

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Suedeem G. Kelly, Marc Spitzer,
Philip D. Moeller, and Jon Wellinghoff.

Algonquin Gas Transmission, LLC

Docket No. RP07-139-000

ORDER ACCEPTING AND SUSPENDING
TARIFF SHEETS SUBJECT TO CONDITION

(Issued February 16, 2007)

1. On January 19, 2007, Algonquin Gas Transmission, LLC (Algonquin) filed proposed changes to its tariff sheets concerning, among other things, timelines and an allocation methodology for available capacity. Algonquin requested that the tariff sheets be made effective February 19, 2007 and also requested waiver of the Commission's notice requirements. The filing was protested. As discussed below, The Commission accepts and suspends the proposed tariff revisions, to become effective the earlier of five months or on a date set by a subsequent Commission order, subject to refund and condition.

Details of the Filing

2. Algonquin filed certain tariff sheets¹ to (a) specify standard timelines under which customers may request available capacity and (b) incorporate an allocation methodology for available firm capacity that is based on net present value (NPV). Additionally, Algonquin filed to implement the terms upon which it may reserve capacity for a planned future expansion and an interim service program for such capacity. Algonquin states that these proposed enhancements to its tariff will ensure that capacity is allocated in accordance with Commission policy and that customers have increased flexibility in matching their capacity requirements on the Algonquin system to their market needs.

¹ The tariff sheets are listed in the Appendix to this order.

3. Currently, Algonquin explains that it allocates available firm capacity on the basis of “first-come, first-served” priority for requests for firm service received by Algonquin and in accordance with section 2 of the General Terms and Conditions (GT&C) of its tariff. Algonquin states that, since the first-come, first-served allocation methodology allocates capacity based on the timing of the receipt by Algonquin of a valid request, this methodology in and of itself does not ensure that capacity is allocated to customers who place the highest value on such capacity. In particular, Algonquin explains that the first-come, first-served methodology does not require certain factors (e.g. rate, quantity, term) to be considered when considering requests for service. Algonquin states that the Commission has consistently held that its policies regarding capacity allocation are guided by its goal of placing capacity in the hands of the bidder that most highly values it.² Algonquin asserts that, to be consistent with Commission policy and precedent, it is proposing to incorporate an NPV allocation methodology into the Algonquin tariff in accordance with current regulatory and market conditions and consistent with the Commission’s goal of ensuring that capacity is allocated according to its value to customers in the marketplace.

A. Standards for the Allocation of Available Capacity

4. Algonquin proposes to add a new section 2.4 to its GT&C to establish standard timelines under which customers may request available capacity on its system. Algonquin states that customers will be able to request available capacity to commence at a future date in accordance with its designated timeframes. According to Algonquin, incorporation of these standard timelines is consistent with the Commission’s approval of similar proposals for a number of other natural gas pipelines.³ Additionally, to address the Commission’s concerns regarding potential conflicts between the right of first refusal and the reservation of capacity under proposed GT&C section 2.5(h),⁴ Algonquin explains that it is proposing tariff revisions in GT&C section 2.6 described below which

² Algonquin states that the Commission has approved the incorporation of proposed capacity allocation methodologies based on NPV for many pipelines. *See, e.g.*, Northern Natural Gas Company, FERC Gas tariff, Fifth Revised Volume No. 1, GT&C section 26; Texas Eastern Transmission, LP, FERC Gas tariff, Seventh Revised No. 1, GT&C section 3.11; ANR Pipeline Company, FERC Gas tariff, Second Revised Volume No. 1, GT&C section 9.1; Transcontinental Gas Pipe Line Corporation, FERC Gas tariff, Third Revised Volume No. 1, GT&C section 49.2(a).

³ Algonquin cites *Wyoming Interstate Company Ltd.*, 110 FERC ¶ 61,238 (2005); *Texas Eastern Transmission, LP*, 106 FERC ¶ 61,018 (2004); *Tennessee Gas Pipeline Co.*, 105 FERC ¶ 61,167 (2003).

⁴ Algonquin cites *Wyoming Interstate Company Ltd.*, 110 FERC ¶ 61,238, at P 5. Algonquin cites *Wyoming Interstate Company Ltd.*, 110 FERC ¶ 61,238, at P 5.

it believes are consistent with the Commission's prior holdings on interim service programs.⁵

5. Proposed section 2.5 of the GT&C provides that Algonquin will post notice of valid requests for firm service with a term greater than thirty (30) days and establish an open season to solicit additional requests for firm service upon which Algonquin may allocate available firm capacity for service to start immediately or in the future. For service with a term less than ninety (90) days, any open season held pursuant to proposed section 2.5 will be held for a minimum of one (1) business day. For service with a term equal to or greater than ninety (90) days that is not otherwise associated with an expansion project, any open season held pursuant to proposed section 2.5 will be held for a minimum of (i) five (5) business days from the posting of the notice of request for service for the capacity or (ii) fifteen (15) business days from the date the capacity in question was first posted as being available for contracting, whichever is the later calendar date. Algonquin states that in no event will any open season conducted pursuant to proposed section 2.5 be held for a period longer than one (1) calendar month. In addition, Algonquin states that it may post notices to establish an open season to solicit bids for an expansion project.

6. According to Algonquin, the standards under which such an open season will occur are based on those already approved in the context of Algonquin's implementation of the right of first refusal process and approved by the Commission for other pipelines. In addition, Algonquin states that proposed section 2.5 provides for Algonquin to post information regarding available capacity before such information is provided to any potential customer.

7. Under proposed section 2.5(a) the open season notice will include the following information: (i) the location of the capacity or proposed expansion; (ii) the total quantity, if applicable; and (iii) the date capacity is available or proposed to be available. Algonquin also states that proposed section 2.5(a) states that Algonquin will attempt to structure any open season posting so as not to specifically identify the customer or potential customer that submitted the request for capacity and/or the specific market(s) to be served.

8. Proposed section 2.5(b) provides that bidders who desire to receive service provided by the capacity described in the open season posting must submit bids online via the LINK System, and further provides that a bid must comply with the bid requirements set forth in proposed section 2.5(c) in order to be a valid bid. Under proposed section 2.5(c)

⁵ Algonquin cites *Gas Transmission Northwest Corp.*, 109 FERC ¶ 61,141 (2004); *Northern Natural Gas Co.*, 109 FERC ¶ 61,388 (2004).

the bidding party must provide all information and data required by sections 2.1 and 3 in order for its bid to be considered a valid bid. In addition, this proposed section identifies the circumstances under which Algonquin may reject a bid.

9. Pursuant to proposed section 2.5(d) available firm capacity will be awarded to the party submitting a valid bid that constitutes the “best bid” among all valid bids. Algonquin states that the best bid shall be the bid that yields to Algonquin the highest NPV. Under this proposed section, NPV will be calculated on the basis of the present value of the Reservation Charge per unit to Algonquin multiplied by the creditworthiness factor, as determined pursuant to proposed section 2.5(e), except that under a negotiated rate agreement with a minimum quantity, the NPV evaluation will also include the fixed cost component of the usage revenue at the minimum quantity. Algonquin states that, consistent with Commission precedent,⁶ a request for a change in Primary Point of Receipt or Primary Point of Delivery will be considered to have an NPV of zero unless the Customer agrees to extend the term of its service agreement or increases its Maximum Daily Transportation Quantity (MDTQ). GT&C section 2.2(b) is being modified to specify that requests to add or change a point that will require additional capacity are addressed in proposed sections 2.4 and 2.5.

10. According to Algonquin, proposed section 2.5(e) defines the creditworthiness factor, in accordance with recent Commission precedent, that it will use when calculating a bid’s NPV.⁷ Algonquin states that the creditworthiness factor is one (1) minus the bidder’s probability of default calculated by extrapolating to the maximum bid term to be used for bid evaluation purposes, using Standard & Poor’s most recent “Cumulative Average Default Rates by Rating Modifier” table. Algonquin states that proposed section 2.5(e) also allows for bidders to increase the NPV of their bid by posting additional collateral which must be in a form permitted under section 3.2 of the Algonquin tariff.

11. Proposed section 2.5(f) provides that, in the event Algonquin receives two or more bids that yield the “best bid,” capacity subject to the open season will be allocated between or among such bids on a *pro rata* basis. Proposed section 2.5(f) further provides that Algonquin will deem null and void any bid submitted by a bidder who is offered capacity on a *pro rata* basis and fails to execute a service agreement within (i) five (5)

⁶ Algonquin cites *Tennessee Gas Pipeline Company*, 108 FERC ¶ 61,177, at P 27 (2004); *Southern Natural Gas Company*, 96 FERC ¶ 61,008, at p. 61,031 (2001).

⁷ Algonquin cites *Gas Transmission Northwest Corporation*, 117 FERC ¶ 61,315 (2006).

business days for service with a contract term of less than one (1) year or (ii) fifteen (15) days of the tender of a service agreement by Algonquin for service with a contract term of one (1) year or longer. Algonquin states that it will reallocate the available capacity on a *pro rata* basis among the remaining “best bids.”

12. Proposed section 2.5(g) provides that, within twenty-four (24) hours after capacity is awarded, Algonquin will post the best bid(s) and show the NPV for such best bid(s). Proposed section 2.5(g) further provides that, in the event Algonquin accepts a winning bid that is less than the applicable maximum tariff rate, the winning bidder must submit a discount request form online via the LINK System, and Algonquin must approve such request pursuant to the provisions of GT&C section 45 in order for the discounted rate to become effective.

13. In addition, pursuant to the proposed section 2.5(h), Algonquin will have the right, but not the obligation, to reserve for a future expansion project any unsubscribed capacity or capacity under expiring or terminating service agreements where such agreements do not have a right of first refusal or the subject customer does not exercise its right of first refusal. Algonquin’s proposed language sets forth the applicable requirements for reserving capacity for a future expansion project. Algonquin states that this is consistent with Commission policy and with provisions recently approved for other pipelines.⁸

B. Interim Service Program

14. Algonquin states that proposed section 2.6 is consistent with Commission precedent.⁹ Proposed section 2.6 provides that capacity reserved by Algonquin pursuant to proposed sections 2.5(h) or 2.6 may be sold on an interim basis, up to the commencement date of the applicable service, to customers requesting such interim capacity service. Proposed section 2.6 specifies the process that will be followed for the posting of, bidding on, and awarding of such Interim Capacity. In addition, proposed section 2.6 provides that the right of first refusal will not be applicable to any service agreement entered into pursuant to section 2.6.

⁸ Algonquin cites *Gas Transmission Northwest Corporation*, 117 FERC ¶ 61,315 (2006); *Texas Gas Transmission, LLC*, 111 FERC ¶ 61,380 (2005); *Dominion Transmission, Inc.*, 111 FERC ¶ 61,135 (2005); *Tennessee Gas Pipeline Co.*, 84 FERC ¶ 61,304 (1998), *reh’g and clarification*, 86 FERC ¶ 61,066 (1999).

⁹ Algonquin cites, *e.g.*, *Gas Transmission Northwest Corp.*, 109 FERC ¶ 61,141 (2004); *Northern Natural Gas Co.*, 109 FERC ¶ 61,388 (2004).

Notice, Interventions and Protests

15. Public notice of the filing was issued on January 23, 2007. Interventions and protests were due as provided in section 154.210 of the Commission's regulations.¹⁰ Pursuant to Rule 214,¹¹ all timely 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 this proceeding or place additional burdens on existing parties. Hess Corporation (Hess) filed a protest and request for clarification. Consolidated Edison Company of New York, Inc. and Orange and Rockland Utilities, Inc. (ConEd) jointly filed a limited protest and request for clarification. Hess LNG Trading, LLC (Hess LNG Trading) filed comments.

16. In its protest and request for clarification, Hess asserts that the Commission should require Algonquin to submit revised tariff language to modify or clarify portions of the proposed tariffs. Specifically, Hess wants Algonquin to revise its proposed tariff language to require an open season for all expansion capacity instead of providing that Algonquin "may post notices for solicitation of bids in an open season for expansion projects."¹² Hess also wants the Commission to clarify: (1) the timing of open seasons that are triggered when a party requests available capacity¹³ and (2) the confidentiality of bids provision in proposed section 2.5(a)(3), Second Revised Sheet No. 512.¹⁴

17. Next, Hess argues that the Commission should reject portions of the tariff language proposed by Algonquin. Specifically, Hess requests that the Commission: (a) not allow Algonquin to reject a bid for posted capacity because of purported operational factors¹⁵; (b) not permit Algonquin to reduce the value of a bid by a creditworthy shipper based on the pipeline's evaluation of the level of the bidder's creditworthiness;¹⁶ and (c) require Algonquin to base the pro-rata award of capacity in

¹⁰ 18 C.F.R. § 154.210 (2006).

¹¹ 18 C.F.R. § 385.214 (2006).

¹² See Hess Protest at 3-4. Hess LNG Trading agrees. It argues that, consistent with Commission precedent, an open season should be required for all expansion projects. See Hess LNG Trading Protest at 4.

¹³ See Hess Protest at 5.

¹⁴ *Id.* at 6.

¹⁵ *Id.* at 6-7.

¹⁶ *Id.* at 7-9.

connection with bids that have the same NPV on the firm capacity entitlement (the MDTQ) in each bid.¹⁷ Next, Hess argues that there is no justification for advance sales of capacity simply because the capacity is sold via an open season, or involves a terminated contract or an MDTQ reduction in an existing contract.¹⁸ If the Commission authorizes Algonquin to reserve capacity for an upcoming expansion, Hess argues that Algonquin must be required to solicit offers by existing shippers to relinquish capacity that could be utilized as part of the expansion.¹⁹ Hess states that the Commission should require that the reservation of capacity for an open season and the expansion open season must have similar conditions.²⁰ Finally, Hess argues that the Commission should either reject the proposed tariff provision that governs a shipper's right to change its primary points in connection with an open season or require Algonquin to submit revised tariff language that establishes standards that govern the application of this provision.²¹

18. In its comments, Hess LNG Trading states that it does not oppose Algonquin's proposed revisions to its tariff that are applied prospectively, but seeks clarification that these revisions will not affect valid pending requests for service on Algonquin. Specifically, Hess LNG Trading seeks clarification that any valid service request for capacity which predates the effective date of the proposed tariff revisions will be governed by the tariff provisions in effect at that time, including applicable provisions related to creditworthiness, so as not to deprive parties of their positions in the "first-come, first-served" queue. Hess LNG Trading also seeks clarification that Algonquin's proposed timelines under which customers may request available capacity on its systems will apply on a prospective basis only and will not affect shippers with outstanding requests for service or deprive them of their respective positions in the queue for transportation service.

19. Next, Hess LNG Trading seeks clarification about Algonquin's open season process under section 2.5.²² Specifically, Hess LNG Trading points out that Algonquin's proposed open season notice provisions do not require its open season notice to specify the applicable bidding window deadlines. Hess LNG Trading suggests that requiring that the open season notice to include this information would provide necessary clarity to prospective shippers. Next, Hess LNG Trading points out that proposed section 2.5

¹⁷ *Id.* at 9.

¹⁸ *Id.* at 10-12.

¹⁹ *Id.* at 12-13.

²⁰ *Id.* at 14-15.

²¹ *Id.* at 15-17.

²² *See* Hess LNG Trading Protest at 4.

provides for open seasons of different minimum durations depending on whether the term of service is for less than 90 days or for greater than 90 days. Hess LNG Trading suggests that there be a separate bidding period for capacity equal to or greater than one year because there is a direct correlation between the length of commitment and a potential bidder's internal review and approval process for such bids. Hess LNG Trading points out that Algonquin's proposed tariff revisions provide for a maximum open season bidding period of one calendar month regardless of the term of service being bid upon. Hess LNG Trading suggests that the maximum bidding period provisions be revised to require that the maximum open season bidding period better correlate to the term of service being offered.

20. Finally, Hess LNG Trading wants the Commission to require Algonquin to clarify its proposed notification procedures for capacity-related activity to provide shippers with sufficient notice of available capacity. Hess LNG Trading suggests that, for example, Algonquin could provide notice in the Informational Postings section of its website that there is an open season regarding capacity. In addition, Hess LNG suggests that whenever Algonquin updates the Unsubscribed Capacity section of its website, Algonquin should simultaneously provide a notice in the Informational Postings section under Notices Non-Critical that the Unsubscribed Capacity has been modified.

21. In its limited protest and request for clarification, ConEd requests that the Commission direct Algonquin to make tariff changes by requiring Algonquin to conform its capacity release rules to its new bid evaluation procedures.²³ ConEd seeks clarification on two issues. First, ConEd wants Algonquin to clarify its bid evaluation procedure, including a clarification that the new procedure does not provide any advantage to negotiated rate bids in comparison to maximum recourse rate bids.²⁴ Second, ConEd seeks clarification that a bidder for capacity will not be subject to adverse consequences if it is tendered a service agreement for only a portion of the capacity it requested and declines to execute that service agreement.²⁵

Discussion

22. The parties have raised many issues that require further review. Therefore, the Commission accepts and suspends Algonquin's filing for five months and directs Algonquin to file a full response to all the issues raised by the protests concerning its proposed tariff changes within thirty (30) days of the date that this order is issued.

²³ See ConEd Protest at 3-4.

²⁴ *Id.* at 4-5.

²⁵ *Id.* at 5.

Suspension

23. Based on a review of the filing, the Commission finds that the proposed tariff sheets listed in the Appendix have not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory, or otherwise unlawful. Accordingly, the Commission will accept the tariff sheets for filing and suspend their effectiveness for the period set forth below, subject to refund and condition.

24. The Commission's policy regarding suspensions is that tariff filings generally should be suspended for the maximum period permitted by statute where preliminary study leads the Commission to believe that the filing may be unjust, unreasonable, or inconsistent with other statutory standards.²⁶ It is recognized, however, that shorter suspensions may be warranted in circumstances where suspension for the maximum period may lead to harsh and inequitable results.²⁷ Here, the Commission will exercise its discretion to accept and suspend these tariff sheets for five months, to become effective the earlier of July 19, 2007 or on a date set by a subsequent Commission order, subject to refund and condition.

The Commission orders:

(A) The tariff sheets listed in the Appendix are accepted and suspended, subject to refund and condition, to become effective the earlier of July 19, 2007 or on a date the Commission specifies in a future order issued in this proceeding.

(B) Algonquin is directed to provide further explanation as directed above, within thirty (30) days from the date this order is issued.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.

²⁶ See *Great Lakes Gas Transmission Co.*, 12 FERC ¶ 61,293 (1980) (five-month suspension).

²⁷ See *Valley Gas Transmission, Inc.*, 12 FERC ¶ 61,197 (1980) (one-day suspension).

APPENDIX

**Algonquin Gas Transmission, LLC
Docket No. RP07-139-000
FERC Gas Tariff, Fifth Revised Volume No. 1**

Second Revised Sheet No. 509

Second Revised Sheet No. 511

Second Revised Sheet No. 512

Second Revised Sheet No. 513

Second Revised Sheet No. 514

Second Revised Sheet No. 515