

171 FERC ¶ 61,148  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

Algonquin Gas Transmission, LLC  
Maritimes & Northeast Pipeline, L.L.C.

Docket No. CP16-9-010

ORDER DENYING REHEARING

(Issued May 21, 2020)

1. On November 27, 2019, the Director of the Office of Energy Projects (OEP), through his designee, Chief of Gas Branch 1 (Branch Chief), granted Algonquin Gas Transmission, LLC's (Algonquin) and Maritimes & Northeast Pipeline, L.L.C.'s (Maritimes) (together, Applicants) request for authorization to proceed with construction of certain Atlantic Bridge Project facilities in Massachusetts and Maine (Notice to Proceed).<sup>1</sup> Fore River Residents Against the Compressor Station (Fore River), Food & Water Watch, Weymouth Councilor Rebecca Haugh, and other community and environmental organizations<sup>2</sup> (collectively, the Coalition); Dr. Curtis Nordgaard; and Michael Hayden each filed timely requests for rehearing of the November 27 Notice to Proceed. On December 27, 2019, Berkshire Environmental Action Team, a member of the Coalition, filed comments on Dr. Nordgaard's request for rehearing and supplement. For the reasons discussed below, we deny or reject the requests for rehearing.

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<sup>1</sup> Notice to Proceed with Construction, Docket No. CP16-9-000 (Nov. 27, 2019).

<sup>2</sup> The other organizations joining the Coalition's rehearing request are: Stop the Algonquin Pipeline Expansion, Grassroots Environmental Education, No Fracked Gas in Mass., Berkshire Environmental Action Team, Safe Energy Rights Group, and West Roxbury Saves Energy.

## I. Background

2. On January 25, 2017, the Commission issued a certificate of public convenience and necessity under section 7 of the Natural Gas Act (NGA),<sup>3</sup> authorizing Applicants to construct and operate certain pipeline and compression facilities in New York, Connecticut, and Massachusetts (the Atlantic Bridge Project or Project), subject to certain conditions.<sup>4</sup> Specifically, the Project entailed replacing existing pipeline, modifying certain facilities, and building a new compressor station in Weymouth, Massachusetts.

3. On March 27, April 13, and May 19, 2017, the Branch Chief granted Algonquin's requests for authorization to proceed with construction of certain Atlantic Bridge Project facilities in Connecticut.<sup>5</sup> On November 3, 2017, the Branch Chief issued a letter order authorizing Algonquin to proceed with construction of certain project facilities in New York.<sup>6</sup>

4. On November 27, 2019, OEP, through the Branch Chief, issued a notice to proceed with construction and use of additional Atlantic Bridge Project facilities, including construction of the Weymouth Compressor Station in Norfolk County, Massachusetts.

5. On December 9, 2019, the Coalition filed a request for rehearing of the November 27, 2019 notice to proceed. Dr. Curtis Nordgaard filed a request for rehearing of the notice to proceed on December 16 and supplemented that request on December 23, 2019. On December 27, 2019, Michael Hayden filed a request for rehearing. Also, on December 27, 2019, the Berkshire Environmental Action Team (Berkshire) filed comments in support of Dr. Nordgaard's filings. On January 10, 2020, Algonquin filed a motion for leave to answer and answer to the requests for rehearing.

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<sup>3</sup> 15 U.S.C. § 717f(c) (2018).

<sup>4</sup> *Algonquin Gas Transmission, LLC*, 158 FERC ¶ 61,061 (Certificate Order), *order on reh'g*, 161 FERC ¶ 61,255 (2017), *aff'd sub nom., Town of Weymouth v. FERC*, No. 17-1135, 2018 WL 6921213, at \*1 (D.C. Cir. Dec. 27, 2018) (unpublished opinion).

<sup>5</sup> A coalition of environmental and community groups sought rehearing of the March 27 Notice to Proceed and, separately, Lori and Michael Hayden filed requests for rehearing of the March 27, April 13, and May 19 Notices to Proceed. On December 21, 2017, the Commission issued an order denying rehearing. *Algonquin Gas Transmission, LLC*, 161 FERC ¶ 61,287 (2017).

<sup>6</sup> Authorization to Proceed with Construction of New York Facilities, Docket No. CP16-9-000 (Nov. 3, 2017).

## II. Procedural Issues

### A. Nordgaard Rehearing Rejected

6. In his December 16, 2019 filing, Dr. Nordgaard states that he is “a party to these proceedings as a board member of the Fore River Residents Against the Compressor Station” and a resident of Massachusetts who is aggrieved by the Commission’s issuance of the notice to proceed.<sup>7</sup> In his December 23, 2019 filing, Dr. Nordgaard states that he is submitting the filing “on behalf of the Fore River Residents Against the Compressor Station . . . as a supplement to our request for rehearing submitted on [December 16, 2019] in this docket” and as a board member of the group has “been authorized to submit this filing, as well as our previous Request for Rehearing on [December 16, 2019].”<sup>8</sup> Both pleadings were signed by Dr. Nordgaard individually.

7. Fore River Residents Against the Compressor Station, along with multiple other organizations, jointly intervened in the underlying certificate proceeding on November 26, 2015 and thus is a party to this proceeding. By contrast, Dr. Nordgaard never intervened in these proceedings and, contrary to his claim, an individual does not become a party to a proceeding merely by being a board member of an organization. Under NGA section 19(a), only parties to a proceeding may seek rehearing of Commission orders.<sup>9</sup> Accordingly, Dr. Nordgaard cannot individually seek rehearing.

8. The question, therefore, is whether the December 16 rehearing request and the December 23, 2019 supplement were made by Fore River. Throughout the underlying certificate proceeding and during the post-certificate proceedings, Dr. Nordgaard filed eleven comments as an individual, from December 21, 2015 through November 22, 2019. Dr. Nordgaard’s November 22, 2019 comment was a statement of support for the Pipeline Awareness Network’s and the Coalition’s – which includes Fore River<sup>10</sup> –

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<sup>7</sup> Nordgaard December 16, 2019 Rehearing Request at 1.

<sup>8</sup> Nordgaard December 23, 2019 Supplement at 1. Fore River’s December 9, 2019 rehearing request, jointly filed with multiple of other entities, was signed by Alice Arena, President of Fore River Residents Against the Compressor Station.

<sup>9</sup> 15 U.S.C. § 717r(a); *see also Jordan Cove Energy Project, L.P.*, 171 FERC ¶ 61,095 (2020) (Notice Rejecting Request for Rehearing and Dismissing Stay).

<sup>10</sup> On November 8, 2019, Fore River, along with the other organizations that form the Coalition, filed comments supporting the Pipeline Awareness Network’s opposition to the notice to proceed. Alice Arena, President of Fore River, the same person who signed Fore River’s December 9, 2019 request for rehearing, was the signatory for Fore River on the November 8, 2019 comments.

filings in opposition to the Applicants' request for the notice to proceed with construction of the Weymouth Compressor Station. The only time Dr. Nordgaard has professed to represent Fore River is in his supplement filed December 23, 2019. Dr. Nordgaard has never been the signatory for any of Fore River's pleadings throughout this proceeding. Although Dr. Nordgaard states in his December 23 supplement that he is submitting it on behalf of Fore River, he provides no evidence that he was authorized to act for the organization.<sup>11</sup> Further, the supplement does not purport to be a stand-alone rehearing request, and Dr. Nordgaard did not even assert that he was authorized by Fore River to file the December 16 rehearing request. Accordingly, we reject Dr. Nordgaard's December 16 request for rehearing and his December 23 supplement. However, to the extent Dr. Nordgaard raises the same issues as other rehearing requests, those issues are addressed below.<sup>12</sup>

## **B. Berkshire Comments**

9. Berkshire submitted what it captioned as "comments" in which Berkshire endorsed the arguments raised in Dr. Nordgaard's requests for rehearing and reiterated the Coalition's earlier request for rehearing, which Berkshire joined. Because the pleading was filed within the 30-day rehearing period, we will treat Berkshire's December 27 comments as a timely supplement to the Coalition's December 9, 2019 rehearing request.<sup>13</sup> We further note that to the extent Berkshire is attempting to

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<sup>11</sup> Rule 2005 of our regulations, 18 C.F.R. § 385.2005 (2019), provides that only an "officer of the ... association or other organized group" may sign a filing submitted to the Commission. Further, Rule 2101 likewise states that a "bona-fide officer of a corporation, trust, association or organized group may represent the ... association or group." 18 C.F.R. § 385.2101 (2019). Board members are not officers unless elected by the board to serve as the president, vice president, secretary, or treasurer of the organization. There is no indication that Dr. Nordgaard is an elected officer of Fore River.

<sup>12</sup> In any case, Dr. Nordgaard's rehearing request focuses exclusively on the need for the project. As discussed below, any argument regarding need is an impermissible collateral attack on the Certificate Order. *See supra* PP 11-13.

<sup>13</sup> *See New York State Elec. & Gas Corp.*, 114 FERC ¶ 61,279, at P 5 (2006) (treating a party's comments in support of another entity's request for rehearing as a rehearing request, albeit in that case untimely).

incorporate by reference Dr. Nordgaard's pleadings into its rehearing request that it is improper to do so.<sup>14</sup>

**C. Answers Prohibited**

10. Rule 713(d) of the Commission's Rules of Practice and Procedure<sup>15</sup> prohibits answers to requests for rehearing. Accordingly, we reject Algonquin's answer to the requests for rehearing in this proceeding.

**III. Discussion**

**A. Project Need Argument Is an Impermissible Collateral Attack on the Certificate Order**

11. The Coalition argues that certain public statements by project shippers indicate that the Weymouth Compressor Station is "not needed to fulfill customer demand" and "their shipping contracts are being met without the compressor station."<sup>16</sup> It also notes that "half of the gas is for export, creating a higher standard of proof of the need in the face of adverse impacts."<sup>17</sup> Berkshire claims that multiple key customers for the

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<sup>14</sup> See *Rio Grande LNG, LLC*, 170 FERC ¶ 61,046, at P 99 n.304 (2020) (citing *San Diego Gas and Electric Co. v. Sellers of Market Energy*, 127 FERC ¶ 61,269, at P 295 (2009)); *Tennessee Gas Pipeline Co., L.L.C.*, 156 FERC ¶ 61,007, at P 7 (2016) ("the Commission's regulations require rehearing requests to provide the basis, in fact and law, for each alleged error including representative Commission and court precedent. Bootstrapping of arguments is not permitted."); *ISO New England, Inc.*, 157 FERC ¶ 61,060, at P 4 (2016) (explaining that the identical provision governing requests for rehearing under the Federal Power Act "requires an application for rehearing to 'set forth specifically the ground or grounds upon which such application is based,' and the Commission has rejected attempts to incorporate by reference grounds for rehearing from prior pleadings"). See also *Allegheny Power v. FERC*, 437 F.3d 1215, 1220 (D.C. Cir. 2006) (rejecting argument made on rehearing to the Commission by incorporating by reference objections made in other pleadings).

<sup>15</sup> 18 C.F.R. § 385.713(d).

<sup>16</sup> Coalition Rehearing Request at 2.

<sup>17</sup> *Id.* (citing *City of Oberlin v. FERC*, No. 18-1248 (D.C. Cir. 2019); 15 U.S.C. § 717f).

Weymouth Compressor Station have withdrawn from the project eroding the need for the project.<sup>18</sup> Berkshire also argues that a rehearing of the Certificate Order is necessary.<sup>19</sup>

12. The Coalition and Berkshire's attacks on the project's need are impermissible collateral attacks of the Certificate Order.<sup>20</sup> The scope of the issues before the Commission here is narrow: whether the notice to proceed properly issued. A party seeking rehearing of the notice to proceed may properly challenge only the applicant's compliance with the Certificate Order, specifically the preconstruction conditions, including environmental condition 9, which requires applicants to document that it has obtained all applicable authorizations required under federal law,<sup>21</sup> and ordering paragraph (E), which requires the applicants execute firm contracts for the capacity levels and terms of service represented in signed precedent agreements. Challenges regarding the Commission's compliance with the NGA in issuing the certificate are outside the scope of this proceeding and instead are belated challenges to the Certificate Order.

13. Grievances regarding the Certificate Order were required to have been raised in a timely request for rehearing of that order. Indeed, most of the same individuals and entities that jointly filed the Coalition's rehearing request here, did seek rehearing of the Certificate Order and raised the issue of project need. After considering those arguments, the Commission denied rehearing.<sup>22</sup> The certificate and rehearing orders were appealed to the U.S. Court of Appeals for the District of Columbia Circuit, which rejected the

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<sup>18</sup> Berkshire December 27 Comments at 2-3.

<sup>19</sup> *Id.* at 4.

<sup>20</sup> See e.g., *Tennessee Gas Pipeline Company, L.L.C.*, 162 FERC ¶ 61,013, at P 37 (2018) (rejecting arguments on rehearing of a notice to proceed that challenge the adequacy of the Commission's environmental review in the certificate proceeding); *Arlington Storage Co., LLC*, 151 FERC ¶ 61,160, at P 20 (2015) (rejecting as a collateral attack an argument in a request for rehearing of a notice to proceed with construction that challenged the proposed location and geology of the proposed storage caverns as unsuitable for gas storage operations, which argument was addressed in the certificate order authorizing the storage caverns).

<sup>21</sup> Environmental Condition 9 states in full: "Prior to receiving written authorization from the Director of OEP to commence construction of any Project facilities, the Applicants shall file with the Secretary documentation that it has received all applicable authorizations required under federal law (or evidence of waiver thereof)."

<sup>22</sup> See *Algonquin Gas Transmission, LLC*, 161 FERC ¶ 61,255, at PP 36-39 (2017).

argument that the “project does not serve the public convenience and necessity because roughly half its gas is slated for export to Canada,” observing that “given that much of the gas will be used for domestic consumption, petitioners have not identified why granting the certificate in this case would not still advance the public convenience and necessity, even if a portion of the gas is ultimately diverted for export.”<sup>23</sup> Accordingly, the issue of project need has been resolved and cannot be relitigated.

**B. Issuance of the Notice to Proceed Was Appropriate**

**1. Sub-delegation of Authority to OEP Branch Chief Is Permissible**

14. Both the Coalition and Mr. Hayden argue that only the Director of OEP, not a branch chief, had the delegated authority to issue the notice to proceed. Mr. Hayden and the Coalition point to a number of instances where the Certificate Order and the appended Environmental Conditions refer solely to the Director of OEP to support their claim that the authority to issue a notice to proceed was not delegated to the Branch Chief.<sup>24</sup> Mr. Hayden also argues that under the Commission’s general sub-delegation regulations, which permit an official with delegated authority to further delegate those functions to the “deputy of such official, the head of a division, or a comparable official,”<sup>25</sup> the Branch Chief is not an appropriate designee.

15. We disagree and find that the Coalition and Mr. Hayden misconstrue the Commission’s delegation of authority in this case. We have previously addressed nearly identical arguments in an order denying rehearing of earlier notices to proceed with construction of other Atlantic Bridge Project facilities and, more recently, in the extension of time rehearing order regarding this project.<sup>26</sup> As we stated in those orders, the Commission routinely delegates authority through its orders, as in this

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<sup>23</sup> *Town of Weymouth, Massachusetts v. FERC*, No. 17-1135, 2018 WL 6921213, at \*1 (2018) (per curiam).

<sup>24</sup> Hayden Rehearing Request at 8-9; Coalition Rehearing Request at 2.

<sup>25</sup> 18 C.F.R. § 375.301(b) (2019).

<sup>26</sup> *Algonquin Gas Transmission, LLC*, 161 FERC ¶ 61,287, at PP 12-26 (2017) (notice to proceed rehearing order); *Algonquin Gas Transmission, LLC*, 170 FERC ¶ 61,144, at PP 6-12 (2020) (extension of time rehearing order).

proceeding, and that any delegated authority may be further sub-delegated to designees of the delegee.<sup>27</sup>

16. Here, the Certificate Order included conditions that must be met before construction or operation may begin, and the Commission delegated to the Director of OEP the authority to act on requests related to construction and operation of the Project.<sup>28</sup> It has been the Commission's longstanding practice to have the Director of OEP (or his designees), not the Commission itself, verify that certificate conditions have been met before issuing notices to proceed with construction.<sup>29</sup> With respect to the Coalition's and Mr. Hayden's argument that the Branch Chief did not have the delegated authority to issue the notice to proceed, the Commission "delegates authority to its Directors with the understanding that the Director may further delegate such authority to a designee," and that sub-delegations to Branch Chiefs and similar level officials are appropriate.<sup>30</sup> The Commission has described this practice as "routin[e]," "usual, and longstanding."<sup>31</sup> In accordance with the usual practice, the OEP Director designated the Branch Chief, who has direct responsibility over environmental compliance matters for the Atlantic Bridge Project and direct knowledge of the project's status and therefore is a comparable official to a deputy or division head in this situation, and could properly act on Algonquin's request for a notice to proceed with construction.<sup>32</sup>

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<sup>27</sup> See *Algonquin Gas Transmission, LLC*, 161 FERC ¶ 61,287 at P 17 (describing the breadth of the Commission's authority to delegate to its designated agents the authority to conduct actions appropriate to the Commission's functions through its orders and regulations); *Algonquin Gas Transmission, LLC*, 170 FERC ¶ 61,144 at P 11 (same). See also 18 C.F.R. § 375.301(b).

<sup>28</sup> See, e.g., Certificate Order at Appendix B, Environmental Conditions 1, 2, 5, 9, 15, 17, and 19.

<sup>29</sup> *Rockies Express Pipeline, LLC*, 128 FERC ¶ 61,045, at P 23 (2009) (affirming practice of delegating authority to Commission staff in certificate orders).

<sup>30</sup> *Id.* at P 21; see also *East Tennessee Natural Gas Co.*, 106 FERC ¶ 61,159, at P 12 (2004) (rejecting argument that letter order authorizing pipeline to place facilities in service signed by the Director of the Division of Gas – Environment and Engineering was not valid because it was not actually signed by the Director of OEP).

<sup>31</sup> *Rockies Express*, 128 FERC ¶ 61,045 at PP 21, 22; *East Tennessee Natural Gas Co.*, 106 FERC ¶ 61,159 at P 12 (affirming Director of OEP's sub-delegation as "usual and longstanding" practice).

<sup>32</sup> See *Rockies Express*, 128 FERC ¶ 61,045 at P 23.



17. This position is consistent with the Commission's interpretation of its regulations, which is entitled to substantial deference.<sup>33</sup> In interpreting section 375.301(b), the Commission has found that, "[w]ith respect to clearances for environmental conditions and authorization to begin construction, [the Chief of Gas Branch 2] who has direct responsibility for ensuring compliance with the conditions is appropriately situated to evaluate whether those conditions have been met, and therefore is a 'comparable official' to a deputy or division head in this situation, as required by section 375.301(b) of the Commission's regulations."<sup>34</sup>

18. Mr. Hayden argues that, because the Commission's OEP organizational chart lists only a Director, Deputy Director, and Senior Policy Advisor in the Office of the Director and the Division of Gas Environment and Engineering lists a Director and Deputy Director, a Branch Chief "cannot be considered a 'comparable official' to the Director of OEP" and the Notice to Proceed is "necessarily invalid."<sup>35</sup> He cites *League of Women Voters of the United States*, in which a federal district court held that "[review of an] agency action must determine that 'the particular official acting on behalf of the agency [was] delegated the authority to act; otherwise such agency action is invalid.'"<sup>36</sup> Mr. Hayden further contends that because section 375.308 of the Commission's regulations<sup>37</sup> does not explicitly reference notices to proceed in contested applications, that the delegation was improper.<sup>38</sup>

19. Mr. Hayden's reliance on *League of Women Voters* is unavailing. There, a group of voting rights organizations brought an action against the United States Election Assistance Commission and its Executive Director, alleging that the Executive Director did not have the delegated authority to grant three states' requests to modify their national

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<sup>33</sup> See, e.g., *Bluestone Energy Design, Inc. v. FERC*, 74 F.3d 1288, 1292 (D.C. Cir. 1996).

<sup>34</sup> *Rockies Express*, 128 FERC ¶ 61,045 at P 23.

<sup>35</sup> Hayden Rehearing Request at 9-10 (citing to OEP's organizational chart, found at [www.ferc.gov/about/offices/oep/org-oep.asp](http://www.ferc.gov/about/offices/oep/org-oep.asp)).

<sup>36</sup> Hayden Rehearing Request at 2, 7, 10 (citing *League of Women Voters of the United States*, 238 F. Supp. 3d 6, 11 (D.D.C. 2017) (quoting *Am. Vanguard Corp. v. Jackson*, 803 F. Supp. 2d 8, 12 (D.D.C. 2011)).

<sup>37</sup> 18 C.F.R. § 375.308.

<sup>38</sup> Hayden Rehearing Request at 5-6.

mail voter registration forms.<sup>39</sup> Noting that there was “no consistent or longstanding practice” as to the Executive Director having delegated authority to approve changes to voter registration forms and the “near-constant fluctuation” between the Executive Director and the Election Commission itself in who granted or denied these requests, the court was unable to determine whether the Executive Director had the delegated authority to take the action it did.<sup>40</sup> Unlike in *League of Women Voters* and as discussed above, evidence of a valid delegation in this case is clear. Here, consistent with its usual and longstanding practice, the Commission delegated authority to issue notices to proceed to the Director of OEP, who has validly sub-delegated that authority to the Branch Chief.<sup>41</sup>

20. We are also not persuaded by Mr. Hayden’s attempt to distinguish the *Rockies Express* order. In that case, the Commission found that the Director of OEP’s delegation to the Branch Chief was “in accordance with usual and longstanding practice and supported by internal documentation.”<sup>42</sup> This statement does not suggest, as Mr. Hayden alleges, that internal documentation is required for a sub-delegation to be valid. On the contrary, in *Rockies Express*, the Commission stated that, “unless explicitly prohibited, a Director may further delegate authority delegated by order of the Commission . . . to Branch Chiefs and similar level officials.”<sup>43</sup> Mr. Hayden fails to identify any Commission authority that would “explicitly prohibit” a sub-delegation in this case.

21. Mr. Hayden’s argument that action by delegated authority was improper here because the notice to proceed was “contested” is inapposite. The Commission’s general delegation regulations define “[f]or purposes of Subpart C,” the terms *uncontested* and *in uncontested cases*.<sup>44</sup> These terms apply to the delegations to the Director of OEP set forth in section 375.308 of the Commission’s regulations, which explicitly identifies actions where the delegated authority is limited to uncontested applications or proceedings.<sup>45</sup> Unless a particular delegation is explicitly limited to “uncontested”

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<sup>39</sup> *League of Women Voters*, 238 F. Supp. 3d at 7.

<sup>40</sup> *Id.* at 12, 14.

<sup>41</sup> *Rockies Express*, 128 FERC ¶ 61,045 at PP 21-22.

<sup>42</sup> Hayden Rehearing Request at 10 (citing *Rockies Express*, 128 FERC ¶ 61,045 at PP 22-23).

<sup>43</sup> *Rockies Express*, 128 FERC ¶ 61,045 at PP 21, 23.

<sup>44</sup> 18 C.F.R. § 375.301(c).

<sup>45</sup> See e.g., *id.* §§ 375.308(a), (b), (i), (v), (w)(1), and (w)(2).

proceedings, then the delegation of authority under a subsection of 375.308 is in force in both contested and uncontested proceedings. Here, the delegation of authority to issue notices to proceed arises from the Certificate Order and is not limited to uncontested cases.<sup>46</sup> Thus, whether this proceeding was contested is not relevant.

22. Accordingly, we again affirm the practice of delegating authority to Commission staff in our certificate orders and we confirm that the Branch Chief had the authority to issue the notice to proceed. Even had that not been the case, we adopt the OEP Director's action, through his designee, as our own.

## 2. The Notice to Proceed Does Not Violate the Certificate

23. The Coalition argues that the notice to proceed violates the Certificate Order's requirement that Applicants receive all applicable federal authorizations before construction can begin. The Coalition points to the Town of Weymouth's pending appeal of three permits issued by the Massachusetts Department of Environmental Protection (Massachusetts DEP) and the consistency determination issued by the Massachusetts Office of Coastal Zone Management.<sup>47</sup> Additionally, the Coalition asserts that Commission staff should not have authorized construction because the Mayor of Weymouth has petitioned Massachusetts DEP to further review the Release Abatement Measures (RAM) plan submitted to it by Algonquin.<sup>48</sup>

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<sup>46</sup> See Certificate Order, 158 FERC ¶ 61,061 at Appendix B, Environmental Conditions 2 and 9.

<sup>47</sup> Coalition Rehearing Request at 1-2. The Coalition does not specify which permits it refers to beyond "air, wetlands, and waterways permits" issued by the Massachusetts Department of Environmental Protection. The authorizations issued by the Massachusetts DEP include a Chapter 91 Waterways License on November 12, 2019, a State Non-Major Comprehensive Plan Approval on August 26, 2019, and a Final Order of Conditions (under the Massachusetts Wetlands Protection Act) on October 24, 2019. Applicants November 13, 2019 Filing at Attachment B. The Massachusetts Office of Coastal Zone Management issued its consistency determination under the Coastal Zone Management Act on November 12, 2019. See Applicants November 13, 2019 Filing at Attachment A.

<sup>48</sup> Coalition Rehearing Request at 2. The RAM plan is not a federal authorization and, although the Commission encourages cooperation between companies subject to its jurisdiction and state and local authorities, the Certificate Order does not condition clearance for the commencement of construction on Algonquin having obtained all applicable state or local permits.

24. The purpose of the Director of OEP's review of a request for notice to proceed is not to reexamine the Commission's conclusions; rather it is to ensure that the Commission's conditions have been met before authorizing construction activities.<sup>49</sup> As stated in the Notice to Proceed, the Commission has confirmed the receipt of all federal authorizations relevant to activities approved therein, which satisfies Environmental Condition 9 of the Certificate Order.<sup>50</sup> The Coalition does not suggest the existence of, much less cite, any legal authority for the proposition that legal appeal of any of the named Massachusetts DEP permits automatically stays the permit.<sup>51</sup>

### 3. Reopening the Record Is Not Appropriate

25. Mr. Hayden argues that the Commission should reopen the record for this proceeding under Rule 716 of the Commission's Rules of Practice and Procedure.<sup>52</sup> He argues that a November 20, 2019 letter from Senators Edward J. Markey and Elizabeth Warren that raises concerns about project need for the Weymouth Compressor Station justifies doing so, under *Oklahoma Natural Gas Co. v. FERC*.<sup>53</sup>

26. Even if Mr. Hayden's attack on the Atlantic Bridge certificate proceeding were procedurally proper, which, for the reasons explained above, it is not, Rule 716 does not provide authority for the Commission to reopen the record. Rule 716, which applies

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<sup>49</sup> *Algonquin Gas Transmission, LLC*, 161 FERC ¶ 61,287, at P 18 (2017); *Tennessee Gas Pipeline Co., L.L.C.*, 162 FERC ¶ 61,013, at P 22 (2018).

<sup>50</sup> See Notice to Proceed with Construction, Docket No. CP16-9-000 (Nov. 27, 2019) and Algonquin's November 13, 2019 Request for Construction Authorization at Appendix B (chart of acquired federal authorizations).

<sup>51</sup> Cf. 15 U.S.C. § 717r(c) (2018) (providing that the filing of an application for rehearing shall not, unless specifically ordered by the Commission, operate as a stay of the Commission's order, and commencement of proceedings in a United States court of appeals for review of a Commission order shall not operate as a stay, unless specifically ordered by the court).

<sup>52</sup> Hayden Rehearing Request at 10-11 (citing 18 C.F.R. § 385.716 (2019)).

<sup>53</sup> 940 F.2d 699 (D.C. Cir. 1991).

only to “decisions in proceedings set for [trial-type] hearing,”<sup>54</sup> allows the Commission to reopen the evidentiary record in limited circumstances if the Commission “has reason to believe that reopening of a proceeding is warranted by any changes in conditions of fact or of law or by the public interest.”<sup>55</sup> The Atlantic Bridge certificate is not a decision in a proceeding set for trial-type hearing; thus, Rule 716 does not apply.

27. *Oklahoma Natural Gas Co.* does not support Mr. Hayden’s argument, either. There, the court examined the Commission’s explanation of its jurisdiction over a particular natural gas transaction.<sup>56</sup> The pipeline company argued that a ruling in a related but separate case in a different court of appeals required the court to order the Commission to reopen the proceedings.<sup>57</sup> The court declined.<sup>58</sup> We find that *Oklahoma Natural Gas Co.* has no bearing on whether the record must be reopened in this proceeding. As explained above, the certificate and rehearing orders have been affirmed on appeal.

**C. Arguments Regarding the 2018 Extension of Time to Construct Order Are Outside the Scope of this Proceeding**

28. Mr. Hayden argues that the Commission’s failure to issue an order on the merits addressing his and other parties’ requests for rehearing of a December 26, 2018, Commission staff-issued letter order granting Algonquin a two-year extension of time to complete construction of the Atlantic Bridge Project violates homeowners’ due process rights and places homeowners in “administrative limbo.”<sup>59</sup> He states that the Commission must issue an order addressing these January 25, 2019 rehearing requests.

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<sup>54</sup> 18 C.F.R. § 385.701; *see also* 18 C.F.R. § 385.501 (explaining that the hearings subpart of the Commission’s regulations “applies to any proceeding, or part of a proceeding, that the Commission or the Secretary under delegated authority sets for a hearing to be conducted in accordance with this subpart”).

<sup>55</sup> 18 C.F.R. § 385.716(c).

<sup>56</sup> *See Okla. Nat. Gas Co. v. FERC*, 940 F.2d 699.

<sup>57</sup> *Id.* at 704.

<sup>58</sup> *Id.*

<sup>59</sup> Hayden Rehearing Request at 12-13 (quoting *Allegheny Defense Project v. FERC*, 932 F.3d 940, 948–51 (D.C. Cir. 2019), *reh’g en banc granted, judgment vacated*, 943 F.3d 496 (D.C. Cir. 2019) (Millett, J., concurring)).

29. Mr. Hayden's argument is moot, as on February 21, 2020, the Commission issued an order on rehearing regarding the extension of time order.<sup>60</sup> Moreover, Mr. Hayden's attack on the timing of the Commission's orders regarding the extension of time falls outside the scope of this proceeding, which as stated above, involves only the issuance of the notice to proceed with construction for the Weymouth Compressor Station.

The Commission orders:

(A) Dr. Curtis Nordgaard's December 16, 2019 request for rehearing and December 23 supplement are rejected.

(B) The Coalition's December 9, 2019 request for rehearing is denied.

(C) Michael Hayden's December 27, 2019 request for rehearing is denied.

(D) Berkshire Environmental Action Team's December 27, 2019 supplemental request for rehearing is denied.

(E) Algonquin's January 10, 2020 motion for leave to file an answer is denied.

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.

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<sup>60</sup> *Algonquin Gas Transmission, LLC*, 170 FERC ¶ 61,144 (2020) (order denying rehearing).