

146 FERC ¶ 61,116
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Cheryl A. LaFleur, Acting Chairman;
Philip D. Moeller, John R. Norris,
and Tony Clark.

Columbia Gas Transmission, LLC

Docket No. CP13-8-001

ORDER DENYING REHEARING

(Issued February 20, 2014)

1. On November 21, 2013, the Commission issued an order granting Columbia Gas Transmission, LLC (Columbia) a certificate of public convenience and necessity under section 7(c) of the Natural Gas Act (NGA) authorizing it to construct and operate pipeline and appurtenant facilities in Baltimore and Harford Counties, Maryland (Line MB Expansion Project).¹ Gunpowder Riverkeeper and the Woodsbrook Residents² filed timely requests for rehearing, and the Woodsbrook Residents also request a stay. Columbia filed answers to the rehearing requests.³ As discussed below, this order denies the requests for rehearing and request for stay.

I. The November 21 Order

2. The November 21 Order authorized Columbia to construct and operate approximately 21.1 miles of 26-inch diameter pipeline from the current terminus of

¹ *Columbia Gas Transmission LLC*, 145 FERC ¶ 61,153 (2013) (November 21 Order).

² The pleading states that Frank and Susan Tedeschi, Owen and Zonda Landis, Michael Martino, James Quick, and William Cole are seeking rehearing in their individual capacities as well as part of the group.

³ Rule 213(a)(2) of the Commission's Rules of Practice and Procedure prohibits answers to rehearing requests. 18 C.F.R. § 385.213(a)(2) (2013). Because Columbia's answers have assisted in our decision-making process, however, we will waive Rule 213(a)(2) to admit its answers.

Columbia's existing Line MB located near Owings Mills in Baltimore County, Maryland to Columbia's existing Rutledge Compressor Station in Harford County, Maryland. The pipeline facilities will extend Columbia's Line MB to loop part of its Line MA.

3. The November 21 Order notes that the Line MB Expansion Project is identified by Columbia as part of a system-wide, approximately \$2 billion, five-year, modernization program, which is designed to improve Columbia's aging infrastructure and comprises many discrete projects, identified through a risk-based prioritization process, designed to increase pipeline safety and service reliability. Line MA, from Owings Mills to Rutledge, is one of the highest priorities because it serves Baltimore Gas & Electric Company's (BG&E) large metropolitan market and additional significant markets farther north and east. The Line MB Expansion Project will reduce the susceptibility of Columbia's customers that are served from Line MA to prolonged outages if service is required to be interrupted for repairs or maintenance because Columbia has only a single line in that corridor and no other pipelines in the area directly connected to BG&E have capacity available during high flow periods to adequately provide emergency replacement gas deliveries.

4. Commission staff issued a *Notice of Intent to Prepare an Environmental Assessment* (NOI), which was published in the *Federal Register*.⁴ In response to comments about its originally planned pipeline route, Columbia revised the route between MPs 16.5 and 21.1. On August 9, 2012, the Commission issued a *Supplemental Notice of Intent to Prepare an Environmental Assessment for the Planned Line MB Extension Project and Request for Comments on Environmental Issues* (Supplemental NOI) that addressed the revised route. To satisfy National Environmental Policy Act (NEPA) requirements, our staff prepared an environmental assessment (EA) with the cooperation of the Army Corps of Engineers. The EA's analysis 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, as well as all substantive comments received during the public scoping review. The EA concludes that the project's construction and operation will not constitute a major federal action significantly affecting the quality of the human environment. The EA was issued for a 35-day comment period and placed into the public record on April 19, 2013.

5. The November 21 Order authorized Columbia to construct and operate the proposed project, subject to 18 environmental conditions recommended by Commission staff, finding that the public convenience and necessity required approval of Columbia's

⁴ 77 Fed. Reg. 24,193 (April 23, 2012).

proposal, consistent with the criteria discussed in the Certificate Policy Statement.⁵ Specifically, the order held that Columbia's proposal was intended to help address system integrity issues and enhance service reliability to existing customers and therefore including the project costs in existing customers' rates does not constitute subsidization. The November 21 Order further held that the proposed project would result in no adverse economic effects on existing customers, or on existing pipelines and their captive customers, and that Columbia had taken steps to minimize any adverse impacts on the economic interests of landowners and surrounding communities, noting that Columbia would construct the proposed facilities primarily on existing rights-of-way and areas adjacent to existing rights-of-way.⁶ The November 21 Order also adopted the EA's findings and recommendations.

II. Requests for Rehearing

A. The Certificate Policy Statement

6. Under the Certificate Policy Statement, the Commission evaluates a proposed project by balancing the evidence of public benefits to be achieved against any potential adverse impacts. The threshold requirement is that the project must be able to proceed without subsidies from existing shippers. The November 21 Order found that Columbia satisfied the threshold requirement that its existing shippers will not subsidize the project because Columbia's proposed facilities are intended to help Columbia address system integrity issues and enhance the reliability of service to existing customers and is needed to reduce the likelihood of service outages in large metropolitan markets like greater Baltimore in instances where Line MA needs repairs or maintenance.

7. Gunpowder Riverkeeper contends that the Commission failed to adequately address the Environmental Protection Agency's (EPA) request for the Commission to elaborate on the project's stated purpose and need by identifying which communities' service the project will improve and how improving service reliability will maintain current levels of gas consumption in those communities.⁷ We disagree.

8. The November 12 Order notes that Columbia's December 13, 2012 data response states that the project's purpose is to: (1) increase Columbia's options for performing routine and unscheduled maintenance on this single-line portion of its system while

⁵ *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).

⁶ November 21 Order, 145 FERC ¶ 61,153 at PP 12-22.

⁷ Gunpowder Riverkeeper Rehearing Request at 13.

maintaining existing service to its customers and (2) create the operational means to continue to serve customers directly connected to Columbia's system and systems farther north in case of a catastrophic failure of the single pipeline now serving this region. Columbia indicates that the communities that would benefit from the enhancement are communities located in Virginia, Maryland, Delaware, Pennsylvania, New Jersey, and New York that are served by Old Dominion Electric Cooperative, Eastern Shore Gas Transmission, Lukens Steel, Delmarva Power & Light, South Jersey Natural Gas, UGI, Orange & Rockland, Public Service Electric & Gas, and Columbia of Pennsylvania, as well as BG&E.

9. As explained in the November 12 Order, Columbia states that, while it has scheduled service outages required for maintenance during periods of moderate weather when demands on its system for power generation and residential consumption are low to minimize impacts to end users, the potential exists and has occurred in the past on similarly configured sections of its system, for outages, planned or unplanned and upstream or downstream of a delivery point, to cut customers off from gas deliveries indefinitely. If a service outage is scheduled on the downstream side of a delivery point, and during that planned maintenance, an unexpected outage (due to third party damage, for example) occurs on the upstream side of the delivery point, service to customers through that delivery point would be cut off until Columbia could make the planned and unplanned repairs. However, a second line on this part of Columbia's system would enable uninterrupted service to Columbia's customers under such circumstances during the needed repairs.⁸

10. The Woodsbrook Residents complain that Columbia did not offer evidence of past outages or a log of customer complaints regarding interrupted service to support Columbia's need for the proposed project.⁹ The November 21 Order notes that Columbia's modernization program is aligned with the Department of Transportation's (DOT) initiative for pipeline safety that urges pipeline operators to reinvest in their infrastructure to ensure continued pipeline safety and reliability and that new Pipeline and Hazardous Materials Safety Administration (PHMSA) rules will require more frequent inspection and maintenance of pipelines, thereby increasing the likelihood of service outages on any given single-line pipeline segment. The order further notes that Exelon Corporation (of which BG&E is a subsidiary), Washington Gas Light Company, and the NiSource Distribution Companies – all existing shippers on Columbia's system who will allegedly benefit from, and be subject to bearing the costs associated with, the proposed facilities – have filed comments supporting Columbia's proposal, noting

⁸ November 21 Order, 145 FERC ¶ 61,153 at PP 19-20.

⁹ Woodsbrook Residents Rehearing Request at 14-15.

similar benefits. For those reasons, the November 12 Order correctly found that Columbia substantiated the need for the proposed project.¹⁰

11. The Woodsbrook Residents assert that a pipeline loop is customarily used to expand capacity, not improve reliability. The Woodsbrook Residents also note that the proposed Line MB is 50 percent larger and will be operated at a higher pressure than the existing line, and that both lines will be in service simultaneously. The Woodsbrook Residents contend that these features are more consistent with a capacity increase than a reliability upgrade.¹¹

12. The Woodsbrook Residents are correct that the proposed project will add additional capacity to Columbia's system. However, what is relevant to this proceeding is how that capacity will be used. As noted in the November 21 Order, Columbia's December 13, 2012 response to a staff data request states that the project's express purpose is specifically not to add capacity that will be sold as additional, incremental service, but to increase system reliability and operational flexibility. The November 21 Order further notes that Columbia explains that it will operate its system from the Loudoun Compressor Station, located upstream of Owings Mills, to Rutledge with a "System Flexibility" delivery of 19,800 dekatherms per day (Dth/d) at Rutledge and a "System Flexibility" receipt of the same quantity (adjusted for compressor fuel) at Loudoun. By reserving the 19,800 Dth/d for "System Flexibility," Columbia will make this capacity unavailable to its shippers for incremental service. Since the amount of firm capacity available for sale along this route will be the same before and after the project, the project will increase system reliability and flexibility, not increase (i.e., expand) the level of service being provided.¹²

13. The Woodsbrook Residents state that the Commission could have considered alternatives to the proposed project, such as an interconnection to the facilities of Transcontinental Pipe Line Company (Transco).¹³ As discussed in the November 21 Order, the EA notes that, although Transco operates interstate pipelines near the project, it has no available firm capacity to transport the natural gas Columbia currently transports.¹⁴

¹⁰ November 21 Order, 145 FERC ¶ 61,153 at P 21.

¹¹ Woodsbrook Residents Rehearing Request at 14-17.

¹² November 21 Order, 145 FERC ¶ 61,153 at PP 16-17.

¹³ Woodsbrook Residents Rehearing Request at 15-16.

¹⁴ November 21 Order, 145 FERC ¶ 61,153 at P 123.

14. The Woodsbrook Residents also complain that the Commission did not evaluate adverse property value impacts on landowners subject to eminent domain.¹⁵ The November 21 Order notes that Columbia will construct the project facilities primarily on existing rights-of-way and areas adjacent to existing rights-of-way, and that about 78 percent of the proposed Line MB expansion is parallel to existing rights-of-way. The November 21 Order further notes that Columbia has worked extensively with nearby landowners and has accommodated numerous variations and alternative routing proposals. While the potential exists that the company may have to exercise eminent domain to acquire some rights necessary for the project, the November 21 Order correctly finds that the project should not significantly affect landowners and the surrounding community and that Columbia has designed the project to minimize any adverse impacts on landowners and surrounding communities.¹⁶

B. Environmental Issues

Need for an Environmental Impact Statement

15. Gunpowder Riverkeeper reiterates its arguments that the EA does not show that measures will be in place to sufficiently protect the environment or that using part of an existing right-of-way somehow exempts the project from thorough environmental review as a major pipeline requiring an Environmental Impact Statement (EIS) under section 380.6(a)(3) of the Commission's regulations. Gunpowder Riverkeeper also argues, again, that the project is controversial because the general public, stakeholders, and intervenors raised substantive environmental concerns during the scoping and application processes.¹⁷

16. As discussed in the November 21 Order, the Council on Environmental Quality (CEQ) regulations state that whether a project will have significant impacts on the environment depends on context and intensity. This means that the "significance of an action must be analyzed in several contexts," including "the affected region, the affected interest, and the locality." With respect to intensity, the CEQ regulations set forth 10 factors agencies should consider, including, as relevant here: the geographic area's unique characteristics; the degree to which the effects are highly controversial or highly uncertain or unknown; the degree to which the action might establish a precedent for future actions; whether the action is related to other actions with insignificant but cumulatively significant impacts; and the degree to which the action might adversely affect threatened and endangered species.

¹⁵ Woodsbrook Residents Rehearing Request at 17.

¹⁶ November 21 Order, 145 FERC ¶ 61,153 at P 14.

¹⁷ Gunpowder Riverkeeper Rehearing Request at 25-26.

17. Regarding the project's context and intensity, the order noted that the project is only 21 miles long, is largely within a right-of-way where there is an existing pipeline, avoids sensitive areas, and does not adversely affect any endangered species' critical habitat. No unique or sensitive vegetation communities were identified in the project area, and no part of the project will cross or come near designated Wilderness Areas, Wildlife Management Areas, National Wildlife Refuges, or other wildlife preservation areas; National Forests, Federal Parks, or other notable landmarks; National or State Scenic Byways; or lands with hazardous conditions (e.g., landfills or hazardous waste sites). The project will cross about 592 feet of Gunpowder Falls State Park near MP 11.6; however, the EA states that Columbia will adequately minimize impacts on the park by collocating the proposed pipeline with existing Line MA, temporarily affecting about 1.0 acre of park property and adding about 0.34 acres of permanent easement on park property.¹⁸ The construction right-of-way at this location overlaps Columbia's existing permanent right-of-way by about 25 feet. Overall, the Line MB Expansion is collocated with the existing Line MA for 16.5 miles, or 78 percent of the project's length. Moreover, as the order notes, the EA clearly and sufficiently describes the affected environment and protective measures for erosion and sedimentation control, restoration, and mitigation that Columbia must implement pursuant to the Environmental Conditions listed in Appendix B to the order.

18. As further discussed in the November 21 Order, for an action to be considered "highly controversial" under NEPA, there must be a dispute over the size, nature or effect of the action, rather than the existence of opposition to it. A controversy does not exist merely because individuals or groups vigorously oppose, or have raised questions about, a project; nor does a controversy exist simply because there are conflicting views among experts.¹⁹ The Line MB Expansion Project does not qualify as "highly controversial" for the purposes of determining significance. Commenters' disagreement with this determination does not amount to a controversy requiring an EIS.

19. The November 21 Order explains that, consistent with CEQ regulations, the Commission's policy is to prepare an EA rather than an EIS if our initial review indicates that a project is not likely to be a major federal action significantly affecting the quality of the human environment. If, during the environmental analysis, it appears that this initial determination is incorrect, an EIS will be prepared. As discussed in the November 21 Order, the EA thoroughly analyzed Columbia's project, identified no significant direct or indirect impacts, and concluded that the Commission's approval of the project will not constitute a major federal action significantly affecting the quality of

¹⁸ EA at 65.

¹⁹ *Fund for Animals v. Williams*, 246 F.Supp.2d 27, 45 (D.D.C. 2003).

the human environment. Accordingly, the November 21 Order correctly rejected Gunpowder Riverkeeper's assertion that an EIS is required.²⁰

Public Participation

20. Gunpowder Riverkeeper again argues that many of the permits, approvals, consultations, and variances Columbia needs, which are listed in the EA's Table A.4-1, are still pending and that the public is therefore excluded from meaningful participation because it cannot comment on issues and impacts that are unknown.²¹ As discussed in the November 21 Order, however, the EA provides adequate information regarding federal permits, including each permit's status. State and federal consultation on threatened and endangered species is concluded. Other plans, such as the stormwater management plan variances, county grading plans, and review of the county-required erosion and sediment control plans, are also available for public comment.

21. The November 21 Order notes that, consistent with our long-standing practice, an EA may be issued before all state and federal authorizations become final. The Commission's approach is a practical response to the reality that, in spite of the best efforts of those involved, an applicant might not be able to obtain all necessary approvals before the Commission issues an EA or certificate without unduly delaying the project. As noted in the EA, and included as Environmental Condition 8, project construction cannot commence until Columbia receives all other necessary federal authorizations, including those delegated to the states. As further noted in the November 21 Order, the Commission takes this approach to make timely decisions in a way that will inform applicants, sponsors, other regulatory agencies, and the public. Placing the Commission's administrative process on hold indefinitely until states with delegated federal authority act could delay in-service dates of natural gas projects to the detriment of consumers and the general public.²²

Cumulative Impacts

22. Gunpowder Riverkeeper contends that development of Marcellus or other shale gas should have been included in the EA.²³ As a general matter, as part of its NEPA analysis, the Commission considers the potential environmental impacts of natural gas production and development occurring in the project area as part of the cumulative

²⁰ November 21 Order, 145 FERC ¶ 61,153 at PP 38-41.

²¹ Gunpowder Riverkeeper Rehearing Request at 14-16 and 24-25.

²² November 21 Order, 145 FERC ¶ 61,153 at PP 44-46.

²³ Gunpowder Riverkeeper Rehearing Request at 17.

impacts analysis to the extent that there is meaningful information available to assist the Commission's decision-making process in a particular proceeding.²⁴ With respect to production and development activities that are not within the project area, the Commission will determine whether impacts of such activities should be included in the EA or EIS based on a fact-specific analysis. CEQ regulations require agencies to consider environmental effects of proposed actions, including direct and indirect effects, if these effects are "reasonably foreseeable."²⁵ Where appropriate, the Commission will evaluate the specific facts to determine whether natural gas production and development is a "reasonably foreseeable" direct or indirect result of construction and operation of the project under consideration, or whether such activities are too speculative or attenuated to warrant their inclusion in the EA or EIS.²⁶

23. As noted in the November 21 Order in this proceeding, however, Columbia's December 13, 2012 response to a staff data request states that Columbia does not anticipate its facilities' utilization rate to increase significantly as a result of the project, explaining that the project's express purpose is specifically not to add capacity which will be used to provide incremental levels of service, but rather to increase system reliability and operational flexibility. The November 21 Order further notes that Columbia explains that it will operate its system from the Loudoun Compressor Station, located upstream of Owings Mills, to Rutledge with a "System Flexibility" delivery of 19,800 Dth/d at Rutledge and a "System Flexibility" receipt of the same quantity (adjusted for compressor fuel) at Loudoun. By reserving the 19,800 Dth/d for "System Flexibility," Columbia will make this capacity unavailable to its shippers for incremental service. Since the amount of firm capacity available for sale along this route will be the same before and after the project,²⁷ the project will neither stimulate nor transport any additional natural gas production from the Marcellus shale formation or any other production area.

24. Gunpowder Riverkeeper asserts that the EA did not consider cumulative impacts caused by reasonably foreseeable future actions.²⁸ This argument is without merit. The EA identifies and includes in its cumulative impacts analysis natural gas pipeline, road,

²⁴ See, e.g., *Central New York Oil & Gas Company, LLC*, 137 FERC ¶ 61,121 at PP 96-100 (2012), *order on reh'g*, 138 FERC ¶ 61,104 at P 48 (2012); see also *Sabine Pass Liquefaction, LLC*, 140 FERC ¶ 61,076, P 11 (2012).

²⁵ 40 C.F.R. § 1508.8(b) (2013).

²⁶ *Central New York Oil & Gas Company, LLC*, 137 FERC ¶ 61,121 at PP 88-94.

²⁷ November 21 Order, 145 FERC ¶ 61,153 at PP 16-17.

²⁸ Gunpowder Riverkeeper Rehearing Request at 19.

bridge, water, sewer, and other kinds of development projects that could affect resources potentially affected by the project proposed in this proceeding and whose exact location, scale and timing are known and therefore reasonably foreseeable.²⁹

25. Gunpowder Riverkeeper again argues that the EA fails to describe or analyze all relevant details and potential cumulative impacts resulting from the total acreage of land, including farmland, disturbed during construction, particularly impacts of access roads on waterways, like runoff, erosion, and sedimentation.³⁰ As discussed in the November 21 Order, while the overall project impacts the EA describes³¹ include 305.4 acres of land, about 235 acres of the disturbance would occur on developed lands (commercial, residential, roads), open land/existing right-of-way, or agricultural land. Since about 27.3 acres of the affected land is agricultural, and will continue to be agricultural after construction, there will be no cumulative impact on agriculture. No prime farmland soils will be lost by project construction or operation because much of the prime farmland soils are within developed residential properties or within the existing Line MA right-of-way. Any cumulative impact on land uses would be consistent with the existing/ongoing uses or would not be considered significant.³²

26. As further noted in the November 21 Order, the EA's Appendix 4 includes information about waterbodies that would be affected by staging areas and access roads. Except for one new permanent access road near the Rutledge Compressor Station, all other access roads that would be used during construction are existing roads that will require little or no modification.³³ Columbia will use erosion and sediment controls to prevent sedimentation to all wetlands and waterbodies along or near the project in accordance with its Environmental Construction Standards (ECS) and county-specific Erosion and Sediment Control Plans (ESCPs). As the EA states,³⁴ we have reviewed Columbia's ECS and found it to be consistent with the Commission's Upland Erosion Control, Revegetation, and Maintenance Plan (Plan) and Wetland and Waterbody Construction and Mitigation Procedures (Procedures).³⁵

²⁹ EA at 92-99.

³⁰ Gunpowder Riverkeeper Rehearing Request at 17-19.

³¹ EA at 18-19.

³² November 21 Order, 145 FERC ¶ 61,153 at P 51.

³³ EA at 42.

³⁴ EA at 9.

³⁵ November 21 Order, 145 FERC ¶ 61,153 at P 50.

27. Gunpowder Riverkeeper asserts that the Commission should have considered cumulative impacts of the Mid-Atlantic Express Pipeline.³⁶ The November 21 Order correctly affirmed the EA's conclusions that, while cumulative impacts on water resources and vegetation are possible, any impacts would be minimal and localized, that Columbia's use of best management practices, engineering controls, and resource protection and mitigation plans will minimize or mitigate environmental impacts, and that project impacts, when added to impacts from other projects, will result in minimal cumulative impacts on surface waters and the aquatic resources they support.³⁷ We note, however, that the authorizations for the Mid-Atlantic Express Pipeline were vacated because the applicants decided not to construct it.³⁸

Mitigation Measures

28. Gunpowder Riverkeeper again contends that Columbia's ECS's proposal to "establish permanent erosion controls as needed" is not an enforceable mitigation measure because it is subjective.³⁹ As discussed in the November 21 Order, the measures in Columbia's ECS are performance-based, since, as the EA explains,⁴⁰ Columbia designed the project to be consistent with federal, state, and county agencies' rules and regulations regarding construction and restoration in environmentally sensitive areas and its ECS adopts the requirements of the Commission's Plan and Procedures. Requirements of agencies with more stringent regulations will supersede those reflected in the ECS.

29. As further explained in the November 21 Order, Columbia's ECS also incorporates a Spill Prevention, Containment, and Countermeasures Plan (SPCC Plan) and best management practices that Columbia is using to develop its project-specific ESCPs for each county. The ESCPs could include further recommendations from local soil conservation authorities or land management agencies for additional temporary and permanent erosion controls and re-vegetation specifications as needed. They will also

³⁶ Gunpowder Riverkeeper Rehearing Request at 16. Mid-Atlantic Express, LLC and AES Sparrows Point LNG, LLC planned to construct and operate an 88-mile-long, 30-inch-diameter pipeline to transport up to 1.5 Bcf/d of gas from the AES LNG terminal to interconnections with three interstate pipelines at Eagle, Pennsylvania.

³⁷ November 21 Order, 145 FERC ¶ 61,153 at PP 47-53.

³⁸ *Mid-Atlantic Express, LLC and AES Sparrows Point LNG, LLC*, 145 FERC ¶ 61,113 (2013).

³⁹ Gunpowder Riverkeeper Rehearing Request at 25.

⁴⁰ EA at 8.

include any other permit requirements. Columbia will file the ESCPs with its Implementation Plan before commencing construction, as Appendix B's Environmental Condition 6 requires. The establishment and maintenance of erosion controls are parts of the project and the resultant erosion controls are therefore enforceable.⁴¹

Waterbody Crossing Methods

30. Gunpowder Riverkeeper reiterates its arguments favoring horizontal directional drilling (HDD) over Columbia's proposed open cut, dry-ditch waterbody crossing method,⁴² citing potential negative impacts on water supply, vegetation, fish, and wildlife and stating that the EA dismissed HDD because of its short-term residential impacts, despite the Army Corps of Engineers' recommendation to investigate using HDD at certain crossings. Gunpowder Riverkeeper states that HDD would have less of a long-term environmental impact.⁴³

31. As discussed in the November 21 Order, the EA concurs with the conclusion of Columbia's HDD analysis of six waterbody crossings, which revealed no measurable benefit for HDD over the proposed dry-ditch method.⁴⁴ As indicated in the "Trout Impact Analysis" Columbia filed on June 1, 2013, the proposed method's anticipated impacts on trout, streambeds, macroinvertebrates, habitat structures, and sedimentation will not be significant and will be mitigated by using proven construction techniques, following in-stream construction timing restrictions, and using appropriate erosion and sediment control measures. A study by Reid et al.⁴⁵ indicates that the proposed stream

⁴¹ November 21 Order, 145 FERC ¶ 61,153 at PP 55-56.

⁴² As the EA notes at 93, a dry-ditch crossing involves isolating the construction work area from the stream flow by directing water through a flume pipe (flume crossing) or by damming and pumping the water around the construction area (dam and pump crossing). These methods' primary objectives are to minimize siltation and allow for a longer construction period (than wet-ditch crossings) without affecting the waterbody.

⁴³ Gunpowder Riverkeeper Rehearing Request at 23-24.

⁴⁴ EA at 38 and 43.

⁴⁵ S. M. Reid, S. Metikosh, T. Huffman, and J. Evans, *Effects of Natural Gas Pipeline Water Crossing Replacement on the Benthic Invertebrates and Fish Communities of Big Darby Creek, Ohio*, in 7th International Symposium on Environmental Concerns in ROW Management, Calgary, Alberta 717-23 (Elsevier Science, 2002).

crossing method causes no long-term (>1 year) changes to benthic invertebrate or fish communities because it limits waterbody sediment release and associated risks to fish and their habitats during construction.

32. The November 21 Order further explains that, at waterbodies with an ordinary high water mark over 10 feet wide, Columbia proposes to return habitat structures that require removal, like logs and debris jams to the stream channel using pre-construction

photographs as reference and will live-stake stream banks with native vegetation pursuant to the county-approved Forest Conservation Plan and Forest Conservation Plan/Forest Buffer Protection Plan to help overhanging vegetation return. Columbia also states that, in compliance with Maryland's Forest Conservation Act, it is consulting Harford County, Baltimore County, and the Maryland Department of Natural Resources (Maryland DNR) to identify and mitigate additional temporary and permanent forest impacts, including impacts near the waterbody crossings.

33. Moreover, as also discussed in the November 21 Order, while Columbia has not proposed HDD, Columbia is still consulting the Army Corps of Engineers, the Maryland Department of the Environment (Maryland DE), and the Maryland DNR about using HDD at specific waterbody crossings. The Army Corps of Engineers states that, in consultation with the Maryland DNR and the Maryland DE, it is currently evaluating the practicability of trenchless construction (e.g., HDD) at several crossing locations. Thus, although the November 21 Order correctly finds that Columbia's proposed waterbody crossing and mitigation plans are consistent with our policies, we acknowledge that the Army Corps of Engineers and the Maryland DE could require additional or alternative measures.⁴⁶ If these agencies require Columbia to complete certain waterbody/wetland crossings using HDD, Columbia must file a variance request, pursuant to Environmental Conditions 1 and 5. The Commission's environmental staff will review such requests before approving construction commencement.

34. Gunpowder Riverkeeper also protests that the EA fails to indicate the method to be used for many of the stream crossings.⁴⁷ While Columbia had not yet determined the

⁴⁶ November 21 Order, 145 FERC ¶ 61,153 at PP 65-67.

⁴⁷ Gunpowder Riverkeeper Rehearing Request at 21-22.

specific kind of dry-ditch crossing method it would use for each waterbody crossing when the EA was issued, Columbia's compliance with the Commission's procedures will insure that it minimizes impacts regardless of the method selected.

Water Quality

35. Gunpowder Riverkeeper again argues that the project could further degrade Section 303(d)-listed downstream waters, contending that the EA fails to provide a thorough analysis of how a dry-ditch construction method will cumulatively impact (both in the short and long term) the 303(d)-listed reservoir, which provides drinking water for 1.8 million Baltimore metro area residents, including linking phosphorus and sediment impairments in Lock Raven Reservoir with downstream construction impacts.⁴⁸

36. As discussed in the November 21 Order, dry-ditch methods are preferred for crossing sensitive aquatic habitats and have little to no impacts on downstream Total Suspended Solids (TSS) concentrations and turbidity. Impacts have been brief and only during dam installation and removal (for dam and pump crossings). Columbia notes that Moyer and Hyer⁴⁹ continuously monitored turbidity to assess the effects of pipeline installation via a dam and flume technique in Virginia and concluded that turbidity 65 feet downstream of a pipeline crossing did not change adversely during construction. Columbia also notes that Reid, et al.⁵⁰ studied pipeline stream-crossing techniques' effectiveness in mitigating sedimentation and found that TSS concentrations were equal to background measurements 40 meters downstream of a dry-ditch crossing. Increases to downstream TSS concentrations during dry-ditch crossings were at least seven times

lower than during wet-ditch pipeline crossings⁵¹ of similar-sized watercourses.

Downstream TSS concentrations returned to background levels within one hour of

⁴⁸ Gunpowder Riverkeeper Rehearing Request at 20-21.

⁴⁹ D. L. Moyer and K. E. Hyer, *Continuous Turbidity Monitoring in the Indian Creek Watershed, Tazewell County, Virginia, 2006-08*, U.S. Geological Survey Scientific Investigations Report (2009).

⁵⁰ S. M. Reid, S. Stoklosar, S. Metikosh, and J. Evans, *Effectiveness of Isolated Pipeline Crossing Techniques to Mitigate Sediment Impacts on Brook Trout Streams*, Water Quality Research Journal of Canada, v. 2, no. 2, 473-88 (2002).

⁵¹ Wet-ditch crossing methods entail trenching directly through the waterbody.

completion of in-stream activity. The November 21 Order correctly found that the project will not degrade downstream water quality of waterbodies it crosses.⁵²

37. Gunpowder Riverkeeper reiterates its contentions that the EA provides no evidence of communication with the Baltimore City Department of Public Works related to unanticipated releases of water from Prettyboy Reservoir, which, it states, could affect the safety and integrity of the pipeline's Gunpowder River crossing and says nothing about potential pipeline rupture release of hydrocarbons into the high quality tributaries and main stem of the Gunpowder River, which supply Lock Raven Reservoir with most of Baltimore's drinking water.⁵³

38. The November 21 Order notes that Columbia states that it will ask the Baltimore Department of Public Works' Reservoir Natural Resources Section about Prettyboy

Reservoir releases before beginning in-stream activities so no releases will occur during

in-stream construction. Regarding Gunpowder Riverkeeper's concern about releasing

hydrocarbons into waterbodies, it notes that the project will transport natural gas, which is lighter than air. If an unlikely pipeline rupture occurs, the gas would dissipate into the air – it would not sink down into the ground or into waterbodies.⁵⁴

39. Gunpowder Riverkeeper again asserts that the EA fails to plan for comprehensive water quality monitoring to protect water supply during construction.⁵⁵ As discussed in the November 21 Order, the EA notes that, pursuant to CWA Section 401 and the November 21 Order's Appendix B's Environmental Condition 8, Columbia must file a state-issued certification that the project complies with the established water quality standards developed by the Maryland DE, the state agency authorized to grant or deny

⁵² November 21 Order, 145 FERC ¶ 61,153 at PP 72-75.

⁵³ Gunpowder Riverkeeper Rehearing Request at 14.

⁵⁴ November 21 Order, 145 FERC ¶ 61,153 at P 75.

⁵⁵ Gunpowder Riverkeeper Rehearing Request at 14.

Columbia's joint permit application,⁵⁶ to protect designated uses assigned to streams and rivers (e.g. potable water, recreation, and fishing) before the Commission issues a Notice to Proceed with construction.⁵⁷ Before beginning construction, Columbia must also have county-approved ESCPs that implement state requirements for maintaining water quality pursuant to the 2011 Maryland Standards and Specifications for Soil Erosion and Sediment Control.

40. As further discussed in the November 21 Order, Columbia explains that it will use turbidity curtains to reduce potential sedimentation and turbidity increases during construction, if needed, and prohibit construction equipment from being parked, refueled, stored, or serviced within 100 feet of any waterbody, pond, wetland, spring, or seep area. An inspector will check all equipment for leaks before construction commences in waterbodies or wetlands. Columbia will comply with the mitigation measures in the Commission's Procedures and use specialized erosion and sediment control best management practices at waterbody crossings with special Maryland DE and Maryland DNR designations.⁵⁸

41. Gunpowder Riverkeeper again argues that the EA is not sufficiently informative because it contains only a cursory review of the state water designations, tier classifications, and water quality standards. It argues that the EA fails to identify the Gunpowder Watershed and Little Gunpowder Falls as Tier II watersheds, indicate the designated uses (drinking water supply) of waterways the project will affect, or discuss Maryland water quality standards and temperature limitations used to protect coldwater resources.⁵⁹

42. As noted in the November 12 Order, the EA's appendix lists the designated uses of all waterbodies the project crosses as defined by Maryland. The project only crosses Tier I stream segments; it does not cross any Tier II segments. There are 13 waterbodies (three ephemeral, three intermittent, and seven perennial) along the project that are in Tier II catchment areas or watersheds, meaning that a Tier II stream segment is further downstream. As further discussed in the November 21 Order, the segment of Little Gunpowder Falls the project will cross is not a designated Tier II waterway; it is a Tier II catchment – the Tier II segment is about 1.5 miles downstream. As discussed in the November 21 Order, the Maryland DE notes that Maryland has “anti-degradation

⁵⁶ Under Environmental Article Title 5, Subtitle 5-901 through 5-911; COMAR 26.213.

⁵⁷ EA at 35.

⁵⁸ November 21 Order, 145 FERC ¶ 61,153 at PP 72-74.

⁵⁹ Gunpowder Riverkeeper Rehearing Request at 22.

policies” for high quality waters (Tier II waters),⁶⁰ which state that “proposed amendments to county plans or discharge permits for discharge into Tier II waters that will result in a new, or an increased, permitted annual discharge of pollutants and a potential impact to water quality, shall evaluate alternatives to eliminate or reduce discharges or impacts.”⁶¹ In addition to its proposed measures to limit water quality impacts, as the EA describes, Columbia is cooperating with the Maryland DE and the Army Corps of Engineers to determine whether additional minimization measures are appropriate for the Little Gunpowder Falls crossing,⁶² as well as other stream crossings in Tier II catchment areas.⁶³

Thermal Degradation

43. Gunpowder Riverkeeper reiterates its claim that the EA fails to identify cumulative temporary and permanent loss of forest and buffers that control stormwater and provide shade and to address resulting thermal degradation of Little Gunpowder Falls and upstream tributaries.⁶⁴ As discussed in the November 21 Order, Columbia states that it will plant native shrubs along the stream banks of the temporary and permanent rights-of-way to accelerate shade restoration to all intermittent and perennial streams along the project, as described in Columbia’s Forest Conservation Plans

submitted to both Harford and Baltimore Counties. Columbia will also re-plant forest

buffers within the temporary right-of-way along all intermittent and perennial Baltimore County streams. In Harford County, the forest buffers will be allowed to revert back to forest.

44. As further discussed in the November 21 Order, the project will require only minimal tree clearing at the Little Gunpowder Falls crossing because the area is fairly open and abuts active farmland. Likewise, the project will cross two of the four unnamed tributaries to Little Gunpowder Falls (upstream of the Little Gunpowder Falls

⁶⁰ The regulations pertaining to Tier II waters are in COMAR 26.08.02.04.

⁶¹ As COMAR 26.08.02.04-1(K)(2) and its 2007 Stormwater Manual currently require.

⁶² This waterbody is under consideration for an HDD crossing.

⁶³ November 21 Order, 145 FERC ¶ 61,153 at PP 76, 78 and 85.

⁶⁴ Gunpowder Riverkeeper Rehearing Request at 22-23.

crossing) in areas where there is currently no tree shade due to the abutting farmland. The remaining two tributary crossings, which are further upstream of the Little Gunpowder Falls crossing, will need temporary and permanent tree clearing; Columbia, however, will plant native shrubs shortly after the crossing is complete to mitigate the loss of shade. The November 21 Order correctly found that Columbia's proposed mitigation measures will facilitate restoration of waterbodies and forest buffers.⁶⁵

Invasive Species

45. Gunpowder Riverkeeper again states that, without an approved didymo control plan,⁶⁶ didymo might spread to all high quality waterways along the project through shared construction equipment that contacts the Gunpowder Falls River.⁶⁷ As discussed in the November 12 Order, Columbia submitted its didymo control plan to the Maryland DNR on June 3, 2013, after the EA was issued. Columbia states that it will not begin construction until the Maryland DNR approves an invasive species plan. Although our review and approval of the didymo control plan is not required, the EA notes that Columbia will file it with the Commission when it is finalized.⁶⁸

Water Wells

46. The Woodsbrook Residents contend that (1) the absence of accurate well locations makes it impossible to evaluate project impacts on wells and water quality, (2) testing wells immediately before and after construction might not be sufficient because an impact might not be immediately apparent, and (3) if a well fails, there are no possible locations for a new well due to easement, set-back, and septic requirements. The Woodsbrook Residents assert that, while the November 21 Order states that Columbia will be responsible for replacing or repairing damaged wells and providing a temporary water source, those requirements are not memorialized as conditions to the certificate and might not be enforceable. The Woodsbrook Residents further argue that Environmental Condition 12's procedures for reporting problems with wells are inadequate because they lack (1) a mechanism for Commission review of Columbia's

⁶⁵ November 21 Order, 145 FERC ¶ 61,153 at PP 84-85.

⁶⁶ Didymo (*Didymosphenia geminata*) is an invasive species in the Gunpowder Falls River.

⁶⁷ Gunpowder Riverkeeper Rehearing Request at 23.

⁶⁸ November 21 Order, 145 FERC ¶ 61,153 at P 90.

resolution of a complaint and (2) a requirement that Columbia participate in Commission-ordered dispute resolution.⁶⁹

47. We find that there is nothing unique about the proposed pipeline construction or operation that would adversely affect wells in this area and no record evidence that Columbia's proposed pipeline would be a source of contamination. Columbia's mitigation measures, which are required as conditions of the authority granted in the November 21 Order, are standard industry practices, and Columbia is at risk and responsible for compensating landowners for any wells it damages. The November 21 Order correctly concurred with the EA's conclusion that the project is not likely to significantly affect water wells, especially in light of the required construction safeguards, mitigation measures, and complaint resolution procedures discussed therein.

48. As noted in the November 21 Order, Columbia identified only one well (on the Tedeschi property) within the construction workspace, which it will protect during construction. Three other wells in the environmental survey corridor are not in the construction workspace, and Columbia asserts that constructing the project is unlikely to damage them. The project will transport natural gas, a non-visible, odorless, and buoyant gas which, if released, would float up into the air, not sink down to contaminate the water table. Columbia also notes it has prevented migrations of various materials (such as, but not limited to, water from adjacent wetlands or waterbodies or underground seeps) by creating a barrier, a ditch breaker, around the pipeline at these areas' entrance and exit, as needed, for previous pipeline projects.⁷⁰

49. Pursuant to Environmental Condition 12, Columbia must finalize its well location survey and file it with the Commission before commencing construction. Environmental Condition 12 also requires Columbia to file a report addressing any complaints about water well yield or quality and how each complaint was resolved. Moreover, Environmental Condition 11 requires Columbia to develop and implement an environmental complaint resolution procedure for landowners with concerns during project construction and right-of-way restoration. Environmental Condition 11 also requires Columbia to instruct landowners to contact the Commission's Dispute Resolution Service Helpline if they are not satisfied with Columbia's response to their concerns.

50. We further note that conditions of a Commission order are enforceable regardless of their placement within the order. The November 21 Order is clarified to emphasize that Columbia is required, as a condition of the certificate authority granted in that order,

⁶⁹ Woodsbrook Residents Rehearing Request at 24-25.

⁷⁰ November 21 Order, 145 FERC ¶ 61,153 at PP 93-94.

to replace or repair any wells it damages and to provide a temporary water supply to affected landowners until such repair or replacement is completed.

Septic Reserve Areas

51. The Woodsbrook Residents claim that the November 21 Order does not describe the full scope of potential impacts on septic reserve systems.⁷¹ This argument is without merit. The November 21 Order indicates that the EA notes that a 20,000-square foot septic reserve area (SRA) can accommodate an initial septic system and two replacement systems and that Columbia is coordinating with county agencies and landowners to identify all SRAs the project will cross.⁷² As the November 21 Order further notes, Columbia states that none of those SRAs will be reduced to less than 25,165 square feet, which is over 25 percent more than the county minimum. As further discussed in the November 21 Order, because many landowners are concerned that the project will damage their properties, Columbia must develop and implement an environmental complaint resolution procedure pursuant to Environmental Condition 11, which will give landowners clear and simple directions for identifying and resolving environmental mitigation concerns during project construction and right-of-way restoration. Before commencing construction, Columbia must mail the procedures to each landowner whose property the project will cross.⁷³

Landis Route Alternative

52. The Woodsbrook Residents claim that the EA evaluated the wrong version of the Landis route alternative.⁷⁴ This argument is without merit. The EA evaluated the Landis route alternative proposed by the Woodsbrook Residents, which, being within the Fallston Road right-of-way and near the BGE right-of-way, would affect road stability and maintenance, as well as pipeline and power line operation and maintenance.

53. The EA further notes that, when pipelines are installed parallel to power lines, there are additional safety considerations. Special construction, maintenance, and operating procedures must be used to minimize risk to workers, the pipeline, and the power line, including specialized training for workers, maintaining minimum distances between power structures (poles) and lines, providing grounding equipment on all construction vehicles, and additional monitoring of construction equipment operating

⁷¹ Woodsbrook Residents Rehearing Request at 26.

⁷² EA at 34-35.

⁷³ November 21 Order, 145 FERC ¶ 61,153 at PP 103-104.

⁷⁴ Woodsbrook Residents Rehearing Request at 20-21.

within the power line right-of-way. To prevent electric arcing between the power line and construction equipment, an adequate separation distance between them must be maintained, including a separation distance between the power line and the tallest point of the equipment. Since the Landis route alternative proposed by the Woodsbrook Residents would not fit into the space between Fallston Road and the power line, Columbia modified it so it was aligned where there would be room to safely install a pipeline. Because Columbia's modified variation would have greater impacts on homes and does not provide a substantial benefit over its proposed route, the EA did not recommend that modified version either.⁷⁵

54. The Woodsbrook Residents object to the November 21 Order's finding that the Landis route alternative is not feasible on grounds that it would involve a parallel alignment with power lines within the SR 152 right-of-way, requiring Columbia to work directly under power lines in violation of Occupational Safety and Health Administration (OSHA) requirements.⁷⁶ While, as the Woodsbrook Residents assert, there is no bar to parallel alignment of pipelines with power lines and OSHA regulations do not prohibit workers from activity under power lines, OSHA does require minimum clearances between power lines and construction activity,⁷⁷ which would limit Columbia's ability to work within the SR 152 right-of-way, especially in consideration of the additional construction workspace constraints associated with the highway, other utilities, and homes already located in or near that right-of-way. For these reasons, the November 21 Order correctly concurred with the EA's conclusion that the Landis route alternative is not feasible.

Request for Stay

55. The Woodsbrook Residents filed a request for stay, contending that absent a stay, Columbia will force residents to endure further hardship and stress by defending their property rights in a condemnation action for a project that may not go forward as a result of its rehearing request or denial of necessary permits.⁷⁸

⁷⁵ EA at 124-125.

⁷⁶ Woodsbrook Residents Rehearing Request at 23.

⁷⁷ OSHA Safety and Health Regulations for Construction, 29 C.F.R. § 1926 (2013).

⁷⁸ Woodsbrook Residents Rehearing Request at 28-30.

56. The Commission's standard for granting a stay is whether justice so requires.⁷⁹ Under this standard, the Commission generally considers whether the moving party will suffer irreparable injury without a stay, whether issuance of a stay will substantially harm other parties, and whether a stay is in the public interest, the most important element being the showing of irreparable injury.

57. The Woodsbrook Residents make no showing that they will be irreparably harmed. In our environmental review we fully considered and addressed the Woodsbrook Residents' comments, as well as those of other individuals and entities. The EA in this proceeding took a hard look at the environmental and landowner impacts and concluded that the proposed action would not have a significant impact on the human environment. Under these circumstances, the Commission will deny the Woodsbrook Residents' request for stay. In any event, this order addresses the requests for rehearing and affirms the Commission's findings in the November 21 Order that the proposed project would not constitute a major federal action significantly affecting the quality of the human environment.

The Commission orders:

(A) The November 21 Order is clarified to emphasize that Columbia is required, as a condition of the certificate authority granted in that order, to replace or repair any wells it damages and to provide a temporary water supply to affected landowners until such repair or replacement is completed.

(B) The requests for rehearing and stay of the November 21 Order are denied, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

⁷⁹ Administrative Procedure Act, 5 U.S.C. § 705 (2006); *Duke Energy Carolina, LLC*, 124 FERC ¶ 61,254, at P 8 (2008).

Document Content(s)

CP13-8-001.DOCX.....1-22