

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Suedeem G. Kelly, Marc Spitzer,
Philip D. Moeller, and Jon Wellinghoff.

Tennessee Gas Pipeline Company

Docket No. CP05-412-001

ORDER ISSUING CLARIFICATION,
GRANTING REHEARING, IN PART, AND DENYING STAY

(Issued October 10, 2006)

1. In an order issued May 9, 2006, the Commission authorized Tennessee Gas Pipeline Company (Tennessee) under section 7(c) of the Natural Gas Act (NGA) to construct or modify compression facilities on its pipeline system in Pennsylvania, New York, and Massachusetts.¹ The project, known as the Northeast ConneXion Project – New England, will allow Tennessee to provide up to 110,300 Dth per day of incremental firm transportation capacity to the New England region from Gulf of Mexico supply sources. As part of the project, the Commission approved the replacement of a 4,500 hp compressor unit at Tennessee’s Compressor Station 254 in Columbia County, New York, with a 10,300 hp compressor unit, subject to a condition that Tennessee consult with the Riders Mills Historical Association (Historical Association) and the New York State Historic Preservation Officer (SHPO) regarding the future of certain historic structures located adjacent to the compressor station.

2. Tennessee filed a timely request for rehearing urging that the Commission remove this condition. In the alternative, should the Commission not grant its request for rehearing, Tennessee requests that the Commission stay that portion of the condition requiring that Tennessee defer construction at Compressor Station 254 until the Director of the Commission’s Office of Energy Projects (OEP) reviews the material submitted by Tennessee regarding the required consultations regarding the adjacent Weston Rider

¹ 115 FERC ¶ 61,160 (2006).

historic property and notifies Tennessee that it can proceed. Also, if the Commission denies rehearing, Tennessee requests that the Commission find that Tennessee should be allowed to recover costs related to the Weston Rider property in its rates.

3. For the reasons stated below, we are granting, in part, Tennessee's request for rehearing to permit the commencement of construction at Compressor Station 254 but defer operating authority until Tennessee has satisfied the consultation requirements regarding the Weston Rider property. We are also granting Tennessee's request for a finding that Tennessee may include the costs associated with the Weston Rider property in its rates for the Northeast ConneXion Project – New England.

Background

4. In 2001, Tennessee purchased property immediately adjacent to its Compressor Station 254. This property is part of the Riders Mills Historic District in Columbia County, New York, and contains two structures, the Weston Rider house and barn, which qualify for listing on the National Register of Historic Places. The May 9 Order stated that Tennessee had purchased the Weston Rider property as a noise buffer area for the compressor station. The Commission found in the May 9 Order that, if not maintained by Tennessee, the two structures would deteriorate over time, and, over objections from Tennessee, the Commission directed that Tennessee consult with the Historical Association and the SHPO concerning maintenance options for the structures and provide a summary of those options for review by the Director of OEP before beginning new construction at the compressor station.

Tennessee's Rehearing Request

5. In its rehearing request, Tennessee contends that the Commission erred in requiring Tennessee to consult with the Historical Association and the SHPO regarding the house and barn, to develop a maintenance plan for the house, and to defer construction at the compressor station until the Director of OEP finds that Tennessee has complied with the condition requiring such consultation. Tennessee asserts that the Commission has no jurisdiction to regulate maintenance of the house and barn on the Weston Rider property because they are not being used by Tennessee for any jurisdictional purpose, and because they are not related to the project and are not impacted by the project. Tennessee states that the property at issue is located outside the compressor station yard and fence. Tennessee asserts that there is no factual support in the record for the May 9 Order's statement that Tennessee obtained the property as a noise buffer around the station. Even if it did purchase the property for that purpose, argues Tennessee, that alone does not make the property subject to the Commission's jurisdiction. Pipeline companies, it avers, have historically purchased and sold property without the need for a certificate from the Commission. Tennessee states that it received

clearance from the SHPO regarding potential noise impacts from the project on the historic district, and avers that the Commission has not found that the Weston Rider property qualifies as a noise sensitive area or that the project will have any other direct or indirect impact on the buildings. Tennessee avers that the Commission's only stated concern is that Tennessee will not maintain the house. Tennessee claims that the Commission's condition relating to the buildings is an overextension of the Commission's NGA authority.

Commission Response

6. Initially, we find that clarification of the condition will be helpful. The environmental assessment (EA) prepared by Commission staff recommended, as part of Condition 5, that Tennessee be directed to file "a long term maintenance plan for the Weston Rider House and Barn developed in consultation with the Riders Mills Historical Association and SHPO; and the Director of OEP reviews and approves all reports and notifies Tennessee in writing that it may proceed."

7. Although the May 9 Order stated that the Commission was adopting the condition recommended in the EA as part of its authorization, Condition 5, as actually adopted, differs slightly from the condition recommended in the EA with respect to the Weston Rider property. Condition 5 adopted by the Commission and set forth in the appendix to the May 9 Order reads, in pertinent part, as follows:

Tennessee shall defer construction ... until it files with the Secretary ... a summary of maintenance options for the Weston Rider House and Barn developed in consultation with the Riders Mills Historical Association and SHPO; and the Director of OEP reviews and approves all reports and notifies Tennessee in writing that it may proceed.

Thus, the Commission's order does not require that Tennessee develop a maintenance plan for the structures or that it maintain the structures; rather, as described in the body of the order,² the Commission directed Tennessee to consult with the Historical Association and the SHPO to identify maintenance options for the property. However, it was not our intent to foreclose consideration of any appropriate options regarding the property, including historical documentation (as opposed to physical maintenance) of the property. Thus, to clarify that point (and also to enable Tennessee to commence construction of the approved compressor facilities while consultation proceeds), we will revise the condition to read as follows:

² See May 9 Order, at P 25.

Tennessee shall defer operation of the replacement compressor unit at Compressor Station 254 until it files with the Secretary a summary of maintenance or documentation options for the Weston Rider House and Barn developed in consultation with the Riders Mills Historical Association and SHPO and the Director of OEP notifies Tennessee in writing that it may operate the replacement compressor unit at Compressor Station 254.³

8. Tennessee is correct that not all property owned by a pipeline company is subject to the Commission's NGA jurisdiction. Tennessee is also correct that the structures at issue do not perform any function directly within the Commission's NGA jurisdiction. In fact, it would be highly unusual for an historic structure to be an NGA jurisdictional facility. The Commission's responsibilities, however, do not lie solely under the NGA. Congress has given the Commission additional duties under the National Environmental Policy Act of 1969 (NEPA) and other related statutes. Despite Tennessee's arguments to the contrary, we continue to find that the Commission has historic preservation oversight responsibility with respect to the structures in question. As pertinent here, and as explained in the EA, section 106 of the National Historic Preservation Act (NHPA) requires the Commission to take into account the effect of its undertakings (including authorizations under section 7 of the NGA) on properties listed, or eligible for listing, on the National Register of Historic Places.⁴ The structures on the Weston Rider property qualify for listing on the National Register of Historic Places.⁵

9. The May 9 Order correctly points out that Tennessee purchased the Weston Rider property in 2001 because of the relationship between the structures on the property and

³ Condition 5 also required that Tennessee defer construction at Compressor Station 245 pending the submission of cultural resource reports following completion of archaeological investigation testing requested by the New York SHPO at Compressor Stations 245 and 254. On August 7, 2006, Tennessee filed correspondence, including the SHPO's comments, showing that such testing has been satisfactorily completed at both sites. The Commission's staff has reviewed Tennessee's filing and determined that there are no remaining archaeological concerns at either site. We have no further concerns regarding Compressor Station 245, and our remaining concern with respect to Compressor Station 254 is the Weston Rider properties. Condition 5 is revised accordingly.

⁴ See 16 U.S.C. § 470f (2005).

⁵ See EA, at p. 44.

the noise levels associated with continued operation of the station.⁶ In any event, while the house and barn are outside the fence around the compressor station, and the Weston Rider structures are unoccupied and thus do not qualify as noise sensitive areas, these factors do not relieve the Commission of its responsibilities under the NHPA. The Commission is authorizing the construction and operation of jurisdictional facilities under section 7 of the NGA and it must consider the effect of these authorizations on historic properties located on Tennessee's contiguous Weston Rider property. As we explained in the May 9 Order, under regulations of the Advisory Council on Historic Preservation, neglect of a historic property which causes deterioration of that property may constitute an adverse effect that requires consultation. Accordingly, we affirm our finding in the May 9 Order that Tennessee must consult with the Riders Mills Historical Association and the SHPO regarding the future of the Weston Rider house and barn. The required consultation process is described in the Commission's *Guide for Reporting on Cultural Resource Investigations* (December 2002), which is referenced in Condition 5.

Tennessee's Stay Request

10. Tennessee asserts that construction and operation of the compressor facilities will have no impact on the Weston Rider house and barn, and that the Commission therefore should not require Tennessee to delay work on the compressor station because of the issue related to these buildings. Tennessee suggests that if the Commission denies its rehearing request, potentially lengthy litigation regarding the Commission's jurisdiction over the buildings may seriously delay the benefits of a significant portion of the project to Tennessee's shippers and the Northeast market. Tennessee argues that the Commission should stay Condition 5 so that Tennessee can proceed with the installation and operation of the replacement compressor unit at Compressor Station 254 pending resolution of issues relating to the Weston Rider buildings.

⁶ Despite Tennessee's suggestion to the contrary, Tennessee, in a letter dated November 14, 2005 from its environmental consultant Environment & Archaeology, L.L.C. to the New York Office of Parks and Historic Preservation stated the following concerning the Weston Rider House: "This structure was purchased by Tennessee Gas Pipeline in 2001 for the opportunity to provide a greater property buffer from the fenced compressor station facility to the public at large" Tennessee filed a copy of this letter with the Commission on December 21, 2005.

Commission Response

11. The standard for granting a stay by administrative agencies, including this Commission, is whether justice so requires.⁷ In applying the standard, we must balance the interests of the party seeking the stay with the overall public interest and determine whether the requesting party will sustain irreparable harm in the absence of a stay.⁸ Where this standard is not met, the Commission follows a general policy of denying motions for stay of its orders based on the need for definiteness and finality in administrative proceedings.

12. While we are revising Condition 5 to permit Tennessee to proceed with replacement of the compressor unit at Compressor Station 254, Tennessee seeks a complete stay of the condition so that it can operate the replacement compressor, pending final resolution of any obligations it may have with respect to the Weston Rider property. We find that Tennessee has not demonstrated that justice requires staying Condition 5 in its entirety. Tennessee does not contend that our requirement that it discuss the future of the Weston Rider structures will result in irreparable harm. Indeed, while the instant project does not pose a threat to the Weston Rider properties, Tennessee's continued failure to consult with the appropriate agencies could eventually result in irreparable damage to those historic properties. Tennessee has already been engaged in such discussions with the Riders Mills Historical Association and our consultation requirement under the NHPA should not prove unduly time-consuming or burdensome. Balancing the interests at stake here, namely the interest of Tennessee in avoiding further discussion of the properties against the interest of the public in considering historic preservation, we will deny the request for stay.

Rate Treatment for the House and Barn

13. Tennessee states that the cost of the Weston Rider buildings and the property on which they are located are not included in Tennessee's rate base. If the Commission denies its rehearing request regarding jurisdiction over the properties, avers Tennessee, the Commission should grant Tennessee the presumption that in the future the cost of the property and costs of any renovation and maintenance should be included in its rates.

⁷ Administrative Procedure Act, 5 U.S.C. § 705. *See also East Tennessee Natural Gas Company*, 101 FERC ¶ 61,188 (2002), *Destin Pipeline Company, L.L.C.*, 85 FERC ¶ 61,057 (1998); and *Portland Natural Gas Transmission*, 83 FERC ¶ 61,080 (1998).

⁸ *See Tennessee Gas Pipeline Company*, 81 FERC ¶ 61,386 (1997); and *Commonwealth Gas Pipeline Corporation*, 29 FERC ¶ 61,054 (1984).

Commission Response

14. Because we have determined that the Weston Rider house and barn fall within the Commission's oversight responsibilities under the NHPA, and because we are requiring Tennessee to engage in historic preservation consultation in connection with our authorization of its construction activities at Compressor Station 254, Tennessee should be entitled to recover costs related to the Weston Rider property in its rates. Accordingly, we find Tennessee may include costs related to the Weston Rider property in its incremental recourse rates for the Northeast ConneXion Project – New England.

The Commission orders:

(A) Our May 9, 2006 Order is clarified as discussed above and Condition 5 in the appendix to that order is revised to read as follows:

5. Tennessee shall defer operation of the replacement compressor unit at Compressor Station 254 until it files with the Secretary a summary of maintenance or documentation options for the Weston Rider House and Barn developed in consultation with the Riders Mills Historical Association and SHPO and the Director of OEP notifies Tennessee in writing that it may operate the replacement compressor unit at Compressor Station 254.

(B) Tennessee's request for rehearing is granted, in part, as discussed herein, and its request for stay is denied.

(C) Tennessee may include the costs related to the Weston Rider property in its incremental recourse rates for the Northeast ConneXion Project – New England.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.