

156 FERC ¶ 61,086  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

Northwest Pipeline, LLC

Docket No. CP15-8-000

ORDER DENYING STAY

(Issued August 1, 2016)

1. On June 30, 2016, the Cowlitz County Cemetery District No. 6 (Cemetery) filed a request asking the Commission to stay its April 11, 2016 Order (April 11 Order).<sup>1</sup> For the reasons discussed below, we find that justice does not require a stay and deny the Cemetery's request.

**I. Background**

2. The April 11 Order granted Northwest Pipeline, LLC (Northwest) a certificate of public convenience and necessity under section 7(c) of the Natural Gas Act (NGA) authorizing the construction and operation of pipeline, metering, and related facilities in Cowlitz County, Washington (Kalama Lateral Project). The Kalama Lateral Project will deliver 320,000 dekatherms per day of firm transportation service to Northwest Innovation Works' contemplated methanol plant to be located in the Port of Kalama, Cowlitz County, Washington.

3. The Commission found that the benefits the 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.<sup>2</sup> In addition, Commission staff prepared an Environmental Assessment. Based on that analysis, the Commission found that, if constructed and operated in accordance with Northwest's application and

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<sup>1</sup> *Northwest Pipeline, LLC*, 155 FERC ¶ 61,026 (2016) (April 11 Order).

<sup>2</sup> *Id.* P 15.

supplements and the conditions imposed by the April 11 Order, the Project will not have a significant impact upon the environment.<sup>3</sup>

4. On May 11, 2016, the Cemetery filed a timely request for rehearing, arguing that the Commission: (1) failed to take a hard look at the environmental impacts to the Cemetery's property; (2) violated the NGA, the Clean Water Act, and the Endangered Species Act; (3) erred by excluding Northwest Innovation Works' contemplated methanol plant from its environmental review; (4) did not evaluate reasonable alternatives to waterbody crossings; and (5) erred in failing to prepare an environmental impact statement.<sup>4</sup>

5. On June 30, 2016, the Cemetery filed a request to stay the April 11 Order. In addition, on June 30, 2016, William Spencer, an elected Commissioner of the Cemetery, filed comments in support of the Cemetery's request for stay. On July 13, 2016, Northwest filed an answer to the Cemetery's stay request.

## **II. Cemetery's Request for Stay**

6. The Cemetery asks that the Commission stay all eminent domain proceedings (including any initial surveying activities), all preconstruction and construction activities, and any land disturbance activities until the Commission acts on the Cemetery's rehearing request. The Cemetery argues that absent a stay, it will suffer irreparable injury from construction of the pipeline, removal of forested lands, and eminent domain proceedings. The Cemetery explains that users' enjoyment of the cemetery will be permanently disrupted by surveying crews and construction activities that create noise, dust, and increased traffic.<sup>5</sup> Additionally, the Cemetery states that the Project's removal of forested lands in the temporary workspaces and the permanent right-of-way will create visual impacts and degrade the cemetery's scenic nature.<sup>6</sup> Finally, the Cemetery contends that if Northwest is able to pursue eminent domain proceedings it will suffer irreparable injury because: (1) the presence of surveying crews will disturb visitors' and users' use and enjoyment of the cemetery; (2) the Cemetery cannot be adequately compensated for its inability to carry out planned improvements to and expansion of the

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<sup>3</sup> *Id.* at P 52.

<sup>4</sup> We have not yet considered the merits of the Cemetery's rehearing request, and we will not prejudge them in any manner.

<sup>5</sup> Cemetery's Request for Stay at 12.

<sup>6</sup> *Id.* at 12-14.

cemetery grounds, including a planned cul-de-sac area along the Hale Barber Road; and (3) the Cemetery cannot adequately recover the costs associated with planning the improvements to and expansion of its grounds.<sup>7</sup>

7. The Cemetery explains that, absent a stay, Northwest could begin eminent domain proceedings and initiate construction activities before the Commission rules on the Cemetery's rehearing request. The Cemetery states that Northwest has already sought a court order that requires the Cemetery and other landowners to allow Northwest to enter their property to conduct initial land surveys.<sup>8</sup>

### **III. Commission Determination**

8. The Commission grants a stay when "justice so requires."<sup>9</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>10</sup> 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 injury absent a stay, we need not examine other factors.<sup>11</sup>

9. Here, we find that the Cemetery has not demonstrated that it will suffer irreparable injury absent a stay of the April 11 Order. In approving the Kalama Lateral Project, the Commission determined that, on balance, approving the pipeline along the recommended

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<sup>7</sup> *Id.* at 11-12.

<sup>8</sup> *Id.* at 2-3.

<sup>9</sup> *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).

<sup>10</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) (*Constitution*); *Enable*, 153 FERC ¶ 61,055 at P 118; *Millennium Pipeline Co., L.L.C.*, 141 FERC ¶ 61,022, at P 13 (2012) (*Millennium*).

<sup>11</sup> *See, e.g., Millennium*, 141 FERC ¶ 61,022 at P 14; *Ruby Pipeline, L.L.C.*, 134 FERC ¶ 61,103, at P 18 (2011); *AES Sparrows Point LNG, LLC*, 129 FERC ¶ 61,245, at P 18 (2009); *Columbia Gas Transmission LLC*, 129 FERC ¶ 61,021, at P 6 (2009); and *Guardian Pipeline, L.L.C.*, 96 FERC ¶ 61,204, at 61,869 (2001).

route is an environmentally acceptable action.<sup>12</sup> With respect to the purported irreparable injury to the affected cemetery grounds, the Environmental Assessment explains that the temporary construction workspace for the Project will encroach on a small portion of the cemetery parking area and a permanent right-of-way will impact a proposed cul-de-sac project planned for the Hale Barber Road near the cemetery parking area. After construction, Northwest must restore all roadway surfaces in the area to their original condition in accordance with Northwest's Erosion Control and Revegetation Plan. The Environmental Assessment recognized that construction activities would be seen and heard by the Cemetery's users. In order to address this issue, Environmental Condition No. 13 of the April 11 Order requires that, prior to construction Northwest must coordinate with the Cemetery regarding property boundaries, the planned cul-de-sac project, and the parking area, and develop measures to avoid or minimize impacts to the cemetery.<sup>13</sup> The Environmental Assessment concluded that construction of the Project would have no long-term impacts to the cemetery or to associated roadways.<sup>14</sup> Therefore, we find that the limited construction activity on cemetery grounds does not amount to irreparable injury.

10. Further, we do not find that the presence of survey crews on the Cemetery's property would constitute irreparable injury. Northwest clarified in its answer that it needs to access the Cemetery's property to confirm the pipeline's location and effects of the project on environmental and cultural resources.<sup>15</sup> Northwest states that any impacts resulting from surveying crews, such as limited vehicular traffic, placement of surveying stakes along the right-of-way, and removal of brush, will be minor and incidental. We agree.

11. The Cemetery also contends that a stay is required because the Kalama Lateral Project's removal of forested lands along the right-of-way will irreparably injure the

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<sup>12</sup> Environmental Assessment at 87-88 and 92.

<sup>13</sup> April 11 Order at Appendix , Environmental Condition No. 13.

<sup>14</sup> Environmental Assessment at 54.

<sup>15</sup> The Environmental Assessment explains that Northwest designed the portion of the Project near the cemetery without survey information, because the Cemetery denied Northwest access to its property. As a result, Northwest designed the Project using property boundary information from Cowlitz County. Once Northwest conducts actual on-site surveys of the Cemetery's property, it may be able to avoid additional encroachments on the cemetery. Environmental Assessment at 54.

cemetery's scenic nature.<sup>16</sup> This generalized claim does not constitute evidence of irreparable injury that would justify a stay.<sup>17</sup> Moreover, as explained in the Environmental Assessment, Northwest will work with landowners to mitigate impacts on lands affected by temporary workspaces and permanent right-of-ways. The Environmental Assessment found that visual impacts resulting from construction and operation of the Project will not be significant.<sup>18</sup> Given this conclusion, we do not believe that denying the request for stay irreparably injures the environment or the cemetery's scenic nature.

12. Finally, with respect to the Cemetery's request for a stay of eminent domain proceedings, 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. Further, the Cemetery's inability to receive compensation for planned cemetery improvements does not constitute irreparable injury.<sup>19</sup>

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<sup>16</sup> Cemetery's Request for Stay at 14-15.

<sup>17</sup> See *Tennessee Gas Pipeline Co., L.L.C.*, 155 FERC ¶ 61,087, at P 5 (2016) (finding that a "generalized claim [of environmental harm] does not constitute evidence of irreparable harm that would justify a stay"); *Florida Southeast Connection, LLC*, 154 FERC ¶ 61,264, at P 8 (2016) (denying stay premised upon "generalized environmental harm without identifying specifics"); *Empire Pipeline, Inc.*, 153 FERC ¶ 61,379, at P 11 (2015) (denying stay where movant "provided only unsupported, generalized allegations about environmental harm resulting from the project"); *Transcontinental Gas Pipe Line Co., LLC*, 150 FERC ¶ 61,183 at P 19 (denying stay request where movant "only asserts generalized environmental harm to its members without identifying specifics"); *Tennessee Gas Pipeline Co.*, 96 FERC ¶ 61,116, at 61,446 (2001) ("general allegations do not constitute evidence of irreparable harm that would justify staying the orders in this proceeding").

<sup>18</sup> Environmental Assessment at 56.

<sup>19</sup> See, e.g., *Constitution*, 154 FERC ¶ 61,092 at P 10 ("Economic loss, without more, does not constitute irreparable harm"); *Transcontinental Gas Pipe Line Co., LLC*, 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*, 141 FERC ¶ 61,022 at P 17 (same).

13. Because the Cemetery has not proven irreparable injury absent a stay, we need not examine whether issuing a stay may substantially harm other parties or whether a stay is in the public interest. Nonetheless, we do not find the Cemetery's claims compelling. The Cemetery states that granting the stay will not substantially harm Northwest. It contends that there is neither a business nor practical need for the pipeline to go forward, because the methanol plant that the pipeline will serve has not yet received authorization from the state.<sup>20</sup> The Cemetery also argues that the stay is in the public interest because a stay will preserve the existing environmental conditions pending the Commission's review of the Cemetery's rehearing request.<sup>21</sup>

14. We disagree. Granting a stay will harm Northwest by preventing it from conducting necessary surveys for the Project and could delay its plans to commence construction of the pipeline by July 2017 and meet potential in-water construction windows for the Kalama River tributaries (between August 1 to August 15) and the Columbia River tributaries (between August 1 and March 31). Moreover, we do not find that granting a stay is in the public interest. As stated above, the Environmental Assessment found that construction and operation of the Kalama Lateral along the recommended route is an environmentally acceptable action and will not significantly affect the quality of the human environment.<sup>22</sup>

15. To the extent that Northwest 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, Northwest might not be able to utilize any new facilities, and could be required to remove them or to undertake further remediation.

16. For the above reasons, we find that the Cemetery has not demonstrated that justice requires a stay of the Project. Accordingly, the Cemetery's request for stay is denied.

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<sup>20</sup> Cemetery's Request for Stay at 4, 15.

<sup>21</sup> *Id.* at 19.

<sup>22</sup> April 11 Order at P 52 and Environmental Assessment at 92.

The Commission orders:

The request for stay filed by the Cowlitz County Cemetery District No. 6 is denied.

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.