

128 FERC ¶ 61,179  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

Columbia Gas Transmission Corporation

Docket No. CP08-431-001

ORDER DENYING REHEARING

(Issued August 21, 2009)

1. On March 19, 2009, the Commission issued an order<sup>1</sup> granting Columbia Gas Transmission Corporation (Columbia) authorization to expand storage capabilities at its Crawford and Weaver Storage Fields in Ohio (the Ohio Storage Project). On April 18, 2009, Charles R. Ogle and Melanie A. Ogle (the Ogles) filed a timely request for rehearing of the March 19 Order. The Ogles filed additional submissions on April 19 and 20, May 13 and 27, June 28, and July 22 and 23, 2009, that are, in essence, late filed comments on the Environmental Assessment (EA).<sup>2</sup> The Commission will address the request for rehearing and the additional pleadings, as discussed below.

**Background**

2. The March 19 Order authorized Columbia to add 3.0 billion cubic feet (Bcf) of storage within the Crawford Storage Field, and 3.7 Bcf within the Weaver Storage Field. Among other authorizations, the March 19 Order also approved the construction of 19 new storage wells on sites within the Crawford Storage Field.

3. The Ogles objected to the location of one of the storage wells proposed in Columbia's application, Well 12487, as well as the proposed location of the associated access road. The March 19 Order noted that Columbia had agreed to move this well 250 feet north of its originally-proposed location to accommodate the Ogles. The EA

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<sup>1</sup> *Columbia Gas Transmission Corp.*, 126 FERC ¶ 61,237 (2009) (March 19 Order).

<sup>2</sup> On July 28, 2009, the Ogles filed a motion for stay of construction on their property pending the completion of the rehearing process. Because this order concludes the rehearing process, we find the request moot.

analyzed that agreed upon location and found that there were no environmentally preferable locations for the proposed well. The March 19 Order explains that after the EA was issued, the Ogles proposed a second alternative location for well 12487 and an alternative route for the access road. The order concluded that because the EA considered an area encompassing the Ogles' second alternative and found no locations within that area to be environmentally preferable to the alternative then under consideration, Columbia would not be required to relocate the well to the second alternative site. As for the access road, the March 19 Order notes that Columbia had agreed to relocate this access road to an alternate location to accommodate the Ogles and found the proposed alternative route to be environmentally preferable to the original route.

### **Rehearing Requests**

4. The issues raised in the rehearing request and in the comments on the EA include: (i) economic considerations and lease terms; (ii) water quality and visual impact; (iii) well and access road location; (iv) disputes over construction activities; and (v) communications and allegations of misrepresentation.

#### **A. Economic Considerations and Lease Terms**

5. The Ogles contend that the Ohio Storage Project will have an adverse economic impact on landowners that is inconsistent with Commission policy. In particular, the Ogles argue that they will be inadequately compensated for the future value of storage rights under the existing storage lease on their property because that lease has no escalator clause, and that they will not be compensated for the continuing property taxes they will have to pay on the portion of their property that will be encumbered by the easement for the new above-ground facilities Columbia will construct on their property as part of this project.

6. While a certificate of convenience and necessity from this Commission carries with it the right to obtain the property rights necessary to construct the project, the Commission plays no role in assessing surface or mineral property values, or in determining the appropriate compensation for the transfer of such rights.<sup>3</sup> The Commission has no jurisdiction to consider issues related to any existing agreements between the Ogles and Columbia.<sup>4</sup> In addition, if the parties are unable to reach agreement regarding any additional easements necessitated by this authorization through negotiation, the Ogles will be able to raise their concerns before the court in an eminent

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<sup>3</sup> See, e.g., *Transwestern Pipeline Co., LLC*, 122 FERC ¶ 61,165, at P 40 (2008).

<sup>4</sup> See *Ogle v. Columbia Gas Transmission Corp.*, 125 FERC ¶ 61,116 (2008).

domain proceeding. Given that the Ogles (and any other adversely affected property owners) will have the opportunity to seek just compensation for any diminution of property value either through easement negotiations with Columbia or in a court proceeding, we affirm our finding that the benefits of this project outweigh the potential adverse economic impacts.

7. The Ogles also direct the Commission to a requirement in their existing lease with Columbia that states, “[n]o well shall be drilled within 300 feet of the barn or dwelling on said premises without written consent of Lessor.” There is apparently now a barn located within 300 feet of the approved location of well 12487. We note that the existence of this barn was not raised as an issue in a timely manner to be addressed in the March 19 Order. In any event, as explained above, this is not the proper forum to address compliance with terms of the lease between the Ogles and Columbia.

### **B. Water Quality and Visual Impact**

8. Although the March 19 Order required Columbia to test water wells within 150 feet of any gas well, the Ogles remain concerned that water quality could be impacted in areas beyond 150 feet from construction. The Ogles request that the Commission require Columbia to test all water sources on leased property before drilling, provide drinking water during drilling, and test water immediately after drilling and intermittently thereafter for a period of three years.

9. The testing of wells closest to construction was only one of the mitigation factors detailed in the EA section addressing groundwater impact. The EA also detailed measures to reduce the risk of spills or leaks, noting that Columbia would not park, store, or service construction equipment, vehicles, hazardous materials, chemical fuels, lubricating oils, or petroleum products within a 200-foot radius of any private well.<sup>5</sup> We believe that Columbia’s implementation of its proposed mitigation, along with our required measures, is sufficient to avoid or minimize project impacts on groundwater. If an individual landowner desires additional testing of water wells, we recommend the landowner propose such testing during their easement negotiations. In addition to these procedures, the Ohio Environmental Protection Agency (OhioEPA) and Ohio Department of Natural Resources has specific regulations that Columbia must implement to ensure that groundwater is not impacted by natural gas wells (e.g., sufficient surface casing would extend below the deepest freshwater level, surface drilling is to be conducted using air, fresh water, or fresh water based drilling fluid, and drilling fluids from drilling activities must be captured and contained).<sup>6</sup>

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<sup>5</sup> EA at 19.

<sup>6</sup> EA at 18-19.

10. The Ogles state that the EA provides no citation for the statement on page 18 of the EA, that “[n]o contaminated groundwater has been identified within the vicinity of the Ohio Storage Expansion Project.” Data underpinning this statement are included on OhioEPA’s website.<sup>7</sup> Furthermore, the remainder of that paragraph states “if contamination is encountered during construction, Columbia would coordinate with the OhioEPA, Division of Solid and Infectious Waste Management, for construction practices through these areas.”<sup>8</sup> We believe the measures proposed by Columbia adequately minimize the likelihood of spreading contaminated groundwater.

11. The Ogles assert that Columbia has been taking water samples from a neighbor’s property, and they request the results of that testing. We are not aware of the water quality testing the Ogles mention. However, in accordance with environmental condition 12 of our March 19 Order, Columbia must file any corrective actions taken should water well yield or quality be impacted by construction of the project.

12. The Ogles assert that we erred in finding that well 12487 would cause minimal visual impact. We note that although the well may be visible to those within close proximity, it would not impact any special or unique scenic features. Further, the well would mostly be surrounded by forested vegetation and would likely not be visible from Donaldson Road or the Ogles’ house. Therefore, as stated in the EA, we believe visual impacts from the project would result in only minimal permanent visual impacts.<sup>9</sup>

### **C. Well and Access Road Location**

13. The Ogles contend that Columbia has not made efforts to eliminate or minimize adverse effects of the project on landowners with regard to well and access road locations. We disagree. Columbia relocated multiple wells and well lines in response to concerns raised by landowners including Mr. Gestner, the Tekulves, Mr. Shaw, and the Kost family. Columbia also limited the amount of tree clearing in response to concerns raised by the Kost family, the Fritts, and Mohican State Forest and Clear Creek Metro Park.<sup>10</sup> Thus, we conclude that Columbia has minimized impacts on landowners and environmental resources.

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<sup>7</sup> See <http://www.epa.ohio.gov/ddagw/pdu/index.html>

<sup>8</sup> EA at 18.

<sup>9</sup> EA at 54.

<sup>10</sup> EA at 42-43.

14. The Ogles ask the Commission to require construction of wells 12491 and 12487 from the same well pad. Since the certificated locations of wells 12491 and 12487 are less than 2,400 feet apart,<sup>11</sup> it would be possible to drill them from one centralized location. The most likely location from which to do this, so that the well pad would not be over Columbia's existing pipelines, would be east of those existing pipelines. However, this location would either impact an additional landowner not previously impacted by the project, or would be located on portion of the Ogles' property that is undesirable due to the topographic relief of the area. Therefore, we do not find this to be a viable alternative.

15. The Ogles also request that the access road associated with well 12487 be reduced to 10 feet in width. As we explained in the March 19 Order, when the Ogles filed their first proposed alternative location for well 12487, they also proposed reducing the access road width.<sup>12</sup> In response, Columbia agreed to move the access road, with modifications, but did not agree to a narrower access road. We believe that the Ogles have not provided any additional justification for a reduction in the width of Columbia's access road and we believe that 25 feet is a reasonable width for the access road. Therefore, we decline to require a change in the width of the road here.

16. The Ogles claim that the Commission erred in not requiring Columbia to minimize forested clearing by locating its facilities adjacent to existing facilities to the maximum extent possible. Columbia's original location for Well 12487 was not immediately adjacent to any existing facilities. However, at the time the EA was issued, it was our understanding that Columbia and the Ogles had worked out an agreement as to the location of the well facilities on the Ogles' property. Further, the Ogles commented on October 27, 2008, that they agreed to the well location. This location is the currently certificated location. Further, the approved location of the access road is almost identical to the location that the Ogles proposed in their November 28, 2008 filing. Additionally, we note that while the access road to the approved well location will impact more forested land than the Ogles' most recently-proposed well location and involve a wet weather ditch crossing, Columbia's use of the certificated corridor for its access road will reduce tree clearing associated with well 12487 by about 600 feet when compared to Columbia's originally proposed location.<sup>13</sup> The Ogles' contend that Columbia misrepresented that it moved the access road to this site to accommodate the Ogles, but,

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<sup>11</sup> As stated in the March 19 Order, Columbia believes that 1,200 feet from the bottom-hole location is the maximum safe drilling distance for well construction using the directional drill method.

<sup>12</sup> March 19 Order, P 74.

<sup>13</sup> Id. at P 76.

nevertheless, we still find there to be no locations for well 12487 and the access road environmentally preferable to those approved in the March 19 Order.<sup>14</sup>

17. The Ogles note that paragraph 72 of the March 19 Order references negotiations between the Ogles and Columbia concerning well location. The Ogles state that their agreement on well location was contingent upon further negotiations with Columbia on lease terms that never took place. The fact that the Ogles believed further negotiations relating to lease terms were forthcoming does not change the fact that they had agreed to the well location and that we found it to be environmentally acceptable.

18. The Ogles would also like the permanent well pad right-of-way reduced from 400 feet by 400 feet to a 120-foot-radius surrounding the well, which is the area of clearing associated with the project sites within the Mohican State Forest and Clear Creek Metro Park. Columbia states that the 120-foot-radius for operation of the wells within the Mohican State Forest and Clear Creek Metro Park is less than ideal. However, Columbia states that it is willing to operate the wells under these conditions in the Mohican State Forest and Clear Creek Metro Park because they are in sensitive areas.<sup>15</sup> The same conditions do not exist for the Ogles' property, and we find the more common 400-foot by 400-foot area to be appropriate under the circumstances.

19. The Ogles claim that Columbia is not in compliance with Environmental Condition 5 to the March 19 Order which states, among other things, that if Columbia proposes to change the location of the well from the certificated location it must obtain landowner approval. However, Columbia has not proposed to relocate the well, well line, or access road. Therefore, Columbia has not violated Environmental Condition 5.

#### **D. Disputes Over Construction Activities**

20. The Ogles allege that Columbia mistakenly cut down 30 trees for well pad 12492 on a neighbor's property. Columbia filed a response on the public record, claiming that the trees had been within the certificated construction right-of-way on the property. Our staff investigated the Ogles' allegations and confirmed during a compliance inspection of the project conducted on June 17, 2009, that trees were within the construction right-of-way.

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<sup>14</sup> The Ogles seem to not have an issue with the location of the gathering pipeline because they did not file any comments in opposition to the line.

<sup>15</sup> EA at 45.

**E. Communications and Allegations of Misrepresentation**

21. The Ogles state that a neighboring landowner did not receive notice of Commission proceedings related to the Ohio Storage Project. They do not, however, alleged that any construction activities will take place on this neighbor's property.
22. On December 27, 2007, our staff initiated the environmental review of the Ohio Storage Project under the Commission's Pre-filing Process in Docket No. PF08-6. On February 22, 2008, we issued a *Notice of Intent to Prepare an Environmental Assessment for the Proposed Ohio Storage Expansion Project and Request for Comments on Environmental Issues* and mailed it to the environmental mailing list (which included federal, state, and local agencies; newspapers and libraries in the project area; parties to the proceeding; and landowners along the project route). Following its formal application filing in Docket No. CP08-431-000, Columbia, in compliance with our regulations, was required to notify the landowners by first class mail or by hand within three business days following the Commission issuance of a Notice of Application on June 11, 2008. Under our regulations, an applicant is also required to publish this notice twice, and no later than 14 days after the date that a docket number is assigned, in a daily or weekly newspaper of general circulation in each county affected by the project. Columbia's notice was required to include the updated docket number for the project. In apparent response to these various notices, we received approximately 12 comments to the NOI. Notice of Columbia's application was published in the *Federal Register* on July 22, 2008. Twelve parties intervened. Moreover, the record shows that numerous landowners knew about the project, participated, and made informed comments, and that Columbia acted on those comments in many instances.<sup>16</sup> Considering the record in this proceeding, there is no indication of a significant problem regarding the adequacy of notice to landowners or other affected persons.
23. The Ogles state that Columbia has submitted false documentation consisting of an incorrect map, and the Ogles submitted their own map for the record. Our environmental staff has reviewed the maps and has not identified any discrepancies between the maps concerning facilities that would be constructed as part of this project. Staff noted a discrepancy between the maps concerning the location of existing well Line 12030, but no construction of facilities would occur on or adjacent to this well line.
24. The Ogles request that the Commission conduct an investigation regarding pre-construction issues and ongoing construction issues they have with Columbia. The Ogles state that Columbia has ignored them and made coercive comments. The Ogles also state that Columbia has been uncooperative with regard to removal of trash and paint from

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<sup>16</sup> For example, Columbia moved wells and access roads, and limited tree clearing.

their property at the well 12487 site.<sup>17</sup> The Ogles want Columbia to be required to answer every question a landowner has in writing and for such questions and answers to be “docketed for public view.”

25. The Ogles complaints are matters of concern to the Commission. The March 19 Order directed Columbia to establish complaint resolution procedures for the project and to provide copies of these procedures to all affected landowners prior to construction.<sup>18</sup> Nevertheless, the appropriate place to deal with these issues is through the complaint resolution procedures provided to the Ogles by Columbia. The procedures are designed to provide landowners with clear directions for identifying and resolving their environmental mitigation problems and concerns during construction of the project and restoration of the rights-of-way and well pads.<sup>19</sup> In addition, Columbia is required to file bi-weekly status reports until all construction and restoration work is completed. These reports must include a description of any landowner/resident complaints that may relate to Columbia’s compliance with the requirements of the March 19 Order and the measures taken to resolve the complaints.<sup>20</sup>

#### **F. Miscellaneous Issues**

26. The Ogles contend that as landowners, they are entitled to an allotment of free gas wells on their property. However, the Ogles state that they cannot use all of the gas they are allotted. They want to know where the unused free gas is going, who it is being sold to, and who is profiting from it.<sup>21</sup>

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<sup>17</sup> The Ogles assume that Columbia no longer has need for the certificated well on its property. While the Commission has not issued a clearance letter for construction of Well 12487 to date, we are unaware of any change in Columbia’s project to exclude this well from the Ohio Storage Expansion Project.

<sup>18</sup> March 19 Order, 126 FERC ¶ 61,237 at Appendix B, Environmental Condition 10.

<sup>19</sup> As specified in the dispute resolution procedures, the Commission’s Enforcement Hotline can be reached by telephone at (888) 889-8030 or by email to hotline@ferc.gov. The Enforcement Hotline can be used to informally resolve matters within the Commission’s jurisdiction.

<sup>20</sup> March 19 Order, 126 FERC ¶ 61,237 at Appendix B, Environmental Condition 10b.

<sup>21</sup> March 19 Order, 126 FERC ¶ 61,237 at Appendix B, Environmental Condition 10b. Columbia holds rights to any remaining native gas in the Clinton Sand at Crawford.

27. Issues related to an agreement between Columbia and landowners concerning free gas are outside of the Commission's jurisdiction. To the extent necessary, they may be pursued in a court with appropriate jurisdiction. The remaining issues raised by the Ogles, including those relating to source, amount, and disposition of native gas in the Clinton Sand formation over time, are also beyond the scope of our jurisdiction and are not relevant to the determinations made in the March 19 Order.

28. Finally, the Ogles request that the Commission investigate safety issues related to the number of employees working at the compressor station and the number of well tenders. Columbia must construct, operate, and maintain its facilities in accordance with the U.S. Department of Transportation's pipeline standards as set forth in Parts 190-199 of Title 49 of the Code of Federal Regulations. Columbia's employee staffing decisions are not regulated by the Commission.

The Commission orders:

The request for rehearing of the March 19, 2009 Order is denied.

By the Commission.

( S E A L )

Kimberly D. Bose,  
Secretary.