

139 FERC ¶ 61,037
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Philip D. Moeller, John R. Norris,
and Cheryl A. LaFleur.

National Fuel Gas Supply Corporation

Docket No. CP11-128-001

ORDER DENYING AND DISMISSING REQUESTS
FOR REHEARING, DENYING LATE INTERVENTION,
AND DENYING STAY

(Issued April 13, 2012)

1. On October 20, 2011, the Commission issued an order authorizing National Fuel Gas Supply Corporation (National Fuel) to construct and operate a new compressor station and other compression and facility upgrades in Pennsylvania and New York (Northern Access Project).¹ On November 18, 2011, the Concerned Neighbors Network (Concerned Neighbors) filed a timely request for rehearing and stay of the October 20 Order. In addition, James Dombrowski filed an untimely request for rehearing and Ted and Eileen Oakley filed an untimely motion to intervene and request for rehearing of the October 20 Order.²

2. As discussed below, we will deny Concerned Neighbors' request for rehearing and stay, dismiss James Dombrowski's request for rehearing, and deny Ted and Eileen Oakley's motion to intervene and dismiss their request for rehearing.

¹ *National Fuel Gas Supply Corporation*, 137 FERC ¶ 61,054 (2011) (October 20 Order).

² James Dombrowski filed his request for rehearing on February 16, 2012. Ted and Eileen Oakley filed their motion to intervene and request for rehearing on November 21, 2011.

Background

3. The October 20 Order authorized National Fuel and Tennessee Gas Pipeline Company, L.L.C. (Tennessee) to construct and operate facilities that would create firm northbound capacity on National Fuel's existing Line X and on the Niagara Spur Loop Line (NSLL).³ The October 20 Order authorized National Fuel, as part of its Northern Access Project, among other things, to construct and operate a new compressor station totaling approximately 4,740 horsepower, the East Aurora Compressor Station, in Erie County, New York, adjacent to the existing East Aurora Meter Station (which is operated by National Fuel and Tennessee). Concerned Neighbors, as well as several towns, communities, and individuals, opposed the siting of the proposed East Aurora Compressor Station, raising a number of environmental and safety concerns and asserting that there was a preferable alternative, namely the expansion of the existing Concord Compressor Station located in Springville, Erie County, New York. In approving National Fuel's proposal, including the proposed East Aurora Compressor Station, the Commission agreed with the conclusion in the Northern Access Project's Environmental Assessment (EA) that there were "no significant impacts associated with the East Aurora Compressor Station that would warrant requiring National Fuel to adopt the Concord Compressor Station alternative."⁴

Concerned Neighbors' Request for Rehearing and Stay

A. Concerned Neighbors' Party Status, Service List, and June 10, 2011 Answer

4. Concerned Neighbors points to language in the October 20 Order stating that "People United for Sustainable Housing and VOICE Buffalo (the Concerned Neighbors Network) filed a timely joint unopposed motion to intervene,"⁵ and expresses concern as whether the Commission recognized it as a separate party representing the concerns of individuals who reside near the East Aurora Compressor Station site. Concerned

³ The NSLL, operated by National Fuel, Tennessee, and Dominion Transmission, Inc., extends from the United States-Canada border at Niagara to East Aurora, New York. National Fuel's Line X extends from an interconnection with the NSLL in East Aurora to National Fuel's Ellisburg Compressor Station in Potter County, Pennsylvania.

⁴ 137 FERC ¶ 61,054 at P 51.

⁵ *Id.* P 17.

Neighbors also states that its June 10, 2011 answer to National Fuel's answer, together with "pages of petitions"⁶ were not acknowledged in the October 20 Order.

Commission Response

5. The "Motion to Intervene of People United For Sustainable Housing, VOICE-Buffalo Submitted on Behalf of the National Fuel Accountability Coalition and Concerned Neighbors Network" was timely filed and unopposed. As such, it was granted by operation of Rule 214 of the Commission's Rules of Practice and Procedure.⁷ Thus, we clarify that the National Fuel Accountability Coalition and Concerned Neighbors each have party status in this proceeding.⁸

6. Concerned Neighbors states the petitions included with its June 10 and September 16, 2011 filings had over 500 signatures and the main point of each was to ask that the proposed East Aurora Compressor Station be denied or relocated. While neither the EA nor the October 20 Order specifically mention the petitions attached to the June 10 filing, both the EA and the October 20 Order addressed the concerns about the proposed compressor station and its location raised by Concerned Neighbors: air quality, impacts of importation and use of Marcellus shale gas, noise, visual impacts, safety risks, including those posed by the Stuxnet worm,⁹ impacts on property values, and lack of consideration for alternative siting for the East Aurora Compressor Station.¹⁰

⁶ These petitions, attached as Exhibit A to Concerned Neighbors' June 10, 2011 Answer, contained the signatures of individual members of Concerned Neighbors and frequenters of Hunters Creek Park, requesting that the Commission seriously consider the matters raised in Concerned Neighbors' motion to intervene.

⁷ 18 C.F.R. § 385.214 (2011).

⁸ We note that Concerned Neighbors also states that it is not on the service list. However, Sarah Buckley, Concerned Neighbors' designated contact for purposes of service, has been e-subscribed and receiving notice of all filings in the proceeding since March 19, 2011, less than two weeks after National Fuel's application was filed.

⁹ The Stuxnet worm is a computer malware specifically targeting Siemens industrial supervisory control and data acquisition systems (SCADA), possibly including natural gas pipeline SCADA systems. Thus, any safety risk posed by the Stuxnet worm would involve matters of natural gas pipeline cyber security, which falls under the jurisdiction of the Transportation Security Administration (TSA), pursuant to the Aviation and Transportation Safety Act (49 U.S.C. § 40101, et seq., Pub. L. 107-07). Accordingly, TSA has the responsibility to protect against and prevent cyber attacks on

(continued...)

B. Adverse Impacts of the East Aurora Compressor Station

7. Concerned Neighbors contends that despite the fact that National Fuel must comply with federal and state air quality and noise standards, as well as multiple mitigation conditions, there will still be new air emissions and an increase in noise for the neighbors of the compressor station. Concerned Neighbors contends the Commission has not taken the potential impacts of such increases on the health of sensitive individuals into consideration. In addition, Concerned Neighbors is concerned that construction of the proposed compressor station is likely to bring additional infrastructure (expansions) in the future.

Commission Response

8. The Commission is sensitive to the fact that even impacts determined as the result of a thorough environmental review to be not significant may seem significant to those in the immediate vicinity of a project. Thus, while we strive to fairly and accurately assess and evaluate all such concerns, they cannot, in and of themselves, be determinative of our environmental assessment. Regarding the concern that the presence of a natural gas facility will engender further development in the area, we have no evidence that National Fuel has current plans to expand the East Aurora Compressor Station, or that any other natural gas projects are contemplated in the area of the East Aurora Compressor Station. However, should this become the case in the future, any application to construct and operate such facilities filed with the Commission would be reviewed and evaluated on its own merits, with appropriate consideration given to factors such as cumulative impacts.

9. While Concerned Neighbors claims that the Commission did not consider the impacts of increased air emissions at the East Aurora Compressor Station on those in the vicinity with sensitive health concerns, Concerned Neighbors concedes that those increased air emissions will meet federal and state air quality standards. As stated in the October 20 Order, the East Aurora Compressor Station would be a minor source of air emissions under federal air quality permitting programs. In addition, the total potential emissions of the East Aurora Compressor Station (assuming full load operation 24 hours

pipeline SCADA systems and the development and implementation of control system cyber security plans for that purpose. As such, TSA has issued Pipeline Security Guidelines, recommending that companies establish and implement Corporate Security Program plans that include, *inter alia*, cyber security measures.

¹⁰ See Paragraphs 43 through 51 of the October 20 Order and EA Sections B.6.1 (air quality impacts), B.6.2 (noise), B.5.1 (property values), B.5.3 (visual impacts), B.7 (safety), and B.8.3 (system alternatives).

per day, 365 days per year) would comply with the U.S. Environmental Protection Agency's (EPA) National Ambient Air Quality Standards (NAAQS), established pursuant to the Clean Air Act. These standards were established to protect human health and public welfare and take into account "sensitive" populations such as asthmatics, children, and the elderly.¹¹

C. Alternative Impact Analysis

10. Concerned Neighbors asserts that in concluding that the East Aurora Compressor Station was environmentally preferable to an alternative expansion of the existing Concord Compressor Station, both the October 20 Order and the EA failed "to accurately consider all aspects of public benefit vs adverse impacts"¹² as required by the Commission's Certificate Policy Statement.

11. Concerned Neighbors claims that the Commission wrongly determined that the construction of the East Aurora Compressor Station was environmentally preferable to the expansion of the existing Concord Compressor Station because the Commission gave more weight to the short-term adverse effects of construction at the Concord Station alternative than the long-term adverse effects of the East Aurora Compressor Station. In particular, Concerned Neighbors refers to the statement in the EA that "[b]ecause the Concord Station is an existing station, the impacts on visual resources, noise, and air quality would be incremental and relatively minor in comparison to those of the East Aurora Compressor Station."¹³ Concerned Neighbors also questions the claim that the East Aurora Compressor Station would provide more efficient operation of, and operational flexibility to, National Fuel's system. Finally, Concerned Neighbors appears to argue that since National Fuel's existing pipeline to the Concord Compressor Station will need to be replaced in the future, the adverse effects associated with pipeline construction are unavoidable in any case. Relying on the balancing between adverse impacts and public benefits that the Commission undergoes in its project evaluation under the Certificate Policy Statement,¹⁴ Concerned Neighbors asserts that the adverse impacts on surrounding landowners and community outweigh the benefit of East Aurora

¹¹ See <http://www.epa.gov/air/criteria.html>.

¹² Concerned Neighbors' Rehearing Request at 2.

¹³ EA at p. 43.

¹⁴ *Certification of New Interstate Natural Gas Pipeline Facilities*, 88 FERC ¶ 61,227 (1999), *clarified*, 90 FERC ¶ 61,128, *further clarified*, 92 FERC ¶ 61,094 (2000).

Compressor Station, especially when viewed in relation to the alternative Concord Compressor Station.

Commission Response

12. The balancing of adverse impacts and public benefits under the Commission's Certificate Policy Statement is not an environmental analysis process, but rather an economic test that we undertake prior to our environmental analysis. Concerned Neighbors correctly points out that the impacts associated with the Concord Compressor Station would be incremental and relatively minor in comparison to those associated with the East Aurora Compressor Station. However, that comparison does not take into account the impacts associated with the construction of the approximately 14.7 miles of additional pipeline that would be required in connection with the expansion of the Concord Compressor Station itself. Although the new pipeline would run parallel to the existing Line X, it would need to be offset by 25 feet to avoid interrupting service on the existing line, hence requiring additional permanent easements across 115 land parcels.¹⁵ Moreover, there is no evidence to support Concerned Neighbors' assertion that the existing pipeline will need to be replaced at some point in the foreseeable future. Even if that were the case, it does not account for the need to obtain additional easements to construct a parallel line to avoid service interruption.¹⁶

13. In addition, as explained by National Fuel, the Concord Compressor Station alternative does not meet the objectives of the proposed project, which is to provide firm transportation service to the Canadian border at National Fuel's tariff system rate, without subsidization from its existing shippers.¹⁷ According to National Fuel, the Concord Compressor Station alternative would require modifications to the existing East Aurora Meter Station, an additional 2,370 horsepower of compression at the Concord Compressor Station, and the construction of 14.7 miles of 24-inch pipeline, which would

¹⁵ See National Fuel's June 10, 2011 Data Response, Resource Report 10.

¹⁶ A number of comments filed by non-parties after the due date for requests for rehearing raise the matter of a 1994 National Fuel pipeline explosion in the nearby town of Aurora, commenting both on public safety generally, and to suggest that Line X between the East Aurora Meter Station might require replacement soon in any event. There is no evidence that that incident was related to the facilities involved in this application, or that pipeline replacement is necessary at any time in the foreseeable future.

¹⁷ See National Fuel's Updated Noise Survey and Additional Comments to the EA, filed September 23, 2011.

increase the estimated capital cost of the project by almost \$26,000,000. As a result, 10-year project revenues associated with such a revised project would not cover the estimated 10-year cost-of-service.¹⁸

14. As to National Fuel's claim that East Aurora Compressor Station would provide more efficient operation of and operational flexibility to National Fuel's system, National Fuel also provided information regarding several technical limitations that adopting the Concord Station alternative would present.¹⁹ First, based on engineering standards, the East Aurora Compressor Station can provide additional horsepower that might be necessary to account for pressure variances permitted to Tennessee under the project's development agreement and to account for power outages, whereas National Fuel is uncertain whether the addition of a single 2,370 horsepower unit at the Concord Station would be adequate in either situation. Second, less fuel would be consumed in making deliveries to the NSLL if compression is located at East Aurora instead of Concord. According to National Fuel, the additional fuel use would result in increased emissions and would require greater use of older, less efficient compressors at the Concord station. Finally, compression at East Aurora would allow for receipt points on Line X north for redelivery into the NSLL that would not be possible if the compression was located at Concord.

15. In conclusion, we restate our determination in the October 20 Order that there is no compelling reason to require National Fuel to alter its proposed project design. The record demonstrates that the East Aurora Compressor Station will not result in significant impacts. The East Aurora Compressor Station would require minimal disturbance and would not impact any sensitive resources. We included in our order conditions and mitigation measures that would further ensure that the East Aurora Compressor Station will not have a significant environmental impact. The record shows, and we find, that notwithstanding the fact that certain adverse effects associated with the Concord Compressor Station alternative are incrementally less than those associated with the East Aurora Compressor Station, the East Aurora Compressor Station, with the mitigation measures required in the October 20 Order, is actually environmentally preferable.

¹⁸ Concerned Neighbors and several commentors refer to a local newspaper report in which a National Fuel official is attributed with stating that constructing compression stations is less expensive than constructing pipeline facilities. We note that costs are legitimate concerns in project development, but it does not follow that environmental considerations are forsaken when a less costly measure is preferred.

¹⁹ National Fuel's Updated Noise Survey and Additional Comments to the EA, filed September 23, 2011.

Other Rehearing Requests and Motion to Intervene Out-of-Time

16. On February 16, 2012, James A. Dombrowski filed a request for rehearing of the October 20 Order. Pursuant to section 19(a) of the Natural Gas Act, 15 U.S.C. § 717r(a), an aggrieved party must file a request for rehearing within 30 days after issuance of a Commission decision, in this case, no later than November 21, 2011. Because the 30-day rehearing deadline is statutorily based, it cannot be waived or extended. Thus, Mr. Dombrowski's request for rehearing is untimely, and as such must be dismissed.²⁰

17. Ted and Eileen Oakley, through a representative, moved to intervene out-of time, stating that they had serious health issues which prevented them from participating in the proceeding until now. The Oakleys raised concerns regarding the East Aurora Compressor Station's impacts on air pollution, well water quality, noise, and depreciating home values. The Oakleys also ask for a rehearing of the October 20 Order.

18. In considering whether to grant an untimely motion to intervene, we may apply the criteria set forth in Rule 214(d)²¹ and consider whether: (1) the movant had good cause for failing to file the motion within the time prescribed; (2) any disruption of the proceeding might result from permitting the intervention; (3) the movant's interest is adequately represented by other parties in the proceeding; (4) any prejudice to, or additional burdens upon, the existing parties might result from permitting the intervention; and (5) the motion describes in adequate detail the movant's interest in and right to participate in the proceeding. When late intervention is sought after the issuance of a dispositive order, the prejudice to the other parties and the burden upon the Commission of granting the late intervention may be substantial. A movant bears a higher burden to show good cause for granting such intervention after issuance of an order addressing the merits of an application.²²

²⁰ We note that Mr. Dombrowski's rehearing request, asking that the Commission initiate an Environmental Impact Statement (EIS) for the Northern Access Project, was premised on the position that settings more rural than the East Aurora Compressor Station location are better suited for the construction of compressor stations. An EIS is required under the National Environmental Policy Act only where a proposed action will have a significant impact on the environment, and in this case, we made a finding of no significant impact.

²¹ 18 C.F.R. § 385.214(d) (2011).

²² See, e.g., *Florida Gas Transmission Company*, 133 FERC ¶ 61,156 (2010); *Entegra Gas Pipeline Inc.*, 113 FERC ¶ 61,327 (2005).

19. The Oakleys were included in the landowner's list provided by National Fuel when it filed its application in this proceeding on March 7, 2011. Consequently, they received a copy of the March 17, 2011 Notice of National Fuel's application in this proceeding, which provided instructions on participating as a party in this proceeding, and they also received a copy of the Notice of Intent to Prepare an Environmental Assessment, which was issued on March 29, 2011. While we are sympathetic to the Oakleys' statement that serious health issues prevented them from getting representation for their concerns, we do not find that granting their motion for late intervention is warranted. Accordingly, we will deny the Oakleys' late-filed motion to intervene. Because the Oakleys are not parties to this proceeding, their request for rehearing must be dismissed.²³ However, the Oakleys' November 21, 2011 Filing raised two concerns regarding air emissions and well water quality that they believe impacts them in particular.²⁴

20. First, as we discussed, above, the total potential emissions of National Fuel's East Aurora Compressor Station must comply with the EPA's NAAQS, which were set to protect the health of "sensitive" populations, such as the Oakleys.

21. Second, regarding the Oakleys' concerns that the East Aurora Compressor Station could negatively affect their well water, while the October 20 Order did not specifically address groundwater concerns, the EA did address potential well water impacts.²⁵ National Fuel's surveys of the project area found no public or private water wells within 800 feet of the proposed compressor station site. The Oakleys' property is approximately 1,000 feet away from the proposed site. As such, the Oakleys' well is far beyond the 150-foot standard for identifying groundwater supply wells in the resource reports that are to be filed in connection with applications for construction of natural gas facilities.²⁶ The EA stated that National Fuel would implement its *Erosion and Sediment Control and Agricultural Mitigation Plan* and *Spill Prevention Control and Containment Plan*, which

²³ Under section 19(a) of the Natural Gas Act, only parties to a proceeding may seek rehearing of Commission orders.

²⁴ The Oakleys' concerns regarding noise and decreased property values were thoroughly addressed in the EA and October 20 Order.

²⁵ See EA at section 2.1, p. 10.

²⁶ Specifically, under section 380.12(d)(9) of the Commission's regulations, 18 C.F.R. § 380.12(d)(9) (2011), the project applicant's resource report for water use and quality must "[i]dentify the location of known public and private groundwater supply wells or springs within 150 feet of the proposed construction areas."

include measures to prevent offsite sedimentation (installation of erosion control devices), spill avoidance measures, and measures to contain and cleanup materials in the event of a release. As a result, the EA concludes that construction of the project would not have a significant impact on groundwater resources. We agree with the EA's analysis and assessment that the implementation of National Fuel's proposed mitigation measures will ensure that construction and operation of the East Aurora Compressor Station do not adversely impact water wells in the project area, including the Oakleys' well.

Post Order Comments

22. We received a late comment from Dr. Michael M. Carlone, a local landowner, indicating that the noise study for the East Aurora Compressor Station was flawed because the noise level was not measured from the property line of the nearest noise-sensitive area (NSA), but from the center of the road in front of the nearest NSA.²⁷ As defined in our regulations, a NSA is usually a structure (in this case, a residence), not the property that the structure occupies. Therefore, it is common practice to take noise measurements at the residence itself (where permission to do so is given), or at a representative point near the residence, as was done by National Fuel. Therefore, we find that the noise survey was conducted appropriately. However, based on calculations by our staff, if the measurement were taken at the property line of the nearest NSA, which is approximately 250 feet from the compressor station, the noise level would be below 55 decibels and would comply with our regulations.

23. Another late comment, filed by a local landowner, Dorothy A. Carlone, faults the 55 dBA criteria which has been adopted by our regulations, and argue that lower World Health Organization standards should apply. This proceeding is not the appropriate vehicle for changing our regulations, which are based on federal EPA standards that the EPA has determined would protect the public from indoor and outdoor activity interference. Environmental Condition 14 of the October 20 Order requires that National Fuel file a post-construction noise survey for the East Aurora Compressor Station and if it is not in compliance with our noise requirements, additional mitigation measures may be required of National Fuel.²⁸

²⁷ Section 380.12(k)(4)(v)(A) of the Commission's regulations, 18 C.F.R. § 380.12(k)(4)(v)(A), provides that: "[t]he noise attributable to any new compressor station, compression added to an existing station, or any modification, upgrade, or update of an existing station, must not exceed a day-night level (Ldn) of 55 dBA at any pre-existing noise-sensitive area (such as schools, hospitals, or residences.)"

²⁸ Subsequent to the October 20 Order and Concerned Neighbors' rehearing request, a number of affected landowners in the vicinity of the East Aurora Compressor

(continued...)

Request for Stay

24. Concerned Neighbors requests a stay of the October 20 Order so that the Commission might consider unaddressed questions about the impact of its decision to authorize construction and operation of the Northern Access Project through preparation of an Environmental Impact Statement (EIS).

Commission Response

25. We review requests for stay under the standard established by the Administrative Procedure Act,²⁹ and grant a stay when “justice so requires.”³⁰ In assessing a request for a 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.³¹ Our general policy is to refrain from granting stays in order to assure definiteness and finality in our proceedings.³²

26. 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.³³ In *Wisconsin Gas Co. v. FERC*,³⁴ 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

Station site filed comments supporting Concerned Neighbors’ rehearing request and raising environmental concerns. The EA and the October 20 Order addressed the concerns raised by these commenters.

²⁹ 5 U.S.C. § 705 (2006).

³⁰ See, e.g., *Ruby Pipeline, L.L.C.*, 134 FERC ¶ 61,103, at P 17 (2011); *Ruby Pipeline, L.L.C.*, 134 FERC ¶ 61,020, at P 15 (2011); *AES Sparrows Point LNG, LLC*, 129 FERC ¶ 61,245, at P 18 (2009).

³¹ *Id.*

³² See, e.g., *Sea Robin Pipeline Co.*, 92 FERC ¶ 61,217, at 61,710 (2000).

³³ *Supra* note 30.

³⁴ 758 F.2d 669 (D.C. Cir. 1985).

feared as liable to occur at some indefinite time.³⁵ Implicit in these principles is the further requirement that the movant substantiate the claim that irreparable injury is “likely” to occur.³⁶ Bare allegations of what is likely to occur are of no value since the court must decide whether the harm will *in fact* occur.³⁷ 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.³⁸ Further, the movant must show that the alleged harm will directly result from the action which the movant seeks to enjoin.³⁹

27. We find that Concerned Neighbors has not shown that a stay is necessary to avoid irreparable injury. Concerned Neighbors has generally alleged that construction and operation of the East Aurora Compressor Station, as proposed, will cause harm to the environment, and in particular, to the health of certain area residents with sensitive health issues. However, Concerned Neighbors has made no allegation or showing of irreparable injury absent a stay.

28. In approving the Northern Access Project, and the construction and operation of the East Aurora Compressor Station in particular, we considered the environmental information in the EA, and we also imposed numerous environmental conditions on the construction and operation of the East Aurora Compressor Station and required mitigation measures to minimize the impacts from that station. We ultimately determined that, on balance, approving the project as proposed will not result in significant impacts. Though issues of air quality and noise are of specific interest to Concerned Neighbors, it does not dispute the fact that the noise and air emissions at the East Aurora Compressor Station must comply with applicable federal and state standards. An EIS is required under the National Environmental Policy Act only where a proposed action will have a significant impact on the environment.⁴⁰ Under these circumstances, we find that Concerned Neighbors has not demonstrated that the preparation of an EIS is

³⁵ *Id.* at 674.

³⁶ *Id.*

³⁷ *Id.* (emphasis in original).

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ *See, e.g., El Paso Natural Gas Co.*, 136 FERC ¶ 61,175 (2011).

necessary or warranted.⁴¹ Since Concerned Neighbors has failed to make the requisite showing of irreparable harm, we conclude that there is no basis for, or reason to, grant a stay which would prevent timely construction of needed facilities.

The Commission orders:

(A) Concerned Neighbors' request for rehearing and stay of the October 20 Order are denied, as discussed above.

(B) James Dombrowski's request for rehearing is dismissed, as discussed above.

(C) Ted and Eileen Oakley's late motion to intervene is denied, as discussed above.

(D) Ted and Eileen Oakley's request for rehearing is dismissed.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

⁴¹ Concerned Neighbors cites *Borough of Leighton*, 57 FERC ¶ 61,401 (1991), as an example of a case in which the Commission has granted a request for a stay in order that the Commission may prepare an EIS. However, as noted herein, we have found that no EIS is warranted for this proposal.