

171 FERC ¶ 61,077
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Neil Chatterjee, Chairman;
Richard Glick, Bernard L. McNamee,
and James P. Danly.

Northwest Pipeline LLC

Docket No. CP15-8-003

ORDER GRANTING EXTENSION OF TIME

(Issued April 27, 2020)

1. On March 12, 2020, Northwest Pipeline LLC (Northwest) filed a motion requesting two-year extension of time to construct the Kalama Lateral Project, which the Commission authorized by issuing, in 2016, a certificate of public convenience and necessity. For the reasons discussed below, the extension is granted.

I. Background

2. On April 11, 2016, the Commission issued an order (Certificate Order) in Docket No. CP15-8-000 authorizing Northwest to construct and operate an approximately 3.1-mile-long, 24-inch-diameter, pipeline lateral extending from Northwest's existing 30-inch-diameter mainline to a proposed delivery meter station and related facilities in Cowlitz County, Washington (Kalama Lateral). The Kalama Lateral would enable Northwest to provide up to 320,000 dekatherms (Dth) per day of firm transportation service to Northwest Innovation Works' (NWIW) proposed methanol plant to be located at the Port of Kalama.¹

3. The Certificate Order required Northwest to complete construction of the Kalama Lateral and make it available for service by April 11, 2018.² Due to delays experienced by NWIW in obtaining permits to construct the methanol plant, on March 9, 2018, Northwest filed a request for an extension of time to complete the Kalama Lateral Project. On April 11, 2018, the Office of Energy Projects (OEP), by delegated order, extended the deadline to April 11, 2019. On February 28, 2019, Northwest filed a second request for an extension of time to complete the project, this time requesting a two-year extension – until April 11, 2021 – again citing permitting delays experienced by NWIW

¹ *Northwest Pipeline LLC*, 155 FERC ¶ 61,026 (2016) (Certificate Order).

² *Id.* at ordering para. (B)(2).

for the methanol plant. OEP granted a one-year extension of time, until April 11, 2020, and conditioned any further extensions on a showing “by Northwest that local permit issues have been resolved and that their construction has begun or is imminent.”³

4. On March 12, 2020, Northwest filed a motion that is the subject of this order, requesting an additional two-year extension of time, until April 11, 2022, to construct and place the Kalama Lateral into service (2020 Extension of Time Request).⁴ Northwest noted that it has received the major permits necessary to construct the Kalama Lateral, but that it has not commenced construction due to the NWIW methanol plant’s ongoing permitting issues.⁵ Northwest further stated that because the proposed methanol plant is the sole customer of the Kalama Lateral, “it is not in the public interest for Northwest to begin constructing the Lateral Project until the future of the Methanol Facility has been determined.”⁶ Northwest provided a timeline of the major milestones in NWIW’s efforts to obtain the major permits required for the methanol plant.⁷

5. Northwest reports that the most significant pending issue for permitting the methanol plant is Washington State Department of Ecology’s (Department) November 2019 decision to issue a second supplemental environmental impact statement with additional information on global greenhouse gas (GHG) emissions and mitigation measures for the methanol plant.⁸ The Department has indicated it will take 12 to 14

³ April 10, 2019 Letter Order Granting Northwest Pipeline LLC’s Request for an Extension of Time, CP15-8-002.

⁴ Northwest Pipeline LLC March 12, 2020 Request for Extension of Time, Docket No. CP15-8 (2020 Extension of Time Request).

⁵ *Id.* at 1-2.

⁶ *Id.* at 3.

⁷ *Id.* at Appendix A.

⁸ The original environmental impact statement was remanded by a state hearings board for failure to fully analyze the impacts of GHG emissions from the methanol plant and to consider whether additional related mitigation should be required. A Supplemental Environmental Impact Statement, which included the additional GHG analysis, was issued by Cowlitz County and the Port of Kalama on August 30, 2019.

months to complete the additional document.⁹ The determination to issue a second supplemental environmental document is also the subject of court challenge at the Washington State Superior Court for Cowlitz County.¹⁰

6. Northwest asserts that no agency has made any changes to the Kalama Lateral that would affect environmental concerns. Additionally, Northwest states that no new information has arisen about the Kalama Lateral that would significantly affect the environment in a manner or to an extent not already considered in the Certificate Order.¹¹ Northwest avers that the United States Fish and Wildlife Services (USFWS) has confirmed that there is no new information that would warrant a new consultation regarding its November 2016 biological opinion¹² and incidental take statement under the Endangered Species Act. Additionally, Northwest asserts that National Marine Fisheries Service's October 2017 biological opinion for the Kalama Lateral remains current.¹³

7. Additionally, Northwest maintains that the Kalama Lateral is still in the public interest as determined in the Certificate Order as the project is supported by a long-term precedent agreement with the sole shipper, NWIW, for one hundred percent of the project's capacity.¹⁴ To support its claim, Northwest notes that the precedent agreement provides for a primary term of twenty-five years that would not commence until after the lateral has been placed in service.¹⁵

⁹ See 2020 Extension of Time Request at n.4. See also Comments in Support by Northwest Innovation Works Kalama, LLC, CP15-8 (filed March 30, 2020) (NWIW Comments) (noting same 12-14-month timeframe).

¹⁰ *Port of Kalama v. State of Washington, Dep't of Ecology*, Docket No. 19-2-01183-08 (Dec. 23, 2019). The hearing on the petition originally scheduled for April 13, 2020, has been postponed until after June 1, 2020, due to the COVID-19 pandemic.

¹¹ 2020 Extension of Time Request at 2.

¹² U.S. Fish and Wildlife Service Biological Opinion for the Kalama Manufacturing and Marine Export Facility and the Kalama Lateral Pipeline Project (Nov. 14, 2016) (FERC Accession No. 20200421-5043).

¹³ 2020 Extension of Time Request at 2.

¹⁴ *Id.* at 3.

¹⁵ *Id.*

II. Notice, Protest and Comments

8. Notice of Northwest's Extension of Time Request was issued on March 17, 2020. The notice established April 1, 2020, as the deadline for filing interventions,¹⁶ comments, and protests. No interventions were filed.

9. Cowlitz County Cemetery District #6 (Cemetery); William L. Spencer, a Cemetery Commissioner;¹⁷ and Columbia Riverkeeper filed comments contesting Northwest's request for an extension of time.¹⁸ Mike Reuter filed comments generally opposing the project and methanol plant. Ella Christine Masters,¹⁹ a Cemetery Commissioner, and NWIW filed comments supporting Northwest's requested extension.

III. Discussion

10. Although Commission regulations do not establish a particular time period to complete construction of an authorized natural gas facility, the Commission's certificate orders include completion deadlines to "diminish[] the potential that the public interest

¹⁶ The notice stated:

If you wish to obtain legal status by becoming a party to the proceedings for this request, you should, on or before the comment date stated below, file a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). However, only motions to intervene from entities that were party to the underlying proceeding will be accepted.

An entity's prior intervention in the proceeding on the project sponsor's certificate application does not make the entity a party indefinitely in any subsequent proceeding involving the approved project, such as a request for an extension of time to construct. *See generally Algonquin Gas Transmission, LLC*, 170 FERC ¶ 61,144, at P 39 (2020).

¹⁷ It is unclear whether Mr. Spencer filed comments as an individual or only on behalf of the Cemetery in his capacity as a Cemetery Commissioner. Regardless, the two sets of comments he filed were virtually identical.

¹⁸ William L. Spencer is one of three commissioners of the Cemetery.

¹⁹ Two of the Cemetery Commissioners, Ms. Masters and Mr. Spencer, dispute the validity of each other's comments as representative of the Cemetery's position. Mr. Spencer requests that Ms. Masters' comments be withdrawn. We will take into consideration the Cemetery's, Mr. Spencer's, and Ms. Masters' comments.

might be compromised by significant changes occurring between issuance of the certificate and commencement of the project.”²⁰ However, construction deadlines may be extended for good cause.²¹ Good cause can be shown by a project sponsor demonstrating that it made good faith efforts to meet its deadline but encountered unforeseeable circumstances.²²

11. Northwest argues it has demonstrated good cause for the Commission to grant an additional two-year extension. As was the case with its past requests, its third extension of time request is based on the circumstance that NWIW still has not obtained the state permits required to construct the methanol plant. Moreover, NWIW urges the Commission to grant the extension, affirming its commitment to developing the methanol plant and asking that the Commission avoid “imposing further cost and procedural impacts at this point as these final state level regulatory and permitting processes come to closure.”²³

12. We consider requests for extensions of time to complete construction on a case-by-case basis, assessing whether the total period of time ultimately allowed for constructing and placing a project into service is a reasonable one, within which the findings supporting our original certificate authorization can be expected to remain valid.²⁴

13. We acknowledge that in the 2019 delegated letter order, staff stated that “any further extension beyond April 11, 2020 would require additional submissions by Northwest that local permit issues have been resolved and that their construction has begun or is imminent,” but we also note that the letter order provides no context or explanation for what was staff’s underlying concern. We find, based on the information

²⁰ *Altamont Gas Transmission Co.*, 75 FERC ¶ 61,348, at 62,103 (1996); *see also* 18 C.F.R. § 157.20(b) (2019) (requiring, among other conditions, that authorized construction be completed and made available for service within the period of time to be specified by the Commission in each certificate order).

²¹ 18 C.F.R. § 385.2008(a) (2019) (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).

²² *See, e.g., Chestnut Ridge Storage LLC*, 139 FERC ¶ 61,149, at P 11 (2012) (denying request for extension of time).

²³ NWIW Comments at 4.

²⁴ *Chestnut Ridge*, 139 FERC ¶ 61,149 at 8.

presented by Northwest and NWIW, that Northwest has demonstrated good cause for failing to meet the April 11, 2020 deadline. As we have explained, “good cause” can be shown by a project sponsor demonstrating that it made good faith efforts to meet its deadline but encountered unforeseeable circumstances.²⁵ As we noted in the *Constitution Pipeline* case, we have regularly found that providing more time for a project applicant to obtain necessary federal permits can be an appropriate basis for granting an extension of time.²⁶

14. Here, Northwest appears to have obtained all necessary permits for construction of its project. However, where, as here, the sole purpose of the project is to serve the needs of a single customer, that customer’s unanticipated difficulties in receiving service can also be an appropriate basis for granting an extension of time.²⁷ We find that NWIW has demonstrated that it has made a good faith effort to obtain the required state permits and that it continues to actively pursue obtaining those permits.²⁸ The permitting delays

²⁵ *Constitution Pipeline Co., LLC*, 169 FERC ¶ 61,102, at P 19 (2019) (order on rehearing affirming the grant of a second two-year extension of time due to unforeseen delays in obtaining a Clean Water Act section 401 water quality certification).

²⁶ *Id.* See also *Arlington Storage*, 155 FERC ¶ 61,165 (2016) (granting two-year extension of time to accommodate ongoing efforts to obtain a permit from the New York State DEC); October 12, 2016 Letter Order in Docket No. CP09-418-000, et al. (granting two-year extension of time to complete construction to accommodate delays in obtaining a permit from the Louisiana Department of Natural Resources); August 2, 2016 Letter Order in Docket No. CP13-502-000 (granting two-year extension of time where applicant has diligently pursued a required air permit and has initiated court review in the U.S. Court of Appeals of the state agency’s inaction); September 30, 2015 Letter Order in Docket No. CP13-8-000 (granting pipeline project two-year extension of time to complete construction due to delays in obtaining waterbody crossing permits); March 25, 2015 Letter Order in Docket No. CP09-19-000 (granting a two-year extension of time because applicant had not yet obtained required permit from a state agency).

²⁷ See, e.g., December 13, 2017 Letter Order in Docket No. CP14-483 (granting a third extension of time where a shipper was unable to construct receipt facilities).

²⁸ See 2020 Extension of Time Request at 3 (noting that “NWIW continues to work in good faith to provide the information necessary to affirm the sufficiency of the Final Supplemental [EWIS].”); NWIW Comments at 4 (“We remain fully engaged in the project, in our community and in the efforts of our regulators.”); *id.* at 5 (noting that it is “proceed[ing] in good faith with our regulators in concluding these remaining project review and permitting efforts”).

NWIW has experienced appear to have been unforeseeable.²⁹ Moreover, NWIW affirmed its commitment to develop the methanol facility.³⁰ Northwest cannot commence construction until it has executed a contract with NWIW,³¹ but, as noted above, has obtained its own necessary permits for the lateral. Further, there is no evidence that any of Northwest's permits for the Kalama Lateral will expire during the requested extension timeframe. It therefore appears that should NWIW be successful in obtaining its authorizations, Northwest would be able to reasonably complete construction of the lateral by the new April 11, 2022 deadline.³² The total four-year extension of time to construct (this two-year extension coupled with the two prior one-year extensions) is within the range of previously granted extensions.³³

15. The Commission received a number of comments arguing against an extension of time for Northwest. The arguments fall into two categories: that the materials underlying the Commission's grant of the initial certificate are stale and that Northwest has failed to show the progress required for a further extension. These arguments are unpersuasive.

16. The Cemetery reasserts substantially the same argument raised in opposition to the 2019 extension that the listing of the Cemetery in the Washington Heritage Register of Historic Places is grounds for denying the requested extension. While the Commission

²⁹ See NWIW Comments at 3-4 (discussing the "evolving and subjective nature of regulatory oversight related to GHGs and climate facing issue across jurisdictions"); 2020 Extension of Time Request at 3 (stating that the Department's decision "to require yet more information on global greenhouse gas emissions and mitigation measures was neither reasonable nor foreseeable").

³⁰ *Id.* at 2, 4.

³¹ Certificate Order, 155 FERC ¶ 61,026 at ordering para. (C).

³² Northwest estimated that the lateral will take five months to construct. See Environmental Assessment Report for Northwest Pipeline LLC's Kalama Lateral Project, CP15-8, at 2 (issued July 13, 2015).

³³ *Constitution Pipeline Co., LLC*, 165 FERC ¶ 61,081, at P 16 (2018) (noting that "the Commission has frequently authorized infrastructure projects with initial deadlines of four, five, or six years without expressing concerns about the certificate order's economic or environmental findings becoming stale" to justify extension of time to construct).

recognizes the listing of the Cemetery on the State Heritage Register of Historic Places,³⁴ this listing does not further alter the Commission's responsibilities. The Commission has previously noted the historic quality of the Cemetery and notes that the project route was designed to minimize impacts on the Cemetery.³⁵ Moreover, the 2019 Extension Letter Order noted that Northwest took extensive steps to ensure that the historic character of the Cemetery was properly included in the environmental analysis of the project.³⁶

17. Columbia Riverkeeper argues that the environmental findings underlying the Certificate Order are stale. However, no agency has made changes to the project that would affect the validity of the environmental findings. Columbia Riverkeeper cites to correspondence between the National Marine Fisheries Service and the Army Corps of Engineers as evidence of "substantial uncertainty about the sufficiency of the reviews and associated permits."³⁷ However, the correspondence on March 5, 2020 makes clear that the revisions are meant to provide more overt explanations of the underlying reasoning and "[t]hese are not new rationales; [National Marine Fisheries Service] is just revising the [Incidental Take Statement] to make these rationales more explicit."³⁸

18. The Cemetery and Columbia Riverkeeper also argue that a further extension would contradict the requirement that Northwest show that local permit issues have been resolved and that construction has begun or is imminent. We addressed this argument above.³⁹ The Commission is satisfied that Northwest and NWIW are actively pursuing and remain committed to their respective projects and we further note that NWIW has made progress in the permitting of the methanol plant since issuance of the 2019 delegated letter order.

19. In view of the above, we grant Northwest's request for an additional two-year extension of time to complete construction of the Kalama Lateral and place it into service.

³⁴ Comment of Cowlitz County Cemetery District #6, at 2 (Mar. 25, 2020).

³⁵ Certificate Order, 155 FERC ¶ 61,026 at ordering para.ph (B)(3), Appendix Paragraphs 13 & 14.

³⁶ April 10, 2019 Letter Order Granting Northwest Pipeline LLC Request for an Extension of Time CP15-8-002.

³⁷ Comment of Columbia Riverkeeper at 3 (Apr. 1, 2020).

³⁸ *Id.* at Attachment C.

³⁹ *Supra* PP 13-14.

Docket No. CP15-8-003

- 9 -

20. 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:

Northwest Pipeline LLC is granted an extension of time to April 11, 2022, to construct the facilities and make available for service the Kalama Lateral Project.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

Document Content(s)

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