UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Standards of Conduct for Transmission Providers	**)** **)**	**Docket No. RM-01-10-000**

POST CONFERENCE COMMENTS OF

NATIONAL FUEL GAS DISTRIBUTION CORPORATION

EXECUTIVE SUMMARY

The Commission instituted this proceeding on September 27, 2001 by issuing its proposed revisions to the Standards of Conduct governing transmission providers and their energy affiliates. This issuance followed the conference held in March of 2001 on affiliated issues. Comments subsequently followed, as well as the Notice of Staff Conference and accompanying Staff Analysis of April 26, 2002. The Conference was held on May 21, 2002 (“Conference”). Distribution sincerely appreciates the Commission’s willingness to approach this issue in a considered fashion and to assure that any regulation change has been fully explored.

All of the comments and discussion at the Conference underscore the rationale for extending the standards, particularly for combined gas and electric companies. At the same time, these same industry responses provide strong grounds for a rational rule that can also take into account unique industry circumstances. An exemption for local distribution companies (“LDC”) such as Distribution would be one such circumstance within a well crafted rule designed to eliminate affiliate concerns while at the same time **not** requiring excessive compliance steps where the costs would be high and the benefits nil. An exemption is needed for Distribution and other companies affiliated with pipelines whose operating efficiencies and reliability depend upon close communication and which have little risk of negatively impacting the Commission’s goals for the natural gas market.

Further, despite this lengthy rule process, and despite requests for specifics at the Conference, no party that has identified any improper LDC conduct that the proposed rule will remedy. Further, state regulation of LDCs, particularly where affiliate rules exist, protect the market against improper affiliate preferences of the type that the Commission seeks to prevent. Most importantly, the documented costs to consumers, both in terms of impaired service and in increased rates, would be significant – despite the lack of corresponding benefits.

For these reasons, any rule should include an exemption for LDCs like Distribution.

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Pursuant to the Federal Energy Regulatory Commission's ("FERC" or "Commission") Notice of Agenda for Technical Conference of May 17, 2002, National Fuel Gas Distribution Corporation ("Distribution") files these post-conference comments. Distribution appreciates the considered approach being taken by the Commission in crafting its Standards of Conduct. In its attempt to assist in this process and provide specific, responsive information on the issue, Distribution filed pre-conference comments which responded to the Staff Analysis of April 25, 2002, and which also responded to the earlier filed comments in response to the Commission's Notice of Proposed Rulemaking in this proceeding. Distribution's comments here respond only to the colloquy at the May 21, 2002 conference ("Conference") discussions.

A. No Parties Provided Examples of Improper Behavior by Affiliated Local Distribution Corporation Under the Current Exemption.

A May 21, 2002 Conference highlight was the failure of *any* party to assert or describe behavior by a pipeline-affiliated LDC which has competitively harmed the interstate natural gas markets. The lack of even any specific allegations of affiliated LDC abuses is particularly striking in light of the Commission Staff's express – and unanswered – request for such specifics at the Conference. The only attempted allegations of harms by any affiliates hearkened back to cases that have already been adjudicated by the Commission – such as the Natural Gas Pipeline Company of America case. None of these cases involves LDCs.

The sole mention of allegedly worrisome LDC behavior at the Conference appeared to involve a vague allegation about an LDC taking advantage of information regarding a new LDC customer to the detriment of a competing supplier of gas on the LDC's own distribution system. No specifics of this case were provided. No effort was made to show how the proposed Standards of Conduct would remedy this instance. Indeed the Standards would not, as it appears the allegation was not even related to an LDC affiliated with a pipeline, but stemmed from facts applicable only to an LDC. The state's public service commission would certainly be the forum for redress. Further, the assertions at the Conference demonstrated that the state rate forum was, in fact, where the issue was raised.

B. Commenters at the Conference Provided Sound Reasons for Continuing the Exemption for LDCs, Including Protections in Place at the State Level.

Further specific comments as to the difficulties and cost of separating LDCs from affiliated pipelines was provided, particularly by Questar and Distribution. The timing, the expense and the effects on such systems were all highlighted in the remarks of the LDCs represented, and by the New York State Public Service Commission. Participants also discussed the operational concerns relevant to pipelines and their affiliated LDCs at the pipeline/LDC interface.

The fact that LDCs are regulated by their relevant state public service commission differentiates the LDC exemption from other affiliates. Where such state oversight is in place, particularly where affiliate rules exist, no benefit is provided by adding the additional layer of affiliate regulation review at the Commission. For Distribution, adding the proposed regulation would only add tremendous cost and reduce the reliability and efficiency of the system.

Some concern appeared to be raised with the "off-system" sales abilities of LDCs under the exemption. That activity is undertaken to offset the cost of gas to consumers, while the LDC typically retains a small portion of the revenues. Off-system sales are a small piece of an LDCs' total sales. Where these transactions are not done on the affiliated pipeline, the NOPR's concerns regarding sharing information and affiliate preferences are simply not present. Moreover, for off-system sales by affiliated LDCs on *other*, non-affiliated pipelines, the proposed rules is not needed to prevent the sharing of upstream pipeline operational information known by the affiliated pipeline; such information sharing would be violative of existing Commission regulations, because all such information is required to be posted. To Distribution's knowledge no violations of the affiliate rules involving off-system sales by affiliated LDCs have occurred. Consequently, imposition of the proposed rule is not necessary to address the problems stemming from off-system sales by LDCs affiliated with pipelines – those transactions are already addressed by existing rules and exemptions.

C. The Dominion Energy ("DTI") Proposal, While Useful for Some Companies, Will Not Address Certain LDC Issues; therefore an LDC Exemption Should be Included With the DTI Language if it is Adopted.

The DTI language proposed at the conference (and circulated afterwards) does not resolve the issue Distribution has identified. Further, the DTI language can be adopted, consistent with the LDC exemption. Distribution asserts that, as discussed earlier, no harm has been identified by parties in this proceeding from the exemption of LDCs. Distribution and others have shown how the costs, both in monetary terms and in reliability of operations areas, far outweigh the once more repeated vague concerns with all affiliates identified at the conference.

DTI has proposed to apply the standards of conduct to "commercial function" employees. This, in many cases, may address concerns with the rule by most companies. The proposal, however, is based on DTI's own corporate and operational structure. It does not address the circumstances of Distribution and National Fuel Gas Supply Corporation's ("Supply"). Distribution has provided extensive detail as to the degree of integration between Distribution and its affiliated pipeline, Supply. The cost to separate out the functions under either the Commission's proposed standards *or* the DTI proposal have been identified by Distribution and would be similar in either case. Thus, the LDC exemption is critical for LDCs such as Distribution. in either set of proposed regulations.

D. Distribution Supports Supply's Proposed Language or DTI's Language with Modification

Given the above, Distribution, therefore supports the language Supply has proposed in §358.3(d)(ii), which modifies the Commission's proposed regulations. Further, Distribution would revise the DTI proposed regulations (also §358.3(d)(ii)) *with the change noted below*.

National Fuel Gas Supply Corporation
Proposed Language
§358.3 Definitions
(d)
(ii) The definition of energy affiliate excludes…3) local gas distribution companies that do not engage in transmission transactions with affiliated transmission providers with respect to off-system sales, except as determined by the Commission.

DTI
Proposed Language
Definitions
(d)
*
(ii) The definition of Energy Affiliate excludes:
(1) other affiliated Transmission Providers; and
(2) local distribution companies that do not engage in transmission transactions with affiliated transmission providers with respect to off-system sales, except as determined by the Commission.

III.

CONCLUSION

The May 21, 2002 Conference brought forth no specifics as to the harm to the natural gas market by exempting LDCs from the standards of conduct. Additional reasons to exempt LDCs were discussed by company and public service commission representatives. Despite having both a forum and a direct invitation, those parties urging extension of the affiliate rules to LDCs made only more of the same vague arguments. An LDC exemption remains critical to companies like Distribution.

Respectfully submitted,

NATIONAL FUEL GAS DISTRIBUTION CORPORATION

By:_________________________
Alice A. Curtiss
Its Attorney

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