

154 FERC ¶ 61,263
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Tennessee Gas Pipeline Company, L.L.C.

Docket No. CP14-529-000

ORDER DENYING STAY

(Issued March 30, 2016)

1. On March 11, 2016, the Commission issued a certificate of public convenience and necessity under section 7(c) of the Natural Gas Act authorizing Tennessee Gas Pipeline Company, L.L.C. (Tennessee) to construct and operate pipeline facilities in Albany County, New York; Berkshire and Hampden Counties, Massachusetts; and Hartford County, Connecticut, and modify an existing compressor station in Hampden County, Massachusetts (Connecticut Expansion Project).¹

I. Request For Stay

2. On March 17, 2016, Sandisfield Taxpayers Opposed to the Pipeline (STOP) filed a motion asking the Commission to indefinitely stay any construction activity associated with the Project, including tree-cutting. STOP contends that a stay is necessary to prevent irreparable harm to the property of two of its members (Ms. Morrical and Mr. Friedman) that will purportedly arise from any tree clearing activities that may take place in connection with the Massachusetts Loop component of the Connecticut Expansion Project. STOP asserts that these activities will result in the loss of old growth forest, have adverse visual impacts, invite invasive plant species, potentially disrupt one stream, and adversely affect property values.² On March 22, 2016, Tennessee filed an answer opposing STOP's motion for stay.

3. For the reasons discussed below, the Commission finds that justice does not require a stay and therefore denies STOP's request.

¹ *Tennessee Gas Pipeline Co., L.L.C.*, 154 FERC ¶ 61,191 (2016) (March 11 Order).

² Motion for Stay, filed March 17, 2016, at 3-4.

II. Commission Determination

4. The Commission grants a stay when “justice so requires.”³ In determining whether this standard has been met, the Commission considers several factors, including: (1) whether the party requesting the stay will suffer irreparable injury without a stay, (2) whether issuing a stay may substantially harm other parties; and (3) whether a stay is in the public interest.⁴

5. Here, we find that STOP has not demonstrated that justice requires a stay of the March 11 Order. In approving the Connecticut Expansion Project, the Commission considered the Environmental Assessment prepared by Commission staff and determined that, on balance, approving the pipeline along the recommended route is an environmentally acceptable action.⁵ With respect to the purported irreparable harm arising from the loss of forest lands on the affected properties, the Environmental Assessment explains that the entirety of the Massachusetts Loop will be within or directly adjacent to existing pipeline rights-of-way, which will reduce the amount of required tree clearing.⁶ After construction, trees and shrubs would be allowed to grow within the temporary construction rights-of-way, and Tennessee would work with individual landowners to develop replanting plans as part of its easement negotiations.⁷ The Environmental Assessment concluded that tree clearing would have long-term impacts, but that such impacts would not be significant as mature trees would eventually re-establish themselves.⁸

6. STOP also points to the visual impacts associated with the right-of-way on Mr. Friedman’s property. As STOP concedes, however, the Massachusetts Loop will only expand an existing easement.⁹ The visual impacts during construction would

³ *Enable Gas Transmission, LLC*, 153 FERC ¶ 61,055, at P 118 (2015) (*Enable*); *Transcontinental Gas Pipe Line Co., LLC*, 150 FERC ¶ 61,183, at P 9 (2015).

⁴ Ensuring definiteness and finality in our proceedings also is important to the Commission. *See Constitution Pipeline Co., LLC*, 154 FERC ¶ 61,092, at P 9 (2016); *Enable*, 153 FERC ¶ 61,055 at P 118; *Millennium Pipeline Co., L.L.C.*, 141 FERC ¶ 61,022, at P 13 (2012) (*Millennium Pipeline*).

⁵ March 11 Order at P 146.

⁶ Environmental Assessment at 71.

⁷ *Id.*

⁸ *Id.* at 71; *see also* March 11 Order at P 135.

⁹ Motion for Stay at 3.

primarily be temporary, with the exception of the expanded permanent right-of-way that would be converted to open land.¹⁰ STOP also contends that the easement “invites” invasive species and places a stream on Mr. Friedman’s property “at risk” for disruption.¹¹ But the irreparable harm necessary to support a stay “must be both certain and great; it must be actual and not theoretical.”¹² STOP also contends that the Project will negatively affect property values. As the Environmental Assessment explained, however, “[t]he effect that a pipeline easement may have on a particular property’s value is a damage-related issue that would be negotiated between the landowner and Tennessee during the easement acquisition process.”¹³ Moreover, economic loss does not constitute irreparable harm.¹⁴

7. Finally, Tennessee asserts that both Ms. Morrical and Mr. Friedman have executed agreements with the pipeline that compensate the landowners for the easements necessary for the construction and operation of the Project and the impacts therefrom. Any such agreements would seemingly preclude a claim that the impacts to the landowners’ property give rise to irreparable injury.¹⁵

¹⁰ Environmental Assessment at 78.

¹¹ Motion at 3-4.

¹² *Algonquin Gas Transmission, LLC*, 154 FERC ¶ 61,048, at P 266 (2016). Moreover, the Environmental Assessment found that the Project’s impact upon vegetation would be minor if constructed in accordance with the conditions imposed by the March 11 Order. *See* Environmental Assessment at 59; March 11 Order at P 112 (discussing invasive species conditions). The stream identified by STOP only extends into temporary workspaces and would not be crossed by the pipeline. *See* Environmental Assessment at E-1, E-3. In any event, the Environmental Assessment found that the Project would have only minor and temporary impacts on surface water resources. *Id.* at 49.

¹³ Environmental Assessment at 84.

¹⁴ *See, e.g., Constitution Pipeline Co., LLC*, 154 FERC ¶ 61,092 at P 10 (“Economic loss, without more, does not constitute irreparable harm”); *Transcontinental Gas Pipe Line*, 150 FERC ¶ 61,183 at P 14 (potential diminution of property values “are indicative of only economic harm, which, without more, is not considered irreparable injury”); *Millennium Pipeline Co.*, 141 FERC ¶ 61,022 at P 17 (same).

¹⁵ *Virginia Petroleum Jobbers Ass’n v. FPC*, 259 F.2d 921, 925 (D.C. Cir. 1958) (noting that the possibility of adequate compensatory relief weighs heavily against a claim of irreparable harm).

8. STOP also argues that a stay is warranted because it is “likely to succeed on the merits” of its claims that (1) Commission erred in granting a section 7 certificate before Massachusetts issued its certification under section 401 of the Clean Water Act, and (2) the section 7 certificate conflicts with Article 97 of the Massachusetts Constitution, which restricts construction on public lands. The Commission generally does not consider a movant’s likelihood of success in determining whether a stay is warranted.¹⁶ The Commission nonetheless notes that both of these claims were addressed in the March 11 Order.¹⁷

9. STOP asserts that Tennessee will not be harmed by a stay because the pipeline has yet to secure all necessary permits under the Clean Water Act and because ground conditions are not currently suitable for tree clearing. The Commission need not conclude that Tennessee will be harmed to find that the public interest does not favor a stay. Here, Tennessee has a limited window to comply with the Fish and Wildlife Service’s tree clearing recommendations in order to mitigate impacts on threatened and endangered species in the Project area.¹⁸ It must do so by April 1, delay until November, or reinitiate consultations with the Fish and Wildlife Service. Any delay in construction could delay completion of a project that the Commission has found to be required by the public convenience and necessity, and will deliver gas supplies to local distribution companies who serve residential, industrial, and commercial customers.¹⁹

10. Both the Commission and the courts have denied stays in circumstances similar to those presented here. For example, in *Enable Gas Transmission, LLC*,²⁰ and *Millennium Pipeline Co., L.L.C.*²¹ the Commission denied a request for stay premised on claims that

¹⁶ See, e.g., *Millennium Pipeline*, 141 FERC ¶ 61,022 at P 18.

¹⁷ See March 11 Order at P 99 (explaining that the “Commission’s conditional approval of the project does not conflict with” the Clean Water Act) and PP 80-86 (discussing interaction between Natural Gas Act and Article 97 of the Massachusetts Constitution).

¹⁸ Any authorized tree clearing must be conducted in accordance with the best management practices described in the Commission’s Plan and Procedures and all other pertinent conditions imposed by the Commission. See March 11 Order at P 74.

¹⁹ *Id.* at PP 5, 6, 17.

²⁰ 153 FERC ¶ 61,055 at P 119.

²¹ 141 FERC ¶ 61,022 at P 15.

tree cutting would cause irreparable harm. The courts have also denied requests for judicial stay in similar pipeline construction cases.²²

11. For these reasons, we find that justice does not require a stay of construction activities and thus deny STOP's motion for stay.

The Commission orders:

The request for stay filed by STOP is denied.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

²² See, e.g., *Catskill Mountainkeeper, Inc. v. FERC*, No. 16-345 (2d. Cir. Feb. 24, 2016) (denying stay of tree clearing activity); *Del. Riverkeeper Network v. FERC*, No. 13-1015 (D.C. Cir. Feb. 6, 2013) (denying stay of tree clearing and construction of a 40-mile pipeline); *Coal. for Responsible Growth and Res. Conservation v. FERC*, No. 12-566, Order Denying Motion for Stay (2d. Cir. Feb. 28, 2012) (denying stay concerning clearing of 200,000 mature trees for a 39-mile greenfield natural gas pipeline).