

175 FERC ¶ 61,148
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Richard Glick, Chairman;
Neil Chatterjee, James P. Danly,
Allison Clements, and Mark C. Christie.

Transcontinental Gas Pipe Line Company, LLC

Docket No. CP17-101-003

ORDER GRANTING REQUEST FOR EXTENSION OF TIME

(Issued May 20, 2021)

On March 19, 2021, Transcontinental Gas Pipe Line Company, LLC (Transco) filed a motion requesting a two-year extension of time, until May 3, 2023, to construct and place into service the Northeast Supply Enhancement Project.¹ For the reasons discussed below, the extension request is granted.

Background

On May 3, 2019, the Commission issued an order authorizing Transco to construct and operate pipeline looping and compression known as the Northeast Supply Enhancement Project, which would expand firm transportation service on Transco's existing system by 400,000 dekatherms (Dth) per day.² The Certificate Order required Transco to construct the project and make it available for service by May 3, 2021.³ The Certificate Order also required Transco to obtain "all

¹Transco March 19, 2021 Request for Extension of Time (Request for Extension of Time).

²See *Transcon. Gas Pipe Line Co., LLC*, 167 FERC ¶ 61,110 (2019) (Certificate Order), *reh'g denied*, 171 FERC ¶ 61,031 (2020) (Order Denying Rehearing). The project consists of: a new compressor unit at Transco's existing Compressor Station 200 in Chester County, Pennsylvania; a new compressor station in Somerset County, New Jersey; the 10.2 miles of 42-inch-diameter onshore Quarryville Loop in Lancaster County, Pennsylvania; the 3.4 miles of 26-inch-diameter onshore Madison Loop in Middlesex County, New Jersey; and the 0.2 miles of 26-inch-diameter offshore Raritan Bay Loop in Middlesex and Monmouth Counties, New Jersey, and Queens and Richmond Counties, New York.

applicable authorizations required under federal law (or evidence of waiver thereof)” prior to commencing construction.⁴

On March 19, 2021, Transco requested a two-year extension of time to complete construction and place the project into service due to delays in receipt of a water quality certification or waiver under section 401 of the Clean Water Act.⁵ On May 15, 2020, the New York State Department of Environmental Conservation (NYSDEC) and New Jersey Department of Environmental Protection (NJDEP) each denied Transco’s applications for a water quality certification.⁶ Transco states that it has not yet refiled its section 401 applications in New York and New Jersey due to uncertainty caused by “the focus by NYSDEC on the need for the [p]roject” and market disruptions caused by the COVID-19 pandemic.⁷ Transco intends to refile section 401 applications in both states before the end of 2021 and “remains fully committed to constructing the project.”⁸ Transco also notes that the proposed extension of time will have no environmental impacts beyond those which the Commission evaluated in the original certificate proceeding.⁹

Notice, Interventions, and Comments

Notice of Transco’s Request for Extension of Time was issued on March 22, 2021, and published in the *Federal Register* on March 26, 2021, with interventions, comments, and protests due on April 6,

4

Certificate Order, 167 FERC ¶ 61,110 at appendix B, envtl. condition 10.

5

Request for Extension of Time at 1.

6

Id. at 2.

7

Id. at 4-5.

8

Id. at 5.

9

Id. at 3.

2021.¹⁰ The Township of South Brunswick, New Jersey; Food & Water Watch; NY/NJ Baykeeper; Princeton Manor; Princeton Manor Homeowners Association; Central Jersey Safe Energy Coalition, Inc.; and Joe Camarota each filed timely motions to intervene and comments opposing the extension.¹¹ Timely, unopposed motions to intervene are granted by operation of Rule 214 of the Commission's Rules of Practice and Procedure.¹² Additionally, over 1,400 individuals filed timely comments opposing the request. Two individuals filed timely comments in favor of the project. Over 50 individuals filed late comments, which are also addressed below.

Commenters argue that: (1) Transco has not demonstrated good cause to justify granting the requested two-year extension; and (2) circumstances have changed since the issuance of the Certificate Order such that there is no longer demand for the project, the project's environmental analysis is stale, the project goes against New York's Climate Leadership and Community Protection Act, and the project no longer meets the Commission's standards. Additionally, many commenters raise arguments seeking to relitigate the issuance of the certificate order.¹³ Such arguments will not be considered here.

Commenters also argue that the Commission failed to give adequate notice of the opportunity to comment on the company's request.¹⁴ They claim that 15 days is inadequate to file comments

10

86 Fed. Reg. 16,200 (Mar. 26, 2021).

11

Each of these intervenors were parties to the underlying certificate proceeding.

12

18 C.F.R. § 385.214(c) (2020).

13

See, e.g., April 1, 2021 Comments of Township of Franklin at 2, 4 (arguing that the project should not be built due to water quality impacts of the project); April 6, 2021 Comments of Kathy Malone at 1 (arguing that the project should not be built due to project's ability to aggravate climate change impacts through GHG emissions); April 6, 2021 Comments of Clean Ocean Action, Inc. at 6-7 (urging the Commission to consider alternatives to the project such as demand response and energy efficiency); April 6, 2021 Comments of Surfrider Foundation at 2-3 (claiming the project should not be constructed due to impacts on ocean recreation and tourism in the region); March 31, 2021 Comments of Karen Crovicz (raising the issue of construction impacts on local property values as a reason for the Commission to cancel the certificate).

14

See, e.g., April 1, 2021 Comments of Township of Franklin at 1, 4-5.

because: there is significant opposition to the project in New Jersey and New York; no impacted landowner other than registered intervenors were specifically notified; the comment period includes major religious holidays and school breaks; commenters need time to consider the impact of state policy changes on the project; and commenters need time to consider the impact of the Commission's recognition of its need to assess greenhouse gas (GHG) impacts in certificate proceedings.¹⁵

We find that the public notice provided adequate opportunity for public participation. Although the Commission is not required to solicit public input before acting upon a request for an extension of time,¹⁶ in *Algonquin*, the Commission, acknowledging the importance of public involvement and transparency in its decision-making processes, directed the Office of the Secretary and Office of Energy Projects to (1) notice all requests for extensions of time to complete construction of Natural Gas Act facilities within 7 calendar days of receiving the request and (2) establish a 15 calendar day intervention and comment period deadline. The issues raised by commenters do not justify extending the comment period.

Discussion

The completion date specified in a certificate order provides what the Commission believes—based on its assessment of circumstances relevant to the specific project—to be a reasonable period of time for the project sponsor to complete construction and make the project available for service.¹⁷ However, construction deadlines may be extended for good cause.¹⁸ “Good cause” can be shown

15

Id. at 4-5.

16

Algonquin Gas Transmission, LLC, 170 FERC ¶ 61,144, at P 38 (2020). (*Algonquin*) (citing *Constitution Pipeline Co., LLC*, 165 FERC ¶ 61,081, at P 23 (2018)); *see also Bangor Hydro-Elec. Co.*, 87 FERC ¶ 61,035 (1999) (grant of extension of time is an administrative matter between Commission and licensee; intervention denied and request for rehearing rejected); *Wis. Valley Improvement Co.*, 88 FERC ¶ 61,054 (1999) (motion to intervene and request for rehearing in proceeding granting extension of time for post-license compliance dismissed; proceeding not type in which intervention and rehearing lie); *Felts Mills Energy Partners, L.P.*, 86 FERC ¶ 61,120, *reh'g denied*, 87 FERC ¶ 61,094 (1999) (motions to intervene and requests for rehearing regarding extensions of time generally are not entertained).

17

Constitution Pipeline Co., LLC, 165 FERC ¶ 61,081, at P 9 (2018) (citing *Arlington Storage Co., LLC*, 155 FERC ¶ 61,165, at P 8 (2016)).

18

18 C.F.R. § 385.2008(a) (2020) (allowing the relevant decisional authority to extend for good cause the time by which any person is required or allowed to act under any statute rule or order).

by a project sponsor demonstrating that it made good faith efforts to meet its deadline but encountered circumstances beyond its control.¹⁹ We consider extension requests on a case-by-case basis.²⁰

Good Cause Exists for Granting an Extension of Time.

The commenters opposing Transco's request for an extension of time assert that Transco's failure to appeal the states' denial of its application for a water quality certificate shows there is not good cause to grant an extension.²¹ Commenters argue that the denial of state water quality certification is not an unforeseeable circumstance worthy of an extension.²² Commenters further argue that Transco made no good faith effort to mitigate the reasons for permit denials.²³ Commenters also state that Transco's framing of the states' denial of water quality certification as related to a flawed demand study is misleading and in bad faith.²⁴ Commenters generally claim that NYSDEC's denial

19

See, e.g., Chestnut Ridge Storage LLC, 139 FERC ¶ 61,149, at P 11 (2012) (denying request for extension of time).

20

See id. P 8.

21

See, e.g., April 1, 2021 Comments of Township of Franklin at 3.

22

Id.

23

Id.

24

Id.

was well reasoned and that there is no configuration of project that would satisfy state water quality standards.²⁵

Transco states that it seeks an extension of time due to an unforeseen delay in obtaining water quality certification from both NYSDEC and NJDEP. Transco explains that, prior to the state agencies' denial of its prior certification applications, it was working diligently with both agencies to provide as much information as possible to the state regulatory agencies²⁶ and that it intends to refile its certification applications.²⁷ Further, Transco notes the COVID-19 pandemic has had an unforeseeable adverse impact on its development of the project.²⁸ Additionally, Transco cites the substantial resources already expended on the project, and notes that nothing in the record reflects any delay on Transco's behalf.²⁹

The Commission has previously found that providing more time for a project applicant to obtain necessary permits can be an appropriate basis for granting an extension of time.³⁰ Neither state's

25

Id.

26

Request for Extension of Time at 4.

27

Id. at 5.

28

Id. at 4.

29

Id.

30

PennEast Pipeline Co., LLC, 170 FERC ¶ 61,138 (2020) (granting a two-year extension of time to complete construction due to a need to obtain new permits); *Constitution Pipeline Co., LLC*, 165 FERC ¶ 61,081 (granting a further two-year extension of time to accommodate the applicant's efforts to obtain a permit from NYSDEC); *Arlington Storage Co., LLC*, 155 FERC ¶ 61,165 (granting a two-year extension of time to accommodate a project applicant's efforts to obtain a permit from NYSDEC). *See also Perryville Gas Storage LLC*, Docket Nos. CP09-418-000, et al. (Oct. 12, 2016) (delegated order) (granting two-year extension of time to complete construction to accommodate delays in obtaining a permit from the Louisiana Department of Natural Resources); *Columbia Gas Transmission, LLC*, Docket No. CP13-8-000 (Sept. 30, 2015) (delegated order) (granting pipeline project two-year extension of time to complete construction due to delays in obtaining waterbody

denial of water quality certification precludes Transco from reapplying. Nor does Transco's lack of pending water quality certification applications prevent a finding of good cause for the extension of time. While pending litigation is one sign of an applicant's intention to complete a project, it is not the sole way a project sponsor can demonstrate good faith efforts to meet a deadline. We are satisfied that Transco has made good faith efforts to meet the deadline and that good cause exists to grant the requested extension. We also emphasize that Transco may not commence construction until it obtains all required permits or authorizations required under federal law, including the section 401 water quality certifications from New Jersey and New York, or each state agency waives its certifying authority.³¹

The Certificate Order's Public Interest Findings and Environmental Analysis are Still Valid

Public Interest

Commenters assert that the Commission should deny Transco's request for an extension of time because circumstances have changed since the Commission's issuance of the Certificate Order in 2019. They argue that the project is no longer in the public interest because: (1) circumstances indicate altered demand for the project's gas;³² and (2) National Grid's ratepayers might get stuck paying for a project they do not need.³³ Transco states that the binding precedent agreements between Transco and National Grid remain in effect, and that the project will remain essential to meeting National Grid's demand once New York City begins to recover from the effects of the COVID-19 pandemic.³⁴

crossing permits); *Bobcat Gas Storage*, Docket Nos. CP09-19-000 et al. (Mar. 25, 2015) (delegated order) (granting a two-year extension of time because applicant had not yet obtained required permit from a state agency).

31

Certificate Order, 167 FERC ¶ 61,110 at appendix B, envtl. condition 10.

32

April 1, 2021 Comments of Township of Franklin at 4.

33

Id. at 5.

34

Request for Extension of Time at 5.

Commission regulations do not establish a particular time period to complete construction of an authorized natural gas facility.³⁵ Rather, certificate orders include completion deadlines to, in part, ensure the information supporting our public convenience and necessity determinations does not go stale with the passage of time.³⁶

Here, Transco requests only to change the timing, not the nature, of the project. Extending the deadline to construct the Northeast Supply Enhancement Project and place it into service within four years of the date of the Certificate Order will not undermine the Commission's findings in the Certificate Order that the project is required by the public convenience and necessity. The Commission has authorized projects and granted extensions setting the in-service deadline of four, five, or six years without expressing concerns about the certificate order's findings becoming stale.³⁷ The Certificate Order found a market need for the project based on Transco's execution of long-term firm transportation precedent agreements with the two National Grid affiliates³⁸ for the entirety of the project's capacity.³⁹ The terms of these agreements extend far beyond May 3, 2023, and commenters do not provide evidence that either shipper intends to cancel the contract.

Environmental Analysis

Commenters suggest that the Commission's public interest and environmental findings no longer remain valid.⁴⁰ They argue that the NYSDEC and NJDEP denials were well-reasoned, that no newly

35

See 18 C.F.R. § 157.20(b) (requiring, among other things, that authorized construction be completed and made available for service within the period of time to be specified by the Commission in each order).

36

See, e.g., Mountain Valley Pipeline, LLC, 173 FERC ¶ 61,026, at P 17 (2020).

37

See, e.g., id. (five years to complete pipeline project); *Golden Triangle Storage, Inc.*, 121 FERC ¶ 61,313, at ordering para. (M) (2007) (six years to complete gas storage project).

38

The two project shippers are Brooklyn Union Gas Company, d/b/a National Grid NY and KeySpan Gas East Corporation, d/b/a National Grid NY.

39

Certificate Order, 167 FERC ¶ 61,110 at PP 5, 18.

40

configured application would satisfy water quality conditions, and that the Commission's analysis should take into account new state laws which seek to limit GHG emissions.⁴¹ Commenters also argue that because the Commission has announced an intention to change its policy regarding GHG emissions, the existing environmental analysis must be stale.⁴²

Transco notes that it has been less than two years since the Commission issued the certificate and that the environmental findings remain valid.⁴³ It argues that the extension "will have no environmental impacts beyond those which the Commission evaluated and found acceptable in issuing the Certificate Order."⁴⁴

We recognize that environmental impacts are subject to change, and that the validity of an order's conclusions and environmental conditions cannot be sustained indefinitely. However, the commenters have not identified any specific change of fact or law that would require the Commission to reconsider our prior findings that the project, as conditioned, is an environmentally acceptable action. Therefore, we do not find it necessary to prepare a supplemental environmental analysis. The Commission generally will grant an extension of time if the movant files for an extension of time within a timeframe during which the environmental findings underlying the Commission's authorization can be expected to remain valid.⁴⁵ We have previously found that

See, e.g., April 1, 2021 Comments of Township of Franklin at 3 (stating that the NYSDEC denial should alter the Commission's environmental review).

41

Id. at 3-4.

42

Id. at 5.

43

Request for Extension of Time at 2-3. Transco also notes that the Environmental Impact Statement quantified GHG emissions during construction and operation, and that the record reflects that the project would help displace 900,000 barrels of oil per year, resulting in a reduction in GHG emissions. *Id.* at 3.

44

Id.

45

Constitution Pipeline Co., LLC, 165 FERC ¶ 61,081 at P 9; 18 C.F.R. § 385.2008(a).

environmental findings remain valid within the two-year extension period requested here.⁴⁶ Moreover, Commission staff will review compliance with all environmental conditions before Transco will receive any authorization to proceed with construction.

Comments Outside the Scope of the Proceeding

The Commission has made clear it will not consider arguments that relitigate the Certificate Order, including whether the Commission properly found the project to be in the public convenience and necessity.⁴⁷ Commenters make arguments attacking the certificate itself, including those regarding: water quality impacts of the project; public safety considerations; the environmental impacts of the project; the Commission's failure to consider alternatives outside of its jurisdiction; the likelihood that state law will alter demand; and aesthetic impacts. These are improper collateral attacks on that the Certificate Order and need not be considered further.

In view of the above, we grant Transco's request for a two-year extension of time to complete construction and place into service the Northeast Supply Enhancement Project.

1. The Commission on its own motion received and made a part of the record in this proceeding all evidence, including the motion and exhibits thereto, and upon consideration of the record,

The Commission orders:

Transcontinental Gas Pipe Line Company, LLC, is granted an extension of time to May 3, 2023, to construct the facilities and make available for service the Northeast Supply Enhancement Project.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

46

See, e.g., Constitution Pipeline Co., LLC, 165 FERC ¶ 61,081 at P 16 (concluding that a second two-year extension of time is appropriate and that the environmental findings in the authorization will remain valid even after six years).

47

Algonquin, 170 FERC ¶ 61,144 at P 40; *Mountain Valley Pipeline Co.*, 173 FERC ¶ 61,026 at P 19; *see also* March 22, 2021 Notice of Transco's Request for Extension of Time.