

137 FERC ¶ 61,054
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

National Fuel Gas Supply Corporation
Tennessee Gas Pipeline Company

Docket Nos. CP11-128-000
CP11-133-000

ORDER ISSUING CERTIFICATES AND GRANTING ABANDONMENT

(Issued October 20, 2011)

1. On March 7, 2011, National Fuel Gas Supply Corporation (National Fuel) filed, in Docket No. CP11-128-000, an application under section 7(c) of the Natural Gas Act (NGA) for authorization to construct and operate its proposed Northern Access Project, consisting of a new compressor station and other compression and facility upgrades in Pennsylvania and New York. In a related filing, on March 9, 2011, Tennessee Gas Pipeline Corporation (Tennessee), as operator, filed, in Docket No. CP11-133-000, an application under sections 7(b) and (c) of the NGA for authorization variously to abandon and to upgrade and modify certain compression facilities on the Niagara Spur Loop Line (NSLL)¹ (Station 230C Project). Together, the proposed Northern Access and Station 230C Projects will enable the transportation of Marcellus Shale production into Canada.
2. For the reasons set forth below, the Commission is granting the requested authorizations, subject to conditions.

Background

3. National Fuel is a corporation organized and existing under the laws of Pennsylvania engaged in the transportation of natural gas in interstate commerce. National Fuel provides transportation for affiliated and nonaffiliated companies from

¹ The NSLL is jointly-owned by National Fuel, Tennessee, and Dominion Transmission, Inc. (Dominion) in the following percentages: National Fuel – 56.72 percent, Tennessee – 32.63 percent, and Dominion 10.65 percent. According to Tennessee, Dominion has elected not to participate in this expansion of the NSLL.

southwestern Pennsylvania to the Canadian border at Niagara, New York, on its 2,877 miles of integrated pipeline.

4. Tennessee is a corporation organized and existing under the laws of Delaware engaged primarily in the business of transporting natural gas in interstate commerce. Tennessee's system originates in Texas, Louisiana and the Gulf of Mexico and extends in a northeasterly direction to its terminus in Connecticut.

5. The NSLL consists of 49.2 miles of 30-inch diameter pipeline extending from an interconnection with TransCanada Pipeline, Ltd (TransCanada) at the U.S.-Canadian border at Niagara to East Aurora, New York. Compressor Station 230C (Station 230C) is located on the NSLL near Lockport, New York. National Fuel's Line X extends from an interconnection with the NSLL in East Aurora to National Fuel's Ellisburg Compressor Station in Potter County, Pennsylvania. Currently, gas is transported on the NSLL from Canada south to the interconnection with National Fuel at East Aurora and from there south on National Fuel's Line X to National Fuel's Rose Lake interconnection with Tennessee at the Ellisburg Compressor Station.

Proposals

A. Northern Access Project – Docket No. CP11-128-000

1. Facilities

6. The Northern Access Project and the Station 230C Project together will enable Marcellus Shale production to be transported north to Canada. National Fuel states that its proposed Northern Access Project is designed to transport 320,000 dekatherms per day (Dth/d) of natural gas on Line X from the Ellisburg Compressor Station to its interconnection with the NSLL at East Aurora, i.e., from south to north. In order to provide the firm south to north transportation service, National Fuel proposes to construct a new compressor station, as well as compression and facility upgrades, to accommodate bi-directional flow on Line X. Specifically, National Fuel proposes to construct and operate the following facilities:

- (1) a compressor station totaling approximately 4,740 horsepower² (HP) in Erie County, New York (East Aurora Compressor Station) adjacent to

² National Fuel proposes to install gas powered internal combustion compressor units at both the proposed East Aurora and existing Ellisburg Compressor Stations. Since the Interstate Natural Gas Association of America's study titled "Waste Heat Recovery Opportunities for Natural Gas Pipelines" determined that waste heat recovery was only economically viable for gas turbine powered compressor units, National Fuel's proposed compressor units are not economically viable for waste heat recovery.

the existing East Aurora Meter Station (which is operated by National Fuel and Tennessee);³

- (2) piping and mainline valve changes at its Concord Compressor Station in Erie County, New York to permit bi-directional flow; and
- (3) two additional compressor units, totaling approximately 9,470 HP, at its existing Ellisburg Compressor Station.⁴

7. National Fuel also proposes to construct and operate a meter facility near the existing Rose Lake interconnection with Tennessee in order to accommodate the proposed capacity requirements of the modified Line X. The new meter facilities will replace the existing Rose Lake and Andrews Settlement interconnects, and will serve as the new Rose Lake interconnection with Tennessee at the Ellisburg Compressor Station.⁵

8. National Fuel states that the cost of the proposed Northern Access Project, together with its share of the Station 230C Project, is approximately \$59,991,948.

2. Open Season

9. National Fuel held an open season for the Northern Access Project between January 12 and February 17, 2010. National Fuel states that Statoil Natural Gas LLC (Statoil) subscribed to 320,000 Dth/d of capacity for a term of 20 years at the maximum applicable rates under National Fuel's FT rate schedule. National Fuel states that it did not hold a reverse open season because the Northern Access Project involves new delivery capacity from National Fuel's Line X to the NSLL, and that no existing shippers hold capacity in that direction.

³ Pursuant to its blanket certificate authorization, Tennessee will modify the East Aurora Meter Station facilities to enable the NSLL to receive gas from National Fuel at the East Aurora Compressor Station.

⁴ National Fuel's proposal assumes the completion of the modifications to permit bi-directional flow on the jointly-owned NSLL facilities proposed as part of the Station 230C Project.

⁵ National Fuel states that the proposed Rose Lake facilities modifications will not affect the existing transportation services it provides from those points and that it does not plan to amend the existing firm transportation agreements that identify the Rose Lake Interconnection as a primary point. National Fuel further states that it has no firm transportation agreements that designate the current Andrews Settlement interconnect as a primary point.

3. Proposed Rates

10. Statoil has agreed to pay the maximum rates applicable under National Fuel's FT rate schedule. National Fuel states that the revenues that would be generated from the Northern Access Project are expected to significantly exceed its associated costs over a 10-year period.⁶ Accordingly, National Fuel requests a pre-determination that it may roll the costs associated with the Northern Access Project, including its investment in Tennessee's Station 230C Project,⁷ into its system rates in a future NGA section 4 rate case.

11. National Fuel also requests approval of a non-conforming service agreement. National Fuel states that its *pro forma* Rate Schedule FT Service Agreement included in the precedent agreement with Statoil, as amended, deviates from National Fuel's Rate Schedule FT Service Agreement in one aspect.⁸ Specifically, National Fuel states that Article III, "Term" of the Agreement provides that the commencement date shall be the later of September 1, 2012, or the date the project facilities are ready to be placed in service, provided that Statoil may elect to delay the commencement date to not later than November 1, 2012.⁹

12. National Fuel states that it agreed to the non-conforming provision to allow Statoil to better align the commencement of service on the NSLL with the in-service date of the Northern Access Project facilities. Further, National Fuel states that this provision will not affect the character of service to be received by Statoil under Rate Schedule FT, nor will the provision present any risk of undue discrimination to its other customers. National Fuel requests that the Commission make a finding that the non-conforming provision constitutes a permissible deviation from its *pro forma* service agreement.¹⁰

⁶ Exhibit N of National Fuel's application.

⁷ As indicated in Exhibits K and N of National Fuel's application, the estimated facilities cost associated with the Station 230C project are included in National Fuel's cost-of-service determination.

⁸ National Fuel states the service agreement will be executed upon its receipt and acceptance of the requested certificate authorizations.

⁹ National Fuel asserts that the Statoil service agreement conforms in every other aspect to National Fuel's *pro forma* Rate Schedule FT Service Agreement.

¹⁰ Prior to the commencement of service, National Fuel will file the executed service agreement reflecting the non-conforming language, and a tariff sheet identifying this agreement as a non-conforming agreement.

B. Station 230C Project – Docket No. CP11-133-000

13. Currently, as described above, the NSLL is configured to flow natural gas from north to south, i.e., from Canada to the United States. Tennessee proposes to construct, install, and modify certain facilities at Compressor Station 230C which, in conjunction with National Fuel's Northern Access Project, will allow for both northerly and southerly flow on the NSLL. When the Station 230C Project is complete, the NSLL will be capable of transporting approximately 548,000 Mcf/d of natural gas north to the interconnection with TransCanada.¹¹

1. Facilities

14. Specifically, Tennessee plans the following modifications and upgrades to Station 230C:

- (1) replace two 5,486 HP drivers with two 6,130 HP drivers;¹²
- (2) re-wheel three existing compressor units;
- (3) install a new check meter;
- (4) modify station piping;
- (5) add gas cooling equipment; and
- (6) install other appurtenant facilities.

15. Tennessee estimates the cost of the Station 230C Project, including contingency, overheads, and AFUDC, to be approximately \$20,100,000, with Tennessee assuming responsibility for \$5,400,000, and \$14,700,000 being allotted to National Fuel. The shared costs are governed by the Development Agreement executed by Tennessee and National Fuel.¹³

¹¹ The south to north capacity will increase to approximately 600,000 Mcf/d during winter months due to lower ambient temperatures.

¹² Tennessee requests abandonment authority to the extent necessary to retire two compressor drive units that will be replaced with new, more powerful drive units.

¹³ National Fuel and Tennessee propose to modify and upgrade the Station 230C facilities pursuant to a development agreement between the joint owners of the NSLL dated February 24, 2011 (Development Agreement). The Development Agreement is governed by the Niagara Spur Loop Line Construction and Ownership Agreement dated May 31, 1990, as amended, and the Niagara Spur Loop Line Operation and Maintenance (continued...)

2. Rates

16. Tennessee did not hold an open season for the Station 230C Project as the project is solely intended to accommodate the capacity required for National Fuel's Northern Access project.¹⁴ In addition, Tennessee proposes no change in to its rates or tariff as a result of its participation in the Station 230C Project. Tennessee states that its relatively minor investment in the project, approximately \$5.4 million, would have a *de minimis* impact upon its rates. Accordingly, Tennessee requests a pre-determination that it may roll the cost of the Station 230C Project into its system rates in a future section 4 rate case.

Notices and Interventions

17. Notice of the National Fuel's application was published in the *Federal Register* on April 5, 2011 (76 Fed. Reg. 18,749). New York State Public Service Commission, National Fuel Gas Distribution Corporation, Atmos Energy Marketing LLC, National Grid Gas Delivery Companies, PSEG Energy Resources & Trade LLC, and Statoil filed timely, unopposed motions to intervene.¹⁵ People United for Sustainable Housing and VOICE Buffalo (the Concerned Neighbors Network) filed a timely joint unopposed motion to intervene.¹⁶

18. Notice of the Tennessee's application was published in the *Federal Register* on April 5, 2011 (76 Fed. Reg. 18,747). New York State Public Service Commission, National Fuel Gas Distribution Corporation, Atmos Energy Marketing LLC, Atmos Energy Corporation, National Grid Gas Delivery Companies, PSEG Energy Resources & Trade LLC, Statoil, and National Fuel filed timely, unopposed motions to intervene.¹⁷

Agreement dated October 31, 1990, as amended, which were the subject of Commission proceedings in *Tennessee Gas Pipeline Co.*, 51 FERC ¶ 61,113 (1990) and *Tennessee Gas Pipeline Co.*, 52 FERC ¶ 61,257 (1990).

¹⁴ Nevertheless, the Station 230C Project will provide Tennessee an additional 179,000 Mcf/d of northbound capacity to the interconnection of the NSLL with TransCanada at the Niagara, New York border crossing. In response to a staff data request, Tennessee states that it plans to offer the available capacity to its shippers as generally available capacity pursuant to terms of its tariff.

¹⁵ Timely, unopposed motions to intervene are granted by operation of Rule 214 of the Commission's Rules of Practice and Procedure. 18 C.F.R. § 385.214 (2011).

¹⁶ *Id.*

¹⁷ *Id.*

19. James Dombrowski, Robert Fierle, and the Town of Wales, New York and the Town of Aurora, New York, (Towns of Wales and Aurora), filed untimely motions to intervene in Docket No. CP11-128-000. Piedmont Natural Gas Company, Inc. (Piedmont) filed an untimely motion to intervene in Docket No. CP11-133-000. The Commission finds that the parties filing untimely motions to intervene have demonstrated an interest in these proceedings and that granting their motions will not delay, disrupt, or prejudice these proceedings or the parties to these proceedings. Thus, the Commission will grant the untimely motions to intervene.¹⁸ Statoil's motion to intervene included comments supporting the Northern Access Project as being an important addition to the interstate infrastructure serving the Marcellus Shale producing area. The Concerned Neighbors Network's motion to intervene included comments regarding concerns over air quality, radon, noise, visual impacts, safety, and lack of consideration of alternative siting for the proposed East Aurora Compressor Station. James Dombrowski, Robert Fierle, and the Towns of Wales and Aurora also raised environmental concerns. All environmental comments and concerns raised by the parties are addressed below.

Discussion

20. Because the facilities proposed by National Fuel and Tennessee will be used to transport natural gas in interstate commerce subject to the jurisdiction of the Commission, their construction and operation are subject to the requirements of section 7(c) of the NGA. Further, Tennessee's proposed abandonment of compressor units is subject to the requirements of section 7(b) of the NGA.

C. Certificate Policy Statement

21. The Certificate Policy Statement provides guidance as to how the Commission will evaluate proposals for certificating new construction.¹⁹ 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

¹⁸ 18 C.F.R. § 385.214(d) (2011).

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

environment, and the unneeded exercise of eminent domain in evaluating new pipeline construction.

22. Under this policy, the threshold requirement for pipelines proposing new projects is that the pipeline must be prepared to financially support the project without relying on subsidization from its existing customers. The next step is to determine whether the 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 then proceed to complete the environmental analysis where other interests are considered.

1. National Fuel

23. As discussed above, the threshold requirement for pipelines proposing new projects is that the pipeline must be prepared to financially support the project without relying on subsidization from existing customers. Here, as shown by Exhibit N in its application, National Fuel has demonstrated that project revenues will exceed the costs associated with both the Northern Access Project and its share of the Station 230C Project over a 10-year period. Thus, the Commission finds that National Fuel's existing customers will not subsidize the project.

24. Nor will the Northern Access Project have an adverse impact on National Fuel's existing customers. By configuring the East Aurora Compressor Station to allow flow in either direction, with flow directions having the capability to change daily and intra-daily, National Fuel can ensure that existing shippers' services will not be adversely affected.²⁰ The project will likewise have no adverse impact on existing pipelines or their captive customers as the proposed facilities will be transporting new gas supply and will not replace existing service on other pipelines.

25. National Fuel states that the installation of the compression facilities at the Ellisburg Compressor Station and the construction of the East Aurora Compressor Station will be on property owned by National Fuel. National Fuel does not expect to acquire

²⁰ The Development Agreement between the joint owners amends the Operation and Management Agreement between the parties to revise some of the delivery pressure obligations off the NSLL under certain flow conditions, including deliveries to National Fuel at Clarence, New York and East Aurora.

any additional rights-of-way. Thus, the Commission finds that National Fuel's Northern Access Project has taken appropriate steps to minimize adverse impacts on landowners.

2. Tennessee

26. Tennessee held no open season and has entered into no agreements for additional service as a result of the proposed Station 230C Project. However, it did agree with National Fuel to participate in the expansion of the NSLL and, as a result of its agreements, will have the right to make approximately 179,000 Mcf/d of the newly-created south-to-north capacity available for service under its tariff. Tennessee has indicated that to the extent it receives requests for service utilizing this capacity, it will provide the service at its existing system rate.

27. It is axiomatic that the rates of Tennessee's existing customers do not currently include any costs associated with the proposed Station 230C Project and that those rates cannot be impacted in a certificate proceeding. Thus, authorizing Tennessee to proceed with construction of the proposed Station 230C Project, and authorizing use of its existing rates as initial rates for service utilizing the new capacity, will not result in subsidization by existing customers. In addition, as discussed below, we are denying Tennessee's request for a predetermination that it is appropriate to roll the costs of this project into its system rates in its next section 4 rate proceeding. Therefore, we find that the no-subsidization requirement of the Certificate Policy Statement has been met with respect to Tennessee's participation in the Station 230C Project.

28. We further find that the Station 230C Project will not have an adverse impact on Tennessee's existing customers, since the project will not degrade any services to existing customers. The project will likewise have no adverse impact on existing pipelines or their captive customers because it is not intended to replace service on any other existing pipeline.

29. In addition, the Commission finds that Tennessee has designed its project to minimize adverse impacts to landowners and surrounding communities in the vicinity of the Station 230C Project, since Tennessee's proposed construction will take place within the footprint of the existing Station 230C.

3. Conclusion

30. The Northern Access Project and the Station 230C Project will make bi-directional flow on National Fuel's Line X and the jointly-owned NSLL possible, thus enabling National Fuel to provide transportation of natural gas for Statoil north to an interconnection with TransCanada at the U.S.-Canada border. Based on the benefits the projects will provide and the lack of any identifiable adverse impacts on existing customers, other pipelines and their captive customers, and landowners and surrounding communities, the Commission finds, consistent with the criteria discussed in the Certificate Policy Statement and section 7(c) of the NGA, that the proposed projects are

required by the public convenience and necessity. Since replacement of the two existing 5,486 HP compressor units at Station 230C with larger ones as proposed is an integral component of the projects we are finding to be required by the public convenience and necessity, we also find that the public convenience and necessity permit Tennessee's abandonment of the existing units.

D. Rate and Tariff Issues

1. National Fuel

31. National Fuel's shipper, Statoil, has agreed to pay the maximum rates applicable under National Fuel's FT rate schedule. National Fuel states that the revenues that would be generated from the Northern Access Project are expected to significantly exceed its associated costs over a 10-year period. National Fuel requests the Commission make a pre-determination that it may roll the costs associated with the Northern Access Project, including its investment in Tennessee's Station 230C, into its system rates in a future NGA section 4 rate case.

32. Since Statoil has agreed to pay the maximum rates applicable under National Fuel's FT rate schedule, and since National Fuel has demonstrated that the project revenues exceed project costs, the Commission will allow National Fuel to roll the costs of the Northern Access Project, including its investment in the Station 230C Project, into its next section 4 rate case, absent any significant change in circumstances. Additionally, the Commission approves the use of National Fuel's system rates for the initial rates for the new capacity.²¹ Further, since National Fuel has shown that the increased compression will not increase its system fuel rate, it is authorized to charge the system fuel rate.²²

33. National Fuel states that the Rate Schedule FT service agreement included in the precedent agreement between National Fuel and Statoil deviates from its Rate Schedule FT *pro forma* service agreement in one aspect. Specifically, the agreement provides that the service commencement date shall be the later of September 1, 2012, or the date the project facilities are ready to be placed in service, provided that Statoil may elect to delay the commencement date to no later than November 1, 2012. National Fuel states that the non-conforming provision will allow Statoil to better align the commencement of service on the NSLL with the uncertain in-service date of the Northern Access Project facilities. Further, National Fuel states that this provision will not affect the character of service to

²¹ National Fuel has a total capacity entitlement of 348,145 Mcf/d (non-winter) and 380,988 Mcf/d (winter) of south-to-north capacity on NSLL. See Tennessee's June 15, 2011 Data Response.

²² See National Fuel's June 10, 2011 Data Response.

be received by Statoil under Rate Schedule FT, nor will the provision present any risk of undue discrimination to other customers.

34. The Commission finds that the non-conforming provision, as described by National Fuel, would constitute a material deviation from National Fuel's *pro forma* service agreement. The Commission finds that the non-conforming provision relating to the commencement date of the agreement to be permissible because it does not present a risk of undue discrimination and will not affect the operational conditions of providing service nor result in any customer receiving a different quality of service from that available to National Fuel's other customers.

35. When a contract deviates materially from the form of service agreement, the contract must be filed and made public.²³ The Commission requires disclosure of contracts with material deviations because the public disclosure of these agreements prevents undue discrimination through secret rates or terms. Accordingly, National Fuel must file not less than 30 days, or more than 60 days, before the in-service date of the proposed facilities an executed copy of the non-conforming agreement reflecting the non-conforming language and a tariff sheet identifying these agreements as non-conforming agreements consistent with section 154.112 of the Commission's regulations. In addition, the Commission emphasizes that the above determination relates only to that item as described by National Fuel in its application and not to the entirety of the precedent agreement or the language contained in the precedent agreement.

2. Tennessee

36. Tennessee proposes to offer service on its share of capacity created by the Station 230C Project as generally available capacity on its system at its existing system rate. Tennessee states that rolling its \$5.4 million share of the approximately \$20.1 million cost of the Station 230C Project into its existing rates in a future section 4 rate case will have essentially no impact on its existing rates. Tennessee notes that its \$5.4 million investment is lower than the Commission's \$10.6 million limit for automatic blanket certificate projects.²⁴ Tennessee requests the Commission make a pre-determination that it may roll the costs associated with the Station 230C Project into its system rates in a future NGA section 4 rate case.

37. While Tennessee states that rolling in its portion of the costs of the Station 230C Project will have only "a *de minimis* effect" on the rates of its existing customers, it has not demonstrated that such a roll in will not result in existing customers subsidizing the costs of the project. Tennessee has failed to establish that the general benefits described

²³ 18 C.F.R. § 154.1(d) (2011).

²⁴ 18 C.F.R. § 157.208(d) (2011).

by Tennessee as accruing to its existing customers are sufficient to justify a predetermination that Tennessee may roll in the costs of a project intended primarily to benefit new shippers of National Fuel.²⁵ However, Tennessee may indeed roll the costs of the Station 230C Project into its rates in its next section 4 rate case upon meeting its burden in that proceeding to show that doing so will not result in subsidization by existing customers. The Commission approves the use of Tennessee's system rates for the initial rates for the new capacity.²⁶

E. Environment

38. On March 29, 2011, the Commission issued a *Notice of Intent to Prepare an Environmental Assessment* (NOI). The NOI was mailed to interested parties including federal, state, and local officials; agency representatives; environmental and public interest groups; Native American tribes; local libraries and newspapers; and affected and local property owners. The Commission received 31 comments in response to the NOI regarding National Fuel's Northern Access Project. No comments on Tennessee's Station 230C Project were received. In addition, the Commission staff conducted a scoping meeting in the vicinity of National Fuel's proposed East Aurora Compressor Station on June 6, 2011.²⁷ Issues that were raised during public scoping primarily focused on the East Aurora Compressor Station and included concerns regarding potential impacts on geology and soils; water quality; recreational activities and visual resources; property values; air quality and noise (including blowdowns) and associated health impacts; and safety. Individuals also recommended review of alternative sites for the East Aurora Compressor Station and review of the cumulative impacts from natural gas production and transmission as a result of National Fuel's project. Further, commentors raised concerns about waste heat generation, hydraulic fracturing, and transportation of Marcellus shale natural gas.

39. To satisfy the requirements of the National Environmental Policy Act of 1969, the Commission's staff prepared an EA for the Northern Access Project and the Station 230C Project. The analysis in the EA addressed: geology and soils; water resources and wetlands; vegetation; wildlife and threatened and endangered species; land use, recreation, and visual resources; cultural resources; air quality and noise; reliability and safety; cumulative impacts; and alternatives. The EA also addressed all substantive scoping comments received in response to the NOI.

²⁵ See Certificate Policy Statement, 90 FERC ¶ 61,128 at 61,394 (2000).

²⁶ Tennessee has a total capacity entitlement of 200,282 Mcf/d (non-winter) and 219,175 (winter) of south-to-north capacity on NSLL. See Tennessee's June 15, 2011 Data Response.

²⁷ The Commission issued a notice of this scoping meeting on May 19, 2011.

40. As detailed above, the Northern Access Project includes, among other things, additional compression at National Fuel's existing Ellisburg Compressor Station in Potter County, Pennsylvania and the construction of the East Aurora Compressor Station in Erie County, New York. The 4,740-horsepower East Aurora Compressor Station will be built within a 4.2-acre parcel of land owned by both National Fuel and Tennessee. The station site is adjacent to existing natural gas infrastructure, including a meter station and the 200 Line pipeline owned by Tennessee, National Fuel's Line X, and the jointly-owned NSLL. In addition, Tennessee operated another compressor station, Station 230B, in the vicinity of this site before abandoning the station in 1996.²⁸ The East Aurora Compressor Station would receive gas from Line X and would discharge gas on the NSLL.

41. The EA concludes that the effects of the East Aurora Compressor Station would result in minimal impacts on geology, soil, and water quality and limited impacts on recreation, land use, visual resources, air quality, noise, and safety for the following reasons: (1) the compressor station would be built immediately adjacent to existing aboveground natural gas facilities and would not require any additional private lands for development; (2) National Fuel's proposed site design and visual screening plan would ensure that the views of the station from public roads, recreation trails, and private land are limited; (3) National Fuel would comply with all federal and state air quality regulations to ensure that operation of the station does not result in significant air quality impacts; (4) National Fuel's proposed noise mitigation and the Commission's staff's recommendations (environmental conditions 14 and 15 in the EA) would ensure that blowdown and operational noise from the station would not significantly impact nearby residents; and (5) National Fuel would comply with Part 192 of the U.S. Department of Transportation's *Minimum Federal Safety Standards* to ensure safe operation of the station. In addition, the EA found that the proposed East Aurora Compressor Station site is environmentally preferable to the alternatives analyzed. The EA also found that the proposed projects would result in limited cumulative effects associated with the Marcellus shale production activities.

42. The EA was issued for a 30-day comment period and placed into the public record on August 16, 2011. The Commission received comments on the EA from the Concerned Neighbors Network, the Towns of Wales and Aurora, and affected landowners and interested parties (James Dombrowski, Donna Fierle, Katherine Tussing, Sheila Miller, and Eve Ulrich). The commentors did not raise new concerns beyond those raised during scoping. National Fuel and Tennessee also provided comments.

²⁸ Tennessee removed all major aboveground facilities at the abandoned Station 230B site, but continues to maintain this site with monitoring and control equipment and piping facilities associated with its Line 200.

43. The Concerned Neighbors Network raised issues with the land use of the East Aurora Compressor Station site and the “overall quality change in the surrounding area that a compressor station would cause.” The Concerned Neighbors Network also states that “[w]hile there may be visual and sound buffers, the presence of a compressor station would change the nature of the neighborhood inevitably.” The EA states that the East Aurora Compressor Station site is in an area that already contains natural gas infrastructure, including a meter station, pipelines, and control and monitoring facilities. Furthermore, the site is in the immediate vicinity of Tennessee’s now-abandoned Station 230B. Therefore, the East Aurora Compressor Station is adjacent to and consistent with similar existing infrastructure and previous uses in the surrounding area.

44. Commentors expressed concern with the visual impacts on recreational activities and the general community surrounding the compressor station site. As stated in the EA, National Fuel has committed to mitigation measures such as locating pipeline below-grade to the extent practicable, using neutral color schemes and architecture to blend with surroundings, shielding facility lights, and leaving a natural tree buffer to shield the compressor station. In addition, National Fuel proposed to develop a visual screening plan to further reduce the impacts on the existing viewshed. The Commission will require (environmental condition 11) National Fuel to file a visual screening plan to ensure that it adequately addresses the visual concerns expressed by commentors. These measures will ensure that the compressor station does not adversely impact the quality of recreation activities in the surrounding area.

45. James Dombrowski, the owner of a residence near the East Aurora site, the Towns of Wales and Aurora, and Concerned Neighbors Network expressed concern regarding the depreciation of property values for homes located adjacent to the compressor station. As stated, the compressor station site is built in an area that currently contains aboveground natural gas facilities and at the interconnection of three natural gas pipelines (National Fuel’s Line X, Tennessee’s Line 200, and the NSLL). While it is possible that the addition of a compressor station could affect the resale value of surrounding property, the Commission finds the extent of such impact to be speculative and, on balance, not sufficient to alter our determination. In the absence of specific evidence to support the commentors’ concerns, the Commission cannot conclude that there would be a significant decrease in property values, particularly if National Fuel implements the visual plan required by environmental condition 11 and noise mitigation measures required by environmental conditions 14 and 15 (as discussed below). These noise conditions will ensure that the compressor station does not significantly affect nearby residents.

46. Several commentors expressed concern with the air quality impacts of the East Aurora Compressor Station, including its impacts on health. One commentor expressed concern with the potential for National Fuel to exceed its potential to emit air emissions for the station. Greenhouse gases (GHG) were also a concern. As stated in

section B.6.1 of the EA, the East Aurora Compressor Station will be a minor source of air emissions under the federal programs.²⁹ National Fuel is required to comply with all federal and state air quality regulations, including reporting requirements. The National Ambient Air Quality Standards (NAAQS) were established to protect human health (primary standards) and public welfare (secondary standards) and the East Aurora Compressor Station air emissions will be below the NAAQS thresholds for all criteria pollutants and hazardous air pollutants. Furthermore, National Fuel would be required to file actual emissions to the NYSDEC as part of its air quality permit. Although the compressor station would emit regulated air pollutants, the EA concludes that the emissions would not be a significant contributor to air quality deterioration. In regard to GHGs, National Fuel's emissions would fall below the significance threshold of 25,000 metric tons per year of carbon dioxide equivalents as set forth in the U.S. Environmental Protection Agency's *Mandatory Greenhouse Gas Reporting Rule*. The East Aurora Compressor Station would be considered a minor source of GHG emissions. The EA concludes that the East Aurora Compressor Station would not have a significant impact on air quality.

47. Commentors expressed concern with operational and blowdown noise associated with the East Aurora Compressor Station. James Dombrowski and the Towns of Wales and Aurora expressed concern with the predicted noise increase of 5.5 decibels (dB) at his property (approximately 850 feet from the compressor station site) for a total new ambient of 45.4 dB on the A-weighted scale (dBA). As stated in section B.6.2 of the EA, the predicted noise from the compressor station would be below the Commission's significance threshold of a day-night level of 55 dBA. In addition, environmental condition 14 requires National Fuel to make all reasonable efforts to meet its predicted noise levels. In a September 16, 2011 filing, National Fuel committed to meet its predicted noise levels. On September 23, 2011, National Fuel filed an updated noise survey based on a further-refined compressor station design. The new noise survey incorporated updated sound level data for the engine exhaust and inlet silencers, engine coolers, aboveground station piping, and further noise attenuation resulting from terrain and foliage shielding between the station and the nearest noise-sensitive areas (NSA). The new noise survey reported a potential noise increase at the nearest NSAs attributable to the compressor station to range from 0.2 to 2.6 dB, which are lower noise levels than was previously reported. National Fuel committed to implement the selected noise control measures described in the updated noise survey and make all reasonable efforts to achieve the updated predicted noise levels from the East Aurora Compressor Station at nearby NSAs.

²⁹ National Fuel received its air quality permit for the East Aurora Compressor Station from the New York State Department of Environmental Conservation (NYSDEC) on September 8, 2011.

48. Sarah Buckley, James Dombrowski, and Donna Fierle filed a joint comment letter on September 28, 2011. The comment letter requested that an independent noise study be conducted by “[a]n outside noise expert, without ties to the natural gas community.” The letter further states that “[t]here are no remedies and/or consequences for non-compliance and non-performance on the part of National Fuel.” Hoover and Keith, Inc., an independent noise consultant, conducted the original and revised noise surveys. As stated, the revised noise estimates and National Fuel’s commitment to meet those levels will result in reduced noise impacts at nearby residences. In addition to environmental conditions 14 and 15, which require in-service noise-surveys and landowner notification of blowdowns, environmental condition 1 requires National Fuel to follow all of its mitigation measures as outlined in its application, any supplements, and the EA. These conditions will ensure that National Fuel is accountable for any noncompliance.

49. Donna Fierle, on behalf of her father who is a landowner, expressed concern with the blowdown noise from the compressor station emergency shutdown system. D’Youville College operates its Hippotherapy (horse therapy) program on Mr. Fierle’s property, which is about a mile from the compressor station. Ms. Fierle was specifically concerned that blowdown noise from the compressor station would adversely affect the horses and children participating in the program. Since issuance of the EA, National Fuel has committed to install silencers on both the compressor units and the emergency shutdown system vents. As a result, all planned and emergency blowdowns will be much quieter at the East Aurora Compressor Station. National Fuel’s updated noise survey estimated the noise attributable to a compressor unit blowdown event to be 46 dBA at the nearest NSA to the compressor station. With implementation of these measures, operation of the compressor station will not result in any noise impact at the Hippotherapy program location. Even so, environmental condition 15 requires National Fuel to file a plan for notifying landowners of planned blowdowns.

50. Safety was a concern for several commentors. Section B.7 of the EA explains that the station must be designed, constructed, operated, and maintained in accordance with the U.S. Department of Transportation (DOT) *Minimum Federal Safety Standards* in 49 C.F.R. Part 192. The DOT regulations are intended to ensure adequate protection for the public and to prevent natural gas facility accidents and failures. The EA concludes that safe operation of the proposed project would be accomplished by National Fuel’s compliance with DOT’s regulations.

51. Several commentors stated that expansion of National Fuel’s existing Concord Compressor Station is a better alternative than the proposed East Aurora Compressor Station. The Concord Compressor Station expansion alternative, among others, was thoroughly evaluated in the EA. Although expansion of the Concord Compressor Station would have certain advantages, the EA found that National Fuel’s East Aurora Compressor Station, with proposed and recommended mitigation measures, is environmentally preferable to any of the alternatives evaluated. The Concord Compressor Station alternative would require about 15 miles of pipeline replacement and

additional compression at the existing Concord Compressor Station. National Fuel stated that it would likely need to construct the replaced segment adjacent to its existing pipeline to maintain gas service under the Concord Compressor Station expansion alternative. In addition to the pipeline replacement impacts described in the EA, this alternative may require additional permanent easements across 115 individual land parcels. According to National Fuel, the Concord Compressor Station expansion alternative would result in less efficient operation of its system and lack the operational flexibility of compression at the East Aurora site. The EA found no significant impacts associated with the East Aurora Compressor Station that would warrant requiring National Fuel to adopt the Concord Compressor Station alternative. Consequently, the Commission sees no compelling reason to require the Concord Compressor Station expansion alternative.

52. As an attachment to its September 16, 2011 comment, the Concerned Neighbors Network filed a petition signed by residents in the Towns of Wales and Aurora. The petition mentions the group's concern regarding, among other things about "hydro-fracking in Pennsylvania and New York State." As stated in the EA, the Northern Access Project does not directly involve hydraulic fracturing and the Commission does not regulate natural gas production.

53. National Fuel filed comments regarding project updates, minor corrections, and clarifications to the EA. Tennessee's comments on the EA likewise included minor corrections. None of these changed the analysis or conclusions presented in the EA.

54. The Commission has reviewed the information and analysis contained in the record, including the EA, regarding the potential environmental effects of National Fuel's and Tennessee's projects. Based on the Commission's consideration of this information, the Commission agrees with the conclusions presented in the EA and finds that if constructed and operated in accordance with National Fuel's and Tennessee's respective applications and supplements, and the environmental conditions imposed herein, approval of these proposals would not constitute a major federal action significantly affecting the quality of the human environment.

55. 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.³⁰

³⁰See, 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);

(continued...)

56. At a hearing held on October 20, 2011, the Commission on its own motion received and made a part of the record in these proceedings all evidence, including the applications, 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 pursuant to section 7(c) of the NGA and Part 157 of the Commission's regulations to construct and operate natural gas facilities as described and conditioned herein, and as more fully described in the application.

(B) A certificate of public convenience and necessity is issued to Tennessee pursuant to section 7(c) of the NGA and Part 157 of the Commission's regulations to construct and operate natural gas facilities as described and conditioned herein, and as more fully described in the application.

(C) The certificate authorities in Ordering Paragraphs (A) and (B) shall be conditioned on the following:

(a) National Fuel's and Tennessee's completing the authorized construction of the proposed facilities and making them available for service within one year of the issuance of this order pursuant to paragraph (b) of section 157.20 of the Commission's regulations;

(b) National Fuel's and Tennessee's compliance with all applicable Commission regulations, including paragraphs (a), (c), (e), and (f) of section 157.20;

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

(D) Tennessee is authorized under section 7(b) of the NGA to abandon its two 5,486 HP compressor units, as described and discussed in the body of this order.

(E) National Fuel and/or Tennessee shall notify the Commission's environmental staff by telephone, email, 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 and/or Tennessee. National Fuel and/or Tennessee

shall file written confirmation of such notification with the Secretary of the Commission (Secretary) within 24 hours.

(F) National Fuel must file not less than 30 days, or more than 60 days, before the in-service date of the proposed facilities an executed copy of the non-conforming agreement reflecting the non-conforming language and a tariff sheet identifying these agreements as non-conforming agreements consistent with section 154.112 of the Commission's regulations.

(G) National Fuel is directed to execute a firm contract equal to the level of service represented in its precedent agreement with Statoil prior to the commencement of construction.

(H) National Fuel's request for a predetermination for rolled-in rate treatment for the costs of the project in its next general NGA section 4 rate proceeding is granted, barring a significant change in circumstances, as discussed in the body of this order.

(I) Tennessee's request for a predetermination for rolled-in rate treatment for the costs of the project in its next general NGA section 4 rate proceeding is denied, as discussed in the body of this order.

(J) The untimely motions to intervene are granted.

By the Commission. Commissioner Spitzer is not participating.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

Appendix Environmental Conditions

1. National Fuel and Tennessee shall follow the construction procedures and mitigation measures described in their applications and supplements (including responses to staff data requests) and as identified in the EA, unless modified by the Order. National Fuel and Tennessee must:
 - a. request any modification to these procedures, measures, or conditions in a filing with the Secretary;
 - b. justify each modification relative to site-specific conditions;
 - c. explain how that modification provides an equal or greater level of environmental protection than the original measure; and
 - d. receive approval in writing from the Director of the Office of Energy Projects (OEP) before using that modification.
2. The Director of OEP has delegated authority to take whatever steps are necessary to ensure the protection of all environmental resources during construction and operation of the projects. This authority shall allow:
 - a. the modification of conditions of 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 and Tennessee shall each file an affirmative statement with the Secretary, certified by a senior company official, that all company personnel, environmental inspectors (EI), and contractor personnel will be informed of the EI's authority and have been or will be trained on the implementation of the environmental mitigation measures appropriate to their jobs **before** becoming involved with construction and restoration activities.
4. The authorized facility locations shall be as shown in the EA, as supplemented by filed alignment sheets. **As soon as they are available, and before the start of construction**, National Fuel and Tennessee 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 and Tennessee's exercise of eminent domain authority granted under NGA section 7(h) in any condemnation proceedings related to the Order must be consistent with these authorized facilities and locations. National Fuel's and Tennessee's right of eminent domain granted under NGA section 7(h) does not authorize them to increase the size of their natural gas facilities 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 and Tennessee shall each file with the Secretary detailed alignment maps and aerial photographs at a scale not smaller than 1: 6,000 identifying all 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/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 Sedimentation Control and Agricultural Mitigation Plan or Tennessee's Upland Erosion Control, Revegetation, and Maintenance 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 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 and Tennessee shall each file an Implementation Plan with the Secretary for review and written approval by the Director of OEP. National Fuel and Tennessee must file revisions to their respective plans as schedules change. Each plan shall identify:

- a. how the company will implement the construction procedures and mitigation measures described in its application and supplements (including responses to staff data requests), identified in the EA, and required by the Order;
 - b. how the company will incorporate these requirements into the contract bid documents, construction contracts (especially penalty clauses and specifications), and construction drawings so that the mitigation required at each site is clear to onsite construction and inspection personnel;
 - c. the number of EIs assigned, and how the company will ensure that sufficient personnel are available to implement the environmental mitigation;
 - d. company personnel, including EIs and contractors, who will receive copies of the appropriate material;
 - e. the location and dates of the environmental compliance training and instructions the company will give to all personnel involved with construction and restoration (initial and refresher training as the project progresses and personnel change);
 - f. the company personnel (if known) and specific portion of the company's organization having responsibility for compliance;
 - g. the procedures (including use of contract penalties) the company will 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. Beginning with the filing of its respective Implementation Plans, National Fuel and Tennessee shall file updated status reports with the Secretary on a **monthly basis until all construction and restoration activities are complete**. On request, these status reports will also be provided to other federal and state agencies with permitting responsibilities. Status reports shall include:
- a. an update on efforts to obtain the necessary federal authorizations;
 - b. the construction status of the projects, work planned for the following reporting period, and any schedule changes for stream crossings or work in other environmentally-sensitive areas;
 - c. a listing of all problems encountered and each instance of noncompliance observed by the EI(s) during the reporting period (both for the conditions

- imposed by the Commission and any environmental conditions/permit requirements imposed by other federal, state, or local agencies);
- d. a description of the corrective actions implemented in response to all instances of noncompliance, and their cost;
 - e. the effectiveness of all corrective actions implemented;
 - f. a description of any landowner/resident complaints which may relate to compliance with the requirements of the Order, and the measures taken to satisfy their concerns; and
 - g. copies of any correspondence received by the company from other federal, state, or local permitting agencies concerning instances of noncompliance, and National Fuel's or Tennessee's response.
8. **Prior to receiving written authorization from the Director of OEP to commence construction of their respective project facilities**, National Fuel and Tennessee shall each file with the Secretary documentation that it has received all applicable authorizations required under federal law (or evidence of waiver thereof).
 9. National Fuel and Tennessee must each receive written authorization from the Director of OEP **before placing their respective projects into service**. Such authorization will only be granted following a determination that rehabilitation and restoration of the areas affected by the projects are proceeding satisfactorily.
 10. **Within 30 days of placing their respective authorized facilities in service**, National Fuel and Tennessee shall each file an affirmative statement with the Secretary, certified by a senior company official:
 - a. that the facilities have been constructed in compliance with all applicable conditions, and that continuing activities will be consistent with all applicable conditions; or
 - b. identifying which of the certificate conditions National Fuel/Tennessee has complied with or will comply with. This statement shall also identify any areas affected by the project where compliance measures were not properly implemented, if not previously identified in filed status reports, and the reason for noncompliance.
 11. **Prior to construction of the Northern Access Project**, National Fuel shall file its visual screening plan for the East Aurora Compressor Station with the Secretary for review and approval by the Director of OEP. The plan shall, at a minimum, show the locations of facility components, roads, and parking areas, and shall include a description of the types and quantities of vegetation screening to be planted. The plan shall also describe how National Fuel's building design is consistent with the existing landscape and architecture.

12. Tennessee shall file a noise survey with the Secretary **no later than 60 days** after placing the authorized units at Station 230C in service. If the noise attributable to the operation of all of the equipment at Station 230C at full load exceeds a day-night level (L_{dn}) of dBA at nearby NSAs, Tennessee shall install additional noise controls to meet the level **within one year** of the in-service date. Tennessee 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.
13. National Fuel shall file a noise survey with the Secretary **no later than 60 days** after placing the authorized units at the Ellisburg Compressor Station in service. If the noise attributable to the operation of all of the equipment at the Ellisburg Compressor Station at full load exceeds an L_{dn} of 55 dBA at the nearby NSAs, National Fuel shall install additional noise controls to meet the level **within one year** of the station's 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.
14. National Fuel shall make all reasonable efforts to ensure its predicted noise levels from the East Aurora Compressor Station are not exceeded at nearby NSAs and file a noise survey showing this with the Secretary **no later than 60 days** after placing the East Aurora Compressor Station in service. However, if the noise attributable to the operation of the East Aurora Compressor Station at full load exceeds an L_{dn} of 55 dBA at any nearby NSAs, National Fuel shall file a report on what changes are needed and shall install additional noise controls to meet the level **within one year** of the in-service date. National Fuel shall confirm compliance with this requirement by filing a second noise survey with the Secretary **no later than 60 days** after it installs the additional noise controls.
15. **Prior to construction of the Northern Access Project**, National Fuel shall file with the Secretary for review and written approval of the Director of OEP a landowner notification plan for planned blowdowns of the East Aurora Compressor Station. The plan shall include notification procedures for landowners within a 0.5-mile radius of the station at least **two business days prior** to performing a planned station blowdown.