

better than those of its competitors. Unlike the Extended Exchange Offer proposed by IDS Life, when Old Contract owners exchange into competitors' contracts, they must pay any remaining CDSC on the Old Contracts at the time of the exchange. No tacking is required when IDS Life's competitors offer their variable annuity contracts to owners of Old Contracts or when IDS Life makes such an offer to competitors' contract owners. The Commission has previously approved similar exchange offers to permit the owners of older contracts to exchange them for contracts offering an immediate and enduring economic benefit even where tacking did not occur.

10. To the extent there are differences between the Old Contracts and the RAVA Advantage Plus contract, those differences relate to enhanced contractual features and charges that are fully described in the prospectus for the RAVA Advantage Plus contract. Furthermore, the Offering Communication (and any Termination Notice) will contain concise, plain English disclosure of each aspect of the RAVA Advantage Plus contract that could be less favorable than the Old Contracts.

Conclusion

Applicants submit, for the reasons stated herein, that the Extended Exchange Offer is consistent with the protections provided by section 11 of the Act, and that approving the terms of the Extended Exchange Offer is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policies and provisions of the Act. Applicants submit that the requested Amended Order approving the terms of the proposed Extended Exchange Offer therefore should be granted.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jill M. Peterson,

Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 35-27935]

Filings Under the Public Utility Holding Company Act of 1935, as Amended ("Act"); National Fuel Gas Company (70-10273)

January 5, 2005.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated under the Act. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendment(s) is/are available for public inspection through the Commission's Branch of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by January 31, 2005, to the Secretary, Securities and Exchange Commission, Washington, DC 20549-0609, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in the case of an attorney at law, by certificate) should be filed with the request. Any request for hearing should identify specifically the issues of facts or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After January 31, 2005, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Notice of Proposal To Amend Restated Certificate of Incorporation; Order Authorizing the Solicitation of Proxies

National Fuel Gas Company ("National Fuel Gas"), 6363 Main Street, Williamsville, NY 14221, a registered holding company, has filed with the Commission a declaration ("Declaration") under sections 6(a)(2), 7 and 12(e) of the Act and rules 54, 62(d) and 65 under the Act.

I. Description of National Fuel Gas

National Fuel Gas, a New Jersey corporation, through its direct and indirect subsidiaries is engaged in the exploration, production, purchasing, gathering, processing, transportation, storage, retail distribution, and wholesale and retail marketing of natural gas. It owns all of the issued and outstanding common stock of National

Fuel Gas Distribution Corporation, a gas-utility company that distributes natural gas at retail to approximately 732,000 residential, commercial and industrial customers (including transportation-only customers) in portions of western New York and northwestern Pennsylvania. National Fuel Gas' principal non-utility subsidiaries include National Fuel Gas Supply Corporation, Empire State Pipeline, Seneca Resources Corporation, National Fuel Resources, Inc., Highland Forest Resources, Inc., Horizon Energy Development, Inc., and Horizon LFG, Inc. (formerly Upstate Energy Inc.).

For the twelve months that ended September 30, 2004, National Fuel Gas reported operating revenues of approximately \$2.0 billion, of which \$1.1 billion (56%) were attributable to regulated utility gas sales. As of September 30, 2004, National and its subsidiaries owned total assets worth approximately \$3.7 billion, including approximately \$3.0 billion in net property, plant and equipment.

II. Requests for Authority

National Fuel Gas requests authority to amend its Restated Certificate of Incorporation ("Certificate of Incorporation"), as described below, and to solicit proxies from its shareholders in connection with the proposed amendment. The annual meeting of National Fuel Gas shareholders ("Annual Meeting") is scheduled for February 17, 2005. To change the Certificate of Incorporation, the proposed amendment must be approved by the affirmative vote of a majority of the votes cast by the holders of the outstanding shares of Common Stock entitled to vote at the Annual Meeting. Proxies may be solicited on behalf of the directors personally, and by mail, telephone, teletype, and employees of National Fuel Gas and its subsidiaries (with no special compensation to these employees). In addition, National Fuel Gas has retained Morrow & Co., Inc., to assist in the solicitation of proxies.

The board of directors of National Fuel Gas proposes to amend Article EIGHTH of the Certificate of Incorporation to revise the provisions relating to shareholder votes on certain actions. National Fuel Gas states that, under the New Jersey Business Corporation Act ("BCA"), certain exceptions are available to the general rule that shareholder approval is required for certain actions (collectively, "Actions"): (1) Amendments to the Certificate of Incorporation; (2) plans of merger or consolidation; (3) sales, leases, exchanges or other dispositions

of all, or substantially all, of the assets of National Fuel Gas, otherwise than in the usual and regular course of business; and (4) dissolution of National Fuel Gas. Currently, the Certificate of Incorporation does not provide for those exceptions and therefore the approval of National Fuel Gas shareholders is required for Actions even where approval would not be required under the BCA. As discussed below, the proposed amendment would make all of the exceptions allowed under the BCA applicable to National Fuel Gas.

Currently, Article EIGHTH of the Certificate of Incorporation requires shareholder approval for "amendments to the Certificate of Incorporation, including restatements, where shareholder approval is required or requested." The BCA generally requires shareholder approval of amendments to a company's certificate of incorporation, but provides that such shareholder approval is not required for certain types of non-critical amendments, including (but not limited to) amendments which would change a company's registered office or registered agent and amendments which would change a company's authorized shares in connection with transactions such as share dividends, divisions (*i.e.*, stock splits) or combinations (*i.e.*, reverse stock splits). The proposed amendment would delete from Article EIGHTH the term "or requested." National Fuel Gas states that it is not clear whether the term refers to requests made by the board of directors, management, or shareholders, and that no procedures are specified in the Certificate of Incorporation regarding the form or timing of requests.

Currently, Article EIGHTH of the Certificate of Incorporation provides that "a plan of merger or consolidation" approved by the Board of Directors must be approved by shareholders. National Fuel Gas states that the BCA is narrower, requiring shareholder approval of: (1) Consolidations in which two or more companies consolidate to form a new company; and (2) mergers that change the rights of shareholders or materially affect shareholder voting power. The company states that the BCA permits certain other merger transactions to proceed without the approval of shareholders of the surviving corporation. Specifically, National Fuel Gas states that the BCA provides that the approval of the shareholders of the surviving corporation in a merger is not required to authorize the merger (unless the corporation's certificate of incorporation otherwise provides) if the following four conditions are met: (1) The plan of

merger does not make an amendment of the certificate of incorporation of the surviving corporation which is required by the provisions of the BCA to be approved by the shareholders; (2) each shareholder of the surviving corporation whose shares were outstanding immediately before the effective date of the merger will hold the same number of shares, with identical designations, preferences, limitations, and rights, immediately after; (3) the number of voting shares outstanding immediately after merger, plus the number of voting shares issuable on conversion of other securities or on exercise of rights and warrants issued pursuant to the merger, will not exceed by more than 40% the total number of voting shares of the surviving corporation outstanding immediately before the merger; and (4) the number of participating shares outstanding immediately after the merger, plus the number of participating shares issuable on conversion of other securities or on exercise of rights and warrants issued pursuant to the merger, will not exceed by more than 40% the total number of participating shares of the surviving corporation outstanding immediately before merger. The proposed amendment to Article EIGHTH of the Certificate of Incorporation would make these statutory exceptions applicable to National Fuel Gas.

Currently, under Article EIGHTH of the Certificate of Incorporation, National Fuel Gas shareholders must approve "a sale, lease, exchange or other disposition of all, or substantially all, the assets of the corporation otherwise than in the usual and regular course of business." The BCA provides that a parent corporation may transfer, without shareholder approval, any or all of its assets to any corporation all of the outstanding shares of which are owned, directly or indirectly, by the parent corporation, unless the parent corporation's certificate of incorporation otherwise requires. The proposed amendment would permit National Fuel Gas to transfer all or substantially all of its assets to any wholly owned subsidiary without shareholder approval;¹ shareholders would continue to have the right to vote on the sale of substantially all of National Fuel Gas' assets to a third party.

Currently, under Article EIGHTH of the Certificate of Incorporation shareholder approval is required for

dissolution of National Fuel Gas. Under the BCA, a corporate officer may dissolve a corporation without shareholder approval where: (1) The corporation has no assets; (2) the corporation has ceased doing business and does not intend to recommence doing business; (3) the corporation has not made any distributions of cash or property to its shareholders within the last 24 months and does not intend to make any distribution following its dissolution; and (4) the officer has given 30 days prior written notice of his intention to dissolve the corporation by mail or personal service to all known directors and shareholders at their last known address and no director or shareholder has objected to the proposed dissolution. The proposed amendment would permit an officer of the Company to dissolve National Fuel Gas without shareholder approval in these limited circumstances.²

The company estimates that the fees, commissions and expenses to be incurred in connection with the proposed transactions will be \$165,500, consisting mostly of expenses associated with the printing, processing and mailing the proxy materials and costs associated with the Annual Meeting.

National Fuel Gas has filed its proxy solicitation materials and requests that its proposal to solicit proxies be permitted to become effective immediately, as provided in rule 62(d) under the Act. It appears to the Commission that the Declaration, with respect to the proposed solicitation of proxies, should be permitted to become effective immediately under rule 62(d).

It is Ordered, under rule 62 under the Act, that the Declaration regarding the proposed solicitation of proxies from National Fuel Gas shareholders become effective immediately, subject to the terms and conditions contained in rule 24 under the Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jill M. Peterson,

Assistant Secretary.

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¹ National Fuel Gas states that it has no present plans, agreements or commitments to transfer any significant portion of its assets to any other corporation (affiliated or unaffiliated) and that, by the Declaration, it is not requesting authority to engage in any such transaction.

² National Fuel Gas is not requesting authority to engage in any transaction that would constitute or result in its dissolution.