

172 FERC ¶ 61,256
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Neil Chatterjee, Chairman;
Richard Glick and James P. Danly.

National Fuel Gas Supply Corporation

Docket No. CP20-53-000

ORDER AMENDING CERTIFICATE

(Issued September 17, 2020)

1. On February 18, 2020, National Fuel Gas Supply Corporation (National Fuel) filed an application under section 7(c) of the Natural Gas Act (NGA)¹ and Part 157 of the Commission’s regulations² to amend its certificate of public convenience and necessity granted on March 2, 2015, authorizing National Fuel’s West Side Expansion and Modernization Project (WSEM Project) in Docket No. CP14-70-000.³ Specifically, National Fuel proposes to re-designate an authorized 1,775 horsepower (hp) of spare compression at its Mercer Compressor Station (Mercer Station) in Mercer County, Pennsylvania, to regular use, in order to accommodate a subscribing shipper’s delivery point request.

2. As discussed below, we approve the requested amendment, subject to conditions.

I. Background and Proposal

3. National Fuel is a corporation organized under Pennsylvania law with its principal place of business in New York. National Fuel is a “natural gas company” within the meaning of section 2(6) of the NGA.⁴

¹ 15 U.S.C. § 717f(c).

² 18 C.F.R. pt. 157 (2020).

³ *National Fuel Gas Supply Corp.*, 150 FERC ¶ 61,162 (2015) (Certificate Order).

⁴ 15 U.S.C. § 717a(6).

4. The Certificate Order authorized National Fuel to construct and operate the WSEM Project, which included (1) the replacement of 23 miles of 20-inch diameter pipe with 24-inch-diameter pipe (Line N) in Washington, Allegheny, and Beaver Counties, Pennsylvania; and (2) installation of a new 3,550-hp reciprocating compressor unit at National Fuel's existing Mercer Station.⁵ The project created capacity enabling National Fuel to provide an additional 175,000 dekatherms per day (Dth/d) of incremental firm transportation service.⁶ Range Resources – Appalachia, LLC (Range) subscribed to 100,00 Dth/d of firm transportation service from a receipt point on Line N near Mt. Pleasant, Pennsylvania (Mt. Pleasant), to a primary delivery point at National Fuel's interconnection with Texas Eastern Transmission, L.P. at Holbrook, Pennsylvania, (TETCO Holbrook) and 45,000 Dth/d to a primary delivery point at National Fuel's interconnect with Tennessee Gas Pipeline Company at Mercer, Pennsylvania (TGP Mercer).⁷ Seneca Resources Company, LLC (Seneca)⁸ subscribed to 18,500 Dth/d of firm transportation service from the Jones Township Interconnect in Elk County, Pennsylvania, to a primary delivery point at TGP Mercer and 11,500 Dth/d to a primary delivery point at TETCO Holbrook.⁹

5. The Certificate Order also authorized National Fuel to designate 1,775 hp of the total 7,100 hp of compression at the Mercer Station as spare compression.¹⁰ This was intended to ensure National Fuel's ability to meet system pressure requirements while

⁵ Certificate Order, 150 FERC ¶ 61,162 at PP 4-7. Following installation of the new compressor unit, the total horsepower of the Mercer Station was 7,100 hp. Application at 3. National Fuel placed the 3,550 hp compressor unit at the Mercer Station into service on September 8, 2015 and placed the Line N facilities into service on October 16, 2015. National Fuel's In-service Notice, Docket No. CP14-70-000 (filed October 22, 2015). We note that while the Certificate Order erred in stating that National Fuel had proposed to install a 3,350 hp unit, the company had actually proposed, and ultimately installed, a 3,550 hp unit.

⁶ Certificate Order, 150 FERC ¶ 61,162 at P 8.

⁷ *Id.*

⁸ Seneca Resources Company, LLC was formerly known as Seneca Resources Corporation.

⁹ Certificate Order, 150 FERC ¶ 61,162 at P 8.

¹⁰ *Id.* PP 31-32.

performing maintenance when the Line N system was operating at a high load.¹¹ The Certificate Order provided that “National Fuel cannot, without grant of additional certificate authorization, use any of the spare compression to satisfy intermittent demand for interruptible or secondary firm service or requests for short-term firm service during scheduled maintenance intervals.”¹²

6. In September 2019, Seneca submitted a request to change the primary delivery point for 11,500 Dth/d of its firm transportation service from TETCO Holbrook to TGP Mercer, shortening Seneca’s current transportation path for those volumes. To accommodate this request, National Fuel proposes to re-designate the authorized spare compression at its Mercer Station to regular use. National Fuel states that operational and system changes on its Line N have altered operations at the Mercer Station. Of particular relevance, National Fuel explains that the BTU value of gas currently flowing on Line N is lower than in the past, due to ethane takeaway options now available to regional producers.¹³ Thus, higher volumes of gas are required to meet the same contractual commitments. National Fuel states that it offset the effect that increased volumetric flow had on horsepower requirements at Mercer Station by implementing an uprate of the Line N pressure under Docket No. CP18-135-000. The pressure uprate in part increased typical suction pressures at Mercer Station, enabling National Fuel to flow greater volumes of gas than those originally contemplated under the WSEM Project, while using less horsepower. With this optimization, National Fuel has determined that it can accommodate Seneca’s delivery point change by utilizing a portion of the redesignated 1,775 hp of compression; the remaining horsepower will still provide flexibility if “a unit [is] taken out of service for maintenance purposes.”¹⁴

II. Notice, Interventions, and Comments

7. Notice of National Fuel’s amendment application was issued on February 27, 2020, and published in the *Federal Register*.¹⁵ The notice established March 19, 2020,

¹¹ National Fuel states that the 1,775 hp of spare compression is the equivalent of one reciprocating compressor unit at the Mercer Station, but it did not designate a specific unit as spare.

¹² Certificate Order, 150 FERC ¶ 61,162 at P 32.

¹³ National Fuel states the BTU values are still acceptable under the Gas Quality Specifications under its FERC Gas Tariff.

¹⁴ National Fuel’s February 18, 2020 Application at 5.

¹⁵ 85 Fed. Reg. 12,784 (March 4, 2020).

as the deadline for filing interventions, comments, and protests. Atlanta Gas Light Company, National Fuel Gas Distribution Corporation, Bay State Gas Company d/b/a Columbia Gas of Massachusetts, Columbia Gas of Pennsylvania, Inc., New Jersey Natural Gas Company, and Range filed timely motions to intervene.¹⁶

8. Range's March 19, 2020 Motion to Intervene requests that National Fuel clarify the process National Fuel required under its tariff regarding Seneca's request to shift capacity from TETCO Holbrook to TGP Mercer.¹⁷ On April 3, 2020, National Fuel filed an answer to Range's comments. Range's comments and National Fuel's response are addressed below.

III. Discussion

9. Because National Fuel's application to re-designate currently authorized spare compression to regular use requires amending its existing certificate authorization, National Fuel's request is subject to the Commission's jurisdiction and the requirements of NGA sections 7(c) and (e).¹⁸

A. Certificate Policy Statement

10. The Certificate Policy Statement provides guidance for evaluating proposals to certificate new construction.¹⁹ 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 natural gas 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.

¹⁶ Timely, unopposed motions to intervene are granted pursuant to Rule 214 of the Commission's Rules of Practice and Procedure. 18 C.F.R. § 385.214(c) (2020).

¹⁷ Motion to Intervene at 3.

¹⁸ 15 U.S.C. § 717f(c), (e).

¹⁹ *Certification of New Interstate Natural Gas Pipeline Facilities*, 88 FERC ¶ 61,227, *corrected*, 89 FERC ¶ 61,040 (1999), *clarified*, 90 FERC ¶ 61,128, *further clarified*, 92 FERC ¶ 61,094 (2000) (Certificate Policy Statement).

11. Under this policy, the threshold requirement for applicants proposing new projects is that the applicant must be prepared to financially support the project without relying on 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, and landowners and communities affected by the construction of the new natural gas facilities. 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.

12. In the Certificate Order, the Commission applied the Certificate Policy Statement to the proposal and found that the WSEM Project was required by the public convenience and necessity.²⁰ Because there are no costs involved with the re-designation of the spare compression, there will be no subsidy involved with approving National Fuel's request. Further, this amendment will not impair National Fuel's ability to provide reliable service to its customers, since re-designating the spare compression to regular use will allow National Fuel to optimize operating conditions at the Mercer Station.²¹ No new capacity on a system basis will be created. The project does not include any new, incremental service, affects only National Fuel's system, and will have no adverse impact on other pipelines or their customers. No other pipelines or their customers have objected to the proposal. The project will not result in any significant impact on landowners, and no landowner comments were filed.

13. Accordingly, we find that the proposed amendment to re-designate the spare compression to regular use does not alter the Commission's previous finding. Therefore, we conclude that the proposal is consistent with the criteria set forth in the Certificate Policy Statement and analyze the environmental impacts of the proposal below.²²

²⁰ Certificate Order, 150 FERC ¶ 61,162 at P 18.

²¹ *See supra* P 6.

²² *See* Certificate Policy Statement, 88 FERC at ¶ 61,745-46 (explaining that only when the project benefits outweigh the adverse effects on the economic interests will the Commission then complete the environmental analysis).

B. Range's Comments

14. Range questions National Fuel's process to shift Seneca's primary delivery point to TGP Mercer. Under Range's firm transportation service agreement, it has a primary receipt point on Line N with delivery points at TGP Mercer and TETCO Holbrook.²³ Range states it, like Seneca, would prefer to shift more delivery point capacity to TGP Mercer.²⁴ Range states it became aware of availability of additional primary delivery point capacity at TGP Mercer through the amendment application and, contrary to the tariff, National Fuel did not issue any public notices, postings, open seasons, or other public disclosures that the capacity was available.

15. Range acknowledges that section 1.4 of National Fuel's Rate Schedule FT allows National Fuel to add or delete firm primary delivery or receipt points by a shipper's request. However, Range notes that section 1.4(d) states that "[a] change will not be made to a primary receipt or delivery point if such change would require capacity that is posted for bidding under section 26 of the General Terms and Conditions. . . ."²⁵ Range further notes that section 26.6 of the General Terms and Conditions of National Fuel's tariff (GT&C) states that if National Fuel receives:

a request for firm service (other than a backhaul service) that requires capacity that exists on [its] system, *but has not been disclosed to shippers* pursuant to Section 9 of these [GT&C], *Transporter shall solicit service requests for such capacity*, and shall allocate such capacity in accordance with this Section 26. In such case, the request for capacity that had not been disclosed shall be considered to have been received in response to the posting and during the posting period.^[26]

16. Range states that the above quoted language in GT&C section 26 requires public posting or disclosure to shippers that capacity is available, and specifically in this case

²³ See *supra* P 4.

²⁴ Range concedes that it has not submitted a formal request but alleges it had conversations with National Fuel regarding shifting delivery point capacity from TETCO Holbrook to TGP Mercer. Motion to Intervene at 4 ("Range personnel have had conversations with National Fuel about Range's desire to shift capacity from [TETCO] Holbrook to [TGP] Mercer."). Range states that TGP Mercer is a more valuable primary delivery point for Range.

²⁵ *Id.* at 4-5 (quoting National Fuel's FERC Gas tariff, Fifth Revised Volume No. 1, GT&C, section 1.4(d)).

²⁶ *Id.* at 5 (quoting GT&C section 26.6) (emphasis added by Range).

because Range is perhaps the largest Line N shipper also using the TGP Mercer delivery point.²⁷

17. Range also asserts that GT&C section 9 of National Fuel's tariff clearly requires such a public posting or disclosure. GT&C section 9.3(a)(3) requires:

(a) Transporter *shall post* information on the web site, on a timely basis, and make such data available via EDI, about *the availability of* firm and interruptible capacity: ...

(3) *at Point(s) of Delivery* for which Transporter receives real time measurement information....^[28]

18. Finally, Range states that its concerns should receive heightened scrutiny by the Commission given that Seneca is a production company affiliated with National Fuel, and that Range is a producer in competition with Seneca and was the largest WSEM Project shipper, helping to fund construction at the Mercer Station that will now provide additional service to Seneca.²⁹

19. In response, National Fuel clarifies that Seneca filed a request pursuant to GT&C section 31.1 of its tariff. GT&C section 31.1 reads that “[a]ny modification of an existing service shall be requested by Shipper’s submission of a new ‘[s]ervice [r]equest [f]orm’ with a notation on the [f]orm that the service requested is a modification of an existing service.”³⁰ National Fuel asserts that Seneca correctly submitted this form in September 2019 to seek a primary delivery point change from TETCO Holbrook to TGP Mercer. National Fuel states that, pursuant to section 31.3(a), it enters submitted forms into a list of pending requests and evaluates its ability to accommodate the requests. In this case, National Fuel asserts that although Seneca’s request did not require additional path capacity to meet the service request, it was necessary for National Fuel to file an application to remove the “spare” compression designation.

20. National Fuel states that currently, “as posted in the Informational Postings area of [its] website, National Fuel has no unsubscribed firm transportation capacity available on

²⁷ *Id.* at 2; Range states that it ships approximately 550,000 Dth/d of natural gas on Line N.

²⁸ *Id.* (quoting GT&C section 9.3) (emphasis added by Range).

²⁹ *Id.*

³⁰ National Fuel’s April 3, 2020 Answer at 3 (quoting GT&C section 31.1).

Line N from south to north.”³¹ National Fuel further states that the reclassification of compression does not create any additional path capacity to its system and instead only adds delivery point capacity at TGP Mercer, which is on Seneca’s existing firm transportation path.³² National Fuel emphasizes that this change will not provide additional path capacity for Seneca because “the two National Fuel pipelines that can provide a firm transportation path to [TGP] Mercer – Line N and Line M – are both fully subscribed[.]”³³

21. National Fuel asserts that to the extent Range requested a primary delivery point change to TGP Mercer, presumably on one of Range’s Line N firm transportation contracts that do not currently have TGP Mercer as a primary delivery point, National Fuel could not have fulfilled the request because of the Line N south-to-north capacity limitation, which was explained to Range.³⁴ According to National Fuel, granting such a request would require a significant pipeline expansion or the termination of an existing firm transportation contract having a south-to-north Line N transportation path. In contrast, National Fuel states there is no additional path capacity needed to satisfy Seneca’s delivery point change request because TGP Mercer is on Seneca’s existing firm transportation path for deliveries to TETCO Holbrook.

22. National Fuel concedes that there were no informational postings, advertisements, or open seasons because its tariff does not require notice, as outlined in GT&C section 31. National Fuel states that although Seneca’s request did not require additional path capacity, the application was still warranted to request authorization to remove the “spare” compression designation from a portion of the compression at the Mercer Station to provide the requested TGP Mercer primary delivery point capacity.

23. National Fuel states that contrary to Range’s comments, no new or additional pipeline capacity will be created pursuant to GT&C section 26. With no new firm capacity on the system to be offered to shippers, National Fuel states it did not solicit service requests. National Fuel also states, contrary to Range’s assertion, GT&C section 9.3(a)(3) is not applicable because the provision requires National Fuel to post information on its website about the availability of firm and interruptible capacity at point(s) of delivery.

³¹ *Id.* at 4.

³² *Id.*

³³ *Id.* at 5.

³⁴ *Id.* at 4.

24. According to National Fuel, there should be additional delivery point capacity available at TGP Mercer after the re-designation of compression and after Seneca's requested delivery point capacity is satisfied; then National Fuel states it will post the available capacity on its website according to GT&C section 9.3(3)(a). National Fuel further states that should Range, or any other shipper, request a delivery point change, National Fuel would evaluate the request according to GT&C section 31 and attempt to accommodate the request.

25. We find that National Fuel appropriately processed Seneca's service request form pursuant to GT&C section 31.1 of National Fuel's tariff. Consistent with its tariff, National Fuel was not required to post, disclose, or hold open seasons for the availability of delivery point changes. As explained in National's Fuel's April 3, 2020 Answer, the TGP Mercer delivery point is on Seneca's current transportation path for primary deliveries to TETCO Holbrook. Therefore, while additional compression is required to accommodate the additional primary deliveries at that point, no additional transportation path capacity is needed. In contrast, Range would require additional transportation path capacity in order to increase its delivery at TGP Mercer.

26. Range's primary receipt point (Mt. Pleasant) is south of TGP Mercer on Line N. We have verified National Fuel's representation that all firm transportation paths that deliver to TGP Mercer (Line M flowing east-to-west and Line N flowing south-to-north) are currently fully subscribed. Thus, National Fuel would not have been able to accommodate any delivery point capacity shift request by Range. We further find that National Fuel's proposal to amend its certificate authorization and re-designate spare compression at the Mercer Station will enable it to accommodate Seneca's request for service, while still having adequate flexibility to maintain service should a unit be off line for maintenance purposes.

27. Additionally, we are not persuaded by Range's arguments that the Commission should apply a heightened scrutiny to National Fuel's actions because (1) Seneca is a production company affiliated with National Fuel; (2) Range and Seneca are production company competitors in the natural gas markets; and (3) Range was the largest WSEM Project shipper. Seneca correctly submitted a service request form pursuant to National Fuel's tariff and the delivery point change offers no additional revenue to National Fuel, as this change does not provide additional service. The mere fact that Seneca has an affiliation with National Fuel does not automatically require heightened scrutiny. We find that there is no evidence of undue preference and, as discussed above, we conclude that National Fuel fully complied with its tariff provisions.

C. Environmental Analysis

28. On March 26, 2020, the Commission issued a *Notice of Intent to Prepare an Environmental Assessment for the Proposed Amendment to WSEM Project and Request for Comments on Environmental Issues* (NOI). The NOI was published in the *Federal*

*Register*³⁵ and mailed to affected landowners located within 0.5 mile of the Mercer Station, and other federal agencies. In response to the NOI, the Commission received no environmental comments.

29. To satisfy the requirements of the National Environmental Policy Act of 1969, our staff prepared an environmental assessment (EA) for National Fuel's proposal. The analysis in the EA addresses the limited operational impacts associated with air and noise quality, reliability and safety, cumulative impacts, and alternatives. The reclassification of the Mercer Station would not require any construction and would not affect the following resources: geological resources, water resources, vegetation and wildlife, land use, socioeconomics, and visual resources. The EA was placed into the public record on June 19, 2020.

30. Based on the analysis in the EA, we conclude that if operated in accordance with National Fuel's application 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.

31. Compliance with the environmental conditions appended to our orders is integral to ensuring that the environmental impacts of approved projects are consistent with those anticipated by Commission staff's environmental analyses. Thus, Commission staff carefully reviews all information submitted. Only when satisfied that the applicant has complied with all applicable conditions will a notice to proceed with the activity to which the conditions are relevant be issued. It is also noted that the Commission has the authority to take whatever steps are necessary to ensure the protection of environmental resources during operation of the project, including authority to impose any additional measures deemed necessary to ensure continued compliance with the intent of the conditions of the order, as well as the avoidance or mitigation of unforeseen adverse environmental impacts resulting from project operation.

32. Any state or local permits issued with respect to the jurisdictional facilities authorized herein must be consistent with the conditions of this certificate. The Commission encourages cooperation between interstate pipelines and local authorities. However, this does not mean that state and local agencies, through application of state or local laws, may prohibit or unreasonably delay the construction or operation of facilities approved by this Commission.³⁶

³⁵ 85 Fed. Reg. 18,221 (April 1, 2020).

³⁶ *See* 15 U.S.C. § 717r(d) (state or federal agency's failure to act on a permit considered to be inconsistent with federal law); *see also* *Schneidewind v. ANR Pipeline Co.*, 485 U.S. 293, 310 (1988) (state regulation that interferes with FERC's regulatory

33. At a meeting held on September 17, 2020, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the motion and exhibits thereto, and upon consideration of the record,

The Commission orders:

(A) The Certificate Order in Docket No. CP14-70-000 is amended, as described and conditioned herein, and as more fully described in the application and subsequent filings by the applicant, including any commitments made therein. In all other aspects, the Certificate Order is unchanged.

(B) National Fuel shall comply with the environmental conditions as appended to this order.

(C) National Fuel shall notify the Commission's environmental staff by telephone or e-mail 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 within 24 hours.

(D) All other requirements and conditions of the Commission's prior orders in Docket No. CP14-70-000 authorizing the WSEM Project remain in effect.

By the Commission.

(SEAL)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

authority over the transportation of natural gas is preempted) and *Dominion Transmission, Inc. v. Summers*, 723 F.3d 238, 245 (D.C. Cir. 2013) (noting that state and local regulation is preempted by the NGA to the extent it conflicts with federal regulation, or would delay the construction and operation of facilities approved by the Commission).

APPENDIX Environmental Conditions

As recommended in the environmental assessment (EA), this authorization includes the following conditions:

1. National Fuel Gas Supply Corporation (National Fuel) shall follow the operation 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), or the Director's designee, **before using that modification.**

2. The Director of OEP, or the Director's designee, has delegated authority to address any requests for approvals or authorizations necessary to carry out the conditions of the Order, and take whatever steps are necessary to ensure the protection of environmental resources during operation of the project. This authority shall allow:
 - a. the modification of conditions of the Order;
 - b. stop-work authority; and
 - c. the imposition of any additional measures deemed necessary to ensure continued compliance with the intent of the conditions of the Order as well as the avoidance or mitigation of unforeseen adverse environmental impact resulting from project operation.

3. National Fuel shall file a noise survey with the Secretary **no later than 60 days** after placing the modified Mercer Compressor Station in service. If a full load condition noise survey is not possible, National Fuel shall 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 average sound level of 55 A-weighted decibel at any nearby

noise sensitive area, 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.