156 FERC ¶ 61,151
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 FOLLOWING TECHNICAL CONFERENCE

(Issued August 31, 2016)

1. On February 19, 2016, Algonquin Gas Transmission LLC (Algonquin) proposed a new section 14.16 to its General Terms and Conditions (GT&C) to permit Electric Distribution Companies (EDCs) that contract for firm transportation capacity on Algonquin as part of a state-regulated electric reliability program to make capacity releases without complying with the Commission's capacity release bidding requirements.[1] On March 31, 2016, the Commission accepted and suspended Algonquin's filing, to be effective September 1, 2016, and established a technical conference to consider the ramifications of the filing.[2] Commission staff conducted the technical conference on May 9, 2016. For the reasons discussed below, the Commission accepts, subject to condition, part of Algonquin's tariff proposal and rejects part of the tariff proposal.[3]

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[1] 18 C.F.R. § 284.8 (2016).

[2] *Algonquin Gas Trans., LLC*, 154 FERC ¶ 61,269 (2016) (March Order).

[3] In a related filing in Docket No. EL16-93-000, NextEra Energy Resources, L.L.C. and PSEG Companies filed a complaint against ISO-New England Inc. (ISO-NE), alleging that state regulators in Massachusetts, New Hampshire, Connecticut, and Rhode Island are on the verge of implementing a manipulative scheme intended to suppress prices artificially in the wholesale energy and capacity markets in New England. Concurrent with the instant order, the Commission is issuing an order in Docket No. EL6-93-000 rejecting that Complaint without prejudice because it is not ripe

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I. Background

2. Algonquin's proposed section 14.16 to its GT&C would permit EDCs who contract for firm transportation capacity as part of a state-regulated electric reliability program to make two types of capacity releases without complying with the Commission's capacity release bidding requirements. This blanket bidding exemption would apply to capacity releases by: (1) an EDC to an asset manager who is required to use the released capacity to carry out the EDC's obligations under the state-regulated electric reliability program, and (2) either the EDC or its agent or asset manager to a replacement shipper that is required to provide electricity to the market serving the EDC. All other releases by the EDC and its agent or asset manager would be subject to any applicable bidding requirements.[4]

3. Although Algonquin's tariff proposal would apply to any capacity that an EDC may purchase as part of a state-regulated electric reliability program, Algonquin proposed the instant tariff revisions in connection with its proposed Access Northeast Project, which currently is under pre-filing review by the Commission in Docket No. PF16-1-000. In the Access Northeast Project, Algonquin, with Eversource and National Grid as part owners,[5] plans to undertake an expansion of the Algonquin pipeline system and construct an LNG storage facility in order to be able to deliver up to 900,000 Dth per day of natural gas directly to approximately sixty percent of New England's natural gas-fired electric generation.[6] This new LNG storage facility would provide flexible hourly "reserved no-notice" service and provide supplemental supplies to customers on cold winter days. The rate schedule proposed in the pre-filing proceeding includes a "fast start" service that will allow shippers to begin taking natural gas up to two hours before nominating transportation to the pipeline.

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for Commission review. *NextEra Energy Resources, L.L.C. and PSEG Companies v. ISO New England Inc.*, 156 FERC ¶ 61,150 (2016).

[4] 18 C.F.R. § 284.8 (2016).

[5] The sponsors of the project are Spectra Algonquin Holdings, LLC (Spectra), Eversource Gas Transmission LLC (Eversource), and National Grid Algonquin LLC (National Grid). Spectra and Eversource each have a 40 percent ownership interest in the project and National Grid has a 20 percent ownership interest. May 9, 2016 Technical Conference Transcript, Docket No. RP16-618-000 (Tr.), Mr. Coyle, Tr. at 104.

[6] March Order, 154 FERC ¶ 61,269 at P 2.

4. Algonquin avers that Eversource and National Grid have executed precedent agreements for 20 years of firm transportation service on the Access Northeast Project. Eversource and National Grid also have filed applications with the Massachusetts Department of Public Utilities (MDPU) requesting approval of the precedent agreements, as well as a proposed Electric Reliability Service Program (ERSP).[7] Under the ERSP program, EDCs purchasing interstate pipeline capacity will hire a Capacity Manager to administer the release of their capacity to electric generators located in the ISO-NE market area. The release schedule will coincide with the ISO-NE Forward Capacity Market (FCM) bidding windows to allow generators to acquire fuel capacity prior to commitments in the FCM. The remainder of the capacity will be made available to generators in bidding windows corresponding to the traditional natural gas trading periods. Release terms would vary from one year to one day.

5. Algonquin states that the subject precedent agreements require Algonquin to request Commission approval of a tariff provision that would allow Eversource and National Grid to release their capacity on a priority basis to electric generators under a state-approved reliability program, without posting the capacity for bidding by others. The precedent agreements also permit Eversource and National Grid to terminate those agreements if the Commission does not approve Algonquin's proposed tariff provision containing the blanket bidding exemptions.[8] Algonquin asserts that the instant tariff proposal is its attempt to carry out its obligation under the precedent agreements.

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[7] On August 16, 2016, the Massachusetts Supreme Judicial Court issued a decision holding that the MDPU has no authority to approve long-term contracts entered into by Massachusetts EDCs to purchase natural gas pipeline capacity. *Engie Gas & LNG LLC v. Dept. of Pub. Utilities*, Slip Op., Case Nos. SJC-12051 and 12052 (Aug. 16, 2016). Subsequently, on August 22, 2016 Eversource and National Grid each withdrew their respective petitions for MDPU approval of long-term contracts related to the Access Northeast Project. Docket Nos. D.P.U. 15-181 (Eversource) and D.P.U. 16-05 (National Grid). Nevertheless, the Commission addresses the merits of Algonquin's tariff proposal since it purports to apply with respect to any capacity purchased by an EDC participating in a state-approved electric reliability program, not just capacity purchased by Massachusetts EDCs.

[8] March Order, 154 FERC ¶ 61,269 at P 4 (citing Eversource Energy MDPU Petition at Exh. EVER-JGD-3).

6. In the March Order, the Commission found that Algonquin's proposal raised numerous issues that should be addressed at a technical conference.[9] Therefore, the Commission directed its staff to hold a technical conference to examine the issues raised with regard to the instant filing. Accordingly, the Commission accepted and suspended 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.[10] On May 9, 2016, the technical conference ordered in this proceeding was held, a transcript was kept of the proceeding, and participants were informed that initial comments on the technical conference would be due on May 31 with reply comments due on June 10, 2016.

7. Initial Comments were filed by Consolidated Edison Company of New York, Inc. and Orange and Rockland Utilities, Inc. (ConEd/O&J); Sequent Energy Management, L.P. (Sequent) and Tenaska Marketing Ventures (Tenaska); Algonquin Gas Transmission, LLC (Algonquin); National Grid Electric Distribution Companies (National Grid);[11] Exelon Corporation (Exelon) and NextEra Energy Resources, LLC (NextEra); Repsol Energy North America Corporation (Repsol); Indicated Shippers;[12] Electric Power Supply Association (EPSA) and New England Power Generators Association, Inc. (NEPGA); NSTAR Electric Company, Public Service Company of New Hampshire, and Western Massachusetts Electric Company (collectively, Eversource); Calpine Energy Services, L.P. (Calpine); Engie Gas & LNG LLC (Engie); The Office of the Attorney General of the Commonwealth of Massachusetts; Connecticut Public Utilities Regulatory Authority (Connecticut PURA); The United Illuminating Company (United Illuminating); Kimberly-Clark Corporation (Kimberly-Clark); and New England Local Distribution Companies (New England LDCs).[13]

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[9] The March Order also granted numerous motions to intervene. March Order, 154 FERC ¶ 61,269 at P13.

[10] March Order, 154 FERC ¶ 61,269 at PP 35-36.

[11] National Grid is Massachusetts Electric Company and Nantucket Electric Company d/b/a National Grid.

[12] In this proceeding, Indicated Shippers are ConocoPhillips Company and Direct Energy Business Marketing, LLC.

[13] 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

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8. Supporting comments were filed by Algonquin, Eversource, National Grid, United Illuminating, New England LDCs, and the Connecticut PURA. Algonquin states its filing is consistent with the Commission's statement in Order No. 809 that the Commission might be open to granting a waiver 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.[14] Algonquin states that the exemption requested is similar to the exemption from bidding the Commission granted in Order No. 712 to local distribution companies participating in state-established retail access programs designed to foster competition among independent suppliers of natural gas.[15] Algonquin maintains that the New England states likewise have unbundled electricity purchases from distribution, and that these electric reliability programs are designed to permit the electric distribution company to acquire pipeline capacity to release to the generators providing electricity.

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. Algonquin points out that ISO-NE's 2016 Regional Electricity Outlook stated that "ultimately it will take natural gas infrastructure improvements – some combination of pipeline, liquefied natural gas, and storage solution – to address both reliability risks and price volatility."[16] However, Algonquin states, natural gas-fired generators

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Norwich, Department of Public Utilities; The Southern Connecticut Gas Company; and Yankee Gas Services Company d/b/a Eversource.

[14] *Coordination of the Scheduling Processes of Interstate Natural Gas Pipelines and Public Utilities*, Order No. 809, FERC Stats. & Regs.¶ 31,368, at P 146 (2015) (citing *Georgia Pub. Serv. Comm'n*, 107 FERC ¶ 61,024, at P 36 (2004), *reh'g granted in part, denied in part*, 110 FERC ¶ 61,048, *reh'g denied*, 111 FERC ¶ 61,178 (2005), and *Promotion of a More Efficient Capacity Release Market*, Order No. 712-A, FERC Stats. & Regs. ¶ 31,284, at P 146 (2008), *order on reh'g and clarification*, Order No. 712-B, 127 FERC ¶ 671,051 (2009)).

[15] Algonquin February 16 Transmittal Letter at 6 (citing *Promotion of a More Efficient Capacity Release Market*, Order No. 712, FERC Stats. & Regs. ¶ 31,271, at P 198 (2008)).

[16] Speaker materials of Algonquin Gas Transmission Company at the Algonquin Gas Transmission Technical Conference, held May 9, 2016 under Docket No. RP16-618-000 at 17; Algonquin Comments at 5 (citing ISO-New England, *2016 Regional Electricity Outlook* at 14).

acknowledged at the technical conference that they do not have sufficient incentives to purchase year-round firm transportation, because they cannot recover the costs of that capacity. In addition, Algonquin points out that Tenaska, a natural gas marketer, stated that it makes commitments in the three- to five-year range and would be unable to hedge a pipeline contract commencing three years later with a 20-year term.[17]

10. By contrast, Algonquin states, Eversource and National Grid have entered into precedent agreements for the Access Northeast Project. Eversource and National Grid also state that their participation is the only viable way for the necessary new pipeline capacity to serve New England natural gas-fired generators to be built.

11. Algonquin, Eversource, and National Grid assert that Algonquin's proposed capacity release bidding exemption will help provide support for state commission approval of EDCs' purchase of capacity on Algonquin, including Eversource and National Grid's purchase of capacity on the Access Northeast Project. They state that the bidding exemption is necessary to ensure that the pipeline capacity purchased by EDCs, and ultimately paid for by their customers, is used for its intended purpose of supplying natural gas for electric generation, thereby increasing electric reliability and reducing price volatility. Eversource and National Grid point out that they generally intend to allocate capacity to electric generators under the ERSP through a competitive bidding process. They contend that the proposed exemption from the requirement to permit others to bid on the capacity will ensure that the economic circumstances that will influence the generators' bids will be limited to circumstances relevant to the market for gas supply to electric generators, and not to other factors.

12. The Connecticut PURA contends that Algonquin's proposed capacity release bidding exemption is in the public interest because it supports the efforts of states and EDCs to increase the amount of firm natural gas pipeline capacity under contract to serve natural gas-fired electric generators.

13. Opposing comments were submitted by parties such as Exelon, NextEra, Calpine, Engie, Repsol, Conoco Phillips, EPSA, NEPGA, Sequent, Tenaska, Kimberly-Clark, Direct Energy, Massachusetts Attorney General, and ConEd. Exelon, Calpine, and NextEra stated that, pursuant to the incentives provided by the ISO-NE FCM, they have

[17] Algonquin Initial Comments at 7. Tenaska observes that obtaining firm capacity for a 20-year term is a "mammoth commercial commitment" that entails far too much risk for a natural gas marketing firm, but it states that a three or five-year term might be workable. Tr. at p. 161.

used alternative, less costly methods to ensure reliable performance, including installation of dual fuel capacity and contractual arrangements with natural gas marketers and LNG suppliers. Calpine stated that, while Algonquin's proposed waiver would afford electric generators preferential access to firm pipeline capacity, "[m]erchant generators are not asking you for this capacity, and you need to ask yourself why."[18] Calpine asserts that electric generators in New England neither want nor need preferential access to Access Northeast Project capacity (or any other regional pipeline capacity) to ensure the reliable operation of their facilities.[19]

14. Exelon continues this theme, stating that a generator incurs the costs it needs to meet its capacity obligations at the least possible price and the generators are indicating that they do not need to buy firm capacity from Algonquin because they can use the products currently in the market and because they are investing in dual fuel capability.[20] Exelon states that as a competitive generator it does not expect a guarantee of revenues, but "it does need to have a reasonable, foreseeable market price signal" that it will be able to recover its costs.[21]

15. Others in opposition such as ConEd, Sequent, Massachusetts Attorney General, Indicated Shippers, Kimberly- Clark, and Engie argue that the tariff proposal, together with capacity release programs proposed at the state level, is premature because no state has approved a state-regulated electric reliability program, leaving unresolved crucial details, such as whether such programs are legal under state law. They state that without settled details, the Commission's evaluation process would compare unfavorably with the Commission's thorough and lengthy consideration of current bidding exemptions.

16. Those in opposition including Repsol, ConEd, Exelon, Calpine, and the Indicated Shippers, also argue that the proposal would be unduly preferential and discriminatory because such a proposal would isolate from the general bidding market a sub-market for biddable secondary capacity for the benefit of targeted generators, thereby subsidizing and giving a competitive advantage to such generators. They assert that the

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[18] Tr. at 102.

[19] Tr. at 113, 177. Mr. Adams notes that if Calpine were to make a 20-year commitment for firm capacity at $25 million a year, it would involve a half a billion dollars, which is hard to justify if a $50 million investment in a fuel oil tank would provide the same guarantee of service. *Id*. Tr. at 180.

[20] Tr. at 158.

[21] Tr. at 181.

proposal is not justified by sufficient data on constraints. Repsol and Calpine assert that Algonquin's existing and projected capacity, diverse supply sources, LNG, and alternative diesel fuel adequately meet all peak day generation needs.

II. Procedural Issues: Request for Late Intervention

17. On May 31, 2016 the Natural Gas Supply Association (NGSA) filed a motion for late intervention and initial comments on the technical conference. NGSA asserts that it represents integrated and independent energy companies that produce and market domestic natural gas, and given that Algonquin's waiver request may impact both the secondary natural gas market and the natural gas market as a whole, NGSA avers that good cause exists to grant its late motion to intervene. NGSA states that it became aware that the issues raised in this proceeding may affect its members upon the issuance of the Commission's notice setting Algonquin's proposal for technical conference on April 15, 2016 and the technical conference held on May 9, 2016. NGSA asserts that the Commission has not ruled on the instant case and that it agrees to accept the record in this case as developed to date. NGSA asserts that no disruption will result if its intervention is granted and that no party will be unduly prejudiced by such grant of intervention to NGSA at this stage in the proceeding. NGSA asserts that, given such circumstances, Commission precedent supports granting NGSA's intervention in this proceeding.[22]

18. On June 10, 2016, Algonquin filed a motion in opposition to NGSA's request for late intervention. Algonquin states that NGSA failed to provide any explanation for why it did not file a motion to intervene until 45 days after the date NGSA alleges that it became aware of its interest in this proceeding. Further, Algonquin states that NGSA fails to explain why its interest in this proceeding is not already adequately represented by other parties in this proceeding. Moreover, Algonquin asserts that this request for late intervention unfairly prejudices Algonquin and the other parties' ability to address NGSA's arguments at the technical conference held by Commission staff on May 9, 2016.

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[22] NGSA Late Motion to Intervene at 2 (citing, *UGI Sunbury, LLC*, 155 FERC ¶ 61,115, at P 9 (2016) (granting late-filed motion to intervene given movant's interest in the proceeding and the absence of disruption to the proceedings or burden to existing parties)); *Entergy Services, Inc.*, 155 FERC ¶ 61,096, at P 18 (2016) (granting late-filed motion to intervene given movant's interest in the proceeding, the early stage of the proceeding, and the absence of undue prejudice or delay); *Southwest Power Pool, Inc.*, 147 FERC ¶ 61,003, at P 16 (2014) (same).

19. The Commission's regulations set forth factors that the Commission may consider when addressing a late motion to intervene.[23] These include whether the movant had good cause for failing to file the motion within the time prescribed. Algonquin filed the instant tariff filing on February 19, 2016. The Commission noticed the filing on February 22, 2016, with interventions due by March 2, 2016. On March 31, 2016, the Commission issued the March Order which, *inter alia*, directed that a technical conference be held in this proceeding.[24] This technical conference was noticed on April 15, 2016 and May 5, 2016. The technical conference was held on May 9, 2016 and the notice establishing the comment period for the technical Conference was issued on May 12, 2016. NGSA argues that it "became aware that the issues raised in this proceeding may affect its members upon the issuance of the Commission's notice setting Algonquin's proposal for technical conference [April 15, 2016] and the technical conference subsequently held on May 9, 2016."[25]

20. The Commission finds that NGSA has failed to meet the first consideration because it gives no reason for its failure to file a motion to intervene within the prescribed time. Even if the Commission were to assume that NGSA was unaware that the interests of its members might be affected by this proceeding until the April 15, 2016 notice, that would still not provide a reason for NGSA's failure to intervene in the proceeding at that time nor does it explain its attempt to intervene on May 31, 2016, some 45 days after it concedes it was aware of the existence of the proceeding.

21. Second, the Commission considers whether the movant's interest is not adequately represented by other parties in the proceeding. NGSA states that its interest in this proceeding is in a "competitive well-functioning market for interstate natural gas transportation."[26] The Commission cannot find that this is an interest that is not shared by parties in the proceeding, which includes parties that ship and produce natural gas, such as ConocoPhillips Company. Lastly, unlike the entities in the precedent it cites in support of its late intervention, NGSA failed to file for intervention before the Commission had taken action by issuing an order in this proceeding. As set forth by the March Order, the Commission grants unopposed motions for late intervention if they miss the intervention date but file for intervention before the Commission issues an order

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[23] 18 C.F.R. § 385.214(d) (2016).

[24] March Order, 154 FERC ¶ 61,269 at PP 35-36.

[25] NGSA Late Motion to Intervene at 2.

[26] *Id.* at 1.

in the proceeding.[27] As noted, NGSA filed for late intervention after the Commission's March Order. Once again, NGSA provides no rationale for its failure to intervene until two months after the March Order and after completion of the technical conference. In sum, based upon the representations of NGSA, it simply has not shown good cause for the Commission to grant its request for late intervention.

22. On August 23, 2016, Engie filed a motion to lodge the decision of the Massachusetts Supreme Judicial Court in *Engie Gas & LNG LLC v. Dept. of Pub. Utilities*, holding that the MDPU has no authority to approve long-term contracts entered into by Massachusetts EDCs to purchase natural gas pipeline capacity. On August 24 and 26, 2016, Algonquin and Eversource, respectively, filed answers to Engie's motion to lodge. Both Algonquin and Eversource request that the Commission approve Algonquin's tariff filing, despite the Massachusetts court decision. They point out that the proposed tariff language applies to states other than Massachusetts that are also considering permitting their EDCs to purchase interstate pipeline capacity. On August 29, 2016, the Massachusetts Attorney General filed an answer to Engie's motion, stating that, after the Massachusetts court decision, Eversource and National Grid had withdrawn their petitions seeking approval of their Access Northeast Project precedent agreements and therefore there would be no Massachusetts state-regulated electric reliability program. Later on August 29, Algonquin filed an answer to the Massachusetts Attorney General's answer. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2016), prohibits an answer to a protest or answer unless otherwise ordered by the decisional authority. We are not persuaded to accept Algonquin's answer to the Massachusetts Attorney General's answer and will, therefore, reject it.

III. Discussion

23. For the reasons discussed below, the Commission rejects Algonquin's proposal to establish a blanket exemption from bidding for capacity releases to natural gas-fired electric generators serving ISO-NE by EDCs contracting for capacity under a state-regulated electric reliability program (or their agents or asset managers). However, the Commission accepts Algonquin's proposal to exempt from bidding an EDC's capacity release to an asset manager who is required to use the released capacity to carry out the EDC's obligations under the state-regulated electric reliability program.

A. Blanket Exemption

[27] March Order, 154 FERC ¶ 61,269 at P 13.

24. As we noted in Order No. 809, "the Commission is open to considering requests for waiver of its capacity release regulations and/or the shipper-must-have-title rule 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."[28] We appreciate Algonquin's and Eversource and National Grid's efforts to develop a proposal to address concerns regarding the need for gas in the New England region. However, we find, as discussed below, that Algonquin has not demonstrated that its waiver, as proposed, is just and reasonable, and for this reason, we are rejecting it here. The determination here is without prejudice to Algonquin developing other more targeted, justified proposals for consideration by the Commission.

25. The Commission's capacity release regulations generally require that capacity offered for release must be posted for bidding, and the pipeline must allocate the capacity "to the person offering the highest rate (not over the maximum rate)."[29] The Commission permits the releasing shipper to establish the terms and conditions of the release and permits the releasing shipper to choose a pre-arranged replacement shipper for its capacity. While the prearranged release must be posted for bidding, the pre-arranged replacement shipper will retain the capacity as long as it matches the highest rate bid for the capacity. In Order No. 636-A, the Commission explained that the purpose of the bidding requirement is "to give parties an opportunity to bid a higher rate so that allocative efficiency is enhanced by allotting capacity to the shipper placing the highest value on the capacity."[30] The capacity release regulations allow only four exceptions from the bidding requirement. These are: (1) releases to an asset manager under a qualifying asset management agreement; (2) releases to a marketer participating in a state retail unbundling program; (3) releases for more than one year at the maximum rate; and (4) releases for a period of 31 days or less with at least a 28-day hiatus between releases to the same shipper.[31]

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[28] Order No. 809, FERC Stats. & Regs.¶ 31,368 at P 146.

[29] 18 C.F.R. § 284.8(e) (2016) provides in pertinent part that "[t]he pipeline must allocate released capacity to the person offering the highest rate (not over the maximum rate) and offering to meet any other terms or conditions of the release."

[30] *Pipeline Service Obligations and Revisions to Regulations Governing Self-Implementing Transportation and Regulation of Natural Gas Pipelines after Partial Wellhead Decontrol*, Order No. 636-A, 57 Fed. Reg. 36,128 (Aug. 12, 1992), FERC Stats.& Regs., Regulations Preambles 1991 – 1996 ¶ 61,950 at 30,555.

[31] 18 C.F.R. § 284.8(h) (2016).

26. Algonquin has not shown that its proposed blanket exemption from bidding for all capacity releases to natural gas-fired generators by EDCs participating in undefined state-regulated electric reliability programs (or their agents or asset manager) is just and reasonable. Algonquin, Eversource, and National Grid contend that the blanket bidding exemption is necessary in order to ensure that EDCs' purchases of pipeline transportation capacity will, in fact, produce the intended benefits of increased electric reliability and reduced price volatility. They argue that, without the bidding exemption, a non-generator could be willing to pay more for the capacity than any natural gas-fired generator is willing to pay, with the result that the capacity purchased by EDCs would be used for a purpose other than serving natural gas-fired electric generation.

27. Under Algonquin's proposal, any gas-fired generator to whom EDCs release capacity would be a pre-arranged replacement shipper. Therefore, pursuant to the Commission's capacity release regulations, the gas-fired generator could retain the released capacity—consistent with the goal of the state-regulated electric reliability program—by matching the highest bid submitted by any other bidder, if any competing bids are submitted.[32] In Order No. 636-A, the Commission stated that the ability to enter into prearranged deals would enable a shipper to consummate "beneficial deals to allocate capacity" to end-users of their choice, explaining that "an LDC can negotiate a prearranged deal with an end user and that end user will receive the capacity as long as it matches the best offer."[33] These regulations seek to balance the interests of the releasing shipper in releasing capacity to a replacement shipper of its choosing while still ensuring that allocative efficiency is enhanced by ensuring the capacity is used for its highest valued use.

28. Neither Eversource nor National Grid provided a persuasive explanation for why the ability to release capacity to a pre-arranged replacement shipper under our existing regulations is not sufficient to meet their needs. Moreover, neither party sufficiently explained why a generator that needed the capacity to obtain the natural gas supplies necessary to generate electricity during a period when Algonquin's capacity is constrained would not match a higher bid.

29. National Grid points out that Eversource and it intend to use a competitive bidding process to allocate their pipeline capacity to electric generators. National Grid argues

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[32] 18 C.F.R. § 284.8(e) (2016).

[33] Order No. 636-A, FERC Stats. & Regs., Regulations Preambles 1991 – 1996 ¶ 30,950 at 30,555.

that the blanket exemption from the Commission's bidding requirements "will ensure that the economic circumstances that will influence and determine those bids will be limited to circumstances relevant to the market for gas supply to electric generators."[34] National Grid states that, if an exemption from the Commission's bidding process is not available, then it is possible that third party (i.e., non-generator) bids that would set the price of the released capacity to the prearranged electric generator could be affected by circumstances that have nothing to do with the value of natural gas supply for the electric generator. The Commission finds this argument unavailing. Bids that may be submitted by other users of natural gas would reflect the value of natural gas pipeline capacity in the market, and National Grid fails to explain why the generator should be able to obtain pipeline capacity even though it is not willing to pay for the full value of that capacity as would be established pursuant to the Commission's bidding process.

30. Algonquin and National Grid also suggest that the proposed blanket bidding exemption may be necessary to permit EDCs to make consecutive short-term releases to the same generator, because such releases cannot be accomplished under the applicable bidding timelines. Algonquin explains that, while the regulations contain a bidding exemption for releases of 31 days or less, the releasing shipper cannot make a second release to the same replacement shipper under that exemption until at least 28 days after the first release has ended. Thus, if an EDC wanted to make consecutive short-term releases to the same generator, they maintain the release would not be possible since the regulations require the pipeline to post the second release for bidding. They note that short-term capacity release bidding takes place only once each day, with releases required to be posted for bidding by 9:00 a.m. Central Clock Time (CCT) and all bidding completed by noon CCT.[35] Algonquin states that this means that an EDC could not make a consecutive day-ahead or intraday release to the same generator unless it could meet the 9:00 a.m. posting deadline for the second release, which is unlikely.[36]

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[34] National Grid Comments at 10.

[35] Algonquin Initial Comments at 10. *See* 18 C.F.R. § 284.12(a)(vi) (incorporating by reference NAESB WGQ Standard, 5.3.2 (Version 3.0, November 14, 2014, with minor corrections applied through June 29, 2015)).

[36] Algonquin points out that in Order No. 809, the Commission adopted NAESB's revised standards moving the Timely Nomination Cycle nomination deadline from 11:30 a.m. CCT to 1:00 p.m. CCT in order to "provide generators more time to acquire natural gas supply and pipeline transportation after learning their electric dispatch obligations." Since ISO-NE posts the results of its day-ahead energy market between 12:00 and 12:30 p.m. CCT, Algonquin argues that pre-arranged deals consummated after generators learn of their ISO-NE commitments could not be made subject to bidding for

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31. Algonquin's proposal, however, is not narrowly tailored to consecutive short-term releases, nor did Algonquin, Eversource, or National Grid contend that such releases would be important to their programs or are being contemplated under the state reliability programs.[37]

32. Algonquin, Eversource, National Grid, and New England LDCs contend that Algonquin's proposed exemption from bidding for capacity releases by EDCs as part of a state-regulated electric reliability program is similar to the exemption from bidding that Order No. 712 approved for releases to marketers participating in a state-regulated retail access program.[38] They argue that the Commission adopted the exemption to enable LDCs to release capacity to natural gas marketers that would serve the LDCs' customers pursuant to state-approved retail choice programs because those programs promoted the Commission's goal of enhancing competition. They argue that Algonquin's instant proposal would enable EDCs to release capacity to electric generators so as to further the Commission's policy of assisting natural gas-fired generators in obtaining access to firm transportation service. They contend that, in both cases, the bidding exemption allows the capacity to be used for its original purpose. They state that, in the case of state-regulated natural gas retail access programs, the LDCs originally purchased the capacity to provide sales service to their customers, and the bidding exemption allows the LDCs to release that capacity to marketers who will use the capacity for that same purpose. They state that in the case of state-regulated electric reliability programs, EDCs are purchasing the capacity to provide natural gas-fired electric generators reliable access to natural gas,

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the same gas day.

[37] In response to a request by Commission staff, Algonquin provided data showing that only four intra-day releases had occurred since 2011. Post-Technical Conference Compliance Filing of Algonquin (May 31, 2016). Eversource and National Grid intend that the majority of their releases under their proposed Electric Reliability Service program be longer term releases of a month or more. See Attachment No.1 to Initial Comments of Exelon, setting forth the Capacity Release Schedule contained in the ERSP filed with the MDPU by Eversource. Under their proposal, the EDCs would release up to 60 percent of their total capacity for monthly or annual terms. Moreover, most daily releases would be awarded two business days before the gas flow day. Algonquin May 31, 2016 Response to Technical Conference at 2. Indeed, National Grid states that short-term releases by EDCs that could not be accomplished in a manner consistent with the Commission's existing bidding rules "are likely to be rare." National Grid Initial Comments at 10.

[38] Order No. 712, FERC Stats. & Regs. ¶ 31,271 at PP 199-201.

and the bidding exemption would ensure that the capacity can be used for that purpose and for the benefit of the consumers who ultimately pay for it, without the capacity being lost to other entities willing to pay more.

33. The Commission finds that the state-regulated electric reliability programs for which Algonquin proposes a bidding exemption are not sufficiently similar to the state regulated retail access programs for which Order No. 712 granted a bidding exemption to justify a similar exemption here. As a number of opponents of Algonquin's proposal point out, Order No. 712 exempted releases to marketers participating in state-regulated retail access programs for the following reasons:

> [S]tate retail unbundling is consistent with the Commission's overall goals in Order No. 636 of improving the competitive structure of the natural gas industry by promoting access to the interstate pipeline transportation grid and the wellhead market so that willing buyers and sellers can meet in a competitive, national market to transact the most efficient deals possible. Therefore the Commission does not wish to discourage state retail unbundling programs that give retail end-users a greater choice of suppliers from whom to purchase their gas.[39]

34. Algonquin's proposed blanket bidding exemption for releases to natural gas-fired generators as part of state-regulated electric reliability programs does not meet the standard of "improving the competitive structure of the natural gas industry" as formulated by the Commission in granting bidding exemptions for state retail access programs. While state-regulated retail access programs increase competition in the retail natural gas sales market by giving retail customers access to a greater number of natural gas suppliers, Algonquin's proposed bidding exemption provides no similar benefit. As the Commission indicated in Order No. 809, it would be open to waivers of its capacity release regulations that provide generators access to firm transportation service in a transparent and not unduly discriminatory manner.[40] However, the blanket bidding waiver requested by Algonquin would allow potential undue discrimination, as it would unnecessarily shield electric generators from the full effect of market forces acting on the natural gas price by excluding non-generators from the bidding process. This constricts the natural gas market and lessens the number of competitors, in contrast to the Commission's action in responding to state-regulated retail access programs, which had the effect of increasing competition in the natural gas marketplace.

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[39] Order No. 712, FERC Stats. & Regs. ¶ 31,271 at P 199 (quoting *Georgia Pub. Serv. Comm'n*, 110 FERC ¶ 61,048 at P 20).

[40] Order No. 809, 151 FERC ¶ 61,049 at P 145.

35. The Commission concludes that Algonquin, Eversource, and National Grid have not shown that the proposed blanket exemption from bidding for capacity releases to natural gas-fired generators by EDCs participating in a state-regulated electric reliability program (or their agents and asset managers) is just and reasonable. They have not shown why such a broad exemption is necessary in order for EDCs or their agents and asset managers to have a sufficient ability to direct their capacity releases to natural gas-fired generators in order to accomplish the goal of increasing electric reliability.

B. Asset Manager Exemption

36. As set forth above, Algonquin also proposes tariff language that would grant an exemption from the capacity release bidding rules to permit an EDC to release its capacity to an asset manager who would manage the capacity on behalf of the EDC. The Commission finds that this part of Algonquin's proposal is just and reasonable. In Order No. 712, the Commission found that asset management arrangements (AMA) provide significant benefits to a variety of participants in the natural gas and electric marketplaces and to the secondary natural gas market itself. By permitting capacity holders to use third party experts to manage their natural gas supply arrangements and their pipeline capacity, AMAs provide for lower gas supply costs and more efficient use of the pipeline grid. Asset managers have resources and market knowledge not necessarily available to natural gas capacity holders, which allow asset managers to better maximize the value of the releasing party's assets and manage the associated risk.[41] Accordingly, Order No. 712 amended the Commission's regulations to exempt releases to an asset manager under a qualifying asset management agreement from the bidding requirements.[42]

37. However, under the terms of the Commission's regulations, EDCs do not currently qualify for the use of asset management agreements. To qualify for the AMA bidding exemption provided in the regulations, the release must contain a condition that the releasing shipper may call upon the replacement shipper to deliver to, or purchase from, the releasing shipper a volume of natural gas up to 100 percent of the daily contract demand of the released transportation capacity on every day of a period set forth in the regulations, though it need not actually do so.[43] An EDC cannot qualify for the AMA

[41] Order No. 712, FERC Stats. & Regs. ¶ 31,271 at P 122.

[42] The exemption is set forth in section 284.8(h)(1)(i) of the Commission's regulations. 18 C.F.R. §284.8(h)(1)(i) (2016).

[43] 18 C.F.R. § 284.8(h)(3) (2016). The Commission's regulations require that "if the capacity release is for a period of one year or less, the asset manager's delivery or purchase obligation must apply on any day during a minimum period of the lesser of

(continued...)

bidding exemption under this standard, because it does not itself use or obtain natural gas. Thus, its capacity release cannot contain the necessary condition that it may call upon the replacement shipper to deliver natural gas to the EDC or purchase natural gas from it.

38. Nevertheless, we see no reason an EDC participating in a state-regulated electric reliability program should not be able to obtain the benefits of AMAs. The ability of EDCs to hire third party experts to manage their capacity should provide the same benefits to the natural gas marketplace as the hiring of such experts by any other shipper. For example, an EDC could hire a natural gas marketer or several such marketers who are expert both in maximizing the value of pipeline capacity and in the marketing and sale of natural gas, thereby providing for more efficient use of the capacity contracted for by the EDCs. Providing a waiver to enable EDCs to release their capacity to an asset manager pursuant to an AMA is therefore consistent with the goals of Order No. 712. Therefore, we accept Algonquin's proposal to exempt from bidding an EDC's capacity release to an asset manager "when the asset manager is required to use the released capacity to carry out the [EDC's] obligations under the state-regulated electric reliability program."[44] However, as discussed above, we have rejected Algonquin's proposed blanket exemption from bidding for capacity releases by EDCs and asset managers to natural gas-fired generators. Therefore, any asset manager to whom an EDC releases its capacity must comply with all applicable capacity release bidding requirements. In approving this waiver, however, we will require Algonquin to remove the proposed statement in GT&C section 14.16 that it "has no responsibility or liability for determining whether a Customer is in compliance with its state-regulated electric reliability program." As with all capacity release regulations, Algonquin is responsible for ensuring compliance with the provisions of its tariff, including verification that a release qualifies for any of the bidding exemptions.

The Commission orders:

Algonquin's filing is rejected, in part, and accepted, in part, subject to the condition that it files revised tariff records consistent with the discussion above within 30 days of the issuance of this order.

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five months (or 155 days) or the term of the release." 18 C.F.R. § 284.8(h)(3)(i) (2016). However, "if the capacity release is for a period of more than one year, the asset manager's delivery or purchase obligation must apply on any day during a minimum period of five months (or 155 days) of each twelve month period of the release, and on five-twelfths of the days of any additional period of the release not equal to twelve months." 18 C.F.R. § 284.8(h)(3)(ii) (2016).

[44] Proposed section 14.16(a) of Algonquin's GT&C.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.