

127 FERC ¶ 61,163
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Algonquin Gas Transmission, LLC

Docket Nos. RP07-504-000
RP07-504-001
RP07-504-002

ORDER DENYING REHEARING, ACCEPTING COMPLIANCE FILING AND
GRANTING WAIVERS

(Issued May 21, 2009)

1. This order addresses a request for rehearing of the Commission's February 19, 2009 order approving a contested settlement regarding gas quality and interchangeability issues on Algonquin Gas Transmission LLC's (Algonquin) system.¹ This order denies rehearing of the February 19 Order and accepts Algonquin's March 23 tariff filing to implement the settlement.² We also grant waiver of section 154.207 of our regulations to allow the tariff sheets in Algonquin's tariff filing to become effective March 23, 2009, as requested by Algonquin.

I. Background

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.³ Algonquin stated that it filed the revisions to be consistent with the future operations of its integrated pipeline system, including the receipt of substantial

¹ *Algonquin Gas Transmission, LLC*, 126 FERC ¶ 61,130 (2009) (February 19 Order).

² On March 23, Algonquin filed in Docket No. RP07-504-002 tariff sheets pursuant to the February 19 Order implementing the Settlement. The tariff sheets are Fifth Revised Volume No. 1, Second Revised Sheet No. 519, Second Revised Sheet No. 520, and Second Revised Sheet No. 521.

³ *Algonquin Gas Transmission, LLC*, Tariff filing dated June 29, 2007 (Tariff filing).

new regasified LNG supplies near the northeastern terminus of its system in Massachusetts. Algonquin explained that it used information provided to it during a collaborative process with its customers to shape the Tariff filing, including a report prepared by the Gas Technology Institute (GTI) at the behest of several participants 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. Several parties filed comments and protests to Algonquin's proposal, challenging such provisions as Algonquin's proposed Wobbe Index range, nitrogen and oxygen limitations, and the lack of non-methane hydrocarbon constituent limitations.

3. On July 30, 2007, the Commission issued an order⁴ accepting and suspending the proposed tariff sheets, to be effective on January 1, 2008 or an earlier date to be established by subsequent order, and establishing a technical conference. At the conclusion of the technical conference, Algonquin submitted to the Commission its Stipulated List of Issues to Be Resolved (Stipulated Issues),⁵ and on November 15, 2007, the Commission issued an order setting the Stipulated Issues for hearing.⁶

4. On February 20, 2008, Algonquin filed an offer of settlement consisting of a Stipulation and Agreement (Settlement), an Explanatory Statement and *pro forma* tariff sheets that would settle the Stipulated Issues. Parties subsequently filed comments supporting or opposing the Settlement. Statoil Natural Gas LLC (Statoil), Dominion Transmission, Inc. (Dominion) and Calpine Corporation filed comments opposing the Settlement. Statoil and Dominion challenged the Settlement's resolution of 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.

⁴ *Algonquin Gas Transmission, LLC*, 120 FERC ¶ 61,114 (2007) (July 2007 Order).

⁵ Algonquin submitted the following ten issues as the only issues that required 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.

⁶ *Algonquin Gas Transmission, LLC*, 121 FERC ¶ 61,152 (2007) (November 2007 Order).

On April 4, 2008, the Administrative Law Judge (ALJ) certified the Settlement as a contested settlement.⁷

5. The February 19 Order approved the contested Settlement over the objections of the opposing parties. The Commission found that the combined oxygen nitrogen and C₂+ limits proposed in the Settlement were supported by substantial record evidence and that the objections of the opposing parties were unsupported.⁸ The Commission also found that certain local distribution company (LDC) customers of Algonquin had demonstrated the potential for specific injury to their LNG peak shaving facilities while Statoil's and Dominion's contentions concerning the detrimental impact of the proposed Settlement standards for combined oxygen/nitrogen and C₂+ constituents on imports of LNG were speculative and did not demonstrate direct harm to Statoil or Dominion. The Commission concluded that on balance, the potential harm demonstrated by the LDCs outweighed the assertions regarding the potential restrictions on LNG reaching Algonquin's system.

6. On March 23, 2009, Algonquin made a compliance filing submitting tariff sheets to implement the Settlement. On the same day, Statoil filed a request for rehearing of the February 19 Order, and on March 27, Statoil filed comments to the compliance filing. On April 7, 2009, Algonquin filed for leave to answer and an answer to Statoil's rehearing request. On April 22, 2009, Statoil filed a request for leave to answer and answer to Algonquin's April 7 filing. Rule 713(d) of the Commission's Rules of Practice and Procedure, 18 CFR. § 385.713(d) (2008), prohibits an answer to a request for rehearing. Accordingly, Algonquin's answer to Statoil's request for rehearing and Statoil's subsequent answer are rejected.

II. Discussion

7. For the reasons discussed below, the Commission denies Statoil's request for rehearing and accepts Algonquin's compliance filing.

A. Rehearing Request

1. The Combined Oxygen/Nitrogen and C₂+ Limitations

8. In its Tariff filing, Algonquin had proposed and supported a 2.0 percent limit on carbon dioxide (CO₂) and a 2.5 percent limit on nitrogen. It also proposed a 4 percent by

⁷ Presiding Judge's *Algonquin Gas Transmission, LLC*, 123 FERC ¶ 63,001 (2008) (Certification Order).

⁸ February 19 Order, 126 FERC ¶ 61,130 at P 33.

volume limit for all non-hydrocarbon (inert) gas.⁹ Both nitrogen and CO₂ are inert gases. In an effort to settle the contested issues in this proceeding the parties agreed to include in the Settlement a more flexible combined nitrogen and oxygen limit of 2.75 percent and to eliminate the separate 2.5 percent limit on nitrogen. The Settlement also contained an uncombined oxygen content limit of 0.2 percent, and a non-methane hydrocarbon (C₂+) limit of 12 percent.

9. Algonquin explained that while operationally it could accept 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.¹⁰ Algonquin noted that the GTI Report showed 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 stated 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 stated that it originally proposed a 2.5 percent nitrogen limit to strike an appropriate balance between the concerns of the LDCs and the LNG suppliers but proposed more flexible standards in its Settlement proposal in the interest of reaching agreement with all the parties.

10. Statoil and Dominion argued 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 proposed combined nitrogen/oxygen limitation and C₂+ limitation are just and reasonable. They contended 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 Commission-approved Natural Gas Council Plus (NGC+) interim guidelines (Interim Guidelines) and that Algonquin had 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.

11. Statoil also argued that rigid nitrogen and non-methane hydrocarbon limits in Algonquin's tariff would unnecessarily restrict significant sources of regasified LNG from flowing on Algonquin's system. Statoil contended 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 claimed that the LDCs that demanded a limit on nitrogen are either

⁹ See Affidavit of Thanh V. Phan attached to Algonquin's Tariff filing, at P 8.

¹⁰ *Id.* P 9.

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 their LNG needs through truck deliveries and/or the use of other pipelines.

12. In the February 19 Order, the Commission rejected Statoil's and Dominion's contentions, finding that there is substantial record evidence to support the 2.75 percent combined nitrogen/oxygen standard and the 12 percent C₂₊ limit. The Commission determined that substantial support for the standards was evident in the historical data presented by Algonquin, which supported an even stricter nitrogen/oxygen limitation than proposed in the Settlement.¹¹ The Commission also found that parties supporting the Settlement, particularly LDCs with peak shaving facilities, demonstrated potential specific injury that could occur to those facilities if the nitrogen and C₂₊ constituents rose above the levels proposed in the Settlement, and that such parties were willing to incur costs related to upgrading facilities or reduced efficiencies in order to accept a wider variety of gas quality than they had received historically. The Commission thus determined that on balance, the demonstrated specific injury to peak shaving plants outweighed what it determined were speculative assertions of Statoil and Dominion as to potential volumes that may be prevented from entering the United States, and particularly Algonquin's system, under the Settlement's standards.¹² The Commission also noted that Statoil had failed to demonstrate any realistic likelihood that the volumes it claims would be restricted from entering Algonquin's system are or would be available for importation into the United States. The Commission also found that those potential volumes that could be vaporized and delivered to Algonquin are less likely to be restricted due to Algonquin's standards because of the remoteness of Dominion's Cove Point LNG import terminal from Algonquin's system.¹³

13. On rehearing, Statoil argues generally that the Commission erred in approving the combined nitrogen/oxygen and C₂₊ limitations because it failed to consider substantial evidence it had submitted in the proceeding. Statoil asserts that in approving the Settlement, the Commission did not give proper weight to what it considers specific factual and technical evidence it filed in the proceeding, including affidavit evidence. Statoil takes issue with the Commission's statement in the Order that Statoil raised only "broad policy issues," and argues that the Commission's statement that Statoil failed to

¹¹ February 19 Order, 126 FERC ¶ 61,130 at P 44-45.

¹² *Id.* P 50-52.

¹³ *Id.* P 52.

file timely affidavits to rebut the GTI Study is incorrect and leads Statoil to conclude that the “Commission failed to review **all** the documents and pleadings filed in this proceeding, especially [Statoil’s].”¹⁴ Statoil also argues that the Commission failed to rule on two procedural motions pending in the proceeding.

14. Statoil argues that the Commission improperly balanced the parties competing interests because it failed to give proper weight to the evidence Statoil submitted. Statoil contends that the Commission summarily dismissed Statoil’s affidavit evidence because the Commission did not include a detailed discussion of the affidavit of Dr. Tore Loland (Loland affidavit) and instead relied on what Statoil considers to be “speculative assertions of possible harm to LNG peak shaving facilities.”¹⁵ Statoil also asserts that the Commission misinterpreted the Dr. Loland’s analysis of the GTI report.

15. Statoil’s arguments that the Commission failed to consider the data it submitted regarding the purported detrimental effect that the Settlement’s proposed combined nitrogen/oxygen and C₂+ restrictions could have on potential LNG imports are incorrect. The Commission did examine Statoil’s data but determined that the information provided by Statoil did not support a showing of specific injury to Statoil as did the evidence provided by the LDCs.¹⁶ The Commission determined that on balance the demonstrated specific potential injury to the LDCs’ facilities, combined with historical evidence supporting the proposed standards, outweighed Statoil’s broad arguments regarding the detrimental impact of Algonquin’s proposed standards on global LNG imports to the United States.¹⁷

16. The evidence presented by Statoil, including Dr. Loland’s affidavits, asserted that the combined nitrogen/oxygen limits proposed in the Settlement would have a detrimental effect on the potential imports of LNG into the United States and to Algonquin’s system. Statoil claims that the GTI Report’s suggestion that 82 percent of

¹⁴ Statoil rehearing request at 7 (emphasis in the original).

¹⁵ Statoil rehearing request at 7. Statoil correctly notes that the Commission stated that neither “Statoil nor Dominion filed timely affidavits to rebut the GTI report.” February 19 Order, 126 FERC ¶ 61,130 at P 50. The Commission’s statement was incorrect. Statoil did file a timely affidavit, which the Commission considered in the February 19 Order. As discussed below, the Commission’s incorrect statement did not impact the Commission’s final decision to approve the contested settlement in the February 19 Order.

¹⁶ *See supra* note 15.

¹⁷ *See* February 19 Order at P 52.

global LNG supplies would be able to enter Algonquin's system is inaccurate because it allegedly included representative LNG samples that were unrealistic and did not represent actual global supplies.¹⁸ Statoil also argued that on a best case basis between 67 and 71 percent of the world's LNG supply would be able to enter Algonquin's system under the Settlement standards while under a four percent nitrogen standard as espoused by Statoil, approximately "80 percent of global LNG supplies could be received into the Mid-Atlantic and Northeast markets by 2015."¹⁹

17. Thus, it was not, and is not, contested that the proposed standards may have some detrimental impact on the potential to import global supplies of LNG. The issue is instead one of the extent of the impact and the relevance to Algonquin. The Commission determined that contrary to Statoil's and Dominion's assertions, there was evidence of historical flows on Algonquin's system and affidavit evidence to support a nitrogen level of 2.25 percent, a standard that is stricter than the 2.75 percent level proposed in the Settlement. Dr. Loland's affidavits did not challenge that evidence. Rather, Dr. Loland argued that based on that standard, the maximum amount of global LNG supplies that could flow to Algonquin's system was between 67 and 71 percent, as opposed to 80 percent of global supplies that could flow if the standard was set at a 4 percent total inerts limit.²⁰ The Commission determined in the February 19 Order that the relatively small difference in supplies that may be inhibited under the Settlement's standards as opposed to that argued for by Statoil was outweighed by the demonstrated potential injury to the LDC's peak shaving facilities.

18. As the Commission noted in the February 19 Order, Statoil did not challenge the contention that nitrogen and C₂+ constituents at percentage levels higher than those proposed in the Settlement could cause substantial damage to the LNG peak shaving facilities.²¹ Statoil argued instead that the LDCs should consider alternative mitigation measures to protect the facilities, such as trucking LNG or retrofits. As the Commission stated in the February 19 Order, however, the record evidence showed that the LDCs had in fact agreed to increased costs through retrofits or facility upgrades as well as reduced efficiencies relating to their peak shaving plants.²² This fact weighed in favor of approving the Settlement standards over the objections of Statoil.

¹⁸ *Id.* at 9-10 (citing Loland affidavit at P 33-35).

¹⁹ Loland affidavit at P 48.

²⁰ *Id.* See also Loland supplement affidavit at P 6.

²¹ February 19 Order, 126 FERC ¶ 61,130 at P 49.

²² *Id.* P 51.

19. Statoil's technical evidence goes more toward supporting broad policy issues concerning the importation of LNG than demonstrating any actual harm to Statoil related to Algonquin's system. The Loland affidavit and supplemental affidavit refer generally to the availability of LNG supplies to the "MidAtlantic and Northeast markets"²³ and also describe the potential effect on imports of LNG if "pipeline tariffs" in general contain nitrogen and C₂+ specifications as proposed in the Settlement.²⁴ Statoil's own affidavit evidence thus indicates that the "global" volumes that will allegedly be affected by Algonquin's standards are ones generally bound for markets in the Northeast and the Mid-Atlantic. This broad evidence does not demonstrate how Statoil will suffer any specific injury as a result of the alleged prevention of "global" LNG supplies from reaching Algonquin's system. Moreover, Statoil's information discusses supplies potentially reaching the United States as far in the future as 2015.²⁵

20. As discussed in the February 19 Order, Statoil does not explain why or how LNG volumes imported at Cove Point would be restricted by gas quality standards on Algonquin. Statoil itself notes that the volumes of LNG it imports into the Cove Point LNG terminal are transported on numerous intervening interstate pipelines including Dominion, Columbia Gas Transmission (Columbia), Transcontinental Gas Pipe Line (Transco) and Texas Eastern. Statoil also states that it sells that regasified LNG to customers that hold transportation on interstate pipelines across the Mid-Atlantic and Northeast regions of the United States, including some of Algonquin's customers.²⁶ Statoil's arguments ignore the fact that the composition of the regasified LNG that it transports away from Cove Point will likely be significantly altered due to commingling with substantial volumes with which it will mix while being transported hundreds of miles on intervening pipelines between Cove Point and Algonquin.

21. The fact that regasified LNG at Cove Point would be commingled with substantial volumes on intervening interstate pipelines such as Dominion, Texas Eastern, Transco or Columbia before it can be delivered to Algonquin increases the likelihood that the gas will meet Algonquin's standards prior to delivery into Algonquin's system. Statoil's

²³ See, e.g., Loland affidavit at P 6, 9, 12, 22, 23, 24, 26, and 48; see also Loland supplemental affidavit at P 3, 4, and 8.

²⁴ See, e.g., Loland affidavit at P 11, Loland supplemental affidavit at P 10.

²⁵ As the Commission stated in the February 19 Order, gas quality depends on many factors and circumstances that may change over time, and if factors change with regard to gas quality elements approved in the Settlement, a customer may file a complaint under section 5 of the NGA to revise those provisions.

²⁶ Statoil reply comments at 3.

analysis does not account for or discuss this fact. Nor has Statoil provided evidence of re-gasified LNG from Cove Point that has been restricted from entering Algonquin's system as result of its current nitrogen specification, which is stricter than that approved by the Settlement. Accordingly, absent evidence to the contrary, it is reasonable to expect that volumes of re-gasified LNG will have ample opportunity to be sufficiently blended by the time they reach Algonquin's system such that it will meet Algonquin's gas quality standards.

22. Moreover, as the Commission found in the February 19 Order, the LDCs with peak shaving LNG liquefaction facilities directly connected to Algonquin²⁷ provided specific and persuasive evidence that those facilities could suffer potential damage and reduced efficiencies if the gas composition on Algonquin rose above the levels proposed in the Settlement.²⁸ The LDCs explained that the peak shaving LNG facilities are vital to maintaining reliable service to their firm customers, especially as a means of providing peak day and peak hour supplies and security supply in the event of pipeline disruptions.²⁹ ConEd also noted that its peak shaving facility provides almost fifteen percent of its peak day design portfolio, and because of its close proximity to five major generating stations, that facility indirectly contributes to electric system reliability.³⁰

23. KeySpan, ConEd and the New England LDCs also showed that they face serious issues of safety with regard to their LNG peak shaving plants. Their affidavits 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

²⁷ Affidavit evidence submitted by the KeySpan, Con Ed and the New England LDCs indicates that Key Span currently operates three liquefaction facilities, one in New York City, one on Long Island and one in Boston Massachusetts (Affidavit of Robert D. Wilson (Wilson affidavit) at P 8); Southern Connecticut Gas Company (SCG) and Connecticut Natural Gas Corporation (CNG) (collectively CT Gas) owns or operates peak shaving plants at Milford, Connecticut and Rocky Hills, Connecticut (Affidavit of Thomas P. Chizinski (Chizinski affidavit) at P 8); Bay State owns and operates a peak-shaving LNG plant in Ludlow Massachusetts (Chizinski affidavit at P 9); an affiliate of Nstar Gas Company (Nstar) owns and operates a peak shaving LNG plant in Hopkinton, Massachusetts (Chizinski affidavit at P 9); and Con Edison owns and operates an LNG peak shaving facility in Queens, New York (Affidavit of Howard Goldberg (Goldberg affidavit) at P 6).

²⁸ February 19 Order at P 46-48

²⁹ Wilson affidavit at P 7; Chizinski affidavit at P 9-11; Goldberg affidavit at P 7.

³⁰ Goldberg affidavit at 7.

tank would stratify into layers, which in turn could lead to a safety hazard known as nitrogen induced “rollover,” would increase.³¹ Those affidavits show that if rollover occurs, there can be severe damage to the LNG storage tanks. These LDCs also provided evidence supporting the assertion that historical levels of C₂+ constituents on Algonquin were low, and that absent a limit on those constituents, their LNG peak shaving facilities would be subject to potential damage and significant increased retrofit costs of up to \$10.0 million.³²

24. The LDCs also demonstrated that they would need to incur retrofit and decreased efficiency costs even to accommodate the nitrogen and C₂+ levels proposed in the Settlement. For example, KeySpan showed that with regard to its Commercial Point facility in Boston, it would need to spend approximately \$5 million in retrofit expenses to allow that facility to accommodate 2.75 percent nitrogen and 12.0 percent non-methane hydrocarbons, and even with such changes, operations at the plant would be at a reduced efficiency level. 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 rendering the Commercial Point facility inoperable, or, requiring the replacement of the liquefaction equipment at a cost of more than \$30 million.³³ 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.³⁴

25. None of the other LNG suppliers participating in this proceeding opposed the Settlement. The LNG suppliers bringing gas to Distrigas of Massachusetts’s Everett facility, which is directly connected to Algonquin, and Excelerate, who will import gas to the new Northeast Gateway project, and which is also directly connected to Algonquin, did not object to the Settlement’s proposed nitrogen standard. Further, Distrigas of Massachusetts, Repsol and Shell LNG all filed either in support or stated that they did not oppose the Settlement. Statoil argues that its position is different because it will be importing LNG mainly to Cove Point, which is the only LNG facility in the Mid-Atlantic and Northeast markets to utilize cryogenic nitrogen injection.³⁵ According to Statoil, this

³¹ See Chizinski affidavit, at P 16-17; Goldberg affidavit, at P 14-16.

³² See, e.g., Goldberg affidavit at P 12-24, Chizinski affidavit at P 20-21.

³³ Wilson affidavit at 18.

³⁴ See Chizinski affidavit at P 20; Goldberg affidavit at P 16.

³⁵ Statoil Initial Comments at 10-12.

method results in higher nitrogen content in the regasified LNG stream. However, we note that Cove Point's facilities are distantly located from Algonquin's system. Thus, while Cove Point may utilize a different nitrogen injection system, it is not directly connected to Algonquin and the miles of intervening interstate pipelines make it likely that significant blending of the Cove Point gas will occur before it reaches Algonquin.

2. Procedural Motions

26. Statoil also states that the Commission failed to rule on two outstanding motions -- ConEd's March 21, 2008 motion to strike certain portions of Statoil's initial and reply comments and Statoil's answer to those comments -- which were still pending in this proceeding when the Commission issued the February 19 Order. ConEd's limited motion to strike was included with its reply comments to the ALJ in favor of the Settlement. ConEd requested that the Commission strike all references to the commercial activities of Statoil's parent, StatoilHydro ASA, from Statoil's initial and reply comments on the ground that neither Statoil nor its referenced parent company responded to discovery requests from ConEd. On April 4, 2008, Statoil filed an answer to ConEd's motion. Statoil argued that ConEd's motion should be denied because Statoil had responded fully to ConEd's discovery request but was unable to provide documents that were out of its control and that there were only four references to its parent company in its previous pleadings, which were meant to show that Statoil had a direct interest in this proceeding.

27. ConEd's motion to strike is denied. Contrary to Statoil's contentions, the motion in question did not go to a substantive matter in the case but to a discovery dispute that the ALJ felt unnecessary to resolve in certifying the Settlement to the Commission. Moreover, the mentions of Statoil's corporate parent in Statoil's comments were not determinative of the Commission's approval of the Settlement in this proceeding.

B. Compliance Filing

28. The Commission accepts Algonquin's March 23 2009 compliance filing to implement the Settlement effective March 23, 2009 as requested. In that filing, Algonquin states that in order to provide the benefits of the Settlement to the parties as soon as possible, Algonquin would waive the Settlement requirement that the Settlement be approved by an order that is final and no longer subject to rehearing. In its comments on the compliance filing, Statoil states that it does not oppose Algonquin's request for waivers to place the tariff sheets into effect immediately because the nitrogen standard approved in the Settlement is higher than Algonquin's currently effective nitrogen limitation. Statoil states that if the Commission grants those waivers then it should make the sheets effective pending the outcome of Statoil's rehearing request. The instant order denies Statoil's rehearing request. Accordingly, the Commission grants waivers of Article III(4) of the Settlement and of the notice requirements of section 154.207 of our regulations and accepts Algonquin's tariff filing effective March 23, 2009.

The Commission orders:

- (A) Statoil's request for rehearing is denied.
- (B) Algonquin's compliance filing is accepted.
- (C) ConEd's Motion to Strike is denied.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.