

138 FERC ¶ 61,224
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. CP11-512-000

ORDER ISSUING CERTIFICATE AND GRANTING ABANDONMENT

(Issued March 29, 2012)

1. On July 8, 2011, National Fuel Gas Supply Corporation (National Fuel) filed an application, pursuant to section 7 of the Natural Gas Act (NGA) and Part 157 of the Commission's regulations, for authorization to construct, operate, and abandon facilities in Washington County, Pennsylvania (the Line N 2012 Expansion Project). For the reasons discussed below, the Commission will grant the requested certificate and abandonment authority, as modified and conditioned in this order.

Background and Proposal

2. National Fuel, a corporation formed under the laws of the Commonwealth of Pennsylvania, is a natural gas company within the meaning of NGA section 2(6) that transports and stores natural gas in interstate commerce in New York and Pennsylvania.

3. National Fuel installed the original Line N pipeline, which is located in an area of now active natural gas production, in 1947. At the time, Line N consisted primarily of a single 20-inch-diameter pipeline extending north from an interconnection with the interstate natural gas pipeline system of Texas Eastern Transmission Corporation (Texas Eastern) in Greene County, Pennsylvania through Washington, Allegheny, Beaver, and Lawrence Counties, and terminating near Slippery Rock in Butler County, Pennsylvania. Traditionally, gas flowed north from the interconnection with Texas Eastern through Line N to markets. However, in 2010, the Commission authorized National Fuel to construct and operate approximately 20.1 miles of replacement pipeline and install a new 4,740 horsepower (hp) Buffalo Compressor Station in Washington County, Pennsylvania in order to provide firm southbound transportation service on Line N to Texas Eastern.¹ These facilities were placed into service on October 19, 2011.

¹ *National Fuel Gas Supply Corp.*, 133 FERC ¶ 61,235 (2010).

4. As the result of an open season held between January 25, and February 26, 2010, National Fuel entered into a precedent agreement with Range Resources – Appalachia, LLC (Range Resources), a producer of gas, for 150,000 dekatherms (Dth) a day of firm transportation service for a primary term of 10 years.² National Fuel states that Range Resources has agreed to pay the maximum rates applicable under National Fuel’s FT rate schedule. Subsequent to the filing of this application, National Fuel entered into precedent agreements with two additional shippers for an additional 13,000 Dth a day of firm transportation service.

5. National Fuel proposes to construct and operate a 24-inch-diameter natural gas pipeline beginning at the Buffalo Compressor Station and extending north for approximately 4.85 miles. The pipeline would replace a 4.85-mile-long segment of National Fuel’s existing 20-inch-diameter Line N and would be located approximately 25 feet from, and parallel to, the existing Line N. National Fuel also proposes to install two 10,310 hp gas-fired turbine-compression units at the Buffalo Compressor Station.³ The proposed project also includes constructing a pig launcher/receiver at milepost 4.85 at the northern end of the new pipeline segment and replacing four 20-inch-diameter pipeline road crossings south of the Buffalo Compressor Station. National Fuel states

² National Fuel states that it did not hold a reverse open season for the Line N Expansion Project because the project involves new southbound transportation capacity and a release of existing northbound capacity would not impact the scope of the project.

³ Upon completion of the project, the Buffalo Compression Station will have two Caterpillar 3608 reciprocating units rated at 2,370 hp and two Solar T70 gas turbines, each rated at 10,310 hp, for a total of 25,360 hp. National Fuel states that it considered the potential for recovery of waste heat energy at the Buffalo Compressor Station as discussed in the Interstate Natural Gas Association of America White Paper entitled “*Waste Energy Opportunities for Interstate Natural Gas Pipelines*” (February 2008) and has concluded that because it has virtually no operating history with the reconfigured Line N system, it cannot make an informed analysis at this time about the feasibility of waste heat power recovery. Accordingly, we will instruct National Fuel to accumulate operational history for the station and evaluate the potential for adding waste heat generation to the facilities. After one full year of operations at the station, National Fuel shall file a report with the Commission describing its analysis of the feasibility of waste heat power recovery.

that the project will provide the additional capacity for the expansion shippers as well as replace older pipe that ranks high on its pipeline risk model.⁴

6. National Fuel estimates that the Line N 2012 Expansion Project will create approximately 164,000 Dth a day of additional southbound transportation capacity on Line N. National Fuel states that the specific amount of the additional capacity created by the expansion will be determined by the actual location of receipt points selected by its shippers.

7. National Fuel states that the area around the existing Line N pipeline will continue to see significant growth in production, which may create the need for additional pipeline infrastructure. Therefore, National Fuel proposes to convert to inactive status the to-be-replaced 4.85-mile segment of Line N and the four road crossings and hold them for possible future use as transmission or gathering facilities. National Fuel states that preserving the road crossings and the existing 4.85-mile section of pipeline would minimize the expense and impacts associated with any future project involving Line N. National Fuel states that (1) the facilities will be capped at each end, purged of residual natural gas, pigged of any free flowing liquids, and filled with dry nitrogen to a low pressure; (2) it will maintain the cathodic protection of these facilities and continue to patrol the pipeline right-of-way; and (3) it will file information with the Commission regarding its future plans for the inactive facilities within two years of the in-service date of its new facilities.

8. National Fuel estimates the cost of the Line N 2012 Expansion Project at approximately \$35,385,929, comprised of \$24,951,288 for the Buffalo Compressor Station (allocable to the expansion shippers), \$233,465 for the road crossings (allocable to the expansion shippers), and \$10,201,176 for the 4.85-mile pipeline replacement and upgrade north of Buffalo Compressor Station (\$4,488,517 allocable to the expansion shippers, and \$5,712,659 allocable to the existing system shippers).⁵ National Fuel requests a pre-determination that it may roll all the costs associated with the Line N 2012 Expansion Project into its system rates in a future NGA section 4 rate case.

⁴ The risk assessment is utilized to rank all pipeline segments for their relative risk based upon a large number of attributes, such as age, pipe material, cathodic protection, seam type, pressure, and operating history.

⁵ See Revised Exhibit K filed on January 30, 2012.

Interventions

9. Notice of National Fuel's application was published in the *Federal Register* on July 28, 2011 (76 Fed. Reg. 45240). Atmos Energy Marketing LLC., Chevron U.S.A., Buffalo Creek Watershed Association, National Fuel Gas Distribution Corporation, National Grid Gas Delivery Companies, et al., Peoples Natural Gas Company LLC, and PSEG Energy Resources & Trade LLC filed timely, unopposed motions to intervene in the proceeding.⁶ The New York State Public Service Commission filed a timely notice of intervention.

Discussion

10. Since the proposed facilities are and will be used for the transportation of natural gas in interstate commerce, the facilities are subject to the Commission's jurisdiction and the requirements of sections 7(b), (c), and (e) of the NGA.

A. Application of the Certificate Policy Statement

11. The Certificate Policy Statement provides guidance for evaluating proposals to certificate new construction.⁷ 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 pipeline 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.

12. 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

⁶ Timely, unopposed motions to intervene are granted by operation of Rule 214(c) of the Commission's Rules of Practice and Procedure. 18 C.F.R. § 385.214(c) (2011).

⁷ *Certification of New Interstate Natural Gas Pipeline Facilities*, 88 FERC ¶ 61,227 (1999), *clarified*, 90 FERC ¶ 61,128 (2000); *further clarified*, 92 FERC ¶ 61,094 (2000) (Certificate Policy Statement).

have on the applicant's existing customers, existing pipelines in the market and their captive customers, or landowners and communities affected by the route of the new pipeline. 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.

13. 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 existing customers. Here, National Fuel proposes to allocate part of the cost of the project to the expansion shippers that will utilize the additional capacity created by the project, and part to the existing National Fuel shippers. As discussed more fully below, that part of the project designed to provide additional capacity is fully supported by long-term firm transportation commitments projected to generate revenues that will exceed the costs associated with the expansion portion of the project. Thus, existing shippers will not subsidize the expansion of Line N.

14. The Certificate Policy Statement also provides that it is not a subsidy for existing customers to pay for projects designed to replace existing capacity or improve the reliability or flexibility of existing service.⁸ Here, the Line N 2012 Expansion Project will replace sections of Line N that are over 60 years old and that have been identified for replacement pursuant to National Fuel's ongoing risk assessment program. Moreover, National Fuel states that the increase in system capacity to the Texas Eastern delivery point will be available to all shippers on a secondary point basis, and that the value of capacity release for existing shippers will be enhanced with the addition of the new capacity. In addition, no existing customers protested National Fuel's proposal. Therefore, we find approval of National Fuel's proposal will not result in subsidization by existing customers.

15. The Commission further finds that the proposed project will have no adverse effect on National Fuel's existing customers. In addition, the project should not negatively impact existing pipelines or their captive customers because the project provides incremental capacity, principally for producers, to deliver their gas into the interstate pipeline grid at National Fuel's interconnection with Texas Eastern. Also, no other pipeline in the area protested or raised concerns regarding National Fuel's application. Further, National Fuel has minimized impacts on landowners by siting the

⁸ Certificate Policy Statement, 88 FERC ¶ 61,227 at n.12.

proposed facilities at the existing Buffalo Compressor Station, and on or adjacent to its existing rights-of-way.

16. In sum, the Commission finds that National Fuel's proposal will provide benefits to the market without any identifiable adverse impacts on existing customers, other pipelines, landowners, and communities. Thus, consistent with the Certificate Policy Statement and section 7(c) of the NGA, the Commission concludes that approval of the Line N 2012 Expansion Project is required by the public convenience and necessity, subject to the conditions discussed below.

B. Inactivation of Existing Line N Facilities

17. National Fuel seeks to convert to inactive status the existing 4.85-mile section of Line N and the existing four road crossings to be replaced. As discussed above, National Fuel believes that, in the future, the inactive segments of Line N, in addition to the four road crossings, could potentially either be used to provide jurisdictional transportation service or transferred to other parties to be used for gas gathering in this active production area. National Fuel proposes to maintain the facilities in an inactive status for up to two years after the in-service date of the Line N 2012 Expansion Project. At that time, National Fuel states that it will make a determination regarding the ultimate disposition of the inactive line segments. For these reasons, given the possibility of their future usefulness either as transmission or gathering facilities in an area of active natural gas production, the Commission will grant National Fuel permission under section 7(b) of the NGA to abandon these facilities into inactive status.⁹ The Commission will, however, require National Fuel to make a filing no later than two years from the date of the in-service of the Line N 2012 Expansion Project explaining the status of, and its plans for, the ultimate disposition of the subject facilities.

C. Rate Issues

Cost Allocation

18. National Fuel proposes to allocate all the costs associated with the Buffalo Compressor Station addition, the replacement road crossings, and allowance for funds

⁹ In its application, National Fuel requests that the Commission under section 7(c)(1)(B) of the NGA exempt from the certificate requirements its proposal to temporarily idle the facilities proposed to be replaced herein. In *El Paso Natural Gas Co.*, 135 FERC ¶ 61,079 (2011), the Commission determined that it is consistent with a better reading of the NGA to address proposals for the cessation of services and/or inactivation of facilities pursuant to section 7(b) of the NGA.

used during construction to the expansion shippers. National Fuel proposes to allocate the estimated \$10,201,176 costs associated with the pipeline replacement and upgrade between the expansion shippers and the existing system shippers. The Commission agrees that it is appropriate for National Fuel to allocate costs for the pipe replacement and upgrade between the expansion shippers and the existing system shippers because the replacement of the segment of Line N will benefit both the new and existing shippers, as described above.

19. Specifically, National Fuel proposes to allocate \$4,488,517 of the 4.85-mile Line N replacement costs north of Buffalo Compressor Station to the expansion shippers and \$5,712,659 to the existing system shippers.¹⁰ National Fuel submits that, as reflected in Revised Exhibit N, 56 percent of the \$10,201,176 total cost, or \$5,712,659, associated with the pipeline replacement and upgrade, should be considered a general system improvement expenditure and the remaining 44 percent of the costs, or \$4,488,517, should be considered an expenditure necessitated by the creation of additional capacity for expansion. National Fuel states that these percentages are derived from the relative capacity addition created by upgrading the pipe to 24-inch diameter pipeline as compared to a hypothetical replacement of the 20-inch diameter pipeline with like-size 20-inch diameter pipeline.¹¹ National Fuel asserts that, since 56 percent of the construction cost of 4.85 miles of 24-inch diameter pipeline (\$5,712,659)¹² is substantially less than the cost of constructing 4.85 miles of 20-inch diameter pipeline (approximately \$10,201,176), National Fuel's existing shippers will incur substantially lower costs by upgrading to 24-inch diameter pipeline than they would if National Fuel were to replace the 4.85 miles with 20-inch diameter pipeline as a separate system improvement project. National Fuel therefore subtracted the general system improvement costs allocated to the existing shippers of \$5,712,659 from the total project facilities cost to determine the project cost of service shown on Revised Exhibit N. The Commission finds that National Fuel's cost allocation is reasonable.

¹⁰ As previously stated, National Fuel allocated the cost associated with replacing the road crossing south of the Buffalo Compressor Station (\$233,465) to the expansion shippers.

¹¹ See Revised Exhibit N filed on March 8, 2012.

¹² National Fuel calculated the 44 percent increase in capacity by dividing the cross-sectional area of a 20-inch diameter pipe by the cross-sectional area of a 24-inch diameter pipe, which assumes that the additional project capacity above the 20-inch diameter pipeline capacity is created for the project shippers and is relative to the additional cross-sectional area.

Initial Rate

20. National Fuel does not propose an initial rate for transportation service over the new capacity. However, in its Revised Exhibit N, National Fuel uses its existing system maximum FT Rate Schedule reservation rate of \$3.3612 per Dth per month in the calculations of projected revenue. Application of National Fuel's existing system rate to the costs associated with the incremental capacity of 164,000 Dth a day results in revenue in excess of estimated incremental costs. Therefore, the Commission finds that National Fuel's system rates, including applicable surcharges, appropriate for the maximum recourse rate for transportation on the expansion capacity.

Rolled-In Rate Treatment

21. National Fuel requests a pre-determination that it may roll all the costs associated with the Line N 2012 Expansion Project into its system rates in a future NGA section 4 rate case. National Fuel states that Revised Exhibit N shows that the revenues to be generated by the project are expected to exceed its associated costs for the expansion facilities over a 10-year period. Further, National Fuel asserts that existing shippers will benefit from the replacement of pipeline that National Fuel has identified under its ongoing risk assessment program.

22. National Fuel's Revised Exhibit N projecting revenues and costs over a 10-year period shows that revenues would exceed costs every year during that period. Moreover, with respect to the costs to be allocated to existing shippers, Commission policy recognizes that projects designed to improve reliability or flexibility of service for existing customers do not constitute a subsidy. Under these circumstances, the Commission will grant National Fuel's request for a pre-determination to roll the costs of the project, including both the portion of costs allocated to the project shippers and the portion of costs allocated to the system shippers, into its existing rates in its next NGA section 4 rate case, absent a significant change in circumstances.

D. Accounting

23. The Commission will approve National Fuel's proposed accounting entries in Exhibit Y of its Application to transfer the original cost of the existing facilities from Account 101, Gas Plant in Service, to Account 105, Gas Plant Held for Future Use, consistent with the requirements of the Commission's Uniform System of Accounts.¹³

¹³ 18 C.F.R. Part 201 (2011).

E. Environmental Analysis

24. On August 15, 2011, the Commission issued a *Notice of Intent to Prepare an Environmental Assessment* (NOI). The NOI was published in the *Federal Register* and was mailed to interested parties, including: federal, state, and local officials; agency representatives; conservation organizations; Indian tribes; local libraries and newspapers; and property owners potentially affected by the proposed facilities.

25. The Commission received comments in response to the NOI from Mr. James Powell, Ms. Helen Bundash, and the Buffalo Creek Watershed Association. The primary issues raised were ground and surface water impacts, routing, and cumulative impacts from Marcellus Shale exploration.

26. To satisfy the requirements of the National Environmental Policy Act, Commission staff prepared an environmental assessment (EA) for National Fuel's proposal. The analysis in the EA addresses geology, soils, water resources, wetlands, vegetation, fisheries, wildlife, threatened and endangered species, land use, recreation, visual resources, cultural resources, air quality, noise, safety, and alternatives. The EA addresses all substantive comments received in response to the NOI.

27. The EA addressed scoping comments from Mr. James Powell regarding a spring which is the sole source of his drinking water. Mr. Powell indicated that the spring is within 100 feet of the pipeline right-of-way. He stated that the pipeline trench and construction area would come very close to the spring seep locations and he is concerned that construction of the pipeline could contaminate the water or cause damage to the subsurface rock layer in which the spring's groundwater flows. The EA reports that National Fuel has moved the pipeline further uphill from the spring location, but that it is not clear if the new location for the pipeline trench would impact the groundwater flow which feeds the spring. Accordingly, the EA recommends that National Fuel prepare a report addressing the impact of the pipeline on the water supply on the Powell property and develop appropriate mitigation measures. The EA recommends that National Fuel's plan must be submitted to and approved by the Director of the Commission's Office of Energy Projects (OEP) before construction in the area commences. The Commission will adopt this recommendation in Environmental Condition 11 set forth in the appendix to this order.

28. Ms. Helen Bundash filed comments regarding the route alignment on her property and her access to a public road during construction. The EA explains that National Fuel responded to her concerns by assuring her that access to her property will be maintained during construction and by clarifying the route alignment.

29. The Buffalo Creek Watershed Association filed a letter expressing general concerns regarding the project's impacts on local streams, and requesting that an environmental impact statement (EIS) be prepared to analyze cumulative impacts from

Marcellus Shale gas exploration. The EA explains that National Fuel will implement erosion control and waterbody crossing methods and mitigation to ensure that sediments from this project will not significantly impact local waterbodies. In addition, the EA addresses cumulative impacts in general and the Marcellus Shale in particular in section B.10.2 of the EA. The EA states that only small cumulative effects are anticipated when the impacts on this project are added to the identified ongoing and planned projects in the immediate area. With respect to the Marcellus Shale natural gas reserves, the EA explains that Marcellus Shale development is expected to take many years due to economics and other factors, and that the exact location, scale, and timing of future Marcellus Shale upstream facilities that could potentially contribute to cumulative impacts in the proposed project area are unknown and, thus outside the scope of our analysis here. Thus, the Commission agrees with the EA's finding that an EIS is not necessary.¹⁴

30. The EA was issued for a 30-day comment period and placed into the public record on December 21, 2011. The Commission received no comments on the EA.

31. Prior to issuance of the EA, National Fuel had not finalized consultation with the United States Fish and Wildlife Service (USFWS) on minimizing impacts to migratory birds in compliance with the Migratory Bird Treaty Act. The EA recommends adoption of a condition mandating that National Fuel provide a Migratory Bird Conservation Plan developed in consultation with the USFWS prior to construction. Subsequently, National Fuel filed information that its Migratory Bird Conservation Plan has been approved by the USFWS. Consequently, the recommended condition is no longer necessary, and is not included as a condition in the appendix to this order.

32. Based on the discussion in the EA, the Commission concludes that if the described facilities are constructed in accordance with National Fuel's application and supplements, and in compliance with the environmental conditions in the appendix to the Order, approval of this proposal would not constitute a major federal action significantly affecting the quality of the human environment.

33. Any state or local permits issued with respect to the jurisdictional facilities authorized herein must be consistent with the conditions of this certificate. The Commission encourages cooperation between interstate pipelines and local authorities. However, this does not mean that state and local agencies, through application of state or

¹⁴ See Central New York Oil and Gas Company, LLC, 138 FERC ¶ 61,104 at P 34-47 (2012) (discussing cumulative impacts relating to Marcellus Shale development).

local laws, may prohibit or unreasonably delay the construction or operation of facilities approved by this Commission.¹⁵

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

The Commission orders:

(A) A certificate of public convenience and necessity is issued to National Fuel authorizing it to construct and operate the Line N 2012 Expansion Project, as described and conditioned herein, and as more fully described in the applications.

(B) The certificate issued in Ordering Paragraph (A) is conditioned on:

(1) National Fuel's completing the authorized construction within two years of the date of this order;

(2) National Fuel's compliance with paragraphs (a), (c), (e), and (f) of section 157.20 of the Commission's regulations; and

(3) National Fuel's compliance with the environmental conditions listed in the appendix to this Order.

(C) National Fuel shall notify the Commission's environmental staff by telephone, e-mail, and/or facsimile of any environmental noncompliance identified by other federal, state, or local agencies on the same day that such agency notifies National Fuel. National Fuel shall file written confirmation of such notification with the Office of the Secretary (Secretary) within 24 hours.

(D) National Fuel must execute, prior to commencement of construction, firm contracts for the volumes and service terms equivalent to those of its filed precedent agreements.

¹⁵ See, e.g., *Schneidewind v. ANR Pipeline Co.*, 485 U.S. 293 (1988); *National Fuel Gas Supply v. Public Service Commission*, 894 F.2d 571 (2d Cir. 1990); *Iroquois Gas Transmission System, L.P., et al.*, 52 FERC ¶ 61,091 (1990) and 59 FERC ¶ 61,094 (1992).

(E) Pursuant to section 7(b) of the NGA, National Fuel is granted authority temporarily to maintain the existing portions of Line N described in the application and the body of this order in an inactive status for a two-year period beginning with the in-service date of the Line N 2012 Expansion Project. National Fuel shall make a filing with the Commission within one month prior to expiration of the two-year period, explaining the status of, and its plans for, the ultimate disposition of the inactive facilities.

(F) National Fuel shall notify the Commission within ten (10) days of cutting and filling the existing Line N pipeline to be placed into inactive status.

(G) National Fuel's existing system rate is approved as the initial maximum recourse rate for transportation over the incremental capacity.

(H) National Fuel's request for rolled-in rate treatment for the costs of the Line N 2012 Expansion Project is granted, as discussed in the body of this order.

(I) National Fuel shall file a report describing its analysis of the feasibility of recovering waste heat energy at its Buffalo Compressor Station within 90 days after completing one full year of operations at the station.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

Appendix

Environmental Conditions

As recommended in the EA, this authorization includes the following conditions:

1. National Fuel shall follow the construction procedures and mitigation measures described in its application and supplements (including responses to staff data requests) and as identified in the environmental assessment, unless modified by the Order. National Fuel must:
 - a. request any modification to these procedures, measures, or conditions in a filing with the Secretary of the Commission (Secretary);
 - b. justify each modification relative to site-specific conditions;
 - c. explain how that modification provides an equal or greater level of environmental protection than the original measure; and
 - d. receive approval in writing from the Director OEP before using that modification.
2. The Director of OEP has delegated authority to take whatever steps are necessary to ensure the protection of all environmental resources during construction and operation of the project. This authority shall allow:
 - a. the modification of conditions of the Order; and
 - b. the design and implementation of any additional measures deemed necessary (including stop-work authority) to assure continued compliance with the intent of the environmental conditions as well as the avoidance or mitigation of adverse environmental impact resulting from project construction and operation.
3. **Prior to any construction**, National Fuel shall file an affirmative statement with the Secretary, certified by a senior company official, that all company personnel, environmental inspectors, and contractor personnel will be informed of the environmental inspector's authority and have been or will be trained on the implementation of the environmental mitigation measures appropriate to their jobs **before** becoming involved with construction and restoration activities.
4. The authorized facility locations shall be as shown in the EA, as supplemented by filed alignment sheets. **As soon as they are available, and before the start of construction**, National Fuel shall file with the Secretary any revised detailed survey alignment maps/sheets at a scale not smaller than 1:6,000 with station positions for all facilities approved by the Order. All requests for modifications of

environmental conditions of the Order or site-specific clearances must be written and must reference locations designated on these alignment maps/sheets.

National Fuel's exercise of eminent domain authority granted under Natural Gas Act section 7(h) in any condemnation proceedings related to the Order must be consistent with these authorized facilities and locations. National Fuel's right of eminent domain granted under NGA section 7(h) does not authorize it to increase the size of its natural gas pipeline to accommodate future needs or to acquire a right-of-way for a pipeline to transport a commodity other than natural gas.

5. National Fuel shall file with the Secretary detailed alignment maps/sheets and aerial photographs at a scale not smaller than 1:6,000 identifying all route realignments or facility relocations, and staging areas, pipe storage yards, new access roads, and other areas that would be used or disturbed and have not been previously identified in filings with the Secretary. Approval for each of these areas must be explicitly requested in writing. For each area, the request must include a description of the existing land use/cover type, and documentation of landowner approval, whether any cultural resources or federally listed threatened or endangered species would be affected, and whether any other environmentally sensitive areas are within or abutting the area. All areas shall be clearly identified on the maps/sheets/aerial photographs. Each area must be approved in writing by the Director of OEP **before construction in or near that area.**

This requirement does not apply to extra workspace allowed by National Fuel's Erosion, Sedimentation Control and Agricultural Mitigation Plan (ESCAMP), minor field realignments per landowner needs and requirements which do not affect other landowners or sensitive environmental areas such as wetlands.

Examples of alterations requiring approval include all route realignments and facility location changes resulting from:

- a. implementation of cultural resources mitigation measures;
 - b. implementation of endangered, threatened, or special concern species mitigation measures;
 - c. recommendations by state regulatory authorities; and
 - d. agreements with individual landowners that affect other landowners or could affect sensitive environmental areas.
6. **Within 60 days of the acceptance of the certificate and before construction begins**, National Fuel shall file an Implementation Plan with the Secretary for review and written approval by the Director of OEP. National Fuel must file revisions to the plan as schedules change. The plan shall identify:

- a. how National Fuel will implement the construction procedures and mitigation measures described in its application and supplements (including responses to staff data requests), identified in the EA, and required by the Order;
 - b. how National Fuel will incorporate these requirements into the contract bid documents, construction contracts (especially penalty clauses and specifications), and construction drawings so that the mitigation required at each site is clear to onsite construction and inspection personnel;
 - c. the number of environmental inspectors assigned per spread, and how the company will ensure that sufficient personnel are available to implement the environmental mitigation;
 - d. company personnel, including environmental inspectors and contractors, who will receive copies of the appropriate material;
 - e. the location of the environmental compliance training National Fuel will give to all personnel involved with construction and restoration (initial and refresher training as the project progresses and personnel change);
 - f. the company personnel (if known) and specific portion of National Fuel's organization having responsibility for compliance;
 - g. the procedures (including use of contract penalties) National Fuel will follow if noncompliance occurs; and
 - h. for each discrete facility, a Gantt or PERT chart (or similar project scheduling diagram), and dates for:
 - (i) the completion of all required surveys and reports;
 - (ii) the environmental compliance training of onsite personnel;
 - (iii) the start of construction; and
 - (iv) the start and completion of restoration.
7. Beginning with the filing of its Implementation Plan, National Fuel shall file updated status reports with the Secretary on a biweekly basis until all construction and restoration activities are complete. On request, these status reports will also be provided to other federal and state agencies with permitting responsibilities. Status reports shall include:
- a. an update on National Fuel's efforts to obtain the necessary federal authorizations;
 - b. the construction status of the project, work planned for the following reporting period, and any schedule changes for stream crossings or work in other environmentally sensitive areas;
 - c. a listing of all problems encountered and each instance of noncompliance observed by the environmental inspector(s) during the reporting period (both for the conditions imposed by the Commission and any environmental conditions/permit requirements imposed by other federal,

- d. state, or local agencies);
 - d. a description of the corrective actions implemented in response to all instances of noncompliance, and their cost;
 - e. the effectiveness of all corrective actions implemented;
 - f. a description of any landowner/resident complaints which may relate to compliance with the requirements of the Order, and the measures taken to satisfy their concerns; and
 - g. copies of any correspondence received by National Fuel from other federal, state, or local permitting agencies concerning instances of noncompliance, and National Fuel's response.
8. **Prior to receiving written authorization from the Director of OEP to commence construction of any project facilities**, National Fuel shall file with the Secretary documentation that it has received all authorizations required under federal law (or evidence of waiver thereof).
9. National Fuel must receive written authorization from the Director of OEP **before commencing service from the project**. Such authorization will only be granted following a determination that rehabilitation and restoration of the right-of-way and other areas affected by the project are proceeding satisfactorily.
10. **Within 30 days of placing the certificated facilities in service**, National Fuel shall file an affirmative statement with the Secretary, certified by a senior company official:
- a. that the facilities have been constructed in compliance with all applicable conditions, and that continuing activities will be consistent with all applicable conditions; or
 - b. identifying which of the certificate conditions National Fuel has complied with or will comply with. This statement shall also identify any areas affected by the project where compliance measures were not properly implemented, if not previously identified in filed status reports, and the reason for noncompliance.
11. National Fuel shall prepare a groundwater impact report that contains the following information regarding the water supply system on the Powell property (approximate milepost 1.8):
- a. the elevation of the spring outlets and cistern and of the pipeline centerline;
 - b. the depth of the water-bearing stratum that is the source for the spring;
 - c. if the pipeline trench or side hill cut would intersect the Powell's water source, engineering and/or other mitigation measures, (including a reroute

- up slope) designed to maintain uninterrupted flow to the spring and cistern;
and
- d. plans for pre- and post-construction testing of the water quality of the spring.

The report shall include site-specific diagrams, as necessary, to illustrate the flow of water to the spring and shall be filed with the Secretary for review and written approval by the Director of OEP **prior to construction between mileposts 1.7 and 1.9.**

12. **Prior to placing into service the new compressors at the Buffalo Compressor Station**, National Fuel shall submit a refined air quality dispersion modeling analysis demonstrating that the total emissions from the Buffalo Compressor Station would not result in exceedance of the 1-hour NO₂ (nitrogen dioxide) and annual PM_{2.5} (particles with an aerodynamic diameter less than or equal to 2.5 micrometers) National Ambient Air Quality Standards at both near and far field receptors. National Fuel shall provide information on all input parameters, emission controls and mitigation measures, and justify the basis for any assumptions.
13. National Fuel shall make all reasonable efforts to ensure its predicted noise levels from the Buffalo Compressor Station are not exceeded at nearby noise sensitive areas (NSA) and file a noise survey showing this with the Secretary **no later than 60 days** after placing the new compressors at the Buffalo Compressor Station in service. If the noise attributable to the operation of all of the equipment at the Buffalo Compressor Station at full load exceeds a day-night average sound level (L_{dn}) of 55 A-weighted decibels at any nearby NSAs, National Fuel shall file a report on what changes are needed and shall install the additional noise controls to meet the level **within one year** of the in-service date. National Fuel shall confirm compliance with the above requirement by filing a second noise survey with the Secretary **no later than 60 days** after it installs the additional noise controls.