125 FERC ¶ 61,398
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Algonquin Gas Transmission, LLC Docket No. RP09-72-000

ORDER ACCEPTING REVISED TARIFF SUBJECT TO CONDITIONS

(Issued December 31, 2008)

1. On November 13, 2008, Algonquin Gas Transmission, LLC (Algonquin) filed tariff sheets[1] proposing numerous modifications and changes, primarily to section 14 of its General Terms & Conditions (GT&C) concerning the procedures for shippers to release their capacity. Algonquin states that the main purpose of these changes is to comply with the capacity release requirements promulgated by Order No. 712.[2] In addition, Algonquin states that it is proposing additional modifications and clarifications as a result of a review of its LINK® system. The tariff sheets are accepted, subject to the conditions discussed below, effective January 1, 2009 as requested.

Summary of the Proposal

2. Algonquin proposes to revise its GT&C mainly to comply with Order No. 712. Order No. 712 permits market-based pricing for short-term capacity releases and facilitates asset management arrangements (AMAs) by relaxing the Commission's prohibition on tying and on its bidding requirements for certain capacity releases. Algonquin proposes several changes to GT&C section 14 in order to provide that short-term releases of one-year or less are not subject to the rate cap. In addition, proposed GT&C section 14.7(a) states that such short-term releases will, therefore, not be subject to refund. Algonquin also states that it is complying with the requirement to exempt releases to asset management arrangements from the bidding process. In order to identify

[1] *See* Appendix.

[2] *Promotion of a More Efficient Capacity Release Market*, Order No. 712, 73 Fed. Reg. 37,058 (June 30, 2008), FERC Stats. & Regs. ¶ 31,271 (2008), *order on reh'g*, Order No. 712-A, 73 Fed. Reg. 72,692 (December 1, 2008), FERC Stats. & Regs. ¶ 31,284 (2008).

these releases, the proposed tariff requires the releasing customer to specify whether the proposed release involves an AMA or a state-mandated retail access program, and if so to provide certain details about the release.

3. Algonquin proposes several other modifications and clarifications that it does not directly attribute to Order No. 712 but rather to its goal of improving flexibility and opportunities for releasing and replacement shippers. For example, Algonquin proposes several changes to its tariff provisions concerning capacity release bid evaluation methods. Algonquin makes several revisions in order to comply with North American Energy Standards Board (NAESB) Wholesale Gas Quadrant (WGQ) Standards, such as allowing the releasing customer to include in its Customer Notice an election not to reveal any minimum conditions to any party other than Algonquin and describing the rights and methods for the reput of capacity by the releasing shipper to the replacement shipper that the releasing shipper can specify in its Customer Notice, as called for in NAESB WGQ Standard No. 5.4.7. Finally, Algonquin standardizes several phrases, so that its use of terminology is consistent throughout its tariff.

Notice of Filing

4. Public notice of Algonquin's filing was issued on November 17, 2008. Interventions and protests were due as provided in section 154.210 of the Commission's regulations.[3] Pursuant to Rule 214,[4] all timely filed motions to intervene and any motions to intervene out-of-time before the issuance date of this order are granted. Granting late intervention at this stage of the proceeding will not disrupt this proceeding or place additional burdens on existing parties. FPL Energy, LLC (FPL) filed comments. Indicated Shippers[5] filed a limited protest. On December 9, 2008, Algonquin filed an answer to FPL and the Indicated Shippers. Pursuant to Rule 213,[6] we grant Algonquin's request for leave to answer.

Discussion

5. For the reasons discussed below, the Commission finds that Algonquin's proposed revisions to its GT&C are generally consistent with Order No. 712 and the Commission's

[3] 18 C.F.R. § 154.210 (2008).

[4] 18 C.F.R. § 385.214 (2008).

[5] In this proceeding, the Indicated Shippers are BP America Production Company, BP Energy Company, and Hess Corporation.

[6] *See* 18 C.F.R. §§ 385.213(a)(2), (a)(3) (2008).

capacity releases policies. Accordingly, the Commission accepts Algonquin's filing subject to the conditions discussed below.

Net Present Value Bid Evaluation Method

6. Algonquin proposes several changes to the provisions of section 14.5(c) concerning the evaluation of bids for released capacity. Revised section 14.4(a)(10) requires the releasing shipper to specify one of three bid evaluation methods in its notice of a release subject to bidding. These include (a) highest rate, (b) net revenue or present value, and (c) an alternative, not unduly discriminatory method chosen by the releasing shipper. Revised section 14.5(c)(3) provides that, if the releasing shipper specifies present value as the bid evaluation method, the pipeline shall use a discount rate of 10 percent in calculating the present value of each bid.

7. FPL opposes Algonquin's proposal to use a 10 percent discount rate under the present value bid evaluation method.[7] FPL urges the Commission to instead require that the discount rate track the interest rate described by section 154.501(d) of the Commission's regulations. FPL states that Algonquin has made no case in support of its proposal, and further notes that Algonquin would retain the Commission interest rate as the discount factor in evaluating primary requests for transportation service.[8] FPL asserts that replacement shippers bidding on packages of released capacity incorporate the actual, current time value of money in establishing their bids by netting the current value of future rates to be paid against the current value of future streams of benefits obtained through the use of the capacity. FPL states that a bid evaluation methodology that ignores the market's perception of the time value of money can result in inefficient capacity awards. FPL asserts that Algonquin's proposal would "limit the possibility of arbitrage between capacity release and new pipeline capacity additions."[9]

8. In response to FPL, "Algonquin rejects any notion that use of the FERC Interest Rate results in a more fair or appropriate outcome in a [net present value] process."[10] Algonquin further contends that the Commission has approved fixed discount rates in the evaluation of net present value bids as just and reasonable.[11]

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[7] FPL November 25, 2008 Comments at 3.

[8] *Id.* at 5.

[9] *Id*. at 6.

[10] Algonquin December 9, 2008 Answer at 9.

[11] *Id*.

9. The Commission accepts Algonquin's revised tariff provisions concerning the evaluation methods for choosing the best bid for a biddable capacity release. Consistent with Commission policy, the revised tariff language permits releasing shippers to choose among several specified bid evaluation methods, including a net present value method using 10 percent discount rate. In addition, revised section 14.4(a)(10) permits the releasing shipper to choose "an alternative Releasing Customer defined bid evaluation method." That section permits the releasing shipper to specify in its notice of the release that bids will be evaluated based on net present value using a discount rate other than 10 percent, for example the Commission interest rate FPL supports. In short, the 10 percent discount rate in the proposed tariff is merely a default that any releasing shipper can override. Because the tariff discount rate is a readily overridden default, it is just and reasonable for Algonquin to choose a fixed number rather than constructing a more complex or nuanced default scheme.[12]

<u>No-Refund Provision</u>

10. Algonquin proposes various tariff revisions to implement Order No. 712's removal of the price cap for short term releases of one year or less. These changes include adding a GT&C section 14.7(a), which would deem the rate paid by a replacement shipper for a short-term release to be a final rate and not subject to refund.

11. Indicated Shippers protest, asserting that a replacement shipper paying a rate equal to or less than the applicable maximum rate for a short-term release should be eligible for refunds, where the pipeline's maximum rate is in effect subject to refund and the Commission requires refunds. Indicated Shippers assert that Order No. 712, unlike Order No. 637, [13] did not address whether rates paid by replacement shippers for short-term

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[12] *See Algonquin Gas Transmission, LLC*, 120 FERC ¶ 61,072, at P 61 (2007), where the Commission accepted a pipeline's proposal to modify the net present value method it used in connection with the sale of its own capacity, without making a similar change in the default net present value method provided in its tariff for capacity release. The Commission pointed out that the pipeline's tariff permitted releasing shippers to specify their own bid evaluation methods, which could include the same net present method used by the pipeline. *See also* 18 C.F.R. §284.8(b) (2008) (Requiring pipelines to let shippers release their capacity "without restriction on the terms or conditions of the release.").

[13] *See Regulation of Short-Term Natural Gas Transportation Services and Regulation of Interstate Natural Gas Transportation Services*, Order No. 637, FERC Stats. & Regs. ¶ 31,091, *clarified*, Order No. 637-A, FERC Stats. & Regs. ¶ 31,099, *reh'g denied*, Order No. 637-B, 92 FERC ¶ 61,062 (2000), *aff'd in part and remanded in part sub nom. Interstate Natural Gas Ass'n of America v. FERC*, 285 F.3d 18 (D.C. Cir.

(continued…)

releases would be treated as final rates not subject to refund. Indicated Shippers state that it would be unduly discriminatory to provide the refund to the releasing shipper rather than to the replacement shipper. Indicated Shippers state that if the Commission allows this part of Algonquin's proposal, it should consider this policy issue as part of a generic proceeding. Alternatively, Algonquin should clarify that releasing shippers will receive any refunds related to the Commission finding the applicable maximum rate to be unjust and unreasonable even if the shipper releases capacity for a short term.

12. Algonquin characterizes the protest of Indicated Shippers as a collateral attack on Order No. 712. In removing the rate cap on short-term capacity release, Algonquin contends, Order No. 712 also removed the replacement shipper's entitlement to refunds, because replacement shippers "could not have been paying a rate ultimately determined to be above a just and reasonable cost-based maximum rate."[14]

13. Indicated Shippers misunderstand Order No. 712. In Order No. 712, the Commission eliminated the price ceiling for short-term capacity release transactions of one year or less in order to allow the prices of short-term capacity release transactions to reflect short-term variations in the market value of that capacity. Accordingly, a capacity release transaction of one year or less has a market-based rate, instead of the regulated cost-based rate. Because the pipeline's maximum rates do not apply to short-term capacity release transactions, replacement shippers are not entitled to any refunds when the Commission finds that the maximum rates proposed by a pipeline in a section 4 rate case are too high.[15] As Order No. 712 stated, short-term capacity release rates will be presumed just and reasonable, and treated similarly to how the Commission treats market-based or negotiated rates.[16] Therefore, Algonquin's proposal to deem rates paid by replacement shippers for terms of one year or less to be final and not subject to refund, is consistent with Order No. 712. However, a releasing shipper paying a recourse rate higher than the maximum just and reasonable rate determined in a rate case would be eligible for refunds because Order No. 712 did not remove any maximum rates for the pipeline's sale of its own capacity.

2002), *order on remand*, 101 FERC ¶ 61,127 (2002), *order on reh'g*, 106 FERC ¶ 61,088 (2004), *aff'd sub nom. American Gas Ass'n v. FERC*, 428 F.3d 255 (D.C. Cir. 2005).

[14] Algonquin December 9, 2008 Answer at 4.

[15] *See Wyoming Interstate Company, Ltd.*, 92 FERC ¶ 61,198 (2000).

[16] Order No. 712 at P 30-31.

Compliance with Order No. 712-A

14. Algonquin made the instant filing after the issuance of Order No. 712, but before the issuance of Order No. 712-A. Among other things, Order No. 712-A revised the regulations adopted by Order No. 712 so that the lifting of the price cap for short-term releases only applies to releases that take effect within one year of the date the pipeline is notified of the release. Algonquin's proposed tariff revisions in the instant filing to implement Order No. 712 do not reflect the Order No. 712-A limitation on the lifting of the price cap for short-term releases. Accordingly, in its filing to comply with this order, Algonquin must revise GT&C section 14 as necessary to comply with this aspect of Order No. 712-A. In addition, it may include in that compliance filing any other tariff revisions it finds necessary to comply with Order No. 712-A.

The Commission orders:

The Commission accepts the tariff sheets listed in the Appendix to this order to be effective on January 1, 2009, subject to Algonquin filing revised tariff sheets as discussed above within 20 days of the date of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

Appendix

Algonquin Gas Transmission, LLC
FERC Gas Tariff, Fifth Revised Volume No. 1
Tariff Sheets to be Effective January 1, 2009

Third Revised Sheet No. 533
Second Revised Sheet No. 534
Original Sheet No. 534A
First Revised Sheet No. 535
Third Revised Sheet No. 537
First Revised Sheet No. 539
Second Revised Sheet No. 541
Second Revised Sheet No. 542
Second Revised Sheet No. 543
Third Revised Sheet No. 544
Second Revised Sheet No. 546
First Revised Sheet No. 547
Second Revised Sheet No. 548
Original Sheet No. 548A
Second Revised Sheet No. 549
Original Sheet No. 549A
Fourth Revised Sheet No. 550
Second Revised Sheet No. 614