

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;  
Nora Mead Brownell, and Joseph T. Kelliher.

Columbia Gas Transmission Corporation  
and  
Energy Corporation of America and  
Eastern American Energy Corporation

Docket Nos. CP03-353-000  
and CP03-355-000

ORDER APPROVING ABANDONMENT, DISCLAIMING JURISDICTION, AND  
ISSUING LIMITED JURISDICTION CERTIFICATE

(Issued March 25, 2004)

1. On September 16, 2003, Columbia Gas Transmission Corporation (Columbia) filed jointly, with Energy Corporation of America (ECA) and Eastern American Energy Corporation (EAEC), in Docket No. CP03-353-000, an application<sup>1</sup> under Section 7(b) of the Natural Gas Act (NGA) seeking authorization for Columbia to abandon by sale to ECA, an unaffiliated gatherer, certain certificated natural gas facilities located in West Virginia and to terminate related jurisdictional services.<sup>2</sup> ECA concurrently filed, in Docket No. CP03-355-000, a petition for a declaratory order asking the Commission to disclaim jurisdiction over these facilities once they are acquired from Columbia and operated as gathering facilities. EAEC will be the owner and operator of the facilities when the transaction with Columbia is consummated.<sup>3</sup> Columbia states that EAEC will continue to serve Columbia's former local gas distribution company customers using the abandoned facilities. In addition, EAEC seeks a limited jurisdiction certificate under Section 7(c) of the NGA in order to provide service to existing customers involving the

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<sup>1</sup>As noted at page (p.) 2 of the September 16, 2004 Joint Application of Columbia Gas Transmission Corporation, ECA, and EAEC (Application), throughout the Application ECA and EAEC are "collectively referred to as ECA."

<sup>2</sup>Since certificated facilities and services are involved, the proposed abandonment is subject to the Commission's jurisdiction and the requirements of Section 7(b) of the NGA.

<sup>3</sup>See: p. 5 of the Application by Columbia, ECA, and EAEC.

transportation of natural gas received from Columbia, to the extent that local production is insufficient to meet such customers' needs. As discussed below, Columbia's request for authorization to abandon facilities and services is granted, with conditions, and EAEC is issued a limited jurisdiction certificate.

### **Background**

2. Columbia is a natural gas company as defined under the NGA, engaged primarily in the business of transporting natural gas and operating underground storage fields in interstate commerce under authorizations granted by and subject to the jurisdiction of the Commission.<sup>4</sup> Columbia offers storage and transportation services under rate schedules and tariffs authorized by the Commission. Such services are provided on an open-access basis pursuant to Columbia's blanket certificate authority under Subpart G of Part 284<sup>5</sup> and Section 311 of the Natural Gas Policy Act (NGPA).

3. ECA is a privately held energy company engaged in the exploration, development, production, transportation and marketing of natural gas and oil in the Appalachian Basin through its wholly-owned subsidiary EAEC, and in the western states through its wholly-owned subsidiary, Westech Energy Corporation (WEC).<sup>6</sup> Upon completion of the transaction with Columbia, EAEC will be the owner and operator of the facilities. ECA, EAEC, and WEC are not natural gas companies as defined by NGA Section 2(6), nor do they currently own or operate any facilities or provide any services that are subject to the Commission's jurisdiction.

4. The facilities proposed for abandonment were constructed and operated by Columbia and its predecessors under certificate authority granted by the Commission. Originally constructed in the early twentieth century to gather local production for delivery into the Cumberland, Maryland market, the facilities continued in that operational mode until the mid-1960s when, with the expansion of Columbia's mainline system, the facilities were used to gather local production and provide service to the local

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<sup>4</sup>Columbia is a wholly owned subsidiary of the Columbia Energy Group, a wholly owned subsidiary of NiSource, Inc.

<sup>5</sup>Docket No. CP86-240-000, 34 FERC ¶ 62,454 (1986).

<sup>6</sup>EAEC is engaged in the exploration, development and production of oil and natural gas and operates oil and natural gas wells and associated pipelines located in West Virginia, Pennsylvania, Kentucky, Virginia, Ohio, New York, and Illinois.

markets along the system. Excess volumes are currently delivered into Columbia's WB mainline system for redelivery to eastern markets.

## **Columbia's Proposals**

### **Abandonment**

5. Columbia and ECA entered into an agreement whereby Columbia would sell and ECA would purchase certain natural gas facilities owned by Columbia, located in various counties of West Virginia and designated as Columbia's 8000 System. The entire sale encompasses approximately 97.8 miles of both jurisdictional and non-jurisdictional pipeline, two compressor stations, rights-of-way, leases and appurtenances. Of the 97.8 miles of pipeline, approximately 87.8 miles were certificated by the Commission as transmission.<sup>7</sup>

6. The portion of Columbia's 8000 System for which abandonment authorization is requested consists of approximately 87.8 miles of pipelines ranging in size from 2-inch through 12-inch with a maximum operating pressure range of 50 psig to 800 psig; the Ellamore Compressor Station consisting of two compressor units with a total of 1,369 horsepower (hp); the Mabie Compressor Station consisting of three compressor units with a total of 1,140 hp, and appurtenances. The facilities will be sold for \$1,200,000.

7. Columbia proposes no facility removal as part of the abandonment; however, Columbia will install custody transfer meters at or near points of interconnection between its retained facilities and those being sold. Installation of the metering facilities will involve minor soil disturbances and will be performed under Columbia's blanket certificate.<sup>8</sup>

### **Services to be Abandoned**

8. The 8000 System currently provides firm service to Mountaineer Gas Company (Mountaineer), a local distribution company (LDC), and interruptible services to customers along the facilities. Columbia seeks abandonment authority for the service it provides through the 8000 System, including service to 469 mainline tap customers.

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<sup>7</sup>The remaining 10 miles are gathering pipeline exempt from the Commission's jurisdiction, and are not the subject of this proceeding.

<sup>8</sup>Docket No. CP83-76-000, 22 FERC ¶ 62,029 (1983).

However, Columbia states that ECA will continue to provide service to all customers currently served through the facilities.

9. Columbia does not anticipate any material change to, or interruption in, the services currently provided to customers through the facilities. Columbia submits that because the facilities for which Columbia is seeking abandonment approval are transmission facilities and the service through the facilities is transmission service, a NGA Section 4 filing for the termination of gathering service is not required.<sup>9</sup> However, in the event that the Commission determines a request under NGA Section 4 to be required, Columbia requests that the Commission waive its requirement that the NGA Section 4 filing be made within 30 days prior to the effective date of the transfer of the facilities to ECA.

### **Requests for Declaratory Order and Limited Jurisdiction Certificate**

10. EAEC seeks to have the Commission declare that the facilities it will acquire from Columbia are non-jurisdictional gathering facilities exempt from regulation under the NGA. EAEC explains that the facilities will primarily perform an exempt gathering function and that it will also make non-jurisdictional deliveries to local distribution customers, such as Mountaineer, at delivery points on the facilities.

11. EAEC agrees to assume Columbia's obligation to operate the transferred facilities on terms and conditions acceptable to EAEC and the customers. EAEC also agrees to establish delivery points on the transferred facilities under new service agreements in order to continue service to Columbia's former tap customers.

12. Columbia states that should EAEC's system requirements exceed the available local production received by EAEC, interstate gas from Columbia would be required. Accordingly, EAEC requests that the Commission grant it a limited jurisdiction certificate for the circumstances wherein interstate gas transfers would be required.

### **Notice and Interventions**

13. The application for abandonment, jurisdictional determination and limited jurisdiction certificate was published in the Federal Register on October 2, 2003, (68 Fed. Reg. 56828). Timely, unopposed motions to intervene were filed by the Cities of Charlottesville and Richmond, Virginia, and Orange and Rockland Utilities, Inc. Independent Oil & Gas Association of West Virginia (IOGA) also filed a timely

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<sup>9</sup>See Columbia Gas Transmission Corp., 86 FERC ¶ 61,214 at 61,762 (1999).

intervention, but unilaterally reserved the right to file a protest on or before October 30, 2003.<sup>10</sup> On October 31, 2003, IOGA filed a protest.<sup>11</sup> No other protests or interventions in opposition were received. On December 18, 2003, Columbia filed an Answer to IOGA's protest. On February 10, 2004, IOGA filed a Response to the Answer filed by Columbia; On March 2, 2004, Columbia filed a Motion for Leave to Answer and Answer to IOGA's Response. Although the Commission's procedural rules do not provide for answers and responses to answers, the Commission accepts the filings in order to insure a complete record in this proceeding.

### **IOGA's Protest**

14. IOGA asserts that: (i.) Columbia should file supplemental information so that it can be determined whether the 8000 System can be operationally used for gathering without engaging in displacement transactions, with EAEC providing services currently provided by Columbia; (ii.) action on the proposed abandonment should be deferred until producers and shippers have agreed to an acceptable default contract that provides continuity of service and rate certainly for a two year period; and (iii.) the manner in which compression and pressure regulation is used in the 8000 System is inconsistent with a gathering function and is only required so that deliveries can be made to Mountaineer.

### **Columbia's Responses**

15. Columbia, in its December 18, 2003 Answer to IOGA's protest, asserts that following the sale of the 8000 System it will eliminate all current delivery points to Mountaineer on the 8000 System and will no longer use these facilities to serve Mountaineer. Columbia avers that it is seeking to shed facilities no longer necessary to its transportation business and to performance of jurisdictional services for its transportation shippers.<sup>12</sup> Columbia also asserts that the facilities to be transferred serve the primary

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<sup>10</sup>Timely, unopposed motions to intervene are granted by operation of Rule 214 of the Commission's Rules of Practice and Procedure.

<sup>11</sup>IOGA's protest was filed out of time. However, no delay will be caused by accepting the protest and, for completeness of the record, the protest is accepted as part of the record. IOGA states that it is an association of small independent producers and other oil and gas-related companies doing business in West Virginia. IOGA avers that many of IOGA's members are represented as either currently or expecting to utilize Columbia's facilities to transport and gather natural gas.

<sup>12</sup>Columbia's December 18, 2003 Answer, at Section 2.(a.), p. 2.

function of gathering. Columbia contends that this is consistent with Columbia's commitment to exit the gathering business and sell its gathering facilities, and to eliminate the subsidization by transportation shippers of the costs of facilities not used in the provision of transportation services.<sup>13</sup> Columbia contends that the proposed sale of facilities complies fully with Columbia's 1996 Phase I Settlement in Docket Nos. RP95-408, et al. which, in part, directs Columbia's transition out of the gathering business and Columbia's end of historical subsidies to Appalachian gathering customers.<sup>14</sup> Further, Columbia argues that the relief sought by IOGA is contrary to the Commission's prior mandate to Columbia to end historical subsidies to Appalachian gathering.

16. Columbia elaborates in its February 17, 2004 data response that it has been advised by ECA that while the specific operation of portions of the 8000 System may change in order to bring additional production volumes on line, or to provide additional delivery points to Mountaineer, the overall system will continue to operate, in its historic manner, as a gathering system. Columbia states that ECA has represented that until ECA has had an opportunity to operate the 8000 System, it is difficult to fully comment on what other modifications may be required or made to the system. Columbia further asserts that all of the producers along the 8000 System will be provided with the ability to have their gas nominated and delivered pursuant to the various Aggregation Service or Interruptible Paper Pool Rate Schedules (collectively referred to as "Pool(s)") at the point of interconnection between the 8000 System and Columbia's mainline transmission system.

17. Columbia states that ECA and Mountaineer are currently negotiating the terms of a contract which will effectively alter the past practice by which Columbia delivered gas to Mountaineer at points on the 8000 System by displacement. Columbia further states that the contract will provide for the sale or exchange of a quantity of gas, which would be provided by either ECA or another gas provider.

18. Columbia further asserts that upon abandonment of the 8000 System, instead of scheduling gas into pooling points from the individual receipt points on the 8000 System, shippers will schedule their gas into pooling points from the interconnection of the 8000 System and Columbia's mainline transmission system. Columbia states that transportation from the current receipt points on the 8000 System to the point of interconnection will be managed for the shippers by ECA. Columbia asserts that ECA has advised it that ECA and Mountaineer are currently negotiating the terms of a contract

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<sup>13</sup>Columbia's December 18, 2003 Answer, at Section 2.(a.), p. 2.

<sup>14</sup>Columbia Gas Transmission Corp., 79 FERC ¶61,044 (1997).

which eliminates the need for Mountaineer to arrange for the transportation of gas from Columbia's mainline transmission system to individual delivery points located on the 8000 System.

19. Columbia counters IOGA's suggestion that producers and/or shippers have default contracts prior to abandonment by responding that there is no legal basis by which the Commission may require a default contract.

20. In response to IOGA's concerns about the presence of pressure regulation in areas of the production field, Columbia represents that the Ellamore and Mabie compressor stations do not eliminate requirements for pressure regulation in other areas of the field. Columbia states that in the 8000 System pressure regulation protects the lower 50 psig pressure sections of Line 8000 East from the higher 250 psig sections of Line 8000 West.

#### **IOGA's February 10, 2004 Response to Columbia's Answer**

21. In its February 10, 2004 Response to Columbia's Answer, IOGA in part contends that a prior rate settlement does not require Columbia to sell gathering facilities or to refunctionalize transmission facilities to gathering for purposes of justifying abandonment of the facilities by sale.<sup>15</sup> Further, IOGA asserts that Columbia's allegation that IOGA is attempting to preserve subsidies to Appalachian producers is not appropriate in the instance of facilities such as significant portions of the 8000 System which were carried on Columbia's books as transmission facilities and used to provide transportation service to a local distribution company and firm customer, Mountaineer Gas. IOGA also states that, in fact, there are no subsidies.<sup>16</sup>

22. IOGA submits that Columbia has not maintained the 8000 System and through the abandonment is attempting to shift system costs to a small group of captive producers. IOGA contends that Columbia should not be allowed to abandon facilities in such a manner.

23. IOGA asserts that if Columbia maintains a delivery point at the interconnection between the 8000 System and Columbia's transmission system, the 8000 System cannot function as a gathering system because it will be located downstream of Columbia's transmission facilities. IOGA further concludes that the existence of a delivery point also

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<sup>15</sup>IOGA's February 10, 2004 Response at ¶ 2.

<sup>16</sup>IOGA's February 10, 2004 Response at ¶ 2.

indicates Columbia's intention to make displacement deliveries to Mountaineer. Additionally, IOGA again advocates for default contracts.

### **Columbia's March 2, 2004 Response to IOGA's Response**

24. In its March 2, 2004 Response to IOGA's Response to Columbia's Answer, Columbia states that: (i.) Columbia's proposal is not an attempt to shift system costs and that Columbia has an ongoing effort to restructure its pipeline system through the abandonment of non-core facilities; (ii.) Columbia has indicated in its February 17, 2004 data response that ECA and Mountaineer are currently negotiating arrangements that would eliminate the need for displacement related to Columbia's transmission system; and (iii.) there is neither case law nor regulatory support for a delay in acting on Columbia's abandonment application until after a two-year default contract is in place.

### **Discussion**

#### **Abandonment**

25. The facilities proposed to be abandoned were certificated to transport natural gas in interstate commerce subject to the jurisdiction of the Commission. Accordingly, the abandonment of Columbia's certificated interests in the gathering facilities requires authorization under NGA Section 7(b).

26. Columbia determined that in restructuring its system consistent with Order No. 636, and moving from a bundled merchant function toward an unbundled transportation function, that it did not need all of its existing system facilities. The Commission has granted requests to abandon facilities that were used for gathering gas supplies in support of the merchant gas sales function that a pipeline no longer offers.<sup>17</sup> In this instance, it is reasonable for Columbia to abandon the 8000 System because these facilities are no longer necessary to support Columbia's restructured transportation service and the service it currently provides through the facilities will be continued by EAEC.

27. IOGA has argued that Columbia should improve the quality of the 8000 System before it sells it. We note that there is no authority to require such improvements.

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<sup>17</sup>See *Trunkline Gas Company*, 95 FERC ¶ 61,337 (2001); *Natural Gas Pipeline Company of America*, 94 FERC ¶ 61,186 (2001); and *Northern Natural Gas company*, 93 FERC ¶ 61,101 (2000).

### **Accounting**

28. Columbia proposes to abandon by sale the 8000 System facilities to ECA for \$1,200,000, which is less than their net book value.<sup>18</sup> Columbia purposes to account for the sale of the facilities as the disposition of an operating unit or system and recognize a loss of \$2,109,888 on the sale in Account 421.2, Loss on Disposition of Property.

29. Columbia's proposed accounting is in accordance with Gas Plant Instruction No. 5 and the requirements of the Uniform System of Accounts. Additionally, Columbia must file its actual accounting entries with the Commission within six months of the sale, as required by paragraph B of the instructions to Account 102, Gas Plant Purchased or Sold.

### **Primary Function Test**

30. Section 1(b) of the NGA exempts from Commission jurisdiction the production or gathering of natural gas. The Commission relies on its modified primary function test to determine which facilities are jurisdictional transportation or non-jurisdictional gathering facilities.<sup>19</sup> That test includes consideration of several physical and geographical factors including: (i.) the length and diameter of the line, (ii.) the extension of the facility beyond the central point in the field, (iii.) the facility's geographic configuration, (iv.) the location of the compressors and processing plants, (v.) the location of wells along all or part of the facility, and (vi.) the operating pressure of the line(s).<sup>20</sup>

31. The Commission also considers the purpose, location and operation of the facilities, the general business activities of the buyer or operator, and whether the jurisdictional determination is consistent with the NGA and the NGPA. The Commission does not consider any one factor to be determinative and recognizes that all factors do not

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<sup>18</sup>The jurisdictional portion of the sales proceeds is \$1,138,021.

<sup>19</sup>See *Farmland Industries, Inc.*, 23 FERC ¶ 61,063 (1983) and *Amerada Hess Corporation*, 52 FERC ¶ 61,268 (1990).

<sup>20</sup>The Commission has further modified the primary function test as applied to facilities located offshore. These modifications are immaterial here, since all the facilities at issue are located in West Virginia.

necessarily apply to all situations.<sup>21</sup> Additionally, the Commission weighs any and all other relevant facts and circumstances of a particular case.<sup>22</sup>

32. Applying the modified primary function test criteria supports a finding that the facilities perform a gathering and not a transmission function. The facilities include 87.8 miles of 2.38-inch diameter to 12.75-inch diameter lines. Pipelines with diameters of 10.75 inches or less comprise 86.36 percent of the total miles of pipeline under consideration. The majority of these are short lines connecting wells to slightly larger lines in order to deliver the gas. More importantly, the length and diameter of larger lines reflect the larger volume of gas that is collected from numerous wells in the production area in which the facilities are located. Additionally, the field compressor stations function to allow lower pressure gas production flowing on the gathering lines to enter Columbia's natural gas transmission system, which is also consistent with a finding of a gathering function. Pressure regulation in the field functions to protect the integrity of operational sections of the production field.<sup>23</sup> After abandonment, the compressors' function will be unchanged. The only gas being compressed through the facilities is local production from wells and gathering lines connected to the facilities.

33. Furthermore, most of the pipelines have one or more wells along their length and many of the longer pipelines have numerous wells attached thereto. Thus, the lengths and diameters of the 8000 System facilities are consistent with a finding of a gathering function. These lines, consistent with the gathering function, exhibit a backbone-type configuration as evidenced by the longer lines with numerous wells attached. Additionally, although the 8000 System facilities serve a number of field tap customers, as well as town border stations that serve the market area, the facilities have been utilized and will continue to be utilized to bring production from area wells to Columbia's interstate transportation system. Lastly, pipelines to be acquired operate at relatively low pressures, ranging from 50 to 800 psig, with over 90 percent operating at 250 psig or less. These pressures are indicative of gathering facilities. Thus, the configuration of the facilities, including their interconnections with wells, the lengths and diameters of the facilities and the operating pressures of the lines are all consistent with a primary function of gathering.

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<sup>21</sup>See, e.g., TOMCAT, 59 FERC ¶61,340 at 62,239 (1992).

<sup>22</sup>See, e.g., *id.* and Amerada Hess Corporation, 52 FERC ¶ 61,268 (1990).

<sup>23</sup>See December 18, 2003 Answer by Columbia Gas Transmission Corp. to Address and Correct Statements Made by IOGA, Response 3, Page 5.

34. We find that the 8000 System facilities will function primarily as gathering facilities<sup>24</sup> and are exempt from our jurisdiction under NGA Section 1(b) subject to the finalized contract between EAEC and Mountaineer providing for gas deliveries, other than by displacement, to Mountaineer.

### **Limited Jurisdiction Certificate**

35. In the instant case, if local production from the 8000 System is insufficient to meet the winter heating needs in Mountaineer's LDC market area, EAEC will supplement the local production with interstate supplies from Columbia. Columbia states that it has had to feed interstate volumes from its mainline into the 8000 System to meet local needs only three times in the last twenty years.<sup>25</sup> Columbia submitted descriptions of the three recent instances wherein such deliveries to Mountaineer were required. EAEC contends that the issuance of a limited jurisdiction certificate authorizing it to provide this service is required by the public convenience and necessity because it will allow EAEC to continue providing services currently performed by Columbia over the 8000 System facilities. EAEC anticipates bringing incremental volumes on to the 8000 System from other 8000 System producers. Accordingly, there will be adequate production from the 8000 System producers for Mountaineer to purchase. Therefore, services by Columbia should rarely occur.

36. It is noteworthy that Columbia did not have to supplement this market with interstate volumes during the December 2003 through January 2004 season, as it did during the three previous winter periods.<sup>26</sup>

37. Even though EAEC will be a gatherer, and not an LDC, upon acquisition of the facilities, the transportation of gas received from an interstate pipeline constitutes the transportation of gas in interstate commerce under NGA Section 1(b). Nevertheless, because of the limited scope of jurisdictional activities anticipated and because EAEC's primary function is the non-jurisdictional gathering of natural gas, the Commission will

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<sup>24</sup>ECA is currently a NGA-exempt gatherer and subsequent to the sale to EAEC, the 8000 System facilities will operate as NGA-exempt gathering facilities. Furthermore, Columbia will eliminate all current delivery points to Mountaineer on the 8000 System and will no longer make deliveries to Mountaineer at such points.

<sup>25</sup>See Columbia's October 24, 2003 and February 17, 2004 Responses to Commission October 9, 2003 and January 21, 2004 Data Requests.

<sup>26</sup>See Columbia's January 21, 2004 Data Response.

issue a certificate of limited jurisdiction to authorize EAEC to perform these limited activities without the full panoply of NGA rate and service obligations. 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 gathering operations.<sup>27</sup> Accordingly, this order grants EAEC the requisite authority to transport and deliver gas on its facilities as described in the record.

38. In previous orders granting limited jurisdiction certificates to otherwise non-jurisdictional companies engaged in relatively minor jurisdictional activities, the Commission has not subjected the companies to all the regulatory requirements applicable to conventional natural gas companies.<sup>28</sup> Accordingly, we find that the public interest would not be served by subjecting EAEC to all the filing and accounting requirements applicable to interstate pipeline companies and these requirements are waived.

39. Since the 8000 System facilities will perform a gathering function once acquired by EAEC, the Commission agrees that issuing the limited jurisdiction certificate to EAEC is required by the public convenience and necessity because doing so will assure continuity of service to Mountaineer and its customers in the area market.

40. Because the Commission is issuing a limited jurisdiction certificate to EAEC to provide certain services to Mountaineer, it is necessary to approve an initial rate for that service.<sup>29</sup> Accordingly, EAEC is directed to file a service agreement, as a special rate schedule under Section 154.112(a) of the Commission's regulations, and support for that rate schedule, within thirty days prior to commencing service under the limited jurisdictional certificate issued by this order.

41. IOGA's protest addressed issues as to whether the transferred 8000 System could operate as a non-jurisdictional gathering system. As discussed earlier, such operation is conditioned upon Columbia's severing its current connections with Mountaineer and ECA effecting satisfactory contractual conditions with Mountaineer that will halt deliveries of gas to Mountaineer by displacement. These prerequisite requirements for

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<sup>27</sup>See *Western Gas Resources*, 85 FERC ¶ 61,087 (1998) (gatherer), and *ONEOK, Inc.*, 55 FERC ¶ 61,453 (1991) (interstate pipeline).

<sup>28</sup>See *Columbia Gas Transmission Corporation, et. al.*, 90 FERC ¶ 61,211 (2000).

<sup>29</sup>See *Columbia Gas Transmission Corporation, Gatherco, Inc.*, 90 FERC ¶ 61,211 (2000).

the 8000 System to operate as a non-jurisdictional gathering system obviate the necessity for supplemental information, as IOGA requests.

### **Default Contracts**

42. There is no obligation to defer abandonment until producers and shippers have agreed to an acceptable default contract that provides continuity of service and rate certainty for a two year period. Likewise, the Commission is proscribed in its abilities to impose such contracts, as IOGA requests.<sup>30</sup>

43. In order to facilitate conversion from merchant to transporter function, requests to abandon facilities are to be expeditiously considered without undue delay in implementation. Both the limitations on the Commission's ability to impose default contracts and the Commission's concern for public interest preclude delay in abandonment as IOGA requests. Accordingly, IOGA's request is denied.

### **Environmental Considerations**

44. Environmental review of the abandonment under the Commission's Regulations confirms that the proposed abandonment qualifies as a categorical exclusion under Section 380.4(a) (31). The determination of whether the facilities would be exempt from the Commission's jurisdiction is an administrative decision. ECA's proposal qualifies as a categorical exclusion under Section 380.4(a) (27). Further, the Commission notes that the issuance of a limited jurisdiction certificate authorizing transportation of natural gas in interstate commerce over existing gathering facilities does not require an environmental review.<sup>31</sup>

45. The Commission finds that the subject facilities, upon their acquisition by EAEC, will perform primarily a gathering function and, accordingly, will be exempt from the jurisdiction of the Commission pursuant to NGA Section 1(b), except to the limited extent that the facilities are used to transport gas, as discussed.

46. At a hearing held on March 24, 2004, all evidence, including the application and exhibits thereto, submitted in support of the authorizations sought in this proceeding and were made part of the record.

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<sup>30</sup>Conoco, Inc. v. FERC, 90 F.3d 536 (D.C. Cir. 1996), cert. denied Amoco Energy Trading, et al. v. FERC, et al., 519 U.S. 1142 (1997).

<sup>31</sup>Equitable Gathering, L.L.C., 101 FERC ¶ 61,132 (2002).

The Commission orders:

(A) Approval of Columbia's application for abandonment of the certificated facilities and services to EAEC, as described in the foregoing order, is granted, subject to the conditions described in this order and set forth below.

(B) EAEC is directed to file with the Commission its agreement with Mountaineer setting forth new system conditions and changes in operation and/or configuration providing that deliveries to Mountaineer and/or any other system supplied by the 8000 System are not effected by displacement. The agreement shall be provided to the Commission within forty-five (45) days before its proposed effective date.

(C) Columbia shall notify the Commission within ten (10) days of the date of abandonment of the facilities.

(D) Columbia is directed to submit its actual accounting entries to clear Account 102 within six (6) months of the sale date.

(E) A limited jurisdiction certificate of public convenience and necessity is granted to EAEC authorizing EAEC to transport interstate gas for delivery to customers on its facilities, and waiver of the Commission's filing and accounting requirements is granted, as discussed in the body of this order.

(F) EAEC is directed to file a service agreement to establish its initial rate as a special rate schedule under Section 154.112(a) of the Commission's regulations, and support for that rate schedule, prior to commencing service under the limited jurisdictional certificate issued by this order.

By the Commission.

( S E A L )

Linda Mitry,  
Acting Secretary.