

finds it to be “unjust, unreasonable or unduly discriminatory.”¹⁸

19. Rather than being little more than private utilities, however, RTOs/ISOs in their present incarnation were essentially created by FERC, as part of the “restructuring” era of the late 1990s/early 2000s, to carry out FERC-driven rate policies.¹⁹ In form, substance and practice, not to mention in their complex governing structures and processes (especially in multi-state organizations), RTOs/ISOs have evolved to resemble somewhat more the hybrid entities that the British not so lovingly call “QANGOs” (quasi-autonomous non-governmental organizations) than they do purely private utilities. This is especially true with regard to multi-state RTOs/ISOs, in which utilities from many different states participate and in which the interests and policies of those multiple states are implicated. Over the past two decades these organizations have taken on various regulatory roles that are more governmental in nature than private, in some cases literally displacing state regulatory authority.²⁰

20. So, just as FERC cannot directly impose a carbon tax without a clear grant of congressional authorization, arguably it would be a distinction without a difference for FERC to approve a proposal from an RTO/ISO to impose a carbon tax (as opposed simply to recognizing an individual state’s carbon tax, as discussed below.)

¹⁸ See, e.g., October 2020 Price Comments at 2 (“To reject such a Section 205 filing, the Commission would need to conclude that it is unreasonable for a private party—the RTO, after all, is not a public regulator—to make these choices.” (emphasis added)).

¹⁹ See, e.g., *Regional Transmission Organizations*, Order No. 2000, FERC Stats. & Regs. ¶ 31,089 (1999) (cross-referenced at 89 FERC ¶ 61,285), *order on reh’g*, Order No. 2000–A, FERC Stats. & Regs. ¶ 31,092 (2000) (cross-referenced at 90 FERC ¶ 61,201), *aff’d sub nom. Pub. Util. Dist. No. 1 of Snohomish Cty. v. FERC*, 272 F.3d 607 (D.C. Cir. 2001); *Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities*, Order No. 888, FERC Stats. & Regs. ¶ 31,036 (1996) (cross-referenced at 75 FERC ¶ 61,080), *order on reh’g*, Order No. 888–A, FERC Stats. & Regs. ¶ 31,048 (cross-referenced at 78 FERC ¶ 61,220), *order on reh’g*, Order No. 888–B, 81 FERC ¶ 61,248 (1997), *order on reh’g*, Order No. 888–C, 82 FERC ¶ 61,046 (1998), *aff’d in relevant part sub nom. Transmission Access Policy Study Group v. FERC*, 225 F.3d 667 (D.C. Cir. 2000), *aff’d sub nom. New York v. FERC*, 535 U.S. 1 (2002).

²⁰ FERC Order Nos. 2222 and 2222–A are the two most recent examples where the RTOs/ISOs displace state regulatory authority, in these examples at FERC’s explicit direction. See *Participation of Distributed Energy Resource Aggregations in Markets Operated by Regional Transmission Organizations and Independent System Operators*, Order No. 2222, 85 FR 67094, 172 FERC ¶ 61,247, *on reh’g*, Order No. 2222–A, 174 FERC ¶ 61,197 (2021).

21. This would include efforts by a multi-state RTO/ISO (and its market participants²¹) to address “leakage” (a euphemism for “states that won’t impose carbon taxes”) ²² by penalizing resources in states within the RTO that have not imposed a carbon tax; ²³ such as, for example, attempting to levelize the costs of state-imposed carbon taxes by imposing a higher offer floor (MOPR anyone?) on untaxed resources from the non-conforming “leakage” states in the RTO/ISO.

22. *Can FERC allow an RTO/ISO to recognize carbon taxes imposed by one or more states?* If a state has used its sovereign authority to impose a carbon tax, directly or indirectly, and that tax is simply incorporated into the production costs of a resource from that state offered into the RTO/ISO markets, there is no reason for FERC to intervene.²⁴ State-imposed regulatory costs, which of course differ from state to state, are already “baked in” to a bidder’s costs and present no cause for FERC’s concern.

23. Just as with proposals to accommodate other state policies, however, consideration of each specific proposal will be highly fact-intensive and one key question will be to determine whether the line has been crossed between simply recognizing an individual state’s carbon tax versus imposing that state’s tax on generating resources—and consumers—in other states that have not consented to be taxed, an especially salient question in multi-state RTOs/ISOs.

24. All future proceedings under Section 205, 206 or other statutory

²¹ For example, Exelon argues that “[f]ailure to address emissions leakage in a coordinated manner is causing wholesale rates to become unjust, unreasonable and unduly discriminatory.” Exelon Corporation November 16, 2020 Comments at 8.

²² See, e.g., Exelon Corporation December 1, 2020 Reply Comments at 6 (“Instead, resources in states with no carbon price seek to preserve the artificial and unintended advantage that they currently enjoy as a result of other states joining RGGI by opposing Commission action. Thus, their positions in this proceeding are efforts to throw carpet tacks in the path of progress toward properly functioning carbon pricing mechanism(s) that include leakage mitigation.”).

²³ See, e.g., *id.* at 10 (“[T]he Commission must act under section 206 to rectify the [leakage] situation—such as by requiring RTO/ISOs that have states with carbon pricing to implement a leakage mitigation mechanism In other words, the intent and effect of leakage mitigation is to remove the impact of an unwanted carbon price from states with no carbon pricing.” (citation omitted) (emphasis in original)).

²⁴ See, e.g., Ari Peskoe October 5, 2020 [filed] Opening Statement at 1 (“The Commission allows sellers to recover in wholesale rates compliance costs associated with emissions regulations, and the Commission would have no basis to prevent regulated entities from passing through the costs of a state-set carbon price.”).

provisions will, of course, come with their own individual evidentiary records and will be judged individually at that future time. To the extent, however, the Policy Statement may be interpreted to invite proposals inconsistent with the general principles stated above, I respectfully dissent.

For these reasons, I respectfully concur in part and dissent in part.

Mark C. Christie,
Commissioner.

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP18–116–000]

Texas Gas Transmission, LLC; Notice of Request for Extension of Time

Take notice that on April 12, 2021, Texas Gas Transmission, LLC (Texas Gas) requested that the Federal Energy Regulatory Commission (Commission) grant an extension of time until June 26, 2023 to complete abandonment activities for the North Lake Pagie/Bay Junop-Bay Round Project (Project) located in Terrebonne Parish, Louisiana, as authorized in the Order Approving Abandonment (Order) on June 26, 2018.¹ Ordering Paragraph (B) of the Order required Texas Gas to complete abandonment of the Project within one year of the date of the order, until and including June 26, 2019, which was previously extended as discussed below.

On June 5, 2019, Texas Gas filed a request for an extension of time for an additional eighteen months to complete abandonment activities. Texas Gas was granted a one-year extension of time, until and including June 26, 2020, to complete abandonment activities authorized in the above referenced docket.

On May 26, 2020, Texas Gas filed a second request for extension of time for an additional year to complete abandonment activities. Texas Gas was granted a one-year extension of time, until and including June 26, 2021, to complete abandonment activities authorized in the above referenced docket.

On April 12, 2021, Texas Gas filed this request for extension of time for an additional two years to complete abandonment activities. Texas Gas request to extend its current

¹ *Texas Gas Transmission, LLC*, 163 FERC 62,218 (2018).

authorization again to allow time to continue working through landowner/agency issues and obtain the outstanding environmental permit to abandon the North Lake Pagie/Bay Junop-Bay Round pipeline. Texas Gas states that the Project's environmental findings remain valid as no agency has made any change, nor has any change occurred to the Project, that would affect the environment to an extent not already considered by the June 26 Order, by the Project's Environmental Assessment issued on June 13, 2018, or by the confirmed biological opinions of environmental agencies. Thus, Texas Gas believes it can come to agreeable terms for abandonment with the relevant landowner/agency parties and therefore asserts that 'good cause' exists to grant an extension of time, until June 26, 2023.

This notice establishes a 15-calendar day intervention and comment period deadline. Any person wishing to comment on Transco's request for an extension of time may do so. No reply comments or answers will be considered. 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).²

As a matter of practice, the Commission itself generally acts on requests for extensions of time to complete construction for Natural Gas Act facilities when such requests are contested before order issuance. For those extension requests that are contested,³ the Commission will aim to issue an order acting on the request within 45 days.⁴ The Commission will address all arguments relating to whether the applicant has demonstrated there is good cause to grant the extension.⁵ The Commission will not consider arguments that re-litigate the issuance of the Order, including whether the Commission properly found the project to be in the public convenience and necessity and whether the Commission's environmental analysis for the certificate complied

with the National Environmental Policy Act.⁶ At the time a pipeline requests an extension of time, orders on certificates of public convenience and necessity are final and the Commission will not re-litigate their issuance.⁷ The OEP Director, or his or her designee, will act on those extension requests that are uncontested.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (<http://ferc.gov>) using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning COVID-19, issued by the President on March 13, 2020. For assistance, contact FERC at FERCOnlineSupport@ferc.gov or call toll-free, (866) 208-3676 or TTY, (202) 502-8659.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the "eFile" link at <http://www.ferc.gov>. Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission. To mail via USPS, use the following address: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. To mail via any other courier, use the following address: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852.

Comment Date: 5:00 p.m. Eastern Time on May 10, 2021.

Dated: April 19, 2021.

Kimberly D. Bose,
Secretary.

[FR Doc. 2021-08519 Filed 4-22-21; 8:45 am]

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 12740-010]

Jordan Hydroelectric Limited Partnership; Flannagan Hydro, LLC; Notice of Application for Transfer of License and Soliciting Comments, Motions To Intervene, and Protests

On March 12, 2021, and supplemented on April 12, 2021, Jordan Hydroelectric Limited Partnership (transferor) and Flannagan Hydro, LLC (transferee) filed jointly an application for the transfer of license of the Flannagan Hydroelectric Project No. 12740. The proposed project would be located at the U.S. Army Corps of Engineers' (Corps) John W. Flannagan Dam and Reservoir on the Pound River, near the Town of Clintwood, in Dickenson County, Virginia.

The applicants seek Commission approval to transfer the license for the Flannagan Hydroelectric Project from the transferor to the transferee.

Applicants Contact: For transferor and transferee: Mr. James Price, President of General Partner, Jordan Hydroelectric Limited Partnership and President of Flannagan Hydro, LLC, P.O. Box 903, Gatlinburg, TN 37738, Email: jabboprice@bellsouth.net and Mr. Joshua E. Adrian, Thompson Coburn LLP, 1909 K Street NW, Suite 600, Washington, District of Columbia 20006, Phone: (202) 585-6922, Email: jadrian@thompsoncoburn.com.

FERC Contact: Anumzziatta Purchiaroni, (202) 502-6191, anumzziatta.purchiaroni@ferc.gov.

Deadline for filing comments, motions to intervene, and protests: 30 days from the date that the Commission issues this notice. The Commission strongly encourages electronic filing. Please file comments, motions to intervene, and protests using the Commission's eFiling system at <http://www.ferc.gov/docs-filing/efiling.asp>. Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at <http://www.ferc.gov/docs-filing/ecomment.asp>. You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at FERCOnlineSupport@ferc.gov, (866) 208-3676 (toll free), or (202) 502-8659 (TTY).

In lieu of electronic filing, you may submit a paper copy. Submissions sent via U.S. Postal Service must be addressed to, Kimberly D. Bose, Secretary, Federal Energy Regulatory

² Only motions to intervene from entities that were party to the underlying proceeding will be accepted. *Algonquin Gas Transmission, LLC*, 170 FERC 61,144, at P 39 (2020).

³ Contested proceedings are those where an intervenor disputes any material issue of the filing. 18 CFR 385.2201(c)(1) (2020).

⁴ *Algonquin Gas Transmission, LLC*, 170 FERC 61,144, at P 40 (2020).

⁵ *Id.* P 40.

⁶ Similarly, the Commission will not re-litigate the issuance of an NGA section 3 authorization, including whether a proposed project is not inconsistent with the public interest and whether the Commission's environmental analysis for the permit order complied with NEPA.

⁷ *Algonquin Gas Transmission, LLC*, 170 FERC 61,144, at P 40 (2020).