

154 FERC ¶ 61,264
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Florida Southeast Connection, LLC
Transcontinental Gas Pipe Line Company, LLC
Sabal Trail Transmission, LLC

Docket Nos. CP14-554-001
CP15-16-001
CP15-17-001

ORDER DENYING STAY

(Issued March 30, 2016)

1. On March 3, 2016, the Kiokee-Flint Group, the Georgia Chapter of the Sierra Club, Flint Riverkeeper, and Chattahoochee Riverkeeper (Petitioners) filed a request for rehearing and stay of the Commission's February 2, 2016 Order (February 2016 Order).¹ In this order, we deny Petitioners' request for stay because we conclude that justice does not require a stay. Petitioners' and other parties' requests for rehearing remain pending before the Commission.

I. Background

2. The February 2016 Order granted Florida Southeast Connection, LLC, Transcontinental Gas Pipe Line Company, LLC (Transco), and Sabal Trail Transmission, LLC (Sabal Trail) certificates of public and convenience to construct and operate the Florida Southeast Connection Project, the Hillabee Expansion Project, and the Sabal Trail Transmission Project (Sabal Trail Project), respectively. In addition, the February 2016 Order authorized Transco to abandon the capacity created by the Hillabee Expansion Project to Sabal Trail, and Sabal Trail to acquire such capacity. In total, the February 2016 Order approved the construction and operation of 685.5 miles of natural gas transmission pipeline and 339,400 horsepower of compression to provide transportation service for up to approximately 1.1 billion cubic feet per day of natural gas to markets in Florida and the southeast United States.

¹ *Florida Southeast Connection, LLC*, 154 FERC ¶ 61,080 (2016).

3. The Commission found that the benefits the projects 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.² In addition, Commission staff prepared a Final Environmental Impact Statement that found, 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 the implementation of recommended mitigation measures. The Commission adopted the applicable recommendations as conditions of the February 2016 Order.³

4. Petitioners filed a timely request for rehearing and stay of the February 2016 Order. Six other parties also requested rehearing. On March 18, 2016, Sabal Trail filed an answer opposing the rehearing requests and Petitioners' request for stay. To date, none of the pipeline companies have requested authorization to proceed with the construction of any segment of the overall project.⁴

II. Petitioners' Request for Stay

5. Petitioners request that the Commission stay the February 2016 Order until the Commission reaches a final decision on rehearing. They ask that the Commission's stay prohibit the pipeline companies from pursuing any action authorized by the order, including any construction activity and eminent domain proceedings. Petitioners argue that a stay is warranted in light of the "substantial questions" they raise on rehearing relating to the purported premature issuance of the certificates, including whether Sabal Trail's capital structure can support the Sabal Trail Project, whether environmental justice issues have been properly addressed, whether the necessary environmental review

² *Id.* P 88.

³ *Id.* P 233.

⁴ Even while rehearing is pending, a pipeline company can request authorization to proceed with construction of discrete segments of the overall project once it has complied with all environmental conditions relevant to that particular section of the approved route. *See, e.g., Ruby Pipeline, L.L.C.*, 134 FERC ¶ 61,130, at P 8 (2011) (*Ruby*). Upon verification that all applicable environmental conditions have been satisfied, Commission staff would issue a "notice to proceed" with construction of, as appropriate, all or a portion of the project covered by the request.

has taken place under National Environmental Policy Act of 1969, and whether the Commission has authority to issue a certificate before the issuance of the necessary Clean Water Act section 401 permits.⁵

6. Petitioners state that if the projects are allowed to go forward before the Commission issues an order on rehearing, the public will suffer irreparable harm from the loss of trees and wetlands and the taking of property through eminent domain. Further, Petitioners argue that because the Commission will act faster on rehearing requests through its recently-formed rehearings group, any delay in construction that the stay would cause the pipeline companies would be minimal.

III. Discussion

7. The Commission's standard for granting a stay is whether justice so requires.⁶ 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.⁷ The most important element of the stay standard is a showing that the movant will be irreparably injured without a stay. If the party requesting the stay is unable to demonstrate that it will suffer irreparable harm absent a stay, we need not examine other factors.⁸

8. Petitioners have not demonstrated that justice requires a stay. Petitioners appear to argue that their members and the public will be irreparably harmed if the Commission prejudices the outcome of their rehearing request by allowing construction to proceed

⁵ Kiokee-Flint Group *et al.* March 3, 2016 Request for Rehearing and Stay at 45-46.

⁶ *See, e.g., Millennium Pipeline Company, L.L.C.*, 141 FERC ¶ 61,022, at P 13 (2012) (*Millennium*); *Ruby*, 134 FERC ¶ 61,103 at P 17; *AES Sparrows Point LNG, LLC*, 129 FERC ¶ 61,245, at P 18 (2009) (*AES*); *Columbia Gas Transmission LLC*, 129 FERC ¶ 61,021, at P 6 (2009) (*Columbia*); *Guardian Pipeline, L.L.C.*, 96 FERC ¶ 61,204, at 61,869 (2001) (*Guardian*).

⁷ *Id.* Ensuring definiteness and finality in our proceedings also is important to the Commission. *See, e.g., Sea Robin Pipeline Co.*, 92 FERC ¶ 61,217, at 61,710 (2000).

⁸ *See, e.g., Millennium*, 141 FERC ¶ 61,022 at P 14; *Ruby*, 134 FERC ¶ 61,103 at P 18; *AES*, 129 FERC ¶ 61,245 at P 18; *Columbia*, 129 FERC ¶ 61,021 at P 6; *Guardian*, 96 FERC ¶ 61,204 at 61,869.

before the issues raised in the rehearing are fully resolved. However, Petitioners' statement that their members and the public will suffer irreparable harm from the loss of trees and wetlands describes generalized environmental harm without identifying specifics. In any event, in approving the projects, the Commission considered the final Environmental Impact Statement prepared by Commission staff to analyze the projects, and determined that the projects will result in some adverse environmental impacts, but that these impacts will be reduced to less-than-significant levels with the implementation of the required mitigation measures adopted as conditions of the February 2016 Order.

9. In addition, the factors we examine when considering whether to grant a stay, enumerated above, do not include the likelihood of success on the merits. We have not yet considered the merits of the rehearing requests, and we will not prejudge them in any manner. To the extent that the company elects to proceed with construction, it bears the risk that we will revise or reverse our initial decision or that our orders will be overturned on appeal. If this were to occur, the company might not be able to utilize any new facilities, and could be required to remove them or to undertake further remediation.

10. Further, the Commission cannot stay eminent domain proceedings as Petitioners request. 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.

11. For the above reasons, we find that Petitioners have not demonstrated that justice requires a stay of the projects. Accordingly, Petitioners' request for stay is denied.

The Commission orders:

The request for stay filed on March 3, 2016, by the Kiokee-Flint Group, the Georgia Chapter of the Sierra Club, Flint Riverkeeper, and Chattahoochee Riverkeeper is denied.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.