

143 FERC ¶ 61,082
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 No. RP13-751-000

ORDER ACCEPTING TARIFF RECORDS SUBJECT TO CONDITIONS

(Issued April 30, 2013)

1. On March 29, 2013, Algonquin Gas Transmission, LLC (Algonquin) submitted revised tariff records¹ to revise its contracting for service and right of first refusal (ROFR) processes. The Commission accepts the revised tariff records listed in footnote no. 1 of this order to be effective May 1, 2013. In addition, pursuant to section 5 of the Natural Gas Act (NGA), the Commission requires that Algonquin either file revisions to its tariff concerning reservation charge credits and curtailment to conform with Commission policy, as discussed in this order, or explain why it should not be required to do so.

Details of the Filing

2. Algonquin proposes to revise its General Terms and Conditions (GT&C) to reflect its current business practices related to contracting for service and right of first refusal (ROFR) processes.

Request for Transportation Service

3. Algonquin proposes to modify GT&C section 2.1(a) to delete the requirement that parties submitting a bid for ROFR capacity pursuant to GT&C section 9 must submit

¹ Algonquin Gas Transmission, LLC, FERC NGA Gas Tariff, Algonquin Database 1; [1., Definitions, 4.0.0](#); [2., Request for Transportation Service, 2.0.0](#); [3., Credit Evaluation, 1.0.0](#); [9., Pregranted Abandonment and Right of First Refusal, 2.0.0](#); [14., Capacity Release, 4.0.0](#).

such bids via the LINK® System.² Algonquin states that this requirement is already reflected in GT&C section 9.2(c).

4. Algonquin proposes to modify GT&C section 2.5 to reflect Algonquin's current business practice that information related to available capacity is posted on the LINK® System. Algonquin proposes to modify that section to provide that bids for capacity posted pursuant to GT&C section 2.5 must be submitted in accordance with the instructions contained in the open season notice. Algonquin also proposes to modify GT&C section 2.5(c) to reflect that: (1) all requests are binding on the requesting party through the end of the open season; and (2) the requesting party is permitted to withdraw a bid and submit a bid with a higher net present value, but neither the requesting party nor an affiliate of the requesting party may withdraw a bid and submit another bid with a lower net present value consistent with *Northern Natural*.³

5. Algonquin also proposes to modify GT&C section 2.5(d) to reflect that: (1) a winning bidder in an open season is bound by the terms of its winning bid and the service agreement tendered by Algonquin even if the winning bidder does not execute the service agreement; (2) a winning bidder must submit a request for service and will be required to comply with the provisions of GT&C section 2, if such winning bidder is not the party who submitted the request that prompted the open season for the available capacity; and (3) in the event that Algonquin is unable to approve the winning bidder's request for service, the capacity will be awarded to the party that submitted the next highest bid unless such party notifies Algonquin in writing within one business day of the notification of the award of the capacity that it rejects such award. Algonquin states that these provisions are similar to currently effective language for other pipelines.

6. Algonquin proposes to modify GT&C section 2.5(f) to reflect that a party offered capacity on a *pro rata* basis pursuant to an open season for available capacity may decline to enter into a service agreement for the prorated capacity by notifying Algonquin via the LINK® System within one business day of notification of the offered capacity, and, if such party declines to enter into a service agreement for the prorated capacity, the capacity will be reallocated among any remaining requests that provide an equivalent net present value to enable a party to decline to accept a capacity quantity that does not meet its needs.

7. Algonquin also proposes to modify GT&C section 2.6 to reflect: (1) Commission policy that any capacity that is available as a result of the operation of GT&C section

² LINK® serves as Algonquin's customer interface system for its daily business processes.

³ *Citing Northern Natural Gas Co.*, 140 FERC ¶ 61,047, at P 23 (2012).

2.4(b), which addresses the advance sales of capacity under certain circumstances, may be sold on an interim basis pursuant to the provisions GT&C section 2.6; and (2) Algonquin's current business practice that interim capacity will be sold pursuant to the open season provisions set forth in GT&C section 2.5 and that the minimum bid period for an open season for interim capacity is one business day, rather than five business days.

Right of First Refusal

8. Algonquin proposes to modify the definition of "ROFR Agreement" in GT&C section 1 to reflect that a service agreement for capacity sold as interim capacity pursuant to GT&C section 2.6 does not qualify as a ROFR Agreement. Algonquin also proposes to modify: (1) GT&C sections 9.2(c) and 9.2(d) to replace the term "Replacement Customer" with "ROFR Bidder" in order to differentiate the party that desires to obtain service pursuant to the ROFR process from the party that desires to obtain or has obtained service pursuant to the capacity release provisions in GT&C section 14; and (2) modify GT&C sections 9.2(e) and 9.2(f) to remove the reference to Replacement Customers to make it clear that these provisions are applicable to all bids submitted for the ROFR capacity.

9. Algonquin proposes to modify (1) GT&C sections 9.2(c) and 9.2(f) to delete the effective date for bidders to submit all bids for ROFR capacity and for a current customer to submit its notification to match the best bid, respectively, via the LINK® System because the referenced date of January 1, 2006 has already occurred and all bids and notifications must now be submitted via the LINK® System; and (2) GT&C section 9.2(c) to reflect Algonquin's current business practice that a Customer's election to match the best bid(s) for ROFR capacity must be submitted via the LINK® System. Algonquin also proposes to modify GT&C section 9.2(d) to reflect Algonquin's current business practice that, if a bid submitted pursuant to the ROFR provisions is rejected, Algonquin will notify the party whose bid was rejected via email of the reason(s) for the rejection of the bid in order to establish consistency with the rejection notification process currently in place for the sale of available capacity pursuant to GT&C section 2.5(c). Algonquin proposes to further modify GT&C section 9.2(f) to reflect that it will have all necessary NGA abandonment authorization if the customer fails to submit a matching bid after receipt of a notice from Algonquin that the customer's bid is not the "best bid."

10. Algonquin is proposing to move the existing language from GT&C section 9.2(h), which provides that any new service agreement entered into as a result of the ROFR process must meet the requirements of the definition of a ROFR Agreement in order for the customer to have a right of first refusal for the new service agreement, to GT&C section 9.2(g) so that section contains all provisions related to the process to enter into a new service agreement with the ROFR customer.

Permanent Capacity Releases

11. Algonquin proposes to modify GT&C section 14.14 to reflect Algonquin's current business practice that the parties will execute a service agreement upon completion of the permanent capacity release and approval processes.

Miscellaneous Changes

12. Algonquin proposes to modify GT&C sections 2.1(c), 2.1(d), 3.2, and 3.4 to replace the phrases "deemed to be null and void," "deemed null and void" and "considered to be null and void" with "rejected by Algonquin" to clarify that a request for service record which is not approved by Algonquin will be retained in the LINK® System with a status of "rejected" rather than being deleted, as the current language implies.

Notice of Filing , Interventions, Protest, and Answer

13. Public notice of the filing was issued on April 1, 2012. Interventions and protests were due as provided in section 154.210 of the Commission's regulations (18 C.F.R. § 154.210 (2012)). Pursuant to Rule 214, 18 C.F.R. § 385.214 (2012), all timely filed motions to intervene and any unopposed 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. Indicated Shippers, consisting of BP Energy Company and Hess Corporation, filed a protest. On April 18, 2013, Algonquin filed an answer to the protest (Answer).⁴

14. In its protest, Indicated Shippers states that the Commission has encouraged shippers who believe a pipeline's tariff is not in compliance with the Commission's reservation charge crediting policy to file a complaint under section 5 or raise the issue in any section 4 filing made by the pipeline.⁵ Indicated Shippers contends that Algonquin's current tariff has no reservation charge crediting language whatsoever in conflict with the

⁴ The Commission's Rules of Practice and Procedure do not permit answers to protests unless otherwise ordered by the decisional authority. 18 C.F.R. § 385.213(a)(2) (2012). However, the Commission finds good cause to accept Algonquin's Answer since it will not delay the proceeding, may assist the Commission in understanding the issues raised, and will ensure a complete record.

⁵ *Citing Natural Gas Supply Ass'n, et al.*, 135 FERC ¶ 61,055, at P 13 (April 2011 NGSA Order), *order on reh'g*, 137 FERC ¶ 61,051 (October 2011 NGSA Rehearing Order) (2011) (NGSA).

Commission reservation charge crediting policy and that Algonquin should be required to file revised tariff records which are consistent with that policy. Indicated Shippers asserts that, for non-*force majeure* outages due to circumstances within the pipeline's control, including planned or scheduled maintenance, Algonquin must provide shippers a full reservation charge credit for the amount of primary firm service the shipper nominated for scheduling which the pipeline failed to deliver. Indicated Shippers further asserts that Algonquin must provide partial reservation charge credits during outages due to *force majeure* events which are unexpected and uncontrollable using the No-Profit method, the Safe Harbor method, or other method that results in the same type of risk-sharing.

15. Indicated Shippers also argues that Algonquin should be required to revise its existing definition of *force majeure*, in section 16 of the GT&C, because it conflicts with Commission precedent with respect to what events constitute *force majeure* events. Indicated Shippers contends that the Commission should require Algonquin to modify its definition of *force majeure* in section 16.4 so that it is clear that planned and scheduled maintenance is not included as a *force majeure* event since the Commission has consistently held that planned and scheduled maintenance is not a *force majeure* event. Indicated Shippers further contends that the Commission should require Algonquin to modify section 16.5 to clarify that compliance with a governmental directive is not by itself a *force majeure* event. Indicated Shippers asserts that the Commission has made clear that a pipeline must exclude outages resulting from compliance activities from its definition of *force majeure* to the extent that such activities were not reasonably within Algonquin's control.

16. In its Answer, Algonquin argues that, while the Commission may allow Indicated Shippers to raise the reservation charge crediting issue in the context of an unrelated section 4 proceeding, Indicated Shippers has failed to satisfy its burden of going forward and the burden of proof under NGA section 5 to show that Algonquin's current reservation charge crediting provisions are unjust and unreasonable and that replacement tariff provisions are just and reasonable. Algonquin asserts that Indicated Shippers have made no attempt to demonstrate why the policy set forth in *NGSA*, as interpreted by Indicated Shippers, is appropriate for Algonquin and its shippers under the unique circumstances associated with the Algonquin system. Algonquin further asserts that Indicated Shippers have presented no factual evidence regarding how circumstances have changed on the Algonquin system such that Algonquin's current application of its tariff, previously determined to be just and reasonable, is now unjust and unreasonable.

17. Algonquin argues that Indicated Shippers cannot claim that *NGSA* or any subsequent proceedings on other pipelines satisfies Indicated Shippers' threshold section 5 burdens. Algonquin contends that *NGSA* itself expressly states that the Commission has made no findings under section 5 with respect to any particular pipeline and that *NGSA* is not intended to be anything more than a policy statement, and that it did not attempt to satisfy a section 5 burden to apply this policy statement in a generic manner to

all natural gas companies. Algonquin further contends that any proceedings related to other pipelines are specific to those individual circumstances and are not sufficient to meet Indicated Shippers' burden, and, therefore, the Commission did not make the statutory findings necessary to absolve Indicated Shippers from satisfying their section 5 burden here.

Discussion

18. The Commission accepts the revised tariff records listed in footnote no. 1 of this order to become effective May 1, 2013. Algonquin's tariff proposals are unopposed and consistent with Commission policy.

19. In addition, as discussed below, this order initiates a section 5 investigation as to whether Algonquin's omission of reservation charge crediting provisions and its definition of *force majeure* in section 16.4 are unjust and unreasonable and must be modified. Accordingly, the Commission directs Algonquin either to file tariff language providing reservation charge credits consistent with current Commission policy, or explain why it should not be directed to do so.

Reservation Charge Crediting Policy

20. The Commission has formulated its reservation charge crediting policy through a series of adjudications concerning the reservation charge crediting tariff provisions of particular pipelines. That policy requires that all interstate pipelines provide reservation charge credits to their firm shippers during both *force majeure* and non-*force majeure* outages.⁶ The Commission requires full reservation charge credits for outages of primary firm service due to non-*force majeure* events and partial reservation charge credits for outages due to *force majeure* events to share the risk of such events for which neither party is responsible. Partial credits may be provided pursuant to: (1) the No-Profit method under which the pipeline gives credits equal to its return on equity and income taxes starting on Day 1, or (2) the Safe Harbor method under which the pipeline provides

⁶ See, e.g., *Southern Natural Gas Co.*, 135 FERC ¶ 61,056, *order on reh'g*, 137 FERC ¶ 61,050 (2011); *Kern River Gas Transmission Co.*, 135 FERC ¶ 61,050 (2011); *order on reh'g*, 139 FERC ¶ 61044 (2012); *Northern Natural Gas Co.*, 135 FERC ¶ 61,250, *order on reh'g*, 137 FERC ¶ 61,202 (2011); *Midwestern Gas Transmission Co.*, 137 FERC ¶ 61,257 (2011) (*Midwestern*); *Gulf South Pipeline Co. LP*, 141 FERC ¶ 61,224 (2012) (*Gulf South*), *Tennessee Gas Pipeline Co., LLC*, 133 FERC ¶ 61,208 (2011), *order on reh'g*, 139 ¶ 61,050 (2012) (*Tennessee*).

full credits after a short grace period when no credit is due (*i.e.*, 10 days or less).⁷ The Commission has defined *force majeure* outages as events that are both unexpected and uncontrollable.⁸ The Commission has held that routine, scheduled maintenance is not a *force majeure* event, and this policy is not dependent on the specific operational conditions of the pipeline.⁹ That is because, even if such outages are not considered to be reasonably within the pipeline's control, they are expected.

21. In *North Baja Pipeline, LLC v. FERC*,¹⁰ the U.S. Court of Appeals for the District of Columbia Circuit (D.C. Circuit) affirmed the major elements of the Commission's reservation charge crediting policies. As the Commission explained in *Texas Eastern Transmission, LP*,¹¹ because our reservation charge crediting policies have been developed in individual adjudications, they have the force of law. While the court held in *PG&E v. FPC*¹² that policy statements do not establish a "binding norm," the court also stated that, in contrast to a policy statement:

An administrative agency has available two methods for formulating policy that will have the force of law. An agency may establish binding policy through rulemaking procedures by which it promulgates substantive rules, or through adjudications which constitute binding precedent.

Therefore, consistent with *PG&E v. FPC*, the Commission's orders in its adjudications concerning pipeline reservation charge crediting provisions constitute "binding

⁷ See, e.g., *Tennessee Pipeline Co.*, Opinion No. 406, 76 FERC ¶ 61,022 (1996), *order on reh'g*, Opinion No. 406-A, 80 FERC ¶ 61,070 (1997), *as clarified by, Rockies Express Pipeline LLC*, 116 FERC ¶ 61,272, at P 63 (2006); *Ingleside Energy Center, LLC, et al.*, 112 FERC ¶ 61,101, at P 58 (2005); *Midwestern*, 137 FERC ¶ 61,257 at PP 19-22. The Commission has also stated that pipelines may use some other method which achieves equitable sharing in the same ball park as the first two methods.

⁸ See, e.g., Opinion No. 406, 76 FERC at 61,088.

⁹ *El Paso Natural Gas Co.*, 105 FERC ¶ 61,262, at 61,350 (2003).

¹⁰ *North Baja Pipeline, LLC v. FERC*, 483 F.3d 819, 823 (D.C. Cir. 2007), *aff'g*, *North Baja Pipeline, LLC*, 109 FERC ¶ 61,159 (2004), *order on reh'g*, 111 FERC ¶ 61,101 (2005) (*North Baja*).

¹¹ 140 FERC ¶ 61,216 at P 24 (2012) (*Texas Eastern*).

¹² 506 F.2d 33, 38 (D.C. Cir. 1974) (footnote and citations omitted). See also, e.g., *Consolidated Edison Co. v. FERC*, 315 F.3d 316, 323 (D.C. Cir. 2003) (an agency may "change the established law and apply newly created rules . . . in the course of an adjudication").

precedents” which establish “binding policy” that has “the force of law.” Similarly, in *Michigan Wis. Pipe Line Co.*, 520 F.2d 84, 89 (D.C. Cir. 1975), the court stated:

There is no question that the Commission may attach precedential, even controlling weight to principles developed in one proceeding and then apply them under appropriate circumstances in a stare decisis manner.¹³

22. In these circumstances, the omission of any reservation charge crediting provisions from Algonquin’s tariff conflicts with binding Commission precedent and is sufficient to establish a *prima facie* case that the tariff is unjust and unreasonable.¹⁴ Contrary to the suggestions of Algonquin, the Commission’s reservation charge crediting policy requiring reservation charge credits during outages of firm service “is not dependent upon specific operating conditions on the pipeline.”¹⁵ Accordingly, pursuant to NGA sections 5, 10, and 14, the Commission requires Algonquin either to produce evidence justifying the absence of any reservation charge crediting provisions from its tariff or file revised tariff language providing reservation charge credits consistent with Commission policy, as set forth in the precedents discussed above.¹⁶

23. While the Commission is imposing on Algonquin the burden of producing evidence, the Commission recognizes that it continues to have the burden of persuasion to demonstrate both that those existing tariff provisions are unjust and unreasonable and that any required replacement tariff provisions are just and reasonable.¹⁷ By giving Algonquin the option to either revise its tariff or explain why it should not be required to do so, the Commission is not making any final merits decision under NGA section 5 in this order on either of those issues. The Commission is only commencing the NGA section 5 proceeding to decide those issues.

¹³ See *Williston Basin Interstate Pipeline Co. v. FERC*, 165 F.3d 54, 61 (D. C. Cir. 1999), holding that to the extent “arguments reflect efforts to skirt or modify, rather than comply” with current Commission policy, the Commission may reject them.

¹⁴ *Texas Eastern*, 140 FERC ¶ 61,216 at P 26.

¹⁵ *North Baja*, 483 F.3d at 823, quoting *El Paso*. 105 FERC ¶ 61,262 at P 15.

¹⁶ *East Tennessee Natural Gas Co. v. FERC*, 863 F.2d 932, 938 (D.C. Cir. 1988) (*East Tennessee*), finding that the Commission may, consistent with its burden of persuasion under section 5, impose on the pipeline the burden of producing evidence justifying a tariff provision, a minimum bill, once a *prima facie* showing is made that the tariff provision is unjust and unreasonable.

¹⁷ *Western Resources Inc. v. FERC*, 9 F.3d 1568, 1578 (D.C. Cir. 1993).

GT&C Section 16

24. Existing GT&C section 16 of Algonquin's tariff concerning *force majeure*, contains a provision which is inconsistent with the Commission's reservation charge crediting policy. Section 16.1, Relief from Liability, includes as a *force majeure* event "the binding order of any court or governmental authority which has been resisted in good faith by all reasonable legal means." The Commission has recognized that, in some circumstances, an outage required to comply with governmental requirements may be treated as resulting from a *force majeure* event for which partial reservation charge credits are required.¹⁸ However, such outages may be treated as resulting from a *force majeure* event only when the governmental requirement pertains to matters which are not reasonably in the pipeline's control and are unexpected.

25. As the Commission found with respect to the same provision in *Texas Eastern Transmission, LP*,¹⁹ to the extent GT&C section 16 of Algonquin's tariff is intended to treat service interruptions for routine, scheduled testing, repair and maintenance in compliance with government orders as *force majeure* events, this provision is contrary to Commission policy. The Commission has required pipelines to clarify identical tariff language to ensure that outages for routine testing and maintenance required to comply with governmental action are not treated as *force majeure* events.²⁰ Accordingly, the Commission requires Algonquin to either (1) modify section 16.1 of its GT&C to exclude outages resulting from regulatory requirements which are within the pipeline's control or expected or revise the definition of *force majeure* outages so that it only includes outages to comply with government requirements which are both outside the pipeline's control and unexpected,²¹ or (2) explain why it should not be required to do so.

¹⁸ See, e.g., *Florida Gas Transmission Co.*, 105 FERC ¶ 61,171, order on reh'g, 107 FERC ¶ 61,074, at P 32 (2004) (*Florida Gas*); *Tarpon Whitetail Gas Storage, LLC*, 125 FERC ¶ 61,050, at P 5 (2008).

¹⁹ *Texas Eastern*, 140 FERC ¶ 61,126 at P 88.

²⁰ *Texas Eastern*, 140 FERC ¶ 61,216 at P 88; *Tennessee*, 139 FERC ¶ 61,050 at P 82. See also *Rockies Express Pipeline LLC*, 139 FERC ¶ 61,275, at P 19 (2012).

²¹ Consistent with *Panhandle Eastern Pipeline Co. LP*, 143 FERC ¶ 61,041 at P 68 (2013) (*Panhandle*), if Algonquin files revised tariff language in compliance with this order, it may include in that filing a provision permitting partial reservation charge crediting for a transitional period of two years for outages resulting from orders issued by the Pipeline and Hazardous Safety Administration (PHMSA) of the United States Department of Transportation pursuant to section 60139(c) of Chapter 601 of Title 49 of the United States Code added by section 23 of the Pipeline Safety, Regulatory and Job

(continued...)

26. Indicated Shippers also contends that Algonquin should be required to clarify sections 16.4 and section 16.5 to make clear that planned and scheduled maintenance and compliance with governmental directives are not *force majeure* events. Indicated Shippers is mistaken.

27. Section 16.4, Scheduling of Construction and Maintenance, of Algonquin's GT&C provides that:

Algonquin shall have the right to *curtail*, interrupt, or discontinue service in whole or in part on all or a portion of its system from time to time to perform repair, maintenance or improvements on Algonquin's system as necessary to maintain the operational capability of the system, or to comply with applicable regulatory requirements, or to perform construction pursuant to valid FERC authorization. Algonquin shall exercise due diligence to schedule repair, construction and maintenance so as to minimize disruptions of service to Customer and shall provide reasonable notice of the same to Customer [emphasis added].

28. Further, section 16.5, Compliance with Directives of Governmental Agencies, provides that:

Whenever in order to comply with orders, directives or regulations of duly constituted state, local or federal authorities, including, but not limited to, the Department of Transportation, the Federal Energy Regulatory Commission, and the Environmental Protection Agency, Algonquin must curtail deliveries to Customer and is unable to deliver to Customer the quantities of gas which Customer may then require up to the quantities of gas Algonquin is then obligated to deliver to Customer, Algonquin shall not be liable in damages or otherwise to Customer or any other person or entity for any such failure to deliver such quantities of gas to Customer except to

Creation Act of 2011. The Commission has found that such outages are comparable to those for which partial crediting is allowed for *force majeure* events. *Gulf South Pipeline Co. LP*, 141 FERC ¶ 61,224 at P 40; *Gulf Crossing Pipeline Co. LLC*, 141 FERC ¶ 61,222 at P 40 (2012); and *Texas Gas Transmission, LLC*, 141 FERC ¶ 61,223 at P 39 (2012). In addition, our holdings in this order are without prejudice to Algonquin's filing a proposal to allow equitable sharing of credits resulting from other new safety requirements PHMSA may adopt, after the nature and timing of such new requirements becomes sufficiently clear to allow consideration of whether such a proposal is just and reasonable. *Panhandle*, 143 FERC ¶ 61,041 at P 69.

the extent the orders or directives were issued as a result of imprudence or failure to exercise due diligence on the part of Algonquin.

29. The Commission, in *Texas Eastern*, found that a similar provision to section 16.4 was not a definition of *force majeure* and did not treat routine scheduled repair and maintenance as a *force majeure* event for which only partial reservation charge credits would be required or otherwise address the issue of reservation charge credits.²² Section 16.4 is limited to (1) authorizing Algonquin to interrupt or curtail service in order to perform repairs and maintenance “as necessary to maintain the operational capability of [Algonquin’s] system or to comply with applicable regulatory requirements, or to perform construction pursuant to valid FERC authorization” and (2) requiring Algonquin to exercise due diligence to schedule such repair, construction, and maintenance so as to minimize disruptions of service and provide reasonable notice to shippers. Section 16.4 contains no provision concerning the issue of when Algonquin must provide reservation charge credits for failure to schedule primary firm service. Similarly, section 16.5 only concerns Algonquin’s liability to pay damages to shippers or others because of failure to make deliveries because of compliance with governmental directives. That does not address the issue of limiting Algonquin’s ability to collect reservation charges from shippers during *force majeure* outages. Accordingly, because sections 16.4 and 16.5 do not concern the issue of when Algonquin must provide reservation charge credits for a failure to schedule primary firm service, there is nothing in those sections contrary to Commission policy concerning reservation charge credits.

30. However, consistent with *Texas Eastern*,²³ the Commission finds that section 16.4 currently contains a provision regarding Algonquin’s curtailment of service which does not comply with Commission policy. Section 16.4 provides, in part that Algonquin has the “right to *curtail*, interrupt, or discontinue service in whole or in part on all or a portion of its system from time to time to perform repair, maintenance or improvements [emphasis supplied].” The Commission finds that the reference to curtailment in this provision is unjust and unreasonable. The Commission has found that pipelines may only “curtail” service in an emergency situation or when an unexpected capacity loss occurs after the pipeline has scheduled service, and the pipeline is therefore unable to perform the service which it has scheduled.²⁴ The term “repair, maintenance or improvements” is not limited to an emergency situation or an unexpected loss of capacity, and the pipeline should take outages required for routine repair, maintenance, and improvements into

²² *Texas Eastern*, 140 FERC ¶ 61,216 at P 33.

²³ *Id.*

²⁴ See, e.g., *Portland Natural Gas Transmission Sys.*, 76 FERC ¶ 61,123, at 61,663 (1996); *Ryckman Creek Resources, LLC*, 136 FERC ¶ 61,061, at P 68 (2011).

account when it is scheduling service, rather than curtailing service after it is scheduled. If an interruption of service is required for routine repair, maintenance or improvements, then the pipeline should not confirm shipper nominations to schedule service that it will not be able to provide for the period of the outage. For that reason, the Commission has held that pipelines should plan routine repair, maintenance, and improvements through the scheduling process and should not curtail confirmed scheduling nominations in order to perform routine repair, maintenance, and improvements.²⁵ Therefore, Algonquin is directed, pursuant to NGA section 5, to modify section 16.4 to remove the authorization to “curtail” service to perform any repair, maintenance, and improvements consistent with Commission policy, or explain why it should not be required to do so.

Conclusion

31. For the foregoing reasons, the Commission finds that Algonquin’s existing tariff is inconsistent with the Commission’s reservation charge crediting and curtailment policies, and, under NGA section 5, directs Algonquin, within thirty days of the date of this order, either to file revised tariff records to conform with the Commission’s reservation charge crediting policy, consistent with the discussion in this order; or explain why it should not be required to do so.

The Commission orders:

(A) The tariff records listed in the footnote no. 1 to this order are accepted to become effective May 1, 2013, subject to conditions, as discussed in this order.

(B) Algonquin is directed to file revised tariff records to conform with the Commission’s reservation charge crediting policy, consistent with the discussion in this order, within thirty (30) days of the date of this order, or explain why it should not be required to do so.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

²⁵ *Id.*