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national fuel

May 18, 2007

Hon. Jaclyn A. Brilling
Secretary
Public Service Commission
Three Empire State Plaza
Albany, NY 12223-1350

Re: Proposed Tariff Amendment

Dear Secretary Brilling:

National Fuel Gas Distribution Corporation ("Distribution" or the "Company") submits the following proposed amendments to its tariff, P.S.C. No. 8 – GAS:

Leaf No. 265 Revision No. 6

The proposed changes are submitted as of the date hereof for an effective date of September 21, 2007.

Explanation of Proposed Amendments

Distribution is proposing to modify its customer aggregation tariff, Service Classification No. 19, Supplier Transportation, Balancing and Aggregation ("STBA") to conform to an update of a schedule currently contained in Distribution's Gas Transportation Operations Procedures Manual ("GTOP"). More particularly, due to higher-than-anticipated customer migration to services provided by Energy Service Companies ("ESCOs"),[1] Distribution believes that a threshold capping the level of "Elective Upstream Transmission Capacity," as provided in the STBA tariff, and currently expressed in the GTOP, may be achieved earlier than expected by the Company.

The Company's proposed amendment, if approved, would memorialize, in the tariff, a cap on the level of capacity utilized by ESCOs to meet the Company's firm upstream capacity requirement for STBA service. Currently, the Company's GTOP states as follows:

[1] Since December 2006, customers have migrated to ESCO service at a rate of approximately 3,500 per month, reaching a total of 82,300 as of May 2007. For the same period last year, the rate of migration was approximately 400 per month.

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> Collectively, Suppliers may demonstrate capacity to serve approximately 128,000 STBA customers or 24% of the core market. . . . Over this customer level, approximately 50,000 additional STBA customers may be served under the Voluntary Critical Capacity Release Program . . . .

The above provision reflects the current division of Elective Upstream Transmission Capacity into two parts: ESCO-provided capacity (the "Marketer Program"), and released Distribution capacity (the "Voluntary Program"). Insofar as Distribution's tariff reflects the Commission's capacity allocation policies for the then-ongoing retail competition transition period, there is no provision in Distribution's tariff or GTOP for capacity allocations beyond the threshold migration levels identified above. At the time the Company's Elective Capacity thresholds were established, it was assumed that the Commission would address the issue of capacity allocation on a prospective basis at a later date in connection with the efforts of Natural Gas Reliability Advisory Group ("NGRAG"). That assumption turns out to have been correct, as the NGRAG has issued a White Paper recommending that the Commission direct LDCs to end the current "voluntary" capacity model in favor of "mandatory capacity assignment, " with "modifications to accommodate marketers who currently bring capacity used to serve core customers." Case 07-G-0299, *Staff White Paper on Capacity Planning and Reliability* ("White Paper") at 16 (issued March 14, 2007).

Prior to the issuance of the White Paper, Distribution filed a base rate case ("Rate Case") that included a proposal for mandatory capacity release similar to the approach recommended in Staff's White Paper. <u>See</u> Case 07-G-0141, *Direct Testimony of John J. Polka* (January 2007). As explained in Mr. Polka's testimony, the Company is proposing to eliminate the current "Voluntary Capacity" option and replace it with a "Marketer Program" and a "Company Program." The Marketer Program would operate as a continuation of the current marketer capacity option. The Company Program would allow marketers the choice of either released LDC capacity or marketer-supplied capacity. If, however, the threshold level of marketer capacity were exhausted, the Company Program – limited at that point to released LDC upstream capacity – would become mandatory.

Very simply stated, the threshold level expressed in the GTOP and set forth above represents the level above which the Company will need to impose a mandatory capacity requirement. **For this filing, the Company is proposing to explicitly state the threshold level as a maximum of 112,600 Dth/day of marketer-provided upstream capacity**. If the marketer option is permitted to continue beyond 112,600 Dth/day, the Company will be unable to shed its remaining critical capacity assets without jeopardizing reliability, as explained in Mr. Polka's testimony filed in the Rate Case. Had the rate of customer migration continued at historic levels – as was reasonably anticipated by the Company - the current capacity program would have been sufficient to maintain system reliability until well after the Commission issued an order addressing the Company's Rate Case. However, because the rate of migration has far exceeded expectations, there is a risk that the critical capacity threshold level will be achieved before an order is issued in the Rate Case in December 2007 (for an effective date in January 2008). The purpose of this filing is to seek approval of the Marketer Program threshold level, at 112,600 Dth/day, well before that late date.

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## Effect of Proposed Amendment

The proposed amendment, if approved, would have no incremental effect on revenues or expenses. Until the threshold level is achieved, there would be no effect on the Company's STBA service or retail access program. Upon the achievement of the threshold level, ESCOs would be required to take an allocation of Distribution's upstream pipeline capacity as provided in the tariff (or otherwise as necessitated by the circumstances). Other impacts of approval (or denial) are described in Mr. Polka's testimony filed in the Rate Case. Approval of this filing will not alter the Company program for capacity release proposed in the Rate Case.

## Newspaper Publication

Notice of the Company's proposed tariff amendment will be published in accordance with Public Service Law §66(12) and applicable regulations.

## Contact Information

In addition to the undersigned, please send information relating to this filing to the following individual:

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## Conclusion

For all of the foregoing reasons, Distribution respectfully requests that the Commission approve the proposed tariff amendment for an effective date of September 21, 2007.

Respectfully submitted,

Michael W. Reville