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File #: 157181

October 5, 2022

***VIA ELECTRONIC FILING***

Rosemary Chiavetta, Secretary  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
400 North Street, 2nd Floor North  
P.O. Box 3265  
Harrisburg, PA 17105-3265

**Re: National Fuel Gas Distribution Corporation Supplement No. 246 to Tariff Gas - Pa.  
P.U.C. No. 9  
Docket No. R-2022-**

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Dear Secretary Chiavetta:

Enclosed for filing on behalf of National Fuel Gas Distribution Corporation (“Distribution” or the “Company”) is Supplement No. 246 to Tariff Gas – Pa. P.U.C. No. 9 (“Supplement No. 246”). In this filing, Distribution is proposing to update the Company’s tariff Rule No. 33 (and other associated tariff pages) and the related Data Security Agreement and Self Attestation. Supplement No. 246 is being filed with an issue date of October 5, 2022 and an effective date of December 5, 2022.

The filing is organized as follows:

- Appendix A – Statement of Reasons.
- Appendix B – Company responses to the Commission’s Filing Requirements Concerning Changes in Tariff contained in 52 Pa. Code § 53.52(a).
- Appendix C-1 – Supplement No. 246 and Revised Data Security Agreement (clean).
- Appendix C-2 – Supplement No. 246 and Revised Data Security Agreement (redline).

Rosemary Chiavetta, Secretary  
October 5, 2022  
Page 2

The Company requests that the following be entered as counsel for Distribution in this proceeding:

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Distribution has served a copy of this filing on all active parties in Docket No. C-2020-3019621. In addition, Distribution will also provide notice to all natural gas suppliers (“NGSs”) at its October 19, 2022 “Marketer Meeting” to be held by conference call. The Company will also post the instant filing on its website and notice will be sent via e-mail to all NGSs operating in its service territory. Additionally, the Company will mail notice to all NGSs operating in its service territory.

Distribution’s counsel are authorized to receive all notices and communications regarding this filing. Please direct any questions regarding this matter to the undersigned.

Respectfully submitted,



Anthony D. Kanagy

ADK/kl  
Enclosures

cc: Certificate of Service

## **CERTIFICATE OF SERVICE**

**C-2020-3019621**

I hereby certify that a true and correct copy of the foregoing has been served upon the following persons, in the manner indicated, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant).

### **VIA EMAIL ONLY**

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Date: October 5, 2022

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Anthony D. Kanagy

# APPENDIX A

**STATEMENT OF REASONS**

In this filing, National Fuel Gas Distribution Corporation (“Distribution” or the “Company”) proposes Supplement No. 246 to Tariff Gas – Pa. P.U.C. No. 9 (“Supplement No. 246”), which revises Rule 33 (and other associated tariff pages) and the related standard Data Security Agreement (“DSA”) and Self Attestation (“SA”). Distribution proposes revisions to Rule 33 and the DSA and SA that (1) incorporate feedback from natural gas suppliers (“NGSs”) received by Distribution during a collaborative process, and (2) decreases the minimum cybersecurity coverage requirement from \$5,000,000 to \$2,000,000 in light of changing market conditions.

On June 14, 2019, Distribution filed Supplement No. 207 to Tariff Gas – Pa. P.U.C. No. 9 (“Supplement No. 207”) and the associated DSA and SA with the Commission at Docket No. R-2019-3010744. No complaints or interventions were filed, and Supplement No. 207 was approved by the Pennsylvania Public Utility Commission (“Commission”) on August 20, 2019. *National Fuel Gas Distribution Corporation, Supplement No. 207 Tariff Gas Pa. P.U.C. No. 9*, Docket No. R-2019-3010744 (Order entered Aug. 29, 2019).

Thereafter, Distribution was served with a Formal Complaint by EnergyMark LLC, Vineyard Oil & Gas Company, Mid American Natural Resources LLC, and Total Energy Resources LLC at Docket No. C-2020-3019621 (the “DSA Complaint”), which *inter alia* challenged the cybersecurity requirements contained in the DSA and SA. While the DSA Complaint proceeding was pending before the Commission, Distribution hosted a collaborated with Pennsylvania NGSs that provide service in Pennsylvania on Distribution’s system to discuss and evaluate possible revisions to the Pennsylvania DSA and SA. As a result of the feedback received, Distribution agreed to adopt and propose changes to the DSA and SA, including: a

revision to the auditing requirements that confirms a third-party auditor will be used; an affirmation that the NGS (included in the term “ESE”) will determine and implement the necessary Data Protection Requirements needed to be in compliance with the DSA and SA; elimination of the requirement that an NGS will require a third-party representative that is not connected to Distribution’s system to abide by the DSA and SA; and a confirmation that no encryption in transit is required for email communications. A copy of the DSA and SA which incorporated these proposed revisions was entered into the record at Docket No. C-2020-3019621 as NFGD Exhibit CC-2.

On January 12, 2022, the Administrative Law Judge Dennis J. Buckley issued an Initial Decision dismissing the DSA Complaint (“DSA I.D.”). The DSA I.D. also denied Distribution’s request to approve the revised DSA and SA, and explained that “[t]ariff revisions need to be filed with the Commission with appropriate notice to all potentially affected parties.” DSA I.D. at 28. The Commission subsequently affirmed the Initial Decision by final Opinion and Order entered April 14, 2022, at Docket No. C-2020-3019621 (“DSA Order”), including the DSA I.D.’s denial of the Company’s request to approve the revised DSA and SA.

With the exception of the cybersecurity insurance provisions and certain SA provisions discussed below, the revisions to the DSA and SA proposed in this filing track the revisions previously proposed by Distribution at Docket No. C-2020-3019621, which were based upon the feedback Distribution received from NGSs during a collaborative process. As noted above, these revisions include:

- a revision to the auditing requirements that confirms a third-party auditor will be used;
- an affirmation that the NGS will determine and implement the necessary Data Protection Requirements needed to be in compliance with the DSA and SA;
- elimination of the requirement that an NGS will require a third-party representative that is not connected to Distribution’s system to abide by the DSA and SA; and

- a confirmation that no encryption in transit is required for email communications.

Consistent with the DSA I.D. and the DSA Order, Distribution is filing these proposed tariff provisions with the Commission and providing appropriate notice to all potentially affected parties. Distribution submits that the proposed revisions resolve NGSs' previously-identified concerns with the DSA and SA, and more closely align the DSA and SA with the versions of those documents that apply in New York (which the NGSs previously identified were preferable).

Supplement No. 246 includes some revisions to the SA to provide greater specificity regarding the requirements for certain security controls and to account for developments in available anti-virus technology. Supplement No. 246 also decreases the minimum cybersecurity insurance coverage requirement set forth in Rule 33 and the DSA from \$5,000,000 per incident to \$2,000,000 per incident. Supplement No. 207 was approved in 2019. As a part of this filing, the Company has re-evaluated the \$5,000,000 minimum requirement. Based on this re-evaluation, Distribution has become aware that the costs of obtaining cybersecurity insurance policies that are compliant with Rule 33 and the DSA have substantially increased over the past three (3) years. Distribution also believes that a \$2,000,000 minimum requirement will ensure that marketers have sufficient coverage and cybersecurity protections in place and will mitigate cost concerns for the marketers. Rule 33 (and other associated tariff pages) has also been revised to clarify its applicability to marketers, suppliers and agents based upon the level of access to Distribution's system that is afforded to these entities.

For the reasons explained herein, Distribution respectfully requests that the Pennsylvania Public Utility Commission approve this filing, and permit Supplement No. 246 to become effective on December 5, 2022.

# **APPENDIX B**



Filing Requirements Concerning Changes In Tariff  
52 Pa. Code § 53.52

**(a) Whenever a public utility, other than a canal, turnpike, tunnel, bridge or wharf company files a tariff, revision or supplement effecting changes in the terms and conditions of service rendered or to be rendered, it shall submit to the Commission, with the tariff, revision or supplement, statements showing all of the following:**

**(1) The specific reasons for each change.**

See statement of reasons, submitted separately as Appendix A.

**(2) The total number of customers served by the utility.**

As of August 31, 2022, the twelve-month average number of customers that Distribution provided either delivery service only or delivery and natural gas supply service to was as follows:

<b>Class of Service</b>	<b>Average Customers Served</b>
Residential	196,984
Commercial/PA	16,155
Industrial	595
Total	213,734

**(3) A calculation of the number of customers, by tariff subdivision, whose bills will be affected by the change.**

The proposed changes are revenue neutral. Therefore, it is not anticipated that any customers' bills will be affected by the change.

**(4) The effect of the change on the utility's customers.**

N/A – see (a)(3).

**(5) The direct or indirect effect of the proposed change on the utility's revenues and expenses.**

This filing is revenue neutral.

**(6) The effect of the change on the service rendered by the utility.**

There will be no effect on the services rendered by Distribution.

**(7) A list of factors considered by the utility in its determination to make the change. The list shall include a comprehensive statement about why these factors were chosen and the relative importance of each. This subsection does not apply to a portion of a tariff change seeking a general rate increase as defined in 66 Pa.C.S. § 1308 (relating to voluntary changes in rates).**

The Company considered feedback received from natural gas suppliers ("NGSs") during various collaboratives, the Initial Decision and Final Order issued at Docket No. C-2020-3019621 that denied proposed revisions to the Data Security Agreement and Self-Attestation in the context of a complaint proceeding, and changes in market forces that have occurred since the Data Security Agreement and Self-Attestation were initially approved by the Commission.

Filing Requirements Concerning Changes In Tariff  
52 Pa. Code § 53.52

**(8) Studies undertaken by the utility in order to draft its proposed change. This paragraph does not apply to a portion of a tariff change seeking a general rate increase as defined in 66 Pa.C.S. § 1308.**

Distribution's proposed tariff revisions are based upon feedback received from NGSs during collaboratives, changes in the price of compliant policies and a review of the sufficiency of coverage and cyberprotections.

**(9) Customer polls taken and other documents which indicate customer acceptance and desire of the proposed change. If the poll or other documents reveal discernible public opposition, an explanation of why the change is in the public interest shall be provided.**

No polls or studies were conducted by the Company to indicate customer acceptance or desire for the proposed change.

**(10) Plans the utility has for introducing or implementing the changes with respect to its ratepayers.**

The Company will post the instant filing on its website and notice will be sent via e-mail to NGSs operating in its service territory. Additionally, the Company will mail notice to NGSs operating in its service territory.

**(11) FCC, FERC or Commission orders or rulings applicable to filing.**

No FCC or FERC orders apply to this filing. Please refer to the Commission's Order entered August 29, 2019, at Docket No. R-2019-3010744, and the Commission's Opinion and Order entered April 14, 2022, at Docket No. C-2020-3019621

# **APPENDIX C-1**

**NATIONAL FUEL GAS DISTRIBUTION CORPORATION  
BUFFALO, NEW YORK  
RATES, RULES AND REGULATIONS  
GOVERNING THE FURNISHING  
OF  
NATURAL GAS SERVICE  
IN  
TERRITORY DESCRIBED HEREIN**

Issued: October 5, 2022

Effective: December 5, 2022

D. L. DeCAROLIS, PRESIDENT  
BUFFALO, NEW YORK

This Supplement includes changes to existing requirements.

See page 2.

LIST OF CHANGES MADE BY THIS TARIFF

Change:

1. Revised Language to adjust cybersecurity insurance requirements and specify applicability.  
Page 35H.
2. Revised language to specify applicability.  
Page 118J.
3. Revised language to specify applicability.  
Page 146.

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for the ADDQ. Additionally, if an Imbalance Holder's FSIV is less than 1,000 Mcf, it will be assigned to the Market Pricing Tier. If the Imbalance Holder does not qualify for the Market Pricing Tier under either of these safe harbors, then the Imbalance Holder's FSIV will be used to determine imbalance pricing.

The Imbalance Holder will be cashed out at the tiers, beginning at the tiers furthest from the Market Pricing Tier until the imbalance volumes within all the tiers are reduced to zero. The Market Pricing Tier will be cashed out after all other tiers have been cashed out.

Cash Out Sales and Cash Out Purchases will be reflected on the next bill issued by the Company to the Imbalance Holder following the conclusion of trading sessions.

31. CHANGES OF RULES AND REGULATIONS

The Company reserves the right to modify, alter or amend the foregoing Rules and Regulations and to make such further and other rules and regulations as experience may suggest or the Company may deem necessary or convenient in the conduct of its business provided, however, that such modifications, alterations, or amendments shall not become effective unless and until included in this tariff.

32. RENEWABLE NATURAL GAS

Renewable Natural Gas or RNG is Pipeline compatible gaseous fuel derived from biogenic or other renewable sources that has lower lifecycle CO<sub>2</sub>e emissions than geological natural gas. Examples include pipeline compatible gas derived from wastewater treatment plants, landfill gas, anaerobic digestion gas, power to gas from renewable electricity or syngas.

The operating procedures applicable to RNG are provided in the Company's Operational Procedures Manual. Parties wishing to produce RNG for delivery into Distribution's system, i.e. RNG Operators, are required to execute an RNG Interconnect Agreement as a condition of access.

RNG produced and delivered into the Company's system must meet the Company's RNG Quality Standards, as specified in the RNG Interconnect Agreement, as well as the gas quality standards specified in Rule 28 of this tariff.

33. DATA SECURITY AGREEMENT

As a condition of access to customer information via publicly available Company business systems, including but not limited to web portals, the Company will require marketers, suppliers, and agents requesting such access to sign a Data Security Agreement and require that the parties carry and maintain Cybersecurity insurance in an amount no less than \$2,000,000 per incident. A standard form Data Security Agreement will be provided in the Company's Operational Procedures Manual.

Such requirement shall not apply to customers with usage less than 5,000 mcf per year that seek to access their own customer account information. Further, the Company may accept Cybersecurity insurance provided under another agreement, provided that such agreement is substantially identical in form and effect as the standard form Data Security Agreement.

(C) Indicates Change

RATE SCHEDULE MMNGS  
MONTHLY METERED NATURAL GAS SUPPLIER SERVICE (Cont.)

In order to validate a claim of Force Majeure, the MMNGS Supplier must have a firm, non-interruptible service with the affected pipeline that is covered by the Force Majeure event and must be willing to present such agreements to the Company.

Volumes not delivered pursuant to this Special Provision must be made up by MMNGS Supplier as soon as possible at a delivery rate to be established by the Company. Any curtailed volumes which are not made-up within thirty (30) days will be sold to MMNGS Supplier at a rate of \$10.00 per Mcf.

M. Title to Gas

Supplier warrants that, at the time of delivery of gas to the Company's City Gate, Supplier or Customer shall have good title to deliver all volumes made available.

N. Control and Possession

After Supplier delivers gas or causes gas to be delivered to the Company, the Company shall be deemed to be in control and possession of the gas until it is redelivered to the Customer at Customer's meter.

O. 24 Hour Availability

Supplier shall include on the MMNGS Service Agreement a phone number by which Supplier can be reached on a twenty-four (24) hour basis.

P. Data Security Agreement

Marketers, suppliers, and agents shall execute a Data Security Agreement pursuant to Tariff Rule 33.

(C)

(C) Indicates Change

RATE SCHEDULE SATS  
SMALL AGGREGATION TRANSPORTATION SUPPLIER SERVICE (Cont.)

2. When the customer's dispute has been filed within the first two billing periods since the customer should reasonably have known of a change of Suppliers and the dispute investigation establishes that the change occurred without the customer's consent, the customer shall not be responsible for any Supplier charges rendered during that period. If the customer has made payments during this period, the Supplier responsible for initiating the change of supplier shall issue a complete refund within 30 days of the close of the dispute. The refund or credit provision applies only to the natural gas supply charges.

3. A customer who has had a Supplier changed without having consented to that change shall be switched back to the original Supplier for no additional fee. Any charges involved in the switch back to the prior Supplier shall be the responsibility of the Supplier that initiated the change without the customer's consent.

4. Should a customer file an informal complaint with the Commission alleging that the customer's Supplier was changed without the customer's consent, the Bureau of Consumer Services will issue an informal decision that includes a determination of customer liability for any Supplier bills or administrative charges that might otherwise apply, rendered since the change of the Supplier.

5. The provisions of this section do not apply in instances when the customer's service is discontinued by the Supplier and subsequently provided by the Company because no other Supplier is willing to provide service to the customer.

6. Company and Suppliers shall preserve all records relating to unauthorized change of Supplier disputes for a period of three years from the date the customers filed the dispute. These records shall be made available to the Commission or its staff upon request.

W. Data Security Agreement

Marketers, suppliers, and agents shall execute a Data Security Agreement pursuant to Tariff Rule 33. (C)

# **DATA SECURITY AGREEMENT**

This Data Security Agreement ("Agreement") effective \_\_\_\_\_ is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2022 by and between National Fuel Gas Distribution Corporation, 6363 Main Street, Williamsville, NY 14221 ("Company") and \_\_\_\_\_, an Energy Service Entity ("ESE"), with offices at \_\_\_\_\_; and together with Company the ("Parties") and each, individually, a "Party").

## **RECITALS**

WHEREAS, ESE desires to have access to certain Company customer information, either customer-specific or aggregated customer information, the Company is obligated to provide information under 52 Pa. Code § 62.76 and/or the Pennsylvania Public Utility Commission ("Commission") has ordered Company to provide to ESE customer information; and

WHEREAS, ESE has obtained consent from all customers for whom the ESE intends to obtain information from Company; and

WHEREAS, Natural Gas Supplier ("NGS"), may utilize a third party to fulfill its Service obligations, including but not limited to, Electronic Data Interchange ("EDI") communications with Company, schedule gas supplies for DMT Service Customer(s), DMLMT Service Customer(s), MMT Customer(s) and/or SATC Customer(s) via Company's Transportation Scheduling System ("TSS") and/or access Confidential Information via Company issued accounts/passwords ; and

WHEREAS, a DMT Service Customer, DMLMT Service Customer or MMT Customer (individually, "Standalone Customer") may schedule its own gas supplies via Company's TSS without an NGS; and

WHEREAS, a Standalone Customer with daily metering and communications equipment which enable the Company to obtain each day meter readings of the volume of gas delivered to the Company for the Customer's account and the volume of gas from the Company used by the Customer each day may access to such information via Company issued accounts/passwords; and

WHEREAS, NGS or Standalone Customer utilization of a third party provider does not relieve NGS or Standalone Customer of their transactional obligation such that they must ensure that the third party provider must comply with all NGS or Standalone Customer obligations; and

WHEREAS, Company and ESE also desire to enter into this Agreement to establish, among other things, the full scope of ESE's obligations of security and confidentiality with respect to the Confidential Information in a manner consistent with the rules and regulations of the Commission and requirements of Company; and

NOW, THEREFORE, in consideration of the premises and of the covenants herein contained, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties, intending to be legally bound, hereby agree as follows:

## 1. Definitions.

- a. "Confidential ESE Information" means information that ESE is: (A) required by 52 PA Code §§ 59.91-59.99 or Governing Documents to receive from the end use customer and provide to the Company to enroll the customer or (B) any other information provided by ESE to Company and marked confidential by the ESE, but excludes (i) information which is or becomes generally available to the public other than as a result of a disclosure by Receiving Party or its Representatives; (ii) information which was already known to Receiving Party on a non-confidential basis prior to being furnished to Receiving Party by Disclosing Party; (iii) information which becomes available to Receiving Party on a non-confidential basis from a source other than Disclosing Party or a representative of Disclosing Party if such source was not subject to any prohibition against transmitting the information to Receiving Party and was not bound by a confidentiality agreement with Disclosing Party; (iv) information which was independently developed by the Receiving Party or its Representatives without reference to, or consideration of, the Confidential Information; or (v) information provided by the customer with customer consent where the customer expressly agrees that the information is public.
- b. "Confidential Company Information" means information that Company is: (A) required by 52 Pa. Code § 62.76 to provide to NGS or Standalone Customer or (B) any other information provided to ESE by Company and marked confidential by the Company at the time of disclosure, but excludes (i) information which is or becomes generally available to the public other than as a result of a disclosure by Receiving Party or its Representatives; (ii) information which was already known to Receiving Party on a non-confidential basis prior to being furnished to Receiving Party by Disclosing Party; (iii) information which becomes available to Receiving Party on a non-confidential basis from a source other than Disclosing Party or a representative of Disclosing Party if such source was not subject to any prohibition against transmitting the information to Receiving Party and was not bound by a confidentiality agreement with Disclosing Party; (iv) information which was independently developed by the Receiving Party or its Representatives without reference to, or consideration of, the Confidential Information; or (v) information provided by the customer with customer consent where the customer expressly agrees that the information is public.
- c. "Confidential Information" means, collectively, Confidential Company Information or Confidential ESE Information.
- d. "Data Protection Requirements" means, collectively, (A) all national, state, and local laws, regulations, or other government standards relating to the protection of information that identifies or can be used to identify an individual that apply with respect to ESE or its Representative's Processing of Confidential Company Information; (B) industry best practices or frameworks to secure information, computer systems, network, and devices using a defense-in-depth approach, such as and including, but not limited to, NIST SP 800-53, ISO 27001 / 27002, COBIT, CIS Security Benchmarks, Top 20 Critical Controls as best industry

practices and frameworks may evolve over time; and (C) Commission rules, regulations, and guidelines relating to confidential customer data. Subject to the above, ESE will determine and implement the necessary Data Protection Requirements to be in compliance with the Governing Documents.

- e. "Data Security Incident" means a situation when Company or ESE reasonably believes that there has been: (A) the loss or misuse (by any means) of Confidential Information; (B) the unauthorized acquisition of computerized data that compromises the security, confidentiality, or integrity of Confidential Information, computer systems, network and devices used by a business; (C) any other act or omission that compromises the security, confidentiality, or integrity of Confidential Information, or (D) any material breach of any Data Protection Requirements in relation to the Processing of Confidential Information, including by any current or former Representatives.
- f. "Customer Agent" is a third party that has access to Confidential Information via Company issued accounts/passwords and/or schedules gas on behalf of a NGS. Customer Agent includes, but is not limited to, third party Brokers Non-selling marketer and Nontraditional marketer as defined 52 PA Code §62.101 that access Confidential Information via Company issued accounts/passwords."
- g. "Standalone Customer" is a customer eligible for natural gas transportation service under 52 PA Code § 60.3 defined in Company's Tariff as a DMT Service Customer, DMLMT Service Customer or MMT Customer, that schedules its own gas supplies via Company's TSS without an NGS.
- h. "NGS" has the meaning set forth in 52 PA Code § 62.72 and as it may be amended from time to time, which is "An entity other than an NGDC, but including NGDC marketing affiliates, which provides natural gas supply services to retail gas customers utilizing the jurisdictional facilities of an NGDC."
- i. "ESE" shall have the meaning set forth in the Recitals and for the avoidance of doubt, includes but is not limited to NGSs or Standalone Customers, Customer Agents and contractors of such entities with which Company electronically exchanges data other than by email and any other entities with which Company electronically exchanges data other than by email or by a publicly available portal.
- j. "PUC" or "Commission" shall have the meaning attributed to it in the Recitals.
- k. "Processing" (including its cognate, "process") means any operation, action, error, omission, negligent act, or set of operations, actions, errors, omissions, or negligent acts that is performed using or upon Confidential Information or Company Data, whether it be by physical, automatic or electronic means, including, without limitation, collection, recording, organization, storage, access, adaptation, alteration, retrieval, use, transfer, hosting, maintenance, handling, retrieval, consultation, use, disclosure, dissemination, exfiltration, taking, removing, copying, processing, making available, alignment, combination, blocking, deletion, erasure, or destruction.

- l. "Third-Party Representatives" or "Representatives" means those agents, including Customer Agents, acting on behalf of NGSs or Standalone Customers, that are contractors or subcontractors and that store, transmit or process Confidential Company Information. For the avoidance of doubt, Third-Party Representatives do not include ESEs and their members, directors, officers or employees who need to know Confidential Company Information for the purposes of providing Services.
  - m. "Services" mean any assistance in the competitive markets provided by ESEs to end use customers or NGSs or Standalone Customers that also require interaction with a Company, including but not limited to the electronic exchange of information with a Company, and must be provided in accordance with the Governing Documents where applicable. Governing Documents may not apply to Third Party Representatives that are not electronically interconnected with Company other than by email.
  - n. "Company Data" means data held by Company, whether produced in the normal course of business or at the request of ESE.
  - o. "Tariff" means (Gas--Pa. P.U.C. No. 9 or any superseding tariff).
  - p. "DMT Service Customer" means, unless redefined in any superseding tariff, any entity that has executed a DMT Service Agreement with the Company for transportation of gas by the Company under Tariff Rate Schedule For Daily Metered Transportation Service.
  - q. "DMLMT Service Customer" means, unless redefined in any superseding tariff, any entity that has executed a DMLMT Service Agreement with the Company for transportation of gas by the Company under Tariff Rate Schedule For Daily Metered Transportation Service.
  - r. "MMT Customer" means, unless redefined in any superseding tariff, a customer that receives transportation service from the Company under this rate schedule and receives gas supply from a Monthly Metered Natural Gas Supplier.
  - s. "SATC Customer" means, unless redefined in any superseding tariff, a customer that has enrolled to receive gas supply service from a qualified supplier under the Company's Small Aggregation Transportation Supplier Service.
2. **Scope of the Agreement.** This Agreement shall govern security practices of ESEs that electronically receive or exchange Confidential Company Information, other than by email, with the Company IT Systems and security practices that apply to all Confidential Company Information disclosed to ESE or to which ESE is given access by Company, including all archival or back- up copies of the Confidential Company Information held or maintained by ESE (or its Representatives) and Confidential ESE Information. No financial information, other than billing information, will be provided pursuant to this Agreement. If any information is inadvertently sent to ESE or Company, ESE or Company will immediately notify the Company/ESE and destroy any such information in the appropriate manner.



3. **ESE Compliance with all Applicable Regulatory Requirements.** The Parties agree that 52 PA Code §§ 62.71-62.81, Company's Tariff and Commission Orders set forth rules governing the protection of Confidential Information (collectively, "Governing Documents") and electronic exchange of information between the Parties, including but not limited to EDI.
4. **Customer Consent.** The Parties agree that the Governing Documents govern an ESE's obligation to obtain informed consent from all customers about whom ESE requests Confidential Company Information from Company. The ESE agrees to comply with the Governing Documents regarding customer consent.
5. **Provision of Information.** Company agrees to provide to ESE or its Representatives, certain Confidential Company Information, as requested, provided that: (A) ESE and its Representatives with an electronic connection to Company other than by email are in compliance with the terms of this Agreement in all material respects; (B) if required by Company due to the identification of a potential or actual Data Security Incident, ESE shall undergo an audit, at the ESE's expense<sup>1</sup>; (C) ESE (and its Third-Party Representatives with an electronic connection to the Company other than by email) shall have and maintain throughout the term, systems and processes in place and as detailed in the Self Attestation to protect Company IT systems, data privacy protections and Confidential Company Information. Provided the foregoing prerequisites have been satisfied, ESE shall be permitted access to Confidential Company Information and/or Company shall provide such Confidential Company Information to ESE. Nothing in this Agreement will be interpreted or construed as granting either Party any license or other right under any patent, copyright, trademark, trade secret, or other proprietary right or any right to assert any lien over or right to withhold from the other Party any Data and/or Confidential Information of the other Party. Company will comply with the security requirements set forth in its assessment.
6. **Confidentiality.** ESE shall: (A) hold all Confidential Company Information in strict confidence pursuant to the Governing Documents; except as otherwise expressly permitted by Section 7 herein; (B) not disclose Confidential Company Information to any Third-Party Representatives, or affiliates, except as set forth in Section 7(a) of this Agreement; (C) not Process Confidential Company Information other than for the Services defined in the Recitals as authorized by this Agreement; (D) limit reproduction of Confidential Company Information; (E) store Confidential Company Information in a secure fashion at a secure location that is not accessible to any person or entity not authorized to receive the Confidential Company Information under the provisions hereof; and (F) otherwise use at least the same degree of care to avoid publication or dissemination of the Confidential Company Information as ESE employs (or would employ) with respect to its own confidential information that

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<sup>1</sup> An audit related to a Data Security Incident is used to verify that the necessary Information Security Control Requirements set forth in Exhibit A are in place for the Company to provide certain Confidential Company Information to the ESE or its Third-Party Representatives with an electronic connection to the utility, other than by email. The same audit requirements will apply as in Section 9. However, the ESE will be responsible for the cost of the audit in order to be re-authorized to receive data from the Company.

it does not (or would not) desire to have published or disseminated, but in no event less than reasonable care. At all times, Company shall have the right for cause to request reasonable further assurances that the foregoing restrictions and protections concerning Confidential Company Information are being observed and ESE shall be obligated to promptly provide Company with the requested assurances. An ESE may provide Confidential Company Information to a Third-Party representative without a direct electronic connection with the Utility, to assist the ESE in providing permitted Services, but an ESE utilizing such Third party Representative shall be solely responsible and fully liable for the actions of the Third Party Representative.

Company shall: (A) hold all Confidential ESE Information in strict confidence; except as otherwise expressly permitted by Section 7 herein; (B) not disclose Confidential ESE Information to any other person or entity except as set forth in Section 7(a) of this Agreement; (C) not Process Confidential ESE Information other than for the Services defined in the Recitals as authorized by this Agreement; (D) limit reproduction of Confidential ESE Information; (E) store Confidential ESE Information in a secure fashion at a secure location that is not accessible to any person or entity not authorized to receive the Confidential ESE Information under the provisions hereof; and (F) otherwise use at least the same degree of care to avoid publication or dissemination of the Confidential ESE Information as Company employs (or would employ) with respect to its own confidential information that it does not (or would not) desire to have published or disseminated, but in no event less than reasonable care. At all times, ESE shall have the right for cause to request reasonable further assurances that the foregoing restrictions and protections concerning Confidential ESE Information are being observed and Company shall be obligated to promptly provide ESE with the requested assurances.

This Section 6 supersedes prior non-disclosure agreements between the Parties pertaining to Confidential Information.

## **7. Exceptions Allowing ESE to Disclose Confidential Company Information.**

- a. **Disclosure to Representatives.** Notwithstanding the provisions of Section 6 herein, the Parties may disclose Confidential Information to their Third-Party Representatives who have a legitimate need to know or use such Confidential Information for the purposes of providing Services in accordance with the Governing Documents, provided that each such Third-Party Representative is advised by the disclosing Party of the sensitive and confidential nature of such Confidential Information. Notwithstanding the foregoing, the ESE shall be liable for any act or omission of its Third-Party Representative, including without limitation, those acts or omissions that would constitute a breach of this Agreement.
- b. **Disclosure if Legally Compelled.** Notwithstanding anything herein, in the event that a Party or any of its Third-Party Representatives receives notice that it has, will, or may become compelled, pursuant to applicable law or regulation or legal

process to disclose any Confidential Information (whether by receipt of oral questions, interrogatories, requests for information or documents in legal proceedings, subpoenas, civil investigative demands, other similar processes, or otherwise), that Party shall, except to the extent prohibited by law, within one (1) business day, notify the other Party, orally and in writing, of the pending or threatened compulsion. To the extent lawfully allowable, the Parties shall have the right to consult and the Parties will cooperate, in advance of any disclosure, to undertake any lawfully permissible steps to reduce and/or minimize the extent of Confidential Information that must be disclosed. The Parties shall also have the right to seek an appropriate protective order or other remedy reducing and/or minimizing the extent of Confidential Information that must be disclosed. In any event, the Party and its Third-Party Representatives shall disclose only such Confidential Information which they are advised by legal counsel that they are legally required to disclose in order to comply with such applicable law or regulation or legal process (as such may be affected by any protective order or other remedy obtained by the Party) and the Party and its Third-Party Representatives shall use all reasonable efforts to ensure that all Confidential Information that is so disclosed will be accorded confidential treatment.

8. **Return/Destruction of Information.** Within thirty (30) days after Company's written demand, ESE shall (and shall cause its Third-Party Representatives to) cease to access and Process Confidential Company Information and shall at the Company's option: (A) return such Confidential Company Information to Company in such manner, format, and timeframe as reasonably requested by Company or, if not so directed by Company, (B) shred, permanently erase and delete, degauss or otherwise modify so as to make unreadable, unreconstructible and indecipherable ("Destroy") all copies of all Confidential Company Information (including any and all extracts, compilations, studies, or other documents based upon, derived from, or containing Confidential Company Information) that has come into ESE's or its Third-Party Representatives' possession, including Destroying Confidential Company Information from all systems, records, archives, and backups of ESE and its Third-Party Representatives, and all subsequent access, use, and Processing of the Confidential Company Information by ESE and its Third-Party Representatives shall cease provided any items required to be maintained by governmental administrative rule or law or necessary for legitimate business or legal needs will not be destroyed until permitted and will remain subject to confidentiality during the retention period. Company, when making a written demand of ESE for the return or destruction of Confidential Company Information will specify the reason for the demand. ESE agrees that upon a customer revocation of consent, ESE warrants that it will no longer access through Company Confidential Company Information and that it will Destroy any Confidential Company Information in its or its Third-Party Representative's possession. Notwithstanding the foregoing, ESE and its Third-Party Representatives shall not be obligated to erase Confidential Company Information contained in an archived computer system backup maintained in accordance with their respective security or disaster recovery procedures, provided that ESE and its Third-Party Representatives shall: (1) not have experienced an actual Data Security Incident; (2) maintain data security protections to limit access to or recovery of Confidential Company Information from such computer backup system and; (3) keep all such Confidential Company Information confidential in accordance

with this Agreement. ESE shall, upon request, certify to Company that the destruction by ESE and its Third-Party Representatives required by this Section has occurred by (A) having a duly authorized officer of ESE complete, execute, and deliver to Company a certification and (B) obtaining substantially similar certifications from its Third-Party Representatives and maintaining them on file. Compliance with this Section 8 shall not relieve ESE from compliance with the other provisions of this Agreement. The written demand to Destroy or return Confidential Company Information pursuant to this Section may occur if the ESE has been decertified pursuant to the Governing Documents, the Company has been notified of a potential or actual Data Security Incident and Company has a reasonable belief of potential ongoing harm or the Confidential Company Information has been held for a period in excess of its retention period. The obligations under this Section shall survive any expiration of termination of this Agreement. Subject to applicable federal, state and local laws, rules, regulations and orders, at ESE's written demand and termination of electronic exchange of data with Company, Company will Destroy or return, at ESE's option, Confidential ESE Information.

9. **Audit.** Upon thirty (30) days' notice to ESE, ESE shall permit a reputable third party auditor selected by the Company through a competitive solicitation and agreed to by the ESE, such agreement not to be unreasonably withheld, (the "CSA") to audit and inspect ESE, at Company's sole expense (except as otherwise provided in this Agreement), and provided that the audit may occur no more often than once per twelve (12) month period (unless otherwise required by Company's regulators). The audit may include (A) the facilities of ESE and ESE's Third-Party Representatives where Confidential Company Information is Processed by or on behalf of ESE; (B) any computerized or paper systems used to Process Confidential Company Information; and (C) ESE's security practices and procedures, facilities, resources, plans, procedures, and books and records relating to the privacy and security of Confidential Company Information. Such audit rights shall be limited to verifying ESE's compliance with this Agreement, including all applicable Data Protection Requirements. If the ESE provides a SOC II report or its equivalent to the Company, or commits to complete an independent third-party audit of ESE's compliance with this Agreement acceptable to the Company at ESE's sole expense, within one hundred eighty (180) days, no audit by a third party auditor selected by the Company through a CSA and conducted at Company's sole expense is necessary absent a Data Security Incident. Any audit must be subject to confidentiality and non-disclosure requirements set forth in Section 6 of this Agreement. The auditor will audit the ESE's compliance with the Agreement and provide those results to the Company and ESE. The audit report sent to the Company shall not include any ESE confidential information, it will simply provide an assessment as to the ESE's compliance with the terms of this Agreement. In the event of a "failed" audit dispute, the dispute resolution processes outlined in the Governing Documents can be utilized or a complaint can be brought to the Commission. Company shall provide ESE with a report of the findings as a result of any audit carried out by an auditor selected through the CSA. ESE shall, within thirty (30) days, or within a reasonable time period agreed upon in writing between the ESE and Company, correct any deficiencies identified in the audit, and provide the SOC II audit report or its

equivalent or the report produced by the independent auditor to the Company and provide a report regarding the timing and correction of identified deficiencies to the Company.

10. **Investigation.** Upon notice to ESE, ESE shall assist and support Company in the event of an investigation by any regulator or similar authority, if and to the extent that such investigation relates to Confidential Company Information processed by ESE on behalf of Company. Such assistance shall be at Company's sole expense, except where such investigation was required due to the acts or omissions of ESE or its Representatives, in which case such assistance shall be at ESE's sole expense.
11. **Data Security Incidents.** ESE is responsible for any and all Data Security Incidents involving Confidential Company Information that is Processed by, or on behalf of, ESE. ESE shall notify Company in writing immediately (and in any event within forty-eight (48) hours) whenever ESE reasonably believes that there has been a Data Security Incident. After providing such notice, ESE will investigate the Data Security Incident, and immediately take all necessary steps to eliminate or contain any exposure of Confidential Company Information and keep Company advised of the status of such Data Security Incident and all matters related thereto. ESE further agrees to provide, at ESE's sole cost: (1) reasonable assistance and cooperation requested by Company and/or Company's designated representatives, in the furtherance of any correction, remediation, or investigation of any such Data Security Incident; (2) and/or the mitigation of any damage, including any notification required by law or that Company may determine appropriate to send to individuals impacted or potentially impacted by the Data Security Incident; and (3) and/or the provision of any credit reporting service required by law or that Company deems appropriate to provide to such individuals. In addition, within thirty (30) days of confirmation of a Data Security Incident, ESE shall develop and execute a plan, subject to Company's approval, which approval will not be unreasonably withheld, that reduces the likelihood of a recurrence of such Data Security Incident. ESE agrees that Company may at its discretion and without penalty immediately suspend performance hereunder and/or terminate the Agreement if a Data Security Incident occurs and it has a reasonable belief of potential ongoing harm. Any suspension made by Company pursuant to this paragraph 11 will be temporary, lasting until the Data Security Incident has ended, the ESE security has been restored to the reasonable satisfaction of the Company so that Company IT systems and Confidential Company Information are safe and the ESE is capable of maintaining adequate security once electronic communication resumes. Actions made pursuant to this paragraph, including a suspension will be made, or subject to dispute resolution and appeal as applicable, pursuant to the Governing Documents processes as approved by the Commission.
12. **Cybersecurity Insurance Required.** ESE shall carry and maintain Cybersecurity insurance in an amount of no less than \$2,000,000 per incident. Company will maintain at least \$2,000,000 of Cybersecurity insurance.
13. **No Intellectual Property Rights Granted.** Nothing in this Agreement shall be

construed as granting or conferring any rights, by license, or otherwise, expressly, implicitly, or otherwise, under any patents, copyrights, trade secrets, or other intellectual property rights of Company, and ESE shall acquire no ownership interest in the Confidential Company Information. No rights or obligations other than those expressly stated herein shall be implied from this Agreement.

#### **14. Additional Obligations.**

- a. ESE shall not create or maintain data which are derivative of Confidential Company Information except for the purpose of performing its obligations under this Agreement or as authorized by the Governing Documents or as expressly authorized by the customer, unless that use violates Federal, State, or local laws, tariffs, rules and/or regulations. For purposes of this Agreement, the following shall not be considered Confidential Company Information or a derivative thereof: (i) any customer contracts, customer invoices, or any other documents created by ESE that reference estimated or actual measured customer usage information, which ESE needs to maintain for any tax, financial reporting or other legitimate business purposes consistent with the Governing Documents; and (ii) Data collected by ESE from customers through its website or other interactions based on those customers' interest in receiving information from or otherwise engaging with ESE or its partners.
- b. ESE shall comply with all applicable privacy and security laws to which it is subject, including without limitation all applicable Data Protection Requirements and not, by act or omission, place Company in violation of any privacy or security law known by ESE to be applicable to Company.
- c. ESE shall have in place appropriate and reasonable processes and systems, including an Information Security Program, defined as having completed an accepted Attestation as reasonably determined by the Company in its discretion, to protect the security of Confidential Company Information and protect against a Data Security Incident, including, without limitation, a breach resulting from or arising out of ESE's internal use, processing, or other transmission of Confidential Company Information, whether between or among ESE's Third-Party Representatives, subsidiaries and affiliates or any other person or entity acting on behalf of ESE, including without limitation Third-Party Representatives. The Company's determination is subject to the dispute resolution process under the Governing Documents. In the event the Company and ESE are unable to resolve the dispute by mutual agreement within thirty (30) days of said referral, the dispute shall be referred for mediation through the Commission's Office of Administrative Law Judge. A party may request mediation prior to that time if it appears that informal resolution is not productive.
- d. ESE and Company shall safely secure or encrypt during storage and encrypt during transmission all Confidential Information, except that no encryption in transit is required for email communications.
- e. ESE shall establish policies and procedures to provide reasonable and prompt assistance to Company in responding to any and all requests, complaints, or

other communications received from any individual who is or may be the subject of a Data Security Incident involving Confidential Company Information Processed by ESE to the extent such request, complaint or other communication relates to ESE's Processing of such individual's Confidential Company Information.

- f. ESE shall establish policies and procedures to provide all reasonable and prompt assistance to Company in responding to any and all requests, complaints, or other communications received from any individual, government, government agency, regulatory authority, or other entity that is or may have an interest in the Confidential Company Information, data theft, or other unauthorized release of Confidential Company Information, disclosure of Confidential Company Information, or misuse of Confidential Company Information to the extent such request, complaint or other communication relates to ESE's accessing or Processing of such Confidential Company Information.
  - g. ESE will not process Confidential Company Information outside of the United States or Canada absent a written agreement with Company. For the avoidance of doubt, Confidential Company Information stored in the United States or Canada, or other countries as agreed upon in writing will be maintained in a secure fashion at a secure location pursuant to the terms and conditions of this Agreement.
15. **Specific Performance.** The Parties acknowledge that disclosure or misuse of Confidential Company Information in violation of this Agreement may result in irreparable harm to Company, the amount of which may be difficult to ascertain and which may not be adequately compensated by monetary damages, and that therefore Company shall be entitled to specific performance and/or injunctive relief to enforce compliance with the provisions of this Agreement. Company's right to such relief shall be in addition to and not to the exclusion of any remedies otherwise available under this Agreement, at law or in equity, including monetary damages, the right to terminate this Agreement for breach and the right to suspend the provision or Processing of Confidential Company Information under the Governing Documents. ESE agrees to waive any requirement for the securing or posting of any bond or other security in connection with Company obtaining any such injunctive or other equitable relief.
16. **Indemnification.** To the fullest extent permitted by law, ESE shall indemnify and hold Company, its affiliates, and their respective officers, directors, trustees, shareholders, employees, and agents, harmless from and against any and all loss, cost, damage, or expense of every kind and nature (including, without limitation, penalties imposed by the Commission or other regulatory authority or under any Data Protection Requirements, court costs, expenses, and reasonable attorneys' fees) arising out of, relating to, or resulting from, in whole or in part, the breach or non-compliance with this Agreement by ESE or any of its Third-Party Representatives except to the extent that the loss, cost, damage or expense is caused by the negligence, gross negligence or willful misconduct of Company.
17. **Notices.** With the exception of notices or correspondence relating to potential or

pending disclosure under legal compulsion, all notices and other correspondence hereunder shall be sent by first class mail, by personal delivery, or by a nationally recognized courier service. Notices or correspondences relating to potential or pending disclosure under legal compulsion shall be sent by means of Express Mail through the U.S. Postal Service or other nationally recognized courier service which provides for scheduled delivery no later than the business day following the transmittal of the notice or correspondence and which provides for confirmation of delivery. All notices and correspondence shall be in writing and addressed as follows:

If to ESE, to:

ESE Name:  
Name of Contact:  
Address:  
Phone:  
Email:

If to Company, to:

Company Name: National Fuel Gas Distribution Corporation  
Name of Contact: Rates and Regulatory Affairs Department  
Address: 6363 Main Street, Williamsville, NY 14221  
Phone: 716-857-6824  
Email: NFGGratesPAD@natfuel.com

A Party may change the address or addressee for notices and other correspondence to it hereunder by notifying the other Party by written notice given pursuant hereto.

- 18. Term and Termination.** This Agreement shall be effective as of the date first set forth above and shall remain in effect until terminated in accordance with the provisions of the service agreement, if any, between the Parties or the Governing Documents and upon not less than thirty (30) days' prior written notice specifying the effective date of termination, provided, however, that any expiration or termination shall not affect the respective obligations or rights of the Parties arising under this Agreement prior to the effective date of termination. Company may terminate this Agreement if the ESE loses its status as a Licensed Supplier, has not served customers for two (2) years, or has not had electronic communication, other than by email, with Company for one (1) year. Further, Company may terminate this Agreement immediately upon notice to ESE in the event of a material breach hereof by ESE or its Third-Party Representatives. For the purpose of clarity, a breach of Sections 3-4, 6-11, 13, 14, 16, and 24 shall be a material breach hereof. The Breaching Party will provide the non-breaching Party with a written description and notice of the material breach. Upon the expiration or termination hereof, neither ESE nor its Third-Party Representatives shall have any further right to Process Confidential Company Information, unless the customer has given written or electronic consent to do so shall immediately comply with its obligations under Section 8 and the Company shall not have the right to process Confidential ESE



Information and shall immediately comply with its obligations under Section 8.

19. **Consent to Jurisdiction; Selection of Forum.** ESE irrevocably submits to the jurisdiction of the Commission and courts located within the Commonwealth of Pennsylvania with regard to any dispute or controversy arising out of or relating to this Agreement. ESE agrees that service of process on it in relation to such jurisdiction may be made by certified or registered mail addressed to ESE at the address for ESE pursuant to Section 11 hereof and that such service shall be deemed sufficient even under circumstances where, apart from this Section, there would be no jurisdictional basis for such service. ESE agrees that service of process on it may also be made in any manner permitted by law. ESE consents to the selection of the Pennsylvania and United States courts within Erie County, Pennsylvania as the exclusive forums for any legal or equitable action or proceeding arising out of or relating to this Agreement.
20. **Governing Law.** This Agreement shall be interpreted and the rights and obligations of the Parties determined in accordance with the laws of the Commonwealth of Pennsylvania, without recourse to such state's choice of law rules.
21. **Survival.** The obligations of ESE under this Agreement shall continue for so long as ESE and/or ESE's Third-Party Representatives continue to have access to, are in possession of or acquire Confidential Company Information even if all Agreements between ESE and Company have expired or been terminated.
22. **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which shall together constitute one and the same instrument. Copies of this Agreement and copies of signatures on this Agreement, including any such copies delivered electronically as a .pdf file, shall be treated for all purposes as originals.
23. **Amendments; Waivers.** Except as directed by the Commission, this Agreement may not be amended or modified except if set forth in writing signed by the Party against whom enforcement is sought to be effective. No forbearance by any Party to require performance of any provisions of this Agreement shall constitute or be deemed a waiver of such provision or the right thereafter to enforce it. Any waiver shall be effective only if in writing and signed by an authorized representative of the Party making such waiver and only with respect to the particular event to which it specifically refers.
24. **Assignment.** This Agreement (and the Company's or ESE's obligations hereunder) may not be assigned by Company, ESE or Third Party Representatives without the prior written consent of the non-assigning Party, and any purported assignment without such consent shall be void. Consent will not be unreasonably withheld.
25. **Severability.** Any provision of this Agreement which is determined by any court or regulatory body having jurisdiction over this Agreement to be invalid or unenforceable will be ineffective to the extent of such determination without invalidating the remaining provisions of this Agreement or affecting the validity or enforceability of such remaining provisions.

26. **Entire Agreement.** This Agreement (including any Exhibits hereto) constitutes the entire Agreement between the Parties with respect to the subject matter hereof and any prior or contemporaneous oral or written Agreements or understandings with respect to such subject matter are superseded hereby, including all Data Security Agreements between ESE and the Company that were executed prior to the effective date of this Agreement. This Agreement may not be amended without the written Agreement of the Parties.
27. **No Third-Party Beneficiaries.** This Agreement is solely for the benefit of, and shall be binding solely upon, the Parties and their respective agents, successors, and permitted assigns. This Agreement is not intended to benefit and shall not be for the benefit of any party other than the Parties and the indemnified parties named herein, and no other party shall have any right, claim, or action as a result of this Agreement.
28. **Force Majeure.** No Party shall be liable for any failure to perform its obligations in connection with this Agreement, where such failure results from any act of God or governmental action or order or other cause beyond such Party's reasonable control (including, without limitation, any mechanical, electronic, or communications failure) which prevents such Party from performing under this Agreement and which such Party is unable to prevent or overcome after the exercise of reasonable diligence. For the avoidance of doubt a Data Security Incident is not a force majeure event.
29. **Relationship of the Parties.** Company and ESE expressly agree they are acting as independent contractors and under no circumstances shall any of the employees of one Party be deemed the employees of the other for any purpose. Except as expressly authorized herein, this Agreement shall not be construed as authority for either Party to act for the other Party in any agency or other capacity, or to make commitments of any kind for the account of or on behalf of the other.
30. **Construction.** This Agreement shall be construed as to its fair meaning and not strictly for or against any party.
31. **Binding Effect.** No portion of this Agreement is binding upon a Party until it is executed on behalf of that Party in the space provided below and delivered to the other Party. Each Party agrees that this Agreement and any other documents to be delivered in connection herewith may be electronically signed, and that any electronic signatures appearing on this Agreement or such other document are the same as handwritten signatures for the purposes of validity, enforceability, and admissibility. Prior to such execution and delivery, neither the submission, exchange, return, discussion, nor the negotiation of this document, whether or not this document is then designated as a "draft" document, shall have any binding effect on a Party.

*[signature page follows]*

**IN WITNESS WHEREOF**, the Parties have executed and delivered this Agreement as of the date first above written.

**NATIONAL FUEL GAS DISTRIBUTION  
CORPORATION**

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

Name: \_\_\_\_\_ Name: \_\_\_\_\_

Title: \_\_\_\_\_ Title: \_\_\_\_\_

## SELF-ATTESTATION OF INFORMATION SECURITY CONTROLS

National Fuel Gas Distribution Corporation ("Company") represents that for all information received from ESE or its Third Party Representatives in response or pursuant to this Self-Attestation that is marked CONFIDENTIAL by ESE or its Third Party Representatives (Confidential Self-Attestation Information) Company shall: (A) hold such Confidential Self-Attestation Information in strict confidence; (B) not disclose such Confidential Self-Attestation Information to any other person or entity; (C) not Process such Confidential Self-Attestation Information outside of the United States or Canada; (D) not Process such Confidential Self-Attestation Information for any purpose other than to assess the adequate security of ESE or its Third Party Representatives pursuant to this Self-Attestation and to work with ESE or its Third Party Representatives to permit it to achieve adequate security if it has not already done so; (E) limit reproduction of such Confidential Self-Attestation Information; (F) store such Confidential Self-Attestation Information in a secure fashion at a secure location in the United States or Canada that is not accessible to any person or entity not authorized to receive such Confidential Self-Attestation Information under the provisions hereof; (G) otherwise use at least the same degree of care to avoid publication or dissemination of such Confidential Self-Attestation Information as Company employs (or would employ) with respect to its own confidential information that it does not (or would not) desire to have published or disseminated, but in no event less than reasonable care.

The Requirements to complete the Self-Attestation are as follows (check all that apply to ESE's computing environment, leave blank all that do not apply to ESE's computing environment. For items that do not apply, if there are plans to address items that do not currently apply within the next 12 months, place an asterisk in the blank and the month/year the requirement is projected to apply to the ESE's computing environment), comments regarding plans for compliance are encouraged:

This SELF-ATTESTATION OF INFORMATION SECURITY CONTROLS ("Attestation"), is made as of this \_\_\_\_\_ day of \_\_\_\_\_, 2022 by \_\_\_\_\_, an ESE.

WHEREAS, ESE desires to retain access to certain Confidential Company Information<sup>1</sup> (as defined in this Data Security Agreement), ESE must THEREFORE self- attest to ESE's compliance with the Information Security Control Requirements ("Requirements") as listed herein. ESE acknowledges that non-compliance with any of the Requirements may result in the termination of Company data access as per the discretion of Company, in whole or part, for its or their system(s). Any termination process will proceed pursuant to the Governing Documents.

- \_\_\_\_\_ An Information Security Policy is implemented across the ESE corporation which includes officer level approval.
- \_\_\_\_\_ An Incident Response Procedure is implemented that includes notification within 48 hours of knowledge of a suspected incident, alerting utilities when Confidential Company Information is potentially exposed, or of any other potential security breach.
- \_\_\_\_\_ Role-based access controls are used to restrict system access to authorized users and limited on a need-to-know basis.
- \_\_\_\_\_ Multi-factor authentication is used for all remote administrative access.
- \_\_\_\_\_ All production systems are properly maintained and updated to include security patches on a regular basis. Where a critical alert is raised, time is of the essence, and patches will be applied as soon as practicable.
- \_\_\_\_\_ Antivirus software is installed on all servers and workstations and is maintained to a supported release. If a pattern based antivirus solution is utilized, pattern signatures are to be kept up-to-date.
- \_\_\_\_\_ All Confidential Company Information is encrypted in transit utilizing industry best practice encryption methods, except that Confidential Information does not need to be encrypted during email communications.
- \_\_\_\_\_ All Confidential Company Information is secured or encrypted at rest utilizing industry best practice encryption methods, or is otherwise physically secured.

<sup>1</sup> "Confidential Company Information" means, information that Company is: (A) required by 52 Pa. Code § 62.76 to provide to ESE or (B) any other Data provided to ESE by Company and marked confidential by the Company at the time of disclosure, but excludes (i) information which is or becomes generally available to the public other than as a result of a disclosure by Receiving Party or its Representatives; (ii) information which was already known to Receiving Party on a non-confidential basis prior to being furnished to Receiving Party by Disclosing Party; (iii) information which becomes available to Receiving Party on a non-confidential basis from a source other than Disclosing Party or a representative of Disclosing Party if such source was not subject to any prohibition against transmitting the information to Receiving Party and was not bound by a confidentiality agreement with Disclosing Party; (iv) information which was independently developed by the Receiving Party or its Representatives without reference to, or consideration of, the Confidential Information; or (v) information provided by the customer with customer consent where the customer expressly agrees that the information is public.

## EXHIBIT A

- \_\_\_\_\_ It is prohibited to store Confidential Company Information on any mobile forms of storage media, including, but not limited to, laptop PCs, mobile phones, portable backup storage media, and external hard drives, unless the storage media or data is encrypted.
- \_\_\_\_\_ All Confidential Company Information is stored in the United States or Canada only, including, but not limited to, cloud storage environments and data management services.
- \_\_\_\_\_ ESE monitors and alerts their network for anomalous cyber activity on a 24/7 basis.
- \_\_\_\_\_ Security awareness training is provided to all personnel with access to Confidential Company Information.
- \_\_\_\_\_ Employee background screening occurs prior to the granting of access to Confidential Company Information.
- \_\_\_\_\_ Replication of Confidential Company Information to non-company assets, systems, or locations is prohibited.
- \_\_\_\_\_ Access to Confidential Company Information is revoked when no longer required, or if employees separate from the ESE or Third Party Representative.

Additionally, the attestation of the following item is requested, but is NOT part of the Requirements:

- \_\_\_\_\_ ESE maintains an up-to-date SOC II Type 2 Audit Report, or other security controls audit report.

IN WITNESS WHEREOF, ESE has delivered accurate information for this Attestation as of the date first above written.

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

# **APPENDIX C-2**

**NATIONAL FUEL GAS DISTRIBUTION CORPORATION  
BUFFALO, NEW YORK  
RATES, RULES AND REGULATIONS  
GOVERNING THE FURNISHING  
OF  
NATURAL GAS SERVICE  
IN  
TERRITORY DESCRIBED HEREIN**

Issued: ~~September 30, 2022~~October 5, 2022

Effective: ~~October 1, 2022~~December 5, 2022

D. L. DeCAROLIS, PRESIDENT  
BUFFALO, NEW YORK

This Supplement includes ~~decreases and increases to existing rates~~changes to existing requirements.

See page 2.



Supplement No. ~~245-246~~ to  
Gas - Pa. P.U.C. No. 9

Gas - Pa. P.U.C. No. 9

Revised Page No. 2

Revised

## LIST OF CHANGES MADE BY THIS TARIFF

Change:

1. Revised Language to adjust cybersecurity insurance requirements and specify applicability.  
Page 35H.
2. Revised language to specify applicability.  
Page 118J.
3. Revised language to specify applicability.  
Page 146.

~~DECREASE:~~

- ~~1. Rider I for Residential, Small Commercial and Public Authority, Small Volume Industrial, Intermediate Volume Industrial, and Large Volume Industrial Classes decrease.~~
- ~~Page 170.~~

~~INCREASE:~~

- ~~2. Rider I for Residential Transportation, Large Commercial and Public Authority, Small Volume Industrial Transportation, and Large Industrial Classes decrease.~~
- ~~Page 170.~~

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2022

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RULES AND REGULATIONS APPLYING TO ALL TERRITORIES SERVED (Cont')

for the ADDQ. Additionally, if an Imbalance Holder's FSIV is less than 1,000 Mcf, it will be assigned to the Market Pricing Tier. If the Imbalance Holder does not qualify for the Market Pricing Tier under either of these safe harbors, then the Imbalance Holder's FSIV will be used to determine imbalance pricing.

The Imbalance Holder will be cashed out at the tiers, beginning at the tiers furthest from the Market Pricing Tier until the imbalance volumes within all the tiers are reduced to zero. The Market Pricing Tier will be cashed out after all other tiers have been cashed out.

Cash Out Sales and Cash Out Purchases will be reflected on the next bill issued by the Company to the Imbalance Holder following the conclusion of trading sessions.

31. CHANGES OF RULES AND REGULATIONS

The Company reserves the right to modify, alter or amend the foregoing Rules and Regulations and to make such further and other rules and regulations as experience may suggest or the Company may deem necessary or convenient in the conduct of its business provided, however, that such modifications, alterations, or amendments shall not become effective unless and until included in this tariff.

32. RENEWABLE NATURAL GAS

Renewable Natural Gas or RNG is Pipeline compatible gaseous fuel derived from biogenic or other renewable sources that has lower lifecycle CO<sub>2</sub>e emissions than geological natural gas. Examples include pipeline compatible gas derived from wastewater treatment plants, landfill gas, anaerobic digestion gas, power to gas from renewable electricity or syngas.

The operating procedures applicable to RNG are provided in the Company's Operational Procedures Manual. Parties wishing to produce RNG for delivery into Distribution's system, i.e. RNG Operators, are required to execute an RNG Interconnect Agreement as a condition of access.

RNG produced and delivered into the Company's system must meet the Company's RNG Quality Standards, as specified in the RNG Interconnect Agreement, as well as the gas quality standards specified in Rule 28 of this tariff.

33. DATA SECURITY AGREEMENT

As a condition of access to customer information via publicly available Company business systems, including but not limited to web portals, the Company will require ~~parties-marketers, suppliers, and agents~~ requesting such access to sign a Data Security Agreement and require that the parties carry and maintain Cybersecurity insurance in an amount no less than ~~\$52~~,000,000 per incident. A standard form Data Security Agreement will be provided in the Company's Operational Procedures Manual.

Such requirement shall not apply to customers with usage less than 5,000 mcf per year that seek to access their own customer account information. Further, the Company may accept Cybersecurity insurance provided under another agreement, provided that such agreement is substantially identical in form and effect as the standard form Data Security Agreement.

(C) Indicates Change

RATE SCHEDULE MMNGS  
MONTHLY METERED NATURAL GAS SUPPLIER SERVICE (Cont.)

In order to validate a claim of Force Majeure, the MMNGS Supplier must have a firm, non-interruptible service with the affected pipeline that is covered by the Force Majeure event and must be willing to present such agreements to the Company.

Volumes not delivered pursuant to this Special Provision must be made up by MMNGS Supplier as soon as possible at a delivery rate to be established by the Company. Any curtailed volumes which are not made-up within thirty (30) days will be sold to MMNGS Supplier at a rate of \$10.00 per Mcf.

M. Title to Gas

Supplier warrants that, at the time of delivery of gas to the Company's City Gate, Supplier or Customer shall have good title to deliver all volumes made available.

N. Control and Possession

After Supplier delivers gas or causes gas to be delivered to the Company, the Company shall be deemed to be in control and possession of the gas until it is redelivered to the Customer at Customer's meter.

O. 24 Hour Availability

Supplier shall include on the MMNGS Service Agreement a phone number by which Supplier can be reached on a twenty-four (24) hour basis.

P. Data Security Agreement

~~Supplier-Marketers, suppliers, and agents~~ shall execute a Data Security Agreement pursuant to Tariff Rule 33.

(C)

(C) Indicates Change

RATE SCHEDULE SATS  
SMALL AGGREGATION TRANSPORTATION SUPPLIER SERVICE (Cont.)

2. When the customer's dispute has been filed within the first two billing periods since the customer should reasonably have known of a change of Suppliers and the dispute investigation establishes that the change occurred without the customer's consent, the customer shall not be responsible for any Supplier charges rendered during that period. If the customer has made payments during this period, the Supplier responsible for initiating the change of supplier shall issue a complete refund within 30 days of the close of the dispute. The refund or credit provision applies only to the natural gas supply charges.

3. A customer who has had a Supplier changed without having consented to that change shall be switched back to the original Supplier for no additional fee. Any charges involved in the switch back to the prior Supplier shall be the responsibility of the Supplier that initiated the change without the customer's consent.

4. Should a customer file an informal complaint with the Commission alleging that the customer's Supplier was changed without the customer's consent, the Bureau of Consumer Services will issue an informal decision that includes a determination of customer liability for any Supplier bills or administrative charges that might otherwise apply, rendered since the change of the Supplier.

5. The provisions of this section do not apply in instances when the customer's service is discontinued by the Supplier and subsequently provided by the Company because no other Supplier is willing to provide service to the customer.

6. Company and Suppliers shall preserve all records relating to unauthorized change of Supplier disputes for a period of three years from the date the customers filed the dispute. These records shall be made available to the Commission or its staff upon request.

W. Data Security Agreement

~~Supplier-Marketers, suppliers, and agents~~ shall execute a Data Security Agreement pursuant to Tariff Rule 33. (C)

# **DATA SECURITY AGREEMENT**



This Data Security Agreement ("Agreement") effective \_\_\_\_\_ is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, ~~2020~~2022 by and between National Fuel Gas Distribution Corporation, 6363 Main Street, Williamsville, NY 14221 ("Company") and \_\_\_\_\_, an Energy Service Entity ("ESE"), with offices at \_\_\_\_\_; and together with Company the ("Parties") and each, individually, a "Party").

## RECITALS

WHEREAS, ESE desires to have access to certain Company customer information, either customer-specific or aggregated customer information, the Company is obligated to provide information under 52 Pa. Code § 62.76 and/or the Pennsylvania Public Utility Commission ("Commission") has ordered Company to provide to ESE customer information; and

WHEREAS, ESE has obtained consent from all customers for whom the ESE intends to obtain information from Company; and

WHEREAS, Natural Gas Supplier ("NGS"), may utilize a third party to fulfill its Service obligations, including but not limited to, Electronic Data Interchange ("EDI") communications with Company, schedule gas supplies for DMT Service Customer(s), DMLMT Service Customer(s), MMT Customer(s) and/or SATC Customer(s) via Company's Transportation Scheduling System ("TSS") and/or access Confidential Information via Company issued accounts/passwords ; and

WHEREAS, a DMT Service Customer, DMLMT Service Customer or MMT Customer (individually, "Standalone Customer") may schedule its own gas supplies via Company's TSS without an NGS; and

WHEREAS, a Standalone Customer with daily metering and communications equipment which enable the Company to obtain each day meter readings of the volume of gas delivered to the Company for the Customer's account and the volume of gas from the Company used by the Customer each day may access to such information via Company issued accounts/passwords; and

WHEREAS, NGS or Standalone Customer utilization of a third party provider does not relieve NGS or Standalone Customer of their transactional obligation such that they must ensure that the third party provider must comply with all NGS or Standalone Customer obligations; and

WHEREAS, Company and ESE also desire to enter into this Agreement to establish, among other things, the full scope of ESE's obligations of security and confidentiality with respect to the Confidential Information in a manner consistent with the rules and regulations of the Commission and requirements of Company; and

NOW, THEREFORE, in consideration of the premises and of the covenants herein contained, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties, intending to be legally bound, hereby agree as follows:

## 1. Definitions.

- a. "Confidential ESE Information" means information that ESE is: (A) required by 52 PA Code §§ 59.91-59.99 or Governing Documents to receive from the end use customer and provide to the Company to enroll the customer or (B) any other information provided by ESE to Company and marked confidential by the ESE, but excludes (i) information which is or becomes generally available to the public other than as a result of a disclosure by Receiving Party or its Representatives; (ii) information which was already known to Receiving Party on a non-confidential basis prior to being furnished to Receiving Party by Disclosing Party; (iii) information which becomes available to Receiving Party on a non-confidential basis from a source other than Disclosing Party or a representative of Disclosing Party if such source was not subject to any prohibition against transmitting the information to Receiving Party and was not bound by a confidentiality agreement with Disclosing Party; (iv) information which was independently developed by the Receiving Party or its Representatives without reference to, or consideration of, the Confidential Information; or (v) information provided by the customer with customer consent where the customer expressly agrees that the information is public.
- b. "Confidential Company Information" means information that Company is: (A) required by 52 Pa. Code § 62.76 to provide to NGS or Standalone Customer or (B) any other information provided to ESE by Company and marked confidential by the Company at the time of disclosure, but excludes (i) information which is or becomes generally available to the public other than as a result of a disclosure by Receiving Party or its Representatives; (ii) information which was already known to Receiving Party on a non-confidential basis prior to being furnished to Receiving Party by Disclosing Party; (iii) information which becomes available to Receiving Party on a non-confidential basis from a source other than Disclosing Party or a representative of Disclosing Party if such source was not subject to any prohibition against transmitting the information to Receiving Party and was not bound by a confidentiality agreement with Disclosing Party; (iv) information which was independently developed by the Receiving Party or its Representatives without reference to, or consideration of, the Confidential Information; or (v) information provided by the customer with customer consent where the customer expressly agrees that the information is public.
- c. "Confidential Information" means, collectively, Confidential Company Information or Confidential ESE Information.
- d. "Data Protection Requirements" means, collectively, (A) all national, state, and local laws, regulations, or other government standards relating to the protection of information that identifies or can be used to identify an individual that apply with respect to ESE or its Representative's Processing of Confidential Company Information; (B) industry best practices or frameworks to secure information, computer systems, network, and devices using a defense-in-depth approach, such as and including, but not limited to, NIST SP 800-53, ISO 27001 / 27002, COBIT, CIS Security Benchmarks, Top 20 Critical Controls as best industry

practices and frameworks may evolve over time; and (C) Commission rules, regulations, and guidelines relating to confidential ~~data~~customer data. Subject to the above, ESE will determine and implement the necessary Data Protection Requirements to be in compliance with the Governing Documents.

- e. "Data Security Incident" means a situation when Company or ESE reasonably believes that there has been: (A) the loss or misuse (by any means) of Confidential Information; (B) the unauthorized acquisition of computerized data that compromises the security, confidentiality, or integrity of Confidential Information, ~~or Private Information~~, computer systems, network and devices used by a business; (C) any other act or omission that compromises the security, confidentiality, or integrity of Confidential Information, or (D) any material breach of any Data Protection Requirements in relation to the Processing of Confidential Information, including by any current or former Representatives.
- f. "Customer Agent" is a third party that has access to Confidential Information via Company issued accounts/passwords and/or schedules gas on behalf of a NGS. Customer Agent includes, but is not limited to, third party Brokers Non-selling marketer and Nontraditional marketer as defined 52 PA Code §62.101 that access Confidential Information via Company issued accounts/passwords."
- g. "Standalone Customer" is a customer eligible for natural gas transportation service under 52 PA Code § 60.3 defined in Company's Tariff as a DMT Service Customer, DMLMT Service Customer or MMT Customer, that schedules its own gas supplies via Company's TSS without an NGS.
- h. "NGS" has the meaning set forth in 52 PA Code § 62.72 and as it may be amended from time to time, which is "An entity other than an NGDC, but including NGDC marketing affiliates, which provides natural gas supply services to retail gas customers utilizing the jurisdictional facilities of an NGDC."
- i. "ESE" shall have the meaning set forth in the Recitals and for the avoidance of doubt, includes but is not limited to NGSs or Standalone Customers, Customer Agents and contractors of such entities with which Company electronically exchanges data other than by email and any other entities with which Company electronically exchanges data other than by email or by a publicly available portal.
- j. "PUC" or "Commission" shall have the meaning attributed to it in the Recitals.
- k. "Processing" (including its cognate, "process") means any operation, action, error, omission, negligent act, or set of operations, actions, errors, omissions, or negligent acts that is performed using or upon Confidential Information or Company Data, whether it be by physical, automatic or electronic means, including, without limitation, collection, recording, organization, storage, access, adaptation, alteration, retrieval, use, transfer, hosting, maintenance, handling, retrieval, consultation, use, disclosure, dissemination, exfiltration, taking, removing, copying, processing, making available, alignment, combination, blocking, deletion, erasure, or destruction.

- l. "Third-Party Representatives" or "Representatives" means those agents, including Customer Agents, acting on behalf of NGSs or Standalone Customers, that are contractors or subcontractors and that store, transmit or process Confidential Company Information. For the avoidance of doubt, Third-Party Representatives do not include ESEs and their members, directors, officers or employees who need to know Confidential Company Information for the purposes of providing Services.
  - m. "Services" mean any assistance in the competitive markets provided by ESEs to end use customers or NGSs or Standalone Customers that also require interaction with a Company, including but not limited to the electronic exchange of information with a Company, and must be provided in accordance with the Governing Documents where applicable. Governing Documents may not apply to Third Party Representatives that are not electronically interconnected with Company other than by email.
  - n. "Company Data" means data held by Company, whether produced in the normal course of business or at the request of ESE.
  - o. "Tariff" means (Gas--Pa. P.U.C. No. 9 or any superseding tariff).
  - p. "DMT Service Customer" means, unless redefined in any superseding tariff, any entity that has executed a DMT Service Agreement with the Company for transportation of gas by the Company under Tariff Rate Schedule For Daily Metered Transportation Service.
  - q. "DMLMT Service Customer" means, unless redefined in any superseding tariff, any entity that has executed a DMLMT Service Agreement with the Company for transportation of gas by the Company under Tariff Rate Schedule For Daily Metered Transportation Service.
  - r. "MMT Customer" means, unless redefined in any superseding tariff, a customer that receives transportation service from the Company under this rate schedule and receives gas supply from a Monthly Metered Natural Gas Supplier.
  - s. "SATC Customer" means, unless redefined in any superseding tariff, a customer that has enrolled to receive gas supply service from a qualified supplier under the Company's Small Aggregation Transportation Supplier Service.
2. **Scope of the Agreement.** This Agreement shall govern security practices of ESEs that ~~have electronic communications~~electronically receive or exchange Confidential Company Information, other than by email, with the Company IT Systems and security practices that apply to all Confidential Company Information disclosed to ESE or to which ESE is given access by Company, including all archival or back-up copies of the Confidential Company Information held or maintained by ESE (or its Representatives) and Confidential ESE Information. ~~Error! Hyperlink reference not valid.~~ No financial information, other than billing information, will be provided pursuant to this Agreement. If any information is inadvertently sent to ESE or Company, ESE or Company will immediately notify the Company/ESE and destroy any such information in the appropriate manner.

3. **ESE Compliance with all Applicable Regulatory Requirements.** The Parties agree that ~~the~~ 52 PA Code §§ 62.71-62.81, Company's Tariff and Commission Orders set forth rules governing the protection of Confidential Information (collectively, "Governing Documents") and electronic exchange of information between the Parties, including but not limited to EDI.

~~\_\_\_\_\_ NGS or Standalone Customer utilizes a Third-Party Representative as a vendor, agent or other entity to provide electronic exchange of information, other than by email, with Company. ESE will require Third-Party Representative to abide by the applicable Governing Documents.~~

4. **Customer Consent.** The Parties agree that the Governing Documents govern an ESE's obligation to obtain informed consent from all customers about whom ESE requests data Confidential Company Information from Company. The ESE agrees to comply with the Governing Documents regarding customer consent.

5. **Provision of Information.** Company agrees to provide to ESE or its Representatives, certain Confidential Company Information, as requested, provided that: (A) ESE and its Representatives with an electronic connection to Company other than by email are in compliance with the terms of this Agreement in all material respects; (B) if required by Company, ~~ESE has provided and has required its Representatives to provide, to the satisfaction of Company any Vendor Product/Service Security Assessments or self attestations (attached hereto as Exhibit A) or such other risk assessment forms as Company may require from time to time ("Assessment") and ESE will comply with the Company Assessment requirements as approved by the Company;~~ (C) ESE (and its Representatives, as applicable due to the identification of a potential or actual Data Security Incident, ESE shall undergo an audit, at the ESE's expense<sup>1</sup>; (C) ESE (and its Third-Party Representatives with an electronic connection to the Company other than by email) shall have and maintain throughout the term, systems and processes in place and as detailed in the Assessment acceptable to Company Self Attestation to protect system security Company IT systems, data privacy protections and Confidential Company Information; ~~and;~~ (D) ~~ESE complies and shall require its Third-Party Representatives who process Confidential Information to comply with Company's Assessment requirements as approved by the Company.~~ Provided the foregoing prerequisites have been satisfied, ESE shall be permitted access to Confidential Company Information and/or Company shall provide such Confidential Company Information to ESE. Nothing in this Agreement will be interpreted or construed as granting either Party any license or other right under any patent, copyright, trademark, trade secret, or other proprietary right or any right to assert any lien over or right to withhold from the other Party any Data and/or

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<sup>1</sup> An audit related to a Data Security Incident is used to verify that the necessary Information Security Control Requirements set forth in Exhibit A are in place for the Company to provide certain Confidential Company Information to the ESE or its Third-Party Representatives with an electronic connection to the utility, other than by email. The same audit requirements will apply as in Section 9. However, the ESE will be responsible for the cost of the audit in order to be re-authorized to receive data from the Company.

<sup>4</sup> Where an ESE exclusively uses a Third Party Representative(s) to communicate electronically with a utility other than by email and the ESE's Third Party Representative executes a DSA with the utility, a DSA is not required of the ESE.



~~6.5.~~ Confidential Information of the other Party. Company will comply with the security requirements set forth in its ~~Assessment~~assessment.

~~7.6.~~ **Confidentiality.** ESE shall: (A) hold all Confidential Company Information in strict confidence pursuant to the Governing Documents ~~and Commission's orders~~; except as otherwise expressly permitted by Section 7 herein; (B) not disclose Confidential Company Information to any Third-Party Representatives, or affiliates, except as set forth in Section 7(a) of this Agreement; (C) not Process Confidential Company Information other than for the Services defined in the Recitals as authorized by this Agreement; (D) limit reproduction of Confidential Company Information; (E) store Confidential Company Information in a secure fashion at a secure location that is not accessible to any person or entity not authorized to receive the Confidential Company Information under the provisions hereof; and (F) otherwise use at least the same degree of care to avoid publication or dissemination of the Confidential Company Information as ESE employs (or would employ) with respect to its own confidential information that it does not (or would not) desire to have published or disseminated, but in no event less than reasonable care; ~~and (G) to the extent required by the Company, each Representative with a need to know the Confidential Company Information shall sign the Third-Party Representative Agreement set forth as Exhibit B to this Agreement.~~ At all times, Company shall have the right for cause to request reasonable further assurances that the foregoing restrictions and protections concerning Confidential Company Information are being observed and ESE shall be obligated to promptly provide Company with the requested assurances. An ESE may provide Confidential Company Information to a Third-Party representative without a direct electronic connection with the Utility, to assist the ESE in providing permitted Services, but an ESE utilizing such Third party Representative shall be solely responsible and fully liable for the actions of the Third Party Representative.

Company shall: (A) hold all Confidential ESE Information in strict confidence; except as otherwise expressly permitted by Section 7 herein; (B) not disclose Confidential ESE Information to any other person or entity except as set forth in Section 7(a) of this Agreement; (C) not Process Confidential ESE Information other than for the Services defined in the Recitals as authorized by this Agreement; (D) limit reproduction of Confidential ESE Information; (E) store Confidential ESE Information in a secure fashion at a secure location that is not accessible to any person or entity not authorized to receive the Confidential ESE Information under the provisions hereof; and (F) otherwise use at least the same degree of care to avoid publication or dissemination of the Confidential ESE Information as Company employs (or would employ) with respect to its own confidential information that it does not (or would not) desire to have published or disseminated, but in no event less than reasonable care; ~~and (G) to the extent required by ESE, each Representative with a need to know the Confidential ESE Information shall sign the Third-Party Representative Agreement set forth as Exhibit B to this Agreement.~~ At all times, ESE shall have the right for cause to request reasonable further assurances that the foregoing restrictions and protections concerning Confidential ESE Information are being observed and Company shall be obligated to promptly provide ESE with the requested assurances.

This Section 6 supersedes prior non-disclosure agreements between the Parties pertaining to Confidential Information.

**8.7. Exceptions Allowing ESE to Disclose Confidential Company Information.**

- a. **Disclosure to Representatives.** Notwithstanding the provisions of Section 6 herein, the Parties may disclose Confidential Information to their Third-Party Representatives who have a legitimate need to know or use such Confidential Information for the purposes of providing Services in accordance with the Governing Documents, provided that each such Third-Party Representative ~~first: (A) is advised by the disclosing Party of the sensitive and confidential nature of such Confidential Information; (B) agrees to comply with the provisions of this Agreement, provided that with respect to Third-Party Representatives and this subsection (B), such Third-Party Representatives must agree in writing to be bound by and observe the provisions of this Agreement as though such Third-Party Representatives were a Party/ESE; and (C) signs the Third-Party Representative Agreement. All such written Agreements with Third-Party Representatives shall include direct liability for the Third-Party Representatives towards Company/ESE for breach thereof by the Third-Party Representatives, and a copy of such Agreement and each Third-Party Representative Agreement shall be made available to Company/ESE upon request. Notwithstanding the foregoing, the Parties shall be liable for any act or omission of a. Notwithstanding the foregoing, the ESE shall be liable for any act or omission of its Third-Party Representative, including without limitation, those acts or omissions that would constitute a breach of this Agreement.~~
- b. **Disclosure if Legally Compelled.** Notwithstanding anything herein, in the event that a Party or any of its Third-Party Representatives receives notice that it has, will, or may become compelled, pursuant to applicable law or regulation or legal process to disclose any Confidential Information (whether by receipt of oral questions, interrogatories, requests for information or documents in legal proceedings, subpoenas, civil investigative demands, other similar processes, or otherwise), that Party shall, except to the extent prohibited by law, within one (1) business day, notify the other Party, orally and in writing, of the pending or threatened compulsion. To the extent lawfully allowable, the Parties shall have the right to consult and the Parties will cooperate, in advance of any disclosure, to undertake any lawfully permissible steps to reduce and/or minimize the extent of Confidential Information that must be disclosed. The Parties shall also have the right to seek an appropriate protective order or other remedy reducing and/or minimizing the extent of Confidential Information that must be disclosed. In any event, the Party and its Third-Party Representatives shall disclose only such Confidential Information which they are advised by legal counsel that they are legally required to disclose in order to comply with such applicable law or regulation or legal process (as such may be affected by any protective order or other remedy obtained by the Party) and the Party and its Third-Party Representatives shall use all reasonable efforts to ensure that all Confidential Information that is so disclosed will be accorded confidential treatment.



**9.8. Return/Destruction of Information.** Within thirty (30) days after Company's written demand, ESE shall (and shall cause its Third-Party Representatives to) cease to access and Process Confidential Company Information and shall at the Company's option: (A) return such Confidential Company Information to Company in such manner, format, and timeframe as reasonably requested by Company or, if not so directed by Company, (B) shred, permanently erase and delete, degauss or otherwise modify so as to make unreadable, unreconstructible and indecipherable ("Destroy") all copies of all Confidential Company Information (including any and all extracts, compilations, studies, or other documents based upon, derived from, or containing Confidential Company Information) that has come into ESE's or its Third-Party Representatives' possession, including Destroying Confidential Company Information from all systems, records, archives, and backups of ESE and its Third-Party Representatives, and all subsequent access, use, and Processing of the Confidential Company Information by ESE and its Third-Party Representatives shall cease provided any items required to be maintained by governmental administrative rule or law or necessary for legitimate business or legal needs will not be destroyed until permitted and will remain subject to confidentiality during the retention period. Company, when making a written demand of ESE for the return or destruction of Confidential Company Information will specify the reason for the demand. ESE agrees that upon a customer revocation of consent, ESE warrants that it will no longer access through Company Confidential Company Information and that it will Destroy any Confidential Company Information in its or its Third-Party Representative's possession. Notwithstanding the foregoing, ESE and its Third-Party Representatives shall not be obligated to erase Confidential Company Information contained in an archived computer system backup maintained in accordance with their respective security or disaster recovery procedures, provided that ESE and its Third-Party Representatives shall: (1) not have experienced an actual Data Security Incident; (2) maintain ~~Data Security Protections~~data security protections to limit access to or recovery of Confidential Company Information from such computer backup system and; (3) keep all such Confidential Company Information confidential in accordance with this Agreement. ESE shall, upon request, certify to Company that the destruction by ESE and its Third-Party Representatives required by this Section has occurred by (A) having a duly authorized officer of ESE complete, execute, and deliver to Company a certification and (B) obtaining substantially similar certifications from its Third-Party Representatives and maintaining them on file. Compliance with this Section 8 shall not relieve ESE from compliance with the other provisions of this Agreement. The written demand to Destroy or return Confidential Company Information pursuant to this Section may occur if the ESE has been decertified pursuant to the Governing Documents, the Company has been notified of a potential or actual Data Security Incident and Company has a reasonable belief of potential ongoing harm or the Confidential Company Information has been held for a period in excess of its retention period. The obligations under this Section shall survive any expiration of termination of this Agreement. Subject to applicable federal, state and local laws, rules, regulations and orders, at ESE's written demand and termination of electronic exchange of data with Company, Company will Destroy or return, at ESE's option, Confidential ESE Information.

**10.9. Audit.** Upon thirty (30) ~~days~~days' notice to ESE, ESE shall, ~~and shall require its~~

~~Third-Party Representatives to permit a reputable third party auditor selected by the Company, its auditors, designated representatives, through a competitive solicitation and agreed to by the ESE, such agreement not to be unreasonably withheld, (the "CSA") to audit and inspect ESE, at Company's sole expense (except as otherwise provided in this Agreement), and provided that the audit may occur no more often than once per twelve (12) month period (unless otherwise required by Company's regulators).~~ The audit may include (A) the facilities of ESE and ESE's Third-Party Representatives where Confidential Company Information is Processed by or on behalf of ESE; (B) any computerized or paper systems used to Process Confidential Company Information; and (C) ESE's security practices and procedures, facilities, resources, plans, procedures, and books and records relating to the privacy and security of Confidential Company Information. Such audit rights shall be limited to verifying ESE's compliance with this Agreement, including all applicable Data Protection Requirements. If the ESE provides a SOC II report or its equivalent to the Company, or commits to complete an independent third-party audit of ESE's compliance with this Agreement acceptable to the Company at ESE's sole expense, within one hundred eighty (180) days, ~~no Company audit~~ audit by a third party auditor selected by the Company through a CSA and conducted at Company's sole expense is necessary absent a Data Security Incident. Any audit must be subject to confidentiality and non-disclosure requirements set forth in Section 6 of this Agreement. ~~Company shall provide ESE with a report of its findings as a result of any audit carried out by or on behalf of Company. The auditor will audit the ESE's compliance with the Agreement and provide those results to the Company and ESE. The audit report sent to the Company shall not include any ESE confidential information, it will simply provide an assessment as to the ESE's compliance with the terms of this Agreement. In the event of a "failed" audit dispute, the dispute resolution processes outlined in the Governing Documents can be utilized or a complaint can be brought to the Commission. Company shall provide ESE with a report of the findings as a result of any audit carried out by an auditor selected through the CSA.~~ ESE shall, within thirty (30) days, or within a reasonable time period agreed upon in writing between the ESE and Company, correct any deficiencies identified ~~by Company in the audit~~, and provide the SOC II audit report or its equivalent or the report produced by the independent auditor to the Company and provide a report regarding the timing and correction of identified deficiencies to the Company.

**11.10. Investigation.** Upon notice to ESE, ESE shall assist and support Company in the event of an investigation by any regulator or similar authority, if and to the extent that such investigation relates to Confidential Company Information processed by ESE on behalf of Company. Such assistance shall be at Company's sole expense, except where such investigation was required due to the acts or omissions of ESE or its Representatives, in which case such assistance shall be at ESE's sole expense.

**12.11. Data Security Incidents.** ESE is responsible for any and all Data Security Incidents involving Confidential Company Information that is Processed by, or on behalf of, ESE. ESE shall notify Company in writing immediately (and in any event within forty-eight (48) hours) whenever ESE reasonably believes that there has been a Data

Security Incident. After providing such notice, ESE will investigate the Data Security Incident, and immediately take all necessary steps to eliminate or contain any exposure of Confidential Company Information and keep Company advised of the status of such Data Security Incident and all matters related thereto. ESE further agrees to provide, at ESE's sole cost: (1) reasonable assistance and cooperation requested by Company and/or Company's designated representatives, in the furtherance of any correction, remediation, or investigation of any such Data Security Incident; (2) and/or the mitigation of any damage, including any notification required by law or that Company may determine appropriate to send to individuals impacted or potentially impacted by the Data Security Incident; and (3) and/or the provision of any credit reporting service required by law or that Company deems appropriate to provide to such individuals. In addition, within thirty (30) days of confirmation of a Data Security Incident, ESE shall develop and execute a plan, subject to Company's approval, which approval will not be unreasonably withheld, that reduces the likelihood of a recurrence of such Data Security Incident. ESE agrees that Company may at its discretion and without penalty immediately suspend performance hereunder and/or terminate the Agreement if a Data Security Incident occurs and it has a reasonable belief of potential ongoing harm. Any suspension made by Company pursuant to this paragraph 11 will be temporary, lasting until the Data Security Incident has ended, the ESE security has been restored to the reasonable satisfaction of the Company so that Company IT systems and Confidential Company Information are safe and the ESE is capable of maintaining adequate security once electronic communication resumes. Actions made pursuant to this paragraph, including a suspension will be made, or subject to dispute resolution and appeal as applicable, pursuant to the Governing Documents processes as approved by the Commission.

**13.12. Cybersecurity Insurance Required.** ESE shall carry and maintain Cybersecurity insurance in an amount of no less than ~~\$5,000,000~~2,000,000 per incident. Company will maintain at least ~~\$5,000,000~~2,000,000 of Cybersecurity insurance.

**14.13. No Intellectual Property Rights Granted.** Nothing in this Agreement shall be construed as granting or conferring any rights, by license, or otherwise, expressly, implicitly, or otherwise, under any patents, copyrights, trade secrets, or other intellectual property rights of Company, and ESE shall acquire no ownership interest in the Confidential Company Information. No rights or obligations other than those expressly stated herein shall be implied from this Agreement.

**15.14. Additional Obligations.**

- a. ESE shall not create or maintain data which are derivative of Confidential Company Information except for the purpose of performing its obligations under this Agreement or as authorized by the Governing Documents: or as expressly authorized by the customer, unless that use violates Federal, State, or local laws, tariffs, rules and/or regulations. For purposes of this Agreement, the following shall not be considered Confidential Company Information or a derivative thereof: (i) any customer contracts, customer invoices, or any other documents created by ESE that reference estimated or actual measured

customer usage information, which ESE needs to maintain for any tax, financial reporting or other legitimate business purposes consistent with the Governing Documents; and (ii) Data collected by ESE from customers through its website or other interactions based on those customers' interest in receiving information from or otherwise engaging with ESE or its partners.

- b. ESE shall comply with all applicable privacy and security laws to which it is subject, including without limitation all applicable Data Protection Requirements and not, by act or omission, place Company in violation of any privacy or security law known by ESE to be applicable to Company.
- c. ESE shall have in place appropriate and reasonable processes and systems, including an Information Security Program, defined as having completed an accepted Attestation as reasonably determined by the Company in its discretion, to protect the security of Confidential Company Information and ~~prevent~~protect against a Data Security Incident, including, without limitation, a breach resulting from or arising out of ESE's internal use, processing, or other transmission of Confidential Company Information, whether between or among ESE's Third-Party Representatives, subsidiaries and affiliates or any other person or entity acting on behalf of ESE, including without limitation Third-Party Representatives. The Company's determination is subject to the dispute resolution process ~~satisfactory to~~under the Company Governing Documents. In the event the Company and ESE are unable to resolve the dispute by mutual agreement within thirty (30) days of said referral, the dispute shall be referred for mediation through the Commission's Office of Administrative Law Judge. A party may request mediation prior to that time if it appears that informal resolution is not productive.
- d. ESE and Company shall safely secure or encrypt during storage and encrypt during transmission all Confidential Information, except that no encryption in transit is required for email communications.
- e. ESE shall establish policies and procedures to provide reasonable and prompt assistance to Company in responding to any and all requests, complaints, or other communications received from any individual who is or may be the subject of a Data Security Incident involving Confidential Company Information Processed by ESE to the extent such request, complaint or other communication relates to ESE's Processing of such individual's Confidential Company Information.
- f. ESE shall establish policies and procedures to provide all reasonable and prompt assistance to Company in responding to any and all requests, complaints, or other communications received from any individual, government, government agency, regulatory authority, or other entity that is or may have an interest in the Confidential Company Information, data theft, or other unauthorized release of Confidential Company Information, disclosure of Confidential Company Information, or misuse of Confidential Company Information to the extent such request, complaint or other communication relates to ESE's accessing or Processing of such Confidential Company Information.

- g. ESE will not process Confidential Company Information outside of the United States or Canada absent a written agreement with Company. For the avoidance of doubt, Confidential Company Information stored in the United States or Canada, or other countries as agreed upon in writing will be maintained in a secure fashion at a secure location pursuant to the terms and conditions of this Agreement.

**16.15. Specific Performance.** The Parties acknowledge that disclosure or misuse of Confidential Company Information in violation of this Agreement may result in irreparable harm to Company, the amount of which may be difficult to ascertain and which may not be adequately compensated by monetary damages, and that therefore Company shall be entitled to specific performance and/or injunctive relief to enforce compliance with the provisions of this Agreement. Company's right to such relief shall be in addition to and not to the exclusion of any remedies otherwise available under this Agreement, at law or in equity, including monetary damages, the right to terminate this Agreement for breach and the right to suspend the provision or Processing of Confidential Company Information ~~hereunder~~under the Governing Documents. ESE agrees to waive any requirement for the securing or posting of any bond or other security in connection with Company obtaining any such injunctive or other equitable relief.

**17.16. Indemnification.** To the fullest extent permitted by law, ESE shall indemnify and hold Company, its affiliates, and their respective officers, directors, trustees, shareholders, employees, and agents, harmless from and against any and all loss, cost, damage, or expense of every kind and nature (including, without limitation, penalties imposed by the Commission or other regulatory authority or under any Data Protection Requirements, court costs, expenses, and reasonable attorneys' fees) arising out of, relating to, or resulting from, in whole or in part, the breach or non-compliance with this Agreement by ESE or any of its Third-Party Representatives except to the extent that the loss, cost, damage or expense is caused by the negligence, gross negligence or willful misconduct of Company.

**18.17. Notices.** With the exception of notices or correspondence relating to potential or pending disclosure under legal compulsion, all notices and other correspondence hereunder shall be sent by first class mail, by personal delivery, or by a nationally recognized courier service. Notices or correspondences relating to potential or pending disclosure under legal compulsion shall be sent by means of Express Mail through the U.S. Postal Service or other nationally recognized courier service which provides for scheduled delivery no later than the business day following the transmittal of the notice or correspondence and which provides for confirmation of delivery. All notices and correspondence shall be in writing and addressed as follows:

If to ESE, to:

ESE Name:

Name of Contact:

Address:

Phone:



Email:

If to Company, to:

Company Name: National Fuel Gas Distribution Corporation  
Name of Contact: Rates and Regulatory Affairs Department  
Address: 6363 Main Street, Williamsville, NY 14221  
Phone: 716-857-6824  
Email: NFGatesPAD@natfuel.com

A Party may change the address or addressee for notices and other correspondence to it hereunder by notifying the other Party by written notice given pursuant hereto.

**19.18. Term and Termination.** This Agreement shall be effective as of the date first set forth above and shall remain in effect until terminated in accordance with the provisions of the service agreement, if any, between the Parties or the Governing Documents and upon not less than thirty (30) days' prior written notice specifying the effective date of termination, provided, however, that any expiration or termination shall not affect the respective obligations or rights of the Parties arising under this Agreement prior to the effective date of termination. Company may terminate this Agreement if the ESE loses its status as a Licensed Supplier, has not served customers for two (2) years, or has not had electronic communication, other than by email, with Company for one (1) year. Further, Company may terminate this Agreement immediately upon notice to ESE in the event of a material breach hereof by ESE or its Third-Party Representatives. For the purpose of clarity, a breach of Sections 3-4, 6-11, 13, 14, 16, and 24 shall be a material breach hereof. The Breaching Party will provide the non-breaching Party with a written description and notice of the material breach. Upon the expiration or termination hereof, neither ESE nor its Third-Party Representatives shall have any further right to Process Confidential Company Information ~~or Customer Information and, unless the customer has given written or electronic consent to do so~~ shall immediately comply with its obligations under Section 8 and the Company shall not have the right to process Confidential ESE Information and shall immediately comply with its obligations under Section 8.

**20.19. Consent to Jurisdiction; Selection of Forum.** ESE irrevocably submits to the jurisdiction of the Commission and courts located within the Commonwealth of Pennsylvania with regard to any dispute or controversy arising out of or relating to this Agreement. ESE agrees that service of process on it in relation to such jurisdiction may be made by certified or registered mail addressed to ESE at the address for ESE pursuant to Section 11 hereof and that such service shall be deemed sufficient even under circumstances where, apart from this Section, there would be no jurisdictional basis for such service. ESE agrees that service of process on it may also be made in any manner permitted by law. ESE consents to the selection of the Pennsylvania and United States courts within Erie County, Pennsylvania as the exclusive forums for any legal or equitable action or proceeding arising out of or relating to this Agreement.

**21-20. Governing Law.** This Agreement shall be interpreted and the rights and obligations of the Parties determined in accordance with the laws of the Commonwealth of Pennsylvania, without recourse to such state's choice of law rules.

**22-21. Survival.** The obligations of ESE under this Agreement shall continue for so long as ESE and/or ESE's Third-Party Representatives continue to have access to, are in possession of or acquire Confidential Company Information even if all Agreements between ESE and Company have expired or been terminated.

**23-22. Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which shall together constitute one and the same instrument. Copies of this Agreement and copies of signatures on this Agreement, including any such copies delivered electronically as a .pdf file, shall be treated for all purposes as originals.

**24-23. Amendments; Waivers.** Except as directed by the Commission, this Agreement may not be amended or modified except if set forth in writing signed by the Party against whom enforcement is sought to be effective. No forbearance by any Party to require performance of any provisions of this Agreement shall constitute or be deemed a waiver of such provision or the right thereafter to enforce it. Any waiver shall be effective only if in writing and signed by an authorized representative of the Party making such waiver and only with respect to the particular event to which it specifically refers.

**25-24. Assignment.** This Agreement (and the Company's or ESE's obligations hereunder) may not be assigned by Company, ESE or Third Party Representatives without the prior written consent of the non-assigning Party, and any purported assignment without such consent shall be void. Consent will not be unreasonably withheld.

**26-25. Severability.** Any provision of this Agreement which is determined by any court or regulatory body having jurisdiction over this Agreement to be invalid or unenforceable will be ineffective to the extent of such determination without invalidating the remaining provisions of this Agreement or affecting the validity or enforceability of such remaining provisions.

**27-26. Entire Agreement.** This Agreement (including any Exhibits hereto) constitutes the entire Agreement between the Parties with respect to the subject matter hereof and any prior or contemporaneous oral or written Agreements or understandings with respect to such subject matter are ~~merged herein, superseded hereby, including all Data Security Agreements between ESE and the Company that were executed prior to the effective date of this Agreement.~~ This Agreement may not be amended without the written Agreement of the Parties.

**28-27. No Third-Party Beneficiaries.** This Agreement is solely for the benefit of, and shall be binding solely upon, the Parties and their respective agents, successors, and permitted assigns. This Agreement is not intended to benefit and shall not be for the benefit of any party other than the Parties and the indemnified parties named herein, and no other party shall have any right, claim, or action as a result of this Agreement.

**29-28. Force Majeure.** No Party shall be liable for any failure to perform its obligations in

connection with this Agreement, where such failure results from any act of God or governmental action or order or other cause beyond such Party's reasonable control (including, without limitation, any mechanical, electronic, or communications failure) which prevents such Party from performing under this Agreement and which such Party is unable to prevent or overcome after the exercise of reasonable diligence. For the avoidance of doubt a Data Security Incident is not a force majeure event.

**30-29. Relationship of the Parties.** Company and ESE expressly agree they are acting as independent contractors and under no circumstances shall any of the employees of one Party be deemed the employees of the other for any purpose. Except as expressly authorized herein, this Agreement shall not be construed as authority for either Party to act for the other Party in any agency or other capacity, or to make commitments of any kind for the account of or on behalf of the other.

**31-30. Construction.** This Agreement shall be construed as to its fair meaning and not strictly for or against any party.

**32-31. Binding Effect.** No portion of this Agreement is binding upon a Party until it is executed on behalf of that Party in the space provided below and delivered to the other Party. Each Party agrees that this Agreement and any other documents to be delivered in connection herewith may be electronically signed, and that any electronic signatures appearing on this Agreement or such other document are the same as handwritten signatures for the purposes of validity, enforceability, and admissibility. Prior to such execution and delivery, neither the submission, exchange, return, discussion, nor the negotiation of this document, whether or not this document is then designated as a "draft" document, shall have any binding effect on a Party.

*[signature page follows]*



**IN WITNESS WHEREOF**, the Parties have executed and delivered this Agreement as of the date first above written.

**NATIONAL FUEL GAS DISTRIBUTION  
CORPORATION**

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

Name: John J. Polka, Jr. Name: \_\_\_\_\_

Title: Assistant Vice President Title: \_\_\_\_\_

## SELF-ATTESTATION OF INFORMATION SECURITY CONTROLS

National Fuel Gas Distribution Corporation ("Company") represents that for all information received from ESE or its Third Party Representatives in response or pursuant to this Self-Attestation that is marked CONFIDENTIAL by ESE or its Third Party Representatives (Confidential Self-Attestation Information) Company shall: (A) hold such Confidential Self-Attestation Information in strict confidence; (B) not disclose such Confidential Self-Attestation Information to any other person or entity; (C) not Process such Confidential Self-Attestation Information outside of the United States or Canada; (D) not Process such Confidential Self-Attestation Information for any purpose other than to assess the adequate security of ESE or its Third ~~party~~Party Representatives pursuant to this Self-Attestation and to work with ESE or its Third ~~party~~Party Representatives to permit it to achieve adequate security if it has not already done so; (E) limit reproduction of such Confidential Self-Attestation Information; (F) store such Confidential Self-Attestation Information in a secure fashion at a secure location in the United States or Canada that is not accessible to any person or entity not authorized to receive such Confidential Self-Attestation Information under the provisions hereof; (G) otherwise use at least the same degree of care to avoid publication or dissemination of such Confidential Self-Attestation Information as Company employs (or would employ) with respect to its own confidential information that it does not (or would not) desire to have published or disseminated, but in no event less than reasonable care.

The Requirements to complete the Self-Attestation are as follows (check all that apply to ~~Third Party's~~ESE's computing environment, leave blank all that do not apply to ~~Third Party's~~ESE's computing environment. For items that do not apply ~~-If, if~~ there are plans to address items that do not currently apply within the next 12 months, place an asterisk in the blank and the month/year the requirement is projected to apply to the ~~Third Party's~~ESE's computing environment), comments regarding plans for compliance are encouraged:

This SELF-ATTESTATION OF INFORMATION SECURITY CONTROLS ("Attestation"), is made as of this \_\_\_\_\_ day of \_\_\_\_\_, ~~2020~~2022 by \_\_\_\_\_, ~~a third party ("Third Party") to~~ Company ESE.

WHEREAS, ~~Third Party~~ESE desires to retain access to certain Confidential Company Information<sup>1</sup> (as defined in this Data Security Agreement), ~~Third Party~~ESE must THEREFORE self- attest to ~~Third Party's~~ESE's compliance with the Information Security Control Requirements ("Requirements") as listed herein. ~~Third Party~~ESE acknowledges that non-compliance with any of the Requirements may result in the termination of Company data access as per the discretion of Company, in whole or part, for its or their system(s). Any termination process will proceed pursuant to the ~~Company's Tariff~~Governing Documents.

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\_\_\_\_\_ An Information Security Policy is implemented across the ~~Third Party~~ESE corporation which includes officer level approval.

\_\_\_\_\_ An Incident Response Procedure is implemented that includes notification within 48 hours of knowledge of a ~~potential suspected~~incident, alerting utilities when Confidential Company Information is potentially exposed, or of any other potential security breach.

- \_\_\_\_\_ Role-based access controls are used to restrict system access to authorized users and limited on a need-to-know basis.
- \_\_\_\_\_ Multi-factor authentication is used for all remote administrative access, ~~including, but not limited to, access to production environments.~~
- \_\_\_\_\_ All production systems are properly maintained and updated to include security patches on a periodic-regular basis. Where a critical alert is raised, time is of the essence, and patches will be applied as soon as practicable.
- \_\_\_\_\_ Antivirus software is installed on all servers and workstations and is maintained to a supported release. If a pattern based antivirus solution is utilized, pattern signatures are to be kept with up-to-date signatures.
- \_\_\_\_\_ All Confidential Company Information is encrypted in transit utilizing industry best practice encryption methods, except that Confidential Information does not need to be encrypted during email communications.
- \_\_\_\_\_ All Confidential Company Information is secured or encrypted at rest utilizing industry best practice encryption methods, or is otherwise physically secured.

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<sup>1</sup> "Confidential Company Information" means, ~~collectively, aggregated and customer specific~~ information that Company is: (A) required by 52 Pa. Code § 62.76 and to provide to ESE or (B) any other Data provided to ESE by Company and marked confidential by the Company at the time of disclosure, ~~or (C) a Company's operations and/or systems, including but not limited to log-in credentials,~~ but excludes (i) information which is or becomes generally available to the public other than as a result of a disclosure by Receiving Party or its Representatives; (ii) information which was already known to Receiving Party on a non-confidential basis prior to being furnished to Receiving Party by Disclosing Party; (iii) information which becomes available to Receiving Party on a non-confidential basis from a source other than Disclosing Party or a representative of Disclosing Party if such source was not subject to any prohibition against transmitting the information to Receiving Party and was not bound by a confidentiality agreement with Disclosing Party; (iv) information which was independently developed by the Receiving Party or its Representatives without reference to, or consideration of, the Confidential Information; or (v) information provided by the customer with customer consent where the customer expressly agrees that the information is public.

- \_\_\_\_\_ It is prohibited to store Confidential Company Information on any mobile forms of storage media, including, but not limited to, laptop PCs, mobile phones, portable backup storage media, and external hard drives, unless the storage media or data is encrypted.  
~~phones, portable backup storage media, and external hard drives, unless the storage media or data is encrypted.~~
- \_\_\_\_\_ All Confidential Company Information is stored in the United States or Canada only, including, but not limited to, cloud storage environments and data management services.
- \_\_\_\_\_ ~~Third Party~~ESE monitors and alerts their network for anomalous cyber activity on a 24/7 basis.
- \_\_\_\_\_ Security awareness training is provided to all personnel with access to Confidential Company Information.
- \_\_\_\_\_ Employee background screening occurs prior to the granting of access to Confidential Company Information.
- \_\_\_\_\_ Replication of Confidential Company Information to non-company assets, systems, or locations is prohibited.
- \_\_\_\_\_ Access to Confidential Company Information is revoked when no longer required, or if employees separate from the ESE or Third Party Representative.

Additionally, the attestation of the following item is requested, but is NOT part of the Requirements:

- \_\_\_\_\_ ~~Third Party~~ESE maintains an up-to-date SOC II Type 2 Audit Report, or other security controls audit report.

IN WITNESS WHEREOF, ~~Third Party~~ESE has delivered accurate information for this Attestation as of the date first above written.

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**THIRD-PARTY REPRESENTATIVE AGREEMENT**

~~This Third Party Agreement to be provided to the Company upon request.~~

~~I, \_\_\_\_\_, have read the Agreement between \_\_\_\_\_,  
("Company") and \_\_\_\_\_, ("Company") dated \_\_\_\_\_, 20  
(the "Agreement") and agree to the terms and conditions contained therein. My duties and  
responsibilities on behalf of \_\_\_\_\_ require me to have access to the  
Confidential Information disclosed by Company to the ESE pursuant to the Agreement.~~

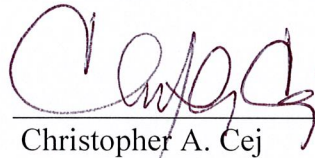
**Signature — Date**

## VERIFICATION

I, CHRISTOPHER A. CEJ, certify that I am the GENERAL MANAGER – GAS SUPPLY ADMINISTRATION of National Fuel Gas Distribution Corporation, and that in this capacity I am authorized to, and do make this Verification on their behalf, that the facts set forth in the foregoing document are based upon my reasonable investigation thereof and/or were provided to me by other individuals and, as such, are true and correct to the best of my knowledge, information and belief, and that National Fuel Gas Distribution Corporation expects to be able to prove the same at any hearing that may be held in this matter. I understand that the statements herein are made subject to the penalties of 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities.

Date: \_\_\_\_\_

10/5/22



Christopher A. Cej

General Manager – Gas Supply Administration



Commonwealth of Pennsylvania  
**Pennsylvania Public Utility Commission**  
Harrisburg, PA 17105-3265  
**EFILING - FILING DETAIL**

Date Created	Filing Number
10/5/2022	2437850

Your filing has been electronically received. Upon review of the filing for conformity with the Commission's filing requirements, a notice will be issued acknowledging acceptance or rejection (with reason) of the filing. The matter will receive the attention of the Commission and you will be advised if any further action is required on your part.

The date filed on will be the current day if the filing occurs on a business day before or at 4:30 p.m. (EST). It will be the next business day if the filing occurs after 4:30 p.m. (EST) or on weekends or holidays.

**Representing:** National Fuel Gas Distribution Corporation

**Case Description:** National Fuel Gas Distribution Corporation Supplement No. 246 to Tariff Gas - Pa. P.U.C. No. 9

**Transmission Date:** 10/5/2022 10:30 AM

**Filed On:** 10/5/2022 10:30 AM

**eFiling Confirmation Number:** 2437850

File Name	Document Type	Upload Date
NFGD - Revised DSA Tariff Supplement.pdf	Tariff - Revision (Fixed Utility)	10/5/2022 10:30:27 AM

For filings exceeding 250 pages, the PUC is requiring that filers submit one paper copy to the Secretary's Bureau within three business days of submitting the electronic filing online. Please mail the paper copy along with copy of this confirmation page to Secretary, Pennsylvania Public Utility Commission, 400 North Street, Harrisburg PA 17120 a copy of the filing confirmation page or reference the filing confirmation number on the first page of the paper copy.

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