

132 FERC ¶ 61,258
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Marc Spitzer, Philip D. Moeller,
John R. Norris, and Cheryl A. LaFleur.

Algonquin Gas Transmission, LLC

Docket Nos. RP10-117-002
RP10-117-001

ORDER ON REHEARING AND COMPLIANCE

(Issued September 23, 2010)

1. On December 11, 2009, Algonquin Gas Transmission, LLC (Algonquin) filed revised tariff sheets¹ to comply with the Commission's November 30, 2009 order issued in Docket No. RP10-117-000.² On December 30, 2009, Hess Corporation (Hess) filed a request for rehearing of the Commission's decision in the November 30, 2009 Order to accept Algonquin's proposal to assess a roughly \$1.6 million incremental fuel surcharge to Ramapo Expansion shippers. In this order, the Commission denies the request for rehearing and accepts Algonquin's compliance filing, as discussed below.

I. Background

2. On October 30, 2009, Algonquin submitted a filing in accordance with section 32, Fuel Reimbursement Quantity (FRQ), of the General Terms and Conditions (GT&C) of Algonquin's FERC Gas Tariff, reflecting the proposed Fuel Reimbursement Percentages (FRPs) for the calendar period beginning December 1, 2009 and allocating the refund and surcharge amounts for the July 31, 2009 balance of the FRQ Deferred Account pursuant to section 32.5 of the GT&C. The proposed FRPs for system customers reflected a decrease of 0.09 percent for the Winter Period and a decrease of 0.18 percent for the Spring, Summer and Fall Period. Algonquin stated that, in compliance with the Commission's December 21, 2006 order in Docket No. CP06-76-000, *et al.*, authorizing

¹ FERC Gas Tariff, Fifth Revised Volume No. 1, First Revised Sheet No. 590, Second Revised Sheet No. 591, and Second Revised Sheet No. 592.

² *Algonquin Gas Transmission, LLC*, 129 FERC ¶ 61,180 (2009) (November 30, 2009 Order).

Algonquin to render service under its Ramapo Expansion project, the October 30, 2009 filing constituted the initial calculation of incremental FRPs for service on facilities constructed under the Ramapo Expansion Project.³ Algonquin stated that the December 21, 2006 Order required Algonquin to delineate actual fuel use and lost and unaccounted for gas (LAUF) associated with the Ramapo Project service in its annual tracker filings under section 32 of the GT&C of its tariff in order to ensure that only expansion shippers be assessed fuel costs attributable to expansion service. Algonquin stated that, as required by the December 21, 2006 Order, the actual fuel use and LAUF attributable to Ramapo Project customers is delineated and assigned directly to Ramapo Project customers for surcharge or refund. The proposed FRPs for Ramapo Expansion customers reflected an increase of 0.92 percent for the Winter Period and an increase of 0.16 percent for the Spring, Summer and Fall Period, from the initial rates approved in the certification of the project. The allocation of the FRQ Deferred Account balance for the FRQ accumulation period of August 1, 2008, through July 31, 2009, between system customers and Ramapo Expansion customers yielded a credit sub-balance of \$791,946 which Algonquin proposed to refund to system customers, and a debit sub-balance of \$1,635,778 which Algonquin proposed to surcharge to Ramapo Expansion customers. Algonquin requested the proposed tariff sheet reflecting these FRPs be accepted effective December 1, 2009.

3. Hess filed a protest to the October 30, 2009 Filing, asserting that the proposed direct bill surcharge of \$1,635,778 to Ramapo Expansion shippers should be rejected for the reason that it is retroactively effective and, therefore, contrary to Commission policy and precedent and Algonquin's tariff. Hess also requested that, to the extent Algonquin proposes to true-up any future period's unreimbursed Ramapo Expansion fuel costs, Algonquin should be required to revise its tariff's fuel/direct bill provisions to address Ramapo Expansion fuel costs.

4. In the November 30, 2009 Order, the Commission denied Hess's request to reject the Ramapo Expansion shipper surcharge.⁴ The Commission stated that, in the

³ *Millennium Pipeline Co., et al.*, 117 FERC ¶ 61,319, at P 107 (2006) (December 21, 2006 Order), *reh'g, sub nom. Empire State Pipeline, et al.*, 119 FERC ¶ 61,173 (2007) (May 21, 2007 Order). The Ramapo Expansion facilities were placed into service on November 1, 2008. *Algonquin Gas Transmission, LLC*, Request for Extension of Time, Docket No. CP06-76-000, at 1 (filed November 26, 2008).

⁴ Section 32.5(c) provides that the FRQ surcharge or refund shall be based on the allocation of the FRQ Deferred Account balance at the end of the twelve month accumulation period ending July 31 over the actual throughput during the twelve month accumulation period, exclusive of backhauls, and that a customer's net debit or credit

(continued...)

December 21, 2006 Order, the Commission authorized Algonquin to render incremental service under the Ramapo Expansion and stated that Algonquin must delineate the actual fuel use and LAUF associated with the proposal in its annual fuel tracker filing required by section 32 of the GT&C in order to ensure that only expansion shippers are assessed fuel costs attributable to expansion service.⁵ Thus, the Commission stated that the December 21, 2006 Order requires two separate rates be calculated: one, the system-wide rate, and the other, the incremental Ramapo Expansion rate. Further, the Commission stated that it interpreted the December 21, 2006 Order as approving the use of the current section 32 tariff provisions with respect to the Ramapo Expansion shippers and that no additional changes to the tariff are required to apply the provisions of section 32 to the Ramapo Expansion shippers. The Commission stated that Ramapo Expansion shippers had sufficient notice that the FRQ surcharge mechanism would apply to them by virtue of the December 21, 2006 Order and the existing tariff provisions. The Commission also rejected Hess's reliance on Commission cases that state that, when a pipeline implements or modifies a tracker and true-up mechanism, the pipeline may not include in the initial true-up any under-recoveries that occurred prior to the effective date of the tariff provision. The Commission found that Hess's reliance on such cases is misplaced given that these cases involve a pipeline implementing a new tracker and true-up mechanism or modifying an existing mechanism. In the instant case, the Commission observed, the tracker and true-up mechanism has been in existence since before the Ramapo Expansion came into service and is not being modified. Therefore, the Commission found that the proposed surcharge is not prohibited by the filed rate doctrine and ban on retroactive rates or by Algonquin's tariff.

5. However, as noted by Hess, the Commission observed that section 32 of the GT&C currently does not expressly distinguish between system-wide fuel costs and Ramapo Expansion fuel costs and does not specifically discuss how Algonquin will treat Ramapo Expansion fuel under-recoveries. The Commission agreed with Hess that Algonquin should revise section 32 of its GT&C to clarify the separate treatment of system-wide and Ramapo Expansion fuel costs and how Algonquin will treat Ramapo Expansion fuel under- or over-recoveries. Accordingly, the November 30, 2009 Order accepted the October 30, 2009 filing to become effective December 1, 2009, subject, *inter alia*, to Algonquin filing revised tariff sheets within 15 days of the order to revise

shall be due and payable 60 days after the Commission's acceptance of the annual FRP filing. The Commission found that Algonquin's proposal to require each Ramapo Expansion shipper to pay its share of the \$1,635,778 surcharge within 60 days is consistent with these provisions.

⁵ November 30, 2009 Order at P 10 (citing December 21, 2006 Order at P 107).

section 32 of the GT&C to clarify the separate treatment of its system-wide and Ramapo Expansion fuel costs and how Algonquin will treat any Ramapo Expansion fuel under- or over-recoveries.⁶

6. On December 11, 2009, Algonquin made its compliance filing and, on December 30, 2009, Hess filed a request for rehearing of the November 30, 2009 Order,⁷ which we address below.

II. Rehearing

A. Hess's Arguments on Rehearing

7. Hess seeks rehearing of the Commission's decision in the November 30, 2009 Order to accept Algonquin's proposal to assess a roughly \$1.6 million incremental surcharge against Ramapo Expansion shippers. In its request for rehearing, Hess argues that the Commission erred by accepting Algonquin's proposal to apply a new, separately-determined incremental surcharge mechanism for Ramapo Expansion fuel under-collections incurred during prior periods. Hess states that it is not seeking rehearing of the Commission's determination that existing shippers should not be required to subsidize the unrecovered Ramapo Expansion fuel under-recoveries, but instead is requesting that Algonquin be required to bear such risks. Hess also states that it is not challenging Algonquin applying a new, separately-determined incremental surcharge in the future as long as it is applied to under-recoveries incurred during prospective periods after the effective date of the new tariff language. However, Hess argues that Algonquin should be required to bear any Ramapo Expansion fuel under-recoveries that were incurred by Algonquin until December 1, 2009, the proposed effective date of the revised fuel true-up mechanism.

⁶ The November 30, 2009 Order also stated that the workpapers submitted by Algonquin indicate that the refund to system customers was rolled into the System Services FRP. On that basis, the Commission directed Algonquin to re-file Fourth Revised Sheet No. 40 to provide for direct refund of the \$791,946 credit sub-balance of the FRQ Deferred Account. However, as discussed below in reference to Algonquin's December 11, 2009 compliance filing, Algonquin had proposed to directly refund that amount and, therefore, did not roll the refund into its proposed System Services FRPs.

⁷ On January 19, 2010, Algonquin filed an answer to Hess's request for rehearing. On January 26, 2010, Hess filed an answer to Algonquin's answer. Rule 713(d)(1) of the Commission's Rules of Practice and Procedure prohibits answers to a request for rehearing. Accordingly, we reject both Algonquin's answer and Hess's answer to the answer.

8. Hess argues that neither the December 21, 2006 Order nor the existing tariff provisions provided adequate notice to Ramapo Expansion shippers that Algonquin could assess incremental fuel rates and separately-determined incremental surcharges on a retroactive basis. Hess asserts that the December 21, 2006 Order merely placed Algonquin on notice that it could not flow Ramapo Expansion fuel under-recoveries to existing shippers, rather than providing that Algonquin may require Ramapo Expansion shippers to be solely responsible for fuel under-recoveries without making appropriate tariff changes. Hess argues that the Commission did not require Algonquin to recover Expansion fuel under-recoveries only from Expansion shippers, but instead ruled that the Expansion shippers and the pipeline would be responsible for bearing such costs. Hess asserts that Algonquin had the right to propose tariff provisions that would require Ramapo Expansion shippers alone to be solely responsible for truing-up the fuel costs via a separately-determined incremental surcharge as it did on December 11, 2009, but such changes can only apply on a prospective basis.

9. Hess argues that the Commission erred in stating that the December 21, 2006 Order required two separate rates to be calculated, the system-wide rate and the incremental Ramapo Expansion rate. Hess asserts that, to the contrary, the December 21, 2006 Order only required a separate, incremental transportation rate for the Ramapo Expansion while specifically allowing Algonquin to charge a single fuel rate to all shippers. Thus, according to Hess, the Commission did not require incremental fuel rates or a separately-determined, incremental fuel surcharge. Hess claims that the December 21, 2006 Order even observed that Algonquin's proposal did not address how it would address fuel under-recoveries, but Algonquin, nevertheless, did not propose tariff provisions to address that matter. Hess also argues that, given Algonquin's historical practice of subjecting its laterals to the same fuel rate as system-wide shippers, the Ramapo Expansion shippers did not have notice that Algonquin may implement a separately-determined incremental fuel surcharge for retroactive periods.

10. Hess asserts that the Commission's precedent⁸ requiring fuel mechanism changes to be applied on a prospective-only basis applies to Algonquin's separately-determined incremental surcharge. Hess asserts that the separately-determined incremental fuel rate is a change to Algonquin's existing tariff provisions and therefore must be filed as a tariff filing and be accepted by the Commission and applied on a prospective-only basis.

11. Finally, Hess contends that Algonquin's Ramapo Expansion fuel use experience is not unique and that other pipelines have had to adjust their fuel rate mechanisms to react

⁸ Hess Request for Rehearing at 13-15 (*citing Wyoming Interstate Company, Ltd.*, 122 FERC ¶ 61,303 (2008) (*Wyoming*) and *Sabine Pipe Line LLC*, 127 FERC ¶ 61,267 (2009) (*Sabine*)).

to fuel under-recovery costs that the pipeline alone had to bear until tariff changes were approved by the Commission. Hess cites an *ANR Pipeline Company* certificate order⁹ as similar to the December 21, 2006 Order in that it required expansion shippers and the pipeline to be responsible for the expansion's fuel costs and found that existing shippers could not be required to subsidize the expansion's fuel costs. Hess states that, in this ANR proceeding, ANR filed tariff sheets in response to the certificate order and to ensure that only expansion shippers bore the expansion fuel costs, implementing an incremental fuel rate and an expansion-specific fuel true-up mechanism separate from its system-wide fuel true-up mechanism which could only apply on prospective basis. Hess argues that the same principles should apply to Algonquin's treatment of the Ramapo Expansion's fuel under-recoveries.

B. Discussion

12. For the reasons set forth below, we deny rehearing of the November 30, 2009 Order.

13. As the Commission found in the November 30, 2009 Order, the December 21, 2006 Order put Ramapo Expansion customers on notice that they would be charged for the expansion fuel use costs and that separate rates would be calculated for system-wide fuel rates and incremental Ramapo Expansion fuel rates. Accordingly, the Commission held in the November 30, 2009 Order that Algonquin was authorized to charge Ramapo Expansion shippers incremental fuel and LAUF charges, including a surcharge to recover under-recovered Ramapo Expansion fuel costs incurred prior to that order. Hess has made no new arguments or raised any new facts that would warrant granting rehearing and disallowing the recovery of the proposed incremental Ramapo Expansion shipper surcharge.

14. Hess argues that the Commission erred and that incremental Ramapo Expansion fuel charges may only be applied to recover such costs prospectively from December 1, 2009, when the new tariff provisions Algonquin filed to comply with the November 30, 2009 Order become effective and that Algonquin should bear the risk of under-recovery of Ramapo Expansion fuel costs incurred prior to that date. In support of the latter claim, Hess relies on the Commission's statement in the December 21, 2006 Order that Algonquin was required "to ensure that expansion fuel use costs are the responsibility of only the expansion shippers *and Algonquin*." (emphasis added). Hess reads too much into the Commission's reference to Algonquin. That statement simply reflected the Commission's general policy that, when the Commission rules that expansion costs are to

⁹ Hess Request for Rehearing at 17-19 (*citing ANR Pipeline Co.*, 119 FERC ¶ 61,220 (2007), *reh'g denied*, 122 FERC ¶ 61,061 (2008) (*ANR*)).

be allocated to expansion shippers but the expansion costs are not fully recovered from the expansion shippers, the pipeline must bear those remaining unrecovered expansion costs. The Commission's point was that existing shippers were not to bear any of the Ramapo Expansion fuel costs. It was not meant to require an allocation of such costs to Algonquin because the expansion shippers pay for Ramapo Expansion fuel at the full, undiscounted, tariff rate.¹⁰ Nor was it recognition that any Ramapo Expansion fuel costs would be unrecoverable from Ramapo Expansion customers due to retroactivity when Algonquin later filed to charge an incremental Ramapo Expansion fuel rate because, as discussed in more detail below, the Commission ordered Algonquin to use its existing tariff's FRQ provision to recover the Ramapo Expansion fuel costs in incremental rates from Ramapo Expansion shippers such that there would not be a retroactive period as Algonquin claims.

15. As the Commission later made clear in the December 21, 2006 Order: "We will also require Algonquin to delineate the actual fuel use and LAUF associated with the proposal in its annual fuel tracker filing required by Section 32 of the GT&C of its tariff. Existing shippers can review the costs included in Algonquin's tracker filings to verify that only expansion shippers are assessed fuel costs attributable to expansion service."¹¹ That the latter statement reflects the Commission's intent that Algonquin was to charge incremental fuel rates to Ramapo Expansion shippers to recover all Ramapo Expansion fuel costs pursuant to the fuel tracker provisions of its tariff is verified by the Commission's May 21, 2007 Order in the same certificate proceeding where the Commission stated: "In the 2006 Millennium order [December 21, 2006 Order], we required Algonquin to ensure that only expansion shippers be charged for fuel associated with expansion facilities."¹² Thus, the directives of the December 21, 2006 Order should have been crystal clear after the Commission's May 21, 2007 Order. Accordingly, we find that Hess reads too much into the Commission's reference to Algonquin in one sentence of the December 21, 2006 Order as the Commission clearly was not assigning Algonquin responsibility for bearing any Ramapo Expansion fuel costs.

¹⁰ The Statements of Negotiated Rates for the expansion shippers contained in Algonquin's tariff provide: "Customer shall also pay the applicable Annual Charge Adjustment ("ACA") and other FERC-prescribed surcharges of general applicability, and Fuel Reimbursement Quantity ("FRQ") charges for service under the Service Agreement specified above." FERC Gas Tariff, Fifth Revised Volume No. 1, Second Revised Sheet No. 89 and First Revised Sheet No. 89A.

¹¹ December 21, 2006 Order at P 107.

¹² *Empire State Pipeline, et al.*, 119 FERC ¶ 61,173, at P 29 (2007).

16. The important point, though, is that well before Algonquin's Ramapo Expansion went into service and Algonquin began incurring fuel costs attributable to the Ramapo Expansion, the Ramapo Expansion customers were given clear notice that, pursuant to the December 21, 2006 Order, they, and they alone, would be responsible for Ramapo Expansion fuel use costs and that they would be charged separate Ramapo Expansion incremental fuel and LAUF rates in future fuel tracker filings. Further, because the December 21, 2006 Order specifically directed that Algonquin utilize section 32 of the tariff to recover incremental Ramapo Expansion fuel costs from the Ramapo Expansion shippers, the Ramapo Expansion shippers were on notice that, from and after December 21, 2006, they would be subject to future true-up surcharges or refunds to make the parties whole for under- or over-recoveries that occur during the FRP deferral periods after that date consistent with Section 32 of Algonquin's GT&C. Accordingly, any Ramapo Expansion fuel costs incurred by Algonquin after the November 1, 2008 in-service date of the Ramapo Expansion Project are the responsibility of Ramapo Expansion shippers, including a surcharge for any net under-collection during the latest accumulation period starting with the November 1, 2008 in-service date and ending July 31, 2009. The fact that Algonquin initially chose to apply the system fuel charge to Ramapo Expansion shippers for fuel attributable to the Ramapo Expansion facilities simply reflected the fact that, as a new service provided on new facilities, there was no operating experience with the Ramapo Expansion facilities prior to the facility's November 1, 2008 in-service date for Algonquin to establish an initial incremental Ramapo Expansion fuel charge to be effective as of that in-service date.

17. Further, to the extent the December 21, 2006 Order required Algonquin to file future incremental Ramapo Expansion fuel rates in annual tracker filings pursuant to section 32 of the tariff, we interpret that order as providing that such annual tracker filings were to include separately-calculated incremental Ramapo Expansion fuel and LAUF rates and true-up surcharges and refunds applicable only to the Ramapo Expansion shippers. Thus, it was pursuant to a Commission order in the certificate proceeding, i.e., the December 21, 2006 Order, that Algonquin was required to allocate Ramapo Expansion fuel and LAUF costs only to the Ramapo Expansion shippers and that actual fuel use and LAUF for the expansion must be delineated for the purpose of setting incremental Ramapo Expansion fuel rates applicable only to those Ramapo Expansion shippers. Therefore, contrary to Hess's arguments, Algonquin did not need to file new tariff provisions to implement the requirements of that order. Moreover, the requirement to separately "delineate" the actual Ramapo Expansion fuel use and LAUF was not merely a bookkeeping requirement to make separate accounting entries, as that would be meaningless delineation if not required for the purpose of calculating separate, incremental Ramapo Expansion fuel and LAUF rates.

18. Hess also asserts that the Commission erred in finding that *Wyoming* and *Sabine*, *supra*, do not apply to Algonquin's separately-determined incremental surcharge mechanism. Hess states that it cited these cases in its protest to the October 30, 2009

filing to support its argument that when a pipeline implements or modifies a tracker and true-up mechanism, it may not include in the initial true-up any under-recoveries that occurred prior to the effective date of the tariff provision. Hess argues that these cases apply to the instant case because they involve a change to the pipeline's existing fuel true-up mechanism and a proposal to apply such surcharges to a retroactive period. We disagree. There has been no change in how Algonquin is required to charge for Ramapo Expansion fuel. As discussed above, the December 21, 2006 Order directed that Algonquin include separately-stated incremental Ramapo Expansion fuel charges in its annual section 32 fuel tracker filings without requiring Algonquin to file to memorialize this filing requirement in tariff provisions. Accordingly, unlike in *Wyoming* and *Sabine*, no additional changes to the tariff were filed, or required to be filed, when Algonquin first sought to charge Ramapo Expansion shippers incremental fuel rates for the Ramapo Expansion fuel costs in its October 30, 2009 fuel tracker in compliance with the directives of the December 21, 2006 Order. Since all of the subject fuel costs were incurred after the Commission issued its directive in the December 21, 2006 Order to incrementally charge Ramapo Expansion shippers for the Ramapo Expansion fuel costs following the in-service date, there is no retroactive ratemaking issue raised by the October 30, 2009 filing. The Commission's directive in the November 30, 2009 Order requiring Algonquin to file revised tariff provisions as directed by the Commission merely served to memorialize in Algonquin's tariff the filing requirements of the December 21, 2006 Order. Their prior absence from Algonquin's tariff does not render the Commission's December 21, 2006 Order's filing requirements any less obligatory.

19. Finally, Hess argues that Algonquin's Ramapo Expansion fuel use experience is not unique to Algonquin because in other cases, such as the *ANR* case, *supra*, pipelines have had to adjust their fuel rate mechanisms to react to fuel under-recovery costs and bear the costs alone until tariff changes were approved by the Commission. Hess argues that in both the Algonquin and ANR certificate orders, the Commission did not explicitly require Algonquin or ANR to file incremental fuel rates but made clear that existing shippers could not subsidize the expansion, and stated that the expansion shippers and the pipeline alone are responsible for the expansion's fuel costs. Hess further argues that ANR filed tariff sheets implementing an incremental fuel rate and an expansion-specific fuel true-up mechanism separate from its system-wide fuel true-up mechanism, and that when ANR subsequently determined that there were additional fuel costs associated with the expansion, ANR could only propose to collect fuel on a prospective basis. Hess asserts that the same principles should apply to Algonquin's treatment of the Ramapo Expansion fuel under-recoveries. However, the ANR case is distinguishable from the instant case because in that case ANR was proposing to implement an electric power cost (EPC) storage charge for the first time in addition to the incremental fuel charge and, therefore, had to submit tariff language in order to collect the EPC storage charge. ANR itself proposed the EPC storage charge and that the tariff sheets have prospective effect. As Hess admits, the Commission did not explicitly require ANR to file incremental fuel rates. The Commission only required ANR to delineate actual fuel use and L&U

associated with the expansion in its annual fuel tracker filing and to ensure that no expansion costs are charged to existing shippers. In the instant case, there was no need for filing of additional tariff language, as there was in the ANR case to implement the EPC storage charge. The December 21, 2006 Order permitted Algonquin to use the existing tariff tracker to recover separate charges for expansion fuel and, therefore, no additional tariff changes were required.

III. Compliance Filing

A. Summary of Algonquin's Compliance Filing

20. As noted earlier herein, the November 30, 2009 Order directed Algonquin to file tariff sheets to revise section 32 of the GT&C of its tariff to clarify the separate treatment of system-wide and Ramapo Expansion fuel costs and how Algonquin will treat Ramapo expansion under- or over-recoveries. The November 30, 2009 Order also directed Algonquin to directly refund the credit sub-balance of \$791,946 in the FRQ Deferred Account to the system customers. However, we find that the Commission erred in ordering Algonquin to re-file Fourth Revised Sheet No. 40, as discussed below.

21. On December 11, 2009, Algonquin filed revised tariff sheets as required by the November 30, 2009 Order. Algonquin states that the revised tariff sheets clarify the separate treatment of the system-wide and incremental fuel costs, including fuel costs for the Ramapo Expansion Project in accordance with the December 21, 2006 Order. Proposed sections 32.2 and 32.4 of the GT&C provide that the FRP shall be separately stated and separately calculated for system services and for each incremental service. Proposed section 32.5(a) states that a separate sub-account shall be maintained in the FRQ Deferred Account for each incremental service. Finally, proposed section 32.5(c) states that Algonquin shall calculate surcharges or refunds separately for system services and for each incremental service.

22. In the November 30, 2009 Order, the Commission interpreted the workpapers submitted in the October 30, 2009 filing as reflecting the roll-in of the refund of the \$791,946 credit sub-balance of the FRQ Deferred Account into the FRPs to be applied to system customers. Accordingly, on that basis, and to comply with Algonquin's tariff's requirement that such a credit sub-balance is to be directly refunded, the Commission ordered Algonquin to re-file Fourth Revised Sheet No. 40 to change the system FRPs on that sheet to reflect a direct refund of the \$791,946 credit sub-balance to system

customers. However, upon further review, the October 30, 2009 filing actually shows that Algonquin proposed to directly refund that amount and that the proposed FRPs for system customers did not reflect roll-in of the refund as the Commission had thought. Therefore no change to the system FRPs was required to comply with Algonquin's tariff.

23. In Algonquin's compliance filing, Algonquin states that it directly refunded the credit sub-balance of \$791,946 in the FRQ Deferred Account to the system customers on December 7, 2009. Algonquin further states that the FRPs that were calculated pursuant to GT&C section 32 and reflected on Fourth Revised Sheet No. 40 in the initial filing do not include any FRQ Deferred Account surcharges or refunds, and therefore the FRPs on Sheet No. 40 now on file comply with the Commission's directive in the November 30, 2009 Order. Finally, Algonquin states that it did not include additional supporting work papers in its compliance filing because Sheet No. 40 is not being modified in this filing, and the work papers in the initial filing supporting the refund to system customers therefore remain applicable.

B. Notice

24. Public notice of Algonquin's December 11, 2009 compliance filing was issued on December 16, 2009. Protests were due as provided in Rule 211 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.211 (2009). No protests were filed.

C. Discussion

25. For the reasons set forth below, we accept the December 11, 2009 compliance filing.

26. We find that the revised tariff sheets filed by Algonquin comply with the November 30, 2009 Order by amending GT&C section 32 to clarify the separate treatment of system-wide and incremental fuel costs.

27. We find that the Commission erred in the November 30, 2009 Order in requiring Algonquin to re-file Fourth Revised Sheet No. 40. No change to the FRPs on that sheet to be applied to system customers should have been required and, therefore, we accept Algonquin's compliance filing as submitted.

The Commission orders:

(A) Rehearing of the Commission's November 30, 2009 Order is denied, as discussed above.

(B) The revised tariff sheets listed in footnote No. 1 are accepted effective December 1, 2009.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.