

155 FERC ¶ 61,296
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. CP14-497-000

ORDER DENYING STAY

(Issued June 23, 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).¹

I. Request For Stay Of Implementation Plan

2. On May 25, 2016, Otsego 2000, Inc., a non-governmental historic preservation and conservation organization, (Otsego 2000) and Mohawk Valley Keeper, a non-governmental environmental conservation organization, (Mohawk) filed an objection to Dominion's May 12, 2016 Implementation Plan. The filing also requests a stay of consideration of Dominion's Implementation Plan for the New Market Project until the State and local governments complete their review.²

3. For the reasons discussed below, the Commission finds that justice does not require a stay. Therefore, we deny Otsego 2000 and Mohawk's request.

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

² We note that Otsego 2000 filed a request for rehearing of the April 28 Order and a request for a stay of all construction activity. The Commission denied Otsego 2000's request for a stay of the Commission's April 28, 2016 Order authorizing the construction and operation of the New Market Project. *Dominion Transmission, Inc.*, 155 FERC ¶ 61,292 (2016). The Commission has yet to consider the merits of the Otsego 2000's request for rehearing.

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 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.⁵

5. Otsego 2000 and Mohawk contend that a stay is necessary because Dominion “has agreed to be bound by local and State law and procedure, and it must be required to await conclusion of those matters” before its Implementation Plan can be considered and approved.⁶ This claim does not support a finding of irreparable harm.

6. First, Otsego 2000 and Mohawk’s argument raises the specter of harm to the Town of Minden, not the movants.⁷ 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 and Mohawk have made no effort to establish the likelihood that the schedule for the local siting approval process, or Dominion’s participation in it, is imperiled by the Commission’s review of the Implementation Plan. Thus, the purported

³ *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).

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).

⁵ *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., L.L.C.*, 141 FERC ¶ 61,022 at P 14.

⁶ Otsego 2000 and Mohawk May 25, 2016 Objection to Implementation Plan at 2.

⁷ *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).

irreparable harm is speculative at best.⁸ We note, as Otsego 2000 and Mohawk indicate, that Dominion first submitted its site development plans to the Town of Minden in April 2015.⁹ In addition, the Town has had the opportunity to participate in the proceedings before the Commission and has, in fact, done so.¹⁰ 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.”¹¹ Thus, Otsego 2000 and Mohawk have failed to identify any legally protected interest that would be imperiled by the Commission’s review of the Implementation Plan.

7. For these reasons, the Commission finds that justice does not require a stay of the Implementation Plan and Otsego 2000 and Mohawk’s request is denied.

The Commission orders:

The request for stay filed by Otsego 2000 and Mohawk is denied.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

⁸ *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).

⁹ Otsego 2000 and Mohawk May 25, 2016 Objection to Implementation Plan at 1.

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

¹¹ April 28 Order, 155 FERC ¶ 61,106 at P 141.