by an ESCO. Customers who are not served by ESCOs would be directly compensated as described in the Joint Utilities' initial comments. Compensation to ESCOs or customers would be made pursuant to individual LDC tariffs. It would be extremely cumbersome and time-consuming for the LDCs to have to make individual payments to the ESCOs' customers in this limited emergency situation. The Joint Utilities agree with MI that any issues between the ESCO and its customers should be governed by the ESCO's contract with its customers. Simply put, the LDCs need to avoid paying for the gas twice, *i.e.*, once to the ESCO and once to the ESCO's customer. Thus, the Joint Utilities urge the Commission to allow payments of compensation for gas used by the LDC during a curtailment to be made to ESCOs (where customers are served by an ESCO) and otherwise to customers, pursuant to individual LDC tariffs.

**Question 7 – How can customers or ESCOs be encouraged to participate in voluntary curtailment arrangements, made in advance of a shortage to facilitate the diversion of gas to higher priority customers?**

Multiple Intervenors stated that the Commission could implement a gas reliability program that provides incentives for firm gas customers (in excess of their cost recovery) to voluntarily curtail in order to protect the system.<sup>15</sup>

Even if firm transportation customers were to participate in voluntary measures, the Joint Utilities must be able to resort to mandatory curtailment if and when voluntary curtailment and supply acquisition is insufficient to protect residential and human needs customers and/or the integrity of the local distribution system.

**Question 8 – How is the operation of the competitive retail market for gas supply best coordinated with the curtailment priorities needed to protect core customers?**

Multiple Intervenors did not submit any comments on this Commission question.

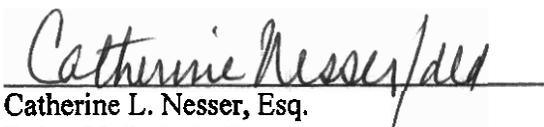
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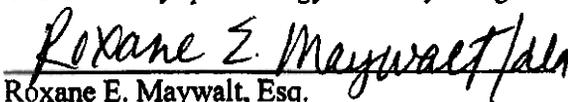
<sup>15</sup> MI Comments at 10.

**Conclusion**

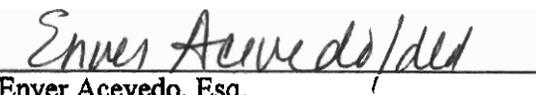
For all the above-stated reasons, the Commission should act favorably upon the recommendations in the reply comments provided herein.

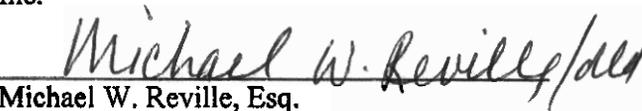
  
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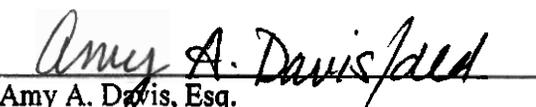
  
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Dated: May 29, 2007