national fuel

September 15, 2010

Hon. Jaclyn A. Brilling
Secretary
Public Service Commission
Three Empire State Plaza
Albany, New York 12222-1350

Re: Case 07-G-0141, National Fuel Gas Distribution Corporation

Dear Secretary Brilling:

On June 28, 2010, National Fuel Gas Distribution Corporation ("Distribution" or the "Company") filed a request with the Public Service Commission ("Commission") to extend the Company's Conservation Incentive Program ("CIP") for an additional year beginning December 1, 2010 ("Request"). On September 3, 2010, an organization known as People United for Sustainable Housing, or PUSH, filed comments in opposition to the CIP renewal request. On September 7, comments were filed by Public Accountability Initiative ("PAI") and Citizens Campaign for the Environment ("CCE").[1] For its reply to the Commenting Parties, Distribution submits the comments that follow.[2]

A. Comments

1. PUSH Seeks a Re-Purposing of CIP from a Conservation and Efficiency Program to a Customer- and Company-funded Program to Benefit PUSH's Targeted Agenda

CIP follows the statewide model for utility conservation and efficiency programs established through numerous orders issued in Case 07-G-0141[3] and the generic Energy Efficiency Portfolio Standard ("EEPS"), Case 07-G-0548.[4] As more fully explained in the

[1] Given the commenting parties' common complaints about CIP, their comments are referred to herein collectively as "Commenting Parties" unless otherwise stated.

[2] In response to the request of counsel for Distribution the Secretary granted Distribution the authority to submit the instant reply out of time no later than September 15, 2010.

[3] See, Case 07-G-0141, *Order Approving the Continuation of National Fuel Gas Distribution Corporation's Conservation Incentive Program with Modifications* (issued October 19, 2009).

[4] See, e.g., Case 08-G-1004 et al., *Order Approving "Fast Track" Utility Administered Gas Energy Efficiency Programs With Modifications* (issued April 9, 2009) ("Fast Track Order").

Company's Request, CIP was approved by the Commission in 2007. CIP includes a residential appliance rebate program administered by Distribution and a third-party rebate vendor, a low-income usage reduction program ("LIURP"), and a commercial and industrial customer rebate program. The latter two programs are coordinated by Distribution and administered at the customer level primarily by the New York State Energy Research and Development Authority ("NYSERDA"). CIP also includes an outreach and education program. CIP programs are funded by Distribution's customers through a surcharge included in rates.[5]

In 2007, the Commission approved a budget of $10.8 million for CIP. In 2009, the Commission approved Distribution's request that the budget be decreased to $10.3 million to reflect the Company's reductions in spending for outreach and education. In its Request for Year 4 of CIP, Distribution is proposing to further reduce the CIP program budget from the current level of $10.3 million to approximately $10.1 million, including $3.4 million allocated to residential appliance rebates, $1.52 for non-residential rebates, $1.5 million for outreach and education, and $2.94 million, or 29 percent of total funding, for the low-income weatherization program.

The allocation of program funding established by the Commission upon the initial approval of CIP was as follows: "We . . . adopt Staff's proposal to apply approximately half the funds to the rebate programs; a quarter to the low-income customer usage reduction program; and, a quarter to outreach and education." Case 07-G-0141, *Order Approving Conservation Incentive Program* (issued September 20, 2007) at 12. Since 2007, the share of program funds allocated for low-income programs has grown to 29 percent because Distribution reduced its spending on customer outreach and education, and therefore total program expense.

Although there are differences in detail, the Commenting Parties have a common request to increase funding for CIP's low-income weatherization program with monies currently dedicated to CIP appliance rebates and customer outreach and education. The Commenting Parties also appear to oppose CIP's current customer funding mechanism and would apparently prefer that the Company pay for CIP programs with its own earnings, or augment customer funds with a charitable donation in an amount equal to the CIP program budget of $10.3 million.[6] All of the Commenting Parties dislike CIP on the merits and are in agreement that it is (a) too modest with respect to low-income customer benefits; and (b) too generous with respect to all other customers.

[5] A sizable and growing piece of the CIP surcharge funds NYSERDA statewide energy efficiency and conservation programs that are not restricted to Distribution's service territory. Although the Commenting Parties opposed the use of customer funds for CIP programs in Distribution's service territory, they did not oppose the use of customer funds for NYSERDA's statewide programs.

[6] While the Commenting Parties unambiguously demand a reallocation of CIP spending, it is unclear whether they support ratepayer funding of the weatherization programs they advocate. They are very critical of ratepayer funding of CIP. PUSH implies that the Company should "pay for its own CIP." It has been reported through the media that PUSH wants the Company to "match" the CIP budget "with its own money," and "put three-quarters of the fund into weatherizing low-income homes and put poor people to work at living wages . . . " Rod Watson, "National Fuel clueless about community" *The Buffalo News*, September 9, 2010. *Accord*, PAI Comments at 2, item no. 4. This suggests that PUSH wants both ratepayer funding and the Company "match," for a total of $20.6 million, dedicated to PUSH's agenda.

The Commenting Parties are requesting a fundamental shift in the focus of CIP from that of a conservation and efficiency program for all customers, to a program that "would include:

- Increased emphasis on weatherization in low-income neighborhoods;
- A requirement that weatherization projects funded through CIP require that contractors train and hire workers from high-poverty census tracts and meet standards for the use of women and minority owned contractors; and
- Stronger integration with other weatherization efforts.

(PUSH Comment at 1-2). These goals go well beyond the scope of CIP and the EEPS programs, and even the Commission's jurisdiction.

While recognizing the importance of funding low-income programs "as part of any efficiency portfolio," the Commission, in 2009, made an explicit decision to withhold additional funding in order to "maintain a policy that favors balance." Case 07-M-0548, *Order Establishing Targets and Standards for Energy Efficiency Programs* (issued May 19, 2009) at 15 ("May 19, 2009 Order).[7] Distribution does not fault the Commenting Parties for their focus on the needs of low-income communities and in the case of PUSH, low-income customers on Buffalo's west side. Distribution disagrees, however, with the Commenting Parties' demands that CIP be changed in such ways as to depart from the Commission's goal of reducing energy usage by customers in *all* neighborhoods, of *all* income levels, throughout Distribution's service territory.

CIP's emphasis on customer rebates reflects the Commission's intent and is one of the EEPS foundational elements. As a result, the Commenting Parties' complaints about the basic architecture of CIP are, by extension, complaints about all gas and electric rebate programs in New York, and not about CIP's performance.

2. PUSH Wants to Redistribute CIP Program Benefits from All Customers to Low-Income Customers Regardless of Cost and Effectiveness

PUSH's basic agenda is to allocate most CIP funds to low-income customers, and particularly low-income customers on Buffalo's west side. This is unfair to all customers who are already paying for CIP as well as other assistance programs that Distribution offers and which produce lower bills for low-income customers.

Viewed most favorably to the Commenting Parties, it appears that they are arguing that, on a system-wide basis, the effectiveness of low-income weatherization programs exceeds that of appliance rebates. That is, in order to hold forth in the context of statewide energy conservation and efficiency objectives, the Commenting Parties would need to establish that, dollar for dollar spent, conservation and efficiency gains are higher for low-income weatherization programs than they are for appliance rebate programs. This requires a comparison of program "TRC's", or evaluations of each program's total resource cost, to establish program efficacy.

[7] The Commission's decision regarding the proper allocation of funding was not exclusively on the merits. Rather the Commission determined that with the amount of federal stimulus and other funds allocated to home weatherization, now was not the time to increase spending in that area. May 19, 2009 Order at 17.

In the EEPS proceeding the Commission evaluated the TRC of programs offered through CIP and similar programs across the state. Although measurement and valuation of conservation programs continues apace, so far the data support maintenance of programs offering rebates to retrofit homes and businesses with more efficient appliances. While low income weatherization programs are a Commission priority, they simply do not produce the same return on investment – in terms of financial, energy efficiency, environmental and social returns – as appliance rebate programs. The Commission's decision in 2007 to allocate one-quarter of CIP funds to low-income weatherization was supportable then, and is supportable now.

Indeed, the CIP allocation for low-income programs, at twenty-five percent when initiated and at twenty-nine percent today – significantly exceeds the allocation for low-income programs established in EEPS for electric companies. There the Commission articulated a "policy decision that 20% of the residential fast-track programs should be oriented toward low-income customers." Case 07-M-0548, *Order Establishing Energy Efficiency Portfolio Standard and Approving Programs* (issued June 23, 2008) at 40. Although the Commission also said that "the question of whether a definitive target should be established for low-income customers for the EEPS as a whole requires further development," Id., n. 24, that question is reserved for "the next phase of [the EEPS] proceeding," and certainly cannot be answered here.

3. PUSH's Other Demands

i. PUSH's Request for Mere "Substantive Dialogue" is Not Credible

PUSH states that is attempting "to engage National Fuel in a productive dialogue." Its conduct since it launched its campaign against the Company cannot be fairly characterized that way. Instead, PUSH has used public protests and media campaigns as a platform for its increasing demands on the Company to underwrite PUSH's agenda with customer funds, through the re-allocation of CIP program funding, and company funds, with a $10 million charitable contribution. The Commenting Parties' comments in opposition to CIP are the latest round of PUSH's continuing efforts to advance its agenda ahead of the interests of all customers, regardless of location or income level, throughout Distribution's service territory.[8]

ii. PUSH's Request to Suspend CIP Would Harm Program Performance and Jeopardize Contractor Jobs

The Commenting Parties' request to stay the implementation of CIP pending Distribution's being directed to engage in "substantive dialogue" with PUSH should be rejected. Not only is the request to engage in "substantive dialogue" unduly vague, the resulting delay in CIP program benefits would not serve the public interest. The Company has established a consistent and workable infrastructure enabling vendors and contractors to provide CIP services to customers. Suspending CIP would undoubtedly result in project delays and cancellations, jeopardizing contractor employee jobs. Suspension would also cause other unnecessary and undue burdens on the Company, participating vendors and contractors, and customers seeking to install energy efficiency measures to reduce their energy usage.

[8] PUSH is located on Buffalo's west side and focuses its activities there. Not until PUSH filed its comments in this proceeding and enlisted the assistance of the CCE and PAI did PUSH purport to broaden its focus to include low-income customers in other neighborhoods.

iii. PUSH's Request for a Public Hearing Lacks Merit and Should be Rejected

PUSH's request for a public hearing "to facilitate community dialogue" should also be rejected. The balance of CIP funding was established by the Commission as part of a public process, and the current proceeding meets public notice requirements under the State Administrative Procedure Act and Commission rules. Accordingly, a public hearing is not necessary to inform the Commission's decision. Moreover, PUSH's record with Distribution suggests, strongly, that it seeks a hearing not to "facilitate . . . dialogue," but to organize public opposition in an arena that bears the imprimatur of the state. PUSH's issues regarding the allocation of program benefits were addressed on the merits in the EEPS proceeding. Granting a hearing to address matters that have already been addressed serves no valid purpose.

B. Specific Remarks

Although the Commenting Parties broadly condemn CIP, PAI submitted a list of eight specific "issues" to support its case. They are, together with Distribution's response, as follows:

1. *PAI claims that CIP is funded with a "hidden tax."* CIP is funded through a surcharge included in customer rates. CIP funding was approved by the Commission in a public proceeding and is identical in method to conservation and efficiency surcharges applied by every utility in New York. The CIP surcharge in practical application is no different than the system benefits charge ("SBC") included in other electric and gas utilities' rates.

2. *PAI claims that CIP is one of two hidden "conservation taxes" in the delivery adjustment charge.* Distribution's RDM was approved by the Commission and is consistent with Commission policy to remove rate design disincentives to conservation. It is an established ratemaking tool supported by regulators and environmental advocates and used in multiple jurisdictions.

3. *PAI claims that CIP fails to address the needs of low-income customers in Buffalo.* PAI's argument about the proportion of CIP spending on LIURP is addressed above. Like PUSH, PAI wants CIP funding for rebates, which primarily benefit middle-income homeowners, to be reallocated to low-income programs. PAI's request is inconsistent with the EEPS model and lacks any demonstration that weatherization is more effective than rebates, or that rebates are not an effective conservation tool.

4. *PAI claims that Taxpayers are already footing the bill for "National Fuel's failure to fund low-income conservation efforts."* Distribution has not failed to fund low-income conservation efforts. In fact, Distribution is paying more than what the Commission has found to be an appropriate level of such efforts. HEAP pays the gas bill for thousands of customers, and Distribution will continue to facilitate HEAP funding, on behalf of its customers, to keep homes heated.

5. *PAI claims that "Customers should not be charged for National Fuel's public relations effort."* CIP outreach and education is not used for public relations. It is designed to reduce customer usage. Public education is proven means of

changing consumer behavior regarding energy usage. Surveys continue to show that customers respond to conservation messages when the utility is the messenger.[9] Even though outreach and education is an important component of CIP, the need for it has decreased since program inception. In 2007 the Commission approved a CIP outreach and education budget of $2.94 million. Since then, Distribution has reduced the budget in each successive year, to $1.5 million proposed for CIP Year 4 to reflect the fact that the message has already "gotten out" and now needs only to be reinforced. Savings from reduced expenditures on outreach and education flow back to customers by reducing the CIP surcharge.

6. *PAI claims that CIP weatherization costs per home are too low*. LIURP is administered by NYSERDA through its existing, and established, EmPower program. Per-house costs average $3200. PAI believes that more should be spent, but does not identify how much more. Distribution does not oppose PAI's request for more information or reject the possibility that more might be done. LIURP's performance is evaluated by Distribution and NYSERDA on a continuing basis. If improvements are indicated, efforts will be made to see that they be undertaken.

7. *PAI claims that low-income outreach efforts are underfunded*. Distribution is reviewing PAI's claim that the Company has underspent funding for low-income outreach and education. Whether there is a benefit to spending more money on outreach and education, however, is debatable, given that there is a backlog of pending low-income weatherization projects Nevertheless, the Company is exploring this matter.

8. *PAI claims that the low-income weatherization program fails to leverage existing weatherization funds.* LIURP is administered by NYSERDA through its EmPower program, as noted above. To Distribution's knowledge, NYSERDA also coordinates federal stimulus programs through its network of contractors, state agencies and authorities, and other utilities. Distribution is currently involved in discussions with other providers of low-income housing services to improve coordination of projects. There certainly is no reason why further coordination should not be explored.

C. Conclusion

Although the Commenting Parties are pursuing a community service agenda, their demands go beyond the scope of the instant proceeding and what is reasonably achievable through CIP. The Company's Request to extend CIP another year is consistent with the Commission's prior orders relating to CIP, and the Commission's orders and directives in the EEPS. The Commenting Parties' demands regarding the balance of program funding for CIP is contrary to the Commission's pronouncements regarding the "balanced portfolio" approach adopted in EEPS, and in orders approving CIP. For all of these reasons, the Commenting

[9] Customers participating in Company surveys have consistently valued the Company high as an important and effective source of energy efficiency information.

Parties' comments should be rejected and the Company's Request for renewal of CIP for a fourth year beginning December 1, 2010 should be approved.

Respectfully submitted,

Michael W. Reville
National Fuel Gas Distribution Corporation
6363 Main Street
Williamsville, NY 14221
716/857-7313
revillem@natfuel.com