

152 FERC ¶ 61,202
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Norman C. Bay, Chairman;
Philip D. Moeller, Cheryl A. LaFleur,
Tony Clark, and Colette D. Honorable.

Columbia Gas Transmission, LLC
Mountaineer Gas Company

Docket Nos. CP15-133-000
CP15-146-000

ORDER AUTHORIZING ABANDONMENT AND DETERMINING
JURISDICTIONAL STATUS OF FACILITIES

(Issued September 17, 2015)

1. On March 27, 2015, Columbia Gas Transmission, LLC (Columbia) filed an application pursuant to section 7(b) of the Natural Gas Act (NGA)¹ seeking authority to abandon by sale to Mountaineer Gas Company (Mountaineer) approximately 15.4 miles of its Line SM-108 and associated appurtenances (Line SM-108 Facilities) located in Cabell and Putnam Counties, West Virginia; to abandon in place approximately 0.75 miles of Line SM-108 between Blue Sulphur Delivery Point (DP) and Indian Meadows DP; and to abandon all transportation services provided by Line SM-108 through its measurement facilities to mainline consumer taps. Concurrently, Mountaineer filed a petition for a declaratory order determining that, upon transfer to Mountaineer, the Line SM-108 Facilities will be local distribution facilities, exempt from the Commission's jurisdiction under NGA section 1(b).²

2. For the reasons discussed below, the Commission finds that Columbia's proposed abandonment is permitted by the public convenience or necessity. In addition, the Commission finds that, upon acquisition by Mountaineer, the facilities will provide local distribution service exempt from the Commission's jurisdiction under section 1(b) of the NGA.

¹ 15 U.S.C. § 717f(b) (2012).

² 15 U.S.C. § 717(b) (2012).

I. Background and Proposals

3. Columbia is a natural gas company as defined by section 2(6) of the NGA and is subject to the Commission's jurisdiction.³ Columbia operates transmission and storage facilities in the States of Delaware, Kentucky, Maryland, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Tennessee, Virginia, and West Virginia.

4. Mountaineer, a local distribution company regulated by the Public Service Commission of West Virginia (PSCWV), transports and distributes natural gas at retail to approximately 220,000 customers in West Virginia, and owns approximately 6,000 miles of pipeline.

5. Line SM-108 consists of approximately 16.15 miles of 2- to 12-inch-diameter pipeline extending from the City of Hurricane in Putnam County, West Virginia, to the City of Huntington in Cabell County, West Virginia, and has a maximum allowable operating pressure (MAOP) of 190 pounds per square inch gauge (psig). The Line SM-108 Facilities include 22 measuring stations, 21 mainline consumer taps, and other associated leases, rights-of-way and appurtenant facilities. Mountaineer is Columbia's only existing firm customer on Line SM-108.

6. Columbia acquired Line SM-108 in 1970, as a result of an internal corporate reorganization which consolidated all the interstate transmission facilities of several affiliated companies under the management of Columbia Gas Transmission Corporation (predecessor to Columbia).⁴ One of the stated purposes of this reorganization was to more clearly separate facilities to be used in Commission-jurisdictional interstate transmission from those primarily used for non-jurisdictional local distribution.⁵ Columbia states that as its pipeline system and markets have evolved, the shortcomings of its original distinction between transmission and distribution facilities became apparent. Columbia asserts that it now requests to abandon the Line SM-108 Facilities in order to better define jurisdictional demarcation points for distinguishing transmission from distribution facilities and also to avoid approximately \$41 million in replacement costs.⁶

³ 15 U.S.C. § 717a(6) (2012).

⁴ *Columbia Gas Transmission Corp.*, 45 FPC 398 (1971).

⁵ Columbia Application at 4.

⁶ *Id.* at 5, 10.

7. Specifically, Columbia proposes to abandon by sale approximately 15.4 miles of Line SM-108 and appurtenant facilities to Mountaineer. Columbia also seeks authorization to abandon in place approximately 0.75 miles of Line SM-108, between the current Indian Meadows DP and the Blue Sulphur DP.⁷ Following the sale of the Line SM-108 Facilities, using its Part 157 blanket authority, Columbia will modify its existing Mount Union DP to act as a single point of delivery to the Line SM-108 pipeline between the Merritts Creek DP and the Indian Meadows DP. Columbia will also modify its existing Hurricane DP to act as a single point of delivery to the Line SM-108 pipeline between the Blue Sulfur DP and the Hurricane DP. As a result of these modifications, gas shipped on Columbia to Mountaineer will change hands at two custody transfer points, in place of the 22 measurement facilities currently in use. This, Columbia states, will aid in “removing Columbia as the intermediary transporter directly connected to the consumer” and more clearly delineate the boundary between Columbia’s interstate transmission and Mountaineer’s local distribution.⁸

8. Columbia submitted its proposed accounting treatment for the abandonment by sale to Mountaineer in Exhibit Y to its application. For purposes of the proposed sale, the facilities will be sold for \$1.00 cash. In addition, Columbia will provide contribution in aid of construction of up to \$2.5 million to reimburse Mountaineer for system upgrades. Columbia states that it will record the sales transaction as a normal retirement of a non-operating unit.⁹

9. Upon transfer, Mountaineer will incorporate the Line SM-108 Facilities into its local distribution system. Mountaineer will construct approximately one mile of pipeline to circumvent the section of Line SM-108 that Columbia proposes to abandon in place. Mountaineer will also install a new delivery meter and other equipment at the new point of interconnection where Columbia will deliver gas to Mountaineer.¹⁰

⁷ Columbia is also required, under a court-approved consent order, to abandon in place an approximately 650-foot long section of the SM-108 pipeline located in Cabell County, West Virginia by October 1, 2015. *See Columbia Gas Transmission, LLC v. WV Storage Systems, Inc., et al.*, Case No. 3: 12-cv-1535, ECF 146 (S.D. W. Va. 2013). This pipeline section is located within the 0.75 mile section to be abandoned in place, and is not part of the purchase and sale agreement between Columbia and Mountaineer. Mountaineer Petition at 3.

⁸ Columbia Application at 5-6.

⁹ Columbia Application at 5.

¹⁰ Mountaineer Petition at 4-5.

10. Mountaineer states that upon incorporation into its system, the sole function of the Line SM-108 Facilities will be the transportation and distribution of natural gas at retail entirely within the State of West Virginia.¹¹ Both Columbia and Mountaineer state that the abandonment will not impede traditional gas flow or result in any disruption to service.

II. Notices and Interventions

11. Notice of Columbia's application was published in the *Federal Register* on April 15, 2015.¹² The parties listed in Appendix A filed timely, unopposed motions to intervene. Mountaineer filed a timely motion to intervene and comments in support of Columbia's application.

12. Notice of Mountaineer's petition was published in the *Federal Register* on April 13, 2015.¹³ Columbia filed a timely motion to intervene and comments in support of Mountaineer's petition.

13. The timely, unopposed motions to intervene in both dockets are granted by Rule 214 of the Commission's Rules of Practice and Procedure.¹⁴ No motions to intervene in opposition, adverse comments, or protests were filed.

14. Untimely, unopposed motions to intervene were filed by Exelon Corporation, Orange and Rockland Utilities, Inc. and Washington Gas in Docket No. CP15-133-000. We find that those filing untimely motions to intervene have demonstrated an interest in this proceeding, and that granting these motions at this stage of the proceeding will not cause undue delay, disruption or prejudice to other parties. We will therefore grant the untimely motions to intervene.¹⁵

¹¹ Mountaineer asserts that the only other customer currently served by Line SM-108 is EXCO Resources (PA), LLC (EXCO), a producer with an interruptible pooling service under an IPP Service Agreement. Mountaineer states that it will offer to provide service to EXCO under its state-approved tariff or some other mutually acceptable arrangement. Mountaineer Petition at 4, fn3.

¹² 80 Fed. Reg. 20,219 (Apr. 15, 2015).

¹³ 80 Fed. Reg. 19,658 (Apr. 13, 2015).

¹⁴ 18 C.F.R. § 385.214(c) (2015).

¹⁵ 18 C.F.R. § 385.214(d) (2015).

III. Discussion

A. Columbia's Abandonment

15. Since the facilities that Columbia proposes to abandon are used to transport natural gas in interstate commerce subject to the jurisdiction of the Commission, the abandonment proposal is subject to the requirements of section 7(b) of the NGA.¹⁶

16. Section 7(b) of the NGA allows an interstate pipeline to abandon jurisdictional facilities or service only if the abandonment is permitted by the “present or future public convenience or necessity.”¹⁷ In deciding whether a proposed abandonment is warranted, the Commission considers all relevant factors, but the criteria will vary as the circumstances of the abandonment proposal vary.

17. When a pipeline proposes to abandon facilities, the continuity and stability of existing services are the primary consideration in assessing whether the public convenience or necessity permit the abandonment.¹⁸ If the Commission finds that a pipeline's proposed abandonment for particular facilities will not jeopardize continuity of existing gas transportation services, it will defer to the pipeline's business judgment.¹⁹

18. Columbia states that the abandonment will not result in the disruption of service to any shipper. Although Columbia requests authorization to abandon the jurisdictional transportation services provided through the Line SM-108 Facilities, which currently deliver gas to numerous mainline and farm tap consumers, Columbia states that after the sale of the facilities, Mountaineer will provide service to these consumers directly.²⁰ Mountaineer has also stated that there will be no impacts on its local distribution service and that it will offer to provide service to the only other customer currently served by Line SM-108, EXCO, and an interruptible shipper. The abandonment will also allow Columbia to replace 22 measurement facilities with 2 custody transfer points, simplifying

¹⁶ 15 U.S.C. § 717f(b) (2012).

¹⁷ *Id.*

¹⁸ *See, e.g., El Paso Natural Gas Co., L.L.C.*, 148 FERC ¶ 61,226, at P 12 (2014).

¹⁹ *See, e.g., Trunkline Gas Co.*, 94 FERC ¶ 61,381, at 62,420 (2001).

²⁰ Columbia Application at 6. Columbia currently delivers gas from its system to the mainline tap consumers for Mountaineer's account, i.e., the consumers are presently customers of Mountaineer and will remain so following the sale of the facilities.

the delivery of gas to Mountaineer. Further, Columbia's ratepayers will benefit because the abandonment will eliminate costs associated with the continued ownership of Line SM-108.²¹ Last, no customer has objected to the abandonment.

19. In view of these considerations, we find that the public convenience or necessity permits Columbia's proposed abandonment of the Line SM-108 Facilities.

B. Mountaineer's Petition

20. On March 27, 2015, Mountaineer filed a petition for a declaratory order, requesting a determination that upon incorporation into Mountaineer's system, the Line SM-108 facilities will not be subject to Commission jurisdiction, nor will Mountaineer be subject to Commission jurisdiction by acquiring the facilities.

21. Under NGA section 1(b), the Commission's jurisdiction does not extend to local distribution facilities.²² The NGA does not define what constitutes the local distribution of gas. The Supreme Court has held, however, that the Commission has jurisdiction over high-pressure pipelines, up to the point where pressure is reduced and the gas enters local mains.²³ Additionally, the Commission has cited factors such as pipe width,²⁴ the physical characteristics of the local pipe system,²⁵ and the function of the system²⁶ in finding that facilities are engaged in local distribution and are exempt from Commission jurisdiction.

22. The facilities in question share the characteristics of facilities previously found to be local distribution. Line SM-108 will be incorporated into Mountaineer's local

²¹ Columbia Application at 10. Columbia further asserts that any impact on its recourse rates resulting from the proposed abandonment will be reflected in its next NGA section 4 general rate case. *Id* at 5.

²² 15 U.S.C. § 717(b) (2012).

²³ *FPC v. East Ohio Gas Co.*, 338 U.S. 464, 470 (1950).

²⁴ *Kinder Morgan Interstate Gas Transmission LLC*, 94 FERC ¶ 61,078, at 61,358 (2001).

²⁵ *Mojave Pipeline Co.*, 42 FERC ¶ 61,351, at 62,002 (1988); *aff'd sub nom. Public Utility Commission of California v. FERC*, 900 F.2d 269 (D.C. Cir. 1990).

²⁶ *Kinder Morgan Interstate Gas Transmission LLC*, 99 FERC ¶ 61,186, at 61,747-61,748 (citing *Cascade Natural Gas Corporation v. FERC*, 955 F.2d 1412, 1420-1421 (10th Cir. 1992)).

distribution system, and will be used by Mountaineer in performance of that function. Line SM-108 is twelve inches or less in diameter, and the pressure on Columbia's system is reduced from 935 psig to approximately 190 psig upon entering Line SM-108. Mountaineer states that after incorporation into its system, Line SM-108 will operate at a maximum operating pressure of 140 psig. Upon incorporation into Mountaineer's system, the facilities will be used to receive gas from interstate pipelines and sell it at retail to consumers in a local geographic area. With these factors in mind, we find that the facilities to be sold to Mountaineer will be exempt from our jurisdiction under section 1(b) of the NGA.²⁷

C. Environmental Analysis

23. Environmental review of this proposal under section 380.4 of the Commission's regulations confirms that this action qualifies as a categorical exclusion under section 380.4(a)(31).

D. Conclusion

24. At a hearing held on September 17, 2015, 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) Columbia's request to abandon facilities in Docket No. CP15-133-000, as described in this order and in the application and supplements, is granted.

(B) Columbia shall notify the Commission within 10 days of the date of the aforementioned abandonment. Columbia shall complete authorized abandonments within one year from the date of this order.

²⁷ Mountaineer and its facilities are also exempt from Commission jurisdiction under NGA section 1(c), known as the "Hinshaw" exemption. 15 U.S.C. § 717(c) (2012). Section 1(c) provides that a company whose facilities are located entirely in one state, receives all its gas at or within the boundaries of the state, has all of its gas supplies consumed within the state, and is regulated by a state commission, is exempt from the jurisdiction of the Commission. All of Mountaineer's operations are confined to the State of West Virginia, Mountaineer delivers gas at retail only in West Virginia, and is regulated by the PSCWV.

(C) Mountaineer's petition for a declaratory order designating the Line SM-108 Facilities exempt under section 1(b) of the NGA, as described in this order and in its petition in Docket No. CP15-146-000, is granted.

(D) The untimely motions to intervene are granted pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

Appendix A

Timely, Unopposed Interventions

- Atmos Energy Marketing, L.L.C.
- The Cities of Charlottesville and Richmond, Virginia
- Mountaineer Gas Company
- New Jersey Natural Gas Company
- National Fuel Gas Distribution Company
- National Grid Gas Delivery Companies
- NJR Energy Services Company
- New York State Electric & Gas Corporation
- PSEG Energy Resources & Trade, L.L.C.
- UGI Distribution Companies²⁸

²⁸ UGI Distribution Companies include: UGI Utilities, Inc., UGI Penn Natural Gas, Inc. and UGI Central Penn Gas, Inc.