

168 FERC ¶ 61,140
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Neil Chatterjee, Chairman;
Cheryl A. LaFleur, Richard Glick,
and Bernard L. McNamee.

National Fuel Gas Supply Corporation

Docket Nos. RP19-429-000
RP19-1426-000

ORDER ACCEPTING AND SUSPENDING TARIFF RECORDS,
SUBJECT TO REFUND, ESTABLISHING HEARING PROCEDURES,
AND TERMINATING FERC FORM NO. 501-G PROCEEDING

(Issued August 30, 2019)

1. On July 31, 2019, in Docket No. RP19-1426-000, National Fuel Gas Supply Corporation (National Fuel) filed revised tariff records¹ pursuant to section 4 of the Natural Gas Act (NGA). National Fuel proposes changes to its rates, to be effective September 1, 2019. In addition, National Fuel proposes *pro forma* tariff records to be made part of any hearing and settlement procedures. As discussed below, the Commission accepts and suspends the tariff records in Appendix A to be effective February 1, 2020, subject to refund, condition, and the outcome of hearing procedures. The Commission also accepts, without suspension, a proposed rate decrease, subject to hearing, and directs National Fuel to file a revised tariff record to be effective during the suspension period that retains the rate decrease, but replaces the suspended rate increases with currently-effective rates. On December 6, 2019, in Docket No. RP19-429-000, National Fuel filed the one-time Report on the Rate Effect of the Tax Cuts and Jobs Act,² designated as FERC Form No. 501-G, as required by section 260.402 of the

¹ See Appendix A.

² An Act to provide for reconciliation pursuant to titles II and V of the concurrent resolution on the budget for fiscal year 2018, Pub. L. No. 115-97, 131 Stat. 2054 (2017) (Tax Cuts and Jobs Act).

Commission's regulations.³ With the filing of this NGA section 4 general rate case, the Commission terminates National Fuel's FERC Form No. 501-G proceeding.

I. Background

2. National Fuel states that it operates a system of approximately 2,500 miles of pipeline that extends from southwestern Pennsylvania to the New York-Canadian border at Niagara, as well as the Ellisburg-Leidy Hub.⁴ National Fuel states that it provides firm and interruptible transportation, storage, and gathering services under a variety of rate schedules.

3. National Fuel states that its last filed rate case was in Docket No. RP12-888-000, and resulted in a settlement.⁵ National Fuel further states that it negotiated a supplemental settlement to the 2012 Settlement in Docket No. RP15-1310-000.⁶ According to National Fuel, the 2015 Stipulation required National Fuel to file an NGA section 4 rate case no sooner than September 30, 2017, and no later than December 31, 2019. National Fuel states that the instant general rate case filing satisfies this requirement.

4. On July 18, 2018, the Commission issued Order No. 849,⁷ a final rule adopting procedures for determining which jurisdictional natural gas pipelines may be collecting unjust and unreasonable rates in light of (1) the income tax reductions provided by the Tax Cuts and Jobs Act; and, (2) the Commission's Revised Policy Statement⁸ and Opinion No. 511-C,⁹ which establishes a policy where master limited partnerships (MLP)

³ *Interstate and Intrastate Natural Gas Pipelines; Rate Changes Relating to Federal Income Tax Rate*, Order No. 849, 164 FERC ¶ 61,031 (2018) (adding 18 C.F.R. § 260.402), *order on reh'g*, Order No. 849-A, 167 FERC ¶ 61,051 (2019).

⁴ National Fuel Ex. NFG-95, at 3:8-14.

⁵ *National Fuel Gas Supply Corp.*, 140 FERC ¶ 61,114 (2012) (2012 Settlement).

⁶ *National Fuel Gas Supply Corp.*, 153 FERC ¶ 61,170 (2015) (2015 Stipulation).

⁷ Order No. 849, 164 FERC ¶ 61,031.

⁸ *Inquiry Regarding the Commission's Policy for Recovery of Income Tax Costs*, Revised Policy Statement, 83 Fed. Reg. 12,362 (Mar. 21, 2018), FERC Stats & Regs. ¶ 35,060, *order on reh'g*, 164 FERC ¶ 61,030 (2018).

⁹ *SFPP, L.P.*, Opinion No. 511-C, 162 FERC ¶ 61,228, at P 9 (2018).

may not recover an income tax allowance in response to the decision of the United States Court of Appeals for the District of Columbia Circuit (D.C. Circuit) in *United Airlines*.¹⁰ Order No. 849 required all interstate natural gas pipeline companies, with cost-based stated rates, to file a FERC Form No. 501-G containing an abbreviated cost and revenue study using data in the pipelines' 2017 FERC Form Nos. 2 and 2-A. Order No. 849 provided four options each interstate natural gas pipeline may choose from to address the changes to the pipeline's revenue requirement as a result of certain income tax reductions: (1) a limited rate reduction filing pursuant to section 4 of the NGA (Option 1); (2) a commitment to file a general NGA section 4 rate case or prepackaged settlement in the near future (Option 2); (3) an explanation of why no rate change is needed (Option 3); and, (4) no action (other than filing a report) (Option 4).

5. On December 6, 2018, National Fuel submitted its FERC Form No. 501-G in Docket No. RP19-429-000 consistent with the reporting requirements of Order No. 849. In its FERC Form No. 501-G, National Fuel stated that it is a separate income taxpaying entity. Therefore, its FERC Form No. 501-G includes a reduced tax allowance reflecting the decrease in corporate income tax provided by the Tax Cuts and Jobs Act. National Fuel's FERC Form No. 501-G shows a total estimated return on equity (ROE) of 15.6 percent.

6. National Fuel elected Option 3 and submitted an Addendum in support of its contention that no rate reduction is necessary. National Fuel's Addendum calculates an estimated ROE of 13.1 percent, after adjusting the capital structure utilized in the cost of service to reflect a 57 percent equity and 43 percent debt ratio. In its statement, National Fuel committed to file an NGA section 4 rate case no later than July 31, 2019, which National Fuel states is five months before the December 31, 2019 deadline for it to file a new rate case established by the 2015 Stipulation. Further, National Fuel argued that its indicated ROE is below the threshold of ROEs that have triggered an NGA section 5 proceeding in the past, and is either below or not greatly in excess of calculated ROEs of proxy group companies included in recent NGA section 4 rate case filings by other pipelines. National Fuel's FERC Form No. 501-G filing was protested, citing concerns with National Fuel's ROE and the promptness with which the Tax Cuts and Jobs Act corporate income tax reduction would be reflected in customers' rates.

II. Proposal

7. In its July 31, 2019 filing, National Fuel proposes a general rate increase to become effective September 1, 2019. National Fuel explains that its proposed rates are based on a cost of service for a twelve-month base period ending March 31, 2019, adjusted for known and measurable changes anticipated to occur during the nine-month period ending December 31, 2019. National Fuel proposes rates designed upon an

¹⁰ *United Airlines, Inc. v. FERC*, 827 F.3d 122 (D.C. Cir. 2016).

overall annual cost of service of \$295,412,396, and a rate base of \$970,837,697. National Fuel states that the cost of service reflects an ROE of 15 percent, a cost of debt of 4.89 percent, and a capital structure of 43.2 percent debt and 56.8 percent equity. National Fuel states that its overall rate of return would be 10.62 percent. National Fuel proposes a depreciation rate for transmission of 2.54 percent; for production and gathering of 1.65 percent; and for underground storage of 2.29 percent. In addition, National Fuel proposes a negative salvage rate for transmission plant of 0.64 percent; for production and gathering plant of 1.99 percent; and for underground storage plant of 1.38 percent. National Fuel states that with the new rates, it would have an increase in annual jurisdictional revenue of \$77,034,185 compared to the rates currently in effect. National Fuel mainly attributes its increased cost of service to increases in operational and maintenance expenses, depreciation expenses, and return and related income taxes. National Fuel explains that these increases reflect the significant level of plant that has been placed in service since the last rate proceeding. National Fuel states that it has also experienced ongoing and increased costs associated with environmental compliance, maintenance, and integrity management.

8. In addition, National Fuel states that its pipeline system's predominant flows, contracting, and business risks have evolved significantly since it last filed a rate case due to the proliferation of shale gas. National Fuel states it has experienced significant contracting business risks due to competition and a narrowing (and sometimes elimination) of the basis differential across its system.

9. National Fuel proposes several adjustments to its billing determinants. National Fuel states that, due to the disappearance of the summer/winter differential in gas prices, its storage services are less in demand. Similarly, National Fuel states that its contracted traditional Niagara firm transportation services have declined significantly as north-to-south basis differentials have disappeared. Furthermore, National Fuel states that its "contracting environment is further hampered by public policies in the State of New York that seek to reduce, if not eliminate, the future use of natural gas."¹¹ Thus, National Fuel proposes a revenue credit adjustment to account for discounted contracts with affiliates and non-affiliates.¹²

10. National Fuel submits a *pro forma* tariff record for a new section 43, Modernization Cost Recovery Mechanism (MCRM), as part of the General Terms and Conditions (GT&C) of its tariff. National Fuel explains that the MCRM seeks to recover, through a rate surcharge, costs associated with specific modernization projects that National Fuel will undertake in the coming years. National Fuel states that beginning in

¹¹ National Fuel's Transmittal Letter at 7.

¹² National Fuel Ex. No. NFG-68, at 33:21-23.

January 2021, the MCRM will allow National Fuel to recover a reservation surcharge for projects undertaken in the prior year without having to file a new rate case proceeding to recover these costs.¹³ National Fuel states that no surcharges will be made effective prior to the in-service date of the applicable facilities, and suggests an effective date of February 1, 2020 for the MCRM tariff provision, even though the provision is filed as a *pro forma* tariff record. National Fuel asks that the *pro forma* records be included in the hearing and settlement procedures.

III. Notice, Interventions, and Comments

11. Public notice of National Fuel's filings in Docket Nos. RP19-429-000 and RP19-1426-000 was issued December 7, 2018 and August 1, 2019, respectively. Interventions and protests were due as provided in section 154.210 of the Commission's regulations.¹⁴ Pursuant to Rule 214,¹⁵ all timely filed unopposed motions to intervene and any unopposed motions to intervene filed out-of-time 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. The entities that submitted protests and comments in response to National Fuel's filings are listed in Appendix B, including Range Resources-Appalachia LLC's protest to National Fuel's FERC Form No. 501-G Filing, requesting the Commission to immediately establish an NGA section 5 hearing without waiting for the filing of a section 4 rate case.

12. On August 16, 2019, National Fuel filed a Motion for Leave to Answer and Answer to protests in Docket No. RP19-1426-000. On August 26, 2019, National Fuel Gas Distribution Corporation (Distribution) filed a Motion for Leave and Answer to respond to National Fuel's answer. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure,¹⁶ prohibits answers to a protest unless otherwise ordered by the decisional authority. We accept the answers of National Fuel and Distribution because they provide information that assisted us in our decision-making process.

13. All of the protestors to National Fuel's section 4 filing raise general rate case issues and assert that National Fuel has not shown its proposed rates to be just and reasonable. The protestors state that National Fuel's proposal presents issues of material fact that must be further examined, and thus, request that the Commission suspend the

¹³ National Fuel's Transmittal Letter at 10.

¹⁴ 18 C.F.R. § 154.210 (2018).

¹⁵ 18 C.F.R. § 385.214 (2018).

¹⁶ 18 C.F.R. § 385.213(a)(2) (2018).

rates for the maximum statutory period of five months, subject to refund, and hearing and settlement procedures.

14. Rochester Gas and Electric Corporation (Rochester Gas) states that National Fuel has not sufficiently justified the costs allocated to the Empire Lease,¹⁷ and that the resulting storage rates assessed on Rochester Gas through Empire may be excessive.¹⁸ Rochester Gas also states that National Fuel has not adequately supported its increase in costs related to an arrangement with Tennessee Gas Pipeline Company, which are associated with the Colden storage field.¹⁹ Consolidated Edison Company of New York, Inc. (Con Edison), Equinor Natural Gas, LLC (Equinor), Indicated Shippers,²⁰ New Jersey Natural Gas Company (New Jersey Natural), New York State Public Service Commission (NYPSC), and Rochester Gas raise concerns about National Fuel's proposed discount adjustment.

15. Con Edison, Equinor, Indicated Shippers, National Fuel Gas Distribution Corporation (Distribution), NYPSC, PSEG Energy Resources & Trade LLC (PSEG), and Rochester Gas state that National Fuel's proposed MCRM and applicable reservation surcharge have not been shown to be just and reasonable, and request that the Commission examine National Fuel's implementation. Con Edison requests the parties be allowed the opportunity to examine whether the surcharge amount and the facilities selected to be upgraded are consistent with Commission policy.²¹ Rochester Gas states that National Fuel must not be allowed to collect integrity management costs in rates and collect similar charges in any modernization charge implemented.²² PSEG also requests

¹⁷ Rochester Gas is a firm shipper and long-term transportation and storage customer of its affiliate, Empire Pipeline, Inc. (Empire), which has a ten-year storage and transportation lease with National Fuel (Empire Lease). Rochester Gas Protest at 3.

¹⁸ *Id.* at 4.

¹⁹ *Id.* at 5.

²⁰ The Indicated Shippers joining in the protest include: Shell Energy North America (US), L.P., and XTO Energy, Inc.

²¹ Con Ed Protest at 6.

²² Rochester Gas Protest at 5.

that the Commission consider whether the integrity management expense should be deferred and examined alongside the associated capital costs.²³

16. Indicated Shippers note that National Fuel formally commenced its modernization program in 2013 and is only now proposing surcharge cost recovery, which shows that it may not be necessary.²⁴ Indicated Shippers also protest National Fuel's proposal to impose the MCRM surcharge on negotiated rate and discounted rate service agreements, as provided for in proposed GT&C section 43.2.b.(ii).²⁵ Indicated Shippers state that allowing National Fuel to impose a new capital cost surcharge on previously negotiated fixed rates defeats the reasonable expectations of shippers. Indicated Shippers also protest the *pro forma* tariff provisions to implement the MCRM. Specifically, Indicated Shippers state it is unclear from proposed GT&C section 43.2 whether National Fuel intends to include the equity return underlying its base rate calculation of eligible facilities costs.²⁶ Indicated Shippers also protest the inclusion of additional operation and maintenance (O&M), and administrative and general expenses associated with eligible facilities as inappropriate for recovery in a modernization tracker and directly at odds with the Commission's 2015 Policy Statement.²⁷ Accordingly, Indicated Shippers request that the Commission summarily reject their inclusion as eligible costs to be recovered through the MCRM surcharge.²⁸

17. In its answer, National Fuel states that, while all of the protestors raise typical rate case issues, it is specifically addressing the protests of Indicated Shippers and Distribution because their protests go beyond typical rate case issues. Specifically, National Fuel contends that the Commission should reject Indicated Shippers' request to summarily reject National Fuel's MCRM proposal. National Fuel argues that the Commission's 2015 Policy Statement is clear that pipelines remain at risk between rate

²³ PSEG Protest at 3.

²⁴ Indicated Shippers Protest at 5.

²⁵ *Id.*

²⁶ *Id.* at 6.

²⁷ *Cost Recovery Mechanisms for Modernization of Natural Gas Facilities*, 151 FERC ¶ 61,047 (2015) (2015 Policy Statement).

²⁸ Indicated Shippers Protest at 8.

cases for non-capital costs that are not attributable to modernization projects.²⁹ However, National Fuel asserts that the Commission's 2015 Policy Statement provides there is no "blanket prohibition on the inclusion of such noncapital costs in a modernization tracker" provided the pipeline can "demonstrate that such non-capital costs are special non-recurring costs not reflected in the O&M costs included in the pipeline's base rates and are directly related to the modernization projects whose costs are included in the modernization cost tracker." Further, National Fuel argues that the Commission gives pipelines and their customers "wide latitude to reach agreements incorporating remedies for a variety of system safety, reliability and/or efficiency issues" and that the Commission clarified that a tracker filing is subject to NGA section 4, which may include setting disputed matters for hearing before an Administrative Law Judge.³⁰

18. National Fuel argues that Indicated Shippers' request fails to meet the standard for summary disposition because there are genuine issues of material fact raised by its proposal that make a hearing on this evidence necessary. National Fuel argues that the Commission recognizes this need for examination and that it expects modernization trackers to be considered as part of the NGA section 4 rate case process. For this reason, National Fuel states that it proposed the MCRM in *pro forma* tariff records to take effect prospectively.³¹

19. Finally, Distribution states it is unclear from National Fuel's proposal whether there are any operational consequences for the services utilized by Distribution. Distribution identifies several issues it wishes to be examined at hearing, such as service flexibility and system enhancements. In addition, Distribution suggests that National Fuel should establish a Customer Advisory Board (CAB) in order to discuss operational

²⁹ National Fuel Answer at 5 (citing 2015 Policy Statement, 152 FERC ¶ 61,046 at P 10).

³⁰ National Fuel Answer at 3-4.

³¹ *Id.* at 4-5. National Fuel explains that it included *pro forma* section 43.2(f) in order to engage with its shippers as part of a collaborative effort to finalize the MCRM provision, as contemplated by the 2015 Policy Statement. Further, National Fuel states that it accepts the burden of proof that comes with an NGA section 4 filing, but argues that it must be given the opportunity, through this rate case proceeding, to demonstrate that any non-capital costs in the MCRM are not "included in the pipeline's base rates and are directly related to the modernization projects whose costs are included in the modernization cost tracker." *Id.* at 5.

matters with shippers on a regular basis³² and requests that the Commission include all these issues in the rate case proceeding pursuant to NGA section 5.

20. In its answer, National Fuel argues that all of the issues identified by Distribution are service flexibility issues that are not appropriate for inclusion in this rate case proceeding. According to National Fuel, Distribution's list is akin to the service flexibility issues raised by National Grid Gas Delivery Companies (National Grid) in Transcontinental Gas Pipe Line Company, LLC.³³ National Fuel explains that, in *Transco*, a protestor sought to address, among other things, service flexibility at a Transco interconnect. According to National Fuel, the Commission did not set the issues for hearing and reasoned that the issues "share little, if any, nexus with the rate issues...to be investigated at hearing," which "focused on the costs, functionalization, allocation and rate design that are associated with [the pipeline's] proposed rate changes." National Fuel points out that in *Transco* the Commission noted that there were alternative pathways for the protestor to raise its concerns, such as through a complaint proceeding.³⁴

21. In its answer, Distribution responds that it raised two broad issues in its protest that do not exclusively address rate matters but that both issues are properly raised and appropriate for inclusion in rate proceedings.³⁵ Distribution argues that the issues raised by it differ from those addressed in *Transco*, and are either directly pertinent to the kinds of cost allocation, cost recovery and risk issues typically raised and reviewed in NGA section 4 rate cases or address broad operational issues similar to those addressed in a recent settlement with National Fuel's affiliated pipeline, Empire.³⁶

³² Distribution Protest at 5-6.

³³ National Fuel Answer at 6 (citing *Transcontinental Gas Pipe Line Co., LLC*, 168 FERC ¶ 61,032 (2019) (*Transco*)).

³⁴ *Id.* at 7.

³⁵ Distribution Answer at 2-3. Distribution argues that those issues are either closely (1) related to the volumes/determinants to be used for National Fuel's rates, or (2) aligned with services and agreed-upon mechanisms approved in the most recent rate proceeding of National Fuel's affiliate, Empire Pipeline, Inc. (Empire), which Distribution claims are provided by the same underlying operating systems and personnel that National Fuel uses.

³⁶ Distribution Answer at 4 (citing *Empire Pipeline, Inc.*, 167 FERC ¶ 61,116 (2019)).

22. With regard to its marketability and system use proposal, Distribution states it studied certain operational issues to determine whether current service is sufficiently market-attractive (which it argues could affect volumes to be projected) and whether injection rights have improved (which it argues could affect determinants for injections). Distribution contends that these study issues are directly tied to the underlying cost and revenue issues upon which the analysis in *Transco* focused. With regard to its proposal to establish a CAB, Distribution states that the CAB could operate in parallel with that of National Fuel's affiliate, Empire, and could address a range of operational issues, i.e., conducting seasonal operational teleconferences to review and discuss the expected impact of construction and maintenance schedules, establish quarterly customer meetings to promote dialogue and address customer issues, and review how reservation charge adjustments are invoiced to avoid unnecessarily complicated invoice reconciliation.³⁷

IV. Discussion

23. We accept and suspend, subject to refund, the proposed tariff records listed in Appendix A, to be effective February 1, 2020, subject to refund and the outcome of hearing procedures. However, because one of the tariff records also reflects a rate decrease, we accept the rate decrease without suspension, to be effective September 1, 2019, subject to the compliance requirement discussed below.

24. National Fuel proposes to reduce Rate Schedule W-1, Hub Service rate to \$0.0251 per Dth from \$0.0287 per Dth. We accept, without suspension, the proposed rate, to be effective September 1, 2019, as requested, subject to the outcome of the hearing procedures established below. Pursuant to NGA section 4(e), the Commission may only require pipelines to order refunds of proposed rate increases above the level of the pipeline's prior rates. It follows that, where the pipeline proposes a rate decrease for a service, the Commission cannot order refunds, and no point would be served by a rate suspension.³⁸ Accordingly, the Commission's ordinary practice is to accept rate

³⁷ Distribution states that the operational issues contemplated for the CAB in this instance could operate in a manner similar to the CAB approved in a settlement in Empire's section 4 rate case, in which it asserts the Commission permitted non-ratemaking issues raised by Distribution to proceed at hearing, resulting in the adoption of the CAB in Article VII of the settlement in that case. Distribution Answer at 2-6 (citing *Empire Pipeline, Inc.*, 167 FERC ¶ 61,116; *Empire Pipeline, Inc.*, 164 FERC ¶ 61,076, at P 12 (2018); and Empire "Stipulation and Agreement" in Docket No. RP18-940-000, at p. 9).

³⁸ *Transcontinental Gas Pipe Line Co., LLC*, 140 FERC ¶ 61,251, at P 29 (2012).

decreases without suspension in order to assure that the rate decrease goes into effect as soon as possible.³⁹ At hearing, parties are free, however, to seek further rate decreases prospectively pursuant to NGA section 5. As the Rate Schedule W-1 rate is listed on a tariff record that contains other rates that are suspended through February 1, 2020, National Fuel is directed to file within 30 days of the date of this order a revised tariff record,⁴⁰ to be effective September 1, 2019, reflecting the accepted reduced Rate Schedule W-1 rate.

A. Hearing Procedures

25. National Fuel's filing raises many issues that warrant further investigation. We find that there are material issues of fact in dispute concerning, among other things, cost of service, functionalization, cost allocation and rate design. In addition, in certain underlying proceedings, the Commission has identified additional issues that require attention in a National Fuel general rate case.⁴¹ Accordingly, we establish a hearing before an Administrative Law Judge to explore the issues arising from the filing, including, but not limited to, those summarized above and set forth in the protests. However, we deny the request of Distribution to include service flexibility issues in this rate case proceeding because, as National Fuel points out, those issues distract from the larger rate case issues included in the rate case filing and can hinder the parties from analyzing and reviewing the issues necessary to resolve this proceeding. The issues the Commission permits to be included in a given hearing require a case-by-case determination and are a matter of broad discretion.⁴² That the Commission has permitted

³⁹ *Filing and Reporting Requirements for Interstate Natural Gas Company Rate Schedules and Tariffs*, Order No. 582-A, FERC Stats. & Regs. ¶ 31,034, at 31,562 (1996) (cross-referenced at 74 FERC ¶ 61,224).

⁴⁰ National Fuel Gas Supply Corporation, FERC NGA Gas Tariff, National Fuel Tariff, 4 - Applicable Rates, 4.050 - Other Rates.

⁴¹ *National Fuel Gas Supply Corp.*, 161 FERC ¶ 61,210 (2017) with regard to non-jurisdictional fuel costs and revenues); and *National Fuel Gas Supply Corp.*, 150 FERC ¶ 61,162, at PP 19-20 & n.16 (2015), 138 FERC ¶ 61,224 (2012), and 133 FERC ¶ 61,235 (2010) (with regard to facilities that are inactive).

⁴² *See Transco*, 168 FERC ¶ 61,032 at P 13, n.15 (citing *Mobil Oil Exploration & Producing Southeast, Inc. v. United Distrib. Co.*, 498 U.S. 211, 230-31 (1991) ("An agency enjoys broad discretion in determining how best to handle related yet discrete issues in terms of procedures and priorities [A]n agency need not solve every problem before it in the same proceeding.")) (citations omitted)).

parties to include in other rate cases issues in different contexts does not require the Commission to include Distribution's desired issues here. As the Commission stated in *Transco*, the issues raised by Distribution share little, if any, nexus with the rate issues that the parties need to resolve at hearing. Those rate case issues focus on the costs, functionalization, cost allocation and rate design that are associated with National Fuel's proposed rate changes, not the quality of the service National Fuel provides. Limiting the hearing to issues with a nexus to rate issues is appropriate. Moreover, we will not require National Fuel to address Distribution's proposal to establish a CAB as this was not something that National Fuel proposed in its rate case filing. Further, as the Commission noted in *Transco*, Distribution has alternative pathways to raise its concerns, such as through a complaint proceeding.

26. National Fuel must adhere to section 154.303(c)(2) of the Commission's regulations, which provides that at the end of the test period, the pipeline must remove from its rates costs associated with any facility that is not in service or for which certificate authority is required but has not been granted.⁴³

B. Modernization Cost Recovery Mechanism

27. Indicated Shippers argue that National Fuel's proposed MCRM does not comply with the 2015 Policy Statement, and request that aspects of that proposal be summarily rejected. We find that National Fuel's proposed MCRM is simply an alternative rate design intended to recover modernization costs through a periodic reservation surcharge as opposed to through base rates.⁴⁴ As noted above, National Fuel filed its MCRM as *pro forma* tariff records. As such, there is no tariff record for the Commission to act upon. The Commission permits natural gas pipelines, as part of a general section 4 rate case filing, to propose prospective changes to their existing cost allocation and rate design methodologies that will only take effect if and when the Commission finds the proposed changes to be just and reasonable. Pipelines set forth these proposals in *pro forma* tariff records, which illustrate how such a proposal would be implemented if the Commission approved the proposal and allowed it to be implemented in actual tariff records.⁴⁵ With one exception discussed below, we direct the MCRM proposal to be examined at the hearing established above.

⁴³ 18 C.F.R. § 154.303(c)(2) (2018).

⁴⁴ *See in accord Transcontinental Gas Pipe Line Co., LLC*, 164 FERC ¶ 61,236, at P 22 (2018).

⁴⁵ *ANR Pipeline Co.*, 155 FERC ¶ 61,217, at P 10 (2016) (*ANR*).

28. National Fuel proposes at section 43.3(c) that the MCRM's eligible costs "shall commence with the effective date of rates in Transporter's general NGA section 4 rate case filing made on July 31, 2019," which is the rate case subject to this order. This language presumes that, at the conclusion of this proceeding, the Commission will approve the MCRM. However, whether National Fuel will file actual tariff records pursuant to NGA section 4 with the MCRM and its proposed and actual effective date is speculative. National Fuel cannot propose to recover costs incurred before the effective date of the new cost recovery mechanism. Such a proposal would constitute retroactive rate making.⁴⁶ Therefore, *pro forma* GT&C section 43.3(c) is rejected.⁴⁷

C. Suspension

29. Based upon review of the filing, we find that the proposed tariff records set forth in Appendix A have not been shown to be just and reasonable, and may be unjust, unreasonable, and unduly discriminatory or otherwise unlawful. Accordingly, we accept and suspend the effectiveness of the tariff records in Appendix A for five months, to be effective February 1, 2020, subject to refund and the outcome of the hearing ordered herein.

30. The Commission's policy regarding suspensions is that tariff 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.⁴⁸ 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.⁴⁹ Such circumstances do not exist for the tariff records set forth in Appendix A. Therefore, we exercise our discretion to suspend them for the maximum period, to be effective February 1, 2020, subject to refund and the outcome of the hearing ordered herein.

⁴⁶ *High Island Offshore System, L.L.C.*, 112 FERC ¶ 61,050, at P 145 (2005).

⁴⁷ *See ANR*, 155 FERC ¶ 61,217 at P 11 (citing examples of the Commission rejecting certain aspects of *pro forma* tariff proposals).

⁴⁸ *See Great Lakes Gas Transmission Co.*, 12 FERC ¶ 61,293 (1980) (five-month suspension).

⁴⁹ *See Valley Gas Transmission, Inc.*, 12 FERC ¶ 61,197 (1980) (one-day suspension).

D. FERC Form No. 501-G

31. Order No. 849 required all interstate natural gas companies with cost-based stated rates to file the FERC Form No. 501-G.⁵⁰ Because National Fuel has now filed a general rate case under NGA section 4, the justness and reasonableness of its rates can be investigated in that proceeding. Therefore, we terminate National Fuel's FERC Form No. 501-G proceeding.

The Commission orders:

(A) The proposed tariff records in Appendix A are accepted and suspended to be effective upon motion on February 1, 2020, subject to refund, condition, and the outcome of the hearing procedures established herein, as discussed in the body of this order.

(B) Within 30 days of the issuance of this order, National Fuel is directed to file a revised tariff record that includes its currently effective rates and the proposed lower rate for Rate Schedule W-1 to be effective September 1, 2019, as discussed in the body of this order.

(C) The captioned FERC Form No. 501-G proceeding is terminated.

(D) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act and the NGA, particularly sections 4, 5, 8, 9, and 15 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the NGA (18 C.F.R. Chapter I), a public hearing shall be held concerning the justness and reasonableness of National Fuel's proposed tariff records, as discussed in the body of this order.

(E) A presiding judge, to be designated by the Chief Judge for that purpose, shall, within fifteen (15) days of the date of the presiding judge's designation, convene a prehearing conference in this proceeding in a hearing or conference 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

⁵⁰ See Order No. 849, 164 FERC ¶ 61,031 at P 30.

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.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

Appendix A

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

Tariff records accepted and suspended, effective February 1, 2020, subject to refund, condition, and the outcome of hearing procedures:

- [4 - Applicable Rates, 4.010 - Transportation Rates, 25.0.0](#)
- [4 - Applicable Rates, 4.020 - Part 284 Storage Rates, 20.0.0](#)
- [4 - Applicable Rates, 4.030 - Part 157 Storage Rates, 19.0.0](#)
- [4 - Applicable Rates, 4.040 - Gathering Rates, 28.0.0](#)
- [4 - Applicable Rates, 4.050 - Other Rates, 17.0.0](#)
- [X-54 Rate Schedule, Volume No. 2 - Special Rate Schedules, 5.0.0](#)

Appendix B
List of Commenters and Protestors, and Abbreviations

Docket No. RP19-429-000

Range Resources-Appalachia LLC

Docket No. RP19-1426-000

Consolidated Edison Company of New York, Inc.

Equinor Natural Gas, LLC

Indicated Shippers

National Fuel Gas Distribution Corporation

New Jersey Natural Gas Company

New York State Public Service Commission

NiSource Distribution Companies⁵¹

Peoples Natural Gas Company LLC

PSEG Energy Resources & Trade LLC

Rochester Gas and Electric Corporation

⁵¹ NiSource Distribution Companies includes Columbia Gas of Pennsylvania Inc., and Bay State Gas Company d/b/a Columbia Gas of Massachusetts.