

104 FERC ¶ 61,293
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
William L. Massey, and Nora Mead Brownell.

Columbia Gas Transmission Corporation Docket No. CP03-29-000

ORDER ISSUING BLANKET CERTIFICATE

(Issued September 15, 2003)

1. On December 17, 2002, Columbia Gas Transmission Corporation (Columbia) filed an application under Sections 7(b) and 7(c) of the Natural Gas Act (NGA) for authorization for a limited blanket-type certificate to perform certain specific activities at its Victory Storage Field in Marshall and Wetzel Counties, West Virginia. The blanket certificate would permit Columbia to implement the terms of a September 18, 2002, Settlement Agreement with Consolidated Coal Company and McElroy Coal Company (collectively referred to as McElroy), allowing for the continued operation of the Victory Storage Field in tandem with coal mining operations.

2. Approval of this proposal is in the public interest because the certificate would ensure preservation of current storage field deliverability for Columbia and its customers while allowing McElroy continuous access for its coal mining operations. The blanket certificate would allow Columbia the flexibility to sequentially drill and plug wells as necessary to allow mining activities through the Victory Storage Field to progress safely while at the same time minimizing the possibility of storage service disruptions and environmental impact. Accordingly, we will issue Columbia a blanket certificate to perform all necessary abandonment and construction activities to accommodate McElroy's mining activities in Columbia's Victory Storage Field, as discussed and conditioned below.

Background and Proposal

3. The Victory Storage Field is located approximately 25 miles southeast of Wheeling, West Virginia. Two sub-fields, Victory A and Victory B, exist within the boundaries of the field and underlie parts of Marshall and Wetzel Counties, West Virginia. Victory A has 45 active injection/withdrawal wells and 15 observation wells. The field has a total operating capacity of 25,100 MMcf at a maximum well head storage

pressure of 800 psig. Victory B has 137 active injection/withdrawal wells and 50 observation wells. The field has a total operating capacity of 7,150 MMcf at a maximum well head storage pressure of 800 psig.

4. McElroy's initial 10-year plan currently calls for mining activities in Victory B. Columbia states that once it became apparent McElroy's ten-year longwall mining plans were inconsistent with Columbia's use of its Victory Storage Field it conducted a review of the parcels lying within or near its Victory B Storage Field and within McElroy's ten-year mining plan. Columbia discovered there were a few small parcels of land within the area that McElroy proposed to mine under which McElroy did not own the coal.

5. From 1997 through 1999, Columbia acquired coal rights to an 80-acre and a 13-acre tract of land. The 80-acre tract is located within Columbia's Victory B field. The 13-acre tract is outside the storage field area, but is in the path of McElroy's ten-year plan. With the exception of these two tracts, McElroy owns or controls the majority of the mining rights and coal within the Pittsburgh coal seam underlying the Victory Storage Field.

6. In 1999, Columbia filed suit in the United States District Court for the Western District of Pennsylvania.¹ Columbia sought, among other things, to enjoin McElroy's longwall mining plan. Subsequently, McElroy filed a complaint in the United States District Court for the Northern District of West Virginia.² McElroy sought, among other things, a determination that Columbia was obligated either to take all mitigation measures necessary within the Victory Storage Field in order to allow McElroy to longwall mine its coal or to compensate McElroy for its coal. McElroy estimated the value of its claim to exceed one billion dollars.

7. Columbia states that the respective legal obligations of the parties in a situation where a coal company wishes to longwall mine its coal through an active gas storage field have never been determined by any court. It contends that the law applicable to its situation with McElroy is untested and unclear. Columbia asserts that both parties made extensive legal arguments relating to state and federal law and their respective rights

¹Columbia Gas Transmission Corporation v. Consolidation Coal Company and McElroy Coal Company, Civil Action No. 99-2071, (D. Pa.).

²McElroy Coal Company v. Columbia Gas Transmission Corporation, Civil Action No. 5-01 cv 18, (D. W.Va.).

under each, but neither could predict the litigation result with genuine confidence. Therefore, Columbia states, in light of the inherent risks in litigation and the uncertain outcome of any court ruling, it entered into the 2002 Settlement Agreement with McElroy.

8. Under the Settlement Agreement, McElroy would have continuous access to the Victory Storage Field for its coal mining operations. The current deliverability of the storage field, however, would also be preserved. McElroy is responsible for identifying the wells that will be affected by its mining operations. McElroy intends to provide Columbia with a map forecasting the location of mining activities in the Victory Storage Field over an 18 month period. After the first map is submitted, McElroy will update the map every six months. Columbia is responsible for taking mitigation measures to protect pipelines in the storage field.

9. Under the Settlement Agreement, McElroy would pay Columbia \$300,000 for Columbia's coal and the rights to mine and remove coal in the 13-acre tract and for Columbia's observation wells numbers 3091, 4410, 4416 and 4495. If McElroy's mining operations proceed through other areas where Columbia owns the coal rights, the parties agree to negotiate in good faith to convey those rights to McElroy at the average price for coal rights paid in the county over the past three years preceding the request to purchase.

10. With respect to plugging and replacing the withdrawal/injection wells and pipes for the new wells, McElroy would pay for all plugging costs associated with the location, drilling, and construction of the replacement withdrawal/injection wells; up to 750 feet of well line to be constructed to connect the replacement wells; and for costs to replace certain observation wells designated by Columbia. Columbia would be responsible for the costs associated with disconnecting existing injection/withdrawal wells to be plugged by McElroy and for any necessary permits. In addition, Columbia would pay for any footage of well line over 750 feet.

11. For costs associated with relocating pipelines in the storage field, Columbia would pay all costs to replace pipelines that are under 12-inches in diameter. Columbia is also responsible for the costs to replace pipelines over 12-inches in diameter that are scheduled to be impacted by mining operations from April through November. For 12-inch and over pipelines that are scheduled to be impacted from December through March, McElroy and Columbia would each be responsible for 50 percent of the costs.

12. The agreement has no specific term and would continue in effect as long as coal reserves within the Victory Storage Field remain to be mined. It is anticipated that

mining activities would encroach on the Victory Storage Field in 2004 and the first replacement well would be drilled in 2006. Columbia maintains that it would not use the proposed blanket authority to develop facilities which would allow it to expand the operating parameters of the Victory Storage Field.

13. Columbia states that it intends to construct, modify, replace, or relocate the field pipelines under its existing blanket certificate authorization. It also states that it will perform other activities under Section 2.55(a) of the Commission's regulations. However, the abandonment of existing injection/withdrawal wells and the drilling of replacement injection/withdrawal wells are outside of the scope of the existing blanket certificate and Section 2.55 authorizations.

14. Columbia states that once mining within the storage field commences, it will be required to act within time frames that do not permit seeking advance Commission authorization each time an active injection/withdrawal well must be plugged or drilled. It states that although the Commission has the ability to process an interstate pipeline's request on an expedited basis, the circumstances surrounding Columbia's efforts to preserve existing deliverability in the Victory Storage Field will be ongoing and episodic over a long period of time. It asserts that to avoid the need to repeatedly seek expedited decisions each time it needed to plug and drill wells, it believes that a better regulatory solution is for the Commission to issue the requested limited blanket certificate. Therefore, Columbia requests a limited blanket certificate authorizing Columbia under NGA Sections 7(b) and 7(c) to perform these activities in tandem with McElroy's mining operations.

15. Columbia estimates that during the initial ten-year period of longwall mining, it would incur approximately \$0.2 million of non-reimbursed costs attributable to abandoning existing wells, e.g., certain permit costs and the cost of disconnecting wells from well lines. In addition, Columbia estimates that it would incur approximately \$0.5 million of non-reimbursed costs attributable to replacing pipelines which are less than 12-inches in diameter and \$29 million of non-reimbursed costs attributable to replacing pipelines which are 12-inches or more in diameter. Therefore, Columbia estimates that during the initial ten-year period of longwall mining, the total cost of non-reimbursed work would be \$29.7 million.

16. Of the \$29.7 million, \$29.5 million of the non-reimbursed costs is attributable to work Columbia intends to perform under its existing blanket certificate. In the event that Columbia estimates that the non-reimbursed cost of planned work would exceed the annual automatic project cost limit established by the Commission (\$7,600,000 for 2003),

it states that it would submit a prior notice application under its existing Subpart F blanket certificate. Otherwise, Columbia states that it would report the costs incurred for the Victory Storage Field projects on an annual basis in the same manner as other projects which are authorized under its blanket certificate authority.

17. Approximately \$0.2 million of the non-reimbursed costs will be attributable to activities that will be performed under the proposed blanket certificate. Columbia requests that the Commission approve rolled-in rate treatment for the costs associated with these activities. Columbia requests that the Commission place no specific monetary limits on expenditures for wells which are subject to reimbursement by McElroy under the terms of the proposed limited blanket certificate. Columbia states that it would report the incidental costs it incurs to abandon existing wells and drill replacement wells on an annual basis.

Procedural Matters

18. Notice of Columbia's application in Docket No. CP03-29-000 was published in the Federal Register on December 30, 2002 (67 Fed. Reg. 79,588). Five timely, unopposed motions to intervene were filed.³

19. McElroy filed a motion to intervene out-of-time. It has shown that it has an interest in this proceeding and that its participation will not delay the proceeding or prejudice the rights of any other party. Accordingly, for good cause shown, we will grant the motion to intervene out-of-time.

20. Orange and Rockland Utilities, Inc. (O&R) filed comments. PSEG Energy Resources and Trade LLC (PSEG) filed a protest to the proposal. Columbia filed a reply to O&R and PSEG. Although our rules do not permit this kind of responsive pleading, we may, for good cause, waive this provision.⁴ We find Columbia's reply provides

³ Timely, unopposed motions to intervene were filed by Cities of Charlottesville and Richmond, Virginia; Piedmont Natural Gas Company, Inc.; Orange and Rockland Utilities, Inc.; and PSEG Energy Resources and Trade LLC. Timely, unopposed motions to intervene are granted by operation of Rule 214 of the Commission's Rules of Practice and Procedure.

⁴18 CFR § 385.213(a)(2)(2002).

information that clarifies the issues and aids us in our decision-making. Accordingly, we will accept it into the record.

Discussion

21. Since the application pertains to the abandonment and construction of facilities used for the transportation of natural gas in interstate commerce subject to the jurisdiction of the Commission, Columbia's proposal is subject to the requirements of Section 7 of the NGA.

A. Public Convenience and Necessity

22. Longwall mining involves complete coal extraction within the longwall panel. The location, direction, speed, and impact of the mining operations cannot be predicted with absolute certainty because the mining plans are subject to revision on an ongoing basis. Columbia may be required to act within time frames that require requesting repeated expedited Commission authorization through case-specific applications under NGA Sections 7(b) and 7(c). The proposed blanket certificate authorization will allow Columbia the time and construction/operational flexibility to respond appropriately to longwall coal mining while continuing operation of the Victory Storage Field in a safe and efficient manner. It will also allow Columbia to maintain deliverability at existing levels without disruption in service during the mining operations.

23. Further, the ongoing environmental impact of its gas storage operations will be lessened by consolidating injection/withdrawal wells. Columbia anticipates that many of the replacement wells would be drilled on previously disturbed well sites where mining has been completed and subsidence has ended. Columbia concludes that in some cases it should be possible to drill more than one replacement well from the same site, resulting in fewer well sites than in the original field.

24. Columbia requests a certificate to cover only the abandonment and construction for injection and withdrawal wells that is not permitted by a Subpart F blanket certificate. The proposal is based on a misunderstanding of Subpart F, however. Columbia apparently intends to proceed under its Subpart F blanket by using only its non-reimbursed costs to determine whether a particular activity comes within the project cost limits for blanket certificates. The project cost limits of Subpart F, however, are based on "the total actual cost of constructing the jurisdictional portions of a project." 18 C.F.R.

§ 157.202(b) (8). There is no deduction for costs that are reimbursed. As a result, Columbia's blanket certificate is unlikely to be available for much of this project.

25. Based on Columbia's application, however, we find that the proposal is in the public interest, and will issue sufficient authorization to allow the project to proceed. Specifically, we will issue Columbia a blanket certificate to perform all the McElroy related activities needed in the Victory Storage Field. Columbia shall file a report on May 1 of each year describing all activities undertaken under this separate blanket authorization. The annual report must document specific well information concerning all construction and abandonment activities. It should also include itemized lists of the total cost of all construction and abandonment activity performed under this authorization, including all reimbursed and non-reimbursed costs. Further, in addition to the environmental conditions addressed below, this authorization is subject to Sections 157.20 (a), (e), and (f) of the Commission's regulations. Further, we note that the blanket certificate authorization issued here is limited to the geographic boundaries and deliverability requirements of the Victory Storage Field and will not involve facility modifications elsewhere on Columbia's system.

B. Rates

1. Protest and Comments

26. As stated, Columbia requests authorization to roll-in the non-reimbursed costs associated with activities performed in the Victory Storage Field during mining operations. O&R objects to Columbia's request and states that it is inconsistent with the treatment of such costs in Columbia's Majorsville settlement.⁵ O&R states that Columbia resolved that case by obtaining a \$20 million settlement from certain coal companies and agreeing to bear the risk that the \$20 million payment was not adequate to cover the costs of new facilities needed to compensate for mining activities. In exchange, Columbia was permitted to retain any difference between the net present value of the \$20 million payment and the cost of the proposed new facilities, in the event the costs of new facilities were less than \$20 million.

27. O&R complains that in this proceeding it appears that Columbia has negotiated a deal that apparently will not fully cover the costs associated with maintaining storage

⁵ Columbia Gas Transmission Corp., 71 FERC ¶ 61,077 (1995), Order Issuing Certificate, 72 FERC ¶ 61,112 (1995) (Majorsville).

deliverability at the Victory Storage Field during active mining operations. O&R further contends that instead of offering to shield customers from any rate increases associated with the mining activities, Columbia wants authority to pass any and all non-reimbursed costs onto its customers. O&R argues that all payments, whether direct reimbursement for storage facilities or revenues for the sale of coal rights, should be used to pay for the costs incurred to maintain storage deliverability. Therefore, O&R maintains that Columbia's request for rolled-in rate treatment of all the non-reimbursed costs should be denied.

28. PSEG contends that consideration of any recovery of costs regarding the Victory Storage Field is premature and would be more appropriately addressed in Columbia's next rate case.

2. Columbia's Answer

29. In response, Columbia states that while it has requested a special limited blanket certificate to cover certain activities that must be carried out once mining operations commence most of the construction, i.e., plugging existing wells and drilling replacement wells, will be paid for by McElroy. Columbia states that the remainder of the work, i.e., pipeline relocations, replacements or rearrangements, will be performed by Columbia under Columbia's existing blanket certificate authorization. Columbia maintains that, as such, all of those costs are eligible for the presumption in favor of rolled-in pricing.

30. Columbia states that the key difference between the subject case and Majorsville is that in Majorsville Columbia was able to deactivate the storage field by adding storage facilities elsewhere and increasing its reliance on other storage fields, including the Victory Storage Field. Mining was to occur after deactivation was initiated. In the instant case, mining will occur simultaneously with active operation of the Victory Storage Field. Columbia maintains that the arrangement negotiated with the coal companies would preserve the deliverability from the Victory Storage Field in order to assure continued, uninterrupted service for Columbia's customers.

31. In addition, Columbia explains that in Majorsville, Columbia accepted a \$20 million lump sum payment from the coal companies to use to maintain storage deliverability and to upgrade other storage facilities. Columbia states that the agreement was reached based on what it would cost Columbia to maintain the deliverability that would be lost due to deactivation of the Majorsville storage field. However, in the case of Victory, Columbia states that it is not possible to calculate with any degree of certainty

what it would cost Columbia to maintain deliverability of the still active Victory Storage Field once the mining operations begin.

32. Columbia states that it is not proposing to retain a profit of \$300,000 for the sale of its coal or other mining rights. Rather, Columbia explains that \$275,000 of the \$300,000 would be used to replace an existing observation well that will be plugged by McElroy. Thus, Columbia maintains that rather than retaining the funds as profit, most of the money would be used to benefit its customers. Columbia states that the remaining balance of \$25,000 would be used to offset the net book cost of Columbia's initial investment in coal and coal rights, as well as four observation wells. Columbia states that it owns very little coal in the Victory Storage Field. Therefore, if there are any future sales of coal by Columbia under the 2002 Settlement Agreement, Columbia does not expect to make a profit.

3. Commission Response

33. O&R argues that because Columbia agreed to assume the risk of the storage field construction work in Majorsville if the cost exceeded the settlement payment, it should do the same here. We disagree. The 2002 Settlement Agreement was the result of three years of litigation between Columbia and McElroy. As Columbia points out, the respective legal obligations of the parties in a situation where a coal mining company wishes to longwall its coal through an active gas storage field had never been determined in any court. The settlement removes the risk that Columbia might not receive any compensation from McElroy for the impact that its mining activities would have on the Victory Storage Field. If Columbia had lost the litigation, the resulting impact on its customers could have been more costly than the result achieved by the Settlement Agreement.⁶

34. The fact that Columbia was able to negotiate a payment that would cover its cost in Majorsville is not determinative here. All legal controversies are generally unique in their facts and circumstances. Just as Columbia's settlement in Majorsville set no precedential value in its settlement with McElroy, it has no precedential value to the Commission's decision in this proceeding. The 2002 Settlement Agreement appropriately resolves a complex legal controversy that could have potentially resulted in damage to

⁶In response to a data request, Columbia stated that McElroy was seeking a claim of inverse condemnation in the West Virginia proceedings and was seeking compensation in excess of one billion dollars.

the Victory Storage Field, thus compromising Columbia's ability to serve its customers. Therefore, we find that the Settlement Agreement is in the best interest of McElroy's and Columbia's businesses and adequately protects the interests of Columbia's customers at a minimal cost.

35. The Commission finds that it is appropriate for Columbia to roll-in the costs of the work to be performed under the blanket certificate issued herein. Columbia estimates that during the initial 10-year period of longwall mining, it will incur approximately \$0.5 million of costs attributable to replacing pipelines which are less than 12-inches in diameter and \$29.0 million in costs attributable to replacing pipelines which are 12-inches or more in diameter. Columbia also estimates that it will incur approximately \$0.2 million of costs attributable to abandoning existing wells, e.g., certain permit costs and the cost of disconnecting wells from well lines, that will be performed under the proposed blanket authority.

36. Under the Commission's Subpart F blanket certificate, a pipeline may make miscellaneous rearrangements to its existing facilities when required by "encroachment of residential, commercial, or industrial areas."⁷ While miscellaneous rearrangement under Section 157.202(b)(6) specifically excludes activities performed on injection/withdrawal wells, this blanket certificate includes activities that can be performed under a Subpart F blanket certificate and generally fills the gap created by the injection/withdrawal well exemption. Accordingly, we find that these activities that will be performed under the blanket certificate being issued here will constitute maintenance for the continued safe operation of an active storage field due to encroachment of McElroy's mining operations. Therefore, we find that rolled-in rate treatment is appropriate for these costs, absent changed circumstances.

37. Further, we note that the \$300,000 payment for the coal rights is a non-jurisdictional transaction and is properly not included in its cost of service. Columbia states that it is not proposing to retain the \$300,000 for the sale of its coal or other mining rights for profit. It asserts that \$275,000 of the sale proceeds would be used to replace an existing observation well that will be plugged by McElroy. The remaining \$25,000 would be used to offset the net book cost of Columbia's initial investment in coal and coal rights, as well as four observation wells. Therefore, rather than retaining the funds as profit, Columbia states that the money would be used to benefit its customers.

⁷18 C.F.R. § 157.202(b)(6)(ii)(2003).

Accordingly, we find Columbia's proposal not to include this sale in its cost of service is appropriate.

38. Finally, we note that because blanket certificate construction activities are generally accorded rolled-in rate treatment, the Commission does not find any reason to defer its determination on this issue to a future NGA Section 4 rate case.

C. Engineering

39. A review of the engineering data provided by Columbia confirms that the proposed activities would not affect overall total system deliverability or working gas capacity of gas storage operations. Furthermore, review of Columbia's proposal for blanket certification to abandon and replace multiple injection/withdrawal wells within the Victory Storage Field as longwall coal mining is proceeding, confirms that the requested authority would allow Columbia to maintain deliverability and integrity of the Victory Storage Field's operation without disruptions of storage services.

D. Environmental Review

40. The Commission prepared an environmental assessment (EA) that addressed the proposed reporting requirement, mitigation measures, and alternatives for Columbia's request for authority to abandon and construct injection and withdrawal wells. However, because we are issuing a certificate to cover all its proposed activity in the Victory Storage Field, we shall condition this authority on Columbia's complying with the standard environmental conditions in Section 157.206(b) of the Commission's regulations for any facility abandoned, constructed, drilled, or replaced under this authority. In addition, we will require the annual report to indicate how Columbia complied with these standard conditions for each facility.

41. Further, we note that Columbia intends to file an annual report on injection/withdrawal wells drilled on existing disturbed well sites. It also intends to provide advance notice of any well site that will require clearing more than 0.5 acres of additional land. For wells on new sites, at least three months prior to construction, Columbia intends to provide the resource reports required by Section 380.12 of the Commission's regulations. Columbia's advance notices will include all required environmental surveys and consultations for Commission review. These reports will allow the Commission sufficient opportunity to ensure that no significant environmental impact will be involved during the construction activity.

42. Based on the discussion in the EA and in consideration of the conditions imposed above, we conclude that if abandoned, replaced or operated in accordance with Columbia's application and supplement filed March 21, 2003, approval of this proposal would not constitute a major Federal action significantly affecting the quality of the human environment.

43. 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 abandonment, replacement or operation of facilities approved by this Commission.⁸

44. Columbia shall notify the Commission's environmental staff by telephone 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.

45. At a hearing held on September 10, 2003, the Commission, on its own motion, received and made a part of the record all evidence, including the application, as amended, and exhibits therefore, submitted in this proceeding, and upon consideration of the record,

The Commission orders:

(A) Permission and approval to for abandonment is granted and a certificate of public convenience and necessity is issued to Columbia to construct and operate the facilities, as described more fully in the application and in the body of this order.

(B) The certificate issued above is conditioned upon Columbia's compliance with all applicable Commission regulations under the NGA, particularly the general

⁸See, 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).

terms and conditions set forth in Parts 154 and paragraphs (a), (e) and (f) of Section 157.20 of such regulations.

(C) Columbia shall file a report annually on May 1 describing all activities undertaken under this blanket certificate authorization. The annual report shall document specific well information concerning all construction and abandonment activities, including itemized lists of the total cost of all construction and abandonment activity performed under this authorization, including all reimbursed and non-reimbursed costs. This report shall also include the information specified in paragraphs 157.208(e) (1) – (4) of the Commission's regulations.

(D) Columbia shall comply with the standard environmental conditions of §157.206(b) for all facilities built, drilled, or replaced under this authority.

(E) As discussed in the body of this order, Columbia shall file advance notice for approval of any well site that will require more than 0.5 acre of land in addition to an existing maintained well site. Columbia shall also file for approval of a well on a new site at least three months prior to construction.

(F) Columbia shall notify the Commission's environmental staff by telephone 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) McElroy's motion to intervene out-of-time is granted.

(H) Columbia's answer is accepted into the record.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.