FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

November 10, 2005

In Reply Refer To:
Algonquin Gas Transmission, LLC
Docket No. RP06-31-000

Algonquin Gas Transmission, LLC
P.O. Box 1642
Houston, Texas 77251-1642

Attention: Gregg E. McBride
Vice President, Rates & Economic Analysis

Reference: Elimination of Penalty Limitations

Dear Mr. McBride:

1. On October 14, 2005, Algonquin Gas Transmission, LLC (Algonquin) filed revised tariff sheets[1] to remove the cap on penalties to be assessed against shippers who violate the emergency situation, curtailment or the unauthorized contract overrun provisions of the General Terms and Conditions of its FERC tariff. The Commission accepts the tariff sheets effective November 14, 2005, as proposed.

2. Notice of Algonquin's filing was issued on October 19, 2005. Interventions and protests were due as provided in section 154.210 of the Commission's regulations, 18 C.F.R. § 154.210 (2005). Pursuant to Rule 214, 18 C.F.R. § 385.214 (2005), all timely motions to intervene and any 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 the proceeding or place additional burdens on existing parties. Northeast Energy Associates, A Limited Partnership (Northeast Energy) filed a protest to the filing.

[1] First Revised Sheet Nos. 570 and 571 and 558 to FERC Gas Tariff, Fifth Revised Volume No. l.

3. Algonquin's tariff currently provides that if a shipper violates the emergency situation provision (section 24.6), the curtailment order provision (section 24.8), or the unauthorized contract overrun provision (section 31.2), the penalty will be equal to three times the daily *Gas Daily* posting for the High Common price for the "AGT Citygate" posting per Dth on the day the violation occurred. The penalties are, however, capped at $25 per Dth for violations of the emergency situation and curtailment order provisions, and $15 per Dth for violations of the unauthorized contract overrun gas provision.

4. In the instant case, Algonquin expresses concern that an economically rational customer will choose to pay a penalty charge rather than purchase gas if the penalty charge is less that the price of gas, a situation which is possible in light of today's gas prices. Algonquin notes that the New York Mercantile Exchange natural gas futures closing price for January 2006 (as of October 11, 2005) was $14.40, and that the Commission has acknowledged that natural gas prices could rise more. Algonquin thus concludes that the $15 or $25 caps may not provide sufficient incentive to preserve the integrity of its system and therefore proposes to eliminate the cap on the penalty without making any other changes to the penalties provisions. Algonquin states that the removal of the current penalty caps will not affect Algonquin's recourse rates or otherwise lead to Algonquin incurring any financial gain because Algonquin's tariff provides for the crediting of all such penalties to non-offending customers.

5. Northeast Energy protests Algonquin's proposal, arguing that the revised penalty provisions are contrary to established Commission policy as enunciated in Order No. 637 that a pipeline may include a penalty in its tariff only to the extent necessary to prevent the impairment of reliable service, and any such penalty must be "narrowly designed." Northeast Energy argues that a penalty level of three times an index price is unreasonably punitive, and that the Commission has found in, *e.g.*, *Williston Basin Interstate Pipeline Co.*,[2] that a penalty of two times a relevant index price is sufficient to deter undesirable behavior by shippers. Northeast Energy further argues that Algonquin bears the burden of showing that its alternative to a capped penalty structure is just and reasonable and narrowly tailored to deter conduct detrimental to its system operations.

6. The penalties in this case are designed to provide an economic disincentive to shippers that might take actions which could threaten the operational integrity of the pipeline in the absence of such penalties. For a penalty to be effective, it must be at a level sufficient to make its incurrence economically undesirable when compared with other choices. Given the current increased gas prices and the real possibility of even higher prices in the near future, Algonquin's current penalties are capped at levels that may no longer act as a deterrent for actions that might threaten pipeline operations. As to the question of whether two times the index price is a more reasonable level than three times the index price, as Northeast Energy argues, the case that Northeast Energy cites

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[2] 98 FERC ¶ 61,212, at 61,810 (2002).

for support, *Williston Basin*, supports a more nominal penalty only for non-critical periods. Algonquin's current penalty structure for emergency situations, curtailment orders, and unauthorized overruns is for critical periods, thus Algonquin has met its burden of showing that the revisions are just and reasonable. These tariff provisions state that they are in effect to protect the operational integrity of the pipeline and penalties are not assessed unless the pipeline's operational integrity is threatened. Penalties are assessed only on those shippers which take actions that may compromise pipeline operations, and penalty revenues are credited to shippers which abide by the relevant tariff provisions. In addition, the Commission has recently approved similar provisions on other pipelines as just and reasonable levels for penalties.[3] The Commission therefore accepts Algonquin's proposal to remove the cap on penalties as a reasonable action to preserve the operational integrity of the pipeline.

7. The Commission accepts Algonquin's revised tariff sheets effective November 14, 2005, as requested.

By direction of the Commission.

Magalie R. Salas,
Secretary.

[3] *Viking Gas Transmission Company*, 112 FERC ¶ 61,098 (2005); *Midwestern Gas Transmission Company*, 112 FERC ¶ 61,345 (2005); *accord Northwest Pipeline Corp.*, 100 FERC ¶ 61,347 P 77 (2002) (approving tariff containing Operational Flow Order penalty equal to the greater of $10.00/Dth or four times the highest absolute price reflected in the local daily price survey with no tolerance bands).