

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
Nora Mead Brownell, and Joseph T. Kelliher.

Algonquin Gas Transmission Company

Docket Nos. RP04-24-000
RP04-24-001
RP04-24-002
RP04-24-003
RP04-24-005
RP04-263-000
(Not Consolidated)

ORDER GRANTING MOTION TO WITHDRAW PLEADINGS
AND TERMINATE PROCEEDING, AND ACCEPTING TARIFF REVISIONS,
AND NEGOTIATED RATE CONTRACTS, SUBJECT TO CONDITIONS

(Issued May 19, 2004)

1. On April 19, 2004, Algonquin Gas Transmission Company (Algonquin) submitted two related filings to the Commission. In Docket No. RP04-24-005, Algonquin filed a motion requesting that the Commission withdraw its filings, including any tariff sheets, and to terminate the proceeding in Docket No. RP04-24. Simultaneously, in Docket No. RP04-263-000, Algonquin filed revised tariff sheets¹ reflecting new rates and restructured services as well as service agreements with negotiated rates for service to USGen New England, Inc. (USGen).

2. In this order, the Commission grants Algonquin's motion to withdraw its pleadings and terminate the proceeding in Docket No. RP04-24, and accepts the tariff sheets and service agreements filed in Docket No. RP04-263-000, subject to conditions. The decision will permit Algonquin and USGen to resolve their outstanding issues in an efficient manner that is consistent with prior Commission determinations.

¹ See Appendix.

I. Background

3. On October 9, 2003, Algonquin filed revised tariff sheets in Docket RP04-24-000 to establish what it characterized as “meter access charges.” Algonquin proposed that these charges would be applicable to shippers for any deliveries to its M&R No. 0087 (Manchester Street) and M&R No. 0090 (Brayton Point) meters on a secondary firm, interruptible, or overrun basis, and would be charged in addition to any other charges shippers incur under their existing service contracts. Algonquin asserted that it became necessary to propose these new charges because USGen declared bankruptcy and the Bankruptcy Court rejected USGen’s contracts under Rate Schedules AFT-1(X-38) and AFT-CL(X-37), leaving Algonquin without the ability to recover the costs of the facilities attributable to the service under the contracts.²

4. By various Commission orders issued in Docket No. CP89-661, et al., Algonquin was authorized to construct and operate project financed facilities to provide incremental service to New England Power Company (NEP) by delivery of gas to its Manchester Street delivery point in Providence, Rhode Island, and the Brayton Point delivery point in Somerset, Massachusetts, under Rate Schedules X-38 and X-37, respectively. For the service to the Manchester Street delivery point under Rate Schedule X-38, Algonquin looped its existing mainline and added compression and metering facilities to provide service along its mainline from Hanover, New Jersey, to Mendon, Massachusetts, and then constructed a lateral line from Mendon leading to the Manchester Street delivery point. The service to the Brayton Point delivery point, under Rate Schedule X-37, was certificated solely as a lateral line service, with Algonquin having constructed a short lateral line from Dighton, Massachusetts to the Brayton Point delivery point to deliver gas to NEP, requiring that NEP be responsible for gas delivered on Algonquin’s mainline to Dighton.

5. The rates for these section 7(c) certificated services were designed as two-part incremental firm reservation rates to recover the incremental cost of the forgoing facilities, with NEP as the sole customer and Algonquin placed at risk for recovery of the

²On August 8, 2003, the U.S. Bankruptcy Court for the District of Maryland (Greenbelt Division) authorized the rejection of USGen’s contracts with Algonquin effective September 11, 2003. See Case No. 03-30465 (PM).

cost of the facilities providing service to NEP and its successors.³ The then-existing two-part incremental rate for service to the Manchester Street delivery point consisted of a maximum firm reservation rate of \$9.4003 per Dth and a commodity charge of \$0.0061 per Dth while the maximum rates for service to the Brayton Point delivery point consisted of a firm maximum reservation rate of \$1.6997 per Dth and maximum commodity charge of \$0.0021 per Dth. After the service to NEP was authorized, Algonquin was authorized to convert the section 7(c) service to Part 284 transportation service with flexible delivery points. Following the conversion of the subject X-38 and X-37 services, NEP permanently assigned its rights to these services to USGen.

6. On November 7, 2003, the Commission issued an “Order Accepting and Suspending Tariff Sheets, Subject to Refund and Conditions, and Establishing Hearing Procedures” in Docket No. RP04-24-000 in which it: (i) accepted and suspended the filed tariff sheets to become effective October 10, 2003, subject to refund and conditions; and (ii) set for hearing rate issues regarding the rates for service on the Manchester Street and Brayton Point facilities.⁴ Specifically, the Commission found Algonquin’s proposed meter access charge would result in existing shippers that use the Manchester Street and Brayton Point delivery points paying for the costs of the incremental laterals, as opposed to those shippers who have subscribed to the incremental service, and rejected the proposed change. However, the Commission clarified that Algonquin could file to revise its existing two-part incremental maximum rate to provide for a one-part volumetric firm maximum rate for service. The Commission stated that Algonquin could also file for a two-part firm rate, with an interruptible 100 percent load factor rate. In addition, consistent with Commission policy, Algonquin was informed that it could propose that only shippers paying the incremental AFT-1(X-38) or AFT-CL(X-37) rates will have access to the Manchester Street and Brayton Point delivery points.

7. On November 26, 2003, as supplemented on December 12 and December 16, 2003, Algonquin made a tariff filing in compliance with the November 7, 2003 Order, and subsequently requested rehearing of that order. In its filing, Algonquin proposed to replace its existing two-part AFT-1(X-38) rate for service to the Manchester Street point with what it asserted is a one-part, 100 percent load-factor designed volumetric rate for

³ Under the “at risk” condition and the certificated rate design for service to NEP, Algonquin was precluded from shifting the cost recovery of the project to other shippers for whom the facilities were not constructed and who did not need or use them.

⁴ Algonquin Gas Transmission Co., 105 FERC ¶ 61,180 (2003) (November 7, 2003 Order).

firm service of \$0.6138 per Dth. Similarly, Algonquin proposed to replace the existing two-part AFT-CL(X-37) rate for firm service to the Brayton Point meter with a one-part volumetric rate of \$1.0105 per Dth. Algonquin also proposed a new interruptible transportation service under Rate Schedule AIT-1.

8. On March 4, 2004, the Commission issued an “Order on Compliance Filing and Rehearing” addressing Algonquin’s compliance filings and the requests for rehearing of the November 7, 2003 Order.⁵ The Commission found that Algonquin’s proposal would restrict customers under Rate Schedules AFT-1(X-38), AFT-CL(X-37), and AIT-2 from using secondary points that are located outside of their contract paths. As such, these provisions were rejected, however, without prejudice to Algonquin filing to prospectively restructure its AFT-1(X-38) and AFT-1 services and rates to reflect separate Manchester Street Lateral only services in Rate Schedule AFT-CL and AIT-2 and mainline AFT-1 service from Hanover to the inlet to the Manchester Street Lateral.

II. Intervening Events

9. While the Commission and Bankruptcy Court proceedings were pending, Algonquin states that it has engaged in extensive settlement negotiations with USGen to resolve the issues in dispute between them in both proceedings, and these efforts have resulted in a settlement agreement executed by Algonquin and USGen on April 16, 2004 (April 16 Settlement).⁶ Algonquin states that the settlement resolves all issues in dispute between Algonquin and USGen in Docket No. RP04-24 and in the proceeding before the Bankruptcy Court.

10. Algonquin states that the settlement agreement provides a comprehensive solution to resolve proceedings before this Commission and the Bankruptcy Court. As part of the settlement, Algonquin and USGen agreed to file contemporaneously: (i) a Motion to Withdraw Pleadings and Terminate Proceedings in Docket No. RP04-24, et al.; (ii) revised tariff sheets and service agreements; and (iii) a Motion to Approve Global Settlement at the Bankruptcy Court seeking approval of the settlement agreement in that forum.

⁵ Algonquin Gas Transmission Co., 106 FERC ¶ 61,217 (2003) (March 4, 2004 Order).

⁶ See Algonquin’s Motion to Withdraw Pleadings at 1-2.

11. Algonquin states that the effectiveness of each of these filings, as well as the settlement itself, is contingent upon Commission or Bankruptcy Court approval of each of the filings, as applicable, without substantial modification or condition. Algonquin states that all issues in Docket No. RP04-24 will be resolved upon the Commission's approval of its motion for withdrawal and the tariff filing, as well as the Bankruptcy Court's approval of the settlement agreement.

III. Motion to Withdraw Pleadings, Terminate Proceeding, and Other Relief

12. On April 19, 2004, Algonquin filed a motion in Docket No. RP04-24-005 to issue an order to: (i) permit Algonquin to withdraw its tariff filings in that docket, as well as all of its pleadings and supporting documentation; (ii) terminate the proceeding in that docket, including the hearing as of the date of such order; (iii) provide any necessary authorizations for Algonquin's system operations during the pendency of that proceeding, as they pertain to the services provided on the AFT-1(X-38) and AFT-CL(X-37) facilities; and (iv) order that Algonquin make refunds with interest to customers (other than USGen) that took service on the Manchester Street and Brayton Point facilities from October 10, 2003, to March 1, 2004, and file a refund report.

13. Algonquin states that unconditional approval of their Motion inures to the benefit of Algonquin, USGen, and its other customers by allowing the settlement agreement to be placed into effect. Algonquin states that since the modified rates in Docket No. RP04-263-000 will only affect USGen as the sole shipper taking service on both the Brayton Point and Manchester Street Laterals, the withdrawal of its filings and termination of the proceeding will not harm its other system shippers. However, to ensure that the settlement has no detrimental affect on other shippers, Algonquin proposes to provide refunds to shippers for whom service was scheduled on the Brayton Point or Manchester Street facilities since the commencement of Docket No. RP04-24. Specifically, for all customers other than USGen that have taken service on the Manchester Street and Brayton Point facilities from October 10, 2003 to February 29, 2004, Algonquin will refund the difference between: (i) the rates paid by customers for access to these facilities from October 10, 2003 to February 29, 2004; and (ii) the currently effective AIT-1 rate of \$0.2425 per Dth, including interest at the Commission prescribed rate. Algonquin states that it will file a report detailing these refunds and make applicable refunds within 30 days after a final order approving this motion.

14. Pursuant to the terms of the settlement, Algonquin states that it is entitled to retain all applicable refunds otherwise payable to USGen for service on the Manchester Street and Brayton Point facilities or pursuant to Rate Schedules AFT-1(X-38), AFT-CL(X-37),

AIT-2(X-37), or AIT-2(X-38) for service between October 10, 2003 and February 29, 2004. Additionally, Algonquin states that, under the settlement, it will retain any payments already made or payments to be made by USGen to Algonquin for such services provided.

15. Finally, Algonquin recognizes that it implemented operating procedures contained in its November 26, 2003 compliance filing prior to receiving Commission approval. Thus, to avoid any potential future controversy and to completely resolve the issues in this proceeding, Algonquin requests that the Commission acknowledge that Algonquin's system operations during the pendency of the proceeding, as they pertain to service of facilities formerly associated with AFT-1(X-38) and AFT-CL(X-37), are resolved. In the alternative, Algonquin requests that the Commission issue any waivers necessary to authorize such operations during this period.

16. Algonquin states that by effectuating the withdrawal of the tariff filings in Docket No. RP04-24, and terminating the proceeding, the settlement returns all of its shippers (other than USGen) to the *status quo ante*, except to the extent that the settlement provides increased capacity availability and flexibility on Algonquin's mainline, as discussed below. Algonquin explains that the settlement does not modify rates for existing mainline customers, and that USGen, the only customer that is proposing to contract for service on the Brayton Point and Manchester Street Laterals, has stipulated and agreed to recourse rates applicable to those laterals, as set forth in the tariff filing. In that regard, Algonquin states that the settlement removes the possibility that there may be precedential value for rate design in future proceedings arising from the factors Algonquin used in deriving the rates underlying its filings in Docket No. RP04-24.

IV. Filing in Docket No. RP04-263-000

17. On April 19, 2004, Algonquin filed revised tariff sheets in Docket No. RP04-263-000 to be effective March 1, 2004, to establish rates and services to USGen as required by the settlement agreement and consistent with the Commission's March 4, 2004 Order for service to the Manchester Street and Brayton Point delivery points. Algonquin proposes that the effectiveness of the proposed tariff sheets and the service agreements discussed below be contingent upon the settlement agreement becoming effective and receipt from the Bankruptcy Court granting all authorizations requested in the Motion to Approve Global Settlement filed with the Bankruptcy Court. Algonquin states that as suggested in the March 4, 2004 Order, Algonquin proposes to restructure its AFT-1(X-38) service which involved both mainline and lateral line service to the Manchester Street Delivery point. Under this restructuring, Algonquin will provide service on its mainline,

using capacity created by the Manchester expansion pursuant to its existing Rate Schedule AFT-1(F-1/WS-1) at the system-wide rate of \$6.5854 per Dth.⁷ Algonquin will provide service on the Manchester Street Lateral which extends from its mainline at the head of the G-12 Lateral (M&R No. 80070) to the Manchester Street generating plant at M&R No. 0087. Algonquin will also continue to provide lateral line service on its Brayton Point Lateral from the tap on its G-1 System in Dighton, Massachusetts to the Brayton Point generating station at M&R No. 00090. Algonquin would provide these proposed lateral line services pursuant to its lateral line rate schedule, AFT-CL. Algonquin proposes a recourse rate of \$1.27 per Dth for the Brayton Point Lateral service under Rate Schedule AFT-CL (Brayton Point Lateral). Further, Algonquin proposes a recourse rate of \$2.45 per Dth for the Manchester Street Lateral service under Rate Schedule AFT-CL (Manchester Street Lateral). The proposed rates for the Manchester Street and Brayton Point laterals are based on the cost of service factors underlying Algonquin's current rates as approved in Docket No. RP99-262⁸ adjusted to reflect the per book balances as of September 30, 2003 for gross plant, accumulated reserve for depreciation, and accumulated deferred income taxes. The mainline transportation service will be provided under Algonquin existing Rate Schedule AFT-1(F-1/WS-1).

18. The revised maximum rates for firm service to the Manchester Street and Brayton Point delivery points are less than the existing maximum rates to those two points. The existing maximum rate to the Manchester Street delivery point is \$9.4003 per Dth, which includes both mainline service from Hanover, New Jersey and transportation on the Manchester Street Lateral to the Manchester Street delivery point. Under the new proposal, shippers would be subject to maximum rates of \$6.5854 per Dth for mainline service to the Manchester Street Lateral and \$2.45 per Dth for transportation on the Manchester Street Lateral for a total of \$9.0354 per Dth. For service to the Brayton Point delivery point on the Brayton Point Lateral, Algonquin proposes a maximum recourse reservation rate under Rate Schedule AFT-CL (Brayton Point Lateral) of \$1.2700 per Dth as compared to the existing rate of \$1.6997 per Dth.

⁷ Algonquin asserts that this filing is not intended to modify in any manner the Commission's statements regarding at-risk conditions in the Commission orders in Docket Nos. CP89-661, et al., certifying the Manchester Street mainline facilities formerly committed under Rate Schedule AFT-1(X-38).

⁸ Algonquin Gas Transmission Co., 87 FERC ¶ 61,008 (1999).

19. Consistent with the Commission's March 4, 2004 Order, Algonquin states that it also is proposing to establish a new Rate Schedule AIT-2 and an associated pro forma service agreement applicable to interruptible service on the Manchester Street and Brayton Point Laterals, proposing an AIT-2 rate of \$0.0805 per Dth for Manchester Street Lateral service and \$0.0418 per Dth for Brayton Point Lateral service. Algonquin states that the proposed rates are the 100 percent load factor rates for the corresponding firm service on each lateral, exclusive of applicable surcharges. Nominating, scheduling and curtailment priorities under the new Rate Schedule AIT-2 will be in accordance with those priorities in Algonquin's tariff for interruptible service. In establishing the new AIT-2 service, Algonquin states that it has provided the appropriate rate sheet, rate schedule, and form of service agreement for the proposed service. Further under Rate Schedule AIT-2, Algonquin has provided for the crediting of eligible AIT-2 revenues to service agreements for firm service on the Manchester Street and Brayton Point Laterals, respectively, under Rate Schedule AFT-CL.

20. Algonquin's filing also included three firm negotiated rate service agreements with USGen to be effective March 1, 2004, and one interruptible service agreement to be effective January 1, 2005. Algonquin proposes negotiated firm transportation service under Rate Schedule AFT-1 (Contract #510253) for USGen on its mainline, transporting up to 60,000 Dth per day from Mendon, Massachusetts and 35,455 Dth per day from Hanover, New Jersey to the head of the Manchester Street Lateral.⁹ For this firm mainline transportation service, Algonquin proposes a rate of \$7.00 per Dth for a term of March 1, 2004, to December 31, 2004. Algonquin also included service agreements with USGen under Rate Schedule AFT-CL, for firm lateral line service on both the Manchester Street and Brayton Point Laterals. For firm service on the Brayton Point Lateral (Contract #510252), Algonquin will transport up to 120,000 Dth per day for USGen from the G-1 system in Dighton, Massachusetts to the Brayton Point generating station at a rate of \$1.27 per Dth with a term of March 1, 2004 to December 31, 2011. For firm service on the Manchester Street Lateral (Contract #510254), Algonquin will transport up to 95,455 Dth per day for USGen from the G-12 Lateral receipt point to the Manchester Street generating station at a rate of \$2.45 per Dth from March 1, 2004 to January 31, 2015. Algonquin also proposes to implement an interruptible transportation agreement with USGen (Contract #510263) under Rate Schedule AIT-1, transporting up to 95,455 Dth per day on Algonquin's mainline to the head of the Manchester Street and

⁹ Algonquin designates this point as the head of G-12 Lateral-Delivery at Dey Street (M&R No. 80071 and M&R No. 80070).

Brayton Point Laterals.¹⁰ Algonquin proposes to charge a rate of \$0.1750 per Dth for the period from January 1, 2005, through December 31, 2007, and \$0.2425 per Dth from January 1, 2008, through January 31, 2015.

V. Public Notice and Interventions

21. Public notice of Algonquin's filing in Docket No. RP04-24-005 was issued on April 21, 2004, and public notice of its filing in Docket No. RP04-263-000 was issued on April 22, 2004. Interventions and protests were due as provided in section 154.210 of the Commission's regulations. Pursuant to rule 214 (18 C.F.R. § 385.214 (2003)), all timely filed motions to intervene and any motions to intervene out-of-time filed before the issuance date of this order are granted. Granting late intervention at this stage of the proceeding will not disrupt the proceeding or place additional burdens on existing parties.

VI. Comments

22. The parties to these proceedings generally support both Algonquin's motion to withdraw pleadings and other relief, and its tariff and service agreements filing. Notwithstanding, two areas of concern have been raised by Calpine Corporation (Calpine), Northeast Energy Associates (NEA), and Consolidated Edison Company of New York, Inc. and Orange and Rockland Utilities, Inc. (ConEd/O&R).

23. Calpine states that it does not oppose the proposal, stating that it will benefit the public by resolving all lingering issues regarding the Brayton Point and Manchester Street Laterals. However, both Calpine and NEA conclude that since the settlement constitutes a negotiated resolution of the issues between Algonquin and USGen, the settlement should have no precedential effect. Therefore, Calpine and NEA request that the Commission clarify approval of these filings has no precedential effect in any future Algonquin NGA section 4 proceeding or for the natural gas pipeline industry in general.

¹⁰ The AIT-1 Service Agreement provides that all receipt points on Algonquin's system are applicable except for those on the Brayton Point and Manchester Street Laterals and the applicable delivery points apply only to M&R Nos. 80070 and 80071 (Head of G-12 Lateral-Delivery, the head of the Manchester Street Lateral) and M&R Nos. 80035 and 80034 (Tap on Algonquin's G-1 System in Dighton, Massachusetts, the head of the Brayton Point Lateral).

24. Second, while ConEd/O&R states that it has no objection to the bargain reached by Algonquin and USGen, it remains concerned with a particular term in the service agreements that states that to the extent there is an inconsistency between Algonquin's service agreements with USGen and the settlement, the settlement shall control. ConEd/O&R believes that if the Commission permits a settlement agreement or any other non-tariff document to trump a pipeline's tariff and a pipeline's contracts with third parties, then no party could safely rely on the pipeline's tariff or its contracts. As such, ConEd/O&R asks the Commission to find that the service agreements should not provide that to the extent there is an inconsistency between Algonquin's service agreements and the settlement, the settlement shall control.

VII. Joint Motion

25. On April 29, 2004, Algonquin, the New England Local Distribution Companies (New England LDCs), and the Algonquin Municipals filed a joint motion requesting that the Commission include specific language in its order to ensure that the interest of the New England LDCs, Algonquin Municipals and other existing customers of Algonquin are protected.¹¹ The language that is requested to be included in any order issued by the Commission is the following:

This order does not and is not intended to modify in any way (i) the Commission's holdings and findings regarding the at-risk conditions in the orders issued in Docket Nos. CP89-661, et al. granting certificate authorization for the Manchester Street mainline facilities formerly used to provide service under Rate Schedule AFT- 1(X-38), or (ii) the holdings and findings of the Commission with regard to these at-risk conditions in the orders issued on November 7, 2003 and March 4, 2004, in Docket Nos. RP04-24, et al. Neither Algonquin nor any other party in the proceeding in Docket No. RP04-263-000 is seeking a Commission ruling that any at-risk condition has been satisfied. In addition, neither Algonquin nor any other party is seeking in the proceeding in Docket No. RP04-263-000 rolled-in rate treatment or rolled-in rate predetermination with respect to the cost of service associated with the Manchester Street mainline facilities. In that regard, any participants seeking the roll-in of the cost of service associated

¹¹ Algonquin states that the parties to this joint motion have agreed not to oppose or protest: (i) Algonquin's motion to withdraw pleadings and terminate proceeding in Docket No. RP04-24; (ii) the related procedural motions filed by Algonquin in Docket No RP04-24; and (iii) the NGA section 4 tariff filing in Docket No. RP04-263-000.

with the Manchester Street mainline facilities or the removal of the at-risk condition related to the certification of the Manchester Street mainline facilities in a future proceeding before the Commission shall be required to satisfy the appropriate standards and requirements of the Natural Gas Act and applicable Commission policies. The fact that the restructured services utilizing the Manchester Street mainline facilities would be sold and priced utilizing the rates under Rate Schedules AFT-1(F-1/WS-1) and AIT-1 is solely as a result of the Settlement Agreement between Algonquin and USGen, which was filed with the Bankruptcy Court, and may not be used or relied upon by Algonquin or any other participant to support any argument that the cost of service associated with the Manchester Street mainline facilities should be rolled-in under Rate Schedule AFT-1(F-1/WS-1) or that the at-risk condition should be removed or has been satisfied.

The acceptance or approval of the tariff filing by the Commission in Docket No. RP04-263-000 shall not constitute a finding by the Commission that Algonquin's existing rates under Rate Schedule AFT-1(F-1/WS-1) are just and reasonable, and not unduly discriminatory, and neither Algonquin nor any participant shall make such an assertion or argument in any future proceeding before the Commission.

26. In the event such language is not included in the Commission's order, the New England LDCs and Algonquin Municipals reserve their rights to protest or otherwise oppose Algonquin's motion to withdraw its section 4 filing. Further, under those circumstances, Algonquin and USGen have agreed not to oppose any such protest or other opposition based on it being untimely.

VIII. Discussion

27. Upon review of the filings and comments, the Commission will grant Algonquin's motion to withdraw its pleadings, terminate the proceeding in Docket No. RP04-24, and for other relief, as conditioned in accordance with the language of the Joint Motion filed on April 29, 2004. The Commission will also accept Algonquin's tariff filing and service agreements in Docket No. RP04-263-000, subject to conditions, as discussed below. Although the April 16 Settlement, itself, has not been filed with the Commission for its action, because major features of that settlement concern rate and tariff matters within the Commission's exclusive jurisdiction, and the subject Motion and tariff and service agreement filings are the product of that settlement, the Commission will treat the subject filings in the same manner as a settlement filed with the Commission. Accordingly, for

these reasons, subject to the conditions discussed below, the Commission finds that the approval of the subject filings is fair and reasonable and in the public interest. Due to the unique circumstances of this case, this order will not constitute precedent for any principles of law or findings of fact.

A. Motion to Withdraw Filings, Terminate Proceeding, and Other Relief

28. The Commission is granting the Motion as clarified by the parties in the April 29, 2004 Joint Motion, and is ordering refunds as requested, subject to the following conditions. The Commission interprets the refund condition to require Algonquin to refund to all customers other than USGen any amounts charged in excess of the rates on file on October 9, 2003, before the tariff sheets being withdrawn went into effect. Further, in light of the withdrawal of the tariff sheets filed in Docket No. RP04-24, Algonquin must file revised tariff sheets effective for the October 10, 2003, to February 29, 2004, period that reflect the rates, and tariff provisions applicable to the AFT-1(X-38), AFT-CL(X-37), AIT-2(X-37) and AIT-2(X-38) services in effect on October 9, 2003. Finally, consistent with the terms of the Motion, the termination of Docket No. RP04-24 is subject to approval of the settlement agreement by the Bankruptcy Court.

B. Tariff Revisions and Service Agreements in Docket No. RP04- 263-000

29. The proposed tariff sheets,¹² which provide for rate reductions consistent with the guidance given in the Commission's prior orders in Docket No. RP02-24, and the negotiated rate service agreements are accepted to be effective, as requested, on the proposed dates of March 1, 2004 and January 1, 2005, subject to refund and conditions. The refund condition shall be lifted upon full compliance by Algonquin with the conditions of this order and approval of the settlement agreement by the Bankruptcy Court.

30. The Commission finds that Algonquin has complied with the filing requirement to redline differences between the filed negotiated rate agreement and its tariff's pro forma service agreements, and to justify the differences. The Commission also finds that, with the exceptions discussed below, the differences are supported and do not raise an undue risk of undue discrimination in light of the settlement and lack of protests.

¹² To the extent that the pagination of the tariff sheets filed in Docket No. RP04-263-000 changes as a result of the withdrawal of its tariff sheets in Docket No. RP04-24, Algonquin must file revised tariff sheets to reflect such changes.

31. In addition, Algonquin states in its transmittal letter that to the extent there is an inconsistency between the April 16 Settlement with USGen and the service agreements, the April 16 Settlement shall control. Section 4 of the Natural Gas Act requires that a pipeline's rates, terms, and conditions of service, as well as its contracts, must be on file with the Commission. Accordingly, the Supreme Court has held that "when there is a conflict between the filed rate and the contract rate, the filed rate controls."¹³ Therefore, to the extent there is any conflict between Algonquin's tariff and the filed service agreement, on the one hand, and the April 16 Settlement, on the other, the tariff and the service agreement must control. Therefore, Algonquin is directed to remove Article IX from the AFT-1 and AFT-CL firm transportation service agreements and Article VII from the AIT-1 interruptible transportation service agreement. In addition, if there are provisions in the April 16 Settlement that conflict with the tariff and the service agreements and that Algonquin and USGen desire to govern their relationship, Algonquin must revise the service agreements to reflect those provisions. For example, section 6 of the April 16 Settlement provides for collateral and prepayments different from those provided for in section 3.2 of the General Terms and Conditions of Algonquin's tariff. Accordingly, Algonquin must revise the relevant service agreements with USGen to include this material deviation.

32. By accepting Algonquin's tariff sheets, the Commission is not modifying the at-risk conditions imposed on Algonquin by the orders issued in Docket Nos. CP98-661, et al., granting certificate authorization for the Manchester Street mainline facilities formerly used to provide service under Rate Schedule AFT-1(X-39) or the at-risk conditions in the November 7, 2003 and March 24 Orders. Algonquin's filing in Docket No. RP04-263-000 does not roll into its system-wide rates any facility costs associated with the Manchester Street expansion. Therefore, any proponent of rolling in these costs in a future proceeding would bear the burden of proof.

33. Finally, the Commission will grant Algonquin's request for waiver of the 30-day notice requirements in section 154.207 of the Commission's regulations, 18 C.F.R. § 154.207 (2003), and any other waivers which are necessary to permit the tariff sheets to become effective on March 1, 2004. The Commission will also waive the requirement in §154.207 that a tariff not be filed more than 60 days in advance of the proposed effective date in order to permit the AIT-1 service agreement to have a proposed effective date of January 1, 2005.

¹³ Arkansas Louisiana Gas Co. v. Hall, 453 U.S. 571, 582 (1981).

The Commission orders:

(A) Algonquin's motion to withdraw its filings, terminate the proceeding in Docket No. RP04-24, and for other relief filed on April 19, 2004 is granted, subject to conditions, as discussed in the body of this order, and Ordering Paragraph (B), below, and subject to approval of the settlement agreement by the Bankruptcy Court.

(B) Algonquin is directed to file a refund report in Docket No. RP04-24 and make the corresponding refunds within 30 days of this order, as discussed in the body of this order.

(C) Algonquin's revised tariff sheets in Docket No. RP04-263-000 are accepted to be effective on March 1, 2004, subject to refund and the conditions of this order, and to the approval of the settlement agreement by the Bankruptcy Court, as discussed in the body of this order and in Ordering Paragraph (E), below.

(D) The negotiated rate service agreements filed in Docket No. RP04-263-000 are accepted, to be effective, respectively, March 1, 2004 and January 1, 2005, subject to the conditions of this order and Ordering Paragraph (E), below, and to the approval of the settlement agreement by the Bankruptcy Court.

(E) Algonquin is directed to file revised tariff sheets and revised negotiated rate service agreements in Docket No. RP04-263 within 30 days of this order, as discussed in the body of this order.

By the Commission. Commissioner Kelly not participating.

(S E A L)

Linda Mitry,
Acting Secretary.

Appendix

Algonquin Gas Transmission Company
FERC Gas Tariff, Fourth Revised Volume No. 1

Tariff Sheets Conditionally Accepted Effective March 1, 2004

Eighth Revised Sheet No. 20
Twenty-Fifth Revised Sheet No. 21
Twenty-Fifth Revised Sheet No. 22
Seventh Revised Sheet No. 36A
Thirteenth Revised Sheet No. 37
Sub Original Sheet No. 42
Sheet Nos. 43 - 49
Original Sheet No. 54
Original Sheet No. 55
Original Sheet No. 56
Original Sheet No. 57
Sheet Nos. 58 - 88
Sixth Revised Sheet No. 100
First Revised Sheet No. 101
Second Rev First Rev Sheet No. 108
Second Rev First Rev Sheet No. 109
Third Revised Sheet No. 116
Second Rev First Rev Sheet No. 126
Fourth Revised Sheet No. 135
Second Revised Original Sheet No. 142
Second Rev Second Rev Sheet No. 143
Second Revised Sheet No. 152
Third Rev First Rev Sheet No. 161
Second Rev First Rev Sheet No. 162
Third Revised Sheet No. 171
Second Revised Sheet No. 176
Second Revised Sheet No. 177
Ninth Revised Sheet No. 241
Ninth Revised Sheet No. 245
2nd Rev Seventh Revised Sheet No. 247
2nd Rev Seventh Revised Sheet No. 248
Sub Original Sheet No. 274
Sub Original Sheet No. 275

Sub Original Sheet No. 276
Sub Original Sheet No. 277
Sheet Nos. 278 – 599
Fifth Revised Sheet No. 615
Eighth Revised Sheet No. 679
Ninth Revised Sheet No. 710
Second Revised Sheet No. 711
Fifth Revised Sheet No. 712
Third Revised Sheet No. 716
Fourth Revised Sheet No. 717
Sixth Revised Sheet No. 799
Twelfth Revised Sheet No. 940
Ninth Revised Sheet No. 942
Sub Original Sheet No. 966
Sub Original Sheet No. 967
Sub Original Sheet No. 968
Sheet Nos. 969 - 1099