

138 FERC ¶ 61,205
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Philip D. Moeller, John R. Norris,
and Cheryl A. LaFleur.

Columbia Gas Transmission, LLC

Docket No. CP11-490-000

ORDER ISSUING CERTIFICATE

(Issued March 20, 2012)

1. On May 20, 2011, Columbia Gas Transmission, LLC (Columbia), filed an application pursuant to section 7(c) of the Natural Gas Act (NGA) and Part 157 of the Commission's Regulations, for a certificate of public convenience and necessity to construct and operate approximately 2.47-miles of 24-inch diameter lateral pipeline and appurtenant facilities. These facilities, together with reserved mainline forward haul capacity and new mainline backhaul capacity, will enable Columbia to transport natural gas for its customer, Virginia Power Services Energy Corp. Inc. (Virginia Power) to a new power generation facility that is being constructed in Warren County, Virginia, by Virginia Power's affiliate, Virginia Electric and Power Company d/b/a Dominion Virginia Power (VEPCO). The project, known as the VEPCO-Warren County Project, is designed to meet the fuel requirements of VEPCO's Warren County Power Station. For the reasons discussed below, the Commission grants Columbia's requested certificate authorizations subject to the conditions described herein.

I. Background and Proposal

2. Both Virginia Power and VEPCO are subsidiaries of Dominion Resources, Inc. Virginia Power is Dominion's state-regulated provider of fuel supply for power generation facilities and VEPCO is a public service corporation organized under the laws of the State of Virginia to supply electric service to the public.

3. Columbia proposes to construct approximately 2.47 miles of 24-inch diameter lateral pipeline from Columbia's existing Lines VB-Loop and VB-5 at the site of Nineveh Measuring Station to VEPCO's planned Warren County Power Station. The proposed project will enable Columbia to provide up to 224,000 dekatherms (Dth) per day of firm transportation service to Virginia Power from April through September between Columbia Gulf Transmission Company's (Columbia Gulf) delivery point to Columbia at Leach, Kentucky and the primary delivery point situated at the VEPCO

power station. The project will also allow Columbia to provide up to 246,000 Dth per day of firm transportation service to Virginia Power from October through March between Columbia's interconnect with Transcontinental Gas Pipe Line (Transco) near Rockville, Maryland and the primary delivery point situated at VEPCO's power station.

4. In addition, Columbia proposes to construct station piping, valves and other appurtenant facilities at Columbia's Lost River Compressor Station in Hardy County, West Virginia, and at the Loudoun Compressor Station in Loudoun County, Virginia,¹ and to abandon by removal an existing pipeline interconnection, and to construct a new interconnection with Transco at approximately the same location in Montgomery County, Maryland. These modifications will enable Columbia to deliver gas to the VEPCO power station during winter via backhaul from the Rockville, Maryland interconnect with Transco, and to deliver gas to the VEPCO power station from its interconnect with Columbia Gulf in Leach, Kentucky during summer, without requiring Columbia to add new mainline transmission facilities to its existing system. The total estimated cost of the proposed project is \$34,300,000.

Reservation of Capacity and Open Season Results

5. Columbia and Virginia Power executed a twenty-year term precedent agreement on September 14, 2010, giving Virginia Power anchor shipper status.² Under the agreement, Virginia Power would receive: (1) 224,000 Dth per day of capacity from Leach, Kentucky to the VEPCO power plant from April 1 through September 30 (summer capacity) under Rate Schedule NTS; and (2) 246,000 Dth per day of capacity from Columbia's Transco interconnect in Rockville, Maryland to the VEPCO power plant from October 1 through March 31 (winter capacity) under Rate Schedule FTS.

6. Columbia held a binding open season between September 14 and September 22, 2010, for up to 250,000 Dth per day of new firm capacity between Columbia's Transco interconnect and the proposed lateral. Columbia also notified shippers of its intent to reserve 224,000 Dth per day of capacity on its system from Leach, Kentucky to Loudoun, Virginia. As required by Section 4.2(i) of the General Terms & Conditions (GT&C) of its tariff, prior to reserving this capacity, Columbia solicited bids at the same minimum terms applicable to the open season. Columbia stated in its open season announcement that it had awarded an anchor shipper (Virginia Power) 224,000 Dth per day of summer

¹ Columbia proposes to install the appurtenant facilities under section 2.55(a) of the Commission's regulations. 18 C.F.R. § 2.55(a) (2011).

² Columbia requests privileged treatment of the executed Virginia Power precedent agreement in accordance with 18 C.F.R. § 388.112 (2011). Columbia asserts that the agreement is commercially sensitive. See Exhibit I to Columbia's application.

capacity and 246,000 Dth per day of winter capacity that would not be subject to pro rata allocation. Columbia received no acceptable bids for either the new capacity or the reserved capacity during the open season.

7. Columbia also offered to evaluate proposals from existing shippers to turn back firm transportation capacity under existing service agreements during the open season, but received no turn back offers.

II. Notice and Interventions

8. Public notice of Columbia's application was published in the *Federal Register* on June 22, 2011 (76 Fed. Reg. 36,526). Timely motions to intervene were filed by Atmos Energy Marketing, LLC; National Fuel Gas Distribution Corporation and Constellation NewEnergy-Gas Division, LLC; Orange and Rockland Utilities; Proliance Energy, LLC; PSEG Energy Resources & Trade, LLC and The City of Charlottesville, Virginia and the City of Richmond, Virginia.³ No comments or protests to the application were filed.

III. Discussion

9. Since Columbia proposes to construct, operate and abandon facilities used to transport natural gas in interstate commerce subject to the jurisdiction of the Commission, the proposal is subject to the requirements of subsections (c), (b), and (e) of section 7 of the NGA.

A. Certificate Policy Statement

10. The Certificate Policy Statement provides guidance for evaluating proposals to certificate new construction.⁴ The Certificate Policy Statement established 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 explained 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

³ Timely, unopposed motions to intervene are automatically granted by operation of Rule 214 of the Commission's Rules of Practice and Procedure. 18 C.F.R. § 385.214(c) (2011).

⁴ *Certification of New Interstate Natural Gas Pipeline Facilities*, 88 FERC ¶ 61,227 (1999), *order on clarification*, 90 FERC ¶ 61,128, *order on clarification*, 92 FERC ¶ 61,094 (2000) (Certificate Policy Statement).

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.

11. Under this policy, the threshold requirement for 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 pipeline. If residual adverse effects on these interest groups are identified after 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.

12. As noted above, the threshold requirement is that the pipeline must be prepared to financially support the project without relying on subsidization from its existing customers. Columbia's precedent agreement with Virginia Power will result in service agreements for transportation under Rate Schedules NTS and FTS, each for a twenty-year term, at maximum recourse rates.⁵ As detailed below, the cost and revenue comparison in Exhibit N of the application projects that Columbia will receive annual revenues in each of the first three years of service that will far exceed the project's annual cost of service. Thus, there is no risk of subsidization by existing customers and the threshold requirement of the Certificate Policy Statement has been satisfied.

13. Furthermore, the proposed project would not adversely impact Columbia's existing customers or existing pipelines in the region. The primary purpose of the VEPCO-Warren County Project is to provide firm capacity for the transportation of natural gas to be used in the operation of a new gas-fired electric generation facility being constructed by VEPCO in Virginia. No existing customers or other existing pipelines protested the application.

14. In addition, we find that the proposed facilities have been designed to minimize the impact on landowners. The new facilities will be constructed near existing facilities. Columbia has acquired, or is currently acquiring, the rights to the land being used for the proposed project. No landowners have protested the filing.

⁵ The summer capacity will be subscribed under Rate Schedule NTS, and the winter capacity under rate Schedule FTS.

15. We find that, on balance, the economic benefits of Columbia's VEPCO-Warren County Project outweigh any potential adverse impacts on the interests discussed. Based on this finding and our environmental analysis and conditions discussed below, we find certification of the project under section 7 of the NGA is required by the public convenience and necessity.

B. Rates

16. Columbia proposes to charge its applicable system-wide recourse rates⁶ as initial rates for firm transportation service using the project's capacity. Columbia also proposes to charge for project-related transportation costs recovered through (1) periodically adjusted surcharges for electric power costs under General Terms & Conditions (GT&C) section 44 (Electric Power Costs Adjustment (EPCA)) and Account No. 858 expenses incurred for transmission and compression of gas by others under GT&C section 36 (Transportation Costs Rate Adjustment (TCRA)) and (2) in-kind retainage of company-use gas (fuel) and lost-and-unaccounted-for-gas (LAUF).⁷ Columbia requests a pre-determination that it may roll all costs associated with its proposed project into its system rates in a future NGA section 4 rate case.

17. As shown in Exhibit N to Columbia's application, Columbia calculated the cost of service for the proposed project based on \$34,300,000 in projected construction costs and the depreciation rate and pre-tax multiplier approved in Columbia's most recent section 4 general rate proceeding in Docket No. RP95-408-000.⁸ According to projections in Exhibit N, combined revenues from Firm Transportation Service under Rate Schedule FTS and No-Notice Transportation Service under Rate Schedule NTS on the proposed facilities will equal \$18,484,328 during each of the first three years of service. During this period, the project's annual cost of service will range from \$5,596,572 in the first year to \$5,359,870 in the third year. This comparison demonstrates that rolling in costs and billing determinants of transportation using the project's facilities would reduce Columbia's recourse rates.

⁶ Columbia's system-wide rates are designed on a postage stamp basis. The current base reservation rates are \$5.609/Dth/month for firm transportation service under Rate Schedule FTS and \$7.123/Dth/month for firm no-notice service under Rate Schedule NTS.

⁷ These surcharges and retentions are applicable to Rate Schedules FTS and NTS services under the relevant terms of Columbia's GT&C.

⁸ See *Columbia Gas Transmission Corp., order on uncontested settlement*, 79 FERC ¶ 61,044 (1997), *order on contested settlement*, 88 FERC ¶ 61,161 (1999).

18. With respect to EPCA expenses, Columbia states that, although Virginia Power's service would increase these expenses to only a minor degree for the operation of various appurtenant equipment associated with the project (e.g., remotely activated valves, gas chromatographs, etc.), existing customers would benefit on a per Dth basis by the addition of Virginia Power's annual determinants to the EPCA surcharge calculations. As to TCRA expenses, Columbia states that, although Virginia Power's service will not involve transportation by others and therefore will not increase TCRA expenses, existing customers would benefit on a per Dth basis by the addition of Virginia Power's annual determinants to the TCRA surcharge calculations.

19. Columbia recovers its transportation fuel and LAUF requirements through a periodically adjusted in-kind retainage percentage under section 35 of its GT&C (Retainage Adjustment Mechanism (RAM)). Columbia states that, while the project does not involve an increase in system compression, rolling-in the fuel and LAUF costs associated with Virginia Power's service would increase the commodity billing determinants used in the RAM calculation by as much as 68,620,000 Dth. Therefore, Columbia asserts, its system-wide retention percentage for transportation will be reduced on a per Dth basis, thereby benefiting existing customers.

20. Based on the discussion above, we will approve Columbia's proposal to charge its system-wide recourse rates as initial rates for service on the project's facilities and its request for a predetermination that it may roll the costs of the proposed project discussed above into its system rates in its next section 4 general rate case, absent a significant change in circumstances.

C. Engineering

21. Staff has completed an analysis of the engineering information submitted by Columbia and in its response to data requests filed on July 28, 2011.⁹ The release and reservation of 224,000 Dth/day will provide the capacity necessary allowing Columbia to provide the newly proposed service without the need of construction extensive mainline facilities. Further, the winter backhaul of 246,000 Dth/day will use existing capacity to effectuate the delivery of the contracted gas volumes while not changing system operating pressures. As a result, the proposed new service will not adversely impact Columbia's existing shippers. Therefore, Columbia has properly designed its VEPCO-Warren County Project.

⁹ From June 15, 2011 until January 9, 2012, several environmental data responses and updates from other Federal agencies were received from Columbia.

D. Environmental Analysis

22. On July 26, 2011, the Commission issued a Notice of Intent to Prepare an Environmental Assessment for the Proposed VEPCO – Warren County 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. We received no responses to the NOI.

23. To satisfy the requirements of the National Environmental Policy Act, our staff prepared an environmental assessment (EA) for Columbia's Warren County Project proposal. The analysis in the EA addresses geology, soils, water resources, wetlands, vegetation, fisheries, wildlife, threatened and endangered species, land use, recreation, visual resources, cultural resources, air quality, noise, safety, socioeconomics, and alternatives. The EA was placed into the public record.

24. Based on the analysis in the EA, we conclude that if constructed and operated in accordance with Columbia's application and supplement(s), and in compliance with the environmental conditions in this Order, our approval of this proposal would not constitute a major federal action significantly affecting the quality of the human environment.

25. Also recommended in the EA, and modified herein, this authorization includes the conditions as shown in Appendix A.

26. 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 or local laws, may prohibit or unreasonably delay the construction or operation of facilities approved by this Commission.¹⁰

IV. Conclusion

27. For the reasons set forth herein, and subject to the conditions set forth below, we find that granting authorization under section 7(c) of the NGA for Columbia's proposal is required by the public convenience and necessity. Thus, we grant the requested authorizations to Columbia.

¹⁰ 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., et al.*, 52 FERC ¶ 61,091 (1990) and 59 FERC ¶ 61,094 (1992).

28. The Commission, on its own motion, received and made part of the record in this proceeding all evidence, including the application(s), as supplemented, and exhibits thereto, submitted in support of the authorizations sought herein, and upon consideration of the record,

The Commission orders:

(A) A certificate of public convenience and necessity is issued to Columbia under NGA section 7(c), authorizing the construction and operation of natural gas facilities as described in this order and in the application.

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

- (1) Columbia's compliance with all applicable Commission regulations under the NGA, including, but not limited to, Parts 154, 157, and 284 and paragraphs (a), (c), (e), and (f) of section 157.20 of the Commission's regulations; and
- (2) constructing and making available for service the facilities described herein, within 2 years in accordance with section 157.20(b) of the Commission's regulations;

(C) Columbia's request for a predetermination of rolled-in rate treatment for the costs of the VEPCO-Warren County Project in its next section 4 proceeding is granted, absent any material change in circumstances.

(D) Columbia's request to charge its existing system rates as initial recourse rates for the VEPCO-Warren County Project is approved.

(E) Columbia is directed to execute firm contracts equal to the level of service in accordance with the terms of service represented in its precedent agreement prior to the commencement of construction.

(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.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

APPENDIX A Environmental Conditions

Also recommended in the EA, and modified herein, this authorization includes the following conditions:

1. Columbia shall follow the construction procedures and mitigation measures described in its application and supplements (including responses to staff data requests) and as identified in the EA, unless modified by the 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 Office of Energy Projects (OEP) before using that modification.

2. The Director of OEP has delegation 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 the 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 the 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, EIs, and contractor personnel would be informed of the EI's authority and have been or would be trained on the implementation of the environmental mitigation measures appropriate to their jobs **before** becoming involved with construction and restoration activities.

The authorized facility locations shall be as shown in the EA, as supplemented by filed alignment sheets. **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 the facility approved by the Order. All requests for modifications of environmental conditions of the 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 Natural Gas Act (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 section 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 the OEP **before construction in or near that area.**

This requirement does not apply to extra workspaces allowed by Columbia's ECS 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 resource 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 this 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 would 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 the

Order;

- b. how Columbia would 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 would ensure that sufficient personnel are available to implement the environmental mitigation;
 - d. company personnel, including EIs and contractors, who would receive copies of the appropriate material;
 - e. the location and dates of the environmental compliance training and instruction Columbia would give to all personnel involved with construction and restoration (initial and refresher training as the project progresses and personnel change with the opportunity for OEP staff to participate in the training sessions);
 - 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 would follow if noncompliance occurs; and
 - h. for each discrete facility, a Gantt or PERT chart (or similar project scheduling diagram), and dates for:
 - (i) the completion of all required surveys and reports;
 - (ii) the environmental compliance training of onsite personnel;
 - (iii) the start of construction; and
 - (iv) the start and completion of restoration.
7. 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 would 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 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 the 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.
8. **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 authorizations required under federal law (or evidence of waiver thereof).
9. Columbia must receive written authorization from the Director of OEP **before placing the project into service**. Such authorization would 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.
10. **Within 30 days of placing the certificated 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 would be consistent with all applicable conditions; or
 - b. identifying which of the Certificate conditions Columbia has complied with or would 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.
11. Prior to **construction**, Columbia shall file with the Secretary a Monitoring Plan for McKay Spring for review and written approval by the Director of OEP. The Monitoring Plan for McKay Spring shall include details of the planned testing including:
- a. survey of potable water use from the McKay Spring (number of residences);
 - b. the locations of surface water monitoring;
 - c. the monitoring frequency and duration; and
 - d. a description of spring yield and water quality testing which should include at a minimum: total coliform bacteria, turbidity, total petroleum hydrocarbons, and volatile organic compounds.

12. Columbia **shall not begin** construction of facilities and/or use of any work areas **until**:
 - a. the staff completes consultation with the FWS regarding the Madison Cave isopod and the Indiana bat; and
 - b. Columbia has received written notification from the Director of the OEP that construction or use of mitigation may begin.