

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

ALGONQUIN GAS TRANSMISSION, LLC)

Docket No. CP14-96-000

**LOCAL OFFICIALS' EMERGENCY MOTION FOR STAY
OF CONSTRUCTION OF THE WEST ROXBURY LATERAL PIPELINE**

United States Congressman Stephen F. Lynch, Massachusetts State Senator Michael F. Rush, Massachusetts State Representative Edward F. Coppinger, and Boston City Councilor Matt O'Malley (Local Officials)¹ urge the Federal Energy Regulatory Commission (FERC or Commission) to issue an emergency stay of construction of the West Roxbury Lateral portion (WR Lateral)² of the Algonquin Incremental Market Project (AIM Project) pending consideration and resolution of the numerous timely filed Requests for Rehearing of the Commission's March 3, 2015 Order issuing a certificate of public convenience and necessity and approving abandonment to Algonquin Gas Transmission, LLC (Algonquin) to construct and operate the AIM project.³ The Local Officials are particularly concerned with the portion of the WR Lateral that abuts active blasting at the West Roxbury Crushed Stone Quarry (Quarry) and is

¹ Local Officials' districts include, in pertinent part, the following communities: Town of Dedham, Town of Westwood and City of Boston's West Roxbury community as represented by United States Congressman Stephen F. Lynch; Town of Dedham, Town of Westwood and City of Boston's West Roxbury community as represented by Massachusetts State Senator Michael F. Rush; City of Boston's West Roxbury community as represented by Massachusetts State Representative Edward F. Coppinger; and City of Boston's West Roxbury community as represented by Boston City Councilor Matt O'Malley.

² Significantly, the WR Lateral portion of the AIM Project includes construction of a 4.9-mile high-pressure pipeline that would transmit gas from Algonquin's facilities in the Town of Westwood through the Town of Dedham into a new metering and regulating station to be constructed in the City of Boston's West Roxbury neighborhood.

³ Nine entities filed Requests for Rehearing with FERC relative to the March 3, 2015 Order. Significantly, the Request for Rehearing of the City of Boston Delegation was filed with the Commission on April 2, 2015 (Boston's Rehearing Request).

adjacent to a densely populated residential community. In light of the Commission's summary turnaround in granting its June 11, 2015 Partial Notice to Proceed with Massachusetts Facilities and Archaeological Data Recovery (Partial Notice to Proceed) in response to Algonquin's June 8, 2015 Request for Authorization to Commence Construction of Certain Segments of the West Roxbury Lateral Pipeline (Algonquin's Request), Local Officials submit that a ruling on this motion is urgent.

I. REQUEST FOR STAY

The Administrative Procedure Act⁴ provides the standard of review for the Commission in granting a stay. Pursuant to this Act, the Commission has established that a stay will be granted when "justice so requires."⁵ The Commission typically assesses several factors on a case-by-case basis in determining the merits of granting a stay, including: (1) likelihood the party requesting a 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.⁶ When balancing these factors, the Commission additionally assesses whether the absence of a stay will preclude future relief.⁷ Accordingly, no single factor proves dispositive in granting a stay, and the Commission has discretion to grant a stay if it is in the interest of justice.

A. Irreparable Harm to Local Officials' Communities

⁴ 5 U.S.C. §705

⁵ *National Fuel*, 139 FERC ¶ 61, 307 (2012).

⁶ See, e.g., *Millennium Pipeline Company, L.L.C.*, 141 FERC ¶ 61,022, at P 13 (2012) (*Millennium*); *Ruby*, 134 FERC ¶ 61,103 at P 17; *AES Sparrows Point LNG, LLC*, 129 FERC ¶ 61,245, at P 18 (2009) (*AES*); *Columbia Gas Transmission LLC*, 129 FERC ¶ 61,021, at P 6 (2009) (*Columbia Gas*); *Guardian Pipeline, L.L.C.*, 96 FERC ¶ 61,204, at 61,869 (2001) (*Guardian*).

⁷ *Virginia Petroleum Jobbers v. FERC*, 259 F.2d 921 (D.C. Cir. 1958).

The prospect of irreparable harm, coupled with the inadequacy of legal remedies that could prevent such harm, constitute the basis for a stay.⁸ Notwithstanding that mere injuries are not enough to justify a stay, the “possibility that other corrective relief will not be available at a later date weighs heavily in favor of a finding of irreparable harm”.⁹

Here, Local Officials’ communities face irreparable harm in the absence of a stay given that the entire portion of the WR Lateral and West Roxbury Meter Station (WR Station) will be located in high consequence areas (HCA) “where a gas pipeline accident could do considerable harm to people and their property,” and in which the blast radius for a pipeline or meter station explosion spans 300 feet.¹⁰ These concerns are substantially exacerbated by the fact that a significant portion of the WR Lateral directly abuts active blasting at the Quarry.¹¹ Given the risk of “significant incidents”¹² involving gas pipeline leaks in general, the combination of a gas pipeline abutting an active blasting quarry site has the dangerous potential to lead to severe and irreparable physical, environmental and economic harm. As such, there is indeed a serious likelihood of irreparable harm to the Local Officials’ interests in protecting their densely populated residential communities. Moreover, “the possibility of other corrective relief” in this situation would surely “not be available at a later date” to offset such substantial harm. As such, these circumstances would certainly “weigh heavily in favor of a finding of irreparable harm”¹³ and thus satisfy FERC’s basis for granting a stay.

B. Grant of a Stay Will Not Harm Algonquin

⁸ *Wisconsin Gas v. FERC*, 788F.2d 669, 674 (D.C. Cir. 1985).

⁹ *Virginia Petroleum Jobbers*, 259 F.2d at 925.

¹⁰ Boston’s Rehearing Request, p. 4.

¹¹ *Id.*

¹² Significant incidents include (1) death (2) personal injuries requiring hospitalization, and (3) property damage of more than \$115,000. At least 1,237 “significant incidents” occurred between the years 1994 and 2013. *Id.*

¹³ *Virginia Petroleum Jobbers*, 259 F.2d at 925.

While the harm to the Local Officials' communities would be irreparable in the absence of a stay, Algonquin would not be prejudiced if a stay is granted because Algonquin can feasibly pursue viable alternatives for its metering station site as well as its route for the WR Lateral.¹⁴ As discussed further in Boston's Rehearing Request, the Commission lacked legal merit in finding that the proposed alternative metering site was not technically feasible.¹⁵ In fact, the Commission's only stated rationale for dismissing the alternative site lies in the fact that it was located on residential land; would result in traffic increases; and would require the demolition of a residential home.¹⁶ Alternatively, the current WR Station proposal would cause similar traffic impacts to the densely populated Centre Street in West Roxbury, in which Algonquin currently plans to use police details and adjustments to its construction schedule to mitigate lengthy delays in this area.¹⁷ Moreover, given the approximately one billion dollar price tag of the AIM Project, Algonquin surely enjoys the financial resources to buy the residential property at issue in order to alleviate the concerns associated with demolishing one single home.¹⁸

Similarly, Algonquin and the Commission were presented with two viable alternative routes for the WR Lateral. One such alternative route would require 0.5 miles less construction; cross five fewer roads; and would pass within 50 to 100 feet of far fewer residences than the WR Lateral.¹⁹ Most importantly, the proposed routes would avoid the Quarry, and thus would

¹⁴ Boston's Rehearing Request, pp. 16-22 (discussing the feasibility of an alternative metering site and alternative pipeline route). Boston asserts that not only would such alternatives indeed prove technically feasible, such alternatives would in fact prove *beneficial* to Algonquin. (emphasis added). *Id.*

¹⁵ *Id.*, p.16.

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ Boston's Rehearing Request, p. 20.

substantially mitigate the most pressing concern associated with the WR Lateral.²⁰ In light of these facts, Algonquin has the viable option of pursuing these alternative route(s), which would entail similar traffic concerns, but with lesser construction expenses—and importantly, would allow Algonquin to circumvent active blasting at the Quarry.

As such, Local Officials submit that Algonquin would not be harmed if a stay is granted given the viable alternatives available. Local Officials further contend that such alternative(s) would actually benefit Algonquin by alleviating the genuine concern of potentially boundless mitigation expenses associated with the serious risk of natural disaster inherent in its proposed WR Lateral route.

C. Stay Is In the Interest of Justice

Justice requires that the Commission should not allow construction to commence or continue on the WR Lateral while the possibility exists that the Commission will decide to reconsider or revoke the Certificate of Approval for such construction. If the Commission does not grant a stay and allows construction to commence and to continue while the Commission is reviewing the Requests for Rehearing, Local Officials' communities will be affected by the AIM Project's WR Lateral construction impacts immediately, notwithstanding the fact that the Commission may ultimately decide to reexamine or disapprove the AIM Project. This would constitute an unfair and unreasonable outcome with the potential for irreparable harm to Local Officials' communities as outlined above.

The Commission's May 1, 2015 Order Granting Rehearing for Further Consideration (Rehearing Order) states that rehearing is being granted "to afford additional time for

²⁰ The City of Boston asserts, based on meticulous analysis, that there was a clear lack of "careful review of the safety issues..." that was "not rooted in the law, facts and science." *Id.*, p. 22.

consideration of the matters raised or to be raised" in the various Requests for Rehearing. The Commission stated further that the Requests for Rehearing "will be addressed in a future order", but did not specify or limit the duration of the Commission's consideration. Meanwhile, as requested by Algonquin, the Commission has issued the Partial Notice to Proceed for site preparation activities at the sites of metering and regulating stations. As such, Algonquin is now currently preparing to commence construction of the WR Lateral pipeline itself. Given the potentially grave consequences of allowing construction to continue along an active quarry blasting site while nine timely filed Requests for Rehearing have yet to be considered (with no timeline established for consideration), Local Officials submit that an emergency stay is clearly in the interest of justice.

II. CONCLUSION

WHEREFORE, for the foregoing reasons, Local Officials respectfully request that the Commission grant this emergency request to STAY Algonquin's construction of the WR Lateral portion of the AIM Project and refrain from issuing any further Notices to Proceed with any construction, including any preliminary or preparatory activity, on any and all portions of the WR Lateral until such time as consideration and resolution is duly given to the Requests for Rehearing. Further, Local Officials urge the Commission to rule promptly on this stay request in light of the Commission's recent June 11, 2015 Partial Notice to Proceed with construction on the WR Lateral.

Respectfully submitted this 23rd day of June, 2015.

Local Officials:

United States Congressman Stephen F. Lynch

Massachusetts State Senator Michael F. Rush

Massachusetts State Representative Edward F. Coppinger

Boston City Councilor Matt O'Malley