

127 FERC ¶ 61,018
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Transcontinental Gas Pipe Line Corporation

Docket Nos. CP08-31-000
CP08-31-001
CP08-31-003

ORDER DENYING RECONSIDERATION, REHEARING,
AND MOTION TO INTERVENE

(Issued April 3, 2009)

1. On August 14, 2008, in Docket No. CP08-31-000, the Commission issued a certificate of public convenience and necessity to Transcontinental Gas Pipe Line Corporation (Transco) authorizing construction of the Sentinel Expansion Project in Pennsylvania and New Jersey.¹ On February 6, 2009, in Docket No. CP08-31-001, the Commission denied a number of landowners' requests for rehearing and stay of the August 14 Certificate Order.² The order on rehearing addressed landowner concerns with the Downingtown Replacement section of the Sentinel Expansion Project, and, among other things: (1) denied rehearing on the grant of an additional 20 feet of permanent right-of-way on the north side of Transco's Mainline A pipeline; (2) denied rehearing on the removal of the Level 3 Communications (Level 3) fiber optic cable; and (3) denied rehearing on the Commission's authority to issue a conditioned certificate. The order on rehearing also denied the landowners' requests for stay of Transco's authority under the certificate order for the Downingtown Replacement. The order on rehearing further denied intervention to several landowners, including Lynda K. and

¹ *Transcontinental Gas Pipe Line Corp.*, 124 FERC ¶ 61,160 (2008) (August 14 Certificate Order).

² *Transcontinental Gas Pipe Line Corp.*, 126 FERC ¶ 61,097 (2009) (February 6 Order on Rehearing).

Steven R. Farrell (Farrells), who had filed a motion to intervene after the issuance of the August 14 Certificate Order.

I. Citizens Coalition's Request for Reconsideration

2. On February 13, 2009, in Docket No. CP08-31-000, the Citizens Coalition for Environmental and Property Protection in Pipeline Operations (Citizens Coalition) filed a request for reconsideration of the August 14 Certificate Order. The Citizens Coalition includes the owners of twenty residential properties affected by the Downingtown Replacement, including the properties of landowners' whose concerns were addressed by the certificate order and the order on rehearing.³ The Citizens Coalition asserts that reconsideration is appropriate in light of new evidence, specifically that the grant of additional permanent right-of-way would be unnecessary if the Level 3 fiber optic cable were not in the right-of-way and that the additional right-of-way should not be granted because the currently depressed economic climate makes homeowners' land less valuable. The Citizens Coalition further requests that the Commission create a post-certificate noncompliance docket and stay Transco's certificate authority to invoke eminent domain with respect to properties affected by the Downingtown Replacement portion of the project.

3. The Citizens Coalition's requests are denied. The August 14 Certificate Order and the February 6 Order on Rehearing addressed the Downingtown Replacement landowners' concerns regarding the grant of an additional 20 feet of permanent right-of-way. Further, the February 6 Order on Rehearing found that relocating the Level 3 fiber optic cable would not reduce the amount of additional right-of-way needed because the portion of Mainline A being replaced on these Downingtown properties is already being moved as close as safely possible to Mainline B. Finally, the Commission has not yet granted clearance for commencement of construction on the Downingtown Replacement portion of the project, and such clearance will not be granted until Transco has satisfied all applicable conditions. Therefore, it is premature to consider the Citizens Coalition's

³ The members of the Citizens Coalition seeking reconsideration include the McHughs, Heiligs, Moodys, Farrells, Burkes, and Mr. Ottaviano. The February 6 Order on Rehearing addressed the merits of the issues raised on rehearing by the McHughs, Heiligs, and Moodys because they were parties who had timely filed for rehearing. The February 6 Order on Rehearing denied the Farrells' motion for late intervention and consequently rejected their request for rehearing on the grounds that they were not parties and therefore did not have standing under section 19 of the Natural Gas Act to seek rehearing. However, the February 6 Order on Rehearing noted that the issues raised by the Farrells were almost identical to those being addressed in that order. The February 6 Order on Rehearing also denied motions for late intervention by the Burkes and Mr. Ottaviano, who sought late intervention but did not request rehearing.

request for establishment of a new post-certificate docket to deal with allegations of noncompliance by Transco with respect to the Downingtown Replacement.

4. Because the February 6 Order on Rehearing denied the Downingtown landowners' requests for rehearing, it also denied their requests for stay of Transco's certificate authority. No new material issues have been raised by the Citizens Coalition in this request for reconsideration. Therefore, we will also deny its request for stay of Transco's certificate authority for the Downingtown Replacement.

II. Farrells' Request for Rehearing

5. On March 4, 2009, in Docket No. CP08-31-003, the Farrells filed a request for rehearing of the February 6 Order on Rehearing's denial of their late motion to intervene. On rehearing the Farrells argue that direct mail delivery of the notice for the Sentinel Expansion Project is not sufficient because such a delivery is not documented in the record, a nondescript letter does not alert the landowner that this is an important legal document, and the Farrells have no record of the delivery. The Farrells further argue that the Commission's process is confusing and unclear, and that they did not understand that in addition to submitting comments to the Commission, a motion to intervene was required to become a party to the proceeding.

6. The Farrells' request for rehearing is denied. Despite the Farrells' contentions to the contrary, Transco has satisfied the requirements in the Commission's regulations for landowner notification, and previous comments submitted by the Farrells acknowledge receipt of the Commission's notice of Transco's application. Pursuant to section 157.6(d)(1) of the Commission's regulations, Transco was required to notify all landowners affected by the Sentinel Expansion Project by first class mail or by hand and also publish notices of its application in a newspaper of general circulation in each county in which the project is located.⁴ As required by section 157.6(d)(3)(vii), Transco's notice included a copy of the Commission's notice of the application, specifically stating when motions to intervene were due, and the Commission's information sheet on how to intervene in the proceeding.⁵

7. In accordance with section 157.6(d)(5), Transco submitted to the Commission on January 4, 2008, a revised list of landowners affected by the Sentinel Expansion Project.⁶

⁴ 18 C.F.R. § 157.6(d)(1) (2008).

⁵ 18 C.F.R. § 157.6(d)(3)(vii).

⁶ 18 C.F.R. § 157.6(d)(5). This section requires applicants to file an updated list of affected landowners, including information concerning notices that were returned as undeliverable, within 30 days of the date the application was filed.

Transco's January 4, 2008 filing indicates that all but 13 letters sent to landowners on the mailing list were delivered.⁷ Of the 13 letters returned as undeliverable, four were mailed again with new addresses, and the other 9 addresses were identified as former landowners at the Woodmont North Condo Association. No other letters were returned as undeliverable.

8. The Farrells are included on the list of addressees that received the mailing. The address provided on Transco's January 4, 2008 landowner list is the same that the Farrells provide in their current rehearing request. Furthermore, in the Farrells' January 7, 2008 comments submitted to the Commission, the Farrells state in the first paragraph that they are submitting their comments "pursuant to the deadline stipulated in the FERC's December 17, 2007 Notice of Application."

9. In the February 6 Order on Rehearing, the Commission addressed the Farrells' argument that they did not understand that submitting comments did not suffice to grant party status for the Sentinel Project. As stated in the February 6 Order on Rehearing, the Commission's December 17, 2007 notice of the Sentinel Project states that "any person wishing to become a party must file a notice of intervention or motion to intervene."⁸ The notice explains that a person does not have to become an intervenor in order to have comments considered by the Commission, "but the filing of a comment will not serve to make the filer a party to the proceeding."⁹ The notice further emphasized that non-party commenters "will not have the right to seek court review of the Commission's final order."¹⁰ Therefore, we are satisfied that the Farrells were aware of the Commission's procedures and timelines outlined in the December 17 notice, but that they nevertheless did not file a motion to intervene until after the issuance of the August 14 Certificate Order.

III. County of Chester's Motion to Intervene

10. On March 4, 2009, in Docket No. CP08-31-000, the County of Chester (Chester County) filed a motion to intervene and a request for stay in the Sentinel Expansion

⁷ Transco's January 4, 2008 filing has been indexed in elibrary as a privileged document, access to which may be sought by filing a Freedom of Information Act Request under 18 C.F.R. § 388.108. The document is privileged because it contains the names and addresses of landowners adjacent to the Sentinel Expansion Project.

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

Project. Chester County states that it should automatically be a party to this proceeding as it relates to two county-owned parcels that an existing Transco pipeline traverses. Chester County states that no disruption of the proceeding will ensue if it is granted late intervention. Alternatively, Chester County requests the Commission stay this proceeding and any condemnation proceedings.

11. Chester County's motion to intervene and request for stay are denied. Chester County has not previously sought intervention in this proceeding on Transco's certificate for the Sentinel Expansion Project. While timely intervention would have allowed Chester County to seek rehearing of the Commission's August 14 Certificate Order, the deadline to request rehearing of the certificate order was September 15, 2008. 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 at the rehearing stage.¹¹ Chester County gives no explanation for failing to file the motion within the time prescribed and thus does not show good cause for granting the late intervention. Chester County raises no new substantive issues regarding the Sentinel Project and all previous substantive issues regarding the Downingtown Replacement were addressed in the August 14 Certificate Order and the February 6 Order on Rehearing.¹² Therefore, Chester County's motion to intervene and request for stay are denied.

¹¹ See, e.g., *Texas Eastern Transmission, L.P.*, 121 FERC ¶ 61,003, at P 4 (2007); *Cameron LNG, L.L.C.*, 112 FERC ¶ 61,146, at P 6 (2005).

¹² Chester County states that its basis for late intervention is its interest in the county's wildlife habitat, water resources, and local ecosystems. However, Chester County has previously commented on these issues and the county's concerns were addressed in the environmental assessment for the Sentinel Expansion Project and in the August 14 Certificate Order. Chester County's latest pleading does not raise any issues regarding those original concerns. Rather, Chester County's basis for seeking intervention now is that residents along the Downingtown Replacement have indicated that Transco has not complied with the conditions of the August 14 Certificate Order. In its motion to intervene, Chester County gives no further explanation. The Commission has not yet granted clearance to Transco to begin construction on the Downingtown Replacement, and such clearance will not be granted until Transco has satisfied all applicable conditions. As stated in the February 6 Order on Rehearing, should the landowners be aggrieved by any post-certificate activity in a manner that was not contemplated by the certificate order, they may be able to seek rehearing of any applicable orders.

The Commission orders:

(A) The requests by the Citizens Coalition for Environmental and Property Protection in Pipeline Operations for reconsideration, a new post-certificate noncompliance docket, and stay are denied.

(B) The request for rehearing by the Farrells of the Commission's denial of late intervention is denied.

(C) The County of Chester's motion to intervene and request for stay are denied.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.