

122 FERC ¶ 61,131  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;  
Sudeen G. Kelly, Marc Spitzer,  
Philip D. Moeller, and Jon Wellinghoff.

NSTAR Gas Company

v.

Docket No. RP07-395-000

Algonquin Gas Transmission, LLC

ORDER ON COMPLAINT AND OFFER OF SETTLEMENT

(Issued February 14, 2008)

1. On April 9, 2007, NSTAR Gas Company (NSTAR) filed a complaint against Algonquin Gas Transmission, LLC (Algonquin) alleging that Algonquin's potential curtailment of service on its J-2 pipeline in order to inspect the pipeline in compliance with the U.S Department of Transportation (DOT) inspection requirements violates Algonquin's tariff and firm service contract with NSTAR. Following the filing of the complaint, Algonquin and NSTAR participated in Commission-sponsored mediation in an effort to resolve the proceeding.

2. On October 16, 2007, Algonquin and NSTAR filed a Stipulation and Agreement pursuant to Rule 602 of the Commission's regulations<sup>1</sup> purporting to resolve all issues raised by the complaint. The settlement is opposed by several parties. As we will discuss below, the proposed settlement contemplates actions requiring separate authorizations from the Commission which cannot be issued in this proceeding and which will affect entities that are not parties to this proceeding and/or were excluded from the negotiations leading to the proffered settlement. Nevertheless, we find that the proposal set forth in the Stipulation and Agreement between Algonquin and NSTAR generally provides a reasonable framework for addressing the problems highlighted by NSTAR's complaint and we will preliminarily approve the proposal, as modified, pending the filing and Commission consideration of appropriate applications.

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<sup>1</sup> 18 C.F.R. § 385.602 (2007).

## **Background**

3. The Pipeline Safety Improvement Act of 2002 (Pipeline Safety Act)<sup>2</sup> and DOT Integrity Management Plan regulations<sup>3</sup> require pipeline companies to assess and mitigate threats to pipeline integrity in High Consequence Areas, which are defined based upon the density of population close to the pipeline. Algonquin completed its Integrity Management Plan in December 2004. As required by statute, all of Algonquin's baseline inspections must be completed by December 2012.

4. Algonquin's J-2 pipeline is a 14-inch diameter pipeline that extends two miles off of Algonquin's J-1 mainline system from the Mystic Street Station in Medford, Massachusetts to two delivery points located in Cambridge, Massachusetts. NSTAR, a local distribution company providing service to 260,000 retail customers in eastern Massachusetts, is the only firm customer with a firm primary delivery point on the J-2 pipeline. KeySpan Delivery Companies (KeySpan) and Hess Corporation (Hess) have secondary delivery points on the J-2 facilities and Mirant Kendall LLC and Mirant Energy Trading LLC (Mirant) use the facilities on an interruptible basis.

5. Based on the age and urban location of the J-2 pipeline and on the non-exclusive list of risk factors mandated by Congress, Algonquin has identified the J-2 pipeline as "high-risk" and has prioritized assessment of the facility.<sup>4</sup> NSTAR states in its complaint that it was advised by Algonquin that inspection and possible repair of the J-2 pipeline may require that Algonquin curtail service to NSTAR for up to five weeks.<sup>5</sup> The J-2

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<sup>2</sup> Pub. L. No. 107-355, 116 Stat. 2985 (2002).

<sup>3</sup> See 49 C.F.R. Part 192, Subpart Q, § 192.901, *et seq.* (2007).

<sup>4</sup> The J-2 pipeline was installed in 1953 as part of Algonquin's mainline system. Replacements were installed in 1987 and 1991. Sections of the pipeline have been in operation for approximately 53 years. External Corrosion Direct Assessment – Pre-Assessment Final Report for the J-2 Lateral Pipeline System, at 1.

<sup>5</sup> NSTAR filed a motion for leave to file an answer and an answer to Algonquin's answer. Algonquin filed an answer to NSTAR's answer. Section 213(a) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a), prohibits answers to answers unless otherwise permitted by the decisional authority. We will allow the answers as they have assisted us in our decision-making. In its June 11, 2007 supplement to its answer to NSTAR's complaint, Algonquin states technological advances will allow in-line inspection of the J-2 pipeline while the pipeline remains in service, albeit with reduced flow rates. Algonquin has also evaluated the use of Stopple fittings to allow the installation of the pig launcher and receiver on the J-2 pipeline without an interruption of service. Algonquin states that this newer technology will most likely result in minimal operating restrictions during the inspection phase. In the unlikely event one of the pigs

pipeline is the only supply source for NSTAR customers in Somerville and Cambridge, Massachusetts. Algonquin has been in consultation with NSTAR over the last several years regarding the upcoming pipeline integrity inspection and potential curtailment.

### **The Complaint**

6. In its complaint, NSTAR alleges that Algonquin's potential significant curtailment of service on its J-2 pipeline in conjunction with its integrity management program violates Algonquin's tariff and firm service contract with NSTAR. NSTAR states that its Cambridge district is home to 45,000 natural gas customers, most of which are served from deliveries on the J-2 pipeline. In addition to residential consumers, the J-2 pipeline serves schools, hospitals and universities with research laboratories that rely on natural gas service to maintain critical experiments and scientific inquiries. Additionally, NSTAR states it serves various private facilities that engage in pharmaceutical research, genetic experimentation, and other forms of scientific exploration. It states that these facilities rely upon a reliable supply of natural gas for their critical process needs. Additionally, NSTAR asserts that there are three natural gas-fired cogeneration plants in the area that rely on gas supplies from the J-2 pipeline for electric generation. NSTAR requested that the Commission enjoin Algonquin from causing any foreseeable curtailment of service. To ensure uninterrupted service, NSTAR also requested that the Commission require Algonquin to construct a loop of the J-2 pipeline and to roll the costs of such looping into Algonquin's system-wide rate.

7. Notice of NSTAR's complaint was published in the *Federal Register* (72 Fed. Reg. 18,974) on April 10, 2007. Eighteen parties filed timely motions to intervene.<sup>6</sup> Northeast Energy Associates (Northeast) filed a motion to intervene out-of-time. Since granting late intervention at this early stage of the proceeding will not disrupt this proceeding or place additional burdens on existing parties, Northeast's late motion to intervene is granted.

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becomes lodged in the pipe during an inspection run, Algonquin anticipates the repair time necessary to cut out the pig and replace the pipe section would be from one to three days. In the event Stoppie fittings could not be used to install the launcher and receiver, a likelihood Algonquin also describes as unlikely, Algonquin maintains that would add no more than several days outage. Finally, Algonquin states that although the precise nature of any repairs will not be known until an inspection is completed, there is no reason to believe that there are any material problems on the J-2 facility that would necessitate a protracted interruption.

<sup>6</sup> All intervenors are listed in the Appendix to this order. Timely, unopposed motions to intervene are granted pursuant to Rule 214 of the Commission's regulations. 18 C.F.R. § 385.214 (2007).

8. Central Hudson Gas & Electric Corporation filed a protest stating that the Commission should deny NSTAR's request to roll the costs of a new loop into Algonquin's system-wide rates. KeySpan filed comments requesting that the Commission investigate whether there are viable alternatives to looping the J-2 pipeline and, if not, the appropriateness of NSTAR's request that the costs of such looping be rolled into Algonquin's system-wide rates. The President and Fellows of Harvard College (Harvard) state that curtailment is unacceptable and would impose significant burdens on Harvard. Similarly, the Massachusetts Institute of Technology states that curtailment would have serious consequences and that a contingency plan to prevent any gas outages should be implemented.

9. The Massachusetts Attorney General (Massachusetts) requests that the Commission determine that curtailment is not in the public interest and direct the interested parties to develop contingencies that do not involve curtailment of service. Massachusetts also requests that the Commission not find the costs of the looping proposed by NSTAR to be just and reasonable until the Commission considers whether the proposed loop is the least-cost, most practicable, and most reasonable alternative. Massachusetts also maintains that the cost of the facility should not be allocated to Algonquin's customers "if the costs are appropriately considered to be costs of operating and maintaining uninterrupted service through the Algonquin system."<sup>7</sup>

10. The City of Cambridge points out that the overriding issue in this proceeding is the implementation of a contingency plan to prevent a gas outage. It also requests that the Commission adopt an equitable cost allocation plan that recognizes the fact that customers such as the City of Cambridge have paid amply for firm service for many years and should not have to bear the burden of additional costs necessary to maintain the level of reliability for which they have contracted as NSTAR customers.

11. Algonquin filed an answer to the complaint claiming that it has a right to take the J-2 facility out of service in order to conduct required inspection, maintenance, and repair work and that such work is consistent with its firm service obligation. It stated that the plain language of section 24 of its FERC tariff allows it to curtail service to make any repairs necessary, in Algonquin's reasonable judgment, to maintain the operational integrity of its system. Moreover, it stated that section 24 allows it to "perform routine maintenance, repairs, improvements and regulatory compliance activities" and to "comply with applicable laws and regulations."

### **The Offer of Settlement**

12. On October 16, 2007, Algonquin and NSTAR filed a Stipulation and Agreement purporting to settle the issues raised by NSTAR's complaint. Under the agreement:

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<sup>7</sup> Massachusetts' Motion to Intervene at 4.

A. Algonquin would construct the J-2 loop, a two-mile long pipeline loop with an estimated cost of \$35.3 million and an estimated in-service date of September 1, 2009. The design capacity of the resultant J-2 facilities (existing pipeline and new loop) is 140,000 Dth/d.

B. Once the J-2 loop is constructed, Algonquin would provide service on the J-2 facilities (existing pipeline and new loop) only under new incremental rates, AFT-CL (J-2) or AIT-2 (J-2), under Rate Schedule AFT-CL and AIT-2.<sup>8</sup>

C. Algonquin and NSTAR would enter into a firm service agreement under Rate Schedule AFT-CL for transportation on the J-2 facilities of up to 140,000 Dth/d for a primary term of 20 years at a negotiated rate which would reflect crediting of 50 percent of the interruptible revenue on the J-2 facilities.

D. Other shippers desiring service on the J-2 facilities (including those currently accessing points on the existing J-2 line on an interruptible or secondary firm basis) would be required to sign new AFT-CL or AIT-2 service agreements and pay incremental rates.

E. Algonquin and NSTAR will take all reasonable steps to avoid any outage or interruption of service on the existing J-2 pipeline as a result of compliance with Algonquin's Integrity Management Plan (Plan). The parties anticipate that Algonquin will perform the contemplated inspection and any related repairs or maintenance on the existing J-2 line in 2008 or 2009, and note that Algonquin's Plan does not contemplate an outage on the existing J-2 pipeline in 2008 or 2009 if the J-2 loop is not placed into service. The parties agree that reductions in operating pressures and the installation/upgrading of certain natural gas regulators will be necessary if the inspection of the existing J-2 pipeline is not completed by the end of the second quarter of 2008. If the proposed loop is not in service and/or the inspection and repairs are not completed by the end of 2009, additional mitigation measures may be necessary.

F. Algonquin and NSTAR agree that costs attributable to the inspection and any related repairs or maintenance on the existing J-2 pipeline in 2008 and/or 2009 would be treated as system-wide costs and would not be charged to the new recourse incremental rates applicable to the J-2 facilities. Inspection and repair costs incurred subsequent to those now contemplated would be treated in the same way as inspection and repair costs on other Algonquin laterals. However, such

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<sup>8</sup> Presently, service on the existing J-2 facility is included under Algonquin's system-wide rates. Under the settlement, service under Algonquin's system-wide rate would no longer include transportation on the J-2 facilities.

costs will not affect the rate to be paid by NSTAR under its negotiated rate agreement.

G. After a 20 year primary term, Algonquin would seek to roll all costs of the J-2 facilities into its system-wide rates. At such time, all AFT-CL (J-2) and AIT-2 (J-2) agreements and services would terminate and other service agreements would be amended, as necessary, to move primary delivery points from the two delivery points in Cambridge to the head of the J-2 facilities at the Mystic Street Station.

### **Settlement Comments**

13. Mirant, Hess, Consolidated Edison Company of New York and Orange and Rockland Utilities (jointly Companies), KeySpan, and Massachusetts filed comments to the settlement.

14. Mirant objects to the proposal to charge an incremental rate for interruptible service on the J-2 facilities, which it contends would effectively force Mirant to pay an additional charge for the service it is currently receiving under Algonquin's system-wide rate.<sup>9</sup> Mirant argues that the settlement violates the Commission's Certificate Policy Statement<sup>10</sup> because the costs of the new loop facilities will be subsidized by existing shippers. It also contends that the settlement also violates the Commission's negotiated rate policy<sup>11</sup> because it shifts costs associated with the negotiated rate agreement between Algonquin and NSTAR to recourse rate shippers.

15. Mirant also states that the rate increase for existing shippers embedded in the settlement is prohibited by a rate moratorium which prevents Algonquin from filing a

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<sup>9</sup> Mirant states that approval of the proposed settlement will increase Mirant's annual costs for service over the J-2 facilities by \$1.7 million, which Mirant claims will equate to 20 percent of the annual cost of service associated with the new pipeline loop.

<sup>10</sup> *Certification of New Interstate Natural Gas Pipeline Facilities*, 88 FERC ¶ 61,227 (1999); *order on clarification*, 90 FERC ¶ 61,128 (2000); *order on clarification*, 92 FERC ¶ 61,094 (2000) (*Certificate Policy Statement*).

<sup>11</sup> *Alternatives to Traditional Cost-of-Service Ratemaking for Natural Gas Pipelines*, 74 FERC ¶ 61,076, *reh'g denied*, 75 FERC ¶ 61,024 (1996), *petitions for review denied and dismissed sub nom. Burlington Resources Oil & Gas Co. v. FERC*, 172 F.3d 918 (D.C. Cir. 1998) (*Alternative Rate Policy Statement*), *criteria modified, Rate Regulation of Certain Natural Gas Storage Facilities*, 71 Fed. Reg. 36,612 (June 27, 2006), FERC Statutes and Regulations ¶ 31,220 (2006) (Order No. 678), *order on clarification and reh'g*, 117 FERC ¶ 61,190 (2006) (Order No. 678-A).

new section 4 rate case prior to January 1, 2009. Mirant also claims that the rate structure negotiated between Algonquin and NSTAR is unduly discriminatory because Mirant has not been offered a discount or negotiated rate under the new rate schedule.

16. Hess argues that it will be harmed economically and operationally by the settlement and that the settlement should be modified to ensure that existing service is not degraded and to remove any unduly discriminatory and preferential advantages for NSTAR. Hess argues that the settlement reduces existing AFT-1 shippers' rights on the existing J-2 facility and increases the costs for AFT-1 shippers using existing J-2 facility delivery points on a secondary firm basis. KeySpan contends that the settlement's proposal to require mainline shippers to pay costs related to inspection, repair and maintenance of the existing J-2 pipeline after they have lost their right to use secondary delivery points on the facility on a secondary basis violates Commission policy that firm shippers must be afforded secondary access to all receipt points in the rate zones for which they pay. Hess also states that the ability of AFT-1 shippers to obtain secondary firm capacity on the J-2 facilities will depend entirely upon how much, if any, J-2 capacity NSTAR releases and that shippers will have to pay the maximum recourse rate for NSTAR's released capacity, which presumably will be higher than NSTAR's negotiated rate. Hess also objects that the settlement does not provide any interruptible credits to replacement AFT-CL (J-2) shippers that acquire NSTAR's released AFT-CL (J-2) firm capacity.

17. Companies contend that NSTAR would not pay the full cost of service for the J-2 facilities (including the existing J-2 pipeline), but only the cost of service for the J-2 loop. They assert that the settlement does not provide an estimate of the remaining costs of the existing J-2 pipeline and the costs related to the inspection and repair and maintenance of the existing J-2 pipeline. Companies state that these costs, which the settlement would allocate to Algonquin's system customers, will not be known until Algonquin's next general rate case.

18. Companies and KeySpan point out that while the settlement would restrict access to both the new J-2 loop and the existing J-2 facilities to customers taking and paying for services under the new incremental J-2 rate schedules, the rates paid by Algonquin's mainline customers will continue to reflect the costs of the existing J-2 facilities until Algonquin files under section 4 to remove those costs from its system rates. Companies charge the settlement fails to provide a rationale for this. Companies also maintain that the settlement fails to explain why NSTAR wants exclusive use of the J-2 facilities. Finally, Companies assert that the settlement offers no justification for the proposal that the costs of the loop be rolled into Algonquin's system rates after 20 years.

19. Massachusetts states that Algonquin has not adequately supported its cost estimates for the J-2 loop. It contends that recent construction cost estimates for similar pipelines suggest that the final cost of the J-2 loop should be significantly less than the \$35.3 million proposed by Algonquin. Massachusetts suggests that the Commission

reject the cost estimate in the proposed settlement and direct the parties to modify the settlement agreement to provide for a more reasonable cost estimate based on the cost of recent projects. In the alternative, it recommends that the Commission should specifically clarify that approval of the settlement should not be deemed to establish the precedential or evidentiary value of the \$35.5 million cost estimate in any future related proceedings.

## **Reply Comments**

### **Algonquin**

20. Algonquin states that the Commission approved a similar settlement in 2004 with USGen New England Inc. (USGen),<sup>12</sup> in which Algonquin incrementally priced facilities that had been under a system-wide rate, and contends that the Commission should take the same action here. Algonquin argues that since interruptible and secondary services do not have primary firm rights to incremental lateral capacity and since none of the parties have primary delivery points on the existing J-2 pipeline, they do not have a right to foreclose the needed operational changes. Algonquin also argues that those shippers can obtain firm capacity on the J-2 facilities through capacity release. Additionally, Algonquin states that no party has made a request to Algonquin for additional primary firm capacity.

21. In response to the argument that the recourse rates for firm service on the mainline should no longer reflect the remaining capital costs of the existing J-2 facility, Algonquin states that since its firm shippers have negotiated rates for their firm transportation service, they would not realize any benefit from Algonquin's removing the costs associated with the existing J-2 facilities from its system recourse rates. Further, Algonquin states that a cost reallocation cannot occur in a section 7 certificate proceeding. Algonquin maintains that it is sufficient that the settlement provides for removal of the depreciated costs of the existing J-2 facilities in its next rate case.

### **NSTAR**

22. NSTAR contends that the Commission should approve the settlement because it is in the public interest and there is an undisputed need for new facilities to avoid service disruptions and to promote reliability. NSTAR states that adding a second pipeline

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<sup>12</sup> *Algonquin Gas Transmission Co.*, 105 FERC ¶ 61,180 (2003); *order granting reh'g for further consideration and den'g motion for stay*, 105 FERC ¶ 61,402 (2003); *order on compliance and reh'g*, 106 FERC ¶ 61,217 (2004); *order granting motion to withdraw pleading and terminate proceeding, and accepting tariff revisions and negotiated rates contracts, subject to conditions*, 107 FERC ¶ 61,173 (2004) (*Algonquin/USGen*).

segment to serve the Cambridge and Somerville areas is a critical upgrade to the operational reliability of the system in the event of a service interruption on the J-2 system unrelated to the DOT inspection process. It also maintains that the new loop will also accommodate system growth while enhancing the overall reliability of the system and increase the minimum delivery pressure to 190 psig at the Mystic Street Station.

### **Mirant's Motion to Supplement**

23. On January 30, 2008, Mirant filed a motion for leave to supplement its comments to the settlement, requesting that the Commission take notice that on January 18, 2008, the Massachusetts Department of Public Utilities (DPU) issued a notice detailing a procedural schedule which extended the state proceeding past the 120 day approval detailed in the offer of settlement.<sup>13</sup> Mirant states that it is engaged in discussions with NSTAR to address Mirant's concerns raised in its comments to the settlement and states that their negotiations would benefit from additional time.

24. Algonquin and NSTAR filed answers to Mirant's motion. Algonquin states that the Commission's approval of the settlement represents an important step towards implementing the proposed project and that any undue delay in approving the settlement will jeopardize timely completion of the J-2 Loop project and introduce the possibility of additional pressure reductions and/or service interruptions on the existing J-2 pipeline. NSTAR states that Mirant has misconstrued Article X.B of the settlement to permit the parties to withdraw if either the Massachusetts DPU or the Commission fails to provide their respective approvals by February 14, 2008. NSTAR asserts that despite the fact that the Massachusetts DPU likely will not issue an order until after February 14, 2008, the Article X.B withdrawal provision will only be triggered if the Commission also delays its efforts past the February 14, 2008 deadline. The Commission finds that Mirant has not provided sufficient justification to delay this proceeding.

### **Discussion**

25. At issue in the instant complaint is an aging mainline facility at the end of Algonquin's system in a heavily populated area. Algonquin's statutory responsibility to inspect, and possibly repair, the line pursuant to DOT's Integrity Management Plan regulations has highlighted the vulnerability of this portion of Algonquin's system. The existing J-2 pipeline is the sole source of natural gas supply for the 45,000 customers in NSTAR's Cambridge Division, including schools, hospital and university research laboratories, and cogeneration plants, and should that line experience a failure or need to

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<sup>13</sup> Section X.B of the settlement states that if NSTAR has not received approval of the negotiated rate agreement from the Massachusetts DPU or the Commission has not issued an order approving the settlement, within 120 days, the parties can withdraw from the settlement.

be taken out of service for any reason, the resultant loss of service would be contrary to the public interest. The Commission believes it is in the public interest to address this serious reliability issue on a permanent basis by constructing additional pipeline infrastructure.

26. Algonquin and NSTAR have proposed that Algonquin will construct approximately two miles of 14-inch diameter pipeline looping that will increase capacity on the J-2 facilities (existing pipeline and new loop) to 140,000 Dth/d. The J-2 pipeline has historically been considered part of Algonquin's mainline system. However, because of its location at the end of the system, there is currently only one firm shipper with a primary delivery point on the existing line. There are currently two firm shippers that use the J-2 pipeline to make deliveries on a secondary firm basis, and one shipper taking interruptible service on the facility.<sup>14</sup>

27. The primary issue raised in NSTAR's complaint and presented by the settlement is who should bear the cost of the proposed loop. NSTAR contends that Algonquin initially proposed that the cost of additional infrastructure be borne by NSTAR.<sup>15</sup> In its complaint, NSTAR countered that the costs associated with looping the J-2 system should be rolled into Algonquin's system-wide rates. Now, Algonquin and NSTAR have agreed to a proposal wherein the costs of the proposed new J-2 loop will be recovered through an incremental rate which would be applicable to all service over the J-2 facilities (existing pipeline and new loop). NSTAR would enter into a firm service agreement for all of the capacity of the J-2 facilities, with service to be provided at a negotiated rate.

28. The primary concern with this proposal is that other Algonquin shippers wishing to use the J-2 facilities, including the interruptible shipper and firm shippers currently accessing secondary delivery points on the existing J-2 pipeline, would have to sign new service agreements and pay a new incremental rate for such service, in addition to the system-wide rate they would continue to pay, but which would only entitle them to service over the mainline.<sup>16</sup> Algonquin would modify its tariff to provide that shippers who sign an agreement for service on the J-2 facilities will have access to all receipt and delivery points on the J-2 facilities, including two delivery points at the end of the system in Cambridge. However, shippers who do not sign such agreements will only have access to the delivery point at the head of the J-2 pipeline at the Mystic Street Station.

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<sup>14</sup> See ¶ 4, *supra*.

<sup>15</sup> NSTAR complaint at 6.

<sup>16</sup> Algonquin's system AIT-1 rate is \$0.2425/Dth, see Sixth Revised Sheet No. 33 to Algonquin's FERC Gas Tariff, Fifth Revised Volume No. 1. The proposed AIT-2 incremental rate is \$0.1672/Dth, see Exhibit 4 of the Settlement, Exhibit P, Schedule 2.

The Commission finds that the proposal set forth in Algonquin's and NSTAR's Stipulation and Agreement is an acceptable one, as it would increase reliability and provide additional capacity to meeting increased demand at the end of Algonquin's system and, as discussed below, the costs of the new facilities would be recovered only from shippers who use and benefit from the new capacity. Therefore, as conditioned below, upon submission and consideration of the appropriate applications, the Commission will accept the parties' proposal that Algonquin construct additional facilities to enable it to provide reliable service on its J-2 system at incremental rates.

29. Mirant argues the proposed settlement violates the Commission's Certificate Policy Statement because existing shippers will be subsidizing the costs associated with the J-2 loop. We disagree. As described above, Algonquin and NSTAR have proposed that the costs of the proposed J-2 loop be recovered through a new, incremental rate, thus insulating shippers not using the J-2 facilities from any responsibility for costs related to the new facilities, consistent with the provisions and intent of the Certificate Policy Statement. Only NSTAR and other shippers that use the J-2 facilities will bear the costs of the new pipeline loop. Under such circumstances, there will be no improper subsidization of the new facilities by existing customers.

30. Mirant complains that under the proposal it will have to pay an additional charge, the incremental rate to transport gas on the existing J-2 pipeline, for service it currently receives under Algonquin's system-wide AIT-1 rate. We acknowledge the fact that the J-2 pipeline has historically been treated as a mainline facility. But it is also a fact that the J-2 facility is physically located at the end of Algonquin's system and the majority of Algonquin's shippers do not use it.<sup>17</sup> It is uncontested that the proposed looping will improve the reliability of the J-2 system. Compliance with DOT's integrity management regulations will enhance and ensure the continued safe operation of the J-2 system. The Certificate Policy Statement recognizes that such projects are for the benefit of existing customers and that increasing the rates of existing customers to pay for these improvements is not a subsidy.<sup>18</sup> Thus, we find it reasonable that existing customers who continue to use the J-2 facilities, and benefit directly from the increased reliability and flexibility the proposed facilities would provide, pay the costs associated with the facilities. Therefore, the Commission believes the proposal to price service over the J-2 facilities on an incremental basis going forward is appropriate.

31. Mirant also contends that the settlement violates the Commission's negotiated rate policy. It argues that the settlement shifts costs associated with NSTAR's negotiated rate

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<sup>17</sup> While two firm system-wide shippers (KeySpan and Hess) have used the J-2 pipeline as a secondary delivery point, Algonquin's other 24 system-wide shippers have not had gas transported on the J-2 pipeline.

<sup>18</sup> *Certificate Policy Statement*, 88 FERC ¶ 61,227 at n.12.

agreement to the recourse rate shippers because NSTAR will be credited one-half of any revenues from interruptible service over the J-2 facilities. Again, we disagree. The IT revenue crediting provision in NSTAR's negotiated rate agreement will have no effect on rates recourse shippers, such as Mirant, will pay. In the section 7(c) certificate proceeding which Algonquin will have to file to implement the proposal set forth in the Stipulation and Agreement, Algonquin will have to propose firm and interruptible initial recourse rates based solely on the costs related to the proposed facilities, without regard to the negotiated rate which NSTAR will be paying. In calculating its proposed initial rates consistent with Commission policy, Algonquin must either allocate costs to interruptible services or, when no allocation is made, provide for IT revenue credits. In either instance, Algonquin cannot take into account the IT revenue credit provided in the negotiated rate agreement. Thus, Algonquin will bear the risk that its negotiated rate with NSTAR, minus the credits, will not recover the costs allocated to the J-2 incremental rates in designing the recourse rates. The design and calculation of Algonquin's initial incremental recourse rates will be reviewed in Algonquin's certificate proceeding.

32. Mirant also states that under the terms of existing negotiated rate agreements between Algonquin and its firm customers, Algonquin agreed not to file a new NGA section 4 rate case seeking to change its recourse rates until after December 31, 2008.<sup>19</sup> Mirant argues that the rate increase for existing shippers under the proposed settlement is prohibited by this rate moratorium. Mirant contends that although Algonquin could file a section 4 rate case prior to the proposed September 1, 2009 in-service date of the J-2 loop project, the Commission should not, in approving the proposed settlement, approve the incremental recourse rate.

33. Algonquin's agreement not to file a new NGA section 4 rate case seeking to change its recourse rates is set forth in its negotiated rate agreements with its firm shippers. Because Mirant is a system-wide interruptible shipper on Algonquin's system, there is no provision in Mirant's contracts with Algonquin limiting Algonquin's rights to file a new section 4 rate case. None of the firm shippers whose negotiated rate agreements do include such a provision have alleged that the proposed settlement would require Algonquin to file "a new section 4 rate case to change its existing recourse rate" in violation of the provision in their negotiated rate agreements. As discussed below, we are authorizing Algonquin to make a limited section 4 filing to provide that shippers who do not contract for service on the combined J-2 facility will not have access to delivery points downstream of the head of that facility and to remove the costs of the existing facilities from its system rates. That limited section 4 filing will not take effect until the

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<sup>19</sup> *Algonquin Gas Transmission, LLC*, 111 FERC ¶ 61,003 (2005). Algonquin's tariff description of its negotiated rate agreements states that those agreements include a provision that "Algonquin shall not file a new section 4 rate case seeking to change its recourse rate."

in-service date of the new J-2 facilities, which is not expected to occur until approximately eight months after the end of the December 31, 2008 rate moratorium. However, to the extent the timing of that filing raises issues related to the rate moratorium, those issues can be better addressed in that proceeding.

34. As indicated above, we find here that the proposal set forth in settlement between Algonquin and NSTAR, i.e., that Algonquin construct additional pipeline facilities to loop its existing J-2 pipeline and that service over the combined J-2 facilities be provided under new, incremental firm and interruptible rates is appropriate. All those who use the J-2 system should share in the cost of providing service over that system in a safe and reliable manner, and the incremental rate proposal accomplishes that result.

35. As acknowledged in the settlement, Algonquin must file for and obtain a certificate of public convenience and necessity under section 7(c) of NGA before the provisions of the settlement can be implemented. The actual terms and conditions for the new service, including the initial incremental recourse rates, will be determined in that section 7 proceeding.

36. In addition, while the Commission will approve the initial recourse rates for service over the J-2 facilities in the section 7 certificate proceeding, the Commission cannot change Algonquin's rates for its existing services in such a section 7 proceeding, as Algonquin points out. The settlement's proposal to remove the ability of existing shippers to access the existing J-2 pipeline under the system rate is a change to an existing term and condition of service and cannot be approved in a section 7 proceeding. Therefore, the Commission will authorize Algonquin to file a limited section 4 proceeding to remove the delivery point at the end of the J-2 system from the list of delivery points available for use by shippers on the mainline system and add to that list a delivery point at the head of the facilities. In proposing such a change, which will serve to remove the availability of the existing J-2 pipeline from Algonquin's mainline system and to designate it as a new lateral pipeline that will be subject to the new incremental recourse rate, Algonquin must also remove all costs associated with the existing J-2 pipeline from its system rate as the mainline rate will no longer provide any access to the J-2 facilities. Until Algonquin receives authorization to make this change to its tariff, it will be required to continue to provide service on the J-2 pipeline under its existing interruptible and/or secondary firm service obligations. Because it is an interruptible

shipper on the existing J-2 facility,<sup>20</sup> Mirant has no guarantee that capacity will continue to be available.<sup>21</sup> Once the pipeline loop is constructed and operational, and Algonquin has obtained authorization to remove the availability of the J-2 facilities from its mainline system, service on the J-2 facilities will no longer be available under the system rate. The new service will be an incremental lateral line service. However, Mirant, and other current users of the existing J-2 pipeline, will be able to enter into service agreements for interruptible service under the new incremental rate schedule or contract for a capacity release with NSTAR.

37. Several parties contend that the proposal set forth in the settlement is unfair, unduly discriminatory, and preferential because other shippers were not offered the same discount or negotiated rate provided to NSTAR. They argue that the proposal requires other shippers to pay the maximum rate for the released capacity without any interruptible credits. However, there is no evidence in the record that any of the other shippers are interested in contracting for primary firm capacity on the J-2 facilities. Thus, NSTAR is the only shipper willing, at this time, to enter into a contractual commitment with Algonquin to pay a share of the costs of the new J-2 facilities. For this reason, the other shippers are not similarly situated to NSTAR.<sup>22</sup>

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<sup>20</sup> Mirant Kendell LLC (a gas-fired generation facility) has a firm service agreement with NSTAR and receives service through NSTAR's local distribution facility. Mirant Energy Trading LLC (MET) supplies Mirant Kendell with its gas. MET delivers gas to NSTAR for delivery to Mirant Kendell. MET either secures gas upstream on Algonquin's system and transports it under an interruptible service agreement with Algonquin or secures gas from other third parties that deliver the gas to NSTAR on a secondary delivery point basis.

<sup>21</sup> See *Texas Eastern Transmission Corp.*, 41 FERC ¶ 61,015, at 61,027 (1987).

<sup>22</sup> *Revisions to the Blanket Certificate Regulations and Clarification Regarding Rates*, Order No. 686, 71 Fed. Reg. 63,680 (October 31, 2006), FERC Stats. & Regs. ¶ 31,231 at p. 30,783 (2006), *order on reh'g and clarification*, Order No. 686-A, 72 Fed. Reg. 37,431 (July 10, 2007), FERC Stats. & Regs. ¶ 31,249 (2007), *order on reh'g*, Order No. 686-B, 72 Fed. Reg. 54,818 (September 27, 2007), FERC Stats. & Regs. ¶ 31,255 (2007), *order denying reh'g*, 122 FERC ¶ 61,028 (2008). In Order No. 686, the Commission stated that a project sponsor can offer different rates to shippers based upon the time the shipper subscribed to the service without necessarily engaging in undue discrimination. One means of avoiding such a charge is to specify in its announcement of an open season the parameters of the bidding provisions and available rate options to all potential customers. While Algonquin did not have an open season for the J-2 loop capacity, if any other shipper wishes to subscribe to firm capacity on the J-2 loop, it should raise that issue in the section 7 certificate proceeding.

38. The proposal that the maximum rate for NSTAR's releases of J-2 capacity will be the maximum recourse rate for service on the J-2 system is consistent with current Commission policy. In any event, NSTAR states that it is willing to release firm capacity to any shipper, at the negotiated rate and with the IT revenue credit, so long as that shipper takes capacity for the term of the settlement and pays demand charges for such capacity under the same conditions to which NSTAR has agreed.<sup>23</sup> Algonquin agrees and also states that the other shippers could purchase firm capacity on the J-2 facilities through capacity release. Further, Algonquin states that shippers could request that it provide additional primary firm capacity and, if need be, build such capacity. However, nobody has made such a request of Algonquin.<sup>24</sup> As discussed above, the issue of revenue credits for recourse rate shippers will be addressed in Algonquin's certificate proceeding. Thus, we find that the proposal is not unfair, unduly discriminatory, or preferential.

39. In response to the comments from Companies and KeySpan that the proposal would require mainline shippers to continue to pay costs associated with the existing J-2 pipeline until Algonquin's next section 4 rate case, Algonquin contends that pipelines can only reallocate capital costs, and thereby reduce existing recourse rates, in a general section 4 or section 5 rate case, and not in a settlement requiring construction of new facilities or in a certificate proceeding establishing initial incremental rates. Algonquin states that as part of the settlement it has committed to reallocate the remaining capital costs of the existing J-2 facilities to the J-2 lateral in its next rate case. It argues that pipelines routinely file applications under NGA section 7 to construct and abandon existing facilities without simultaneously filing rate cases to adjust their rate.

40. While the Commission generally does not require a pipeline to alter its existing transportation rates to remove or add costs as a consequence of the action taken in an NGA section 7 proceeding,<sup>25</sup> we have found that it will be necessary here for Algonquin to file a limited section 4 proceeding in order to delete service over a specific existing facility from one rate schedule before providing service over that same facility under a different, incremental rate schedule.<sup>26</sup> We have also required, as a part of that

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<sup>23</sup> NSTAR's November 15, 2007 comments at 9.

<sup>24</sup> Algonquin's reply comments at 6.

<sup>25</sup> See, e.g., *Equitrans, LP*, 98 FERC ¶ 61,160, at 61,591-2 (2002), citing *NorAm Gas Transmission Co.* 76 FERC ¶ 61,091, at 61,491 (1996) (finding that it was not necessary for a pipeline to file to remove from its rate base costs associated with facilities determined to perform a gathering function).

<sup>26</sup> We note that *Algonquin/USGen*, *supra* at note 14, cited by Algonquin in support of the proposal to charge incremental rates for the J-2 facilities, was an NGA section 4 proceeding.

filing, Algonquin must remove the costs associated with the existing J-2 facilities from its system rates. Under such circumstances, we find that, after the requisite limited section 4 filing, Algonquin may appropriately exclude firm shippers paying only the system rates from any secondary point rights on the J-2 system, because those shippers will be appropriately treated as not paying for such service.

41. The Stipulation and Agreement provides that at the end of the 20-year term of NSTAR's firm service agreement, Algonquin will seek to roll all costs of the J-2 facilities, including any undepreciated costs of the facilities, into its system-wide rates. The Commission will consider all issues relating to such a proposal at the time it is filed.

42. Massachusetts requests that the Commission reject the settlement and require that the parties modify the settlement to provide for a more reasonable cost for the proposed J-2 loop. We note that the loop is proposed to be located in a heavily-congested and populated area, which might reasonably be expected to increase its cost of construction. While there is currently no evidence to suggest Algonquin's cost estimates are out of line, those estimates will be reviewed in its section 7 certificate proceeding. In addition, in the Stipulation and Agreement Algonquin commits that its initial recourse rates will be "derived from final, actual costs to construct the new J-2 loop."<sup>27</sup> Therefore, we will not reject and modify the settlement based on construction costs.

43. Finally, the settlement between NSTAR and Algonquin appears to be conditioned upon Commission approval of the "contents of the Certificate Application and related exhibits (including the Tariff Sheets) as described in Exhibit 4 hereto."<sup>28</sup> The Commission will make no findings regarding this "pro forma" certificate application.

### **Conclusion**

44. In this order, the Commission is approving, on a preliminary basis, pending the submission and consideration of appropriate filings under sections 7(c) and 4 of the NGA, Algonquin's and NSTAR's proposal that Algonquin construct facilities to loop its existing J-2 pipeline in order to ensure continued, reliable service to customers served off that facility; that the costs of those facilities be recovered through incremental rates charged to all customers using the resultant J-2 facilities (existing J-2 pipeline and new loop); that Algonquin's system rates no longer include service over the J-2 facilities (existing J-2 pipeline and new loop); and that Algonquin provide firm service to NSTAR at negotiated rates, including a 50 percent credit of interruptible revenues, under its new incremental rate schedule. The actual terms and conditions for the new incremental rate schedules and the initial recourse rates will be determined in the NGA section 7

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<sup>27</sup> Stipulation and Agreement at 5.

<sup>28</sup> *Id.* at 11.

proceeding that Algonquin will file to seek authorization to construct and operate the J-2 loop pipeline.

45. Algonquin will need to make a limited NGA section 4 filing to modify its tariff to provide that shippers who do not sign an agreement for service on the J-2 facilities will only have access to the delivery point at the head of the J-2 pipeline at the Mystic Street Station. This change will serve to remove the J-2 facility from its mainline system and to designate it as a new lateral pipeline that will be subject to the new recourse rate. In that same filing, Algonquin must also remove all costs associated with the existing J-2 pipeline from its system rate. The Commission will also address the allocation of repair and maintenance costs associated with the J-2 facility incurred prior to the filing in that proceeding.

The Commission orders:

(A) The proposals contained in the Stipulation and Agreement filed by Algonquin and NSTAR on October 16, 2007, are approved, in part, as discussed in the body of this order.

(B) Northeast's motion to intervene out-of-time is granted.

(C) All filings made in this proceeding are accepted into the record.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.

**Intervenors**

Central Hudson Gas and Electric Corp.  
City of Cambridge  
Conectiv Energy Supply Inc.  
Consolidated Edison Company of New York, Inc. and  
Orange and Rockland Utilities, Inc. (jointly)  
Delmarva Power & Light Co.  
Distrigas of Massachusetts LLC  
Hess Corporation  
Hess LNG Trading, LLC  
KeySpan Delivery Companies  
Massachusetts Attorney General  
Massachusetts Department of Public Utilities  
Massachusetts Institute of Technology  
Mirant Kendall, LLC and Mirant Energy Trading, LLC (jointly)  
New England Local Distribution Companies  
New Jersey Natural Gas Co.  
New York State Electric & Gas Corp.  
Northeast Energy Associates  
President and Fellows of Harvard College  
Weaver's Cove Energy LLC