154 FERC ¶ 61,269
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Norman C. Bay, Chairman;
Cheryl A. LaFleur, Tony Clark,
and Colette D. Honorable.

Algonquin Gas Transmission, LLC | Docket No. RP16-618-000

ORDER ACCEPTING AND SUSPENDING TARIFF RECORD AND ESTABLISHING A TECHNICAL CONFERENCE

(Issued March 31, 2016)

1. On February 19, 2016, Algonquin Gas Transmission, LLC (Algonquin) filed a revised tariff record[1] adding section 14.16 to its General Terms and Conditions (GT&C). Proposed GT&C section 14.16 exempts from the capacity release bidding requirements certain types of capacity releases of firm transportation by electric distribution companies (EDCs) that are participating in state-regulated electric reliability programs. Algonquin maintains that the proposal is in the public interest because it supports the efforts of EDCs to increase the reliability of supply for natural gas-fired electric generation facilities in New England and to address high electricity prices during peak periods. As discussed below, the Commission accepts and suspends the proposed tariff record to be effective the earlier of September 1, 2016 or the date specified in a further order of the Commission, subject to refund and the outcome of the technical conference established in this order.

I. Background

2. Algonquin states that, together with certain New England EDCs, it is developing the Access Northeast Project, which is currently under Pre-filing review in Docket No. PF16-1-000. The project is designed to expand the Algonquin pipeline system and develop market area storage assets to deliver, on peak days, up to 900,000 Dth per day of

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[1] Algonquin Gas Transmission, LLC, FERC NGA Gas Tariff, Algonquin Database 1, 14., Capacity Release, 7.0.0.

natural gas for electric generation markets in four identified regional zones (Connecticut, southeastern Massachusetts and Rhode Island, central and eastern Massachusetts, and Northern New England). Algonquin asserts that those zones directly connect to approximately sixty percent of New England's natural gas-fired electric generation. As part of the Access Northeast Project, Algonquin proposes to construct an LNG storage facility in Acushnet, Massachusetts to provide flexible hourly "reserved no-notice" service and to supplement supplies for natural gas-fired electric generators on cold winter days. The service will include a "fast start" service that will allow natural gas-fired electric generators to begin taking gas for up to two hours before having gas nominated to the pipeline.

3. Eversource Energy[2] has executed two precedent agreements for 20-year firm transportation and storage service on the Access Northeast Project and has filed an application with the Massachusetts Department of Public Utilities (MDPU) requesting approval of those agreements, as well as Eversource Energy's proposed Electric Reliability Service Program (ERSP).[3] Under Eversource Energy's proposed ERSP, which was developed in collaboration with National Grid, the EDCs will hire a capacity manager to administer the release of the EDCs' transportation capacity and/or gas supply to natural gas-fired electric generators located in ISO New England Inc. (ISO-NE). The release schedule will coincide with ISO-NE's Forward Capacity Market (FCM) bidding windows to allow natural gas-fired electric generators to acquire fuel capacity prior to commitments in the FCM. The remainder of the pipeline capacity will be made available to natural gas-fired electric generators in bidding windows corresponding to the traditional natural gas trading periods. Release terms would vary from one year to one day. The capacity manager will issue a Request for Proposals (RFP) from "generator pools" before each release in order to seek a prearranged replacement shipper. The responses to the RFPs will be submitted to an EDC working committee comprised of representatives from each EDC that will choose the prearranged replacement shipper for the released capacity. Capacity will be released to natural gas-fired electric generators on a "non-re-releasable" basis such that generators cannot release it once it has been acquired. In addition, the capacity manager would administer the sale of LNG to generators at market-based prices. The capacity manager must make capacity available

[2] Eversource Energy includes NSTAR Electric Company and Western Massachusetts Electric Company.

[3] *See* Petition of NSTAR Electric Company and Western Massachusetts Electric Company each d/b/a/ Eversource for Approval of Gas Infrastructure Contracts with Algonquin Gas Transmission Company for the Access Northeast Project, D.P.U. 15-181 (filed Dec. 18, 2015) (Eversource Energy MDPU Petition).

to natural gas-fired electric generators before releasing any capacity to the secondary market generally. The revenues collected from the capacity releases and LNG sales would be returned to EDC customers to offset the costs of the pipeline capacity.

4. Eversource Energy's precedent agreements for the Access Northeast Project require Algonquin to receive Commission approval of a tariff provision, as proposed in this proceeding, that would allow the EDCs to release their capacity on a priority basis to natural gas-fired electric generators under a state-approved electric reliability program.[4] If the Commission does not approve such a tariff provision, Eversource Energy has the right to terminate its participation in the project.[5] Algonquin also states that the EDCs require approval from their regulators for cost recovery related to the acquisition of pipeline capacity.[6] Algonquin states that during those proceedings, the state regulators will consider the mechanism by which natural gas-fired electric generators will acquire and pay for the capacity to ensure that electric reliability benefits are realized by the regional power grid in which the EDC is located.

5. The Commission's current pipeline capacity release program is designed to permit expeditious and flexible releases, in a transparent and not unduly discriminatory manner, to the shipper placing the highest value on the capacity.[7] To this end, the Commission generally requires that a firm shipper (releasing shipper) sell its capacity by offering it for bid on the pipeline's website, with the capacity awarded to the highest bidder. The Commission permits releasing shippers to choose prearranged replacement shippers who must match the highest bid submitted in order to retain capacity. The Commission, however, has exempted pre-arranged deals of less than 31 days from the bidding requirement. The Commission does not permit re-release of capacity under the 31-day exemption to the same replacement shipper unless the re-release occurs 28 days after the original release.[8]

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[4] *See* Eversource Energy MDPU Petition at Exh. EVER-JGD-3.

[5] *See Id.*

[6] Algonquin Transmittal at 6.

[7] *See* 18 C.F.R. § 284.8 (2015).

[8] The Commission also exempts pre-arranged deals of more than one year at the maximum rate from bidding.

6. In Order No. 712,[9] the Commission also exempted capacity releases made as part of an asset manager arrangement (AMA) from the prohibition on tying and from the bidding requirements.[10] In order to be eligible for the bidding exemption for AMAs, the release must have a condition obligating the asset manager to either deliver gas to, or purchase gas from, the releasing shipper for up to five months of each year. Order No. 712 further exempted releases made as part of state-approved retail access programs from bidding. The Commission did this to permit local distribution companies (LDCs), which already had long-term firm transportation contracts to serve the state's load, to provide this capacity to the unbundled marketers that would now be serving load in that state.

7. In Order No. 809,[11] the Commission stated that it was open to considering requests for waiver of its capacity release regulations on a case-by-case basis, where it is shown that such a waiver would be in the public interest, for example by assisting natural gas-fired generators in obtaining access to firm transportation service in a transparent and not unduly discriminatory manner.

II. Algonquin's Filing

8. As required by its precedent agreements with Eversource Energy, Algonquin's instant filing proposes to permit prearranged releases of firm transportation capacity contracted by EDCs to an asset manager and/or to electric generators providing electric generation to the wholesale electric market serving the EDC as part of a state-regulated electric reliability program, without subjecting those releases to the capacity release bidding requirements. The proposed tariff revision provides as follows:

> 14.16 Customers Participating in State-Regulated Electric Reliability Programs

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[9] *Promotion of a More Efficient Capacity Release Market*, Order No. 712, FERC Stats. & Regs. ¶ 31,271, 123 FERC ¶ 61,286 (2008), *order on reh'g*, Order No. 712-A, FERC Stats. & Regs. ¶ 31,284, 125 FERC ¶ 61,216 (2008), *order on reh'g*, Order No. 712-B, 127 FERC ¶ 61,051 (2009).

[10] The current four exemptions from bidding are set forth in 18 C.F.R. § 284.8(h) (2015).

[11] *Coordination of the Scheduling Processes of Interstate Natural Gas Pipelines and Public Utilities*, Order No. 809, 80 Fed. Reg. 23,197 (Apr. 24, 2015), FERC Stats. & Regs. ¶ 31,368 (cross-referenced at 151 FERC ¶ 61,049, at P 146) (2015), *order on reh'g*, 152 FERC ¶ 61,212 (2015).

> Releases pursuant to a state-regulated electric reliability program designed to provide pipeline transportation that will be utilized by the replacement shipper to provide electric generation to the wholesale electric market serving the electric distribution company will be exempt from the bidding requirements of Section 14 of the General Terms and Conditions of this FERC Gas Tariff in the following circumstances:
>
> (a) A release by an electric distribution company to an asset manager when the asset manager is required by the release to use the released capacity to carry out the electric distribution company's obligations under the state-regulated electric reliability program.
>
> (b) A release by an electric distribution company, or an agent or asset manager for that electric distribution company, when the replacement shipper is required by the release to provide electricity to the market serving the electric distribution company.
>
> All other releases by the electric distribution company, or asset manager or agent for that distribution company, will be subject to any applicable bidding requirements of Section 14 of the General Terms and Conditions of this FERC Gas Tariff.
>
> Algonquin has no responsibility or liability for determining whether a Customer is in compliance with its state-regulated electric reliability program.

9. Algonquin asserts that natural gas pipeline infrastructure to supply regional power generation in New England is critically constrained during the winter months resulting in comparatively higher electric prices and challenges to electric reliability in the region. For example, Algonquin states that essentially no interruptible service has been scheduled on the Algonquin system for the past three years. Algonquin also asserts that natural gas-fired generators do not have sufficient incentives to purchase year-round firm transportation and may be required to pay higher prices for either delivered supply or secondary market capacity during peak periods. Algonquin contends that its proposed tariff changes will facilitate the release of firm capacity obtained by EDCs through state-regulated electric reliability programs for use by electric generators, which in turn will support regional generation of electricity to be delivered to the regional power grid for the benefit of the EDCs' ratepayers. Algonquin maintains that the proposal is in the public interest because it supports the efforts of EDCs to increase the reliability of supply for natural gas-fired electric generation facilities in New England and to address high electricity prices during peak periods.

10. Algonquin states the Commission has previously allowed exemptions from the bidding requirements, including to the extent that the capacity is released pursuant to a state-regulated retail access program and "is committed to be used for its original purpose, to serve the LDC's customers."[12] Algonquin states that the Commission similarly should exempt from its bidding requirements those releases made pursuant to a state-regulated electric reliability program. Algonquin states that, as with a retail access program, capacity released pursuant to a state-regulated electric reliability program would be committed to its original purpose, i.e., benefitting retail electric ratepayers that are supporting the initial subscription for such capacity by EDCs through the state-regulated cost-recovery mechanism. Further, Algonquin states that the Commission has authorized releases to asset managers without bidding. Similarly, the state-regulated electric reliability programs will likely entail releases to asset managers who will further release the capacity for the benefit of the EDC releasing shippers and their ratepayers.

11. Algonquin states that, while its proposal is directly related to both Algonquin's Access Northeast Project and to recent filings by Eversource Energy and National Grid before the MDPU, the tariff revisions are not limited to any specific state electric reliability program. Algonquin also states that the general tariff reference to state-regulated electric reliability programs is appropriate to encompass various state programs with the same stated goal of enhancing electric reliability by supporting the development of additional natural gas infrastructure. To assist the Commission, Algonquin submits that state-regulated electric reliability programs will have many of the following characteristics: (1) the programs would be statewide, and possibly regional, and would utilize preferably one, but possibly more, asset managers to administer the program and capacity acquired by participating electric distribution companies for a fixed fee; (2) the capacity will be managed to ensure reliability in the regional power grid over the winter design season; (3) the programs will favor releases to regional generators owning or operating natural gas-fired generation plants directly or indirectly through their agents; and (4) to the extent capacity is not needed by the generators, the capacity would be released, subject to applicable bidding requirements of Section 14 of the GT&C, and recallable under defined circumstances to ensure the capacity would be available when additional generator demand arises.

12. Algonquin proposes that the revised tariff record filed herein become effective on April 1, 2016. In the event the Commission suspends the proposed tariff changes for five months and sets the filing for hearing or technical conference, Algonquin requests that the Commission issue a final order before the end of the five month suspension

[12] Algonquin Transmittal at 6 (citing Order No. 712, 123 FERC ¶ 61,286 at P 198).

period. Algonquin requests that the Commission approve the proposed tariff changes expeditiously to facilitate review of the electric reliability programs (and Access Northeast Project precedent agreements) that are currently in front of the New England state commissions.

III. Public Notice, Intervention and Protests

13. Public notice of Algonquin's filing was issued on February 22, 2016. Interventions and protests were due as provided in section 154.210 of the Commission's regulations.[13] Pursuant to Rule 214,[14] all timely-filed motions to intervene and any unopposed 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. Comments were filed by the following: Eversource Companies;[15] National Grid EDCs;[16] National Grid LDCs;[17] New England LDCs;[18] Repsol Energy North America Corporation (Repsol); Sequent Energy Management, L.P. (Sequent); and Consolidated Edison Company of New York, Inc. and Orange and Rockland Utilities, Inc. (Con Edison/O&R). Protests were filed by the following: the Massachusetts Attorney General (Massachusetts AG); Conservation Law Foundation; ENGIE Gas & LNG, LLC (ENGIE); ConocoPhillips Company and Direct Energy Business Marketing, LLC (Indicated Shippers); Exelon Corporation and

[13] 18 C.F.R. § 154.210 (2015).

[14] 18 C.F.R. § 385.214 (2015).

[15] Eversource Companies include NSTAR Electric Company, Public Service Company of New Hampshire, and Western Massachusetts Electric Company.

[16] National Grid EDCs include Massachusetts Electric Company and Nantucket Electric Company d/b/a National Grid.

[17] The National Grid LDCs include the Brooklyn Union Gas Company d/b/a National Grid NY, KeySpan Gas East Corporation d/b/a National Grid, Boston Gas Company, and Colonial Gas Company.

[18] The New England LDCs include: Bay State Gas Company d/b/a Columbia Gas of Massachusetts; Connecticut Natural Gas Corporation; Liberty Utilities (New England Natural Gas Company) Corp. d/b/a Liberty Utilities; Middleborough Gas & Electric Department; NSTAR Gas Company d/b/a Eversource; Northern Utilities, Inc.; City of Norwich, Department of Public Utilities; The Southern Connecticut Gas Company; and Yankee Gas Services Company d/b/a Eversource.

NextEra Energy Resources, LLC (Exelon/NextEra); and Calpine Energy Services, L.P., Dynegy Marketing and Trade, LLC, and PSEG Energy Resources & Trade, LLC (Joint Protesters).

14. On March 17, 2016, Algonquin, Eversource Companies, and National Grid EDCs each filed an answer to the comments and protests filed in this proceeding. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2015), prohibits an answer to a protest or answer unless otherwise ordered by the decisional authority. We accept the answers filed by Algonquin, Eversource Companies, and National Grid EDCs as they have provided information that assisted us in our decision-making process.

A. Opposing Comments and Protests

15. The parties protesting Algonquin's filing request that the Commission either summarily reject the proposal or suspend the proposal for the maximum period and convene a technical conference. Several of those parties also argue that the exemption Algonquin is requesting should be considered in the context of a rulemaking rather than an individual pipeline tariff proceeding.

16. More specifically, several parties argue that Algonquin's filing is premature and that the Commission should refuse to consider Algonquin's proposal until a state-regulated electric reliability program has been approved or until Algonquin is able to provide greater detail about its proposal.[19] Although Algonquin states that the main purpose of its proposal is to support the EDCs participating in state electric reliability programs in New England, several parties note that there does not yet exist a state-approved electric reliability program in New England.[20] The Massachusetts AG states that it is unclear whether the kind of electric reliability programs claimed as the basis for Algonquin's proposal are legal under the Massachusetts law and whether the EDCs' gas transportation contracts are in the public interest. Similarly, ENGIE states that there is currently no contract proposal before the Connecticut Public Utility Regulatory Authority and while a contract has been filed with the New Hampshire Public Utility Commission (NH PUC), the NH PUC has yet to determine its own authority to review such contracts. Several parties also argue that Algonquin's proposal contains few details on what an

[19] Massachusetts AG Protest at 3-4; Indicated Shippers Protest at 2; Exelon/NextEra Protest at 10-11; and Joint Protesters Protest at 4-9.

[20] *See, e.g.*, ENGIE Protest at 6-7 and Joint Protesters Protest at 4.

appropriate state-regulated reliability program would need to include to qualify for the proposed exemption.[21]

17. Several parties argue that Algonquin's proposal is preferential and unduly discriminatory.[22] For example, Exelon/NextEra contend that Algonquin's proposal will result in undue discrimination between natural gas-fired generators on Algonquin that are given the benefit of non-biddable, subsidized capacity and natural gas-fired generators that are connected to other pipelines and therefore, ineligible for rate-payer subsidized preference. They argue that the proposal will also result in undue discrimination between those natural gas-fired generators that have made firm fuel arrangements by contracting for firm pipeline capacity without subsidies and those natural gas-fired generators that have not made firm fuel arrangements, but will be offered subsidized pipeline capacity.

18. Indicated Shippers argue that the Algonquin proposal would subsidize natural gas-fired generation by allowing the natural gas-fired generators to procure capacity at a subsidized rate, and that such preferential treatment for natural gas-fired generators violates Commission's policy of not favoring one type of electric generators over others and avoiding undue preference among generation options. Indicated Shippers also argue that Algonquin's proposal would provide some shippers with preferential treatment even though other shippers may be willing to pay more than the price of the preferentially released, non-biddable capacity. Indicated Shippers argue that this withholding of released capacity from the general market may drive the cost of capacity even higher. Conservation Law Foundation argues that the instant proposal would provide additional market subsidy for certain natural gas generators to the detriment of demand response aggregators in New England.

19. Several parties argue that, unlike state-sponsored natural gas retail access programs, Algonquin's proposal does not justify a bidding exemption for capacity releases.[23] Indicated Shippers state that in this case there is no retail consumer choice that would increase competition in the retail market or any other market and there is no stranded capacity due to decreased retail customer demand. Similarly, the Conservation Law Foundation argues that the same limitations on competitive options for retail natural

[21] *See, e.g.*, Con Edison/O&R Comments at 3-4 and Exelon/NextEra Protest at 10-11.

[22] Exelon/NextEra at 6-8; Indicated Shippers at 8-9; and Joint Protesters Protest at 6-8.

[23] Exelon/NextEra Protest at 12-13; Conservation Law Foundation Protest at 3-4; Indicated Shippers Protest at 8-9; and Joint Shippers Protest at 13-15.

gas customers do not exist in the EDC context. It states that, rather, the requested waiver would interfere with the competitive operation of the electricity market in New England. Indicated Shippers also argue that, because Algonquin's proposal does not appear to place a purchase or delivery requirement on the capacity/asset manager, Algonquin's proposal may significantly change requirements for an asset management arrangement without the benefit of rulemaking and public comment.

20. Joint Protesters argue that the Commission adopted the retail access program exemption in 2008 long after many states had implemented such programs, and in response to potential problems presented for those programs by the lifting of price caps on short-term capacity releases. Joint Protesters state that, in contrast, there exist no state-level electric reliability programs. Joint Protesters also point out the Commission adopted the exemption for natural gas retail access programs after engaging in an industry-wide rulemaking process. They contend that it is vital that the specifics and implications of any proposed electric reliability-related exemptions be carefully scrutinized through the same type of industry-wide rulemaking.

21. Several parties contend that Algonquin's proposal is not necessary to increase the reliability of supply for natural gas-fired electric generation facilities in New England or to address high electricity prices during peak periods.[24] Joint Protesters argue that existing electric reliability is adequately maintained via existing pipeline, LNG and dual-fuel capabilities, and ISO-NE's strict capacity performance requirements. Joint Protesters also point out that the Access Northeast Project would improve the availability of gas supply in the region, with or without the proposed capacity release exemption, as conceded by Eversource Energy in testimony before the MDPU.[25] Similarly, the Conservation Law Foundation argues that Algonquin's proposal is unnecessary as ISO-NE's Winter Reliability Program and Pay for Performance program have already resulted in the reduction of wholesale prices and improved system reliability. The Conservation Law Foundation also argues that Algonquin's proposal would not only force EDC customers to pay for firm pipeline capacity, but also would expose them to significant risk of stranded pipeline capacity, as the generating system shifts over the next twenty years to renewable generation resources and to reduced net demand through demand response and energy efficiency improvements. It argues that the requested pipeline capacity release waiver will shift the stranded cost risk from generators to retail customers, which is contrary to the goal of energy market restructuring in New England.

[24] *See, e.g.,* Conservation Law Foundation Protest at 1-2 and Exelon/NextEra Protest at 8.

[25] Joint Protesters Protest at 8 (citing Prepared Direct Testimony of James G. Daly, MDPU Docket No. D.P.U. 15-181 at 74).

A few parties also note the multiple shippers option that the Commission approved in October 2015 as another means for contracting capacity while sharing the cost of firm capacity.[26]

22. Several parties contend that Algonquin's proposal will interfere with the interstate pipeline capacity markets.[27] Indicated Shippers argue that this proposal will result in artificially lowering the interstate pipeline capacity price in the secondary market for some, while others may pay more because the amount of available capacity in the secondary market would be artificially constrained, resulting in false price signals in the market.

23. Several parties argue that Algonquin's proposal will artificially suppress power prices.[28] Joint Protesters state that Algonquin's proposal is part of a larger effort to artificially lower the price of natural gas transportation service paid by natural gas-fired generators with the intent to artificially suppress wholesale electricity prices in New England. Joint Protesters argue that such manipulation of the secondary market for pipeline capacity constitutes impermissible interference in ISO-NE's wholesale energy market.[29] Exelon/NextEra argue that the subsidies to electric generators will depress

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[26] *See, e.g.*, ENGIE at 7. *See also Algonquin Gas Transmission, LLC*, Docket No. RP15-1118-000 (September 10, 2015) (delegated letter order approving proposal to allow multiple shippers the ability to share pipeline capacity by entering into a single firm service agreement pursuant to Rate Schedules AFT-1 or AFT-CL and consistent with Order No. 809).

[27] Exelon/NextEra Protest at 13; Indicated Shippers Protest at 9-11; Joint Protesters Protest at 13-15; and Sequent Comments at 3.

[28] *See, e.g.*, Exelon/NextEra Protest at 4-6 and Joint Protesters Protest at 11-13.

[29] Joint Protesters at 13 (citing *Cal. Indep. Sys. Operator Corp.*, 142 FERC ¶ 61,191, at P 28 (2013) (explaining that "the use of zero price bids could have the unintended effect of depressing the market clearing prices in the [] markets, thus adversely affecting other market participants"); *ISO New England Inc.*, 135 FERC ¶ 61,029, at P 14 (2011) (finding that subsidized new entry "creates a significant design issue for the FCM; all other things being equal, it suppresses the clearing price below competitive levels"), *on reh'g*, 138 FERC ¶ 61,027 (2012); *New York Indep. Sys. Operator, Inc.*, 122 FERC ¶ 61,211, at P 103 (2008) ("While a strategy of investing in uneconomic entry and offering it into the capacity market at a low or zero price may seem to be good for customers in the short-run, it can inhibit new entry, and thereby raise price and harm reliability, in the long-run."), *on reh'g*, 124 FERC ¶ 61,301 (2008), *on reh'g*, 131 FERC ¶ 61,170 (2010)).

wholesale market prices in ISO-NE because they will be reflected in the preferred generators' locational marginal pricing for energy sales and their Forward Capacity Market de-lists.

B. Supporting Comments

24. Algonquin's proposal is supported by parties comprising EDCs[30] and LDCs[31] in the New England region. They assert that, particularly during the winter months, interstate natural gas pipeline infrastructure in New England is severely constrained. They further assert that limited construction of gas pipeline expansions has increasingly and significantly lagged behind a rapidly growing demand for natural gas to fuel electric generation in the ISO-NE region.

25. Eversource Companies and National Grid EDCs represent that to remediate the adverse impact on natural gas-fired electric generators of constrained pipeline conditions, they have signed precedent agreements supporting the construction of pipeline infrastructure projects, specifically Algonquin's Access Northeast Project and Tennessee Gas Pipeline's Northeast Direct Project. They represent that their commitment to the Access Northeast Project is conditioned on Algonquin's proposal. They assert that such tariff provisions and waivers are necessary to support the viability of the electric reliability service programs that both Eversource Companies and National Grid EDCs have proposed and supported before state regulatory commissions in Massachusetts and New Hampshire. They represent that such programs will provide the framework for increased reliability of natural gas-fired electric generation and ultimately contribute to more stable electricity prices in New England.

26. Eversource Companies, National Grid EDCs, and National Grid LDCs believe that the Commission has the authority to find that the public interest supports Algonquin's proposal in light of Commission precedents allowing exemptions from capacity release bidding requirements for state retail access programs and asset manager releases where capacity is committed to its original purpose - to serve retail customers. Moreover, they believe that Order No. 809 signaled the Commission's willingness to consider proposals to enhance the reliability of natural gas-fired electric generation service. National Grid EDCs add that the proposal supports the state statutory obligation of EDCs to provide adequate, safe, and reliable electric power deliveries.

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[30] Eversource Companies and National Grid EDCs.

[31] National Grid LDCs and New England LDCs.

C. **Answers**

27. In its answer, Algonquin argues that the Commission can and should grant the requested limited exemption and accept the tariff filing in this proceeding without notice and comment rulemaking. Algonquin states that it is not proposing any change that would require rulemaking procedures, i.e., add a new exemption of general applicability to section 284.8 of the Commission's regulations or modify any existing Commission regulation. Algonquin also states that its proposed tariff revision will be applicable only on its system and to its customers. Therefore, Algonquin maintains that it is appropriate for the Commission to consider the merits and approve the proposal in this proceeding.

28. Algonquin also argues that although the protests and comments seek additional information regarding the state-regulated electric reliability programs, such information is extraneous to the considerations in this proceeding. Algonquin claims that the specific details regarding implementation of the state-regulated electric reliability programs are not relevant to the Commission's determination of whether the proposed tariff records are just and reasonable. Algonquin further argues that since the parameters of the state-regulated electric reliability programs are, and will be subject to public hearing and consideration in state proceedings, the participants in this proceeding and other stakeholders can raise their concerns in those proceedings. Thus, the Commission can, and should, evaluate the proposal without considering additional information regarding the details of state-regulated electric reliability programs. To the extent the Commission orders a technical conference, Algonquin requests that the Commission clearly define the issues to be considered and specifically exclude from consideration the details of the state-regulated electric reliability programs and the pricing and other terms of such capacity releases.

29. Algonquin also argues that the Commission should reject claims that this filing is unnecessary or premature. Algonquin maintains that its filings demonstrate that market conditions in New England support the need to address electric reliability. Algonquin points out that ISO-NE recently restated electric reliability challenges and concerns in its 2016 Regional Electricity Outlook, identifying inadequate pipeline infrastructure as a cause of electric reliability concerns, increased air emissions during winter, and price volatility.[32] Algonquin notes that even after experiencing much of the relatively warm winter 2015-16 in the Northeast, ISO-NE reiterated that "gas pipelines are constrained during high demand periods, particularly winter."[33] Algonquin also states that although

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[32] Algonquin Answer at 9 (citing ISO-NE, 2016 Regional Electricity Outlook at 11) (ISO-NE 2016 Outlook).

[33] *Id.* (citing Gordon van Welie, ISO-New England, State of the Grid: 2016 at 9 (Jan. 26, 2016)).

ISO-NE has implemented programs to address electric reliability concerns, ISO-NE in its 2016 Outlook still identified natural gas industry solutions as necessary to address the reliability concerns.[34]

30. Algonquin believes that protesters' claims regarding electric price suppression likewise should be rejected. Algonquin states that there is a close correlation between natural gas prices and power prices, which means that access to lower-cost supply of natural gas would be expected to result in reduced wholesale electric prices. However according to Algonquin, the issue in this proceeding is whether Algonquin may implement a tariff mechanism requested by the EDCs, which if approved, would facilitate a supply response to seasonally high market prices. Algonquin asserts that allegations by intervenors that there is a scheme to artificially suppress prices in the ISO-NE market are purely speculative and without basis and not an issue in this proceeding. Rather, according to Algonquin, the purpose of its proposal is to facilitate timely transfers of pipeline capacity to generators during peak periods, which may not be possible if such transfers were subject to bid procedures. Furthermore, Algonquin suggests that following the protesters' position to the logical conclusion would preclude any infrastructure development or service innovation that may result in reduced prices. Algonquin insists that it cannot be true that the only acceptable solutions to electric reliability concerns would be those that maintain or increase prices.

31. Algonquin counters the claims that the proposed tariff record will distort price signals for new pipeline capacity. Algonquin states that the price signals for new pipeline capacity are currently broken due to the separate ownership of generation and distribution. Algonquin states that, here, EDCs that have requested this proposed tariff amendment are providing the signal to Algonquin to expand its system through their market support for the Access Northeast Project. Algonquin states that the EDCs are thus taking on the traditional public utility duty to plan for system reliability, which includes ensuring that there is sufficient pipeline transportation capacity available to meet peak demand. Algonquin also asserts that claims that the proposal will "remove" 0.9 Bcf/day of pipeline capacity from the secondary market are incorrect. Algonquin states that without the EDC support for the Access Northeast Project, it likely will not construct the Access Northeast Project (or will construct less than 0.9 Bcf/day). Algonquin states that even if these EDCs remove capacity from the secondary natural gas market, such

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[34] Algonquin Answer at 9-10 (citing Gordon van Welie, ISO-New England, State of the Grid: 2016 at 14 (Jan. 26, 2016) (stating that "it will take natural gas infrastructure improvements—some combination of pipeline, liquefied natural gas, and storage solutions— to address both reliability risks and price volatility")).

capacity will be re-released to generators or other secondary market participants, which will result in no net change to capacity available in the secondary markets.

32. Algonquin also reiterates that the capacity release mechanism proposed herein is narrowly tailored so as not to negatively affect prices in secondary capacity markets. It states that, instead, the Access Northeast Project is expected to address the need for additional capacity and reduce constraints on Algonquin's system, which will be beneficial to capacity markets.

33. Algonquin also maintains that there are similarities between the instant proposal and exemptions previously granted by the Commission. Algonquin states that capacity released pursuant to a state-regulated electric reliability program would be committed to its original purpose, i.e., benefitting retail electric ratepayers, which is similar to a justification for state-regulated natural gas retail access programs. Algonquin argues that the Commission should follow here the precedent established for retail access, which demonstrates that the Commission (i) has allowed limited exceptions from its capacity release rules to facilitate state programs,[35] (ii) has approved pipeline-specific exemptions from its capacity release rules,[36] and (iii) has granted exemptions without unduly restricting the parameters of state programs.

34. The answers filed by Eversource Companies and National Grid EDCs largely echo the arguments set forth by Algonquin in its answer and described above.

IV. <u>Discussion and Suspension</u>

35. Algonquin's proposal raises numerous issues that are best addressed at a technical conference. Therefore, the Commission directs Commission staff to hold a technical conference to examine the issues raised with regard to the instant filing. A technical conference will provide an appropriate forum to discuss the issues raised by the parties and provide further information on Algonquin's proposal.

36. At the technical conference, Algonquin and the parties should address the concerns raised in this proceeding, including those raised regarding the basis and need for the waiver. Accordingly, the Commission accepts and suspends Algonquin's proposed tariff record, to be effective the earlier of September 1, 2016 or the date specified in a

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[35] Algonquin Answer at 18 (citing Order No. 712 at P 199).

[36] *Id.* (citing Order No. 712 at P 199 (citing *Georgia Pub. Serv. Comm'n*, 110 FERC ¶ 61,048, at P 20 (2005))).

further order of the Commission, subject to refund and the outcome of the technical conference ordered herein.

<u>Suspension</u>

37. Based on a review of the filing, the Commission finds that Algonquin's proposed tariff record has not been shown to be just and reasonable, and may be unjust, unreasonable, unduly discriminatory, or otherwise unlawful. Accordingly, the Commission will accept such tariff record for filing and suspend its effectiveness for the period set forth below, subject to the conditions set forth in this order.

38. The Commission's policy regarding suspension is that tariff 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 inconsistent with other statutory standards.[37] It is recognized, however, that shorter suspensions may be warranted in circumstances where suspension for the maximum period may lead to harsh and inequitable results.[38] Such circumstances do not exist here. The Commission, therefore, accepts and suspends Algonquin's proposed tariff record, to be effective the earlier of September 1, 2016 or the date specified in a further order of the Commission, subject to refund and the outcome of the technical conference ordered herein.

<u>The Commission orders</u>:

(A) Algonquin's proposed tariff record is accepted and suspended to be effective the earlier of September 1, 2016 or the date specified in a further order of the Commission, subject to refund and the outcome of the technical conference ordered herein.

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

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

(B) The Commission Staff is directed to convene a technical conference to explore issues set forth above, and to report the results of the conference to the Commission within 120 days of the issuance of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.