

141 FERC ¶ 61,230
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

December 19, 2012

In Reply Refer To:
National Fuel Gas Supply Corporation
Docket No. RP13-299-000

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

Attention: David W. Reitz
Deputy General Counsel

Dear Mr. Reitz:

1. On November 19, 2012, National Fuel Gas Supply Corporation (National Fuel) filed certain tariff records¹ to be effective December 19, 2012, to revise its tariff in order to implement enhancements to its firm storage service. Several parties filed comments and requests for clarifications. National Fuel's filing was protested and National Fuel filed an answer to the protests. As discussed below, the Commission accepts and suspends the referenced tariff records, subject to refund and further Commission action, effective May 19, 2013, or an earlier date set forth in a subsequent order. The Commission also provides parties 15 days from the date of this order to respond to National Fuel's answer.

2. National Fuel is making this filing pursuant to Article IX of the partial settlement (Settlement) of its general section 4 rate case in Docket No. RP12-88-000. The Commission approved that Settlement on August 6, 2012.² Article X of the Settlement

¹ National Fuel Gas Supply Corporation, FERC NGA Gas Tariff, National Fuel Tariff; [6.080: ESS Rate Schedule, § 2 – Applicability and Character of Service, 1.0.0](#); [10 – Capacity Release, 10.2 – Notice Required by Existing Shipper, 3.0.0](#); [10 – Capacity Release, 10.12 – Decoupled Releases, 0.0.0](#); [33 – OFO, 33 – Operational Flow Orders, 1.0.0](#).

² *National Fuel Gas Supply Corp.*, 140 FERC ¶ 61,114 (2012).

provided that the participants would continue ongoing discussions regarding certain enhancements that shippers requested to storage service. National Fuel agreed to prepare and provide a written analysis of the impact of storage enhancement proposals on its system, and include in that analysis a detailed explanation of how such service enhancements will be accomplished or, if they cannot be accomplished, why that is the case. The written analysis was to be completed and provided by National Fuel no later than 60 days following the Commission's approval of the Settlement. If, as a result of these discussions, the participants agreed that one or more of the aforementioned storage service enhancements should be implemented on its system, on or before 120 days following the date of the Settlement, National Fuel agreed to make and support one or more tariff filings to implement the agreed upon storage service enhancements.

3. In the instant filing, consistent with Article X of the Settlement, National Fuel is proposing to modify its tariff to reflect the parties' agreement to make two changes to National Fuel's firm storage services. First, National Fuel proposes to permit a firm storage customer under Rate Schedules ESS and FSS to release a portion of its Maximum Storage Quantity (MSQ) with Maximum Daily Injection Quantities (MDIQs) and/or Maximum Daily Withdrawal Quantities (MDWQs) that represent a different percentage of its MSQ than the corresponding percentage under the releasing customer's service agreement.³ National Fuel refers to such releases as "decoupled storage capacity releases." Second, National Fuel proposes to provide firm storage customers under Rate Schedule ESS a limited right to make firm summer period withdrawals. National Fuel explains that these changes are intended to provide enhanced flexibility for its firm storage service customers. However, due to the uncertain operational impacts that these changes may have on its ability to meet its firm obligations, National Fuel has also proposed certain limitations designed to protect its system operations and its ability to render no-notice service.

4. National Fuel expects that its proposal to allow decoupled storage capacity releases will result in higher injection and withdrawal activity on its system. However, National Fuel is also proposing four limitations on decoupling.⁴ First, National Fuel is proposing to limit the term of any decoupled release to 24 months. National Fuel explains this limitation will allow for a review of the impact decoupling has had on its system operations. Second, National Fuel is also proposing to limit a customer's

³ This proposal is set forth new sections 10.2(a)(iii)(A) and 10.12 of its General Terms and Conditions (GT&C).

⁴ See National Fuel Gas Supply Corporation, FERC NGA Gas Tariff, National Fuel Tariff; [10 – Capacity Release, 10.12 – Decoupled Releases, 0.0.0.](#)

decoupled releases to 30 percent of its contracted storage capacity. A third limitation requires that decoupled releases of ESS capacity must be accompanied by an amount of EFT transportation service equal to the released injection and/or withdrawal rights. This limitation is intended to mitigate National Fuel's concern that the release of ESS storage capacity with disproportionately high withdrawal rights to a customer planning to take the gas off of National Fuel's system via another interstate pipeline may render National Fuel unable to physically meet its firm contractual obligations. Finally, National Fuel has proposed that the replacement shipper under a decoupled release would be subject to the lowest injection and withdrawal ratchets applicable to the releasing shipper's service regardless of the amount of its storage capacity it occupies.

5. National Fuel has also proposed revisions to section 2.3 of Rate Schedule ESS and GT&C section 33.1 to provide for firm summer period injections. In particular, National Fuel is proposing to provide ESS customers with firm summer period injection period withdrawal rights equal to 24 percent of each customer's MDWQ. National Fuel has also proposed that it may temporarily limit or suspend firm summer withdrawals as necessary to conduct pressure tests of its storage fields. Any limitation on the customer's firm summer period withdrawals would be subject to the notification requirements applicable to operational flow orders.

6. Finally, National Fuel states that the implementation will require significant changes to its automated business system. National Fuel states that changes to accommodate decoupled storage releases may take several months. Therefore, proposed language in GT&C section 10.12 states that decoupled releases will only be available "[f]ollowing the implementation of the necessary changes to Transporter's business system."⁵

7. Public notice of the filing was issued on November 20, 2012. Interventions and protests were due as provided in section 154.210 of the Commission's regulations.⁶ Pursuant to Rule 214,⁷ 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. Consolidated Edison Company of New York

⁵ See National Fuel Gas Supply Corporation, FERC NGA Gas Tariff, National Fuel Tariff; [10 – Capacity Release, 10.12 – Decoupled Releases, 0.0.0.](#)

⁶ 18 C.F.R. § 154.210 (2012).

⁷ 18 C.F.R. § 385.214 (2012).

(ConEd), NFD, NiSource Distribution Companies (NiSource), and The National Grid Gas Delivery Companies (National Grid)⁸ submitted comments.

8. On December 12, 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 Procedure⁹ 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 on this of the filing.

9. The parties filing comments generally support National Fuel's proposed modifications. However, several parties filed comments requesting additional clarifications from National Fuel and/or the Commission.

10. The parties emphasize that National Fuel's proposal is the product of ongoing settlement discussions, and that it represents neither a permanent nor a general solution. Specifically, ConEd, NiSource, and National Grid have, respectively, requested that the Commission: (1) clarify that approval of National Fuel's proposed storage service enhancements will be on a limited, experimental basis subject to further evaluation and Commission approvals; (2) require National Fuel to meet with its customers at the end of the 24-month evaluation period to discuss the continuation and/or modification of the proposed storage enhancements; and (3) consider the storage issues addressed by National Fuel's filing only on a case-by-case basis, and therefore, not deem any approval of National Fuel's proposals to be precedent for other companies.

11. ConEd also seeks clarifications related to two of National Fuel's proposed tariff provisions. First, ConEd notes that National Fuel's proposed GT&C section 10.12(a)

⁸ For the purposes of this proceeding, The National Grid Gas Delivery Companies are: The Brooklyn Union Gas Company d/b/a National Grid NY; KeySpan Gas East Corporation d/b/a National Grid; Boston Gas Company, Colonial Gas Company, collectively d/b/a National Grid; Niagara Mohawk Power Corporation d/b/a National Grid; and The Narragansett Electric Company d/b/a National Grid, all subsidiaries of National Grid USA, Inc.

⁹ 18 C.F.R. § 385.213(a)(2) (2012).

utilizes the phrase “Secondary Existing Shippers.”¹⁰ However, ConEd states that National Fuel’s tariff does not include a definition of this phrase and requests clarification of not only this phrase but also the resulting intent of the full sentence.

12. ConEd has also sought clarification of proposed Section 10.12(c) which provides that National Fuel’s obligation to accept gas for injection or to withdraw gas from storage for replacement shippers under a decoupled release:

...shall be *limited to* the percentage of the MDIQ associated with the highest percentage of occupied Storage Balance and to the percentage of MDWQ associated with the lowest percentage of occupied Storage Balance.

Specifically, ConEd requests clarification that National Fuel’s use of “limited to” does not suggest that there is any range in the applicable percentages of the MDIQ or MDWQ, but instead simply limits the replacement shipper to the lowest injection and withdrawal ratchets.

13. In its Answer, National Fuel responds to ConEd and NiSource. National Fuel agrees with NiSource that the Commission should not establish binding precedent in this proceeding. National Fuel also claims that its filing reflects the agreement of the parties. It argues, therefore, that no additional filing or other modification should be required, as requested by Con Edison.

14. In particular, National Fuel rejects the argument raised by ConEd, and raised in a different form by National Grid, that the Commission should only approve the tariff provisions on the condition that they are considered a pilot program requiring further evaluation and discussion. National Fuel notes that there has been no finding that any of its existing tariff provisions are unjust or unreasonable; rather, National Fuel agreed in the Partial Settlement to continue ongoing discussions regarding storage enhancements. National Fuel further argues that while it “believes that all the provisions in its filing are just and reasonable, it is not seeking a precedential ruling from the Commission to that

¹⁰ Proposed Section 10.12(a) states:

The shipper under the source agreement may in the aggregate release up to thirty percent (30%) of its MSQ in decoupled Releases. This thirty percent (30%) limitation does not apply to Secondary Existing Shippers.

effect.”¹¹ Nevertheless, it argues, ConEd should “pursue changes to the proposed terms and conditions under Section 5 of the Natural Gas Act.”¹²

15. Further, National Fuel argues that any revisions to the tariff proposal would be inappropriate, because, National Fuel claims, “an agreement was reached on these terms and conditions [and thus] National Fuel was obligated under Article X of the Partial Settlement to make and support this filing.”¹³ National Fuel further explains that some limitations on decoupled releases were operationally necessary.

16. Finally, National Fuel responds to ConEd’s request to clarify the term “Secondary Existing Shipper,” stating that the term is defined in existing GT&C section 10.8(a).

17. The Commission accepts National Fuel’s proposed tariff records for filing and suspends their effectiveness for the period set forth below. The parties have raised a number of substantive issues that warrant further scrutiny and deliberation before a determination on the justness and reasonableness of the filing can be made. We will provide the parties the opportunity to respond to National Fuel’s Answer, within 15 days from the date of this order, before making a final determination in this proceeding.

18. 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

¹¹ Answer at 3.

¹² *Id.*

¹³ *Id.* at 4.

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 May 19, 2013, or an earlier date if set by a subsequent Commission order.

By direction of the Commission.

Nathaniel J. Davis, Sr.,
Deputy Secretary.

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