

148 FERC ¶ 61,138
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Cheryl A. LaFleur, Chairman;
Philip D. Moeller, Tony Clark,
and Norman C. Bay.

Columbia Gas Transmission, LLC

Docket No. CP14-99-000

ORDER DENYING PROTEST AND AUTHORIZING CONSTRUCTION,
OPERATION AND ABANDONMENT OF FACILITIES UNDER BLANKET
CERTIFICATE

(Issued August 22, 2014)

1. On March 6, 2014, Columbia Gas Transmission, LLC (Columbia) filed a prior notice request pursuant to section 7 of the Natural Gas Act (NGA),¹ sections 157.205, 157.208, and 157.216(b) of the Commission's blanket certificate regulations,² and its Part 157 blanket certificate authority,³ seeking to abandon a portion of its Line 1655 North pipeline in Adams County, Pennsylvania and to construct and operate replacement pipeline facilities on that line, as well as to construct and operate appurtenant facilities in Cumberland County, Pennsylvania (Line 1655 North Project).
2. Allegheny Defense Project (Allegheny) filed a protest to Columbia's request on May 16, 2014, alleging that prior to authorizing additional projects, the Commission must prepare a regional programmatic environmental impact statement analyzing the existing and potential impacts of additional infrastructure for and use of shale gas in the northeastern United States. Allegheny did not withdraw the protest within the time period specified in the Commission's regulations. Accordingly, the Commission will

¹ 15 U.S.C. § 717f (2012).

² 18 C.F.R. §§ 157.205, 157.208, and 157.216(b) (2014).

³ See *Columbia Gas Transmission, Corp.*, 22 FERC ¶ 62,029 (1983) (issuing a blanket certificate of public convenience and necessity to Columbia).

review Columbia's filing as a case-specific certificate application under section 7 of the NGA.⁴ For the reasons discussed below, the Commission will deny Allegheny's protest and authorize Columbia to abandon, construct, and operate the proposed facilities under its Part 157 blanket certificate.

I. Background and Proposal

3. Columbia is a natural gas company as defined in section 2(6) of the NGA,⁵ subject to the jurisdiction of the Commission. Columbia is a limited liability company formed under the laws of the State of Delaware. Its facilities cross the states of Delaware, Kentucky, Maryland, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Tennessee, Virginia, and West Virginia.

4. Columbia states that it developed a Modernization Program to address its aging infrastructure, enhance pipeline safety, and increase customer service reliability across its 12,000-mile pipeline system.⁶ In a 2013 Settlement Order, the Commission approved a capital cost recovery mechanism agreement between Columbia and its customers, allowing Columbia to recover the costs of eligible pipeline safety and reliability upgrades on its system without undertaking a general rate case.⁷ The 2013 Settlement identified the Line 1655 North Project as part of Columbia's Modernization Program and an eligible facility under the provisions of the Settlement.⁸ In the 2013 Settlement Order, the Commission did not authorize the Modernization Program, nor did it authorize any specific pipeline projects identified as part of the Modernization Program.

5. Columbia proposes, pursuant to the prior notice procedures of the Commission's Part 157 regulations, to replace 3.4 miles of existing 8-inch-diameter bare steel pipeline on Line 1655 in Adams County, Pennsylvania, with parallel 12-inch-diameter coated steel pipeline, and abandon the 8-inch-diameter portion of line in place. Columbia asserts that the replacement will improve the reliability and safety of Line 1655 and allow it to transport an additional 15,700 dekatherms per day on a firm basis to UGI Utilities, Inc.

⁴ 18 C.F.R. § 157.205(f), (g) (2014).

⁵ 15 U.S.C. § 717a(6) (2012).

⁶ Columbia July 18, 2014 Comments at 1, 13.

⁷ *Columbia Gas Transmission, LLC*, 142 FERC ¶ 61,062 (2013) (Settlement Order).

⁸ See Appendix E of the Settlement Order, 142 FERC ¶ 61,062.

(UGI).⁹ In addition, Columbia proposes to install a receiver assembly, filter/separator, waste fluid tank, metering skid, control building, and associated piping at its Locust Point Meter Station in Cumberland County, Pennsylvania, to accommodate the additional service to UGI.

6. Columbia has identified mainline customer taps on Line 1655 that will be abandoned as part of the proposed replacement. Those customers' access to Line 1655 derives from old easement documents that permitted the landowner to take gas from the pipeline to be constructed on the landowner's property. The gas under the easements is delivered by Columbia to a local distribution company that redelivers and bills for the gas to the mainline tap customer. Columbia will maintain service to the affected customers by converting them to an alternate energy source. Other than the abandonment of customer taps noted above, the proposed abandonment will have no impact on the services presently provided by Columbia.

II. Public Notice, Interventions and Protests

7. Notice of Columbia's application was issued on March 18, 2014, and published in the *Federal Register* on March 24, 2014,¹⁰ in accordance with section 157.205(d) of the Commission's regulations.¹¹ Within the 60-day notice period provided by the prior notice procedures, the parties listed in the appendix filed timely, unopposed motions to intervene.¹²

8. Orange and Rockland Utilities, Inc. (Orange and Rockland) filed an untimely motion to intervene. We find that Orange and Rockland has demonstrated an interest in this proceeding, and further find that granting intervention at this stage of the proceeding will not cause undue delay or disruption or otherwise prejudice the applicant or other parties.¹³ Accordingly, we will grant the late motion to intervene.

⁹ Columbia executed a precedent agreement with UGI for this service after conducting a non-binding open season between May 1 and May 7, 2013.

¹⁰ 79 Fed. Reg. 15,993 (2014).

¹¹ 18 C.F.R. § 157.205(d) (2014).

¹² Timely, unopposed motions to intervene are granted by operation of Rule 214 of the Commission's regulations. 18 C.F.R. § 385.214 (2014).

¹³ 18 C.F.R. § 385.214(d) (2014).

9. Pursuant to section 157.205(h) of the Commission's regulations, authorization to conduct the activity proposed under the blanket certificate is automatic so long as no protests to the activity are filed within 60 days of the date the notice is issued by the Commission. If a protest is filed within the 60-day period and it is not withdrawn within 30 days after the 60-day notice period,¹⁴ the prior notice request proceeds as an application for case-specific authorization under section 7 of the NGA.¹⁵

10. Allegheny and Five Way Partners (Five Way) protested Columbia's proposal. Allegheny's protest, filed on April 10, 2014, was dismissed on April 17, 2014, by the Director of the Office of Energy Projects for failure to raise a substantive issue or provide a detailed rationale for an objection germane to Columbia's proposal.¹⁶

11. On May 16, 2014, Allegheny filed another protest. On May 28, 2014, Columbia filed an answer to this protest. The Commission's rules do not permit answers to protests.¹⁷ However, because Columbia's answer provides information that assists the Commission in its decision-making process, the Commission will, for good cause, waive the regulatory proscription against answers in this case and accept Columbia's response.¹⁸ The Commission will address the issues raised in Allegheny's protest below.

Five Way Protest and Resolution

12. In its April 30 protest, Five Way, a landowner affected by the Line 1655 North Project, raised a number of concerns related to land devaluation, property damage, nuisance, and security. Five Way concluded that it could not properly evaluate these concerns without access to certain documents filed by Columbia as critical energy infrastructure information (CEII) pursuant to section 388.112 of the Commission's

¹⁴ The 30-day period, referred to as the "reconciliation period," was established to give parties a chance to resolve their differences.

¹⁵ 18 C.F.R. § 157.205(f) (2014). Since the notice was issued on March 18, 2014, the notice period ended on May 19, 2014, and the reconciliation period ended on June 18, 2014.

¹⁶ 18 C.F.R. § 157.205(g) (2014).

¹⁷ 18 C.F.R. § 385.213(a)(2) (2014).

¹⁸ See 18 C.F.R. §§ 385.213(a)(2), 385.101(e) (2014) (allowing the Commission to accept answers to protests).

regulations.¹⁹ Columbia had not filed a proposed protective agreement, as required under section 388.112,²⁰ which would have expedited Five Way's to access the CEII materials.

13. Five Way filed a request for access to the CEII materials pursuant to section 388.113²¹ of the Commission's regulations. After that filing, however, Columbia voluntarily provided the CEII materials directly to Five Way.

14. Columbia addressed Five Way's concerns by agreeing to a minor project modification at the Locust Point Metering Station in Adams County.²² Subsequently, Five Way withdrew its protest on June 17, 2014.

III. Discussion

15. Since the facilities to be abandoned, constructed, and operated have been used or will be used to transport natural gas in interstate commerce subject to the Commission's jurisdiction, the abandonment, construction, and operation of these facilities are subject to the provisions of subsections (b) and (c) of section 7 of the NGA.

16. As holder of a blanket construction certificate, Columbia is authorized to undertake various routine activities, subject only to certain reporting, notice, and protest requirements. The blanket certificate procedures are intended to increase flexibility and reduce regulatory and administrative burdens. It is expected that activities eligible to proceed under blanket certificate authorization will have minimal impact, such that the close scrutiny involved in considering applications for case-specific certificate authorization by the Commission is not necessary to ensure compatibility with the public convenience and necessity. The prior notice procedures apply to activities that are not minor enough to qualify for automatic authorization under the Commission's blanket certificate regulations, but that are still expected to have relatively minimal impact on ratepayers, pipeline operations, and the environment.²³

¹⁹ 18 C.F.R. § 388.112 (2014).

²⁰ *Id.*

²¹ 18 C.F.R. § 388.113 (2014).

²² *See* Columbia June 16, 2014 Supplemental Information.

²³ *See Interstate Pipeline Certificates for Routine Transactions*, Order No. 234, 47 Fed. Reg. 24,254 (June 4, 1982), FERC Stats. & Regs. ¶ 30,368 (1982); 18 C.F.R. § 157.206(b)(4) (2014).

17. Because interested parties might have valid concerns about individual activities eligible to proceed under the prior notice procedures, the regulations provide an opportunity for a more thorough review and potential adjudication of issues raised in a protest. The prior notice procedures include a 30-day reconciliation period to allow an opportunity for blanket certificate holders to resolve protests and still proceed under their blanket authority. Here, however, Allegheny's protest was not withdrawn by the end of the prior notice procedure's 30-day reconciliation period. Thus, Columbia's request will be treated as an application for section 7 authorization.²⁴

IV. Environmental Analysis

18. Since Allegheny's protest was not withdrawn within the time specified in our regulations, Commission staff prepared an environmental assessment (EA) for Columbia's proposal to satisfy the requirements of the National Environmental Policy Act (NEPA).²⁵ The analysis in the EA addresses geology, soils, water use and quality, wetlands, fish, wildlife, vegetation, migratory birds, special status species, land use and recreation, cultural resources, air quality, noise, reliability and safety, cumulative impacts, and alternatives. The EA also addresses the environmental aspects of the protests filed by Five Way and Allegheny. The EA was placed into the public record on June 18, 2014.

19. The EA documented the land use impacts raised by Five Way. However, because Five Way and Columbia reached an agreement, these impacts are not discussed in detail. The EA evaluates the Columbia's proposal as revised by the Columbia/Five Way agreement.

20. As discussed below, the Commission will deny the protest and authorize the proposals under Columbia's blanket certificate. Recommendation 11 of the EA was included by staff to require Columbia to file a post-construction noise survey after placing the metering facilities at the Locust Point Station in service to ensure that the noise impacts from the facility would not exceed a day-night averaged noise level (L_{dn}) of 55 A-weighted decibels (dBA) at any nearby noise-sensitive area (NSA). On August 13, 2014, Columbia filed a statement that it agreed to conduct the referenced noise surveys and implement any necessary noise controls to ensure the facilities constructed and

²⁴ 18 C.F.R. § 157.205(f) (2014).

²⁵ 42 U.S.C. §§ 4321-4370h (2012).

operated by Columbia do not exceed an L_{dn} of 55 dBA at any NSA.²⁶ Columbia's commitment will protect the public against significant noise impacts.

A. Allegheny's Protest and Comments to the EA

1. Segmentation

21. On July 3, 2014, Allegheny filed comments on the EA, contending that the "Line 1655 North Project is impermissibly segmented from numerous other Columbia projects that are part of Columbia's Modernization Program."²⁷ Allegheny states that the Commission "must consider the Modernization Program in a single programmatic [Environmental Impact Statement]."²⁸

22. Columbia states that it developed a Modernization Program to address its aging infrastructure, enhance pipeline safety, and increase customer service reliability across its 12,000-mile pipeline system.²⁹ The Line 1655 North Project has been identified as part of the Modernization Program.³⁰ While the Commission approved a capital cost recovery mechanism agreement between Columbia and its customers allowing Columbia to recover costs associated with implementing pipeline safety and reliability upgrades undertaken pursuant to the Modernization Program without filing a general section 4 rate case,³¹ the Commission did not authorize the Modernization Program, nor did it authorize any specific pipeline projects identified by Columbia as part of the Modernization Program.

23. The Council on Environmental Quality (CEQ) regulations require that the scope of an environmental review under NEPA include "connected," "cumulative," and "similar"

²⁶ Columbia's commitment is consistent with the noise level requirements in section 157.260(b)(5)(i) of the Commission's blanket certificate regulations.

²⁷ Columbia July 3, 2014 Comments at 1.

²⁸ *Id.* at 4.

²⁹ Columbia July 18, 2014 Comments at 1, 13.

³⁰ *See* Appendix E of the Settlement Order, 142 FERC ¶ 61,062.

³¹ *Id.*

actions.³² An agency may not impermissibly “segment” its NEPA review by dividing such actions into separate projects and thereby failing “to address the true scope and impact of the activities that should be under consideration.”³³

24. Actions are “connected” if they: “[a]utomatically trigger other actions which may require environmental impact statements;” “[c]annot or will not proceed unless other actions are taken previously or simultaneously;” or “[a]re interdependent parts of a larger action and depend on the larger action for their justification.”³⁴ “Cumulative actions” are those “which when viewed with other proposed actions have cumulatively significant impacts and should therefore be discussed in the same impact statement.”³⁵ “Similar actions” are those “which when viewed with other reasonably foreseeable or proposed agency actions, have similarities that provide a basis for evaluating their environmental consequences together, such as common timing or geography.”³⁶ The potential projects described in Columbia’s Modernization Program and the proposed Line 1655 North Project do not meet the definitions of any of these three types of actions.

25. As noted above, the Modernization Program is Columbia’s internal planning process for recognizing and responding to potential safety and reliability concerns, mainly due to infrastructure age, on its natural gas transportation system. Aside from this common purpose, however, the Modernization Program is not focused on projects concentrated in geography or time, or that depend on each other for their utility. Potential Modernization Program projects span as many as six states, on a variety of different mainlines,³⁷ and might be implemented over a span of 10 to 15 years.³⁸ The projects are also “subject to change from time to time to the extent Columbia determines that it is prudent to add, remove, or substitute projects.”³⁹ Moreover, the Line 1655

³² *Am. Bird Conservancy v. FCC*, 516 F.3d 1027, 1032 (D.C. Cir. 2008) (citing 40 C.F.R. § 1508.25 (2013)).

³³ *Kleppe v. Sierra Club*, 427 U.S. 390, 410 (1976).

³⁴ 40 C.F.R. § 1508.25(a)(1) (2014).

³⁵ 40 C.F.R. § 1508.25(a)(2) (2014).

³⁶ 40 C.F.R. § 1508.25(a)(3) (2014).

³⁷ Columbia July 7, 2014 Supplemental Information at 2.

³⁸ Columbia July 18, 2014 Answer at 9.

³⁹ Columbia July 7, 2014 Supplemental Information at 1.

North Project, in particular, is located on a small pipeline lateral, removed in time and geography from the majority of potential Modernization Program activities.⁴⁰ As discussed below, Modernization Program activities are not connected, cumulative, or similar, or otherwise related in ways that would make programmatic environmental review beneficial or necessary.

26. Columbia's proposal herein and other potential Modernization Program projects are not "connected actions" due to their "independent utility"⁴¹ and disparity of location. As safety and reliability enhancements, the various potential Modernization Program activities would "serve a significant purpose even if a second related project is not built,"⁴² specifically enhancing local safety and the reliability of service. As Columbia notes, it "would undertake the Line 1655 North Project regardless of whether it obtains approval for, or undertakes, any other Modernization Program projects."⁴³ Based on this independent utility, these projects would not trigger one another and could proceed on their own. Moreover, potential Modernization Program projects are generally physically independent, and would not directly interconnect or occur on the same mainlines. Accordingly, the potential projects set forth in Columbia's Modernization Program projects are not interdependent, either physically or in purpose, and thus are not "connected actions" pursuant to the CEQ regulations.

27. Columbia's proposal and Modernization Program are also not cumulative actions. As noted by the Fifth Circuit Court of Appeals, actions that are merely contemplated, as opposed to proposed, are not cumulative:

Proposed actions with potential cumulative impacts may mandate the preparation of a regional or comprehensive impact statement; *contemplated* actions with potential cumulative impacts cannot... Should contemplated

⁴⁰ *Id.* at 2.

⁴¹ Many courts have used an independent utility test to determine whether actions are connected under 40 C.F.R. § 1508.25 (2014). See *Town of Huntington v. Marsh*, 859 F.2d 1134, 1142 (2d Cir. 1988); *Taxpayers Watchdog, Inc. v. Stanley*, 819 F.2d 294, 298 (D.C. Cir. 1987).

⁴² *Coal. on Sensible Transp., Inc. v. Dole*, 826 F.2d 60, 69 (D.C. Cir. 1987) (holding that "the proper question" as to whether a project has independent utility "is whether one project will serve a significant purpose even if a second related project is not built.").

⁴³ Columbia July 18, 2014 Answer at 8.

actions later reach the stage of actual proposals, impact statements on them will take into account the effect of their approval upon the existing environment; and the condition of the environment presumably will reflect earlier proposed actions and their effects.⁴⁴

As previously stated, Columbia has not yet proposed, and may never propose, some projects identified in its Modernization Program project aside from the current proposal. Potential environmental impacts from those contemplated projects will be considered if and when they are actually proposed. In short, the Modernization Program is merely a set of contemplated actions, and is therefore not cumulative.

28. Finally, the 1655 Line North Project and other contemplated projects in the Modernization Program are not similar actions, as specific projects are neither reasonably foreseeable nor common in timing or geography. Which potential Modernization Program projects Columbia will ultimately undertake is currently speculative. Indeed, the Commission is aware of the projects Columbia has contemplated potentially undertaking only because the projects were identified by Columbia during the above-described proceedings related to establishment of a recovery mechanism for any costs ultimately incurred. The projects in Appendix E of the Modernization Program, which Allegheny asserts must be reviewed programmatically, have not been approved by the Commission, and Columbia did not, nor does it now, present the Commission with actual project proposals. As such, the Commission is unable to determine which projects will actually be proposed for its approval, or what the scope, timing, and location of such potential proposals may be.

29. Moreover, as noted above, the entire Modernization Program could span six states, multiple pipelines, and occur over the next 10 to 15 years. These projects are not common in timing or geography, or otherwise similarly related. As the CEQ states, “An agency *may* wish to analyze [similar] actions in the same impact statement. It *should* do so when the *best way* to assess adequately the combined impacts of similar actions or reasonable alternatives to such actions is to treat them in a single impact statement.”⁴⁵

⁴⁴ *Fritiofson v. Alexander*, 772 F.2d 1225, 1242 (5th Cir. 1985) *overruled on other grounds by Sabine River Auth. v. U.S. Dep't of Interior*, 951 F.2d 669 (5th Cir. 1992); *Piedmont Heights Civic Club, Inc. v. Moreland*, 637 F.2d 430, 441-442 (5th Cir. 1981) (similarly holding that comprehensive review is not required for contemplated but not yet proposed actions under 40 C.F.R. § 1508.25(a)(2)) (2014); *Delaware Riverkeeper Network v. FERC*, 753 F.3d 1304 (D.C. Cir. 2014) (noting that “NEPA, of course, does not require agencies to commence NEPA reviews of projects not actually proposed”).

⁴⁵ 40 C.F.R. § 1508.25(a)(3) (2014) (emphasis added); *Klamath-Siskiyou Wildlands Ctr. v. Bureau of Land Mgmt.*, 387 F.3d 989, 1000-1001 (9th Cir. 2004)

(continued...)

Given the substantial disparity in time and place, and lack of detail needed to assess potential impacts, the Commission finds that programmatic review is neither required nor the best way to assess Columbia's proposal.⁴⁶

30. This situation is factually and legally distinct from *Del. Riverkeeper Network v. FERC*,⁴⁷ cited by Allegheny to support its claims.⁴⁸ That case considered four pipeline upgrades on a single mainline, all of which were either proposed and before the Commission or under construction at the same time, but reviewed separately. The court found this to be impermissible segmentation.⁴⁹ The immediate situation, however, encompasses potential future projects which would be physically independent, and spread across thousands of miles of pipeline and over a period of 10 to 15 years.⁵⁰

31. Moreover, the instant proposal meets the four factors that the court in *Del. Riverkeeper Network* discussed, and that other courts have looked to when dismissing segmentation claims. Specifically, where “the proposed segment (1) has logical termini; (2) has substantial independent utility; (3) does not foreclose the opportunity to consider alternatives, and (4) does not irretrievably commit federal funds for closely related projects,” individual, as opposed to programmatic, review may be appropriate.⁵¹ As a

(similarly emphasizing that agencies are only required to assess similar actions programmatically when such review is necessarily the *best way* to do so).

⁴⁶ This choice is supported by similar reasoning in *Earth Island Inst. v. United States Forest Serv.*, 351 F.3d 1291, 1306 (2003), which noted that “Given [prior administrative boundaries, different patterns of ownership and destruction, disparate timetables, and separate supervisory personnel], the agency may have reasonably concluded that two separate review documents constituted ‘the best way to assess adequately the combined impacts of similar actions.’”

⁴⁷ *Del. Riverkeeper Network*, 753 F.3d 1304.

⁴⁸ Columbia July 3, 2014 Comments at 6.

⁴⁹ *Del. Riverkeeper Network*, 753 F.3d 1304, 1309.

⁵⁰ Columbia July 18, 2014 Answer at 9.

⁵¹ See *Taxpayers Watchdog, Inc. v. Stanley*, 819 F.2d 294, 298 (D.C. Cir. 1987) (citing *Piedmont Heights Civic Club, Inc. v. Moreland*, 637 F.2d 430 (5th Cir. 1981); *Swain v. Brinegar*, 542 F.2d 364, 369 (7th Cir. 1976); *Daly v. Volpe*, 514 F.2d 1106, 1108-09 (9th Cir. 1975)).

small mainline offshoot, the Line 1655 North Project has logical termini at the beginning of the line and its interconnection with Columbia's 1804 mainline.⁵² As previously discussed, the project has substantial independent utility as a safety upgrade, and additionally, the project does not irretrievably commit federal funds.⁵³ Finally, the Commission finds no reason why independent review would foreclose consideration of alternatives for future projects. Given the independent utility of the Line 1655 North Project and the fact that the project will have no bearing on any other Modernization Program project, alternatives could be adequately considered for future projects when they are proposed. Accordingly, the analysis in *Del. Riverkeeper Network* supports the scope of the EA.

2. Cumulative Impacts

32. Allegheny's May 16 protest claims that the Commission must consider the cumulative impacts of the Line 1655 North Project and all regional shale gas drilling and related infrastructure, particularly impacts on forest fragmentation, wildlife habitat, air and water quality, and recreation. Allegheny's July 3 comments reiterate this assertion and add that the EA inappropriately fails to consider "the cumulative effects ... of the Modernization Program" and two other projects that Columbia is undertaking.⁵⁴

33. Allegheny's arguments with respect to addressing the cumulative impacts of all regional shale gas drilling and the entire list of potential Modernization Program activities are misplaced. The CEQ regulations require agencies to consider three kinds of impacts: direct, indirect, and cumulative.⁵⁵ "Cumulative impact" is defined as the "impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (Federal or non-Federal) or person undertakes such other actions."⁵⁶ Whether an impact is reasonably foreseeable depends on whether it is sufficiently likely to occur that a person of ordinary prudence would take it into account in reaching a

⁵² Columbia July 7, 2014 Supplemental Information Filing at 2.

⁵³ As Columbia's July 18, 2014 Answer notes, the Line 1655 North Project "does not involve federal funds" at all. Columbia July 18, 2014 Answer at 11.

⁵⁴ Allegheny's May 16 Protest at 4, 6 (noting that that "FERC must, at a minimum, consider Columbia's ... East Side Expansion Project and Smithfield Expansion Project").

⁵⁵ 40 C.F.R. § 1508.25 (2014).

⁵⁶ 40 C.F.R. § 1508.7 (2014).

decision.⁵⁷ Agencies are not required “to engage in speculative analysis,”⁵⁸ and are only required to include “such information as appears to be reasonably necessary under the circumstances for evaluation of the project rather than to be so all-encompassing in scope that the task of preparing it would become either fruitless or well nigh impossible.”⁵⁹

34. Consideration of the regional cumulative impacts of Marcellus Shale development and all potential Modernization Program activities would require the Commission to engage in the speculative analysis that courts reject. As the Commission has found in prior proceedings, the full range of Marcellus Shale development is both widespread and uncertain in nature and timing, making it highly difficult and speculative to identify and quantify cumulative impacts of possible future drilling relating to pipeline projects.⁶⁰ As noted above, the Modernization Program is Columbia’s internal planning process, and potential activities that it may be considering have not been proposed, may never be proposed, and are subject to change in time, scope, and location. Accordingly, an analysis of numerous and uncertain projects, likely to be distant in time and place from the Line 1655 North Project, is too speculative to aid the Commission in this proceeding.

35. The Commission also finds no merit in Allegheny’s assertion that the EA inappropriately failed to consider cumulative impacts from the Smithfield and East Side Expansion Projects.⁶¹ The EA specifically notes that both the Smithfield and East Side

⁵⁷ *Sierra Club v. Marsh*, 976 F.2d 763, 767 (1st Cir. 1992).

⁵⁸ *N. Plains Res. Council v. Surface Transp. Bd.*, 668 F.3d 1067, 1078 (9th Cir. 2011); *Wyoming v. U.S. Dep’t of Agric.*, 661 F.3d 1209, 1253 (10th Cir. 2011) (citing *Wilderness Workshop v. U.S. Bureau of Land Mgmt.*, 531 F.3d 1220, 1228–31 (10th Cir. 2008); *Sierra Club v. Lujan*, 949 F.2d 362, 368 (10th Cir.1991); *Safeguarding The Historic Hanscom Area’s Irreplaceable Res., Inc. v. FAA*, 651 F.3d 202, 218 (1st Cir.2011); *Envtl. Def. Fund, Inc. v. Andrus*, 619 F.2d 1368, 1378 (10th Cir.1980)).

⁵⁹ *New York Natural Res. Def. Council, Inc. v. Kleppe*, 429 U.S. 1307, 1311 (1976) (citing *Natural Res. Def. Council v. Calloway*, 524 F.2d 79, 88 (2d. Cir. 1975)).

⁶⁰ *Cent. N.Y. Oil & Gas Co. LLC*, 138 FERC ¶ 61,104, at P 7 (2012) upheld by *Coal. for Responsible Growth and Res. Conservation v. FERC*, 485 Fed. Appx. 472 (2d. Cir. 2012).

⁶¹ Columbia’s Smithfield Expansion Project is a pipeline replacement and expansion project in Greene and Washington Counties, Pennsylvania, which was identified through the Modernization Program and was approved by the Commission on February 7, 2014. *Columbia Gas Transmission, LLC*, 146 FERC ¶ 61,075. Columbia’s proposed East Side Expansion Project is a series of pipeline additions and appurtenant

(continued...)

Expansion Projects are in non-contiguous counties and different watersheds than the immediate proposal, that lack of new operational emissions means that there will be no airshed impacts, and that there are otherwise no significant noise or viewshed impacts.⁶²

36. The CEQ guidance on cumulative impacts assessments advises that agencies have substantial discretion in determining the appropriate level of the cumulative impacts assessments.⁶³ The CEQ Memorandum states that an agency should relate the scope of its analysis to the magnitude of the environmental impacts of the proposed action. Accordingly, proposed actions that result in a finding of no significant impact usually involve only a limited cumulative impact analysis to confirm that the proposed action would not, in fact, have a significant impact on the environment.⁶⁴ Given both the limited scope of the Line 1655 North Project and the minimal environmental footprint, the Commission finds that that the broader cumulative effects analysis sought by Allegheny is not required under NEPA.

37. Finally, the Commission rejects Allegheny's suggestion that a programmatic Environmental Impact Statement (EIS) that considers all natural gas activity over the Marcellus and Utica Shale formations is required. The CEQ regulations state that major federal actions for which an EIS may be required include "programs, such as a group of concerted actions to implement a specific policy or plan; [and] systematic and connected agency decisions allocating agency resources to implement a specific statutory

facility upgrades in Maryland, New York, New Jersey, and Pennsylvania that is pending authorization by the Commission in Docket No. CP14-17-000 (filed Nov. 1, 2013).

⁶² The boundaries used for scoping purposes in the EA, particularly watersheds, airsheds, and viewsheds, are in accord with the CEQ guidance cited in Allegheny's May 16 Protest, which notes that "*cumulative effects analysis should be conducted on the scale of human communities, landscapes, watersheds, or airsheds.*" May 16 Protest at 5; CEQ, *Considering Cumulative Effects Under the National Environmental Policy Act* 12 (Jan. 1997).

⁶³ The Supreme Court has similarly held that "determination of the extent and effect of [cumulative impacts], and particularly identification of the geographic area within which they may occur, is a task assigned to the special competency of the appropriate agencies." *Kleppe*, 427 U.S. at 413.

⁶⁴ CEQ, *Memorandum on Guidance on Consideration of Past Actions in Cumulative Effects Analysis* at 2-3 (June 24, 2005); *See also El Paso Natural Gas Co.*, 136 FERC ¶ 61,175, at P 5 (2011).

program.”⁶⁵ The Line 1655 North Project is a minor, routine replacement project focused on pipeline safety, with a minimal environmental footprint. It is not a broad program or plan for regional gas exploitation. In short, Allegheny seeks a programmatic EIS for a “program” that is not before the Commission.

38. The blanket certificate program relies on the presumption that any project permitted under blanket certificate authority will not have a significant adverse environmental impact. The Commission ensures that this is the case by restricting blanket certificate authority to certain types of facilities and to individual projects that can comply with a cost cap and the environmental requirements specified in section 157.206(b) of the Commission’s regulations.⁶⁶ Allegheny has not identified, nor does the Commission find, any deficiencies in Columbia’s compliance with the environmental conditions set forth in the Commission’s regulations, or the need for any environmental conditions beyond those that would rebut a presumption of no significant impact.⁶⁷ Accordingly, we will deny Allegheny’s protest to the prior notice.

39. As explained above, when a prior notice filing is protested, the Commission treats the filing as an application for case-specific authorization if the protest is not withdrawn within the 30-day reconciliation period. However, the Commission has a policy against granting case-specific authority when, as here, such activity may be performed under a blanket certificate.⁶⁸ In this case, the Commission has determined that Allegheny’s protest to the prior notice filing should be denied and that Columbia has otherwise complied with all the requirements under its blanket certificate. In addition, Five Way has withdrawn its protest. Thus, the Commission will authorize Columbia’s Line 1655 North Project under its Part 157 blanket certificate, subject to the environmental conditions in section 157.206(b) of the Commission’s regulations.

⁶⁵ 40 C.F.R. § 1508.18(b)(3) (2014).

⁶⁶ *Revisions to the Blanket Certificate Regulations & Clarification Regarding Rates*, Order No. 686-A, 72 Fed. Reg. 37,431 (July 10, 2007), FERC Stats. & Regs. ¶ 31,249 (2007); 18 C.F.R. pt. 157 (2014).

⁶⁷ We note that the analysis in the EA supports a conclusion that, if constructed and operated in accordance with Columbia’s application and supplements, approval of this proposal would not constitute a major federal action significantly affecting the quality of the human environment.

⁶⁸ See *Kinder Morgan Gas Transmission LLC*, 133 FERC ¶ 61,044 (2010); *Sea Robin Pipeline Co., LLC*, 147 FERC ¶ 61,197 (2014).

40. Any state or local permits issued with respect to facilities subject to the jurisdiction of this Commission must be consistent with the conditions of any certificate issued by this Commission authorizing construction and operation of those facilities. The Commission encourages cooperation between interstate pipelines and local authorities. This does not mean, however, that state and local agencies, through application of state or local law, may prohibit or unreasonably delay construction or operation of facilities approved by this Commission.⁶⁹

41. 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) Columbia is authorized to abandon, construct and operate the natural gas facilities, as described herein, and as further described in Columbia's prior notice request.

(B) Allegheny's protest is denied.

(C) Columbia shall notify the Commission's environmental staff by telephone, e-mail, and/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 within 24 hours.

⁶⁹ 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.*, 52 FERC ¶ 61,091 (1990) and 59 FERC ¶ 61,094 (1992).

(D) Orange and Rockland's untimely motion to intervene is granted.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

Appendix

Allegheny Defense Project;
Five Way Partners (Five Way);
National Fuel Gas Distribution Corporation;
National Grid Gas Delivery Companies;
New Jersey Natural Gas Company;
NRJ Energy Services Company;
PSEG Energy Resources & Trade, LLC;
UGI Distribution Companies;
Virginia Natural Gas, Inc., Elizabethtown Gas, and Elkton Gas (joint intervenors).