

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
Nora Mead Brownell, Joseph T. Kelliher,
and Suedeen G. Kelly.

Columbia Natural Resources, LLC

Docket No. CP04-101-000

ORDER ON PETITION FOR DECLARATORY ORDER

(Issued January 26, 2005)

1. On April 5, 2004, Columbia Natural Resources, LLC (CNR) filed a petition for a declaratory order regarding the operation of certain natural gas gathering facilities sold by Columbia Gas Transmission Corporation (Columbia Transmission) pursuant to a 1997 global settlement.¹ CNR requests that the Commission declare that CNR has all necessary Commission authorization to receive interstate gas from Columbia Transmission and to use the acquired gathering facilities to transport such gas to former customers of Columbia Transmission at certain delivery points on the acquired gathering facilities. In the alternative, CNR requests that the Commission issue a limited jurisdiction certificate under the Natural Gas Act (NGA) to provide such service.
2. The Commission will grant the requested limited jurisdiction certificate. This order serves the public interest because it assures continued natural gas service to certain captive communities and resolves issues relative to the legal authority under which CNR's future service to such communities will be provided.

¹ CNR states that it is an oil and natural gas exploration and production company focusing on developing oil and natural gas producing properties within the Appalachian Basin. On August 29, 2003, Columbia Natural Resources, Inc. (CNR, Inc.) was purchased from NiSource, Inc. (NiSource), by Triana Energy Holdings, LLC (Triana).

Background

3. In 1995-1996, Columbia Transmission filed several related applications: (A) a comprehensive global rate and certificate settlement resolving future system service issues on the Columbia Transmission system, including the terms under which Columbia Transmission would cease performing extensive gathering operations to support its merchant function, and (B) applications filed pursuant to NGA section 7(b) for approval to abandon by sale the gathering facilities no longer necessary.

4. The global settlement was approved by the Commission in *Columbia Gas Transmission Corp.*,² and the section 7(b) abandonment applications were approved in a series of separate orders. The Commission approved the sale of the gathering facilities described in CNR's instant petition in Docket No. CP97-127-000, one of 4 abandonment orders issued concurrently.³ The Docket No. CP97-127-000 gathering facilities comprised 18 separate groups and included more than 3,400 miles of pipeline, over 1,000 horsepower of compression, points of delivery including 139 town border stations and service to more than 4,000 mainline consumers at mainline taps, in addition to other miscellaneous facilities.

5. Columbia Transmission also filed, in Docket No. CP97-127-000, a request for a declaratory order stating that, upon abandonment, the facilities would be exempt from the Commission's jurisdiction as gathering facilities under the NGA. The Commission found that the 18 groups of facilities to be sold by Columbia Transmission, based on the then-current operation of the facilities, qualify as gathering facilities exempt from the Commission's jurisdiction under section 1(b) of the NGA.⁴

6. CNR requests that the Commission declare that its 1997 approvals, of both the global settlement and the Docket No. CP97-127-000 abandonment application, provided all necessary authorization under section 7 of the NGA enabling CNR to receive interstate gas from Columbia Transmission and to transport such gas to former customers of Columbia Transmission on the abandoned facilities. Such receipt and transport is

² 79 FERC ¶ 61,044 (1997).

³ 79 FERC ¶ 61,045 (1997). The facilities described in CNR's petition for declaratory order were purchased by CNR, Inc., as indicated in compliance reports filed by Columbia Transmission pursuant to Ordering Paragraph (E) in the Docket No. CP97-127-000 order. *See* 79 FERC at 61,211 (1997). The other abandonment orders are reported at 79 FERC ¶¶ 61,038, 61,040, and 61,041 (1997).

⁴ 79 FERC at 61, 210-211 (1997).

necessary, states CNR, due to inadequate volumes of local production being available to meet these customers' continuing requirements. CNR argues that the Commission's order approving the settlement constituted a grant of NGA authority to accomplish the continuing service obligations to Columbia Transmission's former customers, as imposed upon parties purchasing the abandoned facilities by that settlement.⁵

7. In the alternative, should the Commission find that its approval of the settlement did not provide such certificate authority, CNR seeks a limited jurisdiction section 7 NGA certificate. CNR cites the Commission's order granting such a certificate to Gatherco, Inc., permitting the receipt and transportation of natural gas for Columbia Transmission's former jurisdictional customers to delivery points on certain abandoned gathering facilities.⁶

8. On July 8, and October 14, 2004, Commission Staff issued data requests to CNR, concerning the nature of the facilities acquired from NiSource, the use of the facilities, the specific circumstances under which CNR would need a limited jurisdiction certificate, the rate proposed to be charged, demand, and deliveries anticipated. On August 2 and November 19, 2004, CNR submitted its data responses.

9. CNR confirms that the facilities recently acquired from NiSource were part of the specified gathering systems originally abandoned by auction sale to CNR, Inc. by Columbia Transmission.⁷ CNR states that its request for declaratory order is made only with respect to the facilities identified on Appendix A to its August 2 Data Response, including 20 lines located in five counties in West Virginia: Roane County, Jackson County, Kanawha County, Clay County, and Upshur County.

⁵ CNR's Petition at pages 3-5. CNR cites, *e.g.*, Article II (A) of Stipulation I ("The provisions of this Stipulation are a complete and final resolution of all matters covered in this Stipulation for the Settlement Period.").

⁶ Petition, at page 6, *citing Gatherco, Inc.* 90 FERC ¶ 61,211 (2000) (granting Gatherco a certificate of limited jurisdiction to receive and transport gas through the abandoned facilities to delivery points thereon for former customers of Columbia Transmission).

⁷ Data Response # 1, August 2, 2004. As noted above, the facilities involved in this proceeding were purchased and operated by CNR, Inc., until its purchase from NiSource, Inc., in August 2003 by Triana.

Notice and Interventions

10. Notice of Petitioner's filing was published in the *Federal Register*, 69 Fed. Reg. 24,141 (2004), with comments, protests, and interventions due on or before May 10, 2004. Timely motions to intervene were filed by Equitable Gathering, LLC (Equitable), Mountaineer Gas Company d/b/a Allegheny Power (Mountaineer), and Independent Oil & Gas Association (IOGA) of West Virginia.⁸

11. IOGA protests the petition. IOGA argues that the Commission should not provide CNR with a certificate to engage in interstate transportation of natural gas without first determining, on a case-by-case basis, whether such transportation is incidental to CNR's gathering service or is the true primary function. IOGA asserts that, in its acceptance of the global settlement, the Commission did not grant purchasers of the pipeline's gathering facilities requisite authority to transport natural gas in interstate commerce. IOGA asserts also that if CNR is transporting natural gas in interstate commerce, the Commission should require CNR to show cause why it should not be deemed a natural gas company and required to file for a certificate under section 7(c).

Discussion

12. Transportation by CNR of interstate volumes of natural gas received from Columbia Transmission is a jurisdictional service under NGA section 1(b). As noted above, the Commission's jurisdictional analysis of the Docket No. CP97-127-000 facilities concluded that, upon abandonment, they would qualify as exempt gathering facilities. The Commission's 1997 approvals of Columbia Transmission's global settlement and abandonment applications provided no certificate authority for any party purchasing gathering facilities to use such facilities to provide jurisdictional transportation service. Indeed, the Commission's 1997 approval of Columbia Transmission's Docket No. CP97-127-000 abandonment application was supported by Columbia Transmission's representation that future transportation services to be provided through the gathering facilities to be abandoned would be non-jurisdictional.⁹

⁸ Timely 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 (2004).

⁹ 79 FERC at 61,208 (1997) (under the settlement, "Columbia states that it will require the facility purchasers to provide replacement, non-jurisdictional, direct delivery service to the LDCs."); ("Columbia states that the mainline tap customers purchase their gas from LDCs that are subject to the regulation" of state public service commissions.).

13. Nonetheless, the record is clear that such jurisdictional service to Allegheny Power, the sole customer to be served, will remain necessary and will constitute a small part of CNR's total throughput, incidental to its primary function as a gatherer.¹⁰ CNR states that, from 1999 to August 2004, the Docket No. CP97-127-000 facilities were used to deliver interstate volumes of gas ranging from 39,900 Mcf to 76,300 Mcf on an annual basis, to Columbia Transmission's former customers. Such volumes constituted from 0.74 percent to 1.55 percent of the total annual throughput of the Docket No. CP97-127-000 facilities. Transportation of local gas production gathered through those facilities constituted the balance of the total annual throughput.¹¹ Interstate transportation of gas thus comprised a very limited portion of throughput moved by means of the Docket No. CP97-127-000 facilities.

14. The evidence also shows that, when measured against CNR's total system throughput, the movement of interstate gas constitutes a small portion of CNR's business. For the period from 1999 to 2003, interstate gas transported in the Docket No. CP97-127-000 facilities constituted from 0.07 percent to 0.14 percent of CNR's total system annual throughput. The Commission finds, in its discretion, that there is no need in this instance for further investigation or enforcement action regarding past usage of the Docket No. CP97-127-000 facilities. Triana's purchase of CNR occurred in August 2003, this petition was filed in April 2004, and CNR has been responsive to data requests. However, the Commission emphasizes that it takes seriously any company's violation of the NGA or failure to comply with the Commission's orders. The Commission will take appropriate enforcement action in any situation where it determines such action is warranted.¹²

15. With regard to future operations of the facilities, the Commission has issued limited jurisdiction certificates in analogous circumstances, where required by the public convenience and necessity, to assure the continuation of necessary natural gas service. For example, where local production, received into certain other gathering systems abandoned by Columbia Transmission, was shown inadequate to meet former customers' purchase needs, the owners of such facilities were allowed to receive and transport interstate gas to continue service to such customers at town border stations and/or

¹⁰ This finding, and the statistical information supporting the discussion which follows regarding throughput, is drawn from CNR's November 19, 2004 response to the Commission staff data request sent October 14, 2004.

¹¹ Total annual throughput of local production has ranged from 4,930,000 Mcf (in 1999) to 5,732,000 (2003). CNR states that projected 2005 throughput on the Docket No. CP97-127-000 facilities will total 5,185,182 Mcf.

¹² See *BP West Coast Products, LLC, et al.*, 103 FERC ¶ 61,323 (2003).

mainline taps on the facilities.¹³ The Commission noted that such use of certificate authority for the delivery of local production to an LDC does not alter the overall non-jurisdictional gathering function of the facilities.¹⁴

16. Consistent with the facts presented in *Gatherco*, if local production received into CNR's facilities is inadequate to meet the needs of Columbia Transmission's former customers now served by Allegheny Power, CNR will receive interstate gas from Columbia Transmission and will deliver that gas to Allegheny Power in a commingled gas stream. Nevertheless, because of the limited scope of jurisdictional activities proposed and because CNR's primary function is non-jurisdictional, the Commission will issue a certificate of limited jurisdiction to authorize CNR to perform these limited activities without the full panoply of NGA rate and service obligations. Under such a certificate, jurisdiction extends only to the specific activity authorized, and the gatherer remains non-jurisdictional with respect to its remaining non-jurisdictional operations.¹⁵ This order grants to CNR the requisite authority to transport and deliver gas on its system to Allegheny Power as described in the record. Accordingly, IOGA's request for an order to show cause is rendered moot by this order's analysis of the incidental nature of CNR's use of the Docket No. CP97-127-000 facilities for interstate service and the issuance of the limited jurisdiction certificate.

17. CNR states that it will charge Allegheny Power rates authorized by the service agreement.¹⁶ These rates are consistent with the rates reflected in Columbia Transmission's global settlement and we approve these rates as initial rates for service under the certificate of limited jurisdiction we grant in this order. Accordingly, CNR is directed to file its service agreement with Allegheny Power, as a special rate schedule under Section 154.112(a) of the Commission's regulations, within thirty days from the date of this order.

¹³ *Gatherco, Inc.*, *supra*; see also *Columbia Gas Transmission Corporation and Energy Corporation of America and Eastern American Energy Corporation*, 106 FERC ¶ 61,297 (2004).

¹⁴ *Gatherco, Inc.*, 90 FERC at 61,686 (2000), *citing El Paso Natural Gas Co.*, 72 FERC ¶ 61,220 (1995); *CNG Transmission Corp.*, 69 FERC ¶ 61,363 (1994).

¹⁵ See, e.g., *Western Gas Resources*, 85 FERC ¶ 61,087 (1998) (gatherer); *ONEOAK, Inc.*, 55 FERC ¶ 61,453 (1991) (intrastate pipeline).

¹⁶ Data Response #1, August 2, 2004 at # 4.

18. At a hearing held on January 19, 2005, the Commission on its own motion, received and made a part of the record all evidence, including the petition submitted in this proceeding, and upon consideration of the record,

The Commission orders:

(A) CNR is issued a certificate of limited jurisdiction under NGA section 7(c) to transport gas received from Columbia Transmission for delivery to Allegheny Power on CNR's facilities as discussed in this order, which authorization will not otherwise affect the non-jurisdictional status of any other operation in which CNR is currently engaged.

(B) CNR is directed to file its service agreement with Allegheny Power as a special rate schedule under Section 154.112(a) of the Commission's regulations, within thirty days of the date of this order.

(C) The issuance of the certificate of limited jurisdiction in Ordering Paragraph (A) is conditioned upon CNR's compliance with the acceptance provisions of 18 C.F.R. § 157.20 (a).

By the Commission.

(S E A L)

Linda Mitry.
Deputy Secretary.