In the United States Court of Appeals for the District of Columbia Circuit

No. 12-1481

MINISINK RESIDENTS FOR ENVIRONMENTAL PRESERVATION AND SAFETY, *ET AL.*,
Petitioners,

v.

FEDERAL ENERGY REGULATORY COMMISSION,
Respondent.

ON PETITION FOR REVIEW OF ORDERS OF THE FEDERAL ENERGY REGULATORY COMMISSION

RESPONDENT'S OPPOSITION TO MOTION FOR STAY PENDING REVIEW

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Certificate Order	*Millennium Pipeline Co., L.L.C.*, 140 FERC ¶ 61,045 (July 17, 2012)
Certificate Policy Statement	*Certification of New Interstate Natural Gas Pipeline Facilities*, 88 FERC ¶ 61,227 (1999), *clarified*, 90 FERC ¶ 61,128, *further clarified*, 92 FERC ¶ 61,094 (2000)
Commission or FERC	Federal Energy Regulatory Commission
EA	Environmental Assessment for the Minisink Compressor Project, issued March 2, 2012
Millennium	Millennium Pipeline Company, L.L.C., sponsor of the Minisink Compressor Project
NEPA	National Environmental Policy Act
Order Denying Stay	*Millennium Pipeline Co., L.L.C.*, 141 FERC ¶ 61,022 (Oct. 9, 2012)
Project	Minisink Compressor Project, a compressor station consisting of: (1) two 6,130-horsepower natural gas-fired compressor units and (2) approximately 545 feet of both suction and discharge pipeline connecting the station to Millennium's existing pipeline
Rehearing Order	*Millennium Pipeline Co., L.L.C.*, 141 FERC ¶ 61,198 (Dec. 7, 2012)
Residents	Petitioners, Minisink Residents for Environmental Preservation and Safety, *et al.*
Wagoner Alternative	Alternative involving siting a compressor station at Millennium's existing Wagoner Meter Station. The alternative comprises: (1) a 5,100-horsepower compressor unit and (2) replacing the existing 7.2-mile Neversink pipeline with a larger, 30-inch diameter pipeline

INTRODUCTION

Minisink Residents for Environmental Preservation and Safety ("Residents") have returned to this Court to ask, once again, for the extraordinary remedy of indefinitely delaying the completion of a natural gas facility certificated by the Federal Energy Regulatory Commission ("Commission" or "FERC"). Yet, nothing has changed since their last stay request except that the contested compressor station is nearer completion after months of construction.

There is nothing new in the agency record. In December, the Commission issued an order denying Residents' rehearing requests and affirming its determination that the Minisink Compressor Station is needed to meet the Nation's energy needs. The Residents' renewed stay motion duplicates most of the merits arguments previously raised in their October stay request, which this Court denied, yet fails to explain why both the Court and the Commission must expend resources responding twice to essentially the same request. For these reasons alone, the Court should reject Residents' request for extraordinary relief.

Residents continue to press a single claim in support of their request for extraordinary relief: that the Commission should have preferred one siting alternative over another. Again, there is nothing extraordinary here. The Commission selected the project site, in Minisink, New York, preferred by the staff's Environmental Assessment. There are environmental consequences –

mitigated to the extent possible by numerous environmental conditions – of this selection, just as there are environmental consequences to the alternative (the Wagoner Alternative) favored by Residents. Here, the Commission justified and explained, in the 61-page environmental analysis, the Certificate Order and, again, in its Rehearing Order, its choice of alternative. A court will not substitute its judgment for the Commission's even when FERC Commissioners disagree on the merits as to where to strike a balance between project benefits and effects.

The new injuries claimed by Residents also fail to justify a stay. They are wholly speculative and unsupported by the record. In particular, Residents' safety concern, stemming from the alleged high velocity of the gas exiting the Project, is premised entirely on their late-filed expert's report that the Commission rejected as untimely as well as unsubstantiated and flawed.

Residents do not present any legitimate reason why the Court should reach a different decision here than it did in this case three months ago, as well as in other recent natural gas pipeline construction cases. *See In re Minisink Residents for Preservation of the Environment and Safety*, No. 12-1390 (D.C. Cir. Oct. 11, 2012) (denying Residents' October stay request); *In re Delaware Riverkeeper Network*, No. 13-1004 (D.C. Cir. Jan. 17, 2013) (denying petition to stay tree clearing and construction of 40-mile pipeline); and *Summit Lake Paiute Tribe v. FERC*, Nos. 10-1389 and 10-1407 (D.C. Cir. Jan. 28, 2011 and Feb. 22, 2011) (denying emergency

motions for stay of pipeline construction). *See also Coal. for Responsible Growth and Res. Conservation v. FERC*, No. 12-566 (2d Cir. Feb. 28, 2012) (denying emergency motion for stay of tree clearing); *Coal. for Responsible Growth and Res. Conservation v. FERC*, 485 Fed. Appx. 472 (2d Cir. June 12, 2012) (denying petition for review on the merits).

BACKGROUND

This case concerns a proposal by Millennium Pipeline Company, L.L.C. ("Millennium") to construct a new compressor station located on 4.5 acres of land on a 73.4-acre lot owned outright by Millennium near the Town of Minisink, New York (the "Project"). *See Millennium Pipeline Co., L.L.C.*, 140 FERC ¶ 61,045 (July 17, 2012) ("Certificate Order"). The Project will enable Millennium to transport an additional 225,000 dekatherms per day to meet customer demand in the Northeast. *Id.* PP 4, 15 (Project capacity fully subscribed under three long-term contracts).

In agency proceedings extending over a year, and resulting in a detailed, 61-page environmental assessment ("EA"), the Commission thoroughly evaluated the Project's potential impacts and analyzed several alternatives to the Project, including the Wagoner Alternative advocated by Residents. *Id.* PP 26-27; EA at 40-54. Ultimately, the Commission found that, based on the Project's benefits and the minimal adverse effect on existing shippers, other pipelines, their captive

customers, and landowners and surrounding communities, the public convenience and necessity "requires approval" of the Project. Certificate Order P 15. In September 2012, the Commission, after confirming that Millennium had met all pre-construction conditions and had obtained necessary federal authorizations, authorized Millennium to commence construction. *See* Letter from FERC's Office of Energy Projects to Millennium, Docket No. CP11-515-000 (Sept. 18, 2012).

On October 4, 2012 – prior to receiving agency action on their requests for rehearing and stay – Residents petitioned this Court for a stay of pipeline construction. In support, Residents asserted that the Commission misapplied its own Certificate Policy Statement, which guides the Commission's evaluation of proposals for new natural gas facilities, and failed to respond to the concerns raised in the dissents to the Certificate Order. This Court denied the requested stay, finding that Residents failed to meet the "well established requirements that this court routinely applies to motions for stays pending appeal" – irreparable injury and a likelihood of success on the merits. *In re Minisink Residents for Environmental Preservation and Safety*, No. 12-1390 (D.C. Cir. Oct. 11, 2012) (quoting *Reynolds Metals Co. v. FERC*, 777 F.2d 760, 762 (D.C. Cir. 1985)).

On December 7, 2012, the Commission issued an order denying the Residents' rehearing requests and affirming the Certificate Order on all issues. *See Millennium Pipeline Co., L.L.C.*, 141 FERC ¶ 61,198 (2012) (Rehearing Order).

The Commission also denied Residents' November 30, 2012 request to reopen and supplement the record with a report by their expert Mr. Richard Kuprewicz. Rehearing Order PP 1, 13 (finding no "change in circumstances" that would justify reopening the record).

ARGUMENT

There is nothing "traditional" (Motion at 5) about a stay request; a stay is always an extraordinary remedy. *Reynolds Metals*, 777 F.2d at 764 (motion for stay pending review is the "more ordinary means of seeking extraordinary relief"); *see also Munaf v. Geren*, 553 U.S. 674, 691 (2008) (stay pending appeal "is an extraordinary and drastic remedy; it is never awarded as of right"). The four factors the court considers are identical whether the request for stay is filed under the All Writs Act (e.g., Residents' October request) or as a motion (e.g., Residents' current request). *Reynolds Metals*, 777 F.2d at 762.

To obtain such extraordinary relief, Residents must establish: (1) a strong showing that they are likely to prevail on the merits of their appeal; (2) that, without such relief, they will be irreparably injured; (3) a lack of substantial harm to other interested parties; and (4) that the public interest favors a stay. *Wash. Metro. Area Transit Comm'n v. Holiday Tours, Inc.*, 559 F.2d 841, 843 (D.C. Cir. 1977). "The courts must balance the competing claims of injury and consider the effect of granting or withholding the requested relief, paying particular regard to

the public consequences." *Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. 7, 9 (2008). Just as this Court found with respect to Residents' prior stay request, Residents still have "not demonstrated the irreparable injury or likelihood of success on the merits" required for a stay. *In re Minisink Residents*, No. 12-1390 (D.C. Cir. Oct. 11, 2012).

I. Residents Have Not Established Irreparable Injury

A claim of irreparable injury absent a stay must be "both certain and great; it must be actual and not theoretical." *Wis. Gas Co. v. FERC*, 758 F.2d 669, 674 (D.C. Cir. 1985). Implicit in this requirement is the "further requirement that the movant substantiate the claim that irreparable injury is 'likely' to occur." *Id.* "Bare allegations of what is likely to occur are of no value since the court must decide whether the harm will *in fact* occur. The movant must provide proof . . . indicating that the harm is certain to occur in the near future." *Id.* Unsupported assertions are not enough. *Cuomo v. NRC*, 772 F.2d 972, 978 (D.C. Cir. 1985).

Residents premise their motion for stay upon unsubstantiated and speculative allegations of a perceived safety threat and lack of remedy. Both fail to justify the Court exercising the extraordinary and drastic remedy of a stay. *See Mazurek v. Armstrong*, 520 U.S. 968, 972 (1997) (stay should not be granted unless the movant, *by a clear showing*, carries the burden of persuasion).

A. There Is No Record Evidence Of A Safety Threat

Now, with the construction almost completed, Residents have shifted their claimed injury from environmental harms (tree clearing) to alleged safety concerns arising from the Project's operation. But, "the *potential* for . . . harm that *may* result if the Compressor Station is placed in service" (Motion at 15) lacks the certainty or likelihood of occurring that is required to justify a stay.

The Residents hypothesize that the Project's operation might result in Millennium's pipeline system, specifically the Neversink segment, being operated in an unsafe manner. But, the Commission found no such risk. Certificate Order P 68 (responding to Residents' concerns that the Project would threaten the integrity of the Neversink pipeline); Rehearing Order PP 75-80 & n.116 (Residents' expert report "provides no support for [] contention that gas velocity – the only operational issue he raises – will prevent the Millennium system from operating in a safe, effective manner"). Safety was one of the multiple issues studied and evaluated in the EA. *See* EA at 36-38, Certificate Order PP 24, 28; Rehearing Order P 6. The Department of Transportation ("DOT") is the federal agency with principal responsibility to administer and ensure pipeline safety under 49 U.S.C. Chapter 401 – not FERC. Certificate Order P 60; *see also* EA at 37 (compressor station must be designed, constructed, operated, and maintained in accordance with the DOT *Minimum Federal Safety Standards*). Thus, the

Commission determined that, given the application of the DOT requirements, the Project's operation represents a minimal increase in risk to the public. Certificate Order P 61.

Here, the Commission "independently evaluated the hydraulic feasibility of the [Project] and completed an engineering analysis of Millennium's pipeline system" including the Project and found nothing that "suggest[s] that the operation of the [Project] will compromise the safety of the Neversink Segment." Certificate Order P 68; *see also id.* P 69 (nothing in the record indicates that Neversink segment is incapable of accommodating the Project's flow pressures); Rehearing Order P 40 (no evidence that the existing Neversink Segment cannot continue to be operated safely in conjunction with the Project); *id.* P 76 n.114. The Commission's finding that gas velocities would not be above the Neversink segment's safety design standards distinguishes this case from the one on which Residents rely. *See Tenn. Gas Pipeline Co., L.L.C.*, 139 FERC ¶ 61,161 at P 86 (2012) (rejecting an alternative as infeasible because gas velocities would have exceeded the pipeline's specified design standards).

Moreover, this alleged harm is unsupported by any record evidence. Residents rely solely on a report by their expert, Mr. Kuprewicz, which is not part of the agency's record. *See* Rehearing Order P 13 (declining to supplement the record with the Kuprewicz Report, which was submitted to the Commission

months after the Certificate Order issued). The Commission nevertheless found that the Kuprewicz Report provided no support for the assertion that the Project's gas velocities were inconsistent with prudent design standards and safety margins. *Id.*; *see also id.* PP 76-80 (discussing Kuprewicz Report's flaws). Here, the Commission's determination regarding disputed technical facts is based upon its expertise and is entitled to deference. *See Balt. Gas & Elec. Co. v. Natural Res. Def. Council, Inc.*, 462 U.S. 87, 103 (1983).

A stay "will not be granted against something merely feared as liable to occur at some indefinite time," thus, Residents' motion should be denied. *Wis. Gas Co.*, 758 F.2d at 674 (quoting *Connecticut v. Massachusetts*, 282 U.S. 660, 674 (1931)).

B. The Commission Has Full Remedial Authority Should The Court Remand Or Vacate The Challenged Orders

Residents' concern (Motion at 15-17), that absent a stay it may eventually be more difficult for the Commission to order their requested remedy, is speculative and lacks certainty. Moreover, this claim is based on the erroneous assumption that neither the Court nor the Commission has the authority, following appellate review on the merits, to terminate Project service and order the removal of Project facilities.

As the Commission stated, if the Project certificate is vacated, the Commission could require Millennium to remove the Project facilities. *See*

Millennium Pipeline Co., L.L.C., 141 FERC ¶ 61,022 at PP 17, 21 (2012) ("Order Denying Stay") (noting the Commission's broad remedial authority under the Natural Gas Act). *See also United Gas Imp. Co. v. Callery Prop., Inc.*, 382 U.S. 223, 229 (1965) (holding that FERC, like a court, can undo what is wrongfully done by virtue of its order). Residents' citation (Motion at 16) to *Hunt Oil Co. v. FPC*, 334 F.2d 474 (5th Cir. 1964), is unhelpful. That case merely affirms the Commission's broad remedial authority in natural gas certificate proceedings to take whatever action it deems warranted. *See id.* at 479 (holding that FERC has broad power under the Natural Gas Act to perform "any and all acts as it may find necessary or appropriate"). Last, this Court has found that an assertion that "the passage of time could also effectively render other challenges . . . moot" (Motion at 17) does not amount to irreparable harm. *See Cuomo*, 772 F.2d at 977 (rejecting petitioners' claim of irreparable harm based on the "possibility that their claims will be mooted if a stay is not granted").

Where, as here, the movant fails to demonstrate that it will suffer irreparable injury absent a stay, the motion will be denied. *Wis. Gas Co.*, 758 F.2d at 676. Even if the Court finds an irreparable injury, a stay is not a matter of right; rather, the injury must be balanced against the other stay factors. *See Nken v. Holder*, 556 U.S. 418, 427 (2009) (a stay is an exercise of judicial discretion dependent upon the circumstances of the particular case).

II. Residents Fail To Show A Likelihood Of Success On The Merits

Residents fail to demonstrate a likelihood of success on the merits on appeal, one of the four factors necessary to obtain a stay. *See Sherley v. Sebelius*, 644 F.3d 388, 393 (D.C. Cir. 2011) (explaining that "*Winter* at least . . . suggest[s] if not . . . hold[s] 'that a likelihood of success is an independent, free-standing requirement'") (quoting *Davis v. Pension Benefit Guaranty Corp.*, 571 F.3d 1288, 1292 (D.C. Cir. 2009) (Kavanaugh, J., concurring)). Residents mostly reprise the same allegations that the Court previously found did not show a likelihood of success on the merits: misapplication of the Certificate Policy Statement (Motion at 9) and failure to address the two dissenting Commissioners' preference for the Wagoner Alternative (Motion at 7). Residents' new merits arguments, a scattershot of alleged violations of the National Environmental Policy Act ("NEPA"), are dispelled by the findings of the Rehearing Order, the Certificate Order, and the Environmental Assessment.

A. The Commission Appropriately Considered The Wagoner Alternative

Residents' primary justification for their stay request is an alleged failure of the Commission to adequately consider the Wagoner Alternative, which is both the Residents' and the dissenting Commissioners' preferred alternative. Motion at 7-10, 12-13. To support their argument, Residents erroneously claim that the dissenting Commissioners concluded that the "majority's approval of the project

represents an abuse of discretion." Motion at 7. Rather, the dissenting Commissioners stated "given the facts presented in this case, we believe the Commission should have exercised its discretion to deny Millennium's application." Rehearing Order (Wellinghoff and LaFleur, Comm'rs, dissenting).

The Commission identified the environmental impacts and benefits of the Wagoner Alternative and compared and contrasted that Alternative to the Project. *See* Certificate Order PP 26-27 (concurring with the EA's detailed assessment of the Wagoner Alternative); *see also id*. PP 22-23 (noting supplemental notice of inquiry to solicit comments on the Wagoner Alternative, identified by landowners during scoping period). The Commission concluded that the primary advantage of the Wagoner Alternative is that the compressor would be located farther from noise-sensitive areas and residences than the Project. *Id.* P 27 n.28. However, as the Commission explained, because the Wagoner Alternative requires the replacement of the Neversink pipeline segment, it has substantial disadvantages as well: (1) significantly more tree clearing; (2) significantly more land clearing; (3) direct encroachment on 58 residential properties; (4) crossing of wetlands and waterbodies; and (5) greater impact on protected species. *Id.* P 27; Rehearing Order P 67 (detailing the Wagoner Alternative's impacts as compared to the Project's). In these circumstances, the Commission was amply justified in agreeing with the Environmental Assessment that the Wagoner Alternative does

not, on balance, provide an environmental advantage over the Project.

Residents argue that the Commission's comparison of the Project with the Wagoner Alternative was faulty based on their unsupported assertion that the Project's operation also requires the Neversink segment to be replaced. Motion at 8, 13. The Commission disproved this allegation. Certificate Order P 65 (Project does not require replacement of the Neversink Segment); Rehearing Order P 25 ("whether or not the Neversink Segment will someday need to be replaced will depend on the as-of-now-unknowable needs of future unknown customers"). Moreover, contrary to Residents' claim (Motion at 8), there is no evidence that Millennium plans on replacing the Neversink segment. Rehearing Order P 33, n.41 (Millennium has not proposed to replace the Neversink Segment; Neversink's replacement is "purely speculative").

B. The Commission Consistently Applied Its Certificate Policy Statement And Siting Regulations

1. Certificate Policy Statement

The Commission's analysis of the Project included a straightforward application of the Certificate Policy Statement criteria for determining whether there is a need for a proposed project and whether the proposed project will serve the public interest. Certificate Order PP 10-15; Rehearing Order PP 18, 21 (Certificate Policy Statement applied in the same manner since its issuance in 1999). Residents fail to cite a single case in which the policy has been applied

differently.

Applying the Certificate Policy Statement, the Commission balanced the Project's benefits against the limited residual adverse effects to landowners and communities identified in the environmental section of the Commission's order and its earlier Environmental Assessment. Rehearing Order PP 19-20. The Commission found that Millennium "has taken steps to minimize any adverse impacts on landowners and surrounding communities." Certificate Order P 14; *see also id.* P 28 (adopting the EA's conclusion that the Project would result in limited impacts on air quality, noise quality, safety, visual resources, and property values). Accordingly, the Commission reasonably concluded, "[b]ased on the benefits the project will provide and the minimal adverse effect . . . we find, consistent with the criteria discussed in the Certificate Policy Statement and subject to the environmental discussion below, that the public convenience and necessity requires approval of Millennium's proposal, as conditioned in this order." *Id.* P 15.

The Commission's balancing of the Project's benefits against residual adverse impacts under the Certificate Policy Statement is based upon its expertise and is entitled to deference from this Court. *See Am. Gas Ass'n v. FERC*, 593 F.3d 14, 19 (D.C. Cir. 2010) (the Court affords FERC "broad discretion to invoke its expertise in balancing competing interests and drawing administrative lines"). *See also B&J Oil & Gas v. FERC*, 353 F.3d 71, 76 (D.C. Cir. 2004) (noting the Court's

reluctance to interfere with the agency's reasoned judgments involving complex scientific or technical questions).

The Commission did not, as Residents claim (Motion at 9), incorrectly compare the temporary impacts of the Wagoner Alternative against the Project's "residual impacts." *See* Rehearing Order P 46 (addressing this claim). Rather, the Commission considered, in detail, each alternative and fully evaluated their comparative merits as required by NEPA. Rehearing Order P 40; *see also* EA at 49-54 (comparing the Wagoner Alternative to the Project and finding that, while the Project would permanently alter the visual landscape of the surrounding area, it would not have as much of an impact on nearby residents as the Wagoner Alternative, which would impact about 0.7 acre of residential land use and directly impact 58 landowners to obtain the additional right-of-way easements needed for the Neversink segment).

As the Commission explained, "even if it were the case that the Wagoner Alternative would result in fewer environmental impacts, which we do not find that it is, the Commission is not required to reject the environmentally acceptable Minisink Compressor proposal." Rehearing Order P 46. That Residents, two dissenting Commissioners, or even this Court may prefer an alternative to the Project does not render the Commission's analysis of the Project under the Certificate Policy Statement incorrect, unreasonable, or arbitrary and capricious.

See ExxonMobil Gas Mktg. Co. v. FERC, 297 F.3d 1071, 1083 (D.C. Cir. 2002) (court is "not empowered to substitute its judgment for that of the agency").

2. Siting Regulation

The Commission also followed its siting requirements, 18 C.F.R. § 380.15, without deviation. As Residents acknowledge (Motion at 10), the Commission favors projects that limit the need for acquisition of additional property, which in this case favors the Project (sited entirely on land owned by Millennium) over the Wagoner Alternative (requiring easements from 58 landowners). *See* EA at 53. And, contrary to Residents' claim (Motion at 10), the Commission considered noise potential. *See* Rehearing Order P 30 (finding that Project's noise will be barely, if at all, noticeable because Project's operation will potentially increase ambient noise to 1.7 decibels (dB), but the noticeable noise increase threshold for humans is about 3 dB); *see also* EA at 33-34 and Environmental Condition 15 (requiring Project noise to be held significantly below the Commission's standard requirement). Regarding the preference for "unobtrusive sites," the Commission imposed several mitigating measures to make the Project's location as unobtrusive as possible. Rehearing Order P 50 (e.g., landscaping requirements, building design requirements, and noise mitigation requirements).

C. FERC's Finding Of No Significant Impact Complies With NEPA And Is Fully Supported By The Record

Consistent with NEPA procedures, the Commission's staff prepared a thorough, 61-page EA for the Project in order to determine whether the Project has a significant impact on the environment. The EA addressed all comments regarding alternatives, including the Wagoner Alternative, as well as geology, soils, water resources, wetlands, vegetation, wildlife, federally listed species, cultural resources, land use, recreation, visual resources, socioeconomics, air quality and noise, safety, cumulative impacts, and scoping comments. Rehearing Order P 6. Based on the EA, the Commission concluded that the Project, with appropriate mitigation measures, would not constitute a major federal action significantly affecting the quality of the human environment. *Id.*; *see also Cabinet Mountain Wilderness v. Peterson*, 685 F.2d 678, 682-83 (D.C. Cir. 1982) (a mitigated finding of no significant impact, such as this one, has long been appropriate under this Court's precedent); *Public Citizen v. Nat'l Hwy. Traffic Safety Admin.*, 848 F.2d 256, 266 (D.C. Cir. 1988) (Commission's finding of no significant impact is entitled to deference).

Residents' assertions (Motion at 11-12) invite this Court to "flyspeck" the Commission's expert factual analysis. *Nevada v. Dep't of Energy*, 457 F.3d 78, 93 (D.C. Cir. 2006) ("It is well settled that the court will not 'flyspeck' an agency's environmental analysis, looking for any deficiency no matter how minor.").

Residents state (Motion at 11) that the Project will "permanently destroy ten acres of . . . farmland," yet ignore the fact that those ten acres are owned by Millennium. Furthermore, at the Town of Minisink's request, Millennium has agreed to use the 70 acres of its land not needed for the Project as a buffer and to permit farming to continue on the existing farmland south of the project site. Rehearing Order P 36; *see also id.* P 67 (Wagoner Alternative would impact 22 acres of cleared agricultural land compared with 9.8 acres for the Project).

Moreover, there is no record evidence supporting Residents' claimed safety concerns arising from high gas velocities (Motion at 12). *See* Rehearing Order P 76 (Residents' expert's report on high gas velocities unsupported and flawed). Last, contrary to Residents' claim (Motion at 12), the Commission did a cost comparison of the Project and the Wagoner Alternative. *See* Rehearing Order P 40 (noting that the Wagoner Alternative costs twice as much as the Project); *see also id.* P 66 (balancing the Wagoner Alternative's potential annual fuel-related cost savings of $1.6 million against its significantly greater capital cost).

III. A Stay Will Substantially Injure Other Parties

The Court must also consider whether "a stay would have a serious adverse effect on other interested persons." *Va. Petroleum Jobbers Ass'n. v. FPC*, 259 F.2d 921, 925 (D.C. Cir. 1958). This Court has recognized that entities have a protected property interest in permits issued by the government. *See 3883 Conn.*

LLC v. District of Columbia, 336 F.3d 1068, 1074 (D.C. Cir. 2003) ("the permit holder has a substantial interest in the continued effect of the permit and in proceeding with a project without delay"); *Tri County Indus. v. District of Columbia*, 104 F.3d 455, 461 (D.C. Cir. 1997) ("The property interest here – the entitlement to continue construction without unfair interference – is substantial.").

In this case, enjoining the Commission-issued certificate and halting the Project would seriously jeopardize the availability of additional capacity to transport natural gas for the remainder of the winter heating season, to the detriment of Millennium, Project shippers, and natural gas customers in the Northeast. *See* Millennium's Answer to Motion for Stay at 7-8, FERC Docket No. CP11-515-000 (Aug. 30, 2012) (quoting the Project's anchor shippers regarding the pressing need for the Project capacity).

IV. The Public Interest Does Not Favor A Stay

The public interest is a "crucial" factor in "litigation involving the administration of regulatory statutes designed to promote the public interest." *Va. Petroleum Jobbers*, 259 F.2d at 925. The Natural Gas Act charges FERC with regulating the interstate transportation and wholesale sale of natural gas in the public interest. *See, e.g.*, *Columbia Gas Transmission Corp. v. FERC*, 750 F.3d 105, 112 (D.C. Cir. 1984). Because the Commission is the "presumptive[] guardian of the public interest," its views "indicate[] the direction of the public

interest" for purposes of deciding a stay request. *N. Atl. Westbound Freight Ass'n v. Fed. Mar. Comm'n*, 397 F.2d 683, 685 (D.C. Cir. 1968).

Here, the public interest would not be served by a stay of the Project. In issuing the certificate of public convenience and necessity for the Project, the Commission found a strong showing of need for this Project. *See* Certificate Order P 15. The Project will provide substantial benefits to both gas producers and end-users by providing additional capacity to move natural gas produced in the area near Millennium's pipeline to high-demand Northeast markets. *See* Order Denying Stay P 19. A delay would frustrate this objective.

CONCLUSION

For the foregoing reasons, Residents' motion for a stay should be denied.

Respectfully submitted,

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Minisink Residents for Environmental Preservation and Safety, et al. v. FERC
D.C. Cir. No. 12-1481

Docket No. CP11-515-000

CERTIFICATE OF SERVICE

In accordance with Fed. R. App. P. 25(d), and the Court's Administrative Order Regarding Electronic Case Filing, I hereby certify that I have, this 29th day of January, 2013, served the foregoing upon the counsel listed in the Service Preference Report via email through the Court's CM/ECF system or via U.S. Mail, as indicated below:

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