

NATIONAL FUEL GAS CO

FORM 8-K (Current report filing)

Filed 02/26/08 for the Period Ending 02/20/08

Address	6363 MAIN STREET WILLIAMSVILLE, NY 14221-5887
Telephone	716-857-7000
CIK	0000070145
Symbol	NFG
SIC Code	4924 - Natural Gas Distribution
Industry	Natural Gas Utilities
Sector	Utilities
Fiscal Year	09/30

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

FORM 8-K

CURRENT REPORT

Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934

Date of Report (Date of Earliest Event Reported):

February 20, 2008

National Fuel Gas Company

(Exact name of registrant as specified in its charter)

New Jersey

1-3880

13-1086010

(State or other jurisdiction
of incorporation)

(Commission
File Number)

(I.R.S. Employer
Identification No.)

6363 Main Street, Williamsville, New York

14221

(Address of principal executive offices)

(Zip Code)

Registrant's telephone number, including area code:

716-857-7000

Not Applicable

Former name or former address, if changed since last report

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
 - Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
 - Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
 - Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))
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Item 3.03 Material Modifications to Rights of Security Holders.

On February 21, 2008, the Board of Directors of National Fuel Gas Company (the "Company") approved amendments to the Company's Amended and Restated Rights Agreement (the "Rights Agreement"). The amendments modify the rights of holders of the Company's Common Stock Purchase Rights (the "Rights"). The principal amendments are an extension of the expiration date of the Rights Agreement from July 31, 2008 to July 31, 2018 and an increase in the exercise price of the Rights from \$65 to \$150. The Board also amended the Rights Agreement (i) to provide that the phrase "then outstanding," when used with reference to a person's beneficial ownership of securities of the Company, means the number of securities then issued and outstanding together with the number of such securities not then actually issued and outstanding which such person would be deemed to own beneficially under the Rights Agreement, (ii) to eliminate certain restrictive covenants that would have applied to the Company after the "Distribution Date" of the Rights, and (iii) to clarify and update the Rights Agreement in various respects.

Also on February 21, 2008, the Board of Directors amended the procedures by which stockholders may recommend Board candidates for consideration by the Nominating/Corporate Governance Committee of the Board. The Board amended the procedures, which are set forth in Exhibit B to the Company's Corporate Governance Guidelines and available on the Company's website at www.nationalfuelgas.com, to provide that the Committee will evaluate candidates proposed by stockholders owning at least five percent (5%) of the Company's outstanding common stock. The Board of Directors also amended the procedures to provide that the deadline for the Company's receipt of recommendations is 120 days prior to the anniversary date of the Company's proxy statement released to stockholders in connection with the previous year's annual meeting of stockholders.

The inclusion in this Current Report of a reference to the Company's internet address shall not, under any circumstances, be deemed to incorporate the information available at such internet address into this Current Report. The information available at the Company's internet address is not part of this Current Report or any other report filed or furnished by the Company with the Securities and Exchange Commission.

Item 5.02 Departure of Directors or Certain Officers; Election of Directors; Appointment of Certain Officers; Compensatory Arrangements of Certain Officers.

Management Changes

On February 21, 2008, the Board of Directors elected David F. Smith Chief Executive Officer of the Company. As previously announced, the Company's January 24, 2008 settlement agreement with New Mountain Vantage GP, L.L.C. and its affiliates provided, among other things, that following the 2008 Annual Meeting of Stockholders, Philip C. Ackerman would continue to serve as Chairman of the Board and Mr. Smith would be named Chief Executive Officer. Also on February 21, 2008, Mr. Ackerman announced his intention to retire as an employee of the Company effective June 1, 2008. Mr. Ackerman will continue to serve as Chairman of the Board of the Company.

Information concerning Mr. Smith, including the positions he holds with the Company and his business experience during the past five years, is included in the Company's definitive proxy statement, filed January 11, 2008, under Annex A thereto, and such information is incorporated by reference herein. Mr. Smith, age 54, is not employed pursuant to an employment agreement with the Company. He is a party to an Employment Continuation and Noncompetition Agreement with the Company, which would become effective upon a change in control of the Company. In addition, Mr. Smith and the Company are parties to a Retirement Benefit Agreement that provides Mr. Smith with certain retirement benefits in the event the Company terminates him without cause, or Mr. Smith terminates employment with good reason, prior to the first day of the month after which Mr. Smith reaches 57 ½ years of age. Information concerning the Employment Continuation and Noncompetition Agreement and the Retirement Benefit Agreement is included in the Company's definitive proxy statement, filed January 11, 2008, under the headings "Compensation Discussion and Analysis" and "Potential Payments Upon Termination or Change-in-Control," and such information is incorporated by reference herein.

Performance Incentive Program

On February 20, 2008, the Compensation Committee approved payments under the National Fuel Gas Company Performance Incentive Program (the "Program") for the performance period of October 1, 2004 to September 30, 2007. The performance condition for that time period was the Company's total return on capital as compared to the total return on capital for peer companies in the Natural Gas Distribution and Integrated Natural Gas Companies group as calculated and reported in the Monthly Utility Reports of AUS, Inc., a leading industry consultant ("AUS"), with the Company's total return on capital adjusted to reflect the results of discontinued operations. Based on the AUS reports for the performance period October 1, 2004 to September 30, 2007, the Compensation Committee approved a payout of 166.6% of the target incentive awarded to the participants in the Program for that time period. (The calculation of future payouts under the Program will also take into account the results of the Company's discontinued operations, if any.) The approved payouts are as follows for the Company's named executive officers: P. C. Ackerman, \$874,650; D. F. Smith, \$324,870; R. J. Tanski, \$99,960; and J. D. Ramsdell, \$166,600. (The Company's other named executive officer, M. D. Cabell, was not a participant in the Program for the performance period October 1, 2004 to September 30, 2007.) These payouts will result in new total compensation figures for 2007 as follows: P. C. Ackerman, \$4,837,862; D. F. Smith, \$2,391,242; R. J. Tanski, \$1,998,679; and J. D. Ramsdell, \$972,411.

Also on February 20, 2008, the Compensation Committee approved long-term performance incentives under the Program for a performance period of October 1, 2007 to September 30, 2010. The Committee established levels of performance at which 50%, 100%, 150% and 200% of the target incentive will be payable, as described below. For performance levels between established levels, a portion of the target incentive will be payable as determined by mathematical interpolation.

The performance condition for the October 1, 2007 to September 30, 2010 performance period is the Company's total return on capital as compared to the same metric for peer companies in the Natural Gas Distribution and Integrated Natural Gas Companies group as calculated and reported in the Monthly Utility Reports of AUS. Payment will be made in accordance with the Program if the Company achieves certain levels of performance relative to the peer group. If the Company achieves a rank, as a percentile of the peer group, of less than 45.01%, then no payment will be made. If the Company achieves a rank of 45.01%, then 50% of the target incentive will be paid. If the Company achieves a rank of 60%, 75% or 100%, then 100%, 150% or 200%, respectively, of the target incentive will be paid.

For the October 1, 2007 to September 30, 2010 performance period, the Committee approved the following target incentives for the named executive officers of the Company: P. C. Ackerman, \$1,548,000; D. F. Smith, \$585,000; R. J. Tanski, \$350,000; M. D. Cabell, \$225,000; and J. D. Ramsdell, \$100,000.

Stock Appreciation Rights

On February 20, 2008, the Compensation Committee granted stock appreciation rights ("SARs") under the Company's 1997 Award and Option Plan (the "Plan") to certain officers of the Company, including the following grants to the Company's named executive officers other than Mr. Ackerman: D. F. Smith, 70,000; R. J. Tanski, 45,000; M. D. Cabell, 25,000; and J. D. Ramsdell, 12,500. The Committee did not award any SARs to Mr. Ackerman. A brief description of the principal terms and conditions of the SARs is provided below.

The base price of each SAR is the fair market value of the Company's common stock on the date of grant. "Fair market value," as defined in the Plan, means the average of the high and low sales prices of a share of common stock. Absent a change in control of the Company or change in ownership of the Company, the SARs vest and become exercisable annually in one-third increments, commencing February 20, 2009, provided that a performance condition is met for the prior fiscal year. The Compensation Committee selected diluted earnings per share, as reported, of \$2.80 as the performance condition for fiscal 2008, and higher diluted earnings per share figures as the performance conditions for fiscal 2009 and 2010. In the event the performance condition for a given fiscal year is not met, the incremental percentage of shares associated with that performance condition is automatically forfeited.

In the event of a change in control of the Company or change in ownership of the Company, the SARs will become exercisable in accordance with the Plan. The SARs may not be exercised more than ten years from the date of grant.

Upon the exercise of a SAR, the grantee will be entitled to receive from the Company a number of shares of common stock of the Company equal in value to the excess of the fair market value (on the date of exercise) of one share of stock over the base price, multiplied by the number of shares in respect of which the SAR is being exercised.

The SARs will terminate and may no longer be exercised if the grantee ceases to be an employee of the Company, except as otherwise provided in the Plan or the Administrative Rules of the Compensation Committee.

Administrative Rules of Compensation Committee

On February 20, 2008, the Compensation Committee amended its Administrative Rules, principally to address performance goals. As amended, the Administrative Rules generally provide that awards of stock options, SARs or restricted stock made on or after February 20, 2008 will vest or become exercisable only upon the attainment of performance goals established by the Committee. The Administrative Rules also provide certain exceptions. In particular, awards that have not been forfeited or cancelled will vest or become exercisable earlier, without attainment of performance goals, as follows: (i) upon the death of the grantee; (ii) six months after the grant date, if the grantee has voluntarily resigned on or after his 60th birthday, after the grant date, and before such six months; (iii) on the date of the grantee's voluntary resignation on or after his 60th birthday and at least six months after the grant date; (iv) upon a change of control or change in ownership of the Company; (v) if the award notice so provides, on an earlier date for awards as part of the grantee's initial inducement to join the Company; or (vi) if the award notice so provides, on an earlier date for awards made in connection with a merger or acquisition to a grantee who joins the Company as a result of the merger or acquisition.

Item 5.03 Amendments to Articles of Incorporation or Bylaws; Change in Fiscal Year.

On February 21, 2008, the Board of Directors amended and restated the Company's By-Laws. The Board amended Article II, Section 1 of the By-Laws to add certain requirements that nominees for election to the Board and existing Board members must meet in order to qualify for election or continue serving as a director. In particular, election of any nominee or service by any individual as a director must be in compliance with all applicable federal or state laws, rules or regulations, and any nominee or director must obtain any necessary governmental or regulatory approvals prior to or as a condition of serving or continuing to serve on the Board. The Board also amended Article II, Section 1 to add a provision stating that if a governmental or regulatory body determines that an individual seeking to serve or serving as a director did not obtain any required governmental or regulatory approval prior to becoming a director, or that the individual's election or service as a

director otherwise would violate or violated any law, rule or regulation, the individual will not be qualified to serve as a director and, if the determination is made after the election of the individual, the individual automatically will be disqualified from further service as a director of the Company. Finally, the Board amended Article II, Section 1 to add a provision stating that the Board will provide the applicable nominee or director with reasonable notice and an opportunity to be heard on the question of whether any such determination has been made by a governmental or regulatory body before making a finding of disqualification.

The foregoing description of the amendments to the By-Laws does not purport to be complete and is qualified in its entirety by reference to the By-Laws, a copy of which has been filed as an exhibit hereto and is expressly incorporated by reference herein.

Item 5.05 Amendments to the Registrant's Code of Ethics, or Waiver of a Provision of the Code of Ethics.

On February 21, 2008, the Board of Directors amended the Company's Code of Business Conduct and Ethics to (i) expand conflict of interest and corporate opportunity provisions to cover non-Company business affiliates and associates of directors, officers and employees, (ii) clarify the restriction on investments in competitors, customers and suppliers and expand the restriction to apply to non-Company business affiliates and associates of directors, officers and employees, (iii) provide that the obligation to protect the Company's assets includes maintaining the confidentiality of the Company's proprietary information, and (iv) require that persons who are authorized generally to release confidential information first inform the Company of the content of information to be released and the identity of the person(s) to receive such information.

Item 9.01 Financial Statements and Exhibits.

(c) Exhibits

Exhibit 3.1 - By-Laws of National Fuel Gas Company as amended and restated February 21, 2008

SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

February 26, 2008

National Fuel Gas Company

By: */s/ James R. Peterson*

*Name: James R. Peterson
Title: Assistant Secretary*

Exhibit Index

<u>Exhibit No.</u>	<u>Description</u>
3.1	By-Laws of National Fuel Gas Company as amended and restated February 21, 2008

Amended	2/21/85	9/16/99
	6/19/86	2/17/00
	7/07/88	6/15/00
	6/14/90	9/13/01
	6/18/92	9/20/01
	12/8/93	12/13/01
	6/09/94	12/12/02
	9/19/96	12/9/04
	1/01/97	2/15/07
	3/20/97	6/7/07
	6/19/97	2/21/08
	9/18/97	
	9/17/98	
	6/17/99	

NATIONAL FUEL GAS COMPANY
BY-LAWS

ARTICLE I

Meeting of Stockholders

Section 1. Meetings of stockholders may be held at such place, within or without the State of New Jersey, as may be fixed by the Board of Directors and stated in the notice of the meeting.

Section 2. The annual meeting of stockholders shall be held at such place, on such date and at such time as shall be designated from time to time by the Board of Directors.

Section 3. Except as otherwise provided by New Jersey law, written notice of the time, place and purpose or purposes of every meeting of stockholders shall be given not less than 10 nor more than 60 days before the date of the meeting, either personally or by mail, to each stockholder of record entitled to vote at the meeting.

Section 4. Unless otherwise provided by statute, all Special Meetings shall be called upon the written request of three or more directors or of stockholders owning one-fourth of the capital stock issued and outstanding and such stockholders must each be stockholders of record (i) on the date such stockholders provide timely notice to the Corporation as provided in this Section 4 and (ii) on the record date for the determination of stockholders entitled to vote at such Special Meeting.

In addition to any other applicable requirements, for business to be properly brought by stockholders before a Special Meeting, the stockholders must have given proper notice thereof in writing to the Secretary of the Corporation. The stockholders notice requesting the call of a Special Meeting must be delivered to or mailed and received by the Secretary of the Corporation at the principal office of the Corporation and shall set forth as to each matter the stockholders propose to be brought before the Special Meeting (i) a brief description of the business desired to be brought before the Special Meeting and the reasons for conducting such business at the Special Meeting, (ii) the name and record address of the stockholders proposing such business, (iii) the class and number of shares of the Corporation which are beneficially owned by the stockholders and (iv) any material interest of the stockholders in such business. Following receipt of a valid notice requesting the call of a Special Meeting, the Corporation shall convene a Special Meeting not earlier than 60 days nor more than 120 days following receipt of such notice.

Notwithstanding anything in these By-Laws to the contrary, no business shall be conducted at the Special Meeting except in accordance with the procedures set forth in this Section 4.

The Chairman of a Special Meeting shall, if the facts warrant, determine and declare to the meeting that business was not properly brought before the meeting in accordance with the provisions of this Section 4, and if he

should so determine, he shall so declare to the meeting and such business not properly brought before the meeting shall not be transacted.

Section 5. Unless otherwise provided in the Company's Certificate of Incorporation or in New Jersey law, (i) the holders of shares entitled to cast a majority of the votes at any meeting of stockholders shall constitute a quorum at such meeting except that the votes that holders of any class or series of shares are entitled to cast shall not be counted in the determination of a quorum for action to be taken at a meeting with respect to which such class or series has no vote, and (ii) the holders of shares of any class or series entitled to cast a majority of the votes of such class or series entitled to vote separately on a specified item of business shall constitute a quorum of such class or series for the transaction of such specified item of business.

If a quorum is not present or represented at any meeting of stockholders, the Chairman of the meeting, or if so requested by the Chairman, the stockholders present in person or represented by proxy, shall have the power to adjourn the meeting from time to time, without notice other than the announcement at the meeting, until a quorum shall be present or represented. In addition, the Chairman of any meeting of stockholders shall have the power to adjourn the meeting at the request of the Board of Directors if the Board of Directors determines that adjournment is necessary or appropriate to enable stockholders to fully consider information which the Board of Directors determines has not been made sufficiently or timely available to stockholders or is otherwise in the best interests of stockholders. If the time and place to which the meeting is adjourned are announced at the meeting at which the adjournment is taken and at the adjourned meeting only such business is transacted as might have been transacted at the original meeting, it shall not be necessary to give notice of the adjourned meeting unless after the adjournment the Board of Directors fixes a new record date for the adjourned meeting. In the event the Board of Directors fixes such a new record date, a notice of the adjourned meeting shall be given to each stockholder of record at the new record date entitled to notice under Article I Section 3 of these By-Laws.

Section 6. At each election of Directors, the proxies and ballots shall be received and all questions respecting the qualification of voters shall be decided by two inspectors, who shall be appointed by the presiding officer of the meeting; provided however, that no candidate for election as Director shall act as inspector. Such inspectors shall be sworn faithfully to perform their duties and shall report in writing the results of the ballot.

Section 7. A. Business transacted at an annual meeting of stockholders may include all such business as may properly come before the meeting. Nominations of persons for election to the Board of Directors and the proposal of business to be considered by the stockholders may be made at an annual meeting of stockholders:

- (i) pursuant to the Corporation's notice of meeting;
- (ii) by or at the direction of the Board of Directors; or
- (iii) by any stockholder who was a stockholder of record at the time of giving of notice of the meeting, who is entitled to vote at the meeting and who complies with the notice procedures set forth in this Section 7.

B. For nominations or other business to be properly brought before an annual meeting by a stockholder, the stockholder must have given timely notice thereof in writing to the Secretary of the Corporation and such other business must otherwise be a proper matter for stockholder action. Such stockholder's notice shall set forth:

- (i) as to each person whom the stockholder proposes to nominate for election or reelection as a director:
 - (a) the name, age, business address of such person,
 - (b) the principal occupation of employment of such person,
 - (c) the class and number of shares of the Corporation which are owned beneficially by such person, and
 - (d) all other information relating to such person that is required to be disclosed in solicitations of proxies for election of directors in an election contest, or is otherwise required, in each case under applicable

SEC regulations (as of February 1999, Regulation 14A under the Securities Exchange Act of 1934, as amended (the “Exchange Act”), including such person’s written consent to being named in the proxy statement as a nominee and to serving as a director if elected;

- (ii) as to any other business that the stockholder proposes to bring before the meeting, a brief description of the business desired to be brought before the meeting, the reasons for conducting such business at the meeting and any material interest in such business of such stockholder and the beneficial owner, if any, on whose behalf the proposal is made; and
- (iii) as to the stockholder giving the notice and the beneficial owner, if any, on whose behalf the nomination or proposal is made:
 - (a) the name and address of such stockholder, as they appear on the Corporation’s books, and of such beneficial owner, and
 - (b) the class and number of shares of the Corporation which are owned beneficially and of record by such stockholder and such beneficial owner.

C. To be timely, a stockholder’s notice under this Section 7 must be delivered to the Secretary at the principal executive offices of the Corporation not less than 120 days and not more than 150 days prior to the anniversary date of the prior year’s annual meeting of stockholders; provided, however, that if the date of the annual meeting is changed more than 30 days from the date corresponding to the date of the prior year’s annual meeting, then a stockholder’s notice to be timely must be so delivered not later than the close of business on the tenth day following the date on which notice of the meeting is given by the Corporation (or, if earlier, by the tenth day following public disclosure of the new date of the annual meeting).

In no event shall the public announcement of an adjournment of an annual meeting commence a new time period for the giving of a stockholder’s notice under this Section 7.

D. Only such business shall be conducted at a meeting of stockholders as shall have been brought before the meeting in accordance with the procedures set forth in this Section 7. Other than persons nominated by the full Board or any nominating committee thereof, only such persons who are nominated in accordance with the procedures set forth in this Section 7 shall be eligible to serve as directors. The chairman of the meeting shall have the power and duty to determine whether a nomination or any business proposed to be brought before the meeting was made or proposed, as the case may be, in accordance with the procedures set forth in this Section 7 and, if any proposed nomination or business is not in compliance with this Section 7, to declare that such defective proposal or nomination shall be disregarded, unless otherwise provided by any applicable law.

E. Notwithstanding the foregoing provisions of this Section 7, a stockholder shall also comply with all applicable requirements of the Exchange Act and the rules and regulations thereunder with respect to the matters set forth in this Section 7. Nothing in this Section 7 shall be deemed to affect any rights of:

- (i) the stockholders to request inclusion of proposals in the Corporation’s proxy statement pursuant to Rule 14a-8 under the Exchange Act; or
- (ii) the holders of any series of Preferred Stock to elect directors under specified circumstances.

F. Business transacted at a special meeting of the stockholders shall be limited to the purposes set forth in the notice of the special meeting.

G. For purposes of this Section 7, the term “public disclosure” shall mean disclosure in a news release reported by the Dow Jones News Service, the Associated Press or a comparable national news service, or in a document publicly filed by the Corporation with the Securities and Exchange Commission pursuant to Section 13, 14 or 15(d) of the Exchange Act.

Section 8. At each meeting of stockholders, the chairman of the meeting shall fix and announce the date and time of the opening and the closing of the polls for each matter upon which the stockholders will vote at the meeting and shall determine the order of business and all other matters of procedure. The Board of Directors may adopt by resolution such rules and regulations for the conduct of meetings of stockholders as it shall deem appropriate. Except to the extent inconsistent with any such rules and regulations as adopted by the Board of Directors, the chairman of the meeting may establish rules, which need not be in writing, to maintain order and safety and for the conduct of the meeting. Without limiting the foregoing, the chairman of the meeting may:

- A. Determine and declare to the meeting that any business is not properly before the meeting and therefore shall not be considered;
- B. Restrict attendance at any time to bona fide stockholders of record and their proxies and other persons in attendance at the invitation of the chairman of the meeting;
- C. Restrict dissemination of solicitation materials and use of audio or visual recording devices at the meeting;
- D. Adjourn the meeting without a vote of the stockholders, whether or not there is a quorum present; and
- E. Make rules governing speeches and debate, including time limits and access to microphones.

ARTICLE II Board of Directors

Section 1. The Board of Directors shall consist of

- (i) such number of Directors, not less than seven nor more than eleven, as may be determined from time to time by resolution adopted by the affirmative vote of a majority of the entire Board of Directors, and
- (ii) such Directors as may be elected by vote of the holders of shares of preferred stock, when and as provided in the Certificate of Incorporation of the Company.

In order to qualify for election as a Director, a nominee must be a stockholder of the Company. Also in order to qualify, election of any nominee or service by any individual as a Director of the Company must be in compliance with all applicable federal or state laws, rules or regulations, and any nominee or director must obtain any necessary governmental or regulatory approvals prior to or as a condition of serving or continuing to serve on the Board of Directors. If it is determined by any governmental or regulatory body that any individual seeking to serve or serving as a Director did not obtain any required governmental or regulatory approval prior to becoming a Director, or that such individual's election or service as a Director otherwise would violate or violated any law, rule or regulation, such individual shall not be qualified to serve as a Director and, if such determination is made after the election of such person, such person automatically shall be disqualified from further service as a Director of the Company. The Board of Directors shall provide the applicable nominee or Director with reasonable notice and an opportunity to be heard on the question of whether any such determination has been made by any governmental or regulatory body before making any such finding of disqualification.

Section 2. Subject to the provisions of the Statutes of the State of New Jersey, the Certificate of Incorporation, and the By-Laws of the Corporation, the Board of Directors shall have full and complete management and control of the business and affairs of the Corporation.

Section 3. The Board of Directors may hold its meetings or any adjournment thereof either in the State of New Jersey or elsewhere and keep the books of the Corporation at such places within or without the State of New Jersey as the Board of Directors may from time to time determine.

Section 4. Meetings of the Board of Directors may be called at the direction of the Chairman of the Board, the President, or any three of the Directors for the time being in office.

Section 5. Notice of any meetings of the Board of Directors shall be given to each Director by mailing the same to him at his last known address, as the same appears upon the records of the Corporation at least five days before the meeting or by telegraphing, telephoning or delivering the same to him personally at least one day before the meeting.

Section 6. At any meeting of the Board of Directors, there may be transacted without special notice, any business within the powers of the Directors to transact, except that of which the Statutes of the State of New Jersey expressly require special notice shall be given.

Section 7. A. A majority of the Directors in office shall constitute a quorum for the transaction of any business which may properly come before them. If a majority of said Directors shall not be present at any meeting, the Directors present shall have power to adjourn to a day certain, and notice of the adjourned meeting shall be given by mailing the same addressed to each Director at his address as the same appears upon the records of the Corporation, at least two days prior to the adjourned meeting, or by telegraphing, telephoning or delivering the same to him personally at least one day before said adjourned meeting. But, if a majority of the Board of Directors are present, the said meeting, or any adjourned meeting thereof, may be adjourned to a subsequent day; such adjournment may be without notice of such adjournment if such notice is not required by New Jersey Law (as of June 1997, N.J.S.A. 14A:6-10(2)).

B. Unless a greater vote is required by applicable law or by the Certificate of Incorporation of the Company or these By-laws (including, but not limited to, subsection C of this Section 7), any action approved by a majority of the votes of directors present at a meeting at which a quorum is present shall be the act of the Board of Directors.

C. Anything in these By-laws to the contrary notwithstanding, any action taken by the Board of Directors pursuant to the terms of any Rights Plan (as hereinafter defined) of the Company shall, unless otherwise provided by the terms of the Rights Plan, be approved by the affirmative vote of three-fourths (3/4ths) of the entire Board of Directors. For purposes of these By-laws, the term "Rights Plan" shall mean any plan pursuant to which stockholders of the Company are, upon the occurrence of certain specified events (including, but not limited to, the acquisition by any person of a specified number of shares of capital stock of the corporation), entitled to purchase shares of capital stock or other securities of either the Company or the acquiring person at a discounted price.

Section 8. A. The Corporation shall indemnify any person who is or was a director or officer of the Corporation, to the fullest extent permitted and in the manner provided by the laws of the State of New Jersey as now or hereafter in effect, including, without limitation, the indemnification permitted by N.J.S. 14A:3-5(8), against all liabilities (including amounts paid or incurred in satisfaction of settlements, judgments, fines and penalties) and expenses (including, without limitation, attorneys' fees and disbursements) imposed upon or incurred by such person in connection with any pending, threatened or completed civil, criminal, administrative or arbitral action, suit or proceeding, and any appeal therein and any inquiry or investigation which could lead to such action, suit or proceeding ("Proceeding") in which such person may be made, or threatened to be made, a party, or in which such person may become involved by reason of such person being or having been a director or officer of the Corporation, or of serving or having served at the request of the Corporation as a director, officer, trustee, employee or agent of, or in any other capacity with, another foreign or domestic corporation, or any partnership, joint venture, sole proprietorship, employee benefit plan, trust or other enterprise, whether or not for profit.

B. The right to indemnification conferred by this Section 8 shall include the right to be paid by the Corporation the expenses incurred in defending or otherwise participating in any Proceeding in advance of its final disposition, and the Corporation shall, to the fullest extent permitted by law, promptly advance expenses (including, without limitation, attorneys' fees and disbursements) that are incurred, from time to time, in connection therewith by any such current or former director or officer of the Corporation, subject to the receipt by the Corporation of an undertaking of such person as required by law.

C. Nothing in this Section 8 shall restrict or limit the power of the Corporation to indemnify its employees, agents and other persons, to advance expenses (including attorneys' fees) on their behalf and to purchase and maintain insurance on behalf of any person who is or was a director, officer, employee or agent of the Corporation in connection with any Proceeding.

D. The indemnification provided by this Section 8 shall not exclude any other rights to which a person seeking indemnification may be entitled under the Certificate of Incorporation, By-Laws, agreement, vote of

stockholders or otherwise. The indemnification provided by this Section 8 shall continue as to a person who has ceased to be a director or officer, and shall extend to the estate or personal or legal representative of any deceased director or officer.

E. Any repeal or modification of this Section 8 shall not adversely affect any rights to indemnification and to the advancement of expenses of a director or officer of the Corporation existing at the time of such repeal or modification with respect to any acts or omissions occurring prior to such repeal or modification.

Section 9. Any contract or other transaction between the Corporation or a subsidiary of the Corporation and any other entity shall not be void or voidable because a Director of the Corporation is interested therein if the Corporation has complied with the provisions of any then-applicable New Jersey statute(s) necessary or sufficient to make the transaction not void or voidable, including, as of June 1997, N.J.S.A. 14A:6-8(1).

ARTICLE III Officers

Section 1. At the first meeting after the annual election, the Board of Directors shall choose a Chairman of the Board and a President, both of whom shall be members of the Board of Directors, and one or more Vice Presidents, a Secretary, a Treasurer and a Controller, who need not be members of the Board of Directors, and who shall hold their respective offices until others are chosen and qualify in their stead. The offices of Secretary and Treasurer may be filled by the same person.

Section 2. In its discretion, the Board of Directors may leave unfilled for such period as it may determine, any office except the offices of the President, Treasurer and Secretary.

Section 3. The Chairman of the Board shall preside at all meetings of the Board of Directors and at stockholders' meetings.

Section 4. The Chief Executive Officer shall, during the recess of the Board of Directors, have general control and management of the affairs and business of the Corporation.

Section 5. In addition to the duties and responsibilities specified in the laws of the State of New Jersey and these By-Laws, the President shall perform such other duties as from time to time may be assigned to him or her by the Board of Directors, and shall preside at stockholders' meetings in the absence of the Chairman of the Board. In the absence of the Chairman of the Board, or in the event that there is a vacancy in the office of the Chairman of the Board, the President shall be the Chief Executive Officer of the Corporation and shall perform all the duties of the Chairman of the Board as well as those of President.

Section 6. Each Vice President shall perform such duties as shall from time to time be assigned to him by the Board of Directors, the Chairman of the Board, or the President.

Section 7. The Secretary, in addition to his statutory duties, shall give proper notice of all meetings of the stockholders and of the Board of Directors. He shall act as Secretary of all meetings of the stockholders and shall perform such other duties as shall from time to time be assigned to him by the Board of Directors or President.

Section 8. The Treasurer, in addition to his statutory duties, shall keep full and accurate accounts of receipts and disbursements of the funds belonging to the Corporation, and shall cause to be deposited all moneys and other valuable effects in the name and to the credit of the Corporation in such depositories as may from time to time be designated by the Board of Directors. He shall disburse the funds of the Corporation as may be ordered by the Board, taking proper vouchers for such disbursements, and shall render to the President and Directors whenever they may require it, account of all his transactions as Treasurer, and of the financial condition of the Corporation. He shall perform such other duties as shall be assigned to him by the Board or President, and shall give a bond for the faithful discharge of his duties in such sum and with such surety or sureties as the Board of Directors may from time to time require.

Section 9. The Controller shall see that adequate records of all assets, liabilities and transactions of the Corporation are maintained; that adequate audits thereof, are currently and regularly made, and in conjunction with other officers,

initiate and enforce measures and procedures whereby the business of the Corporation shall be conducted with maximum efficiency, safety and economy. He shall also perform all such other duties as usually pertain to the office of Controller. He shall be in all matters subject to the control of and responsible to the Board of Directors alone.

Section 10. The Board of Directors may from time to time appoint such other officers and agents as they may deem necessary or advisable for the transaction of the business of the Corporation, who shall hold their offices during the pleasure of the Board of Directors and perform such duties as may from time to time be designated or assigned to them by said Board of Directors.

Section 11. If the office of the Chairman of the Board, the President, Vice President, Secretary, Treasurer, or Controller or one or more of them becomes vacant for any reason whatsoever, the Board of Directors at any duly convened meeting may, by a majority vote of those present, fill such vacancy and the person elected shall hold office for the unexpired term of such office and until his successor shall be chosen.

Section 12. All officers and agents chosen or appointed by the Board of Directors shall be subject to removal by the Board of Directors at any time with or without cause, and in the case of the absence of any officer or agent of the Corporation, or for any other reason that may seem sufficient to the Board of Directors, the said Board of Directors subject to the limitations herein contained and the statutes in such case made and provided, may, without removal, delegate his powers and duties to any other officer or suitable person for such period as it shall deem proper.

Section 13. All duly authorized bonds and debentures of the Corporation shall be signed on behalf of the Corporation by its Chairman of the Board or its President, or one of its Vice Presidents or, if so provided by resolution of the Board of Directors, by one or more of such officers and such other officer or officers designated by the Board of Directors; any or all such signatures may be manual or facsimile signatures, the signature on interest coupons attached to any said bonds or debentures shall be a facsimile signature; and the corporate seal or a facsimile of such seal may be impressed, affixed, imprinted or otherwise reproduced on said bonds and debentures and, if attested, shall be attested by the Corporation's Secretary or Assistant Secretary by manual or facsimile signature. In case any person whose signature (manual or facsimile) appears upon any said bond or debenture or coupons attached thereto shall cease to be an officer of the Corporation, or shall cease to be the officer specified thereon, before the bonds or debentures so signed shall have been authenticated by the trustee under the indenture or other instrument pursuant to which the bonds or debentures are delivered or sold, such bonds or debentures or coupons may nevertheless be adopted by the Corporation, without further action by the Board of Directors, and authenticated and delivered and sold as though the person or persons who so signed or attested such bonds or debentures or coupons had not ceased to be an officer of the Corporation or the officer specified thereof; and any bonds or debentures may be signed as aforesaid; and the seal of the Corporation impressed, affixed, imprinted or otherwise reproduced thereon may be attested on behalf of the Corporation as aforesaid, and coupons attached may be signed as aforesaid by such persons as at the actual date of the execution of the bonds or debentures or coupons shall be the proper officers of the Corporations, although at the time of the date of the bonds or debentures, such persons may not have been officers of the Corporation.

ARTICLE IV Executive Committee

Section 1. The Directors may appoint an executive committee and one or more other committees of not less than three members to be chosen from among the members of the Board of Directors. Such committees may meet at such times and places as the committee shall, by resolution, determine and it shall make its own rules of procedure. A majority of the members of any such committee shall constitute a quorum.

Section 2. Except as otherwise provided by Board resolution or statute (as of June 1997, N.J.S.A. 14A:6-9(1)), each such committee shall have and may exercise the power of the Board of Directors in the management of the business and affairs of the Corporation at any time when the Board of Directors are not in session. Each such committee shall, however, be subject to the specific directions of the Board of Directors.

Section 3. Each such committee shall keep regular minutes of their transactions and shall cause them to be recorded in books to be kept for that purpose in the office of the Corporation, and shall report the same to the Board of Directors at their regular meetings.

ARTICLE V
Transfer of Shares

Section 1. Except as otherwise provided by statute, shares evidenced by certificates shall be transferred on the books of the Corporation only by the holder thereof in person or by his attorney upon the surrender and cancellation of the certificate or certificates of a like number of shares, except in the case of lost or destroyed certificates, and in that case only after the receipt of a satisfactory bond.

Section 2. The Board of Directors may appoint a transfer agent and a registrar of transfers, and may, in the case of shares represented by certificates, require all stock certificates to bear the signature of either or both.

ARTICLE VI
Fiscal Year

The fiscal year of the Corporation shall begin on the 1st day of October in each calendar year and end on the 30th day of September of the next succeeding year.

ARTICLE VII
Dividends and Working Capital

Section 1. Before declaring any dividends or making any distribution of profits, the Directors may set apart out of the net profits or out of the surplus of the Corporation as a reserve fund to be used as working capital or for any other proper purpose, such sum or sums as the Directors shall in their discretion deem just and proper and most for the benefit of the Corporation.

Section 2. Dividends upon the capital stock of the Corporation when declared shall be payable on dates to be determined by the Board of Directors.

ARTICLE VIII
Closing of Transfer Books and
Fixing A Record Date

The Board of Directors may close the stock transfer books of the Corporation for a period not exceeding sixty days preceding the date of any meeting of stockholders or the date for payment of any dividend, or the date for the allotment of rights, or the date when any change or conversion or exchange of capital stock shall go into effect.

In lieu of so closing the stock transfer books, the Board of Directors may fix, in advance, a date, not exceeding sixty days preceding the date of any meeting of stockholders, or the date for the payment of any dividend, or the date for the allotment of rights, or the date when any change or conversion or exchange of capital stock shall go into effect, as a record date for the determination of the stockholders entitled to notice of, and to vote at, any such meeting, or entitled to receive payment of any such dividend, or any such allotment of rights, or to exercise the rights in respect to any such change, conversion or exchange of capital stock, and in such case only stockholders of record on the date so fixed shall be entitled to such notice of, and to vote at, such meeting, or to receive payment of such dividend, or allotment of rights or exercise of such rights, as the case may be, and notwithstanding any transfer of any stock on the books of the Corporation after any such record date fixed as aforesaid.

ARTICLE IX
Waiver of Notice

Any notice required to be given by these By-Laws may be waived by the person entitled thereto.

ARTICLE X
Seal

The common corporate seal is and until otherwise ordered by the Board of Directors shall be an impression upon

paper or wax bearing the words — “NATIONAL FUEL GAS COMPANY, NEW JERSEY, INCORPORATED 1902”.

ARTICLE XI
Amendment of By-Laws

Except as otherwise provided by statute, the Board of Directors shall have power to make, alter or repeal the By-Laws of the Corporation by a vote of a majority of all the Directors at any duly convened meeting of the Board, but any By-Laws so made or otherwise promulgated may be altered or repealed and new By-Laws made by the stockholders at any duly convened meeting thereof.