

129 FERC ¶ 61,117
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

November 12, 2009

In Reply Refer To:
Algonquin Gas Transmission, LLC
Docket No. RP10-46-000

Algonquin Gas Transmission, LLC
P.O. Box 1642
Houston, TX 77251-1642

Attention: Janice K. Devers
General Manager, Tariffs and Commercial Development

Reference: Tariff Sheet and Non-Conforming Agreements

Dear Ms. Devers:

1. On October 13, 2009, pursuant to section 154.1(d) of the Commission's regulations, Algonquin Gas Transmission, LLC (Algonquin) filed thirty-three currently effective, non-conforming service agreements that potentially materially deviate from its form of service agreements and a revised tariff sheet¹ listing the agreements. Algonquin's proposed revised tariff sheet also lists several currently effective, materially non-conforming agreements that Algonquin states were previously accepted by the Commission, but that Algonquin omitted from First Revised Sheet No. 625. Algonquin requests that the Commission accept its proposed tariff sheet to be effective November 12, 2009 and accept the filed agreements to be effective as of their respective effective dates and in accordance with their respective terms. As discussed below, the Commission accepts Algonquin's proposed tariff sheet and non-conforming agreements, effective on the dates requested, subject to further review and order of the Commission.

2. Algonquin asserts that, following the Commission's order in *Southern Star*,² it undertook a review of all currently effective, Part 284 firm transportation agreements,

¹ Second Revised Sheet No. 625 to Algonquin's FERC Gas Tariff, Fifth Revised Volume No. 1.

² *Southern Star Central Gas Pipeline, Inc.*, 125 FERC ¶ 61,082 (2008).

except for those agreements executed through the online process.³ Algonquin states that this filing is the result of that review.

3. In its filing, Algonquin states that it identified thirty-three contracts as potentially materially non-conforming.⁴ Algonquin asserts that thirty-one of the thirty-three tendered contracts were entered into prior to the Commission's clarification of its policies and regulations governing the identification and filing of materially non-conforming provisions in the 2003 Policy Statement.⁵ Algonquin further states that, of the two contracts entered into after the Commission's 2003 Policy Statement, one was filed with the Commission twice – first as a part of a settlement and a second time as part of a certificate application. Algonquin asserts that the second of the contracts contains non-conforming language that was negotiated in connection with a customer bankruptcy and contract restructuring and accepted by the Commission as part of a negotiated rate contract.

4. Algonquin states that all but six of the thirty-three contracts fall into either, or both, of the following categories: (a) Potential Material Deviations Resulting from Compliance with Order No. 636;⁶ and (b) Potential Material Deviations Related to Expansion Projects. Algonquin states that the remaining six contracts contain deviations

³ Algonquin states that the online process does not permit changes to the agreements.

⁴ During its review, Algonquin states that it identified other contracts containing other deviations, but did not include these contracts in this filing because it does not believe that the deviations are material.

⁵ Algonquin Transmittal at 2 (citing *Natural Gas Pipeline Negotiated Rate Policies and Practices*, 104 FERC ¶ 61,134 (2003), *order on reh'g*, 114 FERC ¶ 61,042 (2006) (2003 Policy Statement)).

⁶ Algonquin Transmittal at 4 (citing *Pipeline Service Obligations and Revisions to Regulations Governing Self-Implementing Transportation; and Regulation of Natural Gas Pipeline After Partial Wellhead Decontrol*, Order No. 636, FERC Stats. & Regs. Regulations Preambles January 1991 – June 1996 ¶ 30,939, *order on reh'g*, Order No. 636-A, FERC Stats. & Regs. Regulations Preambles January 1991 – June 1996 ¶ 30,950, *order on reh'g*, Order No. 636-B, 61 FERC ¶ 61,272 (1992), *notice of denial of reh'g*, 62 FERC ¶ 61,007 (1993), *aff'd in part and vacated and remanded in part sub nom., United Distribution Co. v. FERC*, 88 F.3d 1105 (D.C. Cir. 1996) (per curiam) *cert. denied*, 520 U.S. 1224 (1997), *order on remand*, Order No. 636-C, 78 FERC ¶ 61,186 (1997), *order on reh'g*, Order No. 636-D, 83 FERC ¶ 61,210 (1998) (collectively, Order No. 636)).

that are nevertheless consistent with its tariff, due to the timing of contract execution, or otherwise do not present a risk of undue discrimination. Algonquin also states that it has identified in its filing what it believes to be immaterial deviations contained in certain of the thirty-three contracts.

5. Algonquin includes with its filing a clean version of each of the thirty-three service contracts, along with a redlined version of each of the service contracts that, Algonquin states, delineates each deviation contained in the contract from the applicable form of service agreement in effect at the time the service agreement was executed. Algonquin also includes with its filing a description of deviations from the applicable form of service agreement or any other part of its tariff for each of the contracts and an explanation of why Algonquin believes the deviations either are not material or do not change the conditions under which service is provided and, therefore, do not present a risk of undue discrimination.

6. Algonquin states that Algonquin and its shippers have relied on the tendered contracts in making important market and investment decisions. Algonquin further states that modifying the contracts at this time could cause significant economic harm to the parties. Algonquin, therefore, requests that the Commission, to the extent it finds any of the filed agreements to be materially non-conforming, accept those contracts for filing and grant any and all waivers necessary to allow those contracts to be effective and remain in effect.

7. Further, in addition to the thirty-three contracts filed herein, Algonquin states that it identified three additional contracts that were inadvertently omitted from First Revised Sheet No. 625 and added these three contracts to its proposed Second Revised Sheet No. 625. Algonquin states that contract no. 510233 with Distrigas of Massachusetts LLC (Distrigas) was previously filed with and accepted by the Commission as a materially non-conforming agreement,⁷ but was not reflected on First Revised Sheet No. 625. In addition, Algonquin states that it discovered that language pertaining to particular delivery points was inadvertently omitted from contract no. 510233 and is processing an amendment to Exhibit B of the contract to be effective November 1, 2009 to add the necessary language. Algonquin states that this potential material deviation is necessary due to the configuration of the specific delivery points and is identical to language in one of the thirty-three contracts described above.⁸ Algonquin states that the two other

⁷ Algonquin Transmittal at 7 (citing *Algonquin Gas Transmission, LLC*, Docket No. RP00-70-005 (Sept. 24, 2004) (unpublished letter order)).

⁸ Algonquin states that it only included a clean and redline version of the amendment to Exhibit B because a redline of the rest of contract previously was filed with and accepted by the Commission. *See id.*

contracts inadvertently omitted from First Revised Sheet No. 625 and added to proposed Second Revised Sheet No. 625 (contract nos. 510294 and 510295) were also previously filed and accepted by the Commission.⁹

8. Public notice of Algonquin's filing was issued on October 19, 2009. Interventions and protests were due as provided in section 154.210 of the Commission's regulations, 18 C.F.R. § 154.210 (2009). Pursuant to Rule 214, 18 C.F.R. § 385.214 (2009), all timely motions to intervene and any motions to intervene out-of-time filed 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. No protests or adverse comments were filed.

9. If a pipeline and a shipper enter into a contract that materially deviates from the pipeline's form of service agreement, the Commission's regulations require the pipeline to file the contract containing the material deviations with the Commission.¹⁰ In *Columbia Gas Transmission Corporation*,¹¹ the Commission clarified that a material deviation is any provision in a TSA that (a) goes beyond filling in the blank spaces with the appropriate information allowed by the tariff, and (b) affects the substantive rights of the parties.¹² However, not all material deviations are impermissible. If the Commission finds that such deviation does not constitute a substantial risk of undue discrimination, the Commission may permit the deviation.¹³ Therefore, there are two general categories

⁹ Algonquin Transmittal at 7 (citing *Algonquin Gas Transmission, LLC*, 107 FERC ¶ 61,173, at P 30 (2004), and order on compliance filing, *Algonquin Gas Transmission, LLC*, Docket No. RP04-263-001 (June 18, 2004) (unpublished letter order)). Algonquin states that, subsequently, USGen New England, Inc., the shipper under those contracts, sold its power plants and, in order to effectuate the transfer of assets, permanently released the revised service agreements to Virginia Power Energy Marketing, Inc.

¹⁰ 18 C.F.R. § 154.1(d) (2009).

¹¹ *Columbia Gas Transmission Corp.*, 97 FERC ¶ 61,221 (2001) (*Columbia*).

¹² In *Natural Gas Pipeline Negotiated Rate Policies and Practices*, 104 FERC ¶ 61,134 at P 27, the Commission stated "[s]ince there would appear to be no reason for the parties to use language different from that in the form of service agreement other than to affect the substantive right of the parties, this effectively means that all language that is different from the form of service agreement should be filed with the Commission." *Id.* P 32.

¹³ *Columbia*, 97 FERC ¶ 61,221 at 62,004.

of material deviations: (a) provisions the Commission must prohibit because they present a significant potential for undue discrimination among shippers, and (b) provisions the Commission can permit without a substantial risk of undue discrimination. Moreover, if the Commission determines the contract contains a material deviation that is permissible, the Commission's regulations require the pipeline to file tariff sheets that reference the materially deviating contract.¹⁴

10. Algonquin has presented the Commission with numerous non-conforming service agreements. These agreements contain various deviations from Algonquin's tariff. The Commission has not completed its review of these service agreements. The Commission will accept Algonquin's proposed tariff sheet to be effective November 12, 2009, as requested, subject to further review and order of the Commission.¹⁵ Since the Commission has yet to complete its review of the service agreements, and because they have been in effect for a significant period already, the Commission will also accept all of the filed service agreements, effective on their respective effective dates, subject to further review and order of the Commission.¹⁶

By direction of the Commission.

Nathaniel J. Davis, Sr.,
Deputy Secretary.

¹⁴ 18 C.F.R. § 154.112(b) (2009).

¹⁵ The Commission notes that Algonquin elected not to file herewith certain other non-conforming contracts that it does not believe contain material deviations. In this order, we make no finding with respect to those contracts and remind Algonquin that, consistent with *Southern Star*, all contracts containing material deviations from the form of service agreement in a pipeline's tariff must be filed with the Commission.

¹⁶ It appears that, contrary to the requirements of section 154.1(d) of the Commission's regulations, 18 C.F.R. § 154.1(d) (2009), Algonquin failed to file the non-conforming contracts in a timely manner. Algonquin is reminded that it must submit required filings on a timely basis or face possible sanctions by the Commission.