

146 FERC ¶ 61,054
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

January 30, 2014

In Reply Refer To:
Algonquin Gas Transmission, LLC
Docket No. RP13-1040-000

Steven E. Hellman, Esq.
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Dear Mr. Hellman:

1. On July 18, 2013, the Commission issued an order,¹ which found that Algonquin Gas Transmission, LLC (Algonquin) had correctly followed the Fuel Reimbursement Quantity (FRQ) provisions of its tariff in both its 2011 and 2012 FRQ filings. Specifically, the Commission held that Algonquin had correctly determined that east-to-west transactions using Mainline delivery points should no longer be treated as exempt backhaul transactions, including transactions originating at the far eastern end of its system in Beverly, Massachusetts, where its HubLine interconnects with Maritimes and Northeast Pipeline, LLC. However, pursuant to section 5 of the Natural Gas Act (NGA), the Commission established a hearing to investigate and determine whether Algonquin's tariff provisions concerning exemptions from its fuel charges continue to be just and reasonable.

2. On December 18, 2013, Algonquin filed a Stipulation and Agreement (Settlement) in the above-captioned proceeding. On December 30, 2013, Commission Trial Staff filed comments in support of the Settlement. No other comments were filed. On January 10, 2014, the Presiding Administrative Law Judge certified the Settlement to the Commission as uncontested.²

¹ *Algonquin Gas Transmission, LLC*, 144 FERC ¶ 61,038 (2013).

² *Algonquin Gas Transmission, LLC*, 146 FERC ¶ 63,003 (2014). This certification also provides a description of the proceedings.

3. Article I provides the substantive terms of the Settlement concerning the allocation of fuel use and lost and unaccounted for gas among Algonquin's customers during the term of the Settlement. That allocation method will result in somewhat lower fuel charges for transactions using the Beverly receipt point and delivery points on Algonquin's Mainline, than for other Mainline transactions. This article specifies that Algonquin will submit revised tariff records reflecting the implementation of the terms of the Settlement within ten (10) days following the issuance of the Commission's final Order approving the Settlement, not subject to rehearing or appeal. No changes will be made to the applicable FRQ of zero for backhauls or qualifying transactions on the HubLine as set forth in section 32.1 of the General Terms and Conditions of Algonquin's tariff. In addition, a limited rate moratorium provision, allowing conditional NGA section 4 and section 5 actions either by Algonquin or by any other participant, is included at Section 1.4 of Article I.

4. Article I further specifies that prior to the third anniversary of the effective date of the Settlement, Algonquin will schedule a meeting among all participants to discuss matters pertaining to the Settlement. In advance of the meeting, Algonquin will provide all participants with system flow data in the same spreadsheet format that is provided throughout the instant proceeding, and updated to reflect current flows. Algonquin has further agreed to provide any other relevant data that are reasonably requested.

5. Article II states the effective date of the Settlement, and provides the terms of the Settlement will continue for four years from the effective date.

6. Article III describes the effect of the approval of the Settlement, including the fact that the approval terminates the proceeding.

7. Article IV contains several covenants of the Settlement participants regarding actions they will take in supporting the Settlement before the Commission.

8. Article V establishes that the applicable standard of review for any future modification of the Settlement shall be the most stringent standard permissible under applicable law.

9. Because Article V provides that the standard of review for changes to the Settlement is "the most stringent standard permissible under applicable law," we clarify the framework that would apply if the Commission were required to determine the standard of review in a later challenge to the Settlement.

10. The *Mobile-Sierra* "public interest" presumption applies to an agreement only if the agreement has certain characteristics that justify the presumption. In ruling on whether the characteristics necessary to justify a *Mobile-Sierra* presumption are present,

the Commission must determine whether the agreement at issue embodies either: (1) individualized rates, terms, or conditions that apply only to sophisticated parties who negotiated them freely at arm's length; or (2) rates, terms, or conditions that are generally applicable or that arose in circumstances that do not provide the assurance of justness and reasonableness associated with arm's-length negotiations. Unlike the latter, the former constitute contract rates, terms, or conditions that necessarily qualify for a *Mobile-Sierra* presumption. In *New England Power Generators Association v. FERC*,³ however, the D.C. Circuit determined that the Commission is legally authorized to impose a more rigorous application of the statutory "just and reasonable" standard of review on future changes to agreements that fall within the second category described above.

11. The Commission finds that the Settlement is fair and reasonable and in the public interest and therefore, we approve the Settlement pursuant to Rule 602(g), 18 C.F.R. § 385.602(g) (2013). Approval of the Settlement does not constitute acceptance of, or precedent regarding any principle or issue in this proceeding. Algonquin must file the requisite tariff records consistent with section 1.2 of the Settlement. This letter terminates Docket No. RP13-1040-000.

By direction of the Commission.

Kimberly D. Bose,
Secretary.

³ *New England Power Generators Ass'n, Inc. v. FERC*, 707 F.3d 364, 370-371 (D.C. Cir. 2013).