STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

CASE 05-M-0090 – In the Matter of the System Benefits Charge III

RESPONSE OF
NATIONAL FUEL GAS DISTRIBUTION CORPORATION
IN RESPONSE TO
NOTICE SOLICITING COMMENTS

On January 28, 2005, the Public Service Commission ("Commission") issued a Notice Soliciting Comments ("Notice") in the above-referenced proceeding seeking public remarks on "several questions" relating to the Commission's System Benefits Charge ("SBC") program. The Commission explained that the comments received pursuant to the Notice "will be used by Staff to develop a proposal regarding the future of the SBC program." Notice at 2.

National Fuel Gas Distribution Corporation ("Distribution" or the "Company") is a gas-only utility serving approximately 520,000 customers in western New York State. Distribution's gas service territory encompasses the electric service territories of three major electric utilities.[1] As a general matter, all of Distribution's customers receive electric service from a regulated electric utility participating in the existing SBC program. So, all of Distribution's customers who might possibly be billed an SBC charge are already billed the SBC charge by their electric utility.

Distribution's rates are unbundled (between delivery and commodity charges), and transportation service has been available under Distribution's tariff since 1983. Small volume customers (including residential) gained access to competitive retail

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[1] Niagara Mohawk Power Corporation, New York State Electric and Gas Corporation and Rochester Gas & Electric Corporation. The Jamestown, New York area receives retail electric service from Jamestown Board of Public Utilities.

service in 1996. Today, approximately one-third of Distribution's gas throughput is composed of customer-owned gas obtained under retail access services.

The SBC program was established by the Commission under Opinion 96-12, in Case 94-E-0952 ("Op. 96-2").[2] The purpose of the SBC was to provide a "mechanism for recovering costs required to be spent on environmental and other public policy considerations that would not otherwise be recovered in a competitive market." There was a concern in 1996 that competitive markets would not fund public policy programs previously funded through utility rates, and that lacking an alternative funding mechanism, an SBC was required. The Commission also stated that the SBC program "should be revisited sometime after retail competition has commenced to determine whether funding levels were appropriate and whether the SBC program should be continued." Notice at 1. Toward that end, the Notice includes fourteen questions designed to obtain feedback on the existing SBC program and its future.

Most of the Notice's questions focus on the electric industry. The instant comments address Question no. 13, which seeks comment on a proposal to develop, for the first time, a gas SBC:

13. Should the scope of the SBC program be expanded to include programs for natural gas customers?

To answer the Notice's question no. 13, it is important to recognize how restructuring of gas utilities has differed from restructuring of electric utilities, and the effect of that distinction on funding requirements for SBC programs. For purposes of the SBC, there are two relevant differences: First, retail access is not new to gas customers, as it is to electric customers. And second, many gas customers can utilize an alternate

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[2] Case 94-E-0952 et al., In the Matter of Competitive Opportunities Regarding Electric Service, Opinion and Order Regarding Competitive Opportunities for Electric Service (issued May 20, 1996) at 57-62.

fuel, quite unlike electric customers. If despite these considerations the SBC program were expanded to include programs for natural gas customers, establishment of a separate gas SBC would be unnecessary and possibly counterproductive.

1. Gas Competition Has Not Eroded Collection Levels

In the electric Competitive Opportunities proceeding, the Recommended Decision (at page 110) expressed a concern that competition would erode traditional funding of "environmental and other public policy" programs. As explained in the Final Report of the New York Energy Smart Program Evaluation and Status Report, "New York's public benefits program was initiated in 1996 by order of the PSC as a strategy for preserving, within the emerging competitive energy market, energy efficiency, renewable energy, low-income programs, research and development (R&D) and environmental protection programs previously offered by utilities." The SBC was established as a mechanism "insulated from the effects of competition" to fund the public benefits program in place of traditional ratemaking methods.

Gas utilities have been providing retail access since 1984,[3] preceding electric competition by over a decade. Today, approximately one-third of Distribution's total system throughput is composed of customer-owned supply.[4] Through this continuing transition period, public benefit programs have been sustained via traditional ratemaking and individual utility rate plans. Distribution operates public benefit programs including low-income services, R&D, environmental conservation and energy efficiency without an SBC. Funding is achieved through base rates and other charges. Further, NYSERDA

[3] See Public Service Law §66-d. **Contract Carrier Authorization**, authorizing transportation of customer-owned natural gas to large-volume users. Distribution offered transportation service beginning in 1983.

[4] Almost 100% of Distribution's large-volume customers, and 10% of small-volume customers, have migrated to retail access service.

charges are billed to Distribution as part of the utility assessments, with recovery provided through the traditional ratemaking process. As a general rule, these charges are and should continue to be recovered as part of utility delivery rates, obviating the need for a gas SBC.

2. Gas Service is Optional for Larger Customers

Although most of Distribution's small volume customers lack real alternatives to natural gas service, the opposite holds true for large volume, and especially industrial customers. Many of these customers, nearly all of who purchase supply from ESCOs, have the ability to switch to an alternate fuel, often on very short notice. A "non-bypassable" SBC charge, or any surcharge, would merely inflate the customer's gas cost against a competitive alternative without an SBC (e.g., oil). This would either (1) reduce load, shifting all unrecoverable costs to other, captive customers; or (2) force the creation of an exemption for customers capable of bypass, shifting public benefit costs to more captive customers.

3. A Gas SBC Charge Is Unnecessary and Possibly Counterproductive

For the reasons described above, Distribution strongly believes that there is no need to implement an SBC charge on gas customers. If the Commission decides otherwise, then the Company recommends that funding be provided through the existing electric SBC, and not by establishment of a separate gas SBC.

It appears from the text of the Notice that any proposal to establish a separate gas SBC assumes that customers would be billed a single SBC on a consolidated gas and electric bill. Given that most of the state's gas customers receive service from the same utility that provides electric service, this would presumably be the simplest and least intrusive means of imposing an SBC. Distribution is a gas-only utility. All of

Distribution's customers receive electric service, and presumably are billed an SBC, from any of the three major electric utilities doing business in Distribution's gas service territory. The electric SBC, being billed by the overlapping electric utility, already assures a contribution from Distribution's customers. The appearance of a second SBC on gas bills is unnecessary and will only cause customer confusion. The Company supports NYSERDA administration of the existing SBC programs and that programs developed through the funds collected through the existing SBC charge should apply to any qualified energy efficiency program regardless of primary fuel source.

Conclusion

For all of the foregoing reasons, Distribution recommends against the Notice's proposal to expand SBC charges to natural gas customers. Current gas utility public benefit programs and funding mechanisms are well-established and should not be disturbed outside of individual utility rate plans. Moreover, the primary rationale for an SBC – to protect funding levels from erosion due to competition – is inapplicable to the gas industry, where retail access and public benefit programs have successfully coexisted since 1983.

Respectfully submitted,

NATIONAL FUEL GAS DISTRIBUTION CORPORATION

/s/ Michael W. Reville (bgh)

By______________________________

Michael W. Reville
Deputy General Counsel
6363 Main Street
Williamsville, NY 14221
716/857-7313
Revillem@natfuel.com

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Buffalo, New York