



February 6, 2017

Kimberly D. Bose, Secretary
Federal Energy Regulatory Commission
888 First Street NE, Room 1A
Washington, DC 20216

Re: Docket No. CP14-529-000, TGP Connecticut Expansion Project

Dear Secretary Bose:

The Commission's current lack of quorum has practical implications for the people and natural and cultural resources that will be affected by the Connecticut Expansion project (the "Project").

As an initial matter, the Commission has never adopted rules delegating to staff the authority to grant or deny requests for rehearing in the context of Natural Gas Act proceedings, such as the requests for a rehearing of the certificate order issued on March 11, 2016, *Tennessee Gas Pipeline*, 154 FERC ¶ 61,191(2016) ("Certificate Order").¹ Instead, the only delegated authority relevant to outstanding requests for a rehearing of the Certificate Order is the authority² to toll the time for Commission action on requests for rehearing. *See* 18 C.F.R. 375.302(v). As you know, the Deputy Secretary in fact issued a tolling order on May 9, 2016 (the "Tolling Order") pertaining to requests for rehearing of the Certificate Order for this Project.

On January 30, 2017, counsel to Sandisfield Taxpayers Opposing the Pipelines ("S.T.O.P.") brought to the Commission's attention the due process implications of a failure to act on that group's April 9, 2016 rehearing request, when the Commission still had the quorum to act. The Tolling Order, which explains that the merits of the rehearing requests will be addressed by the Commission "in a future order," appears to leave the parties seeking rehearing with no legal recourse to pursue their challenges to the Certificate Order at this time.

Among the issues raised in S.T.O.P.'s rehearing request was a challenge to the fundamental finding of Project need. The challenge was based on analysis of the confidential precedent agreements that the Commission relied upon in determining that the project is "necessary" under applicable legal standards. The project shippers' February 1, 2017 filings with the Connecticut Public Utilities Regulatory Authority, which we submitted to the Commission the same day of the state regulatory filings by the utilities, further call into question the actual need for this Project.

In this context, the Company presses forward, seeking to fell trees as soon as possible, claiming that Project in-service deadlines set by the Commission must be met. And yet, the Office of

1 *Cf.* 18 C.F.R. 375.302(t) and (u) (delegating to the Secretary authority to reject rehearing requests in Federal Power Act proceedings).

2 We are aware that the Commission's use of tolling orders in pipeline certification proceedings has been challenged elsewhere, and do not concede that the Tolling Order is valid.

Energy Projects (“OEP”), pursuant to authority duly delegated at 18 C.F.R. § 375.308(w)(4), routinely grants extensions of such deadlines. *See, e.g., Letter from OEP Staff to Constitution Pipeline Company, L.L.C., Docket No. CP13-499-000, Accession No. 20160726-3006, July 26, 2016 (granting two-year extension of in-service deadline), Letter from OEP Staff to Dominion Transmission, Inc., Docket No. CP14-496-000, Accession No. 20160726-3010, July 26, 2016 (granting two-year extension of in-service deadline).* Thus, any harm claimed by the Company is illusory; OEP staff can easily grant an extension of the in-service deadline.

In contrast, were tree felling to begin and the Certificate Order subsequently to be ruled to have been granted in error, the environmental harm and harm to cultural resources, detailed in filings on this docket, could not be undone.

At present, as set forth in our January 30, 2017 filing, several conditions have not been met that would allow for the issuance of a Notice to Proceed (“NTP”) with tree felling. In addition, despite the Commission's practice of allowing the Director of the Office of Energy Projects (“OEP”) or his designee to issue notices to proceed,³ such a delegation of authority is not authorized by regulation or statute. The only possible basis for OEP's authority to issue an NTP would have to derive from the Certificate Order itself. Environmental Conditions 9, 12, 16, 19, 22, 23, 25 and 26 spell out numerous ways in which the Company must satisfy OEP prior to construction being allowed to commence. However, nowhere does the Certificate Order delegate to OEP the authority to issue an NTP *without the approval of the Commission*.

In light of the foregoing, in order to maintain the status quo and prevent irreparable harm to impacted people and resources, we respectfully submit that the OEP lacks the authority to issue an NTP without the approval of the Commission, and request that your office revoke the Tolling Order that the Deputy Secretary issued, allowing the rehearing requests to be denied by operation of law, so that the aggrieved parties may seek judicial redress.

Respectfully submitted,



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³ *E.g., Letter order granting, in part, Constitution Pipeline Company, LLC's 1/8/16 request to proceed with Tree Felling and Variance Requests under CP13-499, Accession No. 20160129-3019, January 29, 2016, (https://elibrary.ferc.gov/idmws/file_list.asp?document_id=14423454).*