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national fuel

December 30, 2008

Hon. Jaclyn A. Brilling
Secretary
Public Service Commission
Three Empire State Plaza
Albany, New York 12223-1350

Re: Proposed Tariff Amendment

Dear Secretary Brilling:

National Fuel Gas Distribution Corporation ("Distribution" or the "Company") submits the following amendment to its tariff, P.S.C. No. 7 – GAS:

9th Revised Leaf No. 265
2nd Revised Leaf No. 265.1

The above amendment is issued as of today for an effective date of March 16, 2009, or such other date as the Commission may determine.

Introduction

The proposed amendment modifies Distribution's retail access tariff (Supplier Transportation Balancing and Aggregation ("STBA")) by adding a new provision to charge replacement shipper Energy Service Companies ("ESCOs")[1] a price for released capacity equal to Distribution's weighted average cost of capacity ("WACOC"). Currently Distribution releases a cross section of pipeline paths to provide ESCOs with pipeline receipt points at a cost nearly equal to Distribution's WACOC. Recent changes in federal pipeline regulations have authorized Distribution to implement the instant revisions. Accordingly, the proposed amendments would enable ESCOs to take release of Distribution's suitable, available pipeline capacity at the same WACOC paid by Distribution's sales customers.

Reasons for Proposed Change

Prior to the recent revision of federal rules governing the release of capacity on interstate pipelines, prearranged capacity release transactions were permitted only when the price of the release capacity was equal to the maximum rate set forth in the pipeline's F.E.R.C.-approved tariff. See, 18 CFR §284.8(h)(1). Prearranged capacity releases are necessary for state-mandated retail access programs in order to assure that the capacity

[1] ESCOs are called "Suppliers" or "STBA Suppliers" in Distribution's tariff.

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obtained by the LDC for its customers remains "dedicated" to that LDC's retail markets, and therefore available for use by participating ESCOs.

A feature of state mandated retail access programs is that in order to achieve comparability of capacity costs, the LDCs use mechanisms to release capacity to ESCOs at a cost equal to the LDC's weighted average cost of capacity ("WACOC"). Historically, LDCs were unable to release their pipeline capacity at a rate equal to the WACOC without observing the FERC rule that required that the proposed release be subject to the FERC bidding requirement. As a consequence, LDCs were forced to find other means of charging the WACOC. The two most used means have been, (1) releasing "slices" of the LDC's capacity at maximum rates that, in combination, roughly equal the LDC's WACOC; and (2) releasing capacity at maximum rates and then applying a credit or surcharge to bills rendered for the replacement shipper ESCO's retail customers for the difference between the ESCO's cost of released capacity and the LDC's WACOC.

Distribution has long utilized the first of the two methods described above. Distribution was unable to utilize the second method of applying a credit or surcharge to customer bills for the reasons described by the Company, and accepted by the Commission, in the Company's last rate case.[2] In that case, the issue was left open for further discussion by Staff and the Company in the context of Case 07-G-0299, Natural Gas Industry Issues, Order on Capacity Release Programs (issued April 30, 2007) ("Capacity Order"). The Capacity Order revised the Commission's procedures for ESCO use of LDC upstream capacity by adopting the recommendation of the Commission's long-running Reliability Collaborative for a "mandatory capacity release" model of upstream capacity utilization by ESCOs. Distribution's filing in compliance with the Capacity Order was approved, with no change in the method for achieving WACOC that is still in effect.

In the instant filing, Distribution is proposing to revise its tariff to enable the WACOC to be charged directly to replacement shipper ESCOs under the STBA tariff. In Distribution's opinion, this proposed revision is superior to both methods described above. It is more administratively simple than Distribution's method of allocating "slices" of capacity at a cost approximating the WACOC, and by charging the actual WACOC to the ESCO replacement shipper, it obviates the need for a customer-billed credit or surcharge "true-up" mechanism, which nonetheless remains unworkable in Distribution's retail access program.

The Company's proposed change has been made possible by recent revisions to federal regulations adopted by the FERC in Order 712. *Promotion of a More Efficient Capacity Release Market*, Order No. 712, 123 FERC ¶ 61,286 (2008) ("Order 712"). In Order 712, the FERC adopted a number of important changes to rules governing capacity

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[2] Case 07-G-0141, National Fuel Gas Distribution Corporation – Rates, Order Establishing Rates for Gas Service (issued December 21, 2007) at 64-65.

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release on interstate pipelines, including the pipelines on which capacity is released under Distribution's STBA tariff. For purposes of the instant filing, the pertinent changes adopted by FERC were 1) an exemption from the long established bidding requirement applicable to capacity releases at less than the maximum rate; and 2) relief from the longstanding requirement that the rate for short term capacity releases not be greater than the pipeline's maximum rate for such capacity. As a result of these changes, releases under state-mandated retail access programs are exempt from the bidding requirement "regardless of the rate at which the LDC makes its releases to the marketers participating in the state retail unbundling program." Id. at 134.

With these changes by FERC, LDCs are now permitted to release pipeline capacity to ESCOs participating in the LDC's retail access program at a rate equal to the LDC's WACOC without posting the proposed release transaction for bidding. This means that the LDC can enter into prearranged release transactions with the price of the released capacity set to bring the ESCO's capacity cost to the LDC's WACOC.

Detailed Description of Proposed Change

Distribution's STBA tariff contains a requirement for Mandatory Upstream Transmission Capacity ("MUTC"). The provision for MUTC, at leaf 265, is modified to add a procedure for calculating the WACOC. New text is proposed as follows:

> The Company will calculate a capacity release rate for MUTC to be effective each April 1st for the twelve (12) month release term equal the weighted average cost of capacity ("WACOC") for this under each pipeline's gas tariff filed with FERC. If in any month the actual WACOC should differ from the calculated WACOC by more than five percent (5%), the Company will recalculate the capacity release rate applied to MUTC capacity releases for the remainder of the twelve (12) month release term. The Company will post the WACOC on its web site.

In some circumstances, Distribution may be required to release capacity that does not qualify for the exemption from bidding. Currently this would apply where, for example, the replacement shipper is an entity other than the ESCO serving retail customer.[3] The following additional language is designed to address those situations:

[3] *See*, *Promotion of a More Efficient Capacity Release Market*, , *Order on Rehearing*, 125 FERC ¶ 61,216 (November 21, 2008) ("Order No. 712-A"). A provision of Order 712-A has caused uncertainty regarding the applicability of the bidding exemption to releases of pipeline capacity to agents for retail ESCOs, even under state-mandated retail access programs. Distribution has sought clarification or alternative relief from the FERC in a pleading filed on December 22, 2008, the outcome of which cannot be ascertained at this time. If Distribution's request is granted, then the requirement that Suppliers "match competing bids" will no longer apply for agency or similar arrangements.

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In cases where capacity release offers are not eligible for an exemption from bidding under F.E.R.C. Rules, in order to maintain eligibility under this service classification Suppliers will need to match competing bids, as necessary, to be awarded capacity by the pipeline(s).

Newspaper Publication and other Notice

Notification of the above revisions will be published in newspapers of general circulation prior to the proposed effective date as required by the Public Service Law. In addition, Distribution will post notice of the proposed change on its web site dedicated to providing information for ESCOs doing business under Distribution's STBA tariff.

Conclusion

For all of the foregoing reasons, Distribution respectfully requests that its proposed tariff amendment be approved for an effective date of March 16, 2009, or such other time as determined by the Commission.

Respectfully submitted,

Michael W. Reville