

141 FERC ¶ 61,214  
FEDERAL ENERGY REGULATORY COMMISSION  
WASHINGTON, D.C. 20426

December 18, 2012

In Reply Refer To:  
National Fuel Gas Supply Corporation  
Docket No. RP13-298-000

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

Attention: David W. Reitz  
Deputy General Counsel

Dear Mr. Reitz:

1. On November 19, 2012, National Fuel Gas Supply Corporation (National Fuel) filed tariff records<sup>1</sup> to be effective December 19, 2012, to revise its tariff in order to implement market pooling points and a new Market Pooling Point Aggregation Service (MPPAS) Rate Schedule. National Fuel's filing was protested and National Fuel filed an answer to the protests. As discussed below, the Commission accepts and suspends the referenced tariff records, subject to refund and further Commission action, effective May 19, 2013, or an earlier date set forth in a subsequent order.

2. National Fuel is making this filing pursuant to Article IX 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.<sup>2</sup>

3. Article IX of the Settlement provided that the participants would continue ongoing discussions regarding the establishment of liquid pooling points on National Fuel's

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<sup>1</sup>See Appendix.

<sup>2</sup> *National Fuel Gas Supply Corp.*, 140 FERC ¶ 61,114 (2012).

system. Article IX stated that Appendix C to the Settlement summarizes the agreements in principle that have been reached by the participants regarding future tariff filing(s) that are supportive of the development of liquid pooling points. Further, Article IX provided that, on or before 120 days following the date of the Settlement, National Fuel would make and support one or more such tariff filings (simultaneously or at different times) consistent with the agreements memorialized in Appendix C (and such other filings as National Fuel deems appropriate on the issue) and with National Fuel's commitment to develop pooling points as established on other pipelines, and related services, mechanisms, and tariff modifications, as appropriate, with the intent of developing liquid pooling points. National Fuel reserved:

the right to include in the tariff filing(s) new charges that would recover the costs of any new pooling rights or services from customers that exercise such new rights or utilize such new services; provided that, with respect to the customers that do not exercise such new rights or utilize such new services, National Fuel will not seek to revise any of the settled rates, outside the scope of a general rate case, to reflect the cost associated with the establishment of liquid pooling points and related services, mechanisms, and tariff modifications.<sup>3</sup>

4. In the instant filing, consistent with Article IX of the Settlement, National Fuel is proposing to modify its tariff to establish new market pooling points, related pooling mechanisms, and a new MPPAS Rate Schedule on its system. National Fuel explains that these changes are intended to provide increased flexibility for its customers and enhance liquidity. National Fuel states that section 13.1(d) and (e) of its General Terms and Conditions of Service (GT&C) currently provide for limited pooling opportunities at Appalachian production receipt points and at pipeline interconnections, but that it does not have any pooling mechanisms downstream of those receipt points. In contrast, the MPPAS service would provide for pooling to occur at physical midstream locations on National Fuel's system. As part of its tariff filing, National Fuel is also proposing to retain its existing pooling mechanisms, stating its new MPPAS services could be used in conjunction with the existing mechanisms.

5. Specifically, National Fuel's new MPPAS service includes the establishment of four market pooling points (MPP).<sup>4</sup> A party with an MPPAS service agreement (i.e., a

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<sup>3</sup> National Fuel, Settlement and Stipulation, RP12-88-000, at p. 12 (filed May 22, 2012).

<sup>4</sup> National Fuel proposes to establish the four new MPPs at: New Castle, Oswayo, Ridgeway, and Aurora.

Pool Aggregator) will be able to create a gas pool at any or all of the MPPs. Transportation to and from the MPPs will be performed pursuant to the transportation service agreements of National Fuel's customers under Rate Schedules FT (Firm Transportation), FT-S (Firm Transportation – Seasonal), EFT (Enhanced Firm Transportation), FST (Firm Storage Transportation) or IT (Interruptible Transportation). National Fuel proposes that each MPP would be an eligible nomination point for receipt and delivery under those transportation service agreements. In addition, the Pool Aggregator could nominate to transfer the quantities it aggregates at its Market Pool into the Market Pool of another Pool Aggregator doing business at the same MPP. Thus, a Pool Aggregator could pool gas at an MPP by either: 1) shipping gas to the MPP under its own transportation agreement; 2) purchasing gas from another transportation shipper; or 3) purchasing gas from another Pool Aggregator or other party at the MPP. The aggregated gas would then be eligible for further transportation downstream of the MPP under one or more other transportation agreements, or the Pool Aggregator could sell the gas to third parties at the MPPs.

6. To facilitate the provision of services under the MPPAS Rate Schedule, National Fuel will provide the gas accounting necessary to allocate the quantities aggregated by each Pool Aggregator at the MPP to the appropriate transportation service agreements. In addition, National Fuel will also accept title transfer nominations consistent with its current tariff for the sale of gas involving parties that are not Pool Aggregators. To recover the incremental costs of providing this new service,<sup>5</sup> National Fuel is proposing in section 3.2(a) of Rate Schedule MPPAS to assess a charge to the Pool Aggregator on “all gas scheduled into a Market Pool administered by the Pool Aggregator during the billing month.” National Fuel proposes a maximum usage charge of \$0.0079 per Dth and a minimum rate of zero.

7. National Fuel also proposes to revise its transportation rate schedules to exempt the shippers under those agreements from any transportation usage charge on “quantities scheduled for delivery into a Market Pool established under the MPPAS Rate Schedule.” National Fuel proposes to exempt such transactions from its fuel retainage percentages.

8. National Fuel further proposes several additional tariff modifications as part of its overall proposal. First, National Fuel is requiring each Pool Aggregator to provide it with a predetermined allocation methodology (PDA). National Fuel will use those PDAs to allocate any cuts in shipper nominations necessary so that the transportation quantities

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<sup>5</sup> National Fuel estimates its new MPPAS Rate Schedule will require the employment of one additional gas transportation analyst, as well as, programming modifications to its current automated business system. National Fuel estimates the annual cost of service to be approximately \$204,000 per year.

nominated upstream of each MPP will equal the transportation quantities nominated downstream of the same MPP.

9. The second modification would alter National Fuel's current priority of service with respect to National Fuel's firm transportation services. National Fuel's tariff provides that nominations for secondary firm service within a shipper's contract path (i.e., between the shipper's primary receipt point(s) and primary delivery point(s)) have a scheduling priority over all other secondary firm nominations. National Fuel currently provides both "pathed" transportation services under Rate Schedules FT and FT-S and "non-pathed" transportation services under Rate Schedules EFT and FST. All secondary receipt and delivery points for non-pathed services are considered out-of-path. Therefore, Rate Schedule EFT and FST shippers nominating service using secondary points have a lower scheduling priority than Rate Schedule FT and FT-S shippers nominating service using secondary points within their contract paths.

10. In the instant filing, for purposes of scheduling non-pathed service nominated by EFT and FST shippers either into or out of an MPP, National Fuel has proposed that the MPP will be considered within the path for scheduling priority if certain conditions are met. National Fuel must find that all gas flowing between the EFT or FST shipper's primary receipt and delivery points must physically flow through the MPP. In addition, the service nominated by the EFT or FST shipper must be to or from the shipper's primary delivery or receipt point. National Fuel asserts that, while it remains impracticable to establish contract paths for Rate Schedule EFT and FST services because of the nature of those services and National Fuel's reticulated system, treating the MPP as within the path under the proposed conditions should be workable. National Fuel states that this proposal may in theory elevate the priority of EFT and FST secondary firm nominations relative to FT secondary nominations, but National Fuel states that it does not believe that this will have a practical impact on FT shippers. National Fuel contends that, in the absence of this proposal, EFT and FST shippers would be discouraged from using MPPs during capacity constrained periods, and would likely return to their primary points.

11. Third, National Fuel proposes several modifications to its existing Appalachian production pooling provisions. Existing GT&C section 13.1(d) permits any shipper or operator to create a pool of certain Appalachian production receipt points listed on National Fuel's web site. All the receipt points in a single pool must be within one of three specified zones: two are in Pennsylvania and one is in New York. A receipt point must be associated with only one pool. While the receipt point is included in that pool, all shippers must nominate from the pool rather than the receipt point. National Fuel will schedule all receipts from the pool as secondary receipt point, unless all receipt points within the pool are primary receipt points.

12. National Fuel proposes to limit this form of pooling to receipt points with a design capacity under 5 MMcf per day. It states that this mechanism is intended to permit the

aggregation of gas from many small production receipt points, not larger receipt points with greater impact on system operations. National Fuel states that, with the growth of Marcellus production on its system, it is necessary to specify a maximum design capacity for receipt points eligible for this form of pooling. National Fuel states that, above this level, it needs to know its shippers' intentions regarding the use of a point on a daily basis and have the ability to limit receipts to scheduled quantities. National Fuel also states that this development necessitates the creation of a fourth pooling zone for its East system, defined as Pennsylvania point east of Costello and New York point on Line X south of Concord and other lines connected to Ellisberg or Independence.

13. Finally, National Fuel states that the implementation of its new MPPAS Rate Schedule will require significant changes to its automated business system. National Fuel states these changes may take several months to complete and is, therefore, proposing that MPPAS service agreements be effective on the later of a specific date or the date National Fuel implements the necessary modifications.

14. Public notice of the filing was issued on November 20, 2012. Interventions and protests were due as provided in section 154.210 of the Commission's regulations (18 C.F.R. § 154.210 (2012)). Pursuant to Rule 214 (18 C.F.R. § 385.214 (2012)), all timely filed motions to intervene and any unopposed motion 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. Protests and requests for a technical conference were filed by Consolidated Edison Company of New York, Inc. (ConEd), and Statoil Natural Gas LLC (Statoil). In addition, NFD, National Fuel Resources, Inc. (NFR), and The National Grid Gas Delivery Companies (National Grid)<sup>6</sup> submitted comments and/or requests for clarification.

15. On December 12, 2012, National Fuel a motion to answer and an answer to the protests (Answer). Rule 213(a)(2) of the Commission's Rules of Practice and Procedure (18 C.F.R. § 385.213(a)(2) (2012)) prohibits answers to protests otherwise ordered by the decisional authority. In this case, the Commission will accept National Fuel's Answer because it may assist us in our decision-making process. Moreover, as discussed below,

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<sup>6</sup> For the purposes of this proceeding, The National Grid Gas Delivery Companies are: 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, collectively d/b/a National Grid; Niagara Mohawk Power Corporation d/b/a National Grid; and The Narragansett Electric Company d/b/a National Grid, all subsidiaries of National Grid USA, Inc.

the protestors shall be afforded an opportunity to respond to National Fuel's Answer before the Commission makes a final disposition of the filing.

16. ConEd and Statoil both protested National Fuel's proposed change in scheduling priority for non-pathed EFT and FST transportation services. The parties cite a lack of support and justification from National Fuel for the proposed change and express concerns that the change in priority will adversely affect their current rights at other points on the system. Specifically, because National Fuel has stated that it is impractical to establish transportation paths for EFT and FST services, ConEd and Statoil question how National Fuel will be able to determine that all gas physically flowing between an EFT or FST shipper's primary receipt and delivery points would necessarily flow through a MPP, as required under its proposal. ConEd and Statoil are also concerned that National Fuel's proposal permits it to make this determination in response to an EFT or FST shipper's request to list an MPP in its service agreement as a within-path point, without any notice to other shippers or opportunity for other shippers to challenge National Fuel's determination. Due to the complicated and technical nature of this issue, ConEd and Statoil request the Commission convene a technical conference to permit the parties an opportunity to explore their concerns on this issue further.

17. ConEd and Statoil also question National Fuel's selection of the locations for its proposed MPPs. In particular, the parties state they are unclear as to why National Fuel chose Oswayo as an MPP versus the nearby location at Ellisburg/Roselake, which intersects with numerous lines on National Fuel's system, in addition to interconnections with Tennessee Gas Pipeline Company, LLC and Dominion Transmission Inc. The parties again request a technical conference to investigate this issue.

18. Finally, ConEd seeks clarification of National Fuel's proposed tariff language at section 3.2(a) of Rate Schedule MPPAS. Specifically, ConEd seeks clarification that it is National Fuel's intent that transportation rate schedule usage charges will not be assessed on quantities scheduled to the MPPs which have already been assessed the MPPAS usage charge.

19. In their comments, both NFR and NFD sought clarification as to whether it was National Fuel's intent to assess pool aggregators the MPPAS usage charge when gas quantities were merely being transferred among the aggregators within the MPP versus being physically transported away from the MPP to a delivery point. The parties believe the transfer of quantities within the same MPP merely reflects the transfer of the title of the gas among aggregators which is currently offered under National Fuel's tariff at no cost. Furthermore, NFD seeks clarification of National Fuel's proposed section 13.1(f)(i). NFD requests that National Fuel clarify the transactional difference between gas transferred among shippers at an MPP under National Fuel's Title Transfer Tracking service and gas scheduled under the new MPPAS Rate Schedule.

20. In its Answer, National Fuel states that it believes further discussion among the participants may obviate the need for a technical conference, and suggests that the Commission direct its staff to schedule a conference if the participants have not resolved these issues by February 15, 2013.

21. Next, National Fuel asserts that the determination of whether an MPP is between the primary receipt and delivery points of an EFT and FST customer would not be subjective and secret, as the protestors suggest. Instead, National Fuel avers that proposed new section 2.15 of these rate schedules establishes a straightforward process for determining when a MPP lies between a primary receipt and a primary delivery point. Moreover, National Fuel argues that these MPPs would be identified in the EFT and FST service agreements, and would constitute special details posted in National Fuel's transactional reports pursuant to section 284.13 of the Commission's regulations.

22. In response to the comments of ConEd, NFD and NFR, National Fuel asserts that section 3.2(a) of the proposed MPPAS Rate Schedule would apply the usage charge to "all gas scheduled into any Market Pool administered by the Pool Aggregator during the billing month," and this would include gas scheduled into a pool from another Pool Aggregator's pool at the same point. National Fuel asserts that this recognizes that each transfer into a pool imposes a similar administrative burden on National Fuel, regardless whether the transfer is made from an upstream transportation contract or another pool at the same pooling point. In addition, National Fuel states that its proposed usage charge was based on the assumption that inside-the-pool transfers would be subject to the charge, so a higher charge would result if these transfers are not subject to it.

23. Next, National Fuel states that NFD expresses concern that imposing any charge upon pool aggregators will discourage the growth of market pools and reduce liquidity at the proposed market pooling points. National Fuel contends, however, that Article IX of the Settlement makes it clear that, outside the scope of a general rate proceeding, National Fuel may only recover the costs associated with new pooling rights or services from the customers that use them. National Fuel states that the modest charge it proposes under its MPPAS Rate Schedule is fully consistent with the Settlement. Furthermore, National Fuel clarifies that, while it has proposed to make the MPPAS charge discountable down to zero, it has not made any commitment to offer discounts of this charge.

24. Finally, National Fuel states that NFD requests clarification regarding the applicability of title transfer tracking to transactions occurring at MPPs. In this regard, National Fuel proposes to build upon existing tariff provisions which permit parties to enter into Title Transfer Tracking Nominations Processing Agreements (TTNPA) covering transactions at physical receipt points and pooling points on its system. In the context of MPPs, the Title Transfer Tracking Service Provider (TTTSP) could be any counterparty to a TTNPA. Once gas has been scheduled for delivery into a Market Pool, National Fuel states that one or more subsequent title transfers could be made to parties

other than Pool Aggregators, as long as the transfers are tracked and nominated by the TTTSP under its TTNPA and are followed by a transfer to a Market Pool under the MPPAS Rate Schedule.

25. The Commission accepts National Fuel's proposed tariff records for filing and suspends their effectiveness for the period set forth below. The parties have raised a number of substantive issues regarding National Fuel's proposal on market pooling points that warrant further scrutiny and deliberation before a determination on the justness and reasonableness of the filing can be made. However, in light of National Fuel's Answer in which it provided responses to the parties' requests for clarification and protests, the Commission finds that the technical conference requested by ConEd and Statoil is not necessary at this juncture in the proceeding. We will, instead, provide the parties the opportunity to respond to National Fuel's Answer within 15 days of the date of this order before we make a final determination in this proceeding.

26. Based upon a review of this filing, the Commission finds that the proposed tariff language has not been shown to be just and reasonable, and may be unjust, unreasonable, unduly discriminatory, or otherwise unlawful. The Commission's policy regarding suspensions is that 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.<sup>7</sup> 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.<sup>8</sup> Such circumstances do not exist here. Accordingly, the Commission shall suspend the effectiveness of the referenced tariff records for the full five months, until May 19, 2013, or an earlier date if set by a subsequent Commission order.

By direction of the Commission.

Nathaniel J. Davis, Sr.,  
Deputy Secretary.

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<sup>7</sup> See *Great Lakes Gas Transmission Co.*, 12 FERC ¶ 61,293 (1980) (five-month suspension).

<sup>8</sup> See *Valley Gas Transmission, Inc.*, 12 FERC ¶ 61,197 (1980) (one-day suspension).

## Appendix

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

## Tariff Records Accepted but Suspended Pending Further Commission Action

- [1 – Table of Contents, 1 – Table of Contents, 4.0.0](#)
- [4 – Applicable Rates, 4.050 – Other Rates, 5.0.0](#)
- [6.010: FT Rate Schedule, § 1 – Availability, 1.0.0](#)
- [6.010: FT Rate Schedule, § 3 – Rates, 5.0.0](#)
- [6.020: FT-S Rate Schedule, § 1 – Availability, 1.0.0](#)
- [6.020: FT-S Rate Schedule, § 3 – Rates, 5.0.0](#)
- [6.030: EFT Rate Schedule, § 2 – Applicability and Character of Service, 3.0.0](#)
- [6.030: EFT Rate Schedule, § 3 – Rates, 6.0.0](#)
- [6.040: FST Rate Schedule, § 1 – Availability, 1.0.0](#)
- [6.040: FST Rate Schedule, § 2 – Applicability and Character of Service, 2.0.0](#)
- [6.040: FST Rate Schedule, § 3 – Rates, 5.0.0](#)
- [6.050: IT Rate Schedule, § 3 – Rates, 3.0.0](#)
- [6.160: MPPAS Rate Sched., § 1 – Availability, 2.0.0](#)
- [6.160: MPPAS Rate Sched., § 2 – Applicability and Character of Service, 2.0.0](#)
- [6.160: MPPAS Rate Sched., § 3 – Rates, 2.0.0](#)
- [6.160: MPPAS Rate Sched., § 4 – Aggregation Procedures, 2.0.0](#)
- [6.160: MPPAS Rate Sched., § 5 – General Terms & Conditions, 2.0.0](#)
- [13 – Noms & Scheduling, 13.1 – Nominations, 3.0.0](#)
- [16 – Curtailment, 16 – Curtailment, 2.0.0](#)
- [List of Contents, 8 – Forms of Service Agreement, 3.0.0](#)
- [8.030 – Forms, 8.030 – EFT Form of Service Agreement, 2.0.0](#)
- [8.040 – Forms, 8.040 – FST Form of Service Agreement, 2.0.0](#)
- [8.160 – Forms, 8.160 – MPPAS Form of Service Agreement, 2.0.0](#)