

50 BEAVER STREET  
ALBANY / NEW YORK 12207-2830  
T 518.434.2163 / F 518.434.2621

**GEORGE M. POND**  
PARTNER

DIRECT DIAL 518.429.4232  
DIRECT FAX 518.427.3486  
GPOND@HISCOCKBARCLAY.COM  
ALSO ADMITTED IN: DISTRICT OF COLUMBIA

June 7, 2007

**By Hand Delivery**

Hon. Jaclyn A. Brillling  
Secretary  
New York State Public Service Commission  
Three Empire State Plaza  
Albany, NY 12223

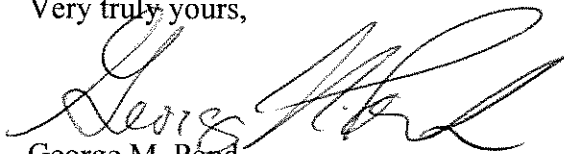
Re: Proceeding on the Motion of the Commission as to the Rates, Charges,  
Rules and Regulations of National Fuel Gas Distribution Corporation  
for Gas Service  
Case 07-G-0141

Dear Secretary Brillling:

Enclosed please find an original and five (5) copies of the Direct Testimony of Chris Kallaher for filing with the Commission in the above-referenced proceeding.

Copies of this filing have been served on all parties on the Commission's Official Service List via first-class mail.

Very truly yours,



George M. Pond  
Attorney for Direct Energy Services, LLC

GMP:cam

Enclosure (original and 5 copies)

cc: William Bouteiller, Admin. Law Judge (w/enclosure)

**BEFORE THE  
PUBLIC SERVICE COMMISSION  
STATE OF NEW YORK**

---

**Proceeding on the Motion of the  
Commission as to the Rates, Charges,  
Rules and Regulations of National Fuel  
Gas Distribution Corporation for  
Gas Service**

---

**Case 07-G-0141**

**DIRECT TESTIMONY OF  
  
CHRIS KALLAHER  
  
DIRECT ENERGY SERVICES, LLC**

**George M. Pond, Esq.  
Hiscock & Barclay, LLP  
50 Beaver Street  
Albany, New York 12207  
(518) 429-4232**

**Attorney for Direct Energy Services, LLC**

**Dated: June 7, 2007**

1   **Q:    Please state your name, nature of your present employment, and business**  
2       **address.**

3  
4   A:    My name is Chris Kallagher. I am currently employed as Director of Government  
5       and Regulatory Affairs for Direct Energy Services, LLC (“Direct”). My business  
6       address is 236 Huntington Ave., Suite 306, Boston, MA 02115.

7  
8   **Q:    Please briefly describe your education, professional experience, and**  
9       **qualifications.**

10  
11 A:    I hold a Bachelor of Science degree in civil engineering from Stanford  
12       University, and a J.D. degree from the University of Wisconsin – Madison Law  
13       School. My work experience includes approximately 19 years as a practicing  
14       lawyer in the area of public utilities regulation in a variety of settings, including  
15       several private law firms in Milwaukee and Boston, and the Massachusetts  
16       Department of Telecommunications and Energy, where I was the hearing officer  
17       on a number of cases implementing the 1997 Massachusetts Electric  
18       Restructuring Act. I was also vice president and general counsel at  
19       Essential.com, a competitive provider of energy and telecommunications services  
20       formerly located in Burlington, Massachusetts. I am admitted to practice law in  
21       Massachusetts and Wisconsin.

22  
23 **Q:    What is the purpose of your testimony?**

**DIRECT TESTIMONY OF CHRIS KALLAHER**

---

1

2 A: I am sponsoring this testimony to demonstrate that certain energy competition  
3 related elements of National Fuel Gas, Inc. ("NFG" or "Company") current tariffs  
4 should be continued and, in certain instances, enhanced.

5

6 **Q: Are you familiar with NFG's pre-filed testimony in this case?**

7

8 A: Yes. I have reviewed the testimony of Company witness Eric H. Meinl.

9

10 **Q: Please briefly describe the elements of Mr. Meinl's testimony relating to**  
11 **energy competition in your own words.**

12

13 A: The Company seeks to discontinue a number of competition related programs.  
14 Among those programs the Company seeks to discontinue are the Marketer  
15 Referral Program ("MRP"), Mass Market Migration Pilot Collaborative  
16 ("MMMPC"), Market Match, Market Expos, Competition Pilot Program to  
17 Promote Marketer Fixed Price and Other Hedged Options. In addition to the  
18 foregoing programs that the Company proposes to eliminate at the close of the  
19 current rate plan, the Company also requests Commission approval to discontinue  
20 its Purchase of Receivables ("POR") Program unilaterally and without further  
21 Commission approval upon the expiration in December of 2008 of the Joint  
22 Proposal under which that program was initially adopted.

**DIRECT TESTIMONY OF CHRIS KALLAHER**

---

1

2 **Q: What is the Company's justification, if any, for the elimination of these**  
3 **programs?**

4

5 A: According to Mr. Meidl, these programs should be eliminated because they have  
6 "served or exhausted their intended purposes" and because retail competition is  
7 "sufficiently robust" in the Company's service territory to be sustained without  
8 these programs.

9

10 **Q: Do you agree with this statement?**

11

12 A: With respect to large commercial and industrial customers, Mr. Meidl is correct.  
13 With respect to mass market customers, however, I disagree. Mr. Meidl's  
14 testimony ignores the structural advantage of incumbency currently enjoyed by  
15 the distribution utility, especially with respect to mass market customers. In some  
16 instances the programs mentioned in Mr. Meidl's testimony should not be seen  
17 simply as temporary, market-opening mechanisms but rather should be seen as  
18 necessary features of an open and robust competitive market in which non-utility  
19 suppliers can compete fairly with utilities, thus increasing consumer surplus for  
20 the customers in a particular service territory. Some provision should be made to  
21 address the utility's incumbent advantage in having established customer  
22 relationships for commodity service with all mass market customers without

**DIRECT TESTIMONY OF CHRIS KALLAHER**

---

1           having had to win those customers through any kind of competitive process. The  
2           right to serve such customers is a valuable right which the utility holds merely as  
3           a result of its position as the sole provider of local distribution service.

4

5           There are a number of ways to mitigate this incumbent advantage, especially  
6           where the exercise of customer choice would put the utility at no disadvantage,  
7           such as at the point of service initiation. The issue of how to treat the exercise of  
8           customer choice at this and other points in the customer's life cycle with a utility  
9           is a matter of permanent concern so long as the sole provider of local distribution  
10          service remains in the commodity business. Similarly, as discussed further  
11          below, the utility's purchase of supplier accounts receivable makes financial and  
12          public policy sense for all market participants and should be continued  
13          indefinitely.

14

15   **Q:    Do you have an opinion concerning the Company's proposal to eliminate a**  
16   **number of energy competition related tariff provisions as a part of its most**  
17   **recent filing?**

18

19   A:    Yes.

20

21   **Q:    Please elaborate.**

22

**DIRECT TESTIMONY OF CHRIS KALLAHER**

---

1 A: First and foremost, let me make a broad statement concerning Direct's position  
2 with respect to these programs: as nascent retail markets develop, it is necessary  
3 to continually remove barriers to entry; however, we are mindful that there is a  
4 difference between removing impediments to the maturation of an efficient  
5 markets and the mere shifting of costs from one set of customers to another. We  
6 favor the former and disfavor the latter. (We also note that the Commission will  
7 be considering the various retail access programs on a generic basis in Case 07-  
8 M-0458. Initial comments are due in that case on June 21, 2007. Direct may  
9 comment further on these issues at that time.)

10

11

12 **Q: Applying that broad philosophy, which programs must continue in order to**  
13 **eliminate barriers to entry and allow for the maturation of efficient retail**  
14 **markets for energy?**

15

16 A: In order to continue a market structure for effective competition, the following  
17 programs should be continued: Marketer Referral Program ("MRP"), Mass  
18 Market Migration Pilot Collaborative ("MMMPC"), Market Match, Market  
19 Expos, Competition Pilot Program to Promote Marketer Fixed Price and Other  
20 Hedged Options, as well as the Purchase of Receivables ("POR").

21

22 **Q: Please explain your recommendations with respect to the POR program.**

**DIRECT TESTIMONY OF CHRIS KALLAHER**

---

1

2   A:     NFG should not be allowed to unilaterally terminate the POR program as it has  
3           proposed. This program benefits customers, ESCOs and the Company itself.  
4           Customers benefit because the POR program eliminates the need for individual  
5           credit checks before an ESCO can take on a customer. As a result, all customers  
6           that qualify for utility service will also have access to ESCO alternatives under  
7           the POR program.

8

9           POR also benefits customers by reducing barriers to the entry of new market  
10          participants in NFG's service territory. With the advent of POR, customers are  
11          able to make a seamless transition from full utility service to taking supply from  
12          marketers such as Direct. POR also benefits NFG itself, since it prevents the  
13          "cherry-picking" of the utility's most financially responsible customers by  
14          ESCOs, which could dramatically increase NFG's collections problems.  
15          Accordingly, NFG's POR program should be retained as a permanent feature of  
16          NFG's retail access program.

17

18   **Q:     Besides POR, what other programs are necessary for the proper functioning**  
19           **of markets?**

20

21   A:     The MRP is another essential element in leveling the playing field. Under the  
22          marketer referral program, customers are given the option of choosing Energy



**DIRECT TESTIMONY OF CHRIS KALLAHER**

---

1 Service Company (ESCO) service. Continuation of this program is essential in  
2 order to avoid customers being pigeon holed into taking commodity service from  
3 NFG. This is especially true in NFG's service territory, in light of the customer  
4 concerns with respect to alternative suppliers noted above.

5

6 **Q: What is your opinion on whether a MMMPC should be pursued?**

7

8 A: Direct believes that the MMMPC should be continued. Pursuant to commission  
9 order, one collaborative meeting was held to explore the possibility of  
10 implementing a mass market migration pilot program ("MMMP"); that meeting  
11 was adjourned to a later date and, since then, no further action has been taken. At  
12 this juncture, Direct recommends that the collaborative process should be  
13 resumed and an MMMP should be actively pursued.

14

15 **Q: Are there any programs that you think should be discontinued at this time?**

16

17 A: Yes. The Competition Outreach and Education Programs should be discontinued  
18 at this time.

19

20 **Q: Why do you propose the elimination of the Competition Outreach and**  
21 **Education Programs?**

22

**DIRECT TESTIMONY OF CHRIS KALLAHER**

---

1 A: As the Company points out, 84% of customers are aware that they have the  
2 option of choosing an ESCO. Given that most customers are cognizant of the fact  
3 that they have a choice, we see little need at this time to continue funding this  
4 initiative.

5

6 **Q: Are there any competition related programs that should be modified at this**  
7 **time?**

8

9 A: Yes. The Market Match and Market Expo programs should be modified to  
10 recognize their success and ensure their future viability.

11

12 **Q: Why do you propose to modify the Market Match and Market Expos?**

13

14 A: In NFG's service territory, these programs were directed at the Company's 1,000  
15 largest customers. It should also be noted that nearly all NFG's large commercial  
16 load has migrated to competitive supply and, therefore, programs to facilitate  
17 their migration are no longer needed. Instead, Direct proposes that the Market  
18 Match and Market Expo programs be focused on smaller commercial accounts.  
19 Given the effectiveness of these programs in bringing about the migration of  
20 larger commercial accounts, the next logical step is to extend this program into  
21 the small commercial space. Small commercial customers typically have fewer  
22 resources to devote to energy procurement than larger industrial customers, and

**DIRECT TESTIMONY OF CHRIS KALLAHER**

---

1 the Market Match and Market Expo programs would likely provide a cost-  
2 effective means of assisting small commercial customers in finding the optimal  
3 service for their particular needs in the market.

4

5 **Q: Earlier, you mentioned that you would like to see certain enhancements to**  
6 **NFG's competition related programs. What enhancements did you have in**  
7 **mind?**

8

9 A: Direct is interested in a change to the MRP that would, over time, level the  
10 playing field between distribution companies and ESCOs with respect the  
11 provision of commodity service.

12

13 **Q: Please describe this change to the MRP that would have the market**  
14 **transforming effect that you mentioned.**

15

16 A: The MRP should be expanded to include the option of taking service from an  
17 ESCO from the point of service initiation. As discussed at the outset of my  
18 testimony, this measure is important in overcoming the inherent advantage of the  
19 incumbent, especially where there is no legitimate public policy goal that is  
20 served by limiting a customer's choice to one option at a point where, by  
21 definition, they have no commodity supplier. Over time, customers would  
22 become accustomed to the idea that at service initiation they must choose a

**DIRECT TESTIMONY OF CHRIS KALLAHER**

---

1           supplier, just as those whose homes are heated with oil know they must choose a  
2           home heating oil supplier when they move into a new home. This feature would  
3           also allow ESCOs to compete fairly with the utility and build scale over time,  
4           which would allow them to compete more aggressively on price and value added  
5           services, all to the benefit of customers.