

**National Fuel Gas Distribution Corporation’s
Written Testimony for Joint Legislative Hearing on the
State Fiscal Year 2024-2025 Executive Budget Proposal
Environmental Conservation
February 7, 2024**

National Fuel Gas Distribution Corporation (“National Fuel” or the “Company”) appreciates the opportunity to submit testimony for the Joint Legislative Hearing on the State Fiscal Year 2024-2025 Executive Budget Proposal with respect to Environmental Conservation. Specifically, National Fuel offers this testimony in opposition to S.8308/A.8808 Part P, titled as the Affordable Gas Transition Act (“AGT Act” or the “Act”).

National Fuel is a gas-only distribution utility providing natural gas service to meet the heating needs of 1.6 million people in western New York. Nearly ninety percent of homes and businesses in our service territory rely on natural gas for space heating, and ninety-three percent of National Fuel’s customers are residential customers. The provision of safe and reliable service is of paramount importance to National Fuel as its service territory routinely experiences frigid temperatures and extreme winter weather events. Recent examples include record-breaking heavy snowfall in portions of the service territory in November 2022 that resulted in downed powerlines and power outages for thousands of western New York homes and businesses and the dangerous December 2022 Christmas blizzard that wreaked havoc throughout National Fuel’s service territory and caused extended power outages for more than 100,000 electric customers. Despite these power outages, National Fuel’s underground natural gas system again proved its resilience to such winter events and continued offering uninterrupted service to its customers. Throughout the four-day emergency, many of our customers without access to power were able to rely on other natural gas appliances such as water heaters,

fireplaces and stoves to maintain safe levels of warmth. National Fuel’s utility service has a 99.999% reliability rating.

The AGT Act authorizes the Public Service Commission (“PSC” or “Commission”) to discontinue portions of the gas distribution system to meet the goals of the Climate Leadership and Community Protection Act (“CLCPA”) and makes sweeping amendments to the Public Service Law to change the obligation to serve of gas companies, expressly altering the consumer right for the continued provision of gas service and erroneously determining that natural gas service is unnecessary for the preservation of the health and general welfare in the State. While the Act includes language that nods at critical concepts of safe, reliable and affordable energy services, it suffers from the flawed premise that the CLCPA requires discontinuance of the natural gas system and irresponsibly advances forceful curtailment language that is unnecessary given the comprehensive proceedings currently pending before the Commission addressing these complex issues in a manner that does not jeopardize energy service and remove fundamental rights for customers.

The CLCPA Does Not Mandate Discontinuance of the Natural Gas System

National Fuel opposes this legislation as a general matter because a core premise of the bill, that use of the natural gas distribution system must be curtailed or discontinued in order to meet the emission reduction goals of the CLCPA, is patently inaccurate. The CLCPA does not mandate curtailment or discontinuance of the natural gas system, and the continued operation of a decarbonized natural gas system is entirely consistent with attainment of the CLCPA’s emission reduction goals. The approximately 50,000-mile natural gas pipeline system in New York can be available to transport low- and no-carbon energy like renewable natural gas (“RNG”) in the near-term and hydrogen in the future, providing a reliable source of dispatchable

energy for New Yorkers during those inevitable times when the electric system is not functioning and/or renewable sources like wind and solar do not generate sufficient energy.¹ The existing natural gas system can also be used to pursue a hybrid heating approach that pairs a high-efficiency natural gas furnace with an air source heat pump to facilitate additional electrification in the state in a way that can minimize costs and strain on the electric grid and provide greater reliability than can be offered by a single energy source. This redundancy is particularly valuable in regions of the State like western New York that experience colder temperatures and are prone to severe winter weather events and would be prematurely jeopardized if the provisions of the AGT Act that encourage curtailment or discontinuance of material portions the natural gas system are enacted.

A Systematic Review of the State’s Energy Systems is Already Underway

Adoption of the Act’s extreme provisions is unnecessary given the ongoing gas planning process being conducted by the PSC in Case 20-G-0131 (“Gas Planning Proceeding”) and related individual utility gas planning dockets (e.g., Case 22-G-0610 for National Fuel). The Gas Planning Proceeding is focused on ensuring that natural gas utilities continue to provide safe and reliable service during the State’s energy evolution. Planning for this evolution involves the examination of a number of complex issues which may impact each gas utility differently given that each utility’s service territory is unique. As noted above, reliability is an extremely important issue for National Fuel as our service territory frequently experiences frigid temperatures and extreme winter weather events often with corresponding power outages. Other

¹ In its *2023 – 2032 Comprehensive Reliability Plan*, the New York Independent System Operator finds growing risks to the reliability of the grid, including: generator deactivations, extreme weather, uncertain demand trends due to electrification, and slow or delayed development of new generation resources. See, <https://www.nyiso.com/documents/20142/2248481/2023-2032-Comprehensive-Reliability-Plan.pdf/c62634b6-cdad-31dc-5238-ee7d5eaece04?t=1701203618895>.

issues being addressed in the proceeding include: affordability; the pace of electrification and the ability of the electric system to reliably provide all of New York’s heating needs in each region of the State; the future role of alternative fuels, such as RNG and hydrogen; future capital investment in the gas distribution system; and potential changes to PSC policy concerning new applications for service and main and/or service line extensions.

National Fuel is the first utility to go through the initial planning process outlined in the Gas Planning Proceeding, which resulted in the Company submitting a final long-term plan to the PSC on July 17, 2023 (“Long-Term Plan”). The Long-Term Plan included a number of decarbonization actions, including energy efficiency, electrification, industrial customer programs, thermal energy networks, renewable natural gas and hydrogen. Pursuant to the PSC order regarding the Company’s Long-Term Plan², National Fuel will further explore these decarbonization actions to inform its next long-term plan to be filed in three-years. For example, the Commission’s LTP Implementing Order directs the Company to, among other things:

- Monitor the evolution of the RNG market and include updated RNG purchase/interconnection data in the Annual Update to the Long-Term Plan and in the Company’s next long-term plan.³
- Include in its next long-term plan scenarios that feature the blending of hydrogen into the natural gas system and the use of hydrogen targeted to specific customers.⁴
- Develop a pilot project to test hybrid heating options, to be filed with the Commission by June 30, 2024.⁵

² In the Matter of a Review of the Long-Term Gas System Plan of National Fuel Gas Distribution Corporation, *Order Implementing Long-Term Natural Gas Plan with Modifications*, Case 22-G-0610 (December 14, 2023) (“LTP Implementing Order”).

³ LTP Implementing Order, p.32.

⁴ LTP Implementing Order, p. 34.

⁵ LTP Implementing Order, p. 63.

Adopting the AGT Act is inappropriate given that viable decarbonization actions, such as alternative fuels and hybrid heating, are still under consideration by the PSC. Indeed, the Scoping Plan developed by the Climate Action Council to facilitate meeting CLCPA goals includes strategies and guidance in its *Gas System Transition Framework* relative to the consideration of alternative fuels (RNG and hydrogen) and dual-fuel and hybrid heating pathways in future gas system planning and expressly acknowledges that “[i]nvestments in traditional infrastructure will still be necessary to maintain reliability and safety and to achieve emissions reduction targets using a decarbonized gas system.”⁶

In addition to the Gas Planning Proceeding, the PSC has also initiated a proceeding in Case 22-M-0149 aimed at implementation of the CLCPA (“CLCPA Implementation Proceeding”). As directed by the Commission in that proceeding, the major New York utility companies (“Joint Utilities”), including National Fuel, submitted a proposal for a *Greenhouse Gas (GHG) Emissions Reduction Pathways Study* on March 31, 2023 that analyzes the scale, timing, costs, risks, uncertainties, and customer bill impacts of achieving reductions in GHG emissions from the use of the gas distribution system including a vision for decarbonization that reflects individual utility service territory characteristics, all in order to constructively seek solutions to reliably and cost-effectively achieve CLCPA goals. The Joint Utilities’ proposal is still pending before the PSC.

Gas utilities like National Fuel are required to provide safe and adequate service at just and reasonable rates. Determining how to reconcile those mandates with the requirements of the CLCPA is a complex process that is better suited to the existing Gas Planning and CLCPA

⁶ New York State Climate Action Council Scoping Plan Report, Chapter 18. Gas System Transition (December 2022), pp. 360-362.

Implementation Proceedings than to the irresponsibly broad statutory changes included in the AGT Act that encourage the discontinuance of portions of the natural gas distribution system yet provide no clear safeguards around the adverse impacts on system pressure and reliability that will inevitably impact customers in contiguous areas. Given the numerous complex issues being considered in the Gas Planning and CLCPA Implementation Proceedings, it is inappropriate to adopt the provisions in the AGT Act – effectively, a ban on gas for designated neighborhoods - before the future role of the gas distribution system has been clearly defined. National Fuel believes that statutory changes impacting the provision of gas service in New York should be informed by these proceedings and the utility-specific long-term plans evaluated by the PSC. Once these proceedings have matured, and the *GHG Emissions Reduction Pathways Study* is complete, the Legislature will be in a better position to review the issues and determine whether any statutory changes are required.

The AGT Act Undermines Critical Provisions of the All-Electric Buildings Act

A measured approach to the evolution of the natural gas system is consistent with certain provisions of the All-Electric Buildings Act passed in last year’s final budget, where the Governor and Legislature acknowledged that there will be situations in which electric service cannot be reasonably provided by the electric grid and included multiple exemptions and a reliability carve-out in the legislation to that effect.⁷ The AGT Act ignores the agreement negotiated in good faith last year, and includes provisions that could render the exemptions and reliability carve-out meaningless by authorizing and encouraging the PSC to unilaterally remove a reliable alternative to electrification. Manufacturing facilities, commercial food establishments, laundromats, hospitals and other medical facilities, manufactured homes, etc., as

⁷ New York Energy Law § 11-104.

well as facilities with back-up and standby power systems that thought the exemptions in the All-Electric Buildings Act would allow them to receive continued service via the natural gas system may find that is not the case if they are located in a neighborhood where the Commission deems the natural gas system should be discontinued, or if located in a contiguous neighborhood where service is negatively impacted or prevented by that discontinuance.⁸

The Act Modifies Fundamental Consumer Protections Codified in the Public Service Law

Perhaps the most concerning aspect of the AGT Act is its modification of New York Public Service Law § 30, *et al* which goes beyond just altering a natural gas utility's obligation to serve. Public Service Law § 30 is the foundation of the Home Energy Fair Practices Act (Public Service Law §§ 30-53) ("HEFPA"), a 1981 statutory change that established as State policy the continued provision of gas, electric and steam service as necessary for the preservation of the health and general welfare of residential customers and as in the public interest. Prefaced by a strong statement of legislative purpose, HEFPA and its implementing regulations provide numerous procedural safeguards to ensure provision of residential utility services, especially during the cold weather season when the lack of those services may pose a serious threat to a customer's health.⁹ The AGT Act unravels this policy determination by the legislature and modifies Public Service Law § 30 such that the provision of natural gas service is no longer considered necessary for the preservation of the health and general welfare of residential

⁸ New York Energy Law § 11-104(7).

⁹ *Consolidated Edison v. Jones*, 444 N.Y.S.2d 1018, 111 Misc. 2d 1 (Civil Ct. City of New York 1981).

customers, thus elevating compliance with the CLCPA over the critical safety and reliability concerns that underpin the enactment of HEFPA.

There is absolutely no basis for such an immediate and dramatic shift in State policy when, as discussed above, the continued utilization of the natural gas system is of utmost importance for customers who rely on it for heating in regions like National Fuel's service territory that experience frigid temperatures and severe winter weather. These changes in the AGT Act fundamentally alter the foundation of consumer protection requirements under the Public Service Law, the foundation for regulating pipeline delivered natural gas as a public utility, and the foundation for treating utility service differently than unregulated commercial products. In the wake of these changes, customer choice relative to critical energy decisions would be severely jeopardized and unilateral determinations could be made by the Commission to curtail or discontinue sections of the natural gas system without appropriate checks and balances. Given these potential consequences, the AGT Act's seismic changes in the Public Service Law are not warranted, particularly where the CLCPA itself does not require them.

Conclusion

National Fuel appreciates the opportunity to submit this testimony and respectfully opposes adoption of the Affordable Gas Transition Act.