FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

June 29, 2006

In Reply Refer To:
National Fuel Gas Supply Corporation
Docket No. RP06-393-000

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

Attention: Antoinetta D. Mucilli
Senior Attorney

Reference: Tenth Revised Sheet No. 478 to FERC Gas Tariff, Fourth Revised Volume No. 1

Dear Ms. Mucilli:

1. On June 14, 2006, National Fuel Gas Supply Corporation (National Fuel) filed six service agreements under Rate Schedule FT, a consent agreement, two interconnection agreements and a facilities construction agreement related to the financing, construction and operation of transportation facilities for Beacon Landfill Gas Holdings (Beacon), a customer that plans to produce pipeline quality gas from two landfills located in Pennsylvania (the Projects). As detailed below, all the agreements are between National Fuel and Beacon, except for the consent agreement which also includes JP Morgan Chase Bank, N.A. (Bank), as Trustee. National Fuel requests that the Commission accept the service agreements, the interconnection agreements, and the consent agreement for filing, effective June 26, 2006, as agreements which deviate from or supplement the forms of firm transportation service agreements and interconnection agreement in its tariff. National Fuel also requests concurrent acceptance of the referenced tariff sheet, which adds four of the service agreements to National Fuel's list of non-conforming service agreements in section 34 of the General Terms and Conditions of its tariff (GT&C). As discussed below, the agreements and tariff sheet are accepted to be effective June 26, 2006, subject to conditions, as discussed below.

2. National Fuel will perform firm transportation under Rate Schedule FT to and from Beacon's landfills under four service agreements. Contract No. F10890, as amended, is for 2,306 Dth/day from National Fuel's interconnection with Texas Eastern Transmission LP to Beacon's Imperial Landfill at Imperial, Pennsylvania. Contract No. F10891, as amended, is for 4,010 Dth/day from National Fuel's interconnection with Tennessee Gas Pipeline Company to Beacon's Greentree Landfill at Kersey, Pennsylvania. Both of these contracts provide that National Fuel will charge a reservation rate consisting of the FT minimum Reservation rate (currently $0.00/Dth), the FT maximum Commodity rate, applicable surcharges, and 0.25% fuel retention.

3. Contract No. F10892 is for 1,650 Dth/day from the Greentree Landfill to National Fuel's interconnection with Tennessee at point 020527. Contract No. F10905 is for 950 Dth/day from the Imperial Landfill to the interconnection with Tennessee at the same point. Each contract provides that National Fuel will charge the maximum FT reservation and commodity rates, applicable surcharges, and the 2.00% fuel retention rate approved for National Fuel's FT service.

4. Contract No. F10906, as amended, is for 3,650 Dth/day from the Imperial Landfill to National Fuel's interconnection with Transcontinental Gas Pipeline Corporation at Leidy (point 7126). Contract No. F10907 is for 6,350 Dth/day from the Greentree Landfill to the interconnection with Transco at the same point. Each contract provides that National Fuel will charge the maximum FT reservation and commodity rates, applicable surcharges, and the 2.00% fuel retention rate approved for National Fuel's FT service. Each of these service agreements are prearranged permanent capacity release agreements. National Fuel states that these agreements will be filed for acceptance as non-conforming agreements after they are executed.

5. All the service agreements contain a termination provision which National Fuel describes as non-conforming. According to this provision, if Beacon does not provide National Fuel with an irrevocable letter of credit by November 15, 2006, as provided in the Facilities Construction Agreement between Beacon and National Fuel, National Fuel may terminate the service agreement. National Fuel explains that this provision reflects the unique situation where Beacon does not meet National Fuel's credit requirements at the time of execution, but in order to obtain financing, Beacon must provide its lender with effective project agreements as collateral to secure its financing. At the request of Beacon's lender, National Fuel did not make the effectiveness of the Service Agreements contingent upon Beacon closing on its financing. Instead, National Fuel has agreed to

execute the Service Agreements before the financial close, and reserves the right to terminate the Agreements in the event that Beacon does not post the letter of credit by a certain date as specified in the Facilities Construction Agreement.

6. National Fuel requests that the Consent Agreement between Beacon, National Fuel and the Bank be accepted as a non-conforming service agreement because it contains several provisions which differ from or are supplementary to National Fuel's tariff, and which effectively amend the Service Agreements between Beacon and National Fuel. In relevant part, the Consent Agreement provides the Trustee, acting on behalf of Beacon's noteholders, the ability to cure defaults under the Service Agreements, and otherwise to step into Beacon's shoes to preserve the Project agreements and hence the value of the collateral supporting issuance of the notes.

7. The Facilities Construction Agreement, for which a *pro forma* tariff agreement does not exist, sets forth the parties' rights, obligations, and interests with respect to the construction of interconnection facilities. Among the conditions precedent to such construction is receipt by National Fuel of an irrevocable letter of credit, which is referenced in the service agreements.

8. The Interconnection Agreements included in the filing do not deviate from National Fuel's *pro forma* Interconnection Agreement. National Fuel states that upon execution of the Interconnection Agreements, National Fuel will file them separately for acceptance upon the Commission's determination that such acceptance is necessary.

9. National Fuel asserts that Beacon has represented that Beacon will not be in a position to close on its project financing arrangements until all regulatory approvals required for the effectiveness of the National Fuel agreements are in hand. National Fuel, therefore, requests expedited treatment and acceptance of this filing by the Commission at the earliest possible date, and if practicable, by June 26, 2006, so as to permit Beacon to close on the financing necessary to undertake the construction of its project facilities, and to commence actual project construction immediately.

10. Public notice of the filing was issued on June 20, 2006. Interventions and protests were due as provided in section 154.210, 18 C.F.R. § 154.2210 (2005), of the Commission's regulations. Pursuant to Rule 214 (18 C.F.R. § 385.214 (2005)), all timely filed motions to intervene and any motion to intervene out-of-time filed before the issuance date of this order are granted. No protests were received.

11. National Fuel has adequately justified the deviations between the forms of service agreements in its tariff and the agreements submitted in this filing. According to National Fuel, such deviations are required in order for Beacon to obtain financing for its projects. We find that such deviations do not present a risk of undue discrimination and we therefore accept the agreements herein, and the referenced tariff sheet for filing, effective June 26, 2006. Acceptance of Contract Nos. F10890 and F10891, as amended, under which National Fuel will retain 0.25% fuel and loss retention instead of 2.00% for FT service,[1] is subject to National Fuel filing an explanation for the reduced fuel retention percentage within five days of the date of this order. In this regard, we note that Commission policy generally prohibits pipelines from discounting variable costs such as fuel charges in recourse rate contracts such as these,[2] although discounted fuel charges are allowed in negotiated rate transactions.[3] As an alternative, National Fuel may refile such agreements, amending them to provide for negotiated rate transactions rather than recourse rates. Finally, National Fuel is directed to include in its explanation a discussion of language in section 3.4 of Rate Schedule FT which appears to violate the aforementioned policy regarding fuel discounts. Specifically, section 3.4 provides that "nothing precludes Transporter from . . . retaining an allowance less than the maximum allowance for service under this Rate Schedule as set forth on Sheet No. 8."

By direction of the Commission.

Magalie R. Salas,
Secretary.

[1] Twenty-Seventh Revised Sheet No. 8 to FERC Gas Tariff, Fourth Revised Volume No. 1.

[2] An exception is allowed where the pipeline can demonstrate that service on a discrete transportation path requires no fuel. See, *e.g.*, *Colorado Interstate Gas Company (CIG)*, 113 FERC ¶ 61,225 (2005).

[3] *CIG*, 112 FERC ¶ 61,199 at no. 20 (2005).