BEFORE THE NEW YORK STATE
PUBLIC SERVICE COMMISSION

Proceeding on Motion of the Commission	**)**	
as to the Rates, Charges, Rules and Regulations of	**)**	**Case 16-G-0257**
National Fuel Gas Distribution Corp. for Gas Service	**)**	

INITIAL BRIEF OF THE NATIONAL ENERGY MARKETERS ASSOCIATION

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I. Introduction

A. Procedural History

On April 28, 2016, National Fuel Gas Distribution Corporation (hereinafter "NFG") filed proposed tariff amendments and a base rate increase. In the filing, NFG sought an annual revenue increase of approximately $41.7 million, that would result in a net aggregate bill increase of approximately 7.89%. Parties filed direct and rebuttal testimony, conducted discovery and hearings were held before Administrative Law Judge Lecakes on October 5, 2016, through October 7, 2016. As particularly referenced in this brief, EnergyMark filed Direct Testimony of Gary Marchiori, Timothy Wright and Cragg Chaffee on August 26, 2016. At the hearing, no cross examination of the EnergyMark panel was taken. The EnergyMark panel advocated that NFG's capacity release program be modified to provide ESCOs with access to new receipt points and also to offer volumetric capacity release. The EnergyMark panel also discussed the impact of offsystem sales and capacity release credits that are only applied to utility sales customers and advocated that those credits should benefit both sales and transportation customers. The EnergyMark panel explained how the reflection of those credits in the utility Price to Compare has a negative impact on the retail marketplace. NEM submits this Initial Brief to similarly recommend adoption of these measures.

X. Retail Access Issues

C. Capacity Release Program

The EnergyMark panel advocated in its testimony that ESCOs should be provided with access to gas supply points recently acquired by NFG. (10/6/16 Tr. 1980) NFG recently contracted for capacity on Empire Pipeline for reaching the Pennsylvania Marcellus region, and EnergyMark recommended that this should be shared with ESCOs. (Id.) NFG's Gas Supply Administration Panel rebuttal testimony stated that mandatory upstream transportation capacity (MUTC) that is allocated to participating marketers is a Tennessee Gas Pipeline (TGP) firm capacity path through shale producing regions of Ohio and Pennsylvania with firm delivery rights at the TGP/NFG Supply Rose Lake interconnection. (10/6/16 Tr. 2221) NFG's Gas Supply Administration Panel rebuttal testimony maintained that the Empire capacity was acquired to, "aid in serving customers and filling storage, located on the north side of the system" and that "[l]limiting the MUTC allocation to TGP capacity at the overall Weighted Average Cost of Capacity ("WACOC") rate alleviates marketers from managing small allocations of capacity from each pipeline and storage and the burden of meeting regional daily delivery quantities required to balance the system." (10/6/16 Tr. 2222) The NFG Gas Supply Administration panel maintained in cross examination that,"[i]f we start allocating capacity like that to marketers now, what's - - it's going to complicate the program because what will happen is marketers now will be issued multiple DDQs for multiple parts of the system and we believe that the majority of the marketers that are participating in the program on our system would not prefer that." (10/6/16 Tr. 2241)

Rather than relying on the utility's opinion of ESCOs' relative ability and desire to have access to other gas supply points, ESCOs should be actively engaged in that decision. Over the years, ESCO sophistication has increased, and with that increased sophistication comes an increased need for flexibility in access to capacity assets so that ESCOs can find ways to best leverage assets to serve their customers. In addition, low cost Marcellus supplies have had significant impacts on the market. ESCOs should have the ability to capitalize on this opportunity to serve their customers with improved access to low priced Marcellus supplies. A reexamination of the capacity release program, that has essentially remained unchanged since its inception, is warranted to reflect the game-changing impacts of the Marcellus production basin.

The EnergyMark panel also recommended that ESCOs should be offered volumetric capacity release. (10/6/16 Tr. 1980) Currently, sales of capacity by NFG are limited to a reservation-only based offer. (Id.) The EnergyMark panel explained that volumetric capacity release would, "increase capacity release revenues and better match market needs, especially to the power generation market," and that it would increase reliability of service for power generators. (10/6/16 Tr. 1980) NFG's Gas Supply Administration Panel rebuttal testimony argued that, "offering volumetric rate releases would reduce revenues by cannibalizing the Company's current demand rate releases." (10/6/16 Tr. 2224) Marcellus gas supplies have resulted in changes in the direction of natural gas flow. Simultaneously, the increase in reliance on natural gas fired generation has made it more difficult for marketers to get capacity. EnergyMark's proposal merits consideration to address these challenges.

D. Offsystem Sales/Capacity Release Credits

The EnergyMark panel explained in its testimony that the credits for capacity release and off-system sales are included in the Gas Supply Adjustments and applied only to utility sales service customers. (10/6/16 Tr. 1979). The EnergyMark panel noted that the uneven application of these adjustments to only sales service customers impacts the utility's Price to Compare and ESCOs relative ability to offer price competitive products. (10/6/16 Tr. 1979-1980) In cross examination of NFG's Gas Supply Administration Panel, it was affirmed that the offsystem sales revenues over the last three years have resulted in a credit of sufficient magnitude to significantly affect the utility's Price to Compare. (10/6/16 Tr. 2229) NFG's Gas Supply Administration Panel argued in its Rebuttal Testimony that the offsystem sales credits offset the costs associated with its need to balance daily system deliveries and is, "compensation to the sales customers for providing system balancing service to the marketer's customers." (10/6/2016 Tr. 2219). It maintains that it, "utilizes its sales customers' pipeline and storage assets to balance deliveries across the entire system each day." (Id.)

To the extent that the utility's pipeline and storage assets were paid for by all ratepayers, all ratepayers should share in the benefits resulting from their use. Likewise, the need for NFG to balance the system does not result from ESCO gas deliveries alone, it results from NFG's use of the system to serve its sales service customers as well. NFG has constructed the capacity program and the corresponding complexity of balancing that is required. ESCOs merely perform within those constructs. Accordingly, the reasons proffered by NFG do not support restricting the application of the offsystem sales and capacity release credits to only sales system customers. The credits should be applied for the benefit of both utility sales service customers and transportation customers.

Moreover, to the extent that the offsystem sales and capacity release credits are distorting and artificially dampening the utility Price to Compare, it harms all consumers, shopping and non-shopping, that make energy purchasing decisions based on this misleading and confusing information. The application of the offsystem sales and capacity release credits to the Price to Compare makes the utility commodity price bear less resemblance to current market pricing conditions. Other adjustments are also made on a retroactive basis to the utility Price to Compare, such as through the gas cost reconciliation mechanism, that compound the problem. (10/6/16 Tr. 2243) By extension, ESCO product and service offerings, that are based on current market conditions, are made to falsely appear to be less competitive.

Conclusion

NEM respectfully urges that the changes to NFG's capacity release program and offsystem sales and capacity release credits set forth herein be included in the Administrative Law Judge's recommendations to the Commission.

Sincerely,

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