

121 FERC ¶ 61,003
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Sudeen G. Kelly, Marc Spitzer,
Philip D. Moeller, and Jon Wellinghoff.

Texas Eastern Transmission, LP

Docket No. CP06-115-001

ORDER DENYING LATE INTERVENTION AND STAY
AND DISMISSING REQUEST FOR REHEARING

(Issued October 1, 2007)

1. On July 9, 2007, as supplemented by a letter dated July 22, 2007, the Tyrone Township Supervisors (Tyrone) filed a motion to intervene out-of-time¹ and a request for rehearing and stay of the authorization granted by the Commission's June 8, 2007 certificate order in this proceeding for Texas Eastern Transmission, LP (Texas Eastern) to construct the Heidlersburg Compressor Station.² The Heidlersburg Compressor Station is part of Texas Eastern's Time II Project certificated by the June 8, 2007 order.³

2. Texas Eastern and NJR Energy Services Company filed answers to Tyrone's motion to intervene out-of-time, Tyrone filed an answer to the answers, and Texas Eastern filed an answer to Tyrone's answer. Although the Commission's Rules of Practice and Procedure do not permit answers to answers, the Commission finds good

¹ Notice of Texas Eastern's application was published in the *Federal Register* on April 24, 2006 (71 *Fed. Reg.* 21,006), with comments and/or motions to intervene due on or before May 8, 2006. Notice of the availability of the Commission staff's environmental assessment (EA) was published in the *Federal Register* on April 5, 2007 (72 *Fed. Reg.* 16,781), with comments due on or before April 30, 2007.

² On July 23, 2007, state representative Steven R. Nickol submitted a letter in support of Tyrone Township's motion.

³ *Texas Eastern Transmission, LP*, 119 FERC ¶ 61,258 (2007). The Time II Project involves the construction and operation of new compression and pipeline facilities in Ohio and Pennsylvania and the abandonment and replacement of certain pipeline facilities in those states.

cause to waive Rule 213(a) to admit the answers, as they provide information that has assisted in the decision-making process.⁴

3. Tyrone states that due to the Heidlersburg Compressor Station's approved location adjacent to the township's only designated commercial corridor, the compressor station will have detrimental socioeconomic effects on the community and its fruit industry, and that the benefits of locating Texas Eastern's compressor station at the approved site do not outweigh the adverse effects that siting it at that location will have on Tyrone's commercial development and economic interests. Tyrone states that the project also presents potential safety issues. Tyrone also asserts that Texas Eastern failed to obtain necessary zoning approval and permits for the compressor station as required by the Pennsylvania Sewage Facility Act and the Pennsylvania Uniform Construction Code and that Texas Eastern had the deed for the land prepared and recorded in a manner that allowed Texas Eastern to avoid paying the applicable transfer tax. Tyrone further states that Texas Eastern did not obtain the required subdivision approval or pay the required fee.

4. Tyrone cites a 2002 Commission order⁵ in support of its assertion that its lack of familiarity with the Commission's formal intervention requirements should not be held against it in considering its motion for late intervention. However, the Commission has more recently applied more stringent standards in considering motions to intervene after the issuance of an order on the merits of an application. In ruling on a motion to intervene out-of-time, we apply the criteria set forth in Rule 214(d),⁶ and consider whether the movant had good cause for failing to file the motion within the time prescribed. Late intervention at the early stages of a proceeding generally does not disrupt the proceeding or prejudice the interest of any party. We are therefore more liberal in granting late intervention at the early stages of a proceeding, but are more restrictive as the proceeding nears its end. A petitioner for late intervention bears a higher burden to show good cause for late intervention after issuance of an order addressing the merits of an application, and generally it is Commission policy to deny late intervention as sought by Tyrone at the rehearing stage.⁷

⁴ 18 C.F.R. § 385.213(a)(2) (2007).

⁵ Florida Gas Transmission Company, 98 FERC ¶ 61,179 (2002).

⁶ 18 C.F.R. § 385.214(d) (2007).

⁷ See, e.g., Entrega Gas Pipeline Inc., 113 FERC ¶ 61,327 (2005); Rendevous Gas Services, LLC, 113 FERC ¶ 61,169 (2005); Columbia Gas Transmission Corporation, 113 FERC ¶ 61,066 (2005); Islander East Pipeline Company, 102 FERC ¶ 61,054 (2003); and Florida Gas Transmission Company, 100 FERC ¶ 61,241 (2002).

5. Tyrone's July 9, 2007 pleading requests late intervention and stay of the June 8, 2007 certificate order's authorization for the Heidlersburg Compression Station to give Tyrone further opportunity to review Texas Eastern's application and to present evidence, cross-examine witnesses, file briefs and present oral arguments to support its argument that the compressor station can and should be sited elsewhere. Since the Commission has resolved all material issues regarding Texas Eastern's application, including siting of the Heidlersburg Compressor Station, granting Tyrone's motion for late intervention would disrupt the proceeding and prejudice existing parties by placing additional burdens on them at this late stage in the proceeding. Further, Tyrone has not shown good cause for not filing its motion to intervene in a timely fashion. Therefore, we will deny its motion to intervene. Under section 19(a) of the NGA and Rule 713(b) of our regulations,⁸ only a party to a proceeding has standing to request rehearing of a Commission decision. Therefore, we will dismiss Tyrone's request for rehearing.

6. In any event, Tyrone has had ample opportunity to present its concerns, as demonstrated by its filing of comments in this proceeding prior to the issuance of our June 8, 2007 certificate order. Although Tyrone's July 9, 2007 pleading does not specifically describe its safety concerns or the detrimental socioeconomic effects that Tyrone believes will result from the compressor station's location adjacent to the township's designated commercial corridor, various socioeconomic and safety concerns were raised in comments filed by Tyrone on April 24, 2007, May 7, 2007, and May 29, 2007, in response to notices issued regarding the Commission's environmental review process. In those comments, Tyrone speculated that economic activity such as jobs, sales, and tax revenues generated by the construction of the Heidlersburg Compressor Station would be minimal and temporary compared to the negative economic impacts on Tyrone's adjacent Highway Commercial Corridor; that only a few local workers would want the construction jobs; that there is no guarantee that the jobs would be given to Tyrone residents; and that the short duration of construction activities is contrary to Tyrone's goals of having workers relocate to the area. Tyrone also stated that compressor stations are not permitted on the land to be acquired for the station because the land is zoned as Agricultural Preservation and is used for timber production.

7. Tyrone also expressed safety concerns on the grounds that methane is flammable but colorless and odorless, and it therefore would be hard to detect the source of a fire or potential explosion. In this regard, Tyrone emphasizes that, as approved, the Heidlersburg Compressor Station would be on a site surrounded by trees, which convert carbon dioxide into oxygen, which, mixed with methane, is explosive. Tyrone stated that Texas Eastern's initial open house did not include a public question and answer period for attendees to share their concerns, and that Texas Eastern did not listen to the public's concerns in the second open house or acknowledge Tyrone's invitation to a December 4, 2006 meeting. Tyrone stated that Texas Eastern did not fully examine alternative routes

⁸ 18 C.F.R. § 713(b) (2007).

and that the compressor station could be located within 50 miles in either direction along the pipeline rather than adjacent to Tyrone's 3.5-mile commercial corridor.

8. The Commission staff's EA discussed the socioeconomic impact of the project. While Tyrone may be correct about the limited economic benefits to be conferred by the compressor station, there may be some long-term employment benefits as well as long-term benefits from property tax and other revenues for Tyrone Township.⁹ Additionally, the pipeline could be used in the future to supply gas to customers (new or existing local distribution companies and/or industrial customers) in the area and along the Highway Commercial Corridor.

9. The EA discussed the zoning of the approved Heidlersburg Compressor Station site and determined that no economic loss is expected by removing the land from agricultural use. The parcel, which is crossed by two existing Texas Eastern pipelines, is mostly wooded but is not used for timber production or other agricultural activity.¹⁰ Although Texas Eastern acquired the 40-acre parcel through negotiations with the landowner, only 6.3 acres will be disturbed for the project.¹¹ The wooded land will screen the facility from the roadway.

10. As indicated in the safety section in the EA, methane, the primary component of natural gas, is colorless, odorless, and tasteless. It is not toxic, but is classified as a simple asphyxiate, possessing a slight inhalation hazard. If breathed in high concentration, oxygen deficiency can result in serious injury or death. Methane has an ignition temperature of 1,000 degrees Fahrenheit and is flammable at concentrations between 5.0 percent and 15.0 percent in air. While unconfined mixtures of methane in air are not explosive, a flammable concentration within an enclosed space in the presence of an ignition source can explode. The EA, however, also specifies how Texas Eastern monitors its pipeline system 24 hours a day to detect any problems. Moreover, while the transportation of natural gas by pipeline involves some risk to the public, the greatest hazard being fire or explosion, the pipeline must be designed, constructed, operated, and maintained in accordance with the Department of Transportation Minimum Federal Safety Standards.¹² As stated in the EA, the available data show that natural gas

⁹ EA at 58-60.

¹⁰ EA at 60-61.

¹¹ EA at 35, 50.

¹² 49 C.F.R. Part 192.

pipelines continue to be safe, reliable means of energy transportation, and Texas Eastern's Time II Project presents an extremely low risk to the nearby public.¹³

11. The compressor station site was selected by Texas Eastern to meet its pipeline system optimum flow requirements. The EA discusses three compressor station locations and 24 miles of looping that were proposed as alternatives to the Heidlersburg Compressor Station. The 24 miles of looping would have had greater environmental impacts than the proposed action and therefore was dismissed from further consideration. The three alternative locations were evaluated based on proximity to existing residences; existing vegetative cover that could be used as screening and noise buffer; access; wetlands, streams, and waterbodies; site topography; cultural resources and threatened and endangered species. The approved Heidlersburg Compressor Station was found to be environmentally preferable to the alternatives. The EA notes that the proposed location of the compressor station was selected because of the minimal impacts to residences, optimal site topography, location adjacent to Texas Eastern's existing pipelines, and accessibility from public roads. There are 16-18 residences within 0.5 mile of each of the three other alternatives, whereas there are 6 residences near the chosen site. Two of the other sites are in open areas with little or no vegetative cover for site screening and noise buffer and would require 800 and 1,400 feet of access road and approximately 2 to 3 miles of electrical lines to be constructed, which would also result in impacts to the environment.¹⁴

12. Regarding Texas Eastern's failure to comply with state and local zoning, sewage, building, and other regulations, the Commission emphasizes that, while state and local regulation is preempted by the NGA where such requirements conflict with federal regulation or would delay construction, applicants may be required to comply with appropriate state and local regulations where no conflict exists.¹⁵ Accordingly, while the Commission's exclusive jurisdiction preempts local and state regulations to the extent they impose requirements above federal requirements or delay construction, this does not exempt Texas Eastern from having to apply for state or local permits that target other concerns. Indeed, as stated in the Commission's June 8, 2007 certificate order, interstate pipelines are encouraged to cooperate with state and local authorities and Texas Eastern

¹³ EA at 70-76.

¹⁴ EA at 77-80.

¹⁵ See *Islander East Pipeline Company, LLC v. Blumenthal*, 478 F. Supp. 2d 289 (D. Conn. 2007); *LNG v. Loga*, 79 F. Supp. 2d 49 (D. R.I. 2000); *Kern River Gas Transmission, Company v. Clark County*, 757 F. Supp. 1110 (D. Nev. 1990); and *Town of Springfield, Vermont v. State of Vermont Environmental Board*, 521 F. Supp. 243 (D. Vt. 1981).

must notify the Commission of any environmental noncompliance with other federal, state or local requirements.

13. On September 6, 2007, Texas Eastern filed a copy of a letter sent by Texas Eastern to Tyrone's Board of Supervisors summarizing discussions at a meeting of Texas Eastern's representatives with the Board of Supervisors on August 23, 2007, and actions that Texas Eastern has agreed to undertake. As pertinent to the specific matters raised in Tyrone's request for rehearing, Texas Eastern has agreed to:

- pay to Tyrone an amount equal to the realty transfer tax after being advised twice by the Recorder of Deeds for Adams County that Texas Eastern is exempt from the tax;
- place vegetative screening around its compressor station facilities;
- encumber a portion of the compressor station property with an agricultural easement in order to ensure that the land remains open and unencumbered by additional natural gas facilities;
- file a building permit application and obtain the related certificate of insurance;
- file a zoning application;
- file for a sewer permit;
- file its subdivision and land development plans with the Township; and
- obtain the required permits for sources of soil brought to the compressor station site and have an environmental inspector on site to observe each load of delivered soil to detect any uncharacteristic staining, odor or debris.

14. The standard for granting a stay by administrative agencies, including this Commission, is whether justice so requires.¹⁶ In applying the standard, we must balance the interests of the party seeking the stay with the overall public interest and determine whether the requesting party will sustain irreparable harm in the absence of a stay.¹⁷

¹⁶ Administrative Procedure Act, 5 U.S.C. § 705. See also *Tennessee Gas Pipeline Company*, 117 FERC ¶ 61,034 (2006); *East Tennessee Natural Gas Company*, 101 FERC ¶ 61,188 (2002); *Destin Pipeline Company, LLC.*, 85 FERC ¶ 61,057 (1998); and *Portland Natural Gas Pipeline Transmission System*, 83 FERC ¶ 61,080 (1998).

¹⁷ See *Tennessee Gas Pipeline Company*, 81 FERC ¶ 61,386 (1997) and *Commonwealth Gas Pipeline Corporation*, 29 FERC ¶ 61,054 (1984).

Where this standard is not met, the Commission follows a general policy of denying motions for stay of its orders based on the need for definiteness and finality in administrative proceedings. We find that Tyrone has not demonstrated that construction of the Heidlersburg Compressor Station at the approved site will have adverse socioeconomic or safety impacts that require staying the June 8, 2007 certificate order's related authorization based on a contention of irreparable harm. On the other hand, the entire Time II Project needs to be completed in time for Texas Eastern to transport up to 150,000 dekatherms of natural gas per day on a firm basis for NJR Energy Services Company to meet the needs of New Jersey consumers in the upcoming 2007-2008 winter heating season. Balancing the interests at stake here, we will deny the request for stay.

The Commission orders:

- (A) Tyrone's motion to intervene out-of-time and request for stay are denied.
- (B) Tyrone's request for rehearing is dismissed.
- (C) Tyrone's, Texas Eastern's and NJR Energy Services Company's answers are accepted.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Acting Deputy Secretary.