129 FERC ¶ 61,029
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Suedeen G. Kelly, Marc Spitzer,
and Philip D. Moeller.

Columbia Gas Transmission, LLC and Jefferson Gas, LLC — Docket No. CP09-65-000

ORDER APPROVING ABANDONMENT, DETERMINING JURISDICTIONAL STATUS OF FACILITIES, AND ISSUING LIMITED JURISDICTION CERTIFICATE

(Issued October 15, 2009)

1. On February 12, 2009, Columbia Gas Transmission, LLC (Columbia) filed an application under section 7(b) of the Natural Gas Act (NGA) for authority to abandon, by sale to Jefferson Gas, LLC (Jefferson), certain facilities identified as Columbia's Line KZ-East System (the facilities) located in Menifee and Morgan Counties, Kentucky. Additionally, Columbia requests permission to abandon a transportation service rendered on the facilities. In the same filing, Jefferson requests that the Commission determine that the facilities will be gathering and exempt from the Commission's jurisdiction after the proposed abandonment. Jefferson, pursuant to section 7(c) of the NGA and Part 157 of the Commission's regulations, also requests a limited jurisdiction certificate to transport interstate gas to two customers on behalf of Columbia.

2. As discussed below, the Commission authorizes Columbia to abandon the facilities and services as requested and finds that the facilities will be used to perform a gathering function exempt from the Commission's jurisdiction following that abandonment. The Commission also will issue a limited jurisdiction certificate to Jefferson, as discussed below.

I. Background and Proposal

3. Columbia, a company organized and existing under the laws of Delaware, is a natural gas company, as defined in the NGA,[1] engaged in the business of transporting

[1] *See* 15 U.S.C. § 717a(6) (2006).

natural gas and operating underground storage fields in interstate commerce. Columbia is a subsidiary of the Columbia Energy Group, which is a wholly owned subsidiary of NiSource Inc. Columbia is authorized to do business in Delaware, Georgia, Indiana, Kentucky, Maryland, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Texas, Virginia, and West Virginia.

4. Jefferson, a limited liability company formed under the laws of Kentucky, is a wholly-owned subsidiary of Kentucky Energy Development, LLC, and is authorized to do business in Kentucky. Jefferson owns and operates approximately 400 miles of natural gas gathering lines in ten counties in eastern Kentucky. Jefferson gathers gas from its wells and wells owned by approximately 38 third-party producers. A portion of the gas is delivered for sale to Jefferson's sister company, Public Gas Company, a public utility regulated by the Kentucky Public Service Commission. The majority of the remaining gas is delivered to Columbia for further delivery to various wholesale markets. Jefferson is not a "natural gas company" as defined by the NGA, nor does it currently own or operate any facilities or provide any services that are subject to the Commission's jurisdiction.

A. Facilities Proposed to be Abandoned

5. The facilities which Columbia proposes to abandon consist of approximately 31.67 miles of pipeline and appurtenances, ranging in inside pipe diameter from 2 to 10 inches with a maximum allowable operating pressure (MAOP) of 303 pounds per square inch gauge (psig); the South Means Compressor Station, consisting of a 180 horsepower (hp) and a 400 hp compressor unit and various station appurtenances; four measuring stations; and approximately 116 mainline taps.

B. Services Proposed to be Abandoned

6. Columbia provides transportation service to 83 mainline tap customers of Columbia Gas of Kentucky (CKY). Columbia proposes to abandon this service. Jefferson has entered into an agreement with Columbia whereby Jefferson will assume the responsibility of serving these customers directly.

7. In addition to the mainline tap consumers, Columbia currently provides service to Delta Natural Gas Company, Inc. (Delta) and Elam Utility Company (Elam) under Columbia's GTS Rate Schedule (the GTS customers) and to Jefferson under Columbia's FTS Rate Schedule. Columbia has entered into an agreement with Jefferson whereby Jefferson will transport gas on Columbia's behalf to the GTS customers.[2] Columbia will

[2] Application at 7. The agreement's initial term is for three years with a right to renew on a yearly basis thereafter. The agreement will stay in effect until the customers cancel their GTS agreements with Columbia.

deliver gas to Jefferson at a new delivery point to be constructed under Columbia's blanket certificate on the suction side of the South Means Compressor Station.[3] Columbia will also relocate its existing point of receipt from Jefferson to the suction side of the South Means Compressor Station, and Jefferson's FT Service Agreement with Columbia will be amended to reflect the change in receipt point.

8. Columbia asserts that as a result of the restructuring of the natural gas industry, it has experienced a shift in its role from that of merchant to that of transporter. As a result of Columbia's continued evaluation of its pipeline system for purposes of better meeting the needs of its customers, Columbia states that it has filed applications for abandonment of non-core transmission facilities that no longer serve as an integral part of its transmission system. Columbia asserts that abandoning the facilities at issue here would allow it to reduce current operating and maintenance expenses and eliminate the need for future capital expenditures for repair or replacement of these facilities. Columbia further asserts that retaining the facilities would be inconsistent with its primary focus on transporting and storing gas in the most cost-effective manner.

C. <u>Gathering Determination</u>

9. Jefferson requests that the Commission determine that after the abandonment by sale, the facilities will perform a gathering function and be exempt from the jurisdiction of the Commission under section 1(b) of the NGA.

D. <u>Limited Jurisdiction Certificate</u>

10. Jefferson requests a limited jurisdiction certificate allowing Jefferson, on a limited basis, to transport interstate gas on behalf of Columbia to Columbia's two GTS customers, Delta and Elam, during those times when local production is insufficient to provide such service.

II. <u>Notices, Interventions, and Comments</u>

11. Notice of Columbia's and Jefferson's application was published in the *Federal Register* on March 3, 2009,[4] with comments, protests, and interventions due on or before March 17, 2009. CKY, Orange and Rockland Utilities, Inc., and National Fuel Gas Distribution Corporation filed timely, unopposed motions to intervene. Duke Energy

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[3] Jefferson will deliver the gas to the GTS customers by displacement, except during those periods when demand exceeds the local supply entering the pipeline through Jefferson's gathering system.

[4] 74 Fed. Reg. 9,236 (March 3, 2009).

Ohio, Inc. and Duke Energy Kentucky, Inc. filed a timely, joint, unopposed motion to intervene.[5] CKY's motion to intervene included comments. Columbia filed an answer to CKY's comments.

12. Delta filed a motion to intervene out of time and comment. Delta has demonstrated that it has an interest in this proceeding and has shown good cause for intervening out of time. Further, Delta's untimely motion will not delay, disrupt, or otherwise prejudice this proceeding. Thus, for good cause shown, we will grant the untimely motion to intervene pursuant to Rule 214(d).[6]

III. Discussion

A. Columbia's Request for Abandonment of Jurisdictional Facilities and Services

13. Because the facilities and the services Columbia proposes to abandon involve transportation of natural gas in interstate commerce, the proposal is subject to the jurisdiction of the Commission and the requirements of NGA section 7(b).

14. Historically, in reviewing a request for abandonment by sale, the Commission has considered: the needs of the two natural gas systems and the public markets they serve, the environmental effects of its decision,[7] the economic effect on the pipelines and their customers, the presumption in favor of continued service, and the relative diligence of the respective pipelines in providing for adequate natural gas supplies.[8]

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[5] Timely, unopposed motions to intervene are granted by operation of Rule 214 of the Commission's Rules of Practice and Procedure. *See* 18 C.F.R. § 385.214 (2009).

[6] In its comments, Delta, which provides local distribution service to customers in Frenchburg, Kentucky, states that it is not clear if its costs or terms and conditions of service will be changed as a result of its transportation service being provided by Jefferson. After discussions with Jefferson and Columbia to resolve its concerns, Delta filed a letter on July 7, 2009, stating that all of its concerns in this proceeding were resolved.

[7] As discussed below, this action qualifies as a categorical exclusion under section 380.4(a)(31).

[8] *Transcontinental Gas Pipe Line Corp. v. FPC*, 488 F.2d 1325, 1330 (D.C. Cir. 1973).

15. Columbia states the facilities to be abandoned were originally constructed by Columbia's predecessor as part of a low-pressure system which connected local production fields to Columbia's mainline transmission system, and that they continue to transport local production today. Columbia maintains the facilities are no longer an integral part of its transmission pipeline system, and that retaining and operating the facilities is inconsistent with its efforts in transporting and storing gas in the most cost-effective manner.

16. Columbia currently provides transportation services to mainline tap customers of CKY and to Delta and Elam, the GTS customers, through the facilities. In its motion to intervene, CKY requests that the Commission impose a special condition for assurance that arrangements have been made for continued service to the mainline tap customers served by CKY from the facilities. Columbia filed an answer to CKY's comment, stating that section 8.1(a) of the Purchase and Sale Agreement (PSA), submitted with the application, contains specific provisions that set forth the obligation of Jefferson to assume responsibility for service to these tap customers. In addition, section 13.7 requires that, prior to closing the sale, Jefferson must have assumed the obligations set forth in section 8, have provided written confirmation of that assumption, and have closed on an agreement with CKY whereby Jefferson will purchase all customers served by CKY along the subject facilities. Therefore, we find no need to impose a special condition to provide additional assurance.[9]

17. As to Delta, one of the GTS customers, its concerns about the proposed abandonment have been resolved through negotiations with Columbia and Jefferson. Elam, the other GTS customer, has not commented on, or objected to, the proposed abandonment.

18. In cases where a pipeline subject to the Commission's jurisdiction seeks to transfer facilities to a nonjurisdictional entity, the Commission has held that it will presume that there are no continuity of service issues present in the proceeding if no customer protests the abandonment of the facilities by that pipeline.[10] As discussed above, Jefferson will assume responsibility for serving the current mainline tap customers of CKY and will transport gas on Columbia's behalf for Delta and Elam. CKY, Delta, and Elam have not protested the proposals. Accordingly, the Commission will presume that there are no continuity of service issues present in the proceeding. Therefore, for the reasons stated

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[9] *See Columbia Gas Transmission Corp.*, 119 FERC ¶ 61,080, at P 24 (2007).

[10] *Southern Star Central Gas Pipeline, Inc.*, 115 FERC ¶ 61,057, at P 34 (2006); *Transcontinental Gas Pipe Line Co.*, 103 FERC ¶ 61,118, at P 9 (2003); *Colorado Interstate Gas Co.*, 101 FERC ¶ 61,377, at P 13 (2002); *Columbia Gas Transmission Corp.*, 93 FERC ¶ 61,278, at 61,913 (2000).

above, the Commission concludes that the facilities are no longer needed by Columbia and that Columbia's request to abandon the facilities and related services is permitted by the public convenience or necessity.

19. Columbia asks the Commission to waive its requirement that a pipeline make an NGA section 4 tariff filing before it terminates gathering service, contending it is not terminating any gathering service. As stated in a prior Columbia order, the Commission's policy is not applicable where a pipeline seeks to abandon jurisdictional transportation services.[11] The requested waiver is unnecessary. However, within 15 days after the date of the abandonment of facilities, Columbia must file revised tariff sheets, to the extent necessary, in compliance with Part 154 of the regulations, to eliminate any tariff language relating to service performed on the facilities to be abandoned.

B. Petition for Gathering Determination

20. In addition to Columbia's application to abandon the facilities and related services, Jefferson petitions the Commission to conclude that the facilities will perform a gathering function and will not be subject to the jurisdiction of the Commission under the NGA once the facilities are abandoned by Columbia.

21. The Commission's jurisdiction under NGA section 1(b) does not extend to facilities used for "the production or gathering of natural gas."[12] Because the NGA does not define gathering, the Commission has developed a legal test known as the primary function test to determine whether facilities are non-jurisdictional gathering facilities. The test includes consideration of physical and geographic factors including: (1) the length and diameter of the pipeline; (2) the location of compressors and processing plants; (3) the extension of the facility beyond the central point in the field; (4) the facility's geographic configuration; (5) the location of wells along all or part of the facility; and (6) the operating pressure of the pipeline.[13]

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[11] 86 FERC ¶ 61,214 (1999).

[12] 15 U.S.C. § 717(b) (2006).

[13] *See Tennessee Gas Pipeline Co.*, 124 FERC ¶ 61,128 (2008); *see also Amerada Hess Corp.*, 52 FERC ¶ 61,268 (1990) (modified the primary function test originally formulated in *Farmland Industries, Inc.*, 23 FERC ¶ 61,063 (1983)).

22. The Commission also considers the purpose, location and operation of the facility,[14] the general business activity of the owner of the facility, and whether the jurisdictional determination is consistent with the NGA and the Natural Gas Policy Act of 1978 (NGPA).[15] The Commission does not consider any one factor to be determinative and recognizes that all factors do not necessarily apply to all situations.[16]

23. Jefferson states that the facilities' primary function will change from interstate gas transportation to gathering once the abandonment by sale to Jefferson takes place.[17] Jefferson, which owns the pipeline that is immediately to the west of the facilities and is the only pipeline with an interconnect to the facilities, plans to operate the facilities, which include an approximately 31.67-mile long pipeline with an inside pipe diameter ranging from 2 to 10 inches, as the central spine, or gathering header, of a network of feeder and tap lines. Jefferson states it intends to operate the facilities as an extension of its current facilities for the purpose of gathering local production. The Commission has found lines with this configuration and these and greater lengths and diameters to be consistent with a gathering function.[18] The facilities operate at an MAOP of 303 psig, a low pressure that is consistent with a gathering function.[19] The South Means Compressor Station consists of one 180 hp compressor unit and one 400 hp compressor unit and appurtenances. It is located at the downstream end of the facilities to be abandoned to

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[14] *See, e.g., SWEPI LP,* 126 FERC ¶ 61,098 (2009); *Eagle Rock DeSoto Pipeline, L.P.*, 126 FERC ¶ 61,092 (2009); *see also Sea Robin Pipeline Co. v. FERC*, 127 F.3d 365, 371 (5th Cir. 1997) (explaining the weight of non-physical criteria).

[15] 15 U.S.C. §§ 3301-3432 (2006). *See, e.g., Southern Natural Gas Co.*, 126 FERC ¶ 61,246 (2009); *Equitrans, LP*, 98 FERC ¶ 61,160 (2002).

[16] *See, e.g., Pecan Pipeline (N.D.), Inc.*, 126 FERC ¶ 61,015 (2009); *Columbia Gas Transmission Corp.*, 125 FERC ¶ 61,343 (2008).

[17] *See Columbia Gas Transmission Corp.*, 127 FERC ¶ 61,262, at P 33 n.31 (2009) (observing that "the primary function of facilities may change from jurisdictional transmission to gathering when they are removed from an interstate pipeline's system and become a stand-alone system or part of a gatherer's system").

[18] *See, e.g., El Paso Natural Gas Co*., 57 FERC ¶ 61,186 (1991) (systems consisting of 61.7 miles of 16-inch pipe, 13.1 miles of 20-inch pipe, and 15.2 miles of 24-inch pipe were found to be gathering).

[19] *See, e.g., CenterPoint Energy Gas Transmission Co.*, 113 FERC ¶ 62,007, at 64,036 (2005) (finding that operating pressures between 300 and 400 psig are consistent with a gathering function).

Jefferson and will function as a field compressor to compress production volumes to transmission pressures, which is an indicator of a gathering facility.[20] The facilities are located within a production field in Kentucky. Additionally, Jefferson is a non-jurisdictional gatherer of natural gas that is engaged in gathering local production from its wells, as well as those owned by 38 third-party producers, and delivering it to its sister company for retail sales or to Columbia for delivery to interstate markets.

24. For these reasons, the Commission concludes that application of the primary function test criteria to the facilities to be abandoned supports a finding that the primary function of the facilities will be gathering once the facilities are abandoned by sale.

C. Request for a Limited Jurisdiction Certificate

25. Jefferson requests a limited jurisdiction certificate to provide firm transportation on the facilities on behalf of Columbia during those times when local production is insufficient to meet demand on its system, in order to continue to provide Columbia's contracted GTS service to Delta and Elam, since such transportation of gas received from Columbia will constitute the transportation of gas in interstate commerce subject to the Commission's jurisdiction under NGA section 7.

26. When the Commission finds that the primary function of facilities to be abandoned by an interstate pipeline company will be gathering, it will issue a limited jurisdiction certificate to the gathering company where necessary to allow the gathering company to provide incidental interstate transportation service through the newly-acquired facilities without affecting the non-jurisdictional status of its gathering operations. Commission precedent is clear that such limited jurisdiction certificates for gatherers are appropriate, when necessary, to assure continuation of natural gas transportation service that is ancillary to the primary gathering function of the facilities.[21]

27. Here, Jefferson proposes to transport gas in interstate commerce on behalf of Columbia in order for Columbia to continue to provide its jurisdictional GTS service to Delta and Elam.[22] However, when measured against Jefferson's total system throughput,

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[20] *Columbia Gas Transmission Corp*., 99 FERC ¶ 62,086 (2002).

[21] *See, e.g., Mardi Gras Pipeline L.L.C.*, 116 FERC ¶ 62,152 (2006); *Columbia Natural Resources, LLC*, 110 FERC ¶ 61,062, at P 13 (2005); and *Columbia Gas Transmission Corp.*, 90 FERC ¶ 61,211 (2000) (*Gatherco Inc.*).

[22] We note that while Jefferson requests a limited certificate for only those times when local production is insufficient to provide service to Elam and Delta, the transportation of gas on behalf of Columbia to Elam and Delta by displacement also constitutes the transportation of natural gas in interstate commerce. *See* 18 C.F.R.

(continued…)

the Commission finds that this jurisdictional transportation of gas in interstate commerce will constitute a small portion of Jefferson's business, incidental to its primary function as a gatherer. As indicated above, the Commission has issued limited jurisdiction certificates in similar circumstances, where required by the public convenience and necessity, to assure the continuation of necessary natural gas service.[23]

28. Because the primary function of the facilities as operated by Jefferson will be non-jurisdictional, the Commission will issue a certificate of limited jurisdiction authorizing Jefferson to deliver gas to Delta and Elam on behalf of Columbia without the full panoply of NGA rate and service obligations.[24] Under such a certificate, jurisdiction extends only to the specific activity authorized, and the gatherer remains non-jurisdictional with respect to its remaining non-jurisdictional operations.[25]

29. Jefferson and Columbia included in its filing a transportation agreement between Jefferson and Columbia. Under the transportation agreement, Columbia will pay Jefferson on a monthly basis the revenues Columbia actually receives from Delta and Elam associated with the Minimum Fixed Cost Contribution and Commodity Charge as set forth in Columbia's GTS Rate Schedule.[26] The Commission will accept the

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§ 284.1(a) and *Associated Gas Distributors v. FERC*, 899 F.2d 1250, 1254 n.1 (D. C. Cir. 1990) ("Since natural gas is fungible, its 'transportation' does not always take the form of the physical carriage of a particular supply of gas from its starting point to its destination."). Therefore, a limited jurisdiction certificate is needed for all deliveries of gas by Jefferson to Elam and Delta, not just those during times when local production is insufficient to meet demand on Jefferson's system.

[23] *Gatherco, Inc., supra*; *see also Columbia Gas Transmission Corp.*, 106 FERC ¶ 61,297 (2004).

[24] While the record indicates that Jefferson will assume responsibility for Columbia's former deliveries to the 83 mainline tap customers, it is unclear as to how or whether those customers will receive service during times when local production is insufficient to meet the market demand on Jefferson's system. If Jefferson intends to use interstate gas physically received from Columbia at such times to serve those customers, it will need additional authority, including initial rates, from the Commission, as the certificate of limited jurisdiction issued in this order is not intended to cover such service.

[25] *See, e.g., Western Gas Resources, Inc.*, 85 FERC ¶ 61,087 (1998) (gatherer); *ONEOK, Inc.*, 55 FERC ¶ 61,453 (1991) (intrastate pipeline).

[26] The agreement further provides that the maximum amount of revenues per year that Columbia shall pay to Jefferson shall never exceed $75,000 ($48,000 for Delta and $27,000 for Elam).

transportation agreement as being in satisfaction of the filing requirements as required by section 4 of the NGA and Part 154 of the Commission's Regulations. The transportation agreement will act as Jefferson's tariff for purposes of providing jurisdictional service under the limited jurisdiction approved herein. Further, consistent with the limited jurisdictional certificate, the Commission grants Jefferson's waiver request regarding accounting, rate reporting, or other requirements generally imposed on natural gas pipelines subject to the NGA.

30. Finally, no environmental assessment or environmental impact statement was prepared for this project because it qualifies as a categorical exclusion under section 380.4(a)(31) of the Commission's regulations.[27]

31. At a hearing held on October 15, 2009, the Commission on its own motion, received and made part of the record in this proceeding all evidence, including the application, as supplemented, and exhibits thereto, submitted in support of the authorizations sought herein, and upon consideration of the record,

The Commission orders:

(A) Permission for and approval of the abandonment by Columbia of the subject facilities and services, as described above and in the application, is granted.

(B) Columbia shall notify the Commission within ten days of the date of the abandonment of its certificate authority.

(C) Upon Columbia's abandonment of its certificate authority, the subject facilities will be processing and gathering facilities exempt from the Commission's jurisdiction pursuant to NGA section 1(b).

(D) Columbia shall comply with all applicable regulations including but not limited to Part 154 of the Commission's regulations.

(E) Jefferson is issued a certificate of limited jurisdiction under NGA section 7(c) authorizing it to transport quantities of natural gas on behalf of Columbia for delivery to the GTS customers. This authorization will not otherwise affect the non-jurisdictional status of Jefferson's operation of the facilities.

(F) The transportation agreement filed between Jefferson and Columbia is accepted and will act as Jefferson's tariff for purposes of providing the limited jurisdictional service as approved herein.

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[27] 18 C.F.R. § 380.4(a)(31) (2009) (excluding facilities abandoned by sale that involve only minor or no ground disturbance to disconnect the facilities from the system).

(G) Delta's motion to intervene out-of-time is granted.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.