

118 FERC ¶ 61,091  
FEDERAL ENERGY REGULATORY COMMISSION  
WASHINGTON, D.C. 20426

February 9, 2007

In Reply Refer To:  
National Fuel Gas Supply  
Corporation  
Docket Nos. RP06-393-002  
RP06-298-000  
RP06-298-003  
RP94-367-000  
RP94-367-002  
RP95-31-008  
RP95-31-009  
RP95-31-010  
RP95-31-011  
RP95-31-012

Sidley Austin LLP  
1501 K Street, NW  
Washington, DC 20005  
Attn: William A. Williams, Esq.  
Attorney for National Fuel Gas Supply Corporation

Reference: Letter Order Approving Uncontested Settlement

Dear Mr. Williams:

1. On November 17, 2006, you submitted an offer of settlement (offer or Stipulation) on behalf of National Fuel Gas Supply Corporation (National Fuel) in the above proceedings, involving a formal complaint filed by the Public Service Commission of New York, the Pennsylvania Public Utility Commission, and the Pennsylvania Office of Consumer Advocate (State Agencies) against National Fuel, (a) alleging that National Fuel's rates are unjust and unreasonable, and (b) questioning whether National Fuel has the appropriate tariff authority to sell retained gas.

2. Comments in support of the offer were filed by the State Agencies, The Peoples Natural Gas Company, d/b/a Dominion Peoples, PSEG Energy Resources & Trade LLC, and the Commission's Trial Staff. Reply comments supporting the offer were filed by National Fuel.
3. On December 20, 2006, the administrative law judge certified the offer to the Commission as an uncontested offer, to settle all the captioned dockets, including Docket No. RP94-367, *et al.*, and RP95-31, *et al.*, which were not referred to the Administrative Law Judge for hearing.<sup>1</sup>
4. The offer consists of the following terms.
5. Article I identifies the settlement transportation and storage rates, the settlement depreciation rates, and refunds provided under the settlement. It also describes certain new tariff provisions that appear in Appendix A to the offer.
6. Article I, section 1, identifies the Settlement Rates and the Settlement Terms and Conditions (described in Appendix A) under which National Fuel will make sales of excess gas and may establish zero fuel point pair transactions, as set forth in section 5. Section 1 further provides that the rates, terms, and conditions reflected in the *pro forma* tariff sheets (also in Appendix A) shall become effective on the first day of the first month following issuance of a final order by the Commission that approves the offer without material modifications or conditions (effective date). National Fuel will begin to charge and physically retain gas under the Settlement Rates beginning on the effective date. Section 1, further provides that, if the effective date occurs after December 1, 2006, National Fuel will refund money to each shipper that is a supporting party (supporting shipper) to reflect the difference between (a) the quantity of gas retained from each supporting shipper during the months starting December 1, 2006, through the month preceding the effective date, and (b) the quantity that would have been retained if the reduced retainage allowances set forth in *pro forma* tariff sheet Nos. 8 and 9 in Appendix A of the offer had been in effect during each such month. Those refunds will be calculated by valuing the retained gas using the Index that is already in National Fuel's tariff for cashout purposes, and using the Index value for the same month in which the gas is retained. Except for the refunds required by Article I, or as a result of a final order in a proceeding initiated by a filing under Article VIII of the offer, or by National Fuel's tariff as of the date of the offer, National Fuel shall retain all proceeds from the sale of retained gas, charges for transportation and storage services, and all other revenues received after December 1, 2006, without further liability to its customers.

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<sup>1</sup> *National Fuel Gas Supply Corp.*, 117 FERC ¶ 63,052 (2006).

7. Article I, section 2, provides that, effective December 1, 2006, the annual depreciation rate applicable to National Fuel's storage plant will be 2.23 percent, inclusive of negative salvage of 0.4 percent, and the annual depreciation rate applicable to National Fuel's transmission plant will be 2.9 percent. Appendix B to the offer reflects the derivation of the storage and transmission plant depreciation rates. Section 2 further provides that in its next rate case, National Fuel shall file using these storage and transmission plant depreciation rates, provided, however, that National Fuel shall have the right to propose different storage and transmission depreciation rates to be made effective and reflected in rates on a prospective basis upon issuance of a Final Order in the next rate case. The provisions of section 2 are to be applicable to Contesting Parties, notwithstanding the provisions of Article VI.

8. Article I, section 3, provides that the Supporting Parties will not oppose a future filing by National Fuel to convert existing FT contract #F02271 with Duferco Farrell Corp., to a negotiated rate agreement.

9. Article I, section 4, provides that, except as expressly provided, the provisions of the September 29, 1995 stipulation in Docket No. RP95-31-000, *et al.*, (the RP95-31 Stipulation) are unchanged by this offer. The Commission's order approving this offer shall constitute approval of the RP95-31 Stipulation, as amended.

10. Article I, section 5, provides that National Fuel shall file the rates, terms, and conditions reflected in the *pro forma* tariff sheets in Appendix A to be effective on the Effective Date. Section 5 further explains that the Appendix A tariff sheets establish a separate Lost and Unaccounted For (LAUF) gas retainage allowance of 0.25 percent on all Volume 1 transportation services (*i.e.*, FT, FT-S, EFT, FST, IT, IAS, W-1, IR-1 and IR-2) and 0.23 percent on all Volume 1 storage services (*i.e.*, FSS, ESS, ISS, P-1, P-2, SS-1 and SS-2). Section 5 also provides that National Fuel may, based upon projected system flows showing that on an aggregate basis no incremental fuel will be required to facilitate certain transactions, establish point pairs where the Fuel and Company Use retention will not be applied. However, such point pairs will be subject to the LAUF allowance. Gas retainage allowances applicable to Volume 2 services and negotiated rate agreements will remain unchanged by this settlement. Section 5 of Article I further explains that the tariff provisions in Appendix A establish a Fuel and Company Use gas retainage allowance of 1.15 percent, which will be assessed (in addition to the 0.25 percent LAUF allowance) on transportation Rate Schedules FT, FT-S, EFT, FST, IT, IAS, W-1, IR-1 and IR-2, except as provided below. The current Fuel, Loss and Company Use gas retainage allowance of 2 percent is eliminated.

11. Article I, section 5, also references tariff provisions in Appendix A amending Rate Schedules EFT and FST to provide that EFT and FST shippers nominating NFSTOR as the receipt point for transportation to such shippers' delivery points will not be assessed

an LAUF or Fuel and Company Use gas retainage allowance if the quantities nominated were, immediately prior to such receipt, stored by National Fuel under a firm storage agreement. Also, the tariff provisions in Appendix A reduce National Fuel's Storage Surface Operating Allowance from 1.4 percent to 1.17 percent of injections and withdrawals, which will be assessed in addition to the 0.23 percent LAUF allowance. Fuel discounts provided under negotiated rates will be reported and posted as required by the Commission's regulations on disclosing other rate discounts.

12. Article II establishes National Fuel's gathering rates for the period December 1, 2006, through November 30, 2011, by extending the term of a September 11, 1995, stipulation in Docket No. RP94-367, *et al.*, through November 30, 2011.

13. Article III governs post-retirement benefits other than pensions (OPEBs), and identifies National Fuel's OPEB Rate Allowance of \$11,000,000 per year. This Article further identifies the portion of the \$11,000,000 OPEB Rate Allowance attributable to the amortization over a five-year period of a \$12,429,180 regulatory asset. Under Article III, the difference between the remaining portion of the OPEB Rate Allowance (\$8,514,164) and National Fuel's SFAS 106 expense shall be deferred in a new regulatory asset (Account No. 182.3) or regulatory liability (Account No. 254), and that difference shall be recorded and reflected in National Fuel's rates in the company's next general rate case. Article III also contains provisions governing disbursements from the OPEB funds (into which the \$11,000,000 OPEB Rate Allowance must be deposited), providing in relevant part that such disbursements will continue to be limited to: (1) payments of OPEBs for the benefit of employees pursuant to National Fuel's post retirement benefit plans or policy; (2) payments for expenses of the OPEB funds, including, but not limited to, expenses respecting the formation and administration of the OPEB funds; and (3) refunds to customers pursuant to a Commission-approved refund plan in the event the OPEB funds are not used for National Fuel's post-retirement benefit plans. Article III also contains provisions dealing with the termination of OPEB benefits by National Fuel or its successor in interest, which provide that if, during the term of the Stipulation, National Fuel or National Fuel's successor-in-interest terminates its obligation to provide OPEB benefits to National Fuel's employees, the balance of the OPEB funds as of the day prior to the effective date of the termination of benefits by such successor-in-interest shall be refunded to ratepayers through a Commission-approved refund plan.

14. Article IV directs that, within ten days of the date on which the initial order becomes a Final Order approving this offer, National Fuel shall file actual tariff sheets consistent with the tariff sheets in Appendix A of the Stipulation to become effective on the Effective Date (the first day of the first month following issuance of the Final Order). Article IV also provides the necessary waivers to effectuate all the provisions of the Stipulation.

15. Article V provides the term of the offer, which is to extend through November 30, 2011. Article V also states that, with the exception of filings made or permitted pursuant to (a) the RP95-31 Stipulation, (b) the September 11, 1995 Stipulation in Docket No. RP94-367, *et al.*, as contemplated by Article II or (c) Article VIII, the Settlement Rates shall continue in effect until the earlier of a general rate filing by National Fuel under section 4 of the Natural Gas Act, 15 U.S.C. § 717c (1994) (the Act), or the effective date of any change in tariff rates resulting from an action brought under section 5 of the Act, 15 U.S.C. § 717d (1994), by the Commission, any state commission, or any other person. Article V further states that, except as otherwise provided in the offer, the offer establishes a five-year moratorium prohibiting the effectiveness of any section 4 or section 5 rate changes prior to December 1, 2011. Article V also provides a "come-back provision," which requires National Fuel to make a section 4 filing with rates effective December 1, 2011.

16. Article VI, section 1, provides that the provisions of the offer are interrelated, with none being agreed to without agreement as to each of the others, and that opposition to any provision by any party is deemed to be opposition to the entire integrated offer by that party.

17. Article VI, section 2, provides that all parties in their initial comments on the offer shall specify whether they support, oppose, or do not oppose Commission approval of the offer, and that parties that support, do not oppose, or do not file initial comments shall be deemed to be Supporting Parties, and that, in the event that the offer is approved without modification or condition, National Fuel and Supporting Parties are bound by the terms of the offer and waive any and all rights to rehearing and judicial review.

18. Article VI, section 3, provides that, to the extent that the offer is modified by a Commission Final Order in whole or in part, each party shall notify National Fuel and the Commission in writing, within 20 days of the issuance of the Commission's Final Order, whether such party elects to be bound by the terms of the offer as modified. A party that elects to be bound shall be deemed a Supporting Party. Within 10 days following the expiration of that 20-day period, National Fuel will inform the Commission and all parties whether it will accept the offer as modified. If it does, all Supporting Parties are bound by, and entitled to, the provisions and benefits of the offer as modified and waive any and all rights to judicial review of the Commission Final Order that modified and approved the Stipulation.

19. Article VI, section 4, provides that any party that contests the offer, or proposes any modification of, or condition to it, shall be deemed a Contesting Party, and shall retain any rights it may have to pursue claims in all dockets subject to the offer. Article VI, section 4, further provides that Contesting Parties shall remain subject to the rates set forth on the applicable tariff sheet nos. 8, 9, 10, and 11, and the provisions of

National Fuel's rate schedules in effect on the day before the Effective Date, except for any language authorizing the discounting of retainages. Article VI, section 4, further states that any refunds or rate reductions during the term of the Stipulation resulting from a final order on any issue litigated by a Contesting Party shall become effective with respect to Contesting Parties only. Further, no rate, surcharge or fuel retainage factor applicable to any Supporting Party under the Stipulation shall be increased as a result of the election of any other party to be a Contesting Party.

20. Article VI, section 5, provides that, except as set forth elsewhere in the offer, none of the terms, benefits or obligations of the offer shall apply to Contesting Parties, and nothing in the offer shall affect the rights of Contesting Parties, or of National Fuel with respect to Contesting Parties, as they exist pursuant to statute, contract, or other settlements; provided, however, that any findings or orders of the Commission in response to a filing by a Contesting Party under section 5 of the Act, or a general filing under section 4 of the Act by National Fuel applicable to Contesting Parties shall not apply to any of the Supporting Parties other than National Fuel.

21. Article VI, section 6 provides that nothing in the offer shall be deemed (a) to initiate a proceeding to establish new rates for any Contesting Parties or (b) to constitute a finding or acknowledgment that a Contesting Party would be aggrieved if the Stipulation is approved.

22. Article VI, section 7, provides among other things that, in the event of a proceeding under section 4 or section 5 of the Act involving Contesting Parties, Supporting Parties shall have the right to participate in such proceedings; provided, however, that the results of such proceeding shall apply only to the Contesting Party or Parties.

23. Article VII states that the offer is made upon the express understanding that all participants in Docket No. RP06-298-000 have reached a negotiated resolution of all issues set for hearing in that Docket and also all issues that could have been raised in that proceeding, and that the Commission's order approving the offer shall constitute approval of the negotiated resolution of all issues set for hearing or that could have been raised. Article VII further provides that the participants (including National Fuel, Commission Trial Staff, and the State Agencies) and any Supporting Party shall not be deemed to have approved, accepted, agreed to, or consented to any concept, theory, principle or method underlying any of the rates or charges, or any other matter identified in the Stipulation or the proceeding, and that the Commission's order approving the Stipulation shall not constitute approval or acceptance of any concept, theory, principle or method underlying any of the rates or charges or any other matter identified in the Stipulation or in this proceeding.

24. Article VIII sets forth exceptions to the moratorium established by Article V. In general, Article VIII permits National Fuel to file rate changes to recover costs under limited section 4 adjustments or to recover costs expressly authorized by future Commission orders and specifically directed for general applicability to interstate pipelines. Article VIII also provides that nothing in the Stipulation shall be deemed to preclude National Fuel from filing for seasonal rates during the five-year moratorium period, provided that any party is free to challenge any such seasonal filing on the merits, and subject to certain limitations set forth in Article VIII.

25. Article IX contains standard reservations and miscellaneous provisions providing that (a) neither National Fuel, the Commission Staff, nor the Supporting Parties shall be bound or prejudiced by any part of the offer unless the offer is approved and made effective as to all of its terms and conditions without modification; (b) the offer is submitted pursuant to Rule 602 of the Commission's Rules of Practice and Procedure and, if not approved in its entirety without condition or modification, is privileged, and its terms shall be null and void and, moreover, it is agreed that all Supporting Parties reserve their rights to a hearing in the event that the offer is not approved in its entirety without conditions; (c) the Commission's order approving the offer shall vacate the Commission's June 23, 2006, order in Docket No. RP06-298; and (d) changes to the terms of the Stipulation shall be governed by the public interest standard established in *United Gas Co. v. Mobile Gas Corp.*, 350 U.S. 332 (1956), and *F.P.C. v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956) (*Mobile-Sierra*).

28. The Commission finds that the settlement is fair, reasonable, and in the public interest and it is hereby approved. We find that the parties intend that the applicable standard of review for any changes to the offer is the *Mobile-Sierra* public interest standard.<sup>2</sup> The Commission's approval of this settlement does not constitute approval of,

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<sup>2</sup> *United Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956); *FPC v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956). As a general matter, parties may bind the Commission to a public interest standard. *Northeast Utilities Service Co. v. FERC*, 993 F.2d 937, 960-62 (1<sup>st</sup> Cir. 1993). Under limited circumstances, such as when the agreement has broad applicability, the Commission has the discretion to decline to be so bound. *Maine Public Utilities Commission v. FERC*, 454 F.3d 278, 286-87 (D.C. Cir. 2006). In this case we find that the public interest standard may apply.

or precedent regarding, any principle of issue in these proceedings. Additionally, National Fuel's proceeding in Docket No. RP06-393-002 is terminated as a result of the Commission's approval of the Settlement.

By direction of the Commission. Commissioner Kelly dissenting in part with a separate statement attached.  
Commissioner Wellinghoff dissenting in part with a separate statement attached.

Magalie R. Salas,  
Secretary.

cc: Public File  
All Parties

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

National Fuel Gas Supply Corporation

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(Issued February 9, 2007)

KELLY, Commissioner, *dissenting in part*:

The parties in this proceeding have requested that the Commission apply the *Mobile-Sierra* “public interest” standard of review to any future changes to the settlement agreement that may be proposed by a party, a non-party or the Commission acting *sua sponte*. As I stated in my separate statement in *Transcontinental Gas Pipe Line Corporation*,<sup>1</sup> in the absence of an affirmative showing by the parties and reasoned analysis by the Commission regarding the appropriateness of approving the “public interest” standard of review to the extent future changes are sought by a non-party or the Commission acting *sua sponte*, I do not believe the Commission should approve such a provision.

Accordingly, I respectfully dissent in part from this order.

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Sudeen G. Kelly

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<sup>1</sup> 117 FERC ¶ 61,232 (2006).

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(Issued February 9, 2007)

WELLINGHOFF, Commissioner, dissenting in part:

The parties in this case have asked the Commission to apply the “public interest” standard of review when it considers future changes to the instant settlement that may be sought by the parties, a non-party, or the Commission acting *sua sponte*.

Because the facts of this case do not satisfy the standards that I identified in *Entergy Services, Inc.*,<sup>4</sup> I believe that it is inappropriate for the Commission to grant the parties’ request and agree to apply the “public interest” standard to future changes to the settlement sought by a non-party or the Commission acting *sua sponte*. In addition, for the reasons that I identified in *Southwestern Public Service Co.*,<sup>5</sup> I disagree with the Commission’s characterization in this order of the case law on the applicability of the “public interest” standard.

For this reason, I respectfully dissent in part.

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Jon Wellinghoff  
Commissioner

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<sup>4</sup> 117 FERC ¶ 61,055 (2006).

<sup>5</sup> 117 FERC ¶ 61,149 (2006).