

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

At a session of the Public Service
Commission held in the City of
Albany on October 11, 2000

COMMISSIONERS PRESENT:

Maureen O. Helmer, Chairman
Thomas J. Dunleavy
James D. Bennett
Leonard A. Weiss
Neal N. Galvin

CASE 00-G-1495 - Proceeding on Motion of the Commission
as to the Rates, Charges, Rules and
Regulations of National Fuel Gas
Distribution Corporation.

ORDER ESTABLISHING RATES FOR GAS SERVICE

(Issued and Effective October 23, 2000)

BY THE COMMISSION:

INTRODUCTION

This proceeding was commenced with an order directing National Fuel Gas Distribution Corporation (National Fuel or the company) to show cause why its rates and charges for gas service should not be reduced on a temporary basis, unless the company agreed to having its current rates and charges made temporary and subject to refund as of October 1, 2000. The order noted that increases in customers' bills for the coming heating season are anticipated as a result of the substantial rise in the market price of natural gas during the course of this year. The order noted further that funds, from various sources, that should be passed along to the company's customers are

available to the company, and that such funds could be used to offset, at least in part, the anticipated increases in heating season bills.¹

In response to that order, National Fuel, the Department of Public Service Staff (Staff), the New York State Consumer Protection Board (CPB), and Multiple Intervenors (MI) entered into a settlement agreement proposing a rate plan intended to satisfy our objectives. The parties to the agreement were directed to file statements in support of the agreement, and other interested parties were invited to file comments, by October 3, 2000. Statements in support of the agreement have been received from National Fuel, Staff, CPB, and MI. No additional filings have been submitted.

TERMS OF PROPOSED RATE PLAN

For the 12-month period beginning October 1, 2000, the proposed rate plan provides that National Fuel's customers could receive, all told, \$19.1 million of bill reductions, consisting of (1) an agreed-to credit of \$10 million; (2) estimated overearnings in past rate years of \$7.6 million; and (3) a credit offsetting the expense allowance embedded in base rates for a discontinued conservation program. The agreement recognizes that the \$7.6 million amount for past overearnings is the company's estimate and is subject to change (with reconciliation) "due to agreement of the parties or action by the Commission." Most customers eligible to receive reductions for the first two items would receive them over the five-

¹ Case 00-G-1495, Order to Show Cause (issued August 31, 2000).

month period beginning November 1, 2000;¹ large industrial customers would receive their share of those reductions throughout the 12-month period. The conservation program expense allowance offset would be received by eligible customers throughout the 12-month period.

For the 12-month period beginning October 1, 2001, the proposed rate plan provides for a \$5 million bill credit, to be allocated in the same manner as the \$10 million credit for the first 12-month period. The conservation program expense allowance offset would also continue.

For subsequent 12-month periods beginning October 1, 2002, the proposed rate plan incorporates a rebuttable presumption that the \$5 million credit should continue. For a given 12-month period, National Fuel would be permitted to submit a presentation to the Commission, not later than the preceding June 1, requesting a determination that the presumption should not apply. The conservation program expense allowance offset would continue unless and until National Fuel's base rates were changed.

For the three-year period beginning October 1, 2000, the proposed rate plan establishes a new threshold for sharing earned returns on common equity. The threshold would be reduced from the current 12% to 11.5%, and the calculation of the earned return would reflect a 47% common equity ratio, the exclusion of expenses associated with stock appreciation rights and restricted stock dividends, and an updated reconciliation of the company's earnings

¹ Customers taking service under individually-negotiated rates would not be eligible for the proposed reductions.

base and capitalization. Earnings would be calculated for the entire three-year period, and 50% of any cumulative earnings exceeding those required for a return on common equity of 11.5% would be returned to National Fuel's customers, beginning in calendar year 2004.

The proposed rate plan provides that, should National Fuel not have filed a rate case that is pending as of April 1, 2003,¹ the company shall, by that date, provide to Staff and CPB financial forecasts for its New York division for the 12-month period beginning October 1, 2003. The proposed rate plan provides that such forecasts would be kept confidential and would be used to "ascertain an appropriate level of rates for future periods." The agreement alludes to the possibility that the parties to the agreement might attempt to negotiate a settlement pertaining to the 12-month period beginning October 1, 2003.

The proposed rate plan contemplates that National Fuel be kept whole for unrecovered costs resulting from the introduction of competitive metering and billing. The proposed rate plan does not advance a resolution of restructuring issues, but it provides for the continuation of negotiations among the parties to the agreement, marketers on National Fuel's system, and other interested parties with a view toward "resolv[ing] all of the outstanding issues raised by the Commission in its various orders aimed at the restructuring of the natural gas

¹ The agreement states that "[n]othing herein shall constrain [the] ability of the Company or any other party to petition the Commission for rate relief in the third year consistent with the provisions of the Public Service Law."

industry in the State." The proposed rate plan sets a six-month deadline for the conclusion of discussions.

Finally, the proposed rate plan contemplates that National Fuel may petition the Commission for deferred accounting recognition and rate recovery of any increase in its operating expenses exceeding 3% of its net income and resulting from a change, repeal, or amendment of a local, state, or federal law, rule, regulation, order, or other requirement while the rate plan was in effect.

EVALUATION OF PROPOSED TERMS

As pointed out in the parties' statements, there are three distinct reasons supporting adoption of the proposed rate plan. First, the rate plan would provide some measure of relief from expected increases in bills for the 2000-2001 heating season resulting from the increased market price of the natural gas commodity itself (compared with the commodity price during the 1999-2000 heating season). Staff points out that, all else equal, residential customers' bills would be reduced by 4% under the rate plan; under expected conditions, however, the proposed base rate reduction will help to mitigate expected bill increases of 25% to 30%.¹

Second, approval of the rate plan would end the show-cause proceeding, thus allowing the parties to continue negotiating a long-term restructuring proposal. National Fuel points out that at the time of the issuance

¹ In its compliance filing, National Fuel should submit, for our staff's review, a proposed message to be printed on customers' bills explaining that the amounts billed during the heating season reflect the credits and base rate reductions provided for in the approved rate plan.

of the August 31, 2000 Order to Show Cause, the company "had been meeting with parties to its previous settlement and gas marketers on its system in an effort to develop a new rate (and restructuring) settlement for the period commencing upon the previous settlement's expiration."¹ The company argues that it "is certain that all the parties involved in the negotiations that were taking place before the issuance of the Order would agree that those negotiations should resume as soon as possible."² We agree that the parties should promptly resume negotiations, and we emphasize here that we expect a restructuring proposal to be submitted to us within six months following the effective date of this order.

Third, the proposed rate plan, by leaving in place the earnings sharing provision approved in its last rate case (while reducing the threshold return on common equity from 12% to 11.5%), provides a continuing and effective incentive for National Fuel to improve its operating efficiency while maintaining the safety and reliability of its service. The company points out that earnings sharing "clearly worked" as an incentive, because "[n]ot only did the Company reduce its costs, it did so with no diminution of service and, moreover, achieved the conversions of customers to third-party gas marketers in a manner that exceeds the success rate of any other [gas corporation] in this State."³

¹ National Fuel's Statement, p. 1 (footnote omitted).

² Ibid., p. 2 (footnote omitted).

³ Ibid., p. 4. The parties agree that the earnings sharing provision might be modified to incorporate restructuring-related incentives. Meanwhile, Staff notes, the customer
(continued...)

As noted by National Fuel, the proposed rate plan entails the following concessions and assumptions of risk on its part:

1. The company has agreed to "the early return of \$7.6 million of earnings sharing credits arising under previous agreements, even though several key elements of the earnings sharing calculation under those settlements remain in dispute."¹
2. The company's earnings sharing threshold would be reduced from the threshold approved in 1998, 12%, to 11.5% even though capital costs generally have not decreased correspondingly since 1998.
3. The company's opportunities to benefit from the earnings sharing incentive will be limited, because "[t]he range of operations and maintenance activities available for cost-cutting and efficiency gains continues to shrink,"² while slow economic growth and a continuing trend of declining consumption per customer will combine to hold down growth in sales and net revenues.

On the basis of the foregoing, we conclude that approval of the proposed rate plan will satisfy our statutory obligation to assure safe and adequate gas service at just and reasonable rates. Accordingly, we shall adopt the terms and conditions of the proposed rate plan.

service incentive approved in National Fuel's last rate case would continue under the proposed rate plan.

¹ Id.

² Ibid., p. 5.

STATE ADMINISTRATIVE PROCEDURE ACT

The parties to the settlement agreement contemplate that the proposed rate plan will go into effect on November 1, 2000, to assure that the bill reductions take effect as the heating season begins. As discussed above, the increased market price of natural gas is expected to result in substantial increases to customers' bills for gas service this winter. The rate reductions and credits will mitigate in part the likely bill increases. For the foregoing reasons, we are approving this order on an emergency basis pursuant to §202(6) of the State Administrative Procedure Act (SAPA). We find that immediate adoption is necessary for the preservation of the general welfare, and that compliance with the advance notice and comment provisions of SAPA §202(1), which would not permit a decision until well after November 1, would be contrary to the public interest.

The Commission orders:

1. The terms and conditions proposed in the settlement agreement filed on September 22, 2000 and attached to this order are adopted and are incorporated as part of this order.

2. National Fuel Gas Distribution Corporation (the company) is directed to file amendments to its existing tariffs consistent with this order. The company shall serve copies of its compliance filing upon all parties that filed statements supporting the settlement agreement. Any comments on the compliance filing must be received at the Commission's offices within ten days of its date of service. Tariff amendments specified in the compliance filing shall not become effective on a permanent

basis until approved by the Commission. The company is directed to file the amendments on not less than one day's notice to go into effect on a temporary basis on or before November 1, 2000, subject to refund if any showing is made that the new rates and charges are not in compliance with this order. The requirements of Public Service Law §66(12) and 16 NYCRR §720-8.1 that newspaper publication be completed before the effective date of the new tariff amendments directed in this ordering paragraph are waived, but the company is directed to file with the Commission, within six weeks after the effective date of those amendments, proof that notice to the public of the changes contained in the amendments and their effective date has been published once a week for four successive weeks in a newspaper having general circulation in each county containing an area affected by the amendments.

3. This order is adopted on an emergency basis pursuant to §202(6) of the State Administrative Procedure Act.

4. This proceeding is continued.

By the Commission,

(SIGNED)

JANET HAND DEIXLER
Secretary

-----X
Case 00-G-1495 - Proceeding on motion :
of the Commission as to the rates, charges, :
rules and regulations of National Fuel Gas :
Distribution Corporation.
-----X

AGREEMENT

On August 31, 2000, Chairman Maureen O. Helmer issued a one-commissioner order ("Order") convening the above-captioned proceeding and directing National Fuel Gas Distribution Corporation ("Distribution" or "the Company") to, inter alia, file evidence by September 20, 2000 and show cause, at a hearing to be held at a time and place to be fixed, why its rates should not be reduced on a temporary basis.

Parties, including marketers, consumer advocates and others were invited to attend a conference to determine if an agreement could be reached that would obviate the need for the show cause proceeding. In response to that invitation, the Company, the Staff of the Department of Public Service ("Staff"), the Consumer Protection Board ("CPB") and Multiple Intervenors ("MI")¹ (also, collectively, "the Parties") met in Albany, New York at the Department's offices on September 12 and 13, 2000. This settlement is the product of those meetings ("Agreement").

The Parties believe that this Agreement is appropriate and fair and should be accepted by the Commission as a reasonable and lawful basis to withdraw its requirement that Distribution show cause why its rates should not be reduced on a temporary basis. The Parties wish to emphasize that this Agreement is not intended to be

¹ Additionally, personnel from North American Energy, Inc., a marketer on Distribution's system, participated by telephone in the meeting held on September 12, 2000.

a comprehensive agreement covering Distribution's rates and the further restructuring of its services along competitive lines. Rather, it is an agreement that provides for just and reasonable rates during the time it takes to complete the more comprehensive settlement process, or, if such negotiations do not bear fruit, for the period covered by the Agreement. This Agreement helps address the Commission's concerns regarding higher gas costs in the upcoming Winter of 2000-2001 by providing for bill credits that will begin November 1, 2000 and maintains an earnings sharing mechanism without interruption, albeit at a lower level than the current level set in the Settlement Agreement attached to the order in Case 98-G-1291 ("1998 Agreement").²

Therefore, the Parties hereby agree, as follows:

1. Upon its approval of this Agreement, the Commission should terminate the show cause proceeding initiated as Case 00-G-1495.
2. Distribution shall provide an aggregate credit totaling \$10 million to its customers³ bills for the 12 month period beginning October 1, 2000. For customers in SC 1, SC 3 and SC 13 (TC-R, TC-1.0, TC-1.1, TC-2, TC-3 and TC-4.1), the credit shall be provided over a five-month period beginning November 1, 2000. Customers in the SC-13, TC-4.0 category (large industrial classification) will receive the credit over the 12 month period commencing October 1, 2000. The credit shall be applied across all customer classes based on the margins by service classification included in Appendix B of the 1998 Agreement updated for normalized sales and margins through June 30, 2000.

² Case 98-G- 129 1, Petition of National Fuel Gas Distribution Corp. for approval of a settlement agreement establishing rates for the period October 1, 1998 - September 30, 2000, Order Establishing Rates for Gas Service (issued and effective October 2 1, 1998).

³ Or marketers' bills, as the case may be. Invoices issued to marketers receiving service under Distribution's aggregation tariff (Service Classification No. 19) will include a credit for each retail customer enrolled in the marketer's aggregation group.

The unit amount of revenue credit per service classification will be identified in the existing Statement of Revenue Credits filed each month with the Commission.

Customers receiving services under individually negotiated rates shall not be eligible for the credit. For the 12 month period beginning October 1, 2001, Distribution shall provide a credit to its customer bills totaling \$5 million; such credit to be applied in the same manner as described above.⁴ Thereafter, there shall be a rebuttable presumption that such \$5 million credit shall continue as described above. This presumption may be rebutted upon a showing by Distribution and a determination by the Commission that it is no longer just and reasonable that such credit be provided. Such a showing shall be presented to the Commission not later than the first day in June preceding the October 1st date on which the credit to be contested is to become effective.

3. The Company shall share with its customers, on a 50/50 basis, earnings on equity in excess of 11.5%. The Company agrees to calculate its earnings in the same manner described in Appendix F to the 1998 Agreement, except that: (1) the common equity component of capital used in such calculation shall be fixed at 47% for the entire three-year period; (2) expenses associated with stock appreciation rights ("SARS") and restricted stock dividends shall be excluded from such calculation; (3) the EB/CAP adjustment shall be updated as of June 30, 2000; and (4) gas storage inventory levels shall be based on the average **annual** level in each of the three years of the Agreement. Furthermore, the income statement will reflect the Policy Statement on Income Taxes expected to be issued by the Commission, if it is issued. The calculation of earnings shall be cumulative for the three-year period commencing October 1, 2000

⁴ The allocation of the revenue credits shall stay in effect unless otherwise agreed to by the Parties or changed by the Commission.

and any cumulative earnings in excess of 11.5% shall be returned to customers commencing in calendar year 2004 in a manner to be agreed upon by the signatories to this Agreement, or if the Parties cannot agree, in a **manner** to be determined by the Commission. This earnings sharing mechanism may be changed during the subsequent negotiations described above to include various incentive provisions.

4. For the 12 month period ending September 30, 2001, the bill credit described in paragraph 2, above, will be increased by a one-time additional annual credit of \$7.6 million relating to customers' share of earnings from the 1998 Agreement and a previous settlement agreement (and such additional credit is to be distributed to customers in the same manner as described in paragraph 2).⁵ This amount is based on the Company's calculation of the earnings due customers. If the aforementioned amount of \$7.6 million is changed due to agreement of the parties or action by the Commission, the amount of \$7.6 million shall be reconciled to the changed amount and the difference shall be collected from, or refunded to, customers. Additionally, the parties recognize that certain expenses for HIECA were built into base rates and under the 1998 Agreement were to be returned to customers beginning October 1, 2000 by a credit applied to customers bills. The parties agree that the HIECA credit shall be provided for customers eligible for such credit (SC 1, SC 3, SC 13 (TC-R) and SC 13 (TC-1 .O)) over the 12 months beginning October 1, 2000 and continuing until base rates are changed.

5. A reconciliation of credits returned to customers against the target levels of \$10 million, \$5 million and \$7.6 million shall be determined and any excess amounts or shortfalls shall be returned to the Company or provided to customers by way

⁵ The Parties recognize that earnings sharing proceeds due customers from settlements in both Cases 95-G- 1009 and 98-G- 129 1 remain in dispute.

of a surcharge or credit, respectively, or otherwise addressed through an appropriate ratemaking mechanism. The surcharge or credit shall be assessed from, or returned to, customer classes that initially received the credit.

6. The Parties agree that the Company shall be kept whole for "back-out credits" determined by the Commission associated with its restructuring effort. The exact mechanism for recovery of allowable costs, whether through a surcharge or a drawdown to the extent funds are available in the generic restructuring reserve established in the 1998 Agreement, may be worked out in the future negotiations referred to above.

7. If the Company does not have a pending rate case, on or before April 1, 2003, the Company shall by April 1, 2003 provide Staff and CPB with estimates of its New York division financial forecasts for the fiscal year commencing on October 1, 2003. The parties to whom the information is to be provided understand that this information is highly confidential and is not to be disclosed or used in any manner other than to ascertain an appropriate level of rates for future periods. Nothing herein shall be read to limit the ability of MI or other parties to obtain information if exploratory discussions ensue as to a settlement intended to cover the period commencing October 1, 2003.

8. Nothing herein shall constrain ability of the Company or any other party to petition the Commission for rate relief in the third year consistent with the provisions of the Public Service Law. If, as a result of such a request by the Company, the Commission does change the Company's base rates, such rates shall supplant this

Agreement and such terms of this Agreement as they have been applied to the Company by action of the Commission.

9. The Parties agree that in the subsequent negotiations referred to above, they, along with marketers on the Company's system and other interested parties, should attempt to address and resolve all of the outstanding issues raised by the Commission in its various orders aimed at the restructuring of the natural gas industry in the State. The Parties further agree that this effort should be completed within six months following the execution of this Agreement.

10. If a change in any law, rule, regulation, order, or other requirement (or any repeal or amendment of an existing law, rule, regulation, order or other requirement) of the state, local or federal government or court having competent jurisdiction results in an increase in Distribution's annual operating expenses, to the extent that the aggregate amount of the effect of such changes in the 12-month period commencing October 1, 2000, or any 12-month period commencing October 1st thereafter, exceeds 3% of the Company's net income, Distribution may petition to defer the full effect of such expense, and any such deferrals are to be reflected in rates the next time the Company's base rates are changed or may be collected from customers through surcharge, as determined by the Commission.


11. It is specifically understood and agreed that this Agreement represents a negotiated interim resolution of the Company's rates for the period in question and is intended to be binding only in this proceeding and only as to the matters specifically addressed herein. Neither the Company, the Commission, Staff nor any other signatory shall be deemed to have approved, agreed to, or consented to any principle or

methodology underlying or supposed to underlie any agreement provided for herein. None of the terms and provisions of the Agreement and none of the positions taken herein by any Party may be referred to, cited, or relied upon by any party in any fashion as precedent or otherwise in any proceeding before this Commission or any regulatory agency or before any court for any purpose except in furtherance of the purposes and results of this agreement.

12. The Parties understand that this Agreement requires the approval of the Commission. The Parties concur that this Agreement shall be presented to the Commission for its approval and the Parties agree that they will take such action as is reasonable and necessary to obtain the Commission's approval of said Agreement. If the Commission does not approve this Agreement in its entirety, without modification and terminate the Show Cause proceeding; a party may choose not to be bound by its terms and shall indicate same by providing notice to the other parties and the Commission. In such event, the above captioned proceeding shall continue.

This Agreement is being executed in counterpart originals and shall become effective when the counterparts have been executed.

AGREED to this 21 day of September 2000.



National Fuel Gas Distribution Corporation

Department of Public Service

methodology underlying or supposed to underlie any agreement provided for herein. None of the terms and provisions of this Agreement and none of the positions taken herein by any Party may be referred to, cited, or relied upon by any party in any fashion as precedent or otherwise in any proceeding before this Commission or any regulatory agency or before any court for any purpose except in furtherance of the purposes and results of this agreement.

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This Agreement is being executed in counterpart originals and shall become effective when the counterparts have been executed.

AGREED to this 21st day of September 2000.

National Fuel Gas Distribution Corporation


Department of Public Service

Christopher J. Zerbe

Consumer Protection Board

Re: CHRISTOPHER J. HAMP

Michael B. Mager

Multiple Intervenors

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