

124 FERC ¶ 61,230
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Columbia Gas Transmission Corporation	Docket Nos. CP06-466-000 CP06-466-001
Somerset Gas Gathering of Pennsylvania, LLC	CP06-467-000 CP06-467-001

ORDER AUTHORIZING ABANDONMENT IN PART,
DETERMINING JURISDICTIONAL STATUS AND DENYING CERTIFICATE

(Issued September 8, 2008)

1. On September 28, 2006, as amended on March 31, 2008, Columbia Gas Transmission Corporation (Columbia) and Somerset Gas Gathering of Pennsylvania, LLC (Somerset Gas), filed applications, respectively, in Docket Nos. CP06-466-000 and CP06-467-000.¹ Columbia requests approval to abandon by sale to Somerset Gas certain natural gas facilities in Pennsylvania, known as the 1818/1862 System, and that the Commission find that a portion of the facilities, when sold to Somerset Gas, will be gathering facilities and therefore exempt from the Commission's jurisdiction pursuant to section 1(c) of the Natural Gas Act (NGA). Somerset Gas requests a limited jurisdiction certificate to continue to provide service to Columbia's only remaining customer, National Fuel Gas Distribution Corporation (National Fuel), through another portion of the subject facilities. For the reasons discussed herein, the Commission will grant

¹ Somerset Gas filed the March 31, 2008 amendment in Docket Nos. CP06-466-001 and CP06-467-001, to give the Commission additional technical and factual information about the 1818/1862 System it proposes to buy from Columbia and its plans for operating the system, as more fully described in this order, to assist the Commission's decision making.

Columbia authority to abandon a part of the 1818/1862 System, subject to conditions, and find that those facilities will perform a gathering function if operated as proposed by Somerset Gas. The Commission will deny abandonment of the remaining facilities and Somerset Gas' request for a limited jurisdiction certificate.

Proposals

A. Columbia's Request to Abandon the 1818/1862 System and for a Gathering Determination

2. Columbia and Somerset Gas' parent company, Somerset Gas Transmission Company (Somerset Transmission), entered into a Purchase and Sale Agreement (Agreement) on October 18, 2002, as amended on August 12, 2004. The Agreement provides for Columbia's sale to Somerset Gas of pipeline facilities known as the 1818/1862 System consisting of pipelines 10348, 1818, 1862, 1862S1, the Emporium Compressor Station, and associated rights-of-way and appurtenances. All of the facilities proposed for sale are located in McKean, Cameron, and Clinton Counties, Pennsylvania. The facilities will be sold for a negotiated price of \$100,000.²

3. Columbia states that the facilities have become obsolete and expensive to maintain and that the abandonment will eliminate the operation and maintenance costs and the need for future expenditures for repair or replacement of the facilities. Furthermore, Columbia states the proposed sale will allow it to optimize its system operations and concentrate efforts on its mainline transmission system and services.

4. The 1818/1862 System, constructed during the mid-1950s, originates at an interconnection with Columbia's Line 4226 in McKean County, Pennsylvania, and runs in a southeasterly direction to the Renovo Compressor Station³ in Clinton County, Pennsylvania. It consists of approximately 65 miles of 4- to 12-inch pipeline, rights-of-way and appurtenances and includes the Emporium Compressor Station, consisting of four 225 horsepower (hp) compressor units and appurtenances.

5. Columbia states that of the facilities to be abandoned, 57.5 miles of pipeline and the Emporium Compressor Station, have been idle since 1999. The other 7.3 miles of pipeline has remained in active service to maintain deliveries at Smethport under a firm transportation contract with National Fuel. There are no other shippers or mainline tap consumers served by these facilities.

² The net book value of the fully depreciated facilities is zero.

³ The Renovo Compressor Station is not included in the Agreement

6. Because Columbia's agreement to transport gas for National Fuel does not expire until March 31, 2010,⁴ and National Fuel continues to desire the service, Columbia entered into a firm service agreement with Somerset Gas which provides that Somerset Gas will continue the current service to National Fuel at no additional charge to National Fuel. Columbia states that it does not propose any change in the actual service being provided or the rates being charged to National Fuel, nor will it seek to recover any costs associated with the transportation agreement with Somerset Gas.

7. Columbia also requests the Commission to find that, when transferred to Somerset Gas, the facilities will perform a gathering function and will be exempt from Commission regulation. As more fully explained below, because Somerset Gas expects initially to operate only one section of the 1818/1862 Systems as a gathering line, it recognizes that the Commission may limit its gathering determination to that one section of the 1818/1862 System.

B. Somerset Gas' Proposed Modifications to the 1818/1862 System and Request for Limited Jurisdiction Certificate

8. Somerset Gas states it does not currently own or operate any facilities and is not subject to the Commission's jurisdiction. Rather, Somerset Gas is a new entity which has been established as a gatherer of natural gas and created to acquire and operate gathering facilities in Pennsylvania.

9. At present, the 1818/1862 System has only two interconnects: (1) a receipt point from Columbia Line 4226; and (2) a delivery point to National Fuel at Smethport. Somerset Gas intends to use these interconnects to provide limited service to Columbia's legacy customer, National Fuel. Therefore, Somerset Gas states that the only source of interstate natural gas on the 1818/1862 System is the Columbia Line 4226 interconnect. There are no other interconnects, including interconnects with jurisdictional interstate pipelines, along the entire length of the 1818/1862 System.

10. Based on discussions with potential producers in the area as well as geological studies, Somerset Gas believes the 1818/1862 System can be divided into four independent segments, with two active segments (Sections 1 and 3) and two inactive segments that will be capped (Sections 2 and 4). Somerset Gas states that structuring the lines in this way, with the inactive segments capped, will prevent interstate gas from

⁴ Upon expiration of the current contract, National Fuel has a right of first refusal for the capacity. As long as National Fuel desires capacity on this pipeline Columbia is under an obligation to provide service.

flowing on the gathering lines and allow new gas supplies in Pennsylvania to flow on the gathering lines to anticipated interconnects with Tennessee Gas Pipeline Company (Tennessee) or National Fuel Gas Supply Corporation (National Fuel Supply) so that they can transport the gas to northeastern consumers.

11. Somerset Gas requests a limited jurisdiction certificate to transport gas on Section 1 for National Fuel on behalf of Columbia as set forth in the Agreement. It further requests that the Commission make a gathering determination for Section 3 because Somerset Gas anticipates that will be the first line on which it will begin gathering gas from local producers. Because Somerset Gas' immediate plans involve operating only Section 3 as a gathering system, Somerset Gas states that it is unnecessary at this time for the Commission to make a gathering determination for the remaining portions of the system. Somerset Gas understands that the Commission's gathering determination will be limited to the facts before the Commission and is willing to accept a gathering determination conditioned on it returning to the Commission if and when it seeks to reactivate the remaining two segments.

12. Somerset Gas intends to segment the 1818/1862 System as follows:

Section 1

13. Section 1, the northernmost segment of the line, is approximately 7.3 miles-long and is the only part of the system that is currently active. Somerset Gas requests a limited jurisdiction certificate so that it may continue to use this line to transport gas from the interconnect with Columbia for delivery to National Fuel at Smethport. Somerset Gas states that because of the limited scope of the jurisdictional activities proposed and because Somerset Gas' primary function is the non-jurisdictional gathering of gas, the Commission should authorize the limited jurisdiction certificate.⁵ Somerset does not intend to use Section 1 to gather gas.

Section 2

14. Section 2 of the 1818/1862 System commences at the Smethport delivery point at the end of section 1 and runs 4.5 miles to the intersection (not an interconnect) with Tennessee. Section 2 has been inactive since 1999. Somerset Gas intends to keep this section of the system inactive. Therefore, Somerset Gas proposes to cap the pipeline at both ends of this section for operational, safety, and compliance reasons. There are no existing interconnections with Tennessee or any other interstate pipelines along this segment of the line.

⁵ *Citing Columbia Gas Transmission Corp., et al.*, 90 FERC ¶ 61,211, at 61,686 (2000).

Section 3

15. Section 3 of the 1818/1862 System commences at the intersection with Tennessee and/or National Fuel Supply and runs approximately 11 miles to the border of Cameron and McKean Counties, Pennsylvania. Somerset Gas states that this segment of the 1818/1862 System is inactive, and that currently there are no interconnections with the interstate pipelines that intersect Section 3.

16. Somerset Gas proposes to put this segment back into service to perform a non-jurisdictional gathering function to gather new supplies of natural gas from production areas in Pennsylvania for delivery to consuming markets. Specifically, this 11-mile segment would be used to gather existing and newly-developed production volumes under low pressures of less than 150 psig, from mature and new natural gas formations either for delivery into National Fuel Supply's line YM-2, or for further compression for delivery to Tennessee.⁶

17. Somerset Gas identifies 4-5 producers and 500-600 shallow drilling locations, as well as several potential deeper shale plays, in the immediate area around Section 3. Based on its ongoing conversations with producers, Somerset Gas estimates that it will gather 10,000 – 18,000 dekatherms of natural gas per day when Section 3 is completed. Somerset Gas states that putting Section 3 into gathering service to serve these and other producers will avoid the need to build redundant and costly infrastructure that otherwise would have to be built to provide an outlet for the gas supplies that will be developed in this area.

18. Finally, Somerset Gas plans to cap the line at the southeastern end of Section 3 for operational purposes. After an interconnection is constructed to provide access to National Fuel Supply or Tennessee, Somerset Gas states that gas will be gathered in a northwesterly direction to reach the interstate grid. Therefore, Somerset Gas asserts that under this proposal, there will be no risk that gas already in interstate commerce will flow into Section 3.

⁶ As National Fuel Supply is operated today, Somerset Gas states that it is unlikely that compression would be needed to enable delivery into line YM-2. However, if an interconnect is constructed to deliver gas to Tennessee, compression would be necessary to increase the pressure to above 800 psig for delivery to the interstate pipeline.

Section 4

19. Section 4 of the 1818/1862 System commences at the Cameron-McKean County line and extends to the Renovo Compressor Station in Clinton County, Pennsylvania. The Emporium Compressor Station is located on this segment and is one of the assets being transferred. However, the Renovo Compressor Station is not included in the Agreement. This approximately 42-mile segment has been inactive since 1999, and will remain inactive with no natural gas volumes being received or delivered. As with Section 2, Somerset Gas proposes to cap the pipeline at both ends of this segment for operational, safety and compliance purposes. Finally, Somerset Gas states that there are no existing interconnections with Tennessee or any other interstate pipeline along this segment of the line.

Notice, Interventions And Comments

20. Notice of Columbia's application filed in Docket No. CP06-466-000 and Somerset Gas' filed in Docket No. CP06-467-000, were published in the *Federal Register* on October 13, 2006, (71 Fed. Reg. 60,495) and (71 Fed. Reg. 60,501), respectively. Notice of Somerset Gas' amended application filed in Docket Nos. CP06-466-001 and CP06-467-001, was published in the *Federal Register* on May 6, 2008 (73 Fed. Reg. 27,527). In Docket No. CP06-466-000, timely, unopposed motions to intervene were filed by Orange and Rockland Utilities, Inc., National Fuel, National Fuel Supply, ProLiance Energy, LLC. Late motions to intervene were filed by M & M Royalty Ltd (M&M) and Somerset Gas.⁷ In Docket No. CP06-467-000, National Fuel and National Fuel Supply filed timely, unopposed motions to intervene. In Docket Nos. CP06-466-001 and CP06-467-001, the Independent Petroleum Association of America filed a timely motion to intervene, which it later supplemented with comments in support of the applications. Timely, unopposed motions to intervene are granted by operation of Rule 214 of the Commission's Rules of Practice and Procedure.⁸ Inasmuch as granting the out-of-time interventions will not prejudice any party to this proceeding, the late motions to intervene are also granted.

21. On September 2, 2008, the Commission received a letter from Congressman John E. Peterson expressing support of the applications. No party protested the applications.

⁷ Columbia filed reply comments to M&M's intervention and M&M filed a reply to Columbia's reply. The Commission construes Rule 213 to allow the filing of all pleadings submitted in this proceeding because they clarify the issues and provide information assisting the Commission in its decision-making process. *See, e.g., Transcontinental Gas Pipe Line Corp.*, 117 FERC ¶ 61,136, at P 4 (2006).

⁸ *See* 18 CFR § 385.214 (2008).

However, M&M, in its motion to intervene, suggests that if Columbia had offered the subject facilities for use, lease, or purchase by M&M, it would greatly benefit not only M&M but also minimize environmental impacts and help facilitate the availability of natural gas to consumers.⁹

Discussion

A. Columbia's Request to Abandon the 1818/1862 System

22. Since the facilities proposed to be abandoned were certificated to transport natural gas in interstate commerce subject to the jurisdiction of the Commission, the abandonment of Columbia's certificated interests in the facilities requires Commission authorization under NGA section 7(b).

23. Columbia explains that the 1818/1862 System facilities were constructed in the mid-1950s, certificated and operated as transmission facilities until 1999, when, due to corrosion, Columbia idled the segment of Lines 1818 and 1862 from the point immediately east of the National Fuel delivery point at Smethport and extending all the way to the Renovo Compressor Station (approximately 57.5 miles). This length of pipeline constitutes Sections 2, 3 and 4. At the same time, Columbia reduced the pressure on the remaining segment of the 1818/1862 System -- the segment of Line 1862 between Columbia's Line 4226 and Smethport which it has continued to operate for the sole purpose of delivering gas to National Fuel. This length of pipe constitutes Section 1.

24. We find that Sections 2, 3 and 4 of the 1818/1862 System have been idle for many years and are no longer necessary for Columbia to carry out its core function as an interstate gas transporter. Further, abandonment of these portions of the system will allow Columbia to eliminate operation and maintenance expenses as well as rehabilitation costs for the facilities. Accordingly, we find that Columbia's request to abandon these facilities is permitted by the public convenience and necessity.

⁹ M&M, a producer, has oil and gas leases in the vicinity of and, in some instances, overlying portions of Columbia's 1818/1862 System. In its reply comments, Columbia alleges that M&M's activities on Columbia's rights-of-way have been detrimental to the cathodic protection of Columbia's system. Thus, on December 4, 2006, Columbia filed an action in the U.S. District Court for the Western District of Pennsylvania (Civil Action No.1:06 cv 285) seeking, among other things, preliminary and permanent injunctive relief to stop present and prevent future encroachment activities by M&M that place the subject facilities at risk. The case was dismissed on September 14, 2007.

25. Upon acquisition by Somerset Gas, Sections 2 and 4 will be capped and will not be used to gather gas until some later date, if at all. Therefore, the Commission is not making a gathering determination regarding those two sections in this order. Should Somerset Gas choose to reactivate Sections 2 and 4 in the future other than for transportation of natural gas in interstate commerce, it may file with the Commission a request for a declaration that the facilities will be gathering and exempt from the Commission's jurisdiction. If it seeks to use the segments for a jurisdictional purpose, Somerset Gas would need to receive prior certificate authority from the Commission.

26. The Commission will deny Columbia's request to abandon Section 1 of the 1818/1862 System because, as discussed more fully below, we are denying Somerset Gas' request for a limited jurisdiction certificate to operate Section 1. Because Somerset Gas will not have the authority to continue to serve National Fuel, we find that abandonment of Section 1 is not permitted by the public convenience and necessity. Therefore, Columbia will continue to own and operate Section 1 and continue interstate transportation service to National Fuel.

27. In response to M&M's comment, we note that Columbia made a business decision to enter into an agreement with Somerset Gas for the sale of the facilities and, absent a compelling reason, it is not the Commission's policy to second-guess such business decisions.¹⁰

B. Columbia's Request for Gathering Determination

28. In its application to abandon the 1818/1862 System, Columbia requested the Commission to determine that upon transfer to Somerset Gas, all of the facilities would perform a gathering function. However, because Somerset Gas later clarified that it currently plans to operate only Section 3 as gathering facilities, this discussion applies only to Section 3.

29. Under NGA section 1(b), the Commission's jurisdiction does not extend to facilities used for "the production or gathering of natural gas." Because the NGA does not define gathering, the Commission has developed the modified "primary function test," to discern whether facilities are gathering natural gas. The test includes

¹⁰*See, e.g., Missouri Interstate Gas LLC*, 122 FERC ¶ 61,136, at P 43 (2008) (Commission will not second guess business decision to change jurisdictional status in application for merger of interstate and Hinshaw pipeline); *Williston Basin Interstate Pipeline Co.*, 115 FERC ¶ 61,081, at P 32 (2006) (Commission does not look behind negotiated rate contracts); *Transcontinental Gas Pipeline Corporation*, 111 FERC ¶ 61,0191, at P 9 (2005) (Commission does not second guess LDC's business decision to change pipeline supplier).

consideration of physical and geographic factors including: (1) the length and diameter of the line, (2) the extension of the facility beyond the central point in the field, (3) the facility's geographic configuration, (4) the location of compressors and processing plants, (5) the location of wells along all or part of the facility, and (6) the operating pressure of the line.¹¹

30. The Commission also considers the purpose, location, and operation of the facility, the general business activity of the owner of the facility, and whether the jurisdictional determination is consistent with the NGA and the Natural Gas Policy Act. The Commission does not consider any one factor to be determinative and recognizes that all factors do not necessarily apply to all situations.¹² In addition to the factors enumerated above, the Commission also weighs any and all other relevant facts and circumstances of a particular case, including non-physical criteria.¹³

31. Somerset plans to operate Section 3, which is approximately 11-miles long and has an inside pipe diameter of 8 inches, as the central spine of a network of feeder and tap lines. The Commission has found lines with this configuration and these and greater lengths and diameters to be consistent with a gathering function.¹⁴ Somerset Gas states that the line will operate at pressures of less than 150 psig, a low pressure that is consistent with a gathering function.¹⁵ Although there currently is no compressor on Section 3, Somerset Gas will likely add compression at the downstream end of Section 3 (at an anticipated interconnection with Tennessee) to maximize producers' ability to deliver gas to the system and to allow delivery into Tennessee's higher pressure interstate pipeline. Thus, all gathering pipeline facilities will be upstream of any compressor station—a configuration often characteristic of a gathering function.¹⁶ The area where

¹¹ See *Amerada Hess Corp.*, 52 FERC ¶ 61,268 (1990); and *Farmland Industries, Inc.*, 23 FERC ¶ 61,063 (1983).

¹² See *TOMCAT*, 59 FERC ¶ 61,340, at p. 62,239 (1992).

¹³ See, e.g., *id.* and *Amerada Hess Corp.*, 52 FERC ¶ 61,268 (1990).

¹⁴ See, e.g., *El Paso Natural Gas Co.*, 57 FERC ¶ 61,186 (1991) (systems consisting of 61.7 miles of 16-inch pipe, 13.1 miles of 20-inch pipe, and 15.2 miles of 24-inch pipe are found to be gathering).

¹⁵ See, e.g., *CenterPoint Energy Gas Transmission Co.*, 113 FERC ¶ 62,007, at p. 64,036 (2005) (finding that operating pressures between 300 and 400 psig are consistent with a gathering function).

¹⁶ See *Panhandle Eastern Pipe Line Co., Panhandle Field Services Co.*, 81 FERC ¶ 61,212, at p. 61,909 (1997).

the Section 3 facilities are located in a developing production area of Pennsylvania which has seen increased exploration and production activity over the last several years. Additionally, Somerset Gas has been established as a gatherer of natural gas to acquire gathering facilities in Pennsylvania and has been engaged in discussions with producers in the area to provide gathering services. Finally, Somerset Gas has received from a number of producers either natural gas gathering agreements or non-binding expressions of interest in service from the project once regulatory approval is obtained.¹⁷ Therefore, wells will likely be attached along the length of the line which is consistent with a gathering function.¹⁸

32. Based on these factors and Somerset Gas's representations we find the primary function of Section 3 will be the gathering of natural gas if configured and operated as described by Somerset Gas.

C. Somerset Gas' Request for a Limited Jurisdiction Certificate

33. Somerset Gas requests a limited jurisdiction certificate to provide firm transportation on Section 1 of the 1818/1862 System on behalf of Columbia, in order to continue to provide Columbia's contracted service to National Fuel. The transportation of interstate gas for Columbia on approximately 7.3 miles of Section 1 will constitute the transportation of gas in interstate commerce subject to the Commission's jurisdiction under NGA section 7.

34. When the Commission finds that the primary function of facilities to be abandoned by an interstate pipeline company to a gathering company will be gathering, it will issue a limited jurisdiction certificate to the gathering company where necessary to allow it to continue to provide incidental interstate transportation service through the newly-acquired facilities without affecting the nonjurisdictional status of its gathering operations. Commission precedent is clear that such limited jurisdiction certificates for

¹⁷ Somerset Gas has natural gas gathering agreements with Open Flow Gas Supply Corp., Minard Run Oil Company, South Jersey Exploration, and EOG Resources, Inc. and non-binding letters of interest from Northcoast Energy Inc., Chesapeake Energy Corporation, and Ultra Petroleum Corp.

¹⁸ See *Northern Natural Gas Company, PVR Midstream LLC*, 123 FERC ¶ 61,325, at P 30 (2008).

gatherers are appropriate when necessary to assure continuation of natural gas transportation service that is ancillary to the primary gathering function of the facilities.¹⁹

35. Somerset Gas states that it will perform no gathering on Section 1 which will be non-contiguous with Section 3 – the portion of the facilities we have found will perform a gathering function. Therefore, the only function of Section 1 will be to provide interstate transportation service. Although the interstate transportation service Somerset Gas proposes to provide would be necessary to continue service to National Fuel, it would not be ancillary to the primary function of Section 1; interstate transportation would be its only function. Under these circumstances, we find that issuance of a limited jurisdiction certificate to Somerset Gas is not in the public convenience and necessity and we will deny its request. Our denial is without prejudice to Somerset Gas providing information to show that it will operate Section 1 primarily as a gathering line.

36. Finally, no environmental assessment or environmental impact statement has been prepared for this project because our review shows that it qualifies as a categorical exclusion under section 380.4(a)(31) as facilities abandoned by sale that involve only minor or no ground disturbance to disconnect the facilities from the system.

37. The Commission on its own motion, received and made a part of the record all evidence, including the application, amendment and exhibits thereto, submitted in regard to the authorization sought herein, and upon consideration of the record,

The Commission orders:

(A) Permission and approval of the abandonment by Columbia of the facilities described in this order as Sections 2, 3 and 4 of the 1818/1862 System and in Columbia's applications in Docket Nos. CP06-466-000 and CP06-466-001, is granted.

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

(C) Columbia's request to abandon the facilities described in this order as Section 1 of the 1818/1862 System is denied.

(D) Somerset Gas' request for a certificate of limited jurisdiction under NGA section 7 (c) to transport gas received from Columbia for delivery to National Fuel on the facilities described as Section 1 of the 1818/1862 System, is denied without prejudice.

¹⁹ See, e.g., *Mardi Gras Pipeline L.L.C.*, 116 FERC ¶ 62,152 (2006); *Columbia Natural Resources, LLC*, 110 FERC ¶ 61,062 (2005); and *Columbia Gas Transmission Corp., Gatherco, Inc.*, 90 FERC ¶ 61,211 (2000).

(E) Columbia's request for a determination that Section 3 of the subject facilities will perform a gathering function exempt from the Commission's jurisdiction under NGA section 1(b) is granted.

(F) The motions to intervene out-of-time are granted.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.