

107 FERC ¶ 61,251
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Algonquin Gas Transmission Company

Docket No. CP04-67-000

ORDER ISSUING CERTIFICATE

(Issued June 2, 2004)

1. On February 26, 2004, Algonquin Gas Transmission Company (Algonquin) filed an application pursuant to section 7(c) of the Natural Gas Act (NGA). Algonquin seeks authorization to install certain facility modifications (referred to as the Everett Alternative Project) in Connecticut, Massachusetts, and Rhode Island in order to provide 60,000 Dth/d of new firm transportation service to Distrigas of Massachusetts LLC (DOMAC). The Everett Alternative Project involves modifying existing compressor station piping and appurtenant facilities, installing gas quality equipment at existing measurement locations, and installing certain remote control valves and regulator valves. This order grants the authorization.

I. Background and Proposal

2. Algonquin's pipeline system, having two mainlines here referred to as the 24-inch mainline and the 30-inch mainline, begins at a point of interconnection with Texas Eastern Transmission Corporation in New Jersey and terminates in the State of Massachusetts by way of three laterals, the J-System, the I-System and the G-System. The G-System provides gas supplies to markets in Rhode Island and southeastern Massachusetts, while the J-System and the I-System provide gas supplies primarily to the Boston market area. Historically, Algonquin has received most of its gas supplies from interstate pipeline companies in New Jersey, New York and Connecticut and has transported the gas to its terminus in the State of Massachusetts and to various market areas along the way.

3. On December 21, 2001, the Commission issued an order (December 21 Order) in Docket Nos. CP01-4-000, CP01-5-000 and CP01-5-001, certificating Maritimes & Northeast Pipeline, L.L.C.'s (Maritimes) proposed Phase III project and Algonquin Gas

Transmission Company's (Algonquin) HubLine Project.¹ The December 21 Order found that the Phase III/HubLine Project would provide Maritimes' existing customers with greater access to domestic markets via the Algonquin system. Further, new and existing shippers on the east end of Algonquin's system would be provided access, via the Phase III facilities, to Canadian gas from offshore supplies located near Sable Island, a developing gas production area off the coast of Nova Scotia. In order to accomplish this, the December 21 Order issued: (1) a certificate to Maritimes to construct and operate approximately 24 miles of 30-inch pipeline, 1.0 mile of 24-inch pipeline, and other facilities in the state of Massachusetts, and; (2) a certificate to Algonquin to construct and operate approximately 29.4 miles of 24-inch pipeline, 5.4 miles of a 16-inch lateral (Deer Island Lateral), and other facilities in Massachusetts. On June 4, 2002, the Commission issued an order amending the certificates issued in the December 2, 2001 Order by authorizing an increase in the diameter of the pipeline facilities involved.²

4. On February 5, 2003, Algonquin filed, in Docket No. CP01-5-003, an application to further amend the certificate issued December 21, 2001. Specifically, Algonquin requested authorization to an additional construct approximately 6.64 miles of 24-inch pipeline and 0.31 miles of 8-inch pipeline, extending from the terminus of the originally certificated Deer Island Lateral portion of Algonquin's HubLine project across Boston Harbor through portions of East Boston, Chelsea, and Everett, Massachusetts to a connection with Algonquin's existing J-System. Algonquin also proposed to construct three meter stations and other related facilities. Algonquin referred to the proposed new facilities as the Everett Extension Project, while referring to the Everett Extension Project and the Deer Island Lateral, collectively, as HubLine Phase II. The estimated cost of the project was \$110 million.

5. Algonquin states that the Everett Extension Project was designed to enhance Algonquin's operations by providing additional access to high pressure gas supplies on the eastern-most end of its system and to provide additional firm transportation capacity as requested by project customers. DOMAC was a customer of the proposed Everett

¹Maritimes & Northeast Pipeline, L.L.C. and Algonquin Gas Transmission Company, 97 FERC ¶ 61,345 (2001). See also 95 FERC ¶ 61,077 (2001) (Preliminary Determination).

²Maritimes & Northeast Pipeline, L.L.C., Algonquin Gas Transmission Company, Docket Nos. CP01-4-001, CP01-5-002, 99 FERC ¶ 61,277 (2002).

Extension Project with an agreement for firm transportation of 50,000 Dth/d. DOMAC has a liquefied natural gas (LNG) terminal in Everett, Massachusetts.

6. On August 25, 2003, Algonquin withdrew its application for the Everett Extension Project, deeming it no longer economically viable, while noting that Algonquin remained committed to exploring other alternatives to the project. Algonquin states that DOMAC chose to continue to explore alternatives with Algonquin, but the other two shippers, Exelon Corporation (with 35,000 Dth/d) and KeySpan Corporation (with 25,000 Dth/d), chose not to participate.³ The instant application, for the Everett Alternative Project, is the result of these efforts.⁴

7. Algonquin conducted an open season from January 2, 2004, through January 16, 2004, and subsequently executed a precedent agreement with DOMAC for 60,000 Dth/d of firm transportation service for an initial term of 10 years.⁵ The service will be provided under Algonquin's Rate Schedule AFT-1. Algonquin states that it intends to enter into a negotiated rate agreement with DOMAC. The recourse rate for the service will be Algonquin's maximum AFT-1 (F-1/WS-1) system rates, fuel, and applicable surcharges.

8. Algonquin states that DOMAC, which is located at the terminus of Algonquin's J-System in Everett, Massachusetts, currently injects up to 90,000 Dth/d of re-gasified LNG into Algonquin's J-System pursuant to an existing agreement. Algonquin further states that, during the winter months, the market demand along the J-System is usually high enough to absorb the entire 90,000 Dth/d of LNG supply. However, during the summer months the demand on Algonquin's J-System is below the 90,000 Dth/d level. In order to absorb all of the LNG supply volumes during the summer months, Algonquin explains that it must lower the operating pressure on its 24-inch mainline facilities, below the 433 psig MAOP of the J-System, in order to allow LNG supply volumes to flow out of the J-System to other upstream markets.

9. Algonquin states that DOMAC currently provides 30 percent to 35 percent of the New England market demand on peak winter days and 15 percent to 20 percent of annual demand. Severe cold weather in recent winters has necessitated operational restrictions

³See Algonquin's April 20, 2004 response to data request no. 2.

⁴See Algonquin's April 20, 2004 response to data request no. 5.

⁵DOMAC will have an option, which must be exercised by October 31, 2009, to extend the primary term of the service agreement for an additional 10 years.

on Algonquin's system, and nineteen of the top twenty-five highest throughput days in the history of the Algonquin system occurred during the 2003/2004 winter. Algonquin also states that market studies indicate that demand is increasing in most market sectors and is anticipated to increase over the next few years.

10. The proposed Everett Alternative Project consists of installation of station piping and appurtenant facilities at Algonquin's existing Burrillville Compressor Station in Providence County, Rhode Island and installation of valves, chromatographs, and related equipment at certain existing meter and valve stations in Tolland, Hartford, and New London Counties, Connecticut, Barnstable and Bristol Counties, Massachusetts, and Newport County, Rhode Island. The proposed Everett Alternative Project's cost is estimated to be approximately \$11.5 million.

11. Algonquin contends that its proposed facility modifications will create the capacity to move an additional 60,000 Dth/d of LNG supply from DOMAC into Algonquin's 24-inch mainline while continuing to provide the contractual volume and pressure requirements of its existing shippers. In addition, Algonquin indicates that the proposed facility modifications: (1) will allow the operation of the 24-inch mainline to be reversed and the Burrillville Compressor Station to be utilized to compress the LNG volumes for transportation further upstream to markets in Rhode Island and Connecticut; and (2) will allow Algonquin's 20-inch G-System line to be isolated and operated continuously as a high pressure line to help ensure that numerous electric generation facilities located along the G-System receive adequate supplies of natural gas during the peak summer generation period. Algonquin states that the modifications will not impact the operation of its 30-inch mainline which will continue to be operated consistent with current operating conditions. Algonquin concludes that the proposed Everett Alternative Project offers the benefits of greater reliability, flexibility, and supply security as well as increased supply competition.

II. Notice and Interventions

12. Notice of Algonquin's Everett Alternative Project was published in the Federal Register on March 11, 2004, with comments due on March 19, 2004.⁶ Northeast Energy Associates, KeySpan Delivery Companies,⁷ New England Local Distribution

⁶69 FR 11600 (2004).

⁷KeySpan Energy Delivery New York; KeySpan Energy Delivery Long Island; and Boston Gas Company, Colonial Gas Company, EnergyNorth Natural Gas, Inc., and Essex Gas Company (collectively KeySpan Energy NE) are all subsidiaries of KeySpan Corporation.

Companies,⁸ DOMAC, The Town of Middleborough, Massachusetts, Consolidated Edison Company of New York, Inc. and Orange and Rockland Utilities, Inc., and Tennessee Gas Pipeline Company filed timely motions to intervene.⁹ On May 13, 2004, Weaver's Cove Energy, LLC and Mill River Pipeline, LLC, jointly, and Metis Energy Holdings, LLC, filed motions to intervene out-of-time. Pursuant to Rule 214 (18 CFR § 385.214 (2003)), all timely filed motions to intervene and the 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. No comments in opposition were filed.

III. Discussion

13. Algonquin's proposal to construct the Everett Alternative Project facilities, to be used to transport gas in interstate commerce, is subject to the Commission's jurisdiction and the requirements of subsections (c) and (e) of section 7 of the NGA.

14. On September 15, 1999, the Commission issued a Policy Statement to provide guidance as to how we will evaluate proposals for certificating new construction.¹⁰ The 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 Policy Statement explains that in deciding whether to authorize the construction of major new pipeline facilities, the Commission balances 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 avoidance of unnecessary disruptions of the environment, and the unneeded exercise of eminent domain in evaluating new pipeline construction.

⁸Including, Bay State Gas Company, Connecticut Natural Gas Corporation, New England Gas Company, Northern utilities, Inc., City of Norwich, NSTAR Gas Company, The Southern Connecticut Gas Company, Yankee Gas Services Company.

⁹Timely unopposed motions to intervene are granted by operation of Rule 214.18 of the Commission's Rules of Practice and Procedure. 18 CFR § 385.214 (2003).

¹⁰Certification of New Interstate Natural Gas Pipeline Facilities (Policy Statement), 88 FERC ¶ 61,227 (1999); order clarifying statement of policy, 90 FERC ¶ 61,128 (2000); order further clarifying statement of policy, 92 FERC ¶ 61,094 (2000).

15. Under this policy, the threshold requirement for pipelines proposing new projects is that the pipeline must be prepared to financially support the project without relying on subsidization from the 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.

16. The Commission also considers potential impacts of the proposed project on other pipelines in the market and those existing pipelines' 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, the Commission 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 the Commission then proceed to complete the environmental analysis where other interests are considered.

17. The Commission's Policy Statement directs that the threshold requirement for pipelines proposing new projects is that the pipeline must be prepared to financially support the project without relying on subsidization from existing customers. Algonquin has a 10-year precedent agreement with DOMAC for service with the recourse rate being Algonquin's maximum AFT-1 (F-1/WS-1) system rates and appropriate surcharges. The recourse rates recover more than the cost-of-service for the project for each year of the first ten years of service, thus, insulating existing customers from contributing to the project's costs. Therefore, Algonquin's proposal satisfies the Policy Statement's threshold requirement.

18. Algonquin's proposal will result in no degradation of service to its existing customers. Also, the proposal will have no impact on other pipelines or their captive customers because the project is designed to meet a request for additional transportation capacity and does not replace any existing service provided by another pipeline. Nor will there be adverse impacts on landowners and communities, as no new land is required. The Everett Alternative Project was filed in response to a request for service. The new capacity also will be available to Algonquin's existing customers on a secondary or interruptible basis.

19. The Commission finds that Algonquin's proposal can proceed without subsidies and that the benefits of the project outweigh any potential adverse impacts. Therefore, the proposal is consistent with the Policy Statement and section 7(c) of the NGA. Accordingly, balancing the factors set forth in the Policy Statement, we conclude that Algonquin's proposed project is required by the public convenience and necessity.

IV. Rates

A. Rolled-in Rate Treatment

20. The firm transportation service contemplated by this proposal will be performed pursuant to Algonquin's Rate Schedule AFT-1. The recourse rate will be the maximum system rate and appropriate surcharges under Rate Schedule AFT-1 (F-1/WS-1). The proposed Everett Alternative Project's cost is estimated to be approximately \$11.5 million. Included in that cost estimate is \$3.6 million of Preliminary Survey and Investigation Charges (PS&I) recorded in Account No. 183.2, Other Preliminary Survey and Investigation Charges, for development of the Everett Extension Project. Algonquin argues that the \$3.6 million of PS&I cost is directly related to the underlying goal of enhancing operations and access to additional supply, specifically at the end of Algonquin's J-System. However Algonquin did not adequately show how these costs contributed directly and without duplication to the cost of the Everett Alternative Project, as is required for capitalization of such costs. See 18 CFR Part 201 Account No 183.2 (2003).¹¹ Therefore we will not approve the inclusion of such costs in the cost of the Everett Alternative Project at this time. If Algonquin desires to seek recovery of such costs in its next section 4 general rate case, it must further substantiate the relationship of such costs to the Everett Alternative Project.¹² Algonquin provided data showing that revenues will greatly exceed the project's cost of service over a ten-year period.¹³

21. Algonquin's proposal meets the threshold requirements of the Policy Statement since the project will not be subsidized by existing customers and will provide benefits to them. Because projected revenues will exceed projected costs, we will require Algonquin to roll-in the substantiated costs of this project in Algonquin's next section 4 general rate case, absent material changes in the relevant facts and circumstances.

¹¹See Algonquin April 20, 2004 response to data request.

¹² If Algonquin determines that it is probable that it will recover the Everett Extension Project preliminary survey costs in future rates, it may record a regulatory asset pursuant to the provisions of Account 182.3, Other Regulatory Assets. 18 CFR Part 201 (2003).

¹³ Attachment E, Schedules 1 and 2 of Algonquin's data response filed on April 20, 2004.

B. Negotiated Rates

22. Algonquin states that it intends to enter into a negotiated rate agreement pursuant to section 46 of its FERC Gas Tariff with DOMAC for 60,000 Dth/d of firm transportation for an initial term of ten years.¹⁴ However, Algonquin has not yet done so. Therefore, the Commission is not approving any particular negotiated rate here; rather, it is approving the use of the currently effective recourse rates as the initial rate for service provided by the expansion project.

23. Since Algonquin intends to charge its shipper a negotiated rate, as opposed to the recourse rate identified in its tariff, Algonquin must file either its negotiated rate contract or numbered tariff sheets not less than 30 days and no more than 60 days prior to the commencement of service on the expansion facilities.¹⁵ If the negotiated rate agreement does not deviate from Algonquin's pro forma service agreement, Algonquin may file a tariff sheet reflecting the terms of the agreement, together with a statement that the agreement conforms in all material respects with its pro forma service agreement.¹⁶ Alternatively, Algonquin may file the negotiated rate contract provided that it uses its Form of Service Agreement as a starting point in drafting the negotiated rate contract, and file a single document, with any differences between the parties' agreement and the form of service agreement indicated by redline and strikeout.¹⁷ Finally, Algonquin must maintain separate and identifiable accounts for volumes transported, billing determinants, 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 section 4 or 5 rate case. The Commission will not permit Algonquin to recover from existing shippers any revenue shortfall due to the charging of negotiated rates.

¹⁴By order issued December 16, 1996, the Commission approved Algonquin's request to charge negotiated rates for its transportation services. Algonquin Gas Transmission Co., 89 FERC ¶ 61,269 (1999).

¹⁵See Alternative Rate Policy Statement, 74 FERC ¶ 61,076 (1996) at 61,241. See also NorAm Gas Transmission Company, 77 FERC ¶ 61,011 (1996).

¹⁶Tariff sheet summaries must fully describe the essential elements of the transaction, including the name of the shipper, the negotiated rate and all applicable charges, the applicable rate schedule for the service, the type of service, the receipt and delivery points applicable to the service, the volume of gas to be transported and the term of the agreement.

¹⁷See Natural Gas Pipeline Negotiated Rate Policies and Practices, 104 FERC ¶ 61,134 (2003) and Texas Eastern Transmission, LP, 107 FERC ¶ 61,099 (2004).

V. Engineering

24. The flow diagrams and flow information submitted with Algonquin's application were reviewed and analyzed. The analysis confirms that Algonquin has properly designed its facility modifications to allow an additional 60,000 Dth/d of LNG supplies from DOMAC to flow into Algonquin's J-System for firm transportation by Algonquin. The analysis also confirms that the piping modifications, including those at the Burrillville Compressor Station, will allow Algonquin to operate its 24-inch and 30-inch mainlines with different flow directions. These modifications will also allow Algonquin to operate different portions of its mainline facilities, as well as different portions of its G-System facilities, as separate high and low pressure systems during the summer months. The analysis confirms that, by operating some portions of its system at high pressure while operating other portions at low pressure, Algonquin will be able to increase its ability to redeliver LNG volumes from DOMAC to markets farther upstream while maintaining higher pressure requirements to reliably supply electric generation facilities located on the G-System.

VI. Environmental

25. Our staff prepared an environmental assessment (EA) for Algonquin's proposal. The EA addresses geology, soils, water resources, fisheries and wetlands, vegetation and wildlife, land use, recreation and visual resources, cultural resources, air and noise quality, reliability and safety, and alternatives.

26. Based on the discussion in the EA, we conclude that if constructed and operated in accordance with Algonquin's application and supplement(s) filed February 26 and April 15 and 16, 2004, approval of this proposal would not constitute a major Federal action significantly affecting the quality of the human environment.

27. 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.¹⁸ Algonquin shall notify the

¹⁸See, e.g., *Schneidewind v. ANR Pipeline Co.*, 485 U.S. 293 (1988); *National Fuel Gas Supply v. Public Service Commission*, 894 F.2d 571 (2d Cir. 1990); and *Iroquois Gas Transmission System, L.P., et al.*, 52 FERC ¶ 61,091 (1990) and 59 FERC ¶ 61,094 (1992).

Commission's environmental staff by telephone 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.

28. At a hearing held on May 26, 2004, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application, as supplemented, and exhibits thereto, submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission orders:

(A) A certificate of public convenience and necessity is issued to Algonquin pursuant to section 7(c) of the NGA and Part 157 of the Commission's regulations to construct and operate facilities as described and conditioned herein, and as more fully described in the application.

(B) The certificate authority in Ordering Paragraph (A) shall be conditioned on the following:

- (1) Algonquin's completion of the proposed facilities and making them available for service within one year of the issuance of this order pursuant to paragraph (b) of section 157.20 of the Commission's regulations;
- (2) Algonquin's compliance with all applicable Commission regulations under the NGA, including paragraphs (a), (c), (e), and (f) of section 157.20 of the Commission's regulations;
- (3) Algonquin's execution of a contract for the quantity and terms of service represented in the precedent agreement prior to commencing construction;
- (4) Algonquin's filing with the Commission the necessary tariff sheets or contract reflecting the negotiated rate, volume, rate schedule, and applicable receipt and delivery points not less than 30 days, nor more than 60 days, prior to the commencement of service; and

- (5) Algonquin's compliance with the environmental conditions listed in the appendix to this order.

(C) Algonquin shall notify the Commission's environmental staff by telephone 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.

By the Commission. Commissioner Kelly not participating.

(S E A L)

Magalie R. Salas,
Secretary.

Appendix

Algonquin Gas Transmission Company, Docket No. CP04-67-000 Environmental Conditions

As recommended in the EA, this authorization includes the following conditions:

1. Algonquin shall follow the construction procedures and mitigation measures described in its application, and as described in the EA, unless modified by this 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) of 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 this Order: and
 - b. the design and implementation of any additional measures deemed necessary (including stop work authority) to assure 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.