

119 FERC ¶ 61,284
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.

Transcontinental Gas Pipe Line Corporation Docket No. CP06-421-001

ORDER DENYING REQUEST FOR STAY

(Issued June 19, 2007)

1. On May 14, 2007, the Virginia Run Community Association, Inc. (VRCA) and Philip Cookson, Sylvia Ehinger, William Hassan, Bjarne Henderson, Melinda Welch, Philip Shapiro, Sandra Jones, John Enescu, Michelle Brooks, and Charles Caldwell (collectively known as the Virginia Run intervenors) filed a joint request for stay of the order issued in *Transcontinental Gas Pipe Line Corporation*, 119 FERC ¶ 61,039 (April 12, 2007). For the reasons discussed below, we will deny the request for a stay.¹

I. Background

2. The April 12 Order authorized Transcontinental Gas Pipe Line Corporation (Transco) to construct and operate facilities in Pittsylvania County, Virginia, Campbell County, Virginia, and Fairfax County, Virginia in order to transport up to 165,000 dekatherms of natural gas per day to Baltimore Gas and Electric Company, Columbia Gas of Virginia, and Washington Gas Light Company.

3. In regard to the Fairfax County facilities, Transco proposed to replace by abandonment and removal approximately 3.18 miles of existing 30-inch diameter pipeline with approximately 3.43 miles of 42-inch diameter pipeline (Line D)² and to install pig launcher and receiver facilities on a strip of land owned by the VRCA.³

¹ The VRCA and the Virginia Run intervenors also filed a joint request for rehearing of the April 12 Order. In addition, the Fairfax County Board of Supervisors filed a request for reconsideration of the April 12 Order. We will address these pleadings in a separate order at a later date.

² We authorized Transco to abandon in place an existing 0.25 mile portion of pipeline under road crossings in Fairfax County.

³ The VRCA is a community association of approximately 1,440 homes.

Currently, Transco owns and operates two 30-inch diameter pipelines (Lines A and B) and one 36-inch diameter pipeline (Line C) on VRCA's land. Transco proposed to install the pig launcher and receiver facilities on Line B in order to retrieve the pigs from Line B and insert them into Line D.

4. After analyzing Transco's proposal regarding the pig launcher and receiver facilities, including issues identified by the Virginia Run community, we required modifications to those facilities. Specifically, we authorized Transco to construct and operate pig launcher facilities for Line D and to construct and operate temporary facilities to connect Line B to Line A, conditioned on Transco's installing a piggable "Y" under section 2.55(a) of the regulations within 18 months of the date of the order in this proceeding or demonstrating that the piggable "Y" was not technologically feasible.⁴ Until the feasibility of the piggable "Y" was determined, we required Transco to submit to the Secretary of the Commission quarterly reports detailing the status of feasibility studies, as well as the construction progress for the piggable "Y." In the event that Transco determined that the piggable "Y" was not technologically feasible, we required Transco to submit, for our approval, reports to justify its conclusion and file a revised plan.

II. Request for Stay

5. The VRCA and the Virginia Run intervenors request a stay of construction of the Fairfax County facilities, contending that allowing Transco to commence construction would result in irreparable injury to the environment for which Transco could not pay compensation. In support of this position, they cite *Amoco Production Co. v. Village of Gambell*, 480 U.S. 531 (1987) (*Amoco*); *National Audubon Society v. Department of Navy*, 422 F.3d 174 (4th Cir. 2005) (*Audubon Society*); and *Ohio Valley Environmental Coalition v. Bulen*, 315 F.Supp.2d 821 (S.D. W. Va. 2004) (*Ohio Valley*). Further, they maintain that a stay will not cause substantial harm to other parties, asserting that Transco could meet its construction deadline through the use of overtime or additional construction assistance. For these reasons, they request a stay until favorable action is taken on the request for rehearing or 30 days after an order denying the request for rehearing.

⁴ Due to design and delivery requirements, Transco states that the piggable "Y" cannot be delivered and installed in time to provide service to its expansion customers for the 2007-2008 winter heating season.

III. Discussion

6. In considering a request for stay, we have applied the standards set forth in section 705 of the Administrative Procedure Act⁵ and have granted a stay “when justice so requires.”⁶ In deciding whether justice requires a stay, we generally consider several factors, which typically include: (1) whether the party requesting the stay will suffer irreparable injury without a stay; (2) whether issuing the stay may substantially harm other parties; and (3) whether a stay is in the public interest.⁷ Our general policy is to refrain from granting stays in order to assure definiteness and finality in our proceedings.⁸ If the party requesting the stay is unable to demonstrate that it will suffer irreparable harm absent a stay, we need not examine the other factors.⁹

7. The VRCA and the Virginia Run intervenors claim that absent a stay there will be irreparable injury to the environment. While they do not describe the specific impacts that construction work will have on the environment, they assert that the impacts will be irreversible, and that “compensation cannot recreate what nature took years to build”. They further argue that Transco's failure to provide adequate notice has resulted in inadequate consideration of the environmental impacts of Transco's project as contemplated by the National Environmental Policy Act (NEPA), and that the Commission's failure to ensure proper consideration will constitute irreparable harm to residents of the Virginia Run community. We disagree that allowing Transco's project to go forward will result in irreparable injury justifying a stay. As explained in the April 12 Order, while Transco's notifications could have identified the locations of above-ground facilities, the residents of the Virginia Run community were not prevented from making informed comments on Transco's proposed facilities and having their concerns thoroughly considered by the Commission.¹⁰ As discussed in the April 12 Order, almost all of Transco's proposed construction will take place in pipeline and utility rights-of-way and we have determined, after a thorough environmental review, that if the proposed facilities are constructed and operated in accordance with the recommended

⁵ 5 U.S.C. § 705.

⁶ See, e.g., *Midwestern Gas Transmission Co.*, 116 FERC ¶ 61,182 (2006) (*Midwestern*); *Independence Pipeline Co.*, 91 FERC ¶ 61,102 at 61,363-64 (2000) (*Independence*).

⁷ See, e.g., *Midwestern* and *Independence*.

⁸ See, e.g., *Sea Robin Pipeline Co.*, 92 FERC ¶ 61,217 at 61,710 (2000).

⁹ *Id.*

¹⁰ 119 FERC ¶ 61,039 at P 26.

environmental mitigation measures, the facilities will not constitute a major federal action significantly affecting the quality of the human environment. In addition, we placed environmental conditions on the construction of the facilities and required mitigation measures to minimize the effect of the construction on the environment. Thus, we conclude that there will not be irreparable injury to the environment.

8. To support their position, the VRCA and the Virginia Run intervenors also cite several cases. In *Amoco*, the Secretary of the Interior granted oil and gas leases to oil companies in the Bering Sea. The Court of Appeals for the Ninth Circuit granted a preliminary injunction against all activity in connection with the leases because the court concluded that it was likely that the Secretary of Interior had failed to comply with the Alaska National Interest Lands Conservation Act. In discussing the issuance of the preliminary injunction, the Supreme Court stated that:

[E]nvironmental injury, by its nature, can seldom be adequately remedied by money damages and is often permanent or at the least of long duration, i.e., irreparable. If such injury is sufficiently likely, therefore, the balance of harms will usually favor issuance of an injunction to protect the environment.¹¹

Despite this statement, the Supreme Court reversed the Ninth Circuit, finding that the injury to environmental resources was not at all probable in that case.

9. In the *Audubon Society* case, the Navy decided to construct a landing field in North Carolina for its Super Hornet aircraft. The District Court found that the Navy's environment impact statement was deficient and issued a permanent injunction preventing the Navy from taking any steps toward the planning, development, or construction of the landing field until it fulfilled its obligations under NEPA. The Court of Appeals for the Fourth Circuit cited the *Amoco* quotation above but, nevertheless, found that the injunction was overly broad and narrowed the injunction to permit the Navy to engage in certain activities that would not harm the environment.

10. The *Ohio Valley* case involved a coal company that applied for a permit to dispose of coal refuse into a tributary of Hominy Creek in West Virginia. The United States Corps of Engineers granted the permit under the Clean Water Act. The plaintiffs moved for a preliminary injunction, among other things. As in the *Audubon Society* case, the District Court quoted from *Amoco* and granted the motion for a preliminary injunction, finding that the balance of harms tipped slightly in favor of the plaintiffs when taking into account the factors used in deciding whether to grant a preliminary injunction.

¹¹ 480 U.S. 535.

11. The court in each of the cited cases acknowledged that long-term or permanent environmental injury that is sufficiently likely to occur may be irreparable and may support the issuance of a stay. Nevertheless, the court examined the relevant facts presented in each case and lifted an injunction (*Amoco*), narrowed the scope of an injunction (*Audubon Society*), and granted an injunction (*Ohio Valley*). Here, as discussed above, the facts demonstrated that almost all of the construction will take place on existing pipeline and utility rights-of-way. In addition, the April 12 Order attached environmental conditions and mitigation measures that will minimize the effect of construction on the environment and ensure that the project does not significantly affect the quality of the human environment.¹² Thus, under the facts here, we conclude that there will be no irreparable environmental injury warranting a stay. The cases cited by the VRCA and the Virginia Run intervenors do not compel us to issue a stay in this proceeding.

12. Accordingly, the request for stay is denied.

The Commission orders:

The request for stay is denied.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

¹² 119 FERC ¶ 61,039 at P 72. With respect to the proposed pigging facilities in Fairfax County, Virginia, the environmental assessment's findings are set forth in the April 12 order at PP 46-69.