

127 FERC ¶ 61,066  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

Millennium Pipeline Company, L.L.C.

Docket No. CP98-150-013

ORDER AMENDING CERTIFICATE

(Issued April 21, 2009)

1. On February 11, 2009, Millennium Pipeline Company, L.L.C. (Millennium) filed an application pursuant to section 7(c) of the Natural Gas Act (NGA) and Part 157 of the Commission's regulations seeking amendment of the certificate authority granted by the Commission in an order issued on December 21, 2006.<sup>1</sup> The requested certificate amendment would authorize Millennium to transfer a passive ownership interest in certain of its certificated facilities in Steuben County, New York to the Industrial Development Agency (IDA) of Steuben County (Steuben County IDA) and lease the facilities back to Millennium in order to qualify for tax benefits. For the reasons stated below, we will grant the requested certificate amendment effective on the date of this order.

**Background and Proposal**

2. The December 21 Order authorized Millennium to construct and operate a redesigned pipeline system in the State of New York consisting of 181.7 miles of 30-inch pipeline as part of the Northeast (NE)-07 Project. Millennium states that it commenced service on its system on December 22, 2008.

3. By order issued on August 4, 2008, the Commission amended the certificate issued to Millennium to permit the company to transfer a passive ownership interest in certain facilities to IDAs in the Counties of Orange, Sullivan, Broome, Chemung, and Delaware in New York where the facilities are located and leaseback the facilities on a

---

<sup>1</sup> *Millennium Pipeline Company, L.L.C.*, 117 FERC ¶ 61,319 (2006) (December 21 Order), *order on reh'g*, 119 FERC ¶ 61,173 (2007).

long-term basis.<sup>2</sup> In granting Millennium's proposal, the August 4 Order recognized that Millennium's projected construction costs have increased and the tax benefits of the lease and leaseback proposals would partially offset the increase in construction costs.

4. In the instant application, Millennium states that it has entered into a similar lease and leaseback transaction with the Steuben County IDA to obtain partial abatement of state property taxes and other tax relief.<sup>3</sup> Under the terms of the lease and leaseback agreements dated on November 1, 2008, Millennium leases certain of its facilities located in Steuben County, New York to the Steuben County IDA and simultaneously leases back those same facilities commencing on the date of the agreements.<sup>4</sup> The lease and leaseback agreements with the Steuben County IDA are for identical terms of 15 years. Millennium states it will retain complete operational control of, and responsibility for, the facilities and the Steuben County IDA will have a passive leasehold interest only. Millennium asserts that the transaction will have no effect on the natural gas transmission services that Millennium will provide to its customers.

5. While it will be exempt from general ad valorem taxes on certain segments of the project facilities, Millennium states that it will be required to make annual Payments-in-Lieu-of-Tax (PILOT) payments to the Steuben County IDA for as long as the facilities are covered by the lease and leaseback agreements. In addition to PILOT payments, Millennium will make special district tax payments assessed on project property, as well

---

<sup>2</sup> *Millennium Pipeline Company, L.L.C.*, 124 FERC ¶ 61,139 (2008) (August 4 Order).

<sup>3</sup> Millennium explains that in New York, property in which an IDA holds an interest is exempt from real property, mortgage recording, and sales and use taxes relating to construction expenditures.

<sup>4</sup> The property interests subject to the lease and leaseback agreements are listed in Schedule A-1 (for property controlled by Millennium as of the date of the agreement) and Schedule A-2 (for property to be acquired by Millennium in connection with the project) of the agreements. The parties entered into a First Supplement to the lease and the leaseback agreements dated on December 1, 2008, that addressed supplemental property interests and replaced Schedules A-1 and A-2 of the original lease and leaseback agreements.

as certain community benefit payments.<sup>5</sup> Millennium states that it will account for these payments by recording them under Account 408.1 of the Uniform System of Accounts, Taxes other than income taxes, utility operating income. As it does with property taxes, Millennium states that it will seek to recover the payments to the Steuben County IDA through its cost-of-service.<sup>6</sup>

6. Millennium also requests pre-granted authority under its certificate to reacquire the IDA's interest in the certificated facilities upon the termination of the lease agreements. Because the Steuben County IDA is acquiring only a leasehold interest in Millennium's facilities, Millennium explains that expiration of the lease agreements will extinguish the leasehold interest of the IDA.

### **Notice, Interventions, and Comments**

7. Public notice of Millennium's application was published in the *Federal Register* on February 25, 2009 (74 Fed. Reg. 8,523). No interventions, protests, or comments were filed.

### **Discussion**

8. Since Millennium's proposal relates to facilities for the transportation of natural gas in interstate commerce subject to the jurisdiction of the Commission, the requested authorizations are subject to the requirements of subsections 7(c) and (e) of the NGA.

9. The December 21 Order analyzed Millennium's revised proposals in light of the Certificate Policy Statement<sup>7</sup> and found that the proposals were in the public convenience

---

<sup>5</sup> Millennium states that these payments (PILOT and community benefits) in lieu of tax obligations are lower than the estimated taxes. The lease, leaseback, PILOT, and community benefits agreements with the Steuben County IDA are attached in Exhibit Z-1 of the application. Millennium requests privileged treatment of the PILOT and community benefits agreements under section 388.112 of the Commission's Rules of Practice and Procedure.

<sup>6</sup> Millennium claims that under its most recent forecast, substantial capital cost increases for the project will more than offset the reduction in taxes.

<sup>7</sup> *Certification of New Interstate Natural Gas Pipeline Facilities*, 88 FERC ¶ 61,227 (1999), *order on clarification*, 90 FERC ¶ 61,128 (2000); *order on clarification*, 92 FERC ¶ 61,094 (2000) (Certificate Policy Statement).

and necessity.<sup>8</sup> Specifically, the determination found that since Millennium was a new company with no existing customers, risk of subsidization was not present. Further, the order found that there would not be any adverse effects on existing pipelines or their customers and that any adverse impacts to landowners and communities affected by the project would be minimal, since most of the proposed pipeline facilities will be constructed in powerline or pipeline rights-of-way. Finally, the December 21 Order found that Millennium's proposal would serve the growing natural gas market in New York City, increase pipeline capacity in southeastern New York, provide access to existing storage fields in western New York, and increase deliverability for electric generation and local distribution in the region.

10. The December 21 Order authorized Millennium's proposals based on the above findings and the representations in Millennium's application for the project, including the fact that the proposed facilities would be owned by Millennium. Granting Millennium's request for amended certificate authority that will continue to authorize the construction and operation of the pipeline facilities, but permit Millennium to transfer a passive ownership interest in certain facilities to the Steuben County IDA and lease them back on a long-term basis, will not change any of the above described findings in the December 21 Order. Further, the tax benefits from the lease and leaseback proposals will partially offset increases in the project's construction costs and lower future operating costs. Millennium's proposal here is similar to its proposal that was approved in the August 4 Order and to proposals approved for other natural gas companies.<sup>9</sup> For these reasons, we find that the public convenience and necessity require the amendment of Millennium's certificate to permit implementation of its proposal to convey a passive ownership interest in certain facilities to the Steuben County IDA and to lease the facilities back on a long-term basis.

11. We will also grant Millennium's request for pre-granted certificate authority to reacquire the Steuben County IDA's ownership interest at the termination of the respective leases. This action will ensure that the facilities at issue will continue to be used for jurisdictional interstate services when the lease and lease-back agreements expire.

---

<sup>8</sup> December 21 Order, 117 FERC ¶ 61,319 at P 89-102.

<sup>9</sup> See, e.g., *Liberty Gas Storage, LLC*, 117 FERC ¶ 61,224 (2006); *Empire Pipeline, Inc.*, 121 FERC ¶ 61,129 (2007) (approving requests to transfer passive ownership interests in jurisdictional facilities to non-jurisdictional entities in exchange for property tax decreases that would lower operating costs).

12. However, we will grant the amended certificate authority effective on the date of this order. While the Commission has had occasion to exercise its discretionary equitable authority to grant certificate and/or abandonment authority retroactively, it does so only where it finds that the circumstances of a case warrant such action.<sup>10</sup> Here, Millennium has not requested a retroactive effective date even though it entered into a lease agreement that transferred an interest in its jurisdictional facilities and into a leaseback agreement permitting it to operate the facilities without first obtaining authority from the Commission. In the future, Millennium is expected to obtain approval from the Commission prior to it effectuating the transfer of a property interest in jurisdictional facilities, or face possible sanctions from the Commission.

13. The Commission, on its own motion, received and made a part of the record all evidence, including the application, as amended and supplemented, and exhibits thereto, submitted in this proceeding, and upon consideration of the record,

The Commission orders:

(A) Millennium's certificate of public convenience and necessity to construct and operate its pipeline system shall be amended to permit a transfer of a passive ownership interest in certain facilities to the Steuben County IDA and the leaseback of the facilities by Millennium effective on the date of this order, as more fully described in the body of this order and in the application.

(B) Millennium's request for pre-granted authorization to reacquire the ownership interest from the Steuben County IDA is granted.

By the Commission.

( S E A L )

Kimberly D. Bose,  
Secretary.

---

<sup>10</sup> See, e.g., *Transcontinental Gas Pipe Line Corp.*, 73 FERC ¶ 62,025, order granting reh'g, 73 FERC ¶ 61,301 (1995) (granting retroactive abandonment to allow a customer to avoid demand charges).