

125 FERC ¶ 61,217
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.

Steckman Ridge, L.P.

Docket No. CP08-15-001

ORDER DENYING REHEARING

(Issued November 21, 2008)

1. On June 5, 2008, the Commission issued an order¹ granting Steckman Ridge, LP (Steckman Ridge) authorization to construct and operate the Steckman Ridge Storage Project, a 17.7 billion cubic foot multi-cycle natural gas storage facility in Bedford County, Pennsylvania. Timely requests for rehearing of the June 5 Order were filed by Joe A. and Sandra K. McDaniel, Michael P. Benard, Paul and Helen Stup, Richard and Pam Hershberger, Kenneth and Sandra Klahre, Richard C. Eckman, Jr., Wayne and Angela Smith, David and Julia Beegle, the Steckman Ridge Landowners Cooperative (Landowners Cooperative),² James and Carol Gipson, and Emerald Coal Resources, LP (Emerald Coal).

2. As discussed below, we will deny the requests for rehearing.

Rehearing Requests

3. The issues raised in the rehearing requests include: (i) landowners' difficulties in understanding Commission processes and procedures; (ii) water pollution; (iii) impacts of the proposal on the development of natural gas production from the Marcellus Shale and

¹*Steckman Ridge, LP*, 123 FERC ¶ 61,248 (2008) (June 5 Order).

² The Landowners Cooperative is comprised of David and Julia Beegle, Michael and Christine Benard, Betty M. Clark, Doris Clark, Denton and Debora Clark, Rex and Cynthia Clark, Ronald and Cindy Clark, Roy and Pattie Clark, Author and Melinda Jo DeYoung, Richard Eckman, Jr., James and Carol Gipson, Richard and Pamela K. Hershberger, Paull Juergens, Jr., Kenneth R. and Sandra Klahre, Ray and Norma Klahre, James and Karla Levy, Sandra K. McDaniels, Michael and Delores Melnick, Ellsworth and Barbara Messersmiths, Sara M. and Bonnie Mills, James and Rose Morgan, Glen Needham, Edward Sakalaukas, William and Angela Smith, and Paul and Helen Stup.

other formations; (iv) metering of individual injection wells; (v) alleged misconduct of Steckman representatives; (vi) eminent domain; (vii) disputes over construction activities, routing, and rights-of-way; and (viii) mining subsidence.

4. On July 16, 2008, Steckman Ridge filed motions for leave to answer and answers to the requests for rehearing filed by the landowners individually, the Landowners Cooperative, and Emerald Coal. Steckman Ridge's answer to the landowners' rehearing requests addresses certain issues raised for the first time on rehearing, as well as alleged procedural deficiencies in the rehearing requests. Additionally, Steckman Ridge's answer to Emerald Coal's rehearing request addresses certain new arguments not previously raised. While our rules generally do not permit answers to requests for rehearing,³ we may, for good cause shown, waive a rule.⁴ We find good cause to accept Steckman Ridge's answers since they provide information that assists us in addressing the new allegations and arguments raised on rehearing.⁵ The issues raised on rehearing are discussed below.

5. Steckman Ridge contends that the individual landowners' rehearing requests, as well as the Landowners Cooperative's rehearing request, should be dismissed for failure to comply with the requirements of Rule 713 of the Commission's Rules of Practice and Procedure.⁶ Specifically, Steckman Ridge asserts that these rehearing requests do not include a concise statement of the alleged errors in the June 5 Order or a section entitled "Statement of Issues" listing each issue and representative Commission and court precedent on which they rely, as required by Rule 713(c).

6. Steckman Ridge is correct that none of the requests for rehearing, other than that filed by Emerald Coal, comply with the requirements of Rule 713, and that in numerous instances the Commission has as contemplated by the rule, dismissed such complaints as deficient.⁷ However, in another instance, where the party was a small local group, appearing before the Commission for the first time, and not represented by counsel, the

³ See 18 C.F.R. §§ 385.213(a)(2), 385.713(d)(1).

⁴ See 18 C.F.R. § 385.101(e).

⁵ See, e.g., *KeySpan LNG, L.P.*, 114 FERC ¶ 61,065, at P 7(2006); *PSEG Power Connecticut, LLC*, 113 FERC ¶ 61,210, at P 17 (2005).

⁶ 18 C.F.R. § 385.713 (2008).

⁷ See, e.g., *Union Electric Company, d/b/a AmereUE*, 119 FERC ¶ 61,202 (2007); *Union Electric Company, d/b/a AmereUE*, 120 FERC ¶ 61,016 (2007); *Joseph M. Keating*, 122 FERC ¶ 61,027 (2008).

Commission found good cause to waive its rule and accept the pleading.⁸ Likewise, for similar reasons, we will do so here. Moreover, a number of these landowners made later filings to supplement their rehearing requests. Those supplemental requests are, in large measure, more appropriately described as late filed comments to the Environmental Assessment. We will accept and respond to those filings, recognizing that the affected landowners may not be wholly familiar with the Commission's procedural rules.

A. Commission Regulations and Procedures

7. Without providing details or specifics, the McDaniels, Stups, Klahres, and Smiths complain that the complexity of the Commission's rules and regulations put landowners at an unfair disadvantage in understanding the Commission's processes. Mr. Benard adds that he had difficulty navigating the Commission's website.

8. As stated above, we recognize that a landowner affected by a natural gas project may be dealing with our procedures for the first time. That is one of the primary reasons the Commission developed its pre-filing process which encourages early involvement of all interested stakeholders, including landowners, to identify and attempt to resolve issues before an application is filed. Following the initiation of the pre-filing process for Steckman Ridge's project, Steckman Ridge hosted a Landowner Information Session on June 23, 2007, in Clearville, Pennsylvania, and an Open House on August 21, 2007, in Everett, Pennsylvania. In addition, Steckman Ridge implemented a 24-hour Landowner Hotline, a project website, and sent notification letters to affected landowners informing them that its certificate application was filed with the Commission on November 1, 2007. Thereafter, several landowners individually intervened as parties, but more significantly, a group of landowners, represented by legal counsel, filed as the Landowners Cooperative to intervene collectively. That group included those who complain that our regulations are too complex.

9. On August 20, 2007, we issued a Notice of Intent to Prepare an Environmental Assessment for the Proposed Steckman Ridge Storage Project and Request for Comments on Environmental Issues (NOI). The NOI was mailed to affected property owners, among other interested parties. In response to the NOI, we received 27 comment letters from landowners and citizens, including those who have filed requests for rehearing of the June 5 Order. During the pre-filing process, our staff had weekly meetings with Steckman Ridge to discuss, among other things, issues and concerns raised by landowners. When the Environmental Assessment (EA) for the Steckman Ridge Storage Project was complete, a Notice of Availability of the EA was issued on March 7, 2008.

⁸ See, *Duke Power Company, LLC*, 117 FERC ¶ 61,300 (2006).

The EA was mailed to all entities on the project mailing list (including those landowners who intervened and the Landowners' Cooperative), and the preface to the EA explains in detail how and when comments to the EA were to be filed.⁹

10. The Commission's website directs any landowner or other member of the public who has any difficulties in navigating the website to FERC's Online Support for assistance and guidance by a member of the Commission's staff.¹⁰ The Commission also offers a free service called eSubscription¹¹ which allows a member of the public to keep track of all formal issuances and submittals in specific dockets. This service automatically provides notification of filings, document summaries and direct links to the document. In sum, the Commission provided extensive public notice and opportunity for comment in this proceeding, and generally has established procedures to ensure that interested members of the public are informed of Commission proceedings and encouraged to participate in them. We do not believe that the landowners were placed at any disadvantage in this proceeding.

B. Water Issues

11. In their rehearing request, the Smiths restate their ongoing concerns with an arsenic water pollution problem on their property. The Smiths reiterate their claim, made during the scoping period and in response to the EA, that arsenic is present in their water as the result of hydraulic fracturing performed by the previous operator of the depleted production field to be used as Steckman Ridge's facility. The Smiths claim that the Beegles also have discovered arsenic in their water supply, indicating that the storage

⁹ We note that a number of landowners filed a letter with the Commission on September 16, 2008, claiming that they had been excluded from meetings between Steckman Ridge representatives and Commission staff during the pre-filing process to discuss the Steckman Ridge Storage Project, and that the landowners were never provided an opportunity to confirm, correct, or clarify information disclosed in those meetings. No specific meetings were identified and no other details were provided. In any event, meeting notes for all meetings held between our staff and Steckman Ridge representatives during the pre-filing process were placed in the public record in Docket No. PF07-9. The public had the opportunity to comment on these notes during both the scoping comment period and the EA comment period. We believe that sufficient time and opportunity has been provided to comment on all information regarding this project

¹⁰ The Commission's website provides phone numbers (202-502-6652 or 1-866-208-3676) and an e-mail address (ferconlinesupport@ferc.gov) for use in contacting our online support staff.

¹¹ Go to www.ferc.gov/esubscribenow.htm.

field is polluted. The Smiths want Steckman Ridge to find the source of their water pollution and fix it before Steckman Ridge proceeds with its drilling operations to develop the storage facility. In addition, the Smiths restate their concern that unknown toxins may be used in Steckman Ridge's drilling operations.

12. As explained in both the EA¹² and in the June 5 Order, Steckman Ridge did not perform the original production well drilling, or any other activities in the project area and, therefore, is not responsible to find the source of or fix this existing problem, as they did not contribute to it. Further, although the Smiths continue to claim that hydraulic fracturing caused their water supply to become contaminated with arsenic, Steckman Ridge states that hydraulic fracturing was not performed when the original wells were drilled. As further explained in the June 5 Order, Steckman Ridge filed copies of all the material safety data sheets for all chemicals that they could use for drilling or hydraulic fracturing, and none of these included arsenic or arsenic derivatives. If the Beegles also have arsenic in their water, that too is evidence of a water problem that previously existed, prior to any activities associated with the Steckman Ridge Storage Project. Since Steckman Ridge has not contributed to any existing arsenic contamination problem and there is no basis for concluding that its construction activities will exacerbate that problem, we will not require that Steckman Ridge find the source of the problem and remedy it. Under these circumstances, it is outside the scope of the Commission's responsibility to determine the cause of an existing water pollution problem. As discussed in the EA¹³ and June 5 Order, the landowners have contacted the Pennsylvania Department of Environmental Protection (PADEP), which is the appropriate agency to address this issue.

13. The McDaniels also raise an issue regarding disposal of drill cuttings, i.e. pieces of rock mixed with mud brought to the surface by well drilling activities. Some well drillings will be disposed of by Steckman Ridge on the McDaniels' land. On rehearing, the McDaniels state they do not want any drill cuttings disposed of on their property because they are concerned about the potential for ground and/or water pollution. As discussed in the EA and in the June 5 Order, Steckman Ridge will only dispose of drill cuttings and fluids resulting from its construction activities near its drilling site on the McDaniels' land if such disposal would be in compliance with Pennsylvania State Code 25 PA.78.56. These state requirements ensure that drill cuttings may be disposed of in pits or by land application only if numerous conditions are met to ensure that ground and

¹² EA at 20.

¹³ *Id.*

water contamination will not result.¹⁴ We find this regulation adequate to ensure that ground and/or water pollution will not result from disposal of drill cuttings. Environmental Condition No. 1 of the June 5 Order requires that Steckman Ridge comply with the construction measures identified in the EA. Consequently, Steckman Ridge's commitment to comply with this regulation is mandatory. Therefore, we will not grant the McDaniel's request.

14. The McDaniels also are not satisfied with the standard water monitoring plan submitted by Steckman Ridge¹⁵ and request a modified plan which would include testing before and after drilling, monitoring on an ongoing yearly basis, and testing for all chemicals and fluids used in the drilling process. The EA found Steckman Ridge's plan to be adequate¹⁶ and it was approved in the June 5 Order. Provisions for testing before and after drilling already are included in Steckman Ridge's approved water plan. Steckman Ridge's plan provides for testing for common indicators for problems or

¹⁴ Some of the requirements of § 78.61, *Disposal of drill cuttings*, of the Pennsylvania State Code are that well drill cuttings may be disposed of in a pit at the well site only if, *inter alia*, the drill cuttings are not contaminated with polluttional material (including brines, drilling muds, stimulation fluids, well servicing fluids, oil, production fluids or drilling fluids other than tophole water, fresh water or gases); the disposal area is not within 100 feet of a stream, body of water or wetland unless approved as part of a waiver granted by the PADEP or not within 200 feet of a water supply; the free liquid fraction of the waste is removed and disposed of in accordance with PADEP discharge requirements; the pit is backfilled to the ground surface and graded to promote runoff with no depression that would accumulate or pond water on the surface and the stability of the backfilled pit is compatible with adjacent land; the surface of the backfilled pit area is revegetated to stabilize the soil surface and otherwise in compliance with PADEP requirements relating to erosion and sedimentation control and the revegetation establishes a diverse, effective, permanent vegetative cover which is capable of self-regeneration and plant succession. If drill cuttings are to be disposed of by land application, the following additional conditions apply: soils must have a minimum depth from surface to bedrock of 20 inches; drill cuttings may not be spread when saturated, snow covered or frozen ground interferes with incorporation of the drill cuttings into the soil; drill cuttings may not be not applied in quantities that will result in runoff or in surface water or groundwater pollution; and drill cuttings must be spread and incorporated into the soil.

¹⁵ See EA at 20.

¹⁶ *Id.* at 25.

pollution associated with gas drilling operations. The McDaniels have not provided any evidence that annual testing on an ongoing basis or that testing for every individual chemical or fluid used is necessary.

15. The Benards assert that their concerns regarding impacts to the Sideling Hill Creek Watershed¹⁷ have not been responded to, but they provide no other details in their rehearing request. Our review of the record in this proceeding indicates that Michael Benard filed a letter on June 11, 2008, expressing concern about impacts on amphibians in Sideling Hill Creek and other area watersheds.

16. As part of the environmental review process, Steckman Ridge contacted the U.S. Fish & Wildlife Service, the Pennsylvania Department of Conservation and Natural Resources, the Pennsylvania Game Commission, and the Pennsylvania Fish and Boat Commission regarding the potential occurrence of significant habitats, threatened or endangered species, or other species of concern in the project area. As discussed in the EA,¹⁸ none of the amphibians listed in the Benards' filing are state or federally listed species. Section B.3 of the EA indicates that wildlife species commonly occurring in close proximity to the project area would likely move away from construction activities and return after construction is complete. Also, given the large amount of available habitat in the vicinity of the project area, no significant, adverse impacts are expected to occur to local wildlife populations. In short, impacts to all water resources and stream crossings were evaluated in the EA and no potential significant impacts were identified.

C. Marcellus Shale

17. Collectively and individually, the landowners assert that the June 5 Order did not address the issue of the impact of the Steckman Ridge Storage Project on the feasibility of developing and producing natural gas reserves located in the Marcellus Shale formation above the certificated storage area or from other formations containing potentially recoverable native gas above or below the storage area. They argue that if the storage project results in native gas being effectively shut in, they will be deprived of royalty income and the nation will be deprived of needed gas supplies. The landowners state that several of them have been approached by natural gas producers who would be interested in exploring and possibly developing natural gas from the Marcellus Shale formation, provided the Steckman Ridge Storage Project is not constructed. According to these landowners, gas producers will not accept the risks associated with drilling gas

¹⁷ The Steckman Ridge Storage Project is located within the Susquehanna River and Potomac River Watersheds. Sideling Hill Creek is located within the Potomac River Watershed.

¹⁸ EA at 26-29.

wells in the proximity of the Steckman Ridge storage field. Several of the landowners argue that the Commission should allow time for the development of the Marcellus Shale natural gas before allowing development of Steckman Ridge's storage project to go forward.

18. The Marcellus Shale formation is an extremely large formation located in New York, Pennsylvania, Ohio, and West Virginia. While gas currently is being produced from areas of the Marcellus Shale, not every part of the Marcellus Shale formation has recoverable gas reserves. This is due to the fact that the formation is not homogenous, and different parts of the formation contained varying amounts of organic materials. The landowners have provided no evidence of the amount of native gas in the Marcellus Shale which lies above the 1,800-acre area of the Oriskany formation which was certificated for Steckman Ridge's gas storage project.¹⁹ Indeed, they have provided no evidence that the formation above Steckman Ridge's storage area has any amount of economically recoverable gas reserves at all. Moreover, anecdotal statements that certain producers might not develop the Marcellus Shale in the vicinity of the Steckman Ridge Storage Project do not amount to substantial evidence. Absent such evidence, the claim that the Steckman Ridge Storage Project will effectively shut in significant volumes of native gas in this relatively small area of the Marcellus Shale formation and thereby deprive landowners of royalties from the production of such gas is entirely speculative.²⁰

¹⁹ Directly above the storage area lies 15-20 feet of Onandaga limestone. Above the Onandaga limestone lies 75-100 feet of Needmore Shale which is classified as the caprock for the storage area. The Needmore Shale and Onandaga limestone are included in the certificated boundaries of the storage project to ensure an impermeable barrier to prevent the upward migration of storage gas. The Marcellus Shale lies directly above the Needmore Shale caprock.

²⁰ Although it is not completely clear from the record, it appears that landowners negotiated leases that gave Steckman Ridge the production rights to any remaining native gas in the previously produced area of the Oriskany formation that will be used for storage. However, it also appears that Steckman Ridge and the landowners do not agree on whether their lease agreements also gave Steckman Ridge the production rights to any native gas in the overlying Marcellus Shale and, if so, what the landowners' rights are if Steckman Ridge does not attempt to produce gas from the Marcellus Shale. In any event, Steckman Ridge can only rely on eminent domain to acquire mineral rights in the areas certificated by the June 5 Order for the storage project. In this regard, we note that on September 19, 2008, the U. S. District Court for the Western District of Pennsylvania issued a preliminary injunction granting Steckman Ridge immediate possession of the 10 properties owned by the landowners with whom it had not been able to reach agreement for storage rights. *Steckman Ridge GP, LLC, et al. v. An Exclusive Natural Gas Storage*

(continued...)

19. On the other hand, as discussed in the Commission's June 5 Order, the Steckman Ridge Storage Project will be located in a competitive market and will serve demand in a region that is experiencing rapid growth in natural gas usage. The project will enhance storage options available to pipelines and their customers and, thus, will increase competitive alternatives.²¹ In addition, the Steckman Ridge Storage Project will enhance the development of an efficient interstate pipeline transportation system by providing customers access to additional high-deliverability storage capacity.²²

20. While the landowners' speculative arguments regarding the Marcellus Shale do not justify delaying the Steckman Ridge Storage Project, we emphasize that no portion of the Marcellus Shale is included within the boundaries of the storage project as certificated by the June 5 Order. Since gas production activities above or below an underground gas storage area may be able to be conducted consistent with maintaining the integrity of the storage area, there may still be the potential for native gas to be produced from formations, including the Marcellus Shale, that are above the Needmore Shale classified as the caprock for Steckman Ridge's storage area, as well as from other formations that are above or below the storage area. In any event, if the landowners and Steckman Ridge cannot reach agreement, the landowners have the right to seek compensation from a court of competent jurisdiction for any loss of potential royalties based on their claim that the storage project will effectively shut-in gas which, if produced, would result in royalties to the landowners.

D. Well Metering

21. Because of their concern that Steckman Ridge's operations may result in the withdrawal of native gas, the McDaniels, Stups, Klahres, Gipsons, and Mr. Eckland argue that the Commission should require metering of all injection/withdrawal wells in order to identify what gas is injected and what gas is withdrawn. The Stups and Mr. Eckland claim that Steckman Ridge has reneged on its promise to meter and monitor injection wells.

Easement, et al., Civil Actions No. 08-168 and No. 08-169 (W.D. Pa., Sept. 19, 2008). The court noted that there were only 10 properties at issue in the proceeding because Steckman Ridge had reached agreement with the owners of the other 147 affected properties. *Id.* slip op. at 29. The court has not yet decided the amounts of compensation to which the owners of the 10 properties at issue are entitled.

²¹ June 5 Order, 123 FERC ¶ 61,248 at P 22.

²² *Id.* P 24.

22. The Commission finds that Steckman Ridges's proposal for one meter to measure the volumes injected and withdrawn from the field is appropriate. Steckman Ridge's proposal to monitor the storage field as a whole with one meter provides the information necessary to determine the inventory of the field. Further, the continuity of the Oriskany formation allows storage gas injected by one well to migrate to another well, depending on the relative pressures throughout the field. In this situation, it is likely that one particular well's injections and withdrawals may not balance. If the volumes of gas withdrawn from a particular well exceed the volumes of gas injected into that well, it does not indicate that the storage operator is withdrawing native gas; rather, it may simply indicate that storage gas injected into one well has migrated to where it is withdrawn from another well. Consequently, metering at each well would not serve to better identify the gas being withdrawn. However, the Commission requires that Steckman Ridge submit an annual inventory verification study for the storage field. In addition, the Commission will require Steckman Ridge to provide affected landowners with a copy of this study.

E. Condemnation and Claims of Misconduct

23. The Hershbergers and Benards complain about the prospect of condemnation proceedings and the adequacy of compensation. The Hershbergers also ask where they can get advice regarding their leases with Steckman Ridge. These are issues beyond the Commission's jurisdiction. In the event issues involving compensation to landowners cannot be negotiated between the landowner and Steckman Ridge, such issues are appropriately resolved by the court, according to Pennsylvania law, in an eminent domain proceeding. Likewise, in the event, the parties cannot resolve disputes regarding interpretation of the leases and the parties' rights thereunder, such disputes are also matters to be resolved in legal proceedings according to Pennsylvania law.

24. The McDaniels complain of a pattern of misinformation supplied by Steckman Ridge to landowners. The Benards further claim that Steckman Ridge agents have been harassing and lying to landowners. The Smiths claim that Steckman Ridge also has switched maps so that it is difficult to determine the location of the underground storage area in relation to areas where there is native gas. Although these complaints are matters of concern to the Commission, they are not issues appropriately addressed in a request for rehearing. The Commission expects pipeline companies to comport themselves fairly, honestly and respectfully in all dealing with landowners. The June 5 Order directed Steckman Ridge to establish complaint resolution procedures for the project and to provide copies of these procedures to all affected landowners.²³ At a minimum, these complaint resolution procedures are to include identification of the Commission's Office of Enforcement Hotline, which is used to informally resolve matters within the

²³ June 5 Order, 123 FERC ¶ 61,248 at Appendix B, Environmental Condition 13.

Commission's jurisdiction.²⁴ In addition, Steckman Ridge is required to file bi-weekly status reports until all construction and restoration work is completed. These reports must include a description of any landowner/resident complaints which may relate to Steckman Ridge's compliance with the requirements of the June 5 Order and the measures taken to resolve the complaints.²⁵

25. The Smiths claim Steckman Ridge performed activities related to the project prior to receiving authorization from the Commission to proceed. Steckman Ridge had performed general maintenance activities (i.e., pigging) of existing pipeline facilities in the project area. These activities were previously scheduled routine maintenance activities unrelated to the storage field project. No clearing, grading, trenching, or drilling activities related to construction of the storage field project were performed prior to Commission approval.

F. Disputes over Construction Activities, Routes and Rights-of-Way

26. The McDaniels claim that the June 5 Order mischaracterized their request that the width of the right-of-way at the beginning of their "Q-pyne trail" be lessened by the use of a stove-pipe or other advanced construction technique. The McDaniels claim that the June 5 Order misinterpreted their request to be a request to use stove-pipe construction for the entire right-of-way.

27. We do not believe that the McDaniels' request was mischaracterized or misunderstood. In evaluating the use of stove-pipe construction on the McDaniels' property in connection with their request for a reduced right-of-way, the June 5 Order concluded that due to the terrain and steep slopes on the McDaniel's property, the width of the construction right-of-way on their property could not be reduced to less than 65 feet (even with the stove-pipe construction technique). As a result, the width of the entire construction right-of-way on the McDaniel's property was reduced from 75 feet to 65 feet.

28. The McDaniels also claim that they discovered in May 2008 that Steckman Ridge was using an unapproved 90 x 70 foot work space on their property. No other information regarding this claim is offered in their rehearing request. No such work space was observed during site visits by Commission staff subsequent to May 2008. In addition, we have not received any maps showing a new 90 x 70 foot workspace on the

²⁴ The Enforcement Hotline can be reached by telephone at (888) 889-8030 or by email to hotline@ferc.gov.

²⁵ June 5 Order, 123 FERC ¶ 61,248 at Appendix B, Environmental Condition 8e.

McDaniels' property nor has one been approved. Should the McDaniels have evidence of any unauthorized activity by Steckman Ridge, they should bring it to the attention of Commission staff.

29. The McDaniels also requested that no rocks be permitted on the permanent easement. As part of a condition to the June 5 Order, Steckman Ridge has provided a site-specific restoration plan for the impacted hiking trails on the McDaniel's property. This plan includes a measure to remove the rocks on the permanent easement.

30. The McDaniels object on rehearing to the 55 dBA noise limit for compressor stations. They assert that usual permissible 55 dBA noise limit is too high in view of the use of their property as a "forested sanctuary" in connection with their ministry.

31. As explained in the June 5 Order, the McDaniels have failed to demonstrate that a reduction in the 55 dBA noise limit is justified.²⁶ The McDaniels are not the closest noise sensitive area to the compressor station; therefore, due to normal sound attenuation the noise levels at the McDaniels' property from the compressor station are expected to be below 55 dBA. Moreover, this project will involve no other significant permanent noise sources. Operation of the storage injection/withdrawal wells is not anticipated to significantly impact existing noise levels in the project area.

32. The Klahres' rehearing request seeks resolution of an issue involving a 25-foot wide temporary right-of-way through forested property which would be used for construction. The Klahres contend that where trees would not return to a "useable" size for 50-75 years, it is a misnomer to call the right-of-way temporary.

33. The term "temporary right-of-way" is not meant to indicate of length of time of impact. Rather, temporary rights-of-way are areas of land that a company only uses during construction of a project, not during operation. Following construction, these areas are returned to preconstruction contours, are revegetated, and the landowners may continue to use the land as they wish. The EA acknowledges that the impacts to the Klahres' forested area will be long-term.²⁷ As approved, the Steckman Ridge Storage Project avoids forested areas where practicable to minimize impacts. The EA found that the project as a whole did not lead to significant impacts on land use.

34. The Stups incorrectly claim in their rehearing request that their requested alternative pipeline route across their property was never evaluated. Their proposed alternative route, the Well Lateral 91H (Well SR11) Variation, was evaluated in the EA

²⁶ 123 FERC ¶ 61,248 at PP 79-83.

²⁷ EA at 34.

and was rejected because it raised significant additional environmental concerns as compared to the proposed route.²⁸ This alternative would require two crossings of an exceptional-value stream and would require parallel construction of this stream up to the stream bank. Although permits may be obtainable as the Stups suggest, the EA determined that the environmental risks associated with construction of this alternate route are much more significant than those associated with the proposed route. Additionally, this alternative provides about a 50-foot wide corridor between the road and the stream bank and an existing utility pole line stands in this space. Therefore, there would not be sufficient space to construct the pipeline.²⁹

35. Mr. Eckman states in his rehearing request that it had been his belief that only a possible alternative route, not Steckman Ridge's actual proposed route, would place pipeline facilities on his property. That is incorrect. The primary proposed route through his property was evaluated all through the pre-filing process and in the EA. Mr. Eckman was notified about the project and the proposed route across this property on August 20, 2007, in the NOI, which included a request for comments. He later joined the group of landowners that intervened as the Landowners Cooperative in this proceeding on December 28, 2008. The motion to intervene listed Mr. Eckman as a landowner whose property "will be directly affected by the proposed Steckman Ridge project." Mr. Eckman was notified and should have been aware that his property would be impacted by the proposed route of the pipeline that is part of Steckman Ridge's project. However, the EA found no significant impacts across his property, and Mr. Eckman has not provided evidence to support an alternative pipeline route that would be environmentally preferable to the originally proposed route crossing his property.

G. Mining Subsidence

36. On rehearing, Emerald reiterates its argument that the success of Steckman Ridge's storage project depends on its interconnection with Texas Eastern's pipeline. Emerald argues that the Commission, in weighing whether public interest requires approval of Steckman Ridge's project, failed to give adequate consideration to Emerald's claims regarding the potential for subsidence under Texas Eastern's interconnecting pipeline as the result of Emerald's planned longwall coal mining operations. Emerald claims to have mining rights superior to Texas Eastern's pipeline easement rights. Therefore, Emerald argues that the Commission should not assume that Steckman Ridge will be able to rely on its interconnection with Texas Eastern in the absence of a subsidence mitigation plan to allow the proposed mining under Texas Eastern's pipeline.

²⁸ *Id.* at 68-69.

²⁹ *Id.* at 68.

37. In the June 5 Order, we denied Emerald's protest, stating;

Emerald's protest raises issues regarding infrastructure that is already in place and has already undergone environmental review by the Commission. The issue of subsidence mitigation of infrastructure that has been previously approved by the Commission and is in-service is not part of this proceeding. Emerald raises no issues regarding Steckman Ridge's proposed facilities. Further, the issues raised by Emerald regarding the potential that its mining operations will cause subsidence of Texas Eastern's existing facilities are before the PADEP. Emerald does not contend that these issues will not, or cannot, be resolved in that forum. Indeed, Emerald acknowledges in its protest that subsidence mitigation has succeeded in prior mining projects involving Texas Eastern's facilities We find the possibility that these issues before the PADEP will not be resolved in a manner that will keep Texas Eastern's downstream facilities operating to be speculative. Accordingly, the Commission rejects Emerald's protest.³⁰

38. Emerald contends that the Commission should have affirmatively addressed the mining subsidence issues in the June 5 Order, and that the Commission's failure to do so was based on several errors. First, Emerald states that contrary to the Commission's statement in the June 5 Order, Texas Eastern's mainline at issue had not already undergone environmental review, since it was constructed and approved as a gas pipeline prior to the passage of the National Environmental Policy Act (NEPA).³¹ Second, Emerald asserts that the Commission deferred to the PADEP to resolve issues that the Commission had the responsibility to address under the Natural Gas Act and NEPA. Emerald refers to the Commission's recent order in *Rockies Express Pipeline, LLC, (REX)*³² in which the Commission included certificate conditions requiring the pipeline to address subsidence mitigation issues and potential route alternatives in collaboration with affected mining operators. Third, Emerald claims that the Commission failed to consider the cumulative impacts of numerous projects, like Steckman Ridge, that will increase reliance on pipelines across active mining regions of Pennsylvania.

39. In its answer to Emerald's protest, Steckman Ridge argues, point by point, that the Commission's rejection of Emerald's protest was not based on whether Texas Eastern's existing pipeline facilities at issue had undergone "adequate environmental review;" that *REX* involved the construction of a new pipeline over an active coal mining area, whereas the instant case does not; and that Steckman Ridge's storage project has no

³⁰ 123 FERC ¶ 61,248 at PP 27, 28.

³¹ 42 U.S.C. §§ 4321, *et seq.*

³² 123 FERC ¶ 61,234 (2008).

impact whatsoever on mining activities, cumulative or otherwise, to be added to the impacts of any other projects. Steckman Ridge argues that the Commission properly concluded that the coal mining subsidence issues are outside the scope of issues that the Commission was required to consider in processing Steckman Ridge's application in this proceeding.

40. As pointed out by Steckman Ridge, we did not rely on the existence or adequacy of a prior environmental review of Texas Eastern's existing facilities in denying Emerald's protest. We concluded that issues relating to subsidence mitigation with respect to Texas Eastern's existing, in-service facilities were not part of this proceeding. We understand that the issues of mine subsidence rights, the liability for damage to landowners' surface facilities, and the responsibility for subsidence mitigation costs, are complex issues that depend on the various parties' rights and applicable federal and Pennsylvania mining regulations. However, the construction of Steckman Ridge's facilities has no impact on Emerald's mining activities. Unlike the situation in *REX*, involving a new pipeline that will cross areas of underground mined land, Steckman Ridge's facilities will have no impact on Emerald's anticipated mining activities, either directly or incrementally. Therefore, the requirements imposed by the Commission in *REX* for new pipeline construction are not only inappropriate for this project, they are outside the scope of the instant proceeding.

41. We are not "deferring" to PADEP, as claimed by Emerald, since the subsidence issues raised by Emerald with respect to Texas Eastern's existing pipeline are beyond the scope of our jurisdiction. This issue should be resolved through PADEP's administrative process for pending mining permit applications or, if necessary, by a court of competent jurisdiction.

The Commission orders:

(A) The requests for rehearing of the June 5 Order are denied.

(B) Steckman Ridge shall provide affected landowners with a copy of the results of annual inventory verification study required in engineering condition no. 3 of the June 5 Order, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.