

124 FERC ¶ 61,023
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

July 8, 2008

In Reply Refer To:
National Fuel Gas Supply Corporation
Docket No. RP08-405-000

National Fuel Gas Supply Corporation
6363 Main Street
Williamsville, NY 14221

Attention: Antoinetta Mucilli
Senior Attorney

Reference: Petition for Waiver of Tariff

Dear Ms. Mucilli:

1. On June 10, 2008, National Fuel Gas Supply Corporation (National Fuel) filed a petition requesting waiver of sections 28 and 31.2(a)(i)(B) of the General Terms and Conditions (GT&C) of its FERC Gas Tariff and such other waivers relating to facilities costs and financial assurances as may be required to permit a proposed transaction with United Refining Company (United) to proceed as contemplated by the parties. The Commission grants the requested waivers subject to condition, as described below.

2. National Fuel states that it and United have entered into a Precedent Agreement for National Fuel to provide firm transportation under a service agreement (FT Agreement) for an additional 6,000 Dth per day of natural gas (for a total of 13,000 Dth per day) for 15 years, subject to certain conditions. It states that the service requires installation of a new 12-inch lateral line and a new delivery point,¹ and that under section

¹ National Fuel states that the facilities will not alter the capacity of National Fuel's mainline facilities, therefore making the facilities eligible for automatic authorization under National Fuel's Part 157 Subpart F blanket certificate, citing 18 C.F.R. §157.202(b)(2)(ii)(C) (2008) of the Commission's Regulations, which provides that, with exceptions not here relevant, facilities that alter the capacity of a main line are

(continued...)

28 of National Fuel's GT&C, National Fuel could require up-front reimbursement for the cost of these facilities.² However, according to National Fuel, under the FT Agreement, United will not be required to reimburse National Fuel as long as United performs under the FT Agreement. National Fuel states that, under section 4(a) of Amendment III to the FT Agreement, National Fuel could require contribution equal to its estimated facility cost of \$500,000, reduced by \$4,166.67 each month, if United materially defaults in its payment obligations under the FT Agreement, or in the event of bankruptcy, reorganization, insolvency or similar proceeding.

3. Further, National Fuel states that, pursuant to section 4(b) of Amendment III to the FT Agreement, United will provide security in a form acceptable to National Fuel, drawable in the event of a default by United up to \$500,000. Because this will exceed three months' of reservation charges under the agreement (\$60,502), National Fuel states that waiver of National Fuel's credit requirement at GT&C section 31.2(a)(i)(B) is required, which, as relevant here, provides that shipper must demonstrate creditworthiness by providing the cost of providing the service for a three-month period.

4. National Fuel states that the Commission has previously granted requests by National Fuel for waivers of the three-month limitation in connection with new facility projects.³ National Fuel also notes that the Commission has recognized that "when pipelines agree to construct lateral facilities for the shipper, the Commission has found it appropriate for the pipeline to receive collateral up to the full cost of the facilities."⁴

not eligible for automatic authorization under the blanket certificate. National Fuel states that, as no certificate filing is required in this case, these risk-sharing provisions are filed for approval in this petition. *See* Attachment A to the filing containing the full text of the subject non-conforming provisions of the FT Agreement.

² Section 28.1 of the GT&C provides that, with the exception of instances where the shipper provides adequate assurances of throughput to make construction of the facilities economical, Shipper shall reimburse National Fuel for the cost of any facilities installed by National Fuel with Shipper's consent, plus carrying charges, to be paid within ten days of receipt of the bills for reimbursement, subject to National Fuel's consent to permit amortization of such reimbursement over a mutually agreeable period not to exceed the primary term of the service agreement. *See* Original Sheet No. 455 to National Fuel's FERC Gas Tariff, Fourth Revised Volume No.1.

³ *Citing National Fuel Gas Supply Corp.*, 83 FERC ¶ 61,058 (1998), *National Fuel Gas Supply Corp.*, 80 FERC ¶ 61,040 (1997), and *National Fuel Gas Supply Corp.*, 61 FERC ¶ 61,192 (1992).

⁴ *Citing Tennessee Gas Pipeline Co.*, 103 FERC ¶ 61,275, at P 26 (2003).

Finally, National Fuel asserts that the Commission has stated that it has no policy against deferred aid-in-construction mechanisms if they are not tied to throughput levels, which is not the case here.⁵ National Fuel states that the FT Agreement with United will be executed following the satisfaction of all conditions. After the execution, National Fuel states that it anticipates filing a revision to section 34 of its GT&C, identifying the FT Agreement as a non-conforming service agreement.

5. Public notice of National Fuel's filing was issued on June 16, 2008. Interventions and protests were due as provided in section 154.210 of the Commission's regulations (18 C.F.R. § 154.210 (2008)). Pursuant to Rule 214 (18 C.F.R. § 385.214 (2008)), all timely filed motions to intervene and any motions to intervene out-of-time before the issuance date of this order are granted. No protests or adverse comments were filed.

6. We find that, because the subject non-conforming provisions of the FT Agreement are related to construction of facilities required to provide service to United, the provisions are permissible in that they do not present a risk of undue discrimination. Accordingly, for good cause shown, the Commission will grant National Fuel's request for waivers, subject to the following conditions. First, National Fuel is required to file an executed copy of the FT Agreement as a non-conforming service agreement no less than 30 days but not more than 60 days prior to the commencement of service. Second, in compliance with the Commission's order on Modification of Negotiated Rate Policy in Docket No. PL02-6-000, National Fuel is also directed to clearly delineate differences between the negotiated contractual terms of the FT Agreement and that of its Rate Schedule FT form of service agreement in redline and strikeout.⁶ Finally, National Fuel must include in its compliance filing a revised tariff sheet reflecting a revision to section 34 of its GT&C, identifying the FT Agreement as a non-conforming service agreement.

By direction of the Commission.

Kimberly D. Bose,
Secretary.

⁵ Citing *Southern Natural Gas Co.*, 51 FERC ¶ 61,186 (1990), *National Fuel Gas Supply Corp.*, 105 FERC ¶ 61,159 (2003), and *National Fuel Gas Supply Corp.*, 106 FERC ¶ 61,335 (2004).

⁶ *Natural Gas Pipeline Negotiated Rate Policies and Practices*, 104 FERC ¶ 61,134, at P 33 (2003).