

130 FERC ¶ 61,011
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Marc Spitzer and Philip D. Moeller.

Algonquin Gas Transmission, LLC

Docket Nos. CP08-420-000
CP08-420-001

ORDER GRANTING ABANDONMENT AND ISSUING CERTIFICATE

(Issued January 5, 2010)

1. On June 9, 2008, Algonquin Gas Transmission, LLC (Algonquin) filed an application under section 7(c) of the Natural Gas Act (NGA) to construct and operate the HubLine/East to West Project (Original E2W Project). On June 19, 2009, as supplemented on June 24, 2009, Algonquin filed an amendment to its application to reduce the scope of the proposed facilities (Amended E2W Project) in response to market conditions. In the amended application, Algonquin proposes to modify piping at its existing Hanover, New Jersey Compressor Station to permit reverse flow and install an approximately 2.6-mile segment of replacement pipeline on its E-3 System. The proposed facilities will permit Algonquin to provide an additional 281,500 dekatherms per day (Dth/d) of firm transportation capacity. Algonquin proposes to charge its currently-effective HubLine 2003 Project¹ rate for the Amended E2W Project service. This order grants the requested certificate authorizations, subject to conditions as described more fully herein.

¹ The HubLine 2003 Project was completed in 2003 and is a major expansion of Algonquin's system which allows new and existing shippers on the eastern end of its system to gain access, via the Maritimes & Northeast Pipeline, L.L.C. system, to Canadian gas from offshore supplies located near Sable Island, a developing gas production area off the coast of Nova Scotia. *Maritimes & Northeast Pipeline, L.L.C. and Algonquin Gas Transmission Co., preliminary determinations*, 95 FERC ¶ 61,077 (2001), *order issuing certificates*, 97 FERC ¶ 61,345 (2001), *order amending certificates*, 99 FERC ¶ 61,277 (2002).

I. Background and Proposal

2. In its original application, Algonquin requested authorization to construct and operate approximately 31.4 miles of multi-diameter pipeline and related facilities, including compression facilities, in Massachusetts, Connecticut, Rhode Island, and New Jersey, to provide at least 746,500 Dth/d of firm transportation capacity from east to west on the Algonquin system by 2009. The Original E2W Project responded to shipper interest in accessing the new sources of supply on the eastern end of Algonquin's system that were predicted to come online from increased production offshore Nova Scotia. Algonquin characterized the Original E2W Project facilities as an enhancement to Algonquin's HubLine 2003 Project which connected the east end of Algonquin system with the terminus of the Maritimes & Northeast Pipeline L.L.C. (Maritimes) system.

3. Algonquin states that due to changes in market conditions subsequent to the filing of its Original E2W Project application, the prospective shippers revised their assessments of their initial requirements and executed amended precedent agreements for only 281,500 Dth/d of firm transportation service. Consequently, Algonquin amended its proposal, reducing the scope of its original project. In the Amended E2W Project application, Algonquin proposes to construct only a subset of the facilities proposed in the original application, specifically to: (1) make piping modifications at the Hanover Compressor Station in Morris County, New Jersey to permit reverse flow of gas and backhaul capability along Algonquin's entire mainline; and (2) install approximately 2.6 miles of 12-inch pipeline along its E-3 System in New London County, Connecticut that will replace a segment of 6-inch pipeline from MP0.0 in Norwich, Connecticut to MP2.559 at the E-4 Tap.

4. Algonquin states that the proposed project will enable it to transport additional volumes for two project shippers, Excelerate Energy Limited Partnership (Excelerate) and Suez LNG NA LLC (Suez) from the HubLine 2003 Project interconnection with Maritimes at the east end of its system. Algonquin states that the proposed project will also allow it to provide transportation service for the City of Norwich, Yankee Gas Services Company (Yankee), and the Narragansett Electric Company from the HubLine 2003 interconnection with the Maritimes system at Beverly, Massachusetts to various delivery points on the E and G Systems. Finally, Algonquin avers that the Amended E2W Project will provide enhanced deliverability along Algonquin's entire mainline.

5. Algonquin states that the reverse flow at the Hanover Compressor Station will provide Algonquin with increased flexibility and is expected to result in fuel savings for existing customers. Because the proposed project will utilize existing facilities and rights-of-way, Algonquin asserts that the environmental impacts of the amended application will be marginal. Algonquin contends that the Amended E2W Project facilities will be a complementary addition to the HubLine 2003 Project and will benefit existing customers by providing supply flexibility at both ends of Algonquin's system, as well as enhanced deliverability along Algonquin's mainline.

6. Algonquin submits that the rate treatment analysis set forth in the original application remains applicable to the amended application. Therefore, Algonquin requests: authorization to charge the currently-effective HubLine 2003 Project rate for Amended E2W Project service; a determination that the Amended E2W Project costs may be rolled into the HubLine 2003 Project costs and treated as a single set of costs in a future section 4 rate proceeding; and a specific determination from the Commission that Algonquin may raise the issue of the rolling in the 2009 HubLine Combined Project² costs with total system costs in a future section 4 proceeding.

II. Notice, Interventions, Comments and Protests

7. Notice of Algonquin's application in Docket No. CP08-420-000 was published in the *Federal Register* on June 20, 2008 (73 FR 36852). Notice of Algonquin's amended application in Docket No. CP08-420-001 was published in the *Federal Register* on July 9, 2009 (74 FR 32903). Timely, unopposed motions to intervene were filed in both dockets by a number of parties which are listed in Appendix A to this order. These timely, unopposed motions to intervene are granted by operation of Rule 214 of the Commission's Rules of Practice and Procedure.³

8. Lawrence Wachira filed a motion to intervene out-of-time. The Commission finds that granting Mr. Wachira's late-filed motion to intervene will not delay, disrupt, or otherwise prejudice this proceeding, or place an additional burden on existing parties. Therefore, for good cause shown, we will grant the late-filed motion to intervene.⁴

9. Distrigas of Massachusetts LLC (DOMAC), Suez, and Yankee filed comments in support of the original application. TW Conroy 5 LLC filed general comments to the application. The City of Norwich, Connecticut; National Grid Gas Delivery Companies; Suez and DOMAC, jointly; and Yankee filed comments in support of the amended application.

10. Consolidated Edison Company of New York, Inc. and Orange and Rockland Utilities, Inc. (ConEdison); Hess Corporation (Hess); and Hess LNG Weaver's Cove Energy, LLC, Mill River Pipeline, LLC, and Hess LNG Trading LLC (collectively, Hess

² The 2009 HubLine Combined Project refers to the combination of the HubLine 2003 Project and the Amended E2W Project.

³ 18 C.F.R. § 385.214(a)(3) (2009).

⁴ 18 C.F.R. § 385.214(c) (2009).

LNG) requested clarification of the original application. ConEdison also filed protests to both applications regarding the proposed rates.⁵

11. Algonquin filed an answer to the requests for clarification and protests to the original application. Hess LNG and NSTAR Electric Company (NSTAR) filed replies to Algonquin's answer, which were followed by another Algonquin answer and a motion in opposition to that answer filed by NSTAR. Algonquin also filed an answer to ConEdison's protest to the amended application. While the Commission's rules of practice and procedure do not permit answers to answers or protests, the Commission will allow such answers when doing so will not unduly delay the proceeding or prejudice any party, and the answer will clarify the issues and assist the Commission in its decision making.⁶ We will accept all of these pleadings because they will assist us in making our decision.

III. Discussion

12. Because Algonquin seeks to construct and abandon facilities used for the transportation of natural gas in interstate commerce subject to the jurisdiction of the Commission, the proposal is subject to the requirements of subsections (b), (c), and (e) of section 7 of the NGA.

A. Certificate Policy Statement

13. The Commission's Certificate Policy Statement provides guidance as to how we will evaluate proposals for certificating new construction.⁷ The Certificate Policy Statement established criteria for determining whether there is a need for a proposed project and whether the proposed project will serve the public interest. The Certificate Policy Statement explained that in deciding whether to authorize the construction of major new pipeline facilities, we balance the public benefits against the potential adverse consequences. Our goal is to give appropriate consideration to the enhancement of competitive transportation alternatives, the possibility of overbuilding, subsidization by existing customers, the applicant's responsibility for unsubscribed capacity, the

⁵ NSTAR filed a protest to the original application concerning Algonquin's proposed use of NSTAR's pipeline rights-of-way for the project. We will dismiss NSTAR's protest as moot, because the amended application no longer proposes construction in the area of concern to NSTAR.

⁶ See, e.g., *Florida Gas Transmission Co.*, 125 FERC ¶ 61,032, at P 3, n.3 (2008).

⁷ *Certification of New Interstate Natural Gas Pipeline Facilities*, 88 FERC ¶ 61,227 (1999), *order on clarification*, 90 FERC ¶ 61,128, *order on clarification*, 92 FERC ¶ 61,094 (2000) (Certificate Policy Statement).

avoidance of unnecessary disruptions of the environment, and the unneeded exercise of eminent domain in evaluating new pipeline construction.

14. Under this policy, the threshold requirement for existing pipelines proposing new projects is that the pipeline must be prepared to financially support the project without relying on subsidization from its existing customers. The next step is to determine whether the applicant has made efforts to eliminate or minimize any adverse effects the project might have on the applicant's existing customers, existing pipelines in the market and their captive customers, or landowners and communities affected by the route of the new pipeline. If residual adverse effects on these interest groups are identified after efforts have been made to minimize them, we will evaluate the project by balancing the evidence of public benefits to be achieved against the residual adverse effects. This is essentially an economic test. Only when the benefits outweigh the adverse effects on economic interests will we proceed to complete the environmental analysis where other interests are considered.

15. Algonquin proposes to charge the existing HubLine 2003 Project rate as the initial rate for the Amended E2W Project service. Algonquin also proposes to assess the E2W service the currently-effective system fuel reimbursement percentages. Since the costs for the Amended E2W Project are not in the current HubLine 2003 rate, there will be no subsidy by existing shippers and the project meets the threshold test. Algonquin has executed amended precedent agreements for long-term transportation service for the entire capacity created by the Amended E2W Project.

16. The Amended E2W Project will enable Algonquin receive gas from either end of its system and deliver that gas along the entire system. There will be no adverse effect on the service of any existing shippers and the project will provide existing shippers the opportunity to access additional sources of natural gas. The new project capacity is meeting additional market demand and should not displace service on competing pipelines. Further, no pipeline objected to the Algonquin's project. Therefore, we conclude that existing pipelines and their customers will not be adversely affected by the Amended E2W Project. As discussed below, the project should also benefit existing and new shippers through projected reduced fuel consumption.

17. We find that environmental impacts on landowners and communities affected by the project will be minimal because the modifications to piping at the Hanover Compressor Station and replacement of 2.6 miles of pipeline along the E-3 System will occur primarily within the boundaries of the existing facility and within existing rights-of-way.

18. Based on the benefits that the Amended E2W Project will provide and the lack of any identified adverse impacts on Algonquin's existing customers or on other pipelines and their customers, and limited impacts on landowners and communities, we find, consistent with the Certificate Policy Statement and section 7(c) of the NGA, that the

public convenience and necessity requires approval of Algonquin's proposed project, subject to the conditions set forth herein. In addition, since Algonquin's abandonment of the 2.6-mile, 6-inch segment of its E-3 System by replacement with 12-inch pipe is necessary to implement the Amended E2W Project, we find that the public convenience and necessity permits the abandonment of the relevant segment of existing pipeline.

B. Rates

1. Algonquin's Rate Proposal

19. Algonquin proposes to charge the Amended E2W Project shippers the existing HubLine 2003 Project rate. That rate consists of the mainline system reservation and commodity rates (\$6.5854 and \$0.0112, respectively), plus the HubLine 2003 Project reservation rate surcharge of \$1.8607.

20. Algonquin requests a predetermination that the Amended E2W Project costs may be rolled with the HubLine 2003 Project costs into a single rate in a future section 4 rate proceeding. Algonquin also requests that the Commission make clear that Algonquin may propose, in a future section 4 rate proceeding, that the costs of the 2009 HubLine Combined Project be rolled into its system-wide rates.

21. Exhibit N of the amended application shows that the revenues generated by the Amended E2W Project service at the HubLine 2003 Project rates exceed the project's costs of service. In its ten-year projection of costs and revenues, Algonquin anticipates the cost of service for the first year will be \$10,068,991, and that by the tenth year the annual cost of service will drop to \$9,847,470. For each of the ten years projected, the annual revenue will be \$29,676,560, an amount that exceeds the cost of service for each year of the projection.

22. Algonquin proposes to assess the currently-effective fuel reimbursement percentages. However, Algonquin asserts that the amended project will result in a reduction in net system fuel costs as demonstrated by the revised fuel study at Exhibit Z-1 to its amended application. Algonquin states that this fuel reduction will be reflected in its fuel reimbursement percentages through the appropriate tracker filing submitted with Algonquin's Fuel Reimbursement Quantity Mechanism pursuant to Section 32 of the General Terms and Conditions (GT&C) of its FERC Gas Tariff. Further, Algonquin states that it will assess fuel charges on certain transactions that no longer meet the definition of backhaul under its current tariff. Thus, shippers that were not previously assessed fuel charges for qualifying backhauls will be subject to them.

2. Comments and Protests

Roll-In Proposal

23. ConEdison objects to Algonquin's request to charge the HubLine 2003 Project rates for Amended E2W Project service. ConEdison also objects to Algonquin's request for a predetermination that in a future rate proceeding the Amended E2W Project costs may be rolled with the HubLine 2003 Project costs into a single rate. Instead, ConEdison argues that the Commission should require Algonquin to roll the Amended E2W Project costs into its mainline system rates. ConEdison also submits that it is inappropriate to make any determination in this proceeding regarding the appropriateness of Algonquin's rolling the 2009 HubLine Combined Project costs into its system rates.

24. Hess LNG objects to the Commission making any predetermination in this proceeding regarding Algonquin's rolling its Amended E2W Project costs into any of its other rates. Instead, Hess LNG maintains that Algonquin should bear the burden of proof in a future section 4 rate case to justify any roll-in proposal it may make concerning the Amended E2W Project costs.

25. ConEdison contends that while Commission policy may dictate rolled-in rates for the Amended E2W Project because the incremental rates would be lower than either the HubLine 2003 Project rates or Algonquin's system rates, it is not clear which set of rates the new service costs should be rolled into. ConEdison challenges Algonquin's assertion that it was the construction of the HubLine 2003 Project facilities made the inexpensive Amended E2W Project expansion possible.⁸ ConEdison notes that charging the HubLine 2003 Project rates for the Amended E2W Project service will be extremely profitable for Algonquin,⁹ but ConEdison asserts that the E2W facilities are not an expansion of the HubLine 2003 Project because the proposed contractual flow of all the Amended E2W Project gas relies on system facilities that pre-date the HubLine 2003 Project expansion. Instead, ConEdison contends that the Amended E2W Project is inexpensive thanks to both the mainline and HubLine 2003 Project facilities.

26. ConEdison maintains that because the Amended E2W Project relies on Algonquin's entire system, the roll-in question should turn on the reasonableness of the resulting rates rather than inexpensive expansibility. ConEdison states that the allowing Algonquin to charge the HubLine 2003 Project surcharge of \$1.8607 on top of the system

⁸ Algonquin July 8, 2008 Answer at 8.

⁹ Exhibit N, Schedule 2 shows that combining an E2W Project cost of service estimate of \$10,068,991 and 2003 HubLine rates generating \$29,676,560 of annual revenues would result in \$19,606,569 of Revenue in Excess of Cost of Service in addition to the Exhibit N return and taxes already included in the cost of service.

rate results in Amended E2W shippers paying approximately \$6.3 million that ConEdison asserts is not required to recover the Amended E2W Project cost of service or to meet the Commission's roll-in policy. Accordingly, ConEdison requests that Algonquin be directed to charge its mainline system rate for service on the Amended E2W Project and that the Commission make a predetermination that it would be appropriate to roll the costs of the Amended E2W Project into Algonquin's system rates, rather than its HubLine 2003 Project rates, in a future section 4 rate proceeding.

Algonquin's Answer

27. Algonquin asserts that, without the sources of supply accessed by the HubLine 2003 Project, the Amended E2W Project would not be feasible. It contends that the Amended E2W Project shippers are only interested in increasing east to west flows from sources that are transported on HubLine 2003 Project facilities from Maritimes and the Northeast Gateway and Neptune deepwater LNG ports. This is evidenced, states Algonquin, by the fact that all of the precedent agreements supporting the project application include the HubLine 2003 Project facilities as part of the transportation path.

28. Algonquin states that the purpose of the "inexpensive expansibility" doctrine, as set forth in the Certificate Policy Statement, is to make sure that new customers will not escape the costs of the construction that makes their new service possible.¹⁰ In such cases, contends Algonquin, the appropriate rate treatment is to charge the existing rate for the expansion facilities that make the inexpensive expansibility possible.¹¹ Since the Amended E2W Project shippers benefit directly from the HubLine 2003 Project facilities, Algonquin states that they must share in the cost of the construction that makes their expansion possible. Moreover, asserts Algonquin, ConEdison neither demonstrates that its alternative methodology is appropriate nor provides any authority for its methodology.

29. With regard to the question of rolling the 2009 HubLine Combined Project costs into its system rate, Algonquin notes that it has specifically requested that the Commission defer any determination on that issue until a future section 4 proceeding.

Commission Response

30. To ensure that expansion rates embody the proper price signals, the Certificate Policy Statement requires incremental rates for expansion services in appropriate cases, specifically where existing customers would otherwise be placed in the position of subsidizing an expansion, since that could encourage overbuilding and inefficient investment. An exception to the policy favoring incremental rates occurs when

¹⁰ Certificate Policy Statement, 88 FERC ¶ 61,227 at 61,746.

¹¹ Citing *Dominion Transmission Inc.*, 99 FERC ¶ 61,367 (2002) (*Dominion*).

inexpensive expansibility is made possible because of earlier, costly construction, because “the existing customers bear the cost of the earlier, more costly construction in their rates, [and] incremental pricing could result in the new customers receiving a subsidy from the existing customers because the new customers would not face the full costs of the construction that makes their new service possible.”¹² Commission precedent in applying the Certificate Policy Statement requires the use of rolled-in rates in circumstances involving inexpensive expansibility. For example, in *Dominion*,¹³ the Commission ordered the pipeline to charge existing rates for expansion facilities instead of the lower incremental rate where the existing facilities enabled the inexpensive expansion.

31. Although the Amended E2W Project is a significantly scaled-down version of the Original E2W Project, the purpose of the project remains the same: to allow customers to transport gas from east to west on Algonquin’s system. Thus, the Amended E2W Project enhances the original Hubline 2003 Project, which connected the east end of Algonquin’s system with the terminus of the Maritimes system to respond to growing new sources of supply on the eastern end of Algonquin’s system and the corresponding demand for gas in the Northeast market.

32. Algonquin requests that it be permitted to charge the currently-effective HubLine 2003 Project reservation charge of \$1.8607/Dth for the Amended E2W Project capacity. In Exhibit N of its amended application, Algonquin asserts that its cost of service for the first year will be \$10,068,991, and that the projected annual revenue will be \$29,676,560. However, when the proposed \$1.8607/Dth is multiplied by the 281,500 monthly billing determinants, the result is an annual revenue amount of \$6,285,445 – considerably less than the annual \$10,068,991 cost of the Amended E2W Project. However, in addition to the \$1.8607/Dth reservation charges, Algonquin includes in its calculation of annual revenues the ATF-1 reservation charge (\$8.446) and the ATF-1 commodity charge (\$0.0112). It is only because these ATF-1 charges are included in Algonquin’s calculation of annual revenues that Algonquin anticipates revenues that are substantially in excess of its annual costs. The Commission will allow Algonquin to charge the lower reservation rate of \$1.8607, but finds that Algonquin shall be responsible for any under-recovery of costs associated with the Amended E2W Project.

33. To assure that costs are properly allocated between Algonquin’s existing mainline shippers and the HubLine incremental shippers, the Commission will require Algonquin to keep separate books and accounting of costs attributable to the HubLine 2003 Project and the Amended E2W Project. Further, the books should be maintained with applicable cross-references as required by section 154.309 of the Commission regulations. This

¹² Certificate Policy Statement, 88 FERC ¶ 61,277 at 61,746.

¹³ 99 FERC ¶ 61,367 (2002).

information must be in sufficient detail so that the data can be identified in Statements G, I, and J in any future NGA section 4 or 5 rate case and the information is provided consistent with Order No. 710 on incremental facilities.¹⁴ Such measures protect existing customers from cost overruns and from subsidization that might result from under-collection of the project's incremental cost of service, as well as help the Commission and parties to the rate proceedings determine the costs of the project.¹⁵

34. At this time, the Commission will make no determination regarding the appropriateness of rolling the 2009 HubLine Combined Project costs into Algonquin's system rates. However, Algonquin may raise this issue in a future section 4 proceeding.

Backhaul Fuel Charges

35. ConEdison opposes Algonquin's proposal to assess fuel charges on its historical backhauls. According to ConEdison, in contrast to the original proposal, the amended application reflects a 62.8 percent reduction in deliveries to the western end of Algonquin's system at Lambertville, New Jersey, and Algonquin no longer claims that the flow on the mainline could at times result in net deliveries out of the system flowing west at Lambertville. In view of the reduced scope of the amended application ConEdison claims that the current fuel retention proposal is no longer justified.

36. ConEdison insists that unless Algonquin can demonstrate that the backhaul transportation that it provides to shippers no longer qualifies as a "backhaul" as defined in its tariff, Algonquin should not be permitted to assess fuel charges pursuant to the tariff. ConEdison requests that any Commission approval of the Amended E2W Project proposal clarify that Algonquin may only impose fuel charges on backhaul shipments where it can demonstrate that the contractual and physical directions of flow are the same.

¹⁴ *Revisions to Forms, Statements, and Reporting Requirements for Natural Gas Pipelines*, Order No. 710, FERC Statutes and Regulations ¶ 31,267, at P 23 (2008), stated in regard to incremental facilities that pipelines were required to:

report the following: (1) the name of the facility; (2) the docket number under which the facility was approved; (3) the type of rate treatment (e.g., incremental or another rate treatment); (4) the amount of plant in service; (5) the amount of accumulated depreciation; (6) the amount of accumulated deferred income taxes; (7) amount of operating expenses; (8) the amount of maintenance expenses; (9) the amount of depreciation expense; (10) incremental revenues; and (11) other expenses.

¹⁵ 18 C.F.R. § 154.309 (2009).

Algonquin's Answer

37. Algonquin answers that gas will flow in either direction along the mainline system under the Amended E2W Project. It explains that the proposed modifications to the Hanover Compressor Station will enable the reverse flow of gas along Algonquin's entire mainline. The precedent agreements for certain Amended E2W Project shippers contractually obligate Algonquin to deliver up to 212,000 Dth/d of gas to the interconnection between Algonquin and Texas Eastern Transmission, LP (Texas Eastern) in Lambertville, New Jersey. Thus, Algonquin asserts that it is reasonable to anticipate that at certain times during the summer, flows along the mainline will move from east to west along the system, resulting in the physical delivery of gas into Texas Eastern to meet the requirements of the precedent agreements. Because the flow on Algonquin's mainline will flow west to east and at other times east to west, Algonquin states that contracts that previously qualified as backhauls in Algonquin's tariff will no longer do so and will be assessed fuel charges.

38. Algonquin also states that ConEdison's protest of proposed fuel treatment ignores system benefits in the form of decreased fuel costs, as reflected in the fuel study included at Exhibit Z-1, that will be derived from lower gas prices that will come with increased supply and decreased east to west physical flows with a resulting reduction in overall fuel consumption.

Commission Response

39. Algonquin's gas tariff defines backhaul as "the movement of gas from a Point of Receipt to a Point of Delivery such that the contractual direction of movement on the mainline is at all times and at all points along the path in a direction opposite to the actual flow of gas in the pipeline."¹⁶ Backhauls are exempt from fuel charges on the Algonquin mainline facilities.¹⁷

40. Because the actual flow of gas on certain parts of Algonquin's mainline will at times be west to east and at other times east to west after completion of the Amended E2W Project, the contractual direction of movement will not be opposite to the actual flow of gas at all times and at all points along the contractual path. Therefore, to the extent that transactions under contracts that previously would have been defined as backhauls pursuant to Algonquin's tariff no longer meet the definition for backhaul, those

¹⁶ Algonquin FERC Gas Tariff, Fifth Revised Volume No. 1, Fifth Revised Sheet No. 501.

¹⁷ Algonquin FERC Gas Tariff, Fifth Revised Volume No. 1, Original Sheet No. 590, Section 32.1.

transactions will be subject to fuel charges pursuant to the fuel reimbursement provisions of Algonquin's tariff.

Fuel Use

41. Hess LNG contends that the assumptions that underlie the revised fuel study provided at Exhibit Z-1 of the amended application are flawed. The assumptions suggest that Algonquin used the primary receipt points for the 281,500 Dth/d of expansion volumes at a 100 percent load factor. However, Hess LNG maintains that the expected volumes, timing of such deliveries, and the load factor attributed to offshore LNG regasification facilities (which are the source of 92 percent of the supply for the Amended E2W Project) should be re-evaluated because until now, existing offshore regasification facilities have demonstrated an extremely low utilization factor. Thus, Hess LNG believes that the compressor fuel use benefits may be overstated.

Algonquin's Answer

42. Algonquin reiterates that the Amended E2W Project will decrease the overall system fuel rate to the benefit of existing shippers by displacing some of the gas it currently transport from west to east on the mainline, resulting in fuel savings from reduced compression. Algonquin anticipates that the increased fuel use at the Hanover Compressor Station during the off-peak period to create east to west flows will be outweighed by the fuel savings from decreased west to east physical flows during the remaining times of the year.

43. With regard to the fuel study, Algonquin responds that it appropriately used the 100 percent load factor when estimating costs and fuel usage because the Commission's practice is that assumptions related to system flows and fuel must be made on a design basis.¹⁸ For these reasons, Algonquin requests that the Commission reject Hess LNG's claim that the fuel study is flawed.

Commission Response

44. Algonquin's fuel study conforms to Commission policy in its use of the 100 percent load factor. To the extent that shippers believe they are being overcharged for

¹⁸ *Citing, inter alia, Wyoming Interstate Co. Ltd.*, 121 FERC ¶ 61,054 (2007) (estimating expansion facilities fuel use at 100 percent load factor) and *Colorado Interstate Gas Co., et al.*, 105 FERC ¶ 61,095 (2003) (basing proposed fuel usage percentage for expansion facilities on 100 percent load factor).

fuel, we note that the true-up provisions of Algonquin's tariff provide for the refund of fuel charges that exceed actual fuel usage.¹⁹

Disclosure of Precedent Agreements

45. Hess LNG requests that the Commission direct Algonquin to disclose precedent agreements filed as privileged and confidential related to all three phases of the HubLine/E2W Project. Hess LNG notes that this amended application is Algonquin's third modification to the E2W project and that the project scope has evolved from its August 2007 parameters of 1.145 Bcf/d and five shippers (Respol, Excelerate, Suez, Narragansett Electric, and Yankee), to the original June 2008 application with 0.747 Bcf/d and five shippers (Excelerate, Suez, Narragansett Electric, Yankee, and the City of Norwich), to the amended application which further modifies the terms and volumetric scope of the precedent agreements for both Excelerate and Suez and delays the project from late 2009 to 2010. Since this project's inception, Hess LNG states, Algonquin has allowed "committed" shippers to come (City of Norwich) and go (Respol) and allowed others to modify their volumes, timing of service, and terms of service. Hess LNG asserts that the terms, conditions, and any financial considerations associated with these modifications should generally be consistent from expansion to expansion and disclosed so that parties to subsequent expansions on the Algonquin system may receive similar flexibility.

Algonquin's Answer

46. Algonquin notes that a similar request for disclosure of the precedent agreements underlying this project which was filed on June 15, 2008, by Hess LNG through the Commission's Freedom of Information Act (FOIA) regulations in the original project proceeding was rejected. The rejection of Hess LNG's FOIA request was based on the grounds that the documents contained "trade secrets and commercial or financial information obtained from a person privileged and confidential" and thus fell within FOIA Exemption 4.²⁰ Algonquin asserts that the reasoning with respect to the precedent agreements related to the original project is equally applicable here and requests that the Commission likewise reject Hess LNG's renewed request.

¹⁹ Algonquin FERC Gas Tariff, Fifth Revised Vol. No. 1, Original Sheet No. 592, Section 32.5(c).

²⁰ *Citing* staff's August 7, 2008 FOIA request response to Hess LNG (citing 5 U.S.C. § 552(b)(4) and *National Parks & Conservation Association v. Morton*, 498 F.2d 765, 770 (D.C. Cir. 1974).

Commission Response

47. We note that information exempted from disclosure under FOIA is not necessarily protected from being made public under the Commission's regulations when it pertains to documents filed with the Commission by a jurisdictional company in support of an application under section 7(c) of the NGA. Under 18 C.F.R. § 388.112(e) (2009) of the Commission's regulations, we will deny Algonquin's request for privileged and confidential treatment of the precedent agreements it filed in Docket Nos. CP08-420-000 and CP08-420-001, which Algonquin claims contain commercially sensitive information. Specifically, the Commission will make public the executed precedent agreements with Yankee, Excelerate, Narragansett, Suez, and the City of Norwich filed on June 9, 2008 as Exhibit I to Algonquin's application in Docket No. CP08-420-000, and the amendments to those precedent agreements that were filed on June 19, 2009 as Volume I-C to Algonquin's application in Docket No. CP08-420-001 within five days from the date this order is issued.

48. Section 388.112(b)(1) requires a person requesting privileged treatment for information to justify the request. The request must be supported with specificity rather than vague and speculative assertions of harm. Algonquin asserts, without explanation, that the precedent agreements contain commercially sensitive information. Accordingly, under section 388.112(e) of the Commission's regulations, Algonquin is hereby notified that its request for privileged treatment is denied. The information will be released no sooner than five days from the date this order is issued.

Continuity of Service

49. Hess requests that the issuance of a certificate be based on Algonquin's representation that existing shippers will not be adversely affected by the project and will continue to receive the same service and traditional delivery points, including lateral delivery points, once the Amended E2W Project is placed into service.

Algonquin's Answer

50. Algonquin's June 28, 2008, answer to Hess' request for clarification of the original application in this proceeding affirms that shippers would continue to receive the same service and have the same access to traditional delivery points, including lateral delivery points.²¹

Commission Response

51. There is no evidence that that Amended E2W Project will adversely impact the service of any existing shipper. As stated above, that is one of the considerations

²¹ Algonquin Answer at 10.

underlying our finding, pursuant to the Certificate Policy Statement, that Algonquin's proposed project is required by the public convenience and necessity. Any existing shipper that believes its service has been negatively impacted may file a complaint.

IV. Environmental Analysis

52. The potential environmental impacts of Algonquin's proposed project were evaluated in draft and final environmental impact statements (EIS) prepared to fulfill the requirements of the National Environmental Policy Act (NEPA).²² During the Commission's NEPA review process, the U.S. Environmental Protection Agency and the U.S. Army Corps of Engineers served as cooperating agencies.

53. On October 16, 2007, we issued a *Notice of Intent to Prepare an Environmental Impact Statement for the Proposed East to West HubLine Expansion Project, Request for Comments on Environmental Issues, and Notice of Public Scoping Meetings* (NOI). On April 14, 2008, a Supplemental NOI was issued to describe an alternative pipeline route under consideration. The notices were published in the *Federal Register*²³ and sent to affected landowners; federal, state, and local government agencies; elected officials; environmental and public interest groups; Native American tribes; local libraries; newspapers; and other interested parties.

54. The Commission staff conducted three public scoping meetings in communities near the proposed facilities and one interagency scoping meeting, and participated in two interagency site investigations. In addition, Commission staff attended Algonquin's open houses, held in various municipalities in Massachusetts and Connecticut between June of 2007 and March of 2008.

55. Throughout the scoping process, the Commission received both written and verbal comments on a variety of environmental issues from landowners, concerned citizens, public officials, and government agencies. The issues most frequently raised during the scoping process included siting of the Boxford Compressor Station in Essex County, Massachusetts (subsequently removed from the project scope during pre-filing); land use impacts at the proposed Rehoboth Compressor Station site in Bristol County, Massachusetts; land use impacts associated with collocation of pipelines with the NSTAR rights-of-way, such as safety and loss of visual screening; proximity of the pipelines and construction activities to homes, schools, and a hospital; and impacts on sensitive vegetative communities, waterbodies, vernal pools, wetlands, and forest lands.

²² 42 U.S.C. §§ 4321-4347 (2005).

²³ 72 FR 60341 (October 24, 2007), and 73 FR 21337 (April 21, 2008).

56. The Commission issued a draft EIS on November 7, 2008 that addressed the comments received during the scoping process.²⁴ The draft EIS was mailed to federal, state, and local government agencies; elected officials; Native American tribes and regional organizations; local libraries and newspapers; intervenors in the proceeding; and other interested parties (i.e., affected landowners, other interested individuals, and groups who provided scoping comments or asked to remain on the mailing list). The public was given 45 days after the date of publication in the *Federal Register* to review and comment on the draft EIS. Two public comment meetings were held in the project area to solicit comments on the draft EIS. In addition, written and electronic comments were submitted directly to the Commission.

57. During the draft EIS comment period, the Commission received numerous comments regarding impacts on land use, safety, wetlands, vernal pools, sensitive vegetative and wildlife communities, cultural resources, and proximity of construction activities to residences. The majority of comments were specific to proposed pipeline facilities in Norfolk County, Massachusetts (the I-10 Extension) and the Rehoboth Compressor Station in Bristol County, Massachusetts. However, these facilities are no longer part of the project as a result of Algonquin's June 19, 2009 application amendment that eliminated all proposed facilities in Massachusetts and Rhode Island, and the majority of the proposed facilities in Connecticut.

58. Algonquin's amended project, which is analyzed in the final EIS, involves only modifications to an existing compressor station in Morris County, New Jersey (Hanover Compressor Station) and the replacement of 2.56 miles of existing pipeline in New London County, Connecticut (E-3 System Replacement) with larger diameter pipeline.

59. The Commission issued the final EIS on September 25, 2009.²⁵ The final EIS was mailed to applicable federal, state, and local government agencies; elected officials; Native American tribes; local libraries and newspapers; intervenors to the proceeding; and other interested parties (i.e., landowners, individuals, and groups who provided scoping comments, commented on the draft EIS, or asked to remain on the mailing list). Landowners along the pipeline route that were identified by Algonquin after the issuance of the draft EIS were also sent a copy of the final EIS. The distribution list is provided as Appendix A of the final EIS.

60. The final EIS considers and responds to comments received on the draft EIS that remain applicable to the amended project. The major issues evaluated include impacts on

²⁴ Public notice of the availability of the draft EIS was published in the *Federal Register* on November 14, 2009 (73 FR 67501).

²⁵ Public notice of the availability of the final EIS was published in the *Federal Register* on October 2, 2009 (74 FR 50963).

wetlands, vernal pools, cultural resources, and proximity of construction activities to residences.

61. The majority of the proposed pipeline would be installed within Algonquin's existing right-of-way by using the lift and replace method. Less than 0.2 acre of new permanent pipeline right-of-way would be required. Modifications to the Hanover Compressor Station would take place entirely within the existing, developed compressor station property. The proposed modifications are principally related to piping to accommodate reverse flow of gas and would have no effect on the station's sound level contributions or air emissions.

62. Algonquin would protect natural and cultural resources during construction and operation of the project by implementing various project-specific construction and restoration plans that are analyzed in the final EIS, including: Algonquin's Erosion and Sediment Control Plan, Spill Prevention, Control, and Countermeasure Plan, Dust Control Plan, Site-specific Residential Construction Plans, Blasting Plan, Invasive Plant Species Control Plan, Wetland Restoration Procedures for Temporary Wetland Impacts, and Procedures Guiding the Discovery of Unanticipated Cultural Resources and Human Remains. Where necessary, staff recommended additional mitigation measures and revisions to Algonquin's resource-specific plans to further minimize or avoid impacts (see environmental conditions nos. 10, 11, and 12). An environmental inspection and monitoring program would be instituted to ensure compliance with all proposed mitigation measures and staff's recommendations included herein as environmental conditions.

63. The EIS found that construction and operation of the proposed project would not adversely impact vegetative communities or wildlife populations because the amounts of the habitats that would be affected are relatively minor and are within and adjacent to Algonquin's existing, maintained right-of-way. No unique or significant natural communities would be affected. No federally listed species potentially occur in the vicinity of the proposed project; therefore, formal consultation under section 7 of the Endangered Species Act is not necessary. Consultation with the Connecticut Natural Diversity Data Base did not identify any state-listed species along the proposed project.

64. Based on Algonquin's wetland delineations, the EIS addressed 12 wetlands that would be crossed by the project resulting in 1.5 acres of non-forested wetland impacts, and 1.3 acres of forested wetland impacts. By locating the replacement pipeline entirely within Algonquin's existing pipeline right-of-way through wetlands, no new permanent wetland impacts would result.

65. The EIS also addressed two vernal pools located within 150 feet of the construction work area and found that the extreme northern fringe of one of the vernal pool basins would be directly impacted by the proposed construction right-of-way. Algonquin consulted with the Connecticut Department of Environmental Protection and

developed site-specific mitigation measures to protect this vernal pool during construction and ensure appropriate restoration.

66. Algonquin completed cultural resources investigations and identified one site as significant and eligible for listing on the National Register of Historic Places. To ensure that the Commission's responsibilities under the National Historic Preservation Act and its implementing regulations are met, we are including environmental condition no. 15, requiring that appropriate consultation with the Connecticut State Historic Preservation Office, the Advisory Council for Historic Preservation, and the appropriate Native American tribes is completed before Algonquin would be allowed to begin construction in any given area.

67. Residential land will be the primary land use affected by construction of the project. Algonquin's proposed construction work area is located within 50 feet of 35 residential, commercial, or other structures. The EIS describes the special construction methods that Algonquin would use that are designed for working in confined areas to minimize construction-related impacts on residences and structures. In addition, Algonquin developed site-specific residential construction plans for 23 residences located within 25 feet of the construction work areas. These site-specific residential plans were presented and analyzed in the draft and final EISs. Algonquin modified workspace arrangements on two impacted parcels in direct response to landowner comments received during the draft EIS comment period.

68. To ensure residential disruptions are minimized to the extent practicable, environmental condition no. 13 requires that Algonquin file evidence of landowner concurrence with the site-specific residential construction plans for all locations where construction work areas and fencing would be within 10 feet of a residence. In addition, environmental condition no. 14 requires that Algonquin develop and implement an environmental complaint resolution procedure that remains active for at least 2 years following completion of construction of the project to ensure Algonquin has a system in place to address landowner concerns during construction and restoration.

69. The final EIS addresses alternatives to the proposed project and determines that Algonquin's proposed project is the preferred alternative. No existing pipeline system was identified in the project area with the available capacity or expansion plans to deliver the volume of natural gas that would be delivered by Algonquin without the construction of new facilities that would result in similar or greater environmental impacts. Looping a portion of Algonquin's existing system was considered an alternative to the proposed project. However, the final EIS found that looping is not environmentally preferable to the proposed replacement because looping would require a larger permanent right-of-way width and could have greater long-term impacts.

70. The analysis in the final EIS discloses that construction and operation of Algonquin's proposed project would result in some adverse environmental impacts.

However, all impacts would be reduced to less-than-significant levels with the implementation of Algonquin's proposed mitigation measures and the additional measures set forth in the final EIS. The final EIS concludes that if the project is constructed and operated in accordance with applicable laws and regulations, Algonquin's proposed mitigation, and staff's additional recommended mitigation measures, it would be an environmentally acceptable action.

71. The Commission received two comments in response to the final EIS. The United States Environmental Protection Agency stated it has no objections to the project as proposed. The Natural Heritage Endangered Species Program of the Massachusetts Division of Wildlife and Fisheries commented that it no longer needs to be notified or provided project-related materials due to Algonquin's withdrawal of proposed work in the Commonwealth of Massachusetts.

72. We have reviewed the information and analysis contained in the final EIS regarding the potential environmental effect of the project. Based on our consideration of this information, the Commission adopts the findings and conclusions of the final EIS and finds that the Algonquin project is environmentally acceptable, if the project is constructed and operated in accordance with the recommended environmental mitigation measures in the Appendix to this order. We are including the environmental mitigation measures recommended in the final EIS as conditions to the authorization issued to Algonquin in Appendix B to this order.

73. Any state or local permits issued with respect to the jurisdictional facilities authorized herein must be consistent with the conditions of this certificate. The Commission encourages cooperation between interstate pipelines and local authorities. However, this does not mean that state and local agencies, through application of state or local laws, may prohibit or unreasonably delay the (construction/replacement or operation) of facilities approved by this Commission.²⁶

Conclusion

74. For the reasons discussed in this order, the Commission finds that the benefits of the Amended E2W Project will outweigh any potential adverse effects, is consistent with the Certificate Policy Statement, and that the proposed facilities are required and permitted by the public convenience and necessity. The Commission also approves Algonquin's proposal to charge its existing HubLine 2003 Project rates for service related to expansion costs and grants a predetermination, absent a significant change in circumstances, of rolled-in rate treatment related to the expansion costs.

²⁶See, e.g., *Schneidewind v. ANR Pipeline Co.*, 485 U.S. 293 (1988); *National Fuel Gas Supply v. Public Service Comm'n*, 894 F.2d 571 (2d Cir. 1990); and *Iroquois Gas Transmission System, L.P.*, 52 FERC ¶ 61,091 (1990) and 59 FERC ¶ 61,094 (1992).

75. The Commission on its own motion, received and made part of the record all evidence, including the application, as amended and supplemented, and exhibits thereto, submitted in this proceeding and upon consideration of the record,

The Commission orders:

(A) A certificate of public convenience and necessity is issued in Docket Nos. CP08-420-000 and CP08-420-001, authorizing Algonquin to construct and operate the Amended E2W Project facilities, as described and conditioned herein, and as more fully described in the applications.

(B) Algonquin is granted permission an approval to abandon its existing 6-inch diameter E-3 System pipeline, as more fully described in this order and the applications.

(C) The certificate authority issued in Ordering Paragraph (A) is conditioned on the following:

- (1) Algonquin completing the authorized construction of the proposed facilities and making them available for service within eighteen months of the issuance of this order pursuant to section 157.20(b) of the Commission's regulations;
- (2) Algonquin's compliance with all applicable Commission regulations, including paragraphs (a), (c), (e), and (f) of section 157.20 of the Commission's regulations;
- (3) Algonquin's compliance with the environmental conditions listed in the appendix to this order.

(D) Algonquin's request to charge the current HubLine 2003 rate as its initial rate for service on the Amended E2W Project is granted.

(E) Algonquin is directed to maintain separate and identifiable accounts for volumes transported, billing determinates, rate components, surcharges, and revenues associated with its negotiated rates in sufficient detail so that they can be identified in Statements G, I, and J in any future NGA section 4 or 5 rate case.

(F) Algonquin's request for a predetermination supporting rolled-in rate treatment for the costs of the E2W Project with the HubLine 2003 Project rates in its next general NGA section 4 rate proceeding is granted, absent a significant change in circumstances.

(G) Algonquin is directed to execute firm contracts equal to the level of service in accordance with the terms of service represented in its precedent agreements prior to the commencement of construction.

(H) For the reasons discussed in the body of this order, the Commission denies Algonquin's request for privileged treatment pursuant to 18 C.F.R. § 388.112(e) (2009) for precedent agreements filed in Docket Nos. CP08-420-000 and CP08-420-001. The precedent agreements will be released no sooner than five days from the date this order issues.

(I) Algonquin shall notify the Commission's environmental staff by telephone, e-mail, and/or facsimile of any environmental noncompliance identified by other federal, state, or local agencies on the same day that such agency notifies Algonquin. Algonquin shall file written confirmation of such notification with the Secretary of the Commission within 24 hours.

(J) NSTAR's protest is dismissed as moot.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

Appendix A

Intervenors in Docket No. CP08-420-000

Averrill Roberts and Ewuniki Sanders
BG Dighton Power, LLC, Lake Road Generating, L.P. and BG Energy Merchants, LLC
Consolidated Edison Co. of New York, Inc. and Orange and Rockland Utilities, Inc.
Constellation Energy Commodities Group, Inc.
Excelerate Energy Limited Partnership
Hess Corporation
Iroquois Gas Transmission System, L.P
Massachusetts Energy Facilities Siting Board
National Grid Gas Delivery Companies, all subsidiaries of National Grid USA, consisting of: The Brooklyn Union Gas Company d/b/a National Grid NY; KeySpan Gas East Corp. d/b/a National Grid; Boston Gas Company, Colonial Gas Company, and Essex Gas Company, collectively d/b/a National Grid; EnergyNorth Natural Gas Inc., d/b/a National Grid NH; Niagara Mohawk Power Corporation d/b/a National Grid; and the Narragansett Electric Co. d/b/a/ National Grid
New England and Local Distribution Companies consisting of Bay State Gas Company; Connecticut Natural Gas Corp.; New England Gas Co.; Northern Utilities, Inc.; City of Norwich, Department of Public Utilities; NSTAR Electric Co.; The Southern Connecticut Gas Co., and Yankee Gas Services Co.
Northeast Energy Associates
NSTAR Electric Co.
Pine Street Realty Corp.
PSEG Energy Resources & Trade LLC
Regina A. Ahern
Respol Energy North America Corporation
Shell NA LNG LLC
Theodore Armstrong and Susan Armstrong
 Valerie Rochon and David L. Arons, as Trustees of the Kilmurray Family Trust
 William J. Devine, as Trustee of the Tremont Realty Family Trust
 William J. Devine, as Trustee of the Mowry Family Trust
TW Conroy 5 LLC
Weaver's Cove Energy, LLC, Mill River Pipeline, LLC and HESS LNG Trading LLC
Yankee Gas Services Co.

Intervenors in Docket No. CP08-420-001

Consolidated Edison Co. of New York, Inc. and Orange and Rockland Utilities, Inc.
Millennium Pipeline Company, L.L.C.
New Jersey Natural Gas Co.

Appendix B

Environmental Conditions

1. Algonquin shall follow the construction procedures and mitigation measures described in its application, supplemental filings (including responses to staff data requests), and as identified in the Environmental Impact Statement (EIS), unless modified by the order. Algonquin must:
 - a. request any modification to these procedures, measures, or conditions in a filing with the Secretary of the Commission (Secretary);
 - b. justify each modification relative to site-specific conditions;
 - c. explain how that modification provides an equal or greater level of environmental protection than the original measure; and
 - d. receive approval in writing from the Director of the Office of Energy Projects (OEP) **before using that modification.**
2. The Director of OEP has delegated authority to take whatever steps are necessary to ensure the protection of all environmental resources during construction and operation of the project. This authority shall allow:
 - a. the modification of conditions of the Commission's order; and
 - b. the design and implementation of any additional measures deemed necessary (including stop work authority) to ensure continued compliance with the intent of the environmental conditions as well as the avoidance or mitigation of adverse environmental impact resulting from project construction and operation.
3. **Prior to any construction**, Algonquin shall file an affirmative statement with the Secretary, certified by a senior company official, that all company personnel, Environmental Inspectors (EIs), and contractor personnel will be informed of the EI's authority and have been or will be trained on the implementation of the environmental mitigation measures appropriate to their jobs **before** becoming involved with construction and restoration activities.
4. The authorized facility locations shall be as shown in the EIS, as supplemented by filed alignment sheets, and shall include all of the staff's recommended workspaces as identified in tables 4.4.3-1 and 4.8.1-3 of the EIS. **As soon as they are available, and prior to the start of construction**, Algonquin shall file with the Secretary any revised detailed survey alignment maps/sheets at a scale not smaller than 1:6,000 with station positions for all facilities approved by the order. All requests for modifications of environmental conditions of the order or site-

specific clearances must be written and must reference locations designated on these alignment maps/sheets.

Algonquin's exercise of eminent domain authority granted under the Natural Gas Act (NGA) section 7(h) in any condemnation proceedings related to the Order must be consistent with these authorized facilities and locations. Algonquin's right of eminent domain granted under NGA section 7(h) does not authorize it to increase the size of its natural gas pipeline to accommodate future needs or to acquire a right-of-way for a pipeline to transport a commodity other than natural gas.

5. Algonquin shall file with the Secretary detailed alignment maps/sheets and aerial photographs at a scale not smaller than 1:6,000 identifying all route realignments or facility relocations, and staging areas, pipe storage and ware yards, new access roads, and other areas that would be used or disturbed and have not been previously identified in filings with the Secretary. Approval for each of these areas must be explicitly requested in writing. For each area, the request must include a description of the existing land use/cover type, and documentation of landowner approval, whether any cultural resources or federally listed threatened or endangered species would be affected, and whether any other environmentally sensitive areas are within or abutting the area. All areas shall be clearly identified on the maps/sheets/aerial photographs. Each area must be approved in writing by the Director of OEP **prior to construction** in or near that area.

This requirement does not apply to temporary extra workspaces allowed by Algonquin's Erosion & Sediment Control Plan (E&SCP) or minor field realignments per landowner needs and requirements that do not affect other landowners or sensitive environmental areas such as wetlands.

Examples of alterations requiring approval include all route realignments and facility location changes resulting from:

- a. implementation of cultural resources mitigation measures;
 - b. implementation of endangered, threatened, or special concern species mitigation measures;
 - c. recommendations by state regulatory authorities; and
 - d. agreements with individual landowners that affect other landowners or would affect sensitive environmental areas.
6. **Within 60 days of the acceptance of the Certificate and before construction begins**, Algonquin shall file an Implementation Plan with the Secretary for review and written approval by the Director of OEP. Algonquin must file revisions to the plan as schedules change. The plan shall identify:

- a. how Algonquin will implement the construction procedures and mitigation measures described in its applications and supplements (including responses to staff data requests), identified in the EIS, and required by the order;
 - b. how Algonquin will incorporate these requirements into the contract bid documents, construction contracts (especially penalty clauses and specifications), and construction drawings so that the mitigation required at each site is clear to onsite construction and inspection personnel;
 - c. the number of EIs assigned to the project, and how Algonquin will ensure that sufficient personnel are available to implement the environmental mitigation;
 - d. company personnel, including EIs and contractors, who will receive copies of the appropriate material;
 - e. the location and dates of the training and instructions Algonquin will give to all personnel involved with construction and restoration (initial and refresher training as the project progresses and personnel change), with the opportunity for OEP staff to participate in the training session;
 - f. the company personnel (if known) and specific portion of Algonquin's organization having responsibility for compliance;
 - g. the procedures (including use of contract penalties) Algonquin will follow if noncompliance occurs; and
 - h. for each discrete facility, a Gantt or PERT chart (or similar project scheduling diagram), and dates for:
 - i. the completion of all required surveys and reports;
 - ii. the mitigation training of onsite personnel;
 - iii. the start of construction; and
 - iv. the start and completion of restoration.
7. **Beginning with the filing of its Implementation Plan**, Algonquin shall file updated status reports with the Secretary on a **biweekly** basis **until all construction-related activities, including restoration, are complete**. On request, these status reports will also be provided to other federal and state agencies with permitting responsibilities. Status reports shall include:
- a. an update on Algonquin's efforts to obtain the necessary federal authorizations;
 - b. the current construction status of the project, work planned for the following reporting period, and any schedule changes for stream crossings or work in other environmentally sensitive areas;
 - c. a listing of all problems encountered and each instance of noncompliance observed by the EI(s) during the reporting period (both for the conditions

- imposed by the Commission and any environmental conditions/permit requirements imposed by other federal, state, or local agencies);
- d. a description of corrective actions implemented in response to all instances of noncompliance, and their cost;
 - e. the effectiveness of all corrective actions implemented;
 - f. a description of any landowner/resident complaints that may relate to compliance with the requirements of the order, and the measures taken to satisfy their concerns; and
 - g. copies of any correspondence received by Algonquin from other federal, state, or local permitting agencies concerning instances of noncompliance, and Algonquin's response.
8. Algonquin must receive written authorization from the Director of OEP **before commencing service from the project**. Such authorization will only be granted following a determination that rehabilitation and restoration of the right-of-way and all other areas affected by the project are proceeding satisfactorily.
 9. **Within 30 days of placing the authorized facilities in service**, Algonquin shall file an affirmative statement with the Secretary, certified by a senior company official:
 - a. that the facilities have been constructed in compliance with all applicable conditions, and that continuing activities will be consistent with all applicable conditions; or
 - b. identifying which of the Certificate conditions Algonquin has complied with or will comply with. This statement shall also identify any areas affected by the Project where compliance measures were not properly implemented, if not previously identified in filed status reports, and the reason for noncompliance.
 10. Algonquin shall revise its E&SCP to be consistent with the FERC Upland Erosion Control, Revegetation, and Maintenance Plan's soil compaction testing procedures (section V.C.1) and soil compaction mitigation requirements (section V.C.3). In addition, Algonquin shall revise table C-1 of its E&SCP to be consistent with the approved workspaces listed in table 4.4.3-1 of the final EIS. Algonquin shall file the revised E&SCP with the Secretary for review and written approval by the Director of OEP **prior to construction**.
 11. Algonquin shall revise its Spill Prevention, Control, and Countermeasure (SPCC) Plan to prohibit refueling within 200 feet of any private water supply well and 400 feet of any public water supply well. Algonquin shall file the revised SPCC Plan with the Secretary for review and written approval by the Director of OEP **prior to construction**.

12. **Prior to construction**, Algonquin shall file with the Secretary the field verified locations, by milepost, of all water supply wells and springs within 150 feet of the construction work area. **Within 30 days of placing the facilities in service**, Algonquin shall file a report with the Secretary discussing whether any complaints were received concerning well yield or water quality and how each was resolved.
13. **Prior to construction**, Algonquin shall file with the Secretary evidence of landowner concurrence with the site-specific residential construction plans for all locations where the construction work area and fencing would be within 10 feet of a residence.
14. Algonquin shall develop and implement an environmental complaint resolution procedure that remains active for at least 2 years following completion of construction of the project. The procedure shall provide landowners with clear and simple directions for identifying and resolving their environmental mitigation problems/concerns during construction of the project and restoration of the right-of-way. Algonquin shall file the environmental complaint resolution procedure with the Secretary and mail the environmental complaint resolution procedure to each landowner whose property would be crossed by the project prior to construction.
 - a. In its letter to affected landowners, Algonquin shall:
 - i. provide a local contact that the landowners should call first with their concerns; the letter should indicate how soon to expect a response;
 - ii. instruct the landowners that, if they are not satisfied with the response, they should call Algonquin's Hotline, as applicable; the letter should indicate how soon to expect a response; and
 - iii. instruct the landowners that, if they are still not satisfied with the response from Algonquin's Hotline, they should contact the Commission's Enforcement Hotline at (888) 889-8030, or at hotline@ferc.gov.
 - b. In addition, Algonquin shall include in its biweekly status reports (see condition no. 7) a table that contains the following information for each problem/concern:
 - i. the identity of the caller and the date of the call;
 - ii. the identification number from the certificated alignment sheet(s) of the affected property and appropriate location by milepost;
 - iii. a description of the problem/concern; and
 - iv. an explanation of how and when the problem was resolved, will be resolved, or why it has not been resolved.

15. Algonquin **shall not begin implementation** of any treatment plans/mitigation measures (including archaeological data recovery); **construction** of facilities; **or use** of all staging, storage, or temporary work areas and new or to-be-improved access roads **until**:
- a. Algonquin files with the Secretary the treatment plan for the Tower Hill Road site, and the Connecticut State Historic Preservation Office's (SHPO) comments on the treatment plan;
 - b. the FERC executes a Memorandum of Agreement with the Connecticut SHPO, and provides the Advisory Council on Historic Preservation (ACHP) with an opportunity to comment; and
 - c. the Director of OEP notifies Algonquin in writing that the treatment plan/mitigation measures may be implemented and/or construction may proceed.

All material filed with the Secretary containing location, character, and ownership information about cultural resources must have the cover and any relevant pages therein clearly labeled in bold lettering: **“CONTAINS PRIVILEGED INFORMATION - DO NOT RELEASE.”**