

June 13, 2013

ENERGY & ENVIRONMENT COMMITTEE  
REPORT NO. 10

ALL MEMBERS PRESENT.  
CHAIR GRANT PRESENT AS EX-OFFICIO MEMBER.

1. RESOLVED, the following item is hereby received and filed:
- a. INTRO 10-8 (2013)  
LOUGHRAN: “Review of EC Household Hazardous Waste Drop-Off Program”  
(4-0) Chair Grant & Legislator Mills not present for vote.

b. COMM. 10M-3 (2013)  
NYS PUBLIC SERVICE COMMISSION: “Public Notice: Proceeding on Motion of the Commission as to the Rates, Charges, Rules & Regulations of National Fuel Gas Distribution Corporation for Gas Service”  
(6-0)

c. COMM. 11M-4 (2013)  
NYS DEPARTMENT OF AGRICULTURE & MARKETS: “EC Agricultural District Nos. 14 & 15 Recertification”  
(4-0) Chair Grant & Legislator Mills not present for vote.
2. INTRO 10-2 (2013)  
HARDWICK, GRANT, MAZUR, AS AMENDED  
HOGUES, McCRACKEN & LORIGO  
WHEREAS, in Birmingham, Alabama the United States Environmental Protection Agency (EPA) funded a comprehensive soil study and clean up in a neighborhood that is located in the shadow of a coke facility; and

WHEREAS, community members in Tonawanda conducted a small sample study and found pollutant levels similar to those found by the Environmental Protection Agency in Birmingham, Alabama; and

WHEREAS, the Tonawanda Community Fund has petitioned the EPA and the New York State Department of Environmental Conservation to conduct its own testing to confirm the unsafe levels of pollutants and take the appropriate remedial actions.

NOW, THEREFORE, BE IT

RESOLVED, that the Erie County Legislature calls upon the United States Environmental Protection Agency and the New York State Department of Environmental Conservation to fund a soil study in Tonawanda to reveal the extent of the pollution caused by industrial facilities; and be it further

RESOLVED, that certified copies of this resolution be forwarded to the United States Environmental Protection Agency and the New York State Department of Environmental Conservation.  
(6-0)

3. INTRO 10-7 (2013)  
GRANT, MAZUR,  
HOGUES & MCCracken  
WHEREAS, the New York State Public Service Commission (PSC) will hold an evidentiary hearing in front of Administrative Law Judge David L. Prestemon beginning at 9:00 a.m. on Thursday, May 23, 2013 in Albany, to be continued on Thursday, May 30, 2013 if needed; and

WHEREAS, the purpose of this hearing is to hear testimony on whether the gas rates and charges of National Fuel Gas Distribution Corporation should be set on a temporary basis, subject to refund; and

WHEREAS, the need for this hearing was occasioned by the Public Service Commission’s Order Instituting Proceeding and to Show Cause, which was issued on April 19, 2013; and

WHEREAS, the aforementioned report draws, in part, the following conclusion: “National Fuel’s earnings level indicates that its gas rates may be higher than needed to provide safe and adequate service, particularly in light of the recently allowed ROE (Return on Equity) and earnings sharing provisions established for other utilities;” and

WHEREAS, the report also draws the following conclusion: “Further, absent action, National Fuel’s deferral balances may continue to escalate during a period of time that the Company is earning a return in excess of its cost of equity;” and

WHEREAS, the report further contends, “These circumstances may result in National Fuel customers paying higher rates than are just and reasonable;” and

WHEREAS, the deferrals outlined by the Public Service Commission include pension and other post-employment benefits, which are being deferred – the PSC asserts – by National Fuel for future recovery from customers; and

WHEREAS, “future recovery from customers” can only be interpreted as meaning future rate hikes; and

WHEREAS, in the 2007 Rate Order, the PSC envisioned a 9.1% ROE (Return on Equity), yet the audited financial statements for National Fuel’s last fiscal year ending September 30, 2012 indicate that the actual ROE is more likely in the range of 12 – 13%; and

WHEREAS, this double digit profit, paired with the deferral of expenses to be “recovered” at a later date from customers, bodes poorly for residential and business ratepayers who are bearing excessive energy costs now, and likely, in the future; and

WHEREAS, the PSC report notes that National Fuel proposes to share its “savings with its customers by implementing an earnings sharing and stabilization mechanism and by accelerating its infrastructure modernization program;” and

WHEREAS, the PSC report further states: “However, the Company’s current Proposal does not yet describe an adjustment to existing rates large enough to fully compensate for the imbalance between ratepayer and shareholder interests that has developed since the 2007 Rate Order;” and

WHEREAS, the report draws the following conclusion: “In the absence of a Company proposal to fully and fairly adjust current rates on a permanent basis, and in the further absence of a proposal to fully protect ratepayer interests while appropriate permanent rates are being determined, we must consider the establishment of temporary rates, pursuant to PSL Section 114, at their current levels subject to refund;” and

WHEREAS, although a number of legal options for National Fuel are advanced in the report, this Honorable Body does not yet know the outcome of National Fuel’s actions in response to the aforementioned report (CASE 13-G-136); and

WHEREAS, it is ironic that National Fuel’s double digit profits were initially garnered during the Great Recession, an economic downturn for the nation, state and local economies marked by business closures and massive layoffs, and a corresponding reduction in energy demands; and

WHEREAS, the double digit profit trend appears to be continuing in 2013, based on a transcript of an earnings call whereby David F. Smith, Chairman and CEO of National Fuel, stated on February 8, 2013: “First quarter was an excellent quarter for National Fuel. Earnings were \$0.81, an increase of \$0.08 per share or 11% over the prior year’s first quarter;” and

WHEREAS, again, these earnings exceed the intent of the 2007 Rate Order and provide further evidence that National Fuel ratepayers are being overcharged and are essentially underwriting the excess profits of the shareholders.

NOW, THEREFORE, BE IT

RESOLVED, that the Erie County Legislature is alarmed by the Public Service Commission’s findings and conclusion that National Fuel Gas Distribution Corporation has been overcharging its customers following the 2007 Rate Order; and be it further

RESOLVED, that the apparent overcharging has resulted in excess profits to the shareholders, resulting in an imbalance between the interests of the ratepayers and the shareholders that is not adequately remedied by National Fuel’s proposal described in the April 19, 2013 Order Instituting Proceeding and To Show Cause; and be it further

RESOLVED, at a time when our economy needs to place more resources in the hands of homeowners and small businesses to stimulate growth, it is counter-intuitive to support any proposal that allows National Fuel to retain excess profits for its own business development purposes; and be it further

RESOLVED, in the alternative, that the Erie County Legislature support a refunding of excess profits to the ratepayers who have been overcharged by National Fuel since the 2007 Rate Order; and be it further

RESOLVED, that copies of this resolution be conveyed to the Public Service Commission, National Fuel Gas Distribution Corporation, Governor Andrew Cuomo, the WNY Delegation to the State Legislature and all parties deemed necessary and proper.  
(4-2) Legislators Mills & Lorigo voted in the negative.

4. COMM. 11E-17 (2013)  
**COUNTY EXECUTIVE**

WHEREAS, pursuant to Legislative Comm. 9E-18 (2010) Contract No.23 was awarded to Visone Construction, Inc. for sanitary sewer replacement and lining of existing sewers in the Town of Boston Pinecrest Terrace/Valley Circle Lane area in Erie County Sewer District No. 3; and

WHEREAS, the Erie County Division of Sewerage Management has advised that all scheduled improvements are now completed; and

WHEREAS, the Erie County Department of Environment and Planning has recommended the acceptance of Contract No. 23, in the final contract amount of \$1,847,577.66 which includes Change Order No. 1 (final), a decrease of \$ 33,573.44, and recommends approval for final payment.

NOW, THEREFORE, BE IT

RESOLVED, that Contract No. 23 between the County of Erie and Visone Construction, Inc. (79 Sheldon Avenue, Depew, New York 14043) is accepted in the final contract amount of \$1,847,577.66

which includes Change Order No. 1 (final), a decrease of \$33,573.44, with \$393,656.40 allocated in Erie County Sewer District No. 3 Bond Account C.00062 and \$1,453,921.26 allocated in Erie County Sewer District No. 3 Bond Account C.00019; and be it further

RESOLVED, that the Erie County Comptroller be directed to make final payment for Contract No. 23 to Visone Construction, Inc., for a total contract amount of \$1,847,577.66; and be it further

RESOLVED, that the Clerk of the Legislature be directed to send one (1) certified copy each to the County Executive, the Erie County Comptroller, the Director of Budget and Management and Kristen Walder, Assistant County Attorney and two (2) certified copies of this resolution to Joseph L. Fiegl, P.E., Department of Environment and Planning.

(4-0) Chair Grant & Legislator Mills not present for vote.

**TERRENCE D. McCRACKEN**  
**CHAIR**