156 FERC ¶ 61,125
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Columbia Gas Transmission, LLC Docket No. CP15-549-000

ORDER ISSUING CERTIFICATE AND GRANTING ABANDONMENT

(Issued August 23, 2016)

1. On September 2, 2015, Columbia Gas Transmission, LLC (Columbia) filed an application, pursuant to sections 7(b) and (c) of the Natural Gas Act (NGA)[1] and Part 157 of the Commission's regulations,[2] seeking authorization for its proposed SM-80 MAOP Restoration Project (SM-80 Project) in Wayne County, West Virginia. Columbia requests authorization to abandon in place approximately 3.3 miles of pipeline along its SM-80 natural gas transmission system (Line SM-80), and to construct and operate approximately 3.9 miles of natural gas pipeline in response to a class location change by the U.S. Department of Transportation's Pipeline and Hazardous Materials Safety Administration (PHMSA).[3]

2. For the reasons discussed below, we will grant the requested authorizations with appropriate conditions.

I. Background and Proposal

3. Columbia,[4] a Delaware limited liability company, is a natural gas company as defined under section 2(6) of the NGA.[5] Columbia is engaged in the transportation and

[1] 15 U.S.C. § 717f(b), (c) (2012).

[2] 18 C.F.R. pt. 157, Subpart A (2015).

[3] 49 C.F.R. § 192.5 (2016).

[4] Columbia is a wholly owned subsidiary of the Columbia Pipeline Group, Inc.

[5] 15 U.S.C. § 717a(6) (2012).

storage of natural gas in interstate commerce in Delaware, Kentucky, Maryland, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Virginia, and West Virginia.

4. Columbia proposes to abandon in place approximately 3.3 miles of 30-inch-diameter pipeline, and to construct and operate approximately 3.9 miles of 30-inch-diameter pipeline to replace the abandoned pipeline. Columbia states that it seeks the requested authorizations to better serve its existing transportation customers, while also complying with PHMSA's regulations.

5. Columbia constructed the 3.3-mile-long pipeline segment proposed for abandonment, which stretches between Columbia's Ceredo Compressor Station and the west bank of the Big Sandy River in Wayne County, West Virginia, in 1955. At that time, Columbia operated Line SM-80 at a maximum allowable operating pressure (MAOP) of 935 pounds per square inch gauge (psig). However, since 1995, population density has increased in the area of the segment, resulting in the area becoming a Class 3 location under PHMSA regulations.[6] To accommodate this change in classification, Columbia currently operates Line SM-80 at a MAOP of 780 psig to comply with PHMSA requirements. Columbia's proposal to abandon the 3.3-mile-long pipeline segment and replace it with a 3.9-mile-long segment of pipe that would bypass the populated Class 3 location would allow Columbia to operate Line SM-80 at an MAOP of 960 psig, while adhering to U.S. Department of Transportation and PHMSA design and safety requirements.

6. The pipeline segment to be abandoned is located between Mileposts 0.67 and 4.00 of Line SM-80. Columbia indicates that the pipeline "will be cut and capped at 16 locations where it will be abandoned in place."[7] Columbia will construct the approximately 3.9 miles of replacement pipeline between Mileposts 0.67 and 4.53 on Line SM-80. Columbia's estimated cost for the SM-80 Project is approximately $40 million.

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[6] *See* 49 C.F.R. § 192.5(3). PHMSA regulations classify pipeline locations based upon the density of buildings intended for human occupancy along a defined corridor. A Class 3 location includes any continuous 1-mile length of pipeline where there are 46 or more buildings intended for human occupancy within 220 yards on either side of the pipeline; an area where the pipeline lies within 100 yards of a building that is occupied by 20 or more persons during normal use; or a playground, recreation area or other small, well-defined outside area occupied by 20 or more persons during normal use.

[7] Columbia's Application at 5.

II. Notice and Interventions

7. Notice of Columbia's application was issued on September 15, 2015, and published in the *Federal Register* on September 21, 2015 (80 Fed. Reg. 56,977). The notice established October 6, 2015 as the deadline for filing comments and interventions. The parties listed in Appendix A of this Order filed timely, unopposed motions to intervene.[8]

8. On October 7, 2015, Antero Resources Corporation (Antero) filed an unopposed motion to intervene out-of-time. We will grant Antero's untimely intervention as we find it has an interest in the proceeding and that granting intervention at this stage of the proceeding will not result in prejudice to any party or undue delay.

III. Discussion

9. Since the facilities to be abandoned have been used to transport natural gas in interstate commerce subject to the Commission's jurisdiction and the proposed replacement facilities will be used for jurisdictional service, the proposed abandonment, construction, and operation of facilities are subject to the requirements of subsections (b), (c), and (e) of section 7 of the NGA.[9]

A. Abandonment

10. Section 7(b) of the NGA allows an interstate pipeline company to abandon jurisdictional facilities only if the abandonment is permitted by the present or future public convenience or necessity.[10] The applicant has the burden of providing evidence to show that the abandonment is permitted under this standard. The Commission has stated that continuity and stability of existing service are the primary considerations in assessing the public convenience or necessity of a permanent cessation of service under NGA section 7(b).[11]

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[8] Timely, unopposed motions to intervene are granted by operation of Rule 214(c) of the Commission's Rules of Practice and Procedure. 18 C.F.R. § 385.214(c) (2015).

[9] 15 U.S.C. § 717f (2012).

[10] 15 U.S.C. § 717f(b) (2012); *see also El Paso Natural Gas Co.*, 135 FERC ¶ 61,079, at P 17 (2011).

[11] *See Tallgrass Interstate Gas Transmission, LLC*, 144 FERC ¶ 61,197, at P 16 (2013); *Southern Natural Gas Co.*, 126 FERC ¶ 61,246, at P 27 (2009).

11. Columbia requests authorization to abandon in place approximately 3.3 miles of pipeline along its Line SM-80, including six residential taps. Columbia states that its SM-80 Project will increase the operational flexibility and reliability of its system and will ensure the continued safe and efficient operation of the system to serve its existing customers. Because the 3.3-mile-long pipeline segment to be abandoned will be replaced by the proposed 3.9-mile-segment discussed below, the proposed abandonment will not detrimentally impact Columbia's ability to meet its existing service obligations. Columbia states that to maintain continuity of service, the six residential taps will be transferred to the local distribution company. Moreover, the abandonment/replacement will allow Columbia to operate its Line SM-80 at an MAOP of 960 psig, as opposed to the current 780 psig, which will provide additional operational flexibility.

12. Based on the above, we find that the proposed abandonment is permitted by the public convenience and necessity. Therefore, we will approve the abandonment.

B. Replacement Pipeline

1. Certificate Policy Statement

13. The Commission's Certificate Policy Statement provides guidance for evaluating proposals to certificate new pipeline construction.[12] The Certificate Policy Statement establishes 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 explains 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.

14. 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 its 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 facilities. If residual adverse effects on these interest groups are identified after

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[12] *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).

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.

15. As stated, the threshold requirement is that the applicant must be prepared to financially support the project without relying on subsidization from its existing customers. Under the Certificate Policy Statement, it is not a subsidy for existing customers to pay for projects to replace existing capacity in order to improve the reliability or flexibility of existing service.[13] To comply with PHMSA's safety regulations, Columbia must replace the 3.3-mile-long segment located in the populated Class 3 location area or continue to operate the entire Line SM-80 at an MAOP of 780 psig. However, operating that pipeline at reduced pressure adversely affects the operational flexibility and reliability of Columbia's system. Replacing the existing pipeline facilities will enable Columbia to operate the affected portion of its system at a higher MAOP, thus improving reliability and flexibility for existing customers. Under these circumstances, we find that there will be no subsidization of the project by existing customers, nor will there be any degradation of service to Columbia's existing customers.

16. We additionally find that because the SM-80 Project is a replacement project designed to maintain existing services there will be no adverse impacts on Columbia's shippers or existing pipelines or their captive customers.

17. We further find that Columbia has taken steps to minimize any adverse impacts on landowners and communities that might be affected by the project. To limit impacts on landowners and the environment, Columbia proposes to collocate the replacement pipeline segment with existing Columbia easements for approximately 3.8 of the 3.9 miles. Columbia further indicates that it will continue to engage with landowners to address routing concerns, and will only resort to the use of eminent domain authority to

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[13] *Kern River Gas Transmission Co.*, 153 FERC ¶ 61,302, at P 12 (2015) (citing Certificate Policy Statement, 88 FERC ¶ 61,227, at n.12 (1999)). *See also, e.g.*, *National Fuel Gas Supply Corp.*, 150 FERC ¶ 61,162, at P 15 (2015) (finding that requiring existing customers that relied on facilities to pay for replacement facilities would not result in a subsidy since the existing 86-year-old pipeline was deteriorated and needed to be replaced in order to ensure continued reliability of the existing services). *Northwest Pipeline Corp.*, 104 FERC ¶ 61,176, at PP 5-7 and 23 (2003) (approving costs to remove river-crossing pipeline posing safety risks because it had become exposed as the result of flooding; approving construction of replacement river-crossing pipeline in different location; and finding that it was not a subsidy to require that existing customers pay for the costs of a project that was necessary for safety reasons and maintain reliable service).

obtain required land rights after efforts to negotiate a mutually acceptable agreement with the landowner have been exhausted.

18. On October 6, 2015, Kenneth Chafin filed a comment expressing concern regarding his property value and future land use. Specifically, Mr. Chafin asked whether a single family dwelling could be built on his property. While certain above ground structures cannot be constructed on a permanent right-of-way itself, construction of a single-family residence on a parcel crossed by a pipeline would not be constrained, so long as it could be constructed without encroaching on the 50-foot-wide permanent easement. As for the potential impact a pipeline could have on a property's value, the Commission has noted that the impact would depend on many factors, including the size of the tract, the values of adjacent properties, the presence of other utilities, the current value of the land, and the current land use.[14] The appraisal methods used to value land are typically based on objective characteristics of the property and any improvements. A potential purchaser's decision on whether to purchase land would be based on his or her planned use of the property. With so many variables exerting impact, it is difficult to separate the effect, if any, a pipeline may have on property values.

19. The SM-80 Project will allow Columbia to most efficiently operate its Line SM-80. Based on the benefits the project will provide, the minimal adverse impacts on Columbia's existing customers, other pipelines and their captive customers, and landowners and surrounding communities, we find that Columbia's project is consistent with the Certificate Policy Statement and, as conditioned in this Order, is required by the public convenience and necessity.

2. **Rolled-In Rate Treatment**

20. Columbia requests a pre-determination that costs associated with the project may be rolled into its system rates in Columbia's next NGA section 4 rate proceeding. Columbia states that the primary purpose of the project is "to ensure the continued safe and efficient operation of Columbia's existing pipeline facilities at their original MAOP."[15] The Certificate Policy Statement recognizes the appropriateness of rolled-in rate treatment for projects constructed to improve the reliability of service to existing customers or to improve service by replacing existing capacity, rather than to increase levels of service.[16] Accordingly, we will grant Columbia's request for predetermination of rolled-in rate treatment for the project in its next general rate proceeding, absent any

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[14] *See Algonquin Gas Transmission, LLC*, 151 FERC ¶ 61,118, at P 56 (2015).

[15] Columbia's Application at 11.

[16] Certificate Policy Statement, 90 FERC ¶ 61,128 at 61,393-61,394.

material change in circumstances. We have reached similar preliminary determinations in prior cases where, as here, the incurred costs are attributable to the maintenance of safety and reliability of the pipeline for the benefit of existing customers.[17]

C. Environmental Analysis

21. On October 23, 2015, the Commission issued a Notice of Intent to Prepare an Environmental Assessment for the Proposed SM-80 Project and Request for Comments on Environmental Issues (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.

22. To satisfy the requirements of the National Environmental Policy Act, our staff prepared an EA for Columbia's proposal that was placed into the public record on June 19, 2016, with a 30-day comment period. The analysis in the EA addresses geology, soils, water resources, wetlands, vegetation, fisheries, wildlife, threatened and endangered species, land use, cultural resources, air quality, noise, safety, cumulative impacts, and alternatives. All environmental comments filed in response to the NOI were addressed in the EA. No further comments were filed following issuance of the EA.

23. Based on the analysis in the EA, we conclude that if the existing facilities are abandoned and the proposed replacement facilities are constructed and operated in accordance with Columbia's application and supplements, and in compliance with the environmental conditions in Appendix B to this Order, our approval of this proposal would not constitute a major federal action significantly affecting the quality of the human environment.

24. 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 and local laws, may prohibit or unreasonably delay the construction or operation of facilities approved by this Commission.[18]

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[17] *See, e.g.*, *Columbia Gas Transmission, LLC*, 153 FERC ¶ 61,042, at P 20 (2015); *Columbia Gas Transmission, LLC*, 134 FERC ¶ 61,196, at P 22 (2011); *Columbia Gas Transmission Corp.*, 111 FERC ¶ 61,431, at P 12 (2005); *Northwest Pipeline Corp.*, 104 FERC ¶ 61,176, at P 23, *reh'g denied*, 105 FERC ¶ 61,109 (2003).

[18] *See* 15 U.S.C. § 717r(d) (state or federal agency's failure to act on a permit considered to be inconsistent with Federal law); *see also Schneidewind v. ANR Pipeline*

(continued ...)

IV. Conclusion

25. 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, and all comments 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 SM-80 Project, as described more fully in this order and in the application.

(B) The certificate authority issued in Ordering Paragraph (A) is conditioned on:

(1) Columbia's completion of construction of the authorized facilities and making them available for service within two years of the date of this order pursuant to section 157.20(b) of the Commission's regulations;

(2) Columbia's compliance with all applicable Commission regulations, including (a), (c), (e), and (f) of section 157.20 of the Commission's regulations; and

(3) Columbia's compliance with the environmental conditions listed in Appendix B to this Order.

(C) Columbia is granted permission and approval under section 7(b) of the NGA to abandon the facilities described in this Order and as more fully described in the application, subject to Columbia's compliance with the environmental conditions listed in Appendix B to this Order.

(D) Columbia's request for a pre-determination of rolled-in rate treatment of project costs is granted, as discussed above.

Co., 485 U.S. 293 (1988) (state regulation that interferes with the Commission's regulatory authority over the transportation of natural gas is preempted) and *Dominion Transmission, Inc. v. Summers*, 723 F.3d 238, 243 (D.C. Cir. 2013) (noting that state and local regulations is preempted by the NGA to the extent it conflicts with federal regulation, or would delay the construction and operation of facilities approved by the Commission).

(E) Columbia shall notify the Commission within 10 days of the abandonment.

(F) 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.

(G) The late motion to intervene is granted.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

Appendix A

Timely Interventions
Docket No. CP15-549-000

Atmos Energy Marketing, LLC
Calpine Energy Services, LP
Cities of Charlottesville and Richmond, Virginia
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. (collectively, NiSource Distribution Companies)
Exelon Corporation
Michigan Public Service Commission
National Fuel Gas Distribution Corporation
National Grid Gas Delivery Companies
New Jersey Natural Gas Company
New York State Electric & Gas Corporation
NJR Energy Services Company
Orange and Rockland Utilities, Inc.
Piedmont Natural Gas Company, Inc.
Pivotal Utility Holdings, Inc. d/b/a/ Elizabethtown Gas Company, Elkton Gas, and Virginia Natural Gas, Inc.
PSEG Energy Resources & Trade, LLC
Public Service Company of North Carolina
UGI Utilities, Inc., UGI Penn Natural Gas, Inc., and UGI Central Penn Gas, Inc. (collectively known as, UGI Distribution Companies)

Appendix B

Columbia Gas Transmission, LLC
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 supplemental filings (including responses to staff data requests) and as identified in the EA unless modified by this Order. Columbia must:

   a. request any modification to these procedures, measures, or conditions in a filing with the Secretary of the Commission (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 this 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 (EI), 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 or plot plans. **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 this Order. All requests for modifications of environmental conditions of this 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 NGA section 7(h) in any condemnation proceedings related to this Order must be consistent with these authorized facilities and locations. Columbia's right of eminent domain granted under NGA 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, and 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 work space allowed by Columbia's 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 this 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. the number of EIs assigned per spread, and how the company 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;

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. Columbia shall employ at least one EI. The EI(s) shall be:

a. responsible for monitoring and ensuring compliance with all mitigation measures required by this order and other grants, permits, certificates, or other authorizing documents;

b. responsible for evaluating the construction contractor's implementation of the environmental mitigation measures required in the contract (see condition 6 above) and any other authorizing document;

c. empowered to order correction of acts that violate the environmental conditions of this order, and any other authorizing document;

d. responsible for documenting compliance with the environmental conditions of this order, as well as any environmental conditions/permit requirements imposed by other federal, state, or local agencies; and

e. responsible for maintaining status reports.

8. **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 EI(s) 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 this 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.

9. **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).

10. 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.

11. **Within 30 days of placing the project 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.

12. **Prior to construction,** Columbia shall file with the Secretary, for review and approval by the Director of the OEP, a landslide mitigation plan to adopt the recommendations contained in Terracon Consultants, Inc.'s Geotechnical Survey Data Report relating to slope instability, or provide justifications for why the recommendations are not appropriate.

13. **Prior to construction**, Columbia shall file with the Secretary, for review and written approval by the Director of OEP, a project-specific Unanticipated Discovery Plan, and documentation that the West Virginia State Historic Preservation Office has reviewed and accepted the plan.