

124 FERC ¶ 61,038
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.

Millennium Pipeline Company L.L.C.

Docket No. CP98-150-006

ORDER DISMISSING REQUEST FOR FORMAL INVESTIGATION

(Issued July 17, 2008)

1. On April 23, 2008, Mr. Peter Supa filed a petition requesting the Commission to conduct an Order No. 670¹ investigation into an alleged violation of section 1c.1 of the Commission's regulations which prohibits natural gas market manipulation. Specifically, Mr. Supa alleges that Columbia Gas Transmission Corporation (Columbia) and "other sponsoring entities" of the Northeast-07 pipeline project (NE-07 project)² "made a material misrepresentation by failing to disclose a material fact." For the reasons set forth below, the Commission will dismiss Mr. Supa's request.

2. The 2006 *Millennium* order authorized Millennium Pipeline Company (Millennium) to construct the NE-07 pipeline project which includes a section of the route known as the Tioga-Broome variation in south central New York. Mr. Supa is a

¹ *Prohibition of Energy Market Manipulation*, Order No. 670, FERC Stats & Regs. ¶ 31,202 (2006). Order No. 670 is a Commission rulemaking implementing amendments to the Natural Gas Act that prohibit the use or employment of manipulative or deceptive devices or contrivances in connection with the purchase or sale of natural gas, electric energy, or transportation or transmission services subject to the jurisdiction of the Commission. 15 U.S.C. § 717c-1 (Supp. 5 2006). Order No. 670 creates 18 C.F.R. § 1c.1, titled "Prohibition of natural gas market manipulation." Section 1c.1, however, makes clear that the regulation does not create a private right of action; rather, it gives the Commission the authority to investigate manipulation of the energy markets.

² See *Millennium Pipeline Co.*, 117 FERC ¶ 61,319 (2006) (authorizing construction of the NE-07 project) (the 2006 *Millennium* order).

landowner whose property is crossed by the Tioga-Broome variation. Mr. Supa states that Columbia owns four abandoned-in-place, 128-year old oil pipelines (the Rockefeller pipelines) that run through his property and argues that Columbia willfully misrepresented material facts by not disclosing to the Commission in the NE-07 project certificate proceeding the existence of the Rockefeller pipelines on his property. Mr. Supa requests that the Commission initiate an Order No. 670 formal investigation to prohibit Millennium from constructing its pipeline on his property until the pollution from past uses of the pipeline corridor is remediated.

3. Section 1c.1 of the Commission's regulations, *inter alia*, makes it unlawful for a company to make any untrue statement of a material fact or to omit to state a material fact necessary to make the statements made, in the light of the circumstances under which they were made, not misleading. Mr. Supa alleges that Columbia/Millennium violated this provision by failing to disclose the existence of the old Rockefeller pipelines on his property.

4. Millennium and Columbia initially filed applications to construct the proposed Millennium pipeline project in December 1997. In its original application, Columbia proposed to abandon approximately 224 miles of its existing Line A-5; 129.8 miles of that total were proposed to be abandoned in place. Another 1.9-mile segment was proposed to be abandoned by conveyance to Millennium. None of the pipeline initially proposed to be abandoned by Columbia or constructed by Millennium was located on the Supa property. Nevertheless, Mr. Supa filed a protest on February 23, 1998, objecting to Columbia's proposal to abandon portions of its Line A-5 in place. In that pleading, he also requested that Commission require Columbia to remove other "abandoned gas pipelines." It is the existence of those other, non-functional pipelines which Mr. Supa alleges Columbia/Millennium unlawfully failed to disclose. However, those lines were not in use and proposed for abandonment in the Millennium proceeding; there was no obligation for Columbia or Millennium to disclose the existence of those pipelines in their initial applications.

5. During its review of the original Millennium proposal, Commission staff suggested alternative routes for a portion of the Millennium pipeline which would deviate from the Line A-5 right-of-way and parallel an existing New York State Electric and Gas Company powerline right-of-way instead. It was this variation to the original proposal, ultimately approved by the Commission over Mr. Supa's objections, which brought the Millennium pipeline onto the Supa property.³ The 2001 Final Environmental Impact Statement for the Millennium proposal acknowledged and rejected the request that Millennium be required to remove an old existing pipeline, finding that removal of the

³ *Millennium Pipeline Co.*, 97 FERC ¶ 61,292 (2001), *order on reh'g*, 100 FERC ¶ 61,277 (2002).

pipeline was not required for installation of the proposed line and that disturbance of ground outside of Millennium's construction work area was not warranted. The Commission did, however, require site-specific reporting regarding potential impact of construction on Mr. Supa's water supply.⁴

6. The originally-certificated Millennium project was never constructed. Millennium subsequently filed for authorization to construct its revised NE-07 projects. In its order on rehearing of the 2006 Millennium order approving the Tioga-Broome variation, which did potentially cross the abandoned pipelines, the Commission required Millennium to evaluate hydrocarbon contamination along the abandoned Rockefeller lines where soils would be disturbed by construction, after completing civil surveys which would enable the company to more precisely determine the location of the old lines within its authorized right-of-way.⁵ No contamination was found. In addition, the Commission separately approved a site-specific plan for Mr. Supa's property which includes procedures for removing the abandoned oil pipelines that are located within the construction right-of-way. Pipeline removal activities must be performed in accordance with all applicable federal and state statutes and regulations. We find this requirement adequately addresses Mr. Supa's concerns regarding possible contamination by any toxic substances related to the Rockefeller pipelines.⁶

7. The Commission learned of the Rockefeller pipelines' existence shortly after Columbia and Millennium filed their initial applications in this proceeding and subsequently received additional information about them and their potential relevance to the certificate proceedings from Mr. Supa and Millennium. As described above, we already have required the remedy Mr. Supa requests in his Order No. 670 petition with respect to any pollution from the Rockefeller pipelines found in the construction right-of-way. As a result, no investigation under section 1c.1 is necessary. Based on the record in this case including the Commission's environmental mitigation requirements with respect to the Rockefeller pipelines, we will dismiss Mr. Supa's request.

⁴ 97 FERC ¶ 61,292 (2001), Environmental Condition 58.

⁵ *Millennium Pipeline Co.*, 119 FERC ¶ 61,173, at P 72-74 (2007) (the Millennium Rehearing order).

⁶ To the extent the Rockefeller pipelines lie outside of the pipeline right-of-way, they will not be disturbed by the pipeline construction and are beyond the scope of the certificate proceeding.

The Commission orders:

Mr. Supa's request for a formal investigation under section 1c.1 of the Commission's regulations is dismissed.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.