

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Sudeen G. Kelly, Marc Spitzer,
Philip D. Moeller, and Jon Wellinghoff.

National Fuel Gas Supply Corporation

Docket Nos. RP06-291-001 and
RP06-291-002

ORDER ON TARIFF SHEETS

(September 29, 2006)

1. On May 26, 2006 and June 23, 2006, as revised on June 30, 2006, in Docket Nos. RP06-291-001 and RP06-291-002, respectively, National Fuel Gas Supply Corporation (National Fuel) filed *pro forma* tariff sheets in compliance with the April 28, 2006 Commission order issued in Docket No. RP06-291-000 (April 28, 2006 Order).¹ The April 28, 2006 Order suspended National Fuel's proposed tariff sheets² for five months, subject to refund and conditions, until September 30, 2006, or an earlier date specified by subsequent Commission order. This order approves the tariffs sheets, which are listed in Appendix A, effective September 30, 2006, subject to National Fuel filing, within thirty (30) days of the issuance of this order, revised tariff sheets to become effective on September 30, 2006, reflecting the proposed revisions contained in the *pro forma* tariff sheets listed in Appendix C.

I. Background

2. In its March 31, 2006 Filing in Docket No. RP06-291-000 (March 31, 2006 Filing) National Fuel proposed to: (1) revise its right of first refusal (ROFR) provisions, including its bidding periods; (2) add an expansion project capacity reservation provision; (3) revise its open season procedures; (4) add provisions pertaining to mutually agreed-upon combinations, terminations or reductions of service agreements; (5) clarify its pressure obligations and include minimum receipt and delivery pressures in service agreements; (6) consolidate and revise the provisions pertaining to permissible discount

¹ *National Fuel Gas Supply Corp.*, 115 FERC ¶ 61,127 (2006).

² *See* Appendix A.

transactions; (7) eliminate its *CIG/Granite State* policy tariff provisions,³ and (8) make other conforming or miscellaneous changes. Multiple parties filed timely protests and interventions in response to the March 31, 2006 Filing.⁴

3. The April 28, 2006 Order directed National Fuel to submit a matrix identifying: (1) the tariff section number that corresponds to each issue discussed in its transmittal; (2) all associated tariff sheet numbers, and (3) the item and tariff sheet numbers for any corresponding tariff changes made necessary by a specific revision proposed by National Fuel. Additionally, the April 28, 2006 Order directed National Fuel to submit information, within thirty days of the date of the order, to justify its proposals to reduce the bidding period contained in its current tariff from five months to ten days and to reduce the time period within which the existing shipper must exercise its right to match the bid from thirty to ten days. The April 28, 2006 Order also directed National Fuel to explain whether the existing five-month and thirty-day periods caused it any complications or hardships in awarding bids. In the April 28, 2006 Order, the Commission encouraged National Fuel to continue a dialogue with its customers with a view toward accommodating their concerns through further revisions to its proposals.⁵

II. The Filings

May 26, 2006 Filing

4. In its May 26, 2006 Filing (Docket No. RP06-291-001), National Fuel filed the matrix and redlined tariff sheets, as required by the April 28, 2006 Order. The May 26, 2006 Filing also addressed questions raised in the April 28, 2006 Order concerning National Fuel's proposed ROFR revisions to sections 11.4 (bidding period) and 11.6

³ See *Colorado Interstate Gas Co.*, 95 FERC ¶ 61,321 (2001); *Granite State Transmission Co.*, 96 FERC ¶ 61,273 (2001).

⁴ KeySpan Delivery Companies (including The KeySpan Delivery Companies are: The Brooklyn Union Gas Company d/b/a KeySpan Energy Delivery NY; KeySpan Gas East Corporation d/b/a KeySpan Energy Delivery LI; and Boston Gas Company, Colonial Gas Company, EnergyNorth Natural Gas, Inc., and Essex Gas Company (collectively "KeySpan Energy NE"), all subsidiaries of KeySpan Corporation (KeySpan); Columbia Gas of Pennsylvania, Inc. (CPA); Consolidated Edison Company of New York, Inc. (Con Edison); The Peoples Natural Gas Company, d/b/a Dominion Peoples (Dominion Peoples); National Fuel Gas Distribution Corporation (Distribution); and Elizabethtown. On April 21, 2006, Dominion Peoples filed a supplemental protest.

⁵ The April 28, 2006 Order also ordered that the intervenors could file additional comments relating to National Fuel's answer to the protest and additional information requested within 30 days of National Fuel's compliance filing (May 26, 2006 Filing).

(matching period) of the General Terms and Conditions of National Fuel's FERC Gas Tariff (GT&C), which are described below. The May 26, 2006 Filing also included *pro forma* tariff sheets containing tariff changes that National Fuel agreed to make in its answer to the comments and protests to the March 31, 2006 Filing.⁶ National Fuel indicated that it would supplement the May 26, 2006 Filing with any revisions agreed upon subsequent discussions with customers. It did so on June 23, 2006 and June 30, 2006, as discussed, *infra*.

5. Generally, with regard to its justification for shortening its ROFR bidding and matching periods, National Fuel explained that under its current tariff an existing long-term shipper can exercise a ROFR only if its agreement is terminated by National Fuel. National Fuel asserts that, since it has never terminated any contracts eligible under its current ROFR provisions, it has not had any experience with the five-month bidding period or the thirty-day matching period.

a. Shortening the Bidding Period - GT&C Section 11.4

6. In its March 31, 2006 Filing, National Fuel proposed to replace the existing five-month bidding period in GT&C section 11.4 with a proposed bidding period of ten business days, which it asserted was consistent with the precedent established in *Dominion Transmission, Inc.*⁷ In response to the March 31, 2006 Filing, Columbia Gas of Pennsylvania, Inc. (CPA) protested that proposed GT&C section 11.4 would shorten the bidding period for capacity subject to ROFR rights from five months to ten business days and argued that the end of the bidding period should be no further from the contract termination date than the end of the existing five-month bidding period.

7. In the April 28, 2006 Order, the Commission directed National Fuel to justify its proposal to shorten its ROFR bidding period and to explain whether the existing five-month period caused it any complications or hardships in awarding bids.

8. In its May 26, 2006 Filing, National Fuel states that although it has not conducted a ROFR open season, it has had substantial experience with open seasons for available capacity under section 26 of its GT&C, which pertains to procedures for allocating firm capacity. National Fuel claims it has found that, regardless of the length of the bidding period, shippers wait until the last day or two (and often the last hour or two) of the bidding period to submit their bids since they want the latest available market information when placing bids on capacity. According to National Fuel, postponing the bid as long as possible allows shippers to know as much as possible before bidding.

⁶ See Appendix B.

⁷ 111 FERC ¶ 61,135 (2005).

9. In its May 26, 2006 Filing, National Fuel also argues that a five-month bidding period is therefore excessive, would serve only to substantially delay the bidding process and would tend to discourage bidding by shippers that are evaluating transportation or storage alternatives with other pipelines that require earlier commitments. National Fuel states that the Commission has permitted many pipelines to adjust their minimum ROFR bidding periods, in some cases to a time period shorter than that proposed by National Fuel.⁸ National Fuel believes that its current five-month period is the longest of any major pipeline serving the Northeast, if not the entire country, and is far longer than the minimum bidding periods of several pipelines serving the Northeast.⁹

10. In its May 26, 2006 Filing, National Fuel further states that while the Commission recently rejected a ROFR bidding period shorter than its proposed period,¹⁰ a ten-business-day minimum period is within the range the Commission has previously found acceptable and is the same bidding period recently approved for Dominion Transmission, which is a major competitor of National Fuel.¹¹ National Fuel argues that requiring it to continue a five-month bidding period would put National Fuel at a competitive disadvantage relative to Dominion Transmission's ten-business-day bidding period, since Dominion Transmission would be able to resell capacity under expiring or terminating storage and transportation agreements earlier in the planning cycle for annual service.

b. Shortened ROFR Matching Period – GT&C Section 11.6

11. In its March 31, 2006 Filing, National Fuel proposed to revise section 11.6 of the GT&C to reduce the ROFR time period that an existing shipper has to match the best bid from thirty days to a period of ten days. In response to the comments of several shippers opposed to the proposed ten-day period in its March 31, 2006 Filing, National Fuel stated in its answer that it would agree to a matching period of fifteen business days, the time

⁸ *PG&E Transmission, Northwest Corp.*, 96 FERC ¶ 61,070 (2001) (5 business days); *Columbia Gas Transmission Corp.*, 103 FERC ¶ 61,160 (2003) (5 business days).

⁹ *Citing Columbia Gas Transmission Corporation*, FERC Gas Tariff, Second Revised Volume No. 1, GT&C § 4.2(a)(1) (5 business days); *Dominion Transmission, Inc.*, FERC Gas Tariff, Third Revised Volume No. 1, GT&C § 24.2(F)(1) (10 business days); *Iroquois Gas Transmission System, L.P.*, FERC Gas Tariff, First Revised Volume No. 1, GT&C § 29.6(d) (5 days); *Transcontinental Gas Pipe Line Corporation*, FERC Gas Tariff, Third Revised Volume No. 1, GT&C § 48.2 (15 days).

¹⁰ *Northern Border Pipeline Co.*, 115 FERC ¶ 61,126 at P 14 (2006) (5 days).

¹¹ *Dominion Transmission, Inc., Order on Technical Conference*, 111 FERC ¶ 61,135 at P 38 (2005); *see also Dominion Transmission, Inc.*, 112 FERC ¶ 61,139 (2005).

period recently adopted by the Commission in *Dominion Transmission, Inc.*¹² The April 28, 2006 Order directed National Fuel to justify its proposal to shorten its ROFR matching period from thirty days to ten days and to explain whether the existing thirty-day periods caused it any complications or hardships in awarding bids.

12. The *pro forma* tariff sheets that National Fuel included in the May 26, 2006 Filing reflected, along with various “housekeeping” changes, the following changes to GT&C section 11.6 - Notification of and Right to Match Best Bid – to: (i) incorporate a matching period of fifteen business days; (ii) provide the existing shipper with the ability to match the best bid(s) with a combination of rate and term equivalent to the best bid(s) on a net present value basis, consistent with National Fuel’s posted valuation criteria; (iii) clarify the language regarding a ROFR exercise as to a quantitative portion of the capacity bid upon; and (iv) change the language concerning the allocation of a reduction in contract quantity among receipt and delivery points as proposed in National Fuel’s April 18, 2006 answer.

13. In its May 26, 2006 Filing, citing to *Dominion Transmission, Inc.*, National Fuel explained that it had agreed in its answer to provide a matching period of fifteen business days. National Fuel further explained that a fifteen-business-day matching period should provide enough time for the existing shipper to make an informed decision about exercising its ROFR. National Fuel argues that the longer the matching period, the longer the winning bidder will have to wait to learn whether it can count on utilizing the capacity at issue and therefore a matching period that is too long could discourage some shippers from bidding.

14. In its May 26, 2006 Filing, National Fuel stated that the Commission has found matching periods shorter than 30 days to be adequate in several cases.¹³ National Fuel asserted that it continues to believe that a ten-day matching period is sufficient, but it remains willing to accept a matching period of fifteen business days, consistent with *Dominion Transmission, Inc.*¹⁴

June 23, 2006 Filing

15. In its June 23, 2006 Filing (Docket No. RP06-291-002), National Fuel included *pro forma* tariff sheets that resulted from a June 2, 2006 meeting with its customers and

¹² 111 FERC ¶ 61,135 (2005).

¹³ *Id.*; citing Columbia Gas Transmission Corporation, FERC Gas Tariff, Second Revised Volume No. 1 GT&C § 4.1(c)(4) (15 business days); Transcontinental Gas Pipe Corporation, FERC Gas Tariff, Third Revised Volume No. 1, GT&C § 48.4 (15 business days).

¹⁴ 111 FERC ¶ 61,135 (2005).

two subsequent e-mail circulations.¹⁵ The June 23, 2006 Filing also included changes in addition to the changes shown in the *pro forma* sheets accompanying the May 26, 2006 Filing.¹⁶

16. In its June 23, 2006 Filing, National Fuel states that follow-up e-mail circulations suggest that there is only one issue about which some disagreement may remain – whether the ROFR process should occur closer to the termination date than it would under the timeline proposed by National Fuel. National Fuel has included language to revise section 11.3 of the GT&C to preclude it from posting ROFR notices for bidding earlier than twelve months prior to the termination date of the applicable contract. National Fuel argues that this revised timeline is consistent with the one recently approved by the Commission in *Dominion Transmission, Inc.*¹⁷ National Fuel therefore asserts that the Commission should approve its proposed timeline.

17. The June 23, 2006 Filing included, among numerous other “housekeeping” changes, proposed changes to the tariff provisions concerning capacity release to permit releasing shippers to release capacity at rates based on published index prices consistent with proposed GT&C section 39(f), as well as changes to provisions regarding notice of termination, reservation of capacity, pressure, and waivers.

18. In addition, the following proposed changes to GT&C section 11.6 (ROFR matching period) were included in the June 23, 2006 Filing. GT&C section 11.6 would be further revised to address notice and notice delivery provisions. The language in GT&C section 11.6 would be revised to clarify the existing shipper’s right to exercise its ROFR with respect to a quantitative portion of the capacity bid upon, as well as the language regarding the allocation of a reduction among primary receipt and delivery points. Under the proposed language, a pro-rata allocation of the reduction across primary points would be the default, however, the shipper can specify a non-pro-rata allocation and National Fuel could require a different allocation if the shipper’s proposal is operationally infeasible or would result in a reduction in its per unit reservation rate for capacity. National Fuel states that this rate-related limitation is consistent with *Tennessee Gas Pipeline Company*.¹⁸

¹⁵ On June 30, 2006, National Fuel filed a Revised *Pro Forma* Tariff Sheet No. 370 to include a word that had been inadvertently omitted, but which it had agreed to incorporate.

¹⁶ See Appendix C.

¹⁷ 111 FERC ¶ 61,135 (2005).

¹⁸ 95 FERC ¶ 61,272 (2001).

19. National Fuel asserts that, while it charges postage-stamp rates for most transportation transactions on its system, transportation from the Niagara Import Point is subject to zoned rates (FT and FT-S Rate Schedules, section 3.5). National Fuel therefore argues that the rate limitation in GT&C section 11.6 is necessary so that a shipper with delivery points in more than one zone would not be entitled to achieve a geographic reduction of its capacity through the ROFR process by allocating a disproportionate share of the reduced quantity to the most distant and expensive zone. In addition, National Fuel proposes to further revise section 11.6 of the GT&C to require National Fuel to provide a written confirmation of a ROFR exercise as to the entire contract quantity within ten business days of shipper's election, and to provide ten business days for the shipper to execute and return the contract tendered when the election is for less than the entire quantity.

20. National Fuel states in its June 23, 2006 Filing that it is authorized to represent that KeySpan; Con Edison; Dominion Peoples; Distribution; and PSEG Energy Resources & Trade LLC, are not opposed to the changes reflected in the tendered *pro forma* tariff sheets. In addition, National Fuel stated that it was advised that a sixth party, Pivotal Utility Holdings, Inc. d/b/a Elizabethtown Gas is not opposed to the proposed revisions. CPA is the only party that filed a protest in Docket No. RP06-291-000 that has not authorized National Fuel to represent that it did not object to the modifications.

III. Public Notice

21. Public notice of National Fuel's May 23, 2006 Filing (Docket No. RP06-291-001) was published on June 15, 2006 in the *Federal Register*, 71 Fed. Reg. 35,882 (2006). Public notice of National Fuel's June 23, 2006 Filing (Docket No. RP06-291-002) was published in on July 18, 2006 in the *Federal Register*, 71 Fed. Reg. 42,372 (2006). Interventions and protests were due as provided in section 154.210 of the Commission's regulations. No protests or adverse comments were filed in either docket.

IV. Discussion

22. For the reasons submitted by National Fuel, as summarized in the body of this order, the Commission accepts all tariff revisions submitted by National Fuel in its May 26, 2006, June 23, 2006 and June 30, 2006 Filings. Based upon a review of the filings, and as discussed above, the Commission finds the proposed tariff sheets to be just and reasonable and consistent with Commission precedent.

The Commission orders:

The Commission accepts the tariff sheets listed in Appendix A, to be effective September 30, 2006, subject to National Fuel filing, within thirty (30) days of the issuance of this order, revised tariff sheets to become effective on September 30, 2006, reflecting the proposed additional revisions contained in the *pro forma* tariff sheets listed in Appendix C.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.

APPENDIX A

National Fuel Gas Supply Corporation

Tariff Sheets to be Effective September 30, 2006, Subject to Condition
FERC Gas Tariff, Fourth Revised Volume No. 1

Tenth Revised Sheet No. 2	First Revised Sheet No. 453
Original Sheet No. 2A	Original Sheet No. 480
Second Revised Sheet No. 24	Original Sheet No. 481
Third Revised Sheet No. 27	Original Sheet No. 482
Third Revised Sheet No. 27A	Original Sheet No. 483
Second Revised Sheet No. 31	Original Sheet No. 484
Second Revised Sheet No. 34	Original Sheet No. 485
First Revised Sheet No. 34A	Original Sheet No. 486
Second Revised Sheet No. 36	Original Sheet No. 487
Third Revised Sheet No. 36.01	Original Sheet No. 488
Fourth Revised Sheet No. 36D	Sheet Nos. 489 - 674
Second Revised Sheet No. 38	Second Revised Sheet No. 787
Original Sheet No. 38A	Second Revised Sheet No. 787A
Fourth Revised Sheet No. 40	Third Revised Sheet No. 788
Second Revised Sheet No. 40A	Third Revised Sheet No. 789
Original Sheet No. 66A	Third Revised Sheet No. 790
Third Revised Sheet No. 70	Original Sheet No. 791.01
Third Revised Sheet No. 70A	Original Sheet No. 791.02
Second Revised Sheet No. 74	Original Sheet No. 791.03
Third Revised Sheet No. 83	Third Revised Sheet No. 791A
First Revised Sheet No. 93	Third Revised Sheet No. 791B
Third Revised Sheet No. 156	Third Revised Sheet No. 791C
First Revised Sheet No. 165	Second Revised Sheet No. 791D
First Revised Sheet No. 174	Third Revised Sheet No. 791F
Second Revised Sheet No. 184	Original Sheet No. 791F.01
Second Revised Sheet No. 196	Original Sheet No. 791F.02
Second Revised Sheet No. 367	Original Sheet No. 791F.03
Second Revised Sheet No. 368	Second Revised Sheet No. 792
First Revised Sheet No. 369	Second Revised Sheet No. 793
Second Revised Sheet No. 370	Second Revised Sheet No. 793A
Original Sheet No. 370A	Second Revised Sheet No. 796
First Revised Sheet No. 371	Original Sheet No. 796A
Second Revised Sheet No. 378	Original Sheet No. 796B
Third Revised Sheet No. 407	Original Sheet No. 796C
Third Revised Sheet No. 451	Second Revised Sheet No. 798
First Revised Sheet No. 452	Second Revised Sheet No. 798A

Second Revised Sheet No. 799

Second Revised Sheet No. 800

Second Revised Sheet No. 802

Original Sheet No. 802A

Original Sheet No. 802B

Original Sheet No. 802C

Third Revised Sheet No. 804

Third Revised Sheet No. 808

First Revised Sheet No. 808A

Third Revised Sheet No. 813

Second Revised Sheet No. 813A

Third Revised Sheet No. 814

Second Revised Sheet No. 817

Third Revised Sheet No. 819

First Revised Sheet No. 819A

Third Revised Sheet No. 820

Second Revised Sheet No. 823

Third Revised Sheet No. 824

First Revised Sheet No. 824A

APPENDIX B

National Fuel Gas Supply Corporation
Pro Forma Tariff Sheets filed May 26, 2006, in Docket No. RP06-291-001
FERC Gas Tariff, Fourth Revised Volume No. 1

Pro Forma Sheet No. 368
Pro Forma Sheet No. 369
Pro Forma Sheet No. 370
Pro Forma Sheet No. 485
Pro Forma Sheet No. 791.01
Pro Forma Sheet No. 791E
Pro Forma Sheet No. 791F
Pro Forma Sheet No. 796
Pro Forma Sheet No. 801
Pro Forma Sheet No. 802
Pro Forma Sheet No. 817
Pro Forma Sheet No. 823

APPENDIX C

National Fuel Gas Supply Corporation
RP06-291-001 Pro Forma Tariff Sheets
FERC Gas Tariff, Fourth Revised Volume No. 1

Pro Forma Tariff Sheets Tendered with the June 23, 2006 Filing

Pro Forma Sheet No. 2A
Pro Forma Sheet No. 359
Pro Forma Sheet No. 359A
Pro Forma Sheet No. 368
Pro Forma Sheet No. 368A
Pro Forma Sheet No. 369
Pro Forma Sheet No. 370
Pro Forma Sheet No. 370A
Pro Forma Sheet No. 480
Pro Forma Sheet No. 485
Pro Forma Sheet No. 488
Pro Forma Sheet No. 791.01
Pro Forma Sheet No. 791E
Pro Forma Sheet No. 791F
Pro Forma Sheet No. 796
Pro Forma Sheet No. 801
Pro Forma Sheet No. 802
Pro Forma Sheet No. 817
Pro Forma Sheet No. 823

Pro Forma Tariff Sheet Tendered with the June 30, 2006 Filing

Revised Pro Forma Sheet No. 370