



for rehearing of the April 22 Order. For the reasons discussed below, the Commission denies the request for rehearing by National Grid.

2. On May 6, 2009, National Fuel filed revised tariff sheets<sup>5</sup> to comply with the April 22 Order (May 6 compliance filing). The Commission accepts the revised tariff sheets to be effective on February 25, 2009, as proposed.

### **I. Background**

3. In Order Nos. 712 and 712-A, the Commission removed the maximum rate ceiling on capacity releases of one year or less that take effect within one year after the pipeline is notified of the release. The Commission also modified its regulations in order to facilitate asset management arrangements (AMAs) by relaxing the Commission's prohibition on tying and on its bidding requirements for certain capacity releases. The Commission further clarified that its prohibition on tying does not apply to conditions associated with gas inventory held in storage for releases of firm storage capacity. Finally, the Commission waived its prohibition on tying and bidding requirements for capacity releases made as part of a state-regulated retail access program.

4. In its January 26 filing, National Fuel proposed several changes to the capacity release provisions in section 10 of the General Terms & Conditions (GT&C) of its tariff to reflect the various changes in the capacity release regulations made by Order Nos. 712 and 712-A. National Fuel's filing was protested, including a limited protest and request for modifications by National Grid. Other parties filed comments. National Fuel filed an answer to the comments and protests. The Commission approved National Fuel's proposed changes in the April 22 Order, subject to certain modifications.

5. Section 10.2(a) of National Fuel's tariff sets forth the information that must be included in a releasing shipper's notice to the pipeline that it desires to release capacity. That section applies to both biddable and non-biddable releases. In its protest to the January 26 filing, National Grid requested that the Commission require National Fuel to revise section 10.2(a) of its tariff to explicitly permit the exercise of all storage inventory transfer rights and to impose conditions on the release of storage capacity, as permitted by Order Nos. 712 and 712-A. Specifically, National Grid requested that National Fuel add a new subsection stating that for releases of storage capacity, a releasing shipper may include in its capacity release notice conditions concerning the transfer and/or return of storage inventory both inside and outside the context of an AMA. National Grid further requested that National Fuel refer to such storage capacity release condition rights in any sections of its tariff that cross-reference the information to be included in a capacity release notice, with specific reference to the introduction of GT&C section 10 of National

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<sup>5</sup> Sub. Fourth Revised Sheet No. 358 and Sub. Fourth Revised Sheet No. 360 to its FERC Gas Tariff, Fourth Revised Volume No. 1.

Fuel's tariff. National Fuel, in its answer, responded that such a change was not necessary because its current tariff language permits shippers to identify terms and conditions, including but not limited to storage related provisions.

6. The Commission denied National Grid's requests, finding that National Fuel's existing tariff language requires shippers to identify the terms and conditions of each release, and, as noted by National Fuel in its answer, the provision includes but is not limited to terms and conditions of storage related releases.<sup>6</sup> The Commission stated that while Order No. 712 permitted parties to negotiate further terms and conditions related to the commodity portion of storage release transactions, it found no reason to require National Fuel to specify that option in section 10.2 of its tariff or in any sections that cross-referenced that section.

**A. Rehearing Request**

7. National Grid requests rehearing of the Commission's decision not to require National Fuel to include tariff provisions (1) expressly permitting the releasing shipper to tie releases of storage capacity to conditions concerning the transfer and return of storage inventory, as permitted under Order No. 712 and (2) requiring shippers to include information concerning such conditions in their capacity release notices. National Grid argues that the Commission's regulations require that firm shippers must notify the pipeline of the terms and conditions under which capacity will be released<sup>7</sup> and that pipelines are required to post special terms and conditions applicable to a release of capacity.<sup>8</sup> National Grid also asserts that the Commission has required other pipelines to revise their tariffs to include provisions describing storage inventory transfer rights and that the Commission has not provided a reasoned explanation as to why National Fuel should not be required to do so. It argues that in a recent order concerning Tennessee Gas Pipeline Company's Order No. 712 compliance proceeding, the Commission recognized that a pipeline must obtain storage inventory transfer information.<sup>9</sup>

8. The Commission denies National Grid's request for rehearing. National Grid's request, that we require National Fuel to include tariff provisions permitting the exercise of storage inventory rights as a condition of a storage release, is the same request that we denied in the April 22 Order. As we found in that order, National Fuel's tariff requires that a shipper include all terms and conditions of a release in the shipper's notice of

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<sup>6</sup> April 22 Order at P 29.

<sup>7</sup> Rehearing request at 2, *citing* 18 C.F.R. §284.8(c).

<sup>8</sup> *Id.* 3, *citing* 18 C.F.R. § 284.13(b)(i)(viii).

<sup>9</sup> *Id.*, *citing Tennessee Gas Pipeline Co.*, 127 FERC ¶ 61,150, at P 24-25 (2009) (*Tennessee Order*).

release, including releases of storage capacity.<sup>10</sup> Specifically, section 10.2(a)(xv) of the GT&C of National Fuel's tariff directs existing firm shippers to state in the release notice whether the replacement shipper will be required to enter into an agreement with the releasing shipper and, if so, a description of the terms and conditions of any such agreements. The tying of storage capacity to storage inventory would be such an agreement, the terms and conditions of which would need to be reported to the pipeline. As we also stated, the right of releasing shippers to condition a release of storage capacity on a transfer of storage inventory is conferred by Order No. 712 and provided for in the Commission's regulations. Pipelines are required to operate in accordance with these regulations.

9. National Grid's reliance on the *Tennessee Order* is misplaced.<sup>11</sup> The provisions and arrangement of Tennessee's tariff are different than the ones at issue here. Tennessee's tariff contains separate sections setting forth the information releasing shippers must provide in notices of biddable and non-biddable releases. While Tennessee's tariff required releasing shippers' biddable releases to provide certain information concerning the recall of storage capacity and the disposition of storage inventory, its tariff did not require releasing shippers making non-biddable releases to provide that information. Thus, at National Grid's request we clarified that releasing shippers are permitted to condition a release of storage capacity on the subsequent sale or repurchase of storage inventory or on there being a certain amount of gas left in storage at the end of the release, regardless of whether the release is biddable.<sup>12</sup> We also required Tennessee to revise its tariff to include a provision that releasing shippers in non-biddable releases provide the pipeline with that information so the pipeline could post it on its website in accordance with the regulations.<sup>13</sup> Contrary to National Grid's contentions on rehearing, however, we did not require Tennessee to file tariff provisions stating specifically that a shipper may include in its notice release conditions regarding the transfer of storage inventory.

10. National Fuel's tariff does not have the deficiency that we found in the *Tennessee Order* and required Tennessee to correct. As noted above, National Fuel's tariff already requires a releasing shipper to include in its release posting all terms and conditions of a proposed capacity release, including a description of any agreements the replacement shipper would be required to enter into with the releasing shipper. Moreover, as we said

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<sup>10</sup> See section 10.2(a) of the GT&C of National Fuel's tariff, Third Revised Sheet No. 356.

<sup>11</sup> National Fuel's argument that other pipelines have voluntarily agreed to include language akin to that requested is also inapposite. The fact that a particular pipeline may agree to certain provisions in no way creates a burden for another pipeline to do so.

<sup>12</sup> *Tennessee Order* at P 23.

<sup>13</sup> *Id.* P 24-25.

in the *Tennessee Order* and reiterate here, a provision in a storage release tying the release of storage capacity to conditions concerning the gas in storage is a special term or condition that must be provided by the shipper and posted by the pipeline. Unlike Tennessee, National Fuel's tariff does not distinguish between biddable and non-biddable releases in terms of the information that shippers are required to provide to the pipeline. Further, National Fuel's tariff makes clear that any information provided for non-biddable releases will be posted for informational purposes.<sup>14</sup> Thus, National Grid's request for rehearing is denied.

## **B. The Compliance Filing**

### **1. Details of the Filing**

11. In the April 22 Order, the Commission accepted National Fuel's initial Order Nos. 712 and 712-A compliance filing, subject to National Fuel: (1) revising section 10.2(a)(viii) of its tariff to require that the releasing shipper's release notice state whether the prearranged release is at the maximum rate for more than one year and thus exempt from bidding; and (2) revising section 10.3(b) of its tariff to refer to "state-regulated retail access programs" and not "state-mandated retail access programs," as stated throughout Order Nos. 712 and 712-A. On May 6, 2009, National Fuel filed revised tariff sheets to comply with the April 22 Order.

### **2. Notice**

12. Public notice of National Fuel's filing in Docket No. RP09-269-001 was issued on May 12, 2009. Comments were due as provided in section 154.210 of the Commission's regulations.<sup>15</sup> No comments or protests were filed.

### **3. Discussion of the Compliance Filing**

13. The Commission finds that National Fuel's proposed tariff revisions are in satisfactory compliance with the April 22 Order and Order Nos. 712 and 712-A. Accordingly, the Commission accepts National Fuel's revised tariff sheets to become effective February 25, 2009, as proposed.

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<sup>14</sup> See GT&C Section 10.3(b).

<sup>15</sup> 18 C.F.R. § 154.210 (2008).

The Commission orders:

(A) Sub. Fourth Revised Sheet No. 358 and Sub. Fourth Revised Sheet No. 360 to National Fuel's FERC Gas Tariff, Fourth Revised Volume No. 1 are accepted effective February 25, 2009 in satisfactory compliance with the April 22 Order, as discussed in the body of this order.

(B) The request for rehearing of National Grid is denied, as discussed in the body of this order.

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.