

154 FERC ¶ 61,092
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Norman C. Bay, Chairman;
Cheryl A. LaFleur, Tony Clark,
and Colette D. Honorable.

Constitution Pipeline Company, LLC

Docket No. CP13-499-000

ORDER DENYING STAY

(Issued February 10, 2016)

1. On January 29, 2016, Catherine Holleran, Megan Holleran and Alexander Lotorto (Petitioners) filed a request that the Commission stay tree cutting by Constitution Pipeline Company, LLC (Constitution) on property owned, in part, by Catherine Holleran located in New Milford Township, Susquehanna County, Pennsylvania (subject property).¹ We find that justice does not require a stay of tree cutting and therefore, we deny Petitioners' request.

I. Background

2. On December 2, 2014, the Commission issued Constitution a Natural Gas Act (NGA) section 7(c) certificate of public convenience and necessity to construct and operate an approximately 125-mile-long, 30-inch-diameter interstate pipeline and related facilities extending from two receipt points in Susquehanna County, Pennsylvania, to a proposed interconnection with Iroquois Gas Transmission System, L.P.'s (Iroquois) pipeline system in Schoharie County, New York (2014 Order).² The proposed pipeline is designed to provide up to 650,000 dekatherms per day of firm transportation service.

¹ Petitioners designate the subject property as Parcel # 127.00-1, 063.00,000, Tract # ALT-PA-SU-020.000.

² *Constitution Pipeline Co., LLC*, 149 FERC ¶ 61,199 (2014), *order on reh'g*, 154 FERC ¶ 61,046 (2016).

3. In the 2014 Order, the Commission found that the benefits the Constitution Pipeline Project will provide to the market outweigh any adverse effects on existing shippers, on other pipelines and their captive customers, and on landowners and surrounding communities. The Commission concluded, after preparing an Environmental Impact Statement (EIS) for the projects to satisfy the requirements of the National Environmental Policy Act (NEPA), that, if constructed and operated in accordance with applicable laws and regulations, the projects will result in some adverse environmental impacts, but that these impacts will be reduced to less-than-significant levels with Constitution's implementation of the required mitigation measures adopted as conditions of the 2014 Order.³

4. In response to comments, the final EIS considered a route variation regarding the subject property.⁴ However, no viable route preferable to the proposed route on this property was identified and the final EIS concluded that the proposed route minimized impacts on the subject property to the extent possible. Based on this analysis, the 2014 Order approved the proposed route on the subject property. No party sought rehearing of this determination.

5. On January 29, 2016, the Commission granted Constitution a partial notice to proceed with limited non-mechanical tree felling in Pennsylvania based upon a finding that Constitution had obtained all necessary federal clearances from Pennsylvania for that activity.⁵

II. Petitioners' Request for Stay

6. Petitioners request a stay of tree cutting on the subject property based on objections listed in a letter, attached to the petition, from Catherine Holleran and Alexander Lotorto to counsel for Constitution requesting that Constitution immediately cease and desist from any and all tree cutting on the subject property. The letter explains that Constitution's right-of-way for the pipeline cuts through woods that are used in a maple sugaring operation on the subject property and asserts that the right-of-way will obstruct the ability to produce from that portion of the sugarbush. Petitioners also contend that they are currently preparing to tap maple trees and that sugaring equipment staged in the right-of-way will be in imminent threat of property damage if tree cutting

³ *Id.* P 3.

⁴ *See* Final EIS at 3-69.

⁵ *Constitution Pipeline Co., LLC*, Docket No. CP13-499-000 (Jan. 29, 2016) (delegated letter order).

proceeds on the subject property. Petitioners maintain that they must “receive compensation before eminent domain condemnation” and since “compensation hearings have yet to be held,” they contend that any action on the subject property is unconstitutional.

III. Constitution’s Answer

7. On February 2, 2016, Constitution filed an answer asserting that Petitioners have not demonstrated the requisite irreparable harm and, for this reason, the motion to stay must be denied.

8. Constitution states that it obtained the right to access and possession of the rights-of-way on the subject property by an order dated March 16, 2015, issued by the United States District Court for the Middle District of Pennsylvania (March 16 Order) (attached to the answer as Exhibit A).⁶ Constitution also states that the March 16 Order required the posting of a \$1.6 million bond to secure the payment of compensation to the subject property landowners and the owners of six other properties in Pennsylvania, which bond Constitution posted with the federal District Court in March 2015. Finally, Constitution asserts that pipeline companies are not required to wait until compensation is paid to access rights-of-way, if the amount of just compensation is secured prior to access.⁷

IV. Discussion

9. The Commission’s standard for granting a stay is whether justice so requires.⁸ The most important element of the stay standard is a showing that the movant will be

⁶ Constitution states that one of the Petitioners, Catherine Holleran, is one of five owners of the approximately 23-acre property in Susquehanna County, Pennsylvania, on which Constitution has the right of possession of 1.84 acres of permanent right-of-way and 3.3 acres of temporary workspace for the project.

⁷ Constitution’s Answer at 4 (citing *ANR Pipeline Co. v. Acres of Land*, No. 03 C 50348, 2004 WL 421527, at *1 (N.D. Ill. Feb. 24, 2004)).

⁸ Administrative Procedure Act, 5 U.S.C. § 705 (2012); *Duke Energy Carolinas, LLC*, 124 FERC ¶ 61,254, at P 8 (2008). Under this standard, the Commission generally considers whether the moving party will suffer irreparable injury without a stay, whether issuance of a stay will substantially harm other parties, and whether a stay is in the public interest. *Pub. Util. Dist. No. 1 of Pend Oreille County*, 113 FERC ¶ 61,166, at P 6 (2005).

irreparably injured without a stay.⁹ Our general policy is to refrain from granting stay to ensure definiteness and finality in our proceedings.¹⁰ For the reasons discussed below, we deny the stay request.

10. Petitioners have not demonstrated that absent a stay there will be irreparable injury to them as a result of tree cutting on the subject property. Rather, Petitioners only raise concerns regarding impacts to a maple sugaring operation on the subject property and the appropriate amount of compensation. Economic loss, without more, does not constitute irreparable harm.¹¹ Therefore, we deny Petitioners' request for a stay of tree cutting on the subject property.

11. Once we have authorized pipeline construction, the Commission does not oversee the acquisition of necessary property rights. Issues related to the acquisition of property rights by a pipeline under the eminent domain provisions of section 7(h) of the NGA, including issues regarding compensation, are matters for the applicable state or federal court. The Commission is not involved in these matters.

12. For these reasons, we find that Petitioners have not demonstrated that justice requires a stay of tree cutting on the subject property. Accordingly, Petitioners' request for stay is denied.

⁹ See, e.g., *Transcontinental Gas PipeLine Co., LLC*, 150 FERC ¶ 61,183, at P 9 (2015); *Millennium Pipeline Co., L.L.C.*, 141 FERC ¶ 61,022, at P 14 (2012); *Ruby Pipeline, L.L.C.*, 134 FERC ¶ 61,103, at P 18 (2011).

¹⁰ See, e.g., *Sea Robin Pipeline Co.*, 92 FERC ¶ 61,217, at 61,710 (2000).

¹¹ See, e.g., *Wisconsin Gas Co. v. FERC*, 758 F.2d 669, 674 (D.C. Cir. 1985); *Public Utility District No. 1 of Pend Oreille County*, 113 FERC ¶ 61,166, at P 11 (2005); *Puget Sound Energy, Inc.* 82 FERC ¶ 61,142 (1998).

The Commission orders:

The request for stay filed by Petitioners is denied.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.