

138 FERC ¶ 61,017  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

National Fuel Gas Supply Corporation

Docket No. CP11-530-000

ORDER DENYING PROTEST AND AUTHORIZING CONSTRUCTION

(Issued January 11, 2012)

1. On August 5, 2011, National Fuel Gas Supply Corporation (National Fuel) filed a prior notice request, pursuant to section 7 of the Natural Gas Act (NGA) and sections 157.205, 157.208, and 157.213 of the Commission's regulations, to construct and operate under National Fuel's Part 157 blanket certificate authority two new horizontal injection/withdrawal wells in its Colden Storage Field in Erie County, New York.<sup>1</sup>

2. On August 22, 2011, Paul B. Mausteller and Amy J. Francis filed a protest to National Fuel's prior notice filing. Because the protest was not withdrawn within the time specified in section 157.205(f) of the regulations, the Commission will review National Fuel's filing as a case-specific certificate application.<sup>2</sup> For the reasons discussed below, the Commission will deny the protest and authorize National Fuel to construct and operate the proposed facilities under its Part 157 blanket certificate.

**I. Background and Proposal**

3. The Colden Storage Field is a depleted natural gas production field in Aurora, Boston, and Colden Townships in Erie County, New York that was converted to an interstate natural gas storage facility under a certificate issued in *Iroquois Gas Corp.*<sup>3</sup>

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<sup>1</sup> National Fuel was issued a Part 157 Blanket Certificate in *National Fuel Gas Supply Corp.*, 21 FERC ¶ 62,298 (1982).

<sup>2</sup> 18 C.F.R. § 157.205(f) (2011).

<sup>3</sup> 13 FPC 492 (1954). *Iroquois Gas Corp.* was a predecessor to National Fuel.

The Colden Storage Field is not a single continuous reservoir, but is a combination of four pools – Aurora, Blanchard, Heath, and Scattered – with 166 vertical wells in the Red Medina and Whirlpool sandstone formations. National Fuel states the Colden Storage Field is operated with a total capacity of 16.22 Bcf (8.67 Bcf of cushion gas and 7.55 Bcf of working gas), with an average of 75 MMcf per day of deliverability.

4. National Fuel states that, when originally converted to storage service, most of the wells were open-hole wells with production casings set in the top of the Red Medina formation. Over time, interbedded shale zones in many of those wells collapsed, filling the wellbores through the Whirlpool formation, the primary storage reservoir. This, along with normal degradation of near-wellbore conditions, reduced the operating deliverability of the field. National Fuel states that, to date, it has reworked 21 existing vertical wells by cleaning out the open holes, installing new cemented production casings from surface to total depth, and perforating and stimulating the sandstone reservoir, resulting in an average deliverability replacement of 0.7 MMcf per day for each well. National Fuel indicates, however, that the restored deliverability of those individual wells has not been sufficient to effect a significant recovery of the overall field deliverability.

5. To more efficiently restore a larger amount of overall field deliverability, National Fuel proposes to drill two open-hole horizontal wells – the Aurora and Heath Wells – to increase deliverability by 9.9 MMcf per day. Each well will be constructed with 9 5/8-inch diameter surface casing at an approximate depth of 500 feet and 7-inch production casing set through the curve into the storage formation. Total vertical depths will be approximately 2,500 feet, with a lateral length of approximately 1,500 feet. National Fuel states that each wellhead will be near existing vertical storage wells and the wells will be entirely within the certificated boundary of the field.<sup>4</sup>

6. National Fuel also proposes to construct two 8-inch diameter well lines, each approximately 150 feet long, to connect the new wells to the existing storage field pipelines. Above-grade facilities at the wellheads will include a separator, measurement equipment, and various other piping, valves, and typical storage well equipment. National Fuel states that its proposal will cost approximately \$3.6 million.

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<sup>4</sup> National Fuel does not seek to change the certificated physical parameters of the Colden Storage Field.

## II. Notice, Interventions, Comments, and Protest

7. Notice of National Fuel's prior notice request was published in the *Federal Register* on August 17, 2011 (76 Fed. Reg. 51,027). The deadline for filing interventions and protests in response to a prior notice filing is 60 days following the date of issuance of the notice.<sup>5</sup>

8. National Fuel Gas Distribution Corporation, National Grid Gas Distribution Companies, and Consolidated Edison Company of New York, Inc. filed timely, unopposed motions to intervene within the 60-day notice period. Timely, unopposed motions to intervene are granted by operation of Rule 214 of the Commission's Rules of Practice and Procedure.<sup>6</sup> Mr. Mausteller and Ms. Francis filed a timely protest to National Fuel's filing. In addition, after the end of the 30-day reconciliation period, on December 5, 2011, landowners Michael and Wende Essrow filed comments raising concerns about the proposal's potential impact on well water safety and quality.

9. Pursuant to section 157.205 of the Commission's regulations, authorization to construct and operate qualifying facilities under a blanket certificate is automatic as long as no protests are filed by the 60-day deadline for filing interventions and protests. If a protest is timely filed and is not withdrawn within 30 days after the 60-day notice period (30-day "reconciliation period"), the prior notice request proceeds as an application under section 7 of the NGA for case-specific authorization.<sup>7</sup> Mr. Mausteller and Ms. Francis did not withdraw their protest during the 30-day reconciliation period. Therefore, pursuant to section 157.205(f) of our regulations, we will treat National Fuel's prior notice request as an application for case-specific authority.<sup>8</sup>

10. Mr. Mausteller and Ms. Francis state that they feel the project (the horizontal drilling of the Aurora Well) will diminish the value of their property. Mr. Mausteller and Ms. Francis also state that although a letter from National Fuel indicates that the project will be constructed pursuant to existing agreements, they have owned their property since 1968 and were never made aware of any such agreements.

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<sup>5</sup> 18 C.F.R. § 157.205(d) (2011).

<sup>6</sup> 18 C.F.R. § 385.214 (2011).

<sup>7</sup> 18 C.F.R. § 157.205 (2011).

<sup>8</sup> See, e.g. *Kinder Morgan Interstate Gas Transmission Co.*, 123 FERC ¶ 61,018, at P 7 (2008).

### III. Discussion

11. Since the proposed facilities will be used to transport natural gas in interstate commerce subject to the Commission's jurisdiction, the construction, and operation of the facilities are subject to the requirements of subsections (c) and (e) of section 7 of the NGA.

12. The statement of policy on the Certification of New Interstate Natural Gas Pipeline Facilities (Certificate Policy Statement) provides guidance for evaluating proposals to certificate new construction.<sup>9</sup> The Certificate Policy Statement established criteria for determining whether there is a need for a proposed project and whether the proposed project will serve the public interest. The Certificate Policy Statement explained that in deciding whether to authorize the construction of major new natural gas facilities, the Commission balances the public benefits against the potential adverse consequences. The Commission's goal is to give appropriate consideration to the enhancement of competitive transportation alternatives, the possibility of overbuilding, subsidization by existing customers, the applicant's responsibility for unsubscribed capacity, the avoidance of unnecessary disruptions of the environment, and the unneeded exercise of eminent domain in evaluating new pipeline construction.

13. Under this policy, the threshold requirement for pipelines proposing new projects is that the pipeline must be prepared to financially support the project without relying on subsidization from its existing customers. The next step is to determine whether the applicant has made efforts to eliminate or minimize any adverse effects the project might have on the applicant's existing customers, existing pipelines in the market and their captive customers, or landowners and communities affected by the construction. If residual adverse effects on these interest groups are identified after efforts have been made to minimize them, the Commission will evaluate the project by balancing the evidence of public benefits to be achieved against the residual adverse effects. This is essentially an economic test. Only when the benefits outweigh the adverse effects on economic interests will the Commission proceed to complete the environmental analysis where other interests are considered.

14. As noted above, the threshold requirement is that the pipeline must be prepared to financially support the project without relying on subsidization from its existing customers. The Certificate Policy Statement, however, also provides that it is not subsidization for existing customers to pay for the costs of projects designed to improve

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<sup>9</sup> 88 FERC ¶ 61,227 (1999), *order on clarification*, 90 FERC ¶ 61,128, *order on clarification*, 92 FERC ¶ 61,094 (2000).

their service, like replacing existing capacity, improving reliability, or providing additional flexibility.<sup>10</sup> Here, despite National Fuel's reworking of existing vertical wells, deliverability at the Colden Storage Field has declined due to degradation of the wellbores. Drilling the two proposed horizontal wells, one in the Aurora pool and one in the Heath pool, will restore a larger amount of deliverability. For this reason, we conclude that the threshold no subsidy requirement of the Certificate Policy Statement has been met.

15. As indicated above, National Fuel's proposal is designed to restore deliverability from the Colden Storage Field. The proposal will not affect the current pressure limits, capacity, or operation of the field or the operations of adjacent facilities. Accordingly, the proposal will not have an adverse impact on National Fuel's existing customers, or on other pipelines or their customers.

16. With respect to the protest of Mr. Mausteller and Ms. Francis, National Fuel has located the wellbore for the new Aurora Well entirely within the certificated boundary of the Colden Storage Field. There will be no above-ground operations on the protesters' property. Moreover, the horizontal well that passes beneath their property will be approximately 2,500 feet below the surface. With these considerations in mind, we believe that the protesters' economic concerns are speculative and do not outweigh the benefits of restoring deliverability from the Colden Storage Field. Thus, we will deny the protest.

17. When we ultimately find, as here, that a protest should be denied, it is our policy to authorize the construction and operation of the proposed facilities under the applicant's Part 157 blanket certificate, rather than grant redundant case-specific certificate authority.<sup>11</sup> Therefore, we will authorize National Fuel to construct and operate the two new horizontal injection/withdrawal wells and associated facilities as proposed under its Part 157 blanket certificate.

#### **IV. Environmental Assessment**

18. To satisfy the requirements of the National Environmental Policy Act of 1969, the Commission staff prepared an environmental assessment (EA) for National Fuel's proposal, which was placed in the record on November 16, 2011. The EA addresses erosion control and revegetation, threatened and endangered species, surface waters,

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<sup>10</sup> Certificate Policy Statement, 88 FERC at 61,747, n.12.

<sup>11</sup> See, e.g., *Tennessee Gas Pipeline Co.*, 125 FERC ¶ 61,258 (2008) and *Destin Pipeline Co.*, 83 FERC ¶ 61,308 (1998).

wetlands, groundwater, land use, visual impacts, cultural resources, and air and noise. In preparing the EA, the Commission staff consulted the U.S. Fish and Wildlife Service and the New York Office of Parks, Recreation and Historic Preservation. The U.S. Fish and Wildlife Service stated that the project would not adversely affect federally listed species. The New York Office of Parks, Recreation and Historic Preservation stated that the project would have no impact on cultural resources in, or eligible for inclusion in, the State and National Register of Historic Places.

19. As noted above, Michael and Wende Essrow filed comments concerning well water safety and quality, stating that they live “not far from either [drilling] site” and depend on private well water. They state that “it would be prudent to have National Fuel guarantee the safety of the well water before and after drilling” and ask to be advised “regarding water testing and project drilling timetables.”

20. The EA notes that there are no groundwater withdrawal areas or springs within 150 feet of the construction area at either the Aurora or Heath Well. The EA also states, based on a review of the New York State Department of Environmental Conservation (NYSDEC) water well dataset and National Fuel’s field verification, that there are no known private or municipal domestic water wells within 150 feet of the proposed construction activities at the wells. The EA notes that National Fuel plans to identify and would offer to test all domestic water wells within 1,000 feet of the proposed construction activities. We believe this action will be sufficient to ensure that there will be no adverse effects from the project on private wells in area. The EA further notes that National Fuel’s review of the New York State Unconsolidated Aquifers dataset indicates that no state-designated aquifers are crossed by the project, and that there are no U.S. Environmental Protection Agency-designated sole-source aquifers located in the vicinity of the project.

21. The Essrow’s residence is over 1,000 feet from the proposed construction sites at the Aurora and Heath Wells; thus, while National Fuel has not proposed to test the Essrow’s individual wells, we find no reason to suspect they will be adversely affected. As noted above, the horizontal well will be 2,500 feet below the surface. Moreover, National Fuel must receive a permit to drill from the NYSDEC prior to construction activities. Section 6.4 of National Fuel’s environmental report indicates that New York State safety and environmental safeguards include: (1) installing and cementing to surface a sufficient amount of surface casing to extend below deepest potable water source; (2) drilling, casing, and completing the well in a manner to prevent migration of oil and gas from one pool or stratum to another; (3) using blowout equipment in accordance with established local practice; and (4) limiting surface spacing in relation to inhabited houses, public buildings, and other places of gathering, major roads, and public

bodies of water. National Fuel's adherence to these standards should sufficiently minimize potential adverse impacts to private water wells.<sup>12</sup> Pursuant to section 157.206 of the Commission's regulations, the testing and drilling must be completed within one year of the date of this order.

22. Based on the analysis in the EA, we conclude that if constructed and operated in accordance with National Fuel's application, as supplemented, our approval would not constitute a major federal action significantly affecting the quality of the human environment.

23. The Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application, as supplemented, and exhibits thereto, submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission orders:

(A) National Fuel is authorized to construct and operate the two new injection/withdrawal wells and associated facilities as described and conditioned herein, and as more fully described in National Fuel's prior notice request.

(B) The protest of Paul B. Mausteller and Amy J. Francis is denied.

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.

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<sup>12</sup> We note that on December 20, 2011, Ms. Nancy Pollina filed comments stating that she also has a water well and that she is concerned the proposed project will adversely affect her "lifestyle and property value." While Ms. Pollina provided no information regarding the location of her property with respect to the project, as discussed above, the environmental analysis identified no properties which would be significantly affected by National Fuel's proposed project.