

171 FERC ¶ 61,191  
FEDERAL ENERGY REGULATORY COMMISSION  
WASHINGTON, DC 20426

June 1, 2020

In Reply Refer To:  
National Fuel Gas Supply Corporation  
Docket No. RP20-659-000

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

Attention: Alice A. Curtiss, Deputy General Counsel

Dear Ms. Curtiss:

1. On March 16, 2020, National Fuel Gas Supply Corporation (National Fuel) filed its final True-Up Report for its Pipeline Safety and Greenhouse Gas (PS/GHG) cost recovery mechanism, pursuant to Section 42 of the General Terms and Conditions (GT&C) of its tariff. For the reasons discussed below, we accept National Fuel's final True-Up Report as in conformance with its tariff.

2. GT&C Section 42 of National Fuel's tariff includes a surcharge mechanism to recover its PS/GHG costs. This mechanism permits National Fuel to utilize reservation surcharges to recover incurred or projected PS/GHG costs associated with new legislation and new regulatory requirements. National Fuel states that its first PS/GHG filing was accepted on October 30, 2017<sup>1</sup> and that its most recent PS/GHG filing was accepted on October 17, 2019 (2019 Annual PS/GHG Filing).<sup>2</sup>

3. National Fuel states that pursuant to GT&C Section 42.3(c), the PS/GHG cost recovery mechanism expired on February 1, 2020 (Expiration Date), which coincided with the effective date of rates filed in its most recent Natural Gas Act (NGA) section 4 rate case. National Fuel indicates that GT&C Section 42.3(c) requires it to file a final

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<sup>1</sup> *National Fuel Gas Supply Corp.*, Docket No. RP17-1123-000 (Oct. 30, 2017) (delegated order).

<sup>2</sup> *National Fuel Gas Supply Corp.*, Docket No. RP19-1608-000 (Oct. 17, 2019) (delegated order).

true-up of the PS/GHG cost recovery mechanism within 60 days of the Expiration Date. National Fuel further states that for remaining balances, the mechanism permits it to make a one-time surcharge to shippers having Firm Applicable Service Agreements based on their proportion of the Estimated Reservation Determinants. National Fuel states that the instant filing represents its required true-up report, and that it developed one-time reservation surcharge rates to allocate the remaining balances in the deferred surcharge account to its shippers. National Fuel's filing includes exhibits detailing the remaining balances in the deferred surcharge account as of January 31, 2020, the one-time reservation surcharge rates, and the surcharge invoice amounts for each shipper having a firm Applicable Service Agreement on the invoice date. National Fuel states it did not include approximately \$5,945.63 in surcharge amounts due to rounding.

4. Public notice of the filing was issued on March 18, 2020. Interventions and protests were due as provided in section 154.210 of the Commission's regulations.<sup>3</sup> Pursuant to Rule 214,<sup>4</sup> all timely filed unopposed 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. On March 30, 2020, Indicated Shippers<sup>5</sup> filed adverse comments.

5. On April 6, 2020, National Fuel filed an answer to comments filed by Indicated Shippers. Pursuant to Rule 213(a)(2) of the Commission's Rules of Practice and Procedure,<sup>6</sup> answers to protests are prohibited unless otherwise ordered by the decisional authority. The Commission will accept the instant answer because it provides information that will assist us in our decision-making process.

6. In their comments, Indicated Shippers raise three concerns with National Fuel's filing. Indicated Shippers argue that National Fuel may have violated section 4 of the NGA by imposing a one-time surcharge on shippers without filing to amend its tariff to provide for such a filing in advance. Indicated Shippers contend that National Fuel's tariff does not provide for the imposition of this surcharge without prior filing, notice, and Commission authorization. Indicated Shippers assert that GT&C Section 42.3(c)

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<sup>3</sup> 18 C.F.R. § 154.210 (2019).

<sup>4</sup> 18 C.F.R. § 385.214 (2019).

<sup>5</sup> In the instant proceeding Indicated Shippers consist of Direct Energy Business Marketing, LLC and Shell Energy North America (US), L.P.

<sup>6</sup> 18 C.F.R. § 385.213(a)(2) (2019).

does not state that National Fuel would implement such a charge without first seeking Commission authorization.

7. Indicated Shippers assert that there is a pending unopposed settlement (Pending Settlement) filed with the Commission on March 13, 2020, addressing National Fuel's NGA section 4 rate case in Docket No. RP19-1426-000, which would reinstate and extend the PS/GHG surcharge mechanism, effective February 1, 2020. Indicated Shippers contend that if this settlement is approved, the PS/GHG surcharge will not be terminated and will remain in effect. Indicated Shippers claim that this would eliminate the basis for a final true-up. Indicated Shippers request that the Commission direct National Fuel to either carry forward the deferred surcharge account balance under the PS/GHG tracker mechanism, contingent upon approval of the Pending Settlement, or at a minimum make a tariff filing under NGA section 4 to recover the deferred surcharge account balance.

8. In its answer, National Fuel argues that the relief requested by Indicated Shippers is not required by National Fuel's tariff, or the NGA. National Fuel states that the 2019 Annual PS/GHG Filing provided notice of the costs recoverable under the PS/GHG cost recovery mechanism, including the estimated deferred surcharge account amounts. National Fuel states that it has made annual surcharge filings under the PS/GHG cost recovery mechanism for rates to be effective each November 1 in 2017, 2018 and 2019,<sup>7</sup> and that these surcharge rates are part of its tariff.

9. National Fuel maintains that its 2019 Annual PS/GHG Filing demonstrates the status of incurred PS/GHG costs as well as costs estimated to be incurred through the last effective date of the cost recovery mechanism of January 31, 2020. National Fuel states that the 2019 Annual PS/GHG Filing listed a remaining balance of \$1.5 million in the deferred surcharge account, which would be updated for actuals once the cost recovery mechanism expired and then be collected through the true-up mechanism listed in GT&C Section 42.3(c). National Fuel asserts that its final True-Up Report provides detailed calculations supporting the deferral account balances of roughly \$1.9 million on January 31, 2020.

10. National Fuel argues that its True-up Report was filed in conformance with GT&C Section 42.3(c) and that the surcharge mechanism does not require any additional pre-approval by the Commission. National Fuel states that by its terms GT&C Section 42.3(c) terminates no later than "...the effective date of the general NGA

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<sup>7</sup> National Fuel states that it made filings to institute these surcharges in Docket Nos. RP17-1123-000, RP18-1257-000 and RP19-1608-000. National Fuel maintains that none of the filings were protested by any party, and each of the filings was approved by the Commission without change.

Section 4 rate proceeding provided by Transporter.” Thus, National Fuel asserts that the Expiration Date complies with this provision because it coincides with the February 1, 2020 effective date for rates from its most recent general NGA section 4 rate case. National Fuel further states that GT&C Section 42.3(c) requires it to:

make a filing to true-up any balances remaining in the Deferred Surcharge Account by either: (i) a refund to shippers who paid PS/GHG Surcharges in the final Annual Period through a one-time credit to each Applicable Service Agreement, pro rata based on its proportion of total amount paid; or (ii) a one-time reservation surcharge to shippers having a firm Applicable Service Agreement on the invoice date, pro rata based on proportion of the Estimated Reservation Billing Determinants on that date.

National Fuel states that its True-Up Report conforms with this provision because it was filed within 60 days of the Expiration Date and describes the one-time reservation surcharges applicable to shippers under the PS/GHG cost recovery mechanism on the invoice date. National Fuel points out that its tariff does not require it to make an NGA section 4 filing before invoicing its shippers for the final surcharge amount.

11. National Fuel also asserts that its final True-Up Report complies with the NGA. National Fuel states that the amounts were already described and provided in the 2019 Annual PS/GHG Filing as discussed above and that GT&C Section 42.3(c) describes how the remainder in the deferred surcharge account was to be allocated in proportion to the shippers’ projected reservation billing determinants for the applicable Annual Period. National Fuel maintains that it did not replace any charge in its tariff and only allocated remaining dollars from its PS/GHG surcharge as provided by GT&C Section 42.3(c).

12. National Fuel argues that it is clear that the PS/GHG cost recovery mechanism expired by its terms on February 1, 2020 and that the Pending Settlement filed on March 13, 2020 will institute a new PS/GHG cost recovery mechanism.<sup>8</sup> National Fuel states that nothing in the Pending Settlement changes the language of the expired PS/GHG cost recovery mechanism. National Fuel further states that nothing in the Pending Settlement provides for the continuation of the expired mechanism or changes the Expiration Date. National Fuel maintains that new expiration dates and cost definitions will apply, among other changes, upon the effective date of the Pending Settlement and filing of a revised PS/GHG cost recovery mechanism.

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<sup>8</sup> An order approving the uncontested settlement in National Fuel’s NGA section 4 general rate case in Docket No. RP19-1426-000 is being issued contemporaneously with this order.

13. We find that National Fuel's final True-Up Report complies with GT&C Section 42.3(c) of its tariff. We find that the 2019 Annual PS/GHG Filing established the surcharges pursuant to NGA section 4 in National Fuel's tariff, which provided Indicated Shippers and all other shippers with adequate notice of the surcharge mechanism. The plain language of GT&C Section 42.3(c) provides the procedures for invoicing the final deferred surcharge account balances without requirement for a further NGA section 4 filing. This mechanism does not require further Commission authorization for implementation. It is a self-implementing process that occurs upon the termination of the surcharge mechanism.

14. Finally, we find that GT&C Section 42.3(c) supports National Fuel's explanation that the PS/GHG cost recovery mechanism expired by its terms on February 1, 2020. In addition, the Pending Settlement establishes a new PS/GHG cost recovery mechanism. The expired mechanism in the current tariff and the mechanism to be established pursuant to the Pending Settlement in Docket No. RP19-1426-000 are separate surcharge mechanisms, and there is no rollover of the deferred surcharge account balance between these mechanisms as alleged by Indicated Shippers.

15. Accordingly, we accept National Fuel's final True-Up Report as in conformance with its tariff.

By direction of the Commission.

Kimberly D. Bose,  
Secretary.