

158 FERC ¶ 61,002
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. CP15-148-000

ORDER DENYING STAY

(Issued January 3, 2017)

1. On September 6, 2016, the Commission issued an order under section 7(c) of the Natural Gas Act authorizing Tennessee Gas Pipeline Company, L.L.C. (Tennessee) to construct and operate certain pipeline and compression facilities to be located in Tioga and Bradford Counties, Pennsylvania.¹ Tennessee's action is referred to collectively as the Susquehanna West Project.

I. Request For Stay

2. On October 6, 2016, Allegheny Defense Project, Damascus Citizens for Sustainability, and Sierra Club (collectively, Allegheny) filed a request for rehearing of the September Order, as did Tennessee. The Commission has yet to consider the merits of those requests for rehearing.

3. On November 18, 2016, Allegheny sought a stay of construction and any other land disturbance conducted pursuant to the September Order pending resolution of its request for rehearing.² On December 1, 2016, Tennessee filed an answer in opposition to Allegheny's motion for stay. The following day, intervenor Statoil Natural Gas, a shipper on the project, also filed an answer in opposition to Allegheny's motion.

4. For the reasons discussed below, the Commission finds that justice does not require a stay and therefore denies Allegheny's motion.

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

² *See* Allegheny's November 18, 2016 Motion for Stay at 13.

II. Commission Determination

5. 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

6. Allegheny asserts that a stay is necessary because the construction and operation of the Susquehanna West Project will harm its members’ environmental interests in their own property and in public lands they visit.⁵ In support, Allegheny relies upon a declaration from Sierra Club member Brian Brown, who asserts that the project will degrade the scenic quality of trails in that part of the Tioga State Forest where Mr. Brown has participated in the Green Monster trail race.⁶ But, as explained in the Environmental Assessment, all pipeline facilities would be located within or adjacent to Tennessee’s existing right-of-way. The affected areas are thus “already subject to the visual impacts of a utility corridor.”⁷ With respect to trails within the Tioga State Forest, the project would only result in temporary disruptions, “lasting approximately 1 day per trail.”⁸ Trails users would be provided with advanced notice of the disruptions and detours.

³ *Tennessee Gas Pipeline Co., L.L.C.*, 157 FERC ¶ 61,154, at P 4 (2016); *Algonquin Gas Transmission, LLC*, 156 FERC ¶ 61,111, at P 9 (2016); *Enable Gas Transmission, LLC* 153 FERC ¶ 61,055, at P 118 (2015); *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, LLC* 153 FERC ¶ 61,055 at P 118; *Millennium Pipeline Co.*, 141 FERC ¶ 61,022, at P 13 (2012).

⁵ Motion for Stay at 6.

⁶ *Id.* at 7-8 and Brown Decl. at PP 4-8.

⁷ Susquehanna West Project Environmental Assessment, dated March 17, 2016 at 42 (EA).

⁸ *Id.* at 39.

Tennessee would ensure that proper safety measures are in place during construction and return all trails to their previous condition.⁹

7. Allegheny also submitted a declaration from Damascus Citizens for Sustainability member Dr. Robert Ross, who lives near Compressor Station 315, which will undergo certain piping and equipment modifications in connection with the Susquehanna West Project. Dr. Ross asserts that the project's construction and operational activities will add to the preexisting noise impacts to his property and exacerbate his "sleep deprivation and [the] constant noise."¹⁰ The Environmental Assessment acknowledged that construction activities would temporarily increase ambient sound levels in the immediate vicinity of Compressor Station 315, but explained that such activities would not affect nighttime noise levels as they would generally be limited to daylight hours.¹¹ The project would not involve any additional compression at Compressor Station 315. The Environmental Assessment found that the increased operational noise at the station will be one decibel or less and would remain below the Commission's 55 A-weighted decibels day-night sound level.¹² In order to ensure that the anticipated noise levels are not exceeded, the Commission required Tennessee to file noise surveys within sixty days after placing the compressor station into service. If the noise levels exceed the Commission's threshold in any noise sensitive area, the September Order requires Tennessee to install additional noise controls within one year of the in-service date.¹³

8. Allegheny also asserts that the Susquehanna West Project may lead to future gas drilling in Tioga State Forest and shale gas development in the area near Dr. Brown's home.¹⁴ But to support a stay, the alleged harm must be certain and actual, not merely

⁹ *Id.* at 39-40. In its answer, Tennessee notes that construction of the pipeline looping is scheduled to be complete by the end of September 2017 and thus no construction activities in the Tioga State Forest are anticipated for October 2017, the next time the Green Monster Race is scheduled to be held. Tennessee's December 1, 2016 Answer at 11-12.

¹⁰ *See* Motion for Stay at 8-9; Ross Decl. at PP 8-9.

¹¹ EA at 53.

¹² *Id.* at 53-54.

¹³ *See* September Order, 156 FERC ¶ 61,156, Appendix B at P 13.

¹⁴ *See* Motion for Stay at 8-9; Brown Decl. at PP 10-14; Ross Decl. at PP 10-11.

theoretical.¹⁵ “Injunctive relief will not be granted against something merely feared as liable to occur at some indefinite time.”¹⁶

9. Allegheny also contends that when the procedural harm caused by the Commission’s purported failure to undertake an adequate National Environmental Policy Act (NEPA) analysis is combined with potential environmental injury, courts are likely to find irreparable injury.¹⁷ This claim is premised on the purported NEPA violations raised by Allegheny throughout this proceeding and addressed, in the first instance, in the September Order.¹⁸ And as discussed above, Allegheny has not substantiated its claim of irreparable environmental injury.¹⁹

10. In approving the Susquehanna West Project, the Commission fully considered the Environmental Assessment prepared by Commission staff and addressed the comments of Allegheny and others in the September Order’s environmental discussion.²⁰ The Commission determined that the Susquehanna West 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.²¹ Given this conclusion, we do not believe that denying the request for stay puts the environment at risk.

11. We further find that it would not be in the public interest to stay construction of the Susquehanna West Project. The Commission found that the project is required by the public convenience and necessity and will allow Tennessee to provide additional transportation to Statoil to meet market needs in the Northeast.²²

¹⁵ See *Tennessee Gas Pipeline Co., L.L.C.*, 154 FERC ¶ 61,263, at P 6 (2016).

¹⁶ *Wisconsin Gas Co. v. FERC*, 758 F.2d 669, 674 (D.C. Cir. 1985).

¹⁷ Motion for Stay at 9-10.

¹⁸ *Id.* at 10. See also September Order, 156 FERC ¶ 61,156 at PP 47-110.

¹⁹ *Transcontinental Gas Pipe Line Co., LLC*, 150 FERC ¶ 61,183 at P 19 (2015) (“what is relevant here is that the group has not substantiated its claim of irreparable environmental injury”).

²⁰ See September Order, 156 FERC ¶ 61,156 at PP 43-111.

²¹ *Id.* P 112.

²² *Id.* PP 4, 24.

12. Allegheny asserts that a stay is necessary to avoid the “state of administrative limbo” created by allowing construction to proceed before the issues raised on rehearing are resolved.²³ We have not yet considered the merits of the petitions on rehearing, and we will not prejudge them in any manner. To the extent that Tennessee 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, Tennessee might not be able to utilize any new facilities, and could be required to remove them or to undertake further remediation.²⁴

The Commission orders:

The request for stay filed by Allegheny is denied.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

²³ Motion for Stay at 5.

²⁴ See *e.g.*, *Transcontinental Gas Pipe Line Co., LLC*, 150 FERC ¶ 61,183 at P 20.