

131 FERC ¶ 61,255
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Marc Spitzer, Philip D. Moeller,
and John R. Norris.

Midcontinent Express Pipeline, LLC

Docket No. CP08-6-004

ORDER DENYING REHEARING

(Issued June 17, 2010)

1. On September 8, 2009, Ditzler H. and Lisa Jones (Joneses) filed a petition under Rule 1902 of the Commission's Rules of Practice and Procedure¹ for rehearing of a ruling issued under delegated authority in the above-captioned docket.² For the reasons discussed in detail below, we will deny the petition for a rehearing.

I. Background

2. On July 25, 2008, the Commission authorized Midcontinent Express Pipeline, LLC (Midcontinent) to construct and operate an approximately 506-mile long pipeline and related facilities from Southeastern Oklahoma to Western Alabama.³ As part of the 2008 Order, the Commission authorized Midcontinent to construct and operate the Lamar Compressor Station in Lamar County, Texas. In 2009, the Commission authorized Midcontinent, among other things, to add compression at the Lamar Compressor Station.⁴ Midcontinent has constructed the Lamar Compressor Station and placed it into service.

3. The Joneses live at least 2,900 feet from the Lamar Compressor Station. Although the Joneses did not intervene and become a party to the 2008 *Midcontinent* proceeding,

¹ 18 C.F.R. § 385.1902 (2009).

² See Docket No. CP08-6-000, Letter from Charles Brown to Bruce Newsome, Vice President of Midcontinent, August 6, 2009 (August 6 letter).

³ *Midcontinent Express Pipeline, LLC*, 124 FERC ¶ 61,089 (2008) (2008 Order), *order denying reh'g and granting clarification*, 127 FERC ¶ 61,164 (2009).

⁴ *Midcontinent Express Pipeline, LLC*, 128 FERC ¶ 61,253 (2009).

the Joneses commented several times on the draft and final Environmental Impact Statements (EIS) regarding the ambient noise testing associated with the Lamar Compressor Station.⁵

4. In response to comments made on the draft and final EISs about potential noise from the Lamar Compressor Station, as well as other compressor stations proposed by Midcontinent, the Commission included Environmental Condition No. 36 in the 2008 Order which requires measurement and assessment of sound effects at Noise Sensitive Areas (NSAs) close to the Lamar Compressor Station, including the Joneses' home. Environmental Condition No. 36 states in full:

Midcontinent shall conduct noise surveys to verify that the noise attributable to operation of each of the compressor stations does not exceed an Ldn [day-night sound level] of 55 dBA [decibels on the A-weighted scale] at any NSA following the installation of all authorized compressor units at each station and file the results of those surveys with the Secretary **no later than 60 days** after placing all authorized compressor units in service or prior to the start of the next phase of construction, whichever is sooner. If the noise attributable to operation of any of the compressor stations exceeds 55 dBA Ldn at any NSA, Midcontinent shall file a report on what additional noise controls are needed to meet that level and install any required controls **within one year** of the in-service date of the associated compressor unit(s) or prior to the start of the next phase of construction, whichever is sooner. Midcontinent shall confirm compliance with the Ldn of 55 dBA requirement by filing a second noise survey with the Secretary **no later than 60 days** after it installs the additional noise controls or **prior to the start of the next phase of construction**, whichever is sooner.⁶

5. On July 29, 2009, Midcontinent submitted a noise testing protocol that set forth standards and methods that it will employ to demonstrate that noise emissions at the Lamar Compressor Station comply with Commission noise standards. Specifically, Midcontinent contends that its protocol was designed to “quantify noise emissions from the Lamar Compressor Station at each of the 10 NSA locations identified during Project

⁵ 2008 Order, 124 FERC ¶ 61,089 at P 154-157.

⁶ *Id.* Appendix, Environmental Condition No. 36.

certification.”⁷ In the August 6 letter to Midcontinent, approval of the noise compliance protocol to test for noise conditions at the Lamar Compressor Station was granted.

6. On September 8, 2009, the Joneses filed a petition for rehearing of the August 6 letter. The Joneses contend that “[t]he protocol proposed by Midcontinent would not measure noise attributable to the compressor station at the NSAs.” Rather, the Joneses assert that the protocol “would merely measure noise at points relatively close to the station and extrapolate from those measurements to estimates of compressor station noise at the NSAs.”⁸ Specifically, the Joneses request a different four-hour testing period than proposed in the protocol; that noise be extrapolated from the loudest measurement site, rather than from areas directionally similar to the NSAs; that measurements should only be obtained at wind speeds up to 10 miles per hour; and that the first two American National Standards Institute (ANSI) standards in the protocol be replaced by newer standards.

7. In a pleading filed contemporaneously with their petition for rehearing, the Joneses request intervention. The Joneses make clear that they do not seek intervention to “contest retroactively the issuance of the certificate” but to contest the protocol by which the certificate holder, i.e., Midcontinent, proposes to determine compliance with the Commission’s noise regulations.⁹

II. Discussion

8. The 2008 Order required Midcontinent to conduct noise surveys to verify that the noise attributable to the Lamar Compressor Station does not exceed an Ldn of 55 dBA at any NSA. On July 29, 2009, Midcontinent submitted a noise testing protocol that set forth standards and methods that it will employ to demonstrate that noise at the Lamar Compressor Station complies with this requirement. The August 6 letter approved Midcontinent’s protocol.

9. The Commission does not have regulations specifying a methodology which must be used to demonstrate compliance with our noise requirement. In its noise testing protocol, Midcontinent has chosen to follow the ANSI standards for noise compliance testing measurements and procedures, which include specifications for wind speed and favorable noise propagation hours. The ANSI standards are widely-accepted within the

⁷ Midcontinent Express Pipeline LLC Noise Compliance Testing Protocol, July 2009 at 2.

⁸ Petition for Rehearing at 3.

⁹ Since the Joneses do not seek to challenge the issuance of the certificate to Midcontinent, we will grant the untimely motion to intervene.

industry and used frequently by the pipelines under the Commission's jurisdiction. However, comparing the relative merits of ANSI to other standardized noise testing methodologies is beyond the scope of this proceeding. Therefore, we will deny the Joneses' petition for rehearing of the Director's acceptance of Midcontinent's proposed testing protocol.

10. However, we note that while the Joneses object in their rehearing to the testing standards and methods that Midcontinent will use to measure noise, they do not allege that noise attributable to the operation of Midcontinent's compressor station has exceeded the 55dBA level at NSAs, imposed by Environmental Condition No. 36.¹⁰ Should the Joneses or any other landowner suspect that the noise from the operating station exceeds the 55 dBA standard, the landowner can report the situation to our dispute resolution service helpline.

The Commission orders:

- (A) The Joneses' untimely motion to intervene is granted.
- (B) The Joneses' petition for rehearing is denied.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

¹⁰ We note that the compressor station was not fully operational when the Joneses filed for rehearing. However, the compressor station is now constructed and fully operational. Midcontinent estimates that it will conduct its noise testing in July, if full capacity is nominated requiring it to operate all six compressor station engines.