

152 FERC ¶ 61,214
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 Gulf Transmission, LLC

Docket No. CP15-109-000

ORDER ISSUING CERTIFICATE

(Issued September 17, 2015)

1. On March 6, 2015, Columbia Gulf Transmission, LLC (Columbia Gulf) filed an application pursuant to section 7(c) of the Natural Gas Act (NGA)¹ and Part 157 of the Commission's regulations² for a certificate of public convenience and necessity to construct and operate approximately 34 miles of pipeline and compression facilities in Louisiana to provide up to 800,000 dekatherms per day (Dth/d) of firm transportation service (Cameron Access Project).

2. As discussed below, the Commission will grant the requested authorization, subject to the conditions herein.

I. Background

3. Columbia Gulf is a natural gas company, as defined by section 2(6) of the NGA,³ engaged in the transportation of natural gas in interstate commerce subject to the Commission's jurisdiction.⁴ Columbia Gulf's transmission system extends from Louisiana through Mississippi and Tennessee to northeastern Kentucky.

¹ 15 U.S.C. § 717f(c) (2012).

² 18 C.F.R. pt. 157 (2015).

³ 15 U.S.C. § 717a(6) (2012).

⁴ Columbia Gulf, a Delaware limited liability company, is a wholly-owned subsidiary of the Columbia Energy Group, which is a wholly-owned subsidiary of NiSource Inc.

4. Columbia Gulf's West Lateral Transmission System consists of three pipeline segments extending west from the Rayne Compressor Station in Acadia Parish, Louisiana, to termini in Calcasieu, Jefferson Davis, and Acadia Parishes, Louisiana (i.e., West Laterals 100, 200, and 300, respectively). Natural gas on Columbia Gulf's West Lateral Transmission System has traditionally flowed from west to east, toward the Rayne Compressor Station and Columbia Gulf's mainline, before flowing north to markets in the midwest and northeast.

II. Proposal

5. Columbia Gulf proposes to construct and operate: (1) approximately 6.8 miles of 30-inch-diameter natural gas pipeline loop, designated as the West Lateral (WL) 400 Loop in Jefferson Davis Parish; (2) approximately 27.3 miles of 36-inch-diameter pipeline, designated as WL 400, in Jefferson Davis, Cameron, and Calcasieu Parishes; and (3) an overpressure protection valve at existing Valve Station 1105 in Jefferson Davis Parish.⁵ Columbia Gulf also proposes to construct and operate a new 12,260 horsepower (hp) compressor station in Jefferson Davis Parish (Lake Arthur Compressor Station). The Lake Arthur Compressor Station will include two turbine-driven compressors, each producing a nominal 6,130 hp.⁶ The proposed facilities will create incremental capacity sufficient to provide up to 800,000 dth/day of additional firm transportation service. Columbia Gulf states that the estimated cost of the proposed facilities is approximately \$309.9 million.

6. Columbia Gulf states that the development of new natural gas markets along the Gulf Coast and elsewhere have created commercial opportunities that require it to now flow gas from east to west on certain pipelines on its West Lateral Transmission System. Columbia Gulf asserts that by changing the direction of flow on a portion of the West Lateral System, it will provide shippers with a new transportation option.

⁵ Columbia Gulf proposes to install a new meter station, designated as MS-4246, in Cameron Parish, pursuant to its blanket construction certificate issued in *Columbia Gulf Transmission Company*, 25 FERC ¶ 62,144 (1983). Columbia Gulf also proposes to install appurtenant facilities pursuant to section 2.55(a) of the Commission's regulations, which include a new tie-in to the existing WL 100 and 200 pipelines at milepost (MP) 6.8; two new mainline valves on WL 400 at MP 10.5 and 19.7; and piping modifications and tie-ins at valve settings 1104, 1105, and 1106.3.

⁶ Columbia Gulf reviewed the potential use of a waste heat recovery system at the proposed Lake Arthur Compressor Station and determined that the type, size, and load factor of the compressor units will not make the facility a viable location for waste heat recovery.

7. Columbia Gulf held a non-binding open season from December 26, 2012, to January 31, 2013, soliciting shipper interest in a project that would provide from 450,000 Dth/day to 1,200,000 Dth/day of incremental firm transportation service. As a result of the open season, Columbia Gulf entered into binding precedent agreements with two shippers for up to 700,000 Dth/day of firm transportation service.⁷ Columbia Gulf received no offers to turn back capacity under existing contracts.

8. Columbia Gulf proposes to establish an incremental recourse rate under Rate Schedule FTS-1 for firm transportation service utilizing project capacity. Columbia Gulf states the two shippers that have signed precedent agreements for project service have elected to receive service at negotiated rates. Columbia Gulf also requests a pre-determination supporting rolled-in rate treatment for company-used gas and lost and unaccounted-for gas quantities associated with the project in its next transportation retainage adjustment filing.

III. Notice and Interventions

9. Public notice of Columbia Gulf's application was published in the *Federal Register* on March 24, 2015, with interventions, comments, and protests due by April 7, 2015.⁸ The parties listed in Appendix A filed timely, unopposed motions to intervene. Timely, unopposed motions to intervene are granted by operation of Rule 214 of the Commission's regulations.⁹

10. Virginia Natural Gas, Inc. and Range Resources-Appalachia, LLC filed late motions to intervene. The parties filing the late motions have demonstrated an interest in this proceeding. We will grant the untimely motions to intervene, because they will not unduly delay, disrupt, or otherwise prejudice this proceeding or other parties.¹⁰

11. No protests to the application were filed. Indicated Shippers filed comments, objecting to Columbia Gulf's request for a pre-determination in favor of rolled-in rate

⁷ Columbia Gulf states that it is actively marketing the 100,000 Dth/day of unsold firm transportation service associated with the proposed facilities.

⁸ 80 Fed. Reg. 15,594 (2015).

⁹ 18 C.F.R. § 385.214(c) (2015).

¹⁰ 18 C.F.R. § 385.214(d) (2015).

treatment of company-used gas and lost and unaccounted-for gas quantities.¹¹ Indicated Shippers' concerns are addressed below.

IV. Discussion

12. Since the proposed facilities will be used to transport natural gas in interstate commerce subject to the Commission's jurisdiction, the construction and operation of the facilities are subject to the requirements of subsections (c) and (e) of section 7 of the NGA.¹²

A. Application of the Certificate Policy Statement

13. The Certificate Policy Statement provides guidance for evaluating proposals to certificate new construction.¹³ The Certificate Policy Statement establishes 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 explains 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 appropriately consider the enhancement of competitive transportation alternatives, the possibility of overbuilding, subsidization by existing customers, the applicant's responsibility for unsubscribed capacity, avoidance of unnecessary disruptions of the environment, and the unneeded exercise of eminent domain in evaluating new pipeline construction.

14. 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 existing customers. The next step is to determine whether the applicant has made efforts to eliminate or minimize any adverse effect 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

¹¹ Indicated Shippers include: ConocoPhillips Company, Cross Timbers Energy Services, Inc., Direct Energy Business Marketing, LLC, and Noble Energy, Inc.

¹² 15 U.S.C. §§ 717f(c), (e) (2012).

¹³ *Certification of New Interstate Natural Gas Pipeline Facilities*, 88 FERC ¶ 61,227 (1999), *clarified*, 90 FERC ¶ 61,128, *further clarified*, 92 FERC ¶ 61,094 (2000) (Certificate Policy Statement).

adverse effects on economic interests will the Commission proceed to complete the environmental analysis where other interests are considered.

15. As discussed above, the threshold requirement is that the applicant must be prepared to financially support the project without relying on subsidization from existing customers. Columbia Gulf proposes to charge an incremental rate for firm transportation service on WL 400 and the WL 400 Loop. The incremental recourse rate was designed to recover the costs to construct the proposed project, thus eliminating any risk of subsidization from its existing customers. Accordingly, the project will not be subsidized by existing customers, and the threshold requirement of no subsidization is met.

16. The Commission finds that the proposed project will not adversely affect service to Columbia Gulf's existing customers. In addition, there will be no adverse impact on other existing pipelines in the region or their captive customers. The project will provide a competitive option to the project shippers to transport their gas. In addition, no pipeline company or their captive customers have protested Columbia Gulf's proposals.

17. Columbia Gulf will construct the WL 400 pipeline in an area that contains other pipelines and oil and gas infrastructure; construct the WL 400 Loop adjacent to its existing rights-of-way; and install taps, regulating facilities, valves, launchers and receivers, and appurtenances on proposed and existing facilities. Over 60 percent of the linear portion of the project will be co-located within existing easements. Further, Columbia Gulf held a number of open-house meetings and other contacts with affected landowners during the pre-filing process in order to identify and address routing concerns. Thus, the Commission finds that Columbia Gulf has designed the project to minimize adverse effects on landowners and surrounding communities.

18. The Cameron Access Project will create additional incremental capacity, enabling project shippers to access new natural gas markets along the Gulf Coast and elsewhere. Based on the benefits the project will provide, the lack of adverse effects on existing customers, other pipelines and their captive customers, and landowners and surrounding communities, we find, consistent with the Certificate Policy Statement and section 7 of the NGA, that the public convenience and necessity requires approval of Columbia Gulf's proposal, subject to the conditions discussed below.

B. Rate Issues

1. Recourse Rates

19. Columbia Gulf's proposals will provide capacity sufficient to provide an additional 800,000 Dth/day of firm transportation service. For service utilizing the new capacity, Columbia Gulf proposes an initial incremental monthly firm recourse

reservation charge under Rate Schedule FTS-1 of \$5.265 per Dth.¹⁴ Columbia Gulf developed its recourse reservation charge by dividing the Year 1 incremental annual cost of service of \$50,543,652¹⁵ by an annual transportation quantity of 9,600,000 Dth. Columbia Gulf utilized its existing transmission depreciation/negative salvage rate of 1.54 percent¹⁶ and a pre-tax rate of return of 12.50 percent.¹⁷

20. Included in the total cost of service of \$50,543,652 is \$1,156,841 estimated for Operation and Maintenance expenses (O&M) for the new compression, measuring, and regulating facilities. In response to the Commission staff's April 28, 2015 data request, Columbia Gulf provided a breakdown of the O&M by FERC account number and between labor and non-labor costs. Columbia Gulf's response identified a total of \$605,600 in non-labor O&M for FERC account numbers 853, 857, 864, and 865. These costs are properly classified as variable costs and, consistent with Commission regulations requiring the use of straight-fixed variable (SFV) rate design,¹⁸ should be recovered through a usage charge, not through the reservation charge as proposed. Accordingly, we will direct Columbia Gulf to recalculate its project incremental base reservation charge to recover only fixed costs when it files actual tariff records.

21. Columbia Gulf's proposed incremental base reservation charge for the project is higher than the system recourse charges for firm transportation service contained in Columbia Gulf's tariff.¹⁹ Under the Certificate Policy Statement, there is a presumption

¹⁴ In response to the Commission's April 28, 2015 data request, Columbia Gulf submitted revised cost-of-service and rate calculations pursuant to Exhibit P. The first revision was submitted on May 8, 2015, and the second revision was submitted on May 15, 2015.

¹⁵ See Columbia Gulf May 15, 2015 Response, Exhibit P, Page 1, Line No. 6.

¹⁶ Columbia Gulf's current depreciation rate of 1.25 percent and negative salvage rate of 0.29 percent were established in *Columbia Gulf Transmission Co.*, 137 FERC ¶ 61,177 (2011).

¹⁷ Columbia Gulf's pre-tax rate of return of 12.50 percent was established in *Columbia Gulf Transmission Co.*, 83 FERC ¶ 61,094 (1998).

¹⁸ 18 C.F.R. § 284.7(e) (2015).

¹⁹ Effective October 1, 2013, Columbia Gulf's monthly system transportation reservation charge for Rate Schedule FTS-1 service is \$4.2917 per Dth. Columbia Gulf Transmission, LLC, FERC NGA Gas Tariff, Columbia Gulf Tariffs, [Currently Effective Rates, FTS-1 Rates, 11.0.0.](#)

that incremental rates should be charged for proposed expansion capacity if the incremental rate will exceed the maximum system-wide rate.²⁰ While we have not recalculated the incremental reservation charge to reflect the removal of the improperly included variable costs, it does not appear that the removal of those costs will result in the recalculated reservation charge being less than Columbia Gulf's system reservation charge. Thus, we will approve, subject to the revision discussed above, Columbia Gulf's proposed incremental base reservation charge as the initial recourse rate for firm service using the incremental capacity created by the project.

22. Columbia Gulf proposes to charge its currently effective Rate Schedule FTS-1 system commodity charge of \$0.0109 per Dth as the base commodity charge for the project capacity.²¹ As the incremental base commodity charge, even recalculated to reflect the reclassified variable costs, would appear to be less than the currently-effective system commodity charge, the Commission will approve Columbia Gulf's proposal to use its existing Rate Schedule FTS-1 base commodity charge as the recourse rate.

23. In addition, the Commission approves Columbia Gulf's proposal to assess its current interruptible charge under Rate Schedule ITS-1 for any interruptible service rendered on additional capacity made available as a result of the project.

24. To ensure that costs are properly allocated between Columbia Gulf's existing shippers and the incremental services proposed in this proceeding, the Commission directs Columbia Gulf to keep separate books and accounting of costs attributable to the project. The books should be maintained with applicable cross-references, as required by section 154.309 of the Commission's regulations.²² This information must be in sufficient detail so that the data can be identified in Statements G, I, and J in any future NGA section 4 or 5 rate case, and must be provided consistent with Order No. 710.²³ Such measures protect existing customers from cost overruns and from subsidization that might result from under-collection of the project's incremental cost of service, as well as assist the Commission and parties to the rate proceedings in determining the costs of the project.

²⁰ Certificate Policy Statement, 88 FERC ¶ 61,227, at 61,745.

²¹ Columbia Gulf Transmission, LLC, FERC NGA Gas Tariff, Columbia Gulf Tariffs, [Currently Effective Rates, FTS-1 Rates, 11.0.0](#).

²² 18 C.F.R. § 154.309 (2015).

²³ See *Revisions to Forms, Statements, and Reporting Requirements for Natural Gas Pipelines*, Order No. 710, FERC Stats. & Regs. ¶ 31,267 (2008).

2. Fuel Retainage

25. Columbia Gulf proposes to assess project shippers its maximum system-wide fuel retainage percentage attributable to the Onshore Zone and, as applicable, the Market Zone.²⁴ In addition, Columbia Gulf requests a pre-determination that rolled-in rate treatment of company-used gas and lost and unaccounted-for gas quantities associated with the project will be appropriate in its next Transportation Retainage Adjustment filing.

26. Columbia Gulf states that rolling in the additional billing determinants in calculating percentages associated with company-used gas and lost and unaccounted-for gas will reduce the overall retainage percentage for each customer in the Market and Onshore Zones. Columbia Gulf also claims that the retainage from the project shippers will offset the incremental increase in Columbia Gulf's compressor fuel and will result in a net benefit to all shippers in the Market and Onshore Zones by reducing the Transportation Retainage Adjustment.

27. Indicated Shippers filed comments regarding Columbia Gulf's proposed project. While Indicated Shippers do not oppose the proposals, they request that the Commission condition its approval of the proposals to prevent subsidization of any increased fuel required for the project. Specifically, Indicated Shippers request that Columbia Gulf (1) use the same methodology as in the application (imputing billing determinants at a 75 percent load factor based on 800,000 Dth/day design capacity in each of its future annual Transportation Retainage Adjustment filings while the project remains in service), and (2) demonstrate that Columbia Gulf's current customers will not subsidize the cost of fuel used by project shippers.

28. Columbia Gulf filed an answer contending that Indicated Shippers' proposal to establish a billing determinant floor in future Transportation Retainage Adjustment filings is contrary to the Commission's historical approach to fuel determinations for expansion projects. Columbia Gulf submitted additional statements and supporting

²⁴ Columbia Gulf's fuel retainage percentages include two components. The first component, known as the current retainage percentage, recovers the zone's projected company-used gas and lost and unaccounted-for gas quantities during the 12-month period commencing with the effective date of Columbia Gulf's Transportation Retainage Adjustment filing. The second component, known as the unrecovered retainage surcharge or true-up component, reflects the reconciliation of the rate zone's actual company-used gas and lost and unaccounted-for gas quantities during the prior calendar year with quantities retained by Columbia Gulf during the same period. Columbia Gulf maintains and calculates these fuel retainage percentages by zone - the Market Zone (mainline) and the Onshore Zone (onshore).

workpapers to verify its assertion that fuel retainage from the shippers will offset any incremental increase in Columbia Gulf's compressor fuel, resulting in a net benefit to all customers via a reduction to the system retainage factors. Specifically, Columbia Gulf contends that by rolling the billing determinants into the Market Zone, existing shippers will benefit by almost 1.3 MDths because the project shippers will be paying the rolled-in rate versus the actual company-used gas resulting from the project. Columbia Gulf also states that the additional billing determinants from the project shippers will benefit the existing Market Zone shippers by providing a broader base over which to allocate the lost and unaccounted-for quantities.

29. For the Onshore Zone, Columbia Gulf argues that if it had included the billing determinants in prior retainage calculations, the resulting impact would have been within the historical range of company-used gas.²⁵ Further, Columbia Gulf states that the increase in billing determinants would reduce the current lost and unaccounted-for rate for the Onshore Zone from 0.229 percent to 0.143 percent, resulting in a total retainage rate reduction for its Onshore Zone shippers.

30. Columbia Gulf's analysis in its May 15, 2015 Data Response has demonstrated that there will be overall fuel benefits for all system shippers attributable to the project. Thus, the Commission will approve Columbia Gulf's proposal to roll the project fuel into its system-wide retainage percentages and assess its generally applicable system-wide fuel retainage percentages.

31. With respect to Indicated Shippers' concerns, the Commission will not require Columbia Gulf to use an imputed load factor of 75 percent as a minimum floor for project throughput in future Transportation Retainage Adjustment filings. Columbia Gulf's analysis included with its May 15, 2015 Data Response necessarily reflects the use of multiple assumptions of future system operating conditions and parameters. In contrast, Columbia Gulf's Transportation Retainage Adjustment filings are intended to track and reconcile actual company-used gas and lost and unaccounted-for quantities along with actual throughput. As a result, Indicated Shippers' concerns are premature at this point. While the Commission is granting Columbia Gulf's proposal to roll-in the project fuel, Indicated Shippers will have the opportunity to challenge Columbia Gulf's recovery of the project fuel in future Transportation Retainage Adjustment filings, if Columbia Gulf's analysis and representations made in this proceeding prove to be erroneous.

²⁵ Columbia Gulf states that due to the volatility of the throughput and fuel rates of the Onshore Zone, the project impact is most appropriately viewed over a five-year period. *See* Columbia Gulf May 15, 2015 Data Response, Question 3.

3. Negotiated Rates

32. Both project shippers have elected to receive service at negotiated rates. Columbia Gulf states that it will file either its negotiated rate agreements or tariff records setting forth the essential terms of the agreements associated with the project, in accordance with the Alternative Rate Policy Statement²⁶ and the Commission's negotiated rate policies²⁷ at least 30 days, but not more than 60 days, before the proposed effective date for such rates.

4. Non-Conforming Provisions

33. As part of the open season process, Columbia Gulf and the shippers executed precedent agreements which contain certain incentives or benefits relating to the shippers' commitment to participate as Anchor Shippers. Columbia Gulf requests that the Commission find that the provision that deviates from the *pro forma* service agreement is not unduly discriminatory. The provision in question states:

The Shippers will have the right to extend the 20-year initial term of their respective Rate Schedule FTS-1 service agreements for two successive five-year terms, at negotiated rates, subject to the shippers providing notice at least six months prior to the end of the initial term.

34. Columbia Gulf states that the shippers have provided it with the contractual support to make the proposed construction possible. Absent the contractual commitments of the shippers, Columbia Gulf would not have proceeded with its proposals. Columbia Gulf states that providing the shippers with contractual extension rights to address their future capacity needs is reasonable and consistent with Commission precedent.

35. In addition, Columbia Gulf states that the precedent agreements provide for the execution of service agreements and negotiated rate letter agreements. Columbia Gulf states that there are certain differences between the service agreements it will enter into

²⁶ *Alternatives to Traditional Cost-of-Service Ratemaking for Natural Gas Pipelines; Regulation of Negotiated Transportation Services of Natural Gas Pipelines*, 74 FERC ¶ 61,076, *order granting clarification*, 74 FERC ¶ 61,194 (1996).

²⁷ *Natural Gas Pipelines Negotiated Rate Policies and Practices; Modification of Negotiated Rate Policy*, 104 FERC ¶ 61,134 (2003), *order on reh'g and clarification*, 114 FERC ¶ 61,042, *reh'g dismissed and clarification denied*, 114 FERC ¶ 61,304 (2006).

with the shippers and the *pro forma* service agreement set forth in its tariff.²⁸ Columbia Gulf requests that the Commission find that the provisions to be included in the service agreements are not unduly discriminatory. The differences between the *pro forma* service agreement and the proposed service agreements with the project shippers are as follows:

- (1) Whereas Clauses - Both proposed service agreements contain “whereas” clauses that describe the specific transaction between Columbia Gulf and each shipper that are not included in the *pro forma* service agreement;
- (2) Effective Date – Section 2 of the proposed service agreements contains language about their effective dates, which is tied to the date the proposed facilities go into service;
- (3) Contract Extension Rights – Section 3 of the proposed service agreements contains contract extension rights (discussed above);
- (4) Negotiated Rate Agreements – Section 4 of the proposed service agreements provides information on the negotiated rates applicable to each shipper and contains language that is different than the rates section of the *pro forma* service agreement;
- (5) Rate Protections – Columbia Gulf is providing the shippers with rate protections that are not included in the *pro forma* service agreement;
- (6) Force Majeure – Section 6 contains language that allows the shippers to delay the effective date of their service agreements, if one or more *force majeure* events result in outages that occur at the Cameron LNG, LLC liquefied natural gas terminal prior to the anticipated in-service date of the project;
- (7) Severability – Both proposed service agreements contain a severability provision that allows Columbia Gulf and the involved shipper to renegotiate an equitable adjustment to the provisions of the relevant service agreement that are held to be unenforceable or invalid by the Commission or any court of jurisdiction; and
- (8) In-Service Delays – Section 7 of the proposed service agreements contains language to account for possible in-service delays.

²⁸ In response to the Commission staff’s April 28, 2015 Request, Columbia Gulf filed the proposed service agreements to be executed by the shippers in redline/strikeout format identifying the non-conforming provisions.

36. The Commission finds that the incorporation of non-conforming provisions in the shippers' service agreements constitutes material deviations from Columbia Gulf's *pro forma* service agreement. However, in other proceedings, the Commission has found that non-conforming provisions may be necessary to reflect the unique circumstances involved with the construction of new infrastructure and to provide the needed security to ensure the viability of a project.²⁹ We find that the non-conforming provisions identified by Columbia Gulf are permissible because they do not present a risk of undue discrimination, do not adversely affect the operational conditions of providing service, and do not result in any customer receiving a different quality of service.³⁰

37. As discussed further below, when Columbia Gulf files its non-conforming service agreements, we will require Columbia Gulf to identify and disclose all non-conforming provisions or agreements affecting the substantive rights of the parties under the tariff or service agreement.³¹ This required disclosure includes any such transportation provision or agreement detailed in a precedent agreement that survives the execution of the service agreement.

38. At least 30 days, but not more than 60 days, before providing service to any project shipper under a non-conforming agreement, Columbia Gulf must file an executed copy of the non-conforming agreement disclosing and reflecting all non-conforming language as part of Columbia Gulf's tariff and a tariff record identifying these agreements as non-conforming agreements consistent with section 154.112 of the Commission's regulations.³² In addition, the Commission emphasizes that the above determination relates only to those items described by Columbia Gulf in its application and not to the entirety of the precedent agreement or the language contained in the precedent agreement.

²⁹ See, e.g., *Tennessee Gas Pipeline Co., L.L.C.*, 144 FERC ¶ 61,219 (2013); and *Midcontinent Express Pipeline LLC*, 124 FERC ¶ 61,089 (2008).

³⁰ See, e.g., *Gulf South Pipeline Co., LP*, 115 FERC ¶ 61,123 (2006) and *Gulf South Pipeline Co., LP*, 98 FERC ¶ 61,318, at P 4 (2002).

³¹ A Commission ruling on non-conforming provisions in a certificate proceeding does not waive any future review of such provisions when the executed copy of the non-conforming agreement(s) and a tariff record identifying the agreement(s) as non-conforming are filed with the Commission, consistent with section 154.112 of the Commission's regulations. See, e.g., *Tennessee Gas Pipeline Co., L.L.C., et al.*, 150 FERC ¶ 61,160, at P 44 & n.33 (2015).

³² 18 C.F.R. § 154.112 (2015).

C. Environmental Analysis

39. On July 17, 2014, in Docket No. PF14-16-000, Commission staff began its environmental review of the proposed project after granting Columbia Gulf's request to use the pre-filing process. As part of the pre-filing review, the Commission issued a *Notice of Intent (NOI) to Prepare an Environmental Assessment for the Planned Cameron Access Project and Request for Comments on Environmental Issues* on September 26, 2014. This notice was published in the Federal Register on October 2, 2014, and established a due date for scoping comments of October 27, 2014.³³ Because it appeared that not all entities on the environmental mailing list received a copy of the original NOI, a Supplemental NOI was issued on November 6, 2014, extending the comment period to December 8, 2014. The Supplemental NOI was published in the Federal Register on November 14, 2014,³⁴ and was sent to over 100 parties including federal, state, and local officials; agency representatives; conservation organizations; local libraries and newspapers; Native American tribes; property owners affected by the proposed facilities; and other interested stakeholders.

40. In response to the NOIs, the Commission received comments from the U.S. Fish and Wildlife Service, U.S. Department of Commerce, the National Oceanic and Atmospheric Administration, the Louisiana Department of Wildlife and Fisheries, and other stakeholders (who commented in support of the project). The primary issues raised by the commenters relate to the project's impacts on wetlands, fisheries, wildlife habitat, federal and state special status species, migratory birds, and local economies and services.

41. To satisfy the requirements of the National Environmental Policy Act, Commission staff prepared an environmental assessment (EA) for Columbia Gulf's 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, cumulative impacts, and alternatives. All substantive comments received in response to the NOI were addressed in the EA. The EA was placed into the public record on July 21, 2015. No comments on the EA were filed.

42. We have analyzed the information and analysis contained in the record, including the EA, concerning the project's potential environmental impacts. Based on our consideration of this information and the discussion above, we agree with the conclusions presented in the EA, and find that if constructed and operated in accordance

³³ 79 Fed. Reg. 59,485-86 (2014).

³⁴ 79 Fed. Reg. 68,231-33 (2014).

with Columbia Gulf's application and the conditions imposed herein, approving 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. We encourage 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.³⁵

44. 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 and exhibits thereto, and all comments submitted herein, and upon consideration of the record,

The Commission orders:

(A) A certificate of public convenience and necessity is issued to Columbia Gulf 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 authorization in Ordering Paragraph (A) is conditioned on Columbia Gulf's:

- (1) compliance with all applicable 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;
- (2) constructing and making available for service the facilities described herein within two years, in accordance with section 157.20(b) of the Commission's regulations;
- (3) executing firm contracts for the capacity levels and terms of service represented in the signed precedent agreements, prior to commencing construction; and

³⁵ See, e.g., *Schneidewind v. ANR Pipeline Co.*, 485 U.S. 293 (1988); *National Fuel Gas Supply Corp. v. Pub. Serv. Comm'n of State of N.Y.*, 894 F.2d 571 (2d Cir. 1990); and *Iroquois Gas Transmission Sys., L.P.*, 52 FERC ¶ 61,091 (1990), *order on reh'g*, 59 FERC ¶ 61,094 (1992).

(4) compliance with the environmental conditions in Appendix B to this order.

(C) Columbia Gulf's incremental recourse reservation charge for transportation service under Rate Schedule FTS-1-CAP is approved, subject to the conditions described above.

(D) Columbia Gulf's request to charge its system-wide Rate Schedule FTS-1 recourse commodity charge for services on the proposed facilities is approved.

(E) Columbia Gulf's request for use of its maximum system-wide fuel retainage percentage is approved.

(F) Columbia Gulf shall keep separate books and accounting of costs attributable to the proposed incremental services, as described above.

(G) Columbia Gulf shall file, not less than 30 days nor more than 60 days, prior to its proposed service date, actual tariff records consistent with its *pro forma* tariff records, except as directed herein, and in accordance with the NGA and Part 154 of the Commission's regulations.

(H) Columbia Gulf shall notify the Commission's environmental staff by telephone, email, and/or facsimile of any environmental noncompliance identified by other federal, state, or local agencies on the same day that such agency notifies Columbia Gulf. Columbia Gulf shall file written confirmation of such notification with the Secretary of the Commission within twenty-four hours.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

Appendix A

List of interveners:

- The City of Richmond, Virginia
- Calpine Energy Services, L.P.
- NJR Energy Services Company
- New Jersey Natural Gas Company
- Atmos Energy Corporation
- Atmos Energy Marketing, LLC
- Cameron LNG, LLC
- Exelon Corporation
- ConocoPhillips Company
- Direct Energy Business Marketing, LLC
- Noble Energy, Inc.
- Cross Timbers Energy Services, Inc.
- MMGS, Inc.
- GDF Suez S.A.
- Chevron U.S.A.
- Anadarko Energy Services Company
- Piedmont Natural Gas Company, Inc.

Appendix B

As recommended in the Environmental Assessment (EA), this authorization includes the following conditions:

1. Columbia Gulf 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 Environmental Assessment (EA), unless modified by the Order. Columbia Gulf 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 the Office of Energy Projects (OEP) **before using that modification.**
2. The Director of OEP has delegated 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 impacts resulting from project construction and operation.
3. **Prior to any construction,** Columbia Gulf shall file an affirmative statement with the Secretary, certified by a senior company official, that all company personnel, Environmental Inspectors (EIs), and contractor personnel will be informed of the EI's authority and have been or will be trained on the implementation of the environmental mitigation measures appropriate to their jobs **before** becoming involved with construction and restoration activities.
4. 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 Gulf 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 all facilities 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 Gulf's exercise of eminent domain authority granted under Natural Gas Act Section 7(h) in any condemnation proceedings related to the Order must be consistent with these authorized facilities and locations. Columbia Gulf's right of eminent domain granted under the Natural Gas Act Section 7(h) does not authorize it to increase the size of its natural gas pipelines or aboveground facilities to accommodate future needs or to acquire a right-of-way for a pipeline to transport a commodity other than natural gas.

5. Columbia Gulf shall file with the Secretary detailed alignment maps/sheets and aerial photographs at a scale not smaller than 1:6,000 identifying all route alignments 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, 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 OEP **before construction in or near that area.**

This requirement does not apply to extra workspace allowed by the FERC *Upland Erosion Control, Revegetation, and Maintenance 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 resources 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 the certificate and before construction begins**, Columbia Gulf shall file an Implementation Plan with the Secretary for review and written approval by the Director of OEP. Columbia Gulf must file revisions to the plan as schedule change. The plan shall identify:
- a. how Columbia Gulf will 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 Gulf will 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, and how the company will ensure that sufficient personnel are available to implement the environmental mitigation;
 - d. company personnel, including EIs and contractors, who will receive copies of the appropriate material;
 - e. the location and dates of the environmental compliance training and instructions Columbia Gulf will 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 session(s);
 - f. the company personnel and specific portion of Columbia Gulf's organization having responsibility for compliance;
 - g. the procedures (including use of contract penalties) Columbia Gulf will follow if noncompliance occurs; and
 - h. for each discrete facility, a Gantt or PERT chart (or similar project scheduling diagram), and dates for:
 - 1) the completion of all required surveys and reports;
 - 2) the environmental compliance training of onsite personnel;
 - 3) the start of construction; and
 - 4) the start and completion of restoration.

7. Columbia Gulf shall employ **at least** one EI per construction spread. The EI shall be:
 - a. responsible for monitoring and ensuring compliance with all mitigation measures required by the Order and other grants, permits, certificates, or other authorizing documents;
 - b. responsible for evaluating the construction contractor's implementation of the environmental mitigation measures required in the contract (see condition 6 above) and any other authorizing document;
 - c. empowered to order correction of acts that violate the environmental conditions of the Order, and any other authorizing document;
 - d. a full-time position, separate from all other activity inspectors;
 - e. responsible for documenting compliance with the environmental conditions of the Order, as well as any environmental conditions/permit requirements imposed by other federal, state, or local agencies; and
 - f. responsible for maintaining status reports.
8. Beginning with the filing of its Implementation Plan, Columbia Gulf shall file updated status reports with the Secretary on a **bi-weekly** basis until all construction and restoration activities are complete. On request, these status reports will also be provided to other federal and state agencies with permitting responsibilities. Status reports shall include:
 - a. an update on Columbia Gulf'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 Gulf from other federal, state, or local permitting agencies concerning instances of noncompliance, and Columbia Gulf's response.
9. **Prior to receiving written authorization from the Director of OEP to commence construction of any project facilities**, Columbia Gulf shall file with the Secretary documentation that it has received all applicable authorizations required under federal law (or evidence of waiver thereof).
10. Columbia Gulf must receive written authorization from the Director of OEP **before placing the project into service**. Such authorization will 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.
11. **Within 30 days of placing the authorized facilities in service**, Columbia Gulf 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 will be consistent with all applicable conditions; or
 - b. identifying which of the certificate conditions Columbia Gulf has complied with or will 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.
12. Columbia Gulf shall conduct, with the well owner's permission, pre- and post-construction water quantity and quality testing for all active private wells within 150 feet of pipeline construction activities. **Within 30 days of placing the facilities in service**, Columbia Gulf shall file a report with the Secretary discussing any complaints received concerning well yield, water quality, or damage caused by construction and how each was resolved.
13. Columbia Gulf shall revise its Environmental Construction Standards (ECS) to remove the use of gravel on geotextile fabric within wetlands to support

construction equipment, and file the revised ECS with the Secretary for review and approval by the Director of OEP.

14. Columbia Gulf shall **not begin** construction activities at VS-1105 or the WL 400 pipeline **until** it conducts bird nesting colony surveys. Before the initiation of surveys, Columbia Gulf shall consult with the Louisiana Department of Wildlife and Fisheries (LDWF) for appropriate survey methods, timeframes, and locations. The survey reports and any LDWF comments on the survey and its conclusions shall be filed with the Secretary. Columbia Gulf must receive written approval from the Director of OEP before construction of these facilities or implementation of any mitigation measures may proceed.
15. Columbia Gulf shall **not begin** construction activities **until**:
 - a. Columbia Gulf completes Birds of Conservation Concern nesting surveys of Project work areas and files reports with the Secretary, along with the U.S. Fish and Wildlife Service (FWS) and LDWF's comments and recommendations on the surveys; and
 - b. Commission staff reviews the survey reports and the Director of OEP notifies Columbia Gulf in writing that construction may proceed.
16. Columbia Gulf shall **not begin** construction activities **until**:
 - a. the staff receives comments from the FWS and National Oceanic and Atmospheric Administration (NOAA) Fisheries regarding the proposed action;
 - b. staff completes any necessary Section 7 Endangered Species Act consultation with the FWS and NOAA Fisheries; and
 - c. Columbia Gulf has received written notification from the Director of OEP that construction and/or use of mitigation may begin.

If facilities are not constructed within 1 year from the date of issuance of the Order, Columbia Gulf shall consult with the appropriate offices of the FWS and NOAA Fisheries to update the species list and to determine if additional surveys are required. The survey reports and any FWS and NOAA Fisheries comments on the survey and its conclusions shall be filed with the Secretary.

17. **Prior to construction**, Columbia Gulf shall file documentation of concurrence from the Louisiana Department of Natural Resources that the Project is consistent with the Louisiana Coastal Zone Management Program.

18. Columbia Gulf shall not **begin** construction of facilities and/or use additional temporary work space, the contractor yard, or access roads **until**:
- a. Columbia Gulf files with the Secretary supplemental survey reports for areas where access was not previously granted, any realignments or reroutes, additional extra work spaces, access roads, or other areas requiring survey, along with the Louisiana Division of Archeology's comments on the reports;
 - b. The Advisory Council on Historic Preservation is afforded an opportunity to comment if historic properties would be adversely affected; and
 - c. Commission staff reviews and the Director of the OEP approves all reports and plans and notifies Columbia Gulf in writing that construction may proceed.

All material filed with the Commission containing location, character, and ownership information about cultural resources must have the cover and any relevant pages therein clearly labeled in bold lettering: "**CONTAINS PRIVILEGED INFORMATION – DO NOT RELEASE.**"

19. Columbia Gulf shall file a noise survey for the Lake Arthur Compressor Station **no later than 60 days** after placing the station into service. If a full power load condition noise survey is not possible, Columbia Gulf shall file an interim survey at the maximum possible power load **within 60 days** of placing the station into service and file the full power load survey **within 6 months**. If the noise attributable to operation of all equipment at the station under interim or full power load conditions exceeds a day-night averaged sound level of 55 decibels on the A-weighted scale at any nearby noise-sensitive area, Columbia Gulf shall:
- a. file a report with the Secretary, for review and written approval by the Director of OEP, on what changes are needed;
 - b. install additional noise controls to meet that level **within one year** of the in-service date; and
 - c. confirm compliance with this requirement by filing a second full power load noise survey with the Secretary for review and written approval by the Director of OEP **no later than 60 days** after it installs the additional noise controls.