

117 FERC ¶ 61, 186
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Sudeen G. Kelly, Marc Spitzer,
Philip D. Moeller, and Jon Wellinghoff.

National Fuel Gas Supply Corporation

Docket No. AC06-253-001

ORDER DENYING REHEARING,
REQUEST FOR STAY AND CEII DESIGNATION

(Issued November 15, 2006)

1. On October 16, 2006, National Fuel Gas Supply Corporation (National Fuel) filed a request for rehearing of the October 2, 2006 letter order denying confidential treatment of the system map and certain compressor station information included in National Fuel's FERC Form No. 2 for the calendar years 2001-2005.¹ National Fuel requests that the Commission designate the data as Critical Energy Infrastructure Information (CEII), pursuant to section 388.113(c)(1) of the Commission's regulations,² and requests that the Commission not make the data available to the public prior to its consideration of the rehearing request. In this order we deny the request for rehearing, CEII classification, and stay.

Background

2. On October 2, 2006, a letter order was issued by the Director of the Office of Enforcement, pursuant to delegated authority, denying National Fuel's request for confidential treatment of certain data reported in National Fuel's FERC Form No. 2.³

¹ *National Fuel Gas Supply Corporation*, Docket No. AC06-253-000 (October 2, 2006) (October 2 letter order) (unreported).

² 18 C.F.R. § 388.113(c)(1) (2006).

³ In its 2001-2005 FERC Form 2, National Fuel marked as Privileged Data the following schedules: (i) Compressor Station – p. 508, lines 1-23 (2001 FERC Form 2); (ii) Compressor Station – p. 508, lines 1, 3-5, 7-23 (2002 FERC Form 2); (iii) System
(continued...)

The letter order noted that National Fuel had not submitted a letter requesting confidential treatment or provided any justification for its assertion that the material should be confidential. *See* 18 C.F.R. § 388.112(b)(1). Rather, National Fuel simply marked the schedules as “Privileged Data” using the Commission’s form submission software.

3. The October 2 letter order stated that FERC Form No. 2 data is and always has been treated as public and non-confidential.⁴ In fact, the cover page to FERC Form No. 2 states that the Commission does not consider the report to be of a confidential nature. The October 2 letter order stated further that the Commission has consistently denied requests for confidential treatment for the annual report data required by the Commission.⁵

National Fuel’s Request for Rehearing

4. On October 16, 2006, National Fuel filed a request for rehearing of the October 2 letter order. In addition, National Fuel requests that the Commission classify the data as Critical Energy Infrastructure Information (CEII), pursuant to section 388.113(c)(1) of

Maps – p. 522, line 1 (2002 FERC Form 2); (iv) Compressor Station – p. 508, lines 1-25 (2003 FERC Form 2); (v) System Maps – p. 522, line 1 (2003 FERC Form 2); (vi) Compressor Station, p. 508 – line 16 (2004 FERC Form 2); (vii) System Maps – p. 522, line 1 (2004 FERC Form 2); (viii) Compressor Station – p. 508, lines 1-24 (2005 FERC Form 2); (ix) System Maps – p. 522, line 1 (2005 FERC Form 2).

⁴ FERC Form No. 2 is required pursuant to sections 10 and 16 of the Natural Gas Act. 15 U.S.C. §§ 717i, o (2000). OMB approved the FERC Form No. 2 through June 30, 2007 as a non-confidential report in OMB No. 1902-0028. FERC Form No. 2 is a compilation of financial and operational information submitted by major interstate natural gas pipelines subject to the Commission’s jurisdiction. Data required to be submitted includes a Comparative Balance Sheet, Statement of Income, Statement of Cash Flows, and Notes to Financial Statements.

⁵ The October 2 letter order cited *PECO Energy Company*, 88 FERC ¶ 61,330 (1999) (denying requests for rehearing of letter orders denying privileged status to data filed in FERC Form No. 1), and *Consolidated Edison Company of New York, Inc. and Central Hudson Gas & Electric Corp.*, 72 FERC ¶ 61,184 (1995) (denying request for stay of the General Counsel’s denial to accord trade secret and privileged status to certain data filed in FERC Form No.1).

the Commission's regulations.⁶ Finally, National Fuel requests that the Commission not make the data public until this request for rehearing has been resolved, and it moves for a stay in that regard.

5. National Fuel asserts, for the first time, that the data at issue qualifies as CEII. National Fuel asserts that the map supplied in its FERC Form No. 2 qualifies for CEII treatment because the map provides more than the general location of the pipelines comprising its system in that it includes the direction of flow of the pipelines.⁷ In support, National Fuel cites an excerpt from a recent Commission Notice of Proposed Rulemaking, in Docket No. RM06-23-000, which discusses CEII treatment for pipeline flow diagrams.⁸ Additionally, National Fuel asserts that the compressor station data reveals more than simply the general location of facilities.

6. National Fuel asserts also that the cases cited in the October 2 letter order, denying confidential treatment of the comparable FERC Form No.1 data, are not relevant because those orders predate the establishment of CEII.

Discussion

7. Following the September 11, 2001 terrorist attacks, the Commission issued a notice that certain documents that had previously been available to the public would no longer be made available through the internet, and the Commission's Records and Information Management System.⁹ Subsequently, the Commission issued a Notice of Inquiry on the appropriate treatment of such documents.¹⁰ The Commission's inquiry resulted in a final rule, Order No. 630, where the Commission defined critical energy information as "information about proposed or existing critical infrastructure that relates to the production, generation, transportation, transmission, or distribution of energy" and

⁶ Section 388.113(c)(1) of the Commission's regulations defines information that may be classified as CEII and excluded from public disclosure.

⁷ Request for Rehearing at 2.

⁸ *Critical Energy Infrastructure Information*, Notice of Proposed Rulemaking, FERC Stats. & Regs. ¶ 32,902 (2006).

⁹ *Treatment of Previously Public Documents*, 97 FERC ¶ 61,030 (2001).

¹⁰ *Notice of Inquiry and Guidance for Filings in the Interim*, FERC Stats & Regs. ¶ 35,542 (2002).

“could be useful to a person in planning an attack on critical infrastructure” and does not simply give the location of infrastructure.¹¹

8. Information regarding the location of facilities, such as general location maps, was expressly excluded from CEII treatment.¹² National Fuel claims that the system map filed as part of its FERC Form No. 2 data meets the definition of CEII because it shows not merely general location, but also provides the direction of flow for pipelines on National Fuel’s system.¹³

8. We disagree with National Fuel’s contention that that the system map filed as part of its FERC Form No. 2 is eligible for CEII treatment. The FERC Form No. 2 instruction for system maps requests information showing the following: transmission lines; incremental facilities, location of gathering areas, location of zones and rate areas; location of storage fields; location of natural gas fields, location of compressor stations and the normal direction of gas flow indicated by arrows.¹⁴ It does not require pipeline companies to file detailed flow diagrams. National Fuel has failed to present a persuasive argument that would justify the exclusion of its system map from public disclosure because National Fuel has not filed detailed flow diagrams.

9. Order No. 630 defines certain location information that may be protected, including “flow diagrams and other drawings or diagrams showing similar details such as volumes and operating pressures like those found in Exhibit G.”¹⁵ National Fuel’s system map shows the general location of facilities, but does not include detailed flow diagrams or other drawings showing details of volumes and operating pressure. National

¹¹ *Critical Energy Infrastructure Information*, Order No. 630, FERC Stats, & Regs. ¶ 31,140 (2003), *amended*, Order No. 630-A, FERC Stats. & Regs. ¶ 30,668 (2003); *see* 18 C.F.R. § 388.113(c)(1) (2006).

¹² *Id.* at P 30; *see* C.F.R. § 388.113(c)(1)(iv) (2006).

¹³ Request for Rehearing at 2.

¹⁴ *See* Instructions for FERC Form No. 2, System Maps.

¹⁵ Order No. 630 at P 31. The October 2 letter order’s reference to Exhibit G refers to information required by Part 156 of the Commission’s regulations, 18 C.F.R. Part 156 (2006), for authorization to construct or expand natural gas transportation facilities. Exhibits G and G-1 require detailed information including flow diagrams showing the daily design capacity and maximum capability of the proposed facilities.

Fuel's map is no different than the system maps filed by other companies and routinely made available to the public.

10. National Fuel also asserts that compressor data supplied in its FERC Form No. 2 qualifies as CEII because it does not provide just general location information, but rather, supplies details that could be used by a person in planning an attack on the nation's infrastructure.¹⁶ National Fuel has failed to present any evidence, however, to support its contention that its FERC Form No. 2 compressor information should be protected as CEII. FERC Form No. 2 requires the following information about compressor stations: (1) name and location of station; (2) number of units at the station; (3) certificated horsepower for each station; and (4) plant cost. A pipeline must also designate stations that were not operated during the past year and state the accounting procedures used for those stations. None of this information is so sensitive as to warrant CEII treatment.¹⁷ The data supplied by National Fuel is no different than data provided by other pipelines which has been made available to the public.

11. National Fuel asserts that the cases cited in the October 2 letter order are not relevant since they address requests for privileged treatment of FERC Form No. 1 data and predate the establishment of CEII protection.¹⁸ While the cases did not involve CEII, the cases are relevant insofar as they denied requests for confidential treatment.¹⁹ As discussed above, FERC Form No. 2 data is and always has been available to the public. Its availability fosters the Commission's policy of transparency of financial information and assists the Commission in evaluating financial and rate issues affecting natural gas pipelines.

12. The Commission takes concerns about revealing potential vulnerabilities in the industry's infrastructure seriously. The FERC Form No. 2 data for which National Fuel requests CEII treatment, however, provides only general location information that has long been considered public information and does not rise to the level of detail or substance warranting CEII classification.

¹⁶ Request for Rehearing at 3.

¹⁷ Order No. 630 found that information such as "diagrams of valve and piping details at compressor stations" eligible for CEII treatment. *See* Order No. 630 at P 31. The FERC Form No. 2 does not require such detailed information.

¹⁸ Request for Rehearing at 3.

¹⁹ For present purposes, FERC Form No. 1 and FERC Form No. 2 are sufficiently analogous, in that they are both annual reports of financial and operational data, that cases involving one are applicable to the other.

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13. Accordingly, National Fuel's request for rehearing and request for CEII classification of certain Form No. 2 data is denied. Since we have denied National Fuel's request for rehearing and CEII classification, we find that the request for a stay of our order is moot.

The Commission orders:

National Fuel's request for rehearing and request for CEII classification are hereby denied.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary