



October 19, 2010

Hon. Jaclyn A. Brillling
Secretary
Public Service Commission
Three Empire State Plaza
Albany, New York 12223-1350

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

Dear Secretary Brillling:

On October 18, 2010, People United for Sustainable Housing, Inc. (“PUSH”) filed a document entitled “Response of [PUSH] to NFG’s Opposition to Request for Active Party Status.” The document was served on National Fuel Gas Distribution Corporation (“Distribution” or the “Company”) via e-mail, and posted on the Commission’s web site.

PUSH’s document states that it is intended to reply to the response of Distribution, filed on October 8, 2010, to PUSH’s request for active party status in Case 07-G-0141, filed on September 29, 2010.

Distribution’s response to PUSH’s request to intervene was allowed under the Commission’s Rules of Procedure. See, 16 NYCRR §3.6. PUSH’s reply, however, is not authorized. 16 NYCRR §3.6(d)(3). PUSH has neither claimed nor demonstrated “extraordinary circumstances,” and Distribution’s response to PUSH’s request did not seek relief or constitute a counter-motion. Id. PUSH’s reply, therefore, cannot be entertained. Consequently, Distribution will not respond to the arguments raised in PUSH’s unauthorized reply. Moreover, at this juncture, little would be gained by another round of comments.

PUSH makes one assertion, however, that calls for a response by Distribution. On page 2 of its unauthorized reply, PUSH suggests that Distribution is either “willfully ignorant” of PUSH’s stated agenda or, worse, that it is engaged in “a purposeful attempt to deceive the commission” when the Company argues that PUSH’s CIP proposal is, or has been, “west-side specific.” Distribution takes very seriously PUSH’s claim that the Company would intentionally “deceive the Commission,” and regards the accusation as one that cannot go unanswered.

PUSH is headquartered on Buffalo’s west side. Most, if not all, of PUSH’s housing rehabilitation projects, including PUSH’s \$300,000 demonstration home, are located on Buffalo’s west side. PUSH, itself, has described its activities in the context of its west side neighborhood. PUSH’s web site currently describes PUSH’s mission as follows:

People United for Sustainable Housing (PUSH Buffalo) is a community organization which works to rebuild the West Side of Buffalo. (<http://www.pushbuffalo.org/>)

PUSH's web site and promotional materials demonstrate that the organization is dedicated to the west side of Buffalo. It was Distribution's reasonable understanding, based on the following examples of PUSH's own writings and promotional materials, that PUSH also intended to have the Company focus its efforts on the west side of Buffalo.

In a message distributed on May 10, 2010 through the Buffalo Independent Media Center, a rally was announced using these words:

As part of their campaign against National Fuel to help weatherize homes on the west side of Buffalo, PUSH will be holding a rally . . .

Furthermore, the "partnership" that PUSH was pursuing with the Company, was clearly directed at activities devoted to the west side of Buffalo. In a section of the Buffalo News that posts community announcements, the following notice of the same rally was posted on May 14, 2010:

Members of PUSH Buffalo plan to gather today at National Fuel headquarters in Amherst to deliver a letter requesting a meeting with the company's chief executive officer David F. Smith. The housing advocacy group wants to pursue a partnership with the utility to help reduce the cost of heating for the West Side Buffalo communities residents that the group represents.

When, however, Distribution issued public statements identifying PUSH's interest as being limited to the west side of Buffalo, PUSH reacted tactically by expressly broadening its focus to low-income neighborhoods in the City of Buffalo, which although larger an area than the west side, is still much smaller than Distribution's 11-county service territory:

We hereby submit this public comment urging you to reject National Fuel's petition to extend its Conservation Incentive Program (CIP) until the company engages in a substantive dialogue about conservation needs in Buffalo's low-income neighborhoods." Case 07-G-0141, *Comments of PUSH Buffalo* (September 2, 2010).

In its most recent statements and filings, PUSH has, again, changed course, claiming to extend its focus to include a presumably larger area than the west side and the City of Buffalo.

The point here is not to impugn the veracity of PUSH's statements or to castigate PUSH for changing its focus as a litigation tactic. Rather, the point is that Distribution's assertion regarding the focus of PUSH's activities cannot credibly be claimed to be either willful ignorance or "a purposeful attempt to mislead the Commission," but instead was a perfectly reasonable statement based on the contents of PUSH's own stated goals and proclamations.¹

Very truly yours,

A handwritten signature in black ink, appearing to read "Michael W. Reville". The signature is fluid and cursive, with a long horizontal stroke at the end.

Michael W. Reville, Esq.

¹Moreover, even assuming, *arguendo*, that PUSH's focus has broadened to include Distribution's entire service territory, or the whole of the state of New York, for that matter, it avails PUSH nothing because PUSH's demands, articulated again in "Recommendations to the Public Service Commission Chairman Gary Brown," and included in the unauthorized reply, would continue to overreach the Commission's established program requirements under the Energy Efficiency Portfolio Standard.