

May 28, 2013

ENERGY & ENVIRONMENT COMMITTEE
REPORT NO. 9

ALL MEMBERS PRESENT, EXCEPT LEGISLATOR MILLS.
CHAIR GRANT PRESENT AS EX-OFFICIO MEMBER.

- 1. RESOLVED, the following item is hereby received and filed:
 - a. COMM. 10E-17 (2013)
COUNTY EXECUTIVE: “ECSD Nos. 1,4 & 5 - Engineer Term Contract Agreement - DiDonato Associated”
(5-0)

2. 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;”

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

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.
(4-1) Legislator Lorigo voted in the negative.

3. COMM. 10E-13 (2013)
COUNTY EXECUTIVE

WHEREAS, the County recognizes the need to properly train its employees to protect their health and well being, and to comply with applicable state and federal regulations; and

WHEREAS, Erie County’s Division of Sewerage Management has applied for funds from the Western New York Council on Occupational Safety & Health through a New York State Department of Labor Hazard Abatement Board training grant.

NOW, THEREFORE, BE IT

RESOLVED, that the proposed agreement between the County of Erie and the Western New York Council on Occupational Safety & Health to provide health and safety training to the Division of Sewerage Management and Sewer District employees is hereby approved; and be it further

RESOLVED, that the County Executive be, and hereby is, authorized to execute said agreement subject to approval as to form by the County Attorney and as to content by the Commissioner of Environment and Planning; and be it further

RESOLVED, that the Clerk of the Legislature be authorized and directed to send one certified copy each to the County Executive, the Director of Budget and Management, Erie County Comptroller, and Kristen Walder, County Attorney and two certified copies of this resolution to Joseph Fiegl, P.E., Deputy Commissioner, Department of Environment and Planning.
(5-0)

4. COMM. 10E-15 (2013)
COUNTY EXECUTIVE

WHEREAS, the Newstead Town Board adopted a resolution on December 10, 2012 noting their desire to acquire approximately 131 acres of Akron Falls Park from Erie County; and

WHEREAS, said acreage is used by Newstead area recreation leagues and is isolated from the Akron Falls natural heritage areas; and

WHEREAS, the proposed land transfer represents an alienation of parkland requiring a series of actions by the Town of Newstead, Erie County, and the New York State Legislature; and

WHEREAS, the proposed land transfer action has been reviewed pursuant to New York State Environmental Quality Review procedure by the Erie County Department of Environment and Planning and determined to be a Type 1 action having no negative impact on the environment; and

WHEREAS, the Director of Real Property Tax Services has reviewed and approved the assessment of the property; and

WHEREAS, an intermunicipal agreement is necessary between Erie County and the Town of Newstead describing the terms of the parkland transfer including but not limited to reversionary clause, residency, park use, acquisition cost, and land description.

NOW, THEREFORE, BE IT

RESOLVED, that the County Executive is hereby authorized to execute an Intermunicipal Agreement with the Town of Newstead which shall provide for but not be limited to the following provisions:

(1) The transfer of approximately 131 acres within Akron Falls Park south of Skyline Drive for an amount not to exceed \$200,000;

(2) The reversion of the land back to the County should the Town cease to use the land solely for park purposes or in the event the Town fails to make the park accessible to all County of Erie residents on the same terms and conditions as apply to Town of Newstead residents; and be it further

RESOLVED, that certified copies of this resolution be sent to the County Executive; the Commissioner of the Department of Environment and Planning; the Commissioner of Parks, Recreation and Forestry; the Director of Real Property Tax Services; the Director of the Division of Budget and Management; the County Attorney; and the Erie County Comptroller.

(5-0)

5. COMM. 10E-16 (2013)
COUNTY EXECUTIVE

WHEREAS, the Department of Parks, Recreation and Forestry currently permits horseback riding on designated trails at three Erie County Park and Forestry Areas; and

WHEREAS, the Department of Parks, Recreation and Forestry is finding it increasingly difficult to maintain horseback riding trails due to lack of staffing; and

WHEREAS, the Western Chapter, New York State Horse Council is willing to enter into agreements with the County to take over some of the maintenance aspects of these horseback riding trails, including, but not limited to, repairs, signage, mapping and trail volunteer days.

NOW, THEREFORE, BE IT

RESOLVED, that the County Executive is hereby authorized to enter into an agreement with Western Chapter, New York State Horse Council for the purpose of permitting the maintenance of these designated horseback riding trails located within the Erie County Parks System; and be it further

RESOLVED, that certified copies of this resolution be forwarded to the Office of the Erie County Executive, the Department of Parks, Recreation and Forestry and Assistant County Attorney, Kristen Walder, of the Law Department.

(5-0)

6. COMM. 10E-18 (2013)

COUNTY EXECUTIVE

WHEREAS, the County of Erie and CSX Transportation, Inc. have a license agreement for sanitary sewers installed within the railroad property; and

WHEREAS, the County of Erie currently pays the license agreement fees on an annual basis; and

WHEREAS, the County of Erie and CSX Transportation, Inc. have negotiated a one time lump sum final payment; and

WHEREAS, the County of Erie and CSX Transportation, Inc. will amend the license agreement and the County will make a final payment of \$4,750.00, with \$4,000.00 for the one time fee and \$750.00 are for CSX Transportation, Inc. administrative costs.

NOW, THEREFORE BE IT

RESOLVED, that the amended license agreement between the County of Erie and CSX Transportation, Inc. on behalf of Erie County Sewer District No. 3 in the amount of \$4,750.00 is hereby approved; and be it further

RESOLVED, that the Comptroller be authorized to allocate from Professional Services, Contracts and Fees SD # 3(1831010) in the 2013 Adopted Budget, \$4,750.00 subject to the approval and verification of the cost by the County's Division of Sewerage Management; and be it further

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

(5-0)

TERRENCE D. McCracken
CHAIR