

14-T-0458

EXHIBIT AGM-3

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AG & MKT's COMMENTS ON

National Fuel Gas Distribution Corporation
Proposed Certificate Conditions
Case 14-T-0458

Comments by Department of Agriculture and Markets

December 30, 2014

EXHIBIT AGM-3
AG & MKTS STAFF'S
COMMENTS ON
NFG PROPOSED CERTIFICATE CONDITIONS

Proposed Certificate Conditions

i. National Fuel Gas Distribution Corporation ("National Fuel" or "Certificate Holder") is granted a Certificate of Environmental Compatibility and Public Need, pursuant to Public Service Law §121-a(3), authorizing construction of a natural gas transmission line and associated facilities as described in the Application (as supplemented) and in this order (referred to as the "Project"), subject to the following conditions:

(a) National Fuel shall apply the measures and techniques for environmental management, construction and restoration that are indicated in the Application, the approved Department of Public Service ("DPS") Environmental Management and Construction Standards and Practices ("EM&CS&P") (the specific measures and techniques that will be applied to the Project being set forth in a checklist in Attachment 1 hereto), and the Storm Water Pollution Protection Plan ("SWPPP"), a copy of which is included as Attachment 2 hereto.

(b) National Fuel shall report to DPS and Department of Environmental Conservation ("DEC") Staff any proposed changes to the approved Project, including but not limited to proposed changes to pipeline location or diameter, or the approved measures and techniques to be applied to the environmental management and construction of the Project. DPS Staff shall refer proposed changes that will not cause a substantial increase in environmental impact or a change in the location of any portion

of the certified site or right-of-way ("ROW") of the Project to the DPS Director of the Office of Energy Efficiency and the Environment ("OEEE") for approval. DPS Staff shall

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refer all other proposed changes to the Commission for approval. Upon being advised that DPS Staff will refer a proposed change to the Commission, National Fuel shall notify statutory and active parties to this proceeding, as well as property owners or lessees whose property is affected by the proposed change and the notice shall: (i) describe the original conditions and the requested change; (ii) provide documents supporting the request; (iii) identify the location of documents supporting the request; and (iv) state that persons may comment by writing to the Commission within fifteen (15) days of the notification date. National Fuel shall not execute any proposed change until it receives written notification from the Director of OEEE or the Commission, unless an emergency situation exists.

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(c) All aspects of the Project shall be subject to inspection by authorized representatives of DPS, DEC and the Department of Agriculture and Markets ("Ag & Mkts").

(d) National Fuel shall notify the Secretary of the proposed commencement date at least 10 days prior to the start of construction.

(e) At least 10 days prior to the start of construction, National Fuel shall designate a full-time environmental and construction monitor with stop-work authority over all aspects of the Project and a full time Construction Supervisor. The monitors and the Supervisor shall be on site during all phases of construction and restoration. The full-time Supervisor and the environmental and construction monitors shall be equipped with sufficient documentation, transportation, and communication equipment

to monitor effectively contractor compliance with the provisions of this order, applicable sections of the Public Service Law, the EM&CS&P, and the SWPPP.

(f) ~~National Fuel's Environmental Monitor shall monitor construction and restoration of the Project in active agricultural fields. If the Monitor is not qualified to do so, then National Fuel shall hire an Agricultural Specialist with sufficient agricultural construction and restoration experience to monitor construction and restoration of the Project in active agricultural fields.~~ National Fuel shall hire a full-time agricultural specialist to monitor construction and restoration of the pipeline project in active agricultural fields.

(g) At least 10 days prior to the commencement of construction, the name, contact information and qualifications of the Environmental Monitor and, where applicable, the Agricultural Specialist, shall be submitted to DPS Staff.

(h) National Fuel shall provide construction contractors with complete copies of the Certificate and subsequent Orders modifying the Certificate, the approved EM&CS&P, the approved SWPPP, updated construction drawings and any site-specific plans. National Fuel shall notify all construction contractors that the Commission may seek to recover penalties for violations of the Certificate, not only from National Fuel, but also from its construction contractors, and that construction contractors may also be liable for other fines, penalties and environmental damage caused.

(i) At least 10 days prior to the start of construction, National Fuel shall hold a pre-construction meeting. An agenda, location, and attendee list shall be agreed upon between DPS Staff and National Fuel. At a minimum DEC and Ag & Mkts

representatives shall be invited to the meeting. As part of the pre-construction meeting, Certificate Holder shall review with DPS Field Staff and National Fuel's contractor the

type of crossing method, erosion control measures, and materials used to install stream crossings. National Fuel shall supply draft minutes from this meeting to all attendees, and the attendees may offer corrections or comments. National Fuel shall issue the finalized meeting minutes to all attendees. If, for any reason, the pipeline contractor cannot finish the construction of the Project and a new pipeline contractor is needed, then another pre-construction meeting with the same format as outlined above in this Ordering Clause shall be held.

(j) At least 10 days prior to construction in active agricultural fields, representatives from Ag & Mkts, DPS Staff, National Fuel and its contractor shall conduct a field review of the Project to discuss compliance with the certificate conditions ~~recommendations of Ag & Mkts~~ regarding construction, restoration, and mitigation to be used in active agricultural fields, including vineyards. Agricultural mitigation, restoration and clean-up may include, but shall not be limited to the following: full-width topsoil stripping, removal of rock four inches or larger, importing of topsoil, surface or subsurface shattering, deep tillage, repair of broken tile or tiling systems, and installation of new intercept tiles.

(k) If blasting is necessary, at least 10 days before blasting operations begin on this Project, a meeting shall be held with DPS Staff from OEEE, and the Gas Safety Section, National Fuel, and National Fuel's contractor to discuss the blasting procedures to be used, along with other pertinent information. If any blasting is necessary in the immediate vicinity or in stream channels the blasting shall be performed when the stream channels are dry. If any blasting is necessary, at least

5 days before any blasting commences, the Certificate Holder shall notify, by letter, all

residents residing within 1,500 feet of the pipeline centerline in the blasting area of when blasting will commence, what residents might expect to hear, and a telephone number and name of a contact person available to answer questions. A copy of the letter shall also be filed with the Secretary.

(l) At least 10 days prior to the commencement of construction, National Fuel shall provide a copy of the permits it has obtained for the Project and a copy of all other plans and documents discussed in the body of this Order. The Certificate Holder shall comply with the terms and conditions of such permits.

(m) For property that will be acquired pursuant to the Eminent Domain Procedure Law, National Fuel shall file with the Secretary proof that it has filed a Notice of Acquisition pursuant to New York Eminent Domain Procedure Law § 402 at least 5 days before the commencement of construction on such property.

(n) Before pipeline construction may commence, both edges of the ROW and the certified extra workspace shall be staked and flagged; in addition, any wetland boundaries within the ROW shall be established by a certified wetland delineator.

(o) Prior to the commencement of construction, National Fuel shall file with the Secretary a copy of its Stormwater Discharge Notice of Intention filed with the DEC Bureau of Water Permits as well as a copy of the SWPPP.

(p) Prior to the commencement of construction, National Fuel shall obtain the consent of the NYS Department of Transportation ("NYSDOT") and/or the New York State Thruway Authority for crossing roadways under its jurisdiction, including the east

and west-bound lanes of Interstate 90, and shall file copies of these consents with the Secretary.

(q) Prior to the commencement of construction, National Fuel shall consult with each local department or agency having jurisdiction over public non-state roads that will be crossed by the pipeline or used for direct access to the ROW and receive all necessary approvals from such jurisdictional authorities.

(r) Prior to crossing any railroad right-of-way, National Fuel shall obtain all necessary crossing permits or consents from the applicable railroad and file such permits or consents with the Secretary.

(s) Prior to the commencement of construction, National Fuel shall make available to Staff a copy of construction standards that conform with 16 NYCRR §255.303; these standards shall encompass all phases of construction, including, but not limited to: welding procedure qualifications, welder qualifications, and non-destructive testing procedures.

(t) At least 30 days before construction commences, National Fuel shall submit an Appendix 7-D form (16 NYCRR Appendix 7-D) ("Appendix 7-D") to DPS Gas Safety Section in Albany and Buffalo.

(u) In the event of a change in the steel pipe coating, National Fuel shall amend Appendix 7-D to reflect the coating change and shall send it to DPS Gas Safety Section Staff.

(v) Should archeological materials, human remains or evidence of human burials be encountered during construction, National Fuel shall implement the Project's Unanticipated Discoveries Plan and stabilize the area and cease all construction activities in the immediate vicinity of the find, and protect the site from further damage. Within twenty-four (24) hours of such discovery, National Fuel shall also notify and consult with DPS Staff and the Office of Parks, Recreation and Historic Preservation ("OPRHP") Field Services Bureau to determine the best course of action.

(w) National Fuel shall follow the Ag & Mkts agricultural protection measures included in the document Pipeline Right of Way Construction Projects; Agricultural Mitigation Through the Stages of Project Planning, Construction/Restoration and Follow Up Monitoring (Rev 2-11) as well as the EM&CS&P.

(x) National Fuel shall perform all restoration in active agricultural fields when soil moisture conditions are suitable for construction equipment, as determined by DPS Field Staff in consultation with Ag & Mkts and National Fuel's agricultural specialist. ~~Where wet soil conditions are present, De~~compaction of the subsoil shall be required using a deep ripper or heavy duty chisel plow and shall be completed as determined when soil conditions have dried sufficiently ~~as determined~~ by the ~~Environmental Inspector or~~ Agricultural Specialist in consultation with Ag & Mkts and DPS Field Staff.

(y) If natural stratification of soil horizons or natural soil drainage patterns are altered by construction occurring on lands within or adjoined to agricultural areas, National Fuel shall rectify the effects with measures such as subsurface intercept drain

lines. The selection of the type of intercept drain line(s) to be installed to prevent surface seeps and the seasonally prolonged saturation of the backfilled trench zone and adjacent areas must be performed by the ~~Environmental Monitor~~ or Agricultural Specialist. All drain lines shall be installed according to the Natural Resource Conservation Service standards and specifications for subsurface drains and shall include the use of Schedule 40 or better outlet pipe and corrugated polyethylene drain that meet or exceed the American Association of State Highway and Transportation Officials M252 standards. Drawings of such drain locations shall be provided to DPS and Ag & Mkts' Field Staff during monitoring and follow-up remediation.

Add: The Applicant shall follow the Ag & Mkts agricultural protection measures included in the document Pipeline Right of Way Construction Projects: Agricultural Mitigation Through the Stages of Project Planning, Construction/Restoration and Follow Up Monitoring (Rev 2-11) as well as the EM&CP. The EMCP shall provide provide DPS Field Staff and the Commission Secretary with construction and restoration procedures and information on a parcel- by- parcel and/or a landowner- by- landowner basis, information which shall include but is not be limited to: removal and disposal of grape vines, row orientation, actual ROW width during construction and permanent ROW width, additional extra work room for spray equipment movement and turn around, and installation of brace posts in the vineyard rows. The Applicant shall follow the procedures recommended by the Ag & Mkts and/or the Cornell Co-operative Extension Grape Specialist, which and shall be discussed in detail at the Project preconstruction meeting.

Add: The Applicant shall work with farm operators during the planning phases of construction to develop a plan to delay the pasturing of the ROW following construction

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until pasture areas are adequately revegetated. The Applicant shall be responsible for maintaining the temporary fencing in pasture-designated parcels on, and along the ROW, until the Agricultural Specialist determines that the vegetation on the ROW is established and able to accommodate grazing; at such time, the Applicant shall remove the temporary fencing.

(z) National Fuel shall use bentonite or sand bag trench breakers in the pipeline trench to minimize erosion and washouts in and around the trench.

(aa) National Fuel shall use native upland and wetland seed mixes for both temporary stabilization and permanent restoration of the ROW.

(bb) Stream and wetland crossings, if bored, shall be subject to the following:

(i) exit and entry points shall be distanced from the stream bank so as to minimize disturbance, to the extent practicable; (ii) prior to boring, all sediment stabilization measures shall be in place to prevent unnecessary erosion and associated turbidity and sedimentation during boring and pre and post boring equipment installation; (iii) no increase in downstream turbidity or sedimentation is permitted during boring; (iv) any water accumulated in the isolated work area shall be managed in a manner that prevents a substantial visual contrast in the stream below the work area; and (v)

equipment and provisions described in the Contingency Plan for HDD Pipeline Installations included shall be readily accessible, for locations where streams are crossed using horizontal directional drilling technology.

(cc) The Certificate Holder shall locate boring pits as far as possible from the top of stream banks or wetland edges or at a minimum of 25 feet where feasible.

(dd) The drilling fluid used for HDD or boring activities shall be a mixture of freshwater, bentonite, and additives. Any additives used to enhance the drilling fluid or additive enhanced bentonite shall be environmentally safe and be approved for use by National Fuel. A material safety data sheet ("MSDS") and product description shall be submitted to DPS Staff 15 days prior to construction for any such drilling fluids or additives. MSDS sheets shall remain available on site during all HDD or boring activities. If new or different fluids or additives are proposed to be used, the Certificate Holder shall follow the change procedure set forth in Condition 1.b.

(ee) During periods of work activity, flow immediately downstream of the worksite shall equal flow immediately upstream of the worksite.

(ff) During open cut crossings, the dam and pump method, or other approved method, shall be used to prevent sedimentation and interruption of stream flow during construction. During the pipe installation at open cut crossings, there shall be no increase in turbidity downstream of the construction activity that will cause a substantial visual contrast to natural conditions, though some turbidity is expected during the

installation and removal of the dams and pump and with the first flush of water in the stream bed; this temporary increase in turbidity shall not be allowed to cause a sustained substantial, visual contrast to natural conditions.

(gg) For all stream crossings, the pre-disturbance flow regime shall be maintained.

(hh) National Fuel shall exercise all necessary and reasonable precautions to minimize sedimentation and soil erosion in work areas and on the ROW and shall take prompt and effective action to control sedimentation and erosion, in the event it does occur.

(ii) In areas of the ROW subject to soil erosion (including stream approaches), National Fuel shall install temporary erosion control devices as soon as practicable, but in no event later than the end of the work day.

(jj) Where final restoration of the ROW cannot be completed due to weather conditions, the ROW shall be temporarily stabilized according to the measures included in AG & Mkts' "Seeding, Fertilizing, and Line Recommendations for Gas Pipeline Right-of-Way Restoration in Farmland" and the EM&CS&P, until final restoration can be completed.

(kk) National Fuel shall seed and mulch the ROW, weather permitting, no more than 5 days after final grading. Fertilizer and lime application shall be applied where applicable.

(ll) National Fuel shall take all practicable steps to minimize the introduction and spread of invasive species within the ROW and shall apply the construction and maintenance activities included in National Fuel' Invasive Species Control Plan in order to limit the impact of invasive species on the ROW.

(mm) If any additional stacking or extra work room areas are needed, National Fuel shall follow the change process as outlined in Ordering Clause 1(b) above and shall provide evidence of the consent of the property owner to occupy that area.

(nn) National Fuel shall confine vegetation and tree removal to the minimum extent necessary for construction, operation and maintenance of the authorized Project. During clearing operations, all brush and trees shall be felled into the ROW to minimize damage to trees and structures on adjacent land.

(oo) In connection with the clearing of trees or incompatible vegetation, National Fuel shall: (i) not clear or alter any area outside the boundaries of the ROW and vegetation management easement without prior notice to the owner(s) of the land to be cleared or altered, and National Fuel also shall cause contractors in its employ to comply with this prohibition; (ii) negotiate in good faith with each landowner appropriate compensation for the merchantable timber that National Fuel has determined will be cleared; (iii) comply with the provisions of 6 NYCRR Part 192, Forest Insect and Disease Control, and Environmental Conservation Law § 9-1303 and any quarantine orders issued thereunder; (iv) chip or stack non-merchantable woody debris resulting from clearing the ROW for the Project, unless removed from the ROW; (v) not create a

maximum chip depth greater than three inches, except for chip roads; and (vi) not store merchantable timber or chips in wetlands, active agricultural fields, or within 25 feet of streams.

(pp) The maximum pressure of the pipeline shall not exceed 760 pounds per square inch gauge. National Fuel shall design, construct, test, operate and maintain the pipeline in accordance with the provisions of 16 NYCRR Part 255 (or 49 CFR Part 192, whichever is more stringent) applicable to gas transmission lines.

(qq) National Fuel shall be a member of the one-call notification system in the area where the Project is located and shall comply with the requirements for excavators and operators for the protection of underground facilities set forth in 16 NYCRR Part 753.

(rr) National Fuel shall notify Dig Safely New York (and update its system maps as necessary) of the addition of the Project prior to the Project's in-service date so that it is included in the one call notification system.

(ss) National Fuel shall comply with the Integrity Management Requirements as found in 16 NYCRR Part 255.

(tt) National Fuel shall comply with its Operation and Maintenance Plan and Emergency Procedures, as required by 16 NYCRR §§255.603(b) and 255.615. In addition, National Fuel shall comply with its program for operator qualification, as required by 16 NYCRR §255.604.

(uu) National Fuel shall non-destructively test 100 percent of the welds for the pipeline.

(vv) At least 5 days prior to commencement of any welding activities, National Fuel shall notify Gas Safety Section Staff of the date, time, and place of any new welding procedure qualification or new welder qualification tests to be conducted. The Certificate Holder shall designate full-time welding inspector(s). The welding inspector(s) shall be present anytime there is active welding to ensure that the welding is being performed in accordance with the qualified procedure under 16 NYCRR §255.225.

(ww) At least 10 days before hydrostatic testing commences, National Fuel shall provide to DEC Staff and DPS Gas Safety Section Staff, the information concerning the hydrostatic testing of the pipeline. Also, at least 5 business days prior to starting the pre-activation strength test, the operator shall notify the Director of the Office of Electric, Gas and Water, and Gas Safety Section Staff.

(xx) At least 7 days before hydrostatic testing commences, National Fuel shall notify all residents residing within 1,500 feet of the pipeline centerline where hydrostatic testing equipment is located by letter explaining when testing will commence and what they might expect to hear, as well as a Company name and contact telephone number. A copy of the letter shall be filed with the Secretary.

(yy) All wastewater shall be handled, stored, tested, transported and disposed of in accordance with all applicable federal, State and local laws and regulations.

(zz) National Fuel shall make available to DPS Gas Safety Section Staff the mill certification corresponding to the steel pipeline being used.

(aaa) With regard to the construction of any Project-related building, the Certificate Holder shall comply with the State Building Code as follows:

- i. Before the start of construction of any Project related building, the Certificate Holder shall first obtain review and written certification by a public entity, or qualified professional recognized by the Department of State as having the requisite training or qualifications that the construction plans are in compliance with the New York State Uniform Fire Prevention and Building Code;
- ii. Within 10 days of receiving any written certification as described in “i” above, the Certificate Holder shall file a copy of such certification with the Secretary;
- iii. During the construction of any Project related building, the Certificate Holder shall make such building site available for reasonable inspection by the public entity issuing the Certification reference in “i” above to check for compliance with the New York State Uniform Fire Prevention and Building Code;

- iv. Prior to the use or occupancy of any Project related building, the Certificate Holder shall first obtain written certification by a public entity or qualified professional recognized by the Department of State as having the requisite training or qualifications that the construction was completed in compliance with the New York State Uniform Fire Prevention and Building Code; and
- v. Within 10 days of receiving any written certification as described herein, the Certificate Holder shall file a copy of such certification with the Secretary.

(bbb) Within 90 days of construction completion, National Fuel shall file as-built drawings of the Project with the Secretary and provide hard copies to Staff of OEEE and to Gas Safety Section Staff.

(ccc) Within 10 days after the ROW is completely restored, National Fuel shall so notify the Secretary in writing.

(ddd) Within 10 days after the Project is in service, National Fuel shall so notify the Secretary in writing.

(eee) To the extent practicable and weather permitting, within one growing season after the in-service date of the Project, the ROW shall be fully restored pursuant to the EM&CS&P.

(fff) National Fuel shall promptly notify DPS Staff and the Secretary in writing should it decide not to complete construction of all or any portion of the Project and shall serve a copy of such notice upon all statutory parties.