

119 FERC ¶ 61,195
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Tennessee Gas Pipeline Company

Docket No. CP05-412-002

ORDER ON REHEARING

(Issued May 25, 2007)

1. In an order issued May 9, 2006 (May 9 Order), 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, as part of Tennessee's Northeast ConneXion Project – New England.¹ As part of the project, the Commission approved the replacement of a 4,500 horsepower (hp) compressor unit at Tennessee's Compressor Station 254 in Columbia County, New York, with a 10,300 hp compressor unit. Environmental Condition 5 of the May 9 Order required Tennessee to consult with the Riders Mills Historical Association (Historical Association) and the New York State Historic Preservation Officer (SHPO) regarding the future of two historic structures, the Weston Rider house and barn, located on Tennessee-owned property immediately adjacent to the compressor station before it began installation of the new compressor unit.
2. Tennessee requested rehearing and stay, urging the Commission to remove Environmental Condition 5. If the Commission should deny rehearing, Tennessee requested that the Commission find that Tennessee should be allowed to recover costs related to the Weston Rider property in its rates.
3. In an order issued October 10, 2006 (October 10 Order), the Commission granted rehearing in part by modifying Environmental Condition 5 to permit Tennessee to begin construction at Compressor Station 254, but requiring it to defer operation until Tennessee satisfied the consultation requirement regarding the Weston Rider property. The Commission also found that Tennessee may include the costs associated with the

¹ 115 FERC ¶ 61,160 (2006).

Weston Rider property in its rates for the Northeast ConneXion Project – New England.² The October 10 Order denied the stay request.

4. Tennessee has now sought rehearing and stay of the October 10 Order, again raising issues relating to Environmental Condition 5 and the appropriate rate treatment for costs associated with the Weston Rider property. For the reasons stated below, we are denying the request for rehearing and stay with respect to the Weston Rider property, but granting rehearing with respect to the rate issue.

Background

5. As set forth in more detail in the prior orders in this proceeding, Tennessee owns property immediately adjacent to its Compressor Station 254 on which are located two structures that qualify for listing on the National Register of Historic Places -- the Weston Rider house and barn. 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 options for the structures and provide a summary of those options for review by the Director of the Commission's Office of Energy Projects (OEP) before beginning new construction at the compressor station.

6. Tennessee objected to the consultation requirement in Environmental Condition 5 on the grounds that the Commission has no jurisdiction to regulate maintenance of the house and barn on the Weston Rider property. The October 10 Order found that the Commission has historic preservation oversight responsibility under section 106 of the Historic Preservation Act (NHPA) with respect to the structures in question, requiring the Commission to take into account the effect of its undertakings (including authorizations under section 7 of the NGA) on properties, such as the Weston Rider property, that qualify for listing on the National Register of Historic Places. The October 10 Order affirmed the Commission's finding in the May 9 Order that Tennessee must consult with the Historical Association and the SHPO regarding the future of the Weston Rider house and barn. The Commission did, however, modify Environmental Condition 5 in the May 9 Order to allow Tennessee to construct, but not operate, the new facilities while engaging in consultation. The October 10 Order also granted rehearing, in part, to permit Tennessee to include costs associated with the Weston Rider property in its incremental rates for services using capacity created by the Northwest ConneXion Project – New England.

² 117 FERC ¶ 61,034 (2006).

Tennessee's Rehearing and Stay Requests

7. In its rehearing request, Tennessee renews its contentions that the Commission has no jurisdiction over the structures on the Weston Rider property and, therefore, that the Commission's consultation requirement regarding the property was inappropriate. Tennessee also argues that the Commission erred in finding that Tennessee may include costs associated with the Weston Rider property only in its incremental recourse rates for this project rather than including those costs in its general system rates. Tennessee asserts that there is no justification for limiting the recovery of any such costs to the recourse rates for this project because the structures are not related to the project. As grounds for its stay request, Tennessee claims that the historical preservation consultation condition will likely lead to a delay or denial of service to Tennessee's existing shippers and to its new shippers.

Commission Response

8. Tennessee's latest rehearing request was filed on November 8, 2006. On April 12, 2007, Tennessee submitted copies of correspondence between Tennessee, the Historical Association, and the SHPO explaining that they have engaged in discussions which have resulted in agreement regarding the future of the Weston Rider house and barn.³ By letter issued April 27, 2007, OEP informed Tennessee that Tennessee has fulfilled the terms of Environmental Condition 5 requiring consultation with the SHPO and Historical Association, and that the restriction in that condition on the operation of the new compressor unit is no longer necessary.

9. Because Tennessee has satisfied the consultation requirement of Environmental Condition 5, we find that issues regarding operation of the compressor unit are moot. Therefore, we will deny Tennessee's requests for stay and rehearing of Environmental Condition 5.

10. We will, however, grant rehearing of the rate issue Tennessee raises regarding the Weston Rider property. In the October 10 Order, we found that Tennessee could recover the costs related to the Weston Rider property only in the incremental rates for Tennessee's Northeast ConneXion Project – New England. After further consideration, we agree with Tennessee that any such costs do not relate solely or even principally to the

³ Specifically, Tennessee will dismantle the structures, erect a site marker near where the house stood, undertake certain documentation regarding the house, plant vegetative screening to provide a visual buffer from the station, and make a donation to the Riders Mills Historic District Educational Scholarship fund.

new construction involved here. Tennessee purchased the Weston Rider property in 2001, and its compressor station has always operated adjacent to the property. Tennessee should, therefore, be free to seek recovery of costs associated with the Weston Rider property in its generally applicable rates in its next section 4 rate proceeding.

The Commission orders:

(A) Tennessee is not precluded from seeking to include the costs related to the Weston Rider property in its general system rates in its next section 4 Natural Gas Act general rate proceeding.

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

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.