125 FERC ¶ 61,035
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

October 14, 2008

In Reply Refer To:
National Fuel Gas Supply Corporation
Docket No. RP08-633-000

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

Attention: Antoinetta Mucilli, Senior Attorney

Reference: Petition for Waiver of Tariff

Dear Ms. Mucilli:

1. On September 25, 2008, National Fuel Gas Supply Corporation (National Fuel) filed a petition requesting waiver of sections 28 and 31.2(a)(i)(B) of the General Terms and Conditions (GT&C) of its FERC Gas Tariff and such other waivers relating to cost contribution and financial assurances as may be required to permit a proposed transaction with Seneca Resources Corporation to proceed as contemplated by the parties. National Fuel requests that the Commission grant the requested waivers by October 15, 2008. As discussed below, the Commission grants the waivers requested by National Fuel, subject to certain conditions as detailed below.

2. National Fuel states that it has entered into a Precedent Agreement with Seneca Resources Corporation (Seneca), which provides that National Fuel will transport on a firm basis an additional 4,000 Dth per day of natural gas for a primary term of 16 years and three months, subject to the satisfaction of certain conditions. National Fuel asserts that the firm transportation (FT) service will require certain modifications, including enhanced automation, to National Fuel's Costello Compressor Station in Potter County, Pennsylvania.[1] National Fuel contends that the automation of the facilities will not alter the capacity of National Fuel's mainline or the compressor.

[1] National Fuel states that these upgrades involve the installation of engine and compressor controls and programmable panels to allow National Fuel to remotely start and stop, and load and unload, the compressor as required. National Fuel asserts that all work will be performed within the existing station and within the existing compressor building.

3. National Fuel states that, pursuant to section 28 of the GT&C of National Fuel's tariff, National Fuel could require Seneca to provide reimbursement up-front for the cost of the modifications to the Costello Compressor Station. However, according to National Fuel, the FT service agreement with Seneca sets forth non-conforming language which provides that National Fuel will not require reimbursement as long as Seneca performs under the firm transportation contract. Section VIII(10)(a) of the FT service agreement provides that National Fuel could require contribution from Seneca equal to its estimated facility cost of $491,000, reduced by $8,183 each month, if Seneca materially defaults in its payment obligations under the FT service agreement, or in the event Seneca becomes subject to a bankruptcy, reorganization, insolvency or similar proceeding.

4. In addition, section VIII(10)(b) of the FT service agreement provides that Seneca will provide security in an acceptable form to National Fuel, drawable in the event of default by Seneca, up to $491,000. During the primary term, the required amount of the security will exceed the three months of reservation charges under the agreement, or $40,334.40. Because of this, National Fuel asserts it requires a waiver of the credit requirement in GT&C section 31.2(a)(i)(B), which limits any collateral requirement to the costs of three months of service.[2] National Fuel further states that on the fifth anniversary of the commencement of the FT service agreement, it may reduce the amount required by the creditworthiness provisions of its tariff.

5. National Fuel asserts that the Commission has previously granted National Fuel's requests for waiver of the three-month limitation in connection with new facility projects.[3] National Fuel further asserts that the Commission has recognized that "when pipelines agree to construct lateral facilities for the shipper, the Commission has found it appropriate for the pipeline to receive collateral up to the full cost of the facilities."[4] National Fuel contends that the Commission has also stated it has no policy against

---

[2] GT&C section 31.2(a)(i)(B) provides that "(a) Transporter shall not be required to perform or to continue service on behalf of any Shipper who is or has become insolvent or who, at Transporter's request, fails within a reasonable period to demonstrate credit worthiness; provided, however, such Shipper may receive service . . . (i) if Shipper prepays for such service or furnishes good and sufficient security, as determined by Transporter in its reasonable discretion, in an amount equal to . . . (B) the cost of performing the service requested by Shipper for a three-month period."

[3] National Fuel cites, e.g., 124 FERC ¶ 61,023 (2008); 83 FERC ¶ 61,058 (1998); 80 FERC ¶ 61,040 (1997); and 61 FERC ¶ 61,192 (1992).

[4] National Fuel cites, *Tennessee Gas Pipeline Company*, 103 FERC ¶ 61,275, at P 26 (2003), *citing*, *Natural Gas Company of America*, 102 FERC ¶ 61,355, at P 80-85 (2003).

deferred aid-in-construction mechanisms, as long as they are not tied to throughput levels.[5] National Fuel maintains that the mechanism in the FT service agreement with Seneca would not be triggered by throughput levels.

6. National Fuel states that the FT service agreement will be executed following the satisfaction of all conditions. National Fuel also states that it intends to file a revision to its GT&C section 34 to identify the FT service agreement with Seneca as non-conforming. Finally, National Fuel asserts that it is authorized to state that Seneca fully supports the instant request for waiver.

7. Public notice of National Fuel's filing was issued on September 30, 2008, with interventions and protests due by October 7, 2008. Pursuant to Rule 214 (18 C.F.R. § 385.214 (2008)), all timely filed motions to intervene and any motions 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. No interventions, adverse comments or protests were filed.

8. National Fuel's proposal to exempt Seneca from the upfront reimbursement requirement, subject to Seneca providing collateral up to the cost of the facilities, is permitted by Commission policy.[6] Therefore, the Commission grants National Fuel's instant waiver requests in order to permit National Fuel to proceed with its proposed transaction with Seneca, subject to certain conditions. First, National Fuel is required to file an executed copy of the non-conforming FT service agreement with Seneca no less than 30 days but not more than 60 days prior to the commencement of service, and, as it states it intends to do in the instant filing, file a revised section 34 of the GT&C of its tariff to list the agreement as a non-conforming service agreement. Second, in compliance with the Commission's *Order on Modification of Negotiated Rate Policy* in Docket No. PL02-6-000, National Fuel is directed to file the non-conforming service agreement, and to delineate clearly the differences between the negotiated contractual terms of the agreement and that of its Rate Schedule FT form of service agreement in redline and strikeout.[7]

9. Finally, this is at least the fourth time since 2003 in which National Fuel has requested waivers of the facilities cost reimbursement requirements of sections 28 of its GT&C and the collateral limits in section 31.2(a)(i)(b) in order to permit it to enter into

---

[5] National Fuel cites, *Southern Natural Gas Company*, 51 FERC ¶ 61,186 (1990). National Fuel also states the Commission has granted such requests by National Fuel in 106 FERC ¶ 61,335 (2004) and 105 FERC ¶ 61,159 (2003).

[6] *See Calpine Energy Services, L.P. v. Southern Natural Gas Company*, 103 FERC ¶ 61,273, at n.20 (2003).

[7] *Natural Gas Pipeline Negotiated Rate Policies and Practices*, 104 FERC ¶ 61,134, at P 33 (2003).

this type of arrangement.[8] Such an arrangement, permitting a shipper to avoid the upfront reimbursement requirement, is clearly beneficial to some shippers. Moreover, the very fact National Fuel has agreed to do this on four occasions shows that the desire for such an arrangement is not limited to shippers with unique characteristics.[9] Therefore, the Commission finds that, if National Fuel desires to continue offering this type of arrangement to shippers, it must file a generally applicable tariff provision offering such arrangements pursuant to not unduly discriminatory conditions.[10] While the Commission is granting the instant waiver request, it will no longer permit National Fuel to offer this type of arrangement through a case-by-case series of tariff waiver requests.

By direction of the Commission.

Nathaniel J. Davis, Sr.,
Deputy Secretary.

cc: All Parties
Public File

---

[8] 124 FERC ¶ 61,023 (2008), 106 FERC ¶ 61,335 (2004) and 105 FERC ¶ 61,159 (2003).

[9] *Contrast ANR Pipeline Co.*, 97 FERC ¶ 61,075 (2001), *cited* in *Columbia Gas Transmission Corp*., 97 FERC ¶ 61,221, at 62,003 (2001).

[10] *Southern Natural Gas Co*., 123 FERC ¶ 61,263 (2008).