

129 FERC ¶ 61,180
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

November 30, 2009

In Reply Refer To:
Algonquin Gas Transmission, LLC
Docket No. RP10-117-000

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

Attention: Gregg E. McBride
Vice President, Rates and Certificates

Reference: Fourth Revised Sheet No. 40 to FERC Gas Tariff, Fifth Revised
Volume No. 1

Dear Mr. McBride:

1. On October 30, 2009, Algonquin Gas Transmission, LLC (Algonquin) submitted a filing in accordance with section 32, Fuel Reimbursement Quantity (FRQ), of the General Terms and Conditions (GT&C) of Algonquin's FERC Gas Tariff. The instant filing reflects the proposed effective Fuel Reimbursement Percentages (FRPs) for the calendar period beginning December 1, 2009. In addition, Algonquin's filing allocates the refund and surcharge amounts for the July 31, 2009 balance of the FRQ Deferred Account pursuant to section 32.5 of Algonquin's GT&C. Algonquin requests the proposed tariff sheet be accepted effective December 1, 2009. The referenced revised tariff sheet is accepted to be effective December 1, 2009 as proposed, subject to Algonquin filing revised tariff sheets as discussed below.

2. The revised FRPs proposed to be effective in this filing for system customers reflect: (1) a decrease of 0.09 percent (from 1.44 percent to 1.35 percent) for the Winter Period and (2) a decrease of 0.18 percent (from 1.02 percent to 0.84 percent) for the Spring, Summer and Fall Period. Algonquin states that the instant filing constitutes the initial calculation of incremental FRPs for service on facilities constructed under the

Ramapo Expansion Project.¹ The revised FRPs proposed to be effective in this filing for Ramapo Expansion customers reflect: (1) an increase of 0.92 percent (from 1.44 percent to 2.36 percent) for the Winter Period and (2) an increase of 0.16 percent (from 1.02 percent to 1.18 percent) for the Spring, Summer and Fall Period, from the initial rates approved in the certification of the project. Algonquin states that it has calculated these FRPs utilizing the latest actual annual data for Company Use Gas and throughput quantities for the twelve month period ended July 31, 2009.

3. Algonquin has also included in its filing the calculation of the FRQ Deferred Account allocation pursuant to section 32.5 of the GT&C, which provides that Algonquin will calculate surcharges or refunds designed to amortize the net monetary value of the balance in the FRQ Deferred Account at the end of the previous accumulation period. For the current FRQ accumulation period (August 1, 2008 through July 31, 2009), the FRQ Deferred Account resulted in a net debit balance of \$843,832. The allocation of the balance between system customers and Ramapo Expansion customers yielded a credit sub-balance of \$791,946 to be refunded to Algonquin's system customers and a debit sub-balance of \$1,635,778 to be surcharged to Ramapo Expansion customers. The working papers submitted by Algonquin indicate that the refund to system customers has been rolled into the System Services FRPs, whereas the surcharge to Ramapo Expansion customers has not been rolled into the Incremental Ramapo Service FRPs. Algonquin states that as required by the December 21, 2006 Order, the actual fuel use and LAUF attributable to the Ramapo Expansion service has been delineated and assigned directly to Ramapo Expansion customers for surcharge. Pursuant to section 32.5(c) of Algonquin's GT&C, the FRQ surcharges are due within 60 days of the Commission's acceptance of this filing. Algonquin states that additional carrying charges will be included for the period from November 1, 2009 to the payment date.

4. Public notice of Algonquin's filing was issued on November 3, 2009, with comments due by November 16, 2009. Pursuant to Rule 214,² all timely filed motions to intervene and any motion to intervene out-of-time filed before the issuance date of this

¹ By order issued December 21, 2006, in Docket Nos. CP06-76-000, et al., the Commission authorized Algonquin to render incremental service under its Ramapo Expansion Project. In this order, the Commission required Algonquin to delineate the actual fuel use and LAUF associated with the Ramapo Expansion in its annual fuel tracker filings required by section 32 of the GT&C of its tariff in order to ensure that only expansion shippers be assessed fuel costs attributable to expansion service. *Algonquin Gas Transmission, LLC*, 117 FERC ¶ 61,319, at P 107 (2006) (December 21, 2006 Order), *on reh'g*, 119 FERC ¶ 61,173 (2007). The Ramapo Expansion facilities were put into service on November 1, 2008. *Algonquin Gas Transmission, LLC*, November 26, 2008, Request for Extension of Time, Docket No. CP06-76-000, at 1.

² 18 C.F.R. § 385.214 (2009).

order are granted. Granting late interventions at this stage of the proceeding will not disrupt the proceeding or place additional burdens on existing parties. Motions to intervene were filed by NJR Energy Services Company; New Jersey Natural Gas Company; New England Local Distribution Companies;³ Virginia Power Energy Marketing, Inc.; PSEG Energy Resources & Trade, LLC; Natural Grid Gas Delivery Companies; New York State Electric & Gas Corporation; and Consolidated Edison Company of New York, Inc. and Orange and Rockland Utilities, Inc. On November 16, 2009, Hess Corporation (Hess) filed a motion to intervene and protest. On November 23, 2009, Algonquin filed an answer to Hess's protest. Rule 213(a)(2)⁴ of the Commission's rules of practice and procedure prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept Algonquin's answer because it has provided information that assisted us in our decision-making process.

5. In its protest, Hess requests that the Commission: (1) reject Algonquin's proposed direct bill surcharge of \$1,635,778, which represents unrecovered Ramapo Expansion fuel costs incurred prior to implementation of incremental Ramapo Expansion fuel rates, as unjust, unreasonable, contrary to Commission policy and precedent, and contrary to Algonquin's tariff, and (2) to the extent that Algonquin proposes to require Ramapo Expansion shippers to true-up any future period's unreimbursed Ramapo Expansion fuel costs, require that Algonquin revise its fuel true-up/direct bill tariff provisions to address Ramapo Expansion fuel costs.

6. Hess argues that the December 21, 2006 Order is silent as to how Algonquin should address Ramapo Expansion fuel under-recoveries and therefore does not require Algonquin to directly bill the Ramapo Expansion shippers for unreimbursed Ramapo Expansion fuel costs. Hess also argues that Algonquin's current tariff does not permit Algonquin to recover unreimbursed Ramapo Expansion fuel costs via a direct bill surcharge against Ramapo Expansion shippers because Algonquin's currently-effective fuel tracker/true-up tariff mechanism does not distinguish between system-wide fuel costs and Ramapo Expansion fuel costs and does not specify how Algonquin will treat Ramapo Expansion fuel under-recoveries.

7. Hess asserts that Commission precedent has clearly established that a pipeline should implement an incremental expansion fuel rate and expansion-specific true-up mechanism by proposing such tariff provisions on a prospective basis and before the expansion's in-service date. Therefore, Hess claims that Algonquin was on notice that it

³ The New England Local Distribution Companies include: Bay State Gas Company; Connecticut Natural Gas Corporation; New England Gas Company; NSTAR Gas Company; Northern Utilities, Inc.; City of Norwich, Department of Public Utilities; The Southern Connecticut Gas Company; and Yankee Gas Services Company.

⁴ 18 C.F.R. § 385.213(a)(2) (2009).

could not use its existing tariff's fuel true-up/direct bill mechanisms to recover any reimbursed Ramapo Expansion fuel costs.

8. Finally, Hess argues that Algonquin's proposal to apply a direct bill surcharge against Ramapo Expansion shippers for unrecovered Ramapo Expansion fuel costs incurred prior to December 1, 2009 is prohibited by the Commission's filed rate doctrine and ban on retroactive rates. Hess states that Ramapo Expansion shippers did not have proper notice that Algonquin would attempt to recover additional Ramapo Expansion fuel costs from past periods via direct bill surcharge. Hess further argues that prior to Algonquin requiring the Ramapo Expansion shippers to true-up for any Ramapo Expansion fuel under-recoveries, Algonquin first must file, and the Commission must accept, tariff changes implementing an incremental Ramapo Expansion fuel rate and a Ramapo Expansion-specific true-up mechanism, with both changes effective on a prospective basis.

9. In its answer, Algonquin argues that its filing complies with the December 21, 2006 Order because the December 21, 2006 Order did not require Algonquin to develop a separate fuel tracker specifically applicable to Ramapo incremental service. Furthermore, Algonquin states that the proposed \$1,635,778 surcharge is consistent with its tariff because the FRQ in section 32 of the GT&C applies to all fuel used to provide service to all Algonquin customers and does not distinguish between system-wide and incremental service. Algonquin also argues that the surcharge is not prohibited by the filed rate doctrine and ban on retroactive rates because the fuel tracker mechanism in section 32 of the GT&C predates the Ramapo in-service date and the Commission did not require Algonquin to develop a separate fuel tracker mechanism applicable to the Ramapo Expansion shippers. Finally, Algonquin asserts that the precedent cited by Hess does not establish that Commission policy requires Algonquin to establish a separate fuel tracker applicable to Ramapo fuel use.

10. Hess argues in its protest that the proposed surcharge of \$1,635,778 to Ramapo Expansion shippers is not permitted by Algonquin's tariff and is prohibited by the Commission's filed rate doctrine and ban on retroactive rates. However, in the December 21, 2006 Order, the Commission authorized Algonquin to render incremental service under the Ramapo Expansion and stated that Algonquin must delineate the actual fuel use and LAUF associated with the proposal in its annual fuel tracker filing required by section 32 of the GT&C in order to ensure that only expansion shippers are assessed fuel costs attributable to expansion service.⁵ Thus, the December 21, 2006 Order requires that two separate rates be calculated: one, the system-wide rate, and the other, the incremental Ramapo rate. Further, we interpret the December 21, 2006 Order as approving the use of the current section 32 tariff provisions with respect to the Ramapo Expansion shippers and that no additional changes to the tariff are required to apply the

⁵ December 21, 2006 Order at P 107.

provisions of section 32 to the Ramapo Expansion shippers. The Ramapo Expansion shippers had sufficient notice that the FRQ surcharge mechanism would apply to them by virtue of the December 21, 2006 Order and the existing tariff provisions. Therefore, we find that the proposed surcharge is not prohibited by the filed rate doctrine and ban on retroactive rates or by Algonquin's tariff.⁶ We accept the revised tariff sheet subject to the conditions discussed below.

11. In its filing, Algonquin proposes to direct bill the Ramapo Expansion customers for their FRQ surcharge of \$1,635,778 in accordance with section 32.5(c) of its GT&C. Section 32.5(c) provides that the FRQ surcharge or refund shall be based on the allocation of the FRQ Deferred Account balance at the end of the twelve month accumulation period over the actual throughput during the twelve month accumulation period, exclusive of backhauls, and that a customer's net debit or credit shall be due and payable 60 days after the Commission's acceptance of the annual FRP filing. Algonquin's proposal to require each Ramapo Expansion shipper to pay its share of the \$1,635,778 surcharge within 60 days is consistent with these provisions.

12. However, Algonquin proposes to roll the FRQ refund of \$791,946 due to system customers into the FRPs to be applied to the system customers prospectively during the next annual period, instead of providing a direct refund within 60 days as set forth in section 32.5(c) of the GT&C. Algonquin must apply the method of applying refunds and surcharges provided in its tariff to all of its customers. We therefore direct Algonquin to re-file Fourth Revised Sheet No. 40 along with supporting working papers to reflect a direct refund of the \$791,946 credit sub-balance of the FRQ Deferred Account to Algonquin's system customers within 60 days of the Commission's acceptance of this filing.

13. As noted by Hess, section 32 of the GT&C currently does not expressly distinguish between system-wide fuel costs and Ramapo Expansion fuel costs and does not specifically discuss how Algonquin will treat Ramapo Expansion fuel under-recoveries. We agree with Hess that Algonquin should revise section 32 of its GT&C to clarify the separate treatment of system-wide and Ramapo Expansion fuel costs and how Algonquin will treat Ramapo Expansion fuel under- or over-recoveries. Therefore, we

⁶ Hess cites *Crossroads Pipeline Company*, 119 FERC ¶ 61,221 (2007); *Wyoming Interstate Company, Ltd.*, 122 FERC ¶ 61,303 (2008); and *Sabine Pipe Line LLC*, 127 FERC ¶ 61,267 (2009) to support its argument that when a pipeline implements or modifies a tracker and true-up mechanism, it may not include in the initial true-up any under-recoveries that occurred prior to the effective date of the tariff provision. Hess's reliance on such cases is misplaced given that these cases involve a pipeline implementing a new tracker and true-up mechanism or modifying an existing mechanism. In the instant case, the tracker and true-up mechanism has been in existence since before the Expansion came into service and is not being modified.

direct Algonquin to file revised tariff sheets updating section 32 of its GT&C to reflect such treatment.

The Commission orders:

(A) Fourth Revised Sheet No. 40 is accepted to become effective on December 1, 2009, subject to Algonquin re-filing Fourth Revised Sheet No. 40 along with supporting working papers, within 15 days of the date this order issues, to reflect a direct refund of the \$791,946 credit sub-balance of the FRQ Deferred Account to Algonquin's system customers within 60 days of the Commission's acceptance of this filing.

(B) Algonquin is directed, within 15 days of the date this order issues, to file tariff sheets to revise section 32 of the GT&C to clarify the separate treatment of its system-wide and Ramapo Expansion fuel costs and how Algonquin will treat any Ramapo Expansion fuel under- or over-recoveries.

By direction of the Commission.

Kimberly D. Bose,
Secretary.