

146 FERC ¶ 61,069
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Columbia Gas Transmission, LLC

Docket No. CP13-125-000

ORDER ISSUING CERTIFICATE

(Issued February 6, 2014)

1. On April 5, 2013, Columbia Gas Transmission, LLC (Columbia) filed an application under section 7(c) of the Natural Gas Act (NGA) seeking authorization to construct approximately 12.6 miles of 8-inch diameter looping pipeline extending from the beginning of Columbia's Line KB in Summers County, West Virginia to a point of delivery with Columbia Gas of Virginia (CGV) in Giles County, Virginia (Giles County Project). For the reasons discussed below, the Commission will authorize Columbia's proposals.

I. Background and Proposals

2. Columbia is a "natural gas company" as defined in section 2(6) of the NGA and is subject to the Commission's jurisdiction. Columbia operates pipeline facilities and underground storage fields in the States of Delaware, Kentucky, Maryland, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Tennessee, Virginia, and West Virginia.

3. Columbia proposes to construct and operate a 12.6-mile long, 8-inch diameter looping pipeline from the beginning of its existing Line KB northeast of Forest Hill, in Summers County, West Virginia to the existing Scott Branch point of delivery with CGV in Giles County, Virginia. Columbia also proposes to construct and operate an 8-inch diameter launcher at mile post (MP) 0.0, an 8-inch diameter receiver at MP 12.6, a main line valve at MP 4.3, and other above-ground appurtenant facilities. The proposed pipeline will be within or directly adjacent to the existing right-of-way of Line KB and will support up to 46,000 dekatherms (Dth) per day of firm transportation service.

4. Columbia states that it developed this project to meet the natural gas requirements of a shipper, Celanese Acetate LLC (Celanese).¹ Columbia held a binding open season for its proposed project from February 7 to February 14, 2013, offering up to 46,000 Dth per day of firm transportation service. After receiving no bids, Columbia signed a precedent agreement with Celanese for service utilizing the full capacity of the project for a 20-year term.

5. Columbia states the negotiated rate agreement with Celanese contains one non-conforming provision that grants Celanese a one-time right to extend the agreement for an additional term of five years.² Columbia intends to file this agreement as a non-conforming, negotiated rate agreement prior to placing the project into service. Columbia states that section 4.1(b)(2) of the General Terms & Conditions of its tariff provides Columbia the option to extend a service agreement. Columbia states that both Celanese and Columbia included the contract extension provision in the precedent agreement, and ultimately want to include the provision in the Service Agreement. Columbia acknowledges that such a term is not included in Columbia's *pro-forma* service agreement, which may render the service agreement with Celanese non-conforming.³

6. Columbia estimates that the cost of the proposed project will be approximately \$22,700,000. Columbia proposes to establish an incremental monthly recourse reservation charge under its new Rate Schedule FTS-GC for service on the Giles County Project.

7. Columbia requests a predetermination supporting rolled-in treatment with respect to certain rate components, including its: (1) retainage adjustment mechanism (RAM) for company use, lost and unaccounted for quantities (retainage) related to the project, (2) electric power cost adjustment (EPCA) for electric costs, (3) operational transaction rate adjustment (OTRA), and (4) transportation cost recovery adjustment (TCRA) for third-party transportation costs.

II. Notice, Interventions and Protest

8. Public notice of Columbia's application was published in the *Federal Register* on April 29, 2013 (78 Fed. Reg. 25,068). The Cities of Charlottesville and Richmond,

¹ According to Columbia, Celanese is expanding its manufacturing facility in Giles County and replacing coal-fired boilers with natural gas boilers.

² See Columbia's August 16, 2013 Response to Staff Data Request No. 2.

³ See Columbia's August 28, 2013 Response to Staff Data Request No. 4.

Virginia, Consolidated Edison Company of New York, Inc., Independent Oil & Gas Association of West Virginia, Inc., National Fuel Gas Distribution Corporation, National Grid Gas Delivery Companies, New York State Electric & Gas Corporation, ProLiance Energy, LLC, and PSEG Energy Resources & Trade LLC filed timely, unopposed motions to intervene. Timely, unopposed motions to intervene are granted by operation of Rule 214(c) of the Commission's Rules of Practice and Procedure.⁴

9. Piedmont Natural Gas Company, Inc. (Piedmont) filed an out-of-time motion to intervene. Piedmont has demonstrated an interest in this proceeding and granting its untimely motion to intervene will not delay, disrupt, or unfairly prejudice any parties to the proceeding. Thus, the Commission will grant Piedmont's untimely motion to intervene.⁵

10. Celanese filed a comment in support of the project. The Catawba Indian Nation and several landowners filed comments expressing concern about the route of the proposed pipeline and the pipeline's impacts. The Commission will address the comments below.

III. Discussion

11. Since the proposed facilities will be used to transport natural gas in interstate commerce subject to the Commission's jurisdiction, the construction and operation of the facilities are subject to the requirements of subsections (c) and (e) of section 7 of the NGA.⁶

A. Application of the Certificate Policy Statement

12. The Commission's Certificate Policy Statement provides guidance for evaluating proposals to certificate new construction.⁷ The Certificate Policy Statement established criteria for determining whether there is a need for a proposed project and whether the proposed project will serve the public interest. The Certificate Policy Statement

⁴ 18 C.F.R. § 385.214(c) (2013).

⁵ 18 C.F.R. § 385.214(d) (2013).

⁶ 15 U.S.C. §§ 717f (2012).

⁷ *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) (Certificate Policy Statement).

explained that in deciding whether to authorize the construction of major new pipeline facilities, the Commission balances the public benefits against the potential adverse consequences. The Commission's goal is to give appropriate consideration to the enhancement of competitive transportation alternatives, the possibility of overbuilding, subsidization by existing customers, the applicant's responsibility for unsubscribed capacity, the avoidance of unnecessary disruptions of the environment, and the unneeded exercise of eminent domain in evaluating new pipeline construction.

13. Under this policy, the threshold requirement for existing pipelines proposing new projects is that the pipeline must be prepared to financially support the project without relying on subsidization from existing customers. The next step is to determine whether the applicant has made efforts to eliminate or minimize any adverse effects the project might have on the applicant's existing customers, existing pipelines in the market and their captive customers, or landowners and communities affected by the route of the new pipeline. If residual adverse effects on these interest groups are identified after efforts have been made to minimize them, the Commission will evaluate the project by balancing the evidence of public benefits to be achieved against the residual adverse effects. This is essentially an economic test. Only when the benefits outweigh the adverse effects on economic interests will the Commission proceed to complete the environmental analysis where other interests are considered.

14. As noted above, the threshold requirement under the Certificate Policy Statement is that the pipeline must be prepared to financially support the project without relying on subsidization from its existing customers. The Commission has determined, in general, that where a pipeline proposes to charge incremental rates for new construction, the pipeline satisfies the threshold requirement that the project will not be subsidized by existing shippers.⁸ Since the incremental recourse rate proposed by Columbia, as modified below, will recover the full cost of the expansion and exceeds the existing system rate for service, the Commission finds that charging an incremental rate is appropriate. In addition, Celanese has executed a precedent agreement for the full capacity of the project for a 20-year term. Therefore, the Commission finds that Columbia's proposal will not result in existing customers subsidizing the proposed project.

15. The proposed project is designed to enable Columbia to provide new firm transportation service to meet the needs of a shipper, Celanese, which has subscribed the full capacity of the project. The proposed expansion project will have no effect on service to Columbia's existing customers. In addition, no pipelines or their captive

⁸ *E.g., Transcontinental Gas Pipe Line Corp.*, 98 FERC ¶ 61,155 (2002).

customers filed adverse comments regarding Columbia's proposal. Thus, the Commission finds that the project will not adversely affect Columbia's existing customers or other pipelines and their customers.

16. Columbia states that the proposed facilities will share the existing Line KB right-of-way to the greatest extent possible, asserting that the proposed line will deviate from the Line KB in three areas for a total distance of approximately 8,977 feet. The Commission finds that Columbia has taken steps to minimize any adverse impacts to landowners and communities affected by the route of the new pipeline. The proposed expansion facilities will be located within or adjacent to the right-of-way of an existing pipeline to the extent feasible.

17. Columbia's proposals will enable Columbia to provide an additional 46,000 Dth per day of firm transportation service to Celanese, which has signed a precedent agreement for long-term service. Based on the benefits the project will provide, the minimal adverse impacts on Columbia's existing customers, other pipelines and their captive customers, and the minimal impacts on landowners and surrounding communities, the Commission finds that Columbia's proposed project is consistent with the Certificate Policy Statement and required by the public convenience and necessity, as conditioned in this order.

B. Recourse Rate

18. Columbia proposes to establish incremental monthly recourse rates under Rate Schedule FTS-GC for project services. Columbia developed a proposed monthly recourse reservation rate of \$6.504 per Dth and a commodity rate of \$0.0104 per Dth. Columbia calculated its proposed reservation rate by dividing an incremental annual cost of service of \$3,590,018⁹ by an annual transportation quantity of 552,000 Dth. Columbia used a pre-tax rate of return of 12.98 percent and a depreciation rate of 1.50 percent, both of which Columbia states were its last approved rates.¹⁰

⁹ See Exhibit P, Page 1, Line No. 6 of the Application.

¹⁰ Columbia's current depreciation rate of 1.5 percent was established in Docket No. RP12-1021-000 and approved by the Commission on January 24, 2013. See *Columbia Gas Transmission, LLC*, 142 FERC ¶ 61,062 (2013). See Columbia's August 16, 2013 Response to Staff Data Request No. 2.

19. However, Columbia's proposed incremental cost of service of \$3,590,018 is a "day-one" value.¹¹ Use of such a "day-one" estimate is inappropriate because it does not reflect the accumulated depreciation that will be accrued over the course of the year.¹² Adjusted for accumulated depreciation, the project's cost of service is \$3,548,230.¹³ Using this revised cost of service, we calculate a resulting initial monthly reservation rate of \$6.428 per Dth.¹⁴ Accordingly, we find Columbia's monthly recourse reservation rate should be \$6.428 per Dth. Additionally, the Commission directs Columbia to charge its current system interruptible transportation service rate for any interruptible service rendered on additional capacity made available as a result of the project.¹⁵

20. To ensure that all parties have full knowledge of the costs and revenues attributable to the project, the Commission requires the applicant to keep separate books and accounting of costs attributable to the new facilities. Further, the books should be maintained with applicable cross-references as required by section 154.309 of the Commission regulations. This information must be in sufficient detail so that the data can be identified in Statements G, I, and J in any future NGA section 4 or 5 rate case and provided consistent with Order No. 710 on incremental facilities.¹⁶

C. Rolled-in Rate Treatment for Existing Surcharges

21. Columbia proposes to assess Celanese various existing surcharges and to roll-in the project's billing determinants into the calculation of these surcharges. With regard to

¹¹ See Columbia's August 28, 2013 Response to Staff Data Request No. 3.

¹² See *Great Lakes Gas Transmission Ltd. P'ship*, 66 FERC ¶ 61,115, at 61,196 (1994); *Texas Eastern Transmission Corp.* 62 FERC ¶ 61,019 (1993), *order on reh'g*, 64 FERC ¶ 61,069 (1993); *Trailblazer Pipeline Co.*, Opinion No. 138, 18 FERC ¶ 61,244, at 61,507 (1982).

¹³ See Exhibit N, Page 1, Line No. 11 of the Application.

¹⁴ $(\$3,548,230) / (552,000 \text{ Dth}) = \6.428 per Dth . Columbia's currently effective reservation rate for applicable transportation service is \$5.001 per Dth.

¹⁵ See, e.g., *Gulf South Pipeline Company, LP*, 130 FERC ¶ 61,015 (2010) and *Kern River Gas Transmission Company*, 117 FERC ¶ 61,077, at PP 313-314 and 326 (2006).

¹⁶ *Revisions to Forms, Statements, and Reporting Requirements for Natural Gas Pipelines*, Order No. 710, FERC Stats. & Regs. ¶ 31,267, at P 23 (2008).

its RAM surcharge, Columbia states that: (1) the project does not add incremental compression; (2) compression utilized by the project and the associated fuel used and gas lost and unaccounted for will be accounted for through Columbia's existing rolled-in rates for its existing compression facilities; (3) the increase in fuel consumed at these existing facilities associated with expansion capacity will be minor in relation to the additional demand and commodity billing determinants; and (4) rolling in the additional determinants when calculating rates associated with fuel used and gas lost and unaccounted for will result in a reduction in the system-wide retainage assessed to each customer.

22. With regard to calculating the TCRA, EPCA, and OTRA¹⁷ surcharges, Columbia states that the project will not: (1) require Columbia to incur additional Account 858 expenses; (2) involve the construction of new equipment requiring a significant increase to existing customers' electric power expenses; or (3) require additional transactions associated with the OTRA mechanism. Columbia states that the project will, however, add 552,000 Dth of annual demand billing determinants and 12,592,500 Dth of annual commodity billing determinants. Columbia asserts that, for these reasons, its existing customers will benefit from rolling-in the additional demand and commodity determinants.

23. The Commission has previously approved Columbia's request for a presumption of rolled-in-rate treatment for its TCRA, EPCA, and RAM surcharges, asserting that rolled-in treatment of these cost components is appropriate because it will have either no cost impact or an anticipated net benefit to Columbia's existing customers.¹⁸ The Commission finds that Columbia has provided sufficient justification in support of its proposal for rolled-in treatment of its TCRA, EPCA, OTRA, and RAM surcharges as it relates to the project. Thus, the Commission grants a predetermination that Columbia may roll these surcharges into its system rates in future rate proceedings.

D. Negotiated Rates

24. Columbia states it will provide service to Celanese at negotiated rates under the negotiated rate authority in its General Terms and Conditions.¹⁹ Columbia must either

¹⁷ The Commission has also previously accepted Columbia's OTRA surcharge. See *Columbia Gas Transmission, LLC*, 139 FERC ¶ 61,141, at P 16 (2012).

¹⁸ *Columbia Gas Transmission, Corp.*, 122 FERC ¶ 61,021, at PP 38-39 (2008).

¹⁹ See *Columbia Gas Transmission, LLC*, FERC NGA Gas Tariff, Baseline Tariffs, Gen. Terms & Conditions, Negotiated Rates, 0.0.0.

file its negotiated rate or tariff records setting forth the essential terms of the agreements associated with the project, in accordance with the Alternative Rate Policy Statement²⁰ and the Commission's negotiated rate policies.²¹ Columbia must file the negotiated rate agreement or tariff records with the Commission at least 30 days, but not more than 60 days, before the in-service date of the proposed facilities.

IV. Environmental Analysis

25. On April 30, 2013, the Commission issued a *Notice of Intent to Prepare an Environmental Assessment* (NOI). The NOI was mailed to interested parties including federal, state, and local officials; agency representatives; environmental and public interest groups; Native American tribes; local libraries and newspapers; and affected property owners.

26. In response to the NOI, the Commission received comments from an individual landowner, the Virginia Department of Environmental Quality, the Catawba Indian Nation, the U.S. National Park Service, and the Virginia Department of Health. The primary issues raised concerned general impacts on air, water, and land resources.

27. To satisfy the requirements of the National Environmental Policy Act of 1969, Commission staff prepared an environmental assessment (EA) for Columbia's proposal. The analysis in the EA addresses geology, soils, water resources, wetlands, vegetation, fisheries, wildlife, threatened and endangered species, land use, recreation, visual resources, cultural resources, air quality, noise, safety, and alternatives. All substantive comments received in response to the NOI were addressed in the EA.

28. The Catawba Nation requested information on the project and requested to be a consulting party. As stated in the EA, we contacted the Catawba Nation and agreed to ensure that they would be notified if any Native American artifacts and/or human remains are encountered during construction.

²⁰ See *Alternatives to Traditional Cost-of-Service Ratemaking for Natural Gas Pipelines; Regulation of Negotiated Transportation Services of Natural Gas Pipelines*, 74 FERC ¶ 61,076, at 61,241, *order granting clarification*, 74 FERC ¶ 61,194, *reh'g denied*, 75 FERC ¶ 61,024 (1996).

²¹ See *Natural Gas Pipelines Negotiated Rate Policies and Practices; Modification of Negotiated Rate Policy*, 104 FERC ¶ 61,134 (2003), *order on reh'g and clarification*, 114 FERC ¶ 61,042, *dismissing reh'g and denying clarification*, 114 FERC ¶ 61,304 (2006).

29. The Virginia Department of Environmental Quality, the U.S. National Park Service, and the Virginia Department of Health requested that we address general impacts on air, water, and land resources, but did not identify any specific environmental resources of concern in the area. As noted above, the EA addressed all the areas of concern.

30. Ms. Becky Spencer submitted scoping comments stating that the pipeline could impact her water supply and impinge upon her ability to develop her property or build additional structures.

31. As discussed in the EA, Columbia's proposal would not include a permanent pipeline easement on Ms. Spencer's property, but it would involve the use of a temporary workspace on her property, which would result in short-term impacts. The EA states that after construction, the presence of the pipeline easement would not affect Ms. Spencer's ability to build additional structures or develop her property.²²

32. The EA also discusses the potential for construction activity to impact water supplies and groundwater wells. The EA concludes that any impacts will be short-term and minor and will return to baseline levels rapidly after completion of construction. In addition, the EA identifies that Columbia would offer pre- and post-construction well monitoring, at the landowners' request, to landowners who have a water supply within 150 feet of construction workspaces. The EA states that Columbia has committed to compensating landowners in the unlikely event that a well is impacted by construction. Thus, the EA concludes that the project will not result in significant impacts on groundwater wells or supplies.

33. The EA was issued for a 30-day comment period and placed into the public record on November 1, 2013. The Commission received comments on the EA from three individuals along the pipeline route, another interested person, and Celanese.²³

34. Mr. Mark Shirley, an affected landowner and the owner of Serenity Hills Farms, LLC, states that he planted fruit trees on his property with plans for it to be a functional orchard. Mr. Shirley also states that the additional 2,100 feet of right-of-way needed for

²² After the issuance of the EA, Columbia filed supplemental information stating it was changing the route of the pipeline to avoid all land disturbing activities on the Spencer property and another adjacent property.

²³ Celanese offered comments in support of the project and requested expedited approval of the project.

the project would prevent him from building another house on his property for “business and income.” Mr. Shirley did not raise these concerns during the scoping process. As a result, the EA does not specifically address these issues.

35. The Commission recognizes that the specific location of the pipeline in relation to resources on Mr. Shirley’s property could result in impacts on Mr. Shirley’s fruit trees and future land use plans. As stated in the EA, Columbia’s permanent right-of-way will prohibit the construction of buildings within the easement and the growth of trees over the pipeline. Compensation for any tree loss or other loss of use on Mr. Shirley’s property should be determined during easement negotiations with Columbia. However, the Commission has added a condition, environmental condition 14, which requires Columbia to coordinate with Mr. Shirley in an effort to reduce impacts on his property.

36. The proposed project also affects the property of Randall and Oneda Pack and Ms. Becky Spencer. They filed comments expressing their objections to the project. They stated their intention to refuse any easement offer, but did not identify any new environmental concerns or issues that were not addressed in the EA.

37. As noted previously, on December 4, 2013, Columbia filed supplemental information stating it had reached an agreement with a new, adjacent landowner and provided information on a minor route change that would avoid all land disturbing activities on both the Spencer and Pack properties.

38. The Commission has reviewed this route change and finds that both routes have comparable environmental impacts. In light of this finding, the Commission has determined that the revised route is preferable to the original route because it addresses the landowners’ concerns. As a result, the Commission has added environmental condition 15, which requires Columbia to provide the remaining surveys associated with this route change prior to construction.

39. We also received comments on the EA from Daniel Schreiber, an interested person. Mr. Schreiber states that the EA should have quantified the total reduction in carbon dioxide emissions expected from the project and states that more stringent controls are necessary to prevent leaks of natural gas, as it has a higher global warming potential than carbon dioxide.

40. The EA discloses the maximum output of carbon emissions from throughput that would occur with approval of the project.²⁴ Further, the EA states that approval would

²⁴ EA at 51.

result in a reduction of carbon emissions as Celanese, the end-user, is undergoing a coal to natural gas conversion in accordance with the U.S. Environmental Protection Agency's (EPA) Boiler Maximum Achievable Technology Rule. Because the specifics of the conversion and the ratio of displacement of coal consumption are unknown, the Commission has not calculated the precise reduction.²⁵ The EA does present the construction emissions of the project as well as the "worst-case scenario" for carbon emission from operational throughput. Furthermore, any precise cataloging of the reduction of carbon emission would be completed by Celanese in accordance with both its implementation of the boiler conversion and compliance with the EPA's Greenhouse Gas Reporting Rule.

41. The EA notes that Columbia is required to construct the pipeline according to regulations established by the U.S. Department of Transportation.²⁶ These regulations include standards for selection of materials, design requirements, maintenance, and protection from corrosion. The EA concludes, and the Commission agrees, that with adherence to these regulations, that leaks, and unintended methane release would be minimized to the greatest extent possible.

42. Any state or local permits issued with respect to the jurisdictional facilities authorized herein must be consistent with the conditions of this certificate. The Commission encourages cooperation between interstate pipelines and local authorities. However, this does not mean that state and local agencies, through application of state or local laws, may prohibit or unreasonably delay the construction or operation of facilities approved by this Commission.²⁷

43. Based on the analysis in the EA, the Commission concludes that if constructed and operated in accordance with Columbia's application and supplements, and in compliance with the environmental conditions in the Appendix to this Order, our approval of this

²⁵ Complete combustion of natural gas generally results in approximately 45 percent fewer carbon dioxide emissions than combustion of coal per equivalent unit of energy. The Celanese plant could experience similar reductions, although the actual overall carbon emission reduction would vary depending on burning efficiencies and the effective fuel replacement ratio.

²⁶ EA at 40.

²⁷ See, e.g., *Schneidewind v. ANR Pipeline Co.*, 485 U.S. 293 (1988); *National Fuel Gas Supply v. Public Service Commission*, 894 F.2d 571 (2d Cir. 1990); and *Iroquois Gas Transmission System, L.P., et al.*, 52 FERC ¶ 61,091 (1990) and 59 FERC ¶ 61,094 (1992).

proposal would not constitute a major federal action significantly affecting the quality of the human environment.

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

The Commission orders:

(A) A certificate of public convenience and necessity is issued authorizing Columbia to construct and operate the Giles County Project, as described more fully herein and in the application.

(B) The certificate authority granted in Ordering Paragraph (A) is conditioned on the following:

- (1) Columbia's completing the authorized construction of the proposed facilities and making them available for service within two years of the issuance of this order pursuant to section 157.20(b) of the Commission's regulations.
- (2) Columbia's complying with all applicable Commission regulations under the NGA including, but not limited to, Parts 154 and 284, and paragraphs (a), (c), (e), and (f) of section 157.20 of the regulations.
- (3) Columbia's complying with the environmental conditions in the Appendix to this Order.

(C) An incremental recourse reservation rate for transportation service under Rate Schedule FTS-GC is approved, as is Columbia's use of its current system interruptible transportation service rate, as more fully discussed above.

(D) Columbia is granted a predetermination supporting rolled-in rate treatment for its TCRA, EPCA, OTRA, and RAM rate components, as more fully discussed above.

(E) Columbia is directed to file a tariff record implementing its initial monthly reservation rate as discussed in the body of the order.

(F) Columbia shall keep separate books and accounting of costs attributable to the proposed incremental services, as more fully described above.

(G) Columbia shall file, not less than 30 days nor more than 60 days prior to the in-service date of the proposed facilities, the negotiated rate agreement or a tariff record describing the negotiated rate agreement with Celanese.

(H) Columbia shall file, not less than 30 days nor more than 60 days prior to their proposed effective date, actual tariff records consistent with Columbia's *pro forma* tariff records, except as directed herein and in accordance with the NGA and Part 154 of the Commission's regulations.

(I) Columbia shall notify the Commission's environmental staff by telephone, e-mail, or facsimile of any environmental noncompliance identified by other federal, state, or local agencies on the same day that such agency notifies Columbia. Columbia shall file written confirmation of such notification with the Secretary of the Commission (Commission) within 24 hours.

(J) Piedmont's untimely motion to intervene is granted.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

Appendix

Environmental Conditions

As recommended in the Environmental Assessment (EA), this authorization includes the following conditions:

1. Columbia shall follow the construction procedures and mitigation measures described in its application and supplements (including responses to staff data requests) and as identified in the EA, unless modified by the Order. Columbia must:
 - a. request any modification to these procedures, measures, or conditions in a filing with the Secretary;
 - b. justify each modification relative to site-specific conditions;
 - c. explain how that modification provides an equal or greater level of environmental protection than the original measure; and
 - d. receive approval in writing from the Director of the Office of Energy Projects (OEP) before using that modification.
2. The Director of OEP has delegated authority to take whatever steps are necessary to ensure the protection of all environmental resources during construction and operation of the project. This authority shall allow:
 - a. the modification of conditions of the Order; and
 - b. the design and implementation of any additional measures deemed necessary (including stop-work authority) to assure continued compliance with the intent of the environmental conditions as well as the avoidance or mitigation of adverse environmental impact resulting from project construction and operation.
3. **Prior to any construction**, Columbia shall file an affirmative statement with the Secretary, certified by a senior company official, that all company personnel, environmental inspectors (EIs), and contractor personnel will be informed of the EI's authority and have been or will be trained on the implementation of the environmental mitigation measures appropriate to their jobs **before** becoming involved with construction and restoration activities.
4. The authorized facility locations shall be as shown in the EA, as supplemented by filed alignment sheets. **As soon as they are available, and before the start of construction**, Columbia shall file with the Secretary any revised detailed survey alignment maps/sheets at a scale not smaller than 1:6,000 with station positions for

all facilities approved by the Order. All requests for modifications of environmental conditions of the Order or site-specific clearances must be written and must reference locations designated on these alignment maps/sheets.

Columbia's exercise of eminent domain authority granted under Natural Gas Act (NGA) section 7(h) in any condemnation proceedings related to the Order must be consistent with these authorized facilities and locations. Columbia's right of eminent domain granted under NGA section 7(h) does not authorize it to increase the size of its natural gas pipeline to accommodate future needs or to acquire a right-of-way for a pipeline to transport a commodity other than natural gas.

5. Columbia shall file with the Secretary detailed alignment maps/sheets and aerial photographs at a scale not smaller than 1:6,000 identifying all route realignments or facility relocations, and staging areas, pipe storage yards, new access roads, and other areas that would be used or disturbed and have not been previously identified in filings with the Secretary. Approval for each of these areas must be explicitly requested in writing. For each area, the request must include a description of the existing land use/cover type, documentation of landowner approval, whether any cultural resources or federally listed threatened or endangered species would be affected, and whether any other environmentally sensitive areas are within or abutting the area. All areas shall be clearly identified on the maps/sheets/aerial photographs. Each area must be approved in writing by the Director of OEP **before construction in or near that area.**

This requirement does not apply to extra workspace allowed by our *Upland Erosion Control, Revegetation, and Maintenance Plan* and/or minor field realignments per landowner needs and requirements which do not affect other landowners or sensitive environmental areas such as wetlands.

Examples of alterations requiring approval include all route realignments and facility location changes resulting from:

- a. implementation of cultural resources mitigation measures;
 - b. implementation of endangered, threatened, or special concern species mitigation measures;
 - c. recommendations by state regulatory authorities; and
 - d. agreements with individual landowners that affect other landowners or could affect sensitive environmental areas.
6. **Within 60 days of the acceptance of the Certificate and before construction begins**, Columbia shall file an Implementation Plan with the Secretary for review and written approval by the Director of OEP. Columbia must file revisions to the plan as schedules change. The plan shall identify:

- a. how Columbia will implement the construction procedures and mitigation measures described in its application and supplements (including responses to staff data requests), identified in the EA, and required by the Order;
 - b. how Columbia will incorporate these requirements into the contract bid documents, construction contracts (especially penalty clauses and specifications), and construction drawings so that the mitigation required at each site is clear to onsite construction and inspection personnel;
 - c. how Columbia will ensure that sufficient personnel are available to implement the environmental mitigation;
 - d. company personnel, including EIs and contractors, who will receive copies of the appropriate material;
 - e. the location and dates of the environmental compliance training and instructions Columbia will give to all personnel involved with construction and restoration (initial and refresher training as the project progresses and personnel change);
 - f. the company personnel (if known) and specific portion of Columbia's organization having responsibility for compliance;
 - g. the procedures (including use of contract penalties) Columbia will follow if noncompliance occurs; and
 - h. for each discrete facility, a Gantt or PERT chart (or similar project scheduling diagram), and dates for:
 - (1) the completion of all required surveys and reports;
 - (2) the environmental compliance training of onsite personnel;
 - (3) the start of construction; and
 - (4) the start and completion of restoration.
7. Beginning with the filing of its Implementation Plan, Columbia shall file updated status reports with the Secretary on a **biweekly basis until all construction and restoration activities are complete**. On request, these status reports will also be provided to other federal and state agencies with permitting responsibilities. Status reports shall include:
- a. an update on Columbia's efforts to obtain the necessary federal authorizations;
 - b. the construction status of the project, work planned for the following reporting period, and any schedule changes for stream crossings or work in other environmentally sensitive areas;
 - c. a listing of all problems encountered and each instance of noncompliance observed by the EIs during the reporting period (both for the conditions imposed by the Commission and any environmental conditions/permit requirements imposed by other federal, state, or local agencies);

- d. a description of the corrective actions implemented in response to all instances of noncompliance, and their cost;
 - e. the effectiveness of all corrective actions implemented;
 - f. a description of any landowner/resident complaints which may relate to compliance with the requirements of the Order, and the measures taken to satisfy their concerns; and
 - g. copies of any correspondence received by Columbia from other federal, state, or local permitting agencies concerning instances of noncompliance, and Columbia's response.
8. **Prior to receiving written authorization from the Director of OEP to commence construction of any project facilities**, Columbia shall file with the Secretary documentation that it has received all applicable authorizations required under federal law (or evidence of waiver thereof).
9. Columbia must receive written authorization from the Director of OEP **before placing the project into service**. Such authorization will only be granted following a determination that rehabilitation and restoration of the right-of-way and other areas affected by the project are proceeding satisfactorily.
10. **Within 30 days of placing the authorized facilities in service**, Columbia shall file an affirmative statement with the Secretary, certified by a senior company official:
- a. that the facilities have been constructed in compliance with all applicable conditions, and that continuing activities will be consistent with all applicable conditions; or
 - b. identifying which of the certificate conditions Columbia has complied with or will comply with. This statement shall also identify any areas affected by the project where compliance measures were not properly implemented, if not previously identified in filed status reports, and the reason for noncompliance.
11. **Prior to construction**, Columbia shall file with the Secretary, for the review and written approval by the Director of OEP, the results of the bridge capacity investigations and confirm its proposed method for crossing Indian Creek.
12. **Columbia shall not begin construction of its project until:**
- a. Columbia submits the results of the James spiny mussel survey at Indian Creek to the U.S. Fish and Wildlife Service (FWS). If James spiny mussels are identified, Columbia shall consult with the FWS for measures that avoid

- impacts on this species, and file the results (including the mussel survey results) with the Secretary;
- b. the Commission staff completes any necessary section 7 consultation with the FWS; and
 - c. Columbia receives written notification from the Director of OEP that construction and/or use of mitigation (including implementation of conservation measures) may begin.
13. **Columbia shall not begin construction** and use of facilities and staging, storage, temporary work areas and new or to-be-improved access roads **until**:
- a. Columbia files with the Secretary:
 - (1) the architectural survey report and addendum survey report; and
 - (2) any outstanding comments on the survey reports from the Virginia and West Virginia State Historic Preservation Officers;
 - b. Columbia provides copies of final reports and/or management summaries to those tribes that have requested this information;
 - c. the Advisory Council on Historic Preservation is afforded an opportunity to comment, if historic properties would be adversely affected; and
 - d. the Commission staff reviews and the Director of OEP approves the cultural resources reports and plans, and notifies Columbia in writing that treatment plans/mitigation measures (including archaeological data recovery) may be implemented and/or construction may proceed.
- All material filed with the Commission containing **location, character, and ownership information** about cultural resources must have the cover and any relevant pages therein clearly labeled in bold lettering: **“CONTAINS PRIVILEGED INFORMATION – DO NOT RELEASE.”**
14. **Prior to construction**, Columbia shall consult with Mr. Mark Shirley, to address the construction and permanent easement concerns of the pipeline on his property at milepost 6.6. Columbia shall file the results of its consultation, including any additional mitigation or minor route realignments on this property, if required (see environmental condition 5 above).
15. **Prior to construction**, Columbia shall submit, for the review and written approval of the director of OEP, all outstanding surveys for its route change filed on December 4, 2013.