

133 FERC ¶ 61,082
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Marc Spitzer, Philip D. Moeller,
John R. Norris, and Cheryl A. LaFleur.

Columbia Gas Transmission, LLC
D&B Resources

Docket No. CP10-152-000

ORDER APPROVING ABANDONMENT AND DETERMINING
JURISDICTIONAL STATUS OF FACILITIES

(Issued October 25, 2010)

1. On April 21, 2010, Columbia Gas Transmission, LLC (Columbia) filed an application under section 7(b) of the Natural Gas Act (NGA)¹ for authority to abandon, by sale to D&B Resources, pipeline and storage facilities located in Greene County, Pennsylvania (Holbrook/Line 149 Facilities). Columbia also requests permission to abandon the transportation service rendered on the Holbrook/Line 149 Facilities. In the same filing, D&B Resources requests that the Commission determine that the facilities, when owned and operated by D&B Resources, will perform a gathering function and be exempt from the Commission's NGA jurisdiction. As discussed below, the Commission will authorize Columbia to abandon the facilities and services and finds that the facilities will perform a gathering function exempt from the Commission's jurisdiction following the abandonment.

I. Background and Proposal

2. Columbia, a Delaware limited liability company, is a natural gas company, as defined in the NGA, engaged in the business of transporting natural gas in interstate commerce. Columbia is a wholly owned subsidiary of the Columbia Energy Group, which is a wholly owned subsidiary of NiSource Inc. Columbia operates facilities in Delaware, Kentucky, Maryland, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Tennessee, Virginia, and West Virginia.

¹ See 15 U.S.C. § 717f(b) (2006).

3. The exact legal name of D&B Resources is Debbie Coleman, dba D&B Resources. D&B Resources is a sole proprietorship formed under the laws of West Virginia. D&B Resources owns and operates natural gas production facilities and was formed for the purpose of producing natural gas. D&B Resources does not own or operate any facilities or provide any services that are subject to the Commission's jurisdiction.

A. Facilities Proposed to be Abandoned

4. The facilities which Columbia proposes to abandon by sale to D&B Resources are Columbia's Holbrook Storage Field (Holbrook Field) and a portion of Line 149 – the Holbrook/Line 149 Facilities – consisting of approximately 11.5 miles of pipeline, 15 wells, a compressor station, rights-of-way, leases, and appurtenant facilities. Specifically, Columbia proposes to abandon: (1) 7.9 miles of transmission lines, consisting of 4 lines ranging in length from 0.04 to 5.9 miles and in diameter from 1 to 12 inches, that were constructed to transport gas from Texas Eastern Transmission, LP (Texas Eastern) to the Holbrook Field and from the Holbrook Field to Columbia's mainline system; and (2) Holbrook Field facilities, consisting of 3.6 miles of 4- to 10-inch diameter pipeline, 13 storage wells, 2 observation wells, and a 130 horsepower compressor station.²

5. Columbia requests permission to abandon the facilities alleging they are no longer an integral part of its transmission or storage systems. Columbia asserts that the proposed abandonment will reduce its current operating and maintenance expenses, as well as eliminate the need for future capital expenditures for their repair or replacement. D&B Resources will purchase the facilities for \$2,000,000.³

B. Services Proposed to be Abandoned

6. Columbia requests abandonment authorization for the transportation service provided to Columbia Gas of Pennsylvania (CPA), a local distribution company, which is

² Holbrook Field was placed into service in 1960 and has a working gas capacity of 450 MMcf (approximately 0.2 percent of Columbia's total system storage working gas), but has not been used for injections or withdrawals since 1997. Columbia does not propose a separate sale of the 1 Bcf of base gas remaining in the storage field because Columbia has determined the gas to be economically unrecoverable.

³ As indicated in Exhibit Y of the application, Columbia will book a gain on the sale of \$795,979 (\$2,000,000 purchase price minus \$189,394 net book value, \$960,535 base gas value, and \$54,092 cost to retire).

Columbia's only firm customer on the facilities. CPA provides service to a number of residential "mainline-tap" customers⁴ located on the facilities proposed to be abandoned. Some of these customers (pay customers) purchase gas from CPA at rates approved by the Pennsylvania Public Utility Commission, while others (free customers) are entitled to receive a certain amount of gas each month free of charge.⁵ Columbia states that D&B Resources has agreed to assume the obligation to provide service to CPA and the mainline tap customers on terms and conditions acceptable to both D&B Resources and CPA.

C. Gathering Determination

7. D&B Resources requests that the Commission find the facilities, when owned and operated by D&B Resources, will be gathering facilities and exempt from the Commission's jurisdiction pursuant to section 1(b) of the NGA.

II. Notices, Interventions and Comments

8. Notice of Columbia's and D&B Resources' application was published in the *Federal Register* on May 6, 2010.⁶ ProLiance Energy, LLC; Public Service Company of North Carolina, Inc.; National Grid Gas Delivery Companies; National Fuel Gas Distribution Corporation; Constellation NewEnergy-Gas Division, LLC; Orange and Rockland Utilities, Inc.; New York State Electric & Gas Corporation; Old Dominion Electric Cooperative; and CPA filed timely, unopposed motions to intervene.⁷ The city of Charlottesville, Virginia and the City of Richmond, Virginia filed a timely, joint motion to intervene.⁸

9. Statoil Natural Gas LLC (Statoil) filed a motion to intervene one-day out of time. Statoil has demonstrated that it has an interest in this proceeding and granting Statoil's

⁴ These mainline tap customers have received service by virtue of right-of-way agreements, leases, or other contractual agreements with Columbia.

⁵ Exhibit Z-2 of the application lists the mainline tap consumers, including 19 pay customers and 9 free customers. See also, Columbia's Data Response No. 1 filed on July 16, 2010.

⁶ 75 Fed. Reg. 24,936 (2010).

⁷ 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 (2010).

⁸ *Id.*

untimely motion will not delay, disrupt, or otherwise prejudice this proceeding. Thus, we will grant the untimely motion to intervene pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure.⁹

10. CPA's motion to intervene included comments. On May 28, 2010, Columbia filed an answer to CPA's comments. CPA's comments and Columbia's answer are addressed below.

III. Discussion

11. 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).

A. Abandonment of Jurisdictional Facilities and Services

12. Columbia states that the pipeline transmission facilities to be abandoned were originally constructed by Columbia and its predecessors as part of a low-pressure transmission system in Pennsylvania intended to transport gas purchased from Texas Eastern to the Holbrook Field for injection and storage, and from the Holbrook Field for delivery into Columbia's mainline system. Columbia further states that the Holbrook Field, comprising less than 0.2 percent of Columbia's total working gas and design deliverability, began operation in 1960, but has not been used to provide storage service since 1997. Columbia maintains that the facilities are no longer an integral part of its transmission system, and that existing storage customers will continue to be served using other system storage within Columbia's integrated storage and pipeline network. Columbia avers that retaining and operating the facilities is not cost-effective, explaining that the proposed abandonment will reduce Columbia's current operating and maintenance expenses and eliminate the need for future capital expenditures for repair or replacement of these facilities.

13. Gas is currently delivered to the mainline-tap customers of CPA through the facilities proposed to be abandoned. In its motion to intervene, CPA states that as of the time of its filing, CPA had not been involved in formal discussion with either Columbia or D&B Resources concerning continued service to those customers and thus, it had no contractual agreement with D&B Resources. CPA avers that the agreement between Columbia and D&B Resources does not adequately address the continuation of service issues. Therefore, CPA requests that the Commission make any abandonment authority expressly contingent upon execution of a written agreement between CPA and D&B

⁹ 18 C.F.R. § 385.214(d) (2010).

Resources that satisfactorily addresses the manner in which the mainline-tap customers are to be served in the future. CPA further requests that such authority be contingent upon any required state regulatory approvals of any resulting changes in the service provided to the mainline-tap customers, including any changes in the entity providing service and abandonment of service.

14. In its May 28, 2010 Answer, Columbia responds that its sales agreement with D&B Resources provides for D&B Resources' assumption of any existing service obligation on the facilities.¹⁰ Columbia further states that the sales agreement stipulates that "the sale will not be finalized unless and until continuity of service issues are first resolved between [D&B Resources] and CPA." Columbia states that the Commission has approved other abandonment applications filed by Columbia involving similar issues, finding that protections built into the sales agreement were adequate to address continuity of service issues.¹¹

15. To date, D&B Resources and CPA have not finalized an agreement resolving the continuity of service issues. However, as pointed out by Columbia, section 8.1(a) of the Purchase and Sale Agreement (PSA) between Columbia and D&B Resources contains specific provisions requiring D&B Resources to assume Columbia's responsibility for providing service to the mainline-tap customers. Further, section 8.1(b) of the PSA provides that D&B Resources shall assume the obligation to provide service to Columbia's existing firm transportation customers (CPA) and that Columbia shall not be obligated to close the sales transaction "until and unless [D&B Resources] has reached agreement with [CPA]" for service at least through the end of the term of Columbia's current service agreement with CPA. In addition, section 13.5 of the PSA requires that, prior to closing the sale, D&B Resources must have assumed the obligations set forth in section 8.1(b) and have provided written confirmation of that assumption.

16. We believe that the contractual provisions in the PSA between Columbia and D&B Resources, together with Columbia's representations in this proceeding, are adequate to assure that the proposed abandonment will not go forward unless D&B

¹⁰ See Exhibit U of the application, at section 8, and Columbia's September 7, 2010 filing.

¹¹ Citing *Columbia Gas Transmission Corp.*, 129 FERC ¶ 61,029 (2009); *Columbia Gas Transmission Corp.*, 93 FERC ¶ 61,278 (2000); *Columbia Gas Transmission Corp.*, 116 FERC ¶ 61,191 (2006).

Resources reaches agreement with CPA regarding future service to the mainline-tap customers. Therefore, we find no need to impose a special condition as CPA requests.¹²

17. CPA also requests that our abandonment approval be contingent on the receipt of any required state regulatory approvals to changes in service. The PSA provides that Columbia is not obligated to close until D&B Resources has reached an agreement with CPA. Currently, CPA and D&B Resources are actively engaged in negotiations. CPA is under no obligation to enter into an agreement with D&B Resources until it is satisfied that the provisions in that anticipated agreement address all its concerns. Under these circumstances, we find no reason to condition the abandonment authorization issued herein upon the receipt of any state regulatory approvals.¹³

18. CPA is Columbia's only firm customer on the subject facilities and no other entity has expressed concerns about continuity of service. As discussed above, we find that CPA's concerns have been adequately addressed by the PSA between Columbia and D&B Resources. Therefore, for the reasons stated above, we conclude 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 an abandoning pipeline make an NGA section 4 tariff filing, as Columbia 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 transportation services being provided pursuant to rate schedules in its currently-effective tariff.¹⁴ Thus, 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.

¹² See *Columbia Gas Transmission Corp.*, 129 FERC ¶ 61,029 at P 16; (citing *Columbia Gas Transmission Corp.*, 119 FERC ¶ 61,080, at P 24 (2007)).

¹³ We note that CPA did not specify the regulatory approvals they or D&B Resources may need or the amount of time it might take to secure such regulatory approvals.

¹⁴ *Columbia Gas Transmission Corp.*, 86 FERC ¶ 61,214 (1999) (Columbia).

B. Gathering Determination

20. D&B Resources petitions the Commission to conclude that once the facilities are abandoned and owned and operated by D&B Resources, the facilities will perform a gathering function and will not be subject to the jurisdiction of the Commission under the NGA.

21. Our jurisdiction under NGA section 1(b) does not extend to facilities used for “the production or gathering of natural gas.”¹⁵ Because the NGA does not define gathering, we have 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.¹⁶

22. We also consider the purpose, location, and operation of the facility,¹⁷ 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).¹⁸ We do not consider any one factor to be determinative and recognize that all factors do not necessarily apply to all situations.¹⁹

23. The facilities are located in an area in which there is rapid development of the Marcellus Shale. D&B Resources plans to extract any remaining producible gas from the Holbrook Field and to develop Marcellus Shale production on its own, or as a joint

¹⁵ 15 U.S.C. § 717(b) (2006).

¹⁶ 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)).

¹⁷ 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).

¹⁸ 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).

¹⁹ See, e.g., *Pecan Pipeline (N.D.), Inc.*, 126 FERC ¶ 61,015 (2009); *Columbia Gas Transmission Corp.*, 125 FERC ¶ 61,343 (2008).

venture with other producers, and to use the facilities to gather its own and others' production.²⁰ Gathered gas would be delivered to Columbia via Line 149 in either a northeast direction to a potential interconnection with Columbia's Line 1570, which operates at up to 900 psig, or to the west to a potential interconnection with the retained portion of Line 149, which will be operated at a maximum pressure of 25 psig. Line 149 has a maximum allowable operating pressure (MAOP) of 500 psig. Thus, deliveries into Line 1570 would require a new interconnection and compression.²¹

24. The facilities to be abandoned consist of 11.5 miles of 1- to 12-inch diameter pipe. We have found that these diameters and lengths are consistent with a system performing a gathering function.²² In addition, the 500 psig MAOP of Line 149 is well within the range of operating pressures that have been found to be gathering.²³ The compression to be acquired by D&B Resources is located at the Holbrook Field at the intersection with Line 149 and is typical of field compression. If new compression were constructed at the interconnection of Lines 149 and 1570 to facilitate deliveries into Line 1570, such compression would be consistent with a gathering function for the subject properties.

25. Currently, no processing plants have been proposed. While all existing wells are located at the Holbrook Field and will have a production function, new production in the area could be attached along Line 149 in a backbone type configuration, having no central point in the field. The active development of the Marcellus Shale in the area strongly suggests that such new production could be attached. We note that our determination of the primary function of the subject facilities does not rest on a single factor, but on a weighing of relevant facts and circumstances.²⁴

26. In addition, the intended purpose of the acquisition of the Holbrook/Line 149 Facilities is to gather gas produced from the Marcellus Shale. Consistent with a finding

²⁰ D&B Resources has no current production in the area.

²¹ See, Columbia's July 16 and July 29, 2010 Data Responses.

²² See, e.g., *Columbia Gas Transmission Corp.*, 93 FERC ¶ 61,278 (2000) (finding 16.3 miles of 20-inch diameter pipeline was gathering); *Columbia Gas Transmission Corp.*, 79 FERC ¶ 61,045 (1997) (finding 34.1 miles of 26-inch diameter pipeline was gathering).

²³ *Mississippi River Transmission Corp.*, 80 FERC ¶ 61,294 (1997) (finding operating pressures of 780 psig and 900 psig to be gathering).

²⁴ See, e.g., *Laser Marcellus Gathering Company, LLC*, 130 FERC ¶ 61,162 (2010).

that the facilities will perform a gathering function, D&B Resources provides no jurisdictional services. Finally, operating the facilities as gathering facilities would promote development of the Marcellus Shale gas resource, in accord with the objectives of the NGA.

27. For these reasons, based on current information and if operated as described above, we conclude that application of the primary function test criteria to the Holbrook/Line 149 Facilities supports a finding that the primary function of the facilities will be gathering, once the facilities are abandoned by sale. As such, the Holbrook/Line 149 Facilities are exempt from our jurisdiction under section 1(b) of the NGA.

C. Environmental Analysis

28. 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.²⁵

29. The Commission on its own motion received and made a 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 Holbrook/Line 149 Facilities and related services, as described in this order, in the application, and in the parties' supporting agreements, is granted.

(B) Upon acquisition by D&B Resources, the primary function of the facilities described in this order and in the application will be gathering, and the facilities will be exempt from Commission regulation under NGA section 1(b).

(C) Columbia shall notify the Commission within 10 days of the date of its abandonment of the Holbrook/Line 149 Facilities.

(D) Within 15 days after the date of the abandonment of the Holbrook/Line 149 Facilities, Columbia shall file revised tariff sheets to the extent necessary, in compliance

²⁵ 18 C.F.R. § 380.4(a)(31) (2010) (excluding facilities abandoned by the sale that involve only minor or no ground disturbance).

with Part 154 of the regulations to eliminate any tariff language relating to service performed on the facilities.

(E) Statoil Natural Gas, LLC's untimely motion to intervene is granted.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.