

125 FERC ¶ 61,343
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
Somerset Gas Gathering of Pennsylvania, LLC

Docket Nos. CP06-466-002
CP06-467-002

ORDER GRANTING REHEARING, GRANTING ABANDONMENT AND
ISSUING LIMITED JURISDICTION CERTIFICATE

(Issued December 19, 2008)

1. On September 8, 2008, the Commission issued an order¹ granting in part Columbia Gas Transmission's (Columbia) request to abandon by sale to Somerset Gas Gathering of Pennsylvania, LLC (Somerset Gas) certain natural gas facilities in Pennsylvania, known as the 1818/1862 System. Specifically, the Commission granted abandonment of Sections 2, 3, and 4 of the System and further found that Section 3 would perform a gathering function if operated as proposed by Somerset Gas. The Commission denied Somerset Gas' request for a limited jurisdiction certificate to continue providing interstate gas transportation service on Section 1 for Columbia on behalf of National Fuel Gas Distribution Corporation (National Fuel), Columbia's only customer on Section 1, because Somerset Gas had not shown that it would perform any gathering on those facilities.

2. On October 3, 2008, Somerset Gas filed a request for rehearing and provided two gathering contracts showing that it will perform gathering on Section 1 of the 1818/1862 System. Therefore, it urges the Commission to grant Columbia's request for abandonment of Section 1 and to make a jurisdictional determination that, upon acquisition by Somerset Gas, Section 1 would be gathering facilities exempt from Commission jurisdiction. Finally, Somerset Gas renews its requests for a limited jurisdiction certificate to continue providing service to Columbia on Section 1.

¹ *Columbia Gas Gas Transmission Corp. and Somerset Gas Gathering of Pennsylvania, LLC*, 124 FERC ¶ 62,230 (2008) (September 8, 2008 Order).

3. Because Somerset Gas has provided gas gathering contracts with local producers that show it will perform primarily gathering on Section 1 of the 1818/1862 System, the Commission will grant rehearing.

Background

4. On September 28, 2006, Columbia filed an application seeking authorization to abandon by sale to Somerset Gas the 1818/1862 System and requesting the Commission to find the facilities exempt from the Commission's jurisdiction pursuant to Section 1(c) of the Natural Gas Act (NGA).² At the same time, Somerset Gas filed an application for a limited jurisdiction certificate to provide transportation service to Columbia on the 1818/1862 System so that Columbia may continue to provide transportation service to National Fuel, its only customer on the 1818/1862 System.

5. As described in the applications, the 1818/1862 System consists of approximately 65 miles of 4- to 12-inch diameter pipeline, including associated rights-of-way and ancillary facilities. The line originates at an interconnection with Columbia Line 4226 in McKean County, PA, and runs in a southeasterly direction to the Renovo Compressor Station³ in Clinton County, PA. 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.

6. On March 31, 2008, Somerset Gas filed supplemental information explaining that it intended to operate the 1818/1862 System, at least in the near future, in four distinct sections and cap the inactive segments. Somerset Gas states that the decision to segment the system was made in part for operational reasons and in part to assure that no gas would enter the 1818/1862 System from Columbia's Line 4226 and re-enter the interstate grid.

7. Somerset Gas stated that Section 1, the northernmost segment of 7.3 miles, was the only portion of the pipeline that was currently active. As proposed, Section 1 would remain active after transfer of ownership so that Somerset Gas could continue the transportation gas from the interconnect with Columbia to the National Fuel Distribution Company interconnect at Smethport. Such transportation would be pursuant to a

² Somerset filed with the Commission the transportation contract with Columbia. This satisfies the statutory requirement that a tariff be on file with the Commission. Somerset will be subject to the tariff refiling requirements of Order No. 714 (*Electronic Tariff Filings*, Order No. 714, FERC Stats. & Regs. ¶31,276, at P 15 (2008)).

³The Renovo Compressor Station is not included in the Purchase and Sale Agreement.

transportation agreement between Columbia and Somerset Gas. Section 2 commences at the Smethport delivery point and runs 4.5 miles southeast to the intersection with Tennessee Gas Pipeline Company (Tennessee). Section 2 is currently inactive and Somerset Gas will cap that section so that it remains inactive for the time being. Section 3, which commences at the intersection with Tennessee and runs approximately 11 miles to the border of Cameron and McKean counties, Pennsylvania, is currently inactive and has no other interconnections with interstate pipelines. Section 4, the final segment of the 1818/1862 system, extends from the Cameron-McKean County line to the Renovo Compressor Station in Clinton County, Pennsylvania. This approximately 42-mile long segment will remain inactive and will be capped at both ends.

8. The Commission's September 8, 2008 Order in this proceeding granted abandonment of Sections 2, 3 and 4, and determined that Section 3 will function as a non-jurisdictional gathering line. The Commission reserved judgment regarding the jurisdictional status of Section 2 and 4 because of Somerset's current plans to leave those segments inactive.

9. Because Somerset Gas stated that it would perform no gathering on Section 1, the Commission found that the only function of Section 1 would be to continue to provide interstate transportation service on behalf of Columbia to serve National Fuel. Therefore, the Commission denied Somerset Gas' request for a limited jurisdiction certificate and denied Columbia's request for abandonment. The Commission's denial was made without prejudice to Somerset Gas providing information that it would operate Section 1 primarily as a gathering line.

Request for Rehearing

10. Somerset Gas states that the Commission erred in failing to consider the underlying goal and ongoing purpose of the transaction between Columbia and Somerset Gas. Somerset Gas asserts that its primary business is gathering and its ultimate goal in acquiring the 1818/1812 System is to gather natural gas from the Marcellus shale production area and bring it to the interstate grid. It states that it plans to segment the system into four sections for short-term operational reasons with the ultimate goal of gathering gas throughout the entire system as new wells come online in the region.

11. Somerset Gas contends that the 1818/1862 System as a whole, and Section 1 in particular, also meet the physical tests for gathering established by the Commission. Somerset Gas asserts the fact that it did not have contracts in place for Section 1 at the time of its application does not change the fact that the nature and purpose of the facilities as a whole is gathering. Somerset Gas contends that the Commission should grant rehearing based on these factors alone, but adds that after the September 8, 2008 Order was issued, it obtained several gathering agreements from producers to gather gas on Section 1 of the 1818/1862 System. These agreements are further and definitive proof,

states Somerset Gas, that the primary function of Section 1 will be gathering and that the limited jurisdictional service Somerset Gas will provide Columbia is ancillary to the gathering services.

12. For these reasons, Somerset Gas requests that the Commission grant rehearing and find that Section 1 is part of the larger non-jurisdictional gathering system, that Somerset Gas will perform gathering on that section, and to grant its request for a limited jurisdiction certificate.

Discussion

13. Subsequent to the September 8, 2008 Order, Somerset Gas obtained several gathering agreements from producers with wells proximate to Section 1 of the 1818/1862 System. Attached to its request for rehearing is an executed gas gathering agreement with SJ Exploration, LLC, under which Somerset Gas will gather approximately 2,000 Dth per day (Dth/d) of production. On October 7, 2008, Somerset Gas filed a second gathering agreement for 2,000 Dth/d with Open Flow Gas Supply Corporation, another producer in the vicinity of Section 1.

14. Considering that gathered gas usually flows onto a system at a nearly 100 percent load factor, Somerset Gas estimates that the two contracts will require close to 4,000 Dth/d of capacity. This is in contrast to the gas being delivered to National Fuel by Columbia. Although the maximum daily delivery quantity under its current agreement with Columbia is approximately 1,750 Dth/d, Somerset Gas understands that National Fuel's actual annual volume requirements total approximately 175,000 Dth, or about 480 Dth/d, an amount well below the commitments of the two gathering contracts submitted to the Commission.

15. Based on the new information filed by Somerset Gas we will reevaluate the primary function of Section 1. Under the "modified primary function test," which the Commission relies on to determine which facilities are non-jurisdictional gathering, the Commission considers several physical and geographical factors, including: (1) the length and diameter of the pipeline(s); (2) the extension of the facility beyond the central point-in-the-field; (3) the facility's geographical configuration; (4) the location of the compressors and processing plants; (5) the location of wells along all or part of the facility; and (6) the operating pressure of the pipeline(s).⁴ In addition, the Commission also considers the purpose, location, and operation of the facility, the general business activities of the owner of the facility, and whether the jurisdictional determination is

⁴ See *Farmland Industries, Inc.*, 23 FERC ¶ 61,063 (1983).

consistent with the NGA and the Natural Gas Policy Act (NGPA).⁵ The Commission does not consider any one factor determinative and recognizes that all factors do not necessarily apply to all situations.⁶

16. In applying the primary function test, we find that the physical characteristics of Section 1 and the purpose for which it is being purchased and operated by Somerset Gas meet the criteria for gathering facilities. The pipeline length of 7.5 miles and the 8-inch diameter of the line are consistent with a gathering function. Because the facilities lie within the area of the Marcellus shale reserves, a large and as yet undeveloped area, it is impossible to pinpoint a central point in the field. However, the likelihood that producer wells will be located along the line is indicated by the size of the field and the two producer agreements already signed. Although there are currently no compressors along Section 1, Somerset Gas states that if compression is added it will be for the purposes of pulling gas from production wells and to increase pressures high enough to enter interconnections with transportation pipelines. In addition, the business purpose of Somerset Gas is to gather gas and it is purchasing the 1818/1862 System to fulfill that purpose.⁷

17. Further, based on the anticipated volumes of gathered gas, we find that the primary function of Section 1 will be gathering, and the continued interstate transportation service to National Fuel will be ancillary to the primary function. The comparatively small volumes transported on behalf of Columbia to National Fuel will permit Columbia to fulfill its continuing commitment to serve National Fuel and will not alter primary purpose of the facilities under Somerset's ownership.

18. However, because Somerset Gas does not intend to operate the entire system on an integrated basis until some time in the future, the Commission makes no determination in this proceeding with regard to the future uses of Sections 2 and 4 of the line which will be capped and dormant until a later date.

19. Accordingly, we grant rehearing and authorize Columbia to abandon the facilities of Section 1 to Somerset Gas, find that those facilities will perform a gathering function if operated as described by Somerset Gas, and issue to Somerset Gas a limited jurisdiction

⁵ See *Amerada Hess Corp.*, 52 FERC ¶ 61,268 (1990).

⁶ See *Columbia Gas Transmission Corp.*, 93 FERC ¶ 61,278 at 61,913 (2000).

⁷ Because the Commission grants rehearing regarding the gathering determination, we do not address Somerset Gas' alternate argument that the Commission could have conditioned the order on Somerset Gas applying for NGA section 7(c) authority to operate Section 1 as a jurisdictional interstate pipeline.

certificate to provide interstate service to Columbia so that Columbia can continue to provide service to its remaining customer, National Fuel. In similar circumstances, where required by the public convenience and necessity, the Commission has issued limited jurisdiction certificates to assure the continuation of necessary gas service. Because of the limited scope of the jurisdictional activities proposed and because Somerset Gas' primary function is non-jurisdictional, the Commission will issue a certificate of limited jurisdiction to authorized Somerset Gas to perform these limited activities without the full panoply of NGA rate and service obligations. Under such a certificate, jurisdiction extends only to the specific activity authorized, and the gatherer remains non-jurisdictional with respect to its remaining non-jurisdictional operations.⁸

The Commission orders:

(A) The request for rehearing of the September 8, 2008 Order is granted as discussed in this order.

(B) Pursuant to NGA section 7(b) Columbia is granted permission and approval to abandon the jurisdictional facilities by sale to Somerset Gas, as described in this order and the applications.

(C) Somerset Gas is issued a certificate of limited jurisdiction under NGA section 7(c) to permit it to continue to transport quantities of natural gas on behalf of Columbia for delivery to National Fuel, as described in the order and in the applications.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

⁸ See *Western Gas Resources*, 85 FERC ¶ 61,087 (1998).