

150 FERC ¶ 61,160
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Cheryl A. LaFleur, Chairman;
Philip D. Moeller, Tony Clark,
Norman C. Bay, and Colette D. Honorable.

Tennessee Gas Pipeline Company, L.L.C.
National Fuel Gas Supply Corporation

Docket Nos. CP14-88-000
CP14-100-000

ORDER ISSUING CERTIFICATE AND AUTHORIZING ABANDONMENT

(Issued February 27, 2015)

1. On February 21 and March 7, 2014, respectively, Tennessee Gas Pipeline Company, L.L.C. (Tennessee) in Docket No. CP14-88-000 and National Fuel Gas Supply Corporation (National Fuel) in Docket No. CP14-100-000, filed applications pursuant to sections 7(b) and 7(c) of the Natural Gas Act (NGA)¹ and Part 157 of the Commission's regulations² for authorization to construct, operate, and abandon certain compression, pipeline, and appurtenant facilities.
2. For the reasons discussed below, the Commission will grant the requested certificate and abandonment authorizations, subject to the conditions described herein.

I. Background and Proposals

3. Tennessee is a limited liability company organized and existing under the laws of the state of Delaware. Tennessee is engaged in the transportation and storage of natural gas in interstate commerce subject to the jurisdiction of the Commission and is a natural gas company within the meaning of NGA section 2(6).³ Tennessee's mainline transmission system extends northeast from Texas, Louisiana, and the Gulf of Mexico

¹ 15 U.S.C. § 717f(b) and 717f (c) (2012).

² 18 C.F.R. Part 157 (2014).

³ 15 U.S.C. § 717a(6) (2012).

through the states of Texas, Louisiana, Arkansas, Mississippi, Alabama, Tennessee, Kentucky, West Virginia, Ohio, Pennsylvania, New York, New Jersey, Massachusetts, New Hampshire, Rhode Island, and Connecticut.

4. National Fuel is a natural gas company within the meaning of NGA section 2(6), organized and existing under the laws of the Commonwealth of Pennsylvania, and engaged in the transportation and storage of natural gas in interstate commerce subject to the jurisdiction of the Commission. National Fuel transports and stores natural gas by means of facilities in New York and Pennsylvania.

A. Tennessee's Niagara Expansion Project, Docket No. CP14-88-000

5. Tennessee states that its proposed Niagara Expansion Project will enable it to provide up to 158,000 Dth/d of incremental firm transportation service for Seneca Resources Corporation (Seneca). Tennessee states that it will transport gas for Seneca from receipt points in Mercer and Elk Counties, Pennsylvania to an interconnection with TransCanada Pipeline Limited (TransCanada) at Niagara Falls, New York, utilizing capacity on its 200 and 300 Line systems and leased capacity from National Fuel.

1. Proposed Facilities to be Constructed and Abandoned

6. Tennessee proposes to construct and operate approximately 3.1 miles of 30-inch-diameter looping pipeline⁴ along its existing 200 Line north of Compressor Station 224 in Chautauqua County, New York (Loop 224). This will allow Tennessee to transport volumes to be received from National Fuel at the discharge side of Tennessee's Compressor Station 229 for delivery to Tennessee's Niagara Spur. Tennessee also proposes to modify existing station piping at Compressor Station 219 in Mercer County, Pennsylvania, to allow gas received from a proposed National Fuel interconnect to flow directly into Tennessee's existing 30-inch Line No. 200-2 located at the discharge side of Compressor Station 219, bypassing compression at that station.⁵ Tennessee proposes to

⁴ This pipeline loop will extend an existing partial loop beginning at Tennessee's Compressor Station 224.

⁵ Tennessee states that it will bypass compression by installing approximately 600 feet of 16-inch diameter line in the station yard from National Fuel's meter station to Tennessee's existing 30-inch Line No. 200-2 and a 16-inch valve with operator and controls to allow for remote operation. Tennessee plans to install two taps to accommodate the interconnection with National Fuel under its blanket certificate authority in Docket No. CP82-413-000.

install a pig launcher at Compressor Station 224 in Chautauqua County, New York, to allow for the pigging of the proposed Loop 224. In addition, Tennessee proposes to modify the Hamburg Meter Station in Erie County, New York, to allow for the receipt of gas from National Fuel at that point.⁶

7. Tennessee also proposes to abandon and replace certain appurtenant facilities at three existing compressor and meter stations. Specifically, Tennessee states that it will: (1) remove one 30-inch well cap at Compressor Station 219 and at Compressor Station 224; and (2) replace two ten-inch existing meter tubes with two eight-inch ultrasonic meters, and install a filter separator, a liquid storage tank, flow control, regulation, over pressure protection, and piping modifications to allow for bi-directional flow at the Hamburg Meter Station.

8. Tennessee states that it has reserved certain existing unsubscribed firm transportation capability on its 200 Line, 300 Line, and Niagara Spur for use in conjunction with this project, pursuant to Article XXVI, section 5.8 of the General Terms and Conditions of its tariff. By doing so, Tennessee asserts that it was able to reduce the facilities it would need to construct and operate in order to meet the market needs of Seneca. Specifically, Tennessee states it has reserved, effective November 1, 2015, 133,000 Dth/d of discharge and associated transportation capability on the 300 Line between Compressor Station 219 in Mercer, Pennsylvania, and Compressor Station 313 in Coudersport, Pennsylvania; 158,000 Dth/d of transportation capability on the Niagara Spur and Niagara Spur Loop Line from the interconnect of the Niagara Spur and Tennessee's mainline in Potter County, Pennsylvania, to the interconnect with TransCanada at the United States/Canada border at Niagara Falls; 18,000 Dth/d on the 200 Line from Station 219 to the interconnect with Tennessee's Niagara Spur at mainline valves 230-1 and 230-2A; and 140,000 Dth/d from Station 313 to the Rose Lake interconnect with National Fuel.

2. Open Season, Rates, and Services

9. Tennessee explains that, prior to holding an open season, it executed a binding precedent agreement with Seneca for all of the proposed project capacity and granted Seneca certain contract extension rights. Tennessee then held a non-binding open season from December 4 to December 13, 2013, for the Niagara Expansion Project. Tennessee

⁶Currently, Tennessee is only able to deliver gas to National Fuel at the Hamburg Meter Station. Tennessee will also construct and operate various appurtenant and auxiliary facilities as part of the project. These appurtenant and auxiliary facilities are listed in Exhibit Z-1 of Tennessee's application.

states that it received requests for service from two parties other than Seneca; one did not conform to the design of the project and the other was for insufficient volumes.

10. Following the open season, Seneca entered into a precedent agreement for 100 percent of the capacity of the project. Tennessee states that Seneca elected to pay negotiated rates for the 158,000 Dth/day of firm transportation service. The negotiated rates include recovery of lease charges that Tennessee will incur under its lease with National Fuel. Tennessee requests that the Commission approve the negotiated contract provisions of its precedent agreement with Seneca as permissible material deviations to the form of service agreement contained in Tennessee's FERC Tariff. Tennessee proposes to establish an incremental rate as the initial recourse rate under Rate Schedule FT-A for firm transportation service on the project facilities. In addition, Tennessee proposes to charge the applicable general system rate under Rate Schedule IT for any interruptible service that may be provided on capacity created by the Niagara Expansion Project.

B. National Fuel's Northern Access 2015 Project, Docket No. CP14-100-000

11. National Fuel proposes to (1) construct and operate a new compressor station, the Hinsdale Compressor Station, in Cattaraugus County, New York, consisting of two 7,700 ISO-rated horsepower turbine-powered centrifugal compressor units;⁷ (2) install one additional 7,700 ISO-rated horsepower turbine-powered centrifugal compressor unit at its existing Concord Compressor Station in Concord, New York; and (3) modify the East Eden measurement and regulator (M&R) station in Eden, New York with over-pressure protection facilities to protect lower-pressure lines and install a tap and side valve to connect the East Eden M&R station to Tennessee's Hamburg Interconnection. The proposed compression facilities⁸ will enable National Fuel to provide Tennessee with the requested lease capacity, as discussed below.

⁷ The proposed Hinsdale Compressor station includes sound insulated buildings, supported by a remotely monitored control system, auxiliary air and emergency power systems, and a fully automated emergency shutdown system which isolates the plant from the gas pipeline system, as well as a small office/locker room facility.

⁸ National Fuel evaluated the technical and commercial feasibility of installing and operating waste heat recovery equipment in association with the proposed gas compression facilities at the Hinsdale CS and Concord CS and determined it is not economically viable for this project.

12. At the Concord Compressor Station, National Fuel currently has five compressor units of 2,250 horsepower each for a total of 11,250 horsepower, of which they indicate 9,000 horsepower is currently required. With the addition of the proposed new 7,700 ISO-rated horsepower unit, and considering the winter temperature operations of that unit, National Fuel states that approximately 18,484 horsepower will be available at the Concord Compressor Station and that approximately 16,020 horsepower will be required to provide the contemplated level of leased capacity to Tennessee. Thus, both as currently configured and as proposed, available horsepower at the Concord Compressor Station exceeds the level necessary for certificated service.

13. National Fuel states that it plans to designate the horsepower of one unit, or 2,250 horsepower of compression, at Concord as spare compression. It shows in the flow diagrams supporting its proposed facility design, this increment of compression horsepower is not factored into the determination of sustainable firm transportation capacity. While National Fuel proposes to designate 2,250 horsepower at the Concord Compressor Station as spare compression, it states that it does not propose to designate any particular compressor units at the Concord Compressor Station as a spare unit. National Fuel says that under this arrangement, it would balance running hours and utilize any and all units in whichever combination will best satisfy the operational needs of the system at a particular time. National Fuel also proposes to reserve the ability to operate this spare compression to the extent necessary to meet design system pressure requirements, or intermittent demands for interruptible or secondary firm service or, when possible within scheduled maintenance intervals, requests for short-term firm service.

C. Tennessee's Lease of Capacity on National Fuel's System

14. In lieu of constructing additional looping facilities to move gas to its interconnection with TransCanada, Tennessee proposes to acquire by lease capacity to transport 140,000 Dth/d on National Fuel's system and National Fuel proposes to abandon by lease to Tennessee an equal amount of capacity. The capacity proposed to be acquired and abandoned will extend along National Fuel's Line X from National Fuel's Ellisburg Compressor Station in Potter County, Pennsylvania (Rose Lake Interconnection), to the Hamburg Interconnection with Tennessee in Erie County, New York. Tennessee has executed a precedent agreement with National Fuel proposing to lease the above-referenced capacity for an initial term of fifteen years.⁹ Under the terms

⁹ Tennessee February 21, 2014 Application, at 7.

of the lease, National Fuel will own, operate, and maintain the pipeline facilities between the Rose Lake and Hamburg Interconnections.¹⁰

15. Tennessee will pay National Fuel a monthly fixed lease payment of \$1,107,167. The lease payment is based on National Fuel's \$65,745,801 cost of constructing the Northern Access 2015 Project facilities and an annual cost of service of \$13,286,004.

16. In addition to the monthly lease payment, Tennessee will furnish fuel for transportation and lost and unaccounted for (LAUF). According to the lease agreement, the level of fuel and LAUF will be the "then effective retention percentages" for transportation services, as reflected in National Fuel's tariff. National Fuel has included in its application *pro forma* tariff sheets which will modify the fuel and LAUF tracker contained in section 41 of the General Terms and Conditions of its FERC Gas Tariff. Thus, the rates for fuel and LAUF will not be stated on a rate sheet; rather, the definition of "transportation fuel and company use" will be expanded to include volumes of gas transported by lease.

II. Notice, Interventions, Protests, and Comments

17. Notice of Tennessee's application in Docket No. CP14-88-000 was published in the *Federal Register* on March 14, 2014 (79 Fed. Reg. 14,503). Notice of National Fuel's application in Docket No. CP14-100-000 was published in the *Federal Register* on March 28, 2014 (79 Fed. Reg. 17,523). The parties listed in Appendix A filed timely, unopposed motions to intervene to Tennessee's application. The parties listed in Appendix B filed timely, unopposed motions to intervene to National Fuel's application. Timely, unopposed motions to intervene are granted by operation of Rule 214 of the Commission's Rules of Practice and Procedure.¹¹

18. The New York State Department of Environmental Conservation filed untimely motions to intervene in both dockets. We will grant these late-filed motions to intervene,

¹⁰ Tennessee will provide firm transportation service on project facilities to Seneca under two Rate Schedule FT-A Gas Transportation Agreements and Negotiated Rate Agreements as provided for in Tennessee's FERC Gas Tariff, Sixth Revised Volume No. 1, as amended from time to time.

¹¹ 18 C.F.R. § 385.214(c) (2014).

since to do so at this stage of the proceeding will not unduly delay, disrupt, or otherwise prejudice the proceeding or other parties.¹²

19. Allegheny Defense Project (Allegheny) protested both applications, asserting that the Commission must postpone action on the proposals herein until it prepares a regional programmatic environmental impact statement (EIS) addressing all proposals related to increasing capacity and use of shale gas in the northeastern United States.

III. Discussion

20. Because the proposed facilities will be used to transport natural gas in interstate commerce subject to the jurisdiction of the Commission, the abandonment, construction, and operation of the facilities are subject to the requirements of subsections (b) and (c) of section 7 of the NGA. In addition, National Fuel's proposed abandonment of capacity by lease to Tennessee and Tennessee's acquisition of that capacity are subject to the requirements of sections 7(b) and 7(c) of the NGA, respectively.

A. Application of the Certificate Policy Statement

21. The Certificate Policy Statement provides guidance for evaluating proposals to certificate new construction.¹³ The Certificate Policy Statement establishes 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.

22. 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

¹² See 18 C.F.R. § 385.214(d) (2014).

¹³ *Certification of New Interstate Natural Gas Pipeline Facilities*, 88 FERC ¶ 61,227 (1999), *order on clarification*, 90 FERC ¶ 61,128, *order on clarification*, 92 FERC ¶ 61,094 (2000) (Certificate Policy Statement).

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.

1. Tennessee's Niagara Expansion Project, Docket No. CP14-88-000

23. As stated, the threshold requirement is that the applicant must be prepared to financially support the project without relying on subsidization from its existing customers. As discussed in greater detail below, the proposed negotiated rates to be paid by Seneca for full subscription of the project will recover all construction, installation, operation, and maintenance costs, as well as lease payments, associated with the project. Moreover, Tennessee has proposed separate incremental recourse rates for transportation service on the project. Therefore, we find that Tennessee's existing customers will not subsidize the project.

24. The proposed project will not adversely affect Tennessee's existing customers because it will neither degrade service currently provided nor adversely impact operational capabilities and conditions of Tennessee's system.

25. The proposed project will not adversely affect other existing pipelines or their customers because it is not intended to replace existing customers' service on any other existing pipeline. In addition, no other pipeline has protested the applications.

26. The proposed project consists of one 3.1-miles-long pipeline looping segment and modified facilities at existing compressor and meter stations. To the extent practicable, the proposed pipeline looping segment will be constructed within or parallel to existing rights-of-way, thereby limiting new disturbances to the environment. The modified facilities at existing compressor and meter stations will occur within the stations' existing fence lines. Tennessee will seek to acquire necessary rights-of-way by negotiation to minimize reliance on eminent domain. Therefore, the proposed project has been designed to minimize the impacts on landowners and the environment.

27. Tennessee has entered into a long-term precedent agreement with Seneca for all of the project's capacity. Based on the benefits Tennessee's proposal will provide, the lack of adverse effects on existing customers, other pipelines, and their captive customers, and the minimal adverse effects on landowners or communities, we find that Tennessee's

proposed Niagara Expansion Project is consistent with the Certificate Policy Statement and required by the public convenience and necessity, as conditioned in this order.

28. Tennessee proposes to abandon by removal one 30-inch well cap at Compressor Station 219 and at Compressor Station 224 and to remove two 10-inch orifice meter tubes at the Hamburg Meter Station and replace them with two 8-inch sound meter tubes, as well as associated piping and appurtenances. We find that Tennessee's proposal to abandon certain facilities that are being replaced or will no longer be required after the proposed project is placed in service is likewise permitted by the present or future public convenience or necessity.

2. **National Fuel's Northern Access Project, Docket No. CP14-100-000**

29. National Fuel's proposal satisfies the threshold requirement that the pipeline must financially support the project without relying on subsidization from its existing customers. As shown in Exhibit N to National Fuel's application, Tennessee's lease payments will fully recover the cost of the proposed facilities during the lease term. Thus, we find that National Fuel's existing customers will not subsidize the project.

30. Nevertheless, we have some concerns regarding National Fuel's proposal to designate 2,250 horsepower of compression at Concord as "spare compression" given the multiple uses for which National Fuel says it may use that spare horsepower. We recognize the potential utility of maintaining an increment of spare compression for operational functions, such as balancing the running hours among the five 2,250 horsepower units in order to even out the wear on the units and meeting any unforeseen design system pressure requirements. However, we specify that National Fuel cannot, without further explanation and grant of additional certificate authorization, use any of the spare 2,250 horsepower for intermittent demands for interruptible or secondary firm service or requests for short-term firm service during scheduled maintenance intervals. As discussed below, the new capacity created by National Fuel's proposal has been fully leased by Tennessee. The costs of that capacity are recovered under that lease and only Tennessee has authorization to utilize that capacity for providing transportation service during the term of the lease.

31. The proposed project will not adversely affect National Fuel's existing customers because the project will not degrade any service currently provided.¹⁴ Moreover, existing pipelines and their captive customers will not be adversely impacted. National

¹⁴ National Fuel application, Exhibit G.

Fuel's proposals will not replace existing customers' service on any other existing pipeline. Further, no pipelines have protested National Fuel's proposals.

32. The proposed Hinsdale Compressor Station will be constructed on land to which National Fuel has property rights under an option agreement. National Fuel also proposes to construct and operate facilities at its existing Concord Compressor and East Eden M&R Stations. These stations are located on property owned by National Fuel. Because National Fuel owns or has rights to the properties where the proposed construction will take place, we find that any adverse impacts on landowners and surrounding communities will be minimal.

33. National Fuel has entered into a lease agreement to abandon and lease pipeline capacity to Tennessee for an initial term of 15 years, enabling Tennessee to provide transportation service to its customer, Seneca, without constructing potentially duplicative facilities of its own. Based on the benefits the Northern Access 2015 Projects will provide and the minimal adverse effects on existing shippers, other pipelines and their captive customers, and landowners and surrounding communities, we find, consistent with the criteria discussed in the Certificate Policy Statement and section 7 of the NGA, that the public convenience and necessity requires approval of National Fuel's Northern Access 2015 Project. We will require National Fuel to file revised tariff records, consistent with the *pro forma* sheets contained in Exhibit P to its application, regarding fuel and LAUF associated with the lease arrangement.

B. Lease Agreement

34. Historically, the Commission views lease arrangements differently from transportation services under rate contracts. The Commission views a lease of interstate pipeline capacity as an acquisition of a property interest that the lessee acquires in the capacity of the lessor's pipeline.¹⁵ To enter into a lease agreement, the lessee must be a natural gas company under the NGA and have section 7(c) certificate authorization to acquire the capacity. Once acquired, we treat the lessee as owner of that capacity and use of the capacity is subject to the lessee's tariff. The lessor continues to operate the pipeline system but releases its right to use the leased capacity.¹⁶

35. The Commission's practice has been to approve a lease if it finds that: (1) there are benefits from using a lease arrangement; (2) the lease payments are less than, or equal

¹⁵ *Texas Eastern Transmission Corp.*, 94 FERC ¶ 61,139, at 61,530 (2001).

¹⁶ *Texas Gas Transmission, LLC*, 113 FERC ¶ 61185, at P 10 (2005).

to, the lessor's firm transportation rates for comparable service over the terms of the lease; and (3) the lease arrangement does not adversely affect existing customers.¹⁷ The lease agreement between Tennessee and National Fuel satisfies these requirements.

36. First, the Commission has found that capacity leases in general have several potential public benefits. Leases can promote efficient use of existing facilities, avoid construction of duplicative facilities, reduce the risk of overbuilding, reduce costs, and minimize environmental impacts.¹⁸ In addition, leases can result in administrative efficiencies for shippers.¹⁹ Here, the lease agreement will promote the efficient use of existing facilities and allow Tennessee to provide Seneca the service it has requested at a lower cost than if Tennessee had constructed its own additional capacity. Second, the lease payments are equal to what the incremental firm transportation rate would be if Tennessee were to contract for firm transportation on National Fuel's system. The cost factors used to develop the lease payment are the same as those National Fuel would have used if it had proposed an incremental firm rate for transportation service using the additional capacity. Thus, under either the lease or an incremental firm rate, Tennessee would be paying the same amount.

37. Third, the lease arrangement does not adversely affect existing customers. During the term of the lease, the monthly lease payment will fully recover the cost of service associated with National Fuel's facilities for the Northern Access 2015 Project. Further, during the term of the lease, National Fuel will be at risk for the cost of the facilities since it will not be able to reflect the incremental costs in its system rates.²⁰ Accordingly, during the term of the lease, National Fuel's existing customers will not subsidize the costs of the lease. At the end of the term of the lease, National Fuel states that it will market the capacity to other customers.²¹ In order to do so, National Fuel will have to file a NGA section 7 application to re-acquire the leased facilities and to recover any

¹⁷ *Id.*; *Islander East Pipeline Company, L.L.C.*, 100 FERC ¶ 61,276, at P 69 (2002) *Islander East*.

¹⁸ *See, e.g. Dominion Transmission, Inc.*, 104 FERC ¶ 61,267, at P 21 (2003); *Islander East*, 100 FERC ¶ 61,276 at P 70.

¹⁹ *Wyoming Interstate Co., Ltd.*, 84 FERC ¶ 61,007, at 61,027 (1998), *reh'g denied*, 87 FERC ¶ 61,011 (1999).

²⁰ *See* National Fuel's Application at 16.

²¹ *Id.* at 10.

remaining costs associated with the new facilities. All parties will have an opportunity to address National Fuel's initial rate proposal. In addition, Tennessee projects that its revenues from transportation service under its negotiated rate for Rate Schedule FT-A service will exceed the cost of service for the Niagara Expansion Project (inclusive of the costs of the lease) by over \$7 million per year.²² Thus, Tennessee's existing customers are not adversely affected.

38. To assist the Commission and parties in any rate filing made by National Fuel to determine the appropriate allocation of costs and prevention of subsidies, we will require National Fuel to keep separate books and accounting of costs attributable to the Northern Access 2015 Project. The books should be maintained with applicable cross-references, as required by section 154.309 of the Commission's regulations. This information must be in sufficient detail so that the data can be identified in Statements G, I, and J in any future NGA section 4 or 5 rate case and the information must be provided consistent with Order No. 710.²³ As noted above, the Commission views a lease of interstate pipeline capacity as an acquisition of a property interest that the lessee acquires in the capacity of the lessor's pipeline. For the term of the lease, National Fuel will not have any rights to use the leased capacity. Accordingly, during the term of lease, National Fuel will not be allowed to reflect in its system rates any of the costs (i.e., the fully-allocated cost of service, including costs associated with spare compression or actual fuel costs) associated with the leased capacity.²⁴ Further, in National Fuel's next rate case,²⁵ we will require the parties to examine whether the lease arrangement allows National Fuel to over-recover the costs associated with the transferred facilities.

C. Tennessee's Recourse Rates

39. Tennessee proposes an initial incremental recourse rate under Rate Schedule FT-A for firm transportation service utilizing capacity associated with the Niagara Expansion Project. The incremental recourse rate consists of: (1) a monthly reservation rate of \$9.9615 per Dth; (2) a commodity rate of \$0.00 per Dth; (3) applicable demand and

²² National Fuel's Application, Exhibit N, p. 1.

²³ Order No. 710, *Revisions to Forms, Statements, and Reporting Requirements for Natural Gas Pipelines*, FERC Stats. & Regs. ¶ 31,267, at P 23 (2008).

²⁴ See *Gulf South Pipeline Co., LP*, 120 FERC ¶ 61,291, at P 42 (2007).

²⁵ National Fuel is required to file a rate case by January 1, 2016. *National Fuel Gas Supply Corp.*, 140 FERC ¶ 61,114, at P 19 (2012).

commodity surcharges; and (4) applicable fuel, LAUF, and electric power costs charges, plus the fuel and LAUF rates included in the lease.²⁶ Tennessee's incremental demand charge is based on an incremental cost of service for the Niagara Expansion Project of \$18,887,000, which includes the annual lease payment of \$13,286,004 (\$1,107,167 x 12 months), and annual billing determinants of 1,896,000 Dth (158,000 Dth x 12 months). Tennessee states that the non-lease portion of its cost of service reflects the income tax rates, capital structure, and rate of return approved in Tennessee's rate case settlement in Docket No. RP95-112-000, *et al.*²⁷ and reaffirmed in its rate case settlement in Docket No. RP11-1566-000.²⁸

40. Tennessee proposes to charge the applicable general system rate under Rate Schedule IT for any interruptible service rendered as a result of the new capacity available on the Niagara Expansion Project.

41. Tennessee's proposed incremental recourse rate exceeds the applicable existing system rates of \$5.9240/Dth for Rate Schedule FT-A service from Zone 4 to Zone 5. Thus we find, consistent with our policies, that it is appropriate for Tennessee to charge an incremental rate for the proposed service. We have reviewed Tennessee's proposed cost of service, proposed incremental initial recourse rate, and proposed rate for interruptible service and find that they are reasonable.

42. Consistent with the Certificate Policy Statement, the Commission directs Tennessee to keep separate books and accounting of costs attributable to the Niagara Expansion Project. The books should be maintained with applicable cross-references, as required by section 154.309 of the Commission's regulations. This information must be in sufficient detail so that the data can be identified in Statements G, I, and J in any future NGA section 4 or 5 rate case and the information must be provided consistent with Order No. 710.²⁹ Such measures protect Tennessee's existing customers from cost overruns and from subsidization that might result from under-collection of the Niagara Expansion

²⁶ Tennessee proposes to retain fuel and LAUF equal to that retained by National Fuel under the terms of the lease – which are the same retention rates applicable under National Fuel's firm transportation rate schedules.

²⁷ *Tennessee Gas Pipeline Co., L.L.C.*, 94 FERC ¶ 61,117 (2001), *Order on Contested Settlement*, 77 FERC ¶ 61,083 (1996), *reh'g denied*, 78 FERC ¶ 61,069 (1997)

²⁸ *Tennessee Gas Pipeline Co., L.L.C.*, 136 FERC ¶ 61,182 (2011).

²⁹ Order No. 710, FERC Stats. & Regs. ¶ 31,267 at P 23.

Project's incremental cost of service, as well as help the Commission and parties to the rate proceedings determine the costs of the project.

D. Tennessee's Non-Conforming Agreements

43. Tennessee submitted two non-conforming agreements and requested that the Commission approve the non-conforming provisions. The first non-conforming agreement is the transportation agreement with Seneca. The second non-conforming agreement is the negotiated rate agreement. Tennessee states that it will file both agreements with the Commission identifying any material deviations or non-conforming provisions consistent with the terms of its tariff.³⁰

44. The Commission has previously indicated that in order for a pipeline to receive an upfront determination in a certificate proceeding regarding potentially non-conforming provisions, the pipeline must file redline/strikeout versions of the service agreements.³¹ However, the Commission failed to specify that the relevant portions of the redline/strikeout documents must also be filed as public (i.e., not under any claim of privilege). The Commission believes this latter requirement to be necessary to ensure that it has the ability to fully explain its rulings on such provisions and not, for example, be constrained to using descriptions of the relevant provisions as opposed to quotations. We will allow Tennessee, if it so chooses, to amend its certificate application to include non-privileged, redline/strikeout versions of the agreements.³² The amendment may be made at any time between the date of this order and 120 days prior to the in-service date of the facilities being authorized in this proceeding.³³ If Tennessee chooses not to exercise this option, we will, as is our standard procedure, rule on any non-conforming provisions when Tennessee files an executed copy of each non-conforming agreement and a tariff record identifying these agreements as non-conforming agreements,

³⁰ Tennessee Application at 19.

³¹ *See Tennessee Gas Pipeline Co., L.L.C.*, 144 FERC ¶ 61,219, at P 31 (2013).

³² Our communication of the non-privileged filing requirement has been less than clear. Commission staff sent a data request to Tennessee requesting public copies of the redlined/strikeout versions of the unexecuted agreements, but indicating that Tennessee had the option of providing the documents as privileged.

³³ We note that Tennessee mistakenly suggests that a Commission ruling on the non-conforming provisions in a certificate proceeding would waive any future review of such provisions. This is incorrect.

consistent with section 154.112 of the Commission's regulations, not less than 30 days, or more than 60 days, before the in-service date of the proposed facilities.³⁴

IV. Environmental Analysis

45. The Commission issued a Notice of Intent to Prepare an Environmental Assessment for the Proposed Niagara Expansion Project and Northern Access 2015 Project and Request for Comments on Environmental Issues (NOI) on April 11, 2014. The NOI was published in the Federal Register and mailed to interested parties including federal, state, and local officials; elected officials; agency representatives; environmental and public interest groups; Native American tribes; local libraries and newspapers; and affected property owners.

46. We received comments during the public scoping process from the New York State Department of Environmental Conservation, the Pennsylvania Natural Heritage Program, the Pennsylvania Fish and Boat Commission, and Allegheny. The primary issues raised during the scoping period concerned cumulative impacts, impacts on waterbodies, state-listed species, and air quality.

47. To satisfy the requirements of the National Environmental Policy Act of 1969 (NEPA), the Commission's staff prepared an environmental assessment (EA) for Tennessee's Niagara Expansion Project and National Fuel's Northern Access 2015 Project. 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, cumulative impacts, and alternatives. All substantive comments received in response to the NOI were addressed in the EA and, in part, below.

48. The EA was issued for a 30-day comment period and placed into the public record on July 16, 2014. The Commission received comments on the EA from the U.S. Fish and Wildlife Service (FWS), Allegheny, the New York Department of Agriculture and Markets, the Pennsylvania Game Commission, and the Pennsylvania Department of Conservation and Natural Resources. The comments concern potential impacts on sensitive waterbodies and wetlands, spill plans, wildlife and federally listed species, construction procedures on agricultural lands, air quality impacts, and cumulative impacts. These comments are summarized below and addressed by topic.

³⁴ Pipelines are required to file any service agreement containing non-conforming provisions and to disclose and identify any transportation term or agreement in a precedent agreement that survives the execution of the service agreement.

49. In addition, Tennessee and National Fuel filed comments on the EA. Tennessee provides an update regarding its consultation with the New York Department of Agriculture and Markets and its plans for hydrostatic testing. National Fuel filed comments clarifying its proposed construction schedule and updating the status of permits and approvals for its project. Our review finds that none of these clarifications or updates are significant, nor do they alter our conclusions with respect to environmental impacts resulting from the project. National Fuel also notes that it has filed the remaining cultural resource survey reports required by environmental recommendation 14 of the EA. We have revised Environmental Condition 14 of this order accordingly.

A. Allegheny's Protests

50. Allegheny filed comments in response to both applications,³⁵ in response to the NOI³⁶, and in response to the EA. Allegheny's comments on the EA will be addressed below along with other comments to the EA. Allegheny's comments on each application are substantively similar and assert that the Commission must develop a programmatic EIS and that the scope of the EA should be broadened to include direct, indirect, and cumulative impacts relating to natural gas extraction.

1. Programmatic Environmental Impact Statement

51. Allegheny asserts that the Commission should postpone processing Tennessee's and National Fuel's applications, as well as the processing of all other pending applications for facilities in the northeastern U.S., until the Commission prepares a regional programmatic EIS examining the direct, indirect, and cumulative effects of shale gas extraction and associated activities in the Marcellus Shale region. This assertion is predicated in part on the allegation that the Commission has aligned with the both the Obama Administration and the gas industry in developing "a regional plan to exploit the Marcellus Shale (and other shale formations in the region) to increase reliance on natural gas, particularly in the northeastern United States."³⁷ In turn, Allegheny asserts, that all pipeline projects proposed for the purpose of providing increased capacity to

³⁵ Allegheny's comment in response to Tennessee's application in Docket No. CP14-88-000 was filed on March 28, 2014 [Allegheny March 28 Protest] and its comment in response to National Fuel's application in Docket No. CP14-100-000 was filed on April 11, 2014 [Allegheny's April 11 Protest].

³⁶ Allegheny's comment in response to the NOI was filed jointly in both dockets.

³⁷ Allegheny March 28 Protest at 40.

accommodate shale gas in the northeastern U.S. constitute a “broad Federal action,” to wit, a series of separate actions that are related to each other closely enough to be, in effect, a single course of action planned together and associated with this regional program.

52. According to Allegheny, the Commission’s active role in the federal government’s large scale regional development plan to “aggressively promote and actively facilitate the extraction of shale gas in the Marcellus Region,”³⁸ is demonstrated by the Commission’s processing and approval of numerous applications for increased capacity in the northeast region of the U.S., including the instant application. In support of this claim, Allegheny points to, among other things, tables listing major pipeline projects approved by the Commission from 2009 through March 8, 2013,³⁹ as well as all pending applications for major pipeline projects;⁴⁰ a graphic created by the Commission’s Office of Energy Projects that identifies “major pipeline projects” on the horizon from January 2010 to February 2014 and separates them into four geographic areas within the continental U.S.;⁴¹ and a staff presentation on Marcellus Shale development consisting of maps of the region and of the approved, pending, and potential interstate pipeline projects in Pennsylvania.⁴² Additionally, Allegheny specifically identifies nine cases since 2009 in which the Commission specifically referred to the development of Marcellus Shale gas production.⁴³

³⁸ Allegheny March 28 Protest at 3.

³⁹ *Id.*, Table 1, FERC Approved Major Pipeline Projects (2009-Present), at 8-11.

⁴⁰ *Id.*, Table 2, FERC Major Pipeline Projects Pending (Onshore), at 11-12.

⁴¹ *Id.*, Figure: Major Pipeline Projects on the Horizon (MMcf/d) Jan. 2010 – Feb 2014 (FERC), at 15.

⁴² Allegheny April 11 Protest, Figure: Natural Gas Pipelines – Understanding the Infrastructure Development, at 16 and 18.

⁴³ *AES Sparrows Point LNG, LLC*, 126 FERC ¶ 61,019 (2009) *order on reh’g*, 129 FERC ¶ 61,245 (2009); *Dominion Cove Point, LNG, LP* 126 FERC ¶ 61,036, at P 20 (2009); *Iroquois Gas Transmission System, L.P.*, 132 FERC ¶ 61,230, at P 2 (2010); *National Fuel Gas Supply Corp.*, 133 FERC ¶ 61,235, at P 2 (2010); *Central New York Oil and Gas Co., LLC*, 134 FERC ¶ 61,035, at P 5 (2011); *Empire Pipeline, Inc.*, 135 FERC ¶ 61,163, at P 3 (2011); *Dominion Transmission, Inc.*, 135 FERC ¶ 61,239, at P 3

(continued ...)

53. Allegheny maintains that these cases, together with a host of statements and documents, including those from the Commission itself, other federal and state agencies, the natural gas industry, individual commissioners, and news reports, demonstrate the Commission's awareness of "many companies' plans to increase infrastructure capacity to accommodate and facilitate natural gas extraction in the Marcellus Shale region."⁴⁴ Allegheny further asserts that the Commission is actively facilitating the Obama administration's alleged policy of promoting and facilitating the rapid expansion of Marcellus Shale gas extraction.

54. Allegheny made identical arguments in *Texas Eastern Transmission, LP's Uniontown to Gas City Project* proceeding in CP14-104. As the Commission explained in its December 18, 2014 order in that proceeding,⁴⁵ CEQ regulations state that major federal actions for which an EIS may be required include "programs, such as a group of concerted actions to implement a specific policy or plan; [and] systematic and connected agency decisions allocating agency resources to implement a specific statutory program."⁴⁶ There is no Commission plan or policy to promote the unconventional production of, or increase reliance on, natural gas. Rather, interstate natural gas infrastructure is proposed and developed by private industry, as reflected in the applications filed with the Commission by natural gas companies.⁴⁷ Under NGA section, the Commission is obligated to authorize a project if it finds that the construction and operation of the proposed facilities "is or will be required by the present or future public convenience and necessity".⁴⁸ In reaching this determination, the Commission performs a flexible, balancing process in which it weighs the criteria enumerated in the Commission's Certificate Policy Statement, as detailed above, as well as analyzes and balances the potential environmental impacts of the proposed project.

(2011); *Tennessee Gas Pipeline Co.* 136 FERC ¶ 61,173, at PP 2,5 (2011); and *National Fuel Gas Supply Corp.*, 137 FERC ¶ 61,054, at PP 2,7 (2011).

⁴⁴ Allegheny March 28 Protest at 8.

⁴⁵ See *Texas Eastern Transmission LP*, 149 FERC ¶ 61,259, at PP 38-47 (2014).

⁴⁶ 40 C.F.R. § 1508.18(b)(3) (2014).

⁴⁷ See *Texas Eastern*, 149 FERC ¶ 62,259, at PP 44-45.

⁴⁸ 15 U.S.C. § 717f(e) (2012).

55. Further, Allegheny has not shown any interrelationship or connectedness between the various referenced pipeline projects proposed to provide capacity to accommodate additional supply sourced in the northeastern U.S. beyond the fact that they might share a general regional proximity to the Marcellus Shale region. None of these projects' utility is shown to be functionally or financially dependent upon any other project; nor are any proposals shown, or claimed to be, dependent upon the timing of another project's approval or service date. Based on this independent utility, these projects would not trigger one another and could proceed on their own. Accordingly, the proposed projects described by Allegheny are not interdependent or otherwise interrelated or connected, either physically or in purpose.

56. For all the above reasons, the Commission concludes that no program exists upon which the Commission must undertake a programmatic EIS.

2. Scope of Environmental Analysis

57. Regarding the Commission's case-specific environmental analysis of the proposed projects, Allegheny asserts this analysis must include a review of the direct, indirect, and cumulative effects of shale gas extraction and associated activities, including, but not limited to, pipeline construction/expansion, construction/expansion of compressor stations, frac sand mining, shale gas wastewater disposal, and shale gas water consumption. For the reasons discussed below, the Commission disagrees.

a) Direct and Indirect Impacts

58. CEQ regulations require agencies to consider three kinds of impacts flowing from a Federal action: direct, indirect, and cumulative.⁴⁹ The direct impacts of an action are caused by the action and occur at the same time and place within the footprint of the proposed action.

59. Indirect impacts are "caused by the proposed action" and occur later in time or farther removed in distance than direct project impacts, but are still "reasonably foreseeable."⁵⁰ Indirect impacts may include growth-inducing effects and other effects related to induced changes in the pattern of land use, population density or growth rate, and related effects on air and water.⁵¹ For an agency to include consideration of an

⁴⁹ 40 C.F.R. § 1508.25 (2014).

⁵⁰ 40 C.F.R. § 1508.8(b) (2014).

⁵¹ *Id.*

impact in its NEPA analysis as an indirect effect, approval of the proposed project and the related secondary effect must be causally related, i.e., the agency action and the effect must be “two links of a single chain.”⁵²

60. The potential environmental effects associated with shale gas development are neither sufficiently causally related to the proposed projects to warrant a detailed analysis nor are the potential environmental impacts reasonably foreseeable, as contemplated by the CEQ regulations.⁵³

61. The proposed projects are not creating the growth in the development of unconventional gas resources in the Marcellus region. Rather, the proposed projects are responding to a need for transportation of natural gas that was identified following the development of production and use of the resource. Further, such development will likely continue regardless of whether the proposed projects are approved because multiple existing and proposed transportation alternatives for production from the region are available.⁵⁴ Thus, there is an insufficient causal link between the proposed project and additional development in the region for such development to be considered an indirect impact under NEPA and CEQ’s regulations.

62. Moreover, even if such a causal relationship were shown, the scope of the *impacts* from any such induced production is not reasonably foreseeable as contemplated by CEQ’s regulations and case law. An impact is reasonably foreseeable if it is “sufficiently likely to occur that a person of ordinary prudence would take it into account in reaching a decision.”⁵⁵ Courts have noted the starting point of any NEPA analysis is a “rule of reason,” under which NEPA documents “need not address remote and highly speculative

⁵² *Sylvester v. U.S. Army Corps of Engineers*, 884 F.2d 394 (9th Cir. 1980).

⁵³ See *Central New York Oil and Gas Co., LLC*, 137 FERC ¶ 61,121, at PP 81-101 (2011), *order on reh’g*, 138 FERC ¶ 61,104, at PP 33-49 (2012), *petition for review dismissed, sub nom., Coalition for Responsible Growth v. FERC*, 485 Fed. Appx. 472, 474-75 (2012) (upholding FERC’s analysis of the development of Marcellus Shale natural gas reserves where FERC reasonably concluded that the impacts of that development were not sufficiently causally-related to the projects to warrant a more in-depth analysis).

⁵⁴ *Id.*

⁵⁵ *Sierra Club v. Marsh*, 976 F.2d 763, 767 (1st Cir. 1992).

consequences.”⁵⁶ While courts have held that NEPA requires “reasonable forecasting,” an agency is not required “to engage in speculative analysis” or “to do the impractical, if not enough information is available to permit meaningful consideration.”⁵⁷ Knowing the identity of a supplier of gas to be shipped on a pipeline, and even the general area where a producer’s existing wells are located, does not enable the Commission to forecast (as opposed to speculate about) the number, location, or timing of the development of the new or existing wells that might produce the gas which will be transported on the project facilities over their lifespans. In the absence of such information, the Commission in turn cannot forecast and analyze the specific impacts which might be associated with any additional production. No party has presented or referenced any accepted, detailed information that quantifies the environmental impacts of producing natural gas in the specific areas from which the proposed projects might receive their supplies. Accordingly, we find that even if we were to find the required causal relation, which we do not, there is not sufficient information available regarding potential upstream impacts to develop an analysis which would assist the Commission in either choosing between alternatives or developing mitigation measures.

b) Cumulative Impacts

63. A “cumulative impact” is defined by CEQ as the “impact on the environment that results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions.”⁵⁸ A cumulative impacts analysis may require an analysis of actions unrelated to the proposed project if they occur in the project area or the region of influence of the project being analyzed.⁵⁹ CEQ states that “it is not practical to analyze the cumulative effects of an action on the universe; the list of environmental effects must focus on those that are truly meaningful.”⁶⁰ An agency is only required to include “such information as appears to be reasonably necessary under the circumstances

⁵⁶ *Hammond v. Norton*, 370 F.Supp.2d 226, 245-46 (D.D.C. 2005).

⁵⁷ *N. Plains Res. Council v. Surface Transp. Board.*, 668 F.3d 1067, 1078 (9th Cir. 2011).

⁵⁸ 40 C.F.R. § 1508.7 (2014).

⁵⁹ CEQ Guidance, *Considering Cumulative Effects Under the National Environmental Policy Act*, (January 1997).

⁶⁰ *Id.* at 8.

for evaluation of the project rather than to be so all-encompassing in scope that the task of preparing it would become either fruitless or well nigh impossible.”⁶¹

64. CEQ’s guidance on cumulative impacts assessments advises that agencies have substantial discretion in determining the appropriate level of the cumulative impacts assessments.⁶² CEQ further states that an agency should relate the scope of its analysis to the magnitude of the environmental impacts of the proposed action.⁶³ Accordingly, proposed actions that result in a finding of no significant impact usually involve only a limited cumulative impact analysis to confirm that the proposed action would not, in fact, have a significant impact on the environment.⁶⁴

65. Here, as indicated above, construction of the proposed projects will mostly occur within previously disturbed rights-of-way, will be co-located with existing facilities, and will be of relatively short duration, followed by restoration activities.⁶⁵ Once construction is complete, only the modification of the Concord Compressor Station and construction of the new Hinsdale Compressor Station would have long-term impacts on air quality, but these impacts are incremental and minor and, further, are subject to Environmental Protection Agency-approved State Implementation Plans, which manage emissions within a state.⁶⁶ These compressor stations will also add to cumulative noise impacts, but the noise from each compressor station would not be perceptible by humans at the nearest noise-sensitive area, which is at least a half-mile away from the proposed

⁶¹ *New York Natural Res. Def. Council, Inc. v. Kleppe*, 429 U.S. 1307, 1311 (1976) (citing *Natural Res. Def. Council v. Calloway*, 524 F.2d 79, 88 (2d. Cir. 1975)).

⁶² The Supreme Court has similarly held that “determination of the extent and effect of [cumulative impacts], and particularly identification of the geographic area within which they may occur, is a task assigned to the special competency of the appropriate agencies.” *Kleppe*, 427 U.S. 390 at 413.

⁶³ *CEQ Memorandum on Guidance on Consideration of Past Actions in Cumulative Effects Analysis at 2-3*, (*CEQ Guidance on Past Effects*); See also, *El Paso Natural Gas Co.*, 136 FERC ¶ 61,175, at P 5 (2011).

⁶⁴ *Id.*

⁶⁵ EA at 52-54.

⁶⁶ EA at 55.

site. Consequently, the EA concluded, and we agree, that the impacts of this project will be minimal and localized.⁶⁷

66. Allegheny contends that the EA does not adequately consider the cumulative effects of the proposed projects. We disagree. The EA evaluates other activities directly in the vicinity of the Niagara Expansion and Northern Access 2015 Projects that affect the same resources in the same approximate timeframe. This analysis considered several interstate pipeline projects, including other Tennessee and National Fuel projects. It also identified production wells that were permitted and under development in Chautauqua County, New York, and Mercer County, Pennsylvania; the Allegheny Wind Power Project, and mining activities in Cattaraugus County, New York. The EA evaluates the potential cumulative impacts of those activities on soils, water resources, vegetation and wildlife, land use, and air quality and noise. The EA concludes that the adverse cumulative impacts that could occur in conjunction with the Niagara Expansion and Northern Access 2015 Projects would be temporary and minor and that approval of the Niagara Expansion and Northern Access 2015 Projects would not result in significant cumulative impacts. Other projects in the larger Pennsylvania and New York region were summarized in table 20 of the EA, but were not considered further in the cumulative impacts analysis because they lie outside of the region of influence for potential cumulative impacts.⁶⁸ The Commission finds that the EA has properly identified the proposed projects' region of influence and appropriately limited its cumulative impacts analysis to other activities located within that area, rather than expanding the analysis as requested by Allegheny.

67. Allegheny argues that because Seneca has subscribed 100 percent of the capacity of the Niagara Expansion Project, the impacts of its production activities must be reviewed as cumulative impacts of the Niagara Expansion and Northern Access 2015 Projects. We disagree. The assertion that the site-specific environmental analysis of a project which will provide access to natural gas produced from a particular region must consider potential impacts associated with the development of gas in that region, including but not limited to impacts associated with the region's existing and future natural gas infrastructure, has been addressed and rejected by the Commission in *Central New York Oil and Gas Co., LLC (CNYOGC)* and the Commission's orders in that case

⁶⁷ EA at 56.

⁶⁸ EA at 48, *see also* Table 20: Existing and Future FERC Jurisdictional Projects Evaluated for Cumulative Impacts, at 49-51, and Table 21: Existing or Future Non-jurisdictional Projects Evaluated for Potential Cumulative Impacts, at 51.

were upheld on judicial review.⁶⁹ Allegheny's arguments and evidence parallel arguments and evidence we rejected in *CNYOGC*.⁷⁰

68. In *CNYOGC*, the Commission found that Marcellus Shale development and its associated potential environmental impacts were not sufficiently causally related to the MARC I Project to warrant the comprehensive analysis sought. Here, as in *CNYOGC*, development and production will continue in the region regardless of whether the proposed projects are approved. As we noted in *CNYOGC*, in the event the Commission does not authorize new interstate natural gas pipeline facilities, the potential exists for producers or developers of unregulated gathering assets to, for example, build longer gathering lines to connect wells in proximity to the proposed interstate facilities to other existing interstate pipelines with no Commission regulation or oversight. The same observation holds true here. We note that any such production would take place pursuant to the regulatory authority of state and local governments.

69. Allegheny specifically expresses concern regarding cumulative air quality impacts from the projects under consideration and natural gas extraction. The EA considers construction air emissions associated with the Niagara Expansion Project and concludes that construction air emissions would be temporary and minor, and these impacts would subside once construction is complete. Therefore, any impact on air quality would be localized, short-term, and minor. Furthermore, because there would be no permanent air emissions sources associated with operation of the Niagara Expansion Project (nor would an operational air permit be required), no cumulative impacts on air quality associated with operation of the project are anticipated.

70. The EA concludes that the other activities in the area of the proposed projects may or do have effects on soils, water resources, vegetation and wildlife, land use, and air quality and noise, but that the impacts on these resources associated with the Niagara Expansion and Northern Access 2015 Projects would be relatively minor and temporary. Accordingly, when considered with past, present, and reasonably foreseeable projects in the vicinity, the EA concludes that the cumulative impacts of the Niagara Expansion and Northern Access 2015 Projects would be minimal and localized.

⁶⁹ *Coalition for Responsible Growth v. FERC*, 485 Fed. Appx. 472, 2012 WL 1596341 (2nd Cir. Apr. 17, 2012) (unpublished opinion).

⁷⁰ *CNYOGC*'s MARC I Project consists of a 39-mile long, 30-inch diameter pipeline in Lycoming and Bradford Counties and additional compressor facilities in Bradford and Sullivan Counties, all in Pennsylvania.

B. Comments to the EA**1. Waterbodies**

71. In its comments on the EA, the FWS provides recommendations regarding the unnamed tributary to Ischua Creek, which would be relocated during construction of National Fuel's Hinsdale Compressor Station. Specifically, the FWS comments that the EA lacks specific information on the design of the new channel, recommends that no direct drainage from the construction site be permitted into Ischua and Olean Creeks, and recommends that an environmental monitor be present to ensure that no impacts occur. National Fuel will be required to obtain the applicable permits from the U.S Army Corps of Engineers and the New York State Department of Environmental Conservation for relocating the unnamed tributary to Ischua Creek which will contain detailed information on the design of the new channel. Environmental Condition 9 requires that these permits be obtained prior to project construction. Erosion controls such as silt fence and straw bales will be used during construction of the facility in accordance with National Fuel's Erosion Sedimentation Control and Agricultural Mitigation Plan (ESCAMP) to prevent any direct drainage into these nearby waterbodies. In addition, National Fuel will be required to design and install a stormwater system for the facility which would minimize the impacts of increased stormwater runoff. The stormwater system will be reviewed and permitted by the New York State Department of Environmental Conservation. Finally, in accordance with its ESCAMP, National Fuel will employ an environmental inspector to monitor construction and restoration activities and ensure that work is completed in compliance with all permits and approvals. We conclude the measures contained in National Fuel's ESCAMP and permit requirements will adequately address relocation of the creek.

72. Both Allegheny and the FWS express several concerns regarding project impacts to French Creek. Allegheny states that the EA should describe the process of conventional boring under a waterbody and specify at what depth the pipeline would be constructed under French Creek. The FWS comments that while the use of a conventional bore would avoid direct impacts on French Creek, there is potential for erosion and sedimentation in work areas adjacent to French Creek. Similarly, Allegheny expresses concern regarding impacts of sedimentation in tributaries on mussel populations in French Creek. In addition, Allegheny states that French Creek is an "ecologically critical area," that FERC fails to take a hard look at the short term and long term effects on French Creek and its tributaries, and that an EIS should be prepared. We believe that the EA sufficiently addresses issues related to French Creek. As described in the EA, French Creek is the only waterbody specifically identified by federal and state resource agencies as a concern. We note that Tennessee filed information in the public record describing the bored crossing method and depicting the pipeline crossing of French Creek approximately ten feet below the ground surface. The impacts on the tributaries to French Creek from construction will be temporary and minor given that

Tennessee will use a dry crossing method (e.g. the conventional bore method) which will avoid direct impacts on the waterbody. Finally, use of the measures contained in Tennessee's Upland Erosion Control, Revegetation, and Maintenance Plan (Plan) and Wetland and Waterbody Construction and Mitigation Procedures (Procedures) will minimize the potential indirect impacts of erosion from nearby workspace, including issues related to sedimentation, and ensures that all workspaces are revegetated as soon as possible after construction is complete. The EA correctly discloses impacts, and given that the Niagara Expansion Project will not have a direct impact on French Creek and indirect impacts would be minimized as much as possible, an EIS is not warranted.

73. Allegheny and the FWS also express concern for water withdrawals from French Creek. Specifically, the FWS recommends that French Creek not be used as a source for hydrostatic test water due to the presence of federally listed species. In its comments on the EA, Tennessee now proposes hauling municipal water to the project area as an alternative to using water from French Creek. To ensure that no mussel species are affected, Environmental Condition 13 has been modified to ensure that Tennessee does not use water from French Creek for hydrostatic testing and requires Tennessee to file, prior to construction, its alternative plan for obtaining water.

74. Allegheny states that Tennessee must have a contingency plan in the event that the bore crossing of French Creek fails. If the bore crossing is deemed unsuccessful, Tennessee is required by Environmental Condition 3 to file a request for an alternate method for the review and written approval by the Director of the Office of Energy Projects prior to implementing any other crossing method. Approval of any other crossing method will also require consultation with the appropriate federal and state agencies, including the FWS in accordance with the Endangered Species Act.

75. Allegheny wants assurance that Tennessee will use a qualified contractor to construct the boring under French Creek. We note that Environmental Condition 6 requires that Tennessee describe how construction procedures and mitigation measures will be incorporated into construction contracts; the instructions that will be given to all company personnel involved with construction and restoration; and the procedures that will be followed if noncompliance occurs. In addition, Environmental Condition 3 requires that Tennessee and National Fuel certify that all onsite personnel have receive environmental compliance training to ensure the mitigation required at each site is clear to onsite construction and inspection personnel. In accordance with Environmental Condition 7, Tennessee is required to employ an Environmental Inspector who would be responsible for monitoring construction and ensuring compliance with all permit conditions and mitigation measures. Commission staff will also conduct independent compliance inspections during construction and restoration of the project to ensure compliance with the environmental conditions contained in this order. We agree with the EA's conclusion that a bored crossing will avoid impacts on this waterbody and the

established inspection protocols will ensure compliance with the construction and mitigation requirements.

2. Wetlands

76. FWS identified a discrepancy in the EA regarding the acreage of forested wetlands that would be temporarily affected by Tennessee's project, and states that compensatory mitigation should be required for all wetland losses, including the conversion of forested wetland to another wetland type. We clarify here that 0.52 acre of forested wetlands will be temporarily affected by Tennessee's project. The error does not change any of the conclusions in the EA. Further, any compensatory mitigation for wetland losses or conversion will be determined by the New York State Department of Environmental Conservation and the Corp of Engineers as part of Tennessee's Joint Wetlands Permit Application.

77. Allegheny expresses concern regarding 0.17 acre of forested wetlands that would be permanently affected by construction of Tennessee's project. As stated in the EA, 0.34 acre of forested wetlands would be allowed to revert to a forested state and 0.18 acre will be maintained in an herbaceous state, but will still function as a wetland. Allegheny disputes the EA's claim that these wetlands would still provide important ecological functions and notes that these functions are not described. Examples of the functions that wetlands provide include wildlife habitat, biodiversity, and flood control. Although wetlands are converted to a different type, containing different types of vegetation, they still provide these important functions. The use of construction procedures and mitigation measures contained in Tennessee's Procedures will ensure that these functions are maintained and restoration and monitoring of wetlands are successful. Therefore, we find the project will not result in a net loss of wetlands.

3. Spill Prevention and Response Plan

78. Allegheny comments that Tennessee's Spill Prevention and Response Plan should be included in the EA or as an appendix so that the information is available to public officials and citizens. Allegheny believes that Tennessee's commitment alone to preparing a Spill Prevention and Response Plan is not sufficient to minimize potential impacts on groundwater. Tennessee's Plan and Procedures provides construction mitigation measures that are intended to protect water resources from accidental spills during construction. A Spill Prevention and Response Plan merely provides more detailed information regarding those steps. We note that Tennessee is required to file its Spill Prevention and Response Plan with the Commission prior to construction and make it available during project construction.

79. Allegheny objects to Tennessee's proposal to place portable pumps within 100 feet of waterbodies and wetlands during dam and pump crossings, and to the refueling of pumps and machinery within the 100 foot buffer. Additionally, Allegheny

notes that the EA does not state whether Tennessee will be permitted to proceed as proposed. Tennessee's Procedures allow these activities to occur closer than 100 feet from wetland and waterbody boundaries only when the Environmental Inspector determines there is no other reasonable alternative and the project sponsor and its contractors take the appropriate steps to prevent spills, such as using secondary containment structures. The EA evaluates Tennessee's proposed methods for crossing surface waters and the implementation of the measures contained in Tennessee's Procedures and National Fuel's ESCAMP, and concludes that with adherence to those measures, the project would not have a significant impact on surface waters. We agree.

80. Allegheny states that the EA does not consider the potential for a pipeline failure or what contingencies would be in place to respond to such a failure. Allegheny further states that a pipeline failure would have disastrous effects on French Creek.

81. Section 7 of the EA discusses this very issue. While the specific possibility of a pipeline failure directly under French Creek was not discussed, the EA does describe the common causes of pipeline accidents (tables 16 and 17) and the regulations the U.S. Department of Transportation's Office of Pipeline and Hazardous Materials Safety Administration has in place to prevent accidents and ensure public safety (49 CFR 192). These include materials specifications, emergency response programs, etc. The EA concluded that the number of significant incidents over the more than 303,000 miles of natural gas transmission lines indicates the risk is low for an incident at any given location. Given that level of risk, the Commission finds approval of the project to be acceptable.

4. Wildlife

82. The FWS states that the EA should specify measures to restore disturbed areas, including the seeding and planting of native vegetation to minimize the impacts on wildlife habitat. Both Tennessee and National Fuel have committed to implementing measures contained in Tennessee's Plan and National Fuel's ESCAMP which require restoration of all areas affected by construction. These plans require that seeding be completed in accordance with the recommendations of local soil conservation authorities or landowner requests. We agree with the EA's conclusion that if construction areas are restored in accordance with measures contained in Tennessee's Plan and National Fuel's ESCAMP, the projects will not have a significant impact on wildlife.

83. The FWS recommends all clearing occur before April 1st to avoid nesting migratory birds. Tennessee has already committed to completing tree clearing by that deadline, which will avoid direct impacts on nesting birds. National Fuel proposes beginning construction of its project in the early spring of 2015. The area affected by National Fuel's project provides minimal habitat for nesting birds due to the co-location with existing infrastructure. Therefore, we agree with the EA's conclusion that the projects would not have a significant impact on migratory birds.

84. The FWS indicates concerns with the impact of increased noise and emissions on migratory birds. Section B.6 of the EA concludes that the noise attributable to operation of the Hinsdale and Concord Compressor Stations and the East Eden Meter Station would not cause a significant impact on the noise environment in the project area. Additionally, the EA concludes that National Fuel's project would not result in an exceedance of the National Ambient Air Quality Standards (NAAQS). According to the Environmental Protection Agency, the secondary NAAQS standards provide "public welfare protection, including protection against decreased visibility and damage to animals, crops, vegetation, and buildings." Therefore, operational noise from the facilities is not expected to significantly impact migratory birds.

85. Finally, the FWS indicates that there are bald eagles that are known to nest near French Creek. However, FWS acknowledges that these nests are located greater than 660 feet from Tennessee's project. Therefore, no impacts on bald eagles are anticipated.

86. The Pennsylvania Game Commission provided general comments regarding the figures included in the EA and recommended that agency response letters and Pennsylvania Natural Diversity Index receipts should be included as an appendix to the EA. While not included as an appendix to the EA, all agency correspondence for the projects is included in the record of the dockets for the respective applications filed by Tennessee and National Fuel. The EA is intended to merely summarize agency consultations, and the documents filed in the public dockets serve as the repository for all of the environmental information on the projects. All such information is readily accessible on the Commission's eLibrary system.

87. The Pennsylvania Department of Conservation and Natural Resources comments that Tennessee's project would not impact any state-listed species under its jurisdiction in Pennsylvania. This is consistent with the EA's conclusion regarding state-listed species.

5. Federally Listed Species

88. The FWS indicates that two waterbodies adjacent to the Hinsdale Compressor Station site, Ischua and Olean Creeks, contain two federally listed mussel species (clubshell, rayed bean). Because National Fuel has identified use of a nearby stream as one of several possible sources of hydrostatic test water, we cannot determine if National Fuel's project will impact these waterbodies. Therefore, we have included new Environmental Condition 17 which ensures that National Fuel will not use water from these waterbodies unless otherwise approved by the FWS, the Corp of Engineers, and appropriate state agencies.

89. Allegheny argues that the EA failed to consider three federally listed species of mussels (snuffbox, northern riffleshell, and rabbitsfoot) that are present within French Creek. Based on Commission staff's independent research, these three species are not listed as potentially occurring in the area affected by the projects. In addition, the FWS

did not identify these species as occurring in the project area. Regardless, Section B.3.4 discusses two federally listed species of mussels (rayed bean, clubshell) that were identified by the FWS as potentially occurring in French Creek and recommended boring under French Creek, which Tennessee has proposed. This will avoid direct impacts on this waterbody. In addition, Environmental Condition 13 ensures that Tennessee will not withdraw water from French Creek for hydrostatic test water, which further minimizes any potential impacts on federally listed mussel species.

90. The FWS concurs with the EA's determination that the projects would not result in adverse impacts on the northern long-eared bat. However, the FWS has not yet concurred with the EA's determinations regarding the clubshell and rayed bean due to Tennessee and National Fuel's proposals to withdraw surface waters for hydrostatic testing. Therefore, to ensure compliance with the Endangered Species Act, Environmental Condition 18 has been added to ensure that Tennessee and National Fuel may not begin construction until consultation is complete.

91. Allegheny claims that the Commission has not satisfied its consultation requirements under the Endangered Species Act. Additionally, Allegheny states that because an EIS is required, the EA should not be considered as the biological assessment for the projects. Finally, Allegheny asserts that the EA is not adequate for the purposes of a biological assessment. We disagree. We conclude that the EA is acceptable to serve as the biological assessment for the projects. While the FWS indicated in its August 25, 2014 letter that it could not yet concur with the EA's determinations for the clubshell and rayed bean, Tennessee will not be able to begin construction of its project until consultation with the FWS is complete in accordance with Environmental Condition 18.

6. Agricultural Land

92. The New York State Department of Agriculture and Markets recommends certain measures regarding construction procedures in agricultural land affected by Tennessee's project in New York. Tennessee also provides an update on its consultation with the New York State Department of Agriculture and Markets regarding impacts on agricultural land along Loop 224 and how it intends to comply with recommendation 12 of the EA (Environmental Condition 12 of this order), indicating that it has received informal approval of its mitigation plan from the agency. However, Tennessee will request formal written approval from New York State Department of Agriculture and Markets and file with the Commission any additional mitigation it incorporates into its project, prior to construction.

7. Air Quality

93. National Fuel states that refinements were made to air emissions calculations for the Hinsdale and Concord Compressor Stations, which were not reflected in the air quality section of the EA, but were filed as part of its permit application to the New York

Department of Environmental Conservation and subsequently with the Commission. National Fuel further states that the new emissions estimates do not trigger any additional regulatory review. Our review of the modified emissions estimates find that the changes do not trigger any federal permitting thresholds.

94. National Fuel states that table 12 of the EA should remove the reference to the Prevention of Significant Deterioration greenhouse gas Tailoring Rule thresholds in light of the Supreme Court ruling striking down a portion of the rule, and because these thresholds are not applicable to the project. We disagree. While the Tailoring Rule may not currently apply to the project, the Environmental Protection Agency (EPA) has not provided guidance on implementation of the Tailoring Rule as a result of the Supreme Court decision and, as such, these thresholds could potentially apply at a later time. Therefore, the greenhouse gas Prevention of Significant Deterioration Tailoring Rule thresholds were appropriately discussed in the EA. Further, the Supreme Court ruling struck down the portion of the Tailoring Rule that would make stationary sources subject to Prevention of Significant Deterioration regulations for greenhouse gases only; these thresholds still apply to facilities that are existing Prevention of Significant Deterioration sources or would become Prevention of Significant Deterioration sources for a criteria pollutant.

95. Finally, National Fuel indicates that the EA incorrectly states that National Fuel would be required to report its greenhouse gas emissions under the Mandatory Greenhouse Gas Reporting Rule based on its potential-to-emit greenhouse gas estimates. National Fuel estimates its greenhouse emissions to be 78,378 tons per year (tpy) of carbon dioxide equivalents (CO₂e) for the Hinsdale Compressor Station and 82,182 tpy CO₂e for the Concord Compressor Station, which are well above the 25,000 tpy CO₂e threshold for the Mandatory Reporting Rule. However, we agree that the Mandatory GHG Reporting Rule is based on actual emissions. Therefore, we clarify that National Fuel will be required to comply with the Mandatory GHG Reporting Rule should its actual greenhouse gas emissions exceed 25,000 tpy CO₂e.

96. Allegheny states that National Fuel's East Eden Meter Station, Concord Compressor Station, and Hinsdale Compressor Station should be reviewed by the Commission as a single source of air emissions because they are of the same industrial grouping and are contiguous within National Fuel's system. Allegheny evokes EPA regulations in support of its claim. We review air emissions sources consistent with the EPA's permitting guidelines. Further, the EPA delegates authority to the states through State Implementation Plans. In the State of New York, the New York Department of Environmental Conservation has permitting authority for the East Eden Meter Station and the Concord and Hinsdale Compressor Stations, and it does not consider these stations a single source. On September 10, 2014, National Fuel filed correspondence with the New York State Department of Environmental Conservation confirming that no air permit is required for the East Eden Meter Station. Each facility is or will be permitted separately

by the New York State Department of Environmental Conservation; therefore, they were reviewed as independent sources in the EA, but considered together in the cumulative impacts analysis, which concluded that the cumulative impacts would not be significant.

97. Allegheny states that the EA does not provide sufficient information to determine whether the Hinsdale and Concord Compressor Stations would comply with the Clean Air Act's New Source Review requirements and further states that table 12 of the EA does not provide existing emissions for each station. Table 12 clearly provides the existing emissions for the Concord Compressor Station. There are no "existing emissions" for the Hinsdale Compressor Station because this will be a new compressor and is, therefore, not currently operating. As shown in table 12 of the EA, the Hinsdale and Concord Compressor Station will have emissions below the New Source Review major thresholds.

98. Based on the analysis in the EA and the discussion above, we conclude that if constructed and operated in accordance with Tennessee and National Fuel's applications and supplements, and in compliance with the Environmental Conditions in the appendix to this order, our approval of this proposal would not constitute a major federal action significantly affecting the quality of the human environment.

99. 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 of facilities approved by this Commission.⁷¹

100. The Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits thereto, and all comments submitted, and upon the consideration of the record,

The Commission orders:

(A) A certificate of public convenience and necessity is issued to Tennessee authorizing the construction of the Niagara Expansion Project facilities and the lease of

⁷¹ 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); and *Iroquois Gas Transmission System, L.P., et al.*, 52 FERC ¶ 61,091 (1990) and 59 FERC ¶ 61,094 (1992).

capacity from National Fuel, all as described and conditioned herein, and as more fully described in its application.

(B) A certificate of public convenience and necessity is issued to National Fuel authorizing the construction of the Northern Access 2015 Project facilities, as described and conditioned herein, and as more fully described in its application.

(C) Tennessee is granted permission and approval to abandon certain facilities, as more fully described herein and in its application.

(D) National Fuel is granted permission and approval to abandon, by lease, the subject capacity to Tennessee, as more fully described in its application and this order.

(E) The certificate authority and abandonment authorizations granted in Ordering Paragraphs (A) through (D) are conditioned on the following:

- (1) Tennessee's and National Fuel's completing the authorized construction of their respective proposed facilities and making them available for service within one year of the issuance of this order pursuant to section 157.20(b) of the Commission's regulations.
- (2) Tennessee's and National Fuel's complying with all applicable Commission regulations under the NGA including, but not limited to, Parts 154 and 284, and paragraphs (a), (c), (e), and (f) of section 157.20 of the Commission's regulations.
- (3) Tennessee's and National Fuel's complying with the respective environmental conditions in Appendix B of this order.
- (4) Tennessee's executing firm service agreements equal to the level of service and in accordance with the terms of service presented in its precedent agreements, prior to commencing construction.

(F) Tennessee's proposed initial rates for the Niagara Expansion Project capacity are approved.

(G) Tennessee shall file actual tariff records no earlier than 60 days, and no later than 30 days, prior to the date the Niagara Expansion Project facilities go into service.

(H) Tennessee and 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 Tennessee or National Fuel. Tennessee or National Fuel shall file written confirmation of such notification with the Secretary of the Commission within 24 hours.

(I) The late motions to intervene filed by The New York State Department of Environmental Conservation are granted.

(J) Allegheny's protest is denied.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

Appendix A

Allegheny Defense Project (Allegheny)

Atmos Energy Corporation

Atmos Energy Marketing LLC

Consolidated Edison Company of New York, Inc.

Exelon Corporation, National Fuel Gas Distribution Corporation

Jason Ryndock

Nancy Mullen

National Fuel Gas Supply Corporation

National Grid Gas Delivery Companies

New Jersey Natural Gas Company

New York State Electric & Gas Corporation

NiSource Distribution Companies

NJR Energy Services Company

Orange and Rockland Utilities

Piedmont Natural Gas Company, Inc.

PSEG Energy Resources & Trade LLC

Seneca Resources Corporation

Tennessee Customer Group

UGI Distribution Companies

Appendix B

Allegheny Defense Project

Atmos Energy Corporation

Atmos Energy Marketing LLC

Consolidated Edison Company of New York, Inc.

Exelon Corporation

National Fuel Gas Distribution Corporation

National Grid Gas Delivery Companies

New Jersey Natural Gas Company

NiSource Distribution Companies

NJR Energy Services Company

Tennessee Customer Group

Tennessee Gas Pipeline Company, L.L.C.

Appendix C
Environmental Conditions

As recommended in the environmental assessment (EA) and discussed in this Order, the Order should include the following conditions:

1. Tennessee Gas Pipeline Company (Tennessee) and National Fuel Gas Supply Corporation (National Fuel) shall follow the construction procedures and mitigation measures described in their respective applications and supplements (including responses to staff data requests) and as identified in the EA, unless modified by this Order. Tennessee and 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 projects. This authority shall allow:
 - a. the modification of conditions of this 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**, Tennessee and National Fuel shall each file an affirmative statement with the Secretary, certified by a senior company official, that all company personnel, environmental inspectors (EIs), 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**, Tennessee and National Fuel shall each 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 this Order. All requests for

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

Tennessee's and National Fuel's exercise of eminent domain authority granted under Natural Gas Act section 7(h) in any condemnation proceedings related to this Order must be consistent with these authorized facilities and locations. Tennessee's and National Fuel's right of eminent domain granted under Natural Gas Act 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. Tennessee and National Fuel shall each 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, 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 Tennessee's *Upland Erosion Control, Revegetation, and Maintenance Plan* and National Fuel's *Erosion Sedimentation Control and Agricultural Mitigation Plan* and/or 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
 - b. 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**, Tennessee and National Fuel shall each file an Implementation Plan with

the Secretary for review and written approval by the Director of OEP. Tennessee and National Fuel must file revisions to the plans as schedules change. The plans shall identify:

- a. how Tennessee and National Fuel will implement the construction procedures and mitigation measures described in their applications and supplements (including responses to staff data requests), identified in the EA, and required by this Order;
 - b. how Tennessee and 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, 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 and dates of the environmental compliance training and instructions Tennessee and 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 Tennessee's and National Fuel's organizations having responsibility for compliance;
 - g. the procedures (including use of contract penalties) Tennessee and 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. Tennessee and National Fuel shall each employ at least one EI per construction spread for their respective projects. The EI shall be:
- a. responsible for monitoring and ensuring compliance with all mitigation measures required by this 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 this 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 this 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 their Implementation Plans**, Tennessee and National Fuel shall each 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 Tennessee's and National Fuel's efforts to obtain the necessary federal authorizations;
 - b. the construction status of the projects, 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 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 this Order, and the measures taken to satisfy their concerns; and
 - g. copies of any correspondence received by Tennessee or National Fuel from other federal, state, or local permitting agencies concerning instances of noncompliance, and Tennessee's or National Fuel's response.
9. **Prior to receiving written authorization from the Director of OEP to commence construction of any project facilities**, Tennessee and National Fuel shall each file with the Secretary documentation that it has received all applicable authorizations required under federal law (or evidence of waiver thereof).
10. Tennessee and National Fuel must receive written authorization from the Director of OEP **before placing the projects into service**. 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 authorized facilities in service**, Tennessee and National Fuel shall each 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 Tennessee and National Fuel have 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. **Prior to construction**, Tennessee should complete its consultation with the New York State Department of Agriculture and Markets regarding impacts on agricultural lands, and file with the Secretary documentation of this consultation and any additional mitigation measures Tennessee plans to incorporate in its project design.
13. Tennessee shall not withdraw hydrostatic test water from French Creek and shall identify in a filing with the Secretary an alternate source of hydrostatic test water **prior to construction**.
14. National Fuel **shall not begin construction** of facilities and/or use of any staging, storage, or temporary work areas and improved access roads **until**:
 - a. National Fuel files with the Secretary comments on the cultural resources reports, addendums and plans from the New York State Historic Preservation Office;
 - b. the Advisory Council on Historic Preservation is afforded an opportunity to comment if historic properties would be adversely affected; and
 - c. the FERC staff reviews and the Director of OEP approves the cultural resources reports and plans, and notifies National Fuel in writing that treatment plans/mitigation measures (including archaeological data recovery) 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.”**

15. National Fuel shall file noise surveys with the Secretary **no later than 60 days** after placing the Hinsdale and Concord Compressor Stations in service. If full load condition noise surveys are not possible, National Fuel shall provide interim surveys at the maximum possible load and provide a full load survey within **6 months**. If the noise attributable to the operation of all of the equipment at the Hinsdale and Concord Compressor Stations under interim or full load conditions exceeds a day-night level (L_{dn}) of 55 decibels on the A-weighted scale (dBA) at any nearby noise-sensitive areas, 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.
16. National Fuel shall file a noise survey with the Secretary **no later than 60 days** after placing the modified facilities at the East Eden Meter Station in service. If the noise attributable to the operation of the modified equipment at the meter station at maximum flow conditions exceeds predicted noise levels at any nearby noise-sensitive areas, 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.
17. **Prior to construction**, National Fuel shall provide documentation of U.S. Fish and Wildlife Service, U.S. Army Corps of Engineers, and appropriate state agency approval to withdraw hydrostatic test water from any surface waters in the vicinity of the Hinsdale Compressor Station or provide an alternate source of hydrostatic test water.
18. Tennessee and National Fuel shall not begin construction activities **until**:
 - a. the staff receives comments from the U.S. Fish and Wildlife Service regarding the proposed actions;
 - b. the staff completes formal consultation with the U.S. Fish and Wildlife Service, if required; and
 - c. Tennessee and National Fuel have received written notification from the Director of OEP that construction or use of mitigation may begin.