

150 FERC ¶ 61,162
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.

National Fuel Gas Supply Corporation

Docket No. CP14-70-000

ORDER ISSUING CERTIFICATE AND AUTHORIZING ABANDONMENT

(Issued March 2, 2015)

1. On February 6, 2014, National Fuel Gas Supply Corporation (National Fuel) filed an application, under sections 7(b) and 7(c) of the Natural Gas Act (NGA)¹ and Part 157 of the Commission's regulations,² for authorization to construct, operate, and abandon facilities in Washington, Allegheny and Beaver Counties, Pennsylvania, comprising the West Side Expansion and Modernization Project.

2. The Commission grants the requested authorizations subject to the conditions described below.

I. Background and Proposal

3. National Fuel, a corporation formed under the laws of the Commonwealth of Pennsylvania with its principal place of business in Williamsville, New York, is a natural gas company that transports and stores natural gas in interstate commerce in New York and Pennsylvania.

4. At the time National Fuel's bare steel Line N pipeline was constructed in 1947,³ it consisted primarily of a single 20-inch-diameter pipeline transporting gas north from an interconnection with the interstate natural gas pipeline system of Texas Eastern

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

² 18 C.F.R. pt. 157 (2014).

³ *United Natural Gas Co.*, 6 FPC 800 (1947). United Natural Gas Company was the surviving company of a merger with other affiliates in 1974, at which time it changed its name to National Fuel Gas Supply Corporation. 51 FPC 1507 (1974).

Transmission, L.P. (Texas Eastern) in Greene County, Pennsylvania, through Washington, Allegheny, Beaver, and Lawrence Counties to a point near Slippery Rock in Butler County, Pennsylvania. National Fuel proposes to replace virtually all of Line N's approximately 23 miles of remaining 20-inch-diameter, 1947-vintage bare steel pipe⁴ with an equivalent length of 24-inch-diameter, high strength, coated pipeline and increase the Maximum Allowable Operating Pressure (MAOP) of the replaced Line N pipeline segments from 787 psig to 1,440 psig. National Fuel also proposes enhancements at two of its compressor stations. In addition to increasing system reliability, National Fuel states that the proposed project will create additional capacity which will be used, along with existing Line N capacity,⁵ to provide transportation service for two project shippers under long-term contracts.

5. National Fuel proposes to replace pipeline along two sections of Line N. Section 1, located in Mount Pleasant Township, Washington County, Pennsylvania, is approximately 1.93 miles long. Section 2, located in Mount Pleasant, Robinson, and Smith Townships in Washington County, Findlay Township in Allegheny County, and Independence Township in Beaver County, Pennsylvania, is approximately 21.3 miles long. National Fuel states that each section of the replacement pipeline will be tied into previously replaced segments of Line N. National Fuel proposes to install the new pipeline at an approximate 25-foot offset from the existing pipeline where possible in order to maximize the availability of service on Line N during construction of the replacement pipeline and to minimize impacts on landowners.⁶

6. National Fuel requests authority to place the abandoned 23 miles of 20-inch-diameter pipeline in idled status, in anticipation that there may be alternative uses for the old pipeline, which is located proximate to natural gas production areas. National Fuel states that it will cap the ends of the inactive sections of pipe, purge residual natural gas, pig any free flowing liquids, and fill the pipe with dry nitrogen to a low pressure.

⁴ National Fuel does not seek authorization to replace the 1947-vintage pipe crossing the Ohio River.

⁵ In anticipation of filing its application for the proposed expansion project, National Fuel reserved sufficient existing capacity to provide 100,000 Dth/day of short-haul north-to-south service on Line N for the project shippers in accordance with Section 36 of its tariff's General Terms and conditions of its tariff.

⁶ National Fuel states that it will rely on the auxiliary installation authority provided by section 2.55(a) of the Commission's regulations, 18 C.F.R. § 2.55(a) (2014), to install block valves, a pig launcher/receiver at Service Creek Road at the northern terminus of Section 2, and two ground beds for cathodic protection.

7. National Fuel also proposes to install one approximately 3,350-horsepower (hp) reciprocating compressor unit at its existing Mercer Compressor Station.⁷ National Fuel states that the proposed additional compression will allow it to designate 1,775 hp of compression at the Mercer Compressor Station and 2,370 hp of compression at its Buffalo Compressor Station as spare compression to ensure that it will be able to meet design system pressure requirements and perform routine and other maintenance when its system is operating at high load factor.

8. National Fuel states that it held an open season for the proposed project from July 7, 2011, to August 4, 2011, seeking bids for both south-to-north and north-to-south service on Line N.⁸ The open season resulted in the following precedent agreements:

- a. Range Resources – Appalachia, LLC (Range) subscribed 145,000 Dth/day of firm transportation from Range's receipt point on Line N near Mount Pleasant, Pennsylvania. Of this total, 100,000 Dth/day of service will have a primary delivery point at National Fuel's interconnection with Texas Eastern at Holbrook, Pennsylvania; the remaining 45,000 Dth/day will have a primary delivery point at National Fuel's interconnection with Tennessee Gas Pipeline Company (Tennessee) at Mercer, Pennsylvania. Range has agreed to pay the maximum rates applicable under National Fuel's FT Rate Schedule for a primary term of ten years.
- b. Seneca Resource Corporation (Seneca) has subscribed 30,000 Dth/day of firm transportation service from the Jones Township Interconnect in Elk

⁷ National Fuel states it also will rely on section 2.55(a) of the regulations to construct a new compressor building to house the proposed compressor unit, as well as a gas cooler, station piping, mufflers, filter-separator, and other appurtenances. In addition, National Fuel will rely on section 2.55(a) authority to make piping and valve modifications at its Henderson Compressor Station to permit gas to flow from east to west when there are no offsetting flows of gas, and pressure requirements at the Mercer Compressor Station dictate the need for utilization of compression at the Henderson Compressor Station.

⁸ National Fuel states that it also conducted a reverse open season soliciting offers from existing shippers with firm south-to-north contracts on Line N to turn back capacity for evaluation of possible reduced compression requirements at the Mercer Compressor Station. No offers were received. National Fuel explains that it did not solicit offers from firm north-to-south shippers because turn-back of north-to-south capacity would not have reduced the amount of the proposed additional compression or proposed replacement pipe.

County, Pennsylvania. National Fuel's interconnection with Tennessee at Mercer, Pennsylvania, will be the primary delivery point for 18,500 Dth/day and National Fuel's interconnection with Texas Eastern at Holbrook, Pennsylvania will be the primary delivery point for the remaining 11,500 Dth/day. The agreement for service to the interconnection with Tennessee has a primary term of fifteen years and the agreement for transportation service to Holbrook has a primary term of ten years. Seneca also has agreed to pay the maximum rates applicable under National Fuel's FT Rate Schedule.

9. National Fuel states that once the project facilities are placed in service it will have unsubscribed south-to-north capacity from Mount Pleasant to Mercer for less than 2,000 Dth/day, and unsubscribed north-to-south capacity from Henderson to Holbrook for less than 1,000 Dth/day. National Fuel notes that the amount of available south-to-north or north-to-south capacity may be somewhat greater or less depending on the primary receipt and delivery points requested.

II. Procedural Issues

10. Notice of National Fuel's application was published in the *Federal Register* on February 24, 2014 (79 Fed. Reg. 11,776). Atmos Energy Marketing LLC., Consolidated Edison Company of New York, Inc., National Fuel Gas Distribution Corporation, National Grid Gas Delivery Companies, et al., and NJR Energy Services Company filed timely, unopposed motions to intervene in the proceeding.⁹ Allegheny Defense Project (Allegheny), James W. Kramer, and Peoples Natural Gas Company LLC filed untimely motions to intervene. We will grant their late motions to intervene as they have demonstrated an interest in this proceeding and granting intervention at this stage will not cause undue delay or undue burden for existing parties.¹⁰

11. Allegheny's motion to intervene includes a protest asserting that the Commission's approval of National Fuel's proposed Line N modernization project would encourage additional shale gas drilling in Pennsylvania, and that the Commission must first complete a programmatic regional environmental impact statement (EIS) for natural gas extraction and transportation projects in the Marcellus Shale region. Mr. Kramer's motion to intervene includes a protest asserting that the proposed routing of National Fuel's replacement pipeline through the middle of his property near his home would

⁹ Timely, unopposed motions to intervene are granted by operation of Rule 214(c) of the Commission's Rules of Practice and Procedure. 18 C.F.R. § 385.214(c) (2014).

¹⁰ 18 C.F.R. § 385.214(d) (2014).

present safety hazards and interfere with future development of his property, and that National Fuel had not provided an adequate explanation why locating the replacement pipeline adjacent to the existing pipeline would not be feasible and environmentally preferable. National Fuel filed answers to the protests. Mr. Kramer filed several answers to National Fuel's answer. Although Rule 385.213(a)(2) of the Commission's Rules of Practice and Procedure states that answers to protests and answers to answers are not permitted, the Commission finds good cause to waive this rule and accept the answers because they provide information that has assisted us in our decision making.¹¹

III. Discussion

12. Since National Fuel seeks to abandon facilities being used for the transportation of natural gas in interstate gas and to construct and operate facilities for the transportation of natural gas in interstate commerce subject to the jurisdiction of the Commission, the proposal is subject to the requirements of sections (b), (c), and (e) of section 7 of the NGA.¹²

A. Certificate Policy Statement

13. The Certificate Policy Statement provides guidance for evaluating proposals to certificate new construction.¹³ The Certificate Policy Statement established criteria for determining whether there is a need for a proposed project and whether the proposed project will serve the public interest. The Certificate Policy Statement explained that in deciding whether to authorize the construction of major new pipeline facilities, the Commission balances the public benefits against the potential adverse consequences. The Commission's goal is to give appropriate consideration to the enhancement of competitive transportation alternatives, the possibility of overbuilding, subsidization by existing customers, the applicant's responsibility for unsubscribed capacity, the avoidance of unnecessary disruptions of the environment, and the unneeded exercise of eminent domain in evaluating new pipeline construction.

14. 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

¹¹ 18 C.F.R. § 385.213(a)(2) (2014).

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

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

subsidization from its existing customers. The next step is to determine whether the applicant has made efforts to eliminate or minimize any adverse effects the project might have on the applicant's existing customers, existing pipelines in the market and their captive customers, or landowners and communities affected by the 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.

15. As stated, the threshold requirement is that the applicant must be prepared to financially support the project without relying on subsidization from existing customers. The Certificate Policy Statement provides that it is not a subsidy for existing customers to pay for projects designed to replace existing capacity or improve the reliability or flexibility of existing service.¹⁴ To the extent that the project will replace existing capacity on sections of Line N that are deteriorated due to age, enabling National Fuel to improve service and reliability to existing shippers, increasing the rates of existing customers to cover associated costs does not constitute a subsidy under the Certificate Policy Statement. As discussed below, National Fuel has proposed an appropriate allocation of project costs to the expansion capacity that will be created by adding compression and using larger diameter pipeline to replace the existing 1947-vintage pipeline. National Fuel has long-term firm transportation commitments for almost all of the expansion capacity at maximum rates that will generate revenues that will exceed the costs associated with the expansion portion of the project. In view of these considerations, we find that approval of this proposal will not result in subsidization of the expansion service by existing customers.

16. There is no evidence that the proposed project will have adverse effects on National Fuel's existing customers. Further, the project should not negatively impact existing pipelines or their captive customers because the expansion capacity created by the project will be used principally for producers to deliver a new source of supply into the interstate pipeline grid at National Fuel's interconnections with Texas Eastern and Tennessee. No concerns have been raised by other pipeline companies or their customers.

17. National Fuel also has minimized impacts on landowners by siting the proposed 23 miles of replacement pipeline at an approximate 25-foot offset from the existing pipeline where possible, which will reduce the amount of new right-of-way needed to

¹⁴ Certificate Policy Statement, 88 FERC ¶ 61,227 at n.12.

maintain a 50-foot-wide right-of-way for the new pipeline by using 25 feet of the existing right-of-way. Further, National Fuel's proposed compression and appurtenant facilities will be located within its existing compressor station properties. In view of these considerations, we find that National Fuel has satisfied the Certificate Policy Statement's requirement that pipeline companies seek to minimize economic impacts on landowners and the need to rely on eminent domain. Those landowners who have indicated dissatisfaction with the amount of compensation offered by National Fuel during negotiations do not have to enter into easement agreements voluntarily, in which case National Fuel will have to initiate eminent domain proceedings in which a court will determine the fair compensation to be received by landowners.¹⁵

18. National Fuel's West Side Expansion and Modernization Project will ensure continued reliable service for National Fuel's existing customers and enable National Fuel to provide firm transportation service for an additional 175,000 Dth/day to two shippers that have signed precedent agreements for the service. Based on the benefits the project will provide, and the minimal adverse impacts on National Fuel's existing customers, other pipelines, landowners, and communities, we find that National Fuel's project is consistent with the Certificate Policy Statement and is required by the public convenience and necessity, as conditioned in this order.

B. Inactivation of Existing Line N Facilities

19. National Fuel seeks authorization to abandon the existing 1.93-mile Section 1 and 21.3-mile Section 2 of Line N and convert them to inactive status. We find that

¹⁵ See, e.g., *Enable Gas Transmission, LLC*, 148 FERC ¶ 61,046, at P 21 (2014). In response to those landowners who have requested that National Fuel be required to vacate the easements on their properties if the replacement pipeline does not use the existing easement, we note that are we approving National Fuel's proposal to maintain the abandoned sections of pipeline in idled status. In any event, just as the Commission has no jurisdiction to determine the level of compensation to be received by a landowner for an easement, the Commission has no authority to require that a pipeline company forfeit its property rights under that easement if it abandons the pipeline for which the easement or right-of-way was originally obtained. However, in some instances the terms of easement agreements or state law may provide for property rights to revert to the landowner in the event the easement is no longer used for the original purposes for which the easement was granted. Thus, it is possible that there will be a reversion of some or all of National Fuel's property rights under the easement for the existing 1947-vintage pipeline if National Fuel is authorized to permanently abandon the pipeline on a particular landowner's property.

National Fuel's proposal is consistent with the public convenience or necessity. As noted above, given the location of the facilities, National Fuel believes that there may be alternatives for their future use (e.g., they could potentially be transferred to other parties and either returned to jurisdictional transportation service or used for non-jurisdictional gathering in this active production area).

20. National Fuel does not specify how long the facilities may remain in an inactive status. However, consistent with our treatment of similar requests from National Fuel with respect to previously replaced segments of Line N,¹⁶ the Commission will grant National Fuel authorization to temporarily abandon the Line N Sections 1 and 2 facilities by placing them in inactive status and require National Fuel to make a filing no later than two years from the date of the in-service of the project, at which time Line N Section 1 and 2 will be idled, to explain the status of, and its plans for, the ultimate disposition of the facilities. Those plans might include the filing of either a NGA section 7(c) application for certificate authority to reactivate the idled sections or an NGA section 7(b) application for authorization to permanently abandon the facilities, as well as the other portions of Line N currently in idled status.

C. Rate Issues

1. Cost Allocation

21. National Fuel's estimated total cost of the project is \$76,122,687. National Fuel proposes to allocate the pipeline replacement and compression costs between its system and incremental customers based on the relative capacity addition that will be created by

¹⁶ In two previous proceedings in which National Fuel was granted certificate authority to replace portions of Line N's 20-inch-diameter with larger diameter pipeline, National Fuel's abandonment authority allowed it to place the old pipeline in inactive status in anticipation that possible alternative uses would be found for the old pipeline. In both orders, the Commission required National Fuel to make a filing within two years after abandoning the old pipeline facilities to explain the status of the abandoned pipeline segments and its plans for ultimate disposition of the facilities. *National Fuel Gas Supply Corp.*, 138 FERC ¶ 61,224 (2012) (2012 Order), and 133 FERC ¶ 61,235 (2010). On September 19, 2013, National Fuel made the required compliance filing and explained that alternative uses have not yet been identified for the segments of Line N that have already been placed in inactive status but that, in view of the continuation of Marcellus drilling activity and the start of Utica shale development, permanent abandonment of the idled pipeline facilities remains premature.

using 24-inch-diameter pipeline to replace the existing 20-inch-diameter segments of pipeline.¹⁷

22. Specifically, National Fuel proposes to allocate 56 percent of the \$65,233,035 pipeline replacement costs, or \$36,530,500, to system customers, maintaining that this level of cost should be considered a general system improvement expenditure. National Fuel acknowledges that using 20-inch-diameter replacement pipe would cost less (approximately \$54.4 million). However, National Fuel explains that using the same size replacement pipeline would not create any expansion capacity and would ultimately cost existing shippers more because none of the costs would be borne by new, expansion shippers.

23. Since using larger diameter pipeline will result in a 44 percent increase in capacity, National Fuel proposes to allocate the remaining 44 percent of the pipeline replacement costs, or \$28,702,535, to service to be provided utilizing the incremental capacity that will be created. National Fuel also proposes to allocate 100 percent of the compression costs, \$10,889,652, to the incremental services.

24. National Fuel proposes to use its maximum system rates, including fuel, lost and unaccounted for gas charges, as the recourse rates for services using the incremental capacity. In support of this proposal, National Fuel calculated an incremental first year cost of service of \$6,990,117, utilizing depreciation, return and capital structure figures from its last approved settlement in its rate proceeding in Docket No. RP12-88, for the expansion service.¹⁸ National Fuel then calculated revenues of \$7,939,056 per year based on charging maximum system rates for the amount of the expansion service that has been contracted by Range and Seneca. National Fuel also has provided information in its

¹⁷ See *National Fuel Gas Supply Corp.*, 138 FERC ¶ 61,224, at PP 18-19 (2012) (approving National Fuel's proposed allocation of costs to replace a 4.85-mile-long segment of Line N and add 10,310 hp of compression between expansion shippers and existing system shippers.) Here, National Fuel calculated a 44 percent increase in capacity by dividing the cross-sectional area of 20-inch-diameter pipeline by the cross-sectional area of a 24-inch-diameter pipeline, which assumes that the additional project capacity above the 20-inch-diameter pipeline capacity is created for the project shippers and is relative to the additional cross-sectional area.

¹⁸ *National Fuel Gas Supply Corp.*, 140 FERC ¶ 61,114 (2012) (approving black box settlement providing that for the purpose of initial section 7 rate calculations in certificate proceedings, return calculations would be based on those approved in National Fuel's Docket No. RP95-31-000 settlement. *Id.* P 32.

Exhibit G and engineering data that demonstrate estimated fuel use per unit transported for the project will remain the same or will be less than current levels.

25. Application of National Fuel's maximum system rate to the amount of incremental service contracted by Range and Seneca results in revenues in excess of the incremental cost of service associated with the all of the expansion capacity that will be created by the project. Further, the proposal will not adversely impact fuel rates. Therefore, the Commission approves National Fuel's proposal to use its existing maximum system rates as the initial recourse rates, including fuel, lost and unaccounted for gas charges, for service utilizing the incremental capacity created by this project.¹⁹

2. Predetermination of Rolled-in Treatment

26. National Fuel requests a predetermination that it may roll all of the costs of the project into its generally applicable system rates in its next general NGA section 4 rate case filing.

27. As discussed above, \$36,530,500 (56 percent of \$65,233,035) of this project's costs are to replace aging pipeline in order to maintain reliable service and therefore have been allocated to system customers. The Certificate Policy Statement provides that increasing the rates of existing customers to pay for projects designed to improve reliability or flexibility in providing a pipeline's existing services for its customers is not a subsidy, and that the costs of such a project may be rolled in in a future rate case.²⁰

28. As discussed above, the \$39,592,187 in project costs to increase capacity by replacing the aging pipe with larger-diameter pipe and adding compression have been allocated to the expansion capacity and used in calculating the incremental cost of service associated with the expansion capacity. National Fuel has provided 10 years of cost and revenue projections that demonstrate revenues from services using the expansion capacity will exceed incremental costs each year. Thus, rolled-in rate treatment for the costs

¹⁹ National Fuel acknowledges that a small amount of the expansion is not yet subscribed and that there may be some short-term firm or interruptible capacity available that it did not include in its revenue projections. That does not affect our determination that National Fuel's existing maximum system rates are appropriate as initial recourse rates for the expansion service. Range and Seneca have both agreed to pay the maximum rates under Rate Schedule FT, and National Fuel's revenues from those shippers will exceed the incremental cost of service associated with all of the expansion capacity.

²⁰ Certificate Policy Statement, 88 FERC ¶ 61,227 at n.12.

associated with the expansion capacity should reduce the per unit cost of service and benefit existing customers.

29. In view of these considerations, the Commission grants National Fuel's request for a finding supporting a presumption of rolled-in rate treatment for all of the project's costs in National Fuel's next section 4 rate case, absent a material change in circumstances.

3. Accounting

30. The Commission will approve National Fuel's proposed accounting entries in Exhibit Y of its Application to transfer the original cost of the existing facilities that will be abandoned in place from Account 101, Gas Plant in Service, to Account 105, Gas Plant Held for Future Use, consistent with the requirements of the Commission's Uniform System of Accounts.²¹ The Commission requires National Fuel to make a filing within two years after abandoning the old pipeline facilities to explain the status of the abandoned pipeline segments and its plans for ultimate disposition of the facilities.

D. Designation and Use of Spare Compression

31. National Fuel proposes to designate 2,370 hp out of 21,010 hp at the Buffalo Compressor Station and 1,775 hp out of 7,100 hp at the Mercer Compressor Station as spare compression. The Commission recognizes the potential utility of maintaining an increment of spare compression for system operations and maintenance purposes. Here, National Fuel anticipates that it will need to operate the Line N system at a high load factor during the term of the proposed services. If all installed horsepower at both stations was necessary to sustain capacity, periodic interruptions of firm transportation services would likely be needed in order to perform routine or other maintenance, particularly on the reciprocating compressor units. In order to alleviate these potential interruptions, National Fuel has proposed to designate 2,370 hp at the Buffalo Compressor Station and 1,775 hp at the Mercer Compressor Station as spare compression.

32. Based on hydraulic models, National Fuel will not be able to use the proposed spare compression at the Mercer and Buffalo Compressor Stations to create year-round firm capacity or to exceed system design levels. Therefore, we will grant National Fuel's request to designate 1,775 hp at the Mercer Compressor Station and 2,370 hp at the Buffalo Compressor Station as spare compression. However, we specify that National Fuel cannot, without grant of additional certificate authorization, use any of the spare

²¹ 18 C.F.R. pt. 201 (2014).

compression to satisfy intermittent demand for interruptible or secondary firm service or requests for short-term firm service during scheduled maintenance intervals.

E. Environmental Analysis

33. On March 19, 2014, the Commission issued a *Notice of Intent to Prepare an Environmental Assessment for the Proposed West Side Expansion and Modernization Project and Request for Comments on Environmental Issues* (NOI). The NOI was published in the *Federal Register*²² 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.

34. We received comments during the public scoping process from various landowners regarding alternatives to the proposed route and route alignment on their respective properties. In particular, Mr. James Kramer filed multiple comment letters suggesting alternative locations for the pipeline alignment and requesting that National Fuel not deviate from its existing right-of-way. National Fuel's ultimately proposed route reflects a number of variations agreed to by National Fuel in response to Mr. Kramer's and other landowners' concerns.²³ The environmental assessment (EA) prepared in this proceeding considered a number of other route variations and concluded that none of them are environmentally preferable to National Fuel's proposed route, as modified during the scoping process.²⁴ Further, as discussed in the EA,²⁵ National Fuel's proposed pipeline facilities must be designed, constructed, operated and maintained in accordance with the regulations, standards, and procedures of the Department of Transportation, which are intended to ensure pipeline safety.

35. To satisfy the requirements of the National Environmental Policy Act of 1969 (NEPA),²⁶ the Commission's staff prepared an environmental assessment (EA) for the 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

²² 79 Fed. Reg. 21752 (April 17, 2014).

²³ EA at 50-51.

²⁴ *Id.*

²⁵ *Id.* at 34-44.

²⁶ 42 U.S.C. § 4321 (2012).

alternatives. All substantive comments received in response to the NOI were addressed in the EA.

36. The EA was issued for a 30-day comment period and placed into the public record on December 8, 2014. The Commission received comments on the EA from the U.S. Fish and Wildlife Service (FWS) and Allegheny. The comments on the EA concern federally listed species; migratory birds; alternatives; the cumulative, indirect, and connected impacts, including the effects of gas drilling and hydraulic fracturing in the Marcellus and Utica shales; and additional assertions that the Commission should prepare a programmatic EIS. These comments are summarized below and addressed by topic.

37. In addition, National Fuel filed comments on the EA to clarify minor details regarding waterbodies, wetlands, and land requirements. The Commission's review finds that none of these clarifications or updates is significant, nor do they alter any conclusions in the EA regarding environmental impacts resulting from the project.

1. Federally Listed Species

38. The FWS indicates that one federally listed species under the Endangered Species Act (ESA), the Indiana bat, is within the range of the project. However, National Fuel conducted mist-net surveys in the project area that did not result in the capture of any Indiana bats, and the EA therefore concludes that tree clearing related to the construction of the project is not likely to adversely affect the Indiana bat. The FWS concurs. The FWS comments that its interim guidance concerning the Northern long-eared bat recommends that all tree clearing occur between November 15 and March 31.²⁷ The FWS also recommends that if tree removal needs to occur outside of this timeframe, Commission should prepare a biological assessment to address potential adverse effects. Allegheny states that the Commission has not completed the required consultation with FWS under the ESA, and that the EA therefore is insufficient for compliance. We disagree. Environmental Condition 13 of this order requires that staff complete consultation with the FWS prior to the commencement of construction. As indicated in this condition, the Commission's staff will continue to consult with the FWS and will ensure that the requirements of the Endangered Species Act are fulfilled prior to allowing any activity that might adversely affect listed species.

²⁷ FWS is considering whether the Northern long-eared bat warrants listing as a threatened species under the ESA and has proposed measures to provide for its conservation. 80 Fed. Reg. 2371 (Jan. 16, 2015).

2. Migratory Birds

39. As indicated in the EA, National Fuel will follow the FWS project-specific recommendation with regard to the Raccoon Creek Valley and State Park Important Bird Area. While the FWS letter recommends that the vegetation clearing window close on March 31, a July 24, 2013 letter from the FWS recommends that the window extend until April 30. On January 27, 2015, the FWS clarified that the April 30 date was the correct date. Therefore, we have revised the EA recommendation to clarify in Environmental Condition 12 of this order that vegetation clearing occur between September 1 and April 30.

3. Alternatives

40. Allegheny comments that the EA should have considered an alternative that included replacing Line N's existing 1947-vintage pipeline with replacement pipeline that would not increase Line N's capacity. In the EA, Commission staff considered alternatives using three criteria, each of which must be satisfied to necessitate further analysis. The criteria are: technical feasibility and practicability (of the alternative); (would the alternative provide) a significant environmental advantage over the proposed action; and would the alternative meet the objectives of the proposed action. As explained in the EA, National Fuel's stated purpose of the project is to increase pipeline capacity sufficient to enable the transportation of an additional 175,000 dekatherms per day. Consequently, an alternative that would replace Line N's existing pipeline with pipeline that would not increase Line N's capacity would fail to satisfy the third criterion. Therefore, this alternative was not further considered.

4. Impacts of Gas Drilling and Production

41. Allegheny asserts that the EA is inadequate because it does not consider the indirect and cumulative effects of natural gas drilling in the Marcellus and Utica Shale formations. As explained below, Allegheny's argument is misplaced.

42. The CEQ regulations require agencies to consider three kinds of impacts: direct, indirect, and cumulative.²⁸ 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.

43. 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

²⁸ 40 C.F.R. § 1508.25 (2014).

foreseeable.”²⁹ 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.³⁰ For an agency to include consideration of an 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.”³¹

44. Contrary to Allegheny’s assertions, the potential environmental effects associated with gas development of the Marcellus and Utica Shale formations 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.³²

45. The proposed projects are not creating the growth in the development of unconventional gas resources in the Marcellus and Utica regions. 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.³³ Thus, there is an insufficient causal link between the proposed projects and additional development in the region for such development to be considered an indirect impact under NEPA and CEQ’s regulations.

46. 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

²⁹ 40 C.F.R. § 1508.8(b) (2014).

³⁰ *Id.*

³¹ *Sylvester v. U.S. Army Corps of Engineers*, 884 F.2d 394 (9th Cir. 1980).

³² 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 (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).

³³ *Id.*

likely to occur that a person of ordinary prudence would take it into account in reaching a decision.”³⁴ 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 consequences.”³⁵ 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.”³⁶ 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.

47. A “cumulative impact” is defined as the “impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions.”³⁷ 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.³⁸ 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.”³⁹ An agency is only required to

³⁴ *Sierra Club v. Marsh*, 976 F.2d 763, 767 (1st Cir. 1992).

³⁵ *Hammond v. Norton*, 370 F.Supp.2d 226, 245-46 (D.D.C. 2005).

³⁶ *N. Plains Res. Council v. Surface Transp. Board.*, 668 F.3d 1067, 1078 (9th Cir. 2011).

³⁷ 40 C.F.R. § 1508.7 (2014).

³⁸ CEQ Guidance, *Considering Cumulative Effects Under the National Environmental Policy Act*, (January 1997).

³⁹ *Id.* at 8.

include “such information as appears to be reasonably necessary under the circumstances 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.”⁴⁰

48. The CEQ guidance on cumulative impacts assessments advises that agencies have substantial discretion in determining the appropriate level of the cumulative impacts assessments,⁴¹ and that an agency should relate the scope of its analysis to the magnitude of the environmental impacts of the proposed action.⁴² 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.⁴³

49. National Fuel’s West Side Expansion and Modernization Project will be limited to construction of approximately 23 miles of replacement pipeline that will be offset 25 feet from the existing pipeline and the addition of compression within existing station yards. Thus, this project is of limited scope and will have a minimal environmental footprint. We find the EA appropriately limited its cumulative impacts review to projects directly in the vicinity of the project, identifying and analyzing the recently constructed natural gas and oil production wells and associated infrastructure in the projects’ region of influence which could contribute to a cumulative impact. We also find that the EA’s use of a 0.5-mile radius around the project area as the region of influence for most resources affected (not including air quality) was not arbitrary as asserted by Allegheny, but rather appropriately reflected the limited scope of the proposed project.

50. Further, the EA did study areas broader in geographic scope where appropriate (i.e., air quality, noise, stream turbidity, and forest clearing). Allegheny also raises a

⁴⁰ *New York Natural Resource Defense Council, Inc. v. Kleppe*, 429 U.S. 1307, 1311 (1976) (citing *Natural Resource Defense Council v. Calloway*, 524 F.2d 79, 88 (2d. Cir. 1975)).

⁴¹ 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 v. Sierra Club*, 427 U.S. 390 at 413 (1976).

⁴² CEQ, *Memorandum on Guidance on Consideration of Past Actions in Cumulative Effects Analysis* at 2-3 (June 24, 2005); see also *El Paso Natural Gas Co.*, 136 FERC ¶ 61,175, at P 5 (2011).

⁴³ *Id.*

specific concern that the EA fails to adequately consider potential impacts on bobcat populations, which Allegheny suggests are already migrating into southern New York as the result of natural gas drilling operations. While the EA does not address bobcats specifically, it concludes based on the project's limited scope and duration that impacts on wildlife will be minimal.⁴⁴

51. Additionally, consideration of the regional cumulative impacts of Marcellus and Utica Shale development would require the Commission to engage in the kind of speculative analysis that courts reject. As the Commission has found in prior proceedings and as is discussed above with respect to indirect impacts, the full range of Marcellus Shale development is both widespread and uncertain in nature and timing, making it highly difficult and speculative to identify and quantify cumulative impacts of possible future drilling relating to pipeline projects.⁴⁵

52. Furthermore, 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 were upheld on judicial review.⁴⁶ Allegheny's arguments and evidence parallel arguments and evidence we rejected in *CNYOGC*.⁴⁷

53. In *CNYOGC*, the Commission found that Marcellus Shale development and its associated potential environmental impacts were not sufficiently causally related to the

⁴⁴ EA at p. 47.

⁴⁵ *Central New York Oil & Gas Co., LLC*, 138 FERC ¶ 61,104, at P 7 (2012) petition for review denied, sub nom. *Coalition for Responsible Growth and Resource Conservation v. FERC*, 485 Fed. Appx. 472 (2d. Cir. 2012) (upholding the Commission's analysis of the development of Marcellus shale natural gas reserves where the Commission reasonably concluded that the impacts of that development were not sufficiently causally-related to the projects to warrant a more in-depth analysis).

⁴⁶ *Coalition for Responsible Growth v. FERC*, 485 Fed. Appx. 472, 2012 WL 1596341 (2d Cir. Apr. 17, 2012) (unpublished opinion).

⁴⁷ 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.

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.

54. Allegheny also alleges that the EA does not analyze the cumulative impacts of this project's installation of additional compression at National Fuel's Mercer Compressor Station, National Fuel's planned modifications at the Mercer Compressor Station as part of its proposed Northern Access 2015 Project in Docket No. CP14-100-000, and Tennessee Gas Pipeline's (Tennessee) proposed Niagara Expansion Project in Docket No. CP14-88-000, which would involve minor modifications at Tennessee's Compressor Station 219 directly south of National Fuel's Mercer Compressor Station as part of Tennessee's expansion in order to deliver more gas to National Fuel's system. However, National Fuel's Northern Access 2015 Project would not involve any construction at the Mercer Compressor Station. Further, while the EA prepared in this proceeding did not consider Tennessee's planned work at its Compressor Station 219 in the cumulative section of the EA prepared in this proceeding, Tennessee's Niagara Expansion Project would involve only minor modifications of existing yard piping and all work would take place within the existing fenced yard of Compressor Station 219, in which is an area covered by low-growing herbaceous vegetation and gravel. The proposed work would affect no wetlands, waterbodies, or forests and provides virtually no wildlife habitat. Consequently, inclusion of this project in the cumulative impacts discussion does not alter any conclusions presented in the EA.

5. Programmatic Environmental Impact Statement (EIS)

55. Finally, Allegheny continues to assert here, as it has in numerous proceedings, that the Commission must prepare a programmatic regional EIS "that encompasses natural gas infrastructure projects targeting the Marcellus and Utica shale formations." As the Commission has previously explained,⁴⁸ 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

⁴⁸ See, e.g., *Texas Eastern Transmission, LP*, 149 FERC ¶ 61,259, at PP 38-47 (2014).

decisions allocating agency resources to implement a specific statutory program.”⁴⁹ 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.⁵⁰ Under NGA section 7(e), 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.”⁵¹ 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.

56. 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 and Utica Shale regions. 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.

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

58. Based on the analysis in the EA and the discussion above, we conclude that if constructed and operated in accordance with 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.

59. 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.

⁴⁹ 40 C.F.R. § 1508.18(b)(3) (2014).

⁵⁰ *See Texas Eastern*, 149 FERC ¶ 62,259, at PP 44-45.

⁵¹ 15 U.S.C. § 717f(e) (2012).

However, this does not mean that state and local agencies, through application of state or local laws, may prohibit or unreasonably delay the construction or operation of facilities approved by this Commission.⁵²

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

The Commission orders:

(A) A certificate of public convenience and necessity is issued to National Fuel authorizing it to construct and operate the West Side Expansion and Modernization Project, as described and conditioned herein, and as more fully described in the application.

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

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

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

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

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

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

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

(E) Pursuant to section 7(b) of the NGA, National Fuel is granted authority temporarily to maintain the existing portions of Line N described in the application and the body of this order in an inactive status for a two-year period beginning with the in-service date of the West Side Expansion and Modernization Project. National Fuel shall make a filing with the Commission within one month prior to expiration of the two-year period, explaining whether it will file pursuant to NGA section 7(c) to reactivate or section 7(b) to permanently abandon, all portions of Line N in inactive status at that time.

(F) National Fuel shall notify the Commission within ten (10) days of placing the Line N facilities into inactive status.

(G) National Fuel's request for rolled-in rate treatment for the costs of the West Side Expansion and Modernization Project is granted, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

Appendix

Environmental Conditions

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

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

positions for all facilities approved by the Order. All requests for modifications of environmental conditions of the Order or site-specific clearances must be written and must reference locations designated on these alignment maps/sheets.

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

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

This requirement does not apply to extra workspace allowed by National Fuel's *Erosion and Sediment Control and Agricultural 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
 - d. agreements with individual landowners that affect other landowners or could affect sensitive environmental areas.
6. **Within 60 days of the acceptance of the Certificate and before construction begins**, National Fuel shall file an Implementation Plan with the Secretary for

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

- a. how National Fuel would implement the construction procedures and mitigation measures described in its application and supplements (including responses to staff data requests), identified in the EA, and required by the Order;
 - b. how National Fuel would 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. how National Fuel would ensure that sufficient personnel are available to implement the environmental mitigation;
 - d. company personnel, including EIs and contractors, who would receive copies of the appropriate material;
 - e. the location and dates of the environmental compliance training and instructions National Fuel would give to all personnel involved with construction and restoration (initial and refresher training as the project progresses and personnel change);
 - f. the company personnel (if known) and specific portion of National Fuel's organization having responsibility for compliance;
 - g. the procedures (including use of contract penalties) National Fuel would follow if noncompliance occurs; and
 - h. for each discrete facility, a Gantt or PERT chart (or similar project scheduling diagram), and dates for:
 - 1) the completion of all required surveys and reports;
 - 2) the environmental compliance training of onsite personnel;
 - 3) the start of construction; and
 - 4) the start and completion of restoration.
7. National Fuel shall employ at least one EI per construction spread. The EI shall be:
- a. responsible for monitoring and ensuring compliance with all mitigation measures required by the Order and other grants, permits, certificates, or other authorizing documents;
 - b. responsible for evaluating the construction contractor's implementation of the environmental mitigation measures required in the contract (see condition 6 above) and any other authorizing document;
 - c. empowered to order correction of acts that violate the environmental conditions of the Order, and any other authorizing document;
 - d. a full-time position, separate from all other activity inspectors;

- e. responsible for documenting compliance with the environmental conditions of the Order, as well as any environmental conditions/permit requirements imposed by other federal, state, or local agencies; and
 - f. responsible for maintaining status reports.
8. Beginning with the filing of its Implementation Plan, National Fuel shall file updated status reports with the Secretary on a **biweekly basis until all construction and restoration activities are complete**. On request, these status reports would also be provided to other federal and state agencies with permitting responsibilities. Status reports shall include:
 - a. an update on National Fuel's efforts to obtain the necessary federal authorizations;
 - b. the construction status of the project, work planned for the following reporting period, and any schedule changes for stream crossings or work in other environmentally sensitive areas;
 - c. a listing of all problems encountered and each instance of noncompliance observed by the EIs during the reporting period (both for the conditions imposed by the Commission and any environmental conditions/permit requirements imposed by other federal, state, or local agencies);
 - d. a description of the corrective actions implemented in response to all instances of noncompliance, and their cost;
 - e. the effectiveness of all corrective actions implemented;
 - f. a description of any landowner/resident complaints which may relate to compliance with the requirements of the Order, and the measures taken to satisfy their concerns; and
 - g. copies of any correspondence received by National Fuel from other federal, state, or local permitting agencies concerning instances of noncompliance, and National Fuel's response.
9. **Prior to receiving written authorization from the Director of OEP to commence construction of any project facilities**, National Fuel shall file with the Secretary documentation that it has received all applicable authorizations required under federal law (or evidence of waiver thereof).
10. National Fuel must receive written authorization from the Director of OEP **before placing the project into service**. Such authorization would 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**, National Fuel shall file an affirmative statement with the Secretary, certified by a senior company official:

- a. that the facilities have been constructed in compliance with all applicable conditions, and that continuing activities would be consistent with all applicable conditions; or
 - b. identifying which of the Certificate conditions National Fuel has complied with or would comply with. This statement shall also identify any areas affected by the project where compliance measures were not properly implemented, if not previously identified in filed status reports, and the reason for noncompliance.
12. National Fuel **shall** conduct clearing activities within the boundaries of the Raccoon Creek Valley and State Park Important Bird Area between September 1 and April 30.
13. National Fuel **shall not begin** construction activities **until**:
- a. the staff receives comments from the U.S. Fish and Wildlife Service regarding the proposed action;
 - b. staff completes any necessary Section 7 conference or formal consultation; and
 - c. National Fuel has received written notification from the Director of OEP that construction or use of mitigation may begin.
14. National Fuel shall not begin implementation of any treatment plans/measures (including archaeological data recovery); construction of facilities; or use of staging, storage, or temporary work areas and new or to-be-improved access roads **until**:
- a. National Fuel files with the Secretary all remaining survey reports and avoidance plans and the Pennsylvania State Historic Preservation Office's comments on the reports and plans;
 - b. the Advisory Council on Historic Preservation is provided an opportunity to comment on the undertaking if historic properties would be adversely affected; and
 - c. the FERC staff reviews and the Director of OEP approves the survey reports and avoidance plans, and notifies National Fuel in writing that treatment plans/mitigation measures may be implemented or construction may proceed.

All material filed with the Secretary 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 a noise survey with the Secretary **no later than 60 days** after placing the Mercer Compressor Station in service. If a full load condition noise survey is not possible, National Fuel should provide an interim survey at the maximum possible horsepower load and provide the full load survey within 6 months. If the noise attributable to the operation of all of the equipment at the Mercer Compressor Station under interim or full horsepower load conditions exceeds a day-night level of 55 decibels at any nearby noise sensitive area, National Fuel shall file a report on what changes are needed and should 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.