

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Columbia Gas Transmission Corporation
Cobra Pipeline Company, Ltd.

Docket No. CP06-435-000
Docket No. CP06-438-000

ORDER GRANTING ABANDONMENT, DETERMINING JURISDICTIONAL
STATUS OF FACILITIES AND ISSUING CERTIFICATE

(Issued April 23, 2007)

1. On September 8, 2006, Columbia Gas Transmission Corporation (Columbia) filed an application in Docket No. CP06-435-000, pursuant to section 7(b) of the Natural Gas Act (NGA) requesting permission and approval to abandon by sale to Cobra Pipeline Co., Ltd. (Cobra) certain natural gas facilities located in Ohio, and approval to abandon the various services being provided through those facilities. The facilities are known as the Churchtown, Holmesville and Northern Trumbull Systems and the Elk Compressor Station and they consist of approximately 217 miles of storage and transmission pipeline, three compressor stations with a combined horsepower (HP) of 2,650, various points of receipt and delivery, mainline taps, rights-of-way, leases and appurtenances. Columbia also requests that the Commission find that upon abandonment and sale to Cobra, the facilities will be exempt from the Commission's jurisdiction pursuant to section 1(c) of the NGA as "Hinshaw" pipeline facilities.¹

2. In an associated filing, Cobra submitted an application on August 30, 2006, in Docket No. CP06-438-000, for a blanket certificate to transport and sell natural gas in interstate commerce, on the facilities that it is purchasing from Columbia, in the same manner that intrastate pipelines are authorized to do under Subparts C and D of Part 284

¹ Section 1(c) of the NGA exempts from jurisdiction any person engaged in the transportation or sale for resale of gas in interstate commerce if (1) the gas is received within or at the boundary of a state, (2) all the gas is ultimately consumed within the state, and (3) a state Commission regulates the rates and service. A pipeline qualifying under section 1(c) is called a "Hinshaw" pipeline.

of the Commission's Regulations.² Cobra proposes to perform activities under the blanket certificate using a state-approved tariff that is pending before the Public Utilities Commission of Ohio (PUCO).

3. This order addresses the two unconsolidated dockets and grants the requested authorizations and jurisdictional determination for the reasons discussed herein.

Background

4. Columbia's primary business is the transportation and underground storage of natural gas under authorizations granted by and subject to the Commission's jurisdiction. Columbia operates facilities located in the states of Delaware, Kentucky, Maryland, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Tennessee, Virginia, and West Virginia.

5. Cobra is a limited liability company that has been formed under the laws of the State of Ohio to take ownership of the facilities described in Columbia's abandonment application. Cobra is not affiliated with Columbia.

Description of the Filings

A. Columbia's Requests to Abandon Facilities and Services

6. Columbia states that its proposals to abandon by sale certain facilities to Cobra, and to abandon services provided through the facilities, are consistent with previous applications it has filed with the Commission and is a part of its continuing program to redefine its pipeline system to better meet the needs of its customers. It further asserts that the facilities proposed for sale herein are no longer needed to support Columbia's role as a transporter.

7. Columbia proposes to abandon and sell the following facilities to Cobra for \$6.5 million:

- The Churchtown System, located in Washington and Noble Counties, consisting of approximately 81 miles of pipeline ranging from 2- to 10-inches in diameter and appurtenances; the Churchtown compressor station, which has a 800 HP compressor unit and related appurtenances; and 40 system meters.

² 18 C.F.R. § 284.224 (2006).

- The Holmesville System, located in Holmes and Wayne Counties, consisting of approximately 58 miles of pipeline ranging from 2- to 10-inches in diameter and appurtenances; the Holmesville Compressor Station which has 2 360 HP compressor units and appurtenances; and 57 system meters.
- The Northern Trumbull System, located in Ashtabula and Columbiana, Geauga, Mahoning and Trumbull Counties, consisting of approximately 78 miles of pipeline ranging from 4- to 12-inches in diameter and appurtenances; and 19 system meters.
- The Elk Compressor Station in Noble County which consists of three compressor units with a total of 1,130 HP. Columbia does not request abandonment of any pipelines, points of receipt, measuring stations or mainline taps in connection with the proposed abandonment of the Elk Compressor Station.

8. Columbia requests permission to abandon the service provided to the mainline tap consumers listed at Exhibit Z-2 of its application. Service to the mainline tap consumers currently is provided under Columbia Gas of Ohio, Inc.'s (a local distribution company) SST service agreement with Columbia. Cobra has reached an agreement with Columbia Gas of Ohio which assures that Cobra will continue to provide service to these consumers.

9. Columbia also seeks approval to abandon the firm service provided pursuant to the agreements listed at Exhibit Z-3 of its application. Upon receiving approval, Columbia will modify the service agreements to reflect the abandonment of service. The affected customers will have the option to relocate the service to the new interconnecting points between Cobra and Columbia. Cobra has agreed to assume Columbia's obligation to provide firm transportation service through the facilities to firm customers. Cobra will provide service to the customers on a non-discriminatory basis in accordance with its tariff pending approval by the PUCO.

10. Columbia's interruptible service contracts permit either party to the contract to cancel the services upon 30-days written notice. Columbia intends to provide cancellation notice to interruptible shippers using the facilities upon receipt of the Commission's abandonment approval.

11. Columbia does not propose to construct or remove any facilities in connection with the proposed abandonment but will establish new points of receipt from and delivery to Cobra between the facilities it will retain and those being sold. Cobra will construct and own metering facilities at or near the new points of interconnection.

B. Columbia's request for a Jurisdictional Determination

12. Columbia states that Cobra has been formed to own and operate the facilities that are the subject of its abandonment application. Columbia states that Cobra is a "pipeline company" within the meaning of the PUCO Revised Code Sections 4905.03(A)(7) and 4950.30. As such, Cobra's activities will fall under the PUCO's jurisdiction. It adds that Cobra has filed an application with the PUCO for the authority to operate, maintain and transport gas through the facilities to natural gas retail suppliers, local distribution companies, and all other customers on a non-discriminatory, open-access basis. Based on these facts, Columbia requests the Commission to declare that the facilities that are the subject of its application will, once they are acquired by Cobra, qualify as Hinshaw facilities that are exempt from the Commission's jurisdiction under section 1(c) of the NGA.

C. Cobra's Request for a Blanket Certificate

13. Cobra states that it is a limited liability company based in Mentor, Ohio, that has been formed to take ownership from Columbia of the facilities located in Ohio that are the subject of Columbia's abandonment application in Docket No. CP06-435-000.

14. Cobra requests a blanket certificate authorizing it to provide services subject to the Commission's jurisdiction using procedures similar to those applicable to intrastate pipelines under Subparts C and D of Part 284 of the Commission's regulations.

15. Cobra asserts that it will use rates contained in effective transportation rate schedules for intrastate service that are on file with the PUCO for comparable service. Cobra states that its proposed rates are set forth in Sections 7 and 8 of its proposed PUCO tariff, which is currently under review by the PUCO in Docket No. 05-1558-PL-ATA. Cobra states that it will advise the Commission when the PUCO approves its tariff and rates.

16. Cobra proposes to negotiate contract rates with individual shippers under Part 284 of the Commission's regulations, using as its maximum rate the rate on file with the PUCO for comparable service to intrastate shippers. Cobra further states that it plans to rely on the pre-granted abandonment authority of its blanket certificate when the contracts expire.

17. Cobra anticipates that service under the blanket certificate will consist primarily of transportation for local distribution companies under Subpart C of Part 284 of the regulations. It may also perform transportation for interstate pipelines under Subpart C. Although it requests authorization to make gas sales pursuant to Subpart D, Cobra has no current plans to engage in such activities.

Notice, Interventions, Comments and Protests

18. Notice of Columbia's application in Docket No. CP06-435-000 was published in the *Federal Register* on September 18, 2006 (71 Fed. Reg. 54,632). Timely interventions were filed by Cobra; Virginia Natural Gas, Inc. and Pivotal Utility Holdings, Inc. d/b/a Elizabethtown Gas and d/b/a Elkton Gas; Orange and Rockland Utilities, Inc.; East Ohio Gas Company d/b/a Dominion East Ohio and Hope Gas, Inc. d/b/a Dominion Hope; Columbia Gas of Ohio, Inc.; ProLiance Energy LLC (ProLiance), and the Ohio Oil & Gas Association (OOGA). Columbia Gas of Ohio and ProLiance filed comments and OOGA filed a protest.

19. Notice of Cobra's Docket No. CP06-438-000 application was published in the *Federal Register* on September 22, 2006 (71 Fed. Reg. 55,456). Interventions were filed by Columbia and Columbia Gas of Ohio. OOGA filed a late motion to intervene and protest.

20. Timely, unopposed motions to intervene are granted by operation of Rule 214 of the Commission's Rules of Practice and Procedure (18 C.F.R. § 385.214(c) (2006)). The Commission finds that granting OOGA's late-filed motion to intervene in Docket No. CP06-438-000 at this early date will not delay, disrupt, or otherwise prejudice this proceeding, or place an additional burden on existing parties. Therefore, for good cause shown, we will grant the late-filed motion to intervene (18 C.F.R. § 385.214(d) (2005)).

21. Columbia and Cobra filed a joint answer to the comments and protests filed in these dockets.³ They also submitted a response to a staff data request on March 6, 2007, containing supplemental information that is incorporated in our discussion below.

Discussion

A. Abandonment of Facilities and Services

22. Because the facilities and services to be abandoned are used in the transportation of natural gas in interstate commerce, their abandonment is subject to the requirements of section 7(b) of the NGA.

23. In its comments, Columbia Gas of Ohio requests assurance that Cobra will continue to provide service to Columbia Gas of Ohio's mainline tap consumers on terms

³ While section 385.213(a)(2) of the Commission's regulations generally bars answers to protests, the Commission will accept such responses when they are helpful to our decision-making as is the case here.

acceptable to Cobra and Columbia Gas of Ohio until such time as Columbia Gas of Ohio is relieved of its obligation to serve those customers by order of the PUCO.

24. That assurance has been given. Cobra has agreed to assume Columbia's service obligations to mainline tap customers and firm transportation customers on the acquired facilities. Cobra's commitment is memorialized at Article 8.1(a) and (b) of the Purchase and Sale Agreement set forth at Exhibit U to Columbia's application.

25. OOGA states that Columbia is late in seeking to abandon the Elk Compressor Station since Columbia ceased operating the station two years ago. Prior to that time, OOGA states that Columbia delivered Ohio-produced natural gas into the interstate system of Columbia via the station. OOGA states that by stopping this service Columbia may have violated its obligations and may now be seeking retroactive support for its unauthorized actions.

26. Columbia responds that in early 2005 the volumes being pumped through the Elk Compressor Station declined to a level below that necessary for the compressor units to run. Columbia asserts that the facilities cannot be deemed abandoned since all components remain in place, maintained and ready to operate. Moreover, it states that no service obligation has been terminated during the last two years.⁴ Columbia states that the station has been for sale for almost a decade and that the facilities leading up to the station are no longer owned by Columbia. These facts, contends Columbia, show that it no longer needs the station to transport gas in interstate commerce. For these reasons, Columbia states that Cobra's agreement to buy the station and other facilities make this the appropriate time to request abandonment authorization.⁵

27. OOGA provides no evidence that Columbia has defaulted on any obligations at the Elk Compressor Station and no shippers have protested the proposed abandonment.⁶

⁴ Citing *Reynolds Metals Co. v. FPC*, 534 F.2nd 379, 384 (D.C. Cir. 1976) (an abandonment within the meaning of NGA section 7(b) "occurs whenever a natural gas company permanently reduces a portion of a particular service.").

⁵ Cobra states that although it has no current plans to reactivate the Elk Compressor Station and the compressor facilities are separate from any other Cobra-owned facilities it would likely operate the station as an unregulated component of a gathering operation if demand justifies such operation.

⁶ See *Southern Star Central Gas Pipeline, Inc.*, 115 FERC ¶ 61,057 at P 34 (Commission will presume there are no continuity of service issues present in a

Columbia indicates that it has not operated the facility recently due to decreased demand and argues convincingly that it no longer requires or can effectively use the certificated facilities it now seeks to abandon.

28. Because Columbia no longer needs the certificated facilities for which abandonment it sought in this proceeding, and since Cobra will continue service to Columbia's current customers, we find that the public convenience and necessity permit their abandonment. We are also granting abandonment of the three compressor units at the Elk Compressor Station, which is not physically connected to the other facilities, because Columbia no longer operates those units to transport local gas to the interstate market and the facilities leading up to the station are no longer owned by Columbia.

B. Jurisdictional Determination

29. In order to be exempted from Commission jurisdiction pursuant to NGA section 1(c), the pipeline must meet three requirements. First, it must receive the gas it transports within or at the boundary of a state. Second, all the gas must be consumed within the state. Third, the rates and services of the pipeline must be subject to regulation by a state commission. Although OOGA believes that Columbia and Cobra have properly characterized the Northern Trumbull System as exempt from the Commission's regulations under section 1(c) of the NGA, OOGA contends that Cobra's proposed operation of the Churchtown and Holmesville Systems does not satisfy the second requirement for a Hinshaw exemption since some of the gas received on those systems eventually will be consumed outside of Ohio. However, as is more fully discussed below, we find that upon acquisition of Columbia's facilities, Cobra's operations will meet the criteria for exemption from regulation under the NGA as long as any gas which will not be consumed within Ohio is transported pursuant to a limited jurisdiction certificate issued pursuant to section 284.224 of the Commission's regulations.

30. OOGA asserts that a portion of the locally-produced gas delivered to the Churchtown and Holmesville Systems – which, OOGA notes, make up approximately 139 of the 217 miles, or over one-half, of the pipeline that Cobra will purchase – is re-delivered to the Columbia Pool, where it enters the interstate gas stream of Columbia and leaves the State of Ohio. This, asserts OOGA, is an example of interstate transportation of natural gas that is regulated by the Commission. Accordingly, OOGA requests that the Commission establish hearing proceedings to examine the Hinshaw exemption issues raised by the Columbia and Cobra applications.

proceeding if there are no protests by shippers with contracts for firm transportation service on the facilities that the interstate pipeline seeks to abandon).

31. Columbia and Cobra concede that some of Cobra's gas will enter interstate commerce but explain that this is the precise reason that Cobra has requested explicit authority to engage in interstate transportation activities under a blanket certificate of limited jurisdiction pursuant to section 284.224 of the Commission's regulations. This does not, they assert, affect Cobra's Hinshaw status.⁷

32. Columbia and Cobra assert that an applicant for a blanket certificate of limited jurisdiction need not demonstrate that none of the gas which it transports will leave the state in order to qualify for Hinshaw status. Rather, Columbia and Cobra cite *Saltville Gas Storage Co.*⁸ for the proposition that only where a pipeline has been unable to demonstrate that it will have a significant amount of in-state service has the Commission found that a pipeline cannot qualify as a Hinshaw pipeline and thus be authorized pursuant to a limited jurisdiction blanket certificate to transport gas in interstate commerce that will leave the state. In their March 6 response to staff's data request, Columbia and Cobra assert that nearly 50 percent of all gas to be transported by Cobra on its three systems will be received within the State of Ohio and delivered by Cobra to three local distribution companies (LDC), two of which are Cobra affiliates, for ultimate consumption within the State of Ohio. Columbia and Cobra assert that the majority of the gas in excess of that required by the markets attached to the three LDCs will be redelivered by Cobra to Columbia's mainline transmission system for consumption in Ohio markets served by those mainlines.

33. Columbia and Cobra state that a very small amount of the gas Cobra will transport will leave Ohio. They state that a *de minimis* quantity of gas from the Churchtown and Holmesville Systems may be delivered to Columbia's storage facilities rather than to local markets. Further, less than two percent of the total gas received into the Northern Trumbull System in 2006 was delivered to Columbia's mainline system which, because of its location, makes it possible for a portion of that gas to cross the Pennsylvania state line. Columbia and Cobra assert that the Part 284 limited jurisdiction certificate requested by Cobra is intended to apply to the small amounts of interstate gas that may be delivered to Columbia's storage or that may enter into part of Columbia's facilities in Pennsylvania.

34. The Commission finds that upon abandonment of the facilities described, Cobra will qualify as a Hinshaw pipeline as contemplated by NGA section 1(c) even though a small amount of gas it receives ultimately will be consumed outside of Ohio. A

⁷ Citing *Wisconsin Power and Light Co.*, 112 FERC ¶ 62,216 (2005).

⁸ 104 FERC ¶ 61,273 at P 25 (2003).

pipeline's Hinshaw status is not jeopardized when the gas it transports reenters interstate commerce so long as it obtains a Part 284 blanket certificate under section 284.224 of the Commission's regulations to provide the jurisdictional service.⁹ In this case, all the gas to be received by Cobra either will be consumed within the State of Ohio or redelivered pursuant to the appropriate regulatory authority under its Part 284 blanket certificate. Thus, the fact that some of the gas transported by Cobra will be redelivered to Columbia for transportation out of Ohio does not jeopardize Cobra's Hinshaw status.

35. We are satisfied that a substantial amount of gas received by Cobra will be directly delivered to Ohio consumers through the three LDCs serviced by Cobra. The rest of the gas will be delivered for further transportation by Columbia to Ohio markets. The fact that a portion of Cobra's gas will be transported within the state over an interstate pipeline for consumption in-state does not affect Cobra's qualification as a Hinshaw pipeline.¹⁰ To the extent that Cobra undertakes transportation of gas volumes for consumption out-of-state, the Part 284 blanket certificate will provide the required authority.¹¹

36. We reject OOGA's argument that we should consider the three systems separately when making our jurisdictional determination. Cobra intends to operate the systems, to the extent possible, on an integrated basis and, in any case, the three systems would qualify as Hinshaw pipelines separately under the same analysis we have applied to the whole.

37. OOGA's request for a hearing is likewise denied. A trial-type hearing is not needed in this instance because there are no material issues of fact in dispute that cannot be resolved on the basis of the written record before us.¹²

⁹ *Intermountain Municipal Gas Agency*, 97 FERC ¶ 61,359 (2001).

¹⁰ *Ohio Valley Hub, L.L.C.*, 96 FERC ¶ 61,152 (2001) (Hinshaw exemption granted but no Part 284 blanket certificate necessary where all of pipeline's gas is either delivered in-state or delivered to interstate pipeline for in-state consumption).

¹¹ *Empire State Pipeline*, 56 FERC ¶ 61,050 (1991) (Hinshaw pipeline required to obtain a Part 284 limited jurisdiction certificate when gas that it transports to an interstate pipeline is likely to flow out-of-state.)

¹² *See Moreau v. FERC*, 982 F.2d 556, 568 (D.C. Cir. 1993).

C. Cobra's Blanket Certificate

38. As discussed herein, upon acquisition of Columbia's facilities Cobra will qualify for Hinshaw pipeline status. Section 284.224 of the Commission's regulations permits any Hinshaw pipeline to apply for a blanket certificate to sell and transport gas in interstate commerce in the same manner that intrastate pipelines are authorized to engage in such activities under section 311 of the NGPA and subparts C and D of Part 284 of the Commission's regulations. With this blanket certificate authority, a Hinshaw pipeline can transport and deliver gas to any interstate pipeline or LDC regardless of where the gas will ultimately be consumed, without jeopardizing its Hinshaw status. Cobra has shown that it is a qualified applicant under section 284.224 and, accordingly, we find that its proposal is in the public convenience and necessity.

39. Under the section 284.224 blanket certificate authority, a Hinshaw pipeline has the option to base its jurisdictional rates on the methodology used to derive the rates on file with its state commission or it may submit rates for Commission approval and provide sufficient information for the Commission to determine that the proposed rates are fair and equitable. Cobra has elected the first option and proposes to charge rates contained in its effective transportation rate schedules for intrastate service that are on file with the PUCO for comparable service.¹³

40. However, because Cobra's proposed rates are currently under review by the PUCO in Docket No. 05-1558-PL-ATA, Cobra does not have any existing rates on file with the appropriate state regulatory agency. Thus, Cobra's election of rates using section 284.123(b)(1) is premature. In addition, Cobra's filing does not contain sufficient information for the Commission to determine that the proposed rates and charges are fair and equitable under the alternate section 284.123(b)(2). Accordingly, Cobra is directed to file pursuant to section 284.123(e) within 30 days of commencement of the new service an election of rates and a statement of operating conditions.

41. Finally, no environmental assessment or environmental impact statement has been prepared for these projects because our review shows that they qualify for categorical exclusion from the Commission's regulations at sections 380.4(a)(31) (Docket No. CP06-435-000) and at section 380.4(a)(22) (Docket No. CP06-438-000).

The Commission orders:

(A) Permission and approval of the abandonment by Columbia of the facilities

¹³ 18 C.F.R. § 284.123(b)(1)(ii) (2006).

and services described in this order and in Columbia's application in Docket No. CP06-435-000, is granted.

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

(C) Upon acquisition by Cobra, the facilities described in this order and in Columbia's application will qualify as "Hinshaw" facilities, exempt from Commission regulation under NGA section 1(c).

(D) A blanket certificate is authorized under NGA section 7 and section 284.224 of the Commission's regulations, effective the date of the issuance of this order, authorizing Cobra to engage in the sale and transportation of natural of gas that is subject to the Commission's jurisdiction under the NGA to the same extent and in the same manner that intrastate pipelines are authorized to engage in such activity under Subparts C and D of Part 284 of the Commission's regulations.

(E) The certificate authorization granted in paragraph (D) is subject to Cobra making a filing pursuant to section 284.123(e) within 30 days of commencement of the new service an election of rates and a statement of operating conditions.

(F) The certificate issued in paragraph (D) is conditioned upon Cobra's compliance with all applicable Commission regulations, particularly sections 157.20(a) and (e).

(G) OOGA's request for a hearing is denied.

(H) Columbia shall account for the sale of its facilities in accordance with Gas Plant Instruction No. 5 and Account 102, Gas Plant Purchased and Sold, of the Uniform System of Accounts; Columbia must submit its final accounting within six months of the date that the transfer is consummated and provide all the accounting entries related to the transaction along with narrative explanations describing the basis for the entries.

By the Commission.

(S E A L)

Kimberly D. Bose
Secretary