

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

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

Tennessee Gas Pipeline Company, L.L.C.

Docket No. CP15-77-001

ORDER DENYING STAY

(Issued November 29, 2016)

1. On September 6, 2016, the Commission issued an order under sections 7(b) and (c) of the Natural Gas Act authorizing Tennessee Gas Pipeline Company, L.L.C. (Tennessee) to construct and operate certain compression facilities to be located in Kentucky, Tennessee, and West Virginia, and to abandon certain compression facilities in West Virginia.¹ Tennessee's proposed action is referred to collectively as the Broad Run Expansion Project.

I. Requests For Stay

2. On October 6, 2016, Lori Birckhead, Lane Brody, Jim Wright, and Mike Younger (Intervenors) filed a request for rehearing of the September 6 Order. In that request, the Intervenors sought a stay of these proceedings pending resolution of their rehearing request and any subsequent judicial review.² On October 19, 2016, Tennessee filed an answer in opposition to Intervenors' request for stay.

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

¹ *Tennessee Gas Pipeline, L.L.C.*, 156 FERC ¶ 61,157 (2016) (September 6 Order).

² *See* Intervenors Petition for Rehearing, filed October 6, 2016, at 60. The Commission has yet to consider the merits of the requests for rehearing filed by Intervenors and others.

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. Intervenors state that a stay is necessary because the Broad Run Expansion Project will result in the “removal of 40 acres of mature forest.”⁶ As explained in the September 6 Order, the Environmental Assessment examined the project’s impact on upland forest and mature forest. The Commission agreed with the EA’s conclusion that, “because the areas of vegetation that would be permanently cleared are relatively small and within larger areas of similar vegetation, the impacts would be insignificant.”⁷

6. Intervenors also note that Walden’s Puddle Rehabilitation and Education Center, which is approximately 0.9 mile from one of the proposed compressor stations associated with the project, “has raised concerns that the construction would stress the animals under their care to such an extent that the facility would be forced to relocate.”⁸ This claim does not support a finding of irreparable harm. The Commission found that Walden’s Puddle “will not be affected by either construction or operational noise, which will

³ *Algonquin Gas Transmission, LLC*, 156 FERC ¶ 61,111, at P 9 (2016); *Enable Gas Transmission*, 153 FERC ¶ 61,055, at P 118 (2015) (Enable); *Transcontinental Gas Pipe Line Co.*, 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.*, 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.*, 150 FERC ¶ 61,183 at P 9; *Millennium Pipeline Co.*, 141 FERC ¶ 61,022 at P 14.

⁶ Intervenors Petition for Rehearing at 58.

⁷ September 6 Order, 156 FERC ¶ 61,157 at P 51.

⁸ Request for Rehearing at 59.

attenuate to background levels within about 4,800 feet during construction and 2,000 feet during operation.”⁹

7. Intervenors also claim that allowing the Broad Run Expansion Project to go forward “unduly encroaches on state and local governments’ federal right” to process the project’s air permit application under the Clean Air Act.¹⁰ But as we have explained in prior cases, “[c]onditioned certificates are a common Commission practice, affirmed by the courts.”¹¹ Such certificates do not encroach upon state authority.¹²

8. In approving the Broad Run Expansion Project, the Commission fully considered the Environmental Assessment prepared by Commission staff and addressed the comments of the Intervenors and others in the September 6 Order’s environmental discussion.¹³ The Commission determined that the Broad Run Expansion Project, if constructed and operated in accordance with the application and supplements, and in compliance with the environmental conditions appended to that order, would not significantly affect the quality of the human environment.¹⁴ Given this conclusion, we do not believe that denying the request for stay puts the environment at risk.

9. For these reasons, the Commission finds that Intervenors have not demonstrated that they will suffer irreparable harm, and their request for stay is denied.

⁹ September 6 Order, 156 FERC ¶ 61,157 at P 121.

¹⁰ Request for Rehearing at 60.

¹¹ *Algonquin Gas Transmission, LLC*, 154 FERC ¶ 61,048, at P 28 (2016).

¹² *See Myersville Citizens for a Rural Cmty., Inc. v. FERC*, 783 F.3d 1301, 1321 (D.C. Cir. 2015) (“The Commission’s certificate order has no bearing on what is and is not included in Maryland’s SIP, and therefore has no bearing on what are or are not Maryland’s ‘rights’ saved by the Natural Gas Act’s clause preserving the ‘rights of States’ under the Clean Air Act.”).

¹³ *See* September 6 Order, 156 FERC ¶ 61,157 at PP 42-176.

¹⁴ *Id.* P 175.

The Commission orders:

The request for stay filed by Intervenors is denied.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.