STATE OF NEW YORK

PUBLIC SERVICE COMMISSION

Petition of National Fuel Gas Distribution Corporation for an Order to Show Cause Why New Mountain Vantage GP, L.L.C. and Others Acting in Concert with it Should Not be Required to Comply with Public Service Law and Other Relief Requested.	Case 07-G-1505

COMMENTS OF THE

NEW YORK STATE CONSUMER PROTECTION BOARD

Mindy A. Bockstein
Chairperson and Executive Director

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Dated: January 9, 2008
Albany, New York

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A Notice Soliciting Comments issued by the Public Service Commission ("PSC" or "Commission") on December 28, 2007, invited interested parties to respond to a Verified Petition ("Petition") filed by National Fuel Gas Distribution Corporation ("NFGD" or "Distribution") on December 19, 2007. In its Petition, Distribution alleges that New Mountain Vantage GP, L.L.C., ("NMV") either directly or in concert with others, is seeking to obtain control of Distribution's parent, National Fuel Gas Company ("National"), and may already have acquired as much as 20% of National's outstanding stock.[1] NFGD asserts that this is in violation of § 70 of the Public Service Law ("PSL") which bars the acquisition or holding of "more than ten per centum of the voting capital stock of any gas corporation" by "a stock corporation of any description" without the consent of the Commission.

Accordingly, Distribution requests that the Commission (1) order NMV to disclose all of the entities with which it "has been in contact and is acting," (2) investigate whether NMV has violated PSL § 70 by attempting to acquire control

[1] Petition, p. 5.

of NFGD, (3) order NMV to show cause why it should not obtain the consent of the Commission before acquiring additional shares of National, and (4) require that such consent be obtained before any vote of stockholders is held which could result in the control of NFGD by NMV.[2]

The Consumer Protection Board ("CPB") is deeply concerned that NMV and its associates may have acquired, or be in the process of acquiring, a controlling interest in National without any evaluation of the consequences of this acquisition for the ratepayers of NFGD, and without any determination by the PSC that the acquisition is in the public interest. We fully support Distribution's request for the Commission to initiate an investigation of the activities of NMV and, if warranted based on its findings, to ensure full compliance with the requirements of PSL § 70.

The allegations of NFGD are serious and sufficient to warrant a determination by the Commission whether the requirements of PSL § 70 are applicable to the activities of NMV.

PSL § 70 requires that any corporation seeking to acquire an interest of 10% or more in any gas corporation obtain the prior consent of the Commission. The term "corporation" is broadly defined in PSL § 2 to include not only traditional corporate entities but also any "association." NMV, a limited liability company, which may be acting in concert with other entities to acquire interest in National, clearly falls within that definition.

NMV acknowledges that it already directly controls some 9.7% of the outstanding shares of National, and the exhibits attached to Distribution's Petition

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2 Petition, p. 16.

clearly evince NMV's intention to control the management of the company. NFGD alleges that the direct ownership reported by NMV may actually significantly understate the volume of shares over which it has direct or indirect control, and that the true interest of NMV and those acting with it may already be in excess of 20%.

These allegations are serious and sufficient to require the Commission to direct NMV to identify the amount of National stock that it owns either directly or in concert with others and show cause why it should not obtain the consent required by PSL § 70. Furthermore, it is noteworthy that the Pennsylvania Public Utilities Commission, on essentially the same set of facts presented here by NFGD, rejected NMV's preliminary objections to NFGD's petition, even though the threshold for requiring the obtaining of a certificate of public convenience in that State is a 20% ownership interest.[3]

The acquisition of control of National by NMV and its associates presents very substantial risks for NFGD ratepayers and no evidence of any net benefit.

As revealed by a presentation and a letter to National's Board of Directors submitted as Exhibits 2 and 3 to NFGD's Petition, NMV's focus is on increasing the return from National's unregulated assets. To accomplish this, it proposes a number of strategies including the sale of certain "non-strategic" assets, the spin-off of other assets into new financial vehicles known as master limited

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[3] Case P-00072343, Complaint of National Fuel Gas Distribution Corporation and Petition for an Order to Show Cause Why New Mountain Vantage GP, L.L.C., and Others Acting in Concert with It Should Not be Required to Apply for a Certificate of Public Convenience Approving the Acquisition of Control of National Fuel Gas Distribution Corporation, Order, December 20, 2007.

partnerships, and significantly more aggressive gas drilling programs, possibly expanding from 200 to as many as 800 new wells per year.[4]

Even if these initiatives achieve some measure of success in increasing earnings for shareholders, the shift in corporate emphasis may have negative implications for NFGD ratepayers. Investors' perception of the overall riskiness of energy companies tends to be highly correlated with the percentage of revenues derived from competitive, unregulated sources as opposed to regulated utility operations. NMV's proposed changes may very well increase National's cost of capital, and that cost increase could be passed on to NFGD ratepayers. In recent cases, such as the KeySpan/National Grid merger, the Commission has required the adoption of measures to protect ratepayers from such a development.[5] Moreover, NMV's proposed shift in corporate emphasis to unregulated operations may jeopardize the quality of NFGD's service and its capital investment program.

In a worst case scenario, if NMV's strategies fail, National's financial situation could be severely weakened, possibly throwing NFGD into a reorganization as a result of bankruptcy. While the probability of this result may be small, the danger is one that the Commission has taken very seriously in recent cases, requiring the adoption of "ring fencing" and "golden share"

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4 Petition, Exhibit 2.

5 Cases 06-M-0878, Joint Petition of National Grid PLC and KeySpan Corporation for Approval of Stock Acquisition and other Regulatory Authorizations, Abbreviated Order Authorizing Acquisition Subject to Conditions and Making Some Revenue Requirement Determinations for KeySpan Energy Delivery New York and KeySpan Energy Delivery Long Island, August 23, 2007, pp. 10-13.

provisions to shield utility subsidiaries from the financial vicissitudes of their parents.

In addition, it is currently impossible to ascertain what NMV's intentions are with respect to the relationship between NFGD and National as components of the parent are sold and spun off. Under the existing holding company structure, many common services are shared among subsidiaries, minimizing duplication and reducing overall costs. What will happen to the shared services arrangements as components of National are sold or included in master limited partnerships? Will NFGD be required to develop additional in-house capabilities or to contract with external sources for functions formerly provided by National? The resolution of these issues may have a significant impact on the utility's cost structure.

In contrast to these very serious risks, there is currently nothing to suggest that control of National by NMV will generate any net benefit for NFGD ratepayers. The NMV documents submitted as exhibits with Distribution's Petition reveal no plans for NFGD and, indeed, little if any interest in the company. In fact, as Distribution points out, NMV has criticized National's management for running its business with a "utility mentality."[6]

The Commission made clear in the KeySpan/National Grid case that the acquisition of a utility is not in the public interest unless it provides net positive benefit to ratepayers. NMV should be required to demonstrate how its acquisition of a controlling interest in National meets this standard.

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[6] Petition, p.14.

CONCLUSION

For the reasons set forth above, the CPB recommends that the relief requested by NFGD be granted.

Respectfully submitted,

Mindy A. Bockstein

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Dated: Albany, New York
January 9, 2008