September 8, 2016

By FEDERAL EXPRESS

Mr. Michael Higgins
New York State Department of Environmental Conservation
Division of Environmental Permits & Pollution Prevention
625 Broadway, 4th Floor
Albany, New York 12233
(518) 402-9167

RE: Supplement to Joint Application for Permits in Response to NYSDEC Comments
Northern Access 2016 Project
National Fuel Gas Supply Corporation and Empire Pipeline, Inc.

Dear Mr. Higgins:

On behalf of National Fuel Gas Supply Corporation and Empire Pipeline, Inc. (collectively, “National Fuel”),¹ please find the enclosed supplement (“Supplement”) to National Fuel’s February 29, 2016 Joint Application for Permits (“Application”) under Sections 401 and 404 of Clean Water Act (“CWA”), and Articles 15 and 24 of the Environmental Conservation Law for the proposed Northern Access 2016 Project (“Project”). The Supplement is provided to the New York State Department of Environmental Conservation (“NYSDEC”) as part of National Fuel’s cooperation in the agency’s ongoing review of the Application and should not in any manner be construed as a re-submittal of the Application by National Fuel. More specifically, the Supplement is provided to address NYSDEC’s comments concerning the Application, as discussed during a June 15, 2016 meeting between National Fuel and NYSDEC staff held at NYSDEC Headquarters, and a subsequent letter from NYSDEC to National Fuel, dated August 4, 2016. To assist in NYSDEC’s further review, we have also attached a comment response tracker (“Tracking Matrix”) that lists each of NYSDEC’s comments on the Application, and

¹ National Fuel Gas Company (“Company”), the parent company of National Fuel Gas Supply Corporation and Empire Pipeline, Inc., has operated as a New York State company for over 110 years, and through its affiliates, employs 1,276 employees and supports 1,573 retirees within Western New York, and supplies natural gas to over 740,000 residential and corporate customers throughout Western New York and northwestern Pennsylvania. The Company has had a successful environmental construction record in New York, and a good working relationship with NYSDEC. As a New York State company, National Fuel is confident it will implement the project in compliance with applicable environmental permits and requirements.
National Fuel’s responses to the same, with corresponding pages in the Supplement and/or Application provided to identify where the comment is (or was already) addressed.

Pursuant to the Natural Gas Act ("NGA"), National Fuel is required to obtain a “certificate of public convenience and necessity" ("CPCN") for the Project from the Federal Energy Regulatory Commission ("FERC"), which has exclusive authority to regulate the sale and transportation of natural gas in interstate commerce. 15 U.S.C. § 717(2). FERC is also the lead agency under the National Environmental Policy Act of 1969 ("NEPA") for the siting of interstate natural gas infrastructure, and therefore is responsible for assessing the environmental impacts of proposed interstate natural gas pipeline projects pursuant to NEPA under its regulatory standards outlined in 18 CFR Part 380. Pursuant to its responsibilities under NEPA, on July 27, 2016, FERC issued an Environmental Assessment ("EA") for the Project. In the context of its review under the EA, FERC examined the identical issues that NYSDEC is reviewing in the context of National Fuel’s Application. To facilitate NYSDEC’s review of the Application, National Fuel specifically incorporates by reference the analysis and findings of the EA related to the Application, particularly those related to water resources, vegetation, and fisheries and wildlife.

While National Fuel understands that it must also obtain a water quality certificate from NYSDEC pursuant to Section 401 of the CWA, to the extent the Application or Supplement thereto provides information pertaining to state law only, please be aware that NYSDEC should not interpret National Fuel’s cooperation to date as a waiver of any rights and remedies available to it under state and federal law to challenge any determination (or lack thereof) made by NYSDEC on the Application. Indeed, National Fuel wants to make clear that it expressly reserves all of its available rights and remedies under state and federal law. Notwithstanding the foregoing, National Fuel fully intends to comply with state permitting requirements that NYSDEC deems applicable to the Project so long as NYSDEC’s implementation of the same is not inconsistent with the CPCN, once issued, and does not prohibit or unreasonably delay the construction and operation of the Project.

As exhibited by the Application and Supplement thereto, National Fuel has selected the proposed route for the Project with the specific intention of minimizing impacts to associated freshwater

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2 National Fuel takes issue with NYSDEC’s statement, in its August 25, 2016 comment letter to FERC, that “[m]any details pertaining to this Project with respect to ensuring that the project will meet water quality standards remains incomplete,” which presumes that FERC’s independent analysis in the (487-page long) EA is the only analysis regarding water quality impacts. Obviously, NYSDEC does not intend to rely just on the EA in making its determination on the Application, but also on the completely separate information and analyses provided in the Application and Supplement. Based on the comprehensive nature of the Application and Supplement, as well as the analysis in the EA, National Fuel disagree that NYSDEC needs any further information to process the Application.

3 For example, NYSDEC’s review of the impacts of the Project on upland endangered or threatened species (such as the Northern Long Eared Bat) are inappropriate in the context of its review of the Application, as such impacts bear no relationship to water quality and, thus, are outside of NYSDEC’s limited purview under Section 401 of the CWA. Similarly, NYSDEC’s references to the generic “natural resource impacts” in its September 21, 2015 letter concerning the WQC for the Project are overbroad in the context of its limited jurisdiction under Section 401 to navigable waters of the state.
wetlands, streams and ponds, to the extent practicable. As evidence of its impact minimization measures, National Fuel wishes to highlight the following:

- The proposed Project pipelines have been routed along existing utility and other corridors for approximately 78% of the total length;

- National Fuel does not propose the wet open cut trenched crossing of any streams;

- National Fuel has performed substantial analysis of the feasibility of implementing trenchless crossing techniques at streams and wetlands NYSDEC identified as warranting this analysis, as documented in National Fuel’s original Trenchless Crossing Feasibility Analysis, as well as its Revised Trenchless Crossing Feasibility Analysis submitted herewith;\(^4\)

- National Fuel proposes five (5) separate areas where the pipeline will be installed using trenchless crossing techniques, which will result in a total of 13 stream/wetland resources being crossed via either a horizontal directional drill (“HDD”) or conventional subsurface bore;

- In the Application, National Fuel had already proposed route changes to avoid and minimize impacts to specific resources of NYSDEC concern; those route changes remain incorporated in the Application;

- National Fuel does not anticipate the need for blasting in streams or wetlands on this Project;

- The Project would not result in the addition of permanent fill in any wetlands. Permanent wetland impacts have been limited to fewer than three (3) acres of permanent conversion of forested/woody wetland covertype to emergent and shrub wetland covertypes. National Fuel is proposing to provide compensatory mitigation for these wetland impacts using a variety of components that are fully adequate to compensate for the impacts, as described in the Application and the Supplement;

- National Fuel is proposing to replant riparian areas along trout streams where existing overhanging vegetation would need to be cleared for pipeline right-of-way (“ROW”), in

\(^4\) As confirmed by Josh Thiel (NYSDEC) during the aforementioned June 15, 2016 meeting, and as contemporaneously documented by National Fuel via its meeting minutes (which were provided to NYSDEC on June 27, 2016), National Fuel’s trenchless feasibility analysis includes all of the stream crossings NYSDEC “required” per its September 21, 2015 letter to National Fuel. National Fuel provided that analysis to address NYSDEC staff’s categorical preference for trenchless crossings. National Fuel has updated its analysis as part of the Supplement, although it continues to disagree with staff’s categorical preference, which is not based on any known scientific studies or guidance issued by the agency. Indeed, staff is applying this categorical preference to the Project without having gone through any rulemaking in violation of the State Administrative Procedure Act.
order to address NYSDEC’s concerns regarding thermal impacts as a result of clearing shade vegetation;\(^5\)

- National Fuel has obtained 76% of the landowner agreements for the ROW easements and aboveground facilities; and

- National Fuel has performed the Vertical Adjustment Potential analysis requested by NYSDEC, and as a result plans to increase its standard six (6) foot depth of cover of the pipeline (already in excess of the required burial depth per federal safety codes) for six (6) streams in order to minimize the chance of a stream exposure requiring additional in stream activity.

In sum, National Fuel believes the Application as supplemented is now complete, with content and analysis above and beyond what NYSDEC has previously required for similar applications. It is National Fuel’s understanding that the totality of NYSDEC’s requests for supplemental information regarding the Application were either outlined in the June 15, 2016 meeting or in the agency’s letters to date on this matter. National Fuel thus presumes at this point that NYSDEC does not need any further information to process the Application pursuant to the requirements of the Uniform Procedures Act – 6 NYCRR Part 621. Because of the lengthy delay in reviewing National Fuel’s application to date, we would appreciate if NYSDEC would let National Fuel know as soon as possible if this is not the case.

While we have endeavored to address all of NYSDEC’s comments, some of the comments made by the agency in its August 4\(^{th}\) letter were somewhat ambiguous, requiring National Fuel to make certain assumptions regarding precisely what was meant by a comment. Listed below are some of the ambiguous comments and National Fuel’s interpretation of the same. National Fuel requests that NYSDEC notify National Fuel as soon as possible if it disagrees with National Fuel’s interpretation.

- \(p. 3\), section on “Wetland Mitigation” – “Tetra Tech indicated it will provide a summary of this proposal for Department review.”

National Fuel would like to clarify that the initially submitted Application contained a conceptual mitigation plan with measures for both stream and wetland impacts, which included impact avoidance and minimization measures for streams and wetlands, as well as compensatory mitigation specifically for the permanent conversion of forested riparian and wetland areas. See Application, Sections 4.1.3.1 [p. 36] and 4.2.3.1 [p. 42-46] concerning National Fuel’s compensatory mitigation proposal. National Fuel

\(^5\) NYSDEC has not provided National Fuel with any scientific data or literature to support its concerns regarding thermal impacts resulting from the clearing of shade vegetation. Additionally, National Fuel wishes to note that, to the extent NYSDEC intends to rely on its water quality standards governing thermal discharges (see 6 NYCRR § 704.2, such reliance is inconsistent with the plain language of NYSDEC’s regulations and is contrary to NYSDEC’s long-standing application of those standards.
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Michael Higgins, Project Manager

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acknowledges that, with the spring 2016 completion of the final approximately 1 mile of wetland delineation surveys, the Project’s total impact acreage has changed slightly since the Application was submitted. National Fuel further acknowledges NYSDEC’s preference of a direct presentation of the impacts to benefits based on wetland functions and values, and a more detailed breakdown of certain impact parameters. We provided this in the enclosed supplement. In addition, the presentation of the mitigation plan has been updated to address technical comments received from the U.S. Army Corps of Engineers – Buffalo District. As National Fuel has not received substantive comments from NYSDEC on this conceptual compensatory mitigation proposal (which was submitted more than 6 months ago to NYSDEC), it is National Fuel’s understanding that the concept plan presented in the Application is sufficient. To the extent that NYSDEC does have any concerns with respect to National Fuel’s compensatory mitigation proposal (such as concerns about acceptability of concept or locations), National Fuel requests that NYSDEC inform it of such concerns as soon as reasonably possible, as mitigation planning is a long lead-time item.

- p. 6, “Vertical Assessment Potential” – “A 100-year storm flow event should be used in this analysis. The WQC application must also address climate change impacts, so the use of a 100-year storm event would be conservative.”

We interpret the statement that National Fuel must “address climate change impacts” as part of the WQC application to be limited to use of the 100-year storm event.

In addition, based on its desktop and field wetland delineation survey for the Project, National Fuel submitted to NYSDEC, on multiple occasions, shape files depicting New York State freshwater wetlands (“FWW”) boundaries and adjacent wetland buffer areas. However, to date, NYSDEC has not provided National Fuel with any confirmation concerning these submittals. As such, National Fuel’s interpretation is that the FWW boundaries and adjacent wetland buffer areas depicted in its submittals are acceptable to NYSDEC. National Fuel requests that NYSDEC notify National Fuel as soon as possible if it disagrees with National Fuel’s interpretation.

Although National Fuel is resubmitting the majority of the Application components in this supplemental filing, the majority of all changes to the Application are in response to formatting comments from USACE and NYSDEC, and this revised Application is designed to support further supplements (if necessary) and tracking by using versioning and dates, which are now provided on the footnote of each page. National Fuel intends that the information contained within this supplemental Application supersedes the previously submitted information, but requests the following components of the previously submitted Application (February 2016) to be retained as part of the complete Application:

1. Attachment C –
   a. Aquatic Resources Report
   b. Supplemental Resources Report
   c. Killian Road Wetland Report
   d. Liberty Drive Wetland Report
2. Attachment D – National Fuel’s ESCAMP
3. Attachment G – Agency Correspondence
4. Attachment H – Threatened and Endangered Species Reports.

National Fuel hereby provides two (2) hard copies of the Supplement package to you in the NYSDEC’s Albany, New York office and two (2) compact disks (CDs) with electronic files of the complete application. In addition, National Fuel has separately provided one (1) paper copy and two (2) CDs to the attention of Chuck Rosenburg in the NYSDEC Region 9 Buffalo Office, and one paper copy and two (2) CDs to the attention of Anne Rothrock and Michael Clancy in the NYSDEC Region 9 Allegany Office. National Fuel is also sending a copy and CDs directly to Joseph Rowley of the USACE, Buffalo District Office.

National Fuel would like to schedule a meeting with NYSDEC as soon as possible, but no later than September 21, to discuss the Supplement, including any questions that NYSDEC may have with respect to the Supplement. Additionally, as previously expressed to NYSDEC staff, National Fuel remains very interested in setting up periodic calls (on a weekly or bi-weekly basis) to discuss any open issues with respect to the Application, and to continue to progress the review process.

National Fuel appreciates your continued review of, and attention to, the Application. If you have any questions or need additional information, please contact Sandy Lare (Tetra Tech) at 716-849-9419 x110 or sandy.lare@tetratech.com, or Bruce Clark (National Fuel) at 814-871-8518 or ClarkR@natfuel.com.

Sincerely,

Ronald C. Kraemer
Senior Vice President, National Fuel Gas Supply Corporation
President, Empire Pipeline, Inc.

Enclosures

cc: Chuck Rosenberg, NYSDEC Region 9 Buffalo Office (w/ enclosures)
    Anne Rothrock/Michael Clancy, NYSDEC Region 9 Allegany Office (w/ enclosures)
    Joseph Rowley, USACE Buffalo District (w/ enclosures)
    Bruce Clark, Sr. Environmental Compliance Manager, National Fuel (w/ enclosures)