

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Nora Mead Brownell, and Suedeen G. Kelly.

Algonquin Gas Transmission, LLC

Docket Nos. RP05-559-001
RP05-559-002

ORDER ON REQUEST FOR CLARIFICATION, OR ALTERNATIVELY
REHEARING, AND COMPLIANCE FILING

(Issued February 16, 2006)

1. On September 9, 2005, the Commission issued an order¹ in this proceeding. The September 9, 2005 Order conditionally accepted a filing by Algonquin Gas Transmission, LLC (Algonquin) to revise its tariff provisions governing contracting, creditworthiness, discounting and electronic communications. The September 9, 2005 Order required Algonquin to include a provision in its tariff stating that shippers will have the opportunity to earn interest on their posted collateral. The order also directed Algonquin to refile to provide that a reissued request for security will contain an explanation of why the shipper's initial offer has been rejected. Algonquin filed a timely request for clarification or, alternatively, rehearing of the September 9, 2005 Order. As discussed below, Algonquin's request for clarification is granted and its rehearing request is dismissed as moot.

2. In addition, on October 11, 2005, Algonquin made a filing to comply with the September 9, 2005 Order. As discussed below, the Commission accepts Substitute First Revised Sheet No. 518 effective September 12, 2005 and accepts First Revised Sheet No. 518A effective November 11, 2005.

¹ *Algonquin Gas Transmission, LLC*, 112 FERC ¶ 61,262 (2005).

Background

3. On August 12, 2005, Algonquin filed revisions to its tariff provisions governing contracting, creditworthiness, discounting, and electronic communications to promote administrative efficiency, automate the process for requesting and contracting for service, ensure its continued compliance with Commission regulations, and increase the service flexibility provided to Algonquin's customers. The instant clarification/rehearing requests and compliance filing only concern Algonquin's proposed creditworthiness changes.

4. Section 3.2 of Algonquin's existing General Terms and Conditions (GT&C) provides that shippers who cannot demonstrate creditworthiness may nevertheless obtain capacity by providing security in the form of a prepayment for service, a standby irrevocable letter of credit, security interest in collateral, or a guarantee from another person or entity. Section 3.2 requires that the security be in an amount equal to three months of transportation at a 100% load factor of the requested maximum daily transportation quantity MDTQ at the maximum rate. Algonquin's current tariff contains no provisions permitting shippers who cannot meet the pipeline's creditworthiness requirements to earn interest on their posted collateral.

5. In its August 12, 2005 filing, Algonquin proposed, among other things, to change its tariff language concerning the amount of security that non-creditworthy shippers must provide in order to obtain service. Algonquin continued to base the security on charges for three months of service, but proposed to change how those charges are calculated. The new provision in section 3.2 requires that existing customers who become non-creditworthy provide security in an amount equal to:

the highest three months of activity (based on usage of in-kind and loan agreements and the billed amounts, including cashout amounts, for all other agreements) for all of Customer's active service agreements during the previous twelve (12) months.

Proposed section 3.2(d)(i) similarly requires new firm customers to provide security in an amount equal to the three highest months' worth of reservation charges at the applicable maximum recourse rate during a contract year. New interruptible transportation customers would be required to provide security in an amount equal to fifteen days of usage per month for three months multiplied by the arithmetic average of the applicable commodity rate(s), multiplied by Customer's Maximum Daily Quantity. New Park and Loan customers would be required to provide security in an amount equal to the applicable maximum Park and Loan Daily Charge multiplied by Customer's Maximum Park Quantity or Maximum Loan Quantity plus the value of any quantity to be loaned to Customer. For Operational Balancing Agreements the required security would be based

on an estimated imbalance quantity of 5,000 Dth per month for three months multiplied by the average of Algonquin's cashout prices for the latest three months.

6. On September 9, 2005, the Commission issued a letter order conditionally accepting Algonquin's tariff filing effective September 12, 2005. The Commission directed Algonquin to include a provision in its tariff stating that shippers will have the opportunity to earn interest on their posted collateral. The Commission stated that its *Policy Statement on Creditworthiness*² requires a pipeline to provide its shippers with the opportunity to earn interest on collateral either by paying interest itself, or giving the shipper the option to designate an interest-bearing escrow account to which the pipeline may gain access to payments for services provided, if needed. Additionally, the Commission accepted Algonquin's proposal subject to Algonquin re-filing to provide that a reissued request for security will contain an explanation of why the shipper's initial offer has been rejected.

7. On October 11, 2005, Algonquin submitted both a filing to comply with the September 9, 2005 Order and a request for clarification or rehearing of that order. Algonquin's compliance filing includes two revised tariff sheets. In Substitute First Revised Sheet No. 518, Algonquin proposed to modify section 3.2 to comply with the Commission's requirement regarding a re-issued request for security by adding a sentence stating that if Algonquin rejects security provided by a potential or existing customer in accordance with GT&C sections 3.2(b) through 3.2(d), Algonquin shall re-issue its request for the security and include a written explanation for its rejection of the security previously provided by the customer.³ In First Revised Sheet No. 518A, Algonquin proposes to add the following paragraph to section 3.2:

Security in the form of an advanced deposit shall accrue interest to the benefit of Customer from the date Algonquin receives such deposit. Interest on such advance deposits shall be calculated monthly at the most recently established 91-day Treasury bill auction rate, as published in The Wall Street Journal. Alternatively, a Customer providing security in the form of an advance deposit may deposit such security into an interest-bearing escrow account, established by Customer at Customer's expense, to which account Algonquin shall have

² *Policy Statement on Creditworthiness for Interstate Natural Gas Pipelines and Order Withdrawing Rulemaking Proceeding*, FERC Statutes and Regulations ¶ 31,191 at P 10 (2005).

³ Substitute First Revised Sheet No. 518

unrestricted access in the amount of an invoice upon presentment of an invoice for the payment of services provided to Customer.⁴

8. Algonquin proposes that Substitute First Revised Sheet No. 518 concerning the re-issued request for security be made effective September 12, 2005, as required by the September 9, 2005 Order. Algonquin proposes that First Revised Sheet No. 518A be made effective prospectively on November 11, 2005 on the ground that the Commission was acting under section 5 of the Natural Gas Act (NGA) when it required Algonquin to revise its tariff to permit shippers to earn interest on collateral.

9. In its request for clarification or rehearing, Algonquin requests that the Commission clarify that the September 9, 2005 Order did not require that the tariff provision permitting shippers to earn interest on collateral be made effective retroactively on September 12, 2005. Algonquin points out that the September 9, 2005 Order accepted the tariff sheets in its August 12 filing to be effective September 12, 2005 and thus without clarification could be interpreted as establishing a September 12, 2005 effective date for the tariff sheet implementing the Commission's directive concerning interest. Algonquin also points out that the paragraph of the September 9, 2005 Order requiring Algonquin to revise its tariff to permit shippers to earn interest on collateral only cited the Commission's *Policy Statement on Creditworthiness* as the basis for its action. Accordingly, Algonquin asks that the Commission clarify that it is acting pursuant to NGA section 5 in requiring this tariff revision, and therefore its tariff sheet implementing the revision must be made effective on a prospective basis as of Algonquin's proposed November 11, 2005 effective date or a subsequent date specified by the Commission in the order accepting the tariff sheet. To the extent the Commission does not grant the requested clarification, Algonquin requests rehearing of the September 9, 2005 Order.

10. Notice of Algonquin's compliance filing was issued on October 14, 2005, providing for the filing of protests by October 26, 2005 in accordance with Rule 211 of the Commission's Rules of Practice and Procedure. 18 C.F.R. § 385.211 (2005). No adverse comments or protests were filed.

Discussion

11. The Commission grants Algonquin's request for clarification. Accordingly, the Commission will accept the two tariff sheets included in Algonquin's compliance filing with the proposed effective dates.

⁴ First Revised Sheet No. 518A

12. Algonquin's existing tariff requires non-creditworthy shippers to provide security in an amount equal to the charges for three months of service without providing for the shipper to receive interest on their prepayments. Pursuant to NGA section 4, Algonquin proposed revised tariff language modifying the method of calculating the charges for three months of service used to determine the level of security to be provided, but did not propose any change concerning interest. Therefore, when the Commission required Algonquin to revise its tariff to permit shippers to earn interest on collateral, the Commission went beyond Algonquin's section 4 proposal to require a modification of the existing tariff not proposed by Algonquin. The Commission agrees that, in these circumstances, it must proceed under NGA section 5 to impose this change, and therefore the change must be made effective prospectively.⁵

13. Here, Algonquin has proposed that its First Revised Sheet No. 518A implementing the Commission's section 5 directive be made effective on November 11, 2005, the thirty-first day after Algonquin filed that tariff sheet. Since the tariff sheet complies with the Commission's requirement that Algonquin permit shippers to earn interest on collateral, the Commission accepts that tariff sheet on the prospective effective date proposed by Algonquin.⁶ Having granted Algonquin's requested clarification, the Commission dismisses its rehearing request as moot.

14. In the September 9, 2005 Order, the Commission also required Algonquin to modify one aspect of its section 4 proposal concerning the re-issued request for security.

⁵ *Transcontinental Gas Pipe Line Corp. (Transco)*, 642 F.2d 1335, 1345 (D.C. Cir. 1980). *Sea Robin Pipeline Co. v. FERC*, 795 F.2d 182, 186 (D.C. Cir. 1986). *ANR Pipeline Co. v. FERC*, 771 F.2d 507, 513 (D.C. Cir. 1985). *Tennessee Gas Pipeline Co. v. FERC*, 860 F.2d 446, 453-456 (D.C. Cir. 1988). *East Tennessee Natural Gas Co. v. FERC*, 863 F.2d 932, 942-3 (D.C. Cir. 1988). *Public Service Commission of New York v. FERC*, 866 F.2d 487, 491-492 (D.C. Cir. 1989). *Western Resources, Inc. v. FERC*, 9 F.3d 1568, 1577-1579 (D.C. Cir. 1993). The court has held that NGA section 4's retroactivity power may extend to changes in an existing tariff provision required in order to avoid an interaction between the existing provision and a proposed change that creates an unjust and unreasonable result under existing Commission policy. *See East Tennessee Natural Gas Co. v. FERC*, 863 F.2d 932, 944 (D.C. Cir. 1988). However, that holding does not apply here. Algonquin's existing tariff's lack of a provision for interest is unjust and unreasonable, without regard to Algonquin's instant section 4 proposal. Thus, the need to change the existing provision is not created by an interaction with the section 4 proposal.

⁶ *Enbridge Pipelines (KPC)*, 102 FERC ¶ 61,304 P 8 (2003).

The Commission finds that Algonquin has satisfactorily complied with the directive in the September 9, 2005 Order concerning the re-issued request for security. Algonquin states that it agrees that its compliance with this aspect of the Commission's order may be made effective as of the September 12, 2005 effective date specified in the September 9, 2005 Order. The Commission therefore accepts Substitute First Revised Sheet No. 518 effective September 12, 2005.

15. Additionally, the Commission will require Algonquin to make a further revision to section 3.2 of its GT&C. Algonquin revised section 3.2 to clarify that the amount of security required from an existing customer is “equal to the highest three (3) months of activity (based on usage of in-kind and loan agreements and the billed amounts, including cashout amounts, for all other agreements) for all of the customer’s active service agreements during the previous twelve months.” The Commission will require Algonquin to clarify that the definition of “in-kind” usage does not include fuel in the determination of the amount of security required from customers.⁷ Because fuel is supplied by Algonquin’s shippers, requiring the amount of security to include fuel is not appropriate. Algonquin is directed to file a revised tariff sheet with this clarification within 30 days of the date of this order.

The Commission orders:

(A) Algonquin’s request for clarification is granted as discussed in the body of this order and its request for rehearing is dismissed as moot.

(B) Algonquin’s October 11, 2005 compliance filing is accepted as in compliance with the September 9, 2005 Order. Substitute First Revised Sheet No. 518 is accepted effective September 12, 2005 and First Revised Sheet No. 518A is accepted effective November 11, 2005.

⁷ See *East Tennessee Natural Gas, LLC*, 112 FERC ¶ 61, 261 (2005) at P 20; *Egan Hub Storage, LLC*, 112 FERC ¶ 61, 260 (2005) at P 5.

(C) Algonquin is direct to file a revised tariff sheet clarifying section 3.2 of its GT&C as discussed in the body of this order.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.