UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Suedeen G. Kelly, Marc Spitzer,
Philip D. Moeller, and Jon Wellinghoff.

National Fuel Gas Supply Corporation Docket No. CP07-101-000

ORDER APPROVING ABANDONMENT

(Issued July 19, 2007)

1. On March 13, 2007, National Fuel Gas Supply Corporation (National Fuel) filed an application, pursuant to section 7(b) of the Natural Gas Act (NGA), to abandon by sale an older natural gas storage field located in Elk County, Pennsylvania, which the pipeline no longer needs to meet its customers' requirements. National Fuel further requests authorization to abandon by sale approximately 1.55 billion cubic feet (Bcf) of unneeded base gas located in that storage field. As discussed below, we will grant National Fuel's request.

**Background/Proposal**

2. National Fuel is a corporation organized under the laws of Pennsylvania and, as defined by the NGA, is a natural gas company. It is engaged in the transportation and storage of natural gas. National Fuel operates underground storage reservoirs in Pennsylvania and New York.

3. National Fuel requests authority to abandon by sale all of the facilities comprising the Owls Nest Storage Field (Owls Nest). These facilities include three pools with 38 active storage wells, 11 miles of 2- to 8-inch diameter pipeline, and one 150 horsepower gas engine compressor. Owls Nest is operated at a maximum shut-in well pressure of 750 psig and has a certificated storage capacity of 2.2 Bcf. In addition, National Fuel seeks authority to abandon the economically recoverable base gas in Owls Nest. National Fuel states that at the time of this application, the identity of the purchasing party is unknown. Upon execution of a purchase and sale agreement for the facilities, National Fuel states that it will file a notification with the Commission identifying the purchaser. National Fuel proposes the effective date of the abandonment to be the tenth day after

filing such notice.[1] National Fuel will, however, begin the sale of base gas immediately upon receipt of an order granting the authority to do so.

4. National Fuel states that the Pennsylvania Gas Company (Penn Gas) was originally authorized to construct and operate Owls Nest in 1949.[2] Subsequently, National Fuel, formerly United Natural Gas Company, was authorized to acquire and operate the storage field in 1974.[3]

5. National Fuel states that it has recently determined that it would need to make substantial investments to maintain desired field performance and integrity at Owls Nest and to comply with U.S. Department of Transportation, Office of Pipeline Safety standards. National Fuel indicates that such expenditures, which would be at least $5 million, would not be justified given the minor contribution of the facilities to National Fuel's system-wide deliverability and capacity. National Fuel explains that it does not intend to expand existing facilities to compensate for the storage services currently provided at Owls Nest. Instead, it indicates that it will meet its customers' existing storage requirements through more efficient operation of its remaining storage facilities. Therefore, according to National Fuel, there will be no abandonment of service for any customer as a result of the abandonment of Owls Nest storage facility.

6. As noted, National Fuel also proposes to abandon up to 1.55 Bcf of base gas recoverable from the Owls Nest field. National Fuel proposed to record a gain or loss on the sale of the Owls Nest facilities in Account 421. With respect to the sale of the base gas in particular, National Fuel states that any gain or loss on the sale would be dependent upon the price of the gas at the time of sale.

7. National Fuel maintains that the environmental impact of the proposed abandonment of Owls Nest and the recoverable base gas will be minimal and limited to soil disturbances that may occur during environmental inspections prior to the sale of Owls Nest. Therefore, National Fuel asserts that its proposal qualifies for a categorical exclusion under section 380.4(a)(31) because it is an abandonment of facilities by sale

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[1] National Fuel states that a similar procedure was used in *Columbia Gas Transmission Corp.*, 96 FERC ¶ 61,082 (2001).

[2] *Pennsylvania Gas Co.*, 8 FPC 984 (1949).

[3] *Iroquois Gas Corp.*, 51 FPC 1507 (1974).

that involves minor or no ground disturbance,[4] and thus no environmental impact statement or environmental assessment is required.

**Interventions**

8. Notice of National Fuel's application was published in the *Federal Register* on March 27, 2007 (72 Fed. Reg. 14,270). Three parties filed timely, unopposed motions to intervene.[5] The Public Service Commission of New York (NY Commission), KeySpan Delivery Companies (KeySpan), and Transcontinental Gas Pipe Line Corporation filed motions to intervene out-of-time. These parties have demonstrated an interest in this proceeding which cannot be adequately represented by any other party. Further, the Commission finds that granting their motions will not delay, disrupt, or otherwise prejudice this proceeding or place an additional burden on existing parties. Therefore, for good cause shown, we will grant the late-filed motions to intervene.[6]

9. PSEG filed a protest to the application regarding the allocation of any proceeds from the sale of base gas and the NY Commission filed comments on the same issue.[7] The NY Commission also asserted that there is a disputed issue of material fact in this proceeding which warrants additional procedures, presumably a hearing. National Fuel filed an answer on May 1, 2007, which the NY Commission answered on May 18, 2007.[8] Although the Commission's Rules of Practice and Procedure do not permit answers to protests or answers to answers, we may for good cause waive this provision. In this instance, we find good cause to accept these answers because they provide information that has assisted us in our decision making.[9] The issues addressed in the protest and answers are discussed below.

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[4] 18 C.F.R. § 380.4(a)(31) (2006).

[5] These intervenors are National Fuel Gas Distribution Corp, Consolidated Edison Co. of New York, Inc. and PSEG Energy Resources & Trade LLC (PSEG). Timely, unopposed motions to intervene are granted by operation of Rule 214 of the Commission's Rules of Practice and Procedure. 18 C.F.R. § 385.214 (2007).

[6] 18 C.F.R. § 385.214(d)(2006).

[7] KeySpan also filed a protest on the same issue which it subsequently withdrew.

[8] In its pleading, the NY Commission conditionally withdrew its opposition to National Fuel's proposal, as discussed below.

[9] *See* 18 C.F.R. § 385.213(a)(2) (2006).

**Discussion**

10. Since the proposed abandonment involves facilities that have been used in the transportation of natural gas in interstate commerce, it is subject to the Commission's jurisdiction and the requirements of subsection (b) of section 7 of the NGA. Under NGA section 7(b), the Commission may grant a request to abandon facilities if such abandonment is permitted by the present or future public convenience and necessity.

11. National Fuel states that it no longer needs the Owls Nest storage facility to meet its customers' requirements. It asserts that the elimination of this storage facility from its system, as well as the base gas in it, will not affect its ability to meet its customers' demands and no customer's service will be abandoned. The Commission's engineering staff reviewed and analyzed National Fuel's system, noting that it is operated on an integrated basis, that it has 31 other storage facilities, and that the Owls Nest storage capacity represents only 0.8 percent of the system's total storage capacity. Based upon these factors, the engineering review and analysis concluded that if the Owls Nest facility and its base gas are abandoned, National Fuel will still be able to meet its existing contractual storage requirements.

12. In addition, although a protest and comments were filed with regard to the allocation of any proceeds from the sales of base gas, no customer objected to the abandonment of the facilities provided that their service requirements continue to be met. We also note that our environment staff confirmed that because National Fuel's proposed abandonment does not include the removal of any facilities, it is considered a categorical exclusion under section 380.4(a)(31) of the Commission's regulations. Therefore, for all of these reasons, the Commission finds that National Fuel's proposal to abandon the Owls Nest storage field and the base gas by sale is permitted by the present and future public convenience and necessity, subject to the discussion and conditions below.

13. In its protest, PSEG states that National Fuel's proposed accounting treatment of the sale of base gas, as reflected in Exhibit Y of the application, recognizes the possibility of either a "Gain or Loss on Disposition of Property" based upon the price of gas at the time of the sale. However, PSEG points out, National Fuel does not declare its intentions regarding allocation of the realized gain or loss of revenue. Specifically, PSEG contends that it would be inappropriate for National Fuel to keep any gains from such sale as opposed to returning those gains to its customers. PSEG reasons that in 1949, when National Fuel first acquired the storage field, the cost of the base gas would have been approximately $1.00 per Dth, but depending upon the prevailing price at the time of the sale, it is possible that National Fuel could realize a one-time benefit of as much as $7-8 million. PSEG argues that over the years National Fuel has fully collected its total system costs, including all costs attributable to Owls Nest. PSEG emphasizes that National Fuel recovered its carrying costs and earned a profit on the base gas at issue

by charging Commission-approved rates. Therefore, PSEG urges that National Fuel should return any net revenues to its customers.

14. The NY Commission states in its comments that it shares the concerns raised about how the net revenues from any sale of the base gas should be treated. It contends that there is a disputed issue of material fact regarding the disposition of funds from this proposed sale of a utility asset that requires further proceedings. According to the NY Commission, to properly allocate the funds from such a sale, the Commission must apply a balancing test to decide whether the investors or the ratepayers bear the financial burden regarding the asset and who has the risk of capital losses.[10] Applying that test would require more factual information in the NY Commission's view.

15. In its May 1, 2007 answer, National Fuel contends that allocating to its customers the net gain from any sale of the base gas is contrary to the terms of a November 17, 2006 Stipulation and Agreement approved by the Commission on February 9, 2007, in Docket No. RP06-298-000, *et al.*[11] National Fuel also maintains that allocating the net gain to its customers is inconsistent with Commission precedent involving similar sales of base gas in which the Commission permitted the pipeline to retain the proceeds from the sale of cushion gas or base gas.[12]

16. National Fuel explains that under the settlement, the clauses of which are dependent upon each other, it agreed not to make any rate filings for five years as part of the compromises between the parties. According to National Fuel, one of the benefits it received from the settlement is in Article I of the Stipulation and Agreement which provides:

> Except for refunds required (i) by this Article I, (ii) as a result of a final order in any proceeding initiated by a filing under Article VIII, or (iii) by National Fuel's tariff as of the date of this Stipulation, National Fuel shall retain all proceeds from

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[10] *Citing Equitrans, Inc.*, 75 FERC ¶ 61,203 at 61,667 (1996) (applying balancing test articulated in *El Paso Natural Gas Co.*, Opinion No. 4, 1 FERC ¶ 61,108 (1977)).

[11] PSEG, KeySpan and the NY Commission participated in the Docket No. RP06-298-000 proceeding and elected to be Supporting Parties under the terms of the November 17, 2006 Stipulation and Agreement.

[12] *Citing Natural Gas Pipeline Co.*, 101 ¶ 61,125, at P 43 & n.15 (2002) (*citing Trunkline Gas Co.*, 90 FERC ¶ 61,017 (2000); *East Tennessee Natural Gas Co.*, 75 FERC ¶ 61,110 (1996)).

> the sale of retained gas, charges for transportation and storage services and **all other revenues** received after December 1, 2006, without further liability to its customers. [National Fuel's emphasis].

17. National Fuel contends that proceeds from sales of base gas constitute part of "all other revenues" which National Fuel is permitted to retain under the November 17, 2006 Stipulation and Agreement. Thus, it is National Fuel's view that PSEG's request that the revenues from such sales should be refunded to its customers is contrary to the terms of a settlement which, it points out, PSEG supported.[13]

18. In its May 18, 2007 answer, the NY Commission states it doubts that the "all other revenues" language in Article I of the Stipulation and Agreement contemplated that National Fuel would retain revenues from the sale of significant assets; nevertheless, it acknowledges, it is arguable that Article I of the Stipulation and Settlement could be interpreted to permit National Fuel to retain such revenues. Therefore, the NY Commission explains that it will not pursue its concerns regarding National Fuel's proposal. However, the NY Commission requests that the Commission base its approval of National Fuel retaining the revenues on the specific language in the settlement and not on the grounds that Commission policy necessarily dictates this result.[14]

19. The Commission agrees with National Fuel that the language of Article I of the Stipulation and Agreement, as quoted above, is unambiguous and that National Fuel may retain any net revenues from the sale of the base gas. It appears that no other provision of the settlement qualifies this language in such a way that would prevent this interpretation of Article I. We also find that because all parties that opposed National Fuel's proposal to retain the revenues were parties to the settlement, it is unnecessary in this proceeding to analyze the parties' contentions regarding Commission policy on this issue.

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[13] National Fuel cites section 40 of its tariff to support its contention that it does not have to refund the proceeds from the sale of base gas to its customers because that section states that it must file reports, but does not specify how funds are to be allocated. However, we note that section 40 relates to sales and purchases of gas that is retained for fuel use or for lost and unaccounted for gas and not for the sale of base gas. Therefore, the provision is not relevant to the issue here.

[14] KeySpan states that it withdrew its protest based on National Fuel's answer regarding the provisions of Article I of the Stipulation and Settlement. However, like the NY Commission, KeySpan maintains that its recognition that Article I permits National Fuel to retain revenues from the sale of the base gas in Owls Nest does not mean that it supports National Fuel's view of Commission policy on this issue.

20. The Commission finds that National Fuel's proposed accounting treatment of net gains or losses of revenues from the sale of base gas, as well as its proposed accounting of the sale of the Owls Nest facility, is consistent with the Commission's Uniform System of Accounts. We will also require that within ten days of execution of a purchase and sale agreement for the Owls Nest storage facilities, National Fuel must notify the Commission of the identity of the purchaser and the purchaser's intended use of the acquired facilities. The effective date of the abandonment of the facilities subject to such agreement will be on the tenth day after the filing of such notice. This requirement is consistent with the Commission's treatment of similar abandonments.[15] We note that National Fuel is authorized to make sales of the base gas as of the date of this order and the effective date of the abandonment of the base gas shall be the date of the sale.

21. At a hearing held on July 19, 2007, the Commission on its own motion, received and made a part of the record all evidence, including the application, supplements and exhibits thereto, submitted in this proceeding and, upon consideration of the record,

The Commission orders:

(A) Permission and approval are granted to National Fuel to abandon by sale the facilities comprising the Owls Nest storage field and approximately 1.55 Bcf of base gas located therein, as described in the application and the body of this order.

(B) National Fuel shall file with the Commission, within ten days of execution of each sales agreement for the facilities described in Ordering Paragraph (A), the identification of the purchaser, the specific facilities to be sold, and the purchaser's intended use of the acquired facilities. The abandonment of the facilities will become effective ten days after receipt by the Commission of each notification of purchase.

(C) The abandonment of the base gas will become effective on the date of the sale of the gas.

(D) National Fuel shall file an actual tariff sheet which deletes the Owls Nest storage facility from section 6 of its EFT Rate Schedule, within 30 days of the date of this order.

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[15] *See, e.g.*, *Columbia Gas Transmission Corp.*, 96 FERC ¶ 61,082, at Ordering Paragraph (B) (2001).

(E) National Fuel shall comply with all relevant provisions of the NGA and the Commission's regulations.

(F) PSEG's protest is denied.

(G) The late motions to intervene are granted.

By the Commission.

( S E A L )

Kimberly D. Bose,
Secretary.