

decide whether the harm will in fact occur. The movant must provide proof that the harm has occurred in the past and is likely to occur again, or proof indicating that the harm is certain to occur in the near future.⁹

Because none of the movants have met the irreparable harm criterion, we do not discuss the remaining two factors for evaluating a stay request.

11. Regarding the claim that the final rule threatens system reliability, the movants have not shown that their concerns about the effects on reliability are more than speculation. Bare allegations regarding the effect on reliability without a substantive showing that such harm is likely or certain to occur are insufficient. The Commission believes that this rule, in fact, will protect reliability.¹⁰

12. Likewise, the claims regarding the economic effects of the final rule, including Southern's arguments regarding the refund obligations, do not demonstrate irreparable harm. First, the movants have not made the necessary showing that the expected economic effects are more than mere speculation. By failing to show that "harm has occurred in the past and is likely to occur again" or providing "proof indicating that the harm is certain to occur in the near future,"¹¹ the movants have not substantiated their claims that the final rule will result in economic harm. Moreover, even if the movants could show that these costs are more certain than speculative, they have not shown that the costs are more than economic losses. In order for an economic loss to be irreparable harm, it must be unrecoverable and must threaten economic viability.¹² Since the parties have not made this showing, we cannot conclude that the alleged economic losses constitute irreparable harm.

13. As for the claim that the final rule is vague and ambiguous in certain respects and violates due process, that is a matter for rehearing or clarification.

III. Requests for Extension of Compliance and Effective Date

A. Arguments Raised

14. The Non-Independent Movants request that the Commission allow non-independent entities until January 20, 2004 to make their compliance filings. The Non-Independent Movants argue that transmission providers need the

additional time to assimilate the provisions of Order No. 2003 into their OATTs and to ensure proper implementation of Order No. 2003's provisions. Additionally, several suggest that granting an extension of the filing date until after the Commission rules on the various pending requests for rehearing would make it unnecessary for them to have to make more than one compliance filing if the Commission grants rehearing.

15. Additionally, NYTO and NETO request that transmission providers belonging to RTOs and ISOs (as distinct from the RTOs or ISOs themselves) be granted an extension until January 20, 2004 to allow them to work with their respective ISOs or RTOs to develop joint compliance filings. APS also requests that the extension of time be granted to jurisdictional entities in the Western Interconnection who jointly own facilities with non-jurisdictional entities, and, like ISOs and RTOs, employ a collaborative stakeholder process to develop their OATTs.

16. Southern and Entergy add that they need additional time to safely implement the Network Resource Interconnection Service portions of Order No. 2003. Finally, Southern also requests that the Commission delay the effective date of the rule by 90 days.

B. Discussion

17. In response to the concerns of the Non-Independent Movants (including APS, NETO, and NYTO), the Commission grants the requests for extension of the compliance deadline until January 20, 2004. The Commission intends to act on the pending rehearing requests prior to that date.

18. In order to avoid confusion, the Commission will also grant the requests to extend the effective date of the rule until January 20, 2004.

The Commission orders

(A) All requests for stay are hereby denied, as discussed in the body of this order.

(B) Requests for extension of the compliance deadline and effective date until January 20, 2004 are granted.

(C) The Secretary is hereby directed to publish this order in the Federal Register.

By the Commission.

Linda Mitry,

Acting Secretary.

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP03-302-000, CP03-303-000, CP03-304-000, PF03-1-000, and CP03-301-000]

Cheyenne Plains Gas Pipeline Company and Colorado Interstate Gas Company; Notice of Availability of the Draft Environmental Impact Statement for the Proposed Cheyenne Plains Pipeline Project

October 3, 2003.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) has prepared a draft environmental impact statement (DEIS) on the natural gas pipeline facilities proposed by Cheyenne Plains Gas Pipeline Company (CPG) and Colorado Interstate Gas Company (CIG) in the above-referenced dockets. The proposed project, referred to as the Cheyenne Plains Pipeline Project, is located in various counties in Colorado and Kansas.

The DEIS was prepared to satisfy the requirements of the National Environmental Policy Act. The staff concludes that if the project is constructed as modified and with the appropriate mitigation measures as recommended, it would have limited adverse environmental impact.

The U.S. Department of Agriculture, Forest Service (FS) is participating as a cooperating agency in the preparation of this DEIS as they (the FS) will be issuing their own Record of Decision on whether or not to issue a special use authorization for the portion of the pipeline that crosses the Pawnee National Grassland (PNG). The Forest Service's Record of Decision is appealable under 36 CFR Part 215, Notice, Comment and Appeal Procedures for National Forest System Projects and Activities. In agreement with 36 CFR 215.13, only individuals and organizations who submit substantive written or oral comments during the 45-day comment period for the DEIS for the proposed Cheyenne Plains Pipeline Project (and specifically addresses the portion on the PNG) may appeal the Regional Forester's decision as documented in the Record of Decision.

The U.S. Fish and Wildlife Service (FWS) is also a cooperating agency in the preparation of the DEIS because the project has the potential to affect endangered species, migratory birds, wildlife, and habitat.

The DEIS addresses the potential environmental effects of the

⁹ *Wisconsin Gas Co. v. FERC*, 758 F.2d 669, 674 (D.C. Cir. 1985) (*Wisconsin Gas*) (citations omitted).

¹⁰ See e.g., Order No. 2003, FERC Stats. & Regs. ¶ 31,146 at P 7 (noting that preserving reliability is one of the goals of Order No. 2003).

¹¹ *Wisconsin Gas*, 758 F.2d at 674.

¹² See *id.*