

166 FERC ¶ 61,037
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Neil Chatterjee, Chairman;
Cheryl A. LaFleur and Richard Glick.

Columbia Gas Transmission, LLC

Docket No. CP18-13-000

ORDER ISSUING CERTIFICATE AND GRANTING ABANDONMENT

(Issued January 17, 2019)

1. On November 17, 2017, Columbia Gas Transmission, LLC (Columbia) filed an application, pursuant to sections 7(b) and (c) of the Natural Gas Act (NGA)¹ and Part 157, subpart A of the Commission's regulations,² for authorization to abandon in place approximately 14 miles of existing pipeline and associated facilities along its Line 8000 system located in Mineral County, West Virginia, and Allegany County, Maryland. Columbia also requests authorization to replace certain facilities that are being abandoned (Line 8000 Replacement Project).
2. For the reasons discussed below, the Commission grants Columbia's requested certificate and abandonment authorizations, subject to certain conditions.

I. Background and Proposal

3. Columbia,³ a Delaware limited liability company with its principal place of business in Houston, Texas, is a natural gas pipeline company as defined by section 2(b) of the NGA,⁴ engaged in the transportation and storage of natural gas in interstate commerce, subject to the Commission's jurisdiction. Columbia operates approximately

¹ 15 U.S.C. §§ 717f(b), (c) (2012).

² 18 C.F.R. pt. 157 (2018).

³ Columbia is an indirect subsidiary of TransCanada Corporation.

⁴ 15 U.S.C. § 717a(6) (2012).

12,000 miles of pipeline facilities located in Delaware, Kentucky, Maryland, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Virginia, and West Virginia.

4. The Line 8000 Replacement Project is part of Columbia's multi-year, comprehensive modernization program designed to address its aging infrastructure.⁵ The modernization program identified and prioritized high risk, vulnerable portions of Columbia's system needing upgrades in order to meet emerging safety regulations or to improve service reliability. Columbia states that its proposal here to replace components of the Line 8000 system is consistent with a settlement entered into with existing base system shippers and approved by the Commission (Modernization II Settlement).⁶ The Modernization II Settlement provided that existing base system shippers will share the costs of replacing certain aging facilities, referred to as "eligible facilities" in the settlement agreement. The settlement agreement identified Line 8000 as an eligible facility due to the age and condition of the facilities.⁷

5. Columbia's predecessor constructed Line 8000, consisting of 10- and 12-inch-diameter pipelines extending from Lewis County, West Virginia, to the Maryland-Pennsylvania border near Cumberland, Maryland, in the early 1900s.⁸ The approximately 14-mile segment proposed for replacement is a 12-inch-diameter steel pipeline that operates at a maximum allowable operating pressure (MAOP) of 273 pounds per square inch gauge (psig) and serves Maryland distribution markets. Several short laterals off Line 8000 serve Columbia Gas of Maryland and Mountaineer Gas.

6. Specifically, Columbia proposes to:

- (1) abandon 13.23 miles of 12-inch-diameter bare steel pipeline along five sections of Line 8000 in Mineral County, West Virginia, and Allegany County, Maryland, and construct 13.52 miles of new coated 12-inch-diameter pipeline to replace the abandon section;
- (2) abandon 0.11, 0.43, and 0.01 miles of 4-inch-diameter bare steel pipeline along Laterals 8225, 8244, and 18012, respectively, in Allegany County,

⁵ Application at 3-4.

⁶ *Columbia Gas Transmission, LLC*, 154 FERC ¶ 61,208 (2016) (Settlement Order) (order accepting settlement in Docket No. RP16-314).

⁷ Application at 4.

⁸ Application at 5.

Maryland, and construct 0.24, 0.43 and 0.11 miles of new coated 4-inch-diameter pipeline to replace the abandoned laterals;

- (3) abandon 0.02 miles of 12-inch-diameter steel pipeline along Lateral Line 8006, and construct 0.02 miles of new coated 12-inch-diameter pipeline to replace the abandoned segment; and
- (4) modify or abandon associated above-ground facilities, including four mainline valves, three side tap valve sites, and tie-ins at two regulator stations.⁹

7. The abandonment would require ground-disturbing activities at sites along the existing pipeline system. Columbia states that the existing pipeline will generally remain in-service while the proposed pipeline is offset 25 feet from the existing pipeline.¹⁰ The new replacement pipelines will retain the current MAOP of 273 psig.

8. Columbia also proposes to abandon 13 active residential taps and abandon 109 inactive taps.¹¹ Columbia states that the residential tap consumers will be converted to an alternative energy source. Specifically, Columbia will review existing active residential taps to determine if a connection to a new distribution line is economically feasible.¹² If such connection is determined to not be economically feasible, Columbia states it will provide affected landowners with the reasonable costs associated with converting to propane.¹³ Columbia's records indicate that the inactive taps never provided service to customers.

9. Columbia estimates the total cost of the project, including contingency, overhead, and allowance for funds used during construction, will be approximately \$84.15 million.¹⁴ Columbia states that it will recover the costs associated with the replacement project through its Modernization II Settlement's Capital Cost Recovery Mechanism. However, to the extent costs of the project are not recovered through this provision, Columbia seeks a pre-determination for rolled-in rate treatment for any

⁹ Application at 5-7.

¹⁰ Application at 7.

¹¹ Application at 7 and Exhibit Z.

¹² Columbia's February 26, 2018 Response to Staff's Data Request at 6.

¹³ *Id.*

¹⁴ Application at 8 and Exhibit K.

remaining costs of the Line 8000 Replacement Project, asserting that the project is designed to maintain or improve service to existing customers as well as enhance reliability and safety of Line 8000. The project is not intended to increase system capacity or enable the provision of new service.

II. Notice, Interventions, and Comments

10. Notice of Columbia's application was published in the *Federal Register* on November 17, 2017, establishing December 8, 2017, as the deadline for filing comments and motions to intervene.¹⁵ Direct Energy Business Marketing, LLC (Direct Energy); NiSource Distribution Companies; Columbia Gas of Maryland, Inc. (CMD); Piedmont Natural Gas Company, Inc.; Duke Energy Ohio, Inc.; Duke Energy Kentucky, Inc.; National Grid Gas Delivery Companies; Vectren Energy Delivery of Ohio, Inc.; Pivotal Utility Holdings, Inc.; Exelon Corporation; New Jersey Natural Gas Company; NJR Energy Services Company; and New York State Electric & Gas Corporation filed timely, unopposed motions to intervene.¹⁶

11. The Cities of Charlottesville and Richmond, Virginia, jointly, filed a late motion to intervene. Because the late-filed motion to intervene was filed before the Commission announced its new policy governing late interventions in *Tennessee Gas Pipeline Company, L.L.C.*,¹⁷ the late motion to intervene is granted.¹⁸

12. Along with an intervention, Direct Energy¹⁹ and CMD²⁰ both filed comments on the proposed project. Direct Energy commented that the \$84.15 million projected cost

¹⁵ 82 *Fed. Reg.* 56,014.

¹⁶ Timely, unopposed motions to intervene are granted by operation of Rule 214(c) of the Commission's Rules of Practice and Procedure. 18 C.F.R. § 385.214(c) (2018).

¹⁷ 162 FERC ¶ 61,167, at P 51 (2018) (noting that the Commission will be less lenient in the grant of late interventions that do not comply with our regulations) (citing 18 C.F.R. § 385.214(b)(3) and (d) (2018)).

¹⁸ 18 C.F.R. § 385.214(d) (2018).

¹⁹ Direct Energy is engaged in the marketing of natural gas transported by Columbia.

²⁰ CMD is a local distribution company engaged in the business of purchasing and selling natural gas to retail residential, commercial, and industrial customers, as well as providing gas transportation service for customer-owned volumes. CMD is owned

of the Line 8000 Replacement Project is substantially higher than the projected cost reflected in the Modernization II Settlement. In its comments, CMD requests that the Commission condition certificate authority on Columbia's payment for all costs of converting the residential tap customers served by CMD to the use of an alternate energy source, and require that natural gas service to the affected residential tap customers be continued until CMD has obtained any necessary abandonment authority from the Maryland Public Service Commission. Columbia filed a motion for leave to answer and an answer to the comments.²¹ In its answer, Columbia provides further explanation of the project's scope and costs in response to Direct Energy's concerns. In response to CMD, Columbia argues that CMD's requested conditions are unnecessary to the Commission's determination that the project is consistent with the public convenience and necessity. Direct Energy's and CMD's comments are addressed below.

III. Discussion

13. Because the facilities to be abandoned have been used to transport natural gas in interstate commerce subject to the jurisdiction of the Commission and the proposed replacement facilities will be used for jurisdictional service, the proposed abandonment, construction, and operation of facilities are subject to the requirements of subsections (b), (c), and (e) of NGA section 7.²²

A. Abandonment

14. Section 7(b) of the NGA allows an interstate pipeline company to abandon jurisdictional facilities only if the abandonment is permitted by the present or future public convenience or necessity.²³ The applicant has the burden of providing evidence

by NiSource Gas Distribution Group, Inc., which in turn is a wholly-owned subsidiary of NiSource Inc.

²¹ Although the Commission's Rules of Practice and Procedure generally do not permit answers to protests or answers to answers, our rules also provide that we may, for good cause, waive this provision. 18 C.F.R. § 385.213(a)(2) and § 385.101(e) (2018). We will accept Columbia's answer because it provided information that assisted us in our decision-making process.

²² 15 U.S.C. §§ 717f (2012).

²³ 15 U.S.C. § 717f(b) 2018; *see also El Paso Natural Gas Co.*, 135 FERC ¶ 61,079, at P 17 (2011).

to show that the abandonment is permitted under this standard.²⁴ The Commission has stated that continuity and stability of existing service are the primary considerations in assessing the public convenience or necessity of a permanent cessation of service under NGA section 7(b).²⁵

15. As described above, Columbia requests authorization to replace approximately 14 miles of pipeline along its Line 8000 and associated facilities. Columbia states that the portions of its Line 8000 system that are proposed to be replaced consist of 100-year-old pipeline that is susceptible to leaks.²⁶ The replacement facilities will include cathodic protection to maintain the integrity of the pipeline and accommodate the use of smart pigs and cleaning pigs.²⁷ Columbia states that the Line 8000 Replacement Project will improve reliability on its system and will ensure the continued safe and efficient operation of the system to serve its existing customers.

16. Because the approximately 14 miles of pipeline segments to be abandoned will be replaced by the proposed segments discussed below, the proposed abandonment will not detrimentally impact Columbia's ability to meet its existing service obligations. Furthermore, we are satisfied that the proposed project will not jeopardize the continuity of existing service because Columbia states that the existing pipeline will remain in service during installation of the replacement pipeline and the replaced pipeline will retain the current MAOP of 273 psig.

17. Additionally, we also find that Columbia's proposal to abandon the 13 active residential taps and 109 inactive taps is permitted by the public convenience and necessity. Columbia's efforts to reach out to landowners affected by the abandonment of the active residential taps, and its assurance that it would review the active taps to determine if connection to a new distribution line is economically feasible, or provide those affected landowners with the reasonable costs of converting to an alternate source of energy,²⁸ satisfies our concern regarding the existing service. As CMD acknowledges, Columbia has worked successfully in the past with LDCs to resolve issues involving converting customers to alternative energy sources and it expects the present situation

²⁴ *Columbia Gas Transmission, LLC*, 156 FERC ¶ 61,125, at P 10 (2016).

²⁵ *See Tallgrass Interstate Gas Transmission, LLC*, 144 FERC ¶ 61,197, at P 16 (2013); *see also Southern Natural Gas Co.*, 126 FERC ¶ 61,246, at P 27 (2009).

²⁶ Application at 5.

²⁷ Application at 4.

²⁸ Columbia's February 26, 2018 Response to Staff's Data Request at 6.

will be no different.²⁹ We encourage and expect CMD and Columbia to continue to cooperate to reach a mutually agreeable solution. We also deny CMD's request to delay certificate authorization until CMD has obtained the necessary abandonment authority from the Maryland Public Service Commission. CMD did not specify the regulatory approvals it may need or the amount of time that it may take to secure such regulatory approvals. Under these circumstances, we do not find it appropriate to condition the abandonment authorization issued herein upon the receipt of any state regulatory approvals.

18. Based on the above, we find that the proposed abandonment is permitted by the public convenience and necessity. Therefore, we will approve the abandonment.

B. Replacement Pipeline

1. Certificate Policy Statement

19. The Commission's Certificate Policy Statement provides guidance for evaluating proposals to certificate new construction.³⁰ The Certificate Policy Statement establishes criteria for determining whether there is a need for a proposed project and whether the proposed project will serve the public interest. The Certificate Policy Statement explains that in deciding whether to authorize the construction of major new natural gas facilities, the Commission balances the public benefits against the potential adverse consequences. The Commission's goal is to give appropriate consideration to the enhancement of competitive transportation alternatives, the possibility of overbuilding, subsidization by existing customers, the applicant's responsibility for unsubscribed capacity, the avoidance of unnecessary disruptions of the environment, and the unneeded exercise of eminent domain in evaluating new pipeline construction.

20. Under this policy, the threshold requirement for applicants proposing new projects is that the applicant must be prepared to financially support the project without relying on subsidization from its existing customers. The next step is to determine whether the applicant has made efforts to eliminate or minimize any adverse effects the project might have on the applicant's existing customers, existing pipelines in the market and

²⁹ CMD's December 6, 2017 Comments at 3. ("In the past, Columbia has demonstrated a willingness to work with LDCs to successfully resolve any issues involving [converting customers to an alternate energy source]. CMD appreciates Columbia's willingness to do so, and fully expects to work with Columbia to successfully resolve any such issues in this proceeding").

³⁰ *Certification of New Interstate Natural Gas Pipeline Facilities*, 88 FERC ¶ 61,227 (1999), *clarified*, 90 FERC ¶ 61,128, *further clarified*, 92 FERC ¶ 61,094 (2000) (Certificate Policy Statement).

their captive customers, or landowners and communities affected by the route of the new facilities. If residual adverse effects on these interest groups are identified after efforts have been made to minimize them, the Commission will evaluate the project by balancing the evidence of public benefits to be achieved against the residual adverse effects. This is essentially an economic test. Only when the benefits outweigh the adverse effects on economic interests will the Commission proceed to consider the environmental analysis where other interests are addressed.

21. As stated above, the threshold requirement is that the applicant must be prepared to financially support the project without relying on subsidization from its existing customers. The Commission has determined that it is not a subsidy under the Certificate Policy Statement for existing customers to pay for projects to replace existing capacity in order to improve the reliability or flexibility of existing service.³¹ Columbia anticipates recovering the costs associated with the replacement project through an existing tariff provision – the Capital Cost Recovery Mechanism, as approved in the Modernization II Settlement. Columbia states that the settlement agreement identified the Line 8000 Replacement Project as an eligible facility, recognizing that replacing the proposed Line 8000 facilities will enable Columbia to operate the affected portion of its system at its current MAOP and reduce the occurrence of leaks, thus improving reliability and safety for existing customers. Accordingly, we find that there will be no subsidization of the project by existing customers, nor will there be any degradation of service to Columbia’s existing customers since all shippers will benefit from the operational reliability provided by replacing the old pipeline.

22. We also find that because the Line 8000 Replacement Project is a replacement project designed to maintain existing services there will be no adverse impacts on Columbia’s shippers or existing pipelines or their captive customers.

23. We further find that Columbia has taken steps to minimize any adverse impacts on landowners and communities that might be affected by the project. To limit impacts on landowners and the environment, Columbia proposes to collocate the

³¹ *Columbia Gas Transmission, LLC*, 156 FERC ¶ 61,125 at P 15 (citing *Kern River Gas Transmission Co.*, 153 FERC ¶ 61,302, at P 12 (2015); *National Fuel Gas Supply Corp.*, 150 FERC ¶ 61,162, at P 15 (2015) (finding that requiring existing customers that relied on facilities to pay for replacement facilities would not result in a subsidy since the existing 86-year-old pipeline was deteriorated and needed to be replaced in order to ensure continued reliability of the existing services); *Northwest Pipeline Corp.*, 104 FERC ¶ 61,176, at PP 5-7 & 23 (2003) (approving costs to remove river-crossing pipeline posing safety risks because it had become exposed as the result of flooding; approving construction of replacement river-crossing pipeline in different location; and finding that it was not a subsidy to require that existing customers pay for the costs of a project that was necessary for safety reasons and maintain reliable service)).

replacement pipeline segment within existing Columbia rights-of-way for approximately 12 of the replacement project's 14 miles. Columbia further indicates that easement negotiations are ongoing and that it will continue to engage with landowners to address routing concerns.

24. Based on the benefits the project will provide, the minimal adverse impacts on Columbia's existing customers, other pipelines and their captive customers, and landowners and surrounding communities, we find that Columbia's project is consistent with the Certificate Policy Statement and, as conditioned in this order, is required by the public convenience and necessity.

C. Pre-Determination of Rolled-In Rate Treatment

25. Columbia will not provide any additional service as a result of the proposed project; therefore, Columbia is not requesting approval of any initial recourse rate in conjunction with its proposal. However, Columbia is requesting a pre-determination of rolled-in treatment of any project costs not recovered through the Modernization II Settlement's Capital Cost Recovery Mechanism (CCRM).

26. We note that Columbia anticipates recovery of the Line 8000 Replacement Project costs through the CCRM, which provides a basis for recovering the costs of replacing the eligible facilities identified in the settlement agreement.³² Consistent with the terms of the settlement, Columbia is permitted to make annual filings under NGA section 4 to recover its revenue requirement related to the identified eligible projects. Any determination on the eligibility for recovery of project costs through the Modernization II Settlement's CCRM will be made in the CCRM section 4 proceeding.

27. In its comments, Direct Energy raised a concern that the \$84.15 million projected cost of the project is substantially higher than the \$53 million estimated in the Eligible Facilities Plan in the settlement.³³ Direct Energy argues that Columbia's application does not provide any explanation for the \$31 million increase in the projected cost for this project over the estimate in the settlement.³⁴ Columbia states the revised estimates, reflected in this application, include the full scope of the project as well as updated cost

³² Application at 3; Settlement Order, 154 FERC ¶ 61,208 at P 3.

³³ Direct Energy's December 8, 2017 Comments.

³⁴ *Id.* Although Direct Energy acknowledges that the projected costs in the settlement are not binding on Columbia, Direct Energy states that the magnitude of the increase in projected costs from the estimate may cause Columbia to defer or cancel projects identified in the settlement to not exceed the annual project cost ceilings agreed to in the settlement.

estimates for the individual elements of the project, several of which had not been contemplated at the time of the initial cost estimates.

28. We find that Direct Energy's concern is not appropriately raised in this proceeding. Rather, to the extent that Columbia proposes to recover costs for the project through the CCRM, any determination on the eligibility of costs that may be recovered for the project should be determined in that proceeding. As Direct Energy recognizes, the settlement agreement provides that parties have the right to challenge Columbia's recovery of revenue requirements for a project in the CCRM proceeding even if it does not protest the certificate application for that project.

29. As noted above, Columbia is requesting a pre-determination of rolled-in treatment of any project costs not recovered through the Modernization II Settlement's CCRM. More specifically, if the full costs of the project are not recovered under the CCRM by that program's January 31, 2022 expiration date, absent a negotiated extension, Columbia requests a pre-determination that it may recover the costs of the project through its base rates in an NGA general section 4 rate case.

30. To support a request for a pre-determination that a pipeline may roll the costs of a project into its system-wide rates in its next NGA general section 4 rate proceeding, a pipeline must demonstrate that rolling in the costs associated with the construction and operation of new facilities will not result in existing customers subsidizing the expansion.³⁵ The Certificate Policy Statement specifically provides that increasing the rates of existing customers to pay for projects designed to improve reliability or flexibility in providing a pipeline's existing services for its customers is not a subsidy.³⁶

31. As discussed above, the primary purpose of the project is "to ensure the continued safe and efficient operation of Columbia's existing pipeline facilities at their original MAOP."³⁷ The Certificate Policy Statement recognizes the appropriateness of rolled-in rate treatment for projects constructed to improve the reliability of service to existing customers or to improve service by replacing existing capacity, rather than to increase levels of service.³⁸ Accordingly, we will grant Columbia's request for predetermination of rolled-in rate treatment for the project in its next general rate proceeding, absent any material change in circumstances. We have reached similar

³⁵ *Columbia Gas Transmission, LLC*, 164 FERC ¶ 61,036 (2018).

³⁶ Certificate Policy Statement, 88 FERC ¶ 61,227 at n.12.

³⁷ Application at 11.

³⁸ Certificate Policy Statement, 90 FERC at 61,393-94.

preliminary determinations in prior cases where, as here, the incurred costs are attributable to the maintenance of safety and reliability of the pipeline for the benefit of existing customers.³⁹ However, parties to such a proceeding may raise issues related to the reasonableness of any costs proposed for recovery.

D. Environmental Analysis

32. On December 19, 2017, the Commission issued a *Notice of Intent to Prepare an Environmental Assessment for the Proposed Line 8000 Replacement Project and Request for Comments on Environmental Issues* (NOI). The NOI was published in the Federal Register and mailed to interested parties including federal, state, and local officials; agency representatives; environmental and public interest groups; Native American tribes; local libraries and newspapers; and affected property owners. We received comments in response to the NOI from the West Virginia Division of Culture and History and Mr. Ronald E. Paugh (a landowner). The West Virginia Division of Culture and History commented that previously documented architectural resources and archaeological sites are located within the general vicinity of the West Virginia portion of the proposed project. Mr. Paugh raises concerns with project construction on his land, including concerns with storm water runoff, erosion, restoration, and how the project would affect a forestry management plan.

33. To satisfy the requirements of the National Environmental Policy Act of 1969, our staff prepared an Environmental Assessment (EA) for Columbia's proposal. The analysis in the EA addresses geology, soils, water resources, wetlands, vegetation, fisheries, wildlife, threatened and endangered species, land use, recreation, visual resources, cultural resources, air quality, noise, safety, cumulative impacts, and alternatives. All substantive comments received in response to the NOI were addressed in the EA.

34. The EA was issued for a 30-day comment period and placed into the public record on August 29, 2018. The Commission received comments on the EA from the Teamsters National Pipeline Labor Management Trust (Teamsters), Mr. Roger Huffman (an adjacent landowner), the West Virginia Division of Culture and History, the Maryland Department of Natural Resources' Wildlife Heritage Service, and the U.S. Fish and

³⁹ See, e.g., *Columbia Gas Transmission, LLC*, 156 FERC ¶ 61,125, at P 7; *Columbia Gas Transmission, LLC*, 153 FERC ¶ 61,042, at P 20 (2015); *Columbia Gas Transmission, LLC*, 134 FERC ¶ 61,196, at P 22 (2011); *Columbia Gas Transmission Corp.*, 111 FERC ¶ 61,431, at P 12 (2005); *Northwest Pipeline Corp.*, 104 FERC ¶ 61,176, at P 23, *reh'g denied*, 105 FERC ¶ 61,109 (2003).

Wildlife Service's West Virginia Field Office (FWS). The state agencies stated that they had no further comments.

35. The Teamsters express a preference for using its members for construction of the project. According to the Teamsters, its members are well-trained and qualified local workers who would construct the project in an environmentally safe manner. As discussed in the EA, Columbia would construct the project with one construction spread that would utilize many different types of crews,⁴⁰ including clearing, grading, etc. Construction of the project will be overseen by at least one environmental inspector and inspected by Commission staff to ensure construction activities are in compliance with all mitigation measures and applicable permits, which are protective of the environment.⁴¹

36. Mr. Huffman raises concerns regarding surface run-off during and after construction and requests appropriate contacts in the event severe run-off occurs after the project is constructed. He also raises concerns regarding the potential for disruption of water supply and contamination of a private water well and concerns regarding Columbia's waterbody crossing procedures.

37. In response to Mr. Huffman's comments,⁴² Columbia stated that it will implement its site-specific Erosion and Sediment Control Plans (Erosion Plans) and Environmental Construction Standards, including the use of slope breakers and sediment barriers, to minimize erosion and surface run-off in all areas that will be disturbed as part of the project.⁴³ Further, the Erosion Plans will be reviewed by the Allegany County Soil Conservation District prior to construction and Columbia informed Mr. Huffman that he could notify the company in the event severe run-off occurs on his property during or after construction. Additionally, Columbia has committed to offer pre- and post-construction water well testing to the owners of the wells within 150 feet of construction workspaces to determine if construction potentially affects water quality or yield. If well tests document impacts due to construction, Columbia commits to provide an

⁴⁰ Selection of Teamster or non-Teamster crews is at Columbia's discretion.

⁴¹ EA at A-11.

⁴² Columbia's October 19, 2018 Response to Mr. Huffman's comments (dated October 10, 2018).

⁴³ EA at B-6.

alternative water source, mitigate the impact, or compensate the landowner.⁴⁴ According to Columbia, Mr. Huffman's well will be included in the preconstruction testing.

38. With regard to waterbody crossings, Columbia will obtain and adhere to all applicable permits for waterbody crossings required for the project, including authorizations under the Clean Water Act from the U.S. Army Corps of Engineers and the Maryland Department of Environment. The EA explains that Columbia will be required to complete all in-stream work in accordance with the section V.B.1. of the FERC Wetland and Waterbody Construction and Mitigation Procedures. However, Columbia anticipates in-stream construction to be restricted according to its state-designated stream classification, for which timing restrictions would be documented in its Clean Water Act permits.⁴⁵ Furthermore, an environmental inspector will monitor project construction to ensure compliance with mitigation and construction procedures and permits, including those required for waterbody crossings.⁴⁶

39. The FWS concurs with the EA's findings that the project is not likely to adversely affect the federally endangered Indiana bat in the West Virginia portion of the project.⁴⁷ In addition, the FWS also confirmed that any take of the federally threatened northern long-eared bat associated with the project in West Virginia is exempted under the 4(d) rule and no conservation measures are required. Therefore, no further Endangered Species Act section 7 consultation is necessary and environmental recommendation number 13 in the EA has been satisfied.

40. On September 7, 2018, as supplemented on October 22, 2018, following the issuance of the EA, Columbia filed minor modifications to the project as a result of its evaluation associated with the section 404/401 permit application process. These modifications include the removal of Modification Point 4;⁴⁸ identification of additional waterbody and wetland resources per the Maryland Department of Environment review; and minor modifications and reductions in workspaces, access roads, and a staging area. All of the proposed modifications are within the project's environmental survey corridor

⁴⁴ EA at B-8.

⁴⁵ EA at B-22.

⁴⁶ EA at A-11.

⁴⁷ EA at B-24.

⁴⁸ Columbia proposed to replace existing pipeline along, what it referred to as, four modification points on Line 8000. EA at A-5, A-7. Due to the need for further evaluation of a potential reroute, Columbia requested to remove Modification Point 4 from this project.

for cultural resources and threatened and endangered species. To minimize impacts, Columbia would adhere to its Erosion Plans and Environmental Construction Standards, and all applicable permits during project construction. No additional landowners would be affected by these modifications. Therefore, we find these modifications acceptable, and find that they do not change the conclusions reached in the EA.

41. Based on the analysis in the EA, as supplemented herein, we conclude that if replaced or abandoned in accordance with Columbia's application and supplements, including any commitments made herein, and in compliance with the environmental conditions in the Appendix to this order, our approval of this proposal would not constitute a major federal action significantly affecting the quality of the human environment. Compliance with the environmental conditions appended to our orders is integral to ensuring that the environmental impacts of approved projects are consistent with those anticipated by our environmental analyses. Thus, Commission staff carefully reviews all information submitted. Only when satisfied that the applicant has complied with all applicable conditions will a notice to proceed with the activity to which the conditions are relevant be issued. We also note that the Commission has the authority to take whatever steps are necessary to ensure the protection of environmental resources during construction and operation of the project, including authority to impose any additional measures deemed necessary to ensure continued compliance with the intent of the conditions of the order, as well as the avoidance or mitigation of unforeseen adverse environmental impacts resulting from project construction and operation.

42. Any state or local permits issued with respect to the jurisdictional facilities authorized herein must be consistent with the conditions of this certificate. The Commission encourages cooperation between interstate pipelines and local authorities. However, this does not mean that state and local agencies, through application of state or local laws, may prohibit or unreasonably delay the replacement of facilities approved by this Commission.⁴⁹

⁴⁹ See 15 U.S.C. § 717r(d) (state or federal agency's failure to act on a permit considered to be inconsistent with Federal law); see also *Schneidewind v. ANR Pipeline Co.*, 485 U.S. 293, 310 (1988) (state regulation that interferes with FERC's regulatory authority over the transportation of natural gas is preempted) and *Dominion Transmission, Inc. v. Summers*, 723 F.3d 238, 245 (D.C. Cir. 2013) (noting that state and local regulation is preempted by the NGA to the extent it conflicts with federal regulation, or would delay the construction and operation of facilities approved by the Commission).

43. At a hearing held on January 17, 2019, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application, and exhibits thereto, and all comments, and upon consideration of the record,

The Commission orders:

(A) A certificate of public convenience and necessity is issued authorizing Columbia to construct and operate the Line 8000 Replacement Project, as described more fully in this order and in the application, and subsequent filings by the applicant, including any commitments made therein;

(B) The certificate authority issued in Ordering Paragraph (A) is conditioned on:

- (1) Columbia's completion of construction of the authorized facilities and making them available for service within two years of the date of this order pursuant to section 157.20(b) of the Commission's regulations;
- (2) Columbia's compliance with all applicable Commission regulations, including (a), (c), (e), and (f) of section 157.20 of the Commission's regulations; and
- (3) Columbia's compliance with the environmental conditions listed in the Appendix to this Order.

(C) Columbia is granted permission and approval under section 7(b) of the NGA to abandon the facilities described in this Order and as more fully described in the application, subject to Columbia's compliance with the environmental conditions listed in the Appendix to this Order.

(D) Columbia's request for a pre-determination of rolled-in rate treatment of project costs is granted, as discussed above.

(E) Columbia shall notify the Commission within 10 days of the abandonments.

(F) Columbia shall notify the Commission's environmental staff by telephone, e-mail, and/or facsimile of any environmental noncompliance identified by other federal, state, or local agencies on the same day that such agency notifies Columbia. Columbia shall file written confirmation of such notification with the Secretary of the Commission within 24 hours.

(G) The late motion to intervene is granted.

By the Commission. Commissioner McNamee is not participating.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

Appendix

Environmental Conditions

As recommended in the Environmental Assessment (EA) and modified herein, this authorization includes the following conditions:

1. Columbia shall follow the construction procedures and mitigation measures described in its application and supplements (including responses to staff data requests) and as identified in the EA, unless modified by the Order. Columbia must:
 - a. request any modification to these procedures, measures, or conditions in a filing with the Secretary of the Commission (Secretary);
 - b. justify each modification relative to site-specific conditions;
 - c. explain how that modification provides an equal or greater level of environmental protection than the original measure; and
 - d. receive approval in writing from the Director of the Office of Energy Projects (OEP) **before using that modification.**

2. The Director of OEP, or the Director's designee, has delegated authority to address any requests for approvals or authorizations necessary to carry out the conditions of the Order, and take whatever steps are necessary to ensure the protection of environmental resources during construction and operation of the new and replacement Project facilities and activities associated with abandonment. This authority shall allow:
 - a. the modification of conditions of the Order;
 - b. stop work authority; and
 - c. the imposition of any additional measures deemed necessary to assure continued compliance with the intent of the conditions of the Order as well as the avoidance or mitigation of adverse environmental impact resulting from Project construction, operation, and abandonment activities.

3. **Prior to any construction**, Columbia shall file an affirmative statement with the Secretary, certified by a senior company official, that all company personnel, environmental inspectors (EI), and contractor personnel will be informed of the EI's authority and have been or will be trained on the implementation of the environmental mitigation measures appropriate to their jobs **before** becoming involved with construction and restoration activities.

4. The authorized facility locations shall be as shown in the EA, as supplemented by filed alignment sheets. **As soon as they are available, and before the start of**

construction, Columbia shall file with the Secretary any revised detailed survey alignment maps/sheets at a scale not smaller than 1:6,000 with station positions for all facilities approved by the Order. All requests for modifications of environmental conditions of the Order or site-specific clearances must be written and must reference locations designated on these alignment maps/sheets.

Columbia's exercise of eminent domain authority granted under Natural Gas Act section 7(h) in any condemnation proceedings related to the Order must be consistent with these authorized facilities and locations. Columbia's right of eminent domain granted under Natural Gas Act section 7(h) does not authorize it to increase the size of its natural gas pipeline facilities to accommodate future needs or to acquire a right-of-way for a pipeline to transport a commodity other than natural gas.

5. Columbia shall file with the Secretary detailed alignment maps/sheets and aerial photographs at a scale not smaller than 1:6,000 identifying all route realignments or facility relocations, and staging areas, pipe storage yards, new access roads, and other areas that would be used or disturbed and have not been previously identified in filings with the Secretary. Approval for each of these areas must be explicitly requested in writing. For each area, the request must include a description of the existing land use/cover type, documentation of landowner approval, whether any cultural resources or federally listed threatened or endangered species would be affected, and whether any other environmentally sensitive areas are within or abutting the area. All areas shall be clearly identified on the maps/sheets/aerial photographs. Each area must be approved in writing by the Director of OEP **before construction in or near that area**.

This requirement does not apply to extra workspace allowed by the Commission's *Upland Erosion Control, Revegetation, and Maintenance Plan* and/or minor field realignments per landowner needs and requirements which do not affect other landowners or sensitive environmental areas such as wetlands.

Examples of alterations requiring approval include all route realignments and facility location changes resulting from:

- a. implementation of cultural resources mitigation measures;
- b. implementation of endangered, threatened, or special concern species mitigation measures;
- c. recommendations by state regulatory authorities; and
- d. agreements with individual landowners that affect other landowners or could affect sensitive environmental areas.

6. **At least 60 days before construction and abandonment by removal activities begin**, Columbia shall file an Implementation Plan with the Secretary for review and written approval by the Director of OEP. Columbia must file revisions to the plan as schedules change. The plan shall identify:
- a. how Columbia will implement the construction procedures and mitigation measures described in its application and supplements (including responses to staff data requests), identified in the EA, and required by the Order;
 - b. how Columbia will incorporate these requirements into the contract bid documents, construction contracts (especially penalty clauses and specifications), and construction drawings so that the mitigation required at each site is clear to onsite construction and inspection personnel;
 - c. the number of EIs assigned per spread, and how the company will ensure that sufficient personnel are available to implement the environmental mitigation;
 - d. company personnel, including EIs and contractors, who will receive copies of the appropriate material;
 - e. the location and dates of the environmental compliance training and instructions Columbia will give to all personnel involved with construction and restoration (initial and refresher training as the Project progresses and personnel change);
 - f. the company personnel (if known) and specific portion of Columbia's organization having responsibility for compliance;
 - g. the procedures (including use of contract penalties) Columbia will follow if noncompliance occurs; and
 - h. for each discrete facility, a Gantt or PERT chart (or similar project scheduling diagram), and dates for:
 - (1) the completion of all required surveys and reports;
 - (2) the environmental compliance training of onsite personnel;
 - (3) the start of construction; and
 - (4) the start and completion of restoration.
7. Columbia shall employ at least one EI per construction spread. The EIs shall be:
- a. responsible for monitoring and ensuring compliance with all mitigation measures required by the Order and other grants, permits, certificates, or other authorizing documents;
 - b. responsible for evaluating the construction contractor's implementation of the environmental mitigation measures required in the contract (see condition 6 above) and any other authorizing document;
 - c. empowered to order correction of acts that violate the environmental conditions of the Order, and any other authorizing document;

- d. a full-time position, separate from all other activity inspectors;
 - e. responsible for documenting compliance with the environmental conditions of the Order, as well as any environmental conditions/permit requirements imposed by other federal, state, or local agencies; and
 - f. responsible for maintaining status reports.
8. Beginning with the filing of its Implementation Plan, Columbia shall file updated status reports with the Secretary **on a biweekly basis** until all construction and restoration activities are complete. On request, these status reports will also be provided to other federal and state agencies with permitting responsibilities. Status reports shall include:
- a. an update on Columbia's efforts to obtain the necessary federal authorizations;
 - b. the construction status of each spread, work planned for the following reporting period, and any schedule changes for stream crossings or work in other environmentally-sensitive areas;
 - c. a listing of all problems encountered and each instance of noncompliance observed by the EIs during the reporting period (both for the conditions imposed by the Commission and any environmental conditions/permit requirements imposed by other federal, state, or local agencies);
 - d. a description of the corrective actions implemented in response to all instances of noncompliance;
 - e. the effectiveness of all corrective actions implemented;
 - f. a description of any landowner/resident complaints which may relate to compliance with the requirements of the Order, and the measures taken to satisfy their concerns; and
 - g. copies of any correspondence received by Columbia from other federal, state, or local permitting agencies concerning instances of noncompliance, and Columbia's response.
10. Columbia must receive written authorization from the Director of OEP **before commencing construction or abandonment by removal of any Project facilities**. To obtain such authorization, Columbia must file with the Secretary documentation that it has received all applicable authorizations required under federal law (or evidence of waiver thereof).
11. Columbia must receive written authorization from the Director of OEP **before placing the Project into service**. Such authorization will only be granted following a determination that rehabilitation and restoration of the right-of-way and other areas affected by the Project are proceeding satisfactorily.

12. **Within 30 days of placing the authorized facilities in service**, Columbia shall file an affirmative statement with the Secretary, certified by a senior company official:
 - a. that the facilities have been constructed and abandoned in compliance with all applicable conditions, and that continuing activities will be consistent with all applicable conditions; or
 - b. identifying which of the conditions in the Order Columbia has complied with or will comply with. This statement shall also identify any areas affected by the Project where compliance measures were not properly implemented, if not previously identified in filed status reports, and the reason for noncompliance.

13. Columbia **shall not begin construction** of facilities and/or use of staging, storage, or temporary work areas and new or to-be-improved access roads **until**:
 - a. Columbia files an addendum survey report for the outstanding survey areas in Maryland, and the State Historic Preservation Officer's comments on the addendum;
 - b. the Advisory Council on Historic Preservation is afforded an opportunity to comment if historic properties would be adversely affected; and
 - c. the FERC staff reviews and the Director of OEP approves the addendum survey report, and notifies Columbia in writing that construction may proceed.

All materials filed with the Commission containing **location, character, and ownership** information about cultural resources must have the cover and any relevant pages therein clearly labeled in bold lettering: **"CUI//PRIV – DO NOT RELEASE."**

14. **Prior to construction of the Fore Sisters Golf Course and the North Branch Potomac River crossings**, Columbia shall file with the Secretary, for the review and written approval by the Director of OEP, a horizontal directional drill noise mitigation plan to reduce the projected noise level attributable to the proposed drilling operations at the Fore Sisters Golf Course and North Branch Potomac River crossings. During drilling operations, Columbia shall implement the approved plan, monitor noise levels, and make all reasonable efforts to restrict the noise attributable to the drilling operations to no more than an existing day-night sound level of 55 decibels on the A-weighted scale or 10 decibels over existing ambient levels at the noise sensitive areas.