

160 FERC ¶ 61,042  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Neil Chatterjee, Chairman;  
Cheryl A. LaFleur, and Robert F. Powelson.

Transcontinental Gas Pipe Line Company, LLC

Docket No. CP15-138-001

ORDER DENYING STAY

(Issued August 31, 2017)

1. On February 3, 2017, the Commission issued an Order Issuing Certificate under section 7(c) of the Natural Gas Act authorizing Transcontinental Gas Pipe Line Company, LLC (Transco) to construct and operate its Atlantic Sunrise Project in Pennsylvania, Maryland, Virginia, North Carolina, and South Carolina.<sup>1</sup> The project is intended to increase firm incremental transportation service on the Transco system by 1,700,002 dekatherms (Dth) per day.

**I. Requests For Stay**

2. On February 10, 2017, Allegheny Defense Project, Clean Air Council, Concerned Citizens of Lebanon County, Heartwood, Lancaster Against Pipeline, Lebanon Pipeline Awareness, and Sierra Club (collectively, Allegheny) filed a request for rehearing and motion for stay of the February 3 Order pending resolution of their rehearing request and any subsequent judicial review.<sup>2</sup> On February 24, 2017, Accokeek, Mattawoman, Piscataway Creeks Communities Council, Inc. (Accokeek) filed a request for rehearing and motion for stay of the February 3 Order, which relies upon the arguments set forth in

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<sup>1</sup> *Transcontinental Gas Pipe Line Company, LLC*, 158 FERC ¶ 61,125 (2017) (February 3 Order).

<sup>2</sup> See Allegheny Request for Rehearing and Motion for Stay, filed Feb. 10, 2017, at 38-46.

Allegheny's earlier pleading.<sup>3</sup> On February 23 and March 10, 2017, Transco filed answers to the Allegheny and Accokeek motions for stay.

3. Numerous requests for rehearing of the February 3 Order were timely filed on March 6, 2017. The rehearing requests filed by the following also include requests for stay of the February 3 Order: (a) Lynda Like (Like); (b) Susan and Justin Cappiello (Cappiello), (c) Follin Smith and Blair and Meghan Mohn (Smith), (d) Geraldine Nesbitt, Narragansett Indian Tribe, and Wampanoag Tribe of Gay Head (Nesbitt), and (e) Stephen and Dorothea Hoffman and Gary and Michelle Erb (Hoffman/Erb).<sup>4</sup> On March 21, 2017, Transco filed answers to motions for stay filed by Like, Cappiello, Smith, Nesbitt and Haffman/Erb.

4. For the reasons discussed below, the Commission finds that justice does not require a stay and therefore denies the motions for stay.

## II. Commission Determination

5. The Commission grants a stay when "justice so requires."<sup>5</sup> In determining whether this standard has been met, the Commission considers several factors, including: (1) whether the party requesting the stay will suffer irreparable injury without a stay; (2) whether issuing a stay may substantially harm other parties; and (3) whether a stay is

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<sup>3</sup> See Accokeek Request for Rehearing and Motion for Stay, filed Feb. 24, 2017, at 5-6 ("In order to avoid duplicative arguments and prompt administrative efficiency, [Accokeek] adopts and relies upon the arguments in Allegheny's request for rehearing.").

<sup>4</sup> The Commission has yet to consider the merits of any of the requests for rehearing. Nor in this order do we address the propriety of requests for rehearing and motions for stay filed on behalf of those who have not previously intervened in this proceeding, or those that were filed outside of the thirty-day statutory period for rehearings. See 18 C.F.R. § 385.714(b) (2017) (establishing the time for filing requests for rehearing).

<sup>5</sup> *Tennessee Gas Pipeline Co., L.L.C.*, 157 FERC ¶ 61,154, at P 4 (2016); *Algonquin Gas Transmission, LLC*, 156 FERC ¶ 61,111, at P 9 (2016); *Enable Gas Transmission*, 153 FERC ¶ 61,055, at P 118 (2015); *Transcontinental Gas Pipe Line Co.*, 150 FERC ¶ 61,183, at P 9 (2015).

in the public interest.<sup>6</sup> If the party requesting the stay is unable to demonstrate that it will suffer irreparable harm absent a stay, we need not examine other factors.<sup>7</sup>

### A. Irreparable Harm

6. In order to support a stay, the movant must substantiate that irreparable injury is “likely” to occur.<sup>8</sup> The injury must be both certain and great and it must be actual and not theoretical. Bare allegations of what is likely to occur do not suffice.<sup>9</sup> The movant must provide proof that the harm has occurred in the past and is likely to occur again, or proof indicating that the harm is certain to occur in the near future.<sup>10</sup> Further, the movant must show that the alleged harm will directly result from the action which the movant seeks to enjoin.<sup>11</sup>

#### 1. Allegheny, Accokeek, and Hoffman/Erb

7. Allegheny and Accokeek offer no support for their assertion that the parties would suffer irreparable injury without a stay. Allegheny states that they have “members who live, work and recreate along the proposed pipeline route” and who have “been active in community meetings and protests against the pipeline.”<sup>12</sup> For its part, Accokeek states that it “will be left without an adequate remedy at law to address the irreparable harm inflicted by construction.”<sup>13</sup> Neither Allegheny nor Accokeek have provided specific

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<sup>6</sup> Ensuring definiteness and finality in our proceedings also is important to the Commission. See *Constitution Pipeline Co.*, 154 FERC ¶ 61,092, at P 9 (2016); *Enable*, 153 FERC ¶ 61,055 at P 118; *Millennium Pipeline Co.*, 141 FERC ¶ 61,022, at P 13 (2012).

<sup>7</sup> See, e.g., *Algonquin Gas Transmission*, 156 FERC ¶ 61,111 at P 9.

<sup>8</sup> See *Transcontinental Gas Pipe Line Co.*, 150 FERC ¶ 61,183 at P 10 (citing *Wisconsin Gas Co. v. FERC*, 758 F.2d 669, 674 (D.C. Cir. 1985)).

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> Allegheny Request for Rehearing at 41.

<sup>13</sup> Accokeek Request for Rehearing at 6.

information regarding the alleged injury inflicted upon their members by the Atlantic Sunrise Project.<sup>14</sup>

8. Allegheny notes that the Atlantic Sunrise Project would involve a 50-foot-wide permanent right-of-way and would impact over 3,740 acres temporarily during construction and over 1,200 acres permanently through operation.<sup>15</sup> Allegheny also contends that the project's emissions would have an impact on air quality.<sup>16</sup> Hoffman/Erb raise similar concerns.<sup>17</sup> Finally, Allegheny observes that Transco has a pending request for partial notice to proceed with tree-clearing activities.<sup>18</sup> Accokeek simply states that, absent a stay, "the public will permanently lose important environmental resources."<sup>19</sup> These generalized claims of environmental harm do not constitute sufficient evidence of irreparable harm that would justify a stay.<sup>20</sup>

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<sup>14</sup> See, e.g., *Transcontinental Gas Pipe Line Co.*, 150 FERC ¶ 61,183 at P 13 (denying stay where "the group ... provided only unsupported allegations in the form of generalized environmental assertions about the project ... [and] no analysis incorporating facts or specific information"); *Ruby Pipeline, L.L.C.*, 134 FERC ¶ 61,103, at P 19 (2011) (denying stay where "Petitioners' request is brief and includes no analysis incorporating facts or specific information. Moreover, Petitioners' member declarations assert generalized harm to the individuals without identifying how, why, or where construction of the Ruby project causes that harm.").

<sup>15</sup> Allegheny Request for Rehearing at 40.

<sup>16</sup> *Id.* at 41.

<sup>17</sup> Hoffman/Erb Request for Rehearing and Motion for Stay, filed Mar. 6, 2017, at 21 (alleging that project will inflict "irreparable environmental harm from construction of a right-of-way across the Landholder's much beloved home properties .... The Project will also contributed significantly to air pollution during both construction and operation.")

<sup>18</sup> Allegheny Request for Rehearing at 43 n.6.

<sup>19</sup> Accokeek Request for Rehearing at 6.

<sup>20</sup> See *Tennessee Gas Pipeline Co., L.L.C.*, 155 FERC ¶ 61,087, at P 5 (2016) (finding that a "generalized claim [of environmental harm] does not constitute evidence of irreparable harm that would justify a stay"); *Florida Southeast Connection, LLC*, 154 FERC ¶ 61,264, at P 8 (2016) (denying stay premised upon "generalized environmental harm without identifying specifics"); *Empire Pipeline, Inc.*, 153 FERC ¶ 61,379, at P 11 (2015) (denying stay where movant "provided only unsupported, generalized allegations about environmental harm resulting from the project"); *Transcontinental Gas Pipe Line*, 150 FERC ¶ 61,183 at P 19 (denying stay

9. Moreover, the Final Environmental Impact Statement (EIS) prepared in this proceeding examined the project's impact on land use and concluded that, "[i]n general, land use-related impacts associated with the Project would include the disturbance of existing uses within the right-of-way during construction and a new permanent right-of-way for operation of the pipeline."<sup>21</sup> The final EIS further explained that "land retained as new permanent right-of-way would generally be allowed to revert to its former use, except for forested land .... [The] maintained right-of-way would be mowed no more than once every 3 years, but a 10-foot-wide strip centered over the pipeline might be mowed annually to facilitate corrosion and other operational surveys."<sup>22</sup> The Commission agreed with final EIS's conclusion that, with adherence to Transco's avoidance and mitigation plans, along with the environmental conditions imposed by the February 3 Order, "the overall impacts on land use will be adequately minimized."<sup>23</sup>

10. With respect to operational emissions, we note initially that any such impacts will not occur until construction is completed. Accordingly, we do not believe that they are sufficiently imminent to support a stay. Moreover, the February 3 Order discussed the modeling analysis conducted by Commission staff. This analysis indicating that, at two compressor stations, modeled concentrations for one-hour NO<sub>2</sub> have the potential to exceed the national ambient air quality standards (NAAQS) during some operating scenarios and meteorological conditions. But "project operations will not incrementally contribute to the potential exceedance .... [R]ather, the modeled exceedances are from existing equipment."<sup>24</sup> In order to address this issue, the Commission required Transco to monitor air quality at certain compressor stations for a period of three years after the newly modified facilities begin operations and to report and develop a plan of action to correct any violation of the NAAQS. In light of this continued monitoring, and the implementation of the environmental conditions imposed in the February 3 Order, the Commission concluded that "operational emissions will not have a significant impact on local or regional air quality."<sup>25</sup>

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request where movant "only asserts generalized environmental harm to its members without identifying specifics"); *Tennessee GasPipeline Co.*, 96 FERC ¶ 61,116, at 61,446 (2001) ("general allegations do not constitute evidence of irreparable harm that would justify staying the orders in this proceeding").

<sup>21</sup> Final EIS at 4-132.

<sup>22</sup> *Id.*

<sup>23</sup> February 3 Order, 158 FERC ¶ 61,125 at P 105.

<sup>24</sup> *Id.* P 118.

<sup>25</sup> *Id.* P 119.

11. Allegheny also appears to argue that, if the Commission were to authorize tree clearing activities, such tree clearing would constitute irreparable harm. We disagree. The proposed tree clearing activities addressed in Transco's request for partial notice to proceed would be conducted by hand, using equipment that will not rut soils or damage root systems.<sup>26</sup> The Commission has denied motions to stay non-mechanized tree felling, particularly where, as here, there is no allegation of irreparable harm.<sup>27</sup>

## 2. Ms. Like, Ms. Smith, and the Cappellos

12. Ms. Like, Ms. Smith, and the Cappellos are landowners who claim that they will be irreparably harmed through the eminent domain proceedings brought against them by Transco and the pipeline's alleged failure to comply with the Uniform Relocation and Assistance Act.<sup>28</sup> As we have previously explained, although the pipeline may have commenced eminent domain proceedings, it is still possible that the parties may reach an accommodation. Moreover, none of the landowners have quantified or qualified the uncompensated damages they will suffer.<sup>29</sup> Finally, economic loss alone is not sufficient to constitute irreparable harm to justify a stay.<sup>30</sup>

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<sup>26</sup> See Transco's Request for Partial Notice to Proceed, filed Feb. 9, 2017 at 2.

<sup>27</sup> See, e.g., *Constitution Pipeline*, 154 FERC ¶ 61,092 at P 10; *Transcontinental Gas Pipe Line*, 150 FERC ¶ 61,183 at P 16.

<sup>28</sup> See Like Petition for Rehearing and Request for Stay, filed Mar. 6, 2017, at 10; Cappello Petition for Rehearing and Request for Stay, filed Mar. 6, 2017, at 13; Smith Petition for Rehearing and Request for Stay, filed Mar. 6, 2017 at 14. The landowners assert that the Uniform Relocation and Assistance Act, 42 U.S.C. § 4601 *et seq.*, requires federal agencies and private companies empowered with the right of federal eminent domain to provide financial assistance to individuals and businesses displaced by the pipeline.

<sup>29</sup> *Midwestern Gas Transmission Co.*, 116 FERC ¶ 61,182, at P 162 (2006) (“[R]egardless of the fact that Midwestern may have commenced eminent domain proceedings, it is still possible for individual landowners to work with Midwestern to accommodate some of their needs. Further, any economic loss, by itself, is not sufficient to constitute irreparable harm. Further, the Landowners have not quantified or qualified the uncompensated damages they will suffer.”).

<sup>30</sup> *Algonquin Gas Transmission, LLC*, 154 FERC ¶ 61,048, at P 267 (2016) (“regardless of the fact that Algonquin may have commenced eminent domain proceedings, it is still possible for individual landowners to work with Algonquin to accommodate some of their needs. Further, any economic loss, by itself, is not sufficient to constitute irreparable harm”); *Eastern Shore Nat. Gas Co.*, 112 FERC ¶ 61,171,

13. Ms. Like, Ms. Smith, and the Cappiellos also contend that the Atlantic Sunrise Project will result in tree felling, soil damage and “other adverse environmental impacts.”<sup>31</sup> These generalized claims do not constitute sufficient evidence of irreparable harm that would justify a stay.<sup>32</sup> And, as discussed above, the Commission examined land use impacts and concluded that they will be adequately minimized.<sup>33</sup>

### 3. Ms. Nesbitt

14. Ms. Nesbitt, a landowner affected by the project, contends that tree-felling will lead to irreparable injury due to the loss of mature trees.<sup>34</sup> In the February 3 Order, the Commission acknowledged that the Atlantic Sunrise Project will affect 262.6 acres of interior forest habitat during construction and 118.5 acres during operations.<sup>35</sup> The Commission found, however, that “due to the prevalence of forested habitats within the project area, the eventual regrowth of the cleared areas outside of the permanent right-of-way, and Transco’s avoidance measures during pipeline routing and alternatives consideration, impacts on vegetation, including forested areas, will be reduced to less-than-significant levels.”<sup>36</sup>

15. Ms. Nesbitt also contends that the project will cause irreparable harm by destroying cultural resources located throughout her property.<sup>37</sup> On April 19, 2017, Transco proposed the Central Penn Line North Alternative 13 to modify the originally certificated route in Luzerne and Wyoming Counties Pennsylvania. The revised route would effectively avoid Ms. Nesbitt’s property. Following its environmental review, Commission staff agreed with the Pennsylvania State Historic Preservation Officer that the Central Penn Line North Alternative 13 would have no adverse effect on historic

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at P 12 (2005) (“the possibility that adequate compensatory relief will later be available through the ordinary course of litigation ‘weighs heavily against a claim of irreparable harm.’”) (quoting *Wisconsin Gas Co.*, 785 F.2d at 674).

<sup>31</sup> See Like Petition for Rehearing at 10; Cappiello Petition for Rehearing at 13; Smith Petition for Rehearing at 14.

<sup>32</sup> See note 20 *supra*.

<sup>33</sup> See P 9 *supra*.

<sup>34</sup> Nesbitt Petition for Rehearing and Request for Stay, filed Mar. 6, 2017 at 86.

<sup>35</sup> See February 3 Order, 158 FERC ¶ 61,125 at P 92.

<sup>36</sup> See *id.* P 95.

<sup>37</sup> Nesbitt Petition for Rehearing at 86.

properties.<sup>38</sup> In a May 18, 2017 order, the Commission approved the route alternative.<sup>39</sup> In light of the revised route, we find that Ms. Nesbitt has failed to establish any irreparable harm with respect to the cultural resources on her property.<sup>40</sup>

16. In approving the Atlantic Sunrise Project, the Commission fully considered the final EIS prepared by Commission staff and addressed the comments of Allegheny, Accokeek, Ms. Nesbitt and others in the February 3 Order's environmental discussion.<sup>41</sup> The Commission determined that, on balance, the Atlantic Sunrise Project, if constructed and operated in accordance with the application and final EIS, is an environmentally acceptable action.<sup>42</sup> Given this conclusion, we do not believe that denying the motions for stay puts the environment at risk.

### **B. Other Factors**

17. In addition, Transco has a limited window to comply with Fish and Wildlife Service's tree clearing recommendations in order to mitigate impacts on threatened and endangered species in the project area.<sup>43</sup> A stay could jeopardize compliance with these recommendations. Moreover, any delay in construction could delay completion of a project that the Commission has found to be required by the public interest. As explained in the February 3 Order, the Atlantic Sunrise Project is required by the public convenience and necessity and will allow Transco to provide additional transportation service to markets in Pennsylvania, Maryland, Virginia, North Carolina, South Carolina, Georgia, Alabama, and Florida.<sup>44</sup>

18. A number of parties assert that it would be unfair to permit construction to proceed before the issues raised on rehearing are resolved, or while the Commission lacks a

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<sup>38</sup> Environmental Assessment Report in Docket No. CP17-212-000 at 7 (May 18, 2017).

<sup>39</sup> *Transcontinental Gas Pipe Line Company, LLC*, 159 FERC ¶ 62,181 (2017).

<sup>40</sup> *Tennessee Gas Pipeline Co., L.L.C.*, 158 FERC ¶ 61,002, at P 8 (2017). *See also Tennessee Gas Pipeline Co., L.L.C.*, 154 FERC ¶ 61,263, at P 6 (2016) ("the irreparable harm necessary to support a stay must be both certain and great; it must be actual and not theoretical") (internal quotations omitted).

<sup>41</sup> *See* February 3 Order, 158 FERC ¶ 61,125 at PP 68-171.

<sup>42</sup> *See id.* P 172.

<sup>43</sup> *See* Transco's February 8, 2017 Request for Partial Notice to Proceed at 1.

<sup>44</sup> *See* February 3 Order, 158 FERC ¶ 61,125 at PP 4, 33.

quorum. With respect to the latter, we note that the Commission now has a quorum. And during the period it lacked a quorum, judicial forums were available for those who believed immediate relief was necessary.<sup>45</sup> As to the former, we note again that the Commission has not yet considered the merits of the petitions on rehearing, and we will not prejudge them in any manner. To the extent that Transco elects to proceed with construction, it bears the risk that we will revise or reverse our initial decision or that our orders will be overturned on appeal. If this were to occur, Transco might not be able to utilize any new facilities, and could be required to remove them or to undertake further remediation.<sup>46</sup>

19. For these reasons, the Commission finds that justice does not require a stay.

The Commission orders:

The requests for stay filed by Allegheny, Accokeek, Like, Cappiello, Smith, Nesbitt and Hoffman/Erb are denied.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.

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<sup>45</sup> See *Town of Dedham v. FERC*, No. CV 15-12352-GAO, 2015 WL 4274884, at \*2 (D. Mass. July 15, 2015) (“While full review of the [FERC’s] action is not yet available under § 717r pending the outcome of the reconsideration process, Dedham is not without an avenue to the immediate relief it seeks. Under the All Writs Act, Dedham may apply to the Court of Appeals for, and that Court may grant, ancillary relief in aid of its future jurisdiction.”).

<sup>46</sup> See e.g., *Tennessee Gas Pipeline Co., L.L.C.*, 158 FERC ¶ 61,002, at P 12 (2017); *Transcontinental Gas Pipe Line Co., LLC*, 150 FERC ¶ 61,183, at P 20 (2017).

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