

153 FERC ¶ 61,202
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

National Fuel Gas Supply Corporation
and
National Fuel Gas Supply, LLC

Docket No. CP15-100-000

ORDER AUTHORIZING ABANDONMENT AND ISSUING CERTIFICATES

(Issued November 19, 2015)

I. Background

1. On February 26, 2015, National Fuel Gas Supply Corporation (National Fuel) and National Fuel Gas Supply, LLC (Supply LLC) (Joint Applicants) jointly filed an application seeking authorization for National Fuel, pursuant to section 7(b) of the Natural Gas Act (NGA), to abandon all of its jurisdictional facilities and services by transfer to Supply LLC and for Supply LLC, under NGA section 7(c), to acquire and operate National Fuel's jurisdictional facilities and to perform the services currently authorized to be provided, in the same manner as National Fuel is currently operating its facilities and performing its services. National Fuel states that it is seeking this authority in order to facilitate the change of the legal ownership structure of National Fuel from a Pennsylvania corporation to a Delaware limited liability company. The Commission approves the Joint Applicant's proposals, as discussed and conditioned below.

2. The Joint Applicants state that upon issuance of the authorization of the requested authorizations and the completion of the referenced corporate reorganization, Supply LLC would own and operate all of the jurisdictional and non-jurisdictional facilities currently owned and operated by National Fuel. The Joint Applicants state that Supply LLC was formed for the purpose of becoming the owner of the facilities, other assets and liabilities of National Fuel, to continue the presently authorized transportation and storage services currently being performed by National Fuel, and to create a more efficient business structure for National Fuel's operations, including increasing the financial flexibility of the business.

3. Subsequent to the restructuring, Supply LLC states it will assume all of National Fuel's service agreements, be subject to all Commission certificates, orders and directives formerly related to National Fuel, and will adopt the tariff and rates of National Fuel. Supply LLC intends to perform all transportation and storage services currently rendered by National Fuel under the same terms and conditions and at the same rates as National Fuel. Further, Joint Applicants state that as of the effective date of the restructuring, National Fuel will cancel its currently effective tariff and Supply LLC will file tariff records reflecting such abandonment, including filing the adopted tariff to reflect the proposed name change.

II. Notices and Interventions

4. Notice of Joint Applicant's application was issued on March 3, 2015, and published in the Federal Register on March 10, 2015 (80 Fed. Reg. 12,263). The notice established March 19, 2015, as the deadline for comments and interventions. Timely unopposed motions to intervene were filed by NJR Energy Services Company, Consolidated Edison Company of New York, National Fuel Gas Distribution Corporation, and National Grid Gas Delivery Companies. Timely, unopposed motions to intervene are granted by operation of Rule 214 of the Commission's Rules of Practice and Procedure.¹ No protests or adverse comments were filed.

III. Discussion

5. Because National Fuel's proposed abandonment pertains to facilities and services involving the transportation of natural gas in interstate commerce subject to the Commission's jurisdiction, National Fuel's proposal is subject to the requirements of section 7(b) of the NGA. Because Supply LLC proposes to acquire and operate facilities and provide services involving the transportation of natural gas in interstate commerce subject to the jurisdiction of the Commission, Supply LLC's proposal is subject to the requirements of sections 7(c) and 7(e) of the NGA.

6. As clarified below, the Commission permits National Fuel to abandon its facilities and services, and grants Supply LLC certificate authorities for all the facilities and services abandoned by National Fuel.

7. We note, however, that natural gas companies do not normally file for authorization under NGA sections 7(b) and (c) simply to accommodate name changes or changes in corporate structure, nor do Commission regulations require such authorization be obtained. The NGA defines "natural gas company" as a "person" engaged in

¹ 18 C.F.R. § 385.214(c) (2015).

transportation or sale of natural gas in interstate commerce.² It then defines “person” as including “an individual or a corporation.”³ Finally, “corporation” is defined expansively, such that a natural gas company may have one of many different corporate structures:

"Corporation" includes any corporation, joint-stock company, partnership, association, business trust, organized group of persons, whether incorporated or not, receiver or receivers, trustee or trustees of any of the foregoing, but shall not include municipalities as hereinafter defined.⁴

The NGA does not require that the Commission review or otherwise make a determination regarding the particular corporate structure chosen by a natural gas company.

8. As the Commission recently explained in *Enable Gas Transmission LLC*,⁵ Commission practice and precedent allow a company to change its name and even its corporate structure without seeking reissuance of its existing certificate authorizations, so long as it will continue to be the same company under the laws of the state in which it is organized and remain subject to all obligations and liabilities, including those imposed by the NGA and the Commission’s regulations. Prior to *Distrigas LLC*,⁶ when a company planned to change its corporate structure to become a limited liability corporation or limited partnership, the Commission had required that the company file an application under section 7 of the NGA for abandonment and new certificate authorizations to implement the transfer of jurisdictional facilities and service obligations to the new limited liability company or partnership. However, in *Distrigas LLC*, the Commission decided that the filing of an application for abandonment authority and reissuance of certificate authorizations was not necessary under the NGA to implement a change in corporate structure if state law ensures that the company will continue to be subject to all of the obligations and liabilities of its predecessor. The Commission therefore determined in *Distrigas LLC* that a change in policy was appropriate in these

² 15 U.S.C. § 717a(6) (2012).

³ 15 U.S.C. § 717a(1) (2012).

⁴ 15 U.S.C. § 717a(2) (2012).

⁵ 153 FERC ¶ 61,055 (2015).

⁶ 93 FERC ¶ 61,221, at 61,743-44 (2000).

circumstances to allow such restructuring without prior, affirmative approval by the Commission.⁷

9. The vast majority of natural gas pipelines (and also Federal Power Act (FPA) public utilities and Interstate Commerce Act (ICA) oil pipeline carriers) provide notice of name and corporate structures changes through a tariff filing within 30 days of the change and which bears the new name of the successor company.⁸ A precondition to making such a tariff filing is that a company is required to modify its Company Identifier's (CID) Company Profile under the Commission's Company Registration system to reflect its new name as it appears on its articles of incorporation or similar document.⁹ The Commission periodically posts the latest company name information on its website¹⁰ and the new name is reflected in real time on the Commission's electronic tariff Public Viewer.¹¹ Further, every regulated entity before the Commission, including natural gas pipelines without tariffs, has a continuing obligation to inform the Commission of any name changes.¹² These regulatory updating and notification requirements have proven over the years to satisfy the Commission's need to know the current names, addresses, and contacts for the regulated entities under our jurisdiction.

⁷ If a jurisdictional company's conversion to a limited liability partnership will involve other changes so that the new company will not be the same legal entity, then the company must file an application for Commission approval and NGA authorization to implement the change. *See, e.g., Ozark Gas Transmission System*, 84 FERC ¶ 61,002 (1998) (granting necessary authorizations under the NGA for newly formed limited liability company to acquire and operate the facilities of two existing jurisdictional interstate pipeline companies).

⁸ 18 C.F.R. §§ 35.16, 154.603 and 341.6 (2015) for the FPA, NGA, and ICA programs, respectively. Such changes often result in other changes, such as the address of the company or points of contact. Those changes, if any, are also required to be part of this tariff filing. 18 C.F.R. §§ 154.102(c)(2) and 341.3(b)(1)(viii) (2015).

⁹ *Instructions for Company Registration* (July 6, 2015), at p. 10, available at <http://www.ferc.gov/docs-filing/company-registration-instruct.pdf>.

¹⁰ *E.g.*: for NGA pipelines: <http://www.ferc.gov/industries/gas/gen-info/reg-fil.asp>.

¹¹ The Commission's eTariff Public Viewer is located at <http://etariff.ferc.gov/TariffList.aspx>.

¹² 18 C.F.R. § 385.2010(k) (2015).

10. The Commission does not necessarily agree with Joint Applicants that they need formal abandonment and certificate authority to implement their contemplated change in corporate structure. We note that most recent cases they reference date from 1998, which was prior to issuance in 2000 of the *Distrigas LLC* order discussed above. However, given the Joint Applicants' business judgment that affirmative action by the Commission will facilitate their corporate restructuring transactions, we will proceed to process their application.

IV. Abandonment and Certificate

11. The Joint Applicant's proposed restructuring involves no change in existing facilities, services, rates, tariff provisions, pending proceedings, or currently effective settlement agreements. National Fuel's transfer of all its jurisdictional facilities and operations to Supply LLC should assure that the new entity will have the same capability as the existing one to meet all customers' service expectations. All certificates, rates, and tariff provisions will remain in full force and effect, except as amended to re-designate Supply LLC in place of National Fuel. Thus, upon issuance of the requested abandonment approval and certificate authorization, Supply LLC will succeed to all of the interests of National Fuel and will be responsible for providing the same services at the same rates under the same tariffs as National Fuel.

12. In view of the above, we find that National Fuel's proposed abandonment, and Supply LLC's proposed acquisition and operation of National Fuel's certificated facilities and services, are permitted and required by the public convenience and necessity.

13. The Joint Applicants request an effective date of National Fuel's abandonment and Supply LLC's assumption of the certificates as of the date of the restructuring. The Commission grants the abandonment and certificate effective no earlier than the date of this order. Supply LLC is required to modify CID C000046's Company Profile to reflect the new name, to be effective no earlier than the date it submits the request. Supply LLC is required to file revised tariff records to reflect the changed name.¹³ National Fuel's currently effective electronic tariff format does not utilize subsections for the major components of its tariff.¹⁴ Further, National Fuel's currently effective tariff records

¹³ As National Fuel's Tariff Identifier (Tariff ID) 13's Tariff Title is sufficiently generic, National Fuel is not required to cancel Tariff ID 13 unless Supply LLC proposes a new Tariff ID.

¹⁴ 18 C.F.R. Part 154, Subpart B (2015).

utilize confusing tariff record section titles.¹⁵ Therefore, Supply LLC is required to revise its electronic tariff format to provide for subsections of the major components of its tariff and provide tariff record section titles that are more informative and remove duplicative information.

14. We find that the Joint Applicants' application to abandon and recertify facilities and services qualifies for a categorical exclusion from an environmental assessment. Accordingly, no environmental assessment or environmental impact statement was required in this proceeding.

15. At a hearing held on November 19, 2015, the Commission on its own motion received and made a part of the record in this proceeding all evidence submitted, including the application and exhibits supporting the authorizations sought, and after consideration of the record,

The Commission orders:

(A) Permission and approval for National Fuel to abandon its facilities and services by transfer to Supply LLC, as more fully described in the application and in this order are granted pursuant to NGA section 7(b).

(B) National Fuel shall notify the Commission upon completion of the abandonment within 10 days thereof.

(C) As of the effective date of the reorganization transferring National Fuel's facilities and service obligations to Supply LLC, all existing certificates currently held by National Fuel shall be amended individually to redesignate Supply LLC in place of National Fuel and Supply LLC shall be substituted for National Fuel as the applicant in all National Fuel proceedings pending before the Commission.

(D) The redesignated certificates of public convenience and necessity described in Ordering Paragraph (C) are issued to Supply LLC, pursuant to NGA section 7(c) authorizing Supply LLC to perform the jurisdictional services presently performed by National Fuel, as more fully described in the application and in this order.

¹⁵ *E.g.*: National Fuel Gas Supply Corporation, FERC NGA Gas Tariff, National Fuel Tariff, [14 – Alloc. & Imbalances](#), [14.5 – Adjustment of Receipts and Deliveries](#), [1.0.0](#), which appears to be Part 7, General Terms and Conditions (GT&C), Section 14.5, Adjustment of Receipts and Deliveries. This section title could be expressed as Part 7, GT&C 14.5, Adjustment of Receipts and Deliveries.

(E) The Ordering Paragraph (A) abandonment approval and the Ordering Paragraph (D) certificate authorizations are conditioned on Supply LLC continuing to perform all certificated services through the remaining term of National Fuel's customer's existing service agreements.

(F) The Ordering Paragraph (D) certificate authorizations are conditioned upon Supply LLC complying with all applicable Commission regulations, in particular Part 154 and section 157.20(a), (d), and (e).

(G) Supply LLC shall file tariff records reflecting National Fuel's abandonment by transfer of its facilities and services in accordance with section 154.603 of the Commission's regulations, and as further conditioned above.

(H) Supply LLC is ordered to submit its new tariff reflecting any name changes using its CID number through the Commission's Company Registration program, as described above.

(I) National Fuel and Supply LLC shall complete the transfer of facilities and the assignment of services authorized herein within one year of the date of issuance of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.