UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Algonquin Gas Transmission, LLC Docket Nos. RP07-139-000 and RP07-139-001

ORDER ON COMPLIANCE FILING

(Issued July 19, 2007)

1. On January 19, 2007, Algonquin Gas Transmission, LLC (Algonquin) filed proposed changes to its tariff concerning, among other things, a capacity allocation process (January 19 filing) to be effective February 19, 2007. The filing was protested. On February 16, 2007, the Commission accepted and suspended the proposed tariff changes, to become effective the earlier of July 19, 2007 or on a date set by a subsequent Commission order, subject to refund and condition.[1] The Commission directed Algonquin to file a response to the issues raised by the protests concerning its proposed tariff changes within thirty days of the issuance of the order.

2. On March 9, 2007, Algonquin filed to comply with the Commission's directive concerning the issues raised by the parties (March 9 compliance filing). Algonquin also requested that the Commission lift the suspension and allow the January 19 filing to take effect on April 1, 2007. As more fully discussed below, the Commission accepts Algonquin's compliance filing subject to certain modifications, and establishes an effective date of July 19, 2007, for the suspended tariff sheets, subject to the conditions of this order.

## I. Notice

3. Public notice of the March 9 compliance filing was issued on March 26, 2007. Protests were due as provided in section 154.210 of the Commission's regulations.[2] On March 14, 2007, Hess Corporation (Hess) filed an answer opposing Algonquin's request to lift the suspension and requesting a technical conference because it believes that

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[1] *Algonquin Gas Transmission, LLC*, 118 FERC ¶ 61,123 (2007).

[2] 18 C.F.R. § 154.210 (2006).

Algonquin's supplemental responses do not address all the issues raised and in some cases are superficial responses. On March 21, 2007, Algonquin filed a motion for leave to answer and an answer. Alternatively, Algonquin moved the Commission to bifurcate the creditworthiness proposal for further consideration and approve the remainder of the filing (March 21 Motion). On March 26, 2007, Hess LNG Trading (Hess LNG) filed an answer, addressing Algonquin's proposal to revise its tariff sheets by requiring an open season for major expansions requiring a certificate of public convenience and necessity.

4. Generally, Rule 213 of the Commission's Rules of Practice and Procedure[3] prohibits the filing of answers unless permitted by the decisional authority. We find that good cause exists here to allow the answers filed by Hess, Hess LNG and Algonquin because they help to provide a more complete record in this proceeding. The details of these pleadings are discussed below.

## II. Background

5. In its January 19, 2007 transmittal letter, Algonquin stated that it filed revised tariff sheets under section 2 of the General Terms and Conditions (GT&C) of its tariff [4] in order to specify standard timelines under which customers may request available capacity and incorporate an allocation methodology for available firm capacity that is based on a net present value (NPV) methodology. Algonquin also proposed to use creditworthiness as a part of its bid evaluation process. Additionally, Algonquin stated that it filed to implement the terms upon which it may reserve capacity for a planned future expansion and sell such reserved capacity on an interim basis. Algonquin stated that these proposed enhancements to its tariff will ensure that capacity is allocated in accordance with Commission policy and that customers will have increased flexibility in matching their capacity requirements on the Algonquin system to their market needs.

6. Algonquin explained that, currently, it allocates available firm capacity on the basis of "first-come, first-served" priority for requests for firm service received by Algonquin and in accordance with section 2 of its GT&C. Algonquin stated that, since the first-come, first-served allocation methodology allocates capacity based on the timing of the receipt by Algonquin of a valid request, this methodology in and of itself does not ensure that capacity is allocated to customers who place the highest value on such capacity. In particular, Algonquin asserted that the first-come, first-served methodology does not require certain factors (*e.g.* rate, quantity, term) to be considered when

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[3] 18 C.F.R. § 385.213 (2006).

[4] FERC Gas Tariff, Fifth Revised Volume No. 1, Second Revised Sheet No. 509, Second Revised Sheet No. 511, Second Revised Sheet No. 512, Second Revised Sheet No. 513, Second Revised Sheet No. 514, and Second Revised Sheet No. 515.

evaluating requests for service. Algonquin asserted that the Commission has consistently held that its policies regarding capacity allocation are guided by its goal of placing capacity in the hands of the bidder that most highly values it.

7. In order to incorporate an NPV allocation methodology into its tariff, that Algonquin believes is consistent with current regulatory and market conditions and the Commission's goal of ensuring that capacity is allocated to customers who most value it, Algonquin proposed changes to section 2 of its tariff by amending section 2.2 and adding a new section 2.4 (a) and (b), new section 2.5 (a) through (h) and a new section 2.6 as follows. First, Algonquin amended the language in section 2.2, entitled "Conditions of Firm Transportation," in order to permit parties to add and change receipt or delivery points that require additional capacity. Next, Algonquin added proposed section 2.4 to permit prospective sale of available capacity and set minimum terms of any awards. Then Algonquin added proposed section 2.5 to establish open seasons procedures for available capacity, including a net present value bid evaluation method. And, finally, Algonquin added proposed section 2.6 to permit the interim sale of capacity that is under contract for a future period.

8. The filing was protested and clarification was requested by Hess and Consolidated Edison Company of New York, Inc. (ConEd) and Orange and Rockland Utilities, Inc. (O&R). In addition, Hess LNG filed comments. The parties raised several issues. The parties asked the Commission to: (a) reject portions of the tariff language; (b) clarify that proposed revisions will not affect valid pending requests for service on Algonquin's system; (c) clarify that the proposed timelines under which customers may request available capacity on Algonquin's systems will apply prospectively; (d) modify the open season notice to specify the applicable bidding window deadlines; (e) require a separate bidding period for capacity equal to or greater than one year; (f) revise the maximum bidding period provisions; and (g) clarify the proposed notification procedures for capacity-related activity to provide shippers with sufficient notice of available capacity.

9. Because the parties raised many issues that required further explanation, review, and action, the Commission accepted and suspended Algonquin's filing for five months and directed Algonquin to file a full response to all the issues raised by the protests concerning its proposed tariff changes.

10. In its March 9 compliance filing, Algonquin responds to the issues raised by the parties by either accommodating the concerns of the parties, agreeing to make certain clarifications and modifications, if required by the Commission, or arguing that, with respect to certain issues, the positions of the parties are without merit and should be rejected.

## III. Discussion

11. For the reasons discussed below, the Commission generally approves Algonquin's proposed capacity allocation tariff provisions, but the Commission does require several revisions. In addition, the Commission will not require a technical conference to address the issues raised concerning creditworthiness, nor will we bifurcate the proceeding to address these issues. We find that the creditworthiness issue and most other issues raised here are questions of policy or fact, which we can decide based upon the record before us. Where there are questions of fact, we find that the record before us is sufficient to address those issues.

### A. Creditworthiness

12. In the January 19 filing, Algonquin proposed tariff language to allow open seasons for available capacity pursuant to proposed section 2.5 in which it defines how to determine the "best bid." The best bid, pursuant to proposed section 2.5(d), is the bid which yields the highest NPV. In addition, Algonquin proposed in section 2.5(e) to use a creditworthiness factor in determining the best bid. Proposed section 2.5(e) provides:

> The creditworthiness factor used in determining the best bid shall be one (1) minus the bidder's probability of default which is calculated by extrapolating to Poor's most recent "Cumulative Average Default Rates by Rating Modifier" table. A bidder may increase the net present value of its bid by posting additional collateral which must be in a form allowed under section 3.2.

In the March 9 compliance filing, Algonquin states that the proposed provisions in sections 2.5(d) and 2.5(e) will allow it to factor the creditworthiness of a potential shipper into the bid evaluation in determining the best bid.[5] Algonquin asserts that the Commission has previously stated that creditworthiness may be relevant in evaluating

[5] In response to Hess' concern about how it will evaluate negotiated rates, Algonquin proposes in the March 9 compliance filing to amend section 2.5(d) by adding the following language: "[i]n determining the highest net present value in connection with a Customer paying a negotiated rate higher than the maximum recourse rate, such negotiated rate Customer paying a rate higher than the maximum recourse rate will be deemed to be paying a rate equal to the maximum recourse rate." *See Pro forma* Second Revised Sheet No. 513.

bids and awarding capacity to the highest valued bidder[6] and has approved a proposal to use the Standard & Poors (S&P) table to discount bids as an appropriate application of this policy.[7]

13. Contrary to Hess' assertions that Algonquin is insulated from shipper default due to market demand for Algonquin's capacity and that the provisions in Algonquin's tariff regarding collateral are sufficient protection, Algonquin argues that the purpose of the bid evaluation provision is not to prevent shipper default, but rather to give weight to the process of evaluating shippers who are less likely, from a statistical standpoint, to default. Algonquin explains that it has experienced multiple rejections of long-term firm service agreements due to several shippers filing for bankruptcy protection and that it still has not remarketed all of the available capacity resulting from these contract rejections, a fact it argues directly contradicts Hess' claim that Algonquin "can readily re-market" such capacity.[8] Algonquin further explains that its current tariff provisions which allow it to obtain three months of collateral from a customer do not provided sufficient protection from financial loss in the event of a shipper's default because it has experienced situations where it has rendered service for three months without having received payment before it can effectuate a contract termination. As a result, Algonquin states that, even with three months of collateral, it stands to lose revenue unless it can immediately find a replacement shipper, which has often proved difficult.[9]

14. Algonquin argues that Hess' contention, that the creditworthiness provisions will reduce competition by making it more difficult for creditworthy shippers to acquire capacity, is illogical because Algonquin is not imposing new minimum standards on parties bidding for capacity. Rather, according to Algonquin, the goal of the provision is to find the bidder who has the highest value bid, which it argues is a factor recognized by the Commission.[10] Algonquin explains that the proposed changes merely provide it with an objective means to give consideration to which bid has the best value by assessing which bidders have a greater probability of default. Using the proposed changes,

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[6] Algonquin March 9 compliance filing at 9-10 and note 24 (*citing Policy Statement on Creditworthiness for Interstate Natural Gas Pipelines*, 70 FR 37717 (June 30, 2005), FERC Stats. & Regs., Regulations Preambles 2001-2005 ¶ 31,191 (June 16, 2005) ("A shipper's credit status may be a relevant factor in assessing the value of its bid")).

[7] *Id.* at 10, note 25 (*citing Gas Transmission Northwest Corporation*, 117 FERC ¶ 61,315 at P 16 (2006) (*GTN*)).

[8] *Id.* at 10 (*citing* Hess Protest at 7).

[9] *Id.* at 10-11.

[10] *Id.* at 11 (*citing GTN* at P 15).

Algonquin states that it will be able to recognize that a distinction exists between a shipper with an "A" credit rating as compared to a shipper with a "B" or "C" credit rating, which it states is a factor that was previously unrecognized in Algonquin's tariff. Algonquin provides a detailed example to clarify how its creditworthiness provisions will operate to accommodate Hess' request for more details.[11]

15. In its March 14 Answer, Hess argues that the proposed creditworthiness factor violates Commission policy by undermining longstanding policy that capacity should be awarded to the party that places the highest value on the capacity[12] and that the Commission has repeatedly required pipelines to rely on a NPV analysis to determine the highest shipper bid. Hess argues that Algonquin's new creditworthiness factor is a threat to clear and non-discriminatory allocation of capacity on Algonquin's system because it will override known and objective NPV factors (*e.g.*, market factors like price, term and volume) and would allow a shipper to win capacity despite a higher bid by another shipper. Hess contends that Algonquin's proposal will make it difficult for a shipper to objectively structure its bid in a manner that maximizes the shipper's chance of winning the capacity because the creditworthiness factor is a non-market factor that has no limit (*e.g.* collateral) and cannot be evaluated objectively (like market factors).[13] Hess provides a table and explanation to illustrate how the Commission's policy of allocating capacity to the highest bidder could be violated and the changes and uncertainty that it believes will become part of the bid evaluation process if creditworthiness is used as a factor in awarding capacity.[14]

16. Algonquin responds in its March 21 Motion that Hess' assertions are generally repetitive of its protest and are unsupported by Commission precedent. Algonquin reiterates that the Commission has previously stated that creditworthiness may be relevant in evaluating bids and awarding capacity to the highest valued bidder and has approved a proposal by GTN to use the S&P table to discount bids as an appropriate application of this policy.[15]

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[11] *See Id.* at 12-14.

[12] Hess March 14 Answer at 4 (*citing Rate Design Policy Statement*, 47 FERC ¶ 61,295, p. 62,053, *order on reh'g*, 48 FERC ¶ 61,122 (1989), *appeal dismissed without order sub nom. Wisconsin Public Service Commission v. FERC*, 966 F.2d 702 (D.C. Cir. 1992)).

[13] *Id.* at 4-5.

[14] *See Id.* at 5-7.

[15] Algonquin March 21 Motion at 2 (*citing Policy Statement on Creditworthiness for Interstate Natural Gas Pipelines*, FERC Stats. & Regs., Regulations Preambles 2001-

(continued…)

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17. The Commission accepts Algonquin's proposal to include an objective measure of creditworthiness in assessing the net present value of a shipper's bid. In the Policy Statement on Creditworthiness,[16] the Commission explained that it would permit pipelines to make filings to take into account a shipper's credit status in determining whether more than three months collateral can be required when shippers are bidding for available capacity on the pipeline's existing system.[17] As the Commission explained, allowing pipelines to take a shipper's creditworthiness into account is consistent with the Commission's policy that allows a pipeline to allocate capacity to the highest valued bidder.[18] A shipper's credit status may be a relevant factor in assessing the value of its bid as compared with bids by more creditworthy shippers, and in determining the amount of collateral that a non-creditworthy shipper must provide to have its bid considered on an equivalent basis.

18. The Commission has accepted a probability of default mechanism almost identical to Algonquin's proposal here in *Gas Transmission Northwest Corporation (GTN)*.[19] As the Commission stated:

> The Commission finds that using a probability of default methodology that is based upon publicly-available information is objective and non-

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2005 ¶ 31,191 at P 15 (2005) ("A shipper's credit status may be relevant factor in assessing the value of its bid ….")("Creditworthiness Policy Statement") and *Gas Transmission Northwest Corp*., 117 FERC ¶ 61,315 at P 16 (2006)).

[16] *Policy Statement on Creditworthiness for Interstate Natural Gas Pipelines*, 70 FR 37717 (June 30, 2005), FERC Stats. & Regs., Regulations Preambles 2001-2005 ¶ 31,191 (June 16, 2005).

[17] *Id*. at P 15.

[18] *See Tennessee Gas Pipeline Co*., 76 FERC ¶ 61,101 at 61,518 (1996) (accepting net present value formula for allocating capacity), *aff'd*, *Process Gas Consumers Group v. FERC*, 292 F.3d 831 (D.C. Cir. 2002) (affirming no length of contract cap for NPV bids); *Texas Eastern Transmission Corp*., 79 FERC ¶ 61,258 (1997), *aff'd on rehearing*, 80 FERC ¶ 61,270 (1997) (use of net present value to allocate capacity), *aff'd*, *Municipal Defense Group v. FERC*, 170 F.3d 197 (D.C. Cir. 1999) (finding use of NPV allocation method not unduly discriminatory when applied to small customers seeking to expand service).

[19] 117 FERC ¶ 61,315 (2006).

> discriminatory. GTN has provided a justifiable rationale for using credit status as a means of evaluating bids through its probability of default table. GTN has explained that using creditworthiness in evaluating bids allows GTN to attract and retain more creditworthy customers while protecting the financial stability of the pipeline.[20]

19. Hess argues that adding the creditworthiness factor could result in allocating capacity to a bidder who is not the highest bidder. Hess also claims that the bid evaluation criteria used by Algonquin is not sufficiently objective.

20. But as stated above, a shipper's credit status is a relevant criterion in evaluating whether it, in fact, has submitted the highest valued bid. A pipeline, like any other company, may reasonably find that a lower bid by a more creditworthy shipper has greater value than a bid by a non-creditworthy shipper. Algonquin's tariff establishes a non-discriminatory method of determining the value of bids, relying on an independent third-party's, Standards and Poors, evaluation of default rates.

21. Hess argues that the S&P credit rating is not objective because credit rating companies use different criteria to evaluate a company's credit and these differences result in different ratings among different rating services. Hess argues that Algonquin has not disclosed or explained the subjective criteria upon which the S&P credit ratings are based.[21]

22. The Commission finds that the S&P credit rating is sufficiently objective. As Algonquin points out in its March 21 Motion, the S&P credit ratings generally are relied upon by the business community, are a recognized standard in the financial world and are used as benchmarks in commercial transactions around the globe.[22] Moreover, the Commission permits pipelines to use S&P credit ratings and S&P long and short-term outlooks in their tariffs because they are objective criteria.[23]

23. Finally, the Commission finds that Algonquin's response to the contention of Hess that Algonquin has not "explained how it would evaluate the bid of a shipper that lacks an S&P credit rating" is a satisfactory response. Algonquin states that, if a shipper lacks

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[20] *Id*. at P 16.

[21] *See* Hess March 14 Answer at 10-12.

[22] Algonquin March 21 Motion at 6-7.

[23] *See Columbia Gulf Transmission Co*., 117 FERC ¶ 61,073 at P 11 (2006); *Tennessee Gas Pipeline Co*., 103 FERC ¶ 61,275 (2003).

an S&P credit rating, it will conduct a non-discriminatory credit appraisal consistent with its currently effective standards set forth in section 3.1 of its GT&C for evaluating credit in order to determine an equivalent rating for a customer.[24]

24. Hess argues that Algonquin's proposal to adjust the value of a capacity bid of a creditworthy shipper by multiplying the bid by a creditworthiness factor based on the 2005 Default Chart published by S&P improperly shifts the normal business risks from the pipeline to its customers. Hess argues that Algonquin cannot be allowed to shift its business risk onto its shippers and that Algonquin's existing collateral standards are fully adequate to protect it against a defaulting shipper.[25] Hess states that the Commission has previously found that "a customer's ongoing credit risk is a business risk of the pipeline that should be reflected in its rate of return on equity."[26] Hess argues that creditworthiness requirements should not be designed to insulate the pipeline from the business risk that a pipeline faces in remarketing capacity pursuant to terminated contracts.[27]

25. As explained above, Algonquin's proposal is in line with Commission policy in allowing pipelines to allocate capacity to the shipper with the highest net present value bid. The Commission has long permitted pipelines to take into account, rate, quantity, and length of contract in determining the highest valued bid, and Hess has cited to no authority for the proposition that a shipper's credit status should not also be considered a legitimate factor in analyzing the value of competing bids, as long as the pipeline uses objective criteria for measuring that risk. While it is true that a pipeline's rate of return on equity can be adjusted to reflect the business risk faced by the pipeline, that adjustment does not mandate that a pipeline must take on increased risk by selling capacity to shippers with lower valued bids. In cases in which sufficient demand exists for pipeline capacity, allowing the pipeline to allocate capacity to the highest bidder not only reduces risk to the pipeline, but also to its existing shippers whose rates reflect the pipeline's business risk.

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[24] *See* Algonquin March 21 Motion at 6.

[25] Hess March 14 Answer at 3

[26] *Id.* at 12-13 and note 3 (*citing Policy Statement on Creditworthiness for Interstate Natural Gas Pipelines and Order Withdrawing Rulemaking Proceeding*, FERC Statutes and Regulations, Regulations Preambles 2001-2005 ¶ 31,191 at P 11 (2005).

[27] *Id.* at 13 and note 6 (*citing Williston Basin Interstate Pipeline Co.* , 104 FERC ¶ 61,036 at P 44 (2003), *order on reh'g*, 107 FERC ¶ 61,164 (2004), *Trailblazer Pipeline Co.*, 106 FERC ¶ 63,005 at P 102, *order approving settlement*, 106 FERC ¶ 61,034, *order on mootness*, 107 FERC ¶ 61,008 (2004)).

26. Hess further argues that requiring shippers to post additional collateral could potentially cause Algonquin to charge certain shippers a rate which exceeds its just and reasonable rates. Algonquin's proposal does not result in a shipper paying higher than just and reasonable rates. The Commission finds it reasonable that non-creditworthy shippers post collateral to protect against default. However, the posting of collateral is not an increase in rates, because the collateral is merely to ensure pipeline reimbursement of charges in the event of default.[28] The pipeline is obligated to return the collateral to the shipper at the end of the contractual relationship and it must return the collateral, if the shipper subsequently satisfies the pipeline's creditworthiness criteria. Should the shipper default, the pipeline can keep only the amount of collateral covering the shipper's obligation.

27. Hess requests that, if the Commission approves Algonquin's proposed creditworthiness factor and the requirement for creditworthy shippers to post collateral, at a minimum, the Commission should require the separation of the collateral requirement from the NPV evaluation of bids, which Hess argues is based solely on objective factors (price, volume and term). Once the highest bid is determined based on these objective factors, Hess suggests that Algonquin could then inform the highest bidder which collateral it would need to post in order to preserve its highest bid by applying the creditworthiness factors.

28. The Commission will not require the separation of the collateral requirement from the NPV evaluation of bids, as Hess requests. While there may be a number of reasonable ways of examining a shipper's creditworthiness, Algonquin's proposal is based on objective criteria and is just and reasonable because it evaluates creditworthiness along with other factors affecting the bid. Hess' proposal, for example, would lock the winning non-creditworthy shipper into posting a higher amount of collateral in order to preserve its winning bid. In contrast, under Algonquin's proposal, the non-creditworthy shipper has more flexibility in choosing the means to increase the value of its bid, such as raising its bid (as long as it is below the maximum rate, increasing the quantity of its bid, increasing the term of the bid, or increasing the collateral it offers.

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[28] If the pipeline holds the collateral, it is required to offer the shipper the opportunity to earn interest. Policy Statement on Creditworthiness, FERC Stats. & Regs., Regulations Preambles 2001-2005 ¶ 31,191, at P 22; *Tennessee Gas Pipeline Co.*, 102 FERC ¶ 61,075 at P 38 (2003).

## B. Other Issues

### 1. Advanced Sales

29. Proposed section 2.4(a) provides that service must commence within certain maximum periods after the capacity is awarded.[29] Proposed section 2.4(b) permits Algonquin to consider, on a not unduly discriminatory basis, a request for firm service outside the time periods specified in proposed section 2.4(a), if the request involves a request for capacity:

a. pursuant to an open season initiated by Algonquin;
b. that is available due to the termination of an existing contract or the reduction of contracted volumes under an existing contract; or
c. that involves the modification or construction of facilities or the issuance of any necessary certificate authorization.

30. If Algonquin allows a variation from the time periods specified in section 2.4(a) based upon one of the circumstances described above or for other reasons, proposed section 2.4(b) requires Algonquin to include the details of the variation in the open season notice. Also, unless otherwise agreed to by Algonquin, all awards of capacity must be for continuous service at a constant Maximum Daily Transportation Quantity (MDTQ) and at maximum rates for the entire term of the service.

31. In its protest and answer to Algonquin's compliance filing, Hess asserts that any exemptions from the section 2.4(a) time limits on when service must commence should be limited to situations involving construction of facilities. Hess asserts that in any other situation, advance sales of capacity are contrary to Commission policy and potentially unduly discriminatory and preferential, because they sever the logical scheduling of an open season from the time proximity and date when the capacity becomes available. Hess states that for shippers to accurately evaluate their need for capacity and the market price for such capacity, the Commission has recognized that bidding for capacity should occur shortly before the capacity becomes available. Hess asserts that, for example, when an existing shipper has the right of first refusal (ROFR), the Commission has found

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[29] The timelines in proposed section 2.4(a) are for service with a primary contract term: (i) of less than ninety (90) days, the requested service must commence no later than five (5) days from the date the capacity is awarded; (ii) equal to or longer than ninety (90) days but less than one (1) year, the requested service must commence no later than thirty (30) days from the date the capacity is awarded; and (iii) of one (1) year or longer, the requested service must commence no later than one hundred and eighty (180) days from the date the capacity is awarded. *See* January 19th Filing (Second Revised Sheet No. 511, superseding First Revised Sheet No. 511).

that ROFR procedures should be triggered by a non-binding notice from the existing shipper as to whether it wants to reserve the right to match the best bid for the capacity and that the initial notice should occur between six and twelve months before the capacity becomes available. Hess states that, similarly, the Commission has determined that the actual bidding process (where the existing shipper decides whether to match the best bid) needs to occur "relatively close to the time the contract would expire."[30]

32. However, if the Commission determines to accept any of the proposed exemptions to Algonquin's timelines for acquiring capacity, Hess requests that the Commission impose a time limit or cap on how far in advance these exemptions can apply. Hess states that a one year time limit or cap, while causing a degree of disconnect between the open season and the actual availability of capacity, would at least maintain some recognition of the need to prevent a complete disconnect.[31]

**Commission Determination**

33. The Commission agrees with Algonquin that Algonquin's proposal is consistent with Commission policy. When the Commission modified its policy to permit advance sales of capacity in *Gas Transmission Northwest Corp.*[32] and *Northern Natural Gas Co.*,[33] the Commission imposed only two conditions. First, pipelines must hold an open season before awarding the capacity, giving all interested parties an opportunity to obtain the capacity as soon as it is available. Second, if the winning bid providing the highest net present value is for service to commence in the future, pipelines must make the capacity available to other shippers on an interim basis. While the Commission mentioned that such an advance sale of capacity could be useful to a developer of an electric generation plant, the Commission did not impose any limits on the type of shipper that could seek advance capacity. The Commission's primary interest is in ensuring that the capacity goes to the shipper who places the highest value on it. The open season requirement described above ensures that "at the time of the request for . . .

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[30] Hess March 14 Answer at 16 (*citing Texas Eastern Transmission, LP*, 103 FERC ¶ 61,135 (2005)). Hess states that the Commission observed that this gives the shipper an opportunity to decide whether and how much of its capacity to retain, not only in light of the *current* market value of the capacity but also in light of the *current* assessment of the shipper's current capacity needs.

[31] *Id.* at 17-18.

[32] *GTN*, 109 FERC ¶ 61,141 (2004).

[33] *Northern Natural*, 109 FERC ¶ 61,388 (2004).

sale of capacity for a future period, there is no other shipper wishing to procure the capacity either immediately or in the future that would place a higher value on the capacity."[34]

34. Algonquin's proposal complies with these requirements. Under section 2.5, it will have to conduct an open season before selling any capacity covered by its advance sale proposal, and these bids will be evaluated on a net present value basis.

35. Hess' reliance on certain Commission orders involving the timing of when an existing shipper must exercise its ROFR rights is misplaced. Algonquin's instant proposal does not affect an existing shipper's exercise of its ROFR rights, but only involves the sale of capacity not subject to ROFR rights. In any event, the Commission recently clarified that pipelines may initiate the ROFR process sufficiently far in advance of the termination of the existing shipper's contract that it could be required to match a third party bid up to eleven months before its contract terminates.[35] The Commission explained that pipelines have an economic interest in selling capacity to those who value it the most; and, therefore, giving the pipeline flexibility concerning the timing of open seasons is consistent with the general policy favoring allocation of capacity for those who value it the most.

### 2. Bidding Period Timelines

36. Proposed section 2.5 provides the minimum and maximum bid periods for any open season conducted pursuant to section 2.5:

a. For service with a term of less than 90 days, the open season will be for a minimum of one (1) business day;
b. For service with a term equal to or greater than 90 days (that is not associated with an expansion project), the open season will be conducted for a minimum of five (5) business days from the posting of the notice of request for capacity, or 15 business days from the date the capacity was first posted as being available for contracting, whichever is the later calendar date;
c. In no event will the open season be for a period greater than one (1) calendar month;
d. All open seasons will end at 2:00 pm CT not less than one (1) business day prior to the date service would be available.

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[34] *Northern Natural*, 109 FERC ¶ 61,388 at P 29.

[35] *Gulf South Pipeline Company*, 119 FERC ¶ 61,032 at P 11-13 (2007).

37. Proposed section 2.5 further provides that the open season may include generally available unsubscribed capacity; capacity under expiring or terminating service agreements, to the extent such agreements do not have a right of first refusal or the subject shipper does not exercise such rights; and/or capacity resulting from one or more expansion projects. This section requires Algonquin to post such available capacity before it provides information to any potential shipper.

38. In its protest, Hess LNG requested the Commission to require Algonquin to change this provision to create another longer bidding period for service lasting one year or more and to make the maximum bidding period "correlate to the term of service being offered."[36]

39. Algonquin states that its proposed minimum and maximum bid periods are consistent with Commission policy, even though Hess LNG pointed to the bidder's need for internal review and approval, it failed to cite to any Commission precedent to support its position to request longer bid periods for service for over a year. Algonquin states that the Commission has previously recognized that "the speed of transactions in today's gas market" supports shorter timelines for open seasons.[37] First, according to Algonquin, if capacity has been posted as available for at least 10 business days and a party submits a request for that capacity, then the first section of its minimum bid proposal for service of 90 days or more controls and the open seasons lasts for five (5) business days. Next, Algonquin states that, if a party submits a service request and the capacity has been posted as available for less than 10 days, or perhaps not at all, then the open season must last for 15 business days after the capacity was, or is, first posted as available. Algonquin asserts that this provision ensures that a shipper interested in capacity that has not submitted a specific request will be provided a fair opportunity to bid on newly posted capacity. Algonquin states that the Commission has previously approved these same

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[36] Hess LNG Protest at 4. Hess LNG also requested clarification of the section 2.5 provision that if service lasts for 90 days or more, the open season is to last until the later of (i) five (5) business days from the posting of the notice of request for capacity or (ii) 15 business days from the date the capacity was first posted as being available for contracting, whichever is the later calendar date.

[37] Algonquin March 9 compliance filing at 7 and note 17 (*citing Texas Eastern Transmission Corp.,* 94 FERC ¶ 61,003 at 61,005 (2001) (*TETCO)*; *Trailblazer Pipeline Co.,* 108 FERC ¶ 61,049 (2004) (allowing five-hour, no-notice open seasons for terms of service less than 5 months); *Southern Natural Gas Co.,* 96 FERC ¶ 61,008 (2001) (allowing 3-day minimum open season for service terms less than one year): *National Fuel Gas Supply Corp.,* 88 FERC ¶ 61,173 (1999) (allowing 1-day minimum open seasons for service terms of less than five months and 3-day minimum open seasons for service terms of five months to one year)).

minimum timelines for open seasons.[38] Algonquin also explains that, in *Texas Eastern Transmission, LP* (*Texas Eastern*), the Commission approved tariff provisions that separated open season periods for service of less than 90 days and service of 90 days or more, without longer periods for service of one year or more.[39]

**Commission Determination**

40. The Commission finds that Algonquin's proposal is consistent with the Commission policy, as expressed in *Texas Eastern*. Given the speed of transactions in today's gas market, the Commission believes that a proposal that guarantees bidders at least 15 days to determine whether to submit a bid for service of 90 days or more is reasonable. Algonquin explains that under its proposal, bidders for capacity for more than 90 days will always have at least 15 days from the date capacity is posted as available in order to submit a bid.

**3. Rejection of Bids that affect Operational Integrity**

41. Proposed section 2.5(c) reserves the right for Algonquin to reject any bid that, among other things, may adversely affect the operational integrity of Algonquin's system. Algonquin states that the Commission has approved similar language for other pipelines.[40] In its pleading, Hess objects to this provision because it claimed that Algonquin failed to explain how posted capacity could adversely affect the operational integrity of the pipeline's system.[41]

42. Hess argues that it is unclear whether Algonquin intends to say that it can reject non-conforming bids which include terms of service different from the terms in the open season notice or whether Algonquin has some other concern. In any event, Hess contends that Algonquin does not need any additional tariff language to reject bids that "do not adhere to the open season criteria" since proposed section 2.5(c) already reserves

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[38] *Id.* at 8 and note 21 (*citing TETCO* at 61,005; *Northern Natural Gas Co.*, 110 FERC ¶ 61,361 (2005) (allowing a five-day minimum open season); *Natural Gas Pipeline Company of America*, 93 FERC ¶ 61,075 at 61,203-204 (2000) (allowing a 4-day open season for service terms of five months or more); *National Fuel Gas Supply Corporation*, 88 FERC ¶ 61,173 (1999) (allowing 5-day minimum open seasons for service terms of one year or more)).

[39] *Id.* at 7 and note 18 (*citing Texas Eastern Transmission Corp.*, 94 FERC ¶ 61,003 (2001)).

[40] *Id.* at 9.

[41] Hess Protest at 6.

Algonquin's right to reject any bid that "does not satisfy all the terms of the applicable posting." Therefore, Hess requests the Commission to require Algonquin to clarify that a bid that complies with the criteria in the posted open season cannot be rejected as adversely affecting Algonquin's operations. Hess also requests the Commission to require Algonquin to revise its tariff to require Algonquin to provide a written explanation to any bidder of the reason(s) the bid is rejected (as Hess contends Algonquin agreed to do in previous pleadings).[42]

43. Algonquin responds that it must be able to reject such bids and requests the Commission to dismiss Hess' request to eliminate this language. Algonquin states that, while it does not disagree with Hess that, as a general matter, it should be operationally feasible for Algonquin to provide service for capacity as posted, it included this provision as a precautionary measure since it cannot specifically identify and provide for each capacity request that could adversely affect its system operations.

**Commission Determination**

44. The Commission accepts Algonquin's proposed language which allows it to maintain the right to reject any bid that may adversely affect the operational integrity of its system. This decision is consistent with Commission precedent where we have approved such language for another pipeline.[43] However, we will direct Algonquin to amend its proposed tariff language to require it to provide a written explanation to any bidder of the reason the bid is rejected, as Algonquin stated it would do in its March 9 compliance filing.[44]

**4. Point Change Provisions**

45. As previously mentioned, proposed section 2.5(d) establishes procedures for evaluating bids in an open season pursuant to an NPV methodology. In addition, this section provides that in determining the best bid:

> [A]ny request to add or change a Point of Receipt and/or Point of Delivery will be considered to have a net present value of zero (0) when comparing such requests to other requests for service and awarding capacity unless the Customer has agreed in conjunction with its request to increase its MDTQ

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[42] Hess March 14 Answer at 22.

[43] *See Tennessee Gas Pipeline Company*, 76 FERC ¶ 61,101 at 61,520, 61,522 (1996) (approving proposed tariff language allowing rejection of a bid that "may detrimentally impact the operational integrity" of the pipeline's system).

[44] *See* Algonquin March 9 compliance filing at 9.

> and/or extend the term of its firm service agreement in which case Algonquin *may*[45] [emphasis added] consider the terms of such MDTQ increase and/or contract extension when calculating the net present value.

46. Hess is concerned that, unless clarified, this provision could improperly restrict existing shippers' rights to change their primary points. It argues that Algonquin's specific tariff language is ambiguous in that it does not draw clear distinctions between (a) an existing shipper requesting a change in primary points (but not additional or incremental capacity, or any increase in term or rate) and (b) an existing shipper requesting incremental (*i.e.*, additional) capacity by increasing its MDTQ or possibly agreeing to extend the term of its existing contract or possibly increasing its rate.[46] Hess contends that the existing shipper in the first scenario who wants to change primary receipt or delivery points is not a bidder for incremental capacity and, thus, should be allowed to request such capacity outside of an open season procedure. If capacity at an alternative primary receipt or delivery point is available within the path of the existing shipper's contract, then that shipper should be permitted to change its primary point(s).

47. Hess further contends that the existing shipper under the second scenario who is seeking expansion capacity is clearly offering incremental revenues to Algonquin; thus, it should be made clear that the NPV of the increased or supplemental revenues offered by the shipper are not zero but rather equivalent to the incremental revenues. Hess argues that Algonquin's tariff needs to be modified to more clearly reflect these distinctions. Hess also asserts that Algonquin should be required to clarify the timing of an existing shipper's request for a change in receipt or delivery points. Hess questions how soon after once receipt or delivery point capacity becomes available, will it be posted and when will the pipeline determine if an open season will be held.

48. Algonquin argues that the Commission should reject the contention by Hess that the primary point change provisions are unclear. Algonquin contends that a bid for a

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[45] Algonquin states that, if ordered by the Commission it will change the word may to "shall" to address the concerns of Con Edison and O&R about the NPV for point changes. Algonquin states that this change would eliminate any confusion with respect to a customer's ability to extend its term or increase its MDTQ in order to raise the NPV of a receipt or delivery point change request. Algonquin notes that it has included *pro forma* tariff sheets in the March 9 compliance filing that illustrates the revised tariff language. If the Commission orders Algonquin to revise its proposed tariffs accordingly, Algonquin requests the Commission to allow it to revise the tariff sheets and submit them within 10 days of a Commission order, along with the tariff sheets not required to be revised, all with an effective date of April 1, 2007. *Id.* at 20 and note 38.

[46] Hess March 14 Answer at 18.

point change with no incremental capacity will not have an NPV. If an existing shipper does bid on incremental capacity in addition to a point change, the incremental capacity will be used to calculate the NPV of the bid. Algonquin asserts that the underlying principle that requests for point changes by existing customers should be considered to have an NPV of zero is well-established.[47] Algonquin also asserts that the Commission has rejected the position that existing shippers should be permitted to request primary point changes outside of the open season procedures.[48] Algonquin therefore concludes that the Commission should permit it to implement proposed section 2.5(d) without modification, except as specified elsewhere in its motion.

**Commission Determination**

49. The Commission finds that Algonquin's proposed tariff language does appropriately set forth when an existing shipper's request for a primary point change in an open season will be given an NPV of zero. The tariff provides that a bid for only a point change, *with no incremental capacity*, will have a NPV of zero. If, however a shipper bids on incremental capacity, *in addition to a point change*, that incremental capacity will be used to calculate the NPV of the request. However, the Commission also finds that Algonquin must clarify the extent to which its open season capacity allocation proposal will apply to existing shippers' changes in their primary points.

50. Since Order No. 636, the Commission has required that pipelines permit firm transportation shippers the right to change their primary receipt and delivery points during the term of their contracts, provided capacity is available.[49] As Algonquin points out, the Commission held in *Tennessee* that, when there is insufficient primary point capacity to satisfy all requests for that capacity, pipelines may use an open season and NPV bid evaluation methodology to allocate the scarce primary point capacity and treat an existing shipper's request for a primary point change without providing any additional

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[47] Algonquin March 9 compliance filing at 15, note 31 (*citing Tennessee Gas Pipeline Company*, 108 FERC ¶ 61,177 (2004); *Great Lakes Gas Transmission Limited Partnership*, 103 FERC ¶ 61,133 at P 30 (2003); *Southern Natural Gas Company*, 96 FERC ¶ 61,008 (2001)).

[48] *See Tennessee Gas Pipeline Company*, 91 FERC ¶ 61,053 (2000), *rehearing denied*, 94 FERC ¶ 61,097 (2001), *aff'd, Process Gas Consumers Group v. FERC*, 292 F.3d 831 (D.C. Cir. 2002) (*Tennessee*).

[49] Order No. 636 at 30,428-29. Order No. 636-A at 30,582-83. *Tennessee*, 91 FERC at 61,192.

revenue to the pipeline as having an NPV of zero.[50] Giving priority to the new shipper's bid will benefit all the pipeline's customers in its next rate case by providing a greater number of units of services over which to spread the pipeline's fixed costs.

51. However, in *Tennessee*, the pipeline's tariff also included a provision which permitted firm shippers, consistent with Order No. 636, to change primary points, if capacity was available at the point and the change would not reduce the shipper's reservation charge. The pipeline stated that its bid evaluation proposal would affect the firm shipper's ability to exercise their rights to obtain primary point changes under this tariff provision only in limited circumstances. The pipeline explained that there are two types of situation in which primary point capacity may be available for sale. First, capacity may be available at a primary point, but all the mainline capacity necessary to use the primary point is fully subscribed by existing customers. In that situation, the only shippers who could obtain capacity at the point are the existing shippers, and their bids would generally all have an NPV of zero. Therefore, in that situation, the pipeline would grant primary point change requests on a first-come, first-served basis, with the result that the NPV bid evaluation would not prevent the existing shippers from obtaining primary point changes.

52. Only in the second situation, where both the primary point capacity and associated mainline capacity is available for sale by the pipeline, would Tennessee's NPV bid evaluation proposal come into play, because the availability of mainline capacity would permit new shippers to obtain primary point capacity. That was the situation, in which the Commission found it reasonable to apply the NPV method in order to give new shippers providing incremental revenue a preference for obtaining the capacity.

53. It is unclear from Algonquin's proposal how Algonquin intends it to affect its firm shippers' right to change their primary points. Consistent with Order No. 636 and *Tennessee*, Algonquin must provide a method for existing firm shippers to change the primary points, subject to the availability of capacity. In situations where mainline capacity associated with primary points is available, thereby permitting new shippers to access the primary points, it is reasonable for Algonquin to apply its open season and NPV bid evaluation in the manner it has proposed. However, Algonquin must provide a method for existing shippers to change primary points in the situation where the associated mainline capacity is fully subscribed, so that only existing firm shippers can access the capacity and the NPV bid evaluation methodology is not applicable. Moreover, even when mainline capacity associated with the primary point is available, Algonquin must permit an existing shipper to shift to that point, so long as there is no bid for the point from a new shipper. In other words, the pipeline must either grant the

[50] *Tennessee*, 94 FERC at 61,402.

existing shipper's point change request or hold an open season to seek bids from new shippers. It cannot simply refuse the existing shipper's request. Accordingly, the Commission requires Algonquin to modify its proposal to clarify existing firm shippers' right to change primary points consistent with this discussion.

### 5. Open Season for Expansion Projects

54. In its original filing, Algonquin included the following language in its proposed section 2.5:

> Algonquin may post notices for solicitation of bids in an open season for expansion projects, which may include requests for incremental service at a date later than the in service date of the proposed expansion facilities.

55. Hess protested that provision on the ground that it did not require Algonquin to hold an open season for expansion projects.[51] In its March 9 compliance filing, Algonquin stated that, if the Commission deems it necessary, it will revise its tariff sheets to require an open season for major expansions, defined as those requiring an individual NGA section 7 certificate of public convenience and necessity. Accordingly, Algonquin proposed to revise this portion of its tariff language in section 2.5 as follows:

> Algonquin shall post notices for solicitation of bids in an open season for all facilities that require certificate authorization for construction under section 7(c) of the Natural Gas Act.[52]

56. Hess argues that Algonquin's proposal to exclude from its open season all expansions constructed pursuant to a blanket certificate is contrary to Commission policy.[53] Hess LNG states that, while it does not oppose Algonquin's desire to exclude some levels of minor construction from an open season requirement (*e.g.*, taps, short laterals), Hess LNG believes that Algonquin's proposed "minor facilities" test could allow for the construction of substantial mainline capacity expansions, with the potential for discrimination among different generations of similarly situated shippers. Therefore, Hess LNG suggests that the Commission should require Algonquin to revise its proposed tariff prospectively to provide for an open season for any new mainline-related construction that results in new system capacity exceeding 50,000 Mcf/d, even if the costs of such construction are less than the current cost caps for blanket certificate

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[51] Hess Protest at 3-5.

[52] *See* Algonquin March 9 compliance filing at 16-17 and *Pro Forma* Sub 2nd Revised Sheet No. 512.

[53] *See* Hess March 14 Answer at 19-21 (citations omitted).

facilities. Hess LNG contends that this approach is more consistent with the goals of the Commission's open season policy and would better balance Algonquin's preference to avoid unnecessary open season procedures for relatively insignificant construction projects, with the need to avoid any discrimination among different generations of new shippers seeking access to Algonquin's mainline capacity.[54]

57. Algonquin responds that it is merely trying to find a clear and objective division between those "significant facility expansions" where an open season is required and "minor facilities" that may be excluded. Algonquin believes that using the certificate requirements as a threshold is the appropriate place to draw a bright line between these requirements and, therefore, the submission of a certificate application should be the dividing line between expansion projects that must be preceded by an open season and those where an open season is unnecessary.[55]

**Commission Determination**

58. The Commission has held that open seasons for expansion projects are important as a vehicle for all types of expansion capacity, and that such open seasons help ensure that the expansion capacity is allocated in a not unduly discriminatory manner.[56] Accordingly, the Commission has held that "the open season should apply to all significant facility expansions, including laterals, but minor facilities may be excluded."[57] The example of a minor facility given in *Gulf South* was the addition of a new meter or point to a system. The Commission finds that Algonquin's proposal to exclude all expansions built pursuant to blanket certificate authority from the open season requirement is overly broad. Currently, the Commission's regulations permit pipelines to receive blanket authorization for certain expansions with a cost of up to $28,200,000.[58] At least in some circumstances such expansions may include the addition of mainline capacity or other capacity additions that may serve a number of shippers. Thus, the Commission's concerns about minimizing undue discrimination in the allocation of capacity on the expansion could clearly apply to some expansions authorized by a blanket certificate. Therefore, the Commission is unwilling to approve tariff language which would exempt all expansions built pursuant to a blanket certificate from any open season

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[54] *See* Hess LNG March 26 Answer at 1-5.

[55] Algonquin March 21 Motion at 17-18.

[56] *Gulf South Pipeline Co*., 95 FERC ¶ 61,132 at 61,415 (2001) (*Gulf South*).

[57] *Id*.

[58] 18 C.F.R. § 157.208(d) (2006).

requirement. Therefore, as we did in *Gulf South*, we require Algonquin to file revised tariff language that more narrowly exempts from the open seasons those minor facilities where the concerns about undue discrimination among shippers are not present.

### 6. Inclusion of NPV methodology in standard methodologies allowed for capacity release transactions.

59. ConEd and O&R request that the Commission require Algonquin to include its proposed section 2.5(d) NPV analysis as a "standard" evaluation method for processing capacity release transactions under section 14.4(a)(10) of Algonquin's General Terms and Conditions. ConEd and O&R state that Algonquin has proposed changes to section 2.5(d) of its GT&C to determine the "best bid" for capacity it sells by multiplying the present value of the Reservation Charge per unit contained in each bid by the bidder's creditworthiness factor. ConEd and O&R state that Algonquin has neglected to propose a conforming change to its capacity release tariff provisions that may be necessary to permit released capacity to compete on a level playing field with capacity sold by Algonquin. ConEd and O&R further state that if section 2.5(d) NPV analysis, including the bidder's creditworthiness factor, is to be the norm on the Algonquin's system for capacity to be purchased from Algonquin, there is no obvious reason that it should be deemed to be an "alternative" evaluation methodology in section 14.4(a)(10).

60. Algonquin states that the Commission should reject ConEd's and O&R's request. First, Algonquin states that it has not proposed any changes to GT&C section 14 in its filing or to any of its capacity release processes, so any request to modify those tariff provisions is beyond the scope of the instant proceeding. Second, Algonquin states that the request made by ConEd and O&R is contrary to NAESB requirements and Algonquin's operations. Algonquin states that under the currently effective provisions in section 14.4(a)(10) and in accordance with NAESB standards, releasing shippers may select among three standard methods for evaluating capacity release bids and the Algonquin NPV methodology proposed in this proceeding is not one of the three standard methods.

### Commission Determination

61. Since Order No. 636, the Commission has required that pipelines include in their tariffs one or more objective, non-discriminatory economic standards for determining the best bid for a capacity release. In addition, the releasing shipper may include in its offer to release a different bid evaluation method than those listed in the pipeline's tariff, so long as that method is objective and non-discriminatory. The Commission has previously approved the standard bid evaluation methods listed in section 14.4(a)(10) of Algonquin's GT&C as complying with the requirements of Order No. 636, and the Commission will not in this proceeding initiate action under NGA section 5 to require Algonquin to modify section 14.4(a)(10).

62. Consistent with Commission policy, section 14.4(a)(10) of Algonquin's tariff permits a releasing shipper to establish its own bid evaluation methodology. Therefore, if a releasing shipper desires to use a bid evaluation method in which the NPV of each bid is adjusted based upon the creditworthiness factor of the bidder, it may do so. However, NAESB standard 5.3.3 and section 14.4(a)(10) of Algonquin's GT&C would permit Algonquin to take longer than the standard one-hour period to evaluate the bids, because the inclusion of the creditworthiness factor in the bid evaluation method would be a special term and condition of the release.

### 7. Reservation of Capacity for an Expansion

63. Proposed section 2.5(h) permits Algonquin to reserve for a future expansion project any unsubscribed capacity or capacity under expiring or terminating service agreements not subject to any ROFR rights, subject to various conditions. Before reserving the capacity, Algonquin must conduct an open season for the capacity to be reserved for at least five days ("reserved capacity open season"). The reserved capacity open season ensures that any capacity which Algonquin does reserve is capacity which no shipper currently desires. In addition, under its proposal, "Algonquin may reserve capacity for a future expansion project for which an open season ["expansion open season"] has been held or will be held within twelve (12) months of the date that Algonquin posts such capacity as being reserved." Algonquin may reserve the capacity "for up to twelve (12) months prior to the time Algonquin files for certificate approval for proposed construction of a related project and thereafter until all expansion facilities are placed in service."

64. Hess seeks two changes in Algonquin's proposed section 2.5(h). First, it contends that Algonquin should be required to add a provision that the minimum terms and conditions imposed in the reserved capacity open season may not materially differ from the minimum terms and conditions imposed in the expansion capacity open season, and if a subsequent expansion capacity open season does impose different terms than an earlier reserved capacity open season, Algonquin will hold another reserved capacity open season using the same terms. Second, Hess contends that section 2.5(h) should be revised to require Algonquin to solicit turned-back capacity before reserving any capacity for an expansion.

65. Algonquin has agreed to make the first change requested by Hess concerning the minimum terms and conditions of the open seasons. However, Algonquin opposes Hess's request with respect to turned-back capacity. Algonquin states that it will solicit turned-back capacity with respect to any required open season for an expansion. However, it states that the Commission does not require pipelines to solicit turned-back capacity before reserving capacity for an expansion. In fact, it states, the Commission has disapproved another pipeline's proposed tariff language that would have allowed it to

solicit turned-back capacity in connection with the reservation of capacity because the reservation process could occur either one year before or after the expansion open season.[59]

**Commission Determination**

66. As Algonquin recognizes, Commission policy requires pipelines considering an expansion project to solicit turned-back capacity, so that any turned back capacity may substitute for the expansion capacity, thereby minimizing the size of the expansion. Accordingly, the Commission has held that the solicitation of turned-back capacity should occur either as part of, or close in time to, the open season for the expansion project, since that is when the size of the project is being assessed.[60] We therefore agree with Algonquin that the timing of the solicitation of turned-back capacity is more appropriately tied to the timing of the expansion open season, and consistent with *Northern* should be within 90 days or less of the open season, rather than tied to the timing of the reservation of capacity, which can occur on a much longer time frame. Hess's proposal to tie the solicitation of turned-back capacity to the reservation of capacity would mean that Algonquin's solicitation of turned-back capacity could occur more than a year before and up to a year after an expansion open season. As such, the solicitation could occur too remote in time from the expansion open season.

67. The Commission does, however, require Algonquin to make the change to section 2.5(h) concerning the minimum terms and conditions of the reserved capacity and expansion open seasons it agreed to make in its March 9 compliance filing.

**8. Disclosure Requirements**

68. Proposed section 2.5(a) provides that an open season notice must disclose, among other things, the total quantity, *if applicable* (emphasis added). Hess argues that the Commission should require Algonquin to delete the phrase "if applicable" because a prospective shipper needs to know the amount of quantity that is the subject of the bidding.[61] In its March 21 Motion, Algonquin contends that Hess fails to recognize that some open seasons do not have an associated quantity. For example, Algonquin states that pipelines will sometimes hold an open season to gauge market interest in an expansion of facilities in order to design an expansion to accommodate the level of

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[59] Algonquin March 9 compliance filing at 17 (*citing Northern Natural Gas Co.*, 105 FERC ¶ 61,057 at P 30 (2003)).

[60] *Northern Natural Gas Co.*, 105 FERC ¶ 61,057 at P 30 (2003).

[61] Hess March 14 Answer at 21.

interest shown. Therefore, Algonquin requests the Commission to deny Hess' request because it would prohibit these kinds of open seasons, which it contends are beneficial to the industry.[62]

69. The Commission rejects Hess' requests and accepts Algonquin's proposal, provided that Algonquin revises section 2.5 (a) to provide that the only circumstances under which the total available capacity is not posted are those times at which the total available capacity is not known or knowable.

### 9. Other Tariff Clarifications

70. Algonquin has proposed a number of tariff changes and clarifications in response to certain requests for clarifications made by the intervening parties. First, in response to two requests for clarification made by ConEd and O&R, Algonquin states that if ordered by the Commission it will incorporate in section 2.5(d) language that the NPV of all bids (including negotiated rate bids) are capped at the recourse rate. Second, Algonquin states that it will replace the word "may" with the word "shall" in section 2.5(d) such that Algonquin "shall" consider the terms of the MDTQ increase and/or contract extension when calculating the NPV for point changes. Algonquin states that this correction would eliminate any confusion with respect to a Customer's ability to extend its term or increase its MDTQ in order to raise the NPV of a receipt or delivery point change request.

71. ConEd, O&R and Hess each request clarification of parts of proposed section 2.5(f) which address situations in which multiple bids qualify as the "best bid" but Algonquin does not have sufficient capacity to fully satisfy all of the best bids. In these situations Algonquin proposes to allocate capacity pro rata to the winning bidders. ConEd and O&R seek clarification that a bidder who declines a pro rata award will not suffer adverse consequences due to its decision. Algonquin states that proposed section 2.5(f) allows bidders to decline such a pro rata award, and that it will not take adverse action against a shipper simply because the shipper declined to execute a service contract for a pro rated award of capacity. The parties also request Algonquin to clarify that capacity allocated according to section 2.5(f) will be awarded pro rata based on the MDTQ requested in each bid. Algonquin states that this was its intention in drafting section 2.5(f) and if ordered by the Commission will modify section 2.5(f) to replace the first and last occurrence of the phrase "on a pro rata basis" with the phrase "pro rata based on the MDTQ requested."

72. Hess LNG seeks clarification that the revisions to the tariff that are applied prospectively will not affect valid pending requests for service on Algonquin so as not to deprive parties of their positions in the "first come, first served" queue. Algonquin states

[62] Algonquin March 21 Motion at 18-19.

that the tariff provisions submitted in this filing will apply prospectively, and, to the extent Algonquin has received a valid service request before the effective date of these changes, such request will be processed in accordance with Algonquin's currently effective tariff. However, contrary to Hess' statement, Algonquin states that there is no provision in Algonquin's currently effective tariff that requires it to maintain a queue for service requests, nor does Algonquin maintain such a queue.

73. Hess LNG also seeks clarification that the open season posting will include the bidding window deadlines. Algonquin states that its intent is to provide such deadlines in the notice, and it will incorporate this requirement into proposed section 2.5(a) by adding a new subsection (4) that provides "the dates on which the open season begins and ends," if required by the Commission.

74. Hess LNG also seeks clarification as to how Algonquin will notify shippers of available capacity and suggests that Algonquin post a notice in its Informational Postings section when an open season is ongoing. It also suggests that Algonquin post a notice whenever the Unsubscribed Capacity section has been updated. Algonquin states that it will post open season notices in the Capacity Requests section of its Informational Postings, as requested, but should not be required to post a notice when the Unsubscribed Capacity section has been updated because it would be duplicative, burdensome and provide little or no value to customers.

75. Hess seeks clarification of a provision in proposed section 2.5 that provides "Algonquin will attempt to structure any such open season posting … so as not to identify specifically … the specific location of the market(s) to be served." Hess states that this provision is unclear because the open season posting will already reveal the receipt and delivery points of the available capacity. Algonquin clarifies that it included this language not to preclude disclosure of the fundamental terms of the service being made available but to establish that it will endeavor not to disclose other information about the bid or bidder that is otherwise not required in order to post or award the capacity. Algonquin states it will continue to include the quantity, term and receipt and delivery points requested in its open season notice. After the bidding is complete and the capacity is awarded, Algonquin states that it will post the winning bidder and its NPV so that other bidders can examine the propriety of the bid evaluation and capacity award.

76. The Commission finds that, as clarified above, the proposed tariff changes are just and reasonable. Accordingly, the Commission will require Algonquin to file the proposed revisions as described above.

The Commission orders:

Algonquin's proposed tariff revisions are accepted to be effective July 19, 2007, subject to Algonquin making the revisions discussed in the body of this order. Algonquin is directed to file revised tariff sheets within ten days of the date of this order.

By the Commission.

( S E A L )

Kimberly D. Bose,
Secretary.