

145 FERC ¶ 61,074
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Philip D. Moeller, John R. Norris,
Cheryl A. LaFleur, and Tony Clark.

Cheniere Creole Trail Pipeline, L.P.

Docket No. CP12-351-001

ORDER DENYING REHEARING AND STAY

(Issued October 25, 2013)

1. On February 21, 2013, the Commission authorized Cheniere Creole Trail Pipeline, L.P. (Creole Trail), pursuant to section 7(c) of the Natural Gas Act (NGA), to construct and operate natural gas pipeline, compression, and related facilities in Cameron and Beauregard Parishes, Louisiana.¹ The proposed facilities will enable Creole Trail to transport natural gas bi-directionally on its pipeline system and deliver domestic gas to the Sabine Pass LNG, L.P. (Sabine Pass) liquefied natural gas (LNG) terminal in Cameron Parish. On March 25, 2013, Sierra Club timely filed a request for rehearing and stay of the February 21 Order pending a final decision in this proceeding. As discussed below, this order denies the requests for rehearing and stay.

I. Background

2. Creole Trail's existing interstate natural gas pipeline system originates at its interconnection with the Sabine Pass LNG terminal in Cameron Parish, Louisiana,² and extends approximately 94.8 miles to its terminus at an interconnection with Texas Eastern Transmission Corporation in Beauregard Parish. Creole Trail also interconnects with Natural Gas Pipeline Company of America, Transcontinental Gas Pipe Line Company, Tennessee Gas Pipeline Company, Florida Gas Transmission Company, Trunkline Gas Company, and Bridgeline Holdings, L.P.

¹ *Cheniere Creole Trail Pipeline, L.P.*, 142 FERC ¶ 61,137 (2013) (February 21 Order).

² The Sabine Pass LNG terminal is owned by Sabine Pass, which is affiliated with Creole Trail.

3. Prior to 2012, Sabine Pass had authorization to use its LNG terminal to import foreign-sourced LNG and to export LNG that had previously been imported into the United States and stored at its terminal in liquid form.³ In 2012, the Commission authorized Sabine Pass under section 3 of the NGA to site, construct, and operate facilities at the existing Sabine Pass LNG terminal designed to liquefy domestic natural gas delivered by nearby pipelines, store the LNG in the terminal's storage facilities, and deliver the LNG from the storage tanks into marine vessels for export (Sabine Pass Liquefaction Project).⁴

4. The February 21 Order authorized Creole Trail to construct and operate a compressor station near Gillis, Louisiana, reconfigure three existing meter and regulating stations, and install approximately 200 feet of pipeline and related facilities. Creole Trail's proposals were designed to make its pipeline bi-directional to allow for the transportation and delivery of domestic feed gas to the Sabine Pass Liquefaction Project at the Sabine Pass LNG terminal for eventual export.

5. Sierra Club protested Creole Trail's application and asserted that the Commission is required to consider in an environmental impact statement (EIS) the reasonably foreseeable indirect and cumulative effects and associated environmental impacts of the additional production of natural gas which Sierra Club contends will be induced by the proposal. The Commission found in the February 21 Order that Creole Trail's proposal was thoroughly analyzed in the environmental assessment (EA) prepared for the project, and no significant direct or indirect impacts were identified. The Commission further found that any impacts which may result from additional gas production are not "reasonably foreseeable" under the applicable judicial standard or as defined by the CEQ regulations and thus rejected Sierra Club's contention that the effects associated with the additional natural gas production needed to be addressed in the EA. The Commission concluded that its approval of the project will not constitute a major federal action significantly affecting the quality of the human environment, and, consistent with Council of Environmental Quality (CEQ) regulations, no EIS was required.

³ *Sabine Pass LNG, L.P.*, 109 FERC ¶ 61,324 (2004); *Sabine Pass LNG, L.P.*, 115 FERC ¶ 61,330 (2006); *Sabine Pass LNG, L.P.*, 127 FERC ¶ 61,200 (2009).

⁴ *Sabine Pass Liquefaction, LLC and Sabine Pass LNG, L.P.*, 139 FERC ¶ 61,039, *reh'g denied*, 140 FERC ¶ 61,076 (2012) (*Sabine Pass*). In 2010 and 2011, pursuant to its NGA section 3 authority, DOE Office of Fossil Energy (DOE/FE) issued to Sabine Pass authorizations to export up to 2.2 billion cubic feet per day of domestically produced natural gas by vessel to all Free Trade Agreement and non-Free Trade Agreement nations, finding the potential export of such volumes was not inconsistent with the public interest. DOE/FE Order Nos. 2822 (2010) and 2961 (2011).

II. Sierra Club's Request for Rehearing

6. Sierra Club argues that the Commission erred because it: (1) failed to analyze the project's indirect and/or cumulative effects with regard to inducement of additional gas production and the environmental harms that will result from such production; (2) wrongfully relied on the Louisiana Department of Environmental Quality (Louisiana DEQ) air permitting in lieu of discussing effects of air emissions and alternatives; and (3) failed to prepare an EIS when substantial questions remained about whether impacts of indirect natural gas production and air emissions will significantly affect the environment.

7. Sierra Club also seeks a stay of the February 21 Order, claiming that it is likely to succeed on the merits, that it will likely suffer irreparable injury absent a stay, and that a stay will not impose an unreasonable burden on Creole Trail.

III. Discussion

A. Induced Natural Gas Production

8. Sierra Club argues that the Commission's environmental analysis was deficient because the EA failed to include the project's reasonably foreseeable impact of inducing additional domestic natural gas production. Sierra Club contends that while the National Environmental Policy Act of 1969 (NEPA) requires that the Commission consider all reasonably foreseeable indirect and cumulative impacts of a project in the course of its environmental review, the Commission misapplied the "reasonably foreseeable" standard in this case. According to Sierra Club, the Commission wrongfully concluded that because "[t]he project does not depend on additional gas production, and additional gas production may occur for reasons unrelated to the project and over which the Commission has no control,"⁵ induced natural gas production is not a reasonably foreseeable consequence of the project. Sierra Club contends that "all available studies and evidence indicate that LNG exports will induce additional domestic natural gas production, primarily from unconventional sources such as shale gas,"⁶ and that the Commission should have analyzed the effects of this induced production. Specifically, Sierra Club refers to and relies on data and information from the Energy Information

⁵ Sierra Club Rehearing Request at 4 (citing the February 21 Order, 142 FERC ¶ 61,137 at P 55).

⁶ Sierra Club Rehearing Request at 3.

Administration (EIA)⁷ and also references a private study conducted in 2011 by the Deloitte Center for Energy Solutions.⁸

9. This issue was fully addressed in the February 21 Order,⁹ as well as in the order authorizing the construction and operation of facilities to enable the liquefaction for export of domestic natural gas at the existing Sabine Pass LNG terminal.¹⁰ Sierra Club also notes that this issue had been addressed in *Sabine Pass*, stating that “[al]though FERC recently refused to consider induced production in a similar proceeding, Sierra Club contends that the decision was wrongly decided and is alternatively distinguishable from the instant proceeding, as we explain below.”¹¹ However, Sierra Club nowhere explains how the Commission’s decisions on the induced production issue in these two proceedings are distinguishable, and we believe that they are not. The issue is one and the same in each proceeding, involving gas transported pursuant to the same export authorization from DOE/FE. The Commission stands by its determinations, as well as the reasoning in support thereof, in its three previous orders on the issue of whether its environmental analyses of the Sabine Pass Liquefaction Project and of the Creole Trail proposal here should have included the impact of inducing natural gas production.¹²

10. The CEQ regulations require agencies to consider the environmental effects of their proposed actions, including: (1) direct effects, which are caused by the action and occur at the same time and place; and (2) indirect effects, which are caused by the action and are later in time or farther removed in distance, but are still reasonably foreseeable.¹³

⁷ Citing EIA’s study, *Effect of Increased Natural Gas Exports on Domestic Energy Markets* (EIA Export Study), January 2012, at 6, 10-11. Sierra Club points to EIA’s estimate that “60-70% (on average, 63%) of exported gas will come from new gas production, and that 73% of this gas will come from shale gas production.” See Sierra Club Rehearing Request at 5.

⁸ *Made in America: The Economic Impact of LNG Exports on Domestic Energy Markets* (Deloitte Report), Exhibit 7 to Sierra Club’s Protest and Comments.

⁹ February 21 Order, 142 FERC ¶ 61,137 at PP 53-59.

¹⁰ See *Sabine Pass*, 139 FERC ¶ 61,039 at PP 94-99, 140 FERC ¶ 61,076 at PP 8-22.

¹¹ Sierra Club Motion to Intervene Out of Time, Protest, and Comments at 1, n.1.

¹² See February 21 Order, 142 FERC ¶ 61,137 at PP 53-59; *Sabine Pass*, 139 FERC ¶ 61,039 at PP 94-99, and 140 FERC ¶ 61,076 at PP 8-22.

¹³ See 40 C.F.R. § 1508.8 (2013).

However, as pointed out in the February 21 Order and explained by the court in *City of Shoreacres v. Waterworth*,¹⁴ an impact is “reasonably foreseeable” if it is “sufficiently likely to occur that a person of ordinary prudence would take it into account in reaching a decision. The February 21 Order explained that impacts that may result from the production of domestic natural gas induced by the project are not “reasonably foreseeable” under that definition or the CEQ regulations for several reasons, including that the project does not depend on additional gas production, that additional gas production might occur for reasons unrelated to the project and over which the Commission has no control, and that any attempted assessment of the locations and amounts of future production resulting from the project would be speculative given Creole Trail’s interconnections with other pipelines.

11. Sierra Club contends, nonetheless, that since it is generally accepted among “informed observers” that as a broad phenomenon exports of gas will lead to increased production, “still further increases in production are a reasonably foreseeable consequence of the project.”¹⁵ Consequently, asserts Sierra Club, the Commission is required to evaluate the environmental impact that this particular project will have through “reasonable forecasting and speculation”¹⁶ as to the increased production it will engender. To this end, Sierra Club reasserts that data and information from the EIA Export Study and the Deloitte Report provide sufficient information upon which the Commission could analyze the predictable effects of exporting gas from the Sabine Pass LNG terminal.

12. The Commission addressed this assertion in both *Sabine Pass* and in the February 21 Order,¹⁷ explaining that the EIA Export Study was prepared in response to a request from DOE/FE as one input to DOE/FE’s assessment of the potential impacts of current and possible future applications to export domestically produced natural gas. The EIA Export Study is a general economic forecast over twenty-five years with four export demand scenarios, none of which is specific to the Sabine Pass Liquefaction Project to export domestic gas from the Sabine Pass LNG’s terminal. The EIA Export Study cautioned that projections of energy markets over the long term are “highly uncertain and

¹⁴ 420 F.3d 440, 453 (5th Cir. 2005).

¹⁵ Sierra Club Rehearing Request at 4. Sierra Club claims that its “claim is not limited to shale gas production; NEPA requires consideration of all induced gas production, shale or otherwise.” Sierra Club Rehearing Request at 5, n.3.

¹⁶ *Id.* at 6, (citing *Scientists’ Institute for Public Information v. Atomic Energy Commission*, 481 F.2d 1079, 1092 (D.C. Cir. 1973)) (*Scientists’ Institute*).

¹⁷ *See Sabine Pass*, 140 FERC ¶ 61,076 at P 14, and February 21 Order, 142 FERC ¶ 61,137 at PP 57-58.

subject to many events that cannot be foreseen, such as supply disruptions, policy changes, and technological breakthroughs.”¹⁸ As we explained in *Sabine Pass*, and reaffirmed in the February 21 Order, the EIA Export Study provides no assistance for us to reasonably estimate how much of the gas transported by Creole Trail’s pipeline to Sabine Pass LNG’s terminal for export will come from current versus future shale gas production, much less any associated environmental impacts of any new gas production from shale.

13. The Commission also addressed in the February 21 Order the Deloitte Report’s lack of assistance in analyzing the predictable effects of exporting gas from the Sabine Pass LNG terminal. As stated there, the Deloitte Report focused primarily on the price impacts that exports of LNG may have on the U.S. gas market. The Deloitte Report also forecasted that the exportation of domestic gas will lead to increased production and that shale gas production particularly in the Marcellus Shale in Appalachia and the Haynesville Shale in Texas and Louisiana, will grow and could eventually become the largest component of domestic gas supply. However, the Deloitte Report, like the EIA Export Study, did not attempt to identify specific locations where the additional gas production induced by exports will occur or otherwise assist us in reasonably assessing the potential environmental impacts from the production of the gas that would be both induced by the export of domestic gas and transported by Creole Trail’s pipeline to the Sabine Pass LNG terminal.

14. Consequently, the Commission restates, for the same reasons previously articulated, that “the factors necessary for a meaningful analysis of when, where, and how gas development will occur are simply unknown at this time” and that “it is impractical for the Commission to identify and assess impacts associated with the production of additional gas supplies that may be transported by pipelines, including Creole Trail’s pipeline, for export from the Sabine Pass LNG’s terminal.”¹⁹

15. In *Sabine Pass* and in its rehearing request of the February 21 Order, Sierra Club relies on *Northern Plains Resource Council v. Surface Transportation Board (Northern Plains)*²⁰ in support of its contention that induced production is a reasonably foreseeable

¹⁸ EIA Export Study at 3.

¹⁹ See February 21 Order, 142 FERC ¶ 61,137 at P 59. Sierra Club suggests in its rehearing request that if the Commission found the EIA Export Study inadequate, the Commission should have sought out a facility-specific study. See Sierra Club’s Rehearing Request at 6, n.4. This suggestion ignores the basic obstacle that the Commission stressed in the February 21 Order and the *Sabine Pass* orders addressing this issue: there is not enough information available to undertake a meaningful analysis of when, where, and how gas development associated with this project will occur.

²⁰ 668 F.3d 1067 (9th Cir. 2011).

effect of the Sabine Pass Liquefaction Project's exportation of domestically produced natural gas. *Northern Plains* addressed the issue of whether the Surface Transportation Board should have considered the cumulative impacts of coal bed methane (CBM) well development as part of its NEPA analysis of a proposed 89-mile-long rail line intended to serve specific new coal mines in three Montana counties. *Northern Plains* is distinguishable because, as part of an earlier, programmatic EIS, the Bureau of Land Management had already analyzed reasonably foreseeable CBM well development which provided the Surface Transportation Board with information about the timing, scope, and location of future CBM well development, whereas the Commission has no similar information in the present case about the timing, location, and scope of future shale (or conventional) well development which might be associated with the proposed Creole Trail project. Moreover, as the Commission stated in *Sabine Pass*, *Northern Plains* establishes that while agencies must engage in reasonable forecasting in considering cumulative impacts, NEPA does not require an agency to "engage in speculative analysis" or "to do the impractical, if not enough information is available to permit meaningful consideration."²¹

16. Sierra Club in its rehearing request of the February 21 Order, also relies on *Mid-States Coalition for Progress v. Surface Transportation Board (Mid-States)*²² to demonstrate the proper application of the "reasonably foreseeable" standard in circumstances Sierra Club claims to be analogous to those present here. *Mid-States* involved the Surface Transportation Board's failure, in approving a proposal to construct 280 miles of new railroad and upgrade 600 miles of existing railroad to reach the coal mines of Wyoming's Powder River, to examine the effects on air quality that a reasonably foreseeable increase in the supply of low-sulfur coal to power plants would produce. The court held that the Surface Transportation Board was required under NEPA to examine the effects that may occur as a result of the reasonably foreseeable increase in coal consumption, stating that: (1) due to Clean Air Act restrictions, many utilities will likely shift to the low-sulfur coal such as will be made available by this project; (2) long-term demand for coal will almost certainly increase as a result of the increased availability of inexpensive coal that the project will provide; (3) the indirect effect, specifically, degradation of air quality resulting from the emission of noxious air pollutants, was identifiable; and (4) parties identified computer models widely used in the electric power industry that could be used to forecast the effects of the project on coal

²¹ See *Sabine Pass*, 140 FERC ¶ 61,076 at P 17 (citing *Northern Plains*, 668 F.3d 1067 (9th Cir. 2011)). See also *Natural Res. Defense Council v. Callaway*, 524 F.2d 79, 90 (2d Cir. 1975) (holding that an agency need not "consider other projects so far removed in time or distance from its own that the interrelationship, if any, between them is unknown or speculative").

²² 345 F.3d 520 (8th Cir. 2003).

consumption. Critically, the last two findings are absent from the circumstances of the present case.

17. Here, unlike the circumstances in *Mid-States*, the indirect effect is not identifiable. The court in *Mid-States* found that “when the *nature* of an effect is reasonably foreseeable, but the extent is not, an agency may not simply ignore the effect.”²³ However, in this proceeding, the nature of the effect of any induced natural gas production from the proposed project is not “reasonably foreseeable” as contemplated by the CEQ regulations. Here, it is unknown at this time when, where, and how additional gas development will occur. As the Commission explained in *Sabine Pass*, it “did not conclude that it was not “reasonably foreseeable” that the Sabine Pass Liquefaction Project would induce increased natural gas production; rather, the order stated that it was virtually impossible to estimate how much, if any, of the export volumes associated with the Sabine Pass Liquefaction Project will come from existing or new shale gas production.”²⁴ In the same vein, it is virtually impossible to estimate how much, if any, of the export volumes associated with the Sabine Pass Liquefaction Project will come from induced gas production, or the associated environmental impacts of any such production.

18. In addition, it was not disputed in *Mid-States* that computer programs existed whereby that project’s effects on coal consumption could be forecast. In contrast, as stated above, the Commission finds that neither the EIA Export Study nor the Deloitte Report provide assistance to us in forecasting when, where, and how gas development attributable to exports from the Sabine Pass Liquefaction Project will occur.

19. For these reasons, the Commission finds that because it is not required to consider impacts from the production of additional gas supplies for export as either direct or indirect impacts of Creole Trail’s project, CEQ regulations do not require that the Commission consider such impacts as incremental impacts and consider them as part of the cumulative impact of past, present and reasonably foreseeable future actions by federal and non-federal agencies. Thus, the EA’s consideration of cumulative impacts was appropriately limited to consideration of the incremental impact Creole Trail’s construction project could have in the areas where its construction activities will occur.

B. Air Emissions and Alternatives

20. Sierra Club contends that the Commission erred by relying on Louisiana DEQ’s future permitting process to ensure that the air quality impacts of the project’s compressor station are insignificant. According to Sierra Club, compliance with the Louisiana DEQ’s permitting process does not adequately ensure that emissions from the

²³ *Id.* at 549.

²⁴ *See Sabine Pass*, 140 FERC ¶ 61,076 at P 9.

compressor station will be minimized such that they will not exceed acceptable levels. In support of this claim, Sierra Club suggests that the EA acknowledges this by “conclud[ing] that further analysis and modeling is necessary to determine whether the project ‘would cause or contribute to a violation of any applicable [national ambient air quality standard] or [prevention of significant deterioration] increment.’”²⁵

21. Air quality impacts are thoroughly considered in the EA,²⁶ and most of that analysis focuses on the operation impacts on air quality resulting from air emissions from the project’s compressor station.²⁷ The EA identified several specific federal and state air quality regulations established as a result of the Clean Air Act that potentially apply to the Creole Trail’s project. The EA quantified the project’s impact on air quality and presents an analysis of the emissions relative to the relevant permits and programs under the Clean Air Act, including the National Ambient Air Quality Standards (NAAQS), which was specifically established by the Environmental Protection Agency (EPA) to protect human health. NAAQS for criteria pollutants²⁸ for the purpose of protecting human health (primary standards) and public welfare (secondary standards), though established by the EPA, are implemented and enforced by the states, in this case by the Louisiana DEQ, through State Implementation Plans.²⁹

22. The February 21 Order requires Creole Trail to document that it has received all necessary authorizations under federal law prior to receiving authorization to commence construction of project facilities, including the requisite air quality permit from the Louisiana DEQ.³⁰ The Louisiana DEQ may not issue the permit unless it determines that the project uses the best available control technology (BACT) to reduce emissions and that the project will not cause or contribute to a violation of any applicable NAAQS or Prevention of Significant Deterioration (PSD) increment. Nonetheless, Sierra Club

²⁵ Sierra Club Rehearing Request at 9 (citing EA at 24-25).

²⁶ EA at 18-28.

²⁷ *Id.* at 21-28.

²⁸ Criteria pollutants include: nitrogen dioxide (NO₂), carbon dioxide (CO₂), ozone (O₃), sulfur dioxide (SO₂), lead (Pb), particulate matter with an aerodynamic diameter less than or equal to 10 microns, and particulate matter with an aerodynamic diameter less than or equal to 2.5 microns. *See* EA at 18.

²⁹ *Id.* The EA also notes that Louisiana’s standards are more stringent than the NAAQS. Louisiana’s standards are found in title 33, part III, chapter 7, section 711 of the Louisiana Administrative Code.

³⁰ *See* Environmental Condition 9 of the February 21 Order.

asserts that the project can satisfy the BACT and NAAQS/PSD increment requirements, and still have a significant adverse effect on local air quality; and therefore, the Commission should have analyzed alternative technologies to reduce those effects. The Commission disagrees. As noted above, the NAAQS was specifically established by the EPA to protect human health. Moreover, the EPA is required to periodically review these standards to ensure that they continue to protect human health and the environment.³¹ Consequently, the Commission is justified in concluding that Creole Trail's compliance with that permitting process will ensure that the compressor station minimizes air quality impacts to a less than significant level and that analyses of Sierra Club's recommended technology alternatives for Creole Trail's compressor station is not warranted.

C. Need for an EIS

23. Sierra Club asserts that an EIS should have been prepared because a substantial question exists as to whether impacts of indirect natural gas production and air emissions will significantly affect the environment. As detailed above, the Commission has found that impacts resulting from additional production of natural gas are beyond the necessary scope of its inquiry and that no substantial question relating to the impacts of air emissions from the project exists. Sierra Club also asserts that an EIS is required because the impacts of unconventional gas production, which Sierra Club asserts will be induced by the proposed project, are "highly controversial," and thus, significant.³² Again, we disagree. Not only are the impacts associated in additional gas production, as they relate to Creole Trail's project, not reasonably foreseeable, but also, for an action to qualify as "highly controversial" for NEPA purposes, there must be a "dispute over the size, nature, or effect of the action, rather than the existence of opposition to it."³³ A controversy does not exist merely because individuals or groups vigorously oppose, or have raised questions about, an action.³⁴ We do not find that our action here meets the standard of "controversial" so as to require the preparation of an EIS.

³¹ Any claim that the air quality standards fail to ensure that there are no significant impacts on air quality properly lies with the EPA.

³² The CEQ regulations provide that the "degree to which the effects on the quality of the human environment are likely to be highly controversial" is one of ten factors relating to the intensity of a project, which in turn is a consideration in determining whether a project significantly affects the quality of the human environment. *See* 40 C.F.R. § 1508.27(b)(4) (2013). Sierra Club raised the very same argument in *Sabine Pass* and the Commission there rejected it. *See* 140 FERC ¶ 61,076 at PP 26-27.

³³ *Friends of the Ompompanoosuc v. FERC*, 968 F.2d 1549, 1557 (2d Cir. 1992).

³⁴ *Id.*

D. Stay Request

24. Sierra Club requests a stay of the February 21 Order, pending resolution of its rehearing request and any judicial appeal of this order on rehearing. Since the Commission is now acting on Sierra Club's request for rehearing and there is no pending judicial appeal of this order, its request for a stay is moot.

25. In any event, the Commission would have denied Sierra Club's stay request, as the Commission has denied rehearing of the same arguments that Sierra Club raises to justify its request for a stay. When considering stay requests, the Commission considers several factors, including "whether the party requesting the stay will suffer irreparable injury without a stay."³⁵ If the party requesting a stay is unable to demonstrate that it will suffer irreparable harm absent a stay, the Commission need not consider the other factors.³⁶

26. Sierra Club asserts that "construction and operation of Creole Trail's proposed facilities will produce irreparable environmental impacts, including impacts of induced production. As explained in the EA and the February 21 Order, the Commission thoroughly considered the potential environmental effects of Creole Trail's pipeline project, and concluded that, if constructed and operated in accordance with Creole Trail's application, and in compliance with the environmental conditions and mitigation measures set forth in the February 21 Order, the project would not constitute a major federal action significantly affecting the quality of the human environment. Accordingly, the Commission finds that Sierra Club has not demonstrated that it will suffer irreparable harm, and therefore, the Commission would have denied Sierra Club's stay request."³⁷

³⁵ *Devon Power LLC*, 119 FERC ¶ 61,150 (2007). The other factors are: whether issuing the stay may substantially harm other parties; and whether a stay is in the public interest.

³⁶ *Id.*

³⁷ Sierra Club asserts that the Commission has "frequently" granted motions for stay of orders that would authorize construction prior to resolution of motions for rehearing and judicial appeals. However, Sierra Club cites only two cases, both of which are inapposite as the project developer either sought the stay or did not object to the stay: *See Horseshoe Bend Hydroelectric Co.*, 43 FERC ¶ 61,315 (1988) (hydroelectric licensee sought a stay of construction deadline pending an objecting party's appeal); and *Pacific Power and Light Co.*, 31 FERC ¶ 61,077 (1985) (winning bidder for project did not object to a stay pending the losing bidders' appeal).

The Commission orders:

(A) Sierra Club's request for rehearing of the February 21 Order is denied as discussed in the body of this order.

(B) Sierra Club's request for a stay of the February 21 Order is dismissed as moot.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.