

134 FERC ¶ 61,103  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Marc Spitzer, Philip D. Moeller,  
John R. Norris, and Cheryl A. LaFleur.

Ruby Pipeline, L.L.C.

Docket No. CP09-54-007

ORDER DENYING STAY

(Issued February 11, 2011)

1. On February 3, 2011, Defenders of Wildlife, Sierra Club, and Great Basin Resource Watch (Petitioners) filed a request for stay of the certificate of public convenience and necessity authorizing Ruby Pipeline, L.L.C. (Ruby) to construct an approximately 677-mile-long, 42-inch-diameter pipeline, from the Opal Hub in Wyoming to Malin, Oregon. We find that justice does not require a stay of construction and therefore, we deny Petitioners' request.

**I. Background**

2. On April 5, 2010, the Commission issued Ruby a Natural Gas Act (NGA) section 7(c) certificate of public convenience and necessity to construct the Ruby project.<sup>1</sup> The purpose of the project is to provide customers in the Pacific Northwest and California with access to natural gas from the Rocky Mountain region.

3. The April 2010 Order concluded that the Ruby project, if constructed and operated in accordance with the recommended and proposed environmental mitigation measures, would be an environmentally acceptable action.<sup>2</sup> The Commission also adopted the final

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<sup>1</sup> *Ruby Pipeline, L.L.C.*, 131 FERC ¶ 61,007 (April 2010 Order), *order denying reh'g*, 133 FERC ¶ 61,015 (2010) (Rehearing Order). On September 4, 2009, the Commission made a preliminary determination that the Ruby project was required by the public convenience and necessity, pending our subsequent environmental review in the April 2010 Order. *Ruby Pipeline, L.L.C.*, 128 FERC ¶ 61,224, at 42 (2009).

<sup>2</sup> April 2010 Order, 131 FERC ¶ 61,007 at P 107.

environmental impact statement (EIS) prepared by its staff regarding the project, and authorized construction of the project subject to modifications and 46 environmental conditions.<sup>3</sup>

4. Defenders of Wildlife and Sierra Club sought rehearing of the April 2010 Order, asserting that the Commission's environmental analysis was deficient.<sup>4</sup> On October 6, 2010, the Commission issued an order denying rehearing.<sup>5</sup> In the Rehearing Order, the Commission found that its review process for natural gas infrastructure, which begins with a pre-filing process and the development of our draft and final EISs, enables the Commission to identify and take a hard look at the potentially adverse environmental impacts of a proposed project. This, in turn, allows the Commission to make an informed comparison among possible alternatives to the proposed project, and, as necessary, to impose environmental mitigation conditions to ensure that the project does not result in unacceptable adverse impacts.<sup>6</sup> The Commission found that this approach meets the National Environmental Policy Act (NEPA) review expectations that an EIS contain "a reasonably complete discussion of possible mitigation measures," and that these measures "be discussed in sufficient detail to ensure that environmental consequences have been fairly evaluated."<sup>7</sup>

5. On December 6, 2010, Petitioners filed a petition for review of the April 2010 Order and the Rehearing Order in the United States Court of Appeals for the District of Columbia (D.C. Circuit).<sup>8</sup> The petition is pending.

6. On December 29, 2010, the Summit Lake Paiute Tribe filed a motion to stay construction of a portion of the Ruby project in northwestern Nevada from milepost 438

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<sup>3</sup> *Id.* at Appendix A.

<sup>4</sup> Great Basin Resource Watch did not seek to intervene in the Ruby proceeding, and did not seek rehearing of the April 2010 Order.

<sup>5</sup> Rehearing Order, 133 FERC ¶ 61,015.

<sup>6</sup> *Id.* P 33.

<sup>7</sup> *Id.* (internal citations omitted).

<sup>8</sup> The case has been assigned D.C. Circuit Docket No. 10-1407. On December 17, 2010, the Court consolidated Petitioners' appeal with the Summit Lake Paiute Tribe's appeal in D.C. Circuit Docket No. 10-1389.

to 588.3. On January 12, 2011, the Commission denied the motion to stay construction.<sup>9</sup> The Summit Lake Paiute Tribe subsequently filed an emergency motion for stay in the D.C. Circuit. On January 28, 2011, the D.C. Circuit denied motion.<sup>10</sup>

7. On February 3, 2011, Petitioners filed with the Commission a request for stay of the April 2010 Order, and of all construction conducted pursuant to that order. Ruby filed an answer in opposition to the request for stay on February 8, 2011.

8. A pipeline company can request authorization to proceed with construction of discrete segments of its overall pipeline project once it has complied with all of the environmental conditions relevant to that particular section of the approved pipeline route. Upon verification that all applicable environmental conditions have been satisfied, the Director of the Office of Energy Projects issues a “notice to proceed” with construction of the project segment covered by the request.

9. As of February 1, 2011, notices to proceed with construction have been issued for 98 percent of the Ruby pipeline project. In other words, construction has not been authorized for approximately 13 miles of the pipeline.<sup>11</sup> Of the 98 percent of the pipeline project where notices to proceed have been issued, some degree of pipeline construction has begun along all but approximately 35 miles of the approved route.<sup>12</sup>

## **II. Petitioners’ Request for Stay**

10. Petitioners have attached ten exhibits to their request for stay, including a copy of Defenders of Wildlife’s and Sierra Club’s requests for rehearing of the April 2010 Order, six declarations of Petitioners’ members stating the harms caused or to be caused by the Ruby project, and copies of two notices to proceed with construction of the pipeline from mileposts 509.9 to 549.9 and from 664.6 to 665.2.

11. Petitioners contend that construction of the pipeline “will destroy and adversely impact ecologically and environmentally important resources in which Petitioners have substantial interests,” and will foreclose rerouting of the pipeline to avoid such impacts.<sup>13</sup>

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<sup>9</sup> *Ruby Pipeline, L.L.C.*, 134 FERC ¶ 61,020 (2011).

<sup>10</sup> *Summit Lake Paiute Tribe in Nevada v. FERC*, No. 10-1389 (D.C. Cir. Jan. 28, 2011).

<sup>11</sup> Ruby February 1, 2011 Request for Notice to Proceed at 7-18.

<sup>12</sup> FERC January 31, 2011 Environmental Compliance Monitoring Program at 15-22.

<sup>13</sup> Defenders of Wildlife February 3, 2011 Request for Stay at 34.

Petitioners assert broadly that the construction conducted pursuant to the April 2010 Order and the notices to proceed have irreparably harmed and will continue to irreparably harm Petitioners and its members.<sup>14</sup> The six declarations submitted by Petitioners' members individually and/or collectively assert that their aesthetic, spiritual, recreational, personal, scientific, conservation, or professional interests in the scenic beauty of the high desert sagebrush steppe, threatened and endangered fish, bird and mammal species, waters and wetlands, and the integrity of the Sheldon-Hart National Wildlife Refuge complex have been harmed or will be harmed by construction of the Ruby project. Those allegations are general. Petitioners do not identify the specific harm to any species or lands, nor any specific segment of the pipeline construction that would cause the harm.

12. Petitioners contend that both the balance of harms and the public interest weigh heavily in favor of granting the stay pending review in the D.C. Circuit. Petitioners argue that the irreparable harm to its members is based upon environmental harms that will be permanent, which cannot be remedied by any amount of compensation, whereas any harm to Ruby or the Commission will be temporary. Petitioners further argue that the public interest weighs in favor of granting the stay because it would prevent "destruction of the environment, public lands, threatened and endangered species, and waters of the United States," by the Ruby project.<sup>15</sup>

13. Petitioners request prompt action on the request for stay and assert that "[i]f FERC does not respond by [February 7, 2011], Petitioners will assume that FERC has denied this request for stay."<sup>16</sup> In fact, Petitioners filed a motion for stay with the D.C. Circuit on February 8, 2011.

### **III. Ruby's Answer**

14. Ruby answers that Petitioners have not demonstrated that they will be irreparably harmed if a stay is not granted because generalized claims of harm are not sufficient to establish irreparable harm. Ruby asserts that Petitioners' delay of over four months since the Rehearing Order in seeking a stay undermines their claim of irreparable harm, and renders their claim for extraordinary injunctive relief moot.

15. Ruby contends that it will suffer substantial harm if a stay delays construction. Ruby's president, James J. Cleary, declares that "for every month of delay in the anticipated in-service date, Ruby would experience an irreversible revenue loss of \$18.7

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<sup>14</sup> *Id.*

<sup>15</sup> *Id.* at 35.

<sup>16</sup> *Id.*

million per month.”<sup>17</sup> Ruby asserts that a stay of construction at this time would cause a substantial harm to the environment because certain river crossings must be completed within 144 hours to minimize environmental impacts, and this time period has already begun.<sup>18</sup> The company states that construction of the pipeline has begun along the 40-mile-stretch of the approved route that was the subject of an administrative stay issued by the D.C. Circuit pending its review of an earlier motion for stay filed by the Summit Lake Paiute Tribe. Ruby states that the “dissolution of the Court’s administrative stay on January 28 set in motion an assembly-line process of pipeline installation after notices to proceed were issued by the Commission.”<sup>19</sup>

16. Finally, Ruby argues that a stay would be contrary to the public interest because it would delay completion of a pipeline that is desired by producers and consumers in the natural gas marketplace, asserting that west-coast consumers need the enhanced reliability of natural gas supplies that only Ruby can provide.

#### **IV. Discussion**

17. The Commission reviews requests for stay under the standard established by the Administrative Procedure Act,<sup>20</sup> and grants a stay when “justice so requires.”<sup>21</sup> In assessing a request for stay, we consider several factors, which typically include: (1) whether the party requesting the stay will suffer irreparable injury without a stay; (2) whether issuing the stay may substantially harm other parties; and (3) whether a stay is in the public interest.<sup>22</sup> Our general policy is to refrain from granting stays in order to assure definiteness and finality in our proceedings.<sup>23</sup>

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<sup>17</sup> Ruby February 8, 2011 Answer at 5.

<sup>18</sup> *Id.* at 5-6.

<sup>19</sup> *Id.* at 6.

<sup>20</sup> 5 U.S.C. § 705 (2006).

<sup>21</sup> *See, e.g., Ruby Pipeline, L.L.C.*, 134 FERC ¶ 61,020, at 15 (2011); *AES Sparrows Point LNG, LLC*, 129 FERC ¶ 61,245, at P 18 (2009); *Columbia Gas Transmission LLC*, 129 FERC ¶ 61,021, at P 6 (2009); *Guardian Pipeline, L.L.C.*, 96 FERC ¶ 61,204, at 61,869 (2001).

<sup>22</sup> *Id.*

<sup>23</sup> *See, e.g., Sea Robin Pipeline Co.*, 92 FERC ¶ 61,217, at 61,710 (2000).

18. If the party requesting a stay is unable to demonstrate that it will suffer irreparable harm absent a stay, we need not examine the other factors.<sup>24</sup> In *Wisconsin Gas Co. v. FERC*,<sup>25</sup> the D.C. Circuit recognized that although the concept of irreparable harm does not readily lend itself to definition, courts have developed well-known principles to guide a determination, which include that the injury must be both certain and great, actual and not theoretical, and that injunctive relief will not be granted against something merely feared as liable to occur at some indefinite time.<sup>26</sup> Implicit in these principles is the further requirement that the movant substantiate the claim that irreparable injury is “likely” to occur.<sup>27</sup> Bare allegations of what is likely to occur are of no value since the court must decide whether the harm will *in fact* occur.<sup>28</sup> The movant must provide proof that the harm has occurred in the past and is likely to occur again, or proof indicating that the harm is certain to occur in the near future.<sup>29</sup> Further, the movant must show that the alleged harm will directly result from the action which the movant seeks to enjoin.<sup>30</sup>

19. We find that Petitioners have not shown that a stay is necessary to avoid irreparable injury. Petitioners variously allege that their aesthetic, spiritual, recreational, personal, scientific, conservation, and/or professional interests have been and will continue to be substantially harmed by construction of the Ruby project, which will cause harm to the environment, public lands, threatened and endangered species, and waters and wetlands. Petitioners’ request is brief and includes no analysis incorporating facts or specific information. Moreover, Petitioners’ member declarations assert generalized harm to the individuals without identifying how, why, or where construction of the Ruby project causes that harm.

20. Furthermore, the harms alleged by Petitioners are all environmental-related harms. In approving the Ruby project, the Commission considered the environmental information in the EIS, and ultimately determined that, on balance, approving the pipeline along the recommended route is an environmentally acceptable action.<sup>31</sup> The

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<sup>24</sup> *Supra* note 21.

<sup>25</sup> 758 F.2d 669 (D.C. Cir. 1985).

<sup>26</sup> *Id.* at 674 (citation omitted).

<sup>27</sup> *Id.* (citation omitted).

<sup>28</sup> *Id.* (emphasis in original).

<sup>29</sup> *Id.*

<sup>30</sup> *Id.*

<sup>31</sup> April 2010 Order, 131 FERC ¶ 61,007 at P 107.

Commission placed numerous environmental conditions on the construction of the pipeline and required mitigation measures to minimize the impacts from construction on the environment. The Commission reviewed the sufficiency of the environmental analysis on rehearing in response to claims by Sierra Club and Defenders of Wildlife that it was deficient, and found these assertions to be without merit. Petitioners once again raise these same issues but have provided no additional information that would lead us to question our prior determinations, and have not demonstrated that they will be irreparably harmed in the absence of a stay.

21. We also find that Ruby would be harmed by a stay of construction. Notices to proceed have been issued for 98 percent of the pipeline route, and construction has begun on most of these sections. As noted by Ruby, the construction phase of the Ruby project involves the hiring and coordination of work crews, such that a sudden halt in activity would involve considerable expense to Ruby.<sup>32</sup> Moreover, certain environmental compliance timelines meant to limit or mitigate any environmental impacts have already begun.<sup>33</sup> Thus, halting construction at this point would limit the mitigative effect of such compliance timelines, and possibly lead to fines for violation of these timelines from other state and federal agencies.

22. Moreover, it would not be in the public interest to stay construction of the Ruby project. The Commission found that the Ruby project is required by the public convenience and necessity to transport natural gas from Rocky Mountain production areas to west coast markets.<sup>34</sup> Notices to proceed have been issued for construction on all but approximately 13 miles of the 677-mile-long Ruby project. Any delay in construction will delay delivery of needed gas supplies to west coast markets, which would ultimately harm consumers.

23. Ruby was granted certificate authorization to construct the pipeline in April 2010. Notices to proceed with construction have been issuing to Ruby since that time. Petitioners have had over nine months to request a stay of construction, and much of the pipeline has already been, or is in the process of being, constructed. Petitioners provide no justification for remaining quiescent during months of construction and then insisting on an immediate stay. In addition, we note that Petitioners waited until the Commission and the court dealt with the Summit Lake Paiute Tribe's stay request before filing a

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<sup>32</sup> Ruby February 8, 2011 Answer at 5.

<sup>33</sup> *Id.* at 5-6.

<sup>34</sup> April 2010 Order, 131 FERC ¶ 61,007 (issuing certificate of public convenience and necessity); *Ruby Pipeline, L.L.C.*, 128 FERC ¶ 61,224 (finding project required by public convenience and necessity pending environmental review).

duplicative, and unsupported, motion. To subject the Commission and the court to such seriatim motions wastes administrative and judicial resources.

24. For these reasons, we find that Petitioners have not demonstrated that justice requires a stay of construction of the Ruby project. Accordingly, the Petitioner's request for stay is denied.

The Commission orders:

The request for stay filed on February 3, 2011, by Defenders of Wildlife, Sierra Club, and Great Basin Resource Watch is denied.

By the Commission. Chairman Wellinghoff is not participating.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.