

161 FERC ¶ 61,244
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Rover Pipeline LLC	Docket Nos. CP15-93-002
Panhandle Eastern Pipe Line Company, LP	CP15-94-001
Trunkline Gas Company, LLC	CP15-96-001

ORDER ON CLARIFICATION AND DENYING REHEARING

(Issued November 30, 2017)

1. On February 2, 2017, the Commission issued an order under section 7(c) of the Natural Gas Act (NGA)¹ authorizing Rover Pipeline LLC (Rover) to construct and operate approximately 510.7 miles of new interstate pipeline and related facilities extending from the Appalachian supply area to an interconnection with Vector Pipeline, LP in Livingston County, Michigan (Rover Pipeline Project).² In doing so, the Commission denied Rover's request for a blanket certificate under Part 157, Subpart F of the Commission's regulations to perform certain routine construction activities and operations in light of Rover's intentional demolition of a house identified as eligible for listing in the National Register of Historic Places and within the visual area of potential effects of the project.

¹ 15 U.S.C. § 717f(c) (2012).

² *Rover Pipeline LLC*, 158 FERC ¶ 61,109 (2017) (February 2 Order).

2. On March 6, 2017, Rover sought rehearing.³ For the reasons discussed below, this request is denied.

3. No other requests for rehearing were filed. However, on February 27, 2017, the Freshwater Accountability Project and Sierra Club (jointly Sierra Club) filed an objection to the mitigation commitments and implementation reflected in the February 2 Order.⁴ Sierra Club's filing points out a misstatement in the February 2 Order which we will clarify below.

I. Blanket Certificate Authority

A. Background and Rehearing Request

4. During the certificate proceeding, the Commission learned that Rover had demolished the Stoneman House, an 1843 historic federal house that was eligible for listing in the National Register of Historic Places and within the area of potential effects of the project. In the February 2 Order, the Commission found that Rover's demolition of the Stoneman House indicated that Rover could not be relied upon to comply with the environmental regulations required for all blanket certificate projects. Accordingly, the Commission denied Rover's request for a Part 157, Subpart F blanket certificate of public convenience and necessity.⁵ On rehearing, Rover argues that this decision was arbitrary and capricious because the Commission did not find that Rover "intended" to circumvent the requirements of section 106 of the National Historic Preservation Act (NHPA). Rover maintains that such a finding is a necessary prerequisite to a denial of Rover's blanket certificate request and that no evidence in the record showed that Rover had such intent. We disagree with each point.

³ On March 2 2017, ECOV-Vrindaban, Inc., d/b/a ECOV and ECO Village and ISKCON New Vrindaban, Inc., known as Krishna Consciousness, also filed a request for rehearing, but subsequently withdrew its request. *See* March 28, 2017 Letter to the Commission from Thomas Butz, Counsel for Krishna Consciousness.

⁴ Rule 713(c)(2) of the Commission's Rules of Practice and Procedure requires that a rehearing request include a separate section entitled "Statement of Issues" listing each issue presented to the Commission in a separately enumerated paragraph. Any issue not so listed will be deemed waived. 18 C.F.R. § 385.713(c)(2) (2017). Sierra Club's objection does not satisfy these requirements and thus will not be treated as a request for rehearing.

⁵ February 2 Order, 158 FERC ¶ 61,109 at PP 253-54.

5. Section 106 of the NHPA requires the Commission to take into account the effect of a proposed project on any historic property.⁶ A “historic property” is any property that is “in, or eligible for inclusion in,” the National Register of Historic Places.⁷ The Commission must consult with the relevant State Historic Preservation Officer (SHPO) to identify those properties, identify any adverse effects that a proposed project might have on them, and then evaluate modifications to the project that would avoid, minimize, or mitigate those adverse effects, subject to agreement by the SHPO.⁸ If adverse effects cannot be avoided, the Commission may only grant a Certificate after notifying the Advisory Council on Historic Preservation (Advisory Council).⁹

6. Section 110(k) of the NHPA directs federal agencies to withhold federal assistance, including licenses or permits, when “an applicant who, with intent to avoid the requirements of [section 106], has intentionally significantly adversely affected a historic property,” unless the agency, after consultation with the Advisory Council, determines that “circumstances justify granting such assistance.”¹⁰

7. During the pre-filing process, Rover identified the Stoneman House, located across the street from Rover’s proposed mainline Compressor Station 1, as potentially eligible for listing in the National Register of Historic Places.¹¹ To mitigate any potential project effects, Rover committed to developing a solution that would avoid adverse effects on the structure.¹² In the draft and final Environmental Impact Statement (EIS), staff recommended that Rover develop a visual screening plan for Compressor

⁶ 54 U.S.C. § 306108 (2012).

⁷ *Id.* § 300308.

⁸ *See* 36 C.F.R. §§ 800.3–800.6 (2017).

⁹ 54 U.S.C. § 306108, 36 C.F.R. § 800.6.

¹⁰ 54 U.S.C. § 306113 (2012).

¹¹ On February 4 and 5, 2015, staff met with representatives from Rover and expressed concern about the proposed compressor station’s potential visual impacts on the Stoneman House.

¹² Rover, Application of Rover Pipeline LLC for a Certificate of Public Convenience and Necessity, Docket No. CP15-93-000, at Volume IIA, Resource Report 4 at 4-11 (filed February 20, 2015).

Station 1.¹³ Instead, Rover, without notice to the Commission, demolished the Stoneman House.¹⁴

8. Rover claims that it bought the property on May 11, 2015, in part, for use as office space and only demolished it after learning that the home was not suitable for such use. But e-mail correspondence between Rover employees and its contractors shows that Rover contemplated demolishing the Stoneman House before purchasing the property. In March 2015, immediately before buying the property, Rover asked its contractors whether tearing down the historic house was permitted.¹⁵

9. In response, Rover's contractor explained that the proposed screening may not fully mitigate likely visual and auditory adverse effects on the eligible property.¹⁶ The contractor acknowledged that no one could stop Rover from demolishing the house and by doing so the project "would no longer be causing an adverse effect to an eligible property in the [area of potential effects]," but also warned that demolition was a "politically risky strategy."¹⁷ To address the project-caused adverse effect on the eligible property, the contractor suggested that Rover consider alternative sites for the house free of adverse effects, while acknowledging that such alternative sites could involve "cost differences" and "may be physically difficult []." ¹⁸ Otherwise, if the compressor station could not feasibly be relocated, the contractor explained that Rover would need to work with the SHPO to mitigate the adverse effect.¹⁹ Rather than pursuing either suggestion,

¹³ Staff issued the draft EIS on February 19, 2016, and the final EIS on July 29, 2016.

¹⁴ While Rover and its contractors had notified the Ohio SHPO of its plans to demolish the Stoneman House by April of 2016, it did not disclose this information to the Commission. *See* September 26, 2016 Rover Response to FERC Environmental Information Request, at 3.

¹⁵ *Id.* at Attachment 2, March 3, 2015 e-mail from Rover, 2-3. Rover subsequently released a public version with names redacted on November 2, 2016.

¹⁶ *Id.* at Attachment 2, March 3, 2015 e-mail from Rover's contractor, 1 (noting that the proposed vegetative screening "may not be totally effective for visual in this situation and may not be effective at all for audial.").

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.*

Rover demolished the house. Based on this evidence, the Commission concluded that Rover both understood the requirements of section 106 and demolished the house with the intent to avoid the section 106 process.

10. In November 2016, after learning that Rover demolished the Stoneman House, Commission staff commenced consultations with the Advisory Council under section 110(k), which, as discussed, applies when federal applicants have intentionally significantly adversely affected a historic property with intent to avoid the requirements of section 106 of the NHPA.²⁰ During the course of those consultations, Commission staff explained that “Rover was aware” that the Stoneman House was subject to section 106 of the NHPA and that Rover’s actions adversely affected the property.²¹ Accordingly, the Commission concluded that “section 110(k) of the NHPA applies to the demolition of the house.”²² To the extent the February 2 Order left any ambiguity, we agree with staff’s conclusions regarding Rover’s conduct.

11. In any event, the denial of the blanket certificate was not based on a violation of section 110(k) of the NHPA. It was Rover’s conduct in connection with the demolition of the Stoneman House that led the Commission to conclude that it could not be confident that “Rover would fully comply with our environmental regulations in future construction activities under a blanket certificate.”²³

12. Rover argues that the public convenience and necessity standard for blanket certificates does not factor the Commission’s confidence in the applicant’s future compliance with environmental regulations. According to Rover, the Commission has stated in other orders that the public convenience and necessity standard involves “relatively little scrutiny” because the blanket certificate only authorizes routine activities or relatively modest investments.²⁴

²⁰ 54 U.S.C. § 306113.

²¹ December 5, 2016, Letter Re: Notification Pursuant to Title 36 of the Code of Federal Regulations Part 800.9(c)(2), from Ann F. Miles, Director, Office of Energy Projects, Federal Energy Regulatory Commission, to Reid Nelson, Director, Office of Federal Agency Programs, Advisory Council on Historic Preservation, at 2.

²² *Id.*

²³ February 2 Order, 158 FERC ¶ 61,109 at P 254.

²⁴ March 6, 2017 Request for Rehearing by Rover, at 12 (Rover Rehearing Request).

13. This argument conflates our rationale for the type of project eligible under a blanket certificate with whether issuing a blanket certificate is in the public convenience and necessity. The Commission has explained that blanket certificate procedures, which include environmental requirements, are appropriate for “routine pipeline operations and investments which . . . are so well understood as an established industry practice that relatively little scrutiny is required to determine their compatibility with the public convenience and necessity.”²⁵ However, authorizing a company to utilize the self-implementing blanket procedures is only appropriate to the extent the Commission has a reasonable basis to expect that the program’s requirements will be adhered to for each individual project. Hence, the Commission’s confidence that a pipeline company will indeed comply with all the requirements of the blanket certificate program, including the environmental requirements, is critical. Rover’s failure to comply in this project-specific proceeding with our requirements with respect to the Stoneman House²⁶ provides a reasonable basis for the Commission to conclude that it cannot be trusted at this time to do so in future cases where there would be no direct Commission scrutiny.²⁷

14. Rover next argues that its failure to proactively inform the Commission of its plans for the Stoneman House is neither evidence of intent to evade the section 106 process nor is it required by any law or regulation. Rover argues that it had no obligation, as a private landowner, to notify the Commission of its intent to demolish its property. It points to regulations stating that even the listing of a property on the National Register of Historic Places does not restrict the owner from taking any action it wishes to its property.²⁸ Rover also suggests that it is the Commission’s responsibility, not Rover’s, to investigate any changes on property acquired by a pipeline. Rover points

²⁵ *Distrigas of Massachusetts Corp.*, 60 FERC ¶ 61,274 at 61,930–31 (1992).

²⁶ *See, e.g., infra* P 15.

²⁷ We noted in the February 2 Order that Rover could reapply for a blanket certificate after 18 months of full commercial operation. At that time, in evaluating such request, the Commission would consider all of Rover’s activities with respect to the construction and operation of the pipeline, including those activities related to the inadvertent release of drilling mud that occurred during the completion of the horizontal directional drilling activity at the Tuscarawas River.

²⁸ Rover Rehearing Request at 5 (citing 5 C.F.R. § 60.2).

to an instance where the Commission noted in a separate project's Final EIS that residential noise limits no longer applied to a property purchased by a project sponsor.²⁹

15. Because the Commission's denial of Rover's blanket certificate request was not based upon its conclusions regarding Rover's intent to evade section 106, these arguments are beside the point. Nonetheless, we note that Rover mischaracterizes its role in the certificate proceeding. The project sponsor, as a non-Federal party, assists the Commission in meeting its obligations under the NHPA and NEPA during the section 7(c) certificate process. Project sponsors are required to show documentation of required consultation with the appropriate SHPO.³⁰ The project sponsor is also under an ongoing obligation to supplement its application with relevant information, namely any known changes to the proposed project's effects, during the NEPA process.³¹ Rover did neither. Rover failed to provide documentation of ongoing consultation with the Ohio SHPO or notify the Commission of the demolition.

16. Rover disputes the Commission's claim that we consider such notification when deciding whether a blanket certificate is in the public convenience and necessity. Rover cites a case in which Columbia Gas Transmission Corporation (Columbia) violated a condition of its certificate order when it conducted archaeological testing to determine if a property was eligible for listing on the National Register of Historic Places.³² Columbia performed data recovery archaeological excavations, which prevented the Commission and the Advisory Council from determining if an eligible property had been adversely affected. Rover contends that circumstantial evidence suggested that Columbia intended to evade the section 106 process because Columbia failed to provide the Commission with an internal report suggesting the site may be eligible for listing. Rover argues, notwithstanding this evidence, the Commission failed to invoke section 110(k) even though it reached the opposite conclusion with respect to Rover.

17. The two cases are not analogous. Columbia was not requesting a blanket certificate; Columbia had been in operation for years and had a long history of complying with Commission regulations. Unlike Rover, Columbia had not immediately violated Commission regulations in its first proceeding. And the Commission did not invoke

²⁹ *Id.* at 5 & n.16 (citing the Cameron Liquefaction Project Final EIS, CP13-25-000, CP13-27-000).

³⁰ The Commission's regulations also state that project sponsors may contact the Commission at any time for assistance. 18 C.F.R. § 380.14(a).

³¹ *See* 18 C.F.R. § 380.3.

³² Rover Rehearing Request at 7.

section 110(k) because Columbia made a good faith effort to notify the Commission. Information in the record showed that the Pennsylvania SHPO reviewed and approved the treatment plan in a letter and had also indicated that it had sent the report on cultural resources to the Commission, even though the SHPO did not in fact share this information.³³ There was no indication that Rover intended to alert the Commission.³⁴ And while Columbia may have had an adverse effect on the site, those effects were mitigated by the fact that a data recovery report would document what was found through the excavations.³⁵ Such mitigation was not possible here because Rover completely destroyed the Stoneman House.

18. Finally, Rover argues that the Stoneman House's demolition was not material since Rover continued to engage in the section 106 process and agreed to mitigation. Specifically, Rover agreed to provide visual screening for its compressor station and provide \$1.5 million to the Ohio History Connection Foundation.³⁶ But this mitigation does not undo the Rover-caused adverse effect on the Stoneman House or reverse the Commission's determination under section 110(k) that Rover intentionally caused such an adverse effect. Most importantly, Rover's subsequent actions on mitigation have done little to convince the Commission that it can be relied upon to comply with the Commission's blanket certificate requirements with respect to any future construction project.

II. Noise Mitigation

19. Sierra Club's objection to the February 2 Order arises from a discrepancy in two descriptions of the project compressor units. The February 2 Order stated that Rover

³³ May 19, 2003 Letter from Robert K. Arvedlund, Chief, Gas Branch 1, Office of Energy Projects, FERC, to Laura Dean, Advisory Council on Historic Preservation, Docket No. CP02-142-000.

³⁴ Rover notified the Ohio SHPO via a courtesy phone call and email on April 5, 2016, and, after it demolished the Stoneman House, on June 15, 2016, sent a letter restating its intent to remove the house. September 26, 2016 Rover Response to FERC Environmental Information Request, at 3.

³⁵ May 19, 2003 Letter from Robert K. Arvedlund, Chief, Gas Branch 1, Office of Energy Projects, FERC, to Laura Dean, Advisory Council on Historic Preservation, Docket No. CP02-142-000.

³⁶ June 16, 2017, Amendment to Memorandum of Agreement Among FERC, the Advisory Council, the Ohio State Historic Preservation Office, and Rover Regarding the Rover Pipeline Project.

would install reciprocating units at the compressor stations,³⁷ whereas the final EIS stated that project compression would not induce low frequency sound in adjacent pipelines because this effect is associated with reciprocating engines, while turbine units would be installed at the project.³⁸ Sierra Club contends that the EIS treated the turbine units as a noise mitigation measure, and thus the Commission violated the National Environmental Policy Act by failing to explain why it rejected the turbine units in the February 2 Order.

20. Sierra Club is correct that the EIS stated that turbine units would be installed in the project's compressor stations.³⁹ In response to commentators' concerns regarding low frequency noise and vibration from compressor stations, the EIS acknowledged that induced vibration along pipelines can be caused by reciprocating engines and mitigation measures exist during the design of these facilities to avoid such impact. The EIS then erred by stating that this problem is absent at the project because Rover would install turbines and then, in response to commenters' specific turbine-related concerns, went on to address other low frequency sound related to specific turbine compressor units.⁴⁰

21. But neither the EIS nor the February 2 Order treat turbines as a mitigation measure. In its application, Rover proposed using reciprocating engines,⁴¹ and the EIS assessed project noise impacts based on the use of reciprocating engines.⁴² For example, the analysis of operational noise impacts upon noise-sensitive areas within one mile of the compressor stations was premised upon the use of reciprocating engines at those stations.⁴³ The noise mitigation measures discussed in the February 2 Order and EIS include, but are not limited to, the use of acoustically-treated building materials, use of

³⁷ See February 2 Order, 158 FERC ¶ 61,109 at P 10 (noting use of "natural gas-fired reciprocating compressor units").

³⁸ EIS at 4-253 ("the proposed compressor units at all compressor stations are turbines. Therefore, the effect commenters are concerned about would not occur.")

³⁹ *Id.* at 4-252 – 53.

⁴⁰ *Id.* at 4-252 – 53, 4-256 – 57.

⁴¹ February 23, 2015, Rover Pipeline Project Application, Resource Report 1: General Project Description, at 1-53.

⁴² The EIS also uses the term "engines" throughout, which is associated with reciprocating engines. See, e.g., EIS at 4-227, 4-232, 4-245, 4-253.

⁴³ See *id.* at 4-253 – 55 (Table 4.11.2-5).

silencers, and piping insulation.⁴⁴ Further, the final EIS explained that Commission regulations require that compressor stations cannot result in a perceptible increase in vibration at nearby receptors.⁴⁵ Therefore, the final EIS recommended, and the February 2 Order included, a condition requiring Rover to perform post-construction noise surveys to ensure that operation noise levels at the compressor stations meet the Commission's criterion. Based on this assessment, no further mitigation was deemed necessary. Based on the foregoing, we reject Sierra Club's claim that the Commission's noise analysis treated turbine units as a mitigation measure and that the Commission subsequently rejected that measure without explanation.

The Commission orders:

(A) The request for clarification filed February 27, 2017 by Sierra Club is denied.

(B) The request for rehearing filed March 6, 2017 by Rover is denied.

By the Commission. Commissioner Glick is not participating.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

⁴⁴ See February 2 Order, 158 FERC ¶ 61,109 at PP 229-30 (discussing construction noise mitigation measures and noting the possibility of future operational noise mitigation measures); EIS at 4-247 to 4-252 (discussing construction noise mitigation); *id.* at 4-253 (discussing acoustically-treated building materials); *id.* at 4-255 –57 (discussing operational noise surveys and potential mitigation).

⁴⁵ *Id.* at 4-257.