

160 FERC ¶ 61,015
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Neil Chatterjee, Chairman;
Cheryl A. LaFleur, and Robert F. Powelson.

Algonquin Gas Transmission, LLC,
Maritimes & Northeast Pipeline, LLC

Docket No. CP16-9-001

ORDER DENYING STAY

(Issued August 21, 2017)

1. On January 25, 2017, the Commission issued an order under section 7(c) of the Natural Gas Act authorizing Algonquin Gas Transmission, LLC (Algonquin) and Maritimes & Northeast Pipeline, L.L.C. (Maritimes) (together, Applicants) to construct and operate certain pipeline and compression facilities in New York, Connecticut, and Massachusetts (the Atlantic Bridge Project).¹

I. Requests For Stay

2. On February 24, 2017, the Town of Weymouth moved for a stay of the January 25 Order and separately filed a request for rehearing of the Order.² Subsequently, on February 24, 2017, requests for rehearing were filed by (a) the City of Quincy, Rebecca Haugh and a number of environmental advocacy groups (Quincy),³ (b) Sandra Peters, and (c) Lori and Michael Hayden. In their requests for rehearing, Quincy and Ms. Peters

¹ *Algonquin Gas Transmission, LLC*, 158 FERC ¶ 61,061 (2017) (January 25 Order).

² Town of Weymouth Motion for Stay, filed Feb. 24, 2017 at 1.

³ The following groups jointly filed a petition for rehearing of the January 25 Order: Fore River Residents Against the Compressor Station, Food & Water Watch, City of Quincy, Weymouth Council Member Rebecca Haugh, Eastern Connecticut Green Action, Keep Yorktown Safe, West Roxbury Saves Energy, Berkshire Environmental Action Team, Dragonfly Climate Collective, Grassroots Environmental Education, Inc., 350 CT, Safe Energy Rights Group, 350Mass South Shore Node, Toxics Action Center, and Stop the Algonquin Pipeline Expansion.

also requested a stay of the January 25 Order.⁴ On March 13, 2017, Algonquin and Maritimes filed an answer to the requests for stay and an answer to the requests for rehearing.⁵

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

II. Commission Determination

4. The Commission grants a stay when “justice so requires.”⁶ 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.⁷ 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.⁸

5. In order to support a stay, the movant must substantiate that irreparable injury is “likely” to occur.⁹ The injury must be both certain and great and it must be actual and not theoretical. Bare allegations of what is likely to occur do not suffice.¹⁰ The movant

⁴ The Commission has yet to consider the merits of any of the requests for rehearing. Nor in this order do we address the propriety of requests for rehearing and motions for stay filed on behalf of those who had not previously intervened in this proceeding.

⁵ In this order, we do not address Algonquin and Maritimes’ motion for leave to answer the requests for rehearing.

⁶ *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*, 153 FERC ¶ 61,055, at P 118 (2015); *Transcontinental Gas Pipe Line Co.*, 150 FERC ¶ 61,183, at P 9 (2015).

⁷ Ensuring definiteness and finality in our proceedings also is important to the Commission. See *Constitution Pipeline Co.*, 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).

⁸ See, e.g., *Algonquin Gas Transmission*, 156 FERC ¶ 61,111 at P 9.

⁹ See *Transcontinental Gas Pipe Line Co., LLC*, 150 FERC ¶ 61,183, at P 10 (citing *Wisconsin Gas Co. v. FERC*, 758 F.2d 669, 674 (D.C. Cir. 1985)).

¹⁰ *Id.*

must provide proof that the harm has occurred in the past and is likely to occur again, or proof indicating that the harm is certain to occur in the near future.¹¹ Further, the movant must show that the alleged harm will directly result from the action which the movant seeks to enjoin.¹²

6. Quincy contends that irreparable harm is “self-evident” because the January 25 Order “will give investors enough confidence to back continued development of the Access Northeast Project.”¹³ This alleged linkage between the January 25 Order and the financing of the separate Access Northeast Project is purely speculative. Moreover, Quincy alleges no harm that it will suffer as a result of the continued development of the Access Northeast Project.¹⁴

7. Quincy also alleges that “the spectre of potential project construction” makes it “impossible for owners to sell their residences in the face of uncertainty.”¹⁵ This “bare allegation” fails to amount to “proof that the harm has occurred in the past and is likely to occur again, or proof indicating that the harm is certain to occur in the near future.”¹⁶ Moreover, in the Environmental Assessment, Commission staff examined project’s impact upon property values. As explained in the Environmental Assessment, the project’s “pipeline segments primarily involve replacements of existing pipeline in the same location and would not require a new permanent pipeline easement [M]ost of the aboveground facilities would be modified at existing facilities within properties owned by the Applicants. The existing property values in these areas account for the presence of the existing pipeline and/or compressor station infrastructure.”¹⁷ And while the Weymouth Compressor Station is a new facility, it will be located “on a previously disturbed industrial property ... between an existing water treatment facility and electric

¹¹ *Id.*

¹² *Id.*

¹³ Quincy Request for Rehearing at 45. On June 29, 2017, Algonquin withdrew the proposed Access Northeast Project from the Commission’s pre-filing process.

¹⁴ *See, e.g., Dominion Transmission, Inc.*, 155 FERC ¶ 61,292, at P 6 (2016) (rejecting request for stay where “the purported irreparable harm is speculative at best”); *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).

¹⁵ Quincy Request for Rehearing at 45.

¹⁶ *Wisconsin Gas*, 758 F.2d at 674.

¹⁷ Environmental Assessment at 2-73 to 2-74.

power plant” and will not “result in other impacts that would significantly impact adjacent property values.”¹⁸

8. Weymouth contends that a stay is necessary because it “is immediately harmed if it cannot enforce state and local regulatory requirements.”¹⁹ But as explained in the January 25 Order, the Commission “encourages cooperation between interstate pipelines and local authorities” regarding state and local permitting requirements.²⁰ Weymouth has not established that any such irreconcilable conflicts exists in this case. Moreover, we do not believe that Weymouth’s inability to enforce any state or local requirements that are preempted as a consequence of the Natural Gas Act amounts to a legally cognizable injury that can support a stay.

9. While the caption of Ms. Peter’s request for rehearing includes a request for stay, the filing does not offer any arguments for why a stay is appropriate in this proceeding. Accordingly, Ms. Peter has not established any basis to stay the January 25 Order.

10. In approving the Atlantic Bridge Project, the Commission fully considered the Environmental Assessment prepared by Commission staff and addressed the comments of Quincy, Weymouth, Ms. Peters and others in the January 25 Order’s environmental discussion.²¹ The Commission determined that, on balance, the Atlantic Bridge Project, if constructed and operated in accordance with the Environmental Assessment and the conditions imposed by the January 25 Order, is an environmentally acceptable action.²² Given this conclusion, we do not believe that denying the motions for stay puts the environment at risk.

11. For these reasons, the Commission finds that justice does not require a stay.

¹⁸ Environmental Assessment at 2-74.

¹⁹ Weymouth Request for Rehearing at 9.

²⁰ January 25 Order, 158 FERC ¶ 61,061 at P 61.

²¹ *See id.* at PP 46-252.

²² *See id.* at P 252.

The Commission orders:

The requests for stay filed by Weymouth, Quincy and Peters are denied.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.