

October 16, 2024

Via electronic submission

Debbie-Anne A. Reese
Acting Secretary
Federal Energy Regulatory Commission
888 First Street, N.E.
Room 1A
Washington, DC 20426

RE: Required federal authorizations for the Cumberland Project stayed by the U.S. Court of Appeals for the Sixth Circuit; Docket No. CP22-493

Dear Secretary Reese:

This letter is to notify the Federal Energy Regulatory Commission (“Commission”) that Tennessee Gas Pipeline Company, L.L.C. (“TGP”) and its contractors may not undertake any construction of the Cumberland Project—including tree clearing and ground disturbing activities—pursuant to the attached order of the U.S. Court of Appeals for the Sixth Circuit.

The Cumberland Project is a proposed pipeline in Middle Tennessee that would be constructed and operated by TGP. The Commission approved the Cumberland Project in January 2024. *See* Order Issuing Certificate, *Tenn. Gas Pipeline Co., L.L.C.*, 186 FERC ¶ 61,046 (Jan. 18, 2024) (“Certificate Order”).

Last week, the Sixth Circuit issued an order staying two required federal authorizations for the Cumberland Project: (1) a water quality certification issued by the Tennessee Department of Environment and Conservation (“TDEC”) under Section 401 of the Clean Water Act; and (2) a permit issued by the U.S. Army Corps of Engineers (“Army Corps”) under Section 404 of the Clean Water Act. *See* Order, *Sierra Club et al. v. Tenn. Dep’t of Env’t & Conservation et al.*, Nos. 23-3682 and 24-3831 (6th Cir. Oct. 11, 2024) (“Stay Order”) (**Attachment 1**).

The Sixth Circuit’s order prevents TGP from commencing pipeline construction, including tree clearing and ground disturbing activities, anywhere along the pipeline right-of-way. To date, all work has been limited to the preparation of contractor yards.¹ *See* TGP, Weekly Status Report for the Period October 6, 2024, through October 12, 2024, at 1, Accession No. 20241015-5142 (Oct. 14, 2024). TGP recently informed the Commission that “TGP . . . is not proceeding with Project construction activities at this time as it considers the impact of the temporary stays on the Project.” *Id.* The Commission must understand that TGP is not free to resume its construction

¹ TGP assured the Sixth Circuit that it “intended to begin pipeline construction, including tree clearing and ground disturbing activities, by October 15, 2024, at the earliest.” Stay Order at 4.

plans under the Stay Order. Among other reasons, the now-stayed TDEC water quality certification encompasses “the entire area of disturbance associated with the construction project” and regulates “[u]nnecessary native vegetation removal, including tree removal, and soil disturbance.” TDEC, Section 401 Certification and Aquatic Resource Alteration Permit NRS 22.192 at 16 (July 21, 2023), *available at* Accession No. 20240815-5182. By staying the TDEC certification, the Sixth Circuit afforded relief that is commensurate in scope.

The TDEC water quality certification is also an essential component of the Certificate Order and its requirements are mandatory conditions upon the Certificate Order. *See* App. to Certificate Order at Condition 13. Further, the TDEC certification and Army Corps permit are both conditions precedent to construction. *Id.* at Condition 10. In fact, the Commission could not lawfully allow construction of the Cumberland Project without a water quality certification or waiver in place. *See* 33 U.S.C. § 1341(a); *Del. Riverkeeper Network v. FERC*, 857 F.3d 388, 399 (D.C. Cir. 2017).

Although no further action from the Commission is required to effectuate the Stay Order, for avoidance of doubt, the Director of the Office of Energy Projects or another appropriate official should immediately issue a stop-work order or, in the alternative, rescind the notice to proceed.²

Sincerely,

/s/ Spencer Gall

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² *See* Letter from David Swearingen, FERC, to Tina S. Hardy, TGP, Notice to Proceed with Construction and Approval of Modifications (Aug. 29, 2024), *available at* Accession No. 20240829-3030.

CERTIFICATE OF SERVICE

I hereby certify that I have this day caused the foregoing document to be served upon each person designated on the official service list compiled by the Secretary in this proceeding.

Dated at Charlottesville, Virginia this 16th day of October 2024

/s/ Spencer Gall _____

Spencer Gall

Southern Environmental Law Center