

145 FERC ¶ 61,009
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

October 2, 2013

In Reply Refer To:
National Fuel Gas Supply Corporation
Docket No. RP13-189-001

David W. Reitz
Deputy General Counsel
National Fuel Gas Supply Corporation
6363 Main Street
Williamsville, NY 14221

Dear Mr. Reitz:

1. On June 5, 2013, National Fuel Gas Supply Corporation (National Fuel) filed certain tariff records¹ to be effective April 28, 2013, to revise its tariff provisions pertaining to reservation charge credits. The Indicated Shippers² filed comments concerning one of the revisions proposed by National Fuel. As discussed below, the Commission approves the revised tariff records, as clarified, effective April 28, 2013.

2. National Fuel initiated this proceeding pursuant to Article VIII 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, 2012.³ Article VIII of the Settlement provided, among other things, that National Fuel would file revised tariff records to amend the reservation charge crediting provisions of its tariff. Consistent with Article VIII, National Fuel filed revised tariff records on October 30, 2012, wherein it

¹ See Appendix.

² For the purposes of this proceeding, 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.

³ *National Fuel Gas Supply Corp.*, 140 FERC ¶ 61,114 (2012).

proposed to modify its firm transportation rate schedules to provide partial reservation charge credits to customers during instances of *force majeure* pursuant to the No Profit Method, and full credits during scheduled maintenance activities and other non-*force majeure* events. National Fuel also included various clarifications, limitations and exceptions on the applicability of its reservation charge crediting proposal.

3. A number of parties protested the filing and on November 28, 2012, the Commission issued an order,⁴ which accepted and suspended the tariff records, subject to refund and further Commission action, to become effective April 28, 2013, or an earlier date established by subsequent Commission order. The November 2012 Order provided the protestors with an opportunity to respond to National Fuel's detailed answer to their protests.

4. The protestors filed responses to National Fuel's answer and in turn, National Fuel filed an answer addressing the protestors' concerns. After considering the parties' pleadings, the Commission issued an order, on May 6, 2013, approving National Fuel's revised tariff records effective April 28, 2013, subject to conditions.⁵ Specifically, the May 2013 Order directed National Fuel to make several modifications to its proposals to bring its reservation charge crediting provisions into full compliance with Commission policy.

5. In the instant filing, National Fuel has proposed to modify each of its firm transportation rate schedules⁶ to reflect the following revisions in compliance with the May 2013 Order: (1) add Section 3.6(c)(v) to provide partial reservation charge credits based on the No Profit Method for outages of primary firm service required to comply with orders issued by PHMSA⁷ pursuant to 49 U.S.C. § 60139(c) occurring during the two-year period commencing April 28, 2013; (2) modify Section 3.6(b)(iv) to further clarify National Fuel's obligation to provide reservation charge credits for *force majeure* events affecting both National Fuel and an upstream or downstream pipeline; (3) modify Section 3.6(a) to clarify when reservation charge credits must be calculated based on nominations and when they must be calculated based on usage during the preceding seven days; (4) revise Section 3.6(b)(vi) to clarify that credits are not excused when a

⁴ *National Fuel Gas Supply Corp.*, 141 FERC ¶ 61,158 (2012) (November 2012 Order).

⁵ *National Fuel Gas Supply Corp.*, 143 FERC ¶ 61,103 (2013) (May 2013 Order).

⁶ These include National Fuel's FT, FT-S, EFT, and FST Rate Schedules.

⁷ PHMSA means the "Pipeline and Hazardous Materials Safety Administration."

shipper refuses service due to National Fuel's failure to meet its tariff obligations; and (5) remove language from Section 3.6(a) referring to the implementation of changes to National Fuel's business systems.

6. Public notice of the filing was issued on June 6, 2013. Protests were due as provided in section 154.210 of the Commission's regulations (18 C.F.R. § 154.210 (2013)). The Indicated Shippers filed comments on June 17, 2013.

7. In their comments, the Indicated Shippers contend National Fuel's filing does not fully comply with the May 2013 Order. Specifically, the Indicated Shippers argue the proposed revisions to Section 3.6(b)(iv) addressing outages due to operating conditions on upstream or downstream pipelines would limit the applicability of reservation charge credits for *force majeure* events solely with regard to National Fuel's ability to deliver gas. In contrast, they note the Commission's policy as set forth in *Paiute Pipeline Company*,⁸ requires reservation charge crediting if a *force majeure* event prevents the pipeline from providing service. The Indicated Shippers contend the proposed tariff language would not provide for reservation charge credits in situations where National Fuel may not be able to provide service, and hence, deliver gas due to *force majeure* events (e.g., the inability to schedule service). Therefore, they request the Commission direct National Fuel to modify Section 3.6(b)(iv) to require credits when it cannot "provide service" under a contract.

8. The Commission believes National Fuel's proposed tariff revisions sufficiently comply with the May 2013 Order and accepts National Fuel's proposed tariff records to be effective April 28, 2013.

9. With regard to the Indicated Shippers' concerns with the revisions to Section 3.6(b)(iv), the Commission does not believe any further modifications are necessary to this section. The Commission considers National Fuel's proposed language regarding its ability to "deliver gas" to be synonymous with its ability to "provide service," as directed by the Commission in *Paiute*.⁹ As such, National Fuel will be required to provide reservation charge credits to its customers consistent with the Commission's holding in

⁸ Indicated Shippers Comments at 2 (citing *Paiute Pipeline Co.*, 139 FERC ¶ 61,089 (2012) (*Paiute*)).

⁹ See *Paiute*, 139 FERC ¶ 61,089 at P 31 ([w]hen force majeure events prevent pipelines from providing service, the Commission requires those pipelines to provide partial reservation charge credits to shippers in order to share the risk of an event for which neither party is responsible).

Paiute in all instances where a *force majeure* event affects its ability to perform under its firm service agreements.

By direction of the Commission.

Nathaniel J. Davis, Sr.,
Deputy Secretary.

Appendix

National Fuel Gas Supply Corporation
FERC NGA Gas Tariff
National Fuel Tariff

Tariff Records Accepted Effective April 28, 2013

- 6.010: FT Rate Schedule, § 3 – Rates, 4.0.1
- 6.020: FT-S Rate Schedule, § 3 – Rates, 4.0.1
- 6.030: EFT Rate Schedule, § 3 – Rates, 5.0.1
- 6.040: FST Rate Schedule, § 3 – Rates, 4.0.1