

143 FERC ¶ 61,155
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

National Fuel Gas Supply Corporation

Docket Nos. RP13-298-000
RP13-580-000
(not
consolidated)

ORDER REJECTING TARIFF RECORDS

(Issued May 17, 2013)

1. On November 19, 2012, National Fuel Gas Supply Corporation (National Fuel) filed tariff records¹ to be effective December 19, 2012, to implement a new Market Pooling Point Aggregation Service (MPPAS) Rate Schedule. Several parties² filed protests, comments and requests for clarifications, and National Fuel filed an answer (December Answer). On December 18, 2012 the Commission issued an order³ accepting and suspending the tariff records, to be effective May 19, 2013, subject to refund and

¹ See Appendix.

² Consolidated Edison Company of New York (ConEd), National Fuel Gas Distribution (NFD), National Fuel Resources, Inc. (NFR), Statoil Natural Gas LLC (Statoil), and The National Grid Gas Delivery Companies (National Grid). 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.

³ *National Fuel Gas Supply Corp.*, 141 FERC ¶ 61,214 (2012) (December 2012 Order).

further Commission action, and provided that parties could file responses to National Fuel's December Answer.

2. On February 22, 2013 in Docket No. RP13-580-000, National Fuel filed tariff records to supplement its earlier tariff filing in Docket No. RP13-298-000 (supplemental filing).⁴ National Fuel states that, because its tariff records in Docket No. RP13-298-000 are currently suspended, it requests the Commission permit its supplemental filing to become effective on the effective date of the suspended tariff records that are neither superseded nor withdrawn by its supplemental filing.

3. As discussed below, the Commission rejects the tariff records listed in the Appendix, because National Fuel proposed that the new MPPAS Rate Schedule take effect at some indefinite date in the future in violation of section 154.207 of the Commission's regulations.⁵ We shall treat the rejected tariff records as though they are *pro forma* and permit National Fuel to file actual tariff records identical to the *pro forma* tariff records, subject to the modifications discussed below, no less than 30 or more than 60 days in advance of the proposed effective date of the tariff records, in accordance with section 154.207 of the Commission's regulations.⁶

I. Background

4. National Fuel submitted its tariff filing establishing new market pooling points pursuant to Article IX of the partial settlement of its general section 4 rate case in Docket No. RP12-88-000 (Settlement), previously approved on August 6, 2012.⁷ Article IX provided that the parties would continue ongoing discussions regarding the establishment of liquid pooling points. Article IX stated Appendix C to the Settlement summarizes the parties' agreements in principle regarding future tariff filing(s) supporting 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 file and support one or more such tariff filings (simultaneously or at different times) consistent with the agreements memorialized in Appendix C. National Fuel, at its election, could also submit other filings as appropriate that reflect its commitment to develop pooling points as established on other pipelines. This would also include, as appropriate, related

⁴ See Appendix for supplemental tariff records filed on February 22, 2013.

⁵ 18 C.F.R. § 154.207 (2012).

⁶ See *Alliance Pipeline L.P.*, 136 FERC ¶ 61,066 (2012) (*Alliance*).

⁷ *National Fuel Gas Supply Corp.*, 140 FERC ¶ 61,114 (2012).

services, mechanisms, and tariff modifications, with the intent of developing liquid pooling points.

II. Description of Filings and Parties' Comments

5. In Docket No. RP13-298-000, consistent with Article IX of the Settlement, National Fuel proposes to modify its tariff to establish new market pooling points, related pooling mechanisms, and a new MPPAS Rate Schedule on its system. Specifically, the new MPPAS service includes the establishment of four market pooling points (MPP).⁸ A party with an MPPAS service agreement (i.e., a Pool Aggregator) could create a gas pool at any or all of the MPPs. National Fuel will transport gas to and from the MPPs pursuant to the customer's Rate Schedules FT (Firm Transportation), FT-S (Firm Transportation – Seasonal), EFT (Enhanced Firm Transportation), FST (Firm Storage Transportation) or IT (Interruptible Transportation) service agreements. National Fuel proposes that each MPP will be an eligible nomination point for receipt and delivery under those service agreements. In addition, the Pool Aggregator could nominate to transfer the quantities it aggregates at its MPP into the MPP of another shipper at the same MPP.

6. Further, consistent with Article IX, National Fuel will only recover the cost of any new service solely from those shippers that utilize the service. Specifically, Article IX provides National Fuel:

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.

To recover the incremental costs of providing this new service,⁹ National Fuel proposes 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

⁸ The four new MPPs are at: New Castle, Oswayo, Ridgeway, and Aurora, NY.

⁹ 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.

billing month.” National Fuel proposes a maximum usage charge of \$0.0079 per Dth and a minimum rate of zero.

7. National Fuel also states it will implement its new MPPAS Rate Schedule only after completing the necessary changes to its automated business system. After the Commission issues a final Commission order in this proceeding, National Fuel estimates the changes may take several months to complete. Therefore, National Fuel proposes that MPPAS service agreements provide for a commencement date of the later of an inserted date or the date National Fuel finalizes the necessary modifications.¹⁰

8. The parties filing comments generally support the proposed new MPPAS Rate Schedule. However, several parties filed limited protests and requested additional clarifications and/or a request for a technical conference. On December 12, 2012, National Fuel filed its December Answer. The December 2012 Order stated that, because the parties raised a number of issues warranting further consideration and National Fuel had filed a detailed answer with clarifications to its proposal, the parties would be afforded an opportunity to respond. ConEd, NFD, NFR, and Statoil filed a response to National Fuel’s December Answer.

9. In their responses, ConEd and Statoil continue to object to National Fuel’s proposed change in scheduling priority for non-pathed EFT and FST transportation services. They 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 stated that it is impractical to establish transportation paths for EFT and FST services, ConEd and Statoil question how National Fuel will 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.

10. ConEd and Statoil also question National Fuel’s selection of the locations for its proposed MPPs. In particular, the parties are unclear 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, this location is also interconnected with Tennessee Gas Pipeline Company, LLC and Dominion Transmission Inc.

11. In their responses, both NFR and NFD express concerns about the pipeline’s intent to assess Pool Aggregators the MPPAS usage charge when it only transfers gas quantities among the aggregators within the MPP versus physically transporting pooled gas away

¹⁰ See National Fuel Gas Supply Corporation, FERC NGA Gas Tariff, National Fuel Tariff; [8.160 – Forms](#), [8.160 – MPPAS Form of Service Agreement](#), [2.0.0](#).

from the MPP to a delivery point. The parties believe gas transfers within the same MPP merely reflects the transfer of the title of the gas among aggregators which National Fuel currently offers at no cost. They also have general concerns about the assessment of the MPPAS usage charge. They fear the usage charge will adversely affect the competitiveness and liquidity of the MPPs.

12. On February 22, 2013, National Fuel submitted its filing in Docket No. RP13-580-000 to further supplement the record in Docket No. RP13-298-000. National Fuel contends the revised tariff records represent a consensus among the parties resolving two of the outstanding issues in this proceeding. Specifically, the filing reflects additional tariff changes to incorporate the resolution of: (1) the priority of Rate Schedule EFT and FST services at the proposed MPPs; and (2) the proposed location of the Oswayo pooling point. To incorporate the parties' consensus on these issues, National Fuel revised its tariff records to incorporate a fifth pooling point located at Sweden, PA and include detailed maps and tables explicitly showing whether EFT or FST shippers will receive a priority of service equivalent to "on-the-path" secondary FT priority. Finally, National Fuel states, in view of the parties' consensus on the above issues, it does not believe that a technical conference is warranted.

III. Public Notice

13. Notice of National Fuel's supplemental filing in Docket No. RP13-580-000 issued on February 26, 2013, with protests or interventions due on or before March 6, 2013. 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. No party filed comments on National Fuel's supplemental filing.

IV. Discussion

14. The Commission rejects the tariff records listed in the Appendix. Specifically, the Commission rejects the proposed tariff records because National Fuel has failed to comply with section 154.207 of the regulations. That regulation requires that "all proposed changes in tariffs ... must be filed with the Commission and posted not less than 30 days nor more than 60 days prior to the proposed effective date thereof."¹¹ In its November 19, 2012, tariff filing, National Fuel states it must make significant changes to its automated business program, which may require up to three months to complete, after a final Commission order. During that time, National Fuel will not allow shippers to use the MPPAS Rate Schedule. The Commission finds that National Fuel's proposal to make

¹¹ 18 C.F.R. § 154.207 (2012).

its pooling proposal effective at some indefinite date in the future is contrary to section 154.207.¹² When, as here, a pipeline desires the Commission to rule on a proposal before it makes the required changes to its computer or other business systems, the pipeline should file *pro forma* tariff records setting forth its proposal and not file actual tariff records until after the Commission has ruled on the *pro forma* proposal. This will avoid any confusion that might arise if the pipeline's tariff included actual tariff records setting forth a service or shipper options that are not, in fact, available.

15. Consistent with this policy, the Commission treats National Fuel's rejected tariff records in these dockets as if they were *pro forma*. The Commission finds the MPPAS proposal set forth in those tariff records to be generally reasonable, except as addressed further below.¹³ National Fuel's proposal should provide shippers with additional flexibility and service options not currently offered under its tariff. These changes may also serve to enhance the value of National Fuel's services to existing customers, as well as, attract new shippers to the system. Accordingly, we will permit National Fuel to file identical tariff records, as modified by this order, when it determines its filing will meet the requirements of section 154.207.

16. While National Fuel contends its shippers support the vast majority of its proposed new pooling service, both NFD and NFR raise legitimate concerns about the proposal to assess the MPPAS usage charge on all volumes transported to MPPs, as well as, on all volumes transferred between Pool Aggregators within the respective MPPs. These parties are concerned that the assessment of the proposed MPPAS usage charge will serve to inhibit the development, and hence, the utilization and liquidity of the new MPPs.

17. National Fuel asserts that it will assess its proposed MPPAS usage charge on all volumes scheduled into an MPP by a Pool Aggregator, as well as, all volumes scheduled into the Pool Aggregators pool at the same MPP (e.g., pool-to-pool transfers). National Fuel contends that Article IX of the Settlement specifically contemplates that it would recover all costs of any new proposed service from those shippers which use the service.

¹² See *Alliance*, 136 FERC ¶ 61,066 at PP 19, 35 (rejecting request for waiver of section 154.207, where pipeline stated its new proposal would not take effect until its business systems could be reprogrammed).

¹³ Because National Fuel's supplemental filing in Docket No. RP13-580-000 further clarified its MPPAS proposal, the Commission does not believe a technical conference is necessary.

18. The Commission finds National Fuel's proposal to assess a volumetric fee on gas volumes moved among and between Pool Aggregators and other parties at the same MPP is unjust and unreasonable and otherwise inconsistent with Commission precedent. Accordingly, we direct National Fuel to modify its proposed MPPAS usage charge, as discussed below.

19. Under the proposal, National Fuel will initially assess the MPPAS usage charge on volumes scheduled and transported to an MPP by Pool Aggregators, with each Pool Aggregator having their own pool (Market Pool) at the respective MPP. National Fuel would then allow parties to engage in transactions pursuant to its Title Transfer Tracking Nominations Processing Agreement (TTNPA).¹⁴ A TTNPA allows for the title transfer of gas from one party (Title Transfer Tracking Service Provider or TTTSP) to a counter-party at no charge. The counter-party to the title transfer can be a Pool Aggregator or a non-Pool Aggregator. National Fuel will permit multiple title transfers; however, each separate title transfer must be tracked and nominated by the TTTSP under its TTNPA, and subsequently transferred to a Market Pool under the MPPAS Rate Schedule. Pursuant to National Fuel's proposal, all volumes nominated under a TTNPA and then transferred to a Market Pool are assessed the MPPAS usage charge.

20. The Commission finds that National Fuel's proposal is in violation of Commission policy because it would assess the volumetric based MPPAS usage charge on the volumes subject to each transfer of title by a TTTSP pursuant to its TTNPA. Commission policy requires that any proposed title transfer tracking fee be determined on a per transaction basis, and not volumetrically, as proposed by National Fuel.¹⁵ As the Commission stated in *Kern River*:

The Commission finds the tracking of title transfers to be a transaction activity with little, if any, relationship to the volumes associated with each transaction. The Commission has required that such charges be on a transaction, as opposed to a volumetric basis.¹⁶

¹⁴ See National Fuel Gas Supply Corporation, FERC NGA Gas Tariff, National Fuel Tariff; 9.020 – Other Forms, 9.020 – Title Transfer Tracking, 0.0.0.

¹⁵ See *Kern River Gas Transmission Co.*, 100 FERC ¶ 61,379 (2002) (*Kern River*).

¹⁶ See *National Fuel Gas Supply Corp.*, 80 FERC ¶ 61,029, at 61,063 (1997) (citing *Williams Natural Gas Co.*, 79 FERC ¶ 61,096, at 61,451 (1997)); see also *Trunkline Gas Company*, 75 FERC ¶ 61,003 (1996) and *CNG Transmission Corporation*, 89 FERC ¶ 61,278 (1999).

Consequently, National Fuel's title transfer tracking charge should not be a volumetric charge. If National Fuel wishes to assess a title transfer tracking fee for these transactions, it must modify and support its proposal accordingly.

21. With respect to National Fuel's proposal to assess the MPPAS usage charge on volumes initially transported to a Market Pool at an MPP, the Commission finds National Fuel's proposed fee is generally consistent with the agreement reached between the parties in Article IX of the Settlement regarding the recovery of costs associated with any new pooling points and related services.¹⁷

22. In addition, when National Fuel submits its MPPAS Rate Schedule filing between 30 and 60 days before it will be effective, National Fuel should modify Article III of the MPPAS Form of Service Agreement to remove the language referencing "the date the necessary changes to Transporter's business system are implemented" and make such other changes as necessary consistent with the Commission's finding in this order.

The Commission orders:

The tariff records identified in the Appendix are rejected, but have been assessed as if they had been filed *pro forma*; as discussed in the body of this order, this rejection is without prejudice to National Fuel filing identical tariff records in accordance with the provisions of section 154.207 of the Commission's regulations.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary

¹⁷ National Fuel contends in its December Answer that its proposed volumetric fee of \$0.0079/Dth would increase substantially if it were not permitted to assess the fee on all pool-to-pool transfers. However, the Commission's analysis of National Fuel's Appendix B work paper submitted in Docket No. RP13-298-000 projects an estimated throughput associated with Rate Schedule MPPAS of only 25.9 MMDth or approximately 6.6 percent of the total annual capacity available at the four new market area pools it originally proposed in that docket. While this figure may be a reasonable estimate for volumes initially transported to the MPPs, National Fuel has otherwise failed to support its contention that this figure also incorporates an estimate associated with pool-to-pool transfers.

Appendix

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

Tariff Records Rejected in Docket No. RP13-298-000

[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](#)

Tariff Records Rejected in Docket No. RP13-580-000

[1 – Table of Contents, 1 – Table of Contents, 4.0.1](#)
[3.030 – Pooling Points, 3.030 – Maps of Market Pooling Points, 0.0.0](#)
[6.030: EFT Rate Schedule, § 2 – Applicability and Character of Service, 3.0.1](#)
[6.040: FST Rate Schedule, § 2 – Applicability and Character of Service, 2.0.1](#)
[6.160: MPPAS Rate Sched., § 4 – Aggregation Procedures, 2.0.1](#)
[13 – Noms & Scheduling, 13.1 – Nominations, 3.0.1](#)
[16 – Curtailment, 16 – Curtailment, 2.0.1](#)