141 FERC ¶ 61,158
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

November 28, 2012

In Reply Refer To:
National Fuel Gas Supply Corporation
Docket No. RP13-189-000

National Fuel Gas Supply Corporation
6363 Main Street
Williamsville, New York 14221

Attention: David W. Reitz
Deputy General Counsel

Reference: Proposed Revision to Reservation Charge Credits Tariff Provisions

Dear Mr. Reitz:

1. On October 30, 2012,[1] National Fuel Gas Supply Corporation (National Fuel) filed certain tariff records[2] to be effective November 28, 2012, to revise its tariff provisions pertaining to reservation charge credits to be consistent with Commission policy. National Fuel's filing was protested and National Fuel filed an answer. As discussed below, the Commission accepts and suspends the referenced tariff records, subject to refund and further Commission action, effective April 28, 2013, or an earlier date set forth in a subsequent order.

[1] Although National Fuel's tariff filing is dated October 29, 2012, it was submitted to the Commission electronically at approximately, 5:06 pm which is after normal filing hours. Therefore, the filing was docketed on the next business day or October 30, 2012.

[2] National Fuel Gas Supply Corporation, FERC NGA Gas Tariff, National Fuel Tariff; 6.010: FT Rate Schedule, § 3 – Rates, 4.0.0; 6.020: FT-S Rate Schedule, § 3 – Rates, 4.0.0; 6.030: EFT Rate Schedule, § 3 – Rates, 5.0.0; 6.030: EFT Rate Schedule, § 6 – Reserved for Future Use, 1.0.0; 6.040: FST Rate Schedule, § 3 – Rates, 4.0.0; 39 – Discounted Agmts, 39 – Discounted Agreements, 1.0.0.

2. On October 31, 2011, National Fuel filed a general base rate increase under section 4 of the Natural Gas Act (NGA) with a proposed effective date of December 1, 2011. Numerous parties objected to National Fuel's filing, arguing that various aspects of National Fuel's proposals were not just and reasonable. In addition, ExxonMobil requested the Commission set for hearing, pursuant to section 5 of the NGA, whether National Fuel's tariff complies with Commission policy regarding reservation charge crediting for both *force majeure* and non-*force majeure* service interruptions. ExxonMobil argued only Rate Schedule EFT[3] currently provided for reservation charge credits due to interruptions of service attributable to *force majeure*. In addition, ExxonMobil asserted that, while Rate Schedule EFT did provide for revenue credits due to non-*force majeure* events, credits would only be provided if National Fuel fails to give at least 30 days prior notice of potential service interruptions; an exception contrary to current Commission policy. According to ExxonMobil, none of National Fuel's other firm rate schedules provide for any crediting of reservation charges due to *force majeure* or non-*force majeure* events.

3. On November 30, 2011, the Commission issued an order accepting and suspending National Fuel's tariff records subject to refund and hearing procedures.[4] The Commission also directed National Fuel to file revised tariff records for the reservation charge crediting provisions during *force majeure* and non-*force majeure* events, or to explain why it should not be required to do so.[5] Specifically, the Commission found that National Fuel's current tariff does not appropriately provide for reservation charge credits for its firm service rate schedules for either *force majeure* or non-*force majeure* events. Accordingly, pursuant to NGA section 5, the Commission directed National Fuel to submit a compliance filing either (1) revising its tariff to provide reservation charge credits for both *force majeure* and non-*force majeure* events consistent with Commission policy, as discussed above, or (2) providing a further explanation why the Commission's policy should not apply to it.

4. On December 30, 2011, National Fuel filed: 1) a request for rehearing of the November 30 Order; 2) an explanation why it should not be required to file actual tariff records implementing reservation charge credits prior to a decision on the issues set for hearing; and 3) revisions to the *pro forma* tariff records on reservation charge credits.

[3] EFT means "Enhanced Firm Transportation."

[4] *National Fuel Gas Supply Corp.*, 137 FERC ¶ 61,171 (2011) (November 30 Order).

[5] *Id.* P 12.

5. Prior to Commission action on National Fuel's rehearing request, National Fuel filed a settlement on May 22, 2012, which resolved or established procedures for resolving, all issues set for hearing in Docket No. RP12-88-000, including reservation charge crediting. The settlement was approved by the Commission on August 6, 2012.[6]

6. The settlement provided for additional procedures related to the resolution of the reservation charge crediting issues. Specifically, Article VIII of the settlement explains that the parties had engaged in ongoing discussions about National Fuel's reservation charge credit tariff provisions. National Fuel and the participants agreed to meet within 45 days following the issuance of a Commission order approving the Partial Settlement to attempt to resolve all remaining issues concerning these tariff provisions. Within 45 days of that meeting and regardless of whether all issues associated with reservation charge credits had been resolved, National Fuel agreed to file revised tariff records to amend the reservation charge crediting provisions of its tariff to be effective 30 days following such filing. The filing would reflect National Fuel's position and incorporate any agreements reached with the participants in those discussions.[7] National Fuel and all such participants reserved their right to take any position with respect to all issues that had not been resolved prior to the filing.

7. In the instant filing, consistent with Article VIII of the Partial Settlement, National Fuel is proposing to modify each of its firm transportation rate schedules to provide for reservation charge crediting. Specifically, National Fuel states that its proposal provides for partial reservation charge credits to customers during instances of *force majeure*, and full credits during scheduled maintenance activities and other non-*force majeure* events, consistent with current Commission policy. National Fuel's proposed tariff changes also include various clarifications, limitations and exceptions on the applicability of its reservation charge crediting proposal. National Fuel states its proposal reflects the agreements reached during its discussions with the parties as well as additional language addressing several issues that were not previously discussed.

8. National Fuel explains that, pursuant to its crediting proposal, the amount of the credit would depend on the specific event responsible for any interruption in service. National Fuel asserts that a partial credit, equal to the percentage of the reservation

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[6] *National Fuel Gas Supply Corp*., 140 FERC ¶ 61,114 (2012).

[7] Because of these ongoing discussions, National Fuel requested in its June 6 reply comments that the Commission defer ruling on its December 30, 2011 request for rehearing until after the expected tariff filing on reservation charge credits.

charge derived from the return on equity and related income taxes,[8] would apply during periods of *force majeure* and interruptions in service resulting from work performed under National Fuel's integrity management program or "other pipeline safety requirements." Finally, National Fuel contends a full reservation charge credit of 100 percent would apply during all other periods of service interruptions.

9. National Fuel states that its proposal to provide partial credits during periods when it must interrupt service to perform work under its integrity management program or other action required to address specific safety requirements is fully justified. First, National Fuel states the partial crediting of its return on equity and related taxes provides a direct financial incentive to National Fuel to minimize the impact on shippers of potential service interruptions, while also not unduly punishing National Fuel for actions required to maintain the integrity and safety of its system. Second, National Fuel contends its tariff currently provides that its firm contractual obligation to schedule receipts and deliveries is limited in defined circumstances: for example, when it must conduct maintenance, repair or replacement activities or USDOT compliance activities.[9] According to National Fuel, this language makes clear that its interruption of firm service to perform safety-related work does not constitute a breach of its firm service obligations and therefore, full credits would not be appropriate in these circumstances.

10. Due to the recent introduction of new safety-related legislation and initiatives originating from, for example, PHMSA, National Fuel contends that the scope of pipeline integrity management initiatives will only be increasing in the future. As a result, the interruption of service to firm shippers may be unavoidable absent the construction of new and otherwise unnecessary facilities. National Fuel states its proposal provides adequate financial incentive for it to minimize interruptions to firm service and schedule work on its system in a diligent manner. Furthermore, if National Fuel fails to exercise due diligence in its scheduling of safety related work to minimize service interruptions to its shippers, the shippers would be entitled to full reservation charge credits.

11. National Fuel states that its proposal also clarifies its obligation to provide credits to shippers with discounted service agreements and capacity release transactions. According to National Fuel, credits for discounted service agreements would be limited to the portion of the rate that exceeds 72 percent of its maximum reservation rate. In

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[8] National Fuel has proposed the partial credit be equal to 28.00 percent; its approximation of the return on equity and taxes associated with its May 22, 2012 settlement rates.

[9] National Fuel Gas Supply Corporation, FERC NGA Gas Tariff, National Fuel Tariff; 13 – Noms & Scheduling, 13.2 – Scheduling, 0.0.0.

addition, for capacity release transactions, (1) credits would be limited to the lower of the Releasing Shipper's reservation rate or the Replacement Shipper's reservation rate; (2) the total credit will not exceed the reservation rate the Shipper would have paid absent a capacity release or segmentation by the Shipper; and (3) Shippers paying a volumetric rate would not be entitled to credits as they only pay for quantities actually shipped.

12. Finally, National Fuel states that it will implement the proposed tariff changes to its reservation charge credits only upon the completion of the necessary computer programming changes to its billing and reporting systems. National Fuel states it will require approximately three months to complete the necessary modifications to its computer systems.

13. Public notice of the filing was issued on October 31, 2012. Interventions and protests were due as provided in section 154.210 of the Commission's regulations (18 C.F.R. § 154.210 (2012)). Pursuant to Rule 214 (18 C.F.R. § 385.214 (2012)), all timely filed motions to intervene and any unopposed motion to intervene out-of-time filed before the issuance date of this order are granted. Granting late intervention at this stage of the proceeding will not disrupt the proceeding or place additional burdens on existing parties. Timely protests were filed by Consolidated Edison Company of New York (ConEd), and Indicated Shippers.[10] Statoil Natural Gas LLC (Statoil) filed a motion to intervene out of time and protest. In addition, National Fuel Gas Distribution Corporation (Distribution) submitted comments.

14. On November 19, 2012, National Fuel filed a motion to answer and an answer to the protests (Answer). Rule 213(a)(2) of the Commission's Rules of Practice and Procedure (18 C.F.R. § 385.213(a)(2) (2012)) prohibits answers to protests otherwise ordered by the decisional authority. In this case, the Commission will accept National Fuel's Answer because it may assist us in our decision-making process. Moreover, as discussed below, the protestors shall be afforded an opportunity to respond to National Fuel's Answer before the Commission makes a final disposition of the filing.

15. The protestors generally argue that certain of National Fuel's proposed limitations on its obligation to provide reservation charge credits are not justified and should be modified or eliminated. Furthermore, ConEd and Indicated Shippers object to National Fuel's proposal to delay implementation of the revised reservation charge crediting

[10] For the purposes of this proceeding, the Indicated Shippers are: BP Energy Company; Chevron U.S.A. Inc.; ConocoPhillips Company; Cross Timbers Energy Services, Inc.; Hess Corporation; Shell Energy North America (US), L.P.; SWEPI LP; and WPX Energy Marketing, LLC.

provisions until after it has completed the necessary modifications to its computer systems.

16. Specifically, ConEd argues National Fuel should modify the language in proposed Section 3.6(b)(vi) to clarify that a shipper electing not to receive gas at a primary delivery point is still eligible for reservation charge credits if the shipper's refusal is otherwise permitted pursuant to National Fuel's tariff. For example, ConEd cites a provision in the tariff permitting a shipper to refuse gas with a total heating value below 967 BTU per cubic foot. According to ConEd, a shipper exercising its rights under National Fuel's tariff should not be a reason to deny them reservation charge credits.

17. ConEd, Indicated Shippers, and Statoil object to National Fuel's proposed exception to reservation charge credits in instances where volumes were:

> Not delivered at a primary delivery point due to scheduled work on Transporter's facilities if Transporter and Shipper have mutually coordinated the timing of the scheduled work and the work is performed in accordance with that schedule.[11]

ConEd and Statoil argue this language should be stricken in that the Commission has already found scheduled maintenance to be a non-*force majeure* event, eligible for full credits. The parties argue there is no distinction between "scheduled maintenance" already found by the Commission to be eligible for full credits and the "scheduled work" described in Section 3.6(b)(vii) of National Fuel's proposal. Indicated Shippers are concerned National Fuel will require a shipper to waive its right to reservation charge credits as a precondition to National Fuel providing scheduled maintenance to avoid service disruptions.

18. Indicated Shippers and Statoil raise several additional objections to National Fuel's crediting proposal. Specifically, the parties request the Commission reject National Fuel's proposal to avoid credits when a *force majeure* event affects both National Fuel and an upstream or downstream pipeline. Both Indicated Shippers and Statoil argue that National Fuel should only be relieved of its crediting obligation in instances where the *force majeure* event occurs only on the upstream or downstream pipeline. If a *force majeure* event affects both National Fuel's system and the upstream or downstream pipeline, the parties state that National Fuel should be required to provide reservation charge credits.

[11] *See* proposed Section 3.6(b)(vii).

19. Indicated Shippers and Statoil also object to National Fuel's proposal to provide partial credits for scheduled maintenance associated with its integrity management program or other pipeline safety requirements.[12] Consistent with Commission policy, scheduled maintenance is a known and anticipated event requiring full crediting. The parties contend National Fuel has failed to provide adequate justification supporting its contention that the work performed pursuant to its Integrity Management Program will result in "unavoidable" firm service interruptions. As a result, National Fuel should be required to provide full crediting when its Integrity Management Program results in firm service interruptions.

20. Finally, Indicated Shippers request the Commission modify National Fuel's tariff language to explicitly provide for refunds to shippers whose service agreement(s) may have expired or terminated prior to National Fuel's application of such credits to the shippers invoice.

21. In its Answer, National Fuel generally addresses the parties' objections with regard to its reservation charge crediting proposals. Among other things, National Fuel states the parties' reasons for objecting to its proposal to apply partial "no-profit" crediting to service outages caused by safety-related work are not reasonable. National Fuel argues that the need to take facilities temporarily out of service for safety-related compliance work will continue to increase under recent legislation and PHMSA initiatives. Therefore, National Fuel avers that the proposed revision is just and reasonable because it provides a direct financial incentive to minimize shipper impacts while avoiding an undue penalty to National Fuel for taking actions necessary to comply with applicable safety regulations.

22. In addition, National Fuel argues that Indicated Shippers and ConEd object to proposed section 3.6(b)(vii) of each firm transportation rate schedule, which would provide an exception to reservation charge crediting if National Fuel and a shipper "have mutually coordinated the timing of the scheduled work and the work is performed in accordance with that schedule."[13] National Fuel asserts that these parties appear to be confused about the purpose of the proposed revision. National Fuel contends that the change is meant to address situations in which it works with a shipper to time an outage on its facilities to coincide with an outage on upstream or downstream facilities. For

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[12] In its comments, Distribution raises similar concerns about National Fuel's tariff language providing for only partial reservation charge credits for firm service interruptions due to scheduled work performed pursuant to its integrity management program and other pipeline safety requirements.

[13] National Fuel Answer at p. 2.

example, National Fuel states that it may schedule maintenance work on a pipeline utilized to provide firm transportation to a producer-shipper to coincide with maintenance the shipper is planning to perform on its compressor units, or scheduled maintenance activity on an upstream pipeline utilized by the shipper to bring gas to its primary receipt point on National Fuel's system. National Fuel argues that, in these scenarios, with the facilities upstream of its primary receipt point temporarily out of service, the only reason the shipper could have for nominating service at its primary receipt point during the outage would be to attempt to qualify for a reservation charge credit. National Fuel states that its proposed revision is meant to address this sort of gamesmanship. Therefore, National Fuel proposes adding the italicized text as follows to section 3.6(b)(vii) to its proposed revision:

> (vii) not delivered at a primary delivery point due to scheduled work on Transporter's facilities *and other work on facilities utilized by Shipper* if Transporter and Shipper have mutually coordinated the timing of the scheduled work *on Transporter's facilities* and the work is performed in accordance with that schedule.

National Fuel asserts that this narrower provision is just and reasonable and would address the concerns raised by the parties.

23. The Commission accepts National Fuel's proposed tariff records for filing and suspends their effectiveness for the period set forth below. The protesters have raised a number of substantive issues that warrant further consideration before a determination on the justness and reasonableness of the filing can be made. In addition, National Fuel filed a detailed Answer to the protests in which it proposed modifications to its original proposal. Therefore, the Commission will provide the parties the opportunity to respond to that Answer within 20 days of the date of this order before making a final determination in this proceeding.

24. Based upon a review of this filing, the Commission finds that the proposed tariff language has not been shown to be just and reasonable, and may be unjust, unreasonable, unduly discriminatory, or otherwise unlawful. The Commission's policy regarding suspensions is that filings generally should be suspended for the maximum period permitted by statute where preliminary study leads the Commission to believe that the filing may be unjust, unreasonable, or inconsistent with other statutory standards.[14] It is recognized, however, that shorter suspensions may be warranted in circumstances where

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[14] *See Great Lakes Gas Transmission Co.*, 12 FERC ¶ 61,293 (1980) (five-month suspension).

suspension for the maximum period may lead to harsh and inequitable results.[15] Such circumstances do not exist here. Accordingly, the Commission shall suspend the effectiveness of the referenced tariff records for the full five months, until April 28, 2013, or an earlier date if set by a subsequent Commission order.

By direction of the Commission.

Kimberly D. Bose,
Secretary.

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[15] *See Valley Gas Transmission, Inc.*, 12 FERC ¶ 61,197 (1980) (one-day suspension).