

137 FERC ¶ 61,171
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Philip D. Moeller, John R. Norris,
and Cheryl A. LaFleur.

National Fuel Gas Supply Corporation

Docket No. RP12-88-000

ORDER ACCEPTING AND SUSPENDING TARIFF RECORDS
SUBJECT TO REFUND AND ESTABLISHING
HEARING PROCEDURES

(Issued November 30, 2011)

1. On October 31, 2011, National Fuel Gas Supply Corporation (National Fuel) filed a request under section 4 of the Natural Gas Act (NGA) to implement a general rate increase. In its filing, National Fuel submitted two sets of proposed tariff records with alternative rate structures for consideration by the Commission: actual tariff records¹ as its Base Case and *pro forma* tariff records as its Preferred Case. The proposed tariff records reflecting National Fuel's Base Case include rates based on the pipeline's current rate structure, and new and revised tariff provisions related to its operations. National Fuel proposes that the Base Case tariff records be placed into effect on December 1, 2011 or, upon motion, at the end of any suspension period. The *pro forma* tariff proposal, National Fuel's Preferred Case, reflects the elimination of National Fuel's existing Niagara rate zones by rolling the costs of the Niagara facilities into National Fuel's system-wide cost of service. The Preferred Case also includes non-rate tariff proposals identical to those in the Base Case. National Fuel filed the *pro forma* Preferred Case on a prospective basis only.

2. For the reasons discussed below, the Commission: 1) accepts and suspends the tariff records listed in Appendix A to be effective on May 1, 2012, subject to refund and the outcome of hearing procedures established herein; and 2) accepts the tariff record listed in Appendix B to be effective December 1, 2011. The Commission also directs that National Fuel's *pro forma* proposal be explored further at the hearing established by this order.

¹ See Appendix A and Appendix B.

3. The Commission is also, pursuant to NGA section 5, requiring National Fuel to modify its existing tariff concerning reservation charge credits during *force majeure* and non-*force majeure* events or explain why it should not be required to do so. Any changes the Commission requires in National Fuel's reservation charge crediting provisions will not take effect until after the Commission acts on National Fuel's filing to comply with this order. The Commission directs National Fuel to submit its compliance filing within 30 days of the date that this order issues.

I. Background

4. National Fuel engages in the gathering, transportation, and storage of natural gas subject to the Commission's jurisdiction under the NGA. National Fuel's operations are located primarily in New York and Pennsylvania, where it provides transportation and storage services to local distribution companies (LDCs) and other customers. In addition, National Fuel provides gathering services to Appalachian natural gas producers in Pennsylvania and New York.

5. National Fuel has not proposed changes to its rates for nearly 17 years, since its last general section 4 rate case resulting from a settlement agreement in Docket No. RP95-31.² However, on April 7, 2006, the New York Public Service Commission (NYPSC), Pennsylvania Public Utility Commission, and the Pennsylvania Office of Consumer Advocate filed a complaint in Docket No. RP06-298 alleging, among other things, that National Fuel's rates were unjust and unreasonable under section 5 of the NGA. By settlement agreement approved February 9, 2007, National Fuel's 1996 settlement rates were adjusted; Article V of the 2006 settlement agreement also contained a "come-back provision," requiring National Fuel to make a section 4 filing with rates to be effective December 1, 2011.³

II. Details of the Filing

6. National Fuel asserts that, since the 2006 Settlement, there have been numerous changes in the natural gas marketplace affecting its current operations. Notably, National Fuel cites the following as evidence of some of the changes in natural gas marketplace: 1) the increase in shale gas production and the development of new pipeline infrastructure for transportation of shale gas; 2) the reversal of the basis differential

² *National Fuel Gas Supply Corporation*, 74 FERC ¶ 61,165 (1996).

³ *See Public Service Commission of New York, Pennsylvania Public Utility Commission and Pennsylvania Office of Consumer Advocate v. National Fuel Gas Supply Corporation*, 118 FERC ¶ 61,091 (2007) (2006 Settlement).

between the Niagara import point and the Northeast; 3) the disappearance of the summer/winter differential in gas prices; and 4) the shift in its customer base from LDCs toward producers. National Fuel avers these changes have resulted in contract terminations, as well as an increase in the need for discounted agreements to retain its existing load. National Fuel also represents that it has experienced increased costs, particularly labor and pension costs, environmental compliance costs, and maintenance and integrity management costs. National Fuel explains that these circumstances require it to revise its rates to have an opportunity to recover its operating costs, earn a reasonable rate of return on its investment, and attract new investment capital.

7. National Fuel's Base and Preferred Cases are substantially similar, except that the Preferred Case eliminates National Fuel's existing Niagara rate zone and certain other related differences. Where these cases differ, it is specifically noted; otherwise, the items discussed with regard to National Fuel's filing refer to both cases.

8. The proposed Base Case rate design continues National Fuel's current rate structure whereby costs are directly assigned to each of the Niagara rate zones, based upon actual cost-of-service data for operations and maintenance associated with the facilities located in that zone. But, the *pro forma* Preferred Case rate design would eliminate the Niagara rate zones and roll costs currently allocated to that zone into a single postage-stamp rate for all National Fuel's Part 284 firm transportation services. National Fuel states the Preferred Case rate design is appropriate for the Niagara facilities due to changes in the historic utilization of these facilities.

9. In its Base Case, National Fuel also proposes new cost-based rates for its firm and interruptible gathering services; modifications to the rates applicable to each of its Part 284 open access storage rate schedules; and revisions to the rates applicable to its Volume 2 Rate Schedules X-51 and X-54.

10. According to National Fuel, its rates employ a straight fixed variable rate design and reflect a total annual cost of service of \$199,345,458 based on actual costs during the base period, with adjustments for known and measurable changes during the adjustment period.⁴ The total revenue requirement includes a 10.61 percent overall rate of return with a 13.50 percent return on equity and a capital structure of 40.7 percent debt to 59.3 percent equity.

11. National Fuel proposes to reduce its rate design volumes to reflect discounted rate transactions, including several discounted rate transactions with affiliates. In addition,

⁴ National Fuel's filing uses a July 2010 through June 2011 base period, and a July 2011 through March 2012 adjustment period.

National Fuel proposes to revise Section 17.2 of its General Terms and Conditions (GT&C) concerning the circumstances under which it can adjust its rate design volumes to reflect negotiated rate transactions. However, National Fuel states that it is not seeking a discount adjustment related to any negotiated rate agreements in this rate case, and therefore the proposed tariff change will not affect the rates proposed in this rate case.

12. Specifically, National Fuel proposes to modify Section 17.2 by subdividing the content of its current Section 17.2 (which addresses several aspects of negotiated rates) into eight subsections (Section 17.2(a)-(h)). National Fuel's proposed language in Section 17.2(g) regarding discount adjustments for negotiated rates would require National Fuel to:

demonstrate that any such discount type adjustment does not have an adverse impact on recourse rate shippers by: (i) demonstrating that, in the absence of Transporter's entering into such Negotiated Rate agreement, Transporter would not have been able to contract for such capacity at any higher rate(s) **and** that recourse rates would otherwise be as high or higher than recourse rates which result after applying the discount adjustment; or (ii) making another comparable showing that the Negotiated Rate contributes more to fixed cost recovery to the system than could have been achieved without the negotiated rate.⁵

National Fuel asserts that this proposed language is very similar to language that was recently accepted by the Commission in *Tennessee Gas Pipeline Co.*,⁶ in which the Commission clarified its policy concerning discount adjustments for negotiated rates.

13. In its filing, National Fuel also proposes a new GT&C Section 41 (OPEB-Related Regulatory Assets and Liabilities) to address the funding of its on-going OPEB obligations, as well as the amortization of its existing OPEB regulatory liability.⁷

14. Finally, National Fuel proposes several minor changes that will make its tariff consistent by incorporating the proposed revisions to its base rates. National Fuel also

⁵ National Fuel Rate Application Transmittal at 9 (emphasis in original).

⁶ National Fuel Rate Application Transmittal at 8-9 (*citing Tennessee Gas Pipeline Co.*, 135 FERC ¶ 61,208 (2011) (Tennessee 2011 Order).

⁷ OPEB means "Other Post-Employment Benefits."

proposes to remove all references to its Niagara zone rates from the transportation table (§4.010) and from Section 3 of the FT and FT-S Rate Schedules in its Preferred Case.⁸

III. Notice, Interventions and Protests

15. Public notice of the filing was issued on November 1, 2011. Interventions and protests were due as provided in section 154.210 of the Commission's regulations.⁹ Pursuant to Rule 214,¹⁰ all timely filed motions to intervene and any unopposed 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 this proceeding or place additional burdens on existing parties. There were a number of protests filed.¹¹

16. On November 21, 2011, National Fuel filed a motion to answer the protests. On November 28, 2011, the NYPSC filed a response to National Fuel's answer. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2011), prohibits answers to protests or answers unless otherwise permitted by the decisional authority. We will accept the answers because they have assisted in the disposition of the issues raised by the protesting parties.

A. General Protests

17. As to the issues raised in the protests, the protesting parties object generally to the substantial increase to National Fuel's rates, arguing various aspects of National Fuel's proposals have not been shown to be just and reasonable. They contend there are many elements of National Fuel's proposed rate increase that must be examined by the Commission including, but not limited to, National Fuel's: (1) proposal in its Preferred Case to roll in the costs of its Niagara facilities; (2) proposed capital structure, rate of return on equity and cost of long-term debt underlying its proposed overall rate of return; (3) proposed adjustment for costs related to integrity management; (4) proposed cost allocation and rate design methodologies for gathering rates; and (5) fixed fuel, and lost and unaccounted-for retention percentages.

⁸ FT and FT-S means "Firm Transportation" and "Firm Transportation – Seasonal," respectively.

⁹ 18 C.F.R. § 154.210 (2011).

¹⁰ 18 C.F.R. § 385.214 (2011).

¹¹ See Appendix C for list of protesting entities.

18. A number of protesting parties raised specific objections to National Fuel's proposals to adjust the volumes used to design the rates proposed in this rate case to reflect discounted rate transactions and to amend Section 17.2 of its GT&C to allow discount-type adjustments for negotiated rate transactions. AGL/ETG requests that the Commission set National Fuel's proposed revision to Section 17.2 for hearing along with the contested rate changes because of the interrelation of these matters to the issues in the rate proceeding. AGL/ETG states that, while National Fuel's proposed tariff revision mirrors the tariff language approved by the Commission in the Tennessee 2011 Order, this decision is still subject to rehearing.

19. Next, AGL/ETG contends that National Fuel's proposed discount agreements for the discount rate services it has agreed to, including five discount agreements with affiliated entities, must be scrutinized. AGL/ETG asserts that, while discounts to affiliates are not *per se* ineligible for discount adjustment treatment, the Commission's long standing policy requires the pipeline to bear a particularly heavy burden to justify such discounts. AGL/ETG further argues that the OPEB recovery mechanism in new GT&C Section 41, although a non-rate tariff change, must be scrutinized by the Commission in the hearing given its relationship to other contested rate issues.

20. Hess and ExxonMobil generally assert that National Fuel's filing reflects discount adjustments that may not be just and reasonable. Hess and ExxonMobil assert, among other things, that National Fuel's proposed discount adjustment tariff language is confusing. Hess and ExxonMobil also assert, although National Fuel claims that it is not "seeking a discount adjustment related to any negotiated rate agreements at this time," National Fuel's filing includes several discount agreements.

21. In its answer, National Fuel states that it is prepared to address the protesting parties' objections to its cost of service, rate design and cost allocation issues in this case and fully expects to achieve a comprehensive negotiated resolution of these matters. National Fuel also argues that its proposed amortization of underground storage losses is consistent with its applicable tariff provisions.

22. Next, with regard to the specific issue on discounts raised by Hess and ExxonMobil, National Fuel claims that such objections reflect a misunderstanding of its discount adjustment proposals. National Fuel states that it is seeking a discount adjustment in its rates; however, the discounted contracts included in the calculation of the adjustment are solely discounted rate agreements and do not include *any* negotiated rate contracts. National Fuel also asserts that it proposes several revisions to Section 17.2 of its GT&C to broaden the circumstances under which it can qualify for a discount adjustment for negotiated rate contracts in future rate cases. National Fuel alleges that the proposed language is fully consistent with language approved by the Commission in the Tennessee 2011 Order and should, therefore, be accepted without suspension.

B. Section 5 Issues

23. ExxonMobil and NFD each propose several changes to National Fuel's current tariff pursuant to section 5 of the NGA. ExxonMobil requests the Commission set for hearing whether National Fuel's tariff complies with Commission policy regarding reservation charge crediting for both *force majeure* and non-*force majeure* service interruptions. ExxonMobil argues only Rate Schedule EFT¹² currently provides for reservation charge credits due to interruptions of service attributable to *force majeure*. In addition, ExxonMobil asserts that, while Rate Schedule EFT does provide for revenue credits due to non-*force majeure* events, credits will only be provided if National Fuel fails to provide at least 30 days prior notice of potential service interruptions; an exception contrary to current Commission policy. According to ExxonMobil, none of National Fuel's other firm rate schedules provide for any crediting of reservation charges due to *force majeure* or non-*force majeure* events.

24. NFD states in its protest that it intends to pursue changes to National Fuel's existing terms and conditions of storage service under Rate Schedule ESS,¹³ as well as, changes to National Fuel's current pooling procedures. NFD argues that its proposed section 5 changes would modify National Fuel's current service terms, which are no longer just and reasonable under changing market conditions, and replace them with slightly revised, just and reasonable terms designed to make the storage service more valuable to customers without imposing any undue burdens on National Fuel.

25. In its answer, National Fuel states that it does not oppose NFD's request to include in the investigation the revision of certain revised tariff provisions to be implemented prospectively. National Fuel notes, however, that NFD is incorrect in its suggestion that National Fuel's tariff does not provide for pooling points. National Fuel states that these provisions are set forth in Sections 13.1(d) and (e) of the GT&C of its tariff.

26. National Fuel did not specifically address ExxonMobil's protest regarding its tariff provisions regarding *force majeure* and non-*force majeure* service interruptions.

C. 2006 Settlement Agreement

27. Several protesting parties generally raise the issue that National Fuel is not in compliance with Article V of the 2006 Settlement agreement, requiring National Fuel to

¹² EFT means "Enhanced Firm Transportation."

¹³ ESS means "Enhanced Storage Service."

file a rate case “with rates effective December 1, 2011.”¹⁴ Specifically, the NYPSC argues that National Fuel failed to honor the terms of Article V of the 2006 Settlement, because it did not submit the required section 4 rate case on May 31, 2011. According to the NYPSC, the correct interpretation of Article V requires National Fuel to submit a section 4 base rate case, which takes into consideration the 30-day notice period and the 5-month suspension period for an effective date of December 1, 2011. Assuming the parties are successful in obtaining rate reductions below preexisting levels, the NYPSC argues that National Fuel’s failure to submit its filing by May 31 would effectively result in a six-month delay of any resulting rate reduction for National Fuel’s customers. The NYPSC, therefore, requests the Commission include as an issue in this proceeding, the development of an appropriate remedy which would keep ratepayers whole for any resulting rate reduction below preexisting rates.

28. In its answer, National Fuel states that the NYPSC’s arguments that it violated the terms of the 2006 Settlement are without merit and should summarily be dismissed by the Commission. National Fuel contends the operative language in the 2006 Settlement required National Fuel to “file a Section 4 rate filing with rates effective December 1, 2011.” National Fuel maintains that this is exactly what it did. National Fuel further argues that, if it filed a section 4 rate proceeding on the May 31, 2011 date suggested by the NYPSC, it would violate the 2006 Settlement’s five-year moratorium on any section 4 rate change. Moreover, the National Fuel asserts that, if the NYPSC preferred a “comeback” provision that requires a filing on or before a specific date, then it should have insisted on including language like Article VI in Transcontinental Gas Pipe Line Corporation’s (Transco) settlement in Docket No. RP01-245-000, which provides that “Transco agrees to *file* a NGA Section 4(e) general rate case no later than September 1, 2006.”¹⁵ National Fuel states that the above type provisions are common and the NYPSC was a party to and supported the above Transco settlement.

¹⁴ Article V of the 2006 Settlement provides:

Except as otherwise provided herein, this Stipulation establishes a 5-year moratorium prohibiting the effectiveness of any Section 5 and/or Section 4 rate change prior to December 1, 2011. The effectiveness of National Fuel's next general rate case under Section 4 of the Natural Gas Act shall not be earlier than December 1, 2011...National Fuel shall file a Section 4 rate filing with rates effective December 1, 2011.

¹⁵ National Fuel Answer at 5 (*citing Transcontinental Gas Pipe Line Corp.*, 100 FERC ¶ 61,085 (2002) (emphasis provided)).

29. In response to National Fuel, the NYPSC states that National Fuel's arguments have no legal value and should be ignored by the Commission because in the fact patterns contemplated by National Fuel, none of the settlements involved the same parties.

IV. Discussion

30. The rates proposed by National Fuel's instant filing have not been shown to be just and reasonable. The Commission finds the instant filing raises issues requiring further investigation. Accordingly, the Commission will establish a hearing to explore the issues set forth in the protests regarding National Fuel's application for a section 4 general rate increase. The Commission finds it is appropriate to examine these issues in the context of a hearing where the parties can develop a factual record.

31. The Commission accepts the revisions to Section 17.2 of National Fuel's proposed tariff records regarding discount adjustments for negotiated rate transactions because the proposed language is consistent with the tariff provisions the Commission accepted in the Tennessee 2011 Order.¹⁶ The proposed revisions to Section 17.2 provide a reasonable framework for considering in a general section 4 rate case whether to permit a discount adjustment for a pipeline's negotiated rate transactions and the tariff language accommodates the interests of all concerned, including the pipeline and its customers.

32. The protesting parties did not raise specific objections to National Fuel's proposed language or state that approval of the language is inconsistent with the Commission policy on discount adjustments as articulated in the Tennessee 2011 Order.¹⁷ In the Tennessee 2011 Order, the Commission fully addressed its policies regarding discounted adjustments for negotiated rate transactions, and explained its reasons and caveats for accepting tariff language consistent with the instant tariff language. The Commission emphasizes, however, as stated in the Tennessee 2011 Order, that acceptance of the tariff language on discount adjustments does not guarantee the pipeline the right to make a discount-type adjustment, but only establishes the burden of proof the pipeline must satisfy in order to obtain a discount-type adjustment consistent with that policy. Similar to the tariff language in the Tennessee 2011 Order, the Commission finds that the burden set forth in National Fuel's proposed tariff language provides a balanced and reasonable framework for considering the issue of discount-type adjustments for negotiated rates in

¹⁶ Tennessee 2011 Order, 135 FERC ¶ 61,208 (2011); *see also Columbia Gulf Transmission Co.*, 133 FERC ¶ 61,078 (2010) (*Columbia Gulf*), *Rockies Express Pipeline LLC*, 135 FERC ¶ 61,206 (2011).

¹⁷ In fact, AGL/EGT's protest notes that the language mirrors the tariff language approved by the Commission in the Tennessee 2011 Order. *See* AGL/EGT Protest at 12.

National Fuel's future general section 4 rate cases.¹⁸ Accordingly, we accept the proposed revisions effective December 1, 2011, as requested.

33. As National Fuel points out in its answer, it has not proposed any discount-type adjustment for negotiated rate transactions in this rate case. However, it has proposed a discount adjustment with respect to discounted rate transactions. All issues concerning those proposed discount adjustments should be addressed at the hearing established by this order.

34. Next, with regard to National Fuel's reservation charge credit policy, the Commission recently explained its reservation charge credit policy in an order on a petition by various industry associations requesting that the Commission take action to enforce its reservation charge crediting policy, *Natural Gas Supply Assn., et al.*, 135 FERC ¶ 61,055 (2011) and contemporaneously-issued decisions in *Southern Natural Gas Co.*, 135 FERC ¶ 61,056 (2011) and *Kern River Gas Transmission Co.*, 135 FERC ¶ 61,050 (2011). As these orders state, Commission policy requires that pipelines and shippers share the risk of *force majeure* service interruptions, because such service interruptions are no-fault occurrences. The risk sharing is accomplished by the pipeline providing partial reservation charge credits for all scheduled gas not delivered due to a *force majeure* event. Furthermore, the Commission's policy also requires a pipeline to provide full reservation charge credits for non-*force majeure* events. More specifically, the Commission's policy provides that where scheduled gas is not delivered due to a non-*force majeure* or planned maintenance event, there must be a full reservation charge adjustment as to the undelivered amount.

35. National Fuel's current tariff does not appropriately provide for reservation charge credits for its firm service rate schedules for either *force majeure* or non-*force majeure* events. Accordingly, pursuant to NGA section 5, the Commission directs National Fuel to submit a compliance filing within thirty days of the date of this order either (1) revising its tariff to provide reservation charge credits for both *force majeure* and non-*force majeure* events consistent with Commission policy, as discussed above, or (2) providing a further explanation why the Commission's policy should not apply to it.

36. Finally, several protesters raise concerns regarding National Fuel's compliance with the terms of Article V of the 2006 Settlement agreement. These protesters allege that, according to the terms of Article V, National Fuel must file its section 4 base rate proceeding so that its proposed rates have an effective date of December 1, 2011. National Fuel's answer rejects this interpretation and requests that we summarily dismiss

¹⁸ Tennessee 2011 Order, 135 FERC ¶ 61,208 at P 208; *see also Columbia Gulf*, 133 FERC ¶ 61,078 at P 15.

the objections. The Commission may summarily reject portions of a proposed filing if it determines that there are no material issues of fact in dispute and the filing is in clear violation of an applicable statute, regulation, or Commission policy.¹⁹ This is a contract claim over the meaning of the provisions in Article V of the 2006 Settlement and we believe the language is sufficiently ambiguous with regard to its meaning such that we will not summarily reject the issue here.²⁰ Therefore, parties are free to raise this issue at hearing before the Presiding Administrative Law Judge.

V. Suspension

37. Based upon review of the filing, the Commission finds that the proposed tariff records listed in Appendix A have not been shown to be just and reasonable, and may be unjust, unreasonable and unduly discriminatory or otherwise unlawful. Accordingly, the Commission will accept and suspend the effectiveness of the proposed tariff records for the period set forth below, subject to the conditions set forth in this order.

38. The Commission's policy regarding rate suspensions is that rate 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.²¹ It is recognized, however, that shorter suspensions may be warranted in circumstances where suspension for the maximum period may lead to harsh and inequitable results.²² Such circumstances do not exist here. Therefore, the Commission shall exercise its discretion to suspend the proposed tariff

¹⁹ See *Northern Border Pipeline Co.*, 60 FERC ¶ 61,176, at 61,644 (1992).

²⁰ See *Texas Eastern Transmission Corp. v Federal Power Commission*, 306 F.2d 345 (5th Cir. 1962) (settlement agreements should be enforced as drafted); see also *Ameren Services Company v. FERC*, 330 F.3d 494, 498 (D.C. Cir. 2003); *Dominion Transmission, Inc. v. FERC*, 533 F.3d 845, 852 (D.C. Cir. 2008) (If the settlement agreement is unambiguous, the language of the agreement controls for the Commission must give effect to the unambiguously expressed intent of the parties). *But see Transcontinental Gas Pipe Line Corp.*, 130 FERC ¶ 61,043 (2010) (A settlement is ambiguous if it is "reasonably susceptible of different constructions and interpretations.")

²¹ See *Great Lakes Gas Transmission Co.*, 12 FERC ¶ 61,293 (1980) (five-month suspension).

²² See *Valley Gas Transmission, Inc.*, 12 FERC ¶ 61,197 (1980) (one-day suspension).

records listed in Appendix A, to be effective May 1, 2012, subject to refund and the outcome of the hearing established herein.

39. National Fuel must adhere to section 154.303(c)(2) of the Commission's regulations which provides that a pipeline's filing must be revised to exclude the costs associated with any facility that will not be in service as of the end of the test period, or for which certificate authorization is required but will not be granted as of the end of the test period.

The Commission orders:

(A) The proposed Base Case tariff records listed in Appendix A are accepted and suspended, to become effective May 1, 2012, upon motion by National Fuel, subject to refund and the outcome of the hearing established herein.

(B) The proposed Base Case tariff record listed in Appendix B is accepted effective December 1, 2011.

(C) Within thirty (30) days of the date of this order, National Fuel shall file revised tariff records concerning reservation charge credits during *force majeure* and non-*force majeure* events consistent with the discussion in this order or explain why it should not be required to do so.

(D) Pursuant to the Commission's authority under the Natural Gas Act, particularly sections 4, 5, 8, and 15, and the Commission's rules and regulations, a public hearing is to be held in Docket No. RP12-88-000 concerning National Fuel's filing.

(E) A presiding judge, to be designated by the Chief Judge, shall, within fifteen (15) days of the date of the presiding judge's designation, convene a prehearing conference in these proceedings in a hearing room of the Commission, 888 First Street, NE, Washington, DC 20426. Such a conference shall be held for the purpose of establishing a procedural schedule. The presiding judge is authorized to establish procedural dates and to rule on all motions (except motions to dismiss) as provided in the Commission's Rules of Practice and Procedure.

By the Commission. Commissioner Spitzer is not participating

(S E A L)

Kimberly D. Bose,
Secretary.

Appendix A

National Fuel Gas Supply Corporation

FERC NGA Gas Tariff National Fuel Tariff

*Tariff Records Accepted and Suspended
to be Effective May 1, 2012, Subject to Refund:*

- 1 – Table of Contents, 1 – Table of Contents, 2.0.0
- 4 – Applicable Rates, 4.010 – Transportation Rates, 3.0.0
- 4 – Applicable Rates, 4.020 – Part 284 Storage Rates, 2.0.0
- 4 – Applicable Rates, 4.030 – Part 157 Storage Rates, 2.0.0
- 4 – Applicable Rates, 4.040 – Gathering Rates, 13.0.0
- 4 – Applicable Rates, 4.050 – Other Rates, 2.0.0
 - 6.010: FT Rate Schedule, § 3 – Rates, 1.0.0
 - 6.020: FT-S Rate Schedule, § 3 – Rates, 1.0.0
 - 6.030: EFT Rate Schedule, § 3 – Rates, 2.0.0
 - 6.040: FST Rate Schedule, § 3 – Rates, 1.0.0
- List of Contents, 7 – General Terms and Conditions, 1.0.0
- 41 - OPEB Expenses, 41 - Recovery of OPEB Expenses, 0.0.0
- Special Rate Schedules, Second Revised Volume No. 2, 0.0.0
- List of Contents, Volume No. 2 - Special Rate Schedules, 0.0.0
- X-51 Rate Schedule, Volume No. 2 - Special Rate Schedules, 0.0.0
- X-54 Rate Schedule, Volume No. 2 - Special Rate Schedules, 0.0.0

Appendix B

National Fuel Gas Supply Corporation

FERC NGA Gas Tariff

National Fuel Tariff

*Tariff Record Accepted
to be Effective December 1, 2011:*

17 – Adjustments, 17 – Adjustments, Surcharges and Negotiated Rates, 1.0.0

Appendix C

Entities Filing Protests

Consolidated Edison Company of New York, Inc.
ExxonMobil Gas & Power Marketing Company, a division of Exxon Mobil Corporation (ExxonMobil)
PSEG Energy Resources & Trade LLC
National Fuel Gas Distribution Corporation (NFD)
Atlanta Gas Light Company (AGL) and Pivotal Utility Holdings, Inc. d/b/a Elizabethtown Gas (ETG) (jointly and severally)
New York Public Service Commission (NYPSC)
Bay State Gas Company, d/b/a Columbia Gas of Massachusetts
Columbia Gas of Pennsylvania, Inc.
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, and Essex Gas Company, collectively d/b/a National Grid
EnergyNorth Natural Gas, Inc. d/b/a National Grid NH
Niagara Mohawk Power Corporation d/b/a National Grid
The Narragansett Electric Company d/b/a National Grid
Hess Corporation (Hess)
WPX Energy Marketing, LLC
Pennsylvania Independent Oil & Gas Association
Pennsylvania Office of Consumer Advocate
Constellation Energy Commodities Group, Inc.
Statoil Natural Gas LLC
South Jersey Resources Group
South Jersey Energy Company d/b/a Open Flow Energy
Peoples Natural Gas Company LLC