

143 FERC ¶ 61,023
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Philip D. Moeller, John R. Norris,
Cheryl A. LaFleur, and Tony Clark.

Algonquin Gas Transmission, LLC

Docket Nos. RP12-128-002
RP12-128-003
RP12-128-005
RP10-46-001
RP10-179-001
RP12-730-000
RP12-827-000

ORDER ON REHEARING AND COMPLIANCE FILINGS

(Issued April 5, 2013)

1. On December 2, 2011, the Commission issued an order¹ to address non-conforming service agreements filed by Algonquin Gas Transmission, LLC (Algonquin) in various dockets. In the December 2011 Order, the Commission conditionally accepted the revised tariff record filed in Docket No. RP12-128-000 and the non-conforming agreements filed in Docket Nos. RP10-46-000 and RP10-179-000. Algonquin requested rehearing or clarification of that order. On January 3, 2012, in Docket No. RP12-128-002 (January 2012 Compliance Filing), and on February 22, 2012, in Docket No. RP12-128-005 (February 2012 Compliance Filing), Algonquin made filings to comply with the December 2011 Order. Algonquin made subsequent filings in Docket Nos. RP12-827-000 and RP12-730-000 that modified the tariff records filed in compliance with the December 2011 Order.
2. As discussed below the Commission conditionally accepts the compliance filings and grants the request for rehearing.

¹ *Algonquin Gas Transmission, LLC*, 137 FERC ¶ 61,178 (2011) (December 2011 Order).

Background

3. On October 13, 2009, Algonquin filed, in Docket No. RP10-46-000, thirty-four then-effective, non-conforming service agreements that potentially materially deviated from Algonquin's form of service agreements contained in its tariff. Algonquin also filed a revised tariff sheet listing materially non-conforming agreements (October 2009 Filing). On November 12, 2009, the Commission accepted Algonquin's proposed tariff sheet and the filed non-conforming agreements, effective on the dates requested, subject to further review and order of the Commission.² The Commission noted that Algonquin had not elected to file certain other non-conforming contracts which it did not believe contained material deviations and reminded Algonquin that "all contracts containing material deviations from the form of service agreement in a pipeline's tariff must be filed with the Commission."³

4. On November 24, 2009, Algonquin filed, in Docket No. RP10-179-000, seventy-four non-conforming service agreements containing what Algonquin characterized as immaterial deviations from the form of service agreements contained in its tariff (November 2009 Filing). On December 22, 2009, the Commission issued an order accepting the non-conforming agreements subject to further review and order of the Commission.⁴

5. On November 2, 2011, in Docket No. RP12-128-000, Algonquin filed revised tariff records to update Algonquin's list of non-conforming service agreements and provided updated information regarding the current status of the service agreements it had submitted for review in its October and November 2009 Filings (November 2011 Filing). Algonquin stated that some of the agreements had been terminated or the material deviations had been eliminated.

6. In the December 2011 Order, the Commission reviewed the currently effective non-conforming agreements which were not identified by Algonquin as moot. The Commission found that the 22 remaining non-conforming agreements from the October 2009 Filing that Algonquin identified as containing purportedly material deviations do not unduly discriminate against Algonquin's shippers and are permissible. The Commission also found that two of the remaining 17 non-conforming agreements

² *Algonquin Gas Transmission, LLC*, 129 FERC ¶ 61,117 (2009) (November 2009 Order).

³ *Id.* P 10, n.15.

⁴ *Algonquin Gas Transmission, LLC*, 129 FERC ¶ 61,263 (2009) (December 2009 Order).

from the November 2009 Filing contained material deviations.⁵ As described more fully below, the Commission found that the SCG Contract contained a material deviation with a significant potential for undue discrimination among shippers and the O&R Contract did not. Accordingly, the Commission required Algonquin to either remove the deviation from the SCG Contract or file generally applicable tariff provisions to offer a similar provision to other firm shippers pursuant to not unduly discriminatory conditions. The Commission also required Algonquin to file a revised tariff record including the O&R Contract in its list of materially deviating agreements. Accordingly, the Commission accepted the tariff record filed in the November 2011 Filing, subject to the conditions set forth in that order and rejected the tariff sheet submitted in the October 2009 Filing as moot.

7. Algonquin filed a request for rehearing of the December 2011 Order, and also made the January 2012 and February 2012 Compliance Filings, and related filings in Docket Nos. RP12-730-000 and RP12-827-000 which are discussed below.

Request for Rehearing

The December 2011 Order

8. The December 2011 Order conditionally accepted the non-conforming agreements that Algonquin filed, with the exception of the SCG Contract.⁶ The current SCG Contract was entered into on March 26, 2009, and filed in the November 2009 Filing. Algonquin identified a non-conforming provision in a footnote in Exhibit B of the SCG Contract. The Commission found that provision allows deliveries at the Milford delivery point of up to 312 MMBtu per hour at Algonquin's discretion which appeared to be hourly quantities in excess of the Maximum Hourly Transportation Quantity (MHTQ).⁷ The Commission noted that it had found that matters such as hourly flow obligations constitute impermissible deviations unless the pipeline's tariff authorizes the pipeline to

⁵ Contract No. 93012EC with Southern Connecticut Gas Company (SCG Contract) and Contract No. 86013 with Orange and Rockland Utilities, Inc. (O&R Contract).

⁶ December 2011 Order, 137 FERC ¶ 61,178 at P 5.

⁷ The MHTQ is the maximum quantity of gas which Algonquin is willing to deliver to a customer during any hour at all delivery points specified in an executed service agreement and such quantity must equal 1/24th of the Maximum Daily Transportation Quantity (MDTQ). The MDTQ is the maximum quantity of natural gas which Algonquin is willing to receive for transportation for a customer's account on any day at all receipt points specified in an executed service agreement for the applicable period, exclusive of any applicable fuel reimbursement quantity.

negotiate such matters with all its customers.⁸ Accordingly, the Commission determined that the SCG Contract provision constituted an impermissible material deviation, and directed Algonquin to either remove it from the SCG Contract or file generally applicable tariff provisions to offer a similar provision to other firm shippers pursuant to not unduly discriminatory conditions.

Request for Rehearing or Clarification

9. Algonquin states that it has discovered additional facts regarding the SCG Contract and requests that the Commission modify, or in the alternative, grant rehearing of the December 2011 Order. Algonquin contends that the non-conforming provision in the SCG Contract is almost identical to the non-conforming provision in Contract No. 9W005 with Connecticut Natural Gas Corporation (CNG) filed in the October 2009 Filing which the Commission found to be permissible.⁹

10. Algonquin asserts that, during the Order No. 636 restructuring process, two contracts with SCG, under Rate Schedules F-1 and WS-1, were converted to Contracts Nos. 93012E and 9W010E, respectively, and entered into on June 1, 1993, under open-access Rate Schedule AFT-E, providing for an hourly rate of delivery of six percent of scheduled daily quantity. Algonquin asserts that the Contract No. 93012E, however, included a notation for the Milford, Connecticut delivery point that deliveries were not to exceed 312 MMBtu per hour, and subsequent versions continued to include this notation. Algonquin further asserts that, on October 31, 1997, Contract Nos. 93012E and 9W010E were combined to form the SCG Contract which included that notation.

11. Algonquin asserts that it is a party to an exchange agreement with Tennessee Gas Transmission Company (Tennessee) dated November 1, 1964 found in Algonquin's FERC Gas Tariff, Second Revised Volume No. 2, as Rate Schedule X-12. Algonquin further asserts that, under that exchange agreement, it is required to deliver gas at the meter station near Milford, Connecticut, operated and maintained by Tennessee, at a uniform hourly rate and at a daily rate corresponding, as nearly as practicable, to the daily rate at which gas is delivered to New Haven. Algonquin asserts that, because the current SCG Contract is the result of a conversion from Rate Schedules F-1 and WS-1, deliveries under the contract are entitled to an hourly rate of up to six percent multiplied by the scheduled daily quantity, pursuant to section 5.9 of Rate Schedule AFT-E and the MHTQ definition in Algonquin's GT&C. Algonquin further asserts that SCG could be entitled to an MHTQ at Milford of up to 448 MMBtu per hour for the period with the highest MDTQ, which would exceed the uniform hourly rate required by the exchange

⁸ December 2011 Order, 137 FERC ¶ 61,178 at P 25 (citing *Columbia Gas Transmission Corp.*, 97 FERC ¶ 61,221 at 62,002-4 (2001)).

⁹ December 2011 Order, 137 FERC ¶ 61,178 at P 21.

agreement. Algonquin contends that, therefore, the footnote was a limitation to the SCG's MHTQ at Milford and, without this limitation, SCG would be entitled to a delivery rate up to six percent times the scheduled daily quantity in conflict with the uniform hourly requirement of the exchange agreement.

Discussion

12. The December 2011 Order stated that the Commission had determined that it may be equitable to allow a material deviation to remain in effect if it is part of a longstanding agreement relied on by the parties and entered into before the clarification for the standards governing non-conforming agreements in *Columbia Gas Transmission Corp.*¹⁰ in November 2001. As stated by Algonquin, the non-conforming provision in the CNG Contract found to be permissible in the December 2011 Order contained a similar provision to that in the SCG Contract, providing that the maximum hourly delivery quantity at a delivery point cannot exceed a specific Dth per hour under all service agreements. The CNG hourly restriction had been in effect since June 1, 1993, due to longstanding operational restrictions. The December 2011 Order accordingly held that the hourly restriction provision in the CNG contract was permissible because it reflected longstanding operational restrictions.

13. The Commission finds that the non-conforming provision in the SCG contract is permissible on the same basis as the provision in the CNG Contract because it also has been in effect since long before the Commission clarified its standards governing non-conforming agreements and reflects longstanding operational restrictions which will not unduly discriminate against other shippers. Therefore, upon reconsideration, the Commission grants the requested rehearing of the December 2011 Order.

January 2012 and February 2012 Compliance Filings

14. The December 2011 Order required Algonquin to file a revised tariff record including the O&R Contract in its list of materially non-conforming service agreements and searchable electronic tariff records in eTariff containing all currently effective agreements, and any amendments thereto, which are non-conforming. In the January 2012 Compliance Filing, Algonquin filed a revised tariff record¹¹ to modify section 49 of its General Terms and Conditions (GT&C) to include the O&R Contract in its list of materially non-conforming service agreements. Algonquin also filed this

¹⁰ 97 FERC ¶ 61,221 (2001).

¹¹ Algonquin Gas Transmission, LLC, FERC NGA Gas Tariff, Algonquin Database 1, 49., Materially Non-conforming Service Agreements, 7.1.0.

service agreement as a searchable electronic tariff record for inclusion in the Filed Agreements section of its tariff.¹²

15. In the February 2012 Compliance Filing, Algonquin filed tariff records submitting its currently effective non-conforming agreements tendered in Docket Nos. RP10-46-000 and RP10-179-000, and any amendments thereto, as searchable electronic tariff records in eTariff. Algonquin asserts that Contract No. 93001F, Bay State No. 2 in Docket No. RP10-46-000, and Contract No. 510101, Lake Road No. 2 in Docket No. RP10-179-000, have been amended such that the executed agreements no longer contain any deviations from the *pro forma* service agreement. Therefore, Algonquin did not include searchable electronic tariff records of those contracts and filed a revised tariff record to remove Contract No. 93001F from the list of materially non-conforming service agreements in its tariff.¹³

Subsequent Filings

16. On May 11, 2012, in Docket No. RP12-730-000 (May 2012 Filing), Algonquin filed revised tariff records¹⁴ to delete three tariff records, service agreements with the City of Norwich, Connecticut (Contract Nos. 93002ES, 9W002ES, and 9B100S), that were filed in the February 2012 Compliance Filing and reserve those records for future use. Algonquin asserted that the three agreements were no longer non-conforming because the agreements were amended so that they did not contain any deviations from Algonquin's *pro forma* service agreements. On June 7, 2012, the Commission issued an unpublished letter order accepting the three tariff records filed in the May 2011 Filing, effective June 11, 2012, as proposed, subject to the outcome of this proceeding.

17. On June 28, 2012, in Docket No. RP12-827-000 (June 2012 Filing), Algonquin filed revised tariff records¹⁵ to, *inter alia*, remove four contracts from its list of materially

¹² Algonquin Gas Transmission, LLC, FERC NGA Gas Tariff, Algonquin Database 1, 7., Orange and Rockland Utilities - contract 86013, 0.0.0.

¹³ Algonquin Gas Transmission, LLC, FERC NGA Gas Tariff, Algonquin Database 1, 49., Materially Non-conforming Service Agreements, 7.2.0.

¹⁴ Algonquin Gas Transmission, LLC, FERC NGA Gas Tariff, Algonquin Database 1, 33., Reserved for Future Use, 1.0.0; 34., Reserved for Future Use, 1.0.0; & 35., Reserved for Future Use, 1.0.0.

¹⁵ Algonquin Gas Transmission, LLC, FERC NGA Gas Tariff, Algonquin Database 1, 13.17, Reserved for Future Use, 1.0.0; 49., Materially Non-conforming Service Agreements, 8.0.0; 1., Reserved for Future Use, 1.0.0; & 40., Reserved for Future Use, 1.0.0.

deviating non-conforming service agreements because one agreement had terminated (Contract No. 510611 with Nextera Energy Power Marketing, LLC) and three agreements were amended such that the executed agreements no longer deviate from Algonquin's *pro forma* agreements in its tariff (Contract No. 510294 with Virginia Power Energy Marketing, Inc. (VPEM), Contract No. 510295 with VPEM, and Contract No. 66667 with Taunton Municipal Lighting Plant (Taunton)). Algonquin stated that Contract No. 66667 with Taunton, which was filed in the February 2012 Compliance Filing, no longer contains any deviations from the *pro forma* service agreement contained in its tariff. On July 26, 2012, the Commission issued an unpublished letter order accepting the tariff records filed in the June 2012 Filing, effective August 1, 2012, as proposed, subject to the outcome of this proceeding.

Public Notice

18. Public notice of the January 2012 and February 2012 Compliance Filings was issued on January 4, 2012, and March 1, 2012, respectively. Comments were due as provided in section 154.210 of the Commission's regulations.¹⁶ No protests or adverse comments were filed.

Commission Determination

19. The Commission conditionally accepts Algonquin's instant filings, as in compliance with the December 2011 Order, with the exception of the revised tariff records listing Algonquin's materially non-conforming service agreements in the January 2012¹⁷ and February 2012¹⁸ Compliance Filings which are rejected as moot. The Commission accepts the corrected tariff record listing Algonquin's non-conforming service agreements submitted in the June 2012 Filing,¹⁹ effective August 1, 2012, as proposed, subject to the condition that within 15 days of the date of the issuance of this order, Algonquin must file revised tariff records listing the SCG Contract as a non-conforming service agreement.

20. Additionally, the currently effective agreements and amendments thereto, filed in the February 2012 Compliance Filing as searchable electronic tariff records are

¹⁶ 18 C.F.R. § 154.210 (2012).

¹⁷ See n.11.

¹⁸ See n.13.

¹⁹ Algonquin Gas Transmission, LLC, FERC NGA Gas Tariff, Algonquin Database 1, 49., Materially Non-conforming Service Agreements, 8.0.0.

accepted,²⁰ effective February 22, 2012, the date of filing, with the exception of the service agreements with the City of Norwich, Connecticut (Contract Nos. 93002ES, 9W002ES, and 9B100S) and with Taunton (Contract No. 66667), which are rejected as moot.²¹ The revised tariff records filed in the May 2012²² and June 2012²³ Filings, with the exception of the tariff sheet listing the non-conforming sheets conditionally accepted above, are accepted to be effective June 11, 2012, and August 1, 2012, respectively, as proposed.

The Commission orders:

(A) Algonquin's request for rehearing in these proceedings is granted, as discussed in the body of this order.

(B) The tariff record listed in n.19 of this order containing Algonquin's section 49 of its GT&C listing Algonquin's non-conforming service agreements is accepted to be effective August 1, 2012, as proposed, subject to the condition that, within 15 days of the date of the issuance of this order, Algonquin must file revised tariff records listing the SCG Contract as a non-conforming service agreement.

(C) The currently effective agreements and amendments thereto, filed in the February 2012 Compliance Filing as searchable electronic tariff records listed in Appendix A are accepted to be effective February 22, 2012, with the exception of the service agreements with the City of Norwich, Connecticut (Contract Nos. 93002ES, 9W002ES, and 9B100S) and with Taunton (Contract No. 66667), listed in Appendix B, which are rejected as moot.

(D) The revised tariff records filed in the May 2012 Filing listed in Appendix C and the tariff records in the June 2012 Filing, listed in Appendix D, with the exception of the tariff record conditionally accepted in Ordering Paragraph (B) above, are accepted to be effective June 11, 2012, and August 1, 2012, respectively, as proposed.

²⁰ See Appendix A.

²¹ See Appendix B.

²² See Appendix C.

²³ See Appendix D.

(E) The revised tariff records listing Algonquin's materially non-conforming service agreements in the January 2012 and February 2012 Compliance Filings are rejected as moot.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

Appendix A

Algonquin Gas Transmission, LLC
FERC NGA Gas Tariff
Algonquin Database 1
Filed in Docket No. RP12-128-005
(Accepted effective February 22, 2012)

- 8., ANP Bellingham - contract 99039, 0.0.0
- 9., Bay State - contract 94501, 0.0.0
- 10., Boston Gas - contract 99012, 0.0.0
- 11., Boston Gas - contract 93002CR, 0.0.0
- 12., Boston Gas - contract 93002EA, 0.0.0
- 13., Boston Gas - contract 934001, 0.0.0
- 14., Boston Gas - contract 9221, 0.0.0
- 15., Central Hudson - contract 931001, 0.0.0
- 16., Central Hudson - contract 933002, 0.0.0
- 17., Central Hudson - contract 934002, 0.0.0
- 18., Colonial Gas - contract 9227, 0.0.0
- 19., Colonial Gas - contract 510025, 0.0.0
- 20., Colonial Gas - contract 933003, 0.0.0
- 21., Connecticut Light and Power - contract 66668, 0.0.0
- 22., Connecticut Light and Power - contract 97130, 0.0.0
- 23., Connecticut Natural Gas - contract 9W005, 0.0.0
- 25., Lake Road Generating - contract 98005LR, 0.0.0
- 26., Middleborough, Massachusetts - contract 934004, 0.0.0
- 27., Narragansett Electric - contract 9001, 0.0.0
- 28., Narragansett Electric - contract 93011E, 0.0.0
- 29., Narragansett Electric - contract 510075, 0.0.0
- 30., New England Gas - contract 510054, 0.0.0
- 31., New York State Electric & Gas - contract 9225, 0.0.0
- 32., Northern Utilities - contract 93002F, 0.0.0
- 36., NSTAR Gas Company - contract 93004EC, 0.0.0
- 37., Orange and Rockland - contract 931003, 0.0.0
- 38., Phelps Dodge - contract 510020, 0.0.0
- 39., Southern Connecticut - contract 93012EC, 0.0.0
- 41., Yankee Gas - contract 93009, 0.0.0
- 42., Yankee Gas - contract 93013EC, 0.0.0
- 43., Yankee Gas - contract 933006, 0.0.0

Appendix B

Algonquin Gas Transmission, LLC
FERC NGA Gas Tariff
Algonquin Database 1
Filed in Docket No. RP12-128-005
(Rejected as moot)

33., Norwich, Connecticut - contract 9W002ES, 0.0.0

34., Norwich, Connecticut - contract 93002ES, 0.0.0

35., Norwich, Connecticut - contract 9B100S, 0.0.0

40., Taunton Municipal - contract 66667, 0.0.0

Appendix C

Algonquin Gas Transmission, LLC
FERC NGA Gas Tariff
Algonquin Database 1
Filed in Docket No. RP12-730-000
(Accepted effective June 11, 2012, as proposed)

33., Reserved for Future Use, 1.0.0

34., Reserved for Future Use, 1.0.0

35., Reserved for Future Use, 1.0.0

Appendix D

Algonquin Gas Transmission, LLC
FERC NGA Gas Tariff
Algonquin Database 1
Filed in Docket No. RP12-827-000
(Accepted effective August 1, 2012, as proposed)

13.17, Reserved for Future Use, 1.0.0

1., Reserved for Future Use, 1.0.0

40., Reserved for Future Use, 1.0.0