



United States Department of the Interior



NATIONAL PARK SERVICE
Chesapeake & Ohio Canal National Historical Park
1850 Dual Highway, Suite 100
Hagerstown, MD 21740

Right-of-Way Determination

Park Name: Chesapeake & Ohio Canal National Historical Park

Project Title: Right-of-Way for Columbia Gas Transmission, LLC, to install 8-inch Natural Gas Pipeline across the Chesapeake & Ohio Canal National Historical Park

Park Superintendent: Kevin D. Brandt

Director: Lisa A. Mendelson-Ielmini (Acting)

A. Overview

This memorandum provides the reasoning for my determination that the proposed National Park Service (NPS) Right-Of-Way permit (ROW), Permit No. 9.088-6000, and associated Special Use Permit (SUP), Permit No. 19.014-5700, to be granted to the Columbia Gas Transmission, LLC (Columbia or Permittee) for the use of lands within the Chesapeake & Ohio Canal National Historical Park (Park), is “not in conflict with the purposes of the park,” consistent with 16 U.S.C. 410y-3(b).

This provision, enacted as part of the Chesapeake & Ohio Canal Development Act in 1971 (P.L. 91-664, sec. 5), allows “[o]ther uses of park lands, and utility, highway, and railway crossings” to be authorized by permit, as long as they “are not in conflict with the purposes of the park and are in accord with any requirements found necessary to preserve park values.” This document explains the NPS’s determination that the right-of-way complies with that provision, drawing from NPS and other agencies’ existing analysis.

The basic purposes of the Park are established by the NPS Organic Act and related laws, and by the statutes that established it. The NPS developed those purposes and explained them in more detail in the Park’s 2013 Foundation Document. This right-of-way determination analysis accordingly reviews Columbia’s application for the proposed pipeline right-of-way and associated construction for consistency with the Park purposes, management guidance, and the acceptable tolerances for resource impacts that have been defined within its foundation document. Further, as explained more fully below and in Appendix A to this Memorandum, the NPS analyzed the terms and conditions to be included in the proposed ROW and SUP, and determined that they are consistent with park purposes.

B. Description of the NPS Action

Columbia proposes to construct and operate approximately 3.37 miles of 8-inch-diameter natural gas transmission pipeline, three main line valves, and two new tie-in assemblies to service markets in West Virginia. It will commence at interconnections with Columbia's Line 1804 and Line 10240 in Fulton County, Pennsylvania, and extend through Washington County, Maryland, to a point of delivery with the local distribution system of Mountaineer Gas Company (Mountaineer Gas), the project shipper, in Morgan County, West Virginia. Once completed, this project will increase supply options and system reliability, and provide firm transportation service to Columbia's customers, which will provide service to markets in West Virginia. Columbia states that the project is needed to meet the market demand growth that its system continues to experience. It is intended to benefit both current and future shippers, by creating an additional point of delivery and providing operational flexibility.

In order to construct and maintain this pipeline, Columbia applied for a ROW to allow the crossing of approximately 0.1 mile (553 feet) of NPS-managed land near Hancock, Maryland.

In response to that application, the action that is being taken by the NPS is: (1) issuance of a SUP to install the approximately 0.1 mile of pipeline within a limited timeframe, and (2) issuance of a 10-year ROW for non-exclusive use and occupancy of the approximately 0.1 mile of NPS land as defined in the permit. The decision to issue the ROW and SUP considered the impacts to the park resources as expressed in statute, including the Park's enabling legislation, regulation, and policy.

1. Proposed Construction Plan

Horizontal directional drilling (HDD) is the proposed method of installation. HDD is a process that allows for trenchless construction by drilling a hole beneath a surface feature, in this case Park lands, and pulling a prefabricated segment of pipeline back through the drilled hole. Use of this method would completely avoid disturbance to the surface of the right-of-way between the entry and exit points of the HDD section. The pipe will be installed at a depth of approximately 116 to 148 feet below the ground surface. There will be no surface ground disturbance or staging of equipment on NPS administered land. Electric grid guide wires will be laid by hand on the ground along the pipeline drill path during construction to create an electromagnetic sensor grid. No ground or surface disturbing activities will be required for installation of the guide wires except for minor hand clearing of a one to two-foot-wide path for the guide wires in thickly vegetated areas. Tree clearing for workspace (entry/exit locations) would not occur within 1,000 feet of NPS property. Surface marking of the proposed pipeline right-of-way may require above grade route markers composed of plastic, fiberglass, or other similar material. The right of way permit will allow Columbia to maintain an active gas pipeline under NPS land for 10 years, after which the permit will be re-evaluated. In return, Columbia will be required to pay a use and occupancy fee to the United States government for use of the land at a value determined by an appraisal. The ROW will allow Columbia to access the pipeline through the Park for periodic inspections. As noted above, the total length of the installed pipeline under the Park will be approximately 0.1 mile (553 feet).

The first phase of this project would be tree clearing and site preparation on non-federal lands associated with the HDD entry and exit workspaces outside the Park's boundaries. Work would be limited to tree clearing, processing timber, and site grading at those sites. Drilling operations would begin once the site preparation is completed. Duration of drilling, installation of the pipeline, clean-up, and regrading of the construction site is not currently known.

2. Contingency Construction Plan

The proposed workspaces and right-of-way planned for the HDD are adequately sized to allow for multiple attempts at a new drill path. That is, the entry/exit points can be relocated several times within the currently proposed limits of disturbance for the HDD. In the event that multiple attempts with the HDD method of construction are unsuccessful, the permit would authorize a contingency plan under which the direct pipe method would be used to bore underneath NPS-managed lands in the Park. The bore pits would be located on non-federal lands. Open trenching would be used to reach the location of the bore pits, from which point an approximately 600-foot trenchless crossing would be executed approximately 116 to 148 feet below the federal surface estate.

The contingency crossing would only be initiated if the HDD, after multiple adjustments and attempts, is determined to be an absolute failure. If the HDD and contingency crossings both fail, no further work could occur until new proposals and a new round of environmental compliance and NPS review for consistency with Park purposes were completed.

C. Park Purpose & Significance

The NPS Organic Act, 54 U.S.C. 100101, states that the fundamental purpose of the NPS is to: *"...conserve the scenery, natural and historic objects, and wild life in the System units and to provide for the enjoyment of the scenery, natural and historic objects, and wild life in such manner and by such means as will leave them unimpaired for the enjoyment of future generations."*

Purpose statements identify the specific reason for the establishment of a particular park. Purpose statements are crafted through a careful analysis of the enabling legislation and legislative history that influenced the development of the Park, which was designated in 1971 when the initial enabling legislation was passed and signed into law (see appendix A for enabling legislation and subsequent amendments). The purpose statement reinforces the foundation for future park management administration and use decisions. The following purpose statement was based on the review of park legislation, previous management documents, and discussions with park staff:

The purpose of the Chesapeake & Ohio Canal National Historical Park is to preserve and interpret the 19th century transportation canal from Washington, D.C., to Cumberland, Maryland, and its associated scenic, natural, and cultural resources; and to provide opportunities for education and appropriate outdoor recreation.

Significance statements express why the park resources and values are important enough to merit national park unit designation. Statements of significance describe why an area is important within a global, national, regional, and system wide context. These statements are linked to the purpose of the park unit, and are supported by data, research, and consensus. Significance statements describe the distinctive nature of the Park and inform management decisions, focusing efforts on preserving and protecting the most important resources and values of the park unit. The Park's 2013 Foundation document identified several significance statements (please note that the statements are in no particular order):

- The Chesapeake & Ohio Canal National Historical Park preserves and interprets 19th century canal transportation, civil engineering technology, and the evolution of a flat water transportation system in support of the industrial growth of the nation.
- The Chesapeake & Ohio Canal National Historical Park contains more than 1,300 historic structures, including one of the largest collections of 19th century canal features and buildings in the national park system.
- The Chesapeake & Ohio Canal National Historical Park preserves archeological evidence of 13,000 years of human habitation along the Potomac River.
- Through preservation efforts that began in the 1950s, the Chesapeake & Ohio Canal National Historical Park towpath was transformed into one of the most heavily used recreational trails in the nation and serves as the backbone for national and regional trail systems.
- The Chesapeake & Ohio Canal National Historical Park provides diverse recreational opportunities for millions of visitors annually, including numerous access points to the Potomac River, ranging from urban to rural settings.
- The 15-mile-long Potomac Gorge, managed in part by the Chesapeake & Ohio Canal National Historical Park, is one of the most biologically diverse natural areas in the national park system.
- Paralleling the Potomac River for 184.5 miles and travelling through four physiographic provinces, Chesapeake & Ohio Canal National Historical Park provides a natural buffer of forest, woodlands, prairies, and barrens and a wildlife corridor along the second-largest tributary to the Chesapeake Bay.
- Interpretive and educational opportunities engage a diverse cross section of urban and rural communities along the length of the Chesapeake & Ohio Canal National Historical Park and were envisioned in the park's enabling legislation.

Living history events, school programming, canal operations demonstrations, and a nationally renowned Canal Quarters program offer visitors the opportunity to experience different eras of the canal's history.

D. Evaluation of potential impacts to park resources

The Park's purpose, recorded in the 2013 Foundation Document, "*...is to preserve and interpret the 19th century transportation canal from Washington, D.C., to Cumberland, Maryland, and its associated scenic, natural, and cultural resources; and to provide opportunities for education and appropriate outdoor recreation.*" The NPS coordinated closely with FERC to identify potential environmental issues and impacts to the fundamental resources and values of the Park

associated with the proposal, and, as such, the NPS was formally recognized by FERC as a cooperating agency. NPS subject matter experts such as biologists, plant ecologists, historians, and archeologists, worked early and often with FERC to ensure impacts to the Park were avoided or minimized as best possible. This coordination was reflected in the 2018 Eastern Panhandle Expansion Project Environmental Assessment (EA). The EA assesses the potential environmental effects of the construction and operation of the entirety of the project in accordance with the requirements of the National Environmental Policy Act (NEPA). Any potential impacts and all avoidance and mitigation measures specific to protecting NPS resources were called out specifically.

1. Cultural Resources

Under 54 U.S.C. 306108, generally known as Section 106 of the National Historic Preservation Act, any potential effects to the Park or its contributing resources must be taken into account with respect to any Federal undertaking. The Section 106 review process serves as one component of the NPS's measure of appropriateness for any NPS approval or action.

Lining the Potomac River waterfront, the Chesapeake & Ohio Canal National Historical Park Historic District is listed on the National Register of Historic Places for its association with events intrinsic to American history, its embodiment of 19th and 20th century canal engineering design and construction, and its potential to yield additional insights on the prehistoric and historic past.

The pipeline in Maryland would cross the Park and the Potomac River by HDD. A survey of the Park within a 200-foot-wide survey corridor identified one archaeological site, 18WA617. The recovery of prehistoric artifacts from depths up to 35.8 inches below ground surface indicates a potential for intact deposits at the site. But since the HDD beneath the Park would be 116-148 feet below the ground surface, the Project is unlikely to affect the site.

There are no other structures such as locks, dams, or lock houses in the vicinity of Project area. During consultation with the Maryland State Historic Preservation Office (July 25, 2017), they recommended a finding that the project would have no adverse effect on historic properties.

2. Natural Resources

Through the NEPA process, the NPS determined that granting the ROW for the installation of the proposed pipeline has the potential for very limited impacts on vegetation (minor hand clearing of a one to two-foot-wide path) within the Park. In addition, because tree clearing for workspace (entry/exit locations) will not occur within 1,000 feet of NPS property, the proposed depth of the pipeline will be approximately 116 to 148 feet below the ground surface, and there will be no surface ground disturbance within the Park, impacts to all other Park natural resources will be avoided.

Additional precautionary measures are included in the ROW and SUP to further minimize any risk of potential impacts. Thus, the proposed pipeline right-of-way would be consistent with Park purposes associated with natural resources and values under either construction method.

3. Visual Resources

The majority of visual impacts associated with the Project would be limited to the period of active construction, resulting from the presence of construction equipment and personnel at the Park. Minor hand clearing of a one to two-foot-wide path for the guide wires would occur in thickly vegetated areas along portions of the right-of-way along the HDD under the Park. However, tree clearing for HDD entry/exit points would not occur within 1,000 feet of NPS property or the banks of the Potomac River in West Virginia.

Due to the minimal vegetation clearing required, topography of the area, forested setting, overall depth of the pipeline, and the fact that any surface disturbance would be located at least 1,000 feet from a NPS boundary, any visual impacts that could affect Park visitors' overall experience will be temporary and only slightly noticeable.

It is the intention of the NPS, in accordance with 43 CFR 46.320, to adopt FERC's EA and make the decision to issue the ROW to Columbia. After much coordination and consultation with FERC and EPA, review of the EA and other supporting documentation, the NPS has found that the EA fulfills the requirements of NEPA and applicable regulations, and has met the policies set forth in the NPS's Director's Order #12, Conservation Planning, Environmental Impact Analysis and Decision-Making, and accompanying Handbook.

Once the NPS Finding of No Significant Impact (FONSI) is finalized, the ROW and SUP will include terms and conditions as precautionary measures to ensure debris, materials, or substances used during construction would not impact park resources. Some items addressed are not part of Applicant's actual plans and go beyond what is authorized, including the following terms in the SUP:

- The Permittee may not use pesticides, herbicides, or growth regulating chemicals on Park lands without obtaining the Superintendent's prior written approval which will consider the product type, amount, application method, and location of proposed application, and will be subject to review by the Park's Integrated Pest Management Coordinator. Permission to apply pesticides, herbicides, or growth regulating chemicals will not be granted if application will be harmful to park resources. (ROW T&C #15)
- Staging of equipment, materials, or vehicles is prohibited on NPS-administered lands. (SUP T&C #6 and #38)

The ROW also includes terms and conditions to broadly protect park resources (*see* ROW T&C #9, #13, #14, #21, and #22), require advance notification for any non-emergency maintenance or repair work (*see* ROW T&C #6), and ensure any future maintenance of the

pipeline right-of-way corridor takes place with appropriate environmental controls to prevent natural resource impacts, even though some items addressed are not part of Applicant's plans and go beyond what is authorized. These include:

- The Permittee may not dig, excavate, or otherwise disturb the ground surface without prior authorization from the Superintendent. Other than in emergency situations, requests for maintenance, repair, or upgrade shall be in writing and subject to written approval from the Superintendent or his or her representative. If ground disturbance is ever authorized, the following conditions will apply, and the Park may add additional terms and conditions for ground disturbance as the Superintendent deems necessary:
 - a. Any ground-disturbing activities occurring inside the Park that exceed 100 square feet shall be reclaimed to attain 70% of original cover with target native species. Seed must be approved by the Park.
 - b. The Permittee shall clean any earth moving equipment used inside the Park by pressure-washing prior to entering the Park and shall ensure it is clean of any soil, plant matter, or other materials to minimize importation of non-native species.
 - c. The Permittee shall only use weed-free fill that has been obtained from outside the Park. The Superintendent must approve the source of the fill before it is brought into the Park, and it must be inspected by NPS for the presence of invasive non-native weeds prior to approving the source.
 - d. During any fueling of equipment or hydrostatic testing occurring in the Park, the Permittee shall use secondary containment (impermeable liners) to collect leaks, drips, and spills.
 - e. The Permittee shall install temporary fencing of sufficient strength to prevent wildlife and visitors from falling into the excavation around any temporary excavation left open for more than one (1) day.
 - f. No vegetation may be cut or destroyed without first obtaining approval from the Superintendent or his or her representative. The Park will be reimbursed for the market value of any vegetation removed. Any vegetation that must be removed shall be replaced in kind as specified by the Superintendent. (SUP T&C #35)
- The Permittee is responsible for any cleanup costs required as a result of spills or accidents resulting from activities during the permit. The permittee is also responsible for any costs and charges associated with the restoration of the resource due to disturbed natural, cultural, and/or historic resources. Cleanup

will be conducted in accordance with all applicable federal and state environmental laws. (SUP T&C #32)

- No roadways or trails shall be constructed or maintained on Park land in connection with inspection, operation, or maintenance of the pipeline without prior written consent from the Superintendent. (ROW T&C #10)

Under the proposed methods of construction, the pipeline would be bored under NPS-managed lands, with no disturbance of the surface. All construction staging would be off of NPS-managed lands. No surface disturbance is permitted on NPS-managed lands under the terms and conditions of the ROW, as outlined above.

Due to the proposed depth of the pipeline, and the absence of surface ground disturbance within the Park, impacts to all other natural and cultural resources will be avoided. There will be no significant impacts on public health, public safety, or unique characteristics of the region. No highly uncertain or controversial impacts, unique or unknown risks, significant cumulative effects, or elements of precedence were identified. The NPS has determined that the selected alternative can be implemented without significant adverse effects, as defined in 40 CFR 1508.27.

E. Additional Impact Considerations

While not specified as part of the Park's fundamental resources and values, the following considerations were also part of the NPS's review of the proposed pipeline right-of-way and associated construction, as appropriate considerations for responsible management of public resources and safety.

Pipeline and Hazardous Materials Safety Administration (PHMSA) data shows that nationwide that there were a total of 4,068 significant pipeline incidents between 2004 and 2017.¹ During this same time period, PHMSA data also shows that the total pipeline mileage (including hazardous liquid, CO₂, gas distribution and gas transmission and gathering pipelines) in the United States has increased by 337,095 miles to a total of 2,757,505 miles of pipelines.²

Table 1 below details the total number of significant incidents by year as well as yearly pipeline length totals by type. Comparing the total yearly pipeline length to the yearly number of significant incidents provides a value for pipeline length per significant incident on a per year basis. Averaging the yearly computed totals of miles of pipeline per significant incident since 2004, yields an estimate of 1 significant incident for every 9,037 miles of pipelines. For context, as noted above, the total length of the crossing of Columbia's proposed pipeline through the Park

¹ PHMSA defines significant incidents as incidents that include any of the following conditions: (1) fatality or injury requiring in-patient hospitalization, (2) \$50,000 or more in total costs, measured in 1984 dollars, (3) highly volatile liquid releases of 5 barrels or more or other liquid releases of 50 barrels or more and (4) liquid releases resulting in an unintentional fire or explosion

² "PHMSA Data and Statistics," PHMSA, <https://www.phmsa.dot.gov/data-and-statistics/phmsa-data-and-statistics>, (September 6, 2018)

is approximately 553 feet (0.1 miles), and the total length of Columbia's entire proposed pipeline project is approximately 3.37 miles.

Table 1: Yearly Significant Incidents Compared to Pipeline Lengths

| Year | Number of Significant Incidents | Miles of Pipeline | | | | Total Miles of Pipeline per Significant Incident |
|-----------------|---------------------------------|-----------------------------------|--------------------|------------------------------|-----------------|--|
| | | Hazardous Liquid & Carbon Dioxide | Gas Distribution | Gas Transmission & Gathering | Pipeline Totals | |
| 2004 | 309 | 166,669 | 1,925,748 | 327,994 | 2,420,411 | 7,833 |
| 2005 | 336 | 166,760 | 1,962,351 | 324,222 | 2,453,334 | 7,302 |
| 2006 | 257 | 166,719 | 2,022,474 | 321,222 | 2,510,415 | 9,768 |
| 2007 | 265 | 169,846 | 2,025,731 | 321,108 | 2,516,686 | 9,497 |
| 2008 | 279 | 173,789 | 2,075,191 | 322,913 | 2,571,893 | 9,218 |
| 2009 | 275 | 175,965 | 2,086,689 | 324,936 | 2,587,591 | 9,409 |
| 2010 | 264 | 181,986 | 2,102,431 | 324,424 | 2,608,842 | 9,882 |
| 2011 | 285 | 183,580 | 2,121,253 | 324,340 | 2,629,173 | 9,225 |
| 2012 | 255 | 186,221 | 2,137,904 | 319,924 | 2,644,049 | 10,369 |
| 2013 | 308 | 192,412 | 2,149,737 | 320,247 | 2,662,396 | 8,787 |
| 2014 | 302 | 199,793 | 2,169,312 | 319,334 | 2,688,439 | 8,902 |
| 2015 | 329 | 208,618 | 2,190,143 | 318,921 | 2,717,681 | 8,260 |
| 2016 | 309 | 212,105 | 2,210,308 | 318,215 | 2,740,628 | 8,869 |
| 2017 | 300 | 215,482 | 2,223,017 | 319,007 | 2,757,505 | 9,192 |
| Total Incidents | | 4,068 | Average Since 2004 | | | 9,037 |

When evaluating Columbia's permit application, the NPS examined the proposal in the context of the data above and concluded that while risks existed (including risks of pipeline spills, leaks and fires), the risks were so minimal that they did not rise to the level of being inconsistent with the Park's purposes.

In order to further manage these risks on NPS-managed lands and to ensure public and employee safety, the proposed ROW and SUP include terms and conditions. These terms and conditions detail specific actions to minimize the risks to the public or park resources from criminal activity, spills, fires or environmental emergencies and are included in the permits as precautions, in the case of an unlikely incident or accident that could cause harm or injury.

Specifically, the NPS included terms and conditions requiring timely reporting and contact information, and preventative measures are included to ensure an appropriate response is swift, effective, protective of staff and visitor safety, and maintains to the highest degree possible the public enjoyment and high-quality scenic and recreational experiences the NPS seeks to provide. These reporting requirements would also aid the NPS in coordinating a timely response with other public agencies as appropriate, including incidents which may take place off of NPS-managed lands, but could affect NPS-managed resources (*see* SUP T&C #27, and ROW T&C #6). Additional terms and conditions require "appropriate warning signs, barricades or other warding devices" during periods of work activity such as maintenance or repairs (ROW T&C #7)

and ensure NPS may suspend any activities within the right-of-way if necessary for resource or visitor protection (ROW T&C #9).

For significant incidents that might occur off of NPS-managed lands, the FERC Certificate requirements, terms and conditions, and PHMSA regulations and policies all provide methods for addressing risks. While the NPS does not have direct control over another agency's responses to significant incidents, the NPS would work in coordination with it to mount the best and most effective response possible.

As noted previously, past significant pipeline incidents indicate that the risk of a future significant pipeline incident occurring (including a spill, leak or fire) is minimal but not non-existent under either construction method. However, these risks do not rise to the level of being inconsistent with the Park's purposes because the risks are minimal, and the NPS has incorporated terms and conditions into the proposed ROW and SUP to further manage these minimal risks.

F. Application of the Regulations at 36 CFR Part 14

1. Pursuant to 36 CFR 14.10(b), the regulations at 36 CFR Part 14 apply to the proposed ROW under 16 U.S.C. 410y-3(b)

Pursuant to 36 CFR 14.10(b), the NPS regulations at 36 CFR Part 14 apply to any "rights-of-way over or through" national park system lands issued pursuant to "[a]ny statute," which includes pipelines allowed under park-specific enabling legislation such as 16 U.S.C. 410y-3(b). Section 14.10(b) clearly recognizes that some rights-of-way will be issued under statutes other than those listed as authority for the Part 14 regulations, and expressly provides that any such rights-of-way will be issued consistent with the Part 14 regulations.

The regulations in 36 CFR Part 14 are designed to protect national park system resources and provide a clear, consistent path for permitting at units within the System. The regulations define the type of right-of-way authorization that the NPS may grant across NPS-managed lands, authorize the NPS to collect an annual use and occupancy fee for the use of NPS land, and set standard terms and conditions for ROW across all System units. By maintaining this uniformity of process and permitting, the NPS is better able manage authorizations across the over 400 units that it manages. Accordingly, in 36 CFR 14.10(b) the NPS adopted the requirements in the Part 14 regulations to apply rights-of-way issued pursuant to park specific legislation, such as 16 U.S.C. 410y-3(b), and the requirements in Part 14 have therefore been appropriately applied to the proposed ROW.

2. Alternatively, the terms and conditions included in the proposed ROW are appropriate under 16 U.S.C. 410y-3(b)

Even if the Part 14 regulations did not apply to pipeline permits like this one as a matter of course, pursuant to 16 U.S.C. 410y-3(b), the NPS has the authority to impose such terms and conditions as are necessary to support a determination that issuing the permit is not in conflict with the purposes of the park, and that are necessary to preserve park values. It has

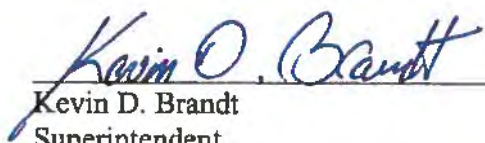
done so here. Where NPS has utilized the terms or conditions of 36 CFR Part 14 as elements of the ROW, it did so only after full consideration of whether the term or condition, when applied to the ROW, is necessary to preserve park values, pursuant to 16 U.S.C. 410y-3(b).

With the terms and conditions analyzed above and in Appendix A to this Memorandum, the permitted use is not in conflict with the NPS Organic Act's goals of "conserv[ing] the scenery, natural and historic objects, and wild life in the System units" and "provid[ing] for the enjoyment of the scenery, natural and historic objects, and wild life in such manner and by such means as will leave them unimpaired for the enjoyment of future generations," as stated in 54 U.S.C. 100101(a). Further, the terms and conditions are not inconsistent with the Park's status as a destination and recreational road, the Park's mission of conserving the scenery and protecting the natural and cultural resources of designed and natural areas, the public enjoyment and understanding of its natural and cultural resources, or opportunities for high-quality scenic and recreational experiences in the Park. Analyzed individually, each of the terms or conditions included in the ROW and described in Appendix A to this Memorandum are necessary to preserve park values and will do so. By imposing such terms and conditions, the NPS will ensure its ability to meet its conservation obligations while permitting the authorized use under the Park pursuant to 16 U.S.C. 410y-3(b). Accordingly, applying the terms and conditions in the ROW is appropriate.

G. Conclusion

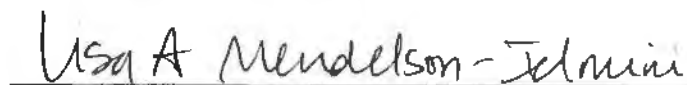
The terms and conditions included in the ROW and SUP are protective of park resources and values. The actions authorized by the proposed pipeline ROW and SUP have been evaluated and determined to avoid adverse impacts to the fundamental resources, values, or character-defining features of the Park as defined in its enabling statute and as documented in the Park's 2013 Foundation Document. The actions authorized will not impair those or any other park resources or values, or interfere with their conservation and public enjoyment. By signing the ROW and SUP, Columbia Gas will agree to comply with the terms and conditions which collectively help ensure that the permitted activities are not in conflict with the fundamental purpose of the national park system or Park purposes. Based on this documentation of the NPS's process and findings presented above, I have accordingly determined that the pipeline right-of-way and associated construction are not in conflict with the Park's purposes, as required by 16 U.S.C. 410y-3(b).

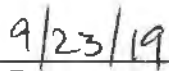
Recommending:


Kevin D. Brandt
Superintendent
Chesapeake & Ohio Canal National Historical Park


Date

Determining:


Lisa A. Mendelson-Ielmini
Acting Director
Region 1 - National Capital


Date

APPENDIX A

The NPS specifically considered each of the below terms and conditions of the ROW proposed to be issued to Columbia Gas and determined that they are not inconsistent with the fundamental purpose of the national park system lands or the use of lands for park purposes.

Administrative Terms and Conditions of the Permit

- ***Authority of Permittee to Enter Permit***

Requiring the Permittee to represent and warrant that the Permittee entering into the Permit and the individual signing the Permit have legal authority to do so protects the interests of the United States and helps conserve the Park's resources in such a manner as to leave it unimpaired for future generations by ensuring that terms are legally enforceable against a legal entity.

- ***Effective Date***

Providing that the Permit will be effective on the date of its signature by the NPS Regional Director prevents permitted activity from moving forward before the deciding official has had an opportunity to review the project's impacts and determine that the grant of a right-of-way is consistent with the purposes of the national park system and the Park.

- ***Legal Description and Map of Permitted Area***

Requiring a legal description and map of the permitted area ensures that the location of the property affected by the Permit is clearly identified and help the NPS effectively manage the ROW and confirm throughout the term of the Permit that the Permittee is operating and maintaining infrastructure as required by its terms and conditions. The legal description requirement is consistent with standard legal description requirements, and the survey requirements are consistent with nationwide standards for locating property boundaries.

- ***As-Built***

Requiring a final map and legal description showing the project as-built ensures that the NPS knows the exact, final location of the constructed pipeline and can manage operations appropriately. Further, the Permit specifies that the NPS "may, in its sole discretion, decline to approve the final map and legal description and instead require the permittee to remove the Project from the permitted area" if the project is not built as authorized. This provision will help ensure that the Permittee follows the requirements of the approved Permit during construction.

- ***Reimbursement of Costs***

Requiring cost recovery for monitoring any uses or activities authorized by the Permit is consistent with relevant authorities. Pursuant to 16 U.S.C. 410y-3(b), the NPS may issue

revocable licenses or permits at the Park. Pursuant to 54 U.S.C. 103104, the NPS may recover all costs of providing necessary services associated with SUP.

- ***Fees for Use and Occupancy***

Requiring payment of fees for use and occupancy of federal land by the uses or activities authorized by the Permit ensures that the United States is compensated for occupation of public land. Congress, by statute, and NPS, by policy, routinely require payment of fair market value by occupiers of public land within the national park system; such payments are required for leases and freehold interests (54 U.S.C. 102102, 102901, 101335), as well as for rights-of-way issued under 36 CFR Part 14. Application of such a requirement here treats this applicant consistently with other users of the national park system.

- ***Provision of Contact Information***

Requiring that the company provide and maintain current contact information, including the address of its principal place of business and of the names and addresses of its principal officers, for both routine and emergency communications ensures that the NPS has accurate information at all times and that a responsible official can be reached in order to ensure Permit requirements are complied with. Maintaining Permit requirements is essential to conserving the scenery and preserving the natural and cultural resources of the Park, as well as ensuring that high-quality scenic and recreational experiences are provided.

- ***Severability Clause***

Including a severability clause in the Permit is necessary to ensure, to the fullest extent permitted by law, that the NPS will be able to enforce the terms and conditions of the Permit and require compliance even if a provision is determined to be invalid or unenforceable. Continued NPS oversight, even if a provision is determined to be invalid or unenforceable, protects park resources and the visitor experience.

Life of the Permit

- ***Term of Permit and Reauthorization of Use***

Providing a 10-year term for the Permit and prescribing procedures that the Permittee must follow in order to seek reauthorization of the Permit provides an opportunity to reexamine the Permit and compliance with the Permit's terms after a 10-year period. Pursuant to the Permit, the Permittee must file a written application for reauthorization, on the then-current NPS-approved form and in accordance with then-existing NPS regulations and policies, at least six months before the Permit's expiration date. The requirement to submit an application six months prior to the expiration date will give the NPS adequate time to examine the Permittee's use to determine whether reauthorization is justified and determine whether any changes are necessary to comply with NPS regulations and policies in effect at that time. The condition on reauthorization also provides the NPS with the discretion to add or remove terms as necessary in a new authorization in order to ensure continuing

compliance with the law and consistency with the purposes of the national park system and the Park. Reauthorization is not guaranteed. Over the term of the Permit, laws, regulations, and circumstances may change, and this condition provides the NPS with enough discretion to react to these potential changes.

- ***Abandonment***

The Permit identifies procedures that the NPS will follow if the Permittee fails to use or occupy the permitted area for a period of 2 years and requires abandonment in place and restoration to pre-permit conditions. Abandonment in place is preferred to pipe removal in this case, as removal of a horizontal directionally drilled (HDD) pipe or a direct pipe located hundreds of feet below the surface could be significantly more environmentally damaging than abandoning the pipe in place and filling with concrete or an inert gas. Pipe removal would likely require some form of surface occupancy, and attendant possibility of environmental damage to national park system lands. The NPS instructed Columbia Gas to use abandonment in place as the preferred method in calculating their bonding amount. Columbia Gas calculations were then reviewed and approved by NPS technical staff.

- ***Transfer and Assignment***

The Permit's terms prohibit transfer or assignment without NPS's prior written approval because transfer and assignment without the NPS's prior written approval could present risks or impacts not analyzed in the decision-making process for the Permit or determined to be consistent with the Park's purposes. The NPS requires prior approval in order of transfers or assignments in order to protect park resources by ensuring that the new permit holder is capable of operating the Permit and will follow the terms and conditions of the Permit.

- ***Modification, Adaptation, and Discontinuation by the Secretary***

The Permit is subject to the express covenant that it will be modified, adapted, or discontinued if found by the Secretary to be necessary, without liability or expense to the United States, so as not to conflict with the use and occupancy of the land for any authorized works which may be hereafter constructed thereon under the authority of the United States. This provision allows the government to adapt its management and administration of the ROW to changing circumstances. Any modification of the authorized use would require additional analysis to prevent any risks or impacts not analyzed in the decision-making process for the Permit or determined to be consistent with the Park's purposes.

Oversight and Enforcement

- ***Unrestricted Access by NPS***

Providing for unrestricted access, entry, and inspection by the NPS, subject to reasonable safety precautions, will allow the NPS more effectively to monitor compliance with the terms and conditions of the permit and consistency with the purposes of the national park system and the Park.

- ***Entry and Inspection Without Prior Notice***

Providing that the NPS may enter and inspect the permitted area at any time without providing prior notice to the permittee strengthens the NPS's ability to provide effective oversight of the permitted activity by entering the permitted area without notice to ensure compliance with the terms and conditions of the Permit. The possibility of unannounced inspections, coupled with other enforcement mechanisms included in the Permit, provides a strong incentive for the Permittee to maintain strict compliance with the requirements of the Permit and allows the NPS to verify such compliance.

- ***Subject to Supervision of Superintendent***

The Permit provides that "Permittee shall exercise this privilege subject to the supervision of the Superintendent or designee, and all terms and conditions of this Permit. Failure to do so may result in the immediate suspension of the permitted activity or the revocation of the Permit." This recognizes the superintendent's supervision and authority to suspend or revoke a permit, provides oversight, and identifies enforcement mechanisms to help ensure compliance with the terms and conditions of the Permit.

- ***Suspension***

Providing that the NPS may require the Permittee to suspend its activities in the permitted area or to relocate or remove its facilities or equipment imposes harsh potential remedies, and will help ensure that the Permittee complies with the terms and conditions of the Permit, conducts its activities in a manner that protects park resources, and operates in a manner that does not interfere with the Park's purposes.

- ***Termination of ROW***

NPS permits are generally revocable in the sole discretion of the NPS, and the statute, 16 U.S.C. 410y-3(b), specifies that a permit is the instrument for this right-of-way. Termination is limited to termination for cause because the NPS must provide a reasonable basis prior to revoking a permit in the middle of its term in order to avoid arbitrary and capricious agency action. Further, requiring upon revocation or termination of the right-of-way, unless waived in writing, that the Permittee shall, so far as it is reasonably possible to do so, restore the land to its original condition to the entire satisfaction of the superintendent protects the scenic and natural resources of the Park in the event that the infrastructure authorized under the Permit is ever removed. Further, this condition also provides by public enjoyment in the Park by allowing the superintendent to set up the restoration in such a way that it causes minimal disruption to Park visitors. For the reasons discussed above, the NPS plans to require abandonment in place.

Resource and Visitor Protection

- ***Non-Interference***

Providing that allowance of the right-of way shall be subject to the express condition that the exercise thereof will not unduly interfere with the management and administration by the United States of the lands affected thereby, ensures that management for natural, scenic, cultural and recreational purposes continues to take precedence on the land where the Permittee is authorized to operate and maintain infrastructure.

- ***Damage to Park Resources***

Prohibiting the permittee from moving, removing, altering, damaging, or destroying any park resources protects park resources. Unauthorized moving, removing, altering, damaging, or destroying park resources is not consistent with the Park's identified purposes and may subject the Permittee to damages under the System Unit Resource Protection Act (54 U.S.C. 100721 et. seq.).

- ***Avoidance, Minimization, and Mitigation***

Requiring the Permittee to take all reasonable measures to avoid or minimize damage to park resources and to implement mitigation where expressly required by statute protects park resources. Where possible as part of the permitted action, the Permittee must avoid impacts to park resources. Where avoidance is not possible, the Permittee must minimize impacts to park resources. If required by law, the Permittee must mitigate impacts pursuant to the requirements of the law that requires the mitigation. These general obligations of the Permittee, which govern all of the Permittee's activities in the Park, will help the NPS "conserve the scenery, natural and historic objects, and wild life in the System units and to provide for the enjoyment of the scenery, natural and historic objects, and wild life in such manner and by such means as will leave them unimpaired for the enjoyment of future generations." 54 U.S.C. 100101(a). The compliance and enforcement mechanisms of the permit provide the superintendent sufficient discretion to monitor the Permittee's compliance with these obligations and take action if necessary to prevent unnecessary impacts on park resources.

- ***Knowledge of Permit and Physical Copy of Permit***

Requiring the Permittee to ensure that its officers, employees, representatives, agents, contractors, and subcontractors are familiar with the Permit and comply with its terms and conditions promotes compliance with the Permit's terms and conditions. The NPS designed the Permit terms intentionally to adhere to the fundamental purposes of the national park system and the Park. Compliance with the Permit's terms and conditions is necessary to ensure that actions related to the Permit remain consistent with these purposes. Thus, the NPS requires full knowledge and compliance with the Permit's terms and conditions by all entities affiliated with the Permittee. In furtherance of the goal of Permit compliance, all supervisory personnel working for the Permittee within the permitted area are required to

carry a copy of the Permit. An accessible on-site physical copy of the Permit will help prevent deviations from its express terms.

- ***Signage***

Requiring the Permittee to maintain route markers composed of plastic, fiberglass, or other similar material at the Permit boundary means that these signs would be imperceptible to most drivers on the Park due to the rate of speed of passersby and the transient nature of the view in this location. Even if visitors notice the signs, the signs must be of a design and in a location acceptable to the NPS. This will prevent visually obtrusive signs. Finally, public enjoyment of the Park includes an informed visitor experience. Appropriate information on contacts, safety, and vegetation management in an unobtrusive medium does not detract from this experience.

Requiring the Permittee to erect and maintain appropriate warning signs, barricades, or other warning devices during all periods when it is using the permitted area, including periods of maintenance or repair promotes visitor safety. Unlike the route markers described above, appropriate warning signs, barricades and other warning devices are meant to be seen by the Park's visitors to ensure their safety during any periods of maintenance or repair. Such actions are consistent with Park purposes to provide for public enjoyment and high-quality recreational experiences.

- ***Ability to Restrict Access***

Providing that the superintendent alone may restrict access to the permitted area also promotes public safety. Restricted access in this case is for health and safety reasons. Passage through the area via motor vehicle will not be restricted. The Park purpose to provide for "public enjoyment" will not be affected as the Park itself will continue to be open to the public. Access to the parts of the Park on either side of the roadway may be restricted by the Superintendent. It will also keep people from potentially parking motor vehicles in a location where these vehicles might be harder for oncoming vehicles to see.

- ***Soil and Resource Conservation and Vegetation Management***

Prohibiting the Permittee from using pesticides, herbicides or growth regulating chemicals on Park lands without obtaining the superintendent's prior written approval promotes visitor safety and protects plants and wildlife. Unauthorized use of pesticides, herbicides, or growth regulating chemicals may present a direct risk to wildlife and visitor health and safety. Additionally, use of these chemicals could significantly alter the natural growth patterns that contribute to the scenic and recreational experiences for which the Park was established. Therefore, in order to be consistent with the Park's purposes, the superintendent must be notified and have an opportunity to analyze the impacts of any such chemicals prior to its use.

Requiring the Permittee to take such soil and resource conservation and protection measures including weed control, on the land covered by the right-of-way as the superintendent may

request is consistent with Park purposes to conserve scenery, natural, and cultural resources and to ensure stability of the Park itself as to not deter from visitor experience and enjoyment. By requiring these measures upon the superintendent's request, the condition also allows the superintendent to impose adaptive management requirements to meet changing circumstances.

- ***Prevention of Litter and Debris***

Prohibiting the burning of any materials and requiring the Permittee to keep the Permitted Area clean and free of litter or other debris at all times are consistent with the Park's purposes of conserving scenic and recreational experiences and maintaining natural and cultural resources for public enjoyment. The burning of materials could impact air quality and visual resources (smoke, odors, and particulate matter) and increase the risk to visitor experience and safety. These impacts would detract from the conservation, enjoyment, and high-quality experience aspects of the Park's purpose.

Requiring the Permittee to clear and keep clear the lands within the right-of-way to the extent and in the manner directed by the superintendent, and to dispose of all vegetative and other material cut, uprooted, or otherwise accumulated during the construction and maintenance of the project in such manner as to decrease the fire hazard and also in accordance with such instructions as the superintendent may specify, will also promote conservation, enjoyment and high quality visitor experience. Proper disposal of vegetative and other material, as directed by the superintendent, will prevent hazardous conditions that could arise if accumulated vegetation were not cleared, as well as preventing possible dispersal of invasive plant species within the Park. Based on the subterranean nature of the permitted use, the NPS only expects minor vegetation clearing on Park lands.

- ***Repair and Restoration of Underground Utilities***

Should an unexpected situation occur where the Permittee must take actions to repair or replace a damaged utility, the repair must occur in a timely manner as to not disrupt visitor use or experience (disruption of power or water service to visitor use areas) or hinder the ability of the NPS to fulfill its responsibilities to protect Park visitors and resources and meet Park purposes. From past experience, the NPS determined that a four-hour timeframe is reasonable to resolve most utility disruptions.

- ***Unmanned Aircraft***

Current NPS Policy Memorandum 14-05 prohibits unmanned aerial vehicle (UAV)/drone use on national park system land unless authorized by the superintendent, which authorization may be allowed within a park only after a determination has been made that it will not result in unacceptable impacts on park resources and values. The Chesapeake and Ohio Canal National Historical Park Superintendent's compendium states: "Launching, landing, or operating an unmanned aircraft from or on lands and waters administered by the National Park Service within the boundaries of Chesapeake and Ohio Canal National Historical Park, is prohibited except as approved in writing by the superintendent." Consistent with the policy

memorandum and compendium, the superintendent only would approve UAV use after a determination that the use would not result in unacceptable impacts on park resources and values, and is an appropriate use within the Park. The NPS would not expect to approve any UAV use in connection with this Permit.

- ***No Right to Enter Closed Areas***

The proposed ROW does not grant permission to enter any closed areas and to reserve the right to close portions of the Park for the purposes of public safety, administration, and protection of natural and cultural resources. Under 36 CFR 1.5, the superintendent has the authority to establish public use limitations for specific use or activities “for the maintenance of public health and safety, protection of environmental or scenic values, protection of natural or cultural resources, aid to scientific research, implementation of management responsibilities, equitable allocation and use of facilities, or the avoidance of conflict among visitor use activities.” Those public use limitations are documented in the Chesapeake and Ohio Canal National Historical Park Superintendent’s compendium dated December 4, 2015. As required by this condition, the Permittee is expected to adhere to such limitations.

- ***Daylight Hours***

The proposed permit prohibits surface disturbance and requires all access to Park lands to occur only during daylight hours unless submitted in writing for approval at least 14 days in advance. As the operation and maintenance of infrastructure as described by the Permittee does not require surface disturbance on Park lands, the NPS prohibited surface disturbance in the proposed Permit. It is outside the scope of uses requested by the Permittee and not authorized under this permit. Further, the Permit requires that any work, if necessary and later approved, be done during the day to avoid disturbance to neighbors and surrounding leaseholders.

- ***Vehicles***

The proposed Permit prohibits vehicles, equipment, or materials from being parked or staged on Park land at any time without first obtaining approval from the superintendent or his or her representative. Unauthorized use of Park lands could present risks or impacts not analyzed in the decision-making process for the Permit or determined to be consistent with the Park’s purposes. The proposed Permit prohibits any crossing of the Park on State system roads from interfering with traffic flow, because preventing interference with traffic flow and reducing disruption for Park visitors helps preserve the Park’s status as a national destination and recreational road and increases public enjoyment of the Park.

- ***Visual Mitigation***

A discussion of visual impacts and limited vegetation removal defined by the NPS and other entities is included in the Right-of-Way Determination to which this Appendix is attached. The Permittee is required to adhere to provisions that limit the visual impacts, as outlined in the Right-of-Way Determination, for the life of this permit, including all permit

reauthorizations.

- ***Ground Disturbance***

As proposed, the pipeline does not include any surface disturbance, except for minor vegetation clearing, on Park lands. Since the operation and maintenance of infrastructure as described by the Permittee does not require surface disturbance on Park lands, the NPS expressly prohibited surface disturbance in this Permit.

- ***Roads, Fences, and Trails***

The NPS has determined that it is not inconsistent with the fundamental purpose of the national park system or the use of lands for Park purposes to require the Permittee to build and repair such roads, fences, and trails as may be destroyed or injured by construction work and to build and maintain necessary and suitable crossings for all roads and trails that intersect the works constructed, maintained, or operated under the right-of-way. While this condition will not be triggered by the activities currently proposed by the Permittee, the NPS places the Permittee on notice that this provision would apply if any activities requested under the Permit or requested regarding the project ever result in such impacts. As stated elsewhere in the Permit, however, any change to the authorized use would require additional analysis and approval.

- ***Construction Traffic***

Any need for construction traffic or equipment within the national park will need prior approval by the Park Superintendent or his representative. On Berm Road (Washington County & NPS) proper traffic control devices and flaggers must be in place if the roadway is encumbered in any way by the permitted activity. Should any requests for construction traffic or equipment be requested and subsequently approved for the C&O Canal Towpath, signage and flaggers will be required to warn pedestrian and bicycle traffic in both directions of the approaching work zone.

- ***Prohibition on Blasting***

As the operation and maintenance of infrastructure as described by the Permittee does not require blasting on Park lands, the NPS prohibited blasting in the Permit. It is outside of the scope of uses requested by the Permittee and not authorized under the Permit.

Emergency Prevention and Response

While the NPS acknowledges risks related to natural gas pipelines, natural gas distribution pipelines connect to homes and businesses throughout the country. Midstream pipelines such as the proposed pipeline pass near schools and hospitals, and cross under roadways and rivers all across the country. Planning and coordination ensures that activities associated with these pipelines, which pass near important facilities or sensitive resources throughout the country are conducted in a safe manner and that all parties are prepared to respond to unforeseen incidents in

a manner that is swift, effective, protective of staff and visitor safety, and maintains to the highest degree possible the public enjoyment and high-quality scenic and recreational experiences the NPS seeks to provide. Emergency prevention and response plans and contact numbers are appropriate to ensure this goal is met.

Given the multi-jurisdictional nature of this pipeline, the NPS also can rely on safety mechanisms and monitoring conducted by the Federal Energy Regulatory Commission (FERC) during pipeline construction, and the Department of Transportation's Pipeline and Hazardous Materials Safety Administration (PHMSA), which is responsible for monitoring and inspection once a pipeline is in service. Coordination with these agencies, state and local law enforcement, and first responders provides a comprehensive safety net to ensure that potential problems are identified early and any incidents that occur are responded to quickly and effectively.

- ***Emergency Response Plan***

For the reasons discussed above, the Permittee is required to have an emergency response plan. The NPS has reviewed and approved the Permittee's emergency response plan.

- ***Contingency Plan for Fires and Earthquakes***

For the reasons discussed above, the Permittee is required to provide and comply with contingency plans for fires and earthquakes. The NPS has reviewed and approved the Permittee's contingency plan for fires and earthquakes.

- ***Fire, Leak, and Rupture Prevention***

Requiring the Permittee to do everything reasonably within its power to prevent and suppress fires resulting from the Permittee's activities under this Permit is protective of park resources. Similarly, requiring the Permittee to do everything reasonably within its power, both independently and on request of any duly authorized representative of the United States, to prevent and suppress fires on or near the lands to be occupied under the right-of-way, including making available such construction and maintenance forces as may be reasonably obtainable for the suppression of such fires, helps protect park resources from damage.

Welding and heavy equipment use during construction will occur offsite. Pursuant to the terms of the Permit, the equipment will not enter Park lands. Nevertheless, the NPS included these provisions as conservative measures to be protective of park resources. Requiring the Permittee to take all reasonable measures to identify, prevent, and suppress fires helps protect the visitor experience and conserve natural and cultural resources.

- ***Cleanup in Accordance with Law***

For the reasons discussed above, requiring the Permittee to pay for any cleanup and to conduct any cleanup activities in accordance with all applicable federal and state environmental laws is precautionary but protective of park resources. The NPS conservatively includes these provisions as precautions in case an unlikely event does occur.

Notifications

The Permit imposes stringent notification requirements on the Permittee in order to keep the NPS apprised of the Permittee's activities and ensure adequate oversight and management of the Permit.

- ***Notification of Non-Emergency Maintenance or Repair Work***

The Permittee is required to notify the superintendent in writing at least three weeks before conducting any non-emergency maintenance or repair work. Notification three weeks in advance provides sufficient time for the Permittee and Park to work together to prevent disruption to Park visitors or values. In furtherance of this goal, the Permit requires work to be completed during daylight hours and allows the NPS to require on-site meetings and site monitors. With these protections, as applicable, the NPS will be able to provide adequate oversight to ensure that authorized activities remain consistent with the purposes of the national park system and the Park.

- ***Notification of Emergency Pipeline Maintenance***

The Permittee is required to notify the Park of emergency pipeline maintenance and provide the superintendent with a report on such maintenance within 48 hours. With these protections, NPS will be able to provide adequate oversight to ensure that authorized activities remain consistent with the purposes of the national park system and the Park.

- ***Notification of Incidents Within the Permitted Area***

The Permittee is required to notify the Park of any OSHA-reportable injury, criminal incident, spill, or environmental emergency within the Permitted Area involving the project. Reporting of OSHA-reportable injuries assists the Park in ensuring visitor safety and the safety of all individuals on or near the Park. Reporting of criminal incidents is necessary so that Park law enforcement can respond appropriately to criminal activities on Park lands. As discussed above, effective reporting mechanisms for emergencies ensure an appropriate response is swift, effective, protective of staff and visitor safety, and maintains to the highest degree possible the public enjoyment and high-quality scenic and recreational experiences the NPS seeks to provide.

- ***Notification of Incidents Within Five Miles of the Park***

The Permittee is required to notify the Park of any spill, or environmental emergency involving the Project, the Permittee or its officers, employees, representatives, agents, contractors, or subcontractors within five (5) miles of the Park. A conservative five-mile reporting zone will keep Park staff informed of issues that may affect Park lands. As described above, effective reporting mechanisms for emergencies ensure an appropriate response is swift, effective, protective of staff and visitor safety, and maintains to the highest degree possible the public enjoyment and high-quality scenic and recreational experiences

the NPS seeks to provide.

- ***Notification of Fires, Leaks, or Ruptures***

The Permittee is required to immediately notify the superintendent or the designated NPS contact in the event of a fire resulting from pipeline operations, or major leak or rupture of the pipeline crossing through or within proximity of the Park. Immediate notification will allow the NPS to respond effectively and protect visitors and natural and cultural resources.

- ***Notification of Unanticipated Discoveries***

The Permittee is required to immediately suspend all activities, and notify the superintendent upon the discovery of any threatened or endangered species or archeological, paleontological, or historical resources within the permitted area. Suspension of work upon unanticipated discovery of archeological, paleontological, or historical resources is consistent with a variety of laws addressing protection of these resources including the National Historic Preservation Act, the Archaeological Resources Protection Act, the Antiquities Act, the Native American Graves Protection and Repatriation Act, and the Paleontological Resources Preservation Act. Compliance with these laws is consistent with the purposes of the national park system and the Park.

No Unauthorized Uses

- ***Amendment***

Amendments to the Permit are prohibited unless executed by both the NPS and Permittee, because amendment without prior NPS approval could present risks or impacts not analyzed in the decision-making process for the Permit or determined to be not inconsistent with the Park's purposes.

- ***No Expansion of Use***

The Permit does not authorize the expansion of use or other uses of this property beyond the express terms of the permit. The NPS will examine any additional requests for authorization for consistency with the national park system's purpose and the Park's purposes.

- ***Prohibition of Deviations from the Approved Location***

Deviation from the approved permitted area is prohibited, and an application and additional authorization is required prior to any deviation, because unauthorized deviations from the approved location could present risks or impacts not analyzed in the decision-making process for the Permit or determined to be not inconsistent with the Park's purposes. Therefore, a separate application and authorization is required for any deviation from the permitted location. This will provide the NPS an opportunity to fully consider any impacts and consistency with Park purposes prior to approving any change in location.

- ***Prohibition of Deviations from the Approved Equipment and Facilities***

Deviations from the approved equipment and facilities are prohibited and separate applications and additional authorizations are required prior to any deviation, because unauthorized deviations in facilities or equipment could present risks or impacts not analyzed in the decision-making process for the Permit or determined to be not inconsistent with the Park's purposes. Therefore, a separate application and authorization is required for any deviation in facilities or equipment. This will provide the NPS an opportunity to consider impacts and consistency with Park purposes fully prior to approving any change in facilities or equipment.

- ***Prohibition on Additional Surface Access Without Additional Authorization***

No roadways or trails shall be constructed or maintained on Park lands in connection with inspection, operation, or maintenance of the pipeline without prior written consent from the superintendent. The NPS will examine any additional requests for authorization for consistency with the national park system's purpose and the Park's purposes. Furthermore, NPS Management Policies section 8.6.4.1 requires that no new roads be permitted with a ROW and requires independent statutory authority for such authorizations.

- ***Reasonable Accommodation in Another Location***

If the NPS determines that the Permittee must relocate or remove its facilities or equipment, the NPS will exercise its best efforts to accommodate the Permittee at another location in the Park; however this will require additional environmental compliance and reappraisal of applicable conditions in accordance with applicable law prior to the issuance of a new permit authorizing such use. This condition ensures that prior to any relocation the NPS would require additional environmental compliance and reappraisal as well as a finding that any new ROW is consistent with the purposes of the national park system and Park.

Limitations on Permission/Additional Uses

- ***Reservation of Right to Use and Grant Additional Uses***

The Permittee is required to agree and consent to the occupancy and use by the United States, its grantees, permittees, or lessees of any part of the right-of-way not actually occupied or required by the project, or the full and safe utilization thereof, for necessary operations incident to such management, administration, or disposal. This provision is one of several terms and conditions where the NPS, by the collective effect of the provisions, grants the most limited permissions possible in order to maintain maximum control over the property covered by the Permit. These provisions, collectively, ensure that the NPS may properly manage the Park for its identified purposes.

- ***Additional Use***

The NPS (a) may establish trails, roads, or other improvements across, over, on, or through the permitted area for use by the NPS, by Park visitors, or by others, and (b) may authorize its contractors or other permittees to use the permitted area at the same time that the Permittee is using it, as long as those other uses will not unreasonably interfere with the Permittee's use of the permitted area under this Permit. This provision is one of several terms and conditions where the NPS, by the collective effect of the provisions, grants the most limited permissions possible in order to maintain maximum control over the property covered by the Permit. These provisions, collectively, ensure that the NPS may properly manage the Park for its identified purposes. This management may include additional improvements such as trails or roads for the benefit of the NPS, Park visitors, and others or other uses of the permitted area where feasible and determined consistent with Park purposes.

- ***Co-location***

Written approval and an additional right-of-way grant is required prior to allowing co-location with the permitted facility on NPS lands. Columbia Gas's application is for a single, 8-inch natural gas pipeline ROW. Unauthorized co-location with the permitted facilities could present risks or impacts not analyzed in the decision-making process for this Permit or determined to be not inconsistent with the Park's purposes. If Columbia Gas or another applicant later applies to co-locate facilities with the permitted facilities, NPS will evaluate that application on its own merits for consistency with the purposes of the national park system and the Park.

Compliance with Other Laws

- ***Compliance with Other Laws***

The Permittee is responsible for making all necessary contacts and arrangements with other Federal, State, and local agencies to secure required inspections, permits, licenses, and other approvals, and is required to comply with State and Federal laws applicable to the project for which the right-of-way is approved, and to the lands which are included in the right-of-way, and lawful existing regulations thereunder. Columbia Gas's crossing of the Park is a small but necessary component of a much larger pipeline project that is governed by an array of Federal, state, and local laws. In order to ensure consistent regulation of Columbia Gas's activities across its area of operation, Columbia Gas is responsible for ensuring compliance with applicable laws and coordination with other regulatory authorities, even on Park lands. The NPS notes that similar provisions are included in other Federal approvals for the project including the Federal Energy Regulatory Commission's certificate.

- ***Nondiscrimination***

The Permittee is prohibited from discriminating against any person based on membership in a protected class. This condition is consistent with the NPS's goal of creating an environment free from harassing behavior. *See, e.g.*, Director's Order 16E ("The NPS will

not tolerate offensive sexual or non-sexual harassing behavior against any NPS employee, intern, volunteer, contractor or other nonfederal employee, visitor, or other member of the public.”). Furthermore, compliance with applicable Federal law is consistent with the purposes and values of the national park system and the Park.

- ***Anti-Deficiency Act***

Consistent with the Anti-Deficiency Act, nothing in the Permit obligates the NPS to expend in any one fiscal year any sum in excess of appropriations made by Congress or administratively allocated by the NPS for the purpose of this Permit, or to involve the NPS in any contract or other obligation for the further expenditure of money in excess of such appropriations or allocations. Compliance with applicable Federal law is consistent with the purposes and values of the national park system and the Park.

- ***System Unit Resource Protection Act***

The Permit’s terms alert the Permittee to the potential for liability under the System Unit Resource Protection Act, 54 U.S.C. 100721-100725 if the Permittee does not conduct its activities in accordance with the Permit and relevant legal obligations. Compliance with applicable Federal law is consistent with the purposes and values of the national park system and the Park.

- ***41 U.S.C. 6306***

The permit notifies the Permittee of legal obligations under 41 U.S.C. 6306. Compliance with applicable Federal law is consistent with the purposes and values of the national park system and the Park.

Protecting the Interests of the United States

- ***Performance Bond***

A \$25,000 performance bond is required.

- ***Liability Insurance***

Commercial general liability insurance is required to protect against claims arising out of acts or omissions of the Permittee or its officers, employees, agents, or representatives while conducting the activities authorized by this Permit. The NPS determined that the amount of liability insurance specified in the permit is sufficient to protect the interests of the United States should unforeseen circumstances occur, and is the standard amount required for such permits within the national park system.

- ***Indemnification***

The Permittee is required to indemnify and hold harmless the United States and its officers,

employees, agents, and representatives from and against all liability of any sort whatsoever arising out of the Permittee's activities under the Permit and to "pay the United States the full value for all damages to the lands or other property of the United States caused by him or by his employees, contractors, or employees of the contractors, and to indemnify the United States against any liability for damages to life, person or property arising from the occupancy or use of the lands under the right-of-way." These provisions protect the Federal government, the Park, and the Park's resources by requiring the Permittee to pay for any potential damages that arise from the Permittee's actions.

- ***Government Equipment***

The Permittee is prohibited from using, borrowing, or renting Park equipment. As provided by Federal law, no manager or employee of the NPS may use or authorize the use of Government property for other than official purposes.