

156 FERC ¶ 61,119
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Empire Pipeline, Inc.
National Fuel Gas Supply Corporation

Docket No. CP14-112-003

ORDER AMENDING CERTIFICATE

(Issued August 19, 2016)

1. On March 10, 2015, the Commission issued a certificate authorizing National Fuel Gas Supply Corporation (National Fuel) to abandon storage and transportation capacity by lease to Empire Pipeline, Inc. (Empire).¹ On June 28, 2016, Empire and National Fuel filed a joint application pursuant to sections 7(b) and 7(c) of the Natural Gas Act (NGA) requesting authorization to increase the quantity of storage capacity abandoned by lease to Empire, with a related amendment to the existing lease agreement. The Commission grants their request.

I. Background

2. The March 2015 Order authorized Empire to construct and operate a 17-mile-long lateral pipeline from a point on Empire's system in Tioga County, Pennsylvania, to connect with National Fuel's system at the existing Tuscarora Compressor Station in the Town of Addison, Steuben County, New York. The March 2015 Order also authorized National Fuel to add a 1,380-horsepower compressor unit to its Tuscarora Compressor Station and to abandon by lease to Empire transportation and storage capacity sufficient to provide 55,000 dekatherms (Dth) per day of firm transportation service and 3,300,000 Dth of firm storage service with injection rights up to 27,500 Dth per day and withdrawal rights up to 55,000 Dth per day. Together, the Tuscarora Lateral Project with the leased capacity allowed Empire to offer new firm no-notice

¹ *Empire Pipeline, Inc.*, 150 FERC ¶ 61,181 (2015) (March 2015 Order).

transportation service, firm no-notice storage service, and interruptible storage service under approved Rate Schedules FTNN, FSNN, and ISS, respectively.

3. The Tuscarora Lateral Project was placed in service on November 1, 2015. Empire entered into a long-term firm transportation agreement with Rochester Gas and Electric Corporation (RG&E) for firm no-notice 60-day storage service using the entire 3,300,000 Dth of leased storage capacity and the maximum quantities allowed under the lease for daily injection or withdrawal. RG&E agreed to pay the maximum rates under Empire's Rate Schedule FSNN.

4. Applicants state that since placing the Tuscarora Lateral Project in service, an additional 453,090 Dth of storage capacity on National Fuel's system has become available as a result of a contract termination. Based on National Fuel's operating limitations, it is not possible to increase maximum quantities for daily injection or withdrawal. Empire held an open season from June 6 to June 13, 2016, to solicit interest in the additional 453,090 Dth of storage capacity. RG&E submitted a request to increase its contract for firm no-notice storage service by the entire 453,090 Dth of storage capacity. Empire states that it did not receive any other service requests during the open season.

II. Proposal

5. National Fuel seeks authorization pursuant to section 7(b) of the NGA to abandon 453,090 Dth of storage capacity by lease to Empire. Empire seeks complementary authorization pursuant to Section 7(c) of the NGA to amend its existing lease agreement with National Fuel to increase the maximum storage quantity by an additional 453,090 Dth. The lease amendment will not change the existing lease agreement's term, maximum daily injection quantity (MDIQ) of 27,500 Dth per day, maximum daily withdrawal quantity (MDWQ) of 55,000 Dth per day, or the existing lease payments by Empire to National Fuel for the leased *storage* capacity.

6. However, the lease amendment will change lease payments by Empire to National Fuel for *transportation* capacity during the period from the effective date of the lease amendment to March 31, 2018.² Under the lease amendment, Empire's lease payments for transportation would be based on a reservation rate that is higher than the originally

² Under the existing lease agreement, lease payments during this period are based on a commodity rate of \$0.0135 per Dth (National Fuel's maximum FST commodity rate is \$0.0135 plus ACA) and reservation rates of \$1.8988 per Dth through March 31, 2017, and \$3.0351 per Dth through the following year to March 31, 2018 (National Fuel's maximum FST reservation rate is \$3.7049 per Dth).

approved lease agreement but is still slightly lower than National Fuel's currently effective maximum Rate Schedule FST reservation rate.³ After March 31, 2018, Empire's payments under both the existing lease and the lease amendment would be based on maximum rates for service under National Fuel's Rate Schedule FST.

7. Empire proposes to use the increased leased capacity to provide 68-day storage service rather than the existing 60-day storage service. Empire submitted a *pro forma* Rate Schedule FSNN tariff record to implement this 68-day service, which attaches differently-proportioned injection and withdrawal rights to a customer's contracted storage capacity when compared to rights under the existing 60-day storage service.

III. Notice, Interventions, and Comments

8. Commission staff issued notice of the joint application on July 7, 2016, with comments due July 18, 2016.⁴ No motions to intervene, adverse comments, or protests were filed.

IV. Discussion

9. Because the additional storage capacity under the proposed lease amendment will be used to transport natural gas in interstate commerce, the requested authorizations are subject to Commission jurisdiction pursuant to sections 7(b) and 7(c) of the NGA.

10. 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.⁵

11. The Commission's practice has been to approve a lease if it finds that: (1) there are benefits for using a lease arrangement; (2) the lease payments are less than, or equal to, the lessor's firm transportation rates for comparable service over the term of the lease on a net present value basis; and (3) the lease arrangement does not adversely affect

³ Under the lease amendment, lease payments during this period would be based on reservation rates of \$2.1367 per Dth through March 31, 2017, and \$3.0891 per Dth through the following year to March 31, 2018 (National Fuel's maximum FST reservation rate is \$3.7049 per Dth).

⁴ 81 Fed. Reg. 45,467 (July 14, 2016).

⁵ *Texas Eastern Transmission Corp.*, 94 FERC ¶ 61,139, at 61,530 (2001).

existing customers.⁶ In the March 2015 Order, we approved the applicants' lease agreement because we found that the lease satisfied these requirements.⁷

12. Here, the applicants' request to amend the lease agreement does not alter in any respect the findings in the March 2015 Order. The lease amendment will not require new construction or modification to existing facilities and will not alter the term of the existing lease. Though the lease amendment will increase Empire's payments to National Fuel for leased firm *transportation* capacity, the payments will still be less than National Fuel's maximum firm transportation rates for comparable service. The lease amendment would not adversely affect National Fuel's or Empire's existing customers. Therefore, we will approve National Fuel's and Empire's request to amend the lease agreement to increase Empire's existing maximum storage quantity (MSQ) by an additional 453,090 Dth.

13. Because a lessor no longer has any rights to use leased capacity,⁸ the lessor requires NGA section 7(b) authority from the Commission to abandon the leased capacity. National Fuel proposes to abandon storage capacity that has become available as a result of a contract termination. Accordingly, we find that the proposed abandonment is consistent with the public convenience and necessity, and we grant National Fuel's request to abandon this capacity by lease to Empire. Consistent with Commission policy, we will require National Fuel to file a notification in this docket within 10 days of the date of abandonment of the capacity leased to Empire. This notification will provide the effective date of the abandonment.⁹ We also remind the applicants that when the lease terminates, Empire is required to obtain authority to abandon the lease capacity, and National Fuel is required to obtain certificate authorization to reacquire that capacity.¹⁰

⁶ *Id.*; *Islander East Pipeline Co., L.L.C.*, 100 FERC ¶ 61,276, at P 69 (2002).

⁷ March 2015 Order, at PP 35-41.

⁸ *Texas Gas Transmission, LLC*, 113 FERC ¶ 61,185, at P 10 (2005).

⁹ *See, e.g., Columbia Gas Transmission, LLC*, 145 FERC ¶ 61,028, at ordering para. (D) (2013).

¹⁰ *See, e.g., Islander East Pipeline Co.*, 102 FERC ¶ 61,054, at P 35 (2003).

14. We reject Empire’s proposal to revise its Rate Schedule FSNN service from a 60-day storage service to a 68-day storage service as a result of the increased leased storage capacity.¹¹ A proposal to amend a currently effective rate schedule is not appropriate in a section 7 application. Our rejection is without prejudice to Empire requesting similar changes in a future limited section 4 proceeding.

15. Because the proposed action involves no construction of facilities, it is categorically excluded from the requirements of the National Environmental Policy Act pursuant to section 380.4(a)(27) of our regulations.¹²

16. 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, and upon consideration of the record.

The Commission orders:

(A) The certificate issued in the March 2015 Order is amended, as discussed in the body of this order. In all other respects, the certificate is unchanged.

(B) National Fuel and Empire shall file the amended Lease Agreement with the Commission within 30 days of executing the amended Lease Agreement.

(C) National Fuel shall notify the Commission within 10 days of the date of abandonment of the capacity leased to Empire.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

¹¹ We note that Empire erred in drafting section 1.4(a) of the submitted *pro forma* Rate Schedule FSNN tariff record. It includes an unnecessary preposition “of” and omits the phrase “be determined by dividing” immediately thereafter.

¹² 18 C.F.R. § 380.4(a)(27) (2016).