Docket #0022 Date Filed: 5/14/2020

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	
WELDED CONSTRUCTION, L.P. *et al*.,	Chapter 11
Debtors.	Case No. 18-12378 (CSS)
	(Jointly Administered)
EARTH PIPELINE	
Plaintiff,	Adv. Pro. No. 19-50274 (CSS)
v.	
COLUMBIA GAS TRANSMISSION LLC,	
Defendant.	

INTERVENOR MERSINO DEWATERING'S MOTION TO INTERVENE AND BRIEF IN SUPPORT OF MOTION FOR INTERVENTION

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TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES……..ii
MOTION TO INTERVENE……..1
Facts:…….....3
BRIEF IN SUPPORT OF MOTION FOR INTERVENTION……6
INTRODUCTION AND FACTUAL SUMMARY……..6
II. ARGUMENT……...8
III. CONCLUSION ……..13

TABLE OF AUTHORITIES

Page

Cases

Acra Turf Club, LLC v. Zanzucckі, 561 Fed. Appx. 219, 222 (3d Cir. 2014) 11
Brody ex rel. Sugzdinis v. Spang, 957 F.2d 1108, 1116 (3d Cir. 1992).....11
Commonwealth of Pennsylvania v. President of the United States, 888 F.3d 52, 57 (3d Cir. 2018) 11
Donaldson v. United States, 400 U.S. 517, 531 (1971).....11
Liberte Capital Group v. Capwill, 126 Fed Appx. 214, 220 (6th[h] Cir. 2005).....13
Stern v. Chemtall, Inc., 217 W.V. 329, 334 (2005) 11
U.S. v. Territory of Virgin Islands, 748 F.3d 514, 525 (3d Cir. 2014) 13

Statutes

28 U.S.C. §1334(b) 4
28 U.S.C. §1409(a) 4
W. Va. Code § 38-2-1 *et seq*.....5, 10
W. Va. Code § 38-2-34 5

Other Authorities

7A C. WRIGHT & A. MILLER, FED. PRAC. & PROC., § 1909 at 524 (1972).....12

Rules

Fed. R. Bankr. P. 7024 .....3, 7
Fed. R. Civ. P. 24..... passim

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MOTION TO INTERVENE

Proposed Intervening Plaintiff, Mersino Dewatering, Inc. ("Mersino"), by its attorneys Butzel Long and Bayard, P.A., moves to intervene in this action pursuant to Fed. R. Civ. P. 24, made applicable in this case through Fed. R. Bankr. P. 7024. In support of its Motion, Mersino states as follows:

1. Mersino is a duly organized and existing Michigan corporation that has its principal place of business located at 10162 E. Coldwater Road, Davison, MI 48423 and that conducts business in the State of West Virginia, in particular, the County of Marshall of the State of West Virginia.

2. TC Energy Corporation ("TC Energy") f/k/a TransCanada Corporation ("TransCanada") is, upon information and belief, a duly organized and existing Canadian corporation that has its principal place of business located at 450 – 1 Street SW Calgary, AB Canada, T2P 5H1 and that conducts business in the State of West Virginia, in particular, the County of Marshall in the State of West Virginia. Upon information and belief, TC Energy and/or TransCanada acquired Columbia Pipeline Group ("Columbia Pipeline") d/b/a Columbia Gas Transmission, LLC ("Columbia Gas") in 2016. Upon information and belief, TC Energy, TransCanada, Columbia Pipeline, and/or Columbia Gas (TC Energy, TransCanada, Columbia Pipeline, and/or Columbia Gas shall hereinafter be referred to collectively as the "Owner") own the project commonly known as the Mountaineer Xpress Pipeline Project (the "Project") and/or the real property consisting of approximately 99,500 linear feet of pipeline right-of-way and related work areas and access roads spanning the County of Marshall and the County of Wetzel in the State of West Virginia (the "Property"). Upon information and belief, the physical address for the Project and/or the Property is 1591 Wheeling Avenue, Glen Dale, WV 26038, which is legally described as:

> Property located at the municipal address of WHEELING AVE GLEN DALE, WV 26038, GLEN DALE, WV 26038. In the county of MARSHALL. APN 06-9-00020000. Briefly described as 3.39 A BETWEEN B&O RR CO. Municipality / Township of GLENDALE CORP. Township/Range/Section. Legal Lot = Book/Page.

3. Jurisdiction is proper in this Court as a proceeding related to Welded's bankruptcy under 28 U.S.C. §1334(b).

4. Venue is proper in this Court under 28 U.S.C. §1409(a).

Facts:

5. Upon information and belief, the Owner and Welded Construction, L.P. ("Welded") entered into a contract in 2018 pursuant to which Welded would furnish certain work, services, labor, materials, supplies, equipment, and/or machinery to the Project and/or for certain improvements to the Property.

6. Welded and Mersino entered into a subcontract (the "Subcontract") in 2018 pursuant to which Mersino would furnish certain work, services, labor, materials, supplies, equipment, and/or machinery to the Project and/or for certain improvements to the Property. See **Exhibit 1.**

7. Pursuant to the Subcontract, Mersino furnished work, services, labor, materials, supplies, equipment, and/or machinery (together, the "Claim Basis") to the Project and/or for the improvements to the Property.

8. As a result of its supply of the Claim Basis and properly and timely filing of its Notice of Mechanic's Lien for $330,670.00 with the Clerk of the County of Marshall of the State of West Virginia on December 11, 2018, Mersino has a valid and enforceable Mechanic's Lien against the Project and/or the Property. See **Exhibit 2.**

9. This suit was filed on March 8, 2019 in the Circuit Court of Wetzel County, West Virginia, Civil Action No. 19-C-15. On May 14, 2019, Columbia removed it to the District Court for the Northern District of West Virginia, Wheeling Division as a matter related to the pending bankruptcy of Welded. The case was subsequently transferred to this Court, the Court in which Welded's bankruptcy is pending.

10. West Virginia's Mechanic's Lien Statute, W. Va. Code § 38-2-1 *et seq*. (the "Mechanic's Lien Statute"), in particular, W. Va. Code § 38-2-34, explicitly permits intervention,

as it provides that, "a suit commenced by any person having [a construction] lien shall, for the purpose of preserving the same, inure to the benefit of all other persons having a lien under this article on the same property, and such persons may intervene in such suit for the purpose of enforcing their liens, in the same manner as in other chancery suits."

11. The present case was brought by Earth Pipeline, seeking among other things, the foreclosure of its mechanic's lien related to the Project and/or the Property.

12. Mersino has a mechanic's lien against the same Project and/or Property as Earth Pipeline. Mersino seeks to intervene in order to protect its interests relative to the Project and/or the Property and to efficiently litigate its claim as provided in the Mechanic's Lien Statute.

13. The outcome of this case will impact Mersino since Mersino claims an interest in the project and the property that are the subject of this action.

14. Mersino is so situated that the disposition of this action may impair or impede Mersino's ability to protect its interest.

15. No party to this case adequately represents Mersino's interest.

16. Mersino relies on Fed. R. Civ. P. 24(a)(2) to intervene as a matter of right in this matter. To the extent that intervention as of right is not available to Mersino, Mersino asserts that it should be granted permission to intervene under Fed. R. Civ. P. 24(b)(1)(B).

17. This case is at an early stage, as a scheduling order has just been set. Mersino's intervention will not unduly delay or prejudice the adjudication of the original parties' rights.

18. Attached as **Exhibit 3** (the "Complaint") is Mersino's pleading setting out the claim for which intervention is sought.

19. For the foregoing reasons, and for the reasons stated in the accompanying brief, Mersino respectfully requests that this Court enter the proposed order attached hereto as **Exhibit**

4 (i) granting its Motion to Intervene pursuant to Fed. R. Civ. P. 24, made applicable by Fed. R. Bankr. P. 7024, (ii) deeming Mersino's Complaint to be filed, and (iii) granting such other relief as the Court deems appropriate.

Dated: May 14, 2020
Wilmington, Delaware

BAYARD, P.A.

/s/ Gregory J. Flasser
GianClaudio Finizio (No. 4253)
Gregory J. Flasser (No. 6154)
600 North King Street, Suite 400
Wilmington, Delaware 19801
Telephone: (302) 655-5000
Facsimile: (302) 658-6395
Email: gfinizio@bayardlaw.com
gflasser@bayardlaw.com

-and-

BUTZEL LONG PC
Max J. Newman
Michael Griffie
Stoneridge West
41000 Woodard Ave
Bloomfield Hills, MI 48304
Telephone: (248) 258-1616
Facsimile: (248) 258-1439
Email: newman@butzel.com
griffie@butzel.com

Counsel for Mersino Dewatering, Inc.

IN THE UNITED STATES BANKRUPTCY COURT
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WELDED CONSTRUCTION, L.P. et al	Chapter 11
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EARTH PIPELINE	
Plaintiff,	Adv. Pro. No. 19-50274 (CSS)
v.	
COLUMBIA GAS TRANSMISSION LLC,	
Defendant.	

BRIEF IN SUPPORT OF MOTION FOR INTERVENTION

I. INTRODUCTION AND FACTUAL SUMMARY

Earth Pipeline ("EP") has filed a Complaint against Defendant, Columbia Gas, based on a subcontract with the Debtor, Welded Construction, Inc. relating to the project commonly known as the Mountaineer Xpress Pipeline Project (the "Project") and/or the real property (the "Property") consisting of approximately 99,500 linear feet of pipeline right-of-way and related work areas and access roads spanning the County of Marshall and the County of Wetzel in the State of West Virginia, which has the physical address of 1591 Wheeling Avenue, Glen Dale, WV 26038 and which is legally described as:

> Property located at the municipal address of WHEELING AVE GLEN DALE, WV 26038, GLEN DALE, WV 26038. In the county of MARSHALL. APN 06-9-

> 00020000. Briefly described as 3.39 A BETWEEN B&O RR CO. Municipality / Township of GLENDALE CORP. Township/Range/Section. Legal Lot = Book/Page.

Among other things, EP's Complaint seeks the foreclosure of its mechanic's lien against the Property.

TC Energy Corporation ("TC Energy") f/k/a TransCanada Corporation ("TransCanada") is, upon information and belief, a duly organized and existing Canadian corporation that has its principal place of business located at 450 – 1 Street SW Calgary, AB Canada, T2P 5H1 and that conducts business in the State of West Virginia, in particular, the County of Marshall in the State of West Virginia. In 2016, TC Energy and/or TransCanada acquired Columbia Pipeline Group ("Columbia Pipeline") d/b/a Columbia Gas Transmission, LLC ("Columbia Gas"). TC Energy, TransCanada, Columbia Pipeline, and/or Columbia Gas (TC Energy, TransCanada, Columbia Pipeline, and/or Columbia Gas shall hereinafter be referred to collectively as the "Owner") own the Project and/or the Property.

Columbia Gas and Welded Construction, L.P. ("Welded") entered into a contract in 2018 pursuant to which Welded would furnish certain work, services, labor, materials, supplies, equipment, and/or machinery to the Project and/or for certain improvements to the Property.

Like EP and Welded, Mersino and Welded entered into a subcontract (the "Subcontract") in 2018 pursuant to which Mersino would furnish certain work, services, labor, materials, supplies, equipment, and/or machinery to the Project and/or for certain improvements to the Property. See **Exhibit 1**.

Pursuant to the Subcontract, Mersino furnished work, services, labor, materials, supplies, equipment, and/or machinery (together, the "Claim Basis") to the Project and/or for the improvements to the Property.

As a result of its supply of the Claim Basis to the Property and properly and timely filing its Notice of Mechanic's Lien for $330,670.00 with the Clerk of the County of Marshall of the State of West Virginia on December 11, 2018, Mersino has a valid and enforceable Mechanic's Lien against the Project and/or the Property. See **Exhibit 2.**

The present case was brought by Earth Pipeline, seeking among other things, the foreclosure of its mechanic's lien against the Project and/or the Property. Mersino has a mechanic's lien on the same Project or Property as Earth Pipeline. Mersino seeks to intervene in order to protect its interests in the Project and/or the Property, and to efficiently litigate its claim as provided in the West Virginia's Mechanic's Lien Statute, which is codified at W. Va. Code § 38-2-1 *et seq*.

The outcome of this case will impact Mersino since Mersino claims an interest in the project or property that is the subject of this lien foreclosure action. Mersino is so situated that the disposition of this action may impair or impede Mersino's ability to protect its interest. No party to this case adequately represents Mersino's interest.

This case is at an early stage, as a scheduling order has just been set. Mersino's intervention will not unduly delay or prejudice the adjudication of the original parties' rights.

II. ARGUMENT

Rule 24(a) of the Federal Rules of Civil Procedure provides, in pertinent part, that "anyone shall be permitted to intervene in an action . . . where the applicant claims an interest relating to the property or transaction which is the subject of the action and the applicant is so situated that the disposition of the action may as a practical matter impair or impede the applicant's ability to protect that interest, unless the applicant's interest is adequately represented by existing parties." FED. R. CIV. P. 24(a). Furthermore, the Court, in its discretion, may allow intervention when "an

applicant's claim or defense and the main action have a question of law or fact in common." FED. R. CIV. P. 24(b); *see also, Acra Turf Club, LLC v. Zanzuccki,* 561 Fed. Appx. 219, 222 (3d Cir. 2014); *Stern v. Chemtall, Inc.,* 217 W.V. 329, 334 (2005)*(*applying West Virginia's version of Fed. R. Civ. P. 24*).*

The Third Circuit has held that a party has a right to intervene if it files a timely motion to intervene and can show 3 things: (1) a sufficient interest in the litigation; (2) a threat that the interest will be impaired or affected, as a practical matter, by the disposition of the action; and (3) that its interest is not adequately represented by the existing parties to the litigation. *Commonwealth of Pennsylvania v. President of the United States*, 888 F.3d 52, 57 (3d Cir. 2018). A party has a sufficient interest in the litigation if its interest is "significantly protectable." *Commonwealth of Pennsylvania v. President of the United States*, 888 F.3d 52, 57-58 (3d Cir. 2018) *citing Donaldson v. United States*, 400 U.S. 517, 531 (1971). The interest must be a cognizable legal interest, and not simply an interest of a general and indefinite character. *Commonwealth of Pennsylvania v. President of the United States*, 888 F.3d 52, 57-58 (3d Cir. 2018) *citing Brody ex rel. Sugzdinis v. Spang*, 957 F.2d 1108, 1116 (3d Cir. 1992).

As one commentator noted, where a non-party's "interest is similar to, but not identical with, that of one of the parties . . . he ordinarily should be allowed to intervene unless it is clear that the party will provide adequate representation for the absentee." 7A C. WRIGHT & A. MILLER, FED. PRAC. & PROC., § 1909 at 524 (1972).

In this case, Mersino meets these standards. Unless Mersino is allowed to intervene, the possibility exists that its interest will not be adequately protected and its interest or right to payment pursuant to its interest will be foreclosed upon or extinguished by another construction company that worked on the Project. Further, a mechanic's lien, like any other lien, is a property interest

protected by due process, and therefore, is significantly protectable. That fact provides sufficient grounds to permit Mersino to intervene. To rule otherwise would deprive Mersino of its due process rights and ability to adequately protect its interest in the Project and/or the Property.

Mersino's interest is not adequately represented by any other party in this litigation – Earth Pipeline merely seeks enforcement of its lien or payment of its claim, not to create a fund for the payment of all liens or claims, in particular, all lien and claims of all mechanic's lien claimants. Moreover, Columbia seeks to defeat those claims and prevent disturbance of its ownership of the Property. There is no party seeking to enforce or protect Mersino's rights or, frankly, to see that Mersino gets paid for the work it has done and/or the services, labor, materials, supplies, equipment, and/or machinery that it furnished to the Project and/or for the improvements to the Property.

Finally, the West Virginia's Mechanic's Lien Statute specifically provides for intervention, and states that the commencement of a lien foreclosure action acts to preserve all liens on the Property involved and that other lienholders may intervene in such suit for the purpose of enforcing their liens, in the same manner as in other chancery suits.

Accordingly, the statutory scheme under which Mersino's lien arises permits intervention.

While Mersino believes that Intervention of Right under Fed. R. Civ. P. 24(a) is appropriate in this case, it also believes that Permissive Intervention under Fed. R. Civ. P. 24(b) is appropriate. Among other things, the issue of the scope of the work performed and/or the services, labor, materials, supplies, equipment, and/or machinery furnished, Welded's defaults, the rights and priority of liens, the foreclosure on property and the relationship to Welded's bankruptcy are all common questions of law or fact. *See, Liberte Capital Group v. Capwill*, 126 Fed Appx. 214, 220 (6^{thh} Cir. 2005); *U.S. v. Territory of Virgin Islands,* 748 F.3d 514, 525 (3d Cir. 2014)(District Court

has discretion to determine request for permissive intervention. Factors to consider in determining whether permissive intervention is appropriate include the stage of the proceeding, the adequacy of representation of the interests of the proposed intervening litigant, and the interests of efficiency of resolution of the original claim).

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III. CONCLUSION

Based on the foregoing reasons and authority, and for all the same stated in the associated Motion for Intervention, Mersino respectfully requests that this Court grant its Motion to Intervene pursuant to Rule 24 of the Federal Rules of Civil Procedure.

Dated: May 14, 2020
Wilmington, Delaware

BAYARD, P.A.

/s/ Gregory J. Flasser
GianClaudio Finizio (No. 4253)
Gregory J. Flasser (No. 6154)
600 North King Street, Suite 400
Wilmington, Delaware 19801
Telephone: (302) 655-5000
Facsimile: (302) 658-6395
Email: gfinizio@bayardlaw.com
gflasser@bayardlaw.com

-and-

BUTZEL LONG PC
Max J. Newman
Michael Griffie
Stoneridge West
41000 Woodard Ave
Bloomfield Hills, MI 48304
Telephone: (248) 258-1616
Facsimile: (248) 258-1439
Email: newman@butzel.com
griffie@butzel.com

Counsel for Mersino Dewatering, Inc.

Exhibit 1

(Subcontract)

CONSTRUCTION SUBCONTRACT

Subcontract Number: **2018-01-15**

Subcontractor: Mersino
Address: 10162 East Coldwater Road
Davison, MI 48423
Contact: Marco Mersino
marco@mersino.com
810-658-3472 cell: 386-566-3356

Work Locations: Marshall and Wetzel Counties, WV

Yard Address: 1307 Wheeling Avenue, Glen Dale, WV 26038

This subcontract is effective as of the 16th day of August 2018, by and between **Welded Construction, L.P.**, a Delaware Limited Partnership (CONTRACTOR) and the above-named SUBCONTRACTOR (the "Parties"). The Parties hereby agree that all Work specified below shall be performed by the SUBCONTRACTOR understanding that CONTRACTOR is committed to safety, health and the protection of the environment as core values reflected in all aspects of its operations. SUBCONTRACTOR shall perform all activities in accordance with these principles and all provisions of this Subcontract Agreement that consists of this Subcontract Agreement, the following documents and the attachments, appendices, drawings, specifications, documents and exhibits specified therein and hereby incorporated herein (Subcontract):

Subcontract Form of Agreement

Exhibit "A" – Labor and Equipment Rates – Extra Work
Exhibit "B" – Administrative Forms
Exhibit "C" – Insurance Requirements
Exhibit "D" – Additional Insured
Exhibit "E" – Baseline Schedule
Exhibit "F" – Subcontractor Proposal
Exhibit "G" – General Terms & Conditions
Exhibit "H" – Safety Requirements
Exhibit "I" – Columbia Pipeline Group Environmental Construction Standards – West Virginia; Rev. Feb. 2018
Exhibit "J"– Columbia Pipeline Group Pipeline Construction Standard CS.220.001 (6/21/2016)
Exhibit "K" – Minimum Requirements for Pipeline Construction In Close Proximity To High Voltage A.C. Overhead Electric Power Lines (Procedure No. 70.002.055)
Exhibit "L" – Steep Slope Procedures (Welded and TransCanada)
Exhibit "M" - MXP Spread 1 Construction Stipulations.as of 3-30-18 (Line List)

A. **WORK TO BE PERFORMED (Work):** Except as specified elsewhere in the subcontract, SUBCONTRACTOR shall furnish all project; union labor; materials; tools; supplies; equipment; transportation (other than stipulated in this article); supervision; technical, professional and other services; and shall perform all operations necessary and required to satisfactorily perform the following:

- Subcontractor will provide temporary pumping services for the creek diversion for Fish Creek on the Mountaineer Express Pipe project.

- MERSINO will supply the contractor a bypass pumping system capable of delivering approximate flows up to 55,000 gpm. Each pump will pull from the river upstream of the temporary dam and open discharge back into the river downstream. Pumps will be set into the river and will be required to discharge up a bank then parallel to the river 250 LF and back down the bank into the river.

- The bypass pumping system will consist of multiple hydraulic submersible pumps to deliver the required flows of 55,000 gpm. This will be accomplished by utilizing 4 – 18" hydraulic submersibles each capable of 9,000 gpm, and 1 – 24" hydraulic submersible capable of 21,000 gpm.
  Mersino has also included pricing to supply and install two temporary Hydro-Dam (8' Tall X50' Long) to dam f lows from in front and behind of the excavation area. Hydro-dam shall be able to bulkhead up to 6' maximum height.

- Mersino will provide an installation crew to fuse the HDPE discharge piping, set and plumb pumps for this pumping system. Additionally, upon completion of the bypass pumping portion of the project Mersino will provide a teardown crew to deconstruct the pumping system so that it may be loaded on trucks for demobilization. Should project delays occur due to weather conditions pumping equipment shall be provided at stand-by rates, however installation/ removal and pump watch rates shall remain the same.

SUBCONTRACTOR will be responsible for the following work:

- Assistance with the development of standard submittals required of the contractor by the engineer for the bypass pumping on the project
- Delivery of the bypass pumping equipment to Welded lay down yard
  Operators required for the installation of the bypass pumping system
- Fusion machine for installation
- Equipment required for the operation of the bypass pumping, including the pumps, power packs, discharge piping, isolation valves, spill containment berms, etc.
- Blocking/ bulkheading of the creek to provide sufficient submergence for the pumps
- 24 Hour pump watch as required
- Preventative maintenance of the pumps for duration of project (checking of levels, oil changes, etc.) – Will be provided if pump watch option is chosen
- Operators required for the breakdown and removal of the bypass pumping system upon completion
- Demobilization of equipment upon completion

CONTRACTOR will be responsible for the following:

- The return of this rental agreement signed by an authorized representative of the Contractor, along with a letter of Commencement' or a copy of the performance bond
- All applicable sales and use taxes
- Delivery of equipment from Welded yard to the site
- All fuel and fueling operations required for the bypass pumping systems
- Loaders, excavators and operators to assist in placement/ removal of pumps to/from the creek and placement/removal of the temporary dam
- Clearing of boulders and other debris from the temporary dam placement area to ensure good seal
- Unrestricted access to the jobsite for installation/ removal purposes
- Any and all permits required
- Assistance in unloading/loading of equipment on trucks
- All site restoration required as a result of the use of the pumping equipment
  Subcontractor shall perform the work in accordance with Columbia Gas Pipeline Construction Specifications CS.220.001 (Effective 6/21/16).
- Subcontractor shall be solely responsible, and shall reimburse Contractor if necessary, for any expenses incurred to relocate or replace any protected property corners, line monuments, survey markers, or government benchmarks that have been damaged or destroyed by Subcontractor, its agents, or employees.
- Subcontractor shall police the ROW to remove and dispose of all construction related trash and debris in a manner acceptable to inspection.
- Subcontractor shall furnish and require all employees to wear and visibly display identification badges at all times while they are on the job and they relate to the project. Photos are not required; however, each worker must be able to provide a photo style identification upon Company request.
- Subcontractor shall provide and maintain a written plan, approved by CONTRACTOR, identifying their DOT Operator Qualification program that meets the requirements of 49 CFR, Part 192,

subpart N. Subcontractor shall use only qualified employees to perform covered tasks and will immediately provide Contractor with documentation of any modifications that are made in their written plan or their employees qualification to perform covered tasks.

- Company will provide an on-site inspection team. Members of this team will have a stop-work authority, and will be responsible for insuring Contractor/Subcontractor compliance on the project.
- Subcontractor shall comply with all OSHA Standards and all applicable State and Local Laws and Regulations.
- In the event Company/Contractor identifies any property corners or line monuments, or government benchmarks that are to be protected. Subcontractor shall reimburse contractor for any expenses incurred by Contractor in relocating or replacing same which have been damaged or destroyed by Subcontractor, its agents, or employees.
- Care should be taken to avoid spills and other types of pollution while work is being performed in streams and other bodies of water and in their immediate drainage areas.
- Where navigable rivers or other streams under the jurisdiction of any governmental agency are crossed, construction shall conform to any code, specifications or special requirement of such agencies.
- Project requires hard hats in compliance with ANSIZ89.1 type II with side impact protection.
- Subcontractor shall provide daily reports to Contractor by 10 am for the previous day's work.
- Subcontractor shall attend progress meetings as required throughout the term of this agreement.

See attached Exhibit F Subcontractor's proposal dated Friday 13th day of July 2018 for pricing.

The Work is a portion of the goods and services to be provided by CONTRACTOR to Columbia Gas Transmission, LLC (OWNER) for **Spread 1** of the **Mountaineer Express Pipeline Project in Marshall and Wetzel Counties in West Virginia.**

B. **SCHEDULE:** The Work shall be performed in accordance with the dates set forth in the Exhibit "E".

In accordance with Exhibit E- Subcontractor will operate ten (10) hours a day six (6) days a week, any overtime hours worked must be approved by the Contractor's Project Superintendent and Project Manager.

C. **COMPENSATION:** As full consideration for the satisfactory performance by SUBCONTRACTOR of this subcontract, CONTRACTOR shall pay to SUBCONTRACTOR compensation in accordance with the prices set forth in Exhibits "A", "F" and with the payment provisions of this subcontract (Exhibit G).
The estimated value of this subcontract is: **$298,380.00, (Two-hundred, ninety-eight thousand, three hundred, eighty and 00.00**
Payment terms NET 30 days after approved invoice
Retainage – 0%

Exhibit F – Subcontractor Proposal is attached as reference for clarifications and assumptions of the work to be performed.

This subcontract embodies the entire agreement between CONTRACTOR and SUBCONTRACTOR and supersedes all other writings. The parties shall not be bound by or be liable for any statement, representation, promise, inducement or understanding not set forth herein.

CONTRACTOR:

Welded Construction, L.P.

Authorized Signature:

Print Name: Mett S. Carroll

Print Title: Project Manager

SUBCONTRACTOR:

Mersino Dewatering, Inc.

Authorized Signature:

Print Name: Gino Mersino

Print Title: President

38-3267850

(Federal Tax Payer I.D. Number)

SUBCONTRACT CHANGE ORDER
Mountain Xpress Pipeline Project

Subcontractor:	Mersino Dewatering, Inc.	Change Order No.:	2018-01-15-CO-001 Rev 1
Address:	10162 East Coldwater Road Davison, MI 48423	Subcontract No.:	2018-01-15 – MXP
Representative:	Marco Mersino (810) 658-3472	Effective Date:	13 November 2018
Email:	Marco@mersino.cocm	Issued by:	Marcus Beckford

Change Scope: ☒ In Scope ☐ Out of Scope

DESCRIPTION OF CHANGES

1.0 SUBCONTRACTOR REQUESTED CHANGES (SRC) 001

This change order is being done to increase value and closeout subcontract in accordance proposed pricing and approved invoicing. A revision to the subcontract proposal was issued on 8 August 2018 to include the supply and installation of two temporary Hydro-Dams (8-foot-tall x 150-foot-long) to dam flows from in front and behind the excavation area. The Hydro-Dam shall be able to bulkhead up to 6' maximum height.

The subcontractor was responsible for the following: (1) Assistance with the development of standard submittals required of the contractor by the engineer for the bypass pumping on the project. (2) Delivery of the bypass pumping equipment to Welded laydown yard. (3) Operators required for the installation of the bypass pumping system. (4) Fusion machine for installation. (5) Equipment required for the operation of the bypass pumping, including the pumps, power packs, discharge piping, isolation valves, spill containment berms, etc. (6) blocking / bulkheading of the creek to provide sufficient submergence for the pumps. (7) 24-hour pump watch as required. (8) Preventative maintenance of the pumps for duration of project (checking of levels, oil changes, etc.) – will be provided if pump watch is chosen. (9) Operators required for the breakdown and removal of the bypass pumping system upon completion. (10) Demobilization of equipment upon completion.

The invoiced amounts are as follows:

Mobilization / Demobilization:	$28,250	
Daily Installation Rate:	$119,400	(the day rate that was estimated was 10 days x $9,950 = $99,500. It took 12 days to complete the scope of work 12 days x $9,950 = $119,400)
Bypass Pumping System	$159,450	(the minimum rental was one month)
Pump Watch mobilization	$3,600	(Time and Material $1,800 x 2 = $3,600)
Day Pump Watch	$2,400	(Time and Material $1,200 x 2 = $2,400 for 8 hours)
OT Day Pump Watch	$960	(Time and material $120/hr (2 x 4 hrs = 8 hrs)
Night Pump Watch	$2,400	(Time and Material $1,200 x 2 = $2,400 for 8 hours)
OT Night Pump Watch	$960	(Time and material $120/hr (2 x 4 hrs = 8 hrs)
Truck Pay	$500	(Time and material $125/day (4 x $125 = $500)
Tear Down Crew	$12,750	(the day rate that was estimated was 6 days x $4,250 = $25,500. It took 3 days to complete the scope of work 3 days x $4,250 = $12,750)
TOTAL:	$330,670	
Invoiced amount:	$330,670	
Subcontract Estimated Value	$298,380	
Increase	$32,290	

Mersino (new) Temporary Pumping Services (new)

Date Received	Invoice Date	Invoice #	Description	Gross Invoice	Retainage Rate	Retainage Rate	Net
09/12/18	08/31/18	61162	Mobilization / Day Installation	133,525.00	0%	$ -	$ 133,525.00
09/30/18	09/30/18	62134	Equipment and labor @ Fish Creek Pump Around	197,145.00	0%	$ -	$ 197,145.00
				330,670.00		$ -	$ 330,670.00

ATTACHMENTS/REFERENCES: This Change Order includes the following supporting documents:

1. Contractor Proposal to be used as SCHEDULE A, Pricing, Schedule and Rates for this CO-001

CONTRACT PRICE SUMMARY –		
Original Contract Value:	USD	$298,380.00
Value of previously approved Changes:	USD	$.00
Value of this Change Order: (Total amount is estimated for 23 Days)	**USD**	**$32,290.00**
New Contract Value:	**USD**	**$330,670.00**

WORK SCHEDULE SUMMARY –	
Estimated Impact to Schedule:	TBD
Previously Accepted Days:	TBD
Total Days Schedule Impact:	**TBD**

▶ The price adjustment and time extension (if any) granted under this Change Order constitute payment in full for the Work covered by this Change Order, including, without limitation, all direct costs, indirect costs, overhead costs, general and administrative expenses, profit, and all effects (direct, indirect, and consequential, including impacts and ripple effects) of the Work covered by this Change Order on all Contract Work, whether or not changed by this Change Order.

▶ The Completion Date, Subcontract Price, and all other terms, covenants and conditions of the above-referenced Subcontract, except as duly modified by this and previous Change Orders and Amendments, if any, remain in full force and effect.

▶ Subcontractor acknowledges that Contractor, by authorizing this Change Order, does not waive or modify any contractual rights or responsibilities unless such waiver or modification is expressly set forth in this Change Order.

APPROVALS

Contractor: **Welded Construction, LP**

Authorized Signature:

Name: Marcus Hood

Title: Sr. Projects Manager - MXP

Subcontractor: **Mersino Dewatering, Inc.**

Authorized Signature:

Name:

Title: CFO

Reviewed By:

AUTHOR	CONTRACTS MGR	PROJ. CONTROLS	PROJ. MGR.
MB	MB	SS	MH

Exhibit B-2: Subcontractor Requested Change

SUBCONTRACT NO. 2018-01-15

SUBCONTRACTOR REQUESTED CHANGE NO. 1

CORRESPONDENCE NO. 1

Additional Pages attached to this request: ____
Total No. of Pages 1

COMMITMENT SECTION

1591 Wheeling Ave. Glen Dale, WV Mountaineer Xpress Pipeline	10/1/18	1
PROJECT LOCATION	DATE	COMPANY WORK ORDER NO.

Mersino Dewatering, Inc.	10162 E. Coldwater Rd. Davison, MI 48423
SUBCONTRACTOR	ADDRESS

Contractor is hereby notified that the following circumstances have arisen that Sub-Contractor believes entitles it to request a change:

Reference to Contract Sections associated with this requested change:

Reference to Drawings associated with or impacted by this requested change (as required):

Detailed Description of the Change: Pump Watch was not included in original subcontract amount. Due to site constraints our estimated quantities for install are higher.

Project Scope of Work:	☐ Unchanged	☐ Reduced	☐ Increased
Cost Proposal Basis:	☐ Lump Sum	☐ Unit Cost	☐ Time and Material

Estimated Value of Change	$32,290.00
Estimated Impact to Schedule	Calendar Days (Enter # of Days)

NOTE: By executing this Change Order Request, Subcontractor acknowledges that all cost and schedule impacts have been expressly identified. No further adjustments for this Work shall be made.

Sub-Contractor's Representative: Stacy Simm — AUTHORIZED REPRESENTATIVE — 10/1/18 — DATE

Remarks:

Welded Approval: **Date:**

The Subcontractor is responsible to complete this form in its entirety and provide associated backup as noted above in this request and / or provide additional backup required to substantiate the change order request.
All T&M/Unit Cost changes will require timesheets for Welded Project Manager (or designee) approval.
Signed authorization by a Welded representative is required to commence Work noted in this Change Request.
Subcontractor acknowledges that Contractor, by authorizing this change request, does not waive or modify any contractual rights or responsibilities unless such waiver or modification is expressly set forth in this change request.

Revision Date: 12/12/2013

Exhibit 2

(Mechanic's Lien)

STACY STOWE
10162 EAST COLD WATER RD
DAVISON MI 48423-8598

BOOK 0011 PAGE 0626

PREPARED BY, RECORDING REQUESTED BY AND RETURN TO:

Khalid Mohammed
Mersino Dewatering, Inc.
10162 E. Coldwater Rd.
Davison, MI 48423

Marshall County
Jan Pest, Clerk
Instrument 1448713
12/11/2018 @ 01:15:41 PM
MECHANICS LIEN
Book 11 @ Page 626
Pages Recorded 1
Recording Cost $ 11.00

SUBCONTRACTOR'S NOTICE OF MECHANIC'S LIEN
West Virginia § Code 38-2-9

TO: TransCanada
54 Seclusion Crescent, Brampton, ON ON L6R 1 L

You will please take notice that the undersigned, Mersino Dewatering, Inc., 10162 E. Coldwater Rd., Davison, MI 48423, Phone: (810) 658-3472, Fax: (810) 653-7828, was and is subcontractor with Welded Construction, 26933 ECKEL RD, PERRYSBURG, OH 43551-1215, who was and is general contractor for the furnishing of materials and doing of the work and labor, necessary to the completion of Dewatering/Pumping Services and/or equipment rentals on that certain building Mountaineer Xpress Pipeline Project, 1591 Wheeling Ave., Glen Dale, WV 26038 in the County of Marshall, owned by you and situated on lot number of block number as shown on the official map of and that the contract price and value of said work and materials is $330,670.00 . You are further notified that the undersigned has not been paid therefor (or has been paid only $0.00 thereof) and that he claims and will claim a lien upon your interest in the said lot (or tract) of land and upon the buildings, structures and improvements thereon to secure the payment of $330,670.00.

Dated December 7, 2018 for Mersino Dewatering, Inc., 10162 E. Coldwater Rd., Davison, MI 48423, Phone: (810) 658-3472, Fax: (810) 653-7828.

By: Khalid Mohammed, Credit Manager

AFFIDAVIT

State of Michigan)
) §
County of Macomb)

Khalid Mohammed, Credit Manager for Mersino Dewatering, Inc. being first duly sworn, upon his oath says that the statements in the foregoing notice of mechanic's lien contained are true, as he verily believes.

Given under my hand this 7th day of December 2018 before me, Jeremy White, NOTARY PUBLIC:

Signature
My Commission Expires: 04/16/2023

JEREMY J WHITE
Notary Public, State of Michigan
County Of Macomb
My Commission Expires 04-16-2023
Acting in the County of Lapeer

STATE OF WEST VIRGINIA, MARSHALL COUNTY, SCT.:

I, JAN PEST, Clerk of the County Commission of said County, do hereby certify that the annexed writing, bearing date on the 7th day of December, 2018, was presented for and by me, admitted to record in my office upon the above certificate as to the parties therein named this 11th day of December, 2018 at 1:15 o'clock P M.

TESTE: Jan Pest Clerk

[redacted]2BLR107
Jan Pest, Clerk
12/11/2018 @ 01:15:41 PM
Receipt 201800008518
Paid By MERSINO DEWATERING INC

Total Due	$	11.00
Check	$	11.00
Total Received	$	11.00

List of Checks

18066	$	11.00

Marshall County
Jan Pest, Clerk
Instrument 1448713
12/11/2018 @ 01:15:41 PM
MECHANICS LIEN
Book 11 @ Page 626
Pages Recorded 1
MERSINO DEWATERING INC
WELDING CONSTRUCTION
TRANSCANADA

Recording	$	5.00
Additional Pages	$	.00
County SB592	$	.10
State SB592	$	.90
Farm Land HB622	$	2.50
Heritage HB622	$	2.50
Instrument Total	$	11.00

Exhibit 3

(Complaint)

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	
WELDED CONSTRUCTION, L.P. et al	Chapter 11
Debtors.	Case No. 18-12378 (CSS)
	(Jointly Administered)
EARTH PIPELINE SERVICES, INC.,	
Plaintiff,	
v.	Adv. Pro. No. 19-50274 (CSS)
COLUMBIA GAS TRANSMISSION, LLC,	
Defendant.	

COMPLAINT FOR ENFORCEMENT OF MECHANIC'S LIEN

Mersino Dewatering, Inc. d/b/a Global Pump ("Mersino"), by and through its attorneys, Butzel Long PC and Bayard, P.A., for its Complaint for Enforcement of Mechanic's Lien, states as follows:

PARTIES, JURISDICTION, AND VENUE

1. Mersino is a duly organized and existing Michigan corporation that has its principal place of business located at 10162 E. Coldwater Road, Davison, MI 48423 and that conducts business in the State of West Virginia, in particular, the County of Marshall in the State of West Virginia.

2. Upon information and belief, TC Energy Corporation ("TC Energy") f/k/a TransCanada Corporation ("TransCanada") is, upon information and belief, a duly organized and

existing Canadian corporation that has its principal place of business located at 450 – 1 Street SW Calgary, AB Canada, T2P 5H1 and that conducts business in the State of West Virginia, in particular, the County of Marshall in the State of West Virginia. Upon information and belief, TC Energy and/or TransCanada acquired Columbia Pipeline Group ("Columbia Pipeline") d/b/a Columbia Gas Transmission, LLC ("Columbia Gas") in 2016. Upon information and belief, TC Energy, TransCanada, Columbia Pipeline, and/or Columbia Gas (TC Energy, TransCanada, Columbia Pipeline, and/or Columbia Gas shall hereinafter be referred to collectively as the "Owner") own the project commonly known as the Mountaineer Xpress Pipeline Project (the "Project") and/or the real property consisting of approximately 99,500 linear feet of pipeline right-of-way and related work areas and access roads spanning the County of Marshall and the County of Wetzel in the State of West Virginia (the "Property"). Upon information and belief, the physical address for the Project and/or the Property is 1591 Wheeling Avenue, Glen Dale, WV 26038, which is legally described as:

> Property located at the municipal address of WHEELING AVE GLEN DALE, WV 26038, GLEN DALE, WV 26038. In the county of MARSHALL. APN 06-9-00020000. Briefly described as 3.39 A BETWEEN B&O RR CO. Municipality / Township of GLENDALE CORP. Township/Range/Section. Legal Lot = Book/Page.

3. Mersino is aware of the following additional lienholders on the Property:

- Welded Construction, L.P. – 26933 Eckel Road, Perrysburg, OH 43551
- Earth Pipeline Services, Inc. – 135 Technology Drive, Suite 400, Canonsburg, PA 15317
- Bayou City Equipment LLC – 14500 E. Hardy Road, Houston, TX 77039
- CADD Enterprises, L.L.C.

4. Jurisdiction is proper in this Court as a proceeding related to Welded's bankruptcy under 28 U.S.C. §1334(b).

5. Venue is proper in this Court under 28 U.S.C. §1409(a).

COUNT I
ENFORCEMENT OF MECHANIC'S LIEN

6. Upon information and belief, the Owner and Welded Construction, L.P. ("Welded") entered into a contract in 2018 pursuant to which Welded would furnish certain work, services, labor, materials, supplies, equipment, and/or machinery to the Project and/or for certain improvements to the Property.

7. Welded and Mersino entered into a subcontract in 2018 pursuant to which Mersino would furnish certain work, services, labor, materials, supplies, equipment, and/or machinery to the Project and/or for certain improvements to the Property (the "Subcontract"). A true and accurate copy of the Subcontract is attached hereto as **Exhibit 1** and is, by reference, incorporated herein and made part hereof.

8. Pursuant to the Subcontract, Mersino furnished work, services, labor, materials, supplies, equipment, and/or machinery to the Project and/or for the improvements to the Property.

9. Mersino's first date of furnishing work, services, labor, materials, supplies, equipment, and/or machinery to the Project and/or for the improvements to the Property was August 19, 2018.

10. Mersino's last date of furnishing work, services, labor, materials, supplies, equipment, and/or machinery to the Project and/or for the improvements to the Property was October 3, 2018.

11. On December 11, 2018, Mersino properly and timely recorded a Notice of Mechanic's Lien for $330,670.00 with the Clerk of the County Commission of the County of Marshall of the State of West Virginia at Instrument 1448713 (Book 0011, Page 0626) for the work, services, labor, materials, supplies, equipment, and/or machinery that it furnished to the

Project and/or for the improvements to the Property (the "Lien"). A true and accurate copy of the Lien is attached hereto as **Exhibit 2** and is, by reference, incorporated herein and made part hereof.

12. Mersino performed all of the steps prescribed by W. Va. Code § 38-2-1 et seq. (i.e. West Virginia Mechanic's Lien Statute) to perfect the Lien, and therefore, has a valid and enforceable mechanic's lien against the Project and/or the Property.

13. To date, Mersino is owed $330,670.00 for the work, services, labor, materials, supplies, equipment, and/or machinery that it furnished to the Project and/or for the improvements to the Property.

14. Mersino will file a Notice of Lis Pendens (the "Lis Pendens") with the Clerk of the County Commission of the County of Marshall of the State of West Virginia as soon as possible after it files this Complaint. A true and accurate copy of the form of the Lis Pendens is attached hereto as **Exhibit 3** and is, by reference, incorporated herein and made part hereof.

WHEREFORE, Mersino respectfully requests that this Court grant the following relief:

a. Declare that Mersino has a valid and enforceable mechanic's lien against the Property;

b. Declare that the value of the Lien is $330,670.00;

c. Determine the priority of all parties claiming an interest in the Property or a lien against the Property;

d. Establish the statutory proceedings required for the sale of the Property and order the sale of the Property and the payment of the proceeds from the sale of the Property to satisfy the Lien and all fees and costs provided by law that are owed to Mersino.

e. Grant any further relief to Mersino that this Court deems appropriate under the circumstances.

Respectfully Submitted,

Dated: May 14, 2020
Wilmington, Delaware

BAYARD, P.A.

/s/ Gregory J. Flasser

GianClaudio Finizio (No. 4253)
Gregory J. Flasser (No. 6154)
600 North King Street, Suite 400
Wilmington, Delaware 19801
Telephone: (302) 655-5000
Facsimile: (302) 658-6395
Email: gfinizio@bayardlaw.com
gflasser@bayardlaw.com

-and-

BUTZEL LONG PC
Max J. Newman
Michael Griffie
Stoneridge West
41000 Woodard Ave
Bloomfield Hills, MI 48304
Telephone: (248) 258-1616
Facsimile: (248) 258-1439
Email: newman@butzel.com
griffie@butzel.com

Counsel for Mersino Dewatering, Inc.

Exhibit 1

(Subcontract)

CONSTRUCTION SUBCONTRACT

Subcontract Number: **2018-01-15**

Subcontractor: Mersino
Address: 10162 East Coldwater Road
Davison, MI 48423
Contact: Marco Mersino
marco@mersino.com
810-658-3472 cell: 386-566-3356

Work Locations: Marshall and Wetzel Counties, WV

Yard Address: 1307 Wheeling Avenue, Glen Dale, WV 26038

This subcontract is effective as of the 16th day of August 2018, by and between **Welded Construction, L.P.**, a Delaware Limited Partnership (CONTRACTOR) and the above-named SUBCONTRACTOR (the "Parties"). The Parties hereby agree that all Work specified below shall be performed by the SUBCONTRACTOR understanding that CONTRACTOR is committed to safety, health and the protection of the environment as core values reflected in all aspects of its operations. SUBCONTRACTOR shall perform all activities in accordance with these principles and all provisions of this Subcontract Agreement that consists of this Subcontract Agreement, the following documents and the attachments, appendices, drawings, specifications, documents and exhibits specified therein and hereby incorporated herein (Subcontract):

Subcontract Form of Agreement

Exhibit "A" – Labor and Equipment Rates – Extra Work
Exhibit "B" – Administrative Forms
Exhibit "C" – Insurance Requirements
Exhibit "D" – Additional Insured
Exhibit "E" – Baseline Schedule
Exhibit "F" – Subcontractor Proposal
Exhibit "G" – General Terms & Conditions
Exhibit "H" – Safety Requirements
Exhibit "I" – Columbia Pipeline Group Environmental Construction Standards – West Virginia; Rev. Feb. 2018
Exhibit "J"– Columbia Pipeline Group Pipeline Construction Standard CS.220.001 (6/21/2016)
Exhibit "K" – Minimum Requirements for Pipeline Construction In Close Proximity To High Voltage A.C. Overhead Electric Power Lines (Procedure No. 70.002.055)
Exhibit "L" – Steep Slope Procedures (Welded and TransCanada)
Exhibit "M" - MXP Spread 1 Construction Stipulations.as of 3-30-18 (Line List)

A. **WORK TO BE PERFORMED (Work):** Except as specified elsewhere in the subcontract, SUBCONTRACTOR shall furnish all project; union labor; materials; tools; supplies; equipment; transportation (other than stipulated in this article); supervision; technical, professional and other services; and shall perform all operations necessary and required to satisfactorily perform the following:

- Subcontractor will provide temporary pumping services for the creek diversion for Fish Creek on the Mountaineer Express Pipe project.

- MERSINO will supply the contractor a bypass pumping system capable of delivering approximate flows up to 55,000 gpm. Each pump will pull from the river upstream of the temporary dam and open discharge back into the river downstream. Pumps will be set into the river and will be required to discharge up a bank then parallel to the river 250 LF and back down the bank into the river.

- The bypass pumping system will consist of multiple hydraulic submersible pumps to deliver the required flows of 55,000 gpm. This will be accomplished by utilizing 4 – 18" hydraulic submersibles each capable of 9,000 gpm, and 1 – 24" hydraulic submersible capable of 21,000 gpm.
  Mersino has also included pricing to supply and install two temporary Hydro-Dam (8' Tall X50' Long) to dam f lows from in front and behind of the excavation area. Hydro-dam shall be able to bulkhead up to 6' maximum height.

- Mersino will provide an installation crew to fuse the HDPE discharge piping, set and plumb pumps for this pumping system. Additionally, upon completion of the bypass pumping portion of the project Mersino will provide a teardown crew to deconstruct the pumping system so that it may be loaded on trucks for demobilization. Should project delays occur due to weather conditions pumping equipment shall be provided at stand-by rates, however installation/ removal and pump watch rates shall remain the same.

SUBCONTRACTOR will be responsible for the following work:

- Assistance with the development of standard submittals required of the contractor by the engineer for the bypass pumping on the project
- Delivery of the bypass pumping equipment to Welded lay down yard
  Operators required for the installation of the bypass pumping system
- Fusion machine for installation
- Equipment required for the operation of the bypass pumping, including the pumps, power packs, discharge piping, isolation valves, spill containment berms, etc.
- Blocking/ bulkheading of the creek to provide sufficient submergence for the pumps
- 24 Hour pump watch as required
- Preventative maintenance of the pumps for duration of project (checking of levels, oil changes, etc.) – Will be provided if pump watch option is chosen
- Operators required for the breakdown and removal of the bypass pumping system upon completion
- Demobilization of equipment upon completion

CONTRACTOR will be responsible for the following:

- The return of this rental agreement signed by an authorized representative of the Contractor, along with a letter of Commencement' or a copy of the performance bond
- All applicable sales and use taxes
- Delivery of equipment from Welded yard to the site
- All fuel and fueling operations required for the bypass pumping systems
- Loaders, excavators and operators to assist in placement/ removal of pumps to/from the creek and placement/removal of the temporary dam
- Clearing of boulders and other debris from the temporary dam placement area to ensure good seal
- Unrestricted access to the jobsite for installation/ removal purposes
- Any and all permits required
- Assistance in unloading/loading of equipment on trucks
- All site restoration required as a result of the use of the pumping equipment
  Subcontractor shall perform the work in accordance with Columbia Gas Pipeline Construction Specifications CS.220.001 (Effective 6/21/16).
- Subcontractor shall be solely responsible, and shall reimburse Contractor if necessary, for any expenses incurred to relocate or replace any protected property corners, line monuments, survey markers, or government benchmarks that have been damaged or destroyed by Subcontractor, its agents, or employees.
- Subcontractor shall police the ROW to remove and dispose of all construction related trash and debris in a manner acceptable to inspection.
- Subcontractor shall furnish and require all employees to wear and visibly display identification badges at all times while they are on the job and they relate to the project. Photos are not required; however, each worker must be able to provide a photo style identification upon Company request.
- Subcontractor shall provide and maintain a written plan, approved by CONTRACTOR, identifying their DOT Operator Qualification program that meets the requirements of 49 CFR, Part 192,

subpart N. Subcontractor shall use only qualified employees to perform covered tasks and will immediately provide Contractor with documentation of any modifications that are made in their written plan or their employees qualification to perform covered tasks.

- Company will provide an on-site inspection team. Members of this team will have a stop-work authority, and will be responsible for insuring Contractor/Subcontractor compliance on the project.
- Subcontractor shall comply with all OSHA Standards and all applicable State and Local Laws and Regulations.
- In the event Company/Contractor identifies any property corners or line monuments, or government benchmarks that are to be protected. Subcontractor shall reimburse contractor for any expenses incurred by Contractor in relocating or replacing same which have been damaged or destroyed by Subcontractor, its agents, or employees.
- Care should be taken to avoid spills and other types of pollution while work is being performed in streams and other bodies of water and in their immediate drainage areas.
- Where navigable rivers or other streams under the jurisdiction of any governmental agency are crossed, construction shall conform to any code, specifications or special requirement of such agencies.
- Project requires hard hats in compliance with ANSIZ89.1 type II with side impact protection.
- Subcontractor shall provide daily reports to Contractor by 10 am for the previous day's work.
- Subcontractor shall attend progress meetings as required throughout the term of this agreement.

See attached Exhibit F Subcontractor's proposal dated Friday 13th day of July 2018 for pricing.

The Work is a portion of the goods and services to be provided by CONTRACTOR to Columbia Gas Transmission, LLC (OWNER) for **Spread 1** of the **Mountaineer Express Pipeline Project in Marshall and Wetzel Counties in West Virginia.**

B. **SCHEDULE:** The Work shall be performed in accordance with the dates set forth in the Exhibit "E".

In accordance with Exhibit E- Subcontractor will operate ten (10) hours a day six (6) days a week, any overtime hours worked must be approved by the Contractor's Project Superintendent and Project Manager.

C. **COMPENSATION:** As full consideration for the satisfactory performance by SUBCONTRACTOR of this subcontract, CONTRACTOR shall pay to SUBCONTRACTOR compensation in accordance with the prices set forth in Exhibits "A", "F" and with the payment provisions of this subcontract (Exhibit G).
The estimated value of this subcontract is: **$298,380.00, (Two-hundred, ninety-eight thousand, three hundred, eighty and 00.00**
Payment terms NET 30 days after approved invoice
Retainage – 0%

Exhibit F – Subcontractor Proposal is attached as reference for clarifications and assumptions of the work to be performed.

This subcontract embodies the entire agreement between CONTRACTOR and SUBCONTRACTOR and supersedes all other writings. The parties shall not be bound by or be liable for any statement, representation, promise, inducement or understanding not set forth herein.

CONTRACTOR:

Welded Construction, L.P.

Authorized Signature:

Print Name: Mett S. Carroll

Print Title: Project Manager

SUBCONTRACTOR:

Mersino Dewatering, Inc.

Authorized Signature:

Print Name: Gino Mersino

Print Title: President

38-3267850

(Federal Tax Payer I.D. Number)

SUBCONTRACT CHANGE ORDER
Mountain Xpress Pipeline Project

Subcontractor:	Mersino Dewatering, Inc.	Change Order No.:	2018-01-15-CO-001 Rev 1
Address:	10162 East Coldwater Road Davison, MI 48423	Subcontract No.:	2018-01-15 – MXP
Representative:	Marco Mersino (810) 658-3472	Effective Date:	13 November 2018
Email:	Marco@mersino.cocm	Issued by:	Marcus Beckford

Change Scope: ☒ In Scope ☐ Out of Scope

DESCRIPTION OF CHANGES

1.0 SUBCONTRACTOR REQUESTED CHANGES (SRC) 001

This change order is being done to increase value and closeout subcontract in accordance proposed pricing and approved invoicing. A revision to the subcontract proposal was issued on 8 August 2018 to include the supply and installation of two temporary Hydro-Dams (8-foot-tall x 150-foot-long) to dam flows from in front and behind the excavation area. The Hydro-Dam shall be able to bulkhead up to 6' maximum height.

The subcontractor was responsible for the following: (1) Assistance with the development of standard submittals required of the contractor by the engineer for the bypass pumping on the project. (2) Delivery of the bypass pumping equipment to Welded laydown yard. (3) Operators required for the installation of the bypass pumping system. (4) Fusion machine for installation. (5) Equipment required for the operation of the bypass pumping, including the pumps, power packs, discharge piping, isolation valves, spill containment berms, etc. (6) blocking / bulkheading of the creek to provide sufficient submergence for the pumps. (7) 24-hour pump watch as required. (8) Preventative maintenance of the pumps for duration of project (checking of levels, oil changes, etc.) – will be provided if pump watch is chosen. (9) Operators required for the breakdown and removal of the bypass pumping system upon completion. (10) Demobilization of equipment upon completion.

The invoiced amounts are as follows:

Mobilization / Demobilization:	$28,250	
Daily Installation Rate:	$119,400	(the day rate that was estimated was 10 days x $9,950 = $99,500. It took 12 days to complete the scope of work 12 days x $9,950 = $119,400)
Bypass Pumping System	$159,450	(the minimum rental was one month)
Pump Watch mobilization	$3,600	(Time and Material $1,800 x 2 = $3,600)
Day Pump Watch	$2,400	(Time and Material $1,200 x 2 = $2,400 for 8 hours)
OT Day Pump Watch	$960	(Time and material $120/hr (2 x 4 hrs = 8 hrs)
Night Pump Watch	$2,400	(Time and Material $1,200 x 2 = $2,400 for 8 hours)
OT Night Pump Watch	$960	(Time and material $120/hr (2 x 4 hrs = 8 hrs)
Truck Pay	$500	(Time and material $125/day (4 x $125 = $500)
Tear Down Crew	$12,750	(the day rate that was estimated was 6 days x $4,250 = $25,500. It took 3 days to complete the scope of work 3 days x $4,250 = $12,750)
TOTAL:	$330,670	
Invoiced amount:	$330,670	
Subcontract Estimated Value	$298,380	
Increase	$32,290	

Mersino (new) Temporary Pumping Services (new)

Date Received	Invoice Date	Invoice #	Description	Gross Invoice	Retainage Rate	Retainage Rate	Net
09/12/18	08/31/18	61162	Mobilization / Day Installation	133,525.00	0%	$ -	$ 133,525.00
09/30/18	09/30/18	62134	Equipment and labor @ Fish Creek Pump Around	197,145.00	0%	$ -	$ 197,145.00
				330,670.00		$ -	$ 330,670.00

ATTACHMENTS/REFERENCES: This Change Order includes the following supporting documents:

1. Contractor Proposal to be used as SCHEDULE A, Pricing, Schedule and Rates for this CO-001

CONTRACT PRICE SUMMARY –		
Original Contract Value:	USD	$298,380.00
Value of previously approved Changes:	USD	$.00
Value of this Change Order: (Total amount is estimated for 23 Days)	**USD**	**$32,290.00**
New Contract Value:	**USD**	**$330,670.00**

WORK SCHEDULE SUMMARY –	
Estimated Impact to Schedule:	TBD
Previously Accepted Days:	TBD
Total Days Schedule Impact:	**TBD**

▶ The price adjustment and time extension (if any) granted under this Change Order constitute payment in full for the Work covered by this Change Order, including, without limitation, all direct costs, indirect costs, overhead costs, general and administrative expenses, profit, and all effects (direct, indirect, and consequential, including impacts and ripple effects) of the Work covered by this Change Order on all Contract Work, whether or not changed by this Change Order.

▶ The Completion Date, Subcontract Price, and all other terms, covenants and conditions of the above-referenced Subcontract, except as duly modified by this and previous Change Orders and Amendments, if any, remain in full force and effect.

▶ Subcontractor acknowledges that Contractor, by authorizing this Change Order, does not waive or modify any contractual rights or responsibilities unless such waiver or modification is expressly set forth in this Change Order.

APPROVALS

Contractor: **Welded Construction, LP**

Authorized Signature:

Name: Marcus Hood

Title: Sr. Projects Manager - MXP

Subcontractor: **Mersino Dewatering, Inc.**

Authorized Signature:

Name:

Title: CFO

Reviewed By:

AUTHOR	CONTRACTS MGR	PROJ. CONTROLS	PROJ. MGR.
MB	MB	SS	MH

Exhibit B-2: Subcontractor Requested Change

SUBCONTRACT NO. 2018-01-15

SUBCONTRACTOR REQUESTED CHANGE NO. 1

CORRESPONDENCE NO. 1

Additional Pages attached to this request: ____
Total No. of Pages 1

COMMITMENT SECTION

1591 Wheeling Ave. Glen Dale, WV Mountaineer Xpress Pipeline	10/1/18	1
PROJECT LOCATION	DATE	COMPANY WORK ORDER NO.

Mersino Dewatering, Inc.	10162 E. Coldwater Rd. Davison, MI 48423
SUBCONTRACTOR	ADDRESS

Contractor is hereby notified that the following circumstances have arisen that Sub-Contractor believes entitles it to request a change:

Reference to Contract Sections associated with this requested change:

Reference to Drawings associated with or impacted by this requested change (as required):

Detailed Description of the Change: Pump Watch was not included in original subcontract amount. Due to site constraints our estimated quantities for install are higher.

Project Scope of Work:	☐ Unchanged	☐ Reduced	☐ Increased
Cost Proposal Basis:	☐ Lump Sum	☐ Unit Cost	☐ Time and Material

Estimated Value of Change	$32,290.00
Estimated Impact to Schedule	Calendar Days (Enter # of Days)

NOTE: By executing this Change Order Request, Subcontractor acknowledges that all cost and schedule impacts have been expressly identified. No further adjustments for this Work shall be made.

Sub-Contractor's Representative: Stacy Simm — AUTHORIZED REPRESENTATIVE — 10/1/18 — DATE

Remarks:

Welded Approval: **Date:**

The Subcontractor is responsible to complete this form in its entirety and provide associated backup as noted above in this request and / or provide additional backup required to substantiate the change order request.
All T&M/Unit Cost changes will require timesheets for Welded Project Manager (or designee) approval.
Signed authorization by a Welded representative is required to commence Work noted in this Change Request.
Subcontractor acknowledges that Contractor, by authorizing this change request, does not waive or modify any contractual rights or responsibilities unless such waiver or modification is expressly set forth in this change request.

Revision Date: 12/12/2013

Exhibit 2

(Mechanic's Lien)

STACY SIMMS
10162 EAST COLD WATER RD
DAVISON MI 48423-8598

BOOK 0011 PAGE 0626

PREPARED BY, RECORDING REQUESTED BY AND RETURN TO:

Khalid Mohammed
Mersino Dewatering, Inc.
10162 E. Coldwater Rd.
Davison, MI 48423

Marshall County
Jan Pest, Clerk
Instrument 1448713
12/11/2018 @ 01:15:41 PM
MECHANICS LIEN
Book 11 @ Page 626
Pages Recorded 1
Recording Cost $ 11.00

SUBCONTRACTOR'S NOTICE OF MECHANIC'S LIEN
West Virginia § Code 38-2-9

TO: TransCanada
54 Seclusion Crescent, Brampton, ON ON L6R 1 L

You will please take notice that the undersigned, Mersino Dewatering, Inc., 10162 E. Coldwater Rd., Davison, MI 48423, Phone: (810) 658-3472, Fax: (810) 653-7828, was and is subcontractor with Welded Construction, 26933 ECKEL RD, PERRYSBURG, OH 43551-1215, who was and is general contractor for the furnishing of materials and doing of the work and labor, necessary to the completion of Dewatering/Pumping Services and/or equipment rentals on that certain building Mountaineer Xpress Pipeline Project, 1591 Wheeling Ave., Glen Dale, WV 26038 in the County of Marshall, owned by you and situated on lot number of block number as shown on the official map of and that the contract price and value of said work and materials is $330,670.00 . You are further notified that the undersigned has not been paid therefor (or has been paid only $0.00 thereof) and that he claims and will claim a lien upon your interest in the said lot (or tract) of land and upon the buildings, structures and improvements thereon to secure the payment of $330,670.00.

Dated December 7, 2018 for Mersino Dewatering, Inc., 10162 E. Coldwater Rd., Davison, MI 48423, Phone: (810) 658-3472, Fax: (810) 653-7828.

By: Khalid Mohammed, Credit Manager

AFFIDAVIT

State of Michigan)
) §
County of Macomb)

Khalid Mohammed, Credit Manager for Mersino Dewatering, Inc. being first duly sworn, upon his oath says that the statements in the foregoing notice of mechanic's lien contained are true, as he verily believes.

Given under my hand this 7th day of December 2018 before me, Jeremy White, NOTARY PUBLIC:

Signature
My Commission Expires: 04/16/2023

JEREMY J WHITE
Notary Public, State of Michigan
County Of Macomb
My Commission Expires 04-16-2023
Acting in the County of Lapeer

STATE OF WEST VIRGINIA, MARSHALL COUNTY, SCT.:

I, JAN PEST, Clerk of the County Commission of said County, do hereby certify that the annexed writing, bearing date on the 7th day of December, 2018, was presented for and by me, admitted to record in my office upon the above certificate as to the parties therein named this 11th day of December, 2018 at 1:15 o'clock P M.

TESTE: Jan Pest Clerk

[redacted]28LR107
Jan Pest, Clerk
12/11/2018 @ 01:15:41 PM
Receipt 201800008518
Paid By MERSINO DEWATERING INC

Total Due	$	11.00
Check	$	11.00
Total Received	$	11.00

List of Checks

18066	$	11.00

Marshall County
Jan Pest, Clerk
Instrument 1448713
12/11/2018 @ 01:15:41 PM
MECHANICS LIEN
Book 11 @ Page 626
Pages Recorded 1
MERSINO DEWATERING INC
WELDING CONSTRUCTION
TRANSCANADA

Recording	$	5.00
Additional Pages	$	.00
County SB592	$	.10
State SB592	$	.90
Farm Land HB622	$	2.50
Heritage HB622	$	2.50
Instrument Total	$	11.00

Exhibit 3

(Lis Pendens)

NOTICE OF LIS PENDENS

Notice is hereby given that Mersino Dewatering, Inc. d/b/a Global Pump ("Mersino") has intervened in a proceeding entitled *Earth Pipeline Services, Inc. v. Columbia Gas Transmission, LLC* and bearing Adversary Proceeding No. 19-50274 in the bankruptcy case entitled *In re Welded Construction, L.P. et al.* and bearing Case No. 18-12378 pending in the United States Bankruptcy Court for the District of Delaware for the enforcement of a mechanic's lien recorded by Mersino with the Clerk of the County Commission of the County of Marshall in the State of West Virginia at Instrument 1448713 (Book 0011, Page 0626) on December 11, 2018 against real property which is: (i) comprised of approximately 99,500 linear feet of pipeline right-a-away and related work areas and access roads spanning the County of Marshall and the County of Wetzel in the State of West Virginia; (ii) owned by TC Energy Corporation, TransCanada Corporation, Columbia Pipeline Group, and/or Columbia Gas Transmission, LLC; (iii) commonly referenced as 1591 Wheeling Avenue, Glen Dale, WV 26038; and (iv) legally described as:

> Property located at the municipal address of WHEELING AVE GLEN DALE, WV 26038, GLEN DALE, WV 26038. In the county of MARSHALL. APN 06-9-00020000. Briefly described as 3.39 A BETWEEN B&O RR CO. Municipality / Township of GLENDALE CORP. Township/Range/Section. Legal Lot = Book/Page.

BUTZEL LONG, a professional corporation

By: _____

Max J. Newman
Stoneridge West Building
41000 Woodward Avenue
Bloomfield Hills, MI 48304
(248) 258-1616
newman@butzel.com

Attorneys for Mersino Dewatering, Inc. d/b/a Global Pump

The foregoing instrument was acknowledged before me this ___ day of _____, 2020, by Max J. Newman, as attorney for Mersino Dewatering, Inc. d/b/a Global Pump, on behalf of the company, who appeared before me and who is personally known to me or has produced sufficient evidence that he is the individual described in and who executed the foregoing instrument.

_____
_____, Notary Public
_____ County, Michigan
Acting in _____County
My commission expires: _____

PREPARED BY AND RETURN TO:

Max J. Newman
Stoneridge West Building
41000 Woodward Avenue
Bloomfield Hills, MI 48304

Exhibit 4

(Proposed Order)

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	
WELDED CONSTRUCTION, L.P. et al	Chapter 11
Debtors.	Case No. 18-12378 (CSS)
	(Jointly Administered)
EARTH PIPELINE	
Plaintiff,	Adv. Pro. No. 19-50274 (CSS)
v.	
COLUMBIA GAS TRANSMISSION LLC,	**Re: D.I. ____**
Defendant.	

ORDER GRANTING MOTION TO INTERVENE

Upon consideration of *Mersino Dewatering's Motion to Intervene* (the "Motion")[1] pursuant to Rule 24 of the Federal Rules of Civil Procedure, made applicable to this proceeding by Rule 7024 of the Federal Rules of Bankruptcy Procedure; and it appearing that this Court has jurisdiction to consider the Motion and the relief requested therein; and due notice of the Motion having been provided, and it appearing that no other or further notice need be provided; and after due deliberation and sufficient cause appearing therefore; it is hereby

ORDERED THAT:

1. The Motion is GRANTED as set forth herein.

2. The Proposed Complaint shall be deemed filed as of the date of this Order.

[1] Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Motion.

3. This Court shall retain jurisdiction with respect to all matters arising from or related to the implementation of this Order.

CERTIFICATE OF SERVICE

I, Gregory J. Flasser, hereby certify that on this 14th day of May 2020, I caused copies of **Intervenor Mersino Dewatering's Motion to Intervene and Brief in Support of Motion for Intervention** to be served on the parties listed via email and/or first class mail.

Mark T Hurford
Campbell & Levine, LLC
222 Delaware Avenue
Suite 1620
Wilmington, DE 19801
Email: mhurford@camlev.com

David W. Carickhoff
Archer & Greiner P.C.
300 Delaware Avenue, Suite 1100
Wilmington, DE 19801
Email: dcarickhoff@archerlaw.com

Andrew Elkhoury
Mayer Brown LLP
700 Louisiana Street
Suite 3400
Houston, TX 77002
Email: aelkhoury@mayerbrown.com

Charles Stephen Kelley
Mayer Brown LLP
700 Louisiana Street
Suite 3400
Houston, TX 77002
Email: ckelley@mayerbrown.com

Kevin F. Shaw
Archer & Greiner, P.C.
300 Delaware Ave. Suite 1100
Wilmington, DE 19801
Email: kshaw@archerlaw.com

Welded Construction, L.P.
26933 Eckel Road
Perrysburgh, OH 43551

/s/ Gregory J. Flasser
Gregory J. Flasser (No. 6154)