

133 FERC ¶ 61,235
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

National Fuel Gas Supply Corporation

Docket Nos. CP10-457-000 and
CP10-458-000

ORDER ISSUING CERTIFICATES

(Issued December 16, 2010)

1. On June 11, 2010, National Fuel Gas Supply Corporation (National Fuel) filed applications in the referenced dockets, pursuant to section 7 of the Natural Gas Act (NGA) and Part 157 of the Commission's regulations, for authorization to construct and operate the Line N Relocation and Interconnect Project and the Line N Compressor Installation Expansion Project (together, the Line N Projects) in western Pennsylvania. National Fuel also requests authorization to abandon those services currently offered on the Line N facilities under section 7(b) of the NGA, but to maintain sections of the existing Line N in inactive status. For the reasons discussed below, the Commission will grant the requested certificate authority, as modified and conditioned in this order.

Background

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 existing Line N pipeline in 1947. The Line N pipeline is a single 20-inch-diameter pipeline that extends northward from an interconnection with the interstate natural gas pipeline system of Texas Eastern Transmission LP (Texas Eastern) in Greene County, Pennsylvania through Washington, Allegheny, Beaver, and Lawrence Counties, and terminates near Slippery Rock in Butler County, Pennsylvania. A portion of Line N is located in an area of active long-wall coal mining. National Fuel states that because of its age, Line N lacks the mechanical properties which enables more modern pipe to safely withstand subsidence caused by long-wall mining activities. National Fuel states that the reliability of service on Line N has already been significantly compromised by the long-wall coal mining operations of Consol Energy Inc. (Consol).

National Fuel states that Consol's mining operations have made it necessary for National Fuel to replace affected pipeline sections utilizing a process in which the new pipe is cradled above ground, monitored for subsidence and pipe stress, and then lowered into the ground after subsidence has taken place. National Fuel states that in the past five years it has endured service interruptions approximately twice every six months, for one to two weeks each time, as a long-wall panel is mined/extracted underneath the line.¹ In order to protect the integrity of its pipeline and to avoid further service interruptions, National Fuel seeks authorization in Docket No. CP10-457-000 to relocate a portion of Line N away from the active long-wall mining areas.

4. In addition, because Line N is located in an area of active Marcellus Shale natural gas production, National Fuel conducted an open season between August 5 and October 3, 2008, to assess the need for expanding the capacity of the to-be-relocated Line N. As a result of the open season, National Fuel entered into a precedent agreement with a producer for 150,000 dekatherms per day (Dth/d) of firm transportation service on Line N under Rate Schedule FT at maximum rates, for an initial term of 11 years.² In order to provide this additional firm service, National Fuel seeks authorization in Docket No. CP10-458-000 for its Compressor Installation Expansion Project, to increase the capacity of Line N.³

Proposal

5. In conjunction with its Line N Relocation and Interconnect Project, National Fuel proposes to abandon the service provided using the existing Line N facilities and to relocate portions of the southernmost section of Line N in Greene and Washington Counties, Pennsylvania. Specifically, National Fuel proposes to construct approximately

¹ In addition, National Fuel states that Consol has advised it that the coal mining operations along National Fuel's Line N pipeline route will increase in extent and frequency.

² National Fuel provided a copy of the precedent agreement in Exhibit I to its application. National Fuel states that the precedent agreement contains commercially sensitive information and that it therefore labeled the filed precedent agreement as privileged and confidential.

³ National Fuel states that its proposal in Docket No. CP10-457-000 to relocate portions of Line N is not dependent on approval of its proposal in Docket No. CP10-458-000 to construct a new compressor station on Line N. National Fuel further explains, however, that the design of the compressor station project assumes the completion of the project to relocate portions of Line N, including the section with the current interconnection with Texas Eastern. *See* Application in Docket No. CP10-458-000 at 3.

18.2 miles of new pipeline in two sections. Section 1 would be approximately 5.4 miles in length and would be located entirely within Washington County. Section 2 would be approximately 12.8 miles in length, and would commence at a tie-in point in Morris Township, Washington County and extend southward to a proposed new interconnection with Texas Eastern at a tie-in point near Bristoria Road, in Richhill Township, Greene County. The Section 2 segment would terminate approximately 2.9 miles west of National Fuel's current Holbrook metering and regulating (M&R) facility interconnection with Texas Eastern at Bristoria Road. Therefore, National Fuel also proposes to relocate the Holbrook M&R facility interconnection with Texas Eastern to a point 2.9 miles west of its current location.⁴ The relocated segments of Line N will be sited through previously mined properties, areas anticipated to be protected by coal mining support facilities, and an active surface operation owned by Consol.⁵

6. National Fuel estimates that the Line N Relocation and Interconnect Project will cost \$36.1 million. National Fuel asserts that the relocation project is necessary to maintain and improve service for its existing customers; therefore, National Fuel requests a pre-determination favoring rolled-in rate treatment for the costs associated with the project facilities.

7. In order to accommodate the request for an additional 150,000 Dth/d of firm service on Line N for delivery to Texas Eastern, National Fuel proposes to construct a new compressor station. Currently, National Fuel receives gas from Texas Eastern at the southern end of Line N, and from various producers along Line N, for transportation northward. In order to ensure its ability to provide the additional 150,000 Dth/d of new transportation service on a firm basis, National Fuel proposes to construct and operate the new 4,740 horsepower (hp) Buffalo Compressor Station,⁶ consisting of two 2,370 hp skid-mounted gas-fired reciprocating compressor units, on Line N in Washington County. In conjunction with construction of the compressor station, National Fuel also proposes to replace approximately 1.9 miles of 20-inch diameter pipeline in or adjacent to National Fuel's existing right-of-way.⁷ National Fuel asserts that replacement of this 1.9-mile

⁴ National Fuel states that there is no need to relocate a recently-replaced a 3.7-mile section of Line N between the proposed Sections 1 and 2.

⁵ National Fuel states that it has worked with Consol to site the proposed relocated segments of Line N.

⁶ National Fuel states that its option to purchase the property for the compressor station site is inclusive of coal rights; this will ensure that it can control coal mining beneath the station.

⁷ This 1.9-mile segment of Line N extends northward from the northern terminus of Section 1 of the Line N Relocation and Interconnect Project.

section of pipe is necessary to accommodate the higher operating pressures that will result from the installation of the Buffalo Compressor Station.⁸

8. National Fuel estimates that the Line N Compressor Installation Expansion Project will cost \$19.6 million. National Fuel states that the revenues to be generated from the additional service subscribed under the precedent agreement will exceed the additional cost-of-service associated with the project. Therefore, National Fuel seeks a pre-determination supporting rolled-in treatment for the costs of this project's facilities.

9. National Fuel states that it believes that the area around the existing Line N pipeline will continue to see significant drilling activity in the coming years, which may create the need for additional pipeline infrastructure. Therefore, to maintain the possibility of reactivating in the future the sections of Line N to be removed from service as a result of both the instant proposals, National Fuel proposes to keep and maintain those pipeline facilities in place, rather than abandoning them at this time. National Fuel states it will convert the existing Line N pipeline segments to "inactive status" and hold them for future possible use as either transmission or gathering lines. National Fuel states that the pipeline facilities to be placed into "inactive status" will be capped on each end, cleaned of residual natural gas and/or liquids prior to being idled, filled with dry nitrogen to a low pressure, and maintained, including cathodic protection, during the idle period.

10. National Fuel states that it will file information with the Commission regarding its future plans for the idled facilities within two years of the in-service date of its new facilities.

Interventions

11. Notice of National Fuel's applications was published in the *Federal Register* on July 7, 2010 (75 Fed. Reg. 39,010). Atmos Energy Marketing LLC., Consolidated Edison Company of New York Inc., National Fuel Gas Distribution Corporation, National Grid Gas Delivery Companies et al., PSEG Energy Resources & Trade LLC, and Statoil Natural Gas LLC filed timely, unopposed motions to intervene in both

⁸ National Fuel states that the Buffalo Compressor Station will ultimately create, depending on the actual location of receipt points, approximately 10,000 Dth/d of firm capacity over and above the 150,000 Dth/d subscribed under the precedent agreement entered into as a result of National Fuel's initial open season. Therefore, National Fuel states that it held another open season, between July 29 and August 12, 2010, for the additional capacity. National Fuel states that it received two responses, both from the same shipper, and that it is negotiating a precedent agreement with that shipper for 10,000 Dth/day of firm service.

dockets.⁹ The New York State Public Service Commission filed a timely notice of intervention in Docket No. CP10-458-000.¹⁰

12. Landowners Bruce Leavitt and William Sadecky, Jr. filed comments in Docket No. CP10-457-000 related to environmental concerns. By letter dated August 19, 2010, Mr. Leavitt stated that his concerns had been addressed by National Fuel. By letter dated September 23, 2010, National Fuel stated that it had resolved the concerns of Mr. Sadecky and Mr. Leavitt through adjustments to the proposed pipeline alignment or other accommodations.

Discussion

13. Since the proposed facilities 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

14. The Certificate Policy Statement¹¹ provides guidance as to how we will evaluate proposals for certificating major new construction. 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 explains 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.

⁹ These timely, unopposed motions to intervene in both dockets were granted by operation of Rule 214(c) of the Commission's Rules of Practice and Procedure. 18 C.F.R. § 385.214(c) (2010).

¹⁰ The New York State Public Service Commission's timely notice of intervention in the proceeding on National Fuel's proposed compressor station in Docket No. CP10-458-000 is granted by operation of Rule 214(a)(2) of the Commission's Rules of Practice and Procedure. 18 C.F.R. § 385.214(a)(2) (2010).

¹¹ *Certification of New Interstate Natural Gas Pipeline Facilities*, 88 FERC ¶ 61,227 (1999), *order on clarification*, 90 FERC ¶ 61,128 (2000); *order on clarification*, 92 FERC ¶ 61,094 (2000) (Certificate Policy Statement).

15. 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 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 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.

16. The Line N Projects satisfy the threshold, no subsidization requirement of the Certificate Policy Statement. First, as contemplated by the Certificate Policy Statement, subsidization does not include the sharing of costs by existing customers for projects designed to improve existing service for those customers, by replacing existing facilities or improving reliability.¹² The Line N Relocation and Interconnect Project is clearly designed to enhance the reliability of service for National Fuel's existing customers. The project will relocate segments of Line N away from active long-wall mining operations, thereby eliminating the potential for periodic outages associated with those mining activities. National Fuel's existing Line N shippers will experience increased service reliability with no adverse effects on the quality of their existing services.

17. Nor will the Line N Compressor Installation Expansion Project be subsidized by National Fuel's existing customers, as the project is supported by a long-term commitment for firm transportation service at the maximum rates under National Fuel's FT Rate Schedule. As discussed below, the revenues generated from this service agreement will exceed the additional cost of service associated with the compressor station project by \$24,746,932.

18. There is no evidence that National Fuel's proposals will result in the displacement of any firm transportation services on any other existing pipelines, and no other pipeline company in the area protested or raised concerns regarding either of National Fuel's applications. The Commission also finds, as discussed further below, that the proposed facilities were designed to minimize impacts on landowners and the environment.

19. In sum, the Commission finds that National Fuel's proposals 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

¹² *Certification of New Interstate Gas Pipeline Facilities*, 88 FERC ¶ 61,227, at n.12 (1999).

Statement and section 7(c) of the NGA, the Commission concludes that approval of the Line N Projects is required by the public convenience and necessity, subject to the conditions discussed below.

B. Inactivation of Line N

20. National Fuel seeks to convert the existing segments of Line N to be replaced by relocated pipe to inactive status, rather than abandon them at this time. To accomplish this, National Fuel proposes to transfer the inactive segments to Account 105, Gas Plant Held for Future Use.

21. As discussed above, the existing Line N is located in an area of active Marcellus Shale gas production and National Fuel believes that, in the future, the inactive segments of Line N could potentially either be used to provide jurisdictional transportation service or transferred to other parties to be used for gas gathering in this 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 Projects; by that time National Fuel will make a determination as to the ultimate disposition of the inactive segments.

22. The Commission finds that National Fuel's idling of the replaced-segments of its existing Line N for a specified period of time would constitute a temporary act that may be exempted from the certificate requirements of section 7 of the NGA under section 7(c)(1)(b). The Commission further finds that it is reasonable to grant National Fuel's request to temporarily maintain these segments in an inactive status, given the possibility of their future usefulness either as transmission or gathering facilities in an area of active natural gas production.¹³ We 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 Projects explaining the status of and its plans, if any, for the subject pipeline segments.

¹³ The Commission previously granted proposals involving temporary deactivation of facilities where warranted by the circumstances. *See Stingray Pipeline Company*, 108 FERC ¶ 61,058 (2004) (authorizing applicant to deactivate, for three years, several old, unreliable compressor units not needed to provide current services to avoid operation and maintenance expenses, while preserving the company's ability to replace the equipment in a timely manner should demand increase); *Midwestern Gas Transmission Company*, 94 FERC ¶ 61,192 (2001) (authorizing applicant to deactivate, for 18 to 24 months, a compressor unit on a mainline with declining throughput while the company decided whether to apply for permanent abandonment or to replace the unit); *Koch Gateway Pipeline Company*, 80 FERC ¶ 61,287 (1997) (authorizing applicant to temporarily inactivate, for 12 to 18 months, six mainline compressor units not needed to meet current firm service obligations while it decided to apply for permanent abandonment or to replace the units).

C. Abandonment of Service

23. As noted, National Fuel requests authority under section 7(b) of the NGA to abandon services currently being provided on the Line N facilities to be placed into inactive status. However, it appears that all existing services on Line N will be relocated to the replacement line for which authorization is being sought; thus, no service will actually be abandoned in connection with this project. Therefore, we will dismiss National Fuel's request for abandonment.

D. Rates and Tariff Issues

1. The Line N Relocation and Interconnect Project

a. Presumption of Rolled-In Rate Treatment

24. National Fuel states that the pipeline construction associated with the proposed relocation project will cost an estimated \$32.3 million and the project's new M&R station will cost an estimated \$3.8 million. National Fuel's requests for a pre-determination that rolled-in rate treatment will be appropriate for the project costs is granted, because the proposed project will enhance the reliability of existing service by replacing and relocating existing mainline transmission facilities away from active long-wall mining areas.

b. Proposed Tariff Changes

25. National Fuel submitted pro forma Rate Schedule EFT tariff sheets¹⁴ to change the location of the M&R facility interconnection with Texas Eastern. National Fuel is required to file actual tariff records for this change at least 30 days and not more than 60 days prior to the in-service date for the relocated Holbrook M&R facility interconnection.

c. Facilities Held for Future Use

26. As discussed above, the Commission is approving National Fuel's request to maintain the inactivated sections of Line N for possible future use. Thus, the Commission will approve National Fuel's proposals in Exhibit Y to its application to remove the original cost associated with the inactivated Line N facilities from Gas Plant in Service and move the cost to Gas Plant Held For Future Use.¹⁵

¹⁴ Pro Forma Sheet No. 46 and Pro Forma Sheet No. 56 to National Fuel's FERC Gas Tariff, Fourth Revised Volume No. 1.

¹⁵ See Exhibit Y.

2. The Line N Compressor Installation Expansion Project

a. Presumption of Rolled-In Rate Treatment

27. As noted above, National Fuel's Line N Compressor Installation Expansion Project is supported by a long-term firm transportation commitment for 150,000 Dth/d of service by a shipper that has agreed to pay the maximum rates under National Fuel's FT Rate Schedule for a primary term of eleven years.

28. Exhibit N to National Fuel's application shows that this service would generate projected revenues of \$60,501,600 over the first ten years of service.¹⁶ This level of revenues would exceed the associated projected \$35,754,668 cost of service over the same ten-year period by \$24,746,932. Further, the project will create an additional 10,000 Dth/d of capacity for which National Fuel states it is currently negotiating another precedent agreement. Such an agreement would result in additional project revenues.¹⁷

29. National Fuel estimates that the fuel required to provide the expansion service will consist of approximately 0.6 percent of suction volumes under design conditions. National Fuel emphasizes that this is significantly less than National Fuel's current fuel retention rate of 1.15 percent. Thus, National Fuel asserts the expansion project will benefit existing shippers by reducing the fuel percentage rate.

30. Given the above, we find that rolling the costs of the Line N Compressor Installation Expansion Project into National Fuel's system rates should serve to reduce existing customers' rates or offset future rate increases. Accordingly, we will grant National Fuel's request for a presumption supporting rolled-in rate treatment for the costs of the project in a future rate case, absent a change in material circumstances.

E. Accounting

31. National Fuel proposes to capitalize a total allowance for funds used during construction (AFUDC) of \$1,281,507 as part of the Line N Projects. National Fuel states that it will commence the accrual AFUDC for the projects when construction begins and construction costs are incurred on a continuous, planned, and progressive basis. National Fuel states it expects AFUDC accruals to begin in November 2010, except for AFUDC accruals related to the relocation of the M&R Station, which are expected to commence in May 2011.

¹⁶ The revenues were calculated using National Fuel's \$3.612 maximum FT Rate Schedule reservation rate and 150,000 Dth/d of maximum daily transportation quantity.

¹⁷ See responses to Questions 2 and 3 of Staff's September 1, 2010 Data Request and supplemental information filed on November 4, 2010.

32. National Fuel's AFUDC proposal appears to be generally consistent with Commission policy.¹⁸ However, we find that National Fuel has overstated the amount of AFUDC that is included in the estimated cost of the project because it took a full month's AFUDC on current month construction expenditures and compounded AFUDC on a monthly basis. Since current month construction expenditures occur throughout the month, only one-half month's AFUDC should be accrued on current month's construction expenditures to reflect the fact that, on average, these expenditures are outstanding for only half the month.¹⁹ Also, the Commission's regulations do not permit monthly compounding of AFUDC and limit the compounding of AFUDC to be no more frequent than on a semi-annual basis.²⁰

33. In order to assure that its construction cost is not overstated, National Fuel is required to revise its procedures for calculating AFUDC to reflect the fact that, on average, these expenditures are outstanding for only half the month and that the compounding of AFUDC may occur on only a semi-annual basis.

F. Environmental Analysis

34. On February 18, 2010, the Commission issued a *Notice of Intent to Prepare an Environmental Assessment for the Proposed Line N Projects, Request for Comments on Environmental Issues and Notice of Public Meetings and Public Site Visits* (NOI).²¹ The

¹⁸ The Commission notes that it recently revised its policy on the commencement of AFUDC in *Florida Gas Transmission Company LLC* and *Southern Natural Gas Company*, to allow natural gas pipelines to begin accruing AFUDC when the following conditions are met: (1) capital expenditures for the project have been incurred; and (2) activities that are necessary to get the construction project ready for its intended use are in progress. See *Florida Gas Transmission Co. LLC*, 130 FERC ¶ 61,194 (2010); *Southern Natural Gas Co.*, 130 FERC ¶ 61,193 (2010).

¹⁹ See *Kern River Gas Transmission Company*, 98 FERC ¶ 61,205 (2002); *Rockies Express Pipeline LLC*, 128 FERC ¶ 61,036 (2009); *Florida Gas Transmission Company, LLC*, 132 FERC ¶ 61,040 (2010).

²⁰ See *Amendments to Uniform System of Accounts for Public Utilities and Licensees and for Natural Gas Companies (Classes A, B, C, and D) to Provide for the Determination of Rate for Computing Allowance for Funds Used During Construction and Revisions of Certain Schedule Pages of FPC Reports*, Order No. 561, 57 FPC 608 (1977), *reh'g denied*, Order No. 561-A, 59 FPC 1340 (1977), *order on clarification*, 2 FERC ¶ 61,050 (1978). See also *Ingleside Energy Center, LLC*, 112 FERC ¶ 61,101 (2005); *Wyoming Interstate Company, Ltd.* 130 FERC ¶ 61,251 (2010).

²¹ 75 Fed. Reg. 8323 (February 24, 2010).

NOI was mailed to interested parties including federal, state, and local officials; agency representatives; conservation organizations; Native American groups; local libraries and newspapers; and landowners in the vicinity of the proposed project.

35. In response to the NOI, we received eight comment letters: one from Richhill Township Supervisors regarding the concerns of a private citizen/landowner; six from private landowners; and two from state agencies. In addition, one comment was provided by an individual during the scoping meeting on March 3, 2010. The primary issues raised included general pipeline routing, mining impacts, and safety.

36. To satisfy the requirements of the National Environmental Policy Act, Commission staff prepared an environmental assessment (EA) for National Fuel's proposal, which was issued for a 30-day comment period and placed into the public record on October 18, 2010.²² The EA included a summary of the project's stated purpose and need, and an analysis of potential impacts on geology, soils, water resources, wetlands, vegetation, fisheries, wildlife, threatened and endangered species, land use, recreation, visual resources, cultural resources, air quality, noise, safety, cumulative impacts, and alternatives. All substantive comments received during our scoping process were addressed in the EA. No comments were received in response the EA.

37. Five landowners had concerns regarding the routing of the pipeline on their land. National Fuel developed alternative routes in response to concerns from four of the landowners.²³ Specifically, National Fuel proposed a reroute of the pipeline which minimized the effects to Mr. Leavitt's and Mr. Sadecky's properties and was determined to be environmentally preferable to the proposed pipeline route. Commission staff determined that the proposed route was environmentally preferable to the route revisions requested by two landowners, Mrs. Jones and Mrs. Lewis;²⁴ however, we are including a condition for the crossing of Mrs. Lewis' property to ensure that the Lewis' septic system will not be adversely impacted. Commission staff also determined that the proposed route would not impact the business of landowner, Ms. Burns.²⁵ In addition, one commenter requested that the easement held by National Fuel for the existing segment of Line N being replaced be reverted back to the private landowner's ownership. Because the segment of the existing Line N is being idled and not abandoned by National Fuel, this option is not viable.²⁶ Finally, one landowner raised concerns regarding the effect of

²² 75 Fed. Reg. 65,477 (October 25, 2010).

²³ See EA section C.3.c at 79-81, 85-86.

²⁴ See EA section C.3.c at 80-85.

²⁵ See EA section B.4 at 45.

²⁶ See EA section A.2.a at 4-5.

construction activities on his livestock and agricultural land. As stated in the EA, the company must follow the Commission's construction guidelines to ensure that impact on soils in agricultural lands and impacts to livestock are minimized.²⁷ In addition, prior to construction, National Fuel must perform a pre-construction groundwater characterization study and submit a construction plan to avoid impacts to the spring on the property of Mrs. Stoller.²⁸

38. In addition, comments were filed by the Pennsylvania Department of Environmental Protection (Pennsylvania DEP) and the Pennsylvania Emergency Management Agency (Pennsylvania EMA). The Pennsylvania DEP requested that the Commission address air quality, environmental cleanup, wastewater management, mining, waste management, water supply management, and water management. A majority of the concerns raised by Pennsylvania DEP relate to actual mining operations, which are not at issue in this project; however, staff determined that each of the pertinent environmental concerns raised would be mitigated by following the measures proposed by National Fuel, the requirements of other permits, and the environmental conditions in this order.²⁹ We agree with that assessment.

39. The Pennsylvania EMA requested that National Fuel provide training and education to elected officials regarding safety, emergency response, noise control, impacts to quality of life, response planning, geologic hazards, and inspections. Under the U.S. Department of Transportation's regulations,³⁰ each operator is required to establish and maintain a liaison with appropriate fire, police, and public officials to learn the resources and responsibilities of each organization that may respond to a natural gas pipeline emergency, and to coordinate mutual assistance. The operator must also establish a continuing education program to enable customers, the public, government officials, and those engaged in excavation activities to recognize a gas pipeline emergency and report it to appropriate public officials. National Fuel is required to provide the appropriate training to local emergency service personnel before the pipeline is placed in service.³¹

²⁷ See EA section B.4.a at 42-43.

²⁸ See EA section B.2.a at 26.

²⁹ See EA section B.2.a at 25-26; EA section B.6.a at 51-57; and Environmental Condition 15.

³⁰ 49 C.F.R. Part 190-199 (2010).

³¹ See EA section B.7 at 61-66.

40. Based on the discussion in the EA, we conclude 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.

41. 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 local laws, may prohibit or unreasonably delay the construction or operation of facilities approved by this Commission.³²

42. At a hearing held on December 16, 2010, the Commission, on its own motion, received and made a part of the record in this proceeding all evidence, including the applications, amendments, and exhibits thereto, submitted in support of the authorizations sought herein, and upon consideration of the record,

The Commission orders:

(A) Certificates of public convenience and necessity are issued to National Fuel authorizing it to construct and operate the Line N Projects, as described and conditioned herein, and as more fully described in the applications.

(B) The certificates issued in Ordering Paragraph (A) are 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 Appendix A of 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

³² 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).

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.

(E) 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.

(F) Upon the terms and conditions of this order pursuant to section 7(c)(1)(b) of the NGA, National Fuel is granted an exemption from the certificate requirements of section 7 of the NGA for the idled segments of Line N. National Fuel shall make a filing no more than two years from the date of the in-service, but one month prior to the expiration, of the Line N Projects explaining the status of and the plans for the idled segments of Line N.

(G) National Fuel's request to abandon service in conjunction with the implementation of its Line N projects is dismissed.

(H) National Fuel shall file actual tariff records not less than 30 days and no more than 60 days prior to the commencement of service pursuant to Part 154 of the Commission's regulations;

(I) National Fuel's request for a finding supporting a presumption of rolled-in rate treatment for the costs of the Line N Relocation and Interconnect Project is granted, absent significant change in circumstances;

(J) National Fuel's request for a finding supporting a presumption of rolled-in rate treatment for the costs of the Line N Compressor Installation Expansion Project is granted, absent a significant change in circumstances;

(K) National Fuel must revise its AFUDC procedures, as discussed in the body of this order.

(L) National Fuel and the representations made with respect to AFUDC accruals are subject to audit to determine whether they are in compliance with the revised policy and related Commission rules and regulations.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

Appendix

Environmental Conditions for National Fuel Gas Supply Corporation's Project in Docket Nos. CP10-457-000 and CP10-458-000

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 of the Office of Energy Projects (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 (EI), and contractor personnel will be informed of the EI'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 (NGA) 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, Avoidance and Mitigation Plan, 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 EIs assigned per spread, and how the company will ensure that sufficient personnel are available to implement the environmental mitigation;
 - d. company personnel, including EIs 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. National Fuel shall employ at least one EI per construction spread. The EI shall be:
- a. responsible for monitoring and ensuring compliance with all mitigation measures required by the Order and other grants, permits, certificates, or other authorizing documents;
 - b. responsible for evaluating the construction contractor's implementation of the environmental mitigation measures required in the contract (see condition 6 above) and any other authorizing document;
 - c. empowered to order correction of acts that violate the environmental conditions of the Order, and any other authorizing document;
 - d. a full-time position, separate from all other activity inspectors;
 - e. responsible for documenting compliance with the environmental conditions of the Order, as well as any environmental conditions/permit requirements imposed by other federal, state, or local agencies; and
 - f. responsible for maintaining status reports.
8. 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 EI(s) during the reporting period (both for the conditions imposed by the Commission and any environmental conditions/permit requirements imposed by other federal, 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.
9. **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).
10. National Fuel must receive written authorization from the Director of OEP **before commencing service from each phase of 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.
11. **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.

12. **National Fuel shall not begin construction** of facilities and/or use of all staging, storage, or temporary work areas and new or to-be-improved access roads **until**:
- a. National Fuel files with the Secretary comments from the State Historic Preservation Office on the revised Discovery Plan, second addendum survey report, and the prehistoric sites avoidance plans;
 - b. the Advisory Council on Historic Preservation is afforded an opportunity to comment if any historic property would be adversely affected; and
 - c. the FERC staff reviews and the Director of OEP approves all cultural resources reports and plans, and notifies National Fuel in writing that avoidance or treatment measures may be implemented and/or construction may proceed.

All materials filed with the Commission containing **location, character, and ownership** information about cultural resources must have the cover and any relevant pages therein clearly labeled in bold lettering: **“CONTAINS PRIVILEGED INFORMATION - DO NOT RELEASE.”**

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 noise surveys showing this with the Secretary **no later than 60 days** after placing the Buffalo Compressor Station in service. However, if the noise attributable to the operation of the Buffalo Compressor Station at full load exceeds a day-night noise level (L_{dn}) of 55 A-weighted decibels (dBA) at any NSAs, National Fuel shall file a report on what changes are needed and shall install additional noise controls to meet the level **within 1 year** of the in-service date. National Fuel shall confirm compliance with this requirement by filing a second noise survey with the Secretary **no later than 60 days** after it installs the additional noise controls.
14. National Fuel shall file a noise survey with the Secretary **no later than 60 days** after placing the Holbrook M&R Station in service. If the noise attributable to the operation of the Holbrook M&R Station at full load exceeds an L_{dn} of 55 dBA at any nearby NSA, National Fuel shall file a report on what changes are needed and shall install the additional noise controls to meet the level **within 1 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.
15. **Prior to construction**, National Fuel shall file with the Secretary for review and written approval by the Director of OEP, the results of the groundwater characterization study and the final construction plans demonstrating how its construction will avoid impact on the Stollar's spring at milepost 4.8 of Section 1.

16. **Prior to construction**, National Fuel shall file with the Secretary for review and written approval by the Director of OEP, a site specific plan for the crossing of Roy Furman Highway and the Lewis property. The plan shall demonstrate how the Project will impact the Lewis' septic leach field.