

129 FERC ¶ 61,021  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

Columbia Gas Transmission LLC

Docket No. CP08-431-001

ORDER DENYING MOTION FOR STAY

(Issued October 9, 2009)

1. Charles R. Ogle and Melanie A. Ogle have filed a motion for a stay of construction activities by Columbia Gas Transmission LLC in connection with the expansion of its Crawford Storage Field, located in Ohio. Because, as discussed below, the Ogles have not demonstrated that justice requires a stay, we deny the motion.

**Background**

2. On March 19, 2009, the Commission granted Columbia Gas Transmission LLC (Columbia) authorization to expand storage capabilities at its Crawford and Weaver Storage Fields in Ohio.<sup>1</sup> Among other matters, the order discussed proposals by the Ogles to alter the location of certain proposed facilities and revise certain construction-related activities, granting some of their requests and denying others.<sup>2</sup> On rehearing, the Commission considered, and denied, arguments by the Ogles that the proposed construction would have undue impacts on them and that Columbia should be required to alter various components of its proposal.<sup>3</sup>

3. On August 24, 2009, the Ogles filed a motion for a stay of Columbia's construction activities on their property, asserting that Columbia has no authority to place a proposed well on their land. The Ogles noted that they had filed a complaint against Columbia in state court.

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<sup>1</sup> *Columbia Gas Transmission Corp.*, 126 FERC ¶ 61,237 (2009).

<sup>2</sup> *See id.* at P 72-79.

<sup>3</sup> *Columbia Gas Transmission Corp.*, 128 FERC ¶ 61,179 (2009).

4. On August 26, 2009, the Commission issued a notice dismissing the motion for stay, explaining that the Commission had stated in prior orders that the issue of whether an existing lease agreement between Columbia and the Ogles permitted the contemplated construction activities was outside the Commission's jurisdiction, and that the motion for stay raised no new issues that the Commission had not previously considered.<sup>4</sup>

5. On September 29, 2009, the Ogles filed another motion for stay. The Ogles repeat their contention that Columbia has no authority to drill the proposed well and again note the ongoing state court action.

### **Discussion**

6. The Commission will issue stays only when it finds that "justice so requires."<sup>5</sup> In addressing motions for stay, the Commission considers: (1) whether the moving party will suffer irreparable injury without the stay; (2) whether issuing the stay will substantially harm other parties; and (3) whether a stay is in the public interest.<sup>6</sup> The key element in the inquiry is irreparable injury to the moving party.<sup>7</sup> If a party is unable to demonstrate that it will suffer irreparable harm absent a stay, we need not examine the other factors.<sup>8</sup>

7. The Ogles make no allegation that failure to issue a stay will cause them irreparable harm, nor do they address whether issuing a stay would substantially harm other parties or why a stay would be in the public interest. Therefore, the motion for stay is denied.<sup>9</sup>

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<sup>4</sup> See August 26 notice, *citing Ogle v. Columbia Gas Transmission Corp.*, 125 FERC ¶ 61,179 (2009).

<sup>5</sup> 5 U.S.C. § 705 (2006).

<sup>6</sup> See, e.g., *CMS Midland, Inc.*, 56 FERC ¶ 61,177, at 61,631 (1991).

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> In their motion, the Ogles reference Environmental Condition 5 to the March 19, 2009 order. That condition states, among other things, that if Columbia proposes to change the location of the well from the certificated location it must obtain landowner approval. Because Columbia has not proposed to relocate the well or access road, Environmental Condition 5 is not relevant here.

8. For clarification, we will again delineate the extent of our certificate orders. When we grant a natural gas company – here, Columbia – authorization to construct facilities, that authorization does not carry with it the authority to enter onto any property. The company must obtain such authority either through an agreement with a landowner or through the exercise of eminent domain. We have no jurisdiction either to construe the terms of agreements such as the existing lease between the Ogles and Columbia, or to consider the issue of compensation for land use, which is a matter for the court to determine in an eminent domain or other judicial proceeding.

9. When we authorize a company to begin construction of a particular portion of a project, we are deciding only that the company has met all of the pre-construction conditions in its certificate. We are not determining that the company has obtained the necessary rights to enter affected properties. It is up to the company to obtain those rights, and if it commences construction without holding such rights, it puts itself at risk of being held liable, among other things, for any damages to the landowners. In this case, if Columbia chooses to begin construction on the Ogles' property, it puts itself at risk that a court may later determine that it lacked sufficient authority to do so. However, the disagreement between the Ogles and Columbia as to the effect of the lease is a matter outside of our jurisdiction and provides no ground for issuing a stay.

10. For the above reasons, the Commission denies the motion for stay.

The Commission orders:

The motion for stay filed by Charles R. Ogle and Melanie A. Ogle on August 29, 2009, is denied.

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.