

141 FERC ¶ 61,160
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Philip D. Moeller, John R. Norris,
Cheryl A. LaFleur, and Tony T. Clark.

Algonquin Gas Transmission, LLC

Docket Nos. RP13-238-000
RP12-39-000
RP12-39-001

ORDER ACCEPTING AND SUSPENDING,
SUBJECT TO REFUND, TARIFF RECORD SUBJECT
TO CONDITIONS AND ESTABLISHING TECHNICAL CONFERENCE

(Issued November 28, 2012)

1. On October 31, 2012, Algonquin Gas Transmission, LLC (Algonquin) submitted a tariff record¹ pursuant to its Fuel Reimbursement Quantity (FRQ) provisions. The filing was protested. For the reasons discussed below, the Commission will accept and suspend the tariff record, to be effective December 1, 2012, subject to refund and to the outcome of the issues raised in Algonquin's last Fuel Reimbursement proceeding in Docket Nos. RP12-39-000 and RP12-39-001. Those issues and the issues raised in the instant proceeding will be addressed in the technical conference established by this order.

Background

2. Each year Algonquin makes an annual FRQ filing to update the Fuel Reimbursement Percentages (FRPs) on its system. In its 2011 Fuel Reimbursement proceeding in Docket No. RP12-39-000, Algonquin submitted a tariff record² pursuant to its FRQ provisions contained in section 32 of its General Terms and Conditions (GT&C). The tariff record reflected Algonquin's proposed FRP for the calendar period beginning December 1, 2011, and its allocation of the surcharge amounts for the July 31, 2011 balance of the FRQ deferred account. Algonquin also submitted its actual fuel use and

¹ Algonquin Gas Transmission, LLC's FERC NGA Gas Tariff, Algonquin Database 1, 12., Fuel Reimbursement Percentages, 3.0.0.

² Algonquin Gas Transmission, LLC's FERC NGA Gas Tariff, Algonquin Database 1, 12., Fuel Reimbursement Percentages, 2.0.0.

lost and unaccounted for gas (LAUF) data associated with service on its Ramapo Expansion Project, as previously required by the Commission.³

3. Section 32.1 of Algonquin's tariff exempts backhaul transactions from charges for the fuel Algonquin uses in its operations. Until Algonquin's HubLine/East to West Project (E2W Project) went into service on November 1, 2010, gas flows on Algonquin's Mainline were always from west to east, and Algonquin accordingly treated all east-to-west mainline transactions as exempt backhaul transactions. However, the E2W Project included piping modifications at the Hanover Compressor Station in Morris County, New Jersey to permit reverse flow of gas along Algonquin's entire mainline.⁴ Therefore, in the Docket No. RP12-39-000 filing, Algonquin proposed to treat east-to-west mainline transactions as forward hauls subject to its fuel charges.

4. Repsol Energy North America (Repsol) protested Algonquin's treatment of the east-to-west transactions, for various reasons, arguing that the Commission should reject Algonquin's fuel rates for east-to-west mainline transactions on its system and direct Algonquin to reinstitute the fuel charge exemption for east-to-west mainline transactions. In response, Algonquin argued that, among other things, Repsol's protest was a collateral attack on issues that had already been raised and rejected by the Commission in the E2W certificate proceedings.⁵ Algonquin stated that in the E2W Certificate Order the Commission held that, after completion of the E2W Project, transactions under contracts for service on the Algonquin Mainline that were previously defined as backhauls would be subject to fuel charges.

5. By order issued on November 30, 2011,⁶ the Commission agreed with Algonquin that the issues raised by Repsol had been discussed and ruled on in the E2W Certificate

³ See *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). The Commission authorized Algonquin to render service under its Ramapo Expansion Project and required Algonquin to delineate actual fuel use and LAUF associated with the Ramapo Expansion Project service in its annual fuel tracker filings under section 32 of the GT&C of its tariff to ensure that only expansion shippers be assessed fuel costs attributable to expansion service. 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 Nov. 26, 2008).

⁴ See *Algonquin Gas Transmission, LLC*, 130 FERC ¶ 61,011, at PP 3 and 39-40 (2010) (E2W Certificate Order), authorizing the E2W Project.

⁵ *E2W Certificate Order*, 130 FERC ¶ 61,011 at P 40.

⁶ *Algonquin Gas Transmission, LLC*, 137 FERC ¶ 61,169 (2011).

Order. The Commission noted that the E2W Certificate Order determined that Algonquin's gas tariff defines backhaul as "the movement of gas from a Point of Receipt to a Point of Delivery such that the contractual direction of movement on the mainline is at all times and at all points along the path in a direction opposite to the actual flow of gas in the pipeline."⁷ (Emphasis added). The E2W Certificate Order then held that, because the actual flow of gas on certain parts of Algonquin's mainline will at times be west to east and at other times east to west after completion of the E2W Project, "the contractual direction of movement will not be opposite to the actual flow of gas at all times and at all points along the contractual path."⁸

6. The Commission determined that Algonquin had demonstrated that gas flows from both east to west and from west to east and reemphasized that, as stated in the E2W Certificate Order, because the actual flow of gas will not be opposite to the actual flow of gas at all times and at all points along the contractual path, those transactions that previously would have been defined as a backhaul pursuant to Algonquin's tariff no longer meet the definition for a backhaul and are appropriately subject to fuel charges. Therefore, we rejected Repsol's protest and accepted Algonquin's tariff record to be effective December 1, 2011, as proposed.

7. On December 30, 2011, Repsol requested rehearing of the November 30, 2011 Order and on January 17, 2012, Algonquin filed an answer to Repsol's rehearing request. On August 10, 2012, the Commission Staff issued a Data Request to get additional information in order to have a more complete record. Algonquin submitted its response and Repsol filed comments. Both parties then submitted a second round of comments. The proceeding remains pending.

Details of the Instant Filing

8. On October 31, 2012, Algonquin submitted a revised tariff record pursuant to its FRQ provisions contained in section 32 of its GT&C, requesting that the proposed tariff be accepted effective December 1, 2012.⁹ Algonquin's filing reflects its proposed FRP for the calendar period beginning December 1, 2012, and its allocation of the surcharge amounts for the July 31, 2012 balance of the FRQ Deferred Account. In compliance with

⁷ See Algonquin Gas Transmission, LLC's FERC NGA Gas Tariff, Algonquin Database 1, 1., Definitions, 3.0.0.

⁸ E2W Certificate Order, *supra*, P 40.

⁹ Algonquin, pursuant to 18 C.F.R. § 154.7(a)(9) (2012), filed a motion to place the rates into effect in the event the Commission accepts, suspends and permits the rates to go into effect on the proposed effective date.

Commission requirements, this filing also includes, in Appendix C, actual fuel use and LAUF data associated with the Ramapo Expansion Project service.

9. The proposed FRPs reflect: (1) for system customers an increase of 0.10 percent (from 1.00 percent to 1.10 percent) for the Winter Period and a decrease of 0.01 percent (from 0.93 percent to 0.92 percent) for the Spring, Summer and Fall periods; and (2) for incremental Ramapo customers a decrease of 0.26 percent (from 2.16 percent to 1.90 percent) for the Winter Period and an increase of 0.27 percent (from 1.60 percent to 1.87 percent) for the Spring, Summer, and Fall periods. Algonquin states that it calculated these FRPs utilizing projections of both Company Use Gas and throughput quantities based on the actual data for the twelve month period ended July 31, 2012.

10. Algonquin also includes in this filing the calculation of the FRQ Deferred Account allocation pursuant to section 32.5 of the GT&C, which provides that Algonquin will calculate surcharges or refunds designed to amortize the net monetary value of the balance in the FRQ Deferred Account at the end of the previous accumulation period. Algonquin states that under section 32.5(c) of the GT&C, the surcharge or refund is based on the allocation of the FRQ Deferred Account balance as of July 31, 2012 over the actual quantities during the 12-month accumulation period ending July 31, 2012. In addition, Algonquin explains that it maintains a separate sub-account in the FRQ Deferred Account for each incremental service as required by Commission order and calculates separate surcharges and refunds for the system service and each incremental service. Algonquin states that, consistent with the Commission's order on the Ramapo Expansion Project, the actual fuel use and LAUF attributable to the Ramapo Expansion Project service is delineated and assigned directly to Ramapo Expansion Project customers for surcharge or refund.

11. For the current FRQ accumulation period (August 1, 2011 through July 31, 2012), Algonquin states that the FRQ Deferred Account resulted in a net debit balance of \$1,991,614.14. Algonquin explains that the allocation of the balance between system customers and Ramapo Expansion Project customers yields a debit sub-balance of \$1,011,334.96 to be surcharged to Algonquin's system customers and a debit sub-balance of \$980,279.18 to be surcharged to Ramapo Expansion Project customers. Algonquin states that the work papers contained in Appendix B to the filing show the monthly accrual of the FRQ Deferred Account balance. Pursuant to section 32.5(c) of Algonquin's GT&C, the FRQ surcharges are due within 60 days of the Commission's acceptance of this filing. Algonquin states that additional carrying charges will be included for the period from November 1, 2012, to the payment date.

Public Notice, Interventions and Protests

12. Public notice of the filing was issued on November 1, 2012. Interventions and protests were due as provided in section 154.210 of the Commission's regulations.¹⁰ Pursuant to Rule 214,¹¹ all timely motions to intervene and any unopposed motion 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.

13. On November 13, 2012, Repsol filed a protest concerning Algonquin's treatment of east-to-west transactions in this filing. On November 20, 2011, Algonquin filed an answer to Repsol's protest. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept Algonquin's answer because it provides a more complete record in this proceeding.

14. Repsol continues to oppose the application of Algonquin's system-wide fuel charges to east-to-west transportation transactions on Algonquin's Mainline, including those originating from the HubLine facilities.¹² Repsol adheres to its position presented in Docket Nos. RP12-39-000 and RP12-39-001 that there is no basis to impose fuel charges on transportation transactions involving gas delivered to the Algonquin Mainline in the easternmost portion of its system. Repsol requests the Commission to make the outcome of this proceeding subject to the outcome of its request for rehearing in Docket Nos. RP12-39-001 and RP12-39-000. Repsol continues its request that transactions involving gas received in the eastern part of the system, such as off HubLine, must continue to be treated as fuel-exempt backhauls just as they were treated prior to the E2W Project.

15. Repsol states that Algonquin began imposing fuel charges on gas delivered on the easternmost portion of its system after the E2W Project based on the assertion that the Hanover Compressor Station would become bi-directional as part of the E2W Project and then be used to move gas in a east-to-west direction along the entire length of the Mainline. Repsol argues that it has demonstrated, in the Docket Nos. RP12-39-000 and RP12-39-001 proceedings, that because of the increased gas volumes from the Marcellus region, gas in fact has continued to flow in a west-to-east direction at least in the eastern

¹⁰ 18 C.F.R. § 154.210 (2012).

¹¹ 18 C.F.R. § 385.214 (2012).

¹² The HubLine facilities include a 29.4 mile, 24 inch pipeline extending from Weymouth, Massachusetts, to an interconnect with Maritimes & Northeast Pipeline L.L.C.'s Phase III facilities in Beverly, Massachusetts.

portion of the Algonquin system, just as it did prior to the E2W Project. Therefore, Repsol maintains that because fuel is not expended on the system to move gas from east to west in the eastern portion of the system Algonquin should continue to exempt gas from fuel charges that is delivered in the eastern portion of its system.

16. Repsol submits that the factual circumstances underlying its request for rehearing in the prior proceeding continue to support its requested relief. Repsol argues that Algonquin's own expansion plans make clear that Marcellus gas deliveries in the western part of the system will only increase to levels greater than what exists today, thereby maintaining the west-to-east direction of flow on the Mainline that prevailed prior to the E2W Project and that continues today. Repsol states that Algonquin's parent company, Spectra Energy, confirms that it is planning a 450 MMcf/day expansion along the Mainline to accommodate the transportation of more Marcellus supplies from the western portion of the Algonquin system to the market area in the eastern portion of the system. Repsol asserts that this serves to confirm what is an established fact, that Algonquin's Mainline by operation of the compressor stations located along its length, flows from west to east and that transportation involving gas received in the eastern portion of the system remain backhauls that should be treated as fuel exempt, as they were prior to the E2W Project.

17. Algonquin responds that Repsol's arguments are an attempt to re-litigate the Commission's decision in the E2W Certificate Order and that its reliance on its pleadings in last year's FRQ proceeding demonstrates that no new issues are present in 2012 compared to 2011. Algonquin states that no party has requested the Commission to delay action on the instant filing and that neither the customers nor the pipeline will be well served by any suspension or delay in implementing the 2012 revised fuel rates. Therefore, Algonquin argues that the Commission should accept the 2012 FRQ filing, without condition or modification, and permit the FRPs to go into effect on December 1, 2012, as requested.

Discussion

18. The Commission has reviewed the instant filing and the pleadings in the instant proceeding. The Commission has also reviewed Algonquin's response to the August 10, 2012 Data Request in Docket Nos. RP12-39-000 and RP12-39-001 and the parties' additional comments and positions in the prior proceeding. We find that it is not possible to determine, at this juncture, whether Algonquin's proposed FRP, its allocation of the surcharge amounts for the balance of the FRQ Deferred Account, and its actual fuel use and LAUF data are just and reasonable. We find that additional information is needed to review Algonquin's proposal, particularly as it relates to charging its proposed fuel reimbursement percentages to transactions that were previously backhaul transactions. In the E2W Certificate Order, the Commission stated:

Because the actual flow of gas on certain part of Algonquin's Mainline will at times be west to east and at other times east to west after completion of ... the E2W Project, the contractual direction of movement will not be opposite to the actual flow of gas at all times and at all points along the contractual path. Therefore, *to the extent that transactions under contracts that previously would have been defined as backhauls... no longer meet the definition for backhauls*, those transactions will be subject to fuel charges pursuant to the fuel reimbursement provisions of Algonquin's tariff. (*Emphasis added*).

It is not clear whether the direction of gas flows on all parts of Algonquin's system have changed, such that certain transactions previously treated as backhaul transactions no longer qualify as backhauls. Further, it is not clear whether the existing definition of backhaul in Algonquin's tariff, requiring that the contractual direction of movement on the mainline be opposite to the actual direction of gas flow "at all times and at all points along the path" continues to be just and reasonable, based on current circumstances on Algonquin's system. Algonquin and the other parties should be prepared to discuss these issues at the technical conference.

19. A technical conference will afford the Commission Staff and the parties to the proceeding an opportunity to discuss the issues raised by Algonquin's proposal, including but not limited to the issues raised in the Docket Nos. RP12-39-000 and RP12-39-001 proceedings.

Suspension

20. The Commission finds that Algonquin's proposed tariff record has not been shown to be just and reasonable, and may be unjust, unreasonable, and unduly discriminatory or otherwise unlawful. The Commission's policy regarding rate suspensions is that rate filings generally should be suspended for the maximum period permitted by statute where preliminary study leads the Commission to believe that the filing may be unjust, unreasonable, or that it may be inconsistent with other statutory standards.¹³ It is recognized, however, that shorter suspensions may be warranted in circumstances where suspensions for the maximum period may lead to harsh and inequitable results.¹⁴ Such circumstances exist here, where Algonquin is making the instant filing pursuant to a tracking mechanism in its tariff. Therefore, the Commission will exercise its discretion to suspend the tariff record for a shorter period and conditionally accept and suspend, subject to refund, the proposed tariff to take effect on December 1, 2012, subject to the

¹³ See *Great Lakes Gas Transmission Co.*, 12 FERC ¶ 61,293 (1980) (five-month suspension).

¹⁴ See *Valley Gas Transmission, Inc.*, 12 FERC ¶ 61,197 (1980) (one-day suspension).

conditions of this order, the outcome of the technical conference established by this order and further order of the Commission.

The Commission orders:

(A) Algonquin's proposed tariff record listed in footnote 1 is accepted and suspended to be effective December 1, 2012, as proposed, subject to refund, the conditions of this order, the outcome of the technical conference and further order of the Commission.

(B) The Commission's Staff is directed to convene a technical conference to address the issues raised by Algonquin's filings in the instant proceeding and the proceedings in Docket Nos. RP12-39-000 and RP12-39-001 and report the results of the conference to the Commission within 120 days of the date this order issues.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.