

FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

September 9, 2005

In Reply Refer To:
Algonquin Gas Transmission, LLC
Docket No. RP05-559-000

Algonquin Gas Transmission, LLC
P.O. Box 1642
Houston, TX 77251-1642

Attention: David A. McCallum
Director, Rates and Tariffs

Reference: Revisions to Tariff Provisions Governing Contracting, Creditworthiness,
Discounting and Electronic Communications

Ladies and Gentlemen:

1. On August 12, 2005, Algonquin Gas Transmission, LLC (Algonquin) filed revisions to its tariff provisions governing contracting, creditworthiness, discounting, and electronic communications (see Appendix for list of tariff sheets). The tariff sheets are conditionally accepted effective September 12, 2005, subject to Algonquin refiling revised tariff sheets as discussed below.
2. Public notice of Algonquin's filing was issued on August 16, 2005, with interventions and protests due as provided in section 154.210 of the Commission's regulations (18 C.F.R. § 154.210 (2005)). Pursuant to Rule 214 (18 C.F.R. § 385.214 (2005)), 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. The New England Local Distribution Companies (New England LDCs) filed comments, and Northeast Energy Associates (Northeast Energy) filed a protest on Algonquin's proposal. The comments and protest are discussed below.
3. Algonquin states that its proposal is designed to promote administrative efficiency, to further automate contracting for service and requesting discounts, and to enhance service flexibility. Many of the revisions are ministerial in nature, such as eliminating sections in the General Terms and Conditions (GT&C) of its tariff that are outdated, moving text between sections when needed, renumbering sections, defining terms, etc.

Also, Algonquin is filing numerous tariff revisions that relate to its electronic LINK system for contracting, communications, and operations. Algonquin states that existing tariff provisions that are inconsistent with the electronic submission of requests for service are being removed.

4. Algonquin proposes to amend the creditworthiness provisions of its tariff (section 3.2 of the GT&C) to require that a customer pay any outstanding balances due Algonquin or complies with the tariff procedures related to disputed bills, and to clarify which forms of security are acceptable, and that a standby irrevocable letter of credit as a form of security must be acceptable to Algonquin and issued by a financial institution that satisfies Algonquin's credit appraisal. Northeast Energy comments that Algonquin's proposal regarding the irrevocable letter of credit allows the pipeline broad discretion in determining what is acceptable and requests that the Commission require Algonquin to add a provision that it will not unreasonably discriminate in exercising this authority, and a provision specifying that when Algonquin rejects a shipper's offer of security Algonquin will provide a prompt written explanation for the rejection to the shipper.

5. The Commission accepts Algonquin's proposal in part. As noted in the Commission's order in *Texas Eastern Transmission, LP*,¹ Algonquin must, by law, operate its tariff in a manner that is not unduly discriminatory. It is not necessary to separately state that fact under each provision of the tariff. However, Algonquin's tariff does not currently provide that a reissued request for security will contain an explanation of why the shipper's initial offer has been rejected. Consistent with *Texas Eastern* and with the Commission's *Policy Statement on Creditworthiness Issues*,² the Commission directs Algonquin to refile to provide that the reissued request will contain such an explanation.

6. Northeast Energy also comments that there does not appear to be any reference in the tariff that shippers posting collateral should be given the opportunity to earn interest thereon. Northeast Energy cites the Commission's *Policy Statement* in its argument. Northeast Energy requests that the Commission direct Algonquin to add a tariff provision stating that shippers will earn interest on their posted collateral.

7. The Commission agrees with Northeast Energy's comments. According to the Commission's *Policy Statement*³, a pipeline must provide its shippers with the

¹ *Texas Eastern Transmission, LP*, 112 FERC ¶ 61,325 (2005) (*Texas Eastern*).

² *Policy Statement on Creditworthiness for Interstate Natural Gas Pipelines and Order Withdrawing Rulemaking Proceeding*, FERC Stats. & Regs. ¶ 31,191 at P10 (2005) (*Policy Statement*).

³ *Id.* at P22.

opportunity to earn interest on collateral either by paying the interest itself, or giving the shipper the option to designate an escrow account to which the pipeline may gain access to payments for services provided, if needed. Consistent with Commission policy, Algonquin is directed to refile to include a provision in its tariff stating that shippers will have the opportunity to earn interest on their posted collateral.

8. Algonquin proposes to add new section 14.14 to its GT&C to govern permanent capacity releases on its system. Northeast Energy believes the proposal is incomplete and must contain a provision addressing how a releasing shipper can be relieved of its obligations under the capacity when it has made a permanent release. In support of its position, Northeast Energy cites Transcontinental Gas Pipe Line Corporation's tariff, which lists the conditions under which the releasing party can be relieved of its liability under its service agreement for the released capacity.

9. Consistent with the Commission's decision in *Texas Eastern*, the Commission finds that no further revision to Algonquin's proposal is necessary. Northeast Energy's concern is addressed by currently effective section 14.7(b) of Algonquin's GT&C which specifies that where there is a permanent release of capacity Algonquin will agree to discharge the shipper of liability on a prospective basis.

10. Section 14.14 provides that Algonquin "may refuse to allow a permanent capacity release if it has a reasonable basis to conclude that it will not be financially indifferent to the release." New England LDCs and Northeast Energy comment that the "financially indifferent" language is proposed without any guidance as to how the standard will be applied. Northeast Energy contends that the "financially indifferent" language appears to conflict with section 3 ("Credit Evaluation") of Algonquin's GT&C, which contemplates that a creditworthy shipper will have its request for service accepted if it satisfies Algonquin's credit appraisal. Northeast Energy questions whether section 14.14 may allow Algonquin to deny a request for service, if that request takes the form of a permanent replacement, under the possibly more stringent "financially indifferent" standard. Northeast Energy also argues that Algonquin's proposed "financially indifferent" language is inconsistent with Commission policy and cites *El Paso Natural Gas Company*⁴, in which a creditworthy shipper offering to pay the maximum rate would be awarded the capacity in the permanent release.

11. New England LDCs request that the Commission require Algonquin to include in its tariff objective criteria for determining whether it is "financially indifferent." Alternatively, New England LDCs request that Algonquin be required to explain in detail the circumstances under which it will consider itself not "financially indifferent" to a permanent release of capacity. Northeast Energy requests that the Commission require Algonquin to revise its tariff to clarify that shippers passing the credit appraisal in section

⁴ Citing, *El Paso Natural Gas Co.*, 61 FERC ¶ 61,133 at 63,312 (1992).

3 are eligible to consummate a permanent release, or that the Commission clarify that in the case of a proposed permanent release, Algonquin is “financially indifferent” between the releasing shipper and a creditworthy replacement.

12. Consistent with *Texas Eastern*, the Commission denies New England LDC’s and Northeast Energy’s request for revision of Algonquin’s “financially indifferent” proposal. In a recent case, the Commission addressed the issue of a pipeline refusing to allow a permanent capacity release “if it has a reasonable basis to conclude that it will not be financially indifferent to the release.”⁵ The Commission stated that the financial indifference of the pipeline in capacity release is a reasonable factor to consider in deciding whether to permit permanent capacity release. The Commission also stated that the pipeline must have flexibility in this regard and does not have to set out in its tariff every extenuating circumstance or condition that would lead the pipeline to determine that it will not be financially indifferent to the release transaction. The same reasoning applies in the instant proceeding, and the Commission declines to require Algonquin to revise its proposal. As to New England LDC’s alternative request, the Commission notes that Algonquin’s proposed section 14.14 of the GT&C concerning permanent capacity release contains the requirement that in a case where Algonquin denies a permanent release of capacity it will provide the customer an e-mail explaining the reason for the denial.⁶

13. Finally, Algonquin proposes to add section 8.3 to its GT&C which would permit Algonquin and a shipper to mutually agree to an extension of the term of the service agreement prior to the expiration of the agreement and prior to posting the capacity under Algonquin’s right-of-first refusal provisions. Northeast Energy comments that this provision would permit Algonquin to extend contracts at discounted rates without posting and bidding. Northeast Energy requests that Algonquin be required to clarify its proposal to state that the provision will only apply to extension of contracts at non-discounted rates.

14. As noted in *Texas Eastern*, the Commission has previously approved contract extension provisions to non-discounted contracts as the Commission’s policies do not prohibit the extension of capacity rights during the current term of the contract.⁷ The

⁵ *Northwest Pipeline Corp.*, 111 FERC ¶ 61,231 at P 23-25 (2005).

⁶ Proposed section 14.14 provides, in pertinent part: “If Customer’s request to permanently release capacity is denied by Algonquin, Algonquin shall notify Customer via e-mail and shall include in the notification the reasons for such denial.”

⁷ *Northern Natural Gas Co.*, 111 FERC ¶ 61,379 at 62,627 (2005).

purpose of right-of-first-refusal provisions is to protect the existing customer.⁸ The Commission assumes that the contract rate for the extension with a non-affiliate reflects the highest value the pipeline can obtain for the capacity.⁹ The Commission accepts Algonquin's proposal as filed.

15. The Commission conditionally accepts Algonquin's revised tariff sheets effective September 12, 2005, and directs Algonquin to file revised tariff sheets consistent with the discussion above within thirty days from the date of this order.

By direction of the Commission.

Magalie R. Salas,
Secretary.

⁸ *Id.*

⁹ *Id.*

APPENDIX

Algonquin Gas Transmission, LLC

Tariff Sheets Conditionally Accepted Effective September 12, 2005

Fifth Revised Volume No. 1

First Revised Sheet No. 504
Second Revised Sheet No. 507
First Revised Sheet No. 508
First Revised Sheet No. 509
First Revised Sheet No. 510
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First Revised Sheet No. 514
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First Revised Sheet No. 518
Original Sheet No. 518A
First Revised Sheet No. 528
First Revised Sheet No. 529
First Revised Sheet No. 530
Second Revised Sheet No. 550
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Third Revised Sheet No. 607
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First Revised Sheet No. 608A
First Revised Sheet No. 608B
First Revised Sheet No. 608C
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Second Revised Sheet No. 615A
First Revised Sheet No. 701
First Revised Sheet No. 702
Second Revised Sheet No. 703
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Second Revised Sheet No. 723
First Revised Sheet No. 741
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First Revised Sheet No. 851

First Revised Sheet No. 852

Second Revised Sheet No. 853