

162 FERC ¶ 61,241  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Kevin J. McIntyre, Chairman;  
Cheryl A. LaFleur, Neil Chatterjee,  
Robert F. Powelson, and Richard Glick.

Millennium Pipeline Company, L.L.C.

Docket No. CP16-486-000

ORDER DENYING STAY

(Issued March 19, 2018)

1. On November 28, 2017, the Commission issued under order pursuant to section 7(c) of the Natural Gas Act authorizing Millennium Pipeline Company, L.L.C. (Millennium) to construct and operate pipeline, compression, and ancillary facilities in Orange, Sullivan, Delaware, and Rockland Counties New York (Eastern System Upgrade Project).<sup>1</sup>

**I. Request for Stay**

2. On December 1, 2017, Delaware Riverkeeper Network (Rivekeeper) moved for a stay pending resolution of Riverkeeper's concurrently-filed request for rehearing of the November 28 Order.<sup>2</sup> On December 18, 2017, Millennium filed an answer to Riverkeeper's motion. On December 19, 2017, Pramilla Malick, on behalf of Protect Orange County, also filed a request for rehearing of the November 28 Order.

3. For the reasons discussed below, the Commission finds that justice does not require a stay and therefore denies the motion for stay.<sup>3</sup>

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<sup>1</sup> *Millennium Pipeline Co., L.L.C.*, 161 FERC ¶ 61,229 (2017) (November 28 Order).

<sup>2</sup> See Riverkeeper December 1, 2017 Motion for Stay.

<sup>3</sup> The Commission has yet to consider the merits of the requests for rehearing filed in this docket.

## II. Commission Determination

4. The Commission grants a stay when “justice so requires.”<sup>4</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 in the public interest.<sup>5</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>6</sup>

5. In order to support a stay, the movant must substantiate that irreparable injury is “likely” to occur.<sup>7</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>8</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>9</sup> Further, the movant must show that the alleged harm will directly result from the action which the movant seeks to enjoin.<sup>10</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>11</sup>

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

<sup>5</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>6</sup> See, e.g., *Tennessee*, 160 FERC ¶ 61,062, at P 4 (2017); *Algonquin*, 156 FERC ¶ 61,111 at P 9.

<sup>7</sup> See *Transco.*, 150 FERC ¶ 61,183 at P 10 (citing *Wisconsin Gas Co. v. FERC*, 758 F.2d 669, 674 (D.C. Cir. 1985)).

<sup>8</sup> *Id.*

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

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

<sup>11</sup> *Tennessee*, 160 FERC ¶ 61,062 at P 4.

6. Riverkeeper makes little effort to substantiate a claim of irreparable injury. It simply asserts that, if the Eastern System Upgrade Project goes forward, Riverkeeper members in the vicinity of the proposed Project route will suffer from the loss of forest lands, wetlands, and streams “in and around where they live, work and recreate,” as well as “alteration of the unique character of their rural community.”<sup>12</sup> But Riverkeeper has failed to provide specific information regarding the purported injury inflicted upon their members by the Eastern System Upgrade Project. Moreover, these are only generalized claims of environmental harm that do not constitute sufficient evidence of irreparable harm to justify a stay.<sup>13</sup>

7. Riverkeeper also contends that when the procedural harm caused by the Commission’s purported failure to undertake an adequate National Environmental Policy Act (NEPA) analysis is combined with potential environmental injury, courts are likely to find irreparable injury.<sup>14</sup> This claim is premised on the purported NEPA violations raised by Riverkeeper throughout this proceeding and addressed, in the first instance, in the November 28 Order.<sup>15</sup> And as discussed above, Riverkeeper has not substantiated its claim of irreparable environmental injury.

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<sup>12</sup> Motion at 5. Riverkeeper also alleges that the Project could lead to the devaluation of their members’ property. Of course, “any economic loss, by itself, is not sufficient to constitute irreparable harm.” *Algonquin*, 154 FERC ¶ 61,048, at P 267 (2016).

<sup>13</sup> See *Tennessee*, 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”); *Transco*, 150 FERC ¶ 61,183 at P 19 (denying stay request where movant “only asserts generalized environmental harm to its members without identifying specifics”); *Tennessee*, 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>14</sup> Motion at 6.

<sup>15</sup> *Id.* at 6, 7-8. See also November 28 Order, 161 FERC ¶ 61,229 at PP 49-181.

8. In addition, Riverkeeper asserts that a stay is necessary because it is likely to succeed on the merits of the claims raised in its request for rehearing.<sup>16</sup> But “the factors we examine when considering whether to grant a stay . . . do not include the likelihood of success on the merits.”<sup>17</sup>

9. Where, as here, a party seeking a stay is unable to establish that it will suffer irreparable harm absent a stay, the Commission need not examine other factors.<sup>18</sup> Nonetheless, we note that any delay in the construction of the Eastern System Upgrade would affect a project that the Commission has found to be required by the public convenience and necessity.<sup>19</sup>

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

The Commission orders:

The request for stay filed by Riverkeeper is denied.

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.

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<sup>16</sup> Motion at 7-8.

<sup>17</sup> *NEXUS Gas Transmission, LLC*, 162 FERC ¶ 61,011, at P 8 (2017).

<sup>18</sup> *Tennessee*, 160 FERC ¶ 61,062 at P 4.

<sup>19</sup> See November 28 Order, 161 FERC ¶ 61,229 at P 22.

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