



National Fuel®

January 29, 2024

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**MEMORANDUM IN OPPOSITION
S.2016-B (Kruger) /A.4592-B (Fahy) – NY HEAT Act**

The New York Home Energy Affordable Transition Act (“NY HEAT Act”), authorizes the Public Service Commission (“PSC”) to discontinue portions of the gas distribution system to meet the goals of the Climate Leadership and Community Protection Act (“CLCPA”). The bill also makes sweeping amendments to the Public Service Law to change the obligation to serve of gas companies, expressly removing the consumer right for the continued provision of gas service.

National Fuel opposes the subject bill as a general matter because a core premise of the bill, that use of the natural gas distribution system must be curtailed or discontinued in order to meet the emission reduction goals of the CLCPA, is patently inaccurate. The CLCPA does not mandate curtailment or discontinuance of the natural gas system, and the continued operation of a decarbonized natural gas system is entirely consistent with attainment of the CLCPA’s emission reduction goals. Indeed, use of a decarbonized natural gas system will be necessary to achieve these reductions in a responsible way that ensures the continued reliability, resilience, and affordability of energy in the State.

National Fuel also opposes the legislation’s characterization of continued gas service as unnecessary for the preservation of the health and general welfare and against the public interest. The continued provision of natural gas is of utmost importance to our customers who rely on it for heating in a region that frequently experiences frigid temperatures and extreme winter weather events, often resulting in widespread power outages. Therefore, continued gas service is indisputably necessary for the preservation of health and general welfare, and in the public interest. It should be noted that identifying continued gas service as “necessary for the preservation of the health and general welfare” is the foundation of consumer protection requirements under the Public Service Law, the foundation for regulating pipeline delivered natural gas as a public utility, and the foundation for treating utility service differently than unregulated commercial products.

Further, adoption of these provisions would be premature given the ongoing gas planning process being conducted by the PSC in Case 20-G-0131 (“Gas Planning Proceeding”) and related individual utility gas planning dockets (e.g., Case 22-G-0610 for National Fuel). The Gas Planning Proceeding is focused on ensuring that natural gas utilities continue to provide safe and reliable service during the State’s energy evolution. Planning for this evolution involves the examination of a number of complex issues which may impact each gas utility differently given that each gas utility’s service territory is unique. Issues being addressed in the proceeding include: affordability; the pace of electrification and the ability of the electric system to reliably provide all of New York’s heating needs in each region of the State; the future role of alternative fuels, such as renewable natural gas and hydrogen; future capital investment in the gas distribution system; and potential changes to PSC policy concerning new applications for service and main and/or service line extensions.

As a part of the initial planning process outlined in the Gas Planning Proceeding, National Fuel submitted a Final Long-Term Plan to the PSC on July 17, 2023 (“Final LTP”) that included a number of decarbonization actions, including energy efficiency, electrification, hybrid heating, industrial customer programs, thermal energy networks, renewable natural gas and hydrogen. Pursuant to the PSC order

regarding the Final LTP, National Fuel will be further exploring these decarbonization actions to inform its next long-term plan.

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

Given the numerous ongoing issues being considered in the Gas Planning Proceeding and CLCPA Implementation Proceeding, it is inappropriate to adopt the provisions in the NY HEAT Act before the future role of the gas distribution system has been clearly defined. There is no question that the NY HEAT Act is a gas ban by another name. National Fuel believes that sweeping statutory changes impacting the provision of gas service in New York should be informed by the Gas Planning and CLCPA Implementation Proceedings and the utility-specific long-term plans evaluated by the PSC.

Gas utilities like National Fuel are still required to provide safe and adequate service at just and reasonable rates. Determining how to reconcile those mandates with the requirements of the CLCPA is a complex process that is better suited to the existing Gas Planning and CLCPA Implementation Proceedings than to broad statutory changes. The NY HEAT Act does not adequately contemplate the complexity of that process and instead elevates gas system discontinuance – effectively, a ban on gas – above customer service, affordability and above all, reliability. For example, the NY HEAT Act encourages the discontinuance of portions of a gas distribution system yet provides no safeguards around the adverse impacts on system pressure and reliability for other contiguous customers caused by a partial discontinuance or the enormous consumer cost burden to electrify their homes and businesses upon loss of gas service.

The proposed legislation also sets a goal that low-to-moderate income customers, defined as households with annual incomes at or below eighty percent of the state median income, are protected from energy burdens greater than 6% of their income. Any cost overrun under this provision would presumably be socialized into the rates of the remaining customers, undermining the affordability goals of the bill, and having an inflationary impact on goods and services where businesses pass on those costs to customers. Further, capping energy costs has the ironic consequence of disincentivizing energy efficiency and reduced energy use in low-to-moderate income homes. Why limit energy usage or install efficiency measures when the price you pay for energy is capped, regardless of usage? Reducing energy use through building envelope and energy efficiency improvements have the most immediate impact on reducing energy costs and emissions for customers.

In the All-Electric Buildings Act passed in last year’s final budget, the Governor and Legislature acknowledged that there will be situations in which electric service cannot be reasonably provided by the electric grid and included an exemption to the ban on new construction to that effect, among other exemptions for critical services and businesses. However, the NY HEAT Act makes no such acknowledgement, and worse, renders that exemptions meaningless by authorizing and encouraging the PSC to remove a reliable alternative to electrification.

Based on the foregoing, National Fuel respectfully urges that the NY HEAT Act does not receive affirmative consideration this legislative session.