

156 FERC ¶ 61,111
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Algonquin Gas Transmission, LLC

Docket No. CP14-96-000

Algonquin Gas Transmission, LLC
Maritimes & Northeast Pipeline, LLC

Docket No. CP16-9-000

ORDER DENYING STAY

(Issued August 16, 2016)

1. On June 30, 2016, Sue Carrillo, an intervenor in the Algonquin Incremental Market (AIM) proceeding, filed an Amended Motion to Intervene, in which, among other things, she sought a stay of all construction activity associated with the Algonquin Gas Transmission pipeline.¹ For the reasons discussed below, we will deny the motion for stay.

I. Background

2. On March 3, 2015, the Commission issued a certificate in Docket No. CP14-96-000 to Algonquin Gas Transmission, LLC (Algonquin) to construct and operate its AIM Project in New York, Connecticut, Rhode Island, and Massachusetts.² Among other

¹ Ms. Carrillo filed her motion in Docket No. CP16-9-000, which is the docket assigned Algonquin Gas Transmission, LLC's and Maritimes & Northeast Pipeline, LLC's pending application for the Atlantic Bridge Project. However, since she specifically requested a stay of construction activities in the vicinity of the Indian Point Nuclear Facility, we have added Docket No. CP14-96-000 as well. We will address Ms. Carrillo's arguments regarding the Atlantic Bridge Project in that docket.

² *Algonquin Gas Transmission, LLC*, 150 FERC ¶ 61,163 (2015) (Certificate Order).

things, the order addressed comments concerning the safety of the project and its proximity to the Indian Point Energy Center, a nuclear facility operated by Entergy Nuclear Operations, Inc. (Entergy) on the east bank of the Hudson River in Westchester County, New York. After reviewing Entergy's Safety Evaluation for the AIM Project and an independent analysis performed by the Nuclear Regulatory Commission (NRC), the Commission found that the AIM project will not result in increased safety impacts at the Indian Point facility.³

3. In response, the Commission received eight timely requests for rehearing and two requests for stay of the certificate order.

4. Beginning in July, 2015, we authorized construction of AIM Project facilities in New York State.⁴ Throughout September and October, 2015, we incrementally authorized construction of the Stony Point to Yorktown Take-up and Relay pipeline portions of the AIM Project facilities, including construction near the Indian Point facility.⁵

5. On January 28, 2016, the Commission denied the requests for rehearing and stay, and affirmed the finding of the Certificate Order that the construction and operation of the AIM Project would not adversely impact the safe operation of the Indian Point Energy Center.⁶ The Commission noted that a 2,159-foot segment of the AIM Project would cross Indian Point's property, but that it would be located over 1,600 feet from the power plant structures and 2,370 feet from the facility's protected security barrier around the main facility sites.⁷ The Commission concluded that it properly relied upon the

³ *Id.* PP 106-107.

⁴ *See Algonquin Gas Transmission, LLC*, Docket No. CP14-96-000 (July 28, 2015) (delegated letter order).

⁵ *See Algonquin Gas Transmission, LLC*, Docket No. CP14-96-000 (Sept. 18, 2015) (delegated letter order); *Algonquin Gas Transmission, LLC*, Docket No. CP14-96-000 (Sept. 30, 2015) (delegated letter order); *Algonquin Gas Transmission, LLC*, Docket No. CP14-96-000 (Oct. 6, 2015) (delegated letter order).

⁶ *Algonquin Gas Transmission, LLC*, 154 FERC ¶ 61,048 (2016) (Rehearing Order).

⁷ *Id.* PP 197-198.

NRC's analysis, and affirmed the final Environmental Impact Statement's finding that the AIM Project can safely operate near Indian Point.⁸

6. On March 3, 2016, the New York State Department of Environmental Conservation (New York DEC) requested that the Commission reconsider and stay its prior determination to grant a certificate to Algonquin for the AIM Project, citing safety concerns related to Indian Point plant.⁹

7. On March 25, 2016, the Commission denied New York DEC's request for reconsideration and stay, again finding that the AIM Project would not adversely impact the safe operation of the Indian Point facility.¹⁰ The Commission stated that it found nothing in New York DEC's pleading that called into question the Commission's previous findings regarding the safe operation of the AIM Project.

II. Request for Stay

8. On June 30, 2016, Sue Carrillo filed an Amended Motion to Intervene, in which she sought a stay of all construction activity associated with the Algonquin pipeline system, including the AIM and Atlantic Bridge Projects.¹¹ To date, the Commission has not issued an order on the merits of the Atlantic Bridge Project application. Therefore, we will restrict our analysis of Ms. Carrillo's motion to issues concerning the AIM Project alone.

⁸ *Id.* P 199.

⁹ The New York State Department of Homeland Security and Emergency Services, New York State Department of Health, and New York Department of Public Service, were also signatories to the March 3, 2016 letter. Only New York DEC was a party to the proceeding.

¹⁰ *Algonquin Gas Transmission, LLC*, 154 FERC ¶ 61,236 (2016) (Order on Reconsideration and Stay).

¹¹ Algonquin and Maritimes & Northeast Pipeline, LLC jointly filed an application in Docket No. CP16-9-000 for their Atlantic Bridge Project on October 22, 2015. It is currently pending before the Commission.

9. The Commission's standard for granting a stay is whether "justice so requires."¹² In determining whether this standard has been met, the Commission considers whether: (1) the party requesting the stay will suffer irreparable injury without a stay; (2) issuing a stay may substantially harm other parties; and (3) a stay is in the public interest.¹³ 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.¹⁴

10. Ms. Carrillo states for the first time in her amended motion to intervene that she is particularly concerned with the AIM Project's proximity to the Indian Point facility. However, she has neither alleged nor shown that she will suffer irreparable harm absent a stay.¹⁵ The Commission determined in the Certificate Order, the January 28, 2016 Rehearing Order, and the March 25, 2016 Order on Reconsideration and Stay that the AIM Project poses no increased risks to the Indian Point plant. In making this determination, the Commission relied upon the expertise of the NRC, which concluded that even a potential rupture of the AIM pipeline poses no threat to the safe operation of the plant or safe shutdown of the plant.¹⁶ The Commission based its determinations on substantial evidence, and Ms. Carrillo provides no new evidence that would cause us to reconsider those determinations now.

¹² Administrative Procedure Act, 5 U.S.C. § 705 (2012); *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).

¹³ Ensuring definiteness and finality in our proceedings is also 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).

¹⁴ See, e.g., *Algonquin Gas Transmission, LLC*, 143 FERC ¶ 61,236, at P 8 (2016); *Transcontinental Gas Pipe Line Co., LLC*, 150 FERC ¶ 61,183 at P 9.

¹⁵ We note that Ms. Carrillo's filing lists a Washington, D.C. address; thus she does not appear to be located in the vicinity of the AIM Project.

¹⁶ Rehearing Order 154 FERC ¶ 61,048 at P 201.

The Commission orders:

Ms. Carrillo's request for stay of construction is denied.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.