

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Nora Mead Brownell, and Suedeen G. Kelly.

Public Service Commission of New York,
Pennsylvania Public Utilities Commission, and
Pennsylvania Office of Consumer Advocate

v.

Docket No. RP06-298-000

National Fuel Gas Supply Corporation

ORDER GRANTING RECONSIDERATION IN PART
AND GRANTING EXTENSION OF TIME

(Issued June 23, 2006)

1. In this order, the Commission grants in part reconsideration of the Order Setting Complaint for Hearing, Suspending Hearing for Settlement Procedures, and Denying Motion for Summary Disposition issued June 7, 2006, in the above-captioned proceeding (June 7, 2006 Order).¹ Further, the Commission grants a 15-day extension to comply with the June 7, 2006 Order as clarified herein.

I. Background

2. In the June 7, 2006 Order, in response to a complaint filed by the Public Service Commission of New York, the Pennsylvania Public Utility Commission, and the Pennsylvania Office of Consumer Advocate (collectively, the State Agencies), the Commission initiated an investigation of National Fuel's rates under section 5 of the Natural Gas Act and set the proceedings for hearing and settlement judge procedures. Ordering Paragraph (G) of the June 7, 2006 Order states:

¹ *Public Service Commission of New York v. National Fuel Gas Supply Corporation*, 115 FERC ¶ 61,299 (2006) (June 7, 2006 Order).

National Fuel shall file a cost and revenue study within 30 days of this order. The filing should include actual data for the latest 12 month period available as of the date of this order. The filing should include all of the schedules required for the submission of a section 4 rate proceeding as set forth in section 154.312 of the Commission's regulations.²

3. On June 9, 2006, National Fuel filed a Motion for Reconsideration and Extension of Filing Deadline (Motion) in the above-captioned proceeding. National Fuel requests that the Commission reconsider its decision to require the cost and revenue study to include the schedules set forth in section 154.312 and, instead, allow National Fuel to file a study in accordance with the information required by section 154.313 (18 C.F.R. § 154.313 (2005)). National Fuel asserts that this requirement is unprecedented and inconsistent with Commission precedent in *Indicated Shippers v. Sea Robin Pipeline Co.*³ It states that the materials required under section 154.312 are far more extensive than those required by section 154.313. National Fuel argues that the material required by section 154.312 is associated with a non-minor rate change or rate increase filing where the pipeline has the burden of proof. National Fuel states that this proceeding does not involve a major rate increase and that it does not have the burden of proof. Further, National Fuel asserts that section 154.313 satisfies the purpose of the cost and revenue study in this case, which is to provide a predicate for settlement discussions and data which the State Agencies can later use to develop their direct case and sustain their burden of proof. National Fuel also requests a 15-day extension to file the cost and revenue study under section 154.313. National Fuel asserts that if it is required to file the information required by section 154.312, it would need additional time and reserves the right to request it.

4. The State Agencies filed an Answer to National Fuel's Motion on June 13, 2006. The State Agencies oppose National Fuel's request to file the less voluminous information required by section 154.313. The State Agencies argue that, because it has been 10 years since the Commission last reviewed National Fuel's rates and because the Commission found that the State Agencies raised serious questions as to whether National Fuel's rates allow it to recover revenue substantially in excess of its costs, the Commission was correct to require National Fuel to file the information required by section 154.312. However, the State Agencies state that they do not oppose granting National Fuel a 15-day extension to file the information required by section 154.312. Further, the State Agencies state that, because National Fuel does not have a section 4 burden of proof in this case and the primary purpose of the required information is to provide the State Agencies with data to allow them to develop their direct case and to

² 18 C.F.R. § 154.312 (2005).

³ 76 FERC ¶ 61,151 (1996) (*Sea Robin*).

sustain their burden of proof, there is no reason why National Fuel need be required to file Statement P. The State Agencies assert that National Fuel will, instead, likely be filing testimony in response to the case-in-chief of other parties at the hearing. In addition, the State Agencies take the position that, because the June 7, 2006 Order indicated that National Fuel should file the “actual data for the latest 12 month period,” the Commission did not intend National Fuel also to file adjustment period cost-of-service data which would include nine months of forward-looking costs and revenues.⁴ The State Agencies assert that, in *Sea Robin*, the Commission made this point explicit.⁵

II. Discussion

5. We find no merit in the request to modify our June 7, 2006 Order to require that National Fuel meet only the filing obligations of section 154.313. Given the duration since National Fuel’s rates were last reviewed, the need to avoid the delays and burdens of further discovery, and the serious questions raised by the complaint, we find that the more extensive schedules and information required by section 154.312 are necessary to perform an appropriately thorough evaluation of National Fuel’s rates. National Fuel cites to *Sea Robin* to argue that National Fuel should be required to file only the information required by section 154.313. We find that its argument has no merit. In *Sea Robin*, the Commission established an investigation into the pipeline’s rates within six years of the order approving a settlement of its last rate case. Here, National Fuel’s rates were approved over 10 years ago. Moreover, the record in *Sea Robin* reflects that significant discovery occurred. Thus, based on the experience in *Sea Robin*, we find that the parties here should have the benefit of being provided the additional schedules and information required by section 154.312 at the outset of the proceeding, rather than having to obtain much, if not all, of the same additional information later through the discovery process.

6. However, upon reconsideration, the Commission modifies National Fuel’s filing obligation to relieve National Fuel from having to file Statement P and the adjustment period cost-of-service data required by section 154.303(a). The Commission agrees that, because National Fuel does not have a section 4 burden, and because National Fuel will be filing testimony in response to other parties, National Fuel should not be required to file Statement P at this juncture. In addition, although we clarify that the Commission’s intent was in fact to require National Fuel to meet the test period requirements of

⁴ Citing 18 C.F.R. § 514.303 (2005). Section 154.303(a)(1) and (2) provides, *inter alia*, that certain statements required by section 154.312 must be based upon a test period consisting of a base period of 12 consecutive months of the most recently available actual experience followed by an adjustment period of up to nine months immediately following the base period.

⁵ Citing *Sea Robin*, 76 FERC at p. 61,826, n.16.

section 154.303(a), which requires up to nine months of forward-looking adjustments from actual data,⁶ we agree that, under these circumstances, consistent with *Sea Robin*,⁷ there is no need to require National Fuel to include the adjustment period changes required by section 154.303(a) at this point in the proceeding. However, National Fuel may choose to include fully supported cost annualizations.

7. Finally, the Commission will grant National Fuel an extension of 15 days, to July 24, 2006, to file the schedules and information required by Ordering Paragraph (G) of the June 7, 2006 Order as modified above. Consistent with this extension of time, we will extend by 15 days the date by which the settlement judge must file the initial status report with the Commission and the Chief Judge as required by Ordering Paragraph (C) of the June 7, 2006 Order.

The Commission orders:

(A) Reconsideration of the June 7, 2006 Order is granted in part, as discussed above.

(B) The filing deadlines established in Ordering Paragraphs (C) and (G) of the June 7, 2006 order are extended as set forth above.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.

⁶ Contrary to the State Agencies' understanding, the direction regarding the filing of actual data only was included to clarify the ending date of the twelve month base period required by section 154.303(a)(1), given that the regulation establishes that date in relation to the filing date of a section 4 rate filing which, of course, was not made in this case. Section 154.303(a)(1) provides in pertinent part: "The last day of the base period may not be more than 4 months prior to the filing date."

⁷ *Sea Robin*, 76 FERC at p. 61,826, n. 16.