

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

Before Commissioners: Jon Wellinghoff, Acting Chairman;  
Sudeen G. Kelly, Marc Spitzer,  
and Philip D. Moeller.

Algonquin Gas Transmission, LLC

Docket No. RP07-504-000

ORDER ON CONTESTED SETTLEMENT

(Issued February 19, 2009)

1. On February 20, 2008, Algonquin Gas Transmission, LLC (Algonquin) filed a Stipulation and Agreement (Settlement) and Explanatory Statement in this proceeding concerning specific gas quality and interchangeability issues on the Algonquin system. On April 4, 2008, the Administrative Law Judge (ALJ) certified the Settlement as a contested settlement. Upon examination of the Settlement, the Explanatory Statement, the comments in favor and opposed, and the documents of record in this case, the Commission finds the Settlement is just and reasonable and approves it.

**I. Background**

**Procedural History**

2. On June 29, 2007, Algonquin filed revised tariff sheets pursuant to section 4 of the Natural Gas Act (NGA) proposing new tariff provisions regarding gas quality and interchangeability.<sup>1</sup>

3. Algonquin's system begins near Lambertville, New Jersey and traverses the states of New York, Connecticut, Rhode Island, and Massachusetts. The gas on Algonquin's system historically has flowed from west to east, as the vast majority of Algonquin's receipts come from long line pipelines originating in the Gulf Coast area, and the majority of Algonquin's deliveries are in the Greater Boston area, at the eastern end of its system. Algonquin notes in the Tariff filing that the historical range of gas quality specifications may change with the introduction of significantly increased volumes of regasified LNG near the northeastern terminus of its system, including the advent of

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<sup>1</sup> Algonquin Gas Transmission, LLC, Tariff filing dated June 29, 2007 (Tariff filing).

receipts from Distrigas of Massachusetts Corporation (DOMAC), receipts from offshore Nova Scotia via Maritimes & Northeast Pipeline, L.L.C. (Maritimes), and the proliferation of gas-fired electric generation attached to the system.

4. Algonquin stated that it filed the revisions to be consistent with the future operations of its integrated pipeline system, including the receipt of substantial new regasified LNG supplies near the northeastern terminus of its system in Massachusetts. Algonquin explained that its tariff did not contain comprehensive gas quality specifications previously due to its historical position as a downstream pipeline, and therefore many of the proposed specifications were entirely new. Algonquin also explained that it used information provided to it during a collaborative process with its customers to shape the Tariff filing. Algonquin noted that several participants in the collaborative process commissioned the Gas Technology Institute (GTI) to prepare a report concerning the potential effects of regasified LNG on downstream end-users (GTI Report). According to Algonquin, the GTI Report relied on historical data provided by Algonquin and on information provided by end-users and LNG importers participating in the collaborative process.

5. Several parties filed comments and protests to Algonquin's proposal, challenging such provisions as Algonquin's proposed Wobbe Index range, the nitrogen and oxygen limitations, and the lack of non-methane hydrocarbon constituent limitations.<sup>2</sup>

6. On July 30, 2007, the Commission issued an order<sup>3</sup> accepting and suspending the proposed tariff sheets, to be effective on January 1, 2008 or an earlier date to be later

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<sup>2</sup> Protests or comments were filed by The Brooklyn Union Gas Company d/b/a KeySpan Energy Delivery NY, KeySpan Gas East Corporation d/b/a KeySpan Energy Delivery LI, Boston Gas Company, Colonial Gas Company, Energy North Natural Gas, Inc., and Essex Gas Company (collectively KeySpan); Calpine Corporation (Calpine); PSEG Energy Resources & Trade LLC and Public Service Electric and Gas Company (PSE&G); DOMAC of Massachusetts LLC (DOMAC); BP Energy Company (BP); Dominion Transmission, Inc. (Dominion); Bay State Gas Company, Connecticut Natural Gas Company, New England Gas Company, NSTAR Gas Company, The Narragansett Electric Company d/b/a National Grid, Northern Utilities, Inc., City of Norwich, Department of Public Utilities, The Southern Connecticut Gas Company, and Yankee Gas Services Company (collectively New England LDCs); Statoil Natural Gas LLC (Statoil); FPL Energy, LLC (FPL); Consolidated Edison Company of New York, Inc. and Orange and Rockland Utilities, Inc. (collectively ConEd); and Weaver's Cove Energy, LLC, Mill River Pipeline, LLC, and Hess LNG Trading LLC (collectively Hess LNG).

<sup>3</sup> *Algonquin Gas Transmission, LLC*, 120 FERC ¶ 61,114 (2007) (July 2007 Order).

established by subsequent order, and establishing a technical conference. On August 21, 2007, the Commission held a technical conference to address the issues raised by Algonquin's filing. At the conclusion of the technical conference, the parties agreed to develop and submit to the Commission a list of issues requiring Commission resolution.

7. On September 4, 2007, Algonquin submitted to the Commission its Stipulated List of Issues to Be Resolved (Stipulated Issues), which included the following ten issues that Algonquin stated it and the other parties to the proceeding agree are the only issues that require resolution by the Commission in this proceeding: (1) Wobbe Index range; (2) Nitrogen limit; (3) Oxygen limit; (4) Sulphur and Hydrogen Sulphide limits; (5) Hydrocarbon constituent limits; (6) Wobbe Index rate of change; (7) waiver provision; (8) notification of nonconforming gas; (9) demand charge credits; and (10) total inerts limits. On September 24, 2007, Algonquin, Calpine, BP Energy, Hess LNG, Repsol North America Corporation (Repsol), Shell NA LNG LLC (Shell LNG), DOMAC, FPL, New England LDCs, Statoil, Dominion, KeySpan, and ConEd filed initial comments on the Stipulated Issues. On October 15, 2007, Algonquin, Calpine, BP, Shell LNG, FPL, Statoil, Dominion, ConEd, and Hess LNG filed reply comments.

8. In addition, on September 7, 2007, Algonquin filed an "Agreed Motion for a Shortened Suspension Period and to Place Tariff Sheets in Effect," asking the Commission to permit its revised tariff sheets with the new gas quality and interchangeability provisions to go into effect on November 25, 2007, subject to the outcome of this proceeding. On October 22, 2007, the Commission issued an order<sup>4</sup> granting the motion and allowing the proposed tariff sheets to go into effect on November 25, 2007, subject to conditions and to further Commission orders.

9. On November 15, 2007, the Commission issued its Order Establishing Hearing, which set the Stipulated Issues for hearing.<sup>5</sup> On December 12, 2007, the ALJ convened a prehearing conference and established a procedural schedule. At a settlement conference on January 10, 2008, a majority of the active participants reached a settlement in principle of all Stipulated Issues in this proceeding.

10. On February 20, 2008, Algonquin filed its Settlement. The parties filed comments on the Settlement by March 11, 2008 and reply comments by March 21, 2008. As noted

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<sup>4</sup> *Algonquin Gas Transmission, LLC*, 121 FERC ¶ 61,076 (2007) (October 2007 Order).

<sup>5</sup> *Algonquin Gas Transmission, LLC*, 121 FERC ¶ 61,152 (2007) (November 2007 Order).

above, on April 4, 2008, the ALJ certified Algonquin's Offer of Settlement to the Commission as a contested settlement.<sup>6</sup>

## II. The Offer of Settlement

11. Algonquin's Offer of Settlement consists of an Explanatory Statement, a Stipulation and Agreement and Exhibit 2 to the Stipulation and Agreement, which are *pro forma* tariff sheets meant to implement the Settlement.

12. The Settlement reflects many of the gas quality standards in Algonquin's currently effective FERC Tariff, i.e., those standards accepted and suspended by the Commission's July 2007 Order and allowed to go into effect on November 25, 2007 by the October 2007 Order. The following are the standards and terms and conditions in the Settlement that are the same as the currently effective tariff provisions:

- a. The Wobbe Index range on the Algonquin system shall be 1,314 to 1,400.
- b. The heating value range on the Algonquin system shall be 967 Btu/cf to 1,110 Btu/cf.
- c. The limit on total inerts (any non-hydrocarbon gas including, without limitation, carbon dioxide, nitrogen, krypton, helium, argon, xenon, and neon) shall be 4.0 percent.
- d. The limit on carbon dioxide (CO<sub>2</sub>) shall be 2.0 percent.
- e. The limit on sulphur content shall be 10 grains per hundred cubic feet on an interim basis, subject to Article IV of the Settlement.
- f. The limit on hydrogen sulphide (H<sub>2</sub>S) content shall be one-half grain per hundred cubic feet on an interim basis, subject to Article IV of the Settlement.
- g. The waiver provisions will be the same as in Section 4.7, Waiver of Requirements, of the General Terms and Conditions in the currently effective Tariff.

13. The Settlement also proposes to modify certain of Algonquin's current tariff provisions. First, it provides for a combined nitrogen and oxygen limit of 2.75 percent and an uncombined limit on oxygen content of 0.2 percent. Second, the Settlement proposes an ethane and heavier hydrocarbons (C<sub>2+</sub>) limit of 12 percent, within which butanes and heavier hydrocarbons (C<sub>4+</sub>) cannot exceed 1.5 percent. Neither Algonquin's current or previously existing tariff contained a non-methane hydrocarbon (C<sub>2+</sub>) limit.

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<sup>6</sup> Presiding Judge's *Certification of Contested Settlement*, 123 FERC ¶ 63,001 (2008) (Certification Order).

14. Article IV of the Settlement also provides for Algonquin to circulate to the parties draft tariff provisions concerning system limits for sulfur, hydrogen sulphide, cricondenthem hydrocarbon dew point (CHDP), and C6+GPM within 30 days of the effective date of revisions which Texas Eastern Transmission, LP (Texas Eastern) may propose in the future to its gas quality tariff provisions. Within 90 days of Commission approval of Texas Eastern's gas quality tariff revisions, Algonquin will file proposed tariff changes with the Commission specifying standards addressing those matters. In addition, Algonquin agrees to make changes in its informational postings website. These changes include posting hourly average chromatograph data for ten mainline chromatographs located along the Algonquin system, continued posting of North American Energy Standards Board (NAESB) gas quality data for a certain meter station, and posting of additional NAESB information required by the Commission's November 2007 Order.

15. Article V contains conditions precedent and procedures for parties to withdraw from the Settlement due to changes made by the Commission. Article VI proposes the effective date of the Settlement to be the date on which the conditions in Article V are satisfied. After June 30, 2009, withdrawal from the Settlement will not be possible if all Article V conditions have been satisfied or waived within 30 days of notice of withdrawal, unless the parties negotiate but cannot reach a mutually satisfactory resolution within those 30 days. Article VII contains the customary disclaimers concerning the Settlement's non-precedential effect and recognizes Algonquin's and the Consenting Parties' retention of Natural Gas Act (NGA) sections 4 and 5 rights. The article also provides that any future review of the Settlement will be subject to the "just and reasonable" standard of review.

### **III. Supplemental Settlement Agreement**

16. On March 11, 2008, Hess LNG filed joint initial comments on the proposed Settlement. Hess LNG filed its initial comments to offer a proposal to supplement the Settlement such that, if accepted, Hess LNG would not oppose the Settlement. According to Hess LNG, Algonquin has agreed to the proposed supplement.

17. Algonquin in initial comments confirms that it agrees to, and supports, the supplemental agreement between itself and Hess LNG to the Settlement, and states that the Settlement, as supplemented, is supported or not opposed by all parties with a direct interest in this proceeding. The supplement provides that: (1) separate quality specifications should be established on Algonquin's G System,<sup>7</sup> which would allow for

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<sup>7</sup> Algonquin's "G system" extends south from the mainline near Mendon Massachusetts, and reaches to Providence Rhode Island and Cape Cod Massachusetts. See Algonquin Tariff filing, Appendix A, p. 2.

all deliveries into the G System to contain up to total diluents of 3.35 percent and oxygen of 0.6 percent; and (2) gas with these specifications should be introduced from the G System into the remainder of the Algonquin system to the extent this can be done in a manner that will allow the gas from the G System to be commingled with gas in proximity to the point of interconnection between the Algonquin mainline system and the G-1 tap located at MP 228.54 such that the resulting commingled gas stream upon delivery will meet the generally applicable quality specifications for Algonquin's system. Hess LNG explains that its proposal and all objections and issues related thereto would be preserved for future disposition as a reserved issue that may be subject of future proceedings in this docket (Reserved Issue). Hess LNG states that the Settlement does not bind any party to this docket or Trial Staff from taking any position in the negotiations or in the related proceedings in this docket that follow such negotiations with respect to the Reserved Issue.

#### **IV. Positions and Comments on the Offer of Settlement**

18. A majority of the parties consent to the Settlement and filed comments in support thereof. Those include the Commission Trial Staff (Staff), Algonquin, the New England LDCs, KeySpan, Repsol, Shell LNG, and PSEG. The following parties support or do not oppose the Settlement: KeySpan, the New England LDCs, Repsol, DOMAC, ConEd, the Public Service Commission of New York (NY-PSC), Northeast Gateway Energy Bridge LLC, Shell LNG, Iroquois Gas Transmission Systems, LP., Chevron Natural Gas, a division of Chevron USA Inc., Maritimes and Northeast Pipeline, LLC, Central Hudson Gas and Electric Corporation, Texas Eastern and FPL Energy.

19. Statoil, Dominion and Calpine filed comments opposing the Settlement. Statoil and Dominion challenge the Settlement's resolution of the combined oxygen/nitrogen and C2+ standards, arguing generally that there is no record support for these limitations and that they will unnecessarily restrict the importation of LNG supply.<sup>8</sup>

20. Dominion claims its direct interest in this proceeding involves ensuring that regasified LNG, which is transported on its system from the Dominion Cove Point LNG facility (Cove Point) in Lusby Maryland, can reach markets where it is needed. Dominion claims that Cove Point is a vital and growing source of gas supply in the Mid-Atlantic and Northeast regions. According to Dominion, Cove Point uses air separation facilities at the terminal to blend nitrogen of up to 4.0 percent of the volume of the gas into regasified LNG with high Btu content. Dominion asserts that gas from Cove Point transported by Dominion can reach the Algonquin system through the PL-1 system interconnection with Texas Eastern at Chambersburg, Pennsylvania, which then continues on to deliver gas into Algonquin at Lambertville, NJ. Dominion states it also

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<sup>8</sup> No party opposed the Supplemental Settlement.

delivers gas at Leidy, the new terminus post-expansion of the PL-1 system to transport Cove Point volumes, to Transcontinental Gas Pipe Line Corporation (Transco, who also receives gas directly from Cove Point), which then proceeds directly to Algonquin at Centerville, NJ. Finally, Dominion claims it recently completed a successful open season for new capacity from Leidy to the Millennium Pipeline, which will also deliver gas into Algonquin. Thus, Dominion asserts that it has a vital interest in the gas quality and interchangeability specifications that are part of this Settlement.

21. Statoil claims that as a major importer of LNG into the Mid-Atlantic and marketer of natural gas to customers throughout the Mid-Atlantic and Northeast, it also has a substantial and direct interest in this proceeding. According to Statoil, it is a major shipper at the Cove Point import terminal, having capacity to import approximately 333,333 MMBtu of LNG per day, and that it currently transports equivalent volumes of regasified LNG on a firm and interruptible basis to delivery points on the Cove Point Dominion pipeline, to Columbia Gas Transmission Corporation ("Columbia") and to Transco. Statoil states that it is currently selling regasified LNG that it imports through the Cove Point facility to customers receiving transportation service on Algonquin. Statoil states that although Cove Point is not connected directly to the Algonquin system and Statoil is not a shipper on Algonquin, regasified LNG from Cove Point reaches the Mid-Atlantic and Northeast markets because some of Statoil's customers are also shippers on Algonquin.

22. Calpine acknowledges that it is currently not a major shipper on the Algonquin system and therefore is not requesting the Commission to reject the Stipulation. Nevertheless, Calpine claims that because Algonquin is the cornerstone of the New England Interstate pipeline network, the Commission's decision here could affect the gas quality standards adopted by all of the interconnecting pipelines in New England. Thus, Calpine provided comments in an effort to illustrate the problems that could arise under the Settlement as it is currently written, particularly with regard to the Wobbe Index range, the Wobbe Index rate of change, and informational postings and procedures.

23. The following parties filed reply comments: Trial Staff, Algonquin, the New England LDCs, KeySpan, ConEd, Shell LNG, Repsol, Dominion, and Statoil.

24. The issues raised by the comments are addressed below.

## **V. Procedural Matters**

25. On March 11, 2008, EnCana Corporation, on behalf of itself and its gas marketing subsidiary, EnCana Marketing (USA) Inc. (collectively, EnCana), filed a "Motion to Intervene out of Time and Comments Opposing the Settlement in part" (EnCana Motion to Intervene). EnCana claims that it recently executed a firm transportation contract with

Algonquin's affiliate, Maritimes, to transport production from its Deep Panuke project<sup>9</sup> and at that time became aware that Maritimes was contemplating altering its tariff to reflect the 2.0 percent CO<sub>2</sub> limit that Algonquin has proposed in this Settlement. EnCana argues that the CO<sub>2</sub> standard proposed in this Algonquin proceeding would have serious impacts on its ability to develop its approved Deep Panuke Project and bring much-needed gas supplies into the Northeast United States. EnCana argues that Algonquin has not shown the 2.0 percent CO<sub>2</sub> limit to be just and reasonable, that the new sources of LNG that Algonquin notes will be coming onto its system will effectively reduce the CO<sub>2</sub> content of the gas on Algonquin's system and the CO<sub>2</sub> limit will have a detrimental affect on EnCana's Deep Panuke project.

26. In response to EnCana's late motion to intervene, Algonquin argued that the motion constitutes an impermissible collateral attack on, or an untimely request for rehearing of, a final, non-appealable Commission order. Algonquin argues that the limit for CO<sub>2</sub> was not identified as a Stipulated Issue and is not subject to further Commission orders in this proceeding. Algonquin explains that EnCana has failed to satisfy the Commission's requirements for considering a motion to intervene out of time and argues that EnCana had actual notice of the fact that Algonquin and Maritimes pipelines were engaged in discussions regarding, among other items, the proposed CO<sub>2</sub> specifications for Maritimes' system.<sup>10</sup> Algonquin states that it and the other parties will be prejudiced and unfairly burdened if EnCana is permitted to raise issues that are outside the scope of this proceeding and that are not resolved pursuant to the Settlement in this proceeding. According to Algonquin, EnCana's claim that Algonquin's currently-effective CO<sub>2</sub> specification will have a serious impact on its ability to develop the Deep Panuke Project is speculative.

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<sup>9</sup> EnCana states that the Deep Panuke project is a sour gas reserve that will be a significant new source of supply from the Nova Scotia/ Sable Island area to the Northeast United States, via an extension of Maritimes' pipeline system. *See* EnCana's Motion to Intervene at 18-20.

<sup>10</sup> As noted above, Algonquin engaged in a collaborative process with its customers to attempt to reach a mutually acceptable agreement concerning its proposed gas quality standards. Algonquin's upstream affiliated pipeline Maritimes, also filed recently for gas quality standards, and stated in its tariff filing that Maritimes is also engaged in a collaborative process with its customers to attempt to reach an agreement concerning gas quality and interchangeability standards on Maritimes' system. The Maritimes' gas quality tariff provisions are currently subject to an evidentiary hearing with regard to certain Stipulated Issues in that proceeding. The Commission ruled on the merits of several of the contested issues in an order issued on November 10, 2008. *Maritimes and Northeast Pipeline, LLC*, 125 FERC ¶ 61,159 (2008).

27. Staff agreed that EnCana's late intervention would impermissibly inject an issue that is outside the scope of this proceeding as defined by the Commission's hearing order and which, if injected, would be unduly disruptive as the proceeding presently stands. The New England LDCs in their answer to EnCana's motion, stated that it adopts the arguments presented by Algonquin and requests that the motion be denied.

28. On March 21, 2008, EnCana filed a motion for leave to answer and an answer in support of its motion to intervene out of time. EnCana claimed that there was "good cause" to grant its motion for leave to file an answer to Algonquin, Staff and Con Ed's opposition because the answer will clarify the argument and assist the ALJ in her decision-making process.

29. On March 25, 2008, the ALJ denied EnCana's motion to intervene out of time.<sup>11</sup> The ALJ rejected EnCana's answer finding that the issue was "fully vetted" by the initial motion and subsequent answers and that EnCana's answer did not further clarify the issue. The ALJ further found that EnCana had failed to establish good cause for its excessive delay in filing its late motion to intervene in this proceeding despite the fact that EnCana received timely legal and actual notice that these proceedings had the potential to affect its rights and interests. The ALJ also found determinative the fact that the issue raised by EnCana was not even one of the Stipulated Issues as established in the Commission's November 2007 Order and thus it was no longer subject to rehearing or appeal. The ALJ noted that the two percent CO<sub>2</sub> limit is unchanged from the limit in Algonquin's tariff, which was approved by the Commission on October 22, 2007 in an order that is no longer subject to rehearing or appeal. The ALJ concluded therefore, that even if EnCana's motion were to be granted, EnCana's comments would be subject to a motion to strike as an impermissible collateral attack on the established issues set for hearing and a clear violation of 18 C.F.R. § 385.214(d)(3)(ii), which requires late interveners to accept the record as it has been established.

30. On April 4, 2008, EnCana filed a motion for reconsideration of the ALJ's order denying intervention. The ALJ denied EnCana's motion that same day finding that EnCana's motion for reconsideration merely re-raised the arguments made in its initial motion.

31. On April 7, 2008, EnCana filed a letter transmitting to the Commission the motions and comments it had filed regarding the Settlement and the ALJ's orders discussed above. EnCana requests that the Commission grant EnCana's Motion to Intervene Out of Time and/or consider its Comments on the Settlement now that the Settlement is no longer before the ALJ.

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<sup>11</sup> *Order Denying EnCana Corporation's Motion to Intervene Out of Time*, Docket No. RP07-504 (March 25, 2008).

32. The Commission denies EnCana's motion to intervene out of time. As stated by the ALJ in her well reasoned ruling, EnCana provided no compelling reasons for its failure to intervene timely in this proceeding, especially given that it had actual<sup>12</sup> and constructive notice that the proceeding may affect its interests. The Commission also declines to consider EnCana's comments on the Settlement. As noted by the ALJ and the parties opposing EnCana's intervention, the only issue raised by EnCana is the proposed two percent limit on CO<sub>2</sub>. While EnCana is correct that the Commission may consider comments on a settlement from non-parties, the issue raised by EnCana is not one of those stipulated by the parties to this proceeding as one that required resolution by the Commission. Nor is it one of the Stipulated Issues that we set for hearing in the November 2007 Order. It would prejudice and unfairly burden the parties to the proceeding to inject this issue into the proceeding at this time, especially given EnCana's failure to raise it in a timely manner. Moreover, it is unclear whether the CO<sub>2</sub> limit on Algonquin will affect the gas from the Deep Panuke project, given the fact that the gas from that project, when it goes into service, will be transported over the Maritimes' system prior to delivery to Algonquin. If the Algonquin standards prove to be a detriment to the delivery of gas from Deep Panuke in the future, then EnCana is free to file a complaint under section 5 of the NGA at that time.

## **VI. Discussion**

33. As noted, Dominion and Statoil challenge the Settlement's combined oxygen/nitrogen and C2+ limits on both factual and policy grounds. Calpine, while not seeking rejection of the Settlement, objects to the Settlement's Wobbe Index range and the fact that the Settlement does not provide for a limit on the Wobbe Index rate of change. Calpine also suggests modifications to the Settlement with regard to informational postings. As discussed below, the Commission finds that these combined nitrogen/oxygen and C2+ limitations provisions are supported by substantial record evidence and that the objections of the opposing parties are unsupported. We also find that there is substantial record evidence to support the Settlement's proposed Wobbe

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<sup>12</sup> On December 11, 2006, Maritimes filed a Status Report on Resolution of Quality and Interchangeability Issues ("Maritimes Status Report") in Docket No. CP06-335, *et al*, a case in which EnCana is an intervener. The status report was served on all parties to that proceeding, including EnCana. The Maritimes Status Report notified the Commission (i) of the collaborative meeting that was held on September 27, 2006 to discuss changes to gas quality specifications on the Maritimes system ("Maritimes Collaborative"), (ii) that Algonquin has been working since the previous year to address gas quality and interchangeability on its system, and (iii) that the final resolution of gas quality and interchangeability issues on Algonquin could have a significant effect on the final resolution of gas quality and interchangeability issues on Maritimes.

Index range and that there is no evidence to support a claim that a limitation on the Wobbe Index rate of change is feasible for the pipeline to implement. The Commission also finds that the informational posting provisions of the Settlement are just and reasonable. The Commission further finds that the remaining provisions of the Settlement are just and reasonable and approves the Settlement.

**A. The Combined Oxygen/Nitrogen and C2+ Limitations**

34. As noted above, the Settlement proposes a combined nitrogen and oxygen limitation of 2.75 percent, an uncombined oxygen content limit of 0.2 percent, and a non-methane hydrocarbon or C2+ limit of 12 percent. In its Tariff filing, Algonquin had proposed and supported a 2.0 percent limit on CO<sub>2</sub>, a 2.5 percent limit on nitrogen, and a 4 percent by volume limit for all non-hydrocarbon (inert) gas.<sup>13</sup> Algonquin explains that while operationally it could take four percent total inert gas without concerns for its own system, it originally proposed a separate 2.5 percent limit on nitrogen to accommodate concerns from its LDC customers regarding their LNG peak shaving facilities.<sup>14</sup> Algonquin notes that the GTI Report indicates that levels of nitrogen above historical levels (approximately 0 to 2.25 percent nitrogen) may cause operational concerns for peak shaving facilities that liquefy and store natural gas as LNG. Algonquin also states that LNG suppliers may inject nitrogen or other inerts to stabilize LNG if the Btu or Wobbe Index of such gas is too high, and thus that LNG suppliers are concerned that any limit on nitrogen injection may limit the potential LNG supply that can enter the system. Accordingly, Algonquin states that it originally proposed a 2.5 percent nitrogen limit to strike an appropriate balance between the LDCs and LNG suppliers. In the interest of attempting to settle the contested issues in this proceeding, the parties agreed to include in the Settlement a more flexible combined 2.75 percent limit on nitrogen and oxygen and to eliminate the separate 2.5 percent limit on nitrogen. As described more fully below, Statoil and Dominion oppose these standards on factual and policy grounds.

**1. Initial and Reply Comments**

35. Statoil and Dominion argue in initial comments that the record in this proceeding as a whole does not provide sufficient factual, scientific, or technical explanation or data to demonstrate that the settled gas composition specifications, particularly the proposed combined nitrogen/oxygen limitation and C2+ limitation, are just and reasonable. They contend that the proposed combined nitrogen/oxygen limit of 2.75 percent and the proposed 12 percent limit on C2+ constituents in the Settlement deviate from the

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<sup>13</sup> See Affidavit of Thanh V. Phan (Phan Affidavit) attached to Algonquin's Tariff filing, at P 8.

<sup>14</sup> *Id.* P 9.

Commission-approved Natural Gas Council Plus (NGC+) interim guidelines (Interim Guidelines) and that Algonquin has not provided evidence to establish an operational, safety or reliability need for the proposed provisions or to demonstrate how the proposed standards meet the Commission's requirement that gas composition tariff provisions be set at a level that maximizes supply.

36. Statoil maintains that rigid nitrogen and non-methane hydrocarbon limits in Algonquin's tariff would unnecessarily restrict significant sources of regasified LNG from flowing on its system. Statoil contends that there is nothing in the record indicating a safety or reliability justification for a nitrogen limit that is more restrictive than the 4.0 percent total inerts standard included in the NGC+ Interim Guidelines. Statoil claims that the LDCs that demanded a limit on nitrogen are either not directly connected to Algonquin, or they can and do receive their LNG supply via truck, primarily from the Distrigas LNG facility in Everett, Massachusetts. According to Statoil, a proper balance between encouraging new supplies of natural gas and ensuring the safe and reliable operations of the gas transmission system in the United States requires the Commission to take into account the LDCs ability to mitigate its LNG needs through truck deliveries and/or other pipelines, like Tennessee. According to Statoil, the record in this proceeding only shows that the specific, rigid standards limiting nitrogen will limit the amount of global LNG supply that can reach the Mid-Atlantic and Northeast markets. Therefore, Statoil contends that these standards are unjust and unreasonable and asks the Commission to reject them.

37. Dominion also states there is no record evidence that would support findings that the Settlement's combined 2.75 percent nitrogen/oxygen or the 12 percent C2+ gas quality restrictions are just and reasonable. Dominion agrees with the conclusions and analysis of Statoil opposing the Settlement and argues that the need to promote access to the LNG supply required to meet the nation's energy demands, combined with the absence of any compelling need for the proposed nitrogen/oxygen and C2+ restrictions, compels the rejection of those restrictions. Dominion states that the Commission should reject quality specifications that could exclude important supplies like those from Algeria and Nigeria. Dominion states that Algonquin originally opposed any constituent limit, and certainly never suggested that a C2+ limit is needed for operational reasons and never asserted any operational basis of its own for its proposed nitrogen limitation.

38. Statoil contends that there is nothing in the record indicating a safety or reliability justification for a nitrogen limit that is more restrictive than the 4.0 percent total inerts standard included in the Interim Guidelines. According to Dominion, the proposed standards do not meet the Commission's expectation that specifications for natural gas quality and interchangeability will be based upon sound technical, engineering and scientific considerations, as stated in the Commission's Policy Statement on Provisions

Governing Natural Gas Quality and Interchangeability in Interstate Natural Gas Pipeline Company Tariffs (Policy Statement).<sup>15</sup> Both parties contend that the proposed nitrogen/oxygen and C2+ limitations will serve no operational purpose for Algonquin and are not necessary for safety or reliability reasons.

39. In reply comments, Algonquin claims that the contesting parties have not demonstrated any specific injury but merely make general policy arguments that the appropriate limit for nitrogen should maximize worldwide hypothetical LNG importation. Algonquin also asserts there is substantial record evidence for the Commission to decide the challenged issues. With respect to the nitrogen limit, Algonquin submitted affidavits and historical data that it asserts supports the originally proposed separate 2.5 percent nitrogen limit and two of the LDCs submitted affidavits supporting a 2.0 percent nitrogen limit. Therefore, Algonquin believes that the proposed combined 2.75 percent combined nitrogen/oxygen limit is well within the ranges proposed by the parties and that there is compelling evidence that would have supported a more restrictive limit on nitrogen content. Algonquin asserts that while the gas quality specifications it proposes may preclude the importation of some LNG, the Settlement strikes a proper balance between maximizing supply and accommodating customer concerns, as evidenced by the fact that all current directly affected LNG customers either support or do not oppose the Settlement.

40. Trial Staff submitted reply comments that attempt to refute Statoil and Dominion's specific concerns that the Settlement's proposed nitrogen/oxygen limit of 2.75 percent is unsupported, unjust, and unreasonable. Despite Statoil and Dominion's claims that a 4.0 percent total inerts standard would permit receipt of 80 percent of the world's LNG supply, Trial Staff rejects a 4.0 percent total inerts standard because the benefit of increased supply is outweighed by concerns about physical or financial harm resulting to Algonquin or a significant number of its customers from higher nitrogen levels. Contrary to Statoil and Dominion's claims, Trial Staff claims that these concerns are supported by affidavits in the record demonstrating that nitrogen content greater than 2.75 percent would create serious operational difficulties for a number of LDCs that liquefy Algonquin-supplied gas for distribution during peak delivery periods. Staff adds that the standard would still allow 82 percent of the world's LNG supplies, which were studied in the GTI Report, to enter Algonquin's system. Trial Staff asserts that the operational difficulties would create serious safety risks and could lead to millions of dollars in upgrade costs.

41. In its reply comments, Statoil argues that consenting parties conveniently ignore the fact that Statoil has a direct, substantial and immediate interest in gas composition

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<sup>15</sup> *Natural Gas Interchangeability*, 115 FERC ¶ 61,325 (2006).

standards that apply to gas transported on the Algonquin system. Statoil states that the wide support in this case does not overcome the fact that there is no rational basis for some of the proposed gas composition specifications. Statoil claims that Algonquin has failed to provide any real technical, scientific, or other factual support for those provisions of the Settlement that deviate from the Interim Guidelines, or evidence to suggest that the Settlement meets the Commission's twin goals of maximizing supply and maintaining safe and reliable pipeline operations. Contrary to Algonquin's statements, Statoil argues that the evidence submitted in this proceeding indicates the proposed Settlement, with its narrowly tailored nitrogen and non-methane hydrocarbon specifications, will not facilitate development of LNG regasification terminals and will restrict import opportunities.

42. Dominion's reply comments state that Trial Staff's comments provide no basis for approval of the contested Settlement provisions. In addition, Dominion reiterates its claims that Algonquin's initial comments provide no factual support for the proposed nitrogen and C2+ restrictions.

## **2. Commission Decision**

43. The Commission finds that the record contains substantial evidence to support the proposed combined oxygen/nitrogen and C2+ standards and that the comments that the record lacks such support are unfounded.

44. Algonquin's initial Tariff filing sought a 2.5 percent limit on nitrogen and included historical data and an affidavit supporting that standard.<sup>16</sup> The historical data shows Algonquin's receipt point levels of nitrogen varied from zero to 2.25 percent, with occasional spikes over 2.5 percent.<sup>17</sup> Algonquin notes that the proposed Settlement combined oxygen/nitrogen limit of 2.75 percent falls within acceptable range of the standards proposed by itself and its customers. Moreover, as Algonquin notes, the evidence provided supports stricter limitations than 2.75 percent and that the proposed Settlement standard provides the opposing parties with more flexibility than could have been adopted under its Tariff filing.

45. Algonquin and supporting parties also provide substantial evidence to support the implementation of the proposed 12 percent C2+ limitation. Algonquin's Tariff filing contained data on non-methane hydrocarbons demonstrating that the actual C2+ composition of the gas on its system historically was lower than 12 percent, and that if

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<sup>16</sup> See Algonquin Reply comments at 14; Algonquin Tariff filing at 11, Phan Affidavit at P 8-11.

<sup>17</sup> See Affidavit of J. Robert Babcock (Babcock Affidavit) at P 20.

each of the highest readings for ethanes, propanes and butanes+ were taken together (though each peak occurred at a different time) the composition of non-methanes would be less than ten percent.<sup>18</sup>

46. KeySpan, ConEd and the New England LDCs each indicate that they face serious issues of safety and reduced efficiencies. Nonetheless, they support the Settlement's gas quality numbers, at a cost to themselves either in terms of plant modifications and/or reduced efficiencies. KeySpan asserts that even Statoil's experts agree that the combination of nitrogen, oxygen, and non-methane hydrocarbons have direct thermodynamic impacts on the liquefaction process. KeySpan also submitted an affidavit analyzing an engineering study performed in connection with KeySpan's Commercial Point facility showing that a maximum combined level of diluents of 2.75 percent, in combination with approximately 12.0 percent non-methane hydrocarbons, would enable the Commercial Point facility to continue operations at a reduced efficiency loss of approximately 12.0 percent, and only if retrofits in excess of \$5 million were made to the facility.<sup>19</sup> KeySpan also presented evidence that increases in the volume of gas with higher than 2.75 percent nitrogen and 12.0 percent non-methane hydrocarbon levels would result in making the Commercial Point facility inoperable, or, the liquefaction equipment would have to be replaced for more than \$30 million. ConEd and the New England LDCs provide support for their claims that while they may be willing to accept gas with higher nitrogen and non-methane constituent levels occasionally, accepting gas that was routinely above those levels would not enable their peak shaving facilities to operate safely and efficiently without significant design upgrades.<sup>20</sup> The LDCs also note that they will need to, and are willing to, accept certain retrofit costs even with the nitrogen and C2+ standards to which they are agreeing as part of the Settlement.<sup>21</sup>

47. The New England LDCs, ConEd and KeySpan all support the addition through the terms of the Settlement of C2+ limits to Algonquin's tariff. They submitted affidavits showing that historical levels of C2+ constituents on Algonquin have been historically low. Absent a limit on those constituents, their LNG peak shaving facilities would be

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<sup>18</sup> Algonquin Reply comments at 14-15 (citing Algonquin Tariff filing, Volume II, May 4 presentation slides 8-10).

<sup>19</sup> Reply Comments of the KeySpan Delivery Companies in Support of Stipulation, Docket No. RP07-504, March 21, 2008, Affidavit of Robert D. Wilson (Wilson Affidavit), at P 17.

<sup>20</sup> See Affidavit of Thomas P. Chizinski (Chizinski Affidavit), at P 20; Goldenberg Affidavit, at P 16.

<sup>21</sup> See, e.g., Wilson Affidavit, at P 18-20.

subject to potential damage. When protesting Algonquin's failure to include any C2+ specification in the Tariff filing, the New England LDCs submitted an affidavit demonstrating that the historical composition of natural gas in New England and on Algonquin's system contained approximately ninety five percent methane.<sup>22</sup> ConEd also explained that it was concerned with the lack of a non-methane hydrocarbon standard on Algonquin because historically gas transported on Algonquin to ConEd and other LDCs contained low levels of ethane, propane, butane and pentane and those levels have met the manufacturer's requirements for their LNG peak shaving plants.<sup>23</sup> Nonetheless, KeySpan included with its reply comments the affidavit of Robert D. Wilson, which provides LNG peak shaving plant's technical support for the proposed combined nitrogen/oxygen standard and for the proposed C2+ standard that vary significantly from the historic levels.

48. The affidavits submitted by the LDCs also show that if the amounts of nitrogen and non-methane constituents entering the LNG storage tanks increase above the levels proposed in the Settlement, then the risk that the contents of the tank would stratify into layers, which in turn could lead to a safety hazard known as nitrogen induced "rollover," would increase.<sup>24</sup> Those affidavits show that if rollover occurs, there can be severe damage to the LNG storage tanks.

49. Notably, neither Statoil nor Dominion challenge the LDCs' contentions that the nitrogen and C2+ constituents in percentages above that proposed in the Settlement may cause substantial damage to the LNG peak shaving facilities. Instead they assert that the standards under the Settlement should not be based on speculation and the needs of a few LNG peak-shaving facilities. Statoil and Dominion contend the LDCs that demanded a limit on nitrogen can and do receive their LNG supply via truck, primarily from the DOMAC LNG facility in Everett, Massachusetts. According to them, the relatively low cost of trucking LNG and making retrofit repairs to the peak shaving facilities are outweighed by the alleged significant restrictions on LNG imports that would result from the standards in the Settlement.

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<sup>22</sup> See Motion to Intervene, Limited Protest and Request for Technical conference of the New England Delivery Companies, Docket No. RP07-504, July 11, 2007, Chizinski Affidavit at P 12.

<sup>23</sup> See Motion to Intervene, Limited Protest, and Request for Technical Conference of Consolidated Edison Company of New York, Inc. and Orange and Rockland Utilities Inc., Docket No. RP07-504, July 11, 2007, Affidavit of Howard Goldenberg (Goldenberg Affidavit) at P 14.

<sup>24</sup> See Chizinski Affidavit, at P 16-17; Goldenberg Affidavit, at P 14-16.

50. According to the Phan Affidavit, the GTI Study shows that under the Settlement standards, 82 percent of LNG supplies studied in the report would be able to enter Algonquin's system. Moreover, Algonquin's affidavit evidence suggests that the 4 percent limit on total non-hydrocarbons espoused by Statoil and Dominion would only increase the amount of LNG supplies able to enter Algonquin's system to approximately 92 percent (or about 4 LNG tankers) of the supplies studied in the GTI Report. Neither Statoil nor Dominion filed timely affidavits to rebut the GTI study. They make only broad ranging assertions that the LNG supplies studied in the report do not comprise the whole of the potential LNG supplies that may become available for importation to the United States.

51. The Commission has noted previously that while one of the goals of the Commission policy is to maximize the availability of supplies, that goal must be balanced with the goal of assuring the safety and reliability of the system.<sup>25</sup> The evidence in this proceeding includes specific support that the LDCs, taking into account their LNG peak shaving plants' safety and efficiency limitations, are willing to accept a greater variety of gas quality than historically has been the case. Further, to accept a wider variety of gas, the LDCs are willing to accept the costs of facility upgrades and/or reduced efficiencies. The LDCs have shown that their LNG peak shaving facilities may not operate safely with nitrogen and C2+ levels above those proposed in the Settlement without significant plant modifications. The Commission believes the users of gas on the Algonquin system have made an informed evaluation of their costs to make themselves capable of handling all sources of LNG as compared to only approximately 80 percent of the potential sources of LNG.

52. On balance, the Commission finds that this demonstrated potential damage outweighs the speculative assertions of Statoil and Dominion regarding the potential amounts of LNG that would be prevented from entering the United States under the Settlement. The opposition's assertions essentially raise broad policy issues and do not provide any specific evidence of direct damage nor do they demonstrate whether there is any realistic chance that those volumes would actually be available for importation into the United States in the near future. As the Settlement supporters point out, those potential volumes vaporized and delivered to Algonquin by upstream pipelines are less likely to be restricted from entering Algonquin's system because of comingling and blending with other gas over many miles of intervening interstate pipelines. Dominion's affiliated Cove Point LNG import terminal is located hundreds of miles from Algonquin's system and the only way that gas supplies from Dominion and the Cove Point LNG import terminal could be delivered into Algonquin's system would be through

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<sup>25</sup> *AES Ocean Express LLC v. Florida Gas Transmission Company*, 121 FERC ¶ 61, 267 at 62, 352 (2007) (citing Policy Statement at P 2)

other interconnecting pipelines such as Tennessee, Texas Eastern, Transco, or Columbia. This fact results in a high likelihood that gas from the Cove Point LNG import terminal would be blended with gas that would bring it into conformance with Algonquin's standards before it arrived on Algonquin's system. Moreover, the record evidence suggests that even with the less restrictive standards promoted by those opposing the Settlement, the difference in LNG volumes that could potentially reach Algonquin's system is relatively low.

53. For the reason discussed above, the Commission finds that Algonquin's proposed oxygen/nitrogen and C2+ standards are supported by substantial record evidence, and are therefore just and reasonable gas quality standards for Algonquin's system. The Commission notes, however, that these standards depend on many factors and that these factors may change over time. Thus the appropriate oxygen/nitrogen and non-methane hydrocarbon standards for Algonquin may change, and in that case, Algonquin may file for revised standards under section 4 of the NGA or a customer may file a complaint under section 5 of the NGA.<sup>26</sup>

#### **B. Interchangeability Standards**

54. While Calpine states that it does not seek rejection of the Settlement, it nonetheless filed comments arguing that the Wobbe Index range is unsupported, and that the settlement is deficient for not addressing the issue of Wobbe Index rate of change.

##### **1. Wobbe Index Range**

55. The settlement provides that the Wobbe Index range on the Algonquin system shall be 1,314 to 1,400. In initial comments, Calpine argues that the Wobbe Index range should be capped at 1,391 consistent with the gas turbine fuel specifications set by the manufacturer of the gas turbines (OEM).

56. Calpine acknowledges that it is currently not a major shipper on the Algonquin system, and Algonquin points out that Calpine is not an Algonquin customer and owns no electric generation facilities on Algonquin's system.<sup>27</sup> Calpine nevertheless asserts that because Algonquin is the "cornerstone" of the New England interstate pipeline network, that the gas quality standards on Algonquin could affect those for all the interconnecting pipelines in New England. Calpine asserts that while Algonquin claims that the proposed Wobbe Index range is supported by historical operating data, both Consolidated

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<sup>26</sup> See also, Policy Statement at P 27, where the Commission anticipated future changes to gas quality tariff provisions.

<sup>27</sup> Algonquin Reply Comments at 23.

Edison<sup>28</sup> and FPL Energy<sup>29</sup> have stated that they have experienced much narrower Wobbe Index ranges at their facilities. Calpine also contends that operators of Dry Low NOx (DLN) generating facilities on the Algonquin system have shown that the adoption of the proposed Wobbe Index range will cause increases in NOx emissions, which in turn would increase the potential for these operators to exceed permit limits, and potentially cause plant shutdowns that could impact the reliability of the electric system in the region.

57. Calpine notes that the GTI Report relied upon by Algonquin in its Tariff filing assessed the impact of higher Wobbe Index gas on DLN turbines. The report concluded that retrofitting these DLN facilities with new control and combustion technology systems could provide a solution to the problem. Calpine argues, however, that the GTI Report fails to recognize that the costs of this new control and combustion technology are substantial and the control technology is unproven. Calpine asserts that this combination of cost and risk is unacceptable and that safe and reliable generation must be ensured. Calpine also claims that it is unreasonable to unilaterally subject generators to such an investment of capital, particularly when the investment is based on unproven technology.

58. Calpine notes that it originally supported a Wobbe Index range of 1,314-1,373 based on a methodology that took into consideration Algonquin's historical average Wobbe Index value of 1,346<sup>30</sup> with a range of plus or minus two percent as required by the OEM's specifications. It states that an increase in the upper limits of the Wobbe Index range by 18 points, to a value of 1,391, moves the gas generation industry into uncharted territory, but that it believes that a 1,391 upper limit would be manageable and the risks would be minimal since this value is still within the OEM specifications. Calpine contends that a reasonable compromise on this issue would be to reduce the proposed upper Wobbe Index range limit of 1,400 by just 9 points. Calpine contends that the resulting Wobbe Index range of 1,314-1,391 would allow for receipts from the Iroquois system and allow for receipts of LNG while also addressing the upper limit specified by gas turbine manufacturers for safe operation.

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<sup>28</sup> See Initial Post-Technical Conference Comments of Consolidated Edison Company of New York, Inc. and Orange and Rockland Utilities, Inc., September 24, 2007, at page 6.

<sup>29</sup> See Initial Comments on Technical Conference of FPL Energy, LLC, September 24, 2007, at page 5.

<sup>30</sup> See, Affidavit of J. Robert Boccock submitted with Algonquin's Tariff Filing, at page 6.

59. In reply, Algonquin notes that Calpine does not state that it is opposed to the Settlement and has not submitted an affidavit or any other evidence in support of its comments. With regard to the Wobbe Index range, Algonquin argues that litigation of that issue would result in the same upper Wobbe Index limit of 1,400 as proposed in the Settlement. Algonquin contends that while Calpine has not submitted any affidavit evidence to support its proposed 1,391 limit, Algonquin's Tariff filing supported the 1,400 limit with historical data and two sworn affidavits. Algonquin asserts that under well established Commission precedent, Calpine's failure to include an affidavit must result in rejection of its position in opposition to the Settlement.<sup>31</sup>

60. Algonquin also claims that the Commission should reject Calpine's proposal to lower the Wobbe Index cap to 1,391 because it would decrease the potential supplies of regasified LNG that may be able to enter Algonquin's system and would curtail current supplies. Algonquin argues that as shown in its Tariff Filing, DOMAC, a current supplier of regasified LNG to Algonquin, occasionally delivered gas into Algonquin with a Wobbe Index above 1,391 during the past five years.<sup>32</sup> Imposing a 1,391 Wobbe Index limit would therefore prevent Algonquin from being able to accept historical supplies from an existing supplier who represents an important source of gas for customers on Algonquin's east end.

61. In its reply comments, Trial Staff notes that the Wobbe Index range proposed by Algonquin is consistent with the Interim Guidelines and is within historical levels illustrated in Algonquin's Tariff filing. Trial Staff also notes that according to the affidavits filed by Algonquin, environmental emissions problems that may arise can be avoided by retrofitting equipment with auto-tuning control and combustion technology systems that accommodate a wider Wobbe Index range. Trial Staff comments that the Commission should not be compelled by Calpine's arguments that such equipment is unproven and costly because the technology is currently available from the companies that manufactured the generators at issue and the projected costs are manageable given the significant number of electric generators that nevertheless support the Settlement.

## **2. Wobbe Index Rate of Change**

62. Neither Algonquin's Tariff filing nor the Settlement contains a Wobbe Index rate of change.

63. Calpine asserts that the Settlement should be modified to include a maximum Wobbe Index rate of change of 2 percent per minute. According to Calpine, the rate of

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<sup>31</sup> Algonquin Reply Comments at 21.

<sup>32</sup> Appendix A to Babcock Affidavit, pp. 27-51

change issue is important because it addresses changes in gas quality that may be associated with the onset of large volumes of LNG. Calpine explains that with the introduction of LNG as a result of the numerous projects that will be coming on line in the near future, the fuel mix has the potential to change dramatically and rapidly, and that such changes can result in gas combustion issues for generators. Those combustion issues can impact power output, environmental emissions and stress equipment beyond its design tolerance. Calpine claims that gas turbine manufacturers have recognized the risks associated with rapidly changing fuel supplies and have included fuel specifications that limit the rate of change in the Wobbe Index in their specifications. Accordingly, alleges Calpine, adding a rate of change limit to the Wobbe Index specification is critical to maintaining the operational reliability and performance of gas turbines used by generators in the northeast region. Calpine states that without a Wobbe Index rate of change limitation, it is impossible for gas-fired generators to operate fine-tuned equipment reliably when they could receive fuel supplies from numerous different sources. Calpine states that its proposed 2 percent per minute maximum rate of change is consistent with OEM requirements and would ensure that New England's consumers will continue to see a stable and predictable fuel supply mix.

64. In response, Algonquin notes that it did not propose a Wobbe Index rate of change limitation and that the Stipulation of Issues makes clear that any party proposing such a limit bears the burden of proof on that issue. Algonquin argues that Calpine put forth no evidence to support its proposal or to show that Algonquin's tariff is unjust and unreasonable absent a Wobbe Index rate of change limitation. Algonquin also cites to *Trunkline Gas Company*, 90 FERC ¶ 61,099, at 61,313 (2000) as support that Commission precedent dictates that absent the required affidavit, a party's opposition to a settlement must be disregarded.

65. Algonquin states that it explained in detail in its comments on the technical conference how it would be impossible for it to implement or enforce such a specification.<sup>33</sup> Algonquin also notes that Calpine does not own any electric generation facility on Algonquin's system and that the only party who does, FPL Energy, has agreed to the Settlement, and particularly to the absence of a Wobbe Index rate of change limitation, which FPL Energy had raised earlier in the proceeding as an issue.

66. Trial Staff in reply comments notes that according to Algonquin's evidence, there is a null point on Algonquin's system that changes the gas quality of the flowing gas instantaneously as the null point moves. Algonquin is unable to predict the movement of the null point on its system. Because Algonquin cannot predict the location of the null point, it is impossible for Algonquin to match its effect on the system with any

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<sup>33</sup> Algonquin Reply at 23 (citing Initial Comments of Algonquin Gas Transmission LLC on Technical Conference at 13-17).

corresponding change in Wobbe Index values. Accordingly, Staff comments, a Wobbe Index rate of change limit for the Algonquin system is presently unworkable. Moreover, Staff asserts, the rate of change limit is probably unnecessary if turbines are retrofitted with auto-tuning components to handle the new Wobbe Index.

### 3. Commission Decision

67. As argued by Algonquin and supporting parties, Calpine provided no affidavits to support its position with regard to the Wobbe Index range or the Wobbe Index rate of change. The ALJ also recognized this procedural deficiency in the Certification Order.<sup>34</sup> Pursuant to Rule 602(f)(4), “any comments that contest an offer by alleging a dispute as to a genuine issue of material fact must include an affidavit detailing [a] genuine issue of material fact...”<sup>35</sup> The record in this proceeding contains no affidavit from Calpine to support its comment in opposition to the Settlement. Accordingly, the Commission need not consider those comments in approving the Settlement.

68. While the Commission dismisses Calpine’s comments on procedural grounds, we note that even were we to consider those comments on the merits, our decision to approve the Settlement would remain the same. As noted above, Calpine is not a customer of Algonquin and owns no electric generating facilities on Algonquin’s system. Moreover, as Algonquin points out, the only active party to the proceeding that owns such a facility, FPL Energy, has agreed to the Settlement and thus no directly-affected electric generators challenge the Settlement’s Wobbe Index range or express a need for a Wobbe rate of change limitation.

69. With regard to the Wobbe Index range, Algonquin submitted supporting historical evidence, analyzed in accordance with the Interim Guidelines, and adjusted pursuant to historical flow data, demonstrating that a Wobbe Index Range of 1,314 to 1,400 is just and reasonable.<sup>36</sup> Algonquin has also submitted record evidence to show that a reduction on the high side of the Wobbe Index range would preclude historical supply from DOMAC from entering Algonquin’s system. In contrast, and as noted by the ALJ, Calpine offers only speculative “policy questions...”<sup>37</sup> Accordingly, based on this

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<sup>34</sup> Certification Order, 123 FERC ¶ 63,001 at P 127 (citing Rule 602(f) of the Commission’s Rules).

<sup>35</sup> 18 C.F.R. §385.602(f) (2007).

<sup>36</sup> Algonquin Tariff filing at pp. 9-10.

<sup>37</sup> Certification Order, 123 FERC ¶ 63,001 at P 128.

evidence, the Commission finds that the Settlement's Wobbe Index range is just and reasonable.

70. The result is the same with regard to Calpine's comments that Algonquin must include a Wobbe Index rate of change limit in its tariff. Algonquin has presented record evidence in this proceeding that such a specification is simply unworkable on its system.<sup>38</sup> Algonquin explains that it does not have the ability to forecast changes in the Wobbe Index in six minute intervals, which would be required to implement a 2 percent per minute rate of change limit. Algonquin also states that it cannot regulate the location and movement of the null point on its system because Algonquin does not control where and in what quantities gas will enter its system. Those decisions are made by its customers. Calpine provides no evidence or argument that such a specification is feasible for Algonquin.

71. Based on Algonquin's showing that it would be impossible for it to implement or enforce a Wobbe Index rate of change, and the complete lack of evidence to the contrary, the Commission will not require Algonquin to include such a provision in its tariff.<sup>39</sup> We thus find that the Settlement is just and reasonable without such a provision and that Calpine has failed to show otherwise.

### **C. Informational Posting Procedures**

#### **1. Comments**

72. Calpine also comments that Algonquin should include in its tariff gas quality data postings. Calpine asserts that such postings would benefit end-users by providing them with information that could allow them to adjust operations in order to compensate for changes in gas quality. Calpine argues that the procedures for posting such data should be included in the tariff to give end-users the security necessary with respect to the quantity, quality, timeliness and longevity of the data. Calpine contends that at a minimum the gas quality data should be posted on a real-time basis.

73. Algonquin states in reply comments that Calpine's request should be denied because contrary to Calpine's assertions, the hourly average methodology proposed by Algonquin and provided for in the Settlement will in fact provide more reliable and

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<sup>38</sup> Initial Comments of Algonquin Gas Transmission LLC on Technical Conference at 13-17.

<sup>39</sup> See *in accord Maritimes & Northeast Pipeline, L.L.C.*, 125 FERC ¶ 61,159, at P 20-28 (2008).

useful data than the real-time method espoused by Calpine.<sup>40</sup> According to Algonquin, it must validate and average its chromatograph readings over an hour long period in order to avoid providing data that may be unreliable due to mechanical or communication issues with its chromatographs. As a result, Algonquin concludes that providing “real-time” data would not provide its customers with the best data available.

74. Trial Staff also comments that the Commission should reject Calpine’s comments on this issue. Trial Staff points out that Calpine is not directly connected to Algonquin’s system. As such, Trial Staff contends that it is of particular import for Calpine to demonstrate a need for real-time data, which could result in significant cost to Algonquin. Staff comments that Calpine fails to show any need for such data, other than it would just be useful.

## **2. Commission Decision**

75. The Settlement provides that Algonquin will provide hourly average chromatograph data on its website’s informational postings for numerous mainline chromatographs, and will post additional gas quality information as required by NAESB pursuant to the Commission’s directive in the November 2007 Order.<sup>41</sup> The Commission finds that these provisions are just and reasonable. As noted by Algonquin, even if it could provide real-time data, such data is not necessarily reliable and could result in unnecessary adjustments by generators and other end-users. Calpine has not demonstrated that a more expedient dissemination of information is necessary to protect Algonquin’s customers. Moreover, Calpine has not provided evidence to show that Algonquin’s tariff would be unjust and unreasonable without the inclusion of parameters of the posting procedures in the tariff. In fact, as demonstrated by the substantial support for the Settlement by the vast majority of parties to this proceeding, it appears that Algonquin’s customers neither need more timely data than that proposed to be provided by Algonquin nor do they express a need for tariff provisions as to the procedures for the postings. We thus find that the Settlement proposal on this issue is just and reasonable.

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<sup>40</sup> Algonquin Reply Comments at p. 24.

<sup>41</sup> We note that the Settlement provided that Algonquin would post hourly chromatograph data within five business days of approval of the Settlement. However, on September 2, 2008, Algonquin filed a statement with the Commission that it had developed and implemented the necessary enhancements to its LINK system to allow for the posting of the data and thus elected to begin posting the information on its website as of September 2, 2008.

**D. Resolution of All Stipulated Issues****1. Comments**

76. Statoil asserts that contrary to Algonquin's assertions, the Settlement does not resolve all of the Stipulated Issues in this proceeding because pursuant to Article IV of the Settlement the parties have agreed to defer the ultimate disposition of the specifications for sulphur, hydrogen sulfide and cricondenthem hydrocarbon dew point (CHDP)<sup>42</sup> until after the effective date of Commission approved gas quality tariff standards for Texas Eastern. Statoil contends that the parties have provided no support for this position and fail to explain why only two elements of the Stipulated Issues should be revisited.<sup>43</sup>

**2. Commission Decision**

77. The Commission rejects Statoil's contention that the Settlement does not resolve all of the Stipulated Issues. To the contrary, as stated above, the Settlement does provide for specifications for sulphur and hydrogen sulfide. Moreover, Texas Eastern is directly connected to Algonquin and delivers gas directly to Algonquin's system. The Commission understands that Texas Eastern is currently exploring the need for appropriate gas quality and interchangeability tariff provisions for its system and that it intends to file for Commission approval of such provisions in the near future. If those provisions indicate a change in gas composition from the standards approved in the Settlement for Algonquin, then it seems reasonable, and consistent with the Commission's outlook that gas quality depends on many factors and that circumstances may change over time, for Algonquin and its customers to agree to revisit certain elements of the Settlement in the future, particularly in conjunction with approval of gas quality standards for an upstream pipeline directly connected to Algonquin. To the extent that factors change with regard to the other gas quality elements in the Settlement, Algonquin may file for revised standards under section 4 of the NGA or a customer may file a complaint under section 5 of the NGA.

**The Commission orders:**

(A) The Offer of Settlement filed by Algonquin on February 20, 2008, and as supplemented, is approved as provided in this order. Algonquin is required to file actual tariff sheets within 30 days of the date of the final order in this proceeding to be effective on the date provided in the Settlement.

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<sup>42</sup> CHDP is not one of the Stipulated Issues in this proceeding.

<sup>43</sup> Statoil comments at pp. 12-13.

(B) The objections of the opposing parties are denied.

By the Commission. Commissioner Kelliher is not participating.

( S E A L )

Kimberly D. Bose,  
Secretary.