

108 FERC ¶ 61,195
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Algonquin Gas Transmission Company

Docket No. CP04-314-000

ORDER ISSUING CERTIFICATE AND DENYING PROTESTS

(Issued August 18, 2004)

1. On April 30, 2004, Algonquin Gas Transmission Company (Algonquin) filed an application pursuant to section 7(c) of the Natural Gas Act (NGA) for authorization to modify its existing two-mile long, 16-inch diameter I-8 pipeline in Norfolk County, Massachusetts, by increasing the maximum allowable operating pressure (MAOP) from 750 to 958 pounds per square inch gauge (psig) and installing remote control and regulator valves. Algonquin requests that the Commission make a preliminary determination that the cost of its proposal to upgrade its I-8 pipeline will qualify for rolled-in rate treatment in Algonquin's next rate case.

2. We find that approval of Algonquin's proposal is in the public interest because it will ensure Algonquin's I-8 pipeline is in compliance with new U.S. Department of Transportation (DOT) safety regulations¹ and will enhance flexibility, reliability, and customers' access to gas supplies. Accordingly, we will approve Algonquin's proposal to modify its I-8 pipeline and we make a preliminary determination that the project costs qualify for rolled-in rate treatment, as discussed, modified, and conditioned in this order.

BACKGROUND

3. Algonquin proposes to increase the MAOP on its 2.02-mile long, 16-inch diameter I-8 lateral line from 750 psig to 958 psig, which will provide additional capacity of 140,000 dekatherms of gas per day (Dth/d). The I-8 line interconnects with Algonquin's I-3, I-9, and I-10 pipelines, all of which have an MAOP of 958 psig, although all are

¹ Pipeline Safety: Pipeline Integrity Management in High Consequence Areas (Gas Transmission Pipelines), Department of Transportation, 68 Fed. Reg. 69788 (December 15, 2003). The pipeline safety rule became effective January 14, 2004.

operated at 750 psig. Algonquin states that by increasing the MAOP on the I-8 line, it can operate these interconnected facilities at a uniform MAOP of 958 psig. Algonquin expects this to allow it to better integrate and manage its system and increase the availability of gas to greater Boston and the northeastern grid.

4. Algonquin states that its I-8 line is located in a high density population area, as defined by DOT. In accordance with new DOT safety standards, Algonquin must identify risks to pipeline segments and develop written integrity management programs that prioritize and reduce those risks² and conduct a baseline assessment of 50 percent of its system in high density population areas by December 2007, and complete its assessment of the remaining portion of its system by December 2012. To comply with new DOT safety standards, Algonquin proposes to install new remote control and regulator valves, install a temporary pig launcher and receiver assemblies, and hydrostatically test the I-8 line.

5. Algonquin estimates the proposed project will cost \$2,390,000. Algonquin asks that the Commission make a pre-determination that the proposed project's cost will qualify for rolled-in rate treatment in its next NGA section 4 rate case.

NOTICE AND INTERVENTIONS

6. Notice of Algonquin's application was published in the *Federal Register* on May 13, 2004.³ Timely, unopposed motions to intervene were filed by Braintree Electric Light Department (Braintree Electric); Consolidated Edison Company of New York Inc. jointly with Orange and Rockland Utilities, Inc. (Con Ed/O&R); Metis Energy Holdings, LLC; New England Local Distribution Companies; Weaver's Cove Energy, LLC; and Weymouth-Braintree Regional Recreation Conservation District.⁴

7. Untimely motions to intervene were filed by Distrigas of Massachusetts, LLC and also by the Brooklyn Union Gas Company d/b/a KeySpan Energy Delivery New York jointly with KeySpan Gas East Corporation d/b/a KeySpan Energy Delivery Long Island,

² Pipeline Safety: Pipeline Integrity Management in High Consequence Areas (Gas Transmission Pipelines), Department of Transportation, 68 Fed. Reg. 69,778-01 (2003).

³ 69 Fed. Reg. 26562 (2004).

⁴Timely, unopposed motions to intervene are granted by operation of Rule 214 of the Commission's Rules of Practice and Procedure. 18 C.F.R. § 385.214 (2004).

Boston Gas Company, Colonial Gas Company, EnergyNorth Natural Gas, Inc., and Essex Gas Company. We will grant the motions to intervene out-of-time, as we find that to do so will not delay, disrupt, or otherwise prejudice this proceeding or the parties to this proceeding.

PROTESTS

8. Con Ed/O&R and Braintree Electric filed protests to Algonquin's application, to which Algonquin submitted a response. Section 385.213(a)(2) of our Rules of Practice and Procedure does not permit answers to protests. However, we may waive this rule for good cause shown, and do so in this instance to help clarify the issues under consideration.

Con Ed/O&R

9. Of the proposed project's estimated cost of \$2,390,000, Con Ed/O&R comments that Algonquin has not distinguished costs necessary to comply with DOT safety regulations from costs attributable to increasing the I-8 line's capacity. Con Ed/O&R requests that Algonquin specify whether proposed costs to comply with safety regulations will be treated as an expense or as a capital investment.

10. Con Ed/O&R suggests it would be more appropriate to treat this proposed project as part of Algonquin's Beverly Extension Project in Docket No. CP01-05-000. Con Ed/O&R notes that in contrast to the present proposal, the Beverly Extension was incrementally priced, and asks that the Commission reject rolled-in rate treatment for I-8 project costs unless sufficient justification is presented. Alternatively, Con Ed/O&R requests that the Commission affirm that its approval of rolled-in rate treatment is based on the facts of this case and "may not be used as precedent for future applications in which incremental rates for the 'related-to-safety-compliance' capacity would be higher than system rates."⁵

Braintree Electric

11. Braintree Electric is concerned that construction on the I-8 line may result in fuel supply outages that could adversely impact power generation in southeastern Massachusetts. Braintree Electric claims Algonquin has not provided sufficient information on the timing and impact of the proposed construction to electric utilities that rely on the I-8 line. For example, Braintree Electric comments that during summer months, its Potter II electric generating plant can be precluded from burning fuel oil in place of natural gas. Consequently, if Algonquin's proposed construction will restrict gas

⁵ Con Ed/O&R's Protest at 4 (May 26, 2004).

deliveries to generating plants, plant operators will need several months' advance notice in order to have time to seek waivers of fuel oil restrictions. Braintree Electric also is concerned that the proposed I-8 modifications may require direct and indirect customers to modify their facilities in response, and asks the Commission ensure that Algonquin adequately compensates customers that have to make such modifications.⁶

Algonquin's Answer

12. In response to Con Ed/O&R's cost concerns, Algonquin specifies that 60 percent of the proposed project's estimated \$2,390,000 cost is for DOT safety compliance, and the remainder attributable to increasing the line's MAOP. Algonquin points out that by coordinating activities necessary to meet DOT safety standards with those intended to uprate the line's MAOP, it can diminish the disruption and reduce the cost that would be incurred if each action was undertaken separately. Algonquin observes that costs such as those to meet DOT standards and increase MAOP are typically capitalized.⁷

13. Algonquin explains that its Beverly Expansion enabled it to access additional supplies and meet customer needs without modification to the I-8 line. Algonquin thus rejects the Con Ed/O&R contention that this proposal to modify the I-8 line should have been included in its earlier, incrementally-priced expansion. Consequently, Algonquin rejects Con Ed/O&R's suggestion that I-8 project costs be similarly recovered via incremental rates.

14. With respect to its request regarding rolled-in rate treatment, Algonquin stresses that its proposal is intended to enable it to meet new DOT safety regulations and to eliminate an existing operational constraint. Algonquin declares that costs associated with safety compliance and enhancements to existing customers' services are costs

⁶ Braintree Electric cites Columbia Gas Transmission Co. (Columbia), 99 FERC ¶ 61,190 at 61,782 (2002) and Cross Bay Pipeline Co., LLC (Cross Bay), 97 FERC ¶ 61,165 at 61,758 (2001) for the proposition that a new project must not degrade existing service or result in higher rates for the same service. *See* Braintree's Electric's Protest at 8 (May 26, 2004).

⁷ *Citing* Algonquin, 75 FERC ¶ 61,284 (1966) (indicating that the accounting treatment of the costs of compliance with safety regulations "must be in accordance with the provisions of the . . . [Commission's Uniform System of Accounts], particularly Gas Plant Instruction No. 10, Additions and Retirements of Gas Plant, and Operating Expense Instruction No.2, Maintenance").

appropriately rolled into the rate base. Algonquin maintains that its proposed project will boost the volume of gas it can flow through its I-8 line and will enhance the integrity, reliability, and flexibility of its system, benefiting its customers and its customers' customers.

15. Algonquin notes that it has no service contract with Braintree Electric, but delivers gas to KeySpan Energy Delivery New England (KeySpan), a local distribution company, which in turn redelivers gas to Braintree Electric. Algonquin has agreed to continue to supply KeySpan. Algonquin avers that the modifications it proposes to its I-8 lateral will not require Braintree Electric to make any changes to its facilities.⁸ Before implementing its proposed upgrade, Algonquin will need to hydro test and dewater the I-8 line, which will necessitate suspending service for approximately four days.⁹

16. In response to Braintree Electric's specific concerns, Algonquin sees no potential disruption to power generation, pointing out that the Potter II plant is capable of operating on either gas or oil. Algonquin contends it has consulted with Braintree Electric and provided it several months' notice of its intended service outage, which Algonquin insists is sufficient lead time for Braintree Electric to request an air permit requirement waiver if needed.

17. Algonquin does not believe that the Commission's regulations or past practices provide any basis for any payment to Braintree Electric.¹⁰ Algonquin stresses that Braintree Electric is not an Algonquin customer and that the proposed upgrade will not result in increased rates or a permanent degradation in the quality of its service.

⁸ Algonquin states that KeySpan will regulate pressure, adjusting it down to the current MAOP for Braintree.

⁹ Braintree Electric states that permit issues prevent it from substituting oil for gas any earlier than October 1, 2004. Algonquin states it has revised its scheduled outage from September 23, 2004 to October 1, 2004 to accommodate Braintree Electric. *See* Algonquin's Answer to Protests at 5-6 and Attachment B at 2 (June 22, 2004).

¹⁰ Algonquin dismisses Braintree Electric's reliance on the Columbia and Cross Bay cases (*see* note 6), pointing out that here there is no allegation that the proposed project could adversely impact existing customers' service or rates; hence, there is no need to condition any prospective authorization to prevent such a result.

DISCUSSION

18. Algonquin's application proposes to modify its I-8 pipeline, a pipeline used to transport natural gas in interstate commerce; therefore, Algonquin's proposal is subject to the Commission's jurisdiction and the requirements of subsections (b), (c), and (e) of section 7 of the NGA.

Policy Statement on New Facilities and Commission Response to Protests

19. On September 15, 1999, we issued a policy statement to provide guidance on how we would evaluate proposals for new gas facilities.¹¹ In this policy statement, we established criteria for determining whether there is a need for a proposed project and whether the proposed project will serve the public interest. Pursuant to our Policy Statement on New Facilities, in deciding whether to authorize the construction of major new pipeline facilities, we balance public benefits against potential adverse consequences. Our goal is to give appropriate consideration to the enhancement of competitive transportation alternatives, the possibility of overbuilding, subsidization by existing customers, the applicant's responsibility for unsubscribed capacity, the avoidance of unnecessary disruptions to the environment, and the unneeded exercise of eminent domain in evaluating new pipeline construction. Algonquin's proposal concerns improvements to an existing line, and does not involve establishing a new right-of-way.

20. Under our policy, the threshold requirement for pipelines proposing new projects is that the pipeline must be prepared financially to support the project without relying on subsidization from the existing customers.¹² The next step is to determine whether the applicant has made efforts to eliminate or minimize any adverse impacts the project might have on the applicant's existing customers. We also consider potential impacts of the proposed project on other pipelines in the market, on those existing pipelines' captive customers, and on landowners and communities affected by the location of the new facility. If residual adverse impacts on these interest groups are identified after efforts have been made to minimize them, we will evaluate the project by balancing the evidence of public benefits to be achieved against the residual adverse effects. This is essentially

¹¹ Certification of New Interstate Natural Gas Pipeline Facilities (Policy Statement on New Facilities), 88 FERC ¶61,227 (1999), *orders clarifying statement of policy*, 90 FERC ¶61,128 and 92 FERC ¶61,094 (2000), *order further clarifying statement of policy*, 92 FERC ¶61,094 (2000).

¹² 88 FERC ¶61,227 at 61,746 (1999).

an economic test. Only when the benefits outweigh the adverse effects on economic interests will we then proceed to complete the environmental analysis where other interests are considered.

21. Con Ed/O&R questions whether Algonquin's proposed rate treatment is consistent with the Commission's Policy Statement on New Facilities and suggests that the costs related to relieving capacity constraints might more properly be attributed to the incrementally-priced Beverly Expansion. Con Ed/O&R also states that if the total project costs are rolled into the existing rate base, Algonquin will more than recover the increase in its cost of service. In this regard, Con Ed/O&R requests the Commission to confirm that our approval of rolled-in rate treatment is based solely on the facts of this case and may not be used as precedent in the future when the incremental rates for "related-to-safety-compliance" capacity would be higher than system rates. Before Algonquin is permitted to recover costs associated with its proposed I-8 upgrade, Con Ed/O&R, all other interested persons, and the Commission, will have the opportunity to scrutinize Algonquin's existing and proposed rates in a future section 4 proceeding. At issue here is whether it is appropriate for us to reach a preliminary determination that I-8 costs can qualify for rolled-in rate treatment in that future section 4 proceeding.

22. We reach a preliminary determination that the appropriate capital costs attributable to ensuring compliance with new DOT safety standards may be rolled in, absent any material change in circumstances. We have reached similar preliminary determinations in prior cases where costs incurred are attributable to the maintenance of safety and reliability for the benefit of existing customers.¹³ We find the actions and costs necessary to meet DOT standards to be required by the public convenience and necessity.

23. In the Policy Statement on New Facilities, we comment that "[p]rojects designed to improve existing service for existing customers, by replacing existing capacity, improving reliability or providing flexibility, are for the benefit of existing customers. Increasing the rates of the existing customers to pay for these improvements is not a

¹³ See, e.g., Northwest Pipeline Corp., 104 FERC ¶ 61,176 at P 23 (2003), stating that "increasing the rates of existing customers to pay for projects designed solely to improve the reliability or flexibility of service for those existing customers is not a subsidy, and that the costs of the project may be rolled-in," citing the Policy Statement on New Facilities, 88 FERC ¶ 61,227 at 61,746 (1999), *reh'g denied*, 105 FERC ¶ 61,109 (2003).

subsidy.”¹⁴ We find that Algonquin’s proposal to boost the pressure on its I-8 line meets these criteria, as it will enhance service for existing customers. Accordingly, we reach a preliminary determination that capital costs associated with increasing the I-8 line’s MAOP may be rolled into Algonquin’s existing rate base in a future rate case.¹⁵ We discuss below which of the proposed project costs are appropriately capitalized and which must be accounted for as expenses in the current period.

24. In view of this finding on the rate treatment of Algonquin’s I-8 project costs, we find no reason to apply the incremental rate treatment we adopted for Algonquin’s Beverly Expansion. Further, particularly in view of the need to modify the I-8 line to meet new DOT safety standards, we find no merit to Con Ed/O&R’s contention that we treat Algonquin’s I-8 proposal as a part of Algonquin’s Beverly Expansion.

25. Braintree Electric contends that Algonquin’s proposal is inconsistent with our Policy Statement on New Facilities because Braintree Electric will be adversely impacted, and cites instances where we have conditioned new construction on there being no degradation in existing customers’ service. We acknowledge that during the approximately four days of hydrostatic testing, Algonquin will suspend service to I-8 customers, and we accept that this will inconvenience Braintree Electric. However, this *temporary* inconvenience bears no relation to the *permanent* degradation in service contemplated in our Policy Statement on New Facilities. Here there is no allegation that the proposed increase in MAOP will permanently adversely impact the service or rates of existing customers or of Braintree Electric. Accordingly, in this case, we find Algonquin’s proposed project to be consistent with our Policy Statement on New Facilities.

¹⁴ 88 FERC ¶ 61,227 at 61,746, n. 12 (1999). While we affirm our policy that costs for system improvements that benefit existing customers may be rolled in, we clarify, as requested by Con Ed/O&R, that our decision in this case regarding the rate treatment of Algonquin’s proposed project costs is based on the circumstances presented in this case.

¹⁵ See, e.g., Northwest Pipeline Corp., 104 FERC ¶ 61,176 at P 14, 23 (2003) (authorizing the predetermination of rolled-in rates where the project is designed solely to improve the safety, reliability or flexibility of service for existing customers), *reh’g denied*, 105 FERC ¶ 61,109 (2003) and Williston Basin Interstate Pipeline Co., 84 FERC ¶ 62,183 at 64,288 (1998) (authorizing the predetermination of rolled-in rates where the costs of the proposed facilities are associated with pipeline safety issues).

26. We believe it is unlikely that Algonquin's relatively short suspension of gas service could disrupt electric supplies. With respect to Braintree Electric's Potter II plant, Algonquin has both provided sufficient advance notice to permit Braintree Electric to arrange for alternative fuel supplies and postponed the date of its proposed service outage to accommodate Braintree Electric.¹⁶ We concur with Algonquin's claim that neither its customers, nor its customers' customers, will have to make any modifications to existing facilities in order to accommodate Algonquin's proposed increase in MAOP.

27. There have been no landowner objections to the proposal. We do not expect the additional compression to have an adverse impact on existing pipelines or on existing pipelines' captive customers. We find Algonquin's proposal will provide additional reliability and flexibility for its existing shippers and will improve shippers' access to competitively priced domestic gas supplies. Balancing Algonquin's proposed project's minimal adverse impacts on the environment, landowners, and existing customers and competitors against the project's anticipated benefits, we find Algonquin's proposal to be consistent with our policy statement on new facilities and required by the public convenience and necessity.

Accounting Issues

28. Operating Expense Instruction No. 2, Maintenance, of the Commission's Uniform System of Accounts provides in part that "costs incurred to inspect, test and report on the condition of plant to determine the need for repairs or replacements" are to be charged to maintenance expense. With respect to the activities Algonquin proposes to undertake, we view the hydrostatic testing of its I-8 line as necessary to comply with the new DOT safety regulations, and thus a work activity that qualifies under this section of the Uniform System of Accounts as maintenance. Ordinarily, hydrostatic testing costs would be charged to maintenance expense in the period the costs are incurred. However, capitalization of testing costs has been permitted in the past either to facilitate recovery of the costs in rates or when the work was conducted in connection with major pipeline rehabilitation efforts that significantly extended the useful life or serviceability of the pipeline.¹⁷

¹⁶ Presumably, after September Braintree Electric will no longer need an air permit waiver to switch from gas to oil. See Algonquin's Answer, Attachment B, Algonquin's June 18, 2004 letter to Braintree Electric at 2.

¹⁷ See Accounting Release Number AR-8. See also Algonquin Gas Transmission Co., 75 FERC ¶ 61,284 (1996), and Commission letter orders issued to Florida Gas Transmission Co. in Docket No. AC97-110-000 and Northwest Pipeline Corp. in Docket No. AC94-149-000.

29. The Commission is currently analyzing the extent of activities that pipelines must perform to comply with the new DOT safety regulations in order to determine the proper accounting treatment for these new safety-related costs. Pending the outcome of this analysis and the anticipated Commission's issuance of guidance on the proper accounting treatment of safety-related costs, we will allow Algonquin to defer all costs incurred in performing hydrostatic testing as part of its baseline assessment to comply with the new DOT regulations in Account 186, Miscellaneous Deferred Debits.

Environmental Issues

30. On June 2, 2004, the Commission issued a *Notice of Intent to Prepare an Environmental Assessment for the Proposed I-8 Uprate Project and Request for Comments on Environmental Issues*, and received no comments in response. The Commission prepared an environmental assessment (EA) for Algonquin's proposal that addresses soils, water resources, vegetation, wildlife, land use, cultural resources, and alternatives. Based on the discussion in the EA, we conclude that if constructed and operated in accordance with Algonquin's application, as supplemented, and the environmental mitigation measures described in the appendix below, approval of this proposal will not constitute a major federal action significantly affecting the quality of the human environment.

31. At a hearing held on August 18, 2004, there was received and made a part of the record in this proceeding all filed evidence, including the application, as supplemented, and exhibits thereto, and after consideration thereof,

The Commission orders:

(A) A certificate of public convenience and necessity pursuant to NGA section 7(c) is issued to Algonquin authorizing it to modify its I-8 pipeline in Norfolk County, Massachusetts, to increase the maximum allowable operating pressure from 750 to 958 psig and install remote control and regulator valves, as more fully described in Algonquin's application and the body of this order.

(B) The authority issued in Paragraph (A) above is conditioned on Algonquin's compliance with all relevant parts of the Commission's regulations, in particular with Part 154 and paragraphs (a), (c), (e) and (f) of section 157.20.

(C) The modifications to the I-8 pipeline authorized herein shall be completed and placed into service within one year of the date of this order.

(D) Algonquin may roll the costs of the proposed I-8 project into its systemwide cost of service in its next NGA section 4 rate proceeding, unless there has been a significant change from the present facts and circumstances.

(E) The authority issued in paragraph (A) above is conditioned on Algonquin's compliance with the environmental conditions set forth in this order.

(F) Algonquin shall notify the Commission's environmental staff by telephone and/or facsimile of any environmental noncompliance identified by other federal, state, or local agencies on the same day that such agency notifies Algonquin. Algonquin shall file written confirmation of such notification with the Secretary of the Commission within 24 hours.

(G) The Con Ed/O&R and Braintree Electric protests are denied, for the reasons discussed in the body of this order.

(H) Motions to intervene out-of-time filed by Distrigas of Massachusetts LLC and also by the Brooklyn Union Gas Company d/b/a KeySpan Energy Delivery New York jointly with KeySpan Gas East Corporation d/b/a KeySpan Energy Delivery Long Island, Boston Gas Company, Colonial Gas Company, EnergyNorth Natural Gas, Inc., and Essex Gas Company are granted.

By the Commission.

(S E A L)

Linda Mitry,
Acting Secretary.

Appendix
Algonquin Gas Transmission Company
Docket No. CP04-314-000

Environmental Conditions

1. Algonquin shall follow the construction procedures and mitigation measures described in its application, as supplemented, and as identified in the EA, unless modified by this order. Algonquin must:
 - a. request any modification to these procedures, measures, or conditions in a filing with the Secretary of the Commission (Secretary);
 - b. justify each modification relative to site-specific conditions;
 - c. explain how that modification provides an equal or greater level of environmental protection than the original measure; and
 - d. receive approval in writing from the Director of the Office of Energy Projects (OEP) before using that modification.

2. The Director of OEP has delegation authority to take whatever steps are necessary to ensure the protection of all environmental resources during construction and operation of the project. This authority shall allow:
 - a. the modification of conditions of this order; and
 - b. the design and implementation of any additional measures deemed necessary (including stop work authority) to assure continued compliance with the intent of the environmental conditions as well as the avoidance or mitigation of adverse environmental impact resulting from project construction.

3. Any state or local permits issued with respect to the jurisdictional facilities authorized herein must be consistent with the conditions of this certificate. The Commission encourages cooperation between interstate pipelines and local authorities. However, this does not mean that state and local agencies, through application of state or local laws, may prohibit or unreasonably delay the construction or operation of facilities approved by this Commission.¹⁸

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

4. Algonquin shall notify the Commission's environmental staff by telephone or facsimile of any environmental noncompliance identified by other federal, state, or local agencies on the same day that such agency notifies Algonquin. Algonquin shall file written confirmation of such notification with the Secretary of the Commission within 24 hours.