

142 FERC ¶ 61,077  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;  
Philip D. Moeller, John R. Norris,  
Cheryl A. LaFleur, and Tony T. Clark.

Millennium Pipeline Company, L.L.C.

Docket No. CP11-515-003

ORDER DENYING REHEARING

(Issued January 31, 2013)

1. On December 7, 2012, the Commission, *inter alia*, denied requests for rehearing of an order that authorized Millennium Pipeline Company, L.L.C. (Millennium) to construct and operate a compressor station.<sup>1</sup> The December 7 Rehearing Order also denied a request to reopen and supplement the record. On January 7, 2013, Mr. Michael Mojica filed a request for rehearing of the December 7 Rehearing Order's denial of the request to reopen and supplement the record. As discussed below, Mr. Mojica's request for rehearing is denied.

**Background**

2. In this proceeding, the Commission authorized Millennium to construct and operate a compressor station and ancillary facilities in the Town of Minisink, New York to enable the transportation of an additional 225,000 dekatherms of gas per day to Algonquin Gas Transmission LLC (Algonquin) at Ramapo, New York.<sup>2</sup> Among other things, the certificate order and the December 7 Rehearing Order rejected arguments by nearby landowners and residents contending that locating the compressor station in

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<sup>1</sup> 141 FERC ¶ 61,198 (2012) (December 7 Rehearing Order).

<sup>2</sup> The earlier orders in this proceeding provide detailed background information about the project and the landowners' environmental issues and need not be repeated here. See *Millennium Pipeline Co., L.L.C.*, 140 FERC ¶ 61,045, *stay of notice to proceed denied*, 141 FERC ¶ 61,022, *order denying and dismissing requests for reh'g, denying request to reopen and supplement the record, and denying requests for stay*, 141 FERC ¶ 61,198 (2012). (Wellinghoff, Chairman, LaFleur, Comm'r, dissenting).

Wagoner, New York would be a preferable alternative. The Commission found that if the proposed compressor station were moved to the Wagoner site, the Neversink Segment of pipeline, which operates as a constraint point on Millennium's system, would also have to be replaced to make delivery of the additional volumes of gas to Algonquin at Ramapo hydraulically feasible.<sup>3</sup> The Commission concluded that while there were some environmental advantages to the Wagoner Alternative, the greater negative environmental and landowner impacts associated with replacing the Neversink Segment outweighed the Wagoner Alternative's advantages.<sup>4</sup>

3. On November 30, 2012, approximately three months after the 30-day statutory deadline for filing requests for rehearing had expired, Mr. Mojica, the Minisink Residents for Environmental Preservation and Safety (MREPS), and two other Town of Minisink residents filed a motion to reopen and supplement the record with an engineering analysis by Mr. Richard Kuprewicz, an MREPS consultant. Mr. Kuprewicz asserted that, based upon his analysis of information filed by Millennium, the Minisink Compressor Project will result in "extremely high actual gas velocities" (estimated to exceed approximately 60 feet per second (ft/s)) on the Neversink Segment. Mr. Kuprewicz stated that such velocities exceed "prudent design standards" and safety margins "that are intended to avoid gas transmission pipeline rupture," and questioned the adequacy of any previous hydraulic study used to approve the Minisink Compressor Project.

4. The December 7 Rehearing Order denied the request to reopen and supplement the record.<sup>5</sup> Nevertheless, the order analyzed Mr. Kuprewicz's report and found that Mr. Kuprewicz, among other things, provided no support for his assertion that 60 ft/s gas velocities were inconsistent with prudent design standards and safety margins.<sup>6</sup>

5. On December 19, 2012, Mr. Mojica, MREPS, and two other Town of Minisink residents filed in the U.S. Court of Appeals for the District of Columbia a joint petition for review of the Commission's orders in this proceeding.<sup>7</sup> In his request for rehearing,

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<sup>3</sup> The Neversink Segment is a 24-inch-diameter portion of Millennium's otherwise 30-inch-diameter mainline located upstream of the Minisink Compressor Station.

<sup>4</sup> *But see Millennium*, 140 FERC ¶ 61,045 at 61,218-21.

<sup>5</sup> December 7 Rehearing Order, 141 FERC ¶ 61,198 at P 13.

<sup>6</sup> *Id.* PP 75-80.

<sup>7</sup> *Minisink Residents for Environmental Protection and Safety v. FERC*, Docket No. 12-1481 (D.C. Cir. December 19, 2012).

Mr. Mojica states that he has concurrently filed a motion with the court to withdraw his individual petition for review of the December 7 Rehearing Order so that he can seek rehearing of the Commission's denial of the request to reopen and supplement the record.<sup>8</sup>

### **Request for Rehearing**

6. On rehearing, Mr. Mojica asserts that the Commission abused its discretion in failing to reopen and supplement the record to consider Mr. Kuprewicz's report. Mr. Mojica contends that the Commission must consider new evidence that "persuades or compels" a result contrary to the Commission's initial decision and, in light of Mr. Kuprewicz's findings, grant rehearing and vacate the certificate. Mr. Mojica claims that Mr. Kuprewicz's report contradicts the Commission's findings and demonstrates that: (1) the Minisink compressor site, like the Wagoner Alternative site, would necessitate an upgrade to the Neversink Segment; (2) the Minisink Compressor would introduce high-speed gas velocities that would exceed the Neversink Segments's design capacity and raise safety issues; and (3) the discharge pressure at the Minisink Compressor Station falls short of the 1,200 maximum allowable operating pressure (MAOP) needed to assure adequate delivery of gas to Algonquin at Ramapo.

7. Mr. Mojica also contends that the Commission and Millennium delayed in giving him and other landowners access to certain critical energy infrastructure information (CEII) and other non-publicly available information requested pursuant to the Freedom of Information Act (FOIA), which prevented the timely filing of Mr. Kuprewicz's engineering analysis. Finally, Mr. Mojica contends that the Commission was arbitrary and capricious when it considered comments by the Town of Minisink submitted after the 30-day statutory deadline for rehearing requests, while refusing to reopen the record to consider Mr. Kuprewicz's report.

### **Discussion**

8. In order to persuade the Commission to exercise its discretion to reopen the record, the requesting party must demonstrate the existence of "extraordinary circumstances."<sup>9</sup> The Commission has held that the requesting party "must demonstrate a change in circumstances that is more than just material — it must be a change in core

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<sup>8</sup> MREPS and the two other residents did not withdraw their petitions for review.

<sup>9</sup> See *California Independent System Operator Corp.*, 121 FERC ¶ 61,193, at P 14 (2007) and *CSM Midland Inc.*, 56 FERC ¶ 61,177, at 61,624 (1991).

circumstances that goes to the very heart of the case.”<sup>10</sup> This policy against reopening the record except in extraordinary circumstances is based on the need for finality in the administrative process.<sup>11</sup>

9. Mr. Mojica claims that Mr. Kuprewicz’s report directly contradicts the Commission’s assumptions and conclusions in this proceeding. While the report takes issue with the Commission’s conclusion that the proposed project does not require replacement of the Neversink Segment, the Commission did not find the report persuasive. Specifically, the December 7 Rehearing Order examined Mr. Kuprewicz’s report and found that the report: (1) did not identify any support or authority for the assertion that 60 ft/s gas velocities are inconsistent with prudent design standards and safety margins; (2) incorrectly assumed constant gas velocities throughout the year and did not evaluate pipeline operations under different scenarios that will occur, such as summer and winter operations, with and without backhaul volumes; and (3) assumed without support that during periods of high demand customers would choose to flow all contract demand through the Neversink Segment and Minisink Compressor Station. Finally, the December 7 Rehearing Order found that Mr. Kuprewicz’s report did not provide any support for his assertion that replacing the Neversink Segment would permit another proposed Millennium project, known as the Hancock Compressor Project, to meet Millennium’s capacity needs associated with the instant project without the construction of compression at either Minisink or Wagoner.<sup>12</sup> Since Mr. Kuprewicz’s report did not provide any authority for his assertion that 60 ft/s gas velocities are inconsistent with prudent design standards and safety margins, and did not support his other assumptions about the project, the report did not compel nor persuade the Commission to reach a decision different from that reached in our earlier orders in this proceeding. The Commission continues to find that Mr. Mojica has failed to demonstrate the existence of extraordinary circumstances that would warrant reopening the record. Thus, the Commission affirms the conclusion in the December 7 Rehearing Order not to reopen the record in this proceeding.<sup>13</sup>

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<sup>10</sup> *CSM Midland Inc.*, 56 FERC at 61,624.

<sup>11</sup> See *Southern Cos.*, 43 FERC ¶ 61,003, at 61,024 (1988) (citing *Bowman Transp., Inc. v. Ark. Best Freight System, Inc.*, 419 U.S. 281, 296 (1974)). See also *Am. Fin. Services Ass’n v. FTC*, 767 F.2d 957, 964, n.5 (D.C. Cir. 1985).

<sup>12</sup> December 7 Rehearing Order, at PP 75-80.

<sup>13</sup> Mr. Mojica contends that good cause exists for the lateness of Mr. Kuprewicz’s report because of the Commission’s slowness in responding to CEII and FOIA requests for information. The Commission’s decision not to reopen the record was not based on

(continued...)

10. On rehearing, Mr. Mojica emphasizes two arguments concerning the hydraulic aspects of the Minisink Compressor Project not addressed in the December 7 Rehearing Order. First, Mr. Mojica contends that the Kuprewicz report shows that the Minisink Compressor Station will not enable Millennium to meet project objectives because the compressor's discharge pressure is less than the 1,200 pounds per square inch gauge (psig) MAOP needed to assure adequate delivery of the additional volumes to Algonquin at Ramapo. While the MAOP on Millennium's mainline is 1,200 psig, except for on the Neversink Segment, where it is 920 psig, Mr. Mojica incorrectly argues that deliveries to Algonquin require a pressure of 1,200 psig. Algonquin's required delivery pressure at Ramapo is 680 psig, as noted in Mr. Kuprewicz's report.<sup>14</sup> While Mr. Kuprewicz characterizes the Minisink compressor's discharge pressure of 845 psig as less than ideal, he does not allege, nor is it the case, that the lower discharge pressure at the Minisink Compressor Station will prevent delivery of all contracted volumes into Algonquin's system at Ramapo.

11. Mr. Mojica also asserts that the December 7 Rehearing Order is inconsistent with the Commission's decision in *Tennessee Gas Pipeline Co.*,<sup>15</sup> contending that in that proceeding the Commission viewed high gas velocities in excess of design capacity as a reason not to grant a certificate. In the cited proceeding, Tennessee proposed to construct, among other things, a pipeline to loop an existing 24-inch-diameter line, a one-mile portion of which traverses the Delaware Water Gap National Recreation Area (NRA). However, rather than build a second line through the NRA, Tennessee proposed to construct a 17.2-mile, 30-inch-diameter pipeline routed around the northern end of the Delaware Water Gap NRA. There were objections to the proposed route from landowners and others, and alternatives were considered. One of the alternatives evaluated would have incorporated the portion of existing 24-inch line that crossed the NRA into the new, 30-inch diameter loop. As described in the *Tennessee* order, the Environmental Assessment determined the alternative to be infeasible because, as

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the lateness of Mr. Kuprewicz's report. Rather, as discussed, the Commission did not reopen the record because Mr. Kuprewicz's report failed to demonstrate the existence of extraordinary circumstances that would warrant doing so. Additionally, the Commission fully addressed concerns raised regarding access to CEII in this proceeding in the December 7 Rehearing Order, and Mr. Mojica has raised no new arguments that persuade us to revisit those determinations here. *See* December 7 Rehearing Order, 141 FERC ¶ 61,198 at PP 70-72.

<sup>14</sup> "Summary of Accufacts Exhibits (CEII)" Exh. 2 of the Kuprewicz report.

<sup>15</sup> 139 FERC ¶ 61,161, at P 86 (2011) (*Tennessee*).

indicated by Tennessee, it would result in gas velocities in the 24-inch pipe significantly above Tennessee's recommended maximum design velocity.<sup>16</sup>

12. The December 7 Rehearing Order recognized that a pipeline's recommended maximum design velocity is a factor in our engineering review of an application to construct and operate facilities but found that Mr. Kuprewicz's report provided no authority for his assertion that the Minisink Compressor Project would result in gas velocities on the Neversink Segment that exceed prudent design standards for any portion of the Millennium pipeline system.<sup>17</sup> Thus, the *Tennessee* order is inapposite here. In any case, every pipeline system is unique. Neither Mr. Kuprewicz nor Mr. Mojica provide any basis to support a conclusion by the Commission that the velocity design criteria and concerns applicable to the segment of pipeline at issue in the *Tennessee* proceeding can or should be applied to the portion of Millennium's system under consideration here.

13. Mr. Mojica asserts that the Commission was arbitrary and capricious in denying the request to reopen the record to consider Mr. Kuprewicz's report while at the same time revising the "conservation easement mitigation requirement" in response to the Town of Minisink's late comments opposing the conservation easement discussed in Environmental Condition 18.<sup>18</sup> The Commission does not believe the two actions to be at all comparable. First, Environmental Condition 18 did not require Millennium to establish a conservation easement, and the Commission did not revise Environmental Condition 18 in the December 7 Rehearing Order.<sup>19</sup> Rather, although the Commission observed that a conservation easement would provide important environmental benefits, in recognition of the disagreement among stakeholders as to the desirability of such an easement, the Commission only required Millennium to provide an update on its efforts/plans to enter the project site into a conservation easement. In its letter filed August 24, 2012, the Town of Minisink did not seek to introduce any additional evidence into the record. The Town did object to what it interpreted as the Commission's

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<sup>16</sup> See Environmental Assessment of the Northeast Upgrade Project, Docket No. CP11-161-000, issue at 3-3 (March 2, 2012) and Resource Report No. 10 at 10.2.5.

<sup>17</sup> December 7 Rehearing Order, 141 FERC ¶ 61,198 at P 76.

<sup>18</sup> The Town of Minisink's comments were filed on August 24, 2012, which was one week after the 30-day statutory deadline for filing requests for rehearing.

<sup>19</sup> Environmental Condition 18 provides that "**Prior to construction**, Millennium shall update the Commission on the status of its plans to enter 42.5 acres of the project site into a conservation easement."

requiring Millennium to enter into a conservation easement over the Town's previously stated objections. But, as explained above, the Commission had not, in fact, conditioned its authorization on Millennium establishing such an easement. The December 7 Rehearing Order found that Millennium's August 24, 2012 filing, in which it informed the Commission that it had determined not to establish a conservation easement but to limit development in some areas and allow farming in other areas complied with Environmental Condition 18 and that Millennium's decision acceptably balanced the desires of the parties to limit the development of the compressor station site. Thus, the Commission's discussion of the Town's filing was a response to comments, not a reopening of the record.

The Commission orders:

Mr. Mojica's request for rehearing of the December 7 Rehearing Order is denied, as discussed in the body of this order.

By the Commission. Chairman Wellinghoff and Commissioner LaFleur are concurring with a joint separate statement attached.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.

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Docket No. CP11-515-003

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WELLINGHOFF, Chairman, and LaFLEUR, Commissioner, *concurring*:

We concur in today's order because we do not believe that Mr. Mojica has met the "extraordinary circumstances" standard for reopening and supplementing the record in this case. However, as noted in our earlier dissents, we believe the record already supports a denial of the application on the basis that the Wagoner Alternative presents an environmentally preferable alternative.

Accordingly, we respectfully concur.

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Cheryl A. LaFleur  
Commissioner

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Jon Wellinghoff  
Chairman