



National Fuel

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Division of Corporation Finance
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

Re: File Number S7-42-10
Section 1504 of the Dodd-Frank Wall Street Reform and Consumer Protection Act
Proposed 17 C.F.R. §229.105

We appreciate the opportunity to contribute to the Securities and Exchange Commission's (the "Commission") rulemaking process regarding the implementation of Section 1504 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Dodd-Frank Act"). Our specific proposed revision to the rule proposed in Release 34-63549 appears in the next-to-last paragraph of this letter.

National Fuel Gas Supply Corporation ("we" or "us") is most of the Pipeline and Storage business segment of National Fuel Gas Company (NYSE:NFG). We specialize in transporting and storing natural gas in interstate commerce for utilities, other pipeline companies, marketers, and energy generators in the northeastern United States. We own and operate a 2,500-mile web-like pipeline network extending from the Canadian border at the Niagara River, southeast to the Ellisburg-Leidy (Pennsylvania) Hub, and west to the Pennsylvania-Ohio border. We also own and operate thirty-one underground natural gas storage fields (four of which are co-owned and operated).

To fulfill the mandate of Section 1504 of the Dodd-Frank Act, the Commission's stated intent is to develop rules that require resource extraction issuers to provide:

information relating to any payment made by it, a subsidiary, or an entity under its control to a foreign government or the U.S. Federal Government ... for the purposes of the commercial development of oil, natural gas, or minerals.¹

To ensure that only payments made for the purpose of, and by entities engaged in, the commercial development of such resources are reported, these rules need to clearly define "commercial development."

The preamble to the proposed rule says that the Commission intends to define commercial development of oil, natural gas, or minerals as including the "exploration, extraction,

¹ Proposed Rule at 75 FR 80978-9

processing, export, and other significant actions relating to oil, natural gas, or minerals, or the acquisition of a license for any such activity.”² The preamble explains that the Commission does not consider the transportation of such natural resources to be included in the definition of commercial development of them, without defining or listing the activities the Commission would consider to be the “transport” of oil, natural gas, or minerals.³

To ensure that transportation activities are excluded from the definition of commercial development in its final rule, and that the Commission’s intent is aligned with other agency and industry understanding, we urge the Commission to state explicitly within the rule that commercial development of oil, natural gas, or minerals does not include transportation activities and that transportation activities include the underground storage of natural gas.

This would be consistent with the long-standing position of the Federal Energy Regulatory Commission (“FERC”), which has jurisdiction over interstate transportation of natural gas pursuant to the Natural Gas Act of 1938 and the Natural Gas Policy Act of 1978. FERC regulations include the storage of natural gas in its definition of transportation at 18 CFR 284.1(a). All underground natural gas storage fields engaged in interstate commerce, including ours, are comprehensively regulated by FERC.

Our underground natural gas storage fields have long been used to store gas that was initially produced elsewhere. Underground storage of natural gas includes our receipt of natural gas, usually in the summer, from customers who own that gas, and our injection of that gas into depleted underground natural gas production fields through our wells in those fields. When our storage customer wants his gas back, often during the winter season, we withdraw the gas through those wells and deliver the stored gas back to the customer who owns it.

These former production fields were commercially developed decades ago, and produced native natural gas until it no longer made economic sense to continue. The wells in these fields no longer produce new native natural gas. Decades ago (our oldest storage field was converted to storage in 1916, the newest ones in the 1980s), we converted these former production fields into underground natural gas storage fields. The conversion of depleted production fields into storage fields after 1938 was done under authorization granted by FERC or its predecessor agency the Federal Power Commission.

These former production fields that have been converted into underground natural gas storage fields look, on the surface, much like active production fields - the facilities include gas wells connected to pipelines - but these storage fields have nothing to do with the commercial development and extraction of native natural gas resources. These storage fields (and related

² Proposed Rule at 75 FR 80981

³ Proposed Rule at 75 FR 80981

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storage facilities such as compressors, pipelines, etc.) simply provide delayed transportation of natural gas that was first produced elsewhere.

A clear definition of transportation, that explicitly includes underground natural gas storage, would prevent the Commission from requiring that payments to the federal government for underground natural gas storage be reported, incorrectly, as payments related to the commercial development of natural gas resources.

If payments made to the federal government for the purpose of storing natural gas were reported as payments for the "commercial development" of natural gas, that would be inaccurate and misleading to the Commission and the public, because it would inappropriately include transportation costs that the Dodd-Frank Act and the Commission intend to exclude.


To fulfill its intended purpose and clearly communicate the type of payments required to be reported, we suggest that proposed 17 C.F.R. §229.105(b)(1) should read as follows:

- (1) Commercial development of oil, natural gas, or minerals includes exploration, extraction, processing, export, and other significant actions relating to oil, natural gas, or minerals, or the acquisition of a license for any such activity. Commercial development of oil, natural gas, or minerals excludes the transport of such materials for any purpose other than their export. Transport of natural gas includes the underground storage of natural gas.

Thank you for the opportunity to comment on the Commission's rule making and implementation of §1504 of the Dodd-Frank Act. If you would like to discuss this matter further or have any questions please do not hesitate to contact me.

Sincerely,

National Fuel Gas Supply Corporation

By: 
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Secretary and General Counsel