

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

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Case 04-G-1047 - Proceeding on motion :
of the Commission as to the rates, charges, :
rules and regulations of National Fuel Gas :
Distribution Corporation. :
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JOINT PROPOSAL

Dated: April 15, 2005

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JOINT PROPOSAL

This JOINT PROPOSAL (“Joint Proposal”) is made this 15th day of April 2005, by and between National Fuel Gas Distribution Corporation (“Distribution” or “the Company”), Staff of the New York State Department of Public Service (“Staff”), the Consumer Protection Board of the State of New York (“CPB”), Multiple Intervenors (“MI”), Public Utility Law Project of New York, Inc., North American Energy, Inc., National Fuel Resources, Inc. (“NFR”), Small Customer Marketer Coalition and other parties whose signature pages are attached to this Joint Proposal (collectively referred to herein as the “Signatory Parties”).

This Joint Proposal was developed pursuant to, and in accordance with, the New York State Public Service Commission’s (“Commission”) Settlement Procedures, as set forth in 16 NYCRR § 3.9. Following exploratory discussions, parties and other persons with an interest in the outcome of discussions¹ were notified of pending settlement

¹ In addition to serving notice as specified in 16 NYCRR §3.9, the Company notified every marketer and natural gas producer doing business in its service territory. Persons identified on the Commission’s Active Parties Service List issued in this proceeding are referred to herein as the “Parties.”

negotiations. A Notice of Impending Negotiation was filed with the Secretary on January 11, 2005.

All party settlement conferences were held, and duly noticed to all parties, in Albany, Buffalo, Niagara Falls and New York City in January, February and March 2005. By agreement of the parties, other smaller breakout groups held various settlement meetings and conference calls with prior notice to all parties.

I. Overall Framework.

On August 27, 2004, Distribution filed new tariffs to be effective August 1, 2005. The new tariffs were designed to increase annual revenue recovered in base rates by \$60.9 million. Elimination of surcharges and other changes, however, produced a net aggregate bill increase of \$41.3 million, or an increase, including commodity charges, of 5.6%.

Following the filing of direct testimony and exhibits responsive to the Company's request, Distribution invited the parties, including Staff, marketers², consumer advocates and others to attend a conference to determine if an agreement could be reached that would settle the rate case and provide for a multi-year rate agreement. In response to that invitation, the Company, Staff, CPB, MI, marketers and gas producer representatives convened settlement discussions on January 10, 2005. Notwithstanding the commencement of negotiations, Distribution filed its rebuttal testimony and exhibits according to the schedule established by Administrative Law Judge Elizabeth H. Liebschutz. Following the Company's rebuttal filing, the parties held numerous

² "Marketer" is used interchangeably with "ESCO" and "Supplier" in this Joint Proposal, identifying the same entity defined in the Company's tariff (at Leaf No. 12) and under the Uniform Business Practices, Case 98-M-1343.

settlement conferences in order to reach a comprehensive settlement of rates and related matters, including competition initiatives. This Joint Proposal is the product of those meetings.

This Joint Proposal covers a two-year period and provides for a revenue requirement increase of \$21 million, effective August 1, 2005. Available credits will mitigate the effect of the base rate increases on customers' bills for the term of this Joint Proposal. Through the implementation of a revenue tax surcharge decrease (described *infra* at Section II. C.) and the return of tax overcollections through a bill credit, the net effect on customer bills when compared to rates currently in effect will be a decrease. With the application of adjustments including these credits and revenue tax reductions totaling \$36 million, the result will be an actual, overall annual bill decrease of \$15 million or 2.0% compared to bills at currently effective rates.

This Joint Proposal also provides for continuation of the earnings sharing arrangement that has provided an effective incentive for productivity gains in the past. This Joint Proposal also provides for programs designed to maintain safety, ensure the continued high level of customer service and provide needed support to help low income customers pay their gas bills. This Joint Proposal also establishes programs intended to further the Commission's competition agenda, including the purchase of marketers' accounts receivable, a promotional program modeled on Orange and Rockland's "Power Switch" plan and other programs to support customers' awareness and understanding of the availability of choice. Further, this Joint Proposal contains various rate design mechanisms that materially advance the rate unbundling process.

The Signatory Parties believe that this Joint Proposal represents a fair and reasonable resolution of the issues presented in the case and should be adopted by the Commission. Therefore, the Signatory Parties hereby agree as follows:

II. Gas Rates and Revenue Levels.

This Joint Proposal covers Distribution's gas rates and charges for retail gas sales and gas transportation services for a two-year term ending on July 31, 2007. Provisions that extend beyond or otherwise depart from the two-year term of this Joint Proposal are expressly identified.

A. Revenue Levels.

The rates contained in this Joint Proposal are designed to become effective August 1, 2005. There shall be a total revenue requirement increase of \$21 million. The \$21 million revenue requirement increase will be achieved by the elimination of a current bill credit (\$4.5 million) (described *infra*), the elimination of the current Home Insulation and Energy Conservation Act ("HIECA") credit³ (\$1.3 million), and a base rate increase which accounts for the balance of the revenue requirement increase (\$15.2 million). Appendix A summarizes the amount of the increase in base rates. The Signatory Parties take note of the fact that Distribution has voluntarily extended the suspension period on four separate occasions – from an effective date of August 1, 2005 to October 26, 2005 - in order to facilitate the negotiations that gave rise to this Joint Proposal. It is the specific recommendation and desire of the Signatory Parties that Distribution be made-whole for this accommodation, through either an effective date of August 1, 2005 or through a rate design or other compensatory mechanism that provides the same revenue in the First Rate

³ The HIECA and other credits are described in more detail *infra* at Section II. H..

Year ending July 31, 2006 as if such rates were effective on August 1, 2005.⁴ The Signatory Parties recommend, however, that in order to fully achieve the benefits of programs in this Joint Proposal, it should become effective no later than August 1, 2005.

As discussed in greater detail in Section II. C. below, the Company will also reflect the implementation of state income taxes in base rates and begin to refund the balance of overcollected state income taxes through a credit to customers' monthly bills. Volumetric quantities and number of bills by rate class as provided in the Company's filing will be utilized solely for rate design purposes and for monthly accounting entries where needed (e.g., in the calculation of the over/under revenue collection for pension, postretirement benefits other than pension ("OPEB"), and Research Development and Demonstration ("RD&D"), and for lost revenues associated with the Merchant Function Charge ("MFC")), but not to establish an agreed-upon sales forecast methodology.

B. Rate Design.

1. Delivery Rates.

The Company's gas delivery rates will be designed to implement the base rate increases discussed in Section II. A. and a low income rate program (described next below), in accordance with Appendix A. The base rate increases will be recovered through an allocation to the rate classes based on the non-gas cost revenues of each firm rate class. Increases by rate class will be recovered from the minimum charges of rate classes allocated an increase with the exception of Service Classification ("SC") 3 (General Service) and SC13 TC4.1 (Large Volume Transportation), where 50% of the

⁴ Each time Distribution agreed to extend the suspension of its rates in order to facilitate further settlement discussions, the Company filed a petition with the Commission requesting that it be "made-whole" with respect to any decrease in revenues resulting from a later effective date for rates. As of the date of this Joint Proposal, those requests remain pending.

allocated increase will be recovered from the usage rate blocks and 50% from the minimum charge.

2. Low Income Rates.

The Company has offered various low income programs for many years. The Company currently provides a discounted rate for up to 28,500 low income customers under its Low Income Residential Assistance (“LIRA”) tariff. LIRA was established in its current form in the Company’s 2002 settlement agreement in Case 00-G-1858.⁵ Currently, the LIRA discount is \$100 annually, or \$8.33/month for eligible customers, and LIRA expenditures, including administrative expenses, are capped at \$3 million. The Signatory Parties recommend that the Company be permitted to modify LIRA in two phases. Phase I, to take effect when rates under this Joint Proposal become effective, increases the size of the discount from the current annual amount to a uniform maximum level of \$170 per eligible customer. The total amount of LIRA discounts and the cost of administering the LIRA program will be capped at \$5 million. The amount of the LIRA discount may be adjusted downward by the Company in a separate statement to be filed with monthly gas cost filings if it is anticipated that the amount of discount at forecast enrollment levels will cause the Company to exceed the \$5 million expense cap. If the Company incurs less than \$5 million of discounts and expenses, the amount below the \$5 million cap will be deferred, and may be used to cover additional costs in Phase II of the LIRA program.

⁵ Case 00-G-1858, National Fuel Gas Distribution Corporation, *Order Adopting Terms of Joint Proposal* (issued April 18, 2002) (“2002 Rate Plan”).

Upon the approval of this Joint Proposal, the Company will convene a collaborative process to design Phase II of the modified LIRA program. Phase II of the LIRA program shall be governed by the following principles:

a. The Company will meet with interested parties within four weeks of the effective date of the order approving this Joint Proposal to continue the design and implementation of Phase II, which takes effect on May 1, 2006.

b. To the extent funds are available, factors for Phase II program eligibility will include, but need not be limited to, the Home Energy Assistance Program (“HEAP”) income eligibility standards and a record of payment difficulty (or demonstrable risk of becoming payment troubled).

c. Phase II program features may include, but are not limited to, variable bill discounts based on household income, arrearage forgiveness, conservation education, financial management education and referrals to other programs. The central feature of the Phase II program shall be a discount which varies from customer-to-customer based on the customer’s household income. Toward that end, discounts implemented under the Phase II program may vary from the uniform Phase I maximum of \$170 per customer, will vary from customer-to-customer, and in some cases may significantly exceed the \$170 Phase I maximum. Given the cap on funding levels, it is expressly understood, and intended, that the LIRA rates developed under Phase II will likely require a reduction in the number of eligible LIRA customers to fewer than 28,500 customers.

d. After collaborating with the interested parties, Distribution will submit the newly designed Phase II program by October 31, 2005 for approval by the

Commission and an effective date of May 1, 2006. In the event interested parties agree that the eligibility requirements described above should be revised for the purpose of creating a more effective program, the parties may jointly propose such eligibility modifications in the context of the October 31, 2005 filing.

Distribution will design a program for the collection of data after discussions with Staff and other parties and will implement such data collection program to be effective with Phase II of the LIRA program on May 1, 2006.

3. Tariff Filings by the Company.

Except as provided in Section VII. E. below, the Signatory Parties agree that, within five business days following the Commission's order approving this Joint Proposal, Distribution will file tariffs and within a practicable time modify its Procedures Manual⁶ in a manner consistent with the terms herein.

C. State Income Tax Effectiveness and Credits.

The Signatory Parties agree that the base rates determined in this Joint Proposal include State Income Taxes ("SIT"). A reconciliation of booked SIT expense to tariff surcharge revenue for SIT shall be provided from the implementation of SIT in 2000 until the effective date of rates in this proceeding. The Company will also provide a reconciliation of booked SIT expense to SIT Tax Returns from 2000 until the effective date of rates in this proceeding by February 15, 2007.

⁶ Gas Transportation Operations Procedures Manual. For purposes of convenience, words and phrases used in this Joint Proposal shall have the same meaning as identical words and phrases that appear in Distribution's tariff. To aid readability of this document, however, some of those words and phrases will be identified herein.

The Company has collected the SIT via the revenue tax surcharge (“RTS”) as directed in Case 00-M-1556.⁷ The difference between the SIT rate (effective but not included in base rates) and the RTS (currently charged) created a SIT overcollection estimated to be approximately \$34,815,000 as of September 30, 2005. This estimate is subject to audit by Staff and the State Department of Taxation and Finance. The overcollection will be returned to customers through bill credits, as more fully described below. The Company will include a monthly bill credit statement with its monthly gas cost filings.

Provided sufficient overcollected tax revenue is available, the bill credits will be equal to the following amounts: For the 12 months beginning August 1, 2005, a credit of \$16.25 million will be applied to customer bills to reflect reconciliation of the SIT overcollection. If available, for the 12 months beginning August 1, 2006 a credit of \$16.25 million will be applied to customer bills. The bill credits shall be allocated to the rate classes based on forecasted total revenue provided in the Company’s testimony submitted in this proceeding. For SC1 (Residential) and SC3, the bill credits will be applied to the minimum charges. For SC10 (Cogeneration), SC13 (Transportation), SC16 (Large Cogeneration Transportation) and SC17 (Cogeneration Transportation) customers, the credits will be allocated on a volumetric basis. Any remaining balance of SIT overcollections shall continue to accrue interest at the Other Customer Capital rate.

D. Uncollectible Accounts Expense.

On the date rates become effective under this Joint Proposal, the Company will be permitted to transfer \$4.5 million from the Cost Mitigation Reserve (“CMR” which is

⁷ Case 00-M-1556, In the Matter of the Proposed Accounting and Ratemaking for the Tax Law Changes Included in the 2000-2001 New York State Budget, Order Implementing Tax Law Changes on a

described in detail in Section III. G.) to its Accumulated Provision for Uncollectible Accounts. This is a one-time transfer of funds and notwithstanding anything else in this Section, there will be no additional reconciliation of the Accumulated Provision for Uncollectible Accounts.

Upon acceptance by the Company of a final Commission order approving this Joint Proposal, the Company will withdraw its request for rehearing of the Commission's order denying the Company's request for removal of the bill credit issued on September 28, 2004 in Case 00-G-1858.

The Signatory Parties agree that final billed accounts awaiting write-off serve as the basis for calculating a revenue requirement for uncollectible expense. For the purpose of computing an initial rate for the MFC (detailed *infra* at Section IV. C.), uncollectible expense is assumed to be \$14.1 million. This assumption, however, is not intended to limit the Company's discretion to recognize and record an appropriate level of uncollectible expense.

In 2003, the Company reduced the uncollectible reserve by \$1.3 million arising from a bankruptcy of Iroquois Energy Management, Inc. ("Iroquois"), a marketer that, until October 2000, served nearly 30,000 customers on Distribution's system. Under a prior rate plan, the Company was permitted to transfer funds from the CMR to the uncollectible reserve if the uncollectible expense level exceeded a pre-established target. That target was achieved with the unpaid Iroquois receivable, and Distribution transferred funds from the CMR into the uncollectible reserve. The Company has been involved in extensive litigation against Iroquois and Iroquois' sureties. Although the outcome of the

Permanent Basis (issued June 28, 2001).

Iroquois litigation cannot be ascertained at this time, the Company agrees that if any funds are recovered from the Iroquois litigation, they will be credited to the CMR.

E. Pension and OPEBs.

The Company has applied the deferral mechanism for differences in Pension and OPEBs recognized in rates and calculated as an expense as permitted in the Commission's Pension and OPEB Policy Statement.⁸ The Signatory Parties agree that the Pension and OPEB Policy Statement's provision should continue to govern the Company's accounting treatment. Beginning August 1, 2005, allowed Pension expense shall be \$9,908,000 and OPEB expense shall be \$12,076,000. Any Pension and OPEB expenses above or below the allowance shall be deferred in accordance with the Pension and OPEB Policy Statement.

The Pension and OPEB Policy Statement recognized that regulated companies may provide funding to Pension and OPEB costs in an amount greater than the rate allowance. In such circumstances, the Company will have a pre-paid debit balance in its internal pension reserve. The Pension and OPEB Policy Statement recognized this potential circumstance and permitted companies to either petition the Commission to apply interest to this balance or include the balance in rate base in a rate case filing. In its filed case, the Company included the balance in its claim for rate base. In this Joint Proposal, the Signatory Parties agree that the debit balance in the internal pension reserve shall be excluded from the rate base. Instead, the Signatory Parties agree that interest will be accrued at the pre-tax rate of return of 11.31% on the debit balance, as provided in Appendix B. As demonstrated in Appendix B, the ability to accrue interest on the debit

balance will be contingent on the Company's funding level at the start and end of the Pension Plan year as calculated by the Company's actuary for purposes of determining Statement of Financial Accounting Standards ("SFAS") 87 expense.

F. Depreciation.

The depreciation rates to be used during the settlement period are the rates as shown in Appendix C. The rates used prior to the implementation of this Joint Proposal are appropriate and will not be adjusted.

The Accumulated Reserve for Depreciation for Production, Transmission, General and Intangible Plant is also appropriately represented prior to the implementation of this Joint Proposal. The Accumulated Reserve for Depreciation for Distribution Plant is at an appropriate total and may be reallocated to specific accounts within the Distribution function.

The Company will provide a depreciation study using the parameters shown in Appendix C the earlier of three months before the expiration of the Second Rate Year, or upon the filing of a major rate case.

The Company will expense negative net salvage in excess of 60% in Account 376 – Mains if total negative net salvage for this specific account exceeds that amount. This will be determined on a total account basis. The amount to be expensed will be calculated on an annual basis. Future changes to the negative net salvage rate for Account 376 – Mains will be capped at 60% until reviewed at the Company's next change in base rates.

⁸ Case 91-M-0890, Statement of Policy and Order Concerning the Accounting and Ratemaking Treatment for Pensions and Postretirement Benefits other than Pensions (issued September 7, 1993) ("Pension and OPEB Policy Statement").

G. Medicare Prescription Drug Improvement Act of 2003.

The effects of the Medicare Prescription Drug Improvement Act of 2003 (the “Act”) have been included in the actuarial costs calculated for OPEB expenses. The intention of the Signatory Parties is that the Company remain on the Commission’s Pension and OPEB Policy Statement. The impact of the Act on deferred income tax calculations has not been established in this Joint Proposal. On February 2, 2005, the Commission instituted a proceeding in Case 04-M-1693 to investigate the impact of the Act on deferred income taxes.⁹ The Signatory Parties agree that this issue will be determined in that proceeding.

H. Cessation of Credits.

Upon the implementation of rates under this Joint Proposal, the following credits shall terminate:

1. Back-out Credits to Marketers.

A “back-out credit” is a credit applied to a customer or marketer bill designed to remove charges for utility services that are provided by the marketer. Back-out credits were adopted by the Commission as a temporary proxy for unbundling until replacement unbundled rates were established under the Commission’s Unbundling Policy Statement. In this Joint Proposal, the Signatory Parties recommend adoption of unbundled rates as more fully described below. Accordingly, the Company’s existing back-out credits will be eliminated.

⁹ Case 04-M-1693, Proceeding on Motion of the Commission as to the Accounting and Ratemaking Related to the Implementation of the Prescription Drug and Medicare Improvement Act of 2003, *Order Clarifying Prior Policy Statement and Order Instituting a Proceeding and Soliciting Comments* (issued February 2, 2005).

a. Billing Back-out Credit.

The billing back-out credit was established pursuant to the Commission's directive in the Billing Proceeding.¹⁰ The Company will make a final lost revenue reconciliation filing consistent with the methodology approved by the Commission in Case 04-G-1138.¹¹ The Company will be permitted to recover lost revenue so calculated from the CMR upon a finding by the Commission that such filing is consistent with the methodology used in Case 04-G-1138.

b. Competition Back-out Credit ("CboC").

The Competition Back-out Credit was adopted under the 2002 Rate Plan and most recently continued in the Commission's Order Canceling Rate Schedule Amendments and Continuing Low Income and Competitive Market Programs (issued September 28, 2004 in Cases 04-G-0718 and 00-G-1858). Pursuant to these cases the Company will continue to recover such CboCs costs from the CMR until replaced by the unbundled rates adopted in this proceeding.

2. Other Credits.

a. Bill Credit.

Under the terms of the Company's 2003 Rate Plan¹² and prior rate plans, a bill credit in the aggregate amount of \$5 million is applied to customers' bills. This bill credit was designed to continue until it was replaced or eliminated in a subsequent

¹⁰ Case 99-M-0631, In the Matter of Customer Billing Arrangements, Order Providing for Customer Choice of Billing Entity (issued March 22, 2000) ("Billing Proceeding").

¹¹ National Fuel Gas Distribution Corporation - Order re: Recovery of Lost Revenues Resulting from Billing Back Out Credit to Energy Service Companies (issued January 19, 2005).

¹² Case 00-G-1858, National Fuel Gas Distribution Corporation, Order Establishing Rate and Restructuring Plan (issued September 18, 2003) (adopting the Parties' "2003 Rate Plan").

proceeding. The Signatory Parties agree that the \$5 million bill credit will be eliminated upon the effective date of rates established in this proceeding.

b. HIECA Credits.

A credit is applied to customer rates equal to the expense level formerly reflected in rates to support costs generated by the State's now defunct HIECA program. HIECA costs were not included in the development of base rates calculated in this proceeding. Therefore, the Signatory Parties agree that the current HIECA bill credit should be terminated.

I. Commitment Not to File and Other Issues.

Conditioned upon the Commission's approval of this Joint Proposal without changes, the Company agrees not to file a base rate increase before August 25, 2006 for a rate year commencing August 1, 2007.

Subject to the foregoing provision, changes to the Company's base rates during the First and Second Rate Years will not be permitted, except for (a) changes provided for in this Joint Proposal and (b) subject to Commission approval, changes as a result of the following circumstances:

1. A minor change in any individual base rate or rates whose revenue effect is *de minimis* or essentially offset by associated changes in other base rates, terms or conditions of service -- for example, an increase in a specific base rate charge in one service classification that is offset by a decrease in another base rate charge in the same or in other service classifications. It is understood that, over time, such minor change filings are routinely made and that they may continue to be made during the term of the Rate Plan, provided they will not result in a change (other than a *de minimis* change) in

the revenues that Distribution's base rates are designed to produce overall before such changes. Provided further that except for changes to bill credits including the SIT credit described *supra*, the Company will not file to make any change to the residential minimum charge effective prior to August 1, 2007 unless directed to do so by the Commission.

2. The parties hereby acknowledge and recognize that the Commission, pursuant to its statutory responsibility, reserves the authority to act to insure the provision of safe and adequate service at just and reasonable rates. Further, nothing in this Joint Proposal shall be construed to limit the Company's right to petition the Commission for rate relief if unforeseen circumstances render the rates produced by this Joint Proposal unreasonable or insufficient for the provision of safe and adequate service at just and reasonable rates.

3. The Signatory Parties recognize that the Commission reserves the authority to act on the level of Distribution's rates in the event that, in the Commission's opinion, Distribution's rates are unreasonable or insufficient for the provision of safe, reliable and adequate service.

4. Nothing herein shall preclude Distribution from petitioning the Commission for approval of new services or rate design or revenue allocation changes on an overall revenue-neutral basis, including, but not limited to, the implementation of new service classifications and/or cancellation of existing service classifications. Provided, however, that except for changes to bill credits including the SIT bill credit described *supra*, the Company will not file to make any change to the residential minimum charge effective prior to August 1, 2007 unless directed to do so by the Commission.

III. Other Rate and Rate-Related Provisions.

A. Lost and Unaccounted For Gas Incentive Mechanism.

The percentage of the Lost and Unaccounted For Gas (“LAUF”) to be reflected in rates which is currently set at 2.0% shall be reduced to 1.95% effective September 1, 2005. Effective September 1, 2006, the LAUF factor shall be further reduced to 1.90%, which level will remain in place until updated in a future base rate case. The calculation of the LAUF incentive mechanism shall be in a manner consistent with the methodology employed in the Company’s most recent annual gas cost reconciliation filing. Further, the commodity cost of gas as specified in the Commission’s recent order relating to the LAUF adjustment¹³ shall be utilized in the LAUF incentive calculation.

B. Accrual of Interest on Deferred Items.

Unless otherwise provided in this Joint Proposal, the Company shall accrue interest on all deferred debits or credits provided for or arising out of the operation of this Joint Proposal until such time as the amounts deferred are reflected in base rates. Interest shall be accrued at the rate determined by the Commission for Other Customer Capital.

C. Sharing of Earnings.

The Company shall share with its customers on a 50/50 basis, earnings on equity in excess of the targeted equity level stated herein. For the purposes of determining any sharing of earnings, the target return on equity shall be as follows:

¹³ Case 04-G-1278, In the Matter of the Filing of Annual Reconciliations of Gas Expenses and Gas Cost Recoveries, filed in C. 21656, *Order Establishing Methodology for Lost and Unaccounted For Gas Adjustment* (issued April 5, 2005).

Fiscal Year 2005 (October 1, 2004 – September 30, 2005)	11.08%
Fiscal Year 2006 (October 1, 2005 –September 30, 2006)	11.5%
Fiscal Year 2007 (October 1, 2006 – September 30, 2007)	11.5%

The earnings sharing mechanism shall be determined on a cumulative basis over Fiscal Years 2006 and 2007. Earnings for each fiscal year shall be measured individually. Any excess or deficiency in the Fiscal Year 2006 shall be carried forward in its entirety to the Fiscal Year 2007. Earnings in Fiscal Year 2007 shall be measured, and a 50/50 sharing of earnings between shareholders and ratepayers shall occur only if Distribution exceeds its threshold rate of return on equity in Fiscal Year 2007 (which includes any cumulative excess or deficiency carried over from the Fiscal Year 2006). Distribution agrees to calculate its earnings as described in Appendix D, such calculation to include, among other things: (1) the common equity portion of capital structure of National Fuel Gas Company (“National“) shall be the lesser of the average between the start and finish of each Fiscal Year based on National’s capital structure (excluding Other Comprehensive Income ¹⁴) or 49%; (2) capital structure components will include Common Equity (but Common Equity shall exclude items of Other Comprehensive Income or Loss), Long Term Debt (including current portion), Short Term Debt (notes payable) and Amounts Payable to Customers (customer deposits), (3) the Earnings Base/Capitalization (“EB/Cap”) adjustment shall be an addition of \$28,173,000 to rate base, (4) expenses associated with Stock Appreciation Rights and restricted stock dividends shall be excluded. Earnings calculated for sharing purposes will exclude

¹⁴ The term “Other Comprehensive Income” (“OCI”) refers to revenues, expenses, gains, and losses that under generally accepted accounting principles are included in comprehensive income but excluded from net income. See SFAS 130, *Reporting Other Comprehensive Income* (Financial Accounting Standards Board 1997). OCI has been excluded from Distribution’s common equity calculation in prior rate plans.

positive or negative incentive revenues. An example of the calculation is provided in Appendix D. The Earnings Sharing report will be provided within 120 days of the end of the Company's fiscal year.

The provision for the sharing of earnings above 11.5% ROE shall continue beyond July 31, 2007 until changed or otherwise addressed in a subsequent proceeding. Interest on the ratepayers' share of earnings, if any, shall be applied at a rate equal to the Commission-determined Other Customer Capital rate. Interest on the ratepayers' share of earnings will be applied from the first month after the earnings sharing period until the provision is transferred to the Cost Mitigation Reserve ("CMR"), a deferral account described *infra* at Section III. G..

D. Affiliate Rules and Royalty Provision.

Distribution is a wholly-owned subsidiary of National, a holding company registered under the Public Utility Holding Company Act of 1935 ("PUHCA"). National also owns a Federal Energy Regulatory Commission ("FERC")-regulated pipeline company subsidiary, National Fuel Gas Supply Corporation ("Supply"), a state regulated pipeline, Empire State Pipeline, and an unregulated marketing company, NFR, among other companies. All of these companies are "associated companies" under PUHCA, and all, by virtue of the relationship with National, are affiliated with Distribution. Although PUHCA governs transactions among Distribution and its affiliates, the Signatory Parties have agreed that the Commission will further regulate certain transactions between Distribution and Distribution's affiliates to insure the fair and non-discriminatory treatment of non-affiliated entities doing business on Distribution's system, and to prohibit transactions that unduly favor Distribution's affiliates over other entities.

Toward that end, Distribution agrees to follow the Affiliate Rules contained in Appendix J to the Joint Proposal adopted by the Commission in its Order issued on April 18, 2002 in Case 00-G-1858, which rules are contained herein at Appendix E. Section 5.0 of those rules has been revised to provide that Distribution will not disclose to its parent or any affiliate, including any marketer affiliate any information relating to the availability of transportation services that it does not disclose to all marketers at the same time.

Adherence to the terms of the Affiliate Rules eliminates any “royalty” payments that could or might be asserted to be payable or imputed to Distribution, including any period following the expiration of the Second Rate Year of this Joint Proposal. If Distribution violates a term of the Affiliate Rules, the evidence of such violation shall be submitted to the Commission for remedial action, if any, which may include the imposition of a royalty, redress or penalties, as applicable. No remedial action shall be taken until after notice to the Company and an opportunity for an on-the-record, evidentiary hearing. Any royalty, redress or penalty imposed shall be proportionate to the nature and degree of the violation of the Affiliate Rules.

E. Service Quality Performance Mechanism.

The Company shall be subject to a Service Quality Performance Mechanism (“SQPM”). The SQPM is applicable for the longer of a) the period August 1, 2005 through July 31, 2009 or b) until the Company changes its base rates. The provisions of the SQPM are set forth in Appendix F. Under this mechanism, the Company is subject to a maximum assessment of \$1,500,000 based on its measured performance in certain designated areas of customer service. Any penalties under the SQPM shall be paid into the CMR. There shall be a null zone of 0 to 125 Units. The Company shall submit

quarterly reports of its performance, with an annual report to be submitted within 90 days following the July 31st conclusion of each program year. The annual reports shall include a narrative description of the results, including methodology, trends and recommendations for improvements in operations.

F. Safety Performance Mechanism.

Distribution represents that it operates and maintains its system in accordance with all applicable laws, orders and regulations governing the safe operation of its pipeline system. Nevertheless, it is recommended that a penalty-only performance regime be adopted for the Company to continue maintaining and improving its system in the current manner and not as a mechanism to establish a higher standard of care.

The safety performance measures will be in effect for the longer of the three-year period ending December 31, 2007 or the Company's next rate case. Penalties, if any, will be based on the schedule contained in Appendix G. Penalties assessed under this mechanism will be paid into the CMR.

The Safety Performance Mechanism is intended to maintain the Company's historic capability and capital expenditures. It is not intended to divert resources from projects targeted for implementation by the Company's risk prioritization program for identifying and prioritizing replacement segments. However, with respect to replacement of bare steel mains and services, in circumstances where attainment of performance targets would require spending beyond budgeted levels, the Company will be allowed funding of the additional amount. The amount of funding required will be determined by calculating the revenue effect of investment in facilities greater than that forecasted in this proceeding resulting from complying with targeted investments under the Safety

Performance Mechanism. The calculation and an explanation supporting and justifying this funding will be filed with the earnings sharing calculation. Appendix G provides a pro-forma example of the calculation of the revenue effect. The additional funding requirement so calculated will be funded from the CMR.

G. Continuation of CMR and Transfer of Balances in the Gas Restructuring Reserves.

Previous Joint Proposals presented to and adopted by the Commission have provided for the continued use of two deferral accounts; the CMR and the Gas Restructuring Reserve (“GRR”). The Signatory Parties agree that the CMR should continue and that the balance of funds in the GRR should be transferred into the CMR at the effective date of this Joint Proposal.

The Company shall accrue interest on all deferred debits or credits provided for or arising out of the operation of the rate plan adopted in this Joint Proposal from the time of inception of the credit or debit until such time as the amounts deferred are reflected in base rates or transferred to other interest bearing accounts. Interest shall be accrued at the rate determined by the Commission for Other Customer Capital.

The CMR shall be continued during the effectiveness of rates established by this Joint Proposal. It is within the Company’s discretion to determine the order in which the balance in the CMR will be used to offset deferred costs and expenses determined herein. It is also within the Company’s discretion to apply credit balances from any identified Costs and Expenses, to any other identified Costs and Expenses debit balance.

Any remaining CMR balance not used for the purposes identified below shall be returned to customers unless otherwise determined by the Commission. Any remaining

balance of additional Costs and Expenses listed below for which deferral accounting treatment has not been previously approved shall, subject to the approval of the Commission, be deferred for collection at the next time base rates are changed following the expiration of this Joint Proposal. Deferral accounting treatment for such items for which deferral accounting has been previously granted shall continue at the end of this Joint Proposal or until these items are addressed in a base rate proceeding.

Funding sources for the CMR shall be as follows:

- a. Capacity Release Credits and Off-System Sales. The Signatory Parties anticipate that the Company will achieve savings from interstate pipeline and storage capacity releases and off-system sales¹⁵ that cannot be quantified in advance. For the Rate Year, the first \$1 million of such savings and revenues will be applied to the CMR. Eighty-five percent of any remaining capacity release savings and/or net revenue from off-system sales shall be accumulated. Such accumulated amounts shall be distributed to the Company's customers during each subsequent five-month period beginning in November and ending in March, through the gas adjustment clause ("GAC") and 15% of such savings and revenues shall be retained by the Company.
- b. Assessments from the penalty only mechanisms (SQPM, Section III. E. and Safety Performance Measures, Section III. F.) will be paid into the CMR by the Company.
- c. Previous Rate Plans contained Sharing Mechanisms that are currently being audited by Staff. Amounts determined to be owed the customer through a signed document between the Company and Staff for Previous Plans or the current plan or by a determination by the Commission will be placed in the CMR. The filing for the period of Fiscal Year 2001 through Fiscal Year 2003 will be settled by 2005.

¹⁵ Pending further developments, the Company has suspended off-system sales in response to recent changes in federal regulations governing interstate sales activities by local distribution company affiliates of regulated interstate pipelines. Standards of Conduct for Transmission Providers, 68 FR 69134 (December 11, 2003), III FERC Stats. & Regs. ¶31,155 (November 25, 2003).

- d. The Empire Synergy Deferral established in Case 02-G-1291¹⁶ will be transferred into the CMR. The implementation of rates in this proceeding has taken into account the affect of the purchase of the Empire Pipeline by National, therefore the synergy deferral will cease.
- e. The reconciliation of the 2003 Rate Plan \$5 Million Bill Credit will be transferred into CMR.
- f. The GRR (including the System Enhancement account) will be transferred into the CMR.
- g. Interest shall be accrued on a monthly basis on the balance of the CMR at the rate determined by the Commission for Other Customer Capital.

Use of funds from the CMR shall be:

- a. Transfer to Uncollectible Reserve (Section II. D.)
Upon implementation of this Joint Proposal, the Company shall be permitted to transfer \$4.5 million into the Accumulated Provision for Uncollectible Account as described in Section II. D.. This is a one time transfer of funds and there will be no additional reconciliation of the Account 144000 Accumulated Provision for Uncollectible Accounts. Any funds recovered from the Iroquois bankruptcy will be credited to the CMR.
- b. Pensions/OPEBs (Section II. E.)
The Company has applied the deferral mechanism for differences in Pension and OPEBs recognized in rates and calculated as an expense as permitted in the Commission Pension and OPEB Policy Statement and will continue to do so under this Joint Proposal. The deferral balances for Fiscal 2004 and Fiscal 2005 may be funded through the CMR to a maximum of \$5 million. The remaining deferral balances will be recovered in future rate proceedings consistent with the Pension and OPEB Policy Statement.
- c. Area Development Program (Section III. K.)
Upon implementation of the Joint Proposal a transfer of \$3,750,000 from the CMR to a new account entitled Area Development Funds. Grants provided from this fund will be debited to the new account. This represents the entire obligation for the five-year program.
- d. Migration Incentive (Section VI. C.)

¹⁶ Case 02-G-1291, National Fuel Gas Company, *Order Approving Transfers* (issued January 30, 2003) at page 8.

The annual migration incentive will be funded through the CMR.

- e. Discounted Retail Access Transportation Service Program (“DRS”) (Section VI. B)
Funds required to support DRS will be provided from the CMR. The costs include bill inserts, print advertisements and outsourced call center support. The expenditures will be limited to \$500,000 for the term of this Joint Proposal.
- f. System Enhancements
Previous rate plans for Expenditures for System Enhancements related to the Restructuring effort have provided that these expenditures will be funded through the GRR to a maximum of \$5,000,000. These expenditures will now be funded through the CMR. \$2,771,587 has been spent through September 30, 2004. Descriptions of the various enhancements are included in Appendix H. Expenditures over the \$5,000,000 cap will be deferred and a petition will be filed with the Commission requesting recovery.
- g. Real Time Meter Installation (Section IV. B. 3)
Program costs for initial software, data collection infrastructure measurement correction devices and meters at locations of customers with annual consumption greater than 55,000 Mcf, continue to be funded through the CMR.
- h. Safety Performance Budget Recovery Mechanism (Section III. F.)
If the Company recovers any funds using the Safety Performance Budget Recovery Mechanism as described in Appendix G, the funding shall come from the CMR. CMR funding shall not exceed \$1,000,000 annually for the duration of the Safety Performance Mechanism.

H. Millennium Fund Surcharge.

On February 14, 2000, the Commission issued an Order in Case 99-G-1369 (the “Millennium Order”) directing the establishment of a mechanism to replace the FERC Gas Research Institute (“GRI”) surcharge on interstate pipeline rates. The Commission was responding to a FERC order that established a schedule to phase out the GRI surcharge. The GRI surcharge was adopted by FERC to support broad-based gas-related research and development. The Millennium Order recognized the continuing value of gas-related Research and Development (“R&D”) for New York customers and

established a permanent funding mechanism and R&D project guidelines. More particularly, the Millennium Order established a surcharge on firm retail gas rates (the “Millennium Fund Surcharge”) that increased as the FERC GRI surcharge was decreased. This Joint Proposal addresses three issues related to the Millennium Fund Surcharge: (1) a recalculated Millennium Fund Surcharge unit rate effective with the approval of this Joint Proposal; (2) the refund of the current overrecovery balance of Millennium Fund Surcharges; and (3) the ability to utilize the funds collected from the Millennium Fund Surcharge for approved energy efficiency programs. Each of these items is set forth in greater detail below.

1. Recalculated Millennium Fund Surcharge.

Under the Millennium Order, Local Distribution Companies (“LDCs”) were authorized to apply a surcharge on utility rates equal to the FERC GRI surcharge decrement as the GRI surcharge was phased out of pipeline rates (the Millennium Fund Surcharge was capped at \$0.0174/Dth). LDCs were required to file tariffs with the Commission providing for a mechanism to implement the Millennium Fund Surcharges. As required, the Company has made five Millennium Fund Surcharge filings with the Commission since the mechanism was first established. In this proceeding, the Signatory Parties have agreed to recalculate the Millennium Fund Surcharge based on a forecast amount of annual expenditures of \$900,000. This amount more closely approximates the anticipated qualified R&D requirements for the year. The volumetric true-up reflected in the current rate will be eliminated. Subsequent years will include an expenditure true-up to correct for the variance between collections and actual expenditures.

Based on these changes, the Millennium Fund Surcharge reflected in the rates billed to firm service customers effective on August 1, 2005 will be reduced from the current level of \$0.0203/Mcf to \$0.0091/Mcf. The calculation of these rates is provided in Appendix I.

2. Refund of Current Millennium Fund Overrecovery Balances.

The Signatory Parties further agree that the Millennium Fund balance, which currently reflects an overcollection of Millennium Fund costs, as of August 31, 2005 will be refunded to customers as a credit effective January 1, 2006.¹⁷ The accrued balance will be refunded to customers consistent with the requirements of the Millennium Order. The Company will include the calculation of the overcollection and associated refund in its gas cost reconciliation filing filed in October 2005. Based on the current overcollection balance and on the proposed annual Millennium Fund Surcharge amount of \$900,000, the Millennium Fund Surcharge effective January 1, 2006 would provide customers with a credit of \$0.031/Mcf.¹⁸

3. Utilization of Millennium Funds for Approved Programs.

The Millennium Order set forth guidelines for approved use of Millennium Fund proceeds and allowed interested LDCs the opportunity to petition the Commission for waiver of the guidelines on an as-needed basis. In Case 04-G-0837¹⁹, Distribution filed a waiver request with the Commission on July 7, 2004, seeking approval to apply Millennium Funds toward specific natural gas appliance applications, including end-use

¹⁷ The Millennium Fund balance as of February 28, 2005 was an overcollection of \$3,962,163.

¹⁸ A pro forma calculation based on current estimates is provided in Appendix I. The actual amount to be credited will be determined based on the actual overcollection balance as of August 2005.

¹⁹ Petition of National Fuel Gas Distribution Corporation for a Waiver of the Requirements of the Commission's Order Issued February 14, 2000, filed in C 99-G-1369.

energy efficiency programs and distributed generation (“DG”) projects.²⁰ In this Joint Proposal, the Signatory Parties agree that the Commission should permit Distribution to utilize Millennium Funds for approved end-use energy efficiency programs, not including DG projects, up to a total limit of \$500,000 annually.

4. System Benefits Charge.

On January 28, 2005 in Case 05-M-0090, the Commission issued a Notice Soliciting Comments seeking public remarks on several questions relating to the Commission’s System Benefits Charge (“SBC”) program for electric companies. Among the issues before the Commission in that proceeding is whether gas projects should be funded by the SBC and if a gas SBC should be established.²¹ The Signatory Parties agree that the Millennium Fund end-use funding provisions agreed to in this Joint Proposal shall be modified, consistent with Case 05-M-0900, if SBC funding is modified to include gas projects, or a gas SBC is established to eliminate any potential double recovery. Nothing herein prevents the Commission from revising the Millennium Fund treatment in this Joint Proposal in the event a gas SBC is established.

I. Suspension Fees.

The 2002 amendments to the Home Energy Fair Practices Act (“HEFPA”) enable marketers to effect a “suspension” of utility service for a customer’s failure to pay amounts due in compliance with HEFPA procedures. Utilities are entitled to “reasonable compensation” from the marketer for the cost of such suspensions. On October 25, 2004 the Commission issued an order in Case 03-M-0117 (“Suspension Order”) directing

²⁰ Case 99-G-1369 – Gas Research and Development Programs, Petition of National Fuel Gas Distribution Corporation for Limited Waiver of Conditions Governing Use of R&D Funds (July 7, 2004).

²¹ This provision is not to be construed as setting forth a position of any party on the issue of whether a gas SBC should be established.

utilities to file updated suspension fees, to be filed when the a utility files its next rate case.²² Accordingly, the Company will file revised suspension fees based on an updated cost of service study, including the assumptions upon which the proposed suspension fee is based.

Reconnection charges are charged to customers by an LDC when a customer previously disconnected for failure to pay the LDC's bill requests service reconnection. The Company will also provide updated cost justification for the reconnection charge. The revised fees, reconnection charges and cost of service study justifying the proposed fees will be filed within 45 days after the Commission issues its order approving this Joint Proposal. The filing will be subject to Commission review and the Commission may require a change in either the reconnection charge or proposed suspension fee.

J. Business Development Rates.

The Business Development Rates ("BDR") was a rate discount program provided to business customers who qualified under criteria designed to promote the development of new and expanding businesses. The BDR expired under the terms of the Company's tariff. The Signatory Parties agree that the BDR will be restored for SC3, SC13M and SC13D. The following additions to the qualifying Standard Industrial Codes will be made to the BDR rider: 01-14 (Agriculture, Forestry, Fishing and Mining); 64 (Insurance Agents, Brokers and Services) and 73 (Business Services). The Empire Development Zone ("EDZ") is another business development rate discount offered to applicants located in EDZs designated by the State. The EDZ rider will continue as currently structured with the exception of the rate discounts described below. The unit rate

²² Case 03-M-0117, *In the Matter of Chapter 686 of the Laws of 2002, Order Modifying Suspension Fees and Other Tariff Provisions and Granting Further Relief* (issued October 25, 2004).

discounts per Ccf for BDR and EDZ are provided in Appendix J. Promotional/- advertising funds of \$20,000 annually will be allocated for the purpose of promoting use of the BDR and EDZ rates.

K. Area Development Program.

An Area Development Program will be developed to provide development grants to community based organizations or local development authorities for specific economic development projects in order to expand economic opportunities in Distribution's service territory. Such projects will have either a natural gas application or will provide increased use of the natural gas infrastructure. Qualified projects shall receive grants from the Company under the Area Development Program based upon written applications which demonstrate the proposed project's capacity to:

- i. Stimulate investment in infrastructure for the development or redevelopment of underutilized industrial or commercial property, including but not limited to brownfield sites or brownfield opportunity areas receiving state assistance pursuant to Section 970-r of the General Municipal Law;
- ii. Create new employment opportunities or higher value employment opportunities;
- iii. Provide workforce training or retraining to assure that higher value skills are available in the workforce, when needed; and
- iv. Stimulate the expenditure of private investment in direct capital expenditures needed to expand employment opportunities in Distribution's service territory.

This is a five-year program. Grants will be funded up to \$750,000 annually, as described in Section III. G.. Unspent funds will carry over and may be spent in the following year. Staff will work with the Company and with interested parties to finalize program details, including description of “targeted areas,” and criteria by which grant recipients will be identified, the maximum amount of individual grants, reporting requirements and such other relevant criteria as may be material. Toward this end, the Company agrees to schedule a meeting to be convened within 45 days of the Commission’s order adopting this Joint Proposal. The completed program will then be filed with the Commission for its approval.

IV. Changes to Transportation Services.

A. Description.

The Company provides a variety of unbundled services on its system. Firm transportation service (SC13) to large volume customers is currently offered in two broad service classes: Monthly Metered Transportation and Daily Metered Transportation.

Monthly Metered Transportation service is available to customers that have their volumes measured on a monthly basis. These services allow customers (or their marketers) to arrange for the delivery of gas, within prescribed tolerances, to serve retail customers according to a delivery schedule that provides for customers’ metered usage and deliveries to be reconciled (“balanced”) once monthly.

Daily Metered Transportation service is available to customers that have their volumes measured on a daily basis. This service allows the customers (or their marketers) to arrange for the delivery of gas on a daily basis and modify this arrangement

during the day to provide more control between usage and deliveries. Daily service requires that deliveries and usage be balanced each day.

Monthly service is available on Distribution's system on a "stand-alone" or on an "aggregated" basis. Both transportation services are largely the same from an operational perspective, and are nearly the same in price.

Stand-alone monthly service evolved from the initial transportation tariff offered to large-volume customers in the 1980s, and for that reason has long been the most popular firm transportation service for commercial and industrial uses. Aggregated monthly service was developed in response to the Commission's 1996 requirement that transportation service be made available to all customers regardless of size. Marketers are permitted to aggregate customers' requirements of any size into a single, larger delivery requirement.

The principal distinction between aggregation and stand-alone monthly service is that aggregation service combines the requirements of multiple customers. Stand-alone monthly service customers may arrange for nomination and delivery of gas supplies on their own behalf.

Over the years, the responsibility for managing nomination and deliveries for stand-alone monthly service shifted from the individual customer to the customer's marketer. In recognition of this shift, the Company created an imbalance aggregation service for stand-alone customers called Customer Balancing and Aggregation ("CBA") service. This service expressly transfers monthly balancing responsibilities from the stand-alone customer to the marketer. As a result, the combination of stand-alone

monthly service plus CBA service formed a service that responded to a market requirement prior to the establishment of the aggregated service.

The aggregation service is known as Supplier Transportation, Balancing and Aggregation (“STBA”) service. Although STBA service is similar to CBA service, there are important distinctions. Balancing charges for CBA service are lower than balancing charges for STBA service. This occurred, in part, because original monthly balancing costs were developed in a previous base rate proceeding and have not been modified in over ten years. STBA balancing costs were developed in a more recent rate filing and the cost of upstream pipeline contracts supporting STBA imbalance service is updated monthly.

It is appropriate that these services be modified to reflect current circumstances. Therefore, the Signatory Parties agree that stand-alone monthly service and CBA service will be phased out during the term of this Joint Proposal. Eligible customers receiving service under the stand-alone CBA service classification will have the choice of receiving STBA service or stand-alone daily service.

Larger-volume Monthly Metered Transportation service classification customers, with annual usage greater than 55,000 Mcf, will be required to install daily metering capability and may elect to receive Daily Metered Transportation service.

B. Detailed Description of Changes.

1. STBA Program.

As explained above, stand-alone monthly service will be phased out. Current stand-alone monthly customers will have the choice of either STBA service or Daily

Metered Transportation and balancing services. To facilitate these changes, STBA service will be modified as follows:

- a. Imbalance charges to be included in rates are to be determined based on capacity to meet a 62 Heating Degree Day (“HDD”) requirement.
- b. Capacity assignment rules will not change and the capacity requirements will remain based on the standard of 62 HDD.
- c. The allocation of capacity assets to support the STBA program and to set balancing charges shall be as specified in Appendix K. These new balancing charges will not go into effect prior to September 1, 2005. The existing balancing charges included in Monthly Metered Transportation rates will be included in rates effective August 1, 2005.
- d. Because all Monthly Metered Transportation customers will now be served under the STBA program, and the majority of large volume transportation customers (annual throughput greater than 25,000 Mcf) were transportation customers prior to aggregation service, transition cost charges associated with the Company’s contracted pipeline capacity will not be included in large volume customer rates.

2. Standard Monthly Metered Transportation (CBA) Service Phase-Out.

- a. Meters capable of real-time readings were installed for most of Distribution’s largest customers with annual consumption exceeding 55,000 Mcf.²³ In this Joint Proposal, the Signatory Parties agree that real-time meters will be installed for the remaining large-volume transporters except as noted below. This is a

²³ SC13 – TC 3.0, 4.0 and 4.1.

requirement of service whether those customers migrate to Daily Metered Transportation service or not.²⁴

b. Any firm transportation customer with annual usage between 5,000 and 55,000 Mcf²⁵, may volunteer for real-time meter installation and Daily Metered Transportation service. However, once installed, the installation must be maintained similar to the larger volume (greater than 55,000 Mcf annually) customers. This decision must be made by September 1, 2005 to avoid being charged the higher standard Monthly Metered Transportation STBA balancing service rates.

c. All other delivery rates and imbalance charges associated with Monthly Metered Transportation STBA service will apply.

d. Costs for software, data collection infrastructure, installation of measurement correction devices and meters for customers with annual consumption greater than 55,000 Mcf continue to be funded through the CMR. The same costs for customers with annual consumption between 5,000 and 55,000 Mcf, who volunteer for real-time metering and Daily Metering Transportation service, will receive rate base treatment.

e. The gas costs included in rates to be charged to Monthly Metered Transportation customers electing Daily Metered Transportation service during the transition from monthly to daily service shall be equal to the current charges included in the Monthly Metered Transportation CBA service rates (\$0.0378/Mcf for SC13 TC 4.0

²⁴ Customers in this category with more than 15 meters per account will be permitted to opt out of the real-time measurement requirement. Where these customers opt for real-time measurement, the Company will investigate alternative metering configurations to minimize installation and operating costs. This decision must be made by September 1, 2005 to avoid being charged the increased standard STBA service rates. Notwithstanding the September 1, 2005 date, customers will have 30 days to make a decision after the presentation of alternative metering options by the Company.

²⁵ SC13 – TC 1.1, and 2.0.

and \$0.0928/Mcf for all other SC13 customers). This lower transition rate shall cease on April 1, 2006, i.e., the customer must make its election by September 1, 2005 and convert to Daily Metered Transportation service by April 1, 2006 to avoid being charged the increased standard STBA service rates.

g. In all cases, customers will be responsible for communication expenses related to providing meter data to the Company on a real-time basis (e.g. telephone line or wireless service and subscription costs).

3. SC13 Daily Metered Transportation Service.

a. Real-time metering is required for SC13 Daily Metered Transportation service.

b. Daily balancing band widths shall be 10% year round, but the end of month band width shall be 5% from November through March of each year and 10% for the rest of the year.

c. The allocation of capacity assets to support this program and set balancing charges are provided in Appendix K.

4. Mandatory Capacity Release.

The Company shall hold collaborative discussions with the parties to address the release, by the Company to marketers participating in the Company's aggregation program, of upstream capacity that the Company has under contract. Such discussions shall address, among other things, reliability and cost allocation of released capacity and

shall not contradict efforts in the Commission's Reliability Collaborative.²⁶ The collaborative will attempt to implement a program for the next heating season.

C. Unbundled Rate Design Format.

On August 25, 2004, the Commission issued a Statement of Policy on Unbundling and Order Directing Tariff Filings ("Unbundling Order") in Case 00-M-0504. The Company timely filed an updated embedded cost of service study ("ECOS Study") and unbundled competitive service rates in supplemental testimony filed in this case. Consistent with the Unbundling Order, the Signatory Parties agree that an unbundled rate design format will be implemented, as set forth in Appendix A.

The unbundled rates in this proceeding were developed based on ECOS Study results, which included the allocation of gas storage inventory, theft of service, corporate goodwill and promotional advertising costs on a revenue basis, consistent with the requirements of the Unbundling Order. ECOS Studies that allocate the Company's total cost of service to its delivery services, merchant (energy sales) service and billing service were developed. These cost of service studies provided the cost guidance that was used to develop the unbundled rates agreed to by the Signatory Parties.

A MFC will be included in the Company's monthly gas supply rate to sales customers. The MFC will be calculated monthly to reflect changes in gas costs. This Joint Proposal also proposes an unbundled billing service rate to be applied to customers receiving a bill from the Company.

The Unbundling Order also provided for the recovery of lost revenues due to increases in customer migration over imputed levels. Each year for the 12 months ended

²⁶ Established pursuant to the Commission's Policy Statement in Case 97-G-1380, In the Matter of Issues Associated with the Future of the Natural Gas Industry and the Role of Local Gas Distribution Companies

July 31, the Company shall calculate lost MFC and billing revenues resulting from customers migrating from sales to transportation service. Revenues are lost if there has been a decline in imputed billing and MFC activity based on weather normalized volumes as a result of customers migrating from sales to transportation service. The imputed billing service activity shall be 5,680,162 bills. The imputed MFC volumes shall be 44,324,153 Mcf for SC1 and 8,431,124 Mcf for SC3. The lost billing revenues and lost MFC revenues shall be recovered in the Delivery Adjustment Charge (“DAC”) to the delivery rates of SC1 and SC3 customers for the 12 months beginning January 1 of each year. The Company shall file the lost revenue calculation with its annual gas cost reconciliation filing.

The determination of lost billing and lost MFC revenue shall be based on actual migrated customers and actual weather normalized customer consumption. The actual migration activity shall be determined by summing all volumes and bills associated with customers migrating from Company provided firm natural gas supply service and billing service commencing August 1, 2005. Pro-forma monthly gas supply statements are provided in Appendix L. Pro-forma lost revenue statements are also provided in Appendix L.

D. Bill Format.

Bill presentation will be implemented in compliance with the Commission’s Order Directing Submission of Unbundled Bill Formats, issued in Case 00-M-0504 on February 18, 2005 (“Bill Format Order”). In the Bill Format Order, the Commission required LDCs to submit bill formats, implementation timetables, draft tariffs and consumer outreach and education plans with copies to Staff and rate case parties. The

(issued November 3, 1998).

Company will make a filing complying with the Bill Format Order requirements, with copies submitted to Staff and other parties, within 90 days of the Commission's order adopting this Joint Proposal.

V. Local Production Issues.

Approximately five percent of the gas flowing on Distribution's system comes from production within the Company's New York franchise area. Historically the Company permitted the use of local production to replace a portion of the upstream pipeline capacity required to sustain STBA service so long as the local production output could be monitored electronically as is pipeline-delivered gas. Electronic monitoring, however, is a costly requirement that deterred the use of local production for STBA service. Therefore, in prior rate plans, the Company agreed to accept a portion of local production without electronic monitoring – currently 65% of flowing supplies - as a substitute for the STBA upstream capacity requirement. In this Joint Proposal the Company has proposed, and the Signatory Parties agree, to increase the 65% allowance to 100% of projected monthly volume.

A. Assets Utilized to Accommodate Increased Allowance.

To maintain reliability for STBA service requirements, the Company will allocate storage assets to enable the increased allowance for non-telemetered local production such that its reliability is equivalent to the previously established 65% level for STBA service. The rates provided in Appendix K for Monthly Metered Transportation customers include the costs of storage required to support local production.

B. Producer Committee.

Under previous rate plans, a committee of natural gas producers, the Company, Staff and other interested persons was convened to address issues related to local production. The Signatory Parties agree that the Producer Committee will continue as established. Meetings will be held twice yearly at a minimum.

C. Meter Maintenance Fee.

The Meter Maintenance Fee (the “Fee”) is a fee charged to producers to recover the Company’s cost of maintaining meters and appurtenant facilities required to enable and measure the flow of local production at interconnection points on the Company’s system. The Fee will be reviewed to determine the appropriate cost of service. The Company will complete its study of the Fee and report the results to the Commission by April 1, 2006. Comments of the Producers Committee will be included in the report, along with the approval of the Committee, if obtained.

VI. Retail Access and Competition Programs.

A. Purchase of Accounts Receivable.

Within 90 days of when rates become effective under this Joint Proposal, the Company will offer a pilot Purchase of Accounts Receivable Program (“POR Pilot”) to ESCOs who are authorized to provide gas commodity service in its territory. Under the POR Pilot, the Company will purchase gas commodity service accounts receivable, at a discount and without recourse, on the accounts of the Company’s firm transportation customers who receive a consolidated bill from the Company that includes gas commodity service provided by the ESCOs. At the outset of the POR Pilot, Distribution will purchase existing ESCO accounts receivable in place as of the date the POR Pilot

commences, not including ESCO accounts receivable arising from bills rendered by ESCOs and not by Distribution. The POR Pilot shall continue for a period of three years, terminable by the Company at the end of the third year following 12 months prior notice to participating ESCOs. The POR Pilot is premised on implementation in accordance with the following provisions.

1. Discount Rate.

The discount rate applicable to accounts receivable purchased from the commencement of the POR Pilot through the end of the Second Rate Year will be 2.6% for residential customers and 0.71% for commercial and industrial customers.²⁷ The discount rate applicable to accounts receivable purchased after July 31, 2007 will be adjusted to reflect (1) changes in the MFC arising out of any change in base rates or by order of the Commission and (2) any additional incremental costs beyond those included in the initial discount rate associated with the POR Pilot incurred by the Company. Proposed changes to the MFC and discount rate made outside a general rate filing will be filed with the Commission and notice with opportunity to comment will be provided to ESCOs participating in the POR Pilot. The POR Pilot exempts the Company from proration of partial customer payments.

The discount rate for residential customers reflects a compromise position consisting only of:

(a) a 2.56% discount related to the cost of uncollectibles associated with gas costs included in the MFC to residential customers;

²⁷ POR billing for STBA customers enrolled in a Restricted STBA Group existing as of the date of this Joint Proposal, i.e. aggregation accounts under single ownership as defined by the Company, and with good payment history, shall be exempt from the discount.

(b) a 0.04% to recover administrative costs of the POR Pilot; and

(c) a 0.00% risk factor to reflect uncertainty of cost recovery of the purchased receivables (reduced to 0.00% for this Joint Proposal).

The discount rate for commercial and industrial customers of 0.71% reflects the sum of:

(a) a 0.61% discount related to the cost of uncollectibles associated with gas costs included in the MFC for non-residential customers;

(b) a 0.05% to recover administrative costs of the POR Pilot; and

(c) a 0.05% risk factor to reflect uncertainty of cost recovery of the purchased receivables.

2. Remittance of Payment.

The Company will remit payment to the ESCO for purchased accounts receivable on the 23rd day following the issuance of the bill to the ESCO's customer.

3. Disconnection of Service.

When Distribution has purchased an account receivable for residential service to a residential customer, Distribution, in accordance with applicable provisions of law including but not limited to Public Service Law §32, may, as agent for the ESCO, implement a suspension of the ESCO's service to such customer who fails to make full payment of all amounts due for such service on the consolidated bill,. Residential customers whose service is suspended under the POR Pilot will be returned to service upon the payment of the arrears that were the subject of the disconnection, which may include both delivery and supply charges, or a lesser amount as specified in Public Service Law §32(5)(d).

Distribution is also authorized to disconnect its delivery service and the ESCO commodity service, in accordance with 16 NYCRR Part 13, to non-residential customers where: (i) the customer fails to make full payment of all amounts due on the consolidated bill; (ii) the Company purchased the ESCO accounts receivable; and (iii) the ESCO furnishes the Company an affidavit from an officer of the ESCO representing to the Company that the ESCO has notified its current non-residential customers and will notify its future non-residential customers that Distribution is permitted to disconnect the customer for non-payment of the ESCO charges. The ESCO will indemnify the Company for any cost, expense, or penalty if the customer's service is discontinued for non-payment and the customer establishes that it did not receive such notification.

4. Charge Back.

Where Distribution reconnects service to a residential customer in accordance with Public Service Law §32(5)(d), at the time Distribution writes off the account the Company is permitted to charge back to the ESCO the difference between the purchase amount and the amount the residential customer would have been charged as a full service customer. Charge back may be accomplished by netting out the amounts owed the Company by the ESCO from the payments otherwise due the ESCO from the Company.

5. Billing Options.

Distribution is not required to offer additional utility consolidated billing options to any ESCO apart from the consolidated billing option available for the POR Pilot. ESCOs may also provide their own bill to residential customers under the procedures applicable to the dual billing model or the single retailer model.

6. Security Deposits and Late Payment Charge.

The Signatory Parties agree that Distribution may require as a condition of receiving POR Pilot service that ESCOs delegate to Distribution the ESCO's right to obtain security deposits and other forms of security on the commodity portion of commercial and residential accounts so that Distribution may be secured to the same extent as is authorized for bundled utility service under 16 NYCRR Parts 11 and 13. The Signatory Parties further agree that Distribution may also require as a condition of POR Pilot service that ESCOs delegate to Distribution the ESCO's right to assess late payment charges on the total balance of consolidated bills under the POR Pilot.²⁸

B. Discounted Retail Access Transportation Service Program.

Within 30 days of the Commission's adoption of this Joint Proposal, Distribution will provide to Signatory Parties its outline for a Discounted Retail Access Transportation Service ("DRS") program to be effective through the term of this Joint Proposal and convene a meeting, to be held no later than October 1, 2005, to confer with interested parties regarding the design of DRS. Under DRS, participating ESCOs will offer firm residential and small non-residential customers who enroll with the ESCO a 7% discount from Distribution's current month Gas Supply Charge for a two-billing cycle introductory period, provided that each gas account will receive only one discount over the two-year term of this rate plan. The DRS program will be filed with the Commission no later than December 1, 2005 for an anticipated effective date, upon the Commission's approval, of April 1, 2006. The DRS program shall expire on July 31, 2007. DRS as filed will include the following:

1. A procedure for the timely provision of program-related information to customers and for customer enrollments. Such enrollment procedures shall be reasonably designed to provide each ESCO a generally equivalent number of accounts by rate classification, and location. Customers enrolling through this program are permitted to select a specific ESCO;
2. Distribution will obtain customer authorization, process enrollments and provide customer information to the assigned ESCO;
3. Calculation by Distribution of the price to be charged customers enrolled under the program on the two bills issued during the two-billing cycle introductory period;
4. A requirement that participating ESCOs provide enrolled customers with the terms and conditions, including price, for serving those customers beyond the two billing cycle introductory period;
5. ESCOs will not penalize a customer who returns to utility service during or following the two-billing cycle introductory period but before concluding a new agreement for commodity service with the ESCO; and
6. A requirement that ESCOs indemnify the Company against any damages, penalties or other costs associated with or arising from a claim that the ESCO misrepresented the terms of the ESCO service that was initiated through DRS..
7. Participating ESCOs will be enrolled in the Company's POR Pilot.

The Company may, after consultation with Staff and with consensus among ESCOs authorized to provide service in the Company's service territory, adjust the 7%

²⁸ Marketers participating in the Company's POR Pilot shall be required by the terms of the Company's Billing Services Agreement to authorize a late payment charge on the commodity portion of the

discount prospectively for the purpose of maximizing both ESCO and customer participation in DRS.

To promote DRS, Distribution will use a marketing approach that includes, but is not limited to, the use of customer bill inserts and print advertisements. The Company's advertising may include a statement that this is a Commission-endorsed program. The Company shall be permitted to "outsource" call center contacts for this program in order that telephone inquiries related to this program are handled by contracted call center personnel and not Distribution employees. The contracted call center will handle telephone calls in accordance with the standards contained in the SQPM. Upon presentation of reasonable costs of the DRS program (not to exceed \$500,000) for approval by the Commission, it is intended that the Company will recover such costs associated with the DRS program from the CMR.

C. Migration Incentives.

In order to encourage Distribution to promote retail access in its service territory, a migration incentive will be made available to the Company for the First Rate Year and Second Rate Year provided there is a net minimum migration of at least 10,000 accounts. The incentive will be calculated using the Company's "monthly LDC sales report" in accordance with the following methodology:

1. During each Rate Year, the Company will earn \$300,000 if 10,000 customer accounts migrate to ESCO service.
2. During each Rate Year, for each account between 10,000 and 15,000 that migrates to ESCO service, the Company will earn \$30.
3. During each Rate Year for each migrated account above 15,000,

consolidated bill equal to the utility portion, or 1.5% monthly.

the Company will earn \$50 per account. Each Rate Year shall constitute a separate incentive period.

4. For purposes of the migration incentives, migrating customers include new customers that commence taking firm transportation service calculated as set forth in subparagraph (5), provided that the Company can only receive an incentive once on each eligible gas account.

5. The Company will determine the net increase in customers on firm transportation service at the end of each Rate Year as compared to the number of customers who were taking firm transportation service as of the beginning of each Rate Year. If the Company meets the 10,000-customer migration threshold during the First Rate Year and again during the Second Rate Year, the incentive will be \$300,000 for each of the two Rate Years; however, if fewer than 10,000 customers migrate or negative migration occurs during the First Rate Year, but additional customers migrate during the Second Rate Year, the migration incentive will be the total net increase over two years (First and Second Rate Years migrating customers), measured from the beginning of the First Rate Year, for additional migration up to 10,000 customers (\$300,000), plus any balance of the net increase over the cumulative 10,000 customers times the appropriate tier amount. Customers who resume taking firm sales service from Distribution during the Second Rate Year due to an ESCO's cessation of retail marketing operations in or departure from Distribution's service territory will be considered to have remained with the ESCO for purposes of calculating the incentive.

6. The total incentive that the Company may receive over the period these provisions remain in effect will be capped at \$ 2.7 million.

7. The Company may recover the incentive from the CMR. If the funds in the CMR are insufficient, the Company shall defer the incentive amounts for collection at the time of its next base rate case. Within 60 days following the end of each Rate Year, Distribution will file with the Commission verification of migration during that period, the computation of any requested incentive, the available credits, and the proposed deferral, if any. Appendix M contains examples of the migration incentive calculation for purposes of illustration.

D. Other Measures to Foster Retail Choice.

1. Retail Competition Plan.

The programs presented in this Joint Proposal to foster the development of retail energy markets are specifically recognized to be in compliance with the Commission's directive contained in the August 25, 2004 Statement of Policy on Further Steps Toward Competition in Retail Energy Markets issued in Case 00-M-0504 ("Competition Policy Statement") that the utility is required to file a plan that will outline the next steps/initiatives on how interested parties and the Company can collaborate to increase migration and further the development of the competitive retail market. The Company agrees to collaborate on retail access issues as provided for in this Joint Proposal. The Company agrees to summarize retail access provisions of this Joint Proposal and to file such summary for record purposes in Case 00-M-0504. No Signatory Party will challenge the sufficiency of the Company's response to the Competition Policy Statement in this Joint Proposal so long as the programs contained herein are implemented as agreed.

2. Customer Awareness Surveys.

Distribution will continue to survey its residential customers annually for the purpose of tracking changes in customer awareness and understanding of competition in the gas market. Distribution will meet with Staff and interested parties to review the most recent customer awareness and understanding survey to research the reasons why customers are reluctant to choose alternate suppliers. The research will be conducted within 45 days after the Company's acceptance of the order in this proceeding is issued. The Company will report the results of the survey by January 31, 2006.

3. Market Match and Market Expo Programs.

Distribution will develop Market Match and Market Expo programs. The Market Match program will be targeted to at least 1,000 of the Company's largest sales customers within 60 to 120 days of the Company's acceptance of the Commission's order adopting this Joint Proposal. The Market Match program will provide the opportunity to exchange information electronically and allow ESCOs to offer interested eligible customers competitive supply offers. The program elements of Market Match will be developed in consultation with Staff and interested parties.

Provided that at least five ESCOs commit in writing to participate, Distribution will sponsor and conduct a minimum of two Market Expos ("Expos") over the term of the Rate Plan for non-residential business customers. The purpose of the Market Expo Program is to bring Staff, ESCOs, non-residential customers and Distribution together to provide a forum for an exchange of information regarding retail choice and a platform for customers to receive offers from ESCOs. The Expos will be targeted to SC3 customers. The content of the Expos will be developed in consultation with Staff and interested

parties within 60-120 days of the Company's acceptance of the Commission's order adopting this Joint Proposal.

4. Mass Market Migration Pilot Collaborative.

Distribution will convene a collaborative within 180 days of acceptance of the order approving this Joint Proposal to study the feasibility and possible implementation of a mass market migration pilot program discussed on page 26 of the Competition Policy Statement. All customers that migrate as a result of this pilot program, if adopted, shall be included in the migration incentive calculation.

5. ESCO Satisfaction Survey.

Distribution will continue to conduct the annual ESCO survey to measure ESCO satisfaction. Distribution will consult with Staff and ESCOs operating in its service territory to determine if any changes need to be made in the existing survey. All ESCOs will be contacted to participate in the survey. Distribution will report the results of the survey and its plans for addressing marketer concerns, if any, identified by the survey by December 31, 2005.

6. ESCO/Marketer Ombudsman.

Within 30 days after the Commission's approval of this Joint Proposal, Distribution will formally announce the continued designation of a management employee who will be responsible for addressing ESCO concerns and issues and who will serve as a liaison between ESCOs and the Company. ESCOs will be provided with the Ombudsman's name and telephone number and the Ombudsman will be available directly to ESCOs.

7. Competition Outreach and Education.

Distribution will meet with Staff and interested parties to design an enhanced Retail Market Education plan using the results of the research findings (described in paragraph 2 above) and incorporating the Retail Market Outreach and Education messages listed in Appendix N. The expense allowance for the enhanced Retail Market and Education effort shall be \$350,000 annually for the term of this Joint Proposal.

8. Pilot Program to Promote Marketer Fixed Price and Other Hedged Options

The Signatory Parties agree that Distribution will develop a pilot program to support marketer hedged price options. As soon as possible, but no later than sixty days following approval of this Joint Proposal, Distribution will convene interested Parties for the purpose of designing a two-year pilot program to become effective, if achievable, for use beginning winter 2005-2006.

The pilot program would be limited to the winter season (November through March). Total program volume would be limited to 1.5 MMDth (approximately 17,500 customers). Under the pilot, marketers will hedge supplies for their offers to customers and the Company will purchase or financially settle a part of the marketer's unsubscribed enrollment volume. The cost of the purchased hedge or financial settlement will be charged as a gas cost for recovery through the Company's normal gas cost adjustment.

9. Annual Report.

The Company will include in an Annual Report to the Director of the Office of Retail Market Development the research results and lessons learned from them, as well as an evaluation of the customer awareness and understanding survey's effectiveness, and

an explanation of how the survey design will be improved and tailored in the following year.

VII. Miscellaneous Provisions.

A. Dispute Resolution.

In the event of any disagreement over the interpretation of this Joint Proposal which cannot be resolved informally among the Signatory Parties to this proceeding, the party claiming a dispute shall serve a Notice of Dispute on the remaining parties, briefly identifying the provision or provisions of this Joint Proposal under dispute and the nature of the dispute, and convening a conference in a good faith attempt to resolve the dispute. If any such dispute cannot be resolved by agreement among the parties, the Signatory Parties agree to submit the matter to the Commission for an expedited determination, with a hearing as would be appropriate under the circumstances.

B. Change of Law.

If a change in any law, rule, regulation, order, or other requirement (or any repeal or amendment of an existing law, rule, regulation, order or other requirement) of the state, local or federal government or court having competent jurisdiction results in an increase in Distribution's annual operating expenses, to the extent that the aggregate amount of the effect of such changes in the First or Second Rate Years or any subsequent 12-month period exceed 3% of the Company's net income, Distribution may seek deferral treatment of any such expense, and any such deferrals are to be reflected in rates at the next time the Company's base rates are changed following the rate changes specified in this Joint Petition, subject to prudence review.

C. Binding Effect.

The Signatory Parties believe that this Joint Proposal should be approved by the Commission as being in the public interest. The Signatory Parties further agree that they consider this Joint Proposal to be binding on themselves for all purposes herein.

D. Severability.

It is the Signatory Parties' intent that the terms of this Joint Proposal not be separately interpreted and applied. To that end, it is understood that each provision of this Joint Proposal was given in consideration and support of all other provisions, and expressly conditioned upon the acceptance of the Joint Proposal in its entirety by the Commission. In the event or to the extent that the Commission does not adopt this Joint Proposal according to its terms, the parties to this Joint Proposal shall be free to pursue their respective positions in this proceeding and any remedies at Law or in equity without prejudice upon reasonable notice to the other parties.

E. Commission Action on This Joint Proposal.

The Signatory Parties understand that this Joint Proposal requires the approval of the Commission and agree to act so as to expedite the Commission's approval of this Joint Proposal.

If the Commission does not approve this Joint Proposal in its entirety, without modification, the Company may choose not to be bound by the terms of this Joint Proposal after that date by serving written notice on the other parties.

F. General Reservation.

It is specifically understood and agreed that this Joint Proposal represents a negotiated resolution of the Company's rates and services for the period of the Rate Plans

contained herein and, except as otherwise expressly provided for herein, is intended to be binding only in this proceeding and only as to the matters specifically addressed herein. Neither the Company, the Commission, nor its Staff, shall be deemed to have approved, agreed to, or consented to any principle or methodology underlying or supposed to underlie any agreement provided for herein. None of the terms and provisions of the Joint Proposal and none of the positions taken herein by any Signatory Party may be referred to, cited or relied upon by any party in any fashion as precedent or otherwise in any proceeding before this Commission or any regulatory agency or before any court for any purpose except in furtherance of the purposes and results of this Joint Proposal.

G. Extension.

Nothing herein shall be construed as precluding the parties from convening additional conferences and from reaching agreement to extend this Joint Proposal on mutually acceptable terms and from presenting an agreement concerning such extension to the Commission for its approval.

H. Continuation of Ratemaking Mechanisms.

This Joint Proposal is predicated upon the continuation in their present form (except as may be altered by this Joint Proposal) of the following ratemaking mechanisms: the Weather Normalization Clause; the GAC, the 90/10 Symmetrical Sharing Mechanism (which shall exclude the effect of the SIT refund) (see Appendix O), Pension and OPEB deferrals, environmental clean-up cost deferrals (see below) and Company RD&D.²⁹ These rate mechanisms shall not be eliminated or significantly changed for Distribution during the effectiveness of this Rate Plan.

²⁹ \$1,117,000 shall be used for RD&D deferral accounting.

The Signatory Parties further agree that \$600,000 included in the Company's rate case O&M presentation for Site Investigation & Remediation ("SIR") will continue to offset the Company's expenditures for SIR which are currently deferred and will continue to be deferred under previously-granted deferral authority. Each month, on a volumetric basis, an amount (for an annual amount of \$600,000) will be debited to Account 583420 Miscellaneous General Expense and credited to 186635 Site Remediation Cost Amortization.

I. Execution in Counterpart Originals.

This Joint Proposal is being executed in counterpart originals, and shall be binding on each party when the counterparts have been executed.

AGREED to this ___ day of April 2005.

NATIONAL FUEL GAS DISTRIBUTION CORPORATION

BY: _____

STAFF OF THE DEPARTMENT OF PUBLIC SERVICE

BY: _____

CONSUMER PROTECTION BOARD

BY: _____

MULTIPLE INTERVENORS

BY: _____

PUBLIC UTILITY LAW PROJECT

BY: _____

CROWN ENERGY SERVICES, INC.

BY: _____

NATIONAL FUEL RESOURCES, INC.

BY: _____

NORTH AMERICAN ENERGY, INC.

BY: _____

SMALL CUSTOMER MARKETER COALITION

BY: _____