

155 FERC ¶ 61,292  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

Dominion Transmission, Inc.

Docket No. CP14-497-001

ORDER DENYING STAY

(Issued June 21, 2016)

1. On April 28, 2016, the Commission issued a certificate of public convenience and necessity under section 7(c) of the Natural Gas Act authorizing Dominion Transmission, Inc. (Dominion) to construct and operate compression and related facilities in Chemung, Herkimer, Madison, Montgomery, Schenectady, and Tompkins Counties, New York (New Market Project).<sup>1</sup>

**I. Requests For Stay**

2. On May 31, 2016, Otsego 2000, Inc., a non-governmental historic preservation and conservation organization, filed a request for rehearing of the April 28 Order. That filing also included a request for stay of all construction activity associated with the New Market Project while the Commission considers this matter on rehearing and any subsequent judicial review.<sup>2</sup> On June 14, 2016, Dominion filed an opposition to the request for stay.

3. For the reasons discussed below, the Commission finds that justice does not require a stay and therefore denies Otsego 2000's request.

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<sup>1</sup> *Dominion Transmission, Inc.*, 155 FERC ¶ 61,106 (2016) (April 28 Order).

<sup>2</sup> The Commission has yet to consider the merits of the Otsego 2000's request for rehearing. Nor do we address herein the purported amended rehearing request filed on June 2, 2016 on behalf of Otsego 2000, John and Maryanne Valentine, and Mohawk Valley.

## II. Commission Determination

4. The Commission grants a stay when “justice so requires.”<sup>3</sup> 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.<sup>4</sup> If the party requesting the stay is unable to demonstrate that it will suffer irreparable harm absent a stay, we need not examine the other factors.<sup>5</sup>

5. Otsego 2000 contends that a stay is necessary because, if the New Market Project “moves forward before the local siting approval process is complete, irreparable harm will result since the Town [of Minden] will lose the ability to have input on siting of the compressor station.”<sup>6</sup> This claim does not support a finding of irreparable harm.

6. First, Otsego 2000’s argument raises the specter of harm to the Town of Minden, not the movant.<sup>7</sup> The Town has not moved for a stay, nor has it sought rehearing of the April 28 Order. Second, even if third-party harm could suffice to support a stay, Otsego 2000 has made no effort to establish the likelihood that the schedule for the local siting approval process is imperiled by the April 28 Order. Thus, the purported irreparable

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

<sup>4</sup> 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., LLC*, 141 FERC ¶ 61,022, at P 13 (2012).

<sup>5</sup> See, e.g., *Algonquin Gas Transmission, LLC*, 154 FERC ¶ 61,236, at P 8 (2016); *Transcontinental Gas Pipe Line Co., LLC*, 150 FERC ¶ 61,183 at P 9; *Millennium Pipeline Co., LLC*, 141 FERC ¶ 61,022 at P 14.

<sup>6</sup> Otsego 2000 Petition for Rehearing and Request for Stay, filed May 31, 2016, at p. 32.

<sup>7</sup> See, e.g., *Wisconsin Gas Co. v. FERC*, 758 F.2d 669, 673-74 (D.C. Cir. 1985) (*Wisconsin Gas*) (“The factors to be considered in determining whether a stay is warranted are ... (2) the likelihood that *the moving party will be irreparably harmed* absent a stay”) (emphasis added); *CMM Cable Rep., Inc. v. Ocean Coast Properties, Inc.*, 48 F.3d 618, 622 (1st Cir. 1995) (“the issuance of a preliminary injunction requires a showing of irreparable harm *to the movant* rather than to one or more third parties”) (emphasis in original).

harm is speculative at best.<sup>8</sup> Third, Otsego 2000 suggests that a stay is necessary to ensure that the Town of Minden has an opportunity to provide input on the siting of the project. Otsego 2000's filings indicate that the Dominion first submitted its site development plans to the Town of Minden in April 2015.<sup>9</sup> In addition, the Town has had the opportunity to participate in the proceedings before the Commission and has, in fact, done so.<sup>10</sup> Finally, while the April 28 Order encouraged cooperation between Dominion Transmission and local authorities, the Commission noted that "state and local agencies, through application of state or local laws, may [not] prohibit or unreasonably delay the construction or operation of facilities approved by this Commission."<sup>11</sup> Thus, Otsego 2000 has failed to identify any legally protected interest that would be imperiled by the April 28 Order.

7. For these reasons, the Commission finds that justice does not require a stay and Otsego 2000's request is denied.

The Commission orders:

The request for stay filed by Otsego 2000 is denied.

By the Commission.

( S E A L )

Kimberly D. Bose,  
Secretary.

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<sup>8</sup> *Wisconsin Gas*, 758 F.2d at 674 ("the injury must be both certain and great; it must be actual and not theoretical. Injunctive relief will not be granted against something merely feared as liable to occur at some indefinite time") (internal quotations omitted).

<sup>9</sup> See Otsego 2000 Objection To Implementation Plan, filed May 25, 2016, at p. 1.

<sup>10</sup> See April 28 Order, 155 FERC ¶ 61,106 at PP 34, 111, 126, 141.

<sup>11</sup> April 28 Order, 155 FERC ¶ 61,106 at P 141.