

07-G-0141

ORIGINAL

OGC

6/4/02

6/2/02

Comments

**READ AND LANIADO, LLP**

ATTORNEYS AT LAW

25 EAGLE STREET

ALBANY, NEW YORK 12207-1904

(518) 465-9313 MAIN

(518) 465-9315 FAX

WWW.READLANIADO.COM

RECEIVED  
PUBLIC SERVICE  
COMMISSION  
EXECUTIVE CLERK

2007 AUG 28 PM 1:27

KEVIN R. BROCKS  
CRAIG M. INDYKE  
DAVID B. JOHNSON  
SAM M. LANIADO  

---

STEVEN D. WILSON

HOWARD J. READ  
RICHARD C. KING  
OF COUNSEL

**Via Hand Delivery and Regular Mail**

August 27, 2007

Hon. William L. Bouteiller  
Administrative Law Judge  
New York Public Service Commission  
Three Empire State Plaza  
Albany, NY 12223

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

Dear Judge Bouteiller:

We offer the following comments on behalf of Constellation NewEnergy-Gas Division, LLC (“CNE-Gas”) in reply to the positions submitted by the parties in the National Fuel Gas Distribution (“NFGD”) above-captioned rate case (Case No. 07-G-0141).

CNE-Gas is an active energy service company (“ESCO”) in New York, particularly in the western New York region where NFGD provides service. CNG-Gas provides service to a broad range of gas retail customers.

CNE-Gas is a subsidiary of Constellation Energy Group. CNE-Gas currently serves 1,200 commercial gas and business customers in the NFGD service territory. CNE-Gas has a proven track record of sound, competitive ESCO service. CNE-Gas serves over 4,200 accounts in 37 states, 4 Canadian provinces, and Mexico.

CNE-Gas is now seeking to offer increased competitive retail natural gas services, through participation in the NFGD ESCO Referral Program.

CNE-Gas, however, is concerned that regulatory policies may create anticompetitive and harmful retail gas service outcomes. Of particular concern is the off system sales and capacity release revenue sharing between NFGD and customers. The revenue sharing provides NFGD with an incentive to use its system and marketing personnel to sell gas and use pipeline capacity

that would otherwise be available to the gas transportation market. NFGD agreed that it's off system sales could be viewed as a competitive alternative to other pipeline users.

Thus, the Consumer Protection Board's ("CPB") 80%/20% sharing formula could lead to utility incentives that exclude competitive transportation and gas system market access. The CPB proposal should not be accepted.

Respectfully submitted,

READ AND LANIADO, LLP  
Attorneys for Constellation NewEnergy-  
Gas Division



By: \_\_\_\_\_

Craig M. Indyke

CMI/lac

cc: Active Parties (Via Electronic and Regular Mail)