

NATIONAL FUEL GAS CO

Form 35-CERT

December 18, 2003

UNITED STATES OF AMERICA

Before the

SECURITIES AND EXCHANGE COMMISSION

In the Matter of

NATIONAL FUEL GAS COMPANY  
 NATIONAL FUEL GAS DISTRIBUTION CORPORATION  
 NATIONAL FUEL GAS SUPPLY CORPORATION  
 HORIZON ENERGY DEVELOPMENT, INC.

THIRD  
 CERTIFICATE  
 PURSUANT TO  
 RULE 24

AND ITS SUBSIDIARIES  
 HIGHLAND FOREST RESOURCES, INC.  
 LEIDY HUB, INC.  
 DATA-TRACK ACCOUNT SERVICES, INC.  
 SENECA INDEPENDENCE PIPELINE COMPANY  
 SENECA RESOURCES CORPORATION  
 AND ITS SUBSIDIARIES  
 UPSTATE ENERGY INC.  
 NIAGARA INDEPENDENCE MARKETING COMPANY  
 NATIONAL FUEL RESOURCES, INC.  
 HORIZON POWER, INC.

File No. 70-10074

(Public Utility Holding Company Act of 1935)

THIS IS TO CERTIFY, pursuant to Rule 24, that certain transactions proposed by National Fuel Gas Company ( National ) and its subsidiaries, National Fuel Gas Distribution Corporation ( Distribution Corporation ), National Fuel Gas Supply Corporation ( Supply Corporation ), Horizon Energy Development, Inc. ( Horizon Energy ) and its subsidiaries, Highland Forest Resources, Inc. ( Highland ), Leidy Hub, Inc. ( Leidy ), Data-Track Account Services, Inc. ( Data-Track ), Seneca Independence Pipeline Company ( SIP ), Seneca Resources Corporation ( Seneca ) and its subsidiaries, Upstate Energy Inc. ( Upstate ), Niagara Independence Marketing Company ( NIM ), National Fuel Resources, Inc. ( NFR ) and Horizon Power, Inc. ( Power ) (collectively, the Subsidiaries ), in their Application-Declaration on Form U-1, as amended ( Application-Declaration ), in SEC File No. 70-10074, have been carried out in accordance with the terms and conditions of, and for the purposes as represented by, said Application-Declaration and the Order of the Securities and Exchange Commission ( Commission ) (HCAR No. 35-27600, dated November 12, 2002) with respect thereto.

**1. EXTERNAL FINANCING BY NATIONAL**

**a. Common Stock**

During the quarter ended September 30, 2003 (the "Quarter"), National issued the following shares of common stock through the following plans:

| Name Of Plan   | Number of Newly Issued Shares | Number of Shares Purchased in Open Market | Number of Share Consideration F |
|--|-------------------------------|---|---------------------------------|
| Direct Stock Purchase and Dividend Reinvestment Plan | 91,648                        | -0-                                       |                                 |

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|                                       |         |        |
|---------------------------------------|---------|--------|
| Tax Deferred Savings Plans (401(k))   | 69,814  | -0-    |
| Employee Stock Ownership Plan         | -0-     | 2,232  |
| Thrift Plan                           | -0-     | 7,952  |
| 1997 Award & Option Plan              | 16,800  | -0-    |
| 1993 Award & Option Plan              | 96,099  | -0-    |
| 1984 Stock Plan                       | -0-     | -0-    |
| 1983 Incentive Stock Option Plan      | -0-     | -0-    |
| Retainer Policy for Outside Directors | 2,400   | -0-    |
| Total                                 | 276,761 | 10,184 |
| Net New Shares                        | 272,414 |        |

Aggregate gross consideration received upon issuance of 272,414 shares: \$6,154,223.29.

Other than as set forth above, National did not sell any common stock during the Quarter. National did not issue any common stock as consideration in connection with any acquisition during the Quarter.

On September 11, 2003, the Compensation Committee of the Board of Directors of National awarded 125,000 stock options pursuant to the National Fuel Gas Company 1997 Award and Option Plan. The Compensation Committee of the Board of Directors of National Fuel did not award any shares of restricted stock, performance units, performance share or other common stock-based awards.

### **b. Preferred Securities**

National has no preferred securities outstanding.

### **c. Long-Term Debt**

During the Quarter, National redeemed \$62,000 principal amount of its \$97,700,000 - 6.50% Notes due 2022 at a price of 100%, plus accrued interest in accordance with the death put provisions of those Notes. As of the end of the Quarter, there were \$97,400,000 of such Notes still outstanding.

### **d. Stock Purchase Contracts and Stock Purchase Units**

National did not issue any stock purchase contracts or stock purchase units during the Quarter.

### **e. Short-term Debt**

#### (1) Short-term Notes

National issued short-term notes (in all cases having maturities of no more than 270 days) to banks or other financial institutions during the Quarter. The maximum amount of such notes outstanding at any time during the Quarter was \$185,500,000.

## (2) Commercial Paper

National sold commercial paper during the Quarter through Merrill Lynch Money Markets, Inc., J.P. Morgan Securities Inc. and/or Goldman, Sachs & Co. The maximum amount of commercial paper outstanding at any time during the Quarter was \$190,900,000.

## (3) Total Short-term Debt

The maximum aggregate amount of short-term debt securities of National outstanding at any time during the Quarter was \$340,600,000.

**2. FINANCING SUBSIDIARIES AND SPECIAL PURPOSE SUBSIDIARIES**

National did not organize any new Financing Subsidiaries or Special Purpose Subsidiaries during the Quarter. In connection with the sale of its Southeast Saskatchewan oil properties, National sold Seneca New Brunswick L.P. during the Quarter. National's Financing Subsidiaries and Special Purpose Subsidiaries are as follows:

|   |                                  |  |  |
|---|----------------------------------|--|--|
|   | Seneca Player Corp.              | 3062782 Nova Scotia Co.  | 3062783 Nova Scotia Co.  |
| Balance sheet account where investment and cost booked  | fully consolidated into National | fully consolidated into National   | fully consolidated into National   |
| Form of organization                                    | corporation                      | unlimited liability company  | unlimited liability company  |
| Percentage owned by National or a Nonutility Subsidiary | 100%                             | 100%   | 100%   |
| Identification of other owners if not 100% owned        | N/A                              | N/A  | N/A  |
| Purpose of investment in subsidiary                     | increase tax efficiencies        | increase tax efficiencies  | increase tax efficiencies  |
| Securities authorized to be issued                      | 1,000 shares of common stock     | 1,000,000 shares, in such classes, and with such rights and conditions, as directors may determine | 1,000,000 shares, in such classes, and with such rights and conditions, as directors may determine |

Information regarding National's investments in these subsidiaries is filed confidentially pursuant to Rule 104(b).

**3. FINANCING BY SUBSIDIARIES**

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Distribution Corporation issued short-term debt securities through the system money pool ( Money Pool ) as set forth below under Section 4. The Nonutility Subsidiaries did not engage in financing transactions other than exempt transactions.

### **4. MONEY POOL**

During the Quarter, National coordinated the borrowing requirements of certain Subsidiaries through the money pool. For each participant in the Money Pool, the following table lists the maximum amount of borrowings through, and the maximum amount of investments made in, the Money Pool during the Quarter:

|                          | Maximum Borrowings<br>Through Money Pool<br>(\$) | Maximum Investments<br>in Money Pool (\$) |
|--------------------------|--|---|
| National                 | n/a  | 46,500,000                                |
| Distribution Corporation | 93,000,000                                       | 11,100,000                                |
| Supply Corporation       | 13,300,000                                       | 0   |
| Horizon Energy           | n/a  | 900,000                                   |
| Highland                 | 204,600,000                                      | 0   |
| Leidy                    | 0  | 800,000                                   |
| Data-Track               | 0  | 500,000                                   |
| SIP                      | 14,400,000                                       | 0   |
| Seneca                   | 73,600,000                                       | 0   |
| Upstate                  | 48,300,000                                       | 0   |
| NIM                      | 0  | 0   |
| NFR                      | 0  | 51,100,000                                |
| Power                    | 0  | 0   |

The interest rates applied to Money Pool borrowings and investments during the Quarter are set forth in Exhibit 1 hereto, which is incorporated herein by reference.

### **5. GUARANTEES**

During the Quarter, National issued two guarantees on behalf of NFR, in the following amounts: \$1,000,000 and \$10,000,000.

National issued one guarantee on behalf of Seneca Resources Corporation in the amount of \$25,000,000.

The maximum amount of guarantees and credit support that National had outstanding on behalf of its Subsidiaries at any time during the Quarter was \$592,252,266. The guarantees and credit support relate primarily to:

(i) obligations under derivative financial instruments, which are included on the consolidated balance sheet in accordance with Statement of Financial Accounting Standards No. 133; (ii) NFR obligations to purchase gas or to purchase gas transportation/storage services where the amounts due on those obligations each month are included on National's consolidated balance sheet as a current liability; and (iii) other obligations which are reflected on National's consolidated balance sheet. National believes that the likelihood it would be required to make payments under the guarantees is remote.

**6. HEDGING TRANSACTIONS**

**7. CHANGES IN CAPITAL STRUCTURE OF MAJORITY-OWNED NONUTILITY SUBSIDIARIES**

**8. NONUTILITY SUBSIDIARY REORGANIZATIONS**

During the Quarter, National reorganized its Canadian exploration and production subsidiaries in connection with the sale of its Southeast Saskatchewan oil properties. The structure of National's wholly owned exploration and production subsidiary, Seneca Resources Corporation, and its Canadian operations is now as follows:

**9. OTHER ITEMS**

National filed a Form U-6B-2 on August 29, 2003.

National's consolidated balance sheet as of September 30, 2003 is included in National's Form 10-K for the year ended September 30, 2003 and incorporated herein by reference.

Distribution Corporation's balance sheet as of September 30, 2003 is set forth in Exhibit 2 hereto, which is incorporated herein by reference and filed confidentially pursuant to Rule 104(b).

**SIGNATURES**

Pursuant to the requirements of the Public Utility Holding Company Act of 1935, the undersigned companies have duly caused this Second Certificate Pursuant to Rule 24 to be signed on their behalf by the undersigned thereunto duly authorized.

**NATIONAL FUEL GAS COMPANY**

By: /s/ P. C. Ackerman  
P. C. Ackerman  
Chairman, President & CEO

**NATIONAL FUEL GAS DISTRIBUTION CORPORATION**

By: /s/ D. F. Smith

D. F. Smith  
President

NATIONAL FUEL GAS SUPPLY CORPORATION

By: /s/ D. J. Seeley  
D. J. Seeley  
President

HORIZON ENERGY DEVELOPMENT, INC.

By: /s/ P. C. Ackerman  
P. C. Ackerman  
President

HIGHLAND FOREST RESOURCES, INC.

By: /s/ J. A. Beck  
J. A. Beck  
President

LEIDY HUB, INC.

By: /s/ W. E. DeForest  
W. E. DeForest  
President

DATA-TRACK ACCOUNT SERVICES, INC.

By: /s/ P. C. Ackerman  
P. C. Ackerman  
President

SENECA INDEPENDENCE PIPELINE COMPANY

By: /s/ W. E. DeForest  
W. E. DeForest  
President, Secretary & Treasurer

SENECA RESOURCES CORPORATION

By: /s/ J. A. Beck  
J. A. Beck  
President

UPSTATE ENERGY INC.

By: /s/ B. H. Hale  
B. H. Hale  
President

NIAGARA INDEPENDENCE MARKETING COMPANY

By: /s/ T. L. Atkins  
T. L. Atkins  
Treasurer

NATIONAL FUEL RESOURCES, INC.

By: /s/ D. L. DeCarolis  
D. L. DeCarolis  
Vice President and Secretary

HORIZON POWER, INC.

By: /s/ B. H. Hale  
B. H. Hale  
President

Dated: December 17, 2003