

133 FERC ¶ 61,219
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Columbia Gas Transmission, LLC
Millennium Pipeline Company, LLC

Docket No. CP10-488-000

ORDER AMENDING CERTIFICATE

(Issued December 16, 2010)

1. On August 17, 2010, Columbia Gas Transmission, LLC (Columbia) and Millennium Pipeline Company, LLC (Millennium) filed a joint application under section 7(c) of the Natural Gas Act to amend the certificate authority granted in various Commission orders in *Millennium Pipeline Company, L.P.* (the *Millennium Orders*).¹ Among other things, these certificate orders authorized Columbia to lease capacity from Millennium and Millennium to lease capacity from Columbia. In the current application, Columbia proposes to amend its lease with Millennium to clarify receipt and delivery point rights, as well as to allocate capacity at receipt and delivery points. Millennium proposes to amend its lease with Columbia to clarify how capacity will be allocated at shared points of receipt and delivery. The Commission will approve the proposed revisions, as discussed below.

Background and Proposal

2. The *Millennium Orders* authorized Millennium, among other things, to construct and operate pipeline facilities across southern New York.² The *Millennium Orders* also authorized Columbia to abandon its existing Line A-5 by sale to Millennium, for Millennium's use as part of its pipeline system. Acquiring Columbia's Line A-5 enabled Millennium to avoid the construction of certain, potentially duplicative facilities.

¹ 97 FERC ¶ 61,292 (2001), *order issuing and amending certificates*, 117 FERC ¶ 61,319 (2006), *order on rehearing*, 119 FERC ¶ 61,173 (2007), *order amending certificates*, 124 FERC ¶ 61,139 (2008).

² The Millennium pipeline serves as a link between Empire Pipeline, Inc. and Algonquin Gas Transmission, LLC and provides service to the New York City area.

3. Millennium was able to further avoid the construction of facilities by leasing 29,248 dekatherms (Dth) per day of capacity on the existing Columbia system (the Millennium Lease). In addition, the *Millennium* Orders authorized Columbia to lease discrete forward- and backward-haul segment rights that, in total, constitute the long-haul equivalent of 25,400 Dth per day of Millennium's system capacity (the Columbia Lease). The Columbia Lease was intended to enable Columbia to continue to meet its historic firm service obligations to its shippers previously served through Line A-5.³

4. The Millennium pipeline went into service on December 22, 2008. Since then, Columbia has been able to meet its firm service obligations to its historic Line A-5 customers through the capacity provided under the Columbia Lease. However, Columbia and Millennium assert that certain historic Line A-5 customers have requested changes to their existing agreements. In addition, other Columbia customers have requested service from Columbia along the Line A-5 route. Columbia and Millennium state that in order to provide the additional requested services, Columbia would have to have certain rights not specifically addressed in the Columbia Lease.

5. The original Columbia Lease listed specific points of receipt and delivery at which Columbia was to bring gas to, and take gas from, Millennium's system. Columbia and Millennium state that they have agreed to amend the Columbia Lease⁴ to provide a greater degree of flexibility to Columbia and its historic Line A-5 customers. Columbia and Millennium assert that the proposed amendment is structured to ensure that the increased flexibility does not increase the total amount of capacity used by Columbia, or jeopardize Millennium's ability to serve its customers.

6. Specifically, Columbia and Millennium propose to revise the Columbia Lease by: (1) replacing Article 1.2, which addresses receipt and delivery point rights, with a new Article 1.2; (2) adding a section 1.6, which provides for the allocation of receipts and deliveries; (3) replacing Exhibits B, C, and D, which list leased capacities, maximum receipt quantities, and maximum delivery quantities, respectively, with new Exhibits B, C, and D; and (4) adding an Exhibit G, which lists secondary point rights. Columbia and

³ The historic Line A-5 customers are: Central Hudson Gas & Electric Corporation; Corning Natural Gas Corporation and Corning Incorporated; New York State Electric & Gas Corporation (NYSEG); Orange and Rockland Utilities, Inc.; UGI Corporation; and United States Gypsum Company.

⁴ Third Amendment to Second Amendment and Restated Capacity Lease and Exchange Agreement Between Millennium Pipeline, LLC and Columbia Gas Transmission, LLC.

Millennium also propose to revise the Millennium's Lease⁵ by adding a section 1.6, which provides for the allocation of receipts and deliveries.

7. The applicants contend that the proposed revisions specify the circumstances under which (1) Columbia's historic Line A-5 customers will be allowed to shift existing firm delivery rights to new delivery points on Millennium's system and (2) any Columbia shipper would be allowed to receive or deliver gas on a secondary basis at a receipt or delivery point that existed prior to the construction of Millennium. The applicants state that the proposed revisions also clarify how capacity will be allocated between Columbia and Millennium at common points of receipt and delivery.

Notice and Intervention

8. Columbia's and Millennium's application was noticed by publication in the *Federal Register* on August 19, 2010 (75 Fed. Reg. 53,285), with protests or interventions due by August 31, 2010. NiSource Distribution Companies;⁶ New Jersey Natural Gas Company; NJR Energy Services Company; National Grid Gas Delivery Companies; Washington Gas Light Company; NYSEG; and Stand Energy Corporation (Stand) filed timely, unopposed motions to intervene. Consolidated Edison Company of New York, Inc. and Orange and Rockland Utilities, Inc. (ConEd and Orange and Rockland) and the City of Charlottesville, Virginia and City of Richmond, Virginia filed timely, unopposed, joint motions to intervene.⁷

9. PSEG Energy Resources & Trade LLC, UGI Distribution Companies,⁸ and Energy America LLC filed late motions to intervene. The parties filing the untimely motions to intervene have demonstrated an interest in this proceeding. Further, the untimely motions will not delay, disrupt, or otherwise prejudice these proceedings.⁹ Thus, we will grant the late motions to intervene.

10. Stand, a marketer of natural gas and electricity, filed a protest to the application. ConEd and Orange and Rockland filed joint comments in support of the proposals. NYSEG filed comments opposing some of the proposals. Columbia and Millennium

⁵ First Amendment to Retained Capacity Lease Between Millennium Pipeline, LLC and Columbia Gas Transmission, LLC.

⁶ The NiSource Distribution Companies consist of Columbia Gas of Ohio, Inc., Columbia Gas of Pennsylvania, Inc., and Columbia Gas of Virginia, Inc.

⁷ Timely, unopposed motions to intervene are granted by operation of Rule 214 of the Commission's Rules of Practice and Procedure. 18 C.F.R. § 385.214(c)(1) (2010).

⁸ The UGI Distribution Companies consist of UGI Penn Natural Gas, Inc., UGI Utilities, Inc., and UGI Central Penn Gas, Inc.

⁹ 18 C.F.R. § 385.214(d) (2010).

filed an answer to Stand's protest and NYSEG's comments. Although Rule 213(a)(2)¹⁰ prohibits answers to protests, we find good cause to waive the rule to admit Columbia's and Millennium's answer because it assisted in our decision-making process.

Discussion

11. The capacity leases at issue here were authorized so that Millennium could provide service to its customers, and Columbia could continue to provide service to its historic Line A-5 customers, without the construction of additional facilities by either pipeline.¹¹ The proposed revisions to the leases clarify the rights of Columbia and Millennium in connection with the use of the leased capacity. As discussed below, we find the public convenience and necessity support our grant of the requested certificate amendments.

12. Under Section 1.6, regarding the allocation of receipts and deliveries, which Columbia and Millennium propose to add to the Columbia Lease, the first gas through each meter on Millennium's system will be treated as gas received or delivered by Millennium, up to the volumes confirmed by Millennium on behalf of its shippers. Stand, a Columbia shipper on the Line A-5 facilities,¹² contends that this provision appears to degrade the reliability of service to Columbia and to deprive Columbia and its customers of the full use of the capacity leased by Columbia on Millennium. Specifically, Stand is concerned that in treating the first gas through the meters as gas shipped on Millennium's retained-capacity, imbalances would be borne by Columbia's shippers and, during capacity constraints, preference would be given to Millennium. Stand further contends that the proposal would inappropriately lock a system of accounting into a certificate, and the Commission would not be able to change it if the accounting practice was flawed. In addition, Stand expresses a concern that these provisions could result in additional charges to Columbia's customers beyond Columbia's tariff.

13. As noted by Columbia and Millennium in their answer, under Article 1.2 of the Columbia Lease, Columbia is entitled to use the capacity it leases on Millennium on a firm basis, not subject to a prior claim by any other customer, and to receive the same priority as any class of firm service. Moreover, under Article 3.8 of the Columbia Lease, in the event of capacity constraints, Columbia's and Millennium's shippers would be subject to pro rata capacity reductions. Columbia and Millennium contend that Stand's

¹⁰ 18 C.F.R. § 385.213(a)(2) (2010).

¹¹ 117 FERC ¶ 61,219, at P 116 (2006).

¹² Stand is not a historic Line A-5 customer of Columbia because it did not have primary firm service rights on Line A-5 when the Columbia Lease was approved.

protest appears to be based on a misunderstanding of the difference between scheduling and allocation. Columbia and Millennium assert that nominated quantities are confirmed based on service priority during the scheduling process, while, on the other hand, the allocation process is an accounting process that occurs after the gas has been scheduled and delivered and cannot impact the priority or reliability of service.

14. We agree with Columbia's and Millennium's position. We find that the proposed lease revisions regarding the allocation process will not reduce the quantity or reliability of service to Columbia's shippers or result in inappropriate imbalance penalties or other charges. Further, the Commission finds that the proposed Section 1.6 of the Columbia Lease provides for the allocation of receipts and/or deliveries to individual points identified in the Columbia Lease, but does not lock Columbia into an accounting system which unfairly impacts Columbia shippers or result in any charge beyond Columbia's tariff.

15. The proposed Section 1.6(d) provides that the last gas through the meters will also be treated as gas received or delivered by Millennium. Stand objects to this provision as well, stating that, historically, the last gas through the meters would have been treated as Columbia shipper overrun.

16. Columbia and Millennium contend that under the lease arrangement, volumes are allocated to Columbia's shippers up to the capacity entitlements set forth in the Columbia Lease, but that Columbia does not have unlimited capacity rights under the lease. Once the specified entitlements have been met, Columbia and Millennium contend that any additional volumes are appropriately treated as receipts or deliveries on behalf of Millennium. As further noted by Columbia and Millennium, if Millennium's system had not been constructed, Columbia's shippers' ability to overrun their firm service entitlements would have been limited by the physical capacity of Columbia's facilities. Now that Columbia provides service to the Line A-5 customers through the lease, Columbia and Millennium contend that the shippers' ability to overrun their firm service entitlements is properly limited to Columbia's entitlements under the Columbia Lease.

17. We find appropriate that volumes should only be allocated to Columbia's shippers up to the capacity entitlements (25,400 Dth per day) set forth for Columbia in the Columbia Lease. Once those capacity entitlements are exceeded, any additional volumes are appropriately treated as receipt or deliveries on behalf of Millennium. The capacity lease is not a service agreement under Millenniums tariff; it does not provide for overruns by Columbia or its shippers. Thus, we will approve the applicant's request to amend the Columbia Lease to include the proposed Section 1.6(d).

18. The proposed Article 1.2(c) and Sections 1.6(b) and (c) to the Columbia Lease provide that gas delivered to or received by Columbia be scheduled and confirmed in accordance with Millennium's tariff. Stand contends that clarification is needed to assure that this does not diminish services to Columbia's customers or restrict their right to

schedule services on the leased capacity. Columbia and Millennium state that the referenced language refers to the practice whereby Columbia communicates the nominations it has received from its shippers into Millennium's system so that Millennium can appropriately manage its pipeline. We find that the proposed provisions will not adversely affect Columbia's shippers.

19. Section 1.6(b) also provides that, for purposes of determining whether a segment limitation has been exceeded, gas will be considered as being delivered to the furthest downstream point first, until the segment limit is met. Stand contends that this provision appears to restrict Columbia's ability to fully use its leased capacity. As an example, Stand asserts that the quantities set for secondary point rights in the new Exhibit G of the Columbia Lease are less than the amounts historically allocated to Columbia.

20. Columbia and Millennium contend that counting from the furthest downstream point provides more flexibility to the Columbia deliveries, since more pipeline capacity is required to flow further downstream. Columbia and Millennium assert that the historic capacities referenced in Stand's argument were taken from a posting from one specific day more than five years before the Columbia Lease became effective. As noted by Columbia and Millennium, the proposed Exhibit G reflects the total segment capacities Columbia retained on the segments of Line A-5 to provide service to its historic Line A-5 customers, and all shippers had full notice of these capacities when the lease was filed with, and approved by, the Commission. Based on these representations, we find that the proposal regarding segment limitations does not restrict Columbia's ability to use its leased capacity, while ensuring that Columbia only utilizes the capacity to which it is entitled and for which it pays.

21. NYSEG contends that, while the proposal allows Columbia to shift firm delivery rights to new delivery points on Millennium's system, it does not appear to allow Columbia to provide service at any new receipt points within the leased segments. NYSEG contends that the provisions regarding new delivery points should be applied to new receipt points as well, citing the Commission's policy on flexible receipt and delivery points. NYSEG further asserts that Columbia was permitted to abandon Line A-5 to Millennium with the understanding that the A-5 shippers would not suffer any diminution of service or other adverse effect. NYSEG contends that, if Columbia had not abandoned Line A-5, any new receipt points would be available to Columbia's firm shippers. Accordingly, NYSEG contends that Columbia should be permitted to make available to its shippers any new receipt points within the leased segments, if such use would not adversely affect Millennium's operations.

22. In response to NYSEG's arguments, Columbia and Millennium contend that if the Millennium system had not been constructed, there would be no new receipt points. Columbia and Millennium assert that Columbia's capacity entitlements and receipt and delivery point rights are set forth in the Columbia Lease, which was filed with, and approved, by the Commission. While Columbia and Millennium claim that negotiations

have resulted in the proposed amendment granting Columbia conditional authority to shift delivery points, no such agreement has been reached with respect to receipt points. We find that Millennium is under no obligation to modify the Columbia Lease to make new receipt points on its system available to Columbia or Columbia's shippers.

23. Under Section 1.6, which Columbia and Millennium propose to add to the Millennium Lease, the first gas through each meter will be treated as gas received or delivered by Millennium, up to the volumes confirmed by Millennium on behalf of its shippers; remaining gas will be treated as received or delivered by Columbia. We find that the proposed revisions will not adversely affect any shippers.

24. At a hearing held on December 16, 2010, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits thereto, submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission orders:

(A) Columbia's and Millennium's Leases, as authorized in the *Millennium* Orders, are amended, as described more fully in the application.

(B) In all other respects, the *Millennium* Orders shall remain in full force and effect.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.