

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
William L. Massey, and Nora Mead Brownell.

Transcontinental Gas Pipe Line Corporation

Docket No. CP02-204-001

ORDER DISMISSING REQUEST FOR REHEARING AND DENYING STAY

(Issued July 24, 2003)

1. On December 24, 2002, the Commission issued a certificate under Section 7 of the Natural Gas Act (NGA) authorizing Transcontinental Gas Pipe Line Corporation (Transco) to construct and operate its proposed Trenton Woodbury Expansion Project. The project consists of approximately 7.17 miles of new 36-inch pipeline looping facilities on Transco's existing Trenton Woodbury Line and the related 2.48 mile, 24-inch Fairless Delivery Lateral from the Trenton Woodbury Line to a new power plant being constructed on behalf of Fairless Energy.¹ A portion of the approved pipeline route runs through Hamilton Township, in Mercer County, New Jersey (Hamilton or Township), and the Township owns several parcels of land on the route. On June 16, 2003, Hamilton submitted to the Commission a request for rehearing and stay of the Commission's December 24, 2002 certificate order pending rehearing. For the reasons explained below, we are dismissing and denying Hamilton's requests.

Background

2. Transco filed its application to construct the facilities described above on May 6, 2002. Notice of the application was published in the Federal Register on May 16, 2002,² and in accordance with Commission regulations, the notice provided that persons wishing to obtain legal status in the proceeding should file a motion to intervene on or before May 31, 2002. The notice also explained that a person obtaining party status would be placed on the service list maintained by the Secretary of the Commission and would

¹Transcontinental Gas Pipe Line Corporation, 101 FERC ¶ 61,367 (2002).

²67 Fed. Reg. 34,918.

receive copies of all documents filed by the applicant and all other parties. The Commission received eleven timely motions to intervene.

3. On May 24, 2002, we issued a Notice of Intent to Prepare an Environmental Assessment for the Proposed Trenton Woodbury Expansion Project and Request for Comments on Environmental Issues (NOI). The NOI summarized the proposed project, explained the environmental review process, summarized the environmental issues identified thus far, explained the land acquisition process, and directed landowners on where to find more information about these processes. The NOI also explained how the public could participate in the Commission's review process, and requested written comments from interested persons by June 26, 2002. In addition to publishing the NOI in the Federal Register, the Commission mailed the NOI to about 230 persons, including, as pertinent, local elected officials, local conservation organizations, local libraries and newspapers, and affected property owners. The NOI was mailed to the Clerk of Hamilton Township.

4. On August 5, 2002, Hamilton filed an untimely motion to intervene in the proceeding. The request stated that the Township and its population of 87,000 would be impacted by the proposed expansion. Hamilton averred generally that its participation would help resolve safety and landowner compensation issues. It did not object to the proposed pipeline route or any other aspect of Transco's proposal. Attached to its motion was a draft of an order that Hamilton prepared, apparently for the Commission to use should it grant its motion to intervene.

5. On September 24, 2002, the Commission issued a preliminary determination (PD) that, subject to environmental review, Transco's proposed project was required by the public convenience and necessity.³ The PD noted the timely filing of the eleven intervention requests, and granted a late-filed request for intervention by Baltimore Gas and Electric Company.

6. On October 24, 2002, the Commission issued the Trenton Woodbury Expansion Project Environmental Assessment (EA), inviting comments from interested persons on or before November 25, 2002. Copies of the EA were mailed to, among others, Federal, state, and local agencies, and landowners, including Hamilton. The EA addressed in detail a number of issues, including several system alternatives and several route alignments. The EA noted that the Commission had issued the PD the previous month. Hamilton did not file a comment.

³Transcontinental Gas Pipe Line Corporation, 100 FERC ¶ 61,311 (2002).

7. The Commission thereafter completed its environmental review of the project and issued its order certifying Transco's Trenton Woodbury Expansion Project on December 24, 2002. The December 24 order explained that in making its environmental determinations it had considered responses to the NOI from 15 persons: nine from affected property owners, individuals, and citizens; the Chesterfield Township Historical Society; the Townships of Chesterfield and Hamilton, New Jersey; the U.S. Fish and Wildlife Service; the New Jersey State Historic Preservation Office; the Delaware River Basin Commission; and the Pennsylvania Department of Environmental Protection. In addition, explained the order, the Commission addressed comments on the EA submitted by several affected landowners, and comments filed subsequent to issuance of the EA on environmental issues not addressed in the EA from the New Jersey Casino Reinvestment Development Authority and the Chesterfield Township Historical Society. The Commission found that the proposed pipeline, if constructed and operated in accordance with the mitigation measures contained in the application, as supplemented, and the environmental conditions attached to the order, is environmentally acceptable

Hamilton's Request for Rehearing and Stay

8. In its motion, filed nearly six months after the Commission order certifying the project, Hamilton states that Commission records show that the Commission granted its request to intervene, but never notified Hamilton of this decision. Nor, states Hamilton, did the Commission notify Hamilton regarding any developments, filings, or orders issued in this case. Hamilton states that, if rehearing were granted, Hamilton would attempt to demonstrate to the Commission that there are alternate routes for the proposed expansion that would remove the pipeline route from the densely populated areas of the Township.

9. Hamilton maintains that because the Commission failed to inform Hamilton of its status as an intervenor and failed to inform Hamilton of developments in the application proceeding in accordance with Commission procedures, it denied Hamilton and its citizens their right to participate in this proceeding. Hamilton also states that because it was not able to receive information that may have been submitted by other parties, it was at a distinct disadvantage. Hamilton requests that the Commission provide the Township with the opportunity to submit relevant material to be considered by the Commission, and that the Commission stay the proceedings until Hamilton has had an opportunity to present material before the Commission.

Motion by Transco to Dismiss Hamilton's Requests for Rehearing and Stay

10. Transco moves that the Commission dismiss Hamilton's requests for rehearing and stay because the December 24, 2002 order of the Commission issuing a certificate to Transco for this project is final and not subject to a rehearing request by Hamilton. Transco states that the 30-day time period for seeking rehearing of a Commission order is statutory and cannot be waived by the Commission. The time period for seeking rehearing of the December 24, 2002 order expired on January 23, 2003, and thus Hamilton's June 16 request is untimely, argues Transco. Moreover, notes Transco, only parties to a proceeding may seek rehearing. Because Hamilton's request to intervene was untimely, and the Commission did not, contrary to Hamilton's assertion, specifically grant intervention by Hamilton, Hamilton is not a party to the proceeding, and thus has no standing to file a request for rehearing.

11. Transco also argues that Hamilton's request for rehearing mischaracterizes the Township's involvement in the proceeding. Transco states that it has had extensive personal contacts and meetings with Hamilton from the commencement of the certificate process. Transco identifies seven such meetings over a period extending from December 2001 to December 13, 2002, in which it met with various Hamilton officials including the mayor, emergency response personnel, the attorney for the township, the director of planning, enforcement, and engineering, and the director of economic development. Moreover, avers Transco, as an affected landowner, Hamilton was served with a copy of the Commission's May 24, 2002 NOI, and specifically invited to submit comments on the proposed pipeline route. Transco contends that Hamilton's intervenor status was unrelated to its notice of the project and its ability to submit comments. Hamilton, it says, had knowledge of Transco's application and ample opportunity to express any concerns regarding the route of Transco's expansion project.

12. Transco states that it is ready to begin construction in July 2003 and that any delays at this stage of the proceeding would jeopardize its proposed November 1, 2003 in-service date and the demonstrated need for service by its customers at that time. In a

follow-up letter to its motion Transco states that it has now acquired all the land rights it needs for the project, including easements across six tracts of land owned by Hamilton.⁴

Commission Response

13. Hamilton's request to intervene was filed more than 60 days late. Under the Commission's Rules of Practice and Procedure, a person filing a request to intervene outside the time prescribed in the notice of the proceeding does not become a party unless the Commission specifically grants intervention upon a showing of good cause therefore.⁵ Contrary to Hamilton's assertion, however, the Commission did not act on Hamilton's intervention request.⁶

14. The failure to act on Hamilton's petition to intervene and to include it on the service list of the proceeding was the result of an oversight that should not have happened. The Commission regrets this error and is reviewing its internal procedures to learn how it occurred and how future incidents can be prevented. Nevertheless, as Transco correctly notes, the 30-day period for parties to seek rehearing of Commission orders is a statutory requirement that cannot be waived. Hamilton was never admitted as a party to the proceeding and the 30-day period has expired. Therefore, Hamilton's request for rehearing must be dismissed.

15. Although we must dismiss Hamilton's request for rehearing, we note that Hamilton did have ample opportunity to present its views to the Commission, despite its lack of standing as a party. Hamilton has been aware of the pendency of the project since at least December 2001 when Transco met with the Township's senior planner, approximately

⁴Transco explained that it had reached a contingent agreement for obtaining these properties from Hamilton, but that the Hamilton Township Council refused to adopt a resolution required to implement the agreement. On June 25, 2003, the United States Court for the District of New Jersey granted Transco possession of the easements. See *Transcontinental Gas Pipe Line Corp. v. 6.26 Acres of Land in the Township of Hamilton*, No. 03-1147, slip op. (D.N.J. June 25, 2003).

⁵18 C.F.R. § 385.214(b)(3).

⁶Hamilton argues that a Commission order posted August 5, 2002 on the Federal Energy Regulatory Records System (FERRIS), the Commission's internet web site, approved Hamilton's intervention and conferred party status. This is incorrect. The posting on FERRIS is a reference to the draft order that Hamilton filed with its motion to intervene out of time.

5 months before Transco filed its application with the Commission. In February 2002, Transco met with Hamilton's mayor and others to offer Hamilton what Transco calls a "heads up" regarding its application. In April 2002, Transco met with Hamilton's emergency response personnel. In April 2002, Transco held an open house in Hamilton to inform the public of the project and answer questions. Transco continued to meet with Hamilton officials after it filed its application to discuss routing and other issues.

16. After the application was filed and Hamilton failed to file a timely request to intervene, the Commission provided Hamilton with a copy of the NOI ⁷ and, later, a copy of the EA, both of which invited comments on environmental issues, including the appropriate routing of the proposed pipeline. The EA specifically stated that in September 2002 the Commission had already issued a preliminary determination finding that, on the basis of all pertinent non environmental issues, the Trenton Woodbury Expansion Project would be in the public convenience and necessity. As noted in the December 24, 2002 certificate order, the Commission treated Hamilton's late-filed intervention request as an environmental comment. Despite its invitation to participate, however, Hamilton did not comment on the EA, or at any time state any specific safety concerns or suggest any route alternatives. Until now, Hamilton's expressed interest in this proceeding before the Commission consists of a perfunctory late-filed intervention request.⁸

17. Nor have Hamilton residents been denied the opportunity to participate in the proceeding. In compliance with the Commission's landowner notification requirements, Transco notified all landowners of the project after it filed its application with the Commission. The Commission's NOI and the EA, moreover, were mailed to all affected landowners and adjacent landowners along a utility right-of-way in Hamilton, as well as to the Hamilton Township Clerk and Mercer County officials. In addition, as noted above, several Hamilton Township residents and a Hamilton Township engineer participated in a noticed Site Visit on July 9, 2002, with Commission staff examining other potential routes through Hamilton Township.

⁷A Hamilton Township engineer, moreover, accompanied Commission environmental staff and several Hamilton residents on a site visit in July 2002 to look at potential project route variations within the Township.

⁸Hamilton did send a letter to the Secretary of the Commission asking about the status of its intervention request on September 13, 2002, but never made any other inquiry about the status of the case or attempted to find out why it was not receiving copies of any pleadings from other parties, even after it received the EA.

18. This proceeding has been final for several months, and Hamilton's request to submit evidence at this late date is untimely. In any event, the issues raised by the Township in its request for rehearing, namely the safety of its residents and route alternatives to reduce impact on populated areas, including Hamilton Township, have been considered in the EA and incorporated in the Commission's December 24, 2002 order.

19. Hamilton also requests stay of the proceeding pending rehearing of the Commission's December 24, 2002 order. Because the Commission is dismissing the rehearing request here, the request for stay is denied.

The Commission orders:

The request for rehearing is dismissed and the request for stay is denied by the Township of Hamilton, New Jersey is denied.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.