145 FERC ¶ 61,028
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Columbia Gas Transmission, LLC — Docket No. CP13-480-000
Columbia Gulf Transmission, LLC

ORDER ISSUING CERTIFICATE AND AUTHORIZING ABANDONMENT

(Issued October 8, 2013)

1. On May 15, 2013, Columbia Gas Transmission, LLC (Columbia) and Columbia Gulf Transmission, LLC (Columbia Gulf) (together applicants) filed a joint application for approval of a lease agreement. Columbia requests authority, pursuant to section 7(c) of the Natural Gas Act (NGA), to acquire 545,635 dekatherms per day (Dth/d) of capacity by lease from Columbia Gulf, and Columbia Gulf requests authority, pursuant to section 7(b) of the NGA, to abandon 545,635 Dth/d of capacity by lease to Columbia. The Commission will grant the requested authorizations subject to conditions, as described below.

Background and Proposal

2. Columbia is engaged primarily in the business of transporting natural gas and operating underground storage fields in interstate commerce.[1] It owns and operates facilities in Delaware, Kentucky, Maryland, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Virginia and West Virginia. Columbia is a “natural gas company” as defined under section 2(6) of the NGA, subject to the jurisdiction of the Commission.

[1] Columbia’s storage and transportation services are provided on an open-access basis primarily pursuant to blanket certificate authority under Subpart G of Part 284 of the Commission’s regulations, 18 C.F.R. §§ 284.221-227 (2013), under rate schedules and tariffs authorized by the Commission and incorporated in Columbia’s FERC NGA Gas Tariff, Baseline Tariffs, Fourth Revised Volume No. 1.

3. Columbia Gulf is engaged primarily in the business of transporting natural gas in interstate commerce.[2] It owns and operates an interstate natural gas pipeline system extending from Offshore Louisiana through Louisiana, Mississippi, Tennessee and Kentucky. Columbia Gulf is "natural gas company" as defined under section 2(6) of the NGA, subject to the jurisdiction of the Commission.

4. The applicants state that historically Columbia has received a significant quantity of gas from Columbia Gulf at Columbia's primary interconnect with Columbia Gulf located near Leach, Kentucky for further transportation to Columbia's customers. Columbia Gulf transports gas from sources in the Gulf of Mexico, onshore Louisiana, and southern shale formations through its main transmission pipeline system commencing in Rayne, Louisiana. In addition to the primary interconnect with Columbia at Leach, Columbia Gulf also interconnects with various Columbia pipeline facilities in eastern Kentucky which are physically isolated from the remainder of Columbia's primary transportation system and located upstream (i.e., south) of the Leach interconnect, specifically Lines KA-1, G, KZ and E. Columbia Gulf has transported gas for delivery to Columbia's customers located on those facilities, in addition to making deliveries to certain other Columbia delivery points which are directly located on Columbia Gulf's system in Kentucky and Tennessee. According to the applicants, all gas flowing on Columbia Gulf's system for Columbia's account has flowed from south to north, and deliveries to Columbia's customers located off of Columbia Gulf facilities are made via displacement.

5. The applicants state that they expect that this south-to-north flow on Columbia Gulf's pipeline will change in response to on-going major shifts in traditional sources of gas supply and Columbia Gulf anticipates the commencement of north-to-south gas flow on a portion of its mainline pipeline system in the near future. Columbia asserts that as a result, it can no longer reliably depend on displacement to effect the delivery of gas to its customers via backhaul deliveries on Columbia Gulf's system.

The Capacity Lease

6. Under the proposed lease, Columbia Gulf, as lessor, has agreed to lease 545,635 Dth/d of capacity on its system to Columbia for a primary term commencing on

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November 1, 2013, and continuing through March 31, 2024.[3] Columbia will use the leased capacity to provide firm service to its customers at (1) delivery points located on Lines KA-1, G, KZ, and E, in Kentucky and Ohio, which are physically isolated from Columbia's primary system; and (2) delivery points directly located on Columbia Gulf's pipeline system in Kentucky and Tennessee. Columbia states that the proposed lease of north-to-south capacity on Columbia Gulf will ensure Columbia's ability to deliver gas on a firm basis to its customers located south of the Columbia's interconnect with Columbia Gulf near Leach.

7. Under the lease, Columbia Gulf will continue to own, operate, and maintain the facilities providing the capacity which is the subject of the lease. No new facilities will be constructed to implement the terms of the proposed lease. Because no construction activity is necessary, the applicants propose to commence the lease effective on the issuance date of an order authorizing the proposal herein.

Lease Rates and Cost Recovery

8. The proposed lease provides that Columbia will pay to Columbia Gulf a fixed monthly payment of $333,500 for the leased capacity. Applicants state that this rate was determined by calculating the total cost of operating the Columbia Gulf system on a Dth/mile basis in order to calculate a lease payment based on the mileage and volumes under the lease, which they assert more accurately represents the costs to Columbia Gulf of providing this service than does the more typical cost/Dth calculus.[4] The applicants also state that the proposed lease payment is less than Columbia Gulf's Part 284 firm transportation rate for comparable service over the same transportation path as the lease. The applicants state that by leasing this capacity from Columbia Gulf to maintain services to its customers served from Columbia Gulf's system, Columbia can avoid the capital costs associated with new construction, which they estimated would be approximately $500 million.

9. The applicants state that in addition to the fixed monthly lease charge, Columbia will compensate Columbia Gulf for its fuel gas, and lost and unaccounted for (LAUF) gas attributable to the use of leased capacity. Applicants state that the initial retainage rate shall be equal to the retainage rate applicable to mainline backhaul transactions set forth in Columbia Gulf's FERC NGA Gas Tariff, as it may change from time to time. The applicants further state that on an annual basis, Columbia Gulf will reassess the retainage

[3] The lease will continue from year to year thereafter unless terminated by either party upon six months' prior written notice.

[4] The applicants point out that Columbia will not have secondary rights to any other points on Columbia Gulf's system.

rate and, to the extent actual fuel and LAUF utilization associated with the lease exceeds offsetting fuel benefits associated with displacement of volumes under the lease, resulting in a net under-collection by Columbia Gulf, Columbia Gulf and Columbia will revise the retainage rate to account for any under-collection.

10. Columbia proposes to charge its existing FT and IT rates for service on the leased capacity. Columbia explains that leasing capacity on Columbia Gulf's system will enable Columbia to continue to provide reliable service to its customers served directly and indirectly from Columbia Gulf's system and eliminate the need for Columbia to construct duplicative facilities to maintain service to these customers. Columbia states that it will account for the cost of leasing capacity from Columbia Gulf as an Account 858 expense (Transmission and Compression of Gas by Others).[5] However, Columbia asserts that it will not seek to recover the costs of the leased capacity from its customers at least through the primary term of the existing Modernization Settlement.[6]

Notice, Interventions, and Comments

11. Notice of Columbia and Columbia Gulf's application was published in the *Federal Register* on May 31, 2013 (78 Fed. Reg. 32,644). The parties listed in the appendix filed timely, unopposed motions to intervene. Timely, unopposed motions to intervene are granted by operation of Rule 214 of the Commission's Rules of Practice and Procedure.[7]

12. The City of Charlottesville, Virginia and the City of Richmond, Virginia, Virginia, jointly, Virginia Natural Gas, Inc. and Pivotal Utility Holdings, Inc., jointly, d/b/a Elizabethtown Gas and d/b/a Elkton Gas, New York State Electric & Gas Corporation, National Fuel Gas Distribution Corporation, and Piedmont Natural Gas Company, Inc. filed untimely motions to intervene. The Commission finds that the parties filing untimely motions to intervene have demonstrated an interest in these proceedings and

[5] Columbia recovers Account 858 expenses incurred for operational reasons through the mechanism established in the Transportation Cost Recovery Adjustment (TCRA) of its FERC Gas Tariff.

[6] Columbia's Modernization Settlement provides for, among other things, a rate moratorium through January 31, 2018 and a requirement for the pipeline to file an NGA section 4 general rate case by February 1, 2019. *See Columbia Gas Transmission, LLC*, 142 FERC ¶ 61,062, at P 6 (2013). Further, Columbia states that it retains the right to seek recovery of future lease costs in its first NGA section 4 general rate proceeding following expiration of the primary term of the capacity lease, which is March 31, 2024. Application at 9.

[7] 18 C.F.R. § 385.214 (2013).

that granting their motions will not delay, disrupt, or prejudice these proceedings or the parties to these proceedings. Thus, the Commission will grant the untimely motions to intervene, pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure.[8]

13. NiSource Distribution Companies' (NiSource)[9] and Exelon Corporation's (Exelon) motions to intervene included comments in support of the proposed lease. NiSource believes that the lease agreement will provide operational reliability in response to shifts in flow patterns, is reasonable and avoids the need for Columbia to undertake up to $500 million in new construction. Exelon's support is based on the fact that Columbia is not seeking to recover the cost of the capacity lease from its customers through the TCRA during the primary term of its existing Modernization Settlement.[10]

Discussion

14. Because the applicants' proposal involves a lease agreement for the transportation capacity of natural gas in interstate commerce subject to the jurisdiction of the Commission, Columbia Gulf's and Columbia's proposal is subject to the requirements of subsections (b), (c) and (e) of section 7 of the NGA.

The Certificate Policy Statement

15. The Certificate Policy Statement provides guidance as to how we will evaluate proposals for certificating new construction by establishing criteria for determining whether there is a need for a proposed project and whether the proposed project will

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[8] 18 C.F.R. § 385.214(d) (2013).

[9] NiSource consists of Columbia Gas of Kentucky, Inc., Columbia Gas of Maryland, Inc., Columbia Gas of Ohio, Inc., Columbia Gas of Pennsylvania, Inc., and Columbia Gas of Virginia, Inc.

[10] In its motion to intervene, National Grid Gas Deliveries Company (National Grid) requested additional information regarding the market requirements associated with the leased capacity and that Columbia demonstrate that the revenues it will receive from shippers using the leased capacity will offset the incremental cost of the lease at such time as it seeks to recover those costs in its next general rate case. On June 7, 2013, Columbia supplied the requested information. On June 10, National Grid stated that its concerns had been addressed and that it does not oppose the application in this proceeding.

serve the public interest.[11] A proposal to lease capacity with no related construction of facilities such as the proposal in this proceeding eliminates the Certificate Policy Statement's concerns with overbuilding, disruptions of the environment, and the exercise of eminent domain. However, the threshold requirement under the Certificate Policy Statement, that a pipeline must be prepared to financially support the project without relying on subsidization from its existing customers, is equally applicable to leases of capacity. Similarly, whether the applicant has made efforts to eliminate or minimize any adverse effects the proposed lease might have on the applicant's existing customers and existing pipelines in the market and their captive customers is also relevant to our evaluation of the proposal.

16. We find first that the proposed lease will satisfy the threshold test of the Certificate Policy Statement as an initial matter because Columbia has agreed not to attempt to recover the leased capacity costs at least through the primary term of the existing Modernization Settlement. In addition, the proposal provides a cost-effective means for Columbia to maintain service to its existing customers who may be impacted by the changing flow patterns on Columbia Gulf's system and will result in those customers continuing to receive service without the need for Columbia to construct additional facilities. Moreover, the Commission notes that several of Columbia's customers support the proposal and no existing customers oppose it. As more fully discussed below, in accordance with the Commission's lease policy, the Commission also finds that benefits from use of the lease will accrue, that the lease payments are satisfactory, and the lease arrangement will not adversely affect existing customers.

Lease Policy

17. Historically, the Commission views lease arrangements differently from transportation services under rate contracts. The Commission views a lease of interstate pipeline capacity as an acquisition of a property interest that the lessee acquires in the capacity of the lessor's pipeline.[12] To enter into a lease agreement, the lessee generally needs to be a natural gas company under the NGA and needs NGA section 7(c) certificate authorization to acquire the capacity. Once acquired, the lessee in essence owns that capacity and the capacity is subject to the lessee's tariff. The leased capacity is allocated for use by the lessee's customers. The lessor, while it may remain the operator of the pipeline system, no longer has any rights to use the leased capacity.[13] The Commission's

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[11] *Certification of New Interstate Natural Gas Pipeline Facilities*, 88 FERC ¶ 61,227 (1999), *clarified*, 90 FERC ¶ 61,128, *further clarified*, 92 FERC ¶ 61,094 (2000).

[12] *Texas Eastern Transmission Corp.*, 94 FERC ¶ 61,139, at 61,530 (2001).

[13] *Texas Gas Transmission*, *LLC*, 113 FERC ¶ 61,185, at P 10 (2005) (*Texas Gas*).

practice has been to approve a lease if it finds that: (1) there are benefits from using a lease arrangement; (2) the lease payments are less than, or equal to, the lessor's firm transportation rates for comparable service over the terms of the lease; and (3) the lease arrangement does not adversely affect existing customers.[14]

18. The Commission has found that capacity leases in general have several potential public benefits. Leases can promote efficient use of existing facilities, avoid construction of duplicative facilities, reduce the risk of overbuilding, reduce costs, and minimize environmental impacts.[15] In addition, leases can result in administrative efficiencies for shippers.[16] Here, the proposed lease arrangement enables Columbia to maintain service to its customers served from Columbia Gulf's system and to avoid the construction of duplicative facilities to serve these markets. Thus, the lease serves to ensure the continued reliability of service to Columbia's customers served off Columbia Gulf's facilities and avoids the negative economic and environmental consequences potentially associated with the construction of additional pipeline facilities.

19. Columbia will pay a fixed lease payment of $333,500 per month for 545,635 Dth/d of capacity for the primary term of the lease. This equates to a monthly lease reservation charge of $0.61 per Dth/d,[17] which is lower than Columbia Gulf's currently-effective system reservation rate for firm transportation service of $4.2917 per Dth/d. Thus, the lease payments will be less than the lessor's firm transportation rates for comparable service.

20. Finally, the Commission finds that the lease arrangement, as conditioned herein, will not adversely affect either pipeline's existing customers. Columbia Gulf's customers should not experience any degradation of service because Columbia Gulf is selling available capacity to provide the lease to Columbia. Additionally, consistent with Commission policy, Columbia Gulf will be at risk for the recovery of any costs

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[14] *Id.*; *Islander East Pipeline Co., L.L.C.*, 100 FERC ¶ 61,276, at P 69 (2002) (*Islander East*); *Midcontinent Express Pipeline LLC*, 124 FERC ¶ 61,089 (2008), *order on reh'g*, 127 FERC ¶ 61,164 (2009), *order on remand*, 134 FERC ¶ 61,155 (2011).

[15] *See, e.g.*, *Dominion Transmission, Inc.*, 104 FERC ¶ 61,267, at P 21 (2003); *Texas Gas*, 113 FERC ¶ 61,185 at P 9; *Islander East*, 100 FERC ¶ 61,276 at P 70.

[16] *Wyoming Interstate Co., Ltd.*, 84 FERC ¶ 61,007, at 61,027 (1998).

[17] The monthly lease reservation charge was calculated as follows: $333,500 divided by 545,635 Dth/d equals $0.61 per Dth/d.

associated with the lease capacity that are not collected from Columbia.[18] As we explained above, the Commission views a lease of interstate pipeline capacity as an acquisition of a property interest by the lessee pipeline in the capacity of the lessor's pipeline, and during the term of the lease the lessor pipeline no longer has any rights to use the leased capacity (although it may remain the operator of the pipeline system). Because Columbia Gulf will not be able to provide jurisdictional service on the leased capacity during the term of the lease, we will require Columbia Gulf to remove all costs and revenues associated with the leased capacity from its cost of service in future section 4 rate cases.[19] This will ensure that Columbia Gulf's customers are not required to subsidize any of the costs associated with Columbia's and Columbia Gulf's lease deal.

21. Columbia's customers are not adversely affected in that the lease provides a cost effective means of maintaining service to Columbia's existing customers with delivery points located on Lines KA-1, G, KZ and E in Kentucky and Ohio, and to those Columbia customers with delivery points directly located on Columbia Gulf's pipeline system in Kentucky and Tennessee. Columbia has agreed not to attempt to recover the costs associated with the leased capacity costs at least through the primary term of the existing Modernization Settlement. In addition, Columbia stated in its June 7, 2013 response to National Grid that the revenues the pipeline receives from the affected shippers are significantly greater than the annual cost of the proposed lease.

22. Based on the benefits the proposals will provide to Columbia's customers and the lack of adverse effects on existing customers and other pipelines we find that the public convenience or necessity requires approval of Columbia's and Columbia Gulf's proposals.

23. Section 2.4 of the proposed lease states that Columbia may allow Columbia Gulf to access and utilize any leased capacity not being used by Columbia. However, the Commission's policy, as stated above, is that once the capacity is leased, it is subject to the provisions of the lessee's tariff and the lessor has no rights to the leased capacity.[20] Therefore, Columbia Gulf has no rights under the lease to any of the unused leased

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[18] *See, e.g., Gulf Crossing Pipeline Co. LLC*, 123 FERC ¶ 61,100, at P 123 (2008); *Gulf South Pipeline Co.*, LP, 120 FERC ¶ 61,291, at P 42 (2007); *Gulf South Pipeline Co., L.P.*, 119 FERC ¶ 61,281, at P 42 (2007) (*Gulf South).* We also note that because Columbia and Columbia Gulf are affiliates, the proposed lease arrangement is not an arm's-length transaction.

[19] This requirement assumes that the lease will not terminate during the test period of any respective rate case.

[20] *UGI Storage Co.*, 142 FERC ¶ 62,170 (2013).

capacity and that provision of the proposed lease is not approved. The applicants are directed to remove that provision in section 2.4 from the lease.

Accounting

24. Applicants propose to treat the capacity lease as an operating lease for accounting purposes and Columbia states it will record the lease payments in Account 858, Transmission and Compression of Gas by Others. We find that these accounting proposal are appropriate. In addition, Columbia Gulf is directed to record the monthly receipts in Account 489.2, *Revenues from Transportation of Gas of Others Through Transmission Facilities*. We have authorized similar accounting treatment for transportation capacity lease agreements in other cases.[21]

Environmental Analysis

25. Since neither proposal requires construction of facilities, they both qualify as categorical exclusions under section 380.4(a)(27) of the Commission's regulations and therefore no environmental assessment is required.[22]

26. The Commission on its own motion, received and made a part of the record all evidence, including the application and exhibits thereto, submitted in support of the authorizations sought herein, and upon consideration of the record,

The Commission orders:

(A) Columbia Gulf is granted permission and approval to abandon, by lease, the subject capacity to Columbia, as more fully described in the application and this order.

(B) A certificate of public convenience and necessity is issued to Columbia authorizing it to lease the subject capacity from Columbia Gulf, as more fully described in the application and this order.

(C) The abandonment approval and certificate authorization issued in Ordering Paragraphs (A) and (B) are conditioned on Columbia and Columbia Gulf complying with all applicable Commission regulations under the NGA and particularly Part 154 and paragraphs (a), (d), and (e) of section 157.20 of the Commission's regulations.

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[21] *See, e.g.*, *Gulf South*, 119 FERC ¶ 61,281, at P 42; *Millennium Pipeline Co., L.P.*, 97 FERC ¶ 61,292, at 62,331 (2001).

[22] 18 C.F.R. § 380.4 (a)(27) (2013).

(D) Columbia Gulf shall notify the Commission within 10 days of the date of abandonment of the capacity leased to Columbia.

(E) The applicants are directed to revise section 2.4 of the lease, as described in the body of the order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

Appendix

Atmos Energy Marketing LLC
Calpine Energy Services, L.P.
ConocoPhillips Company [23]
Exelon Corporation
Hess Corporation
Interstate Gas Supply, Inc.
National Grid Gas Delivery Companies[24]
New Jersey Natural Gas Company
NiSource Distribution Companies [25]
NJR Energy Services Company
ProLiance Energy, LLC,
PSEG Energy Resources & Trade LLC
Tennessee Valley Authority
UGI Distribution Companies[26]
United States Gypsum Company
Washington Gas Light Company

[23] Though styled a motion for leave to file late intervention, ConocoPhillips Company's motion to intervene was timely filed.

[24] Jointly, The Brooklyn Union Gas Company d/b/a National Grid NY; KeySpan Gas East Corporation d/b/a National Grid; Boston Gas Company, Colonial Gas Company, collectively d/b/a National Grid; Niagara Mohawk Power Corporation d/b/a National Grid; and the Narragansett Electric Company d/b/a National Grid, all subsidiaries of National Grid USA, Inc.

[25] Collectively and jointly, Columbia Gas of Kentucky, Inc., Columbia Gas of Maryland, Inc., Columbia Gas of Ohio, Inc., Columbia Gas of Pennsylvania, Inc., and Columbia Gas of Virginia, Inc.

[26] Collectively, UGI Utilities, Inc., UGI Penn Natural Gas, Inc., and UGI Central Penn Gas, Inc.

Document Content(s)