

126 FERC ¶ 61,198
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Rockies Express Pipeline LLC

Docket No. CP07-208-004

ORDER DISMISSING REQUEST FOR REHEARING

(Issued March 4, 2009)

1. On October 31, 2008, John Forman, owner of the Hunt-Forman Farm in Warren County, Ohio, filed a request for rehearing of the October 2, 2008 letter conveying Commission staff's Determination of Effects for the Hunt-Forman Farm (October 2 letter) issued by Alisa M. Lykens, Chief, Environmental Gas Branch 2. Mr. Forman filed the request for rehearing of the October 2 letter under Rule 1902 of the Commission's Rules of Practice and Procedure.¹
2. For the reasons discussed below, we will dismiss Mr. Forman's request for rehearing as moot.

Background

3. In *Rockies Express Pipeline LLC*, 123 FERC ¶ 61,234 (2008) (May 30 Order), we authorized Rockies Express Pipeline LLC (Rockies Express) to construct and operate approximately 639 miles of 42-inch-diameter pipeline, with appurtenant facilities, between the eastern terminus of Rockies Express' REX-West facilities in Audrain County, Missouri and the Clarrington Hub in Monroe County, Ohio (the REX-East pipeline).
4. Mr. Forman's Hunt-Forman Farm is listed on the National Register of Historic Places (NRHP) as the Hunt-Forman Farm Historic District for its association with the development of the Poland China breed of swine and as an example of an intact historic

¹ 18 C.F.R. § 385.1902(a) (2008). "Any staff action . . . taken pursuant to authority delegated to the staff by the Commission is a final agency action that is subject to a request for rehearing under Rule 713."

farmstead with a period of significance from 1840 to 1945. As originally proposed, the REX-East pipeline would have crossed the Hunt-Forman Farm paralleling four existing pipelines that traverse the farm.

5. The May 30 Order in this proceeding granted Mr. Forman consulting party status in the National Historic Preservation Act (NHPA) section 106² process as it relates to his farm.³ The May 30 Order invited Mr. Forman to submit his views on the project and stated that, if it was found that the project had an adverse impact on his farm under the NHPA, we “would continue to consult with Mr. Forman to develop and evaluate alternatives or modifications that could avoid, minimize, or mitigate adverse impacts.”⁴

6. Subsequently, the Ohio Historic Preservation Office (Ohio HPO), Rockies Express, and Mr. Forman submitted comments about the proposed pipeline route through the Hunt-Forman Farm, as well as several alternative routes by-passing the farm. The Ohio HPO, Rockies Express, and the Commission also signed a Memorandum of Agreement that included procedures for the identification and resolution of adverse effects to historic properties, including architectural resources, in Ohio.⁵

7. The October 2 letter to the Ohio HPO stated that the pipeline’s impact to the historic property would include temporary disruption of agricultural activities and temporary effects to some of the contributing elements of the farm including field boundaries, fence lines, and the Snake Creek and its southern tributary, but that construction of the pipeline would not directly impact any structures on the farm. The October 2 letter concluded that the REX-East pipeline would have an adverse effect on the Hunt-Forman Farm, but that the effect would be of a limited duration. For these reasons, the letter stated that Commission staff preferred the proposed route to any of the alternatives.

8. In his request for rehearing of the October 2 letter, Mr. Forman alleged that the Commission (1) failed to properly fulfill its obligations under the NHPA, (2) violated the Memorandum of Agreement, and (3) violated section 4(f) of the Department of Transportation Act.⁶ On November 11, 2008, Rockies Express filed a motion to dismiss,

² 16 U.S.C. § 470f (2006).

³ 123 FERC ¶ 61,234 at P 175.

⁴ *Id.* n.64.

⁵ The Memorandum was signed on August 5, 2008.

⁶ 49 U.S.C. § 303 (2006).

or in the alternative, a motion for leave to answer and an answer to Mr. Forman's request. After that filing, Commission staff, Rockies Express, Mr. Forman, and the Ohio HPO actively worked through the consultation process to resolve this issue.

9. On February 2, 2009, Rockies Express filed a request for a notice to proceed with construction of the portion of pipeline that, as originally proposed, would have crossed the Hunt-Forman Farm, but that now includes a reroute around Mr. Forman's property. Mr. Forman wrote a letter stating that it was his opinion that because the pipeline route was altered it would no longer affect his property. The Ohio HPO also wrote a letter concurring with Rockies Express' proposed reroute. On February 5, 2009, Laura Turner, Environmental Project Manager, issued authorization to Rockies Express to proceed with construction of the pipeline across the Forman Reroute.

Discussion

10. Commission staff approved Rockies Express' revised pipeline route to avoid construction on Mr. Forman's farm in a decision supported by both Mr. Forman and the Ohio HPO. We, therefore, find that it is not necessary to reach the issues presented in Mr. Forman's rehearing request and we will, therefore, dismiss the rehearing request as moot.

The Commission orders:

Mr. Forman's request for rehearing is dismissed.

By the Commission. Commissioner Kelliher is not participating.

(S E A L)

Kimberly D. Bose,
Secretary.