

ORAL ARGUMENT NOT YET SCHEDULED**UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

Allegheny Defense Project, <i>et al.</i> ,)	
)	
Petitioners,)	
)	
v.)	
)	Nos. 17-1098, 17-1127
Federal Energy Regulatory Commission,)	& 17-1128 (consolidated)
)	
Respondent.)	
)	

**MOTION OF INTERVENOR TRANSCONTINENTAL GAS PIPE LINE
COMPANY, LLC FOR CLARIFICATION OF ADMINISTRATIVE STAY**

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GLOSSARY

Certificate Order	The Federal Energy Regulatory Commission's February 3, 2017 Order Issuing Certificate for Transcontinental Gas Pipe Line Company, LLC's Atlantic Sunrise Project
FERC	Federal Energy Regulatory Commission
Opposition	Transcontinental Gas Pipe Line Company, LLC's Opposition to Petitioners' Emergency Motion for Stay
PADEP	Pennsylvania Department of Environmental Protection
Petitioners	Petitioners Accokeek, Mattawoman, Piscataway Creeks Communities Council, Inc., Allegheny Defense Project, Clean Air Council, Concerned Citizens of Lebanon County, Heartwood, Lancaster Against Pipelines, Lebanon Pipeline Awareness, and Sierra Club
Project	Transcontinental Gas Pipe Line Company, LLC's Atlantic Sunrise Project
Springer Clarification Declaration	Declaration of R. Christopher Springer In Support of Motion for Clarification
Supplemental Springer Declaration	Supplemental Declaration of R. Christopher Springer
Transco	Intervenor Transcontinental Gas Pipe Line Company, LLC

Intervenor Transcontinental Gas Pipe Line Company, LLC (“Transco”) respectfully moves for clarification of the Court’s Order dated November 6, 2017 issuing an administrative stay of the Federal Energy Regulatory Commission’s (“FERC”) February 3, 2017 Order Issuing Certificate (“Certificate Order”) for Transco’s Atlantic Sunrise Project (“Project”). Petitioners¹ sought a stay because they allege that their members “are threatened with imminent irreparable harm from further construction of the Project” and because the project allegedly will leave an indelible mark “across central Pennsylvania farms, forests and streams.”² The Declarations submitted by Petitioners are all by residents of Pennsylvania.³ Petitioners also appear to interpret the Court’s Order as applying only to construction in Pennsylvania.⁴

The Court’s Order, attached hereto as Addendum B, states that FERC’s Certificate Order is “administratively stayed pending further order of the court. The purpose of this administrative stay is to give the court sufficient opportunity to

¹ Petitioners Accokeek, Mattawoman, Piscataway Creeks Communities Council, Inc., Allegheny Defense Project, Clean Air Council, Concerned Citizens of Lebanon County, Heartwood, Lancaster Against Pipelines, Lebanon Pipeline Awareness, and Sierra Club.

² Petitioners’ Motion for Stay, pp. 14, 15 and n.2.

³ *Id.*, Exhibits A-K.

⁴ Petitioner’s Letter dated November 6, 2017, attached hereto as Addendum A.

consider the emergency motion for stay and should not be construed in any way as a ruling on the merits of that motion.”

The Certificate Order encompasses much more than just the construction currently occurring in Pennsylvania in six construction spreads. The Project involves construction of new facilities or modifications to facilities not just in Pennsylvania, but in Maryland, Virginia, North Carolina and South Carolina as well.⁵ Petitioners did not submit any Declarations of affected members in states other than Pennsylvania. A stay of the Certificate Order would not only stay construction in Pennsylvania, but would stay construction in Maryland, Virginia, North Carolina and South Carolina.⁶

As Transco noted in its response to the Motion, some facilities are already complete and in service pursuant to FERC letter orders⁷, including a replacement of two segments of pipeline on Transco’s main pipeline system in Virginia.⁸ A stay of the Certificate Order could require taking completed facilities out of

⁵ Certificate Order, ¶¶ 5-8, *available at* <https://elibrary.ferc.gov/idmws/common/opennat.asp?fileID=14483853>; Supplemental Declaration of R. Christopher Springer (“Supplemental Springer Declaration”), ¶¶ 12-13, attached as Addendum B to Transco’s Opposition to Petitioners’ Emergency Motion for Stay (“Opposition”).

⁶ *Id.*

⁷ Transco’s Opposition, p. 8; Addendum E to Transco’s Opposition; Supplemental Springer Declaration, ¶¶ 7-9.

⁸ Transco’s Opposition, p. 6; Supplemental Springer Declaration, ¶¶ 5-9.

service, which would have significant adverse impacts on Transco, its customers and the environment. Specifically, the existing Project facilities are currently being used by Transco to provide much-needed “partial path” firm transportation service to the Project customers of up to 400,000 dekatherms of natural gas per day. In addition, because these facilities are integrated into Transco’s existing mainline pipeline system, and are being operated as an essential component of Transco’s existing system, they are necessary for Transco to be able to provide natural gas transportation service to Transco’s existing customers located along the Transco pipeline system. In other words, these facilities cannot be shut down without also shutting down existing Transco facilities. Transco would sustain lost revenue from its existing system, and Transco’s existing customers would be deprived of transportation service, until modifications can be installed to isolate the Project facilities from non-Project facilities. Furthermore, a shutdown of the existing Project facilities will require that the natural gas contained in the facilities be “blown down,” a process by which the gas is vented into the atmosphere, which would result in adverse impacts on the environment.⁹

Transco respectfully seeks clarification that the Court’s Order applies only to stay construction, not operation of completed facilities already in service, and

⁹ Declaration of R. Christopher Springer In Support of Motion for Clarification (“Springer Clarification Declaration”), attached hereto as Addendum C, ¶¶ 5-11.

clarification regarding the facility construction that is affected by the stay – only those in construction spread 5, where the Pantalones, the only directly affected landowners who supported Petitioners’ Motion with a Declaration, own property¹⁰, or all facilities under construction in Pennsylvania, which would encompass six construction spreads and one active horizontal directional drilling operation. The current status of construction in Pennsylvania is described in the Springer Clarification Declaration, ¶¶ 12-16.

At the last minute, Petitioners are seeking to stop construction activities on a \$2.8 billion construction Project, after having known for seven months that construction had begun. The ongoing construction activities have been long planned and publicly announced. Thus, Petitioners should be required to post adequate security in the event they do not prevail on the merits or the Court determines that the administrative stay, or any future stay, should not have been entered. Requiring such security is the only means by which the Court can actually preserve the status quo; otherwise, the stay imposes harsh, and irreversible, sanctions on Transco in advance of any ultimate decision on the merits. Accordingly, Transco also respectfully requests that the Court require the Petitioners to post security in the amount of \$8 million dollars per day for the

¹⁰ Springer Clarification Declaration, ¶ 15.

estimated length of the stay if all construction in Pennsylvania is to be stayed, pursuant to Federal Rule of Appellate Procedure 18(b).¹¹

Immediately upon receipt of the Court's Order, Transco contacted both FERC and the Pennsylvania Department of Environmental Protection ("PADEP"), to discuss cessation of construction and stabilization of the areas already affected by construction. Transco anticipates that to comply with federal environmental permit conditions, it will have to continue installation of certain environmental controls to stabilize disturbed areas, and also continue to monitor, inspect, and repair as necessary environmental controls already installed, as requested by state and federal agencies. There is one horizontal directional drill where the drill is under construction and Transco is seeking guidance from PADEP regarding how the agency wants Transco to handle the drilling pits.¹² Transco will continue to have environmental inspectors monitoring the Rights of Way and will install additional environmental controls to maintain the Rights of Way, as required by

¹¹ Supplemental Springer Declaration, ¶ 30.

¹² Because there is a high risk that if the horizontal directional drill will fail if it is stopped, Transco is seeking to periodically rotate the downhole drill bits or reamers and move them back and forth within the drill holes without advancing the drill hole or conducting additional drilling, to safeguard the integrity of the downhole equipment. This was relief PADEP did not oppose in another case during a stay, to allow the maintenance of the drill holes. Springer Clarification Declaration, ¶ 13.

applicable permits, and will continue to have security personnel patrolling the Rights of Way.

WHEREFORE, Transco respectfully requests clarification of the Court's November 6, 2017 Order as described above.

Respectfully submitted this 7th day of November, 2017.

By: /s/Elizabeth U. Witmer

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ADDENDUM A



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November 6, 2017

Sent via Electronic Mail

Robert H. Solomon, Solicitor
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888 First Street, NE
Washington, DC 20426
robert.solomon@ferc.gov

Re: D.C. Circuit Order Staying Certificate Order for Atlantic Sunrise Pipeline in Allegheny Defense Project et al. v. FERC, No. 17-1098

Dear Mr. Solomon:

As you are aware, on November 6, 2017, in response to Petitioners' Motion for Stay in the above-referenced case, the United States District Court for the District of Columbia Circuit issued an order that administratively stayed the Federal Energy Regulatory Commission's February 3, 2017 Order Issuing Certificate for the Atlantic Sunrise Pipeline. A copy of the Court's order is attached.

The order effectively suspended the Section 7 Certificate for the Atlantic Coast Pipeline. The project is not lawful without a valid Certificate. Accordingly, further construction and other ground disturbing activities related to the Atlantic Sunrise Pipeline must halt immediately. We trust that this is the Commission's understanding of the Court's order as well. We request that the Commission notify Transcontinental Gas Pipe Line Company, LLC, and all persons acting in concert with them that they must cease and desist all construction and ground disturbing activities immediately, pending further order of the court. Please inform us as soon as such notice issues.

Sincerely,

A handwritten signature in blue ink, appearing to read "Derek O. Teaney". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Derek O. Teaney
Counsel for Allegheny Defense Project, Clean Air Council, Concerned Citizens of Lebanon County, Heartwood, Lancaster Against Pipelines, Lebanon Pipeline Awareness, Sierra Club, and Accokeek,

*Mattowoman, Piscataway Creeks Communities
Council, Inc.*

cc (by electronic mail):

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United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 17-1098

September Term, 2017

FERC-CP15-138-000

FERC-CP15-138-001

Filed On: November 6, 2017

Allegheny Defense Project, et al.,
Petitioners

v.

Federal Energy Regulatory Commission,
Respondent

Anadarko Energy Services Company, et al.,
Intervenors

Consolidated with 17-1127, 17-1128

BEFORE: Rogers, Srinivasan, and Wilkins, Circuit Judges

ORDER

Upon consideration of the emergency motion for stay, the oppositions thereto, the reply, and the supplemental opposition, it is

ORDERED that the Federal Energy Regulatory Commission’s February 3, 2017 Order Issuing Certificate be administratively stayed pending further order of the court. The purpose of this administrative stay is to give the court sufficient opportunity to consider the emergency motion for stay and should not be construed in any way as a ruling on the merits of that motion. See D.C. Circuit Handbook of Practice and Internal Procedures 33 (2017).

Per Curiam

FOR THE COURT:
Mark J. Langer, Clerk

BY: /s/
Robert J. Cavello
Deputy Clerk

ADDENDUM B

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 17-1098

September Term, 2017

FERC-CP15-138-000

FERC-CP15-138-001

Filed On: November 6, 2017

Allegheny Defense Project, et al.,
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v.

Federal Energy Regulatory Commission,
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Anadarko Energy Services Company, et al.,
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Consolidated with 17-1127, 17-1128

BEFORE: Rogers, Srinivasan, and Wilkins, Circuit Judges

ORDER

Upon consideration of the emergency motion for stay, the oppositions thereto, the reply, and the supplemental opposition, it is

ORDERED that the Federal Energy Regulatory Commission’s February 3, 2017 Order Issuing Certificate be administratively stayed pending further order of the court. The purpose of this administrative stay is to give the court sufficient opportunity to consider the emergency motion for stay and should not be construed in any way as a ruling on the merits of that motion. See D.C. Circuit Handbook of Practice and Internal Procedures 33 (2017).

Per Curiam

FOR THE COURT:
Mark J. Langer, Clerk

BY: /s/
Robert J. Cavello
Deputy Clerk

ADDENDUM C

DECLARATION OF R. CHRISTOPHER SPRINGER
IN SUPPORT OF MOTION FOR CLARIFICATION

R. CHRISTOPHER SPRINGER, of full age, hereby declares, pursuant to 28 U.S.C. § 1746, as follows:

BACKGROUND

1. I am employed by Transcontinental Gas Pipe Line Company, LLC (“Transco” or the “Company”) as its Project Director for the Atlantic Sunrise Project (the “Project”), and have personal knowledge of the facts contained in this Supplemental Declaration.

2. As Project Director, I am deeply involved with the implementation and planning for construction of the Project. In connection with the planning of the Project, I am familiar with the need for new pipeline capacity on Transco’s pipeline system in order to meet customer demand (these customers are referred to in the industry as “shippers”) and construction requirements, including schedules for the construction of the physical facilities that are proposed. Further, I am generally familiar with the environmental permits, clearances, and approvals needed to begin and complete construction of the Project on a timely basis.

3. I make this Second Supplemental Declaration for the purpose of setting forth certain facts in support of the Motion of Intervenor Transcontinental Gas Pipe Line Company, LLC for Clarification of Administrative Stay.

4. With this Declaration, I am supplementing my previous Declaration, dated October 10, 2017, and my Supplement thereto (“Supplemental Declaration”), dated October 31, 2017, attached as Addenda A and B, respectively, to Transco’s Opposition of Intervenor Transcontinental Gas Pipe Line Company, LLC to Emergency Motion for Stay (“Transco’s Opposition”), in *Allegheny Defense Project, et al., v. FERC*, Case Nos. 17-1098, 17-1127, 17-1128 (consolidated) (D.C. Cir.).

**ADVERSE IMPACTS FROM A SHUTDOWN
OF EXISTING ATLANTIC SUNRISE FACILITIES**

5. As I described in my Supplemental Declaration, some of the Project facilities have been completed and are already in service. Specifically, the Mainline A and B Replacement facilities and Compressor Station 185 valve and yard piping modifications in Prince William County, Virginia, and Compressor Station 190 regulator valves in Howard County, Maryland, all of which are facilities approved in the FERC’s February 3, 2017 Certificate Order for the Project, have been constructed and are currently in service.

6. A stay of the Certificate to operate these existing Project facilities will cause immediate, substantial, certain, and irreparable harm to Transco and its customers.

7. The existing Project facilities are enabling Transco to provide “partial path” firm transportation service to the Project customers of up to 400,000

dekatherms of natural gas per day. A shutdown of the existing Project facilities would prevent Transco from continuing to provide this much-needed service and would cause the customers receiving this service to seek “last-minute” replacement services and/or gas supplies to meet their service obligations. A shutdown of this service also would result in lost revenue to Transco of \$80,000 per day.

8. A shutdown of the existing Project facilities will cause Transco to be unable to perform the obligations contained in its partial path firm transportation service agreements with the Project customers thereby exposing Transco to potential legal liability.

9. Because the existing Project facilities are integrated into Transco’s existing mainline pipeline system and are being operated as an essential component of Transco’s existing system, they are necessary for Transco to be able to provide natural gas transportation service to Transco existing customers located along the Transco pipeline system. In other words, these facilities cannot be shut down without also shutting down existing Transco facilities. Transco would sustain lost revenue from its existing system services, and the Transco’s existing customers would be deprived of transportation service, until modifications can be installed to isolate the Project facilities from non-Project facilities. Transco’s existing pipeline capacity would be reduced by more than 280,000 dekatherms of natural gas per day. This reduction in capacity would occur as the peak winter heating season

approaches, which could result in significant customer impacts if customers were not able to re-source gas supplies. In addition, this reduction in capacity would likely result in Transco issuing demand charge credits to its customers, thereby causing economic harm to Transco. Moreover, if the Station 185 reverse flow piping had to be removed this would require an extended outage of the station and a blowdown of all mainlines to remove the Project taps (which would further degrade capacity in both directions).

10. Furthermore, a shutdown of the existing Project facilities would require that the natural gas contained in the facilities be “blown down,” a process by which the gas is vented into the atmosphere. It is estimated that approximately 34,308 MMBtu (million British Thermal Units) of natural gas would be vented into the atmosphere as a result of the facility blowdown process. In addition to the environmental impact of this release, it would result in a direct monetary loss to Transco of the value of such gas. Transco will also incur unrecoverable costs necessary to maintain or abandon the affected facilities during shut down and to restore and restart such facilities in the event that a restart is permitted.

11. A shutdown of the existing Project facilities would damage Transco’s reputation as a reliable gas transportation service provider, thereby making it more difficult for Transco to compete against other service providers for new business in the gas transportation marketplace.

CURRENT STATUS OF CONSTRUCTION IN PENNSYLVANIA

12. In Pennsylvania, work on the Project continues to progress since my last Declaration. Two road bores and one horizontal directional drill, of the Conestoga River, have started, and trenching of the pipeline has begun. As the result of the road bore, one public road has been closed.

13. Because there is a high risk that if the horizontal directional drill will fail if it is stopped, we are seeking to periodically rotate the downhole drill bits or reamers and move them back and forth within the drill holes without advancing the drill hole or conducting additional drilling, to safeguard the integrity of the downhole equipment. This was relief PADEP did not oppose in another case during a stay, to allow the maintenance of the drill holes. See the order attached as Exhibit 1 from the Pennsylvania Environmental Hearing Board.

14. In Spread 1, 27,665 feet have been cleared and 20,645 feet graded; in Spread 2, 31,700 feet have been cleared and 9,764 feet graded; in Spread 4, 44,108 feet cleared and 7,105 feet graded and 3,000 feet of trenches were installed; in Spread 5, 16,900 feet cleared and 1,600 feet graded, and 57,340 feet of pipe hauled to the pipe yard; in Spread 6, 134,703 feet cleared and 39,200 feet graded and 1,200 feet of pipe strung on the Rights of Way, in addition two road bores are in progress; and in Spread 7, 33,338 feet cleared and 15,549 feet graded, and 1,575 feet of pipe has been welded, installed in the trench and backfilled, in addition one

horizontal directional drill has started, with 900 feet of pilot hole of 3,859 feet drilled, and with drilling in the east pit advancing 843 feet and drilling in the west pit advancing 83 feet.

15. The Pantalones own property directly affected by the Project located in construction spread 5. Mrs. Pantalone provided Declarations in support of the Petitioners' Motion at Exhibits A and B of Petitioners' Addendum. Clearing has now been completed on the Rights of Way on the Pantalone property, and required environmental controls were being installed on November 6, 2017.

16. I or persons under my direction and control have provided notice to FERC and to the Pennsylvania Department of Environmental Protection regarding the Court's Order, and we are in the process of consulting with federal and state agencies regarding stabilizing the disturbed Rights of Way, as well as to the two road bores and the horizontal directional drill of the Conestoga River as required by applicable environmental permits.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on November 7, 2017



R. CHRISTOPHER SPRINGER

Exhibit 1



COMMONWEALTH OF PENNSYLVANIA
ENVIRONMENTAL HEARING BOARD

CLEAN AIR COUNCIL, THE DELAWARE :
RIVERKEEPER NETWORK, AND :
MOUNTAIN WATERSHED ASSOCIATION, :
INC. :

v. :

EHB Docket No. 2017-009-L

COMMONWEALTH OF PENNSYLVANIA, :
DEPARTMENT OF ENVIRONMENTAL :
PROTECTION and SUNOCO PIPELINE, L.P., :
Permittee :

ORDER

AND NOW, this 25th day of July, 2017, upon consideration of Sunoco Pipeline, L.P.’s Verified First Emergency Motion for Clarification of the Board’s July 25, 2017 Order, it is hereby ordered that such motion is **granted**. Sunoco Pipeline, L.P. shall be permitted to periodically rotate the downhole drill bits or reamers and move them back and forth within the drill holes without advancing the drill hole or conducting additional drilling, to safeguard the integrity of the downhole equipment.

ENVIRONMENTAL HEARING BOARD

s/ Bernard A. Labuskes, Jr. _____
BERNARD A. LABUSKES, JR.
Judge

DATED: July 25, 2017

c: For the Commonwealth of PA, DEP:
William J. Gerlach, Esquire
Gail Guenther, Esquire
Margaret O. Murphy, Esquire
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**CERTIFICATE OF COMPLIANCE WITH TYPE-VOLUME LIMIT,
TYPEFACE REQUIREMENTS, AND TYPE-STYLE REQUIREMENTS**

1. This motion complies with the type-volume limit of Fed. R. App. P. 27(d)(2)(A) because, excluding the parts of the document exempted by Fed. R. App. P. 32(f) and 27(a)(2)(B), this motion contains 1,124 words.

2. This motion complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type-style requirements of Fed. R. App. P. 32(a)(6) because this motion has been prepared in a proportionally spaced typeface using Microsoft Word in 14 point Times New Roman.

Dated: November 7, 2017

/s/Elizabeth U. Witmer

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Transcontinental Gas Pipe Line

Company, LLC

CERTIFICATE OF SERVICE

I hereby certify that on November 7, 2017, the foregoing Motion of Intervenor Transcontinental Gas Pipe Line Company, LLC for Clarification of Administrative Stay has been filed and served electronically through the Court's CM/ECF system on all registered counsel, as follows:

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Dated: November 7, 2017

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