

126 FERC ¶ 61,110  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

Algonquin Gas Transmission, LLC

Docket No. CP08-256-000

ORDER ISSUING CERTIFICATE

(Issued February 11, 2009)

1. On April 30, 2008, Algonquin Gas Transmission, LLC (Algonquin) filed an application under section 7(c) of the Natural Gas Act (NGA) and Part 157 of the Commission's regulations for authorization to construct, operate, and maintain approximately 2.3 miles of 14-inch diameter pipeline loop in Medford, Massachusetts (J-2 Loop). We will grant the requested authorization, as modified and conditioned below.

**Background**

2. The Pipeline Safety Improvement Act of 2002 (Pipeline Safety Act)<sup>1</sup> and U.S. Department of Transportation (DOT) Integrity Management Plan regulations<sup>2</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.

3. Algonquin's existing 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,

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<sup>1</sup> Pub. L. No. 107-355, 116 Stat. 2985 (2002).

<sup>2</sup> See 49 C.F.R. Part 192, Subpart Q, § 192.901, *et seq.* (2007).

Massachusetts to two delivery points located in Cambridge, Massachusetts. NSTAR Gas Company (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 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.

4. Based on the age and urban location of the J-2 pipeline and on the list of risk factors mandated by Congress, Algonquin identified the J-2 pipeline as “high-risk” and prioritized assessment of the facility.<sup>3</sup> On April 9, 2007, NSTAR filed a complaint alleging that Algonquin’s potential curtailment of service on its J-2 pipeline in order to inspect the pipeline in compliance with the DOT requirements violates Algonquin’s tariff and firm service contract with NSTAR. Subsequently, on October 16, 2007 Algonquin and NSTAR filed a settlement that resolved the issues raised by the complaint.

5. On February 14, 2008, the Commission issued an order addressing NSTAR’s complaint and approving the resultant settlement.<sup>4</sup> Under the settlement, Algonquin would construct approximately two miles of 14-inch diameter pipeline looping that would provide for a design capacity of 140,000 Dth/d. Algonquin would recover its costs for the new J-2 Loop through an incremental rate 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.

6. Under the settlement, other Algonquin shippers wishing to use the J-2 Facilities, including the firm and interruptible 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. The new incremental rate would be in addition to the system-wide rate they would continue to pay for service over Algonquin’s mainline. Prior to commencing service, Algonquin would modify its tariff to provide that shippers who sign an agreement for service on the J-2 Facilities would 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 did not sign such agreements would only

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<sup>3</sup> The J-2 pipeline was installed in 1953 as part of Algonquin’s mainline system. Sections of the pipeline were replaced in 1987 and 1991. Thus, the oldest sections of the pipeline have been in operation for over 55 years. *See* External Corrosion Direct Assessment – Pre-Assessment Final Report for the J-2 Lateral Pipeline System, at 1.

<sup>4</sup> *NSTAR Gas Co. v. Algonquin Gas Transmission, LLC*, 122 FERC ¶ 61,131 (2008) (*NSTAR v. Algonquin*).

have access to the delivery point at the head of the J-2 pipeline at the Mystic Street Station.

7. In the February 14, 2008 order approving the settlement, the Commission stated that the actual terms and conditions for the new service, including the initial incremental recourse rates, would be determined in the NGA section 7 proceeding approving the facilities. It also determined that the settlement's proposal to remove the ability of existing shippers to access the existing J-2 pipeline under the system rate would be a change to an existing term and condition of service that could not be approved in a section 7 proceeding. However, the Commission stated that Algonquin could 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.<sup>5</sup>

### **Proposal**

8. Algonquin proposes to construct approximately 2.3 miles of 14-inch diameter pipeline from the head of the J-2 Lateral in Medford, Massachusetts, to the McGrath-O'Brien Highway Bridge near the border of Somerville and Cambridge, Massachusetts. The proposed J-2 Loop will have a total design capacity of approximately 140,000 Dth/d, and a maximum allowable operating pressure of 433 psi. Algonquin estimates that the cost of the J-2 Loop project is approximately \$35,307,000.

9. NSTAR has entered into an agreement to subscribe the entire capacity of the proposed loop and the existing J-2 pipeline under a 20-year negotiated rate agreement for firm service. Algonquin proposes an initial J-2 Facility firm reservation rate under Rate Schedule AFT-CL of \$5.2045 per Dth, per month. It also proposes an initial interruptible rate under Rate Schedule AIT-2 of \$0.1711 per Dth, based on a 100 percent load factor rate of the firm rate on the J-2 Facilities.

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<sup>5</sup> *Id.* at P 36. In the NGA section 4 proceeding Algonquin would remove the availability of the existing J-2 pipeline from its mainline system and designate it as a new lateral pipeline that would be subject to the new incremental recourse rate. Algonquin would also remove all costs associated with the existing J-2 pipeline from its system rate, as the mainline rate would 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 tariff to meet its existing interruptible and/or secondary firm service obligations.

## **Procedural Issues**

10. Notice of Algonquin's application was published in the *Federal Register* on May 20, 2008 (73 Fed. Reg. 29,131). Ten parties filed timely, unopposed motions to intervene.<sup>6</sup> Timely, unopposed motions to intervene are granted by operation of Rule 214 of the Commission's Rules of Practice and Procedure.<sup>7</sup> Northeast Energy Associates, LP filed a motion to intervene out-of-time. We will grant this motion, since to do so at this stage of the proceeding will not unduly delay, disrupt, or otherwise prejudice the proceeding or other parties.

11. Hess and the Massachusetts Attorney General (Massachusetts AG) filed protests to Algonquin's certificate application in this proceeding. Algonquin filed a motion for leave to answer and an answer to the protests. Hess subsequently also filed a motion for leave to answer and answer to Algonquin's answer. Although answers to protests and answers to answers are not permitted by Rule 213(a)(2), 18 C.F.R § 385.213(a)(2)(2008), the Commission finds good cause to waive the rule to permit the answers filed in the instant proceeding as they provided information that has assisted in our decision making. The issues raised in the protests and answers are addressed below.

## **Discussion**

12. Since Algonquin proposes facilities for the transportation of natural gas in interstate commerce subject to the jurisdiction of the Commission, Algonquin's proposal is subject to the requirements of NGA sections 7(c) and (e).

### **A. Application of the Certificate Policy Statement**

13. The Commission's Certificate Policy Statement set forth criteria for determining whether a proposed project is needed and will serve the public interest.<sup>8</sup> In deciding whether to authorize the construction of new pipeline facilities, we balance the public

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<sup>6</sup> The timely, unopposed motions to intervene were filed by Consolidated Edison Company of New York, Inc; Hess; Lisa M. Mulholland and AJ Gerritson; Massachusetts Attorney General; Massachusetts Energy Facilities Siting Board; Mirant; Mystic Property Associates Limited Partnership; National Grid Gas Delivery Companies; New England Local Distribution Companies; and NSTAR.

<sup>7</sup> 18 C.F.R. § 385.214(c) (2008).

<sup>8</sup> *Certification of New Interstate Natural Gas Pipeline Facilities*, 88 FERC ¶ 61,227 (1999), *order on clarification*, 90 FERC ¶ 61,128, *order on clarification*, 92 FERC ¶ 61,094 (2000) (Certificate Policy Statement).

benefits against the potential adverse consequences. Our goal is to give appropriate consideration to the enhancement of competitive transportation alternatives, the possibility of overbuilding, subsidization by existing customers, the applicant's responsibility for unsubscribed capacity, the avoidance of unnecessary disruptions of the environment, and the unneeded exercise of eminent domain in evaluating new pipeline construction.

14. Under the Certificate Policy Statement, the threshold requirement for pipelines proposing new projects is that the pipeline must be prepared to financially support the project without relying on subsidization from its existing customers. The next step is to determine whether the applicant has made efforts to eliminate or minimize any adverse effects the project might have on the applicant's existing customers, existing pipelines in the market and their captive customers, or landowners and communities affected by the applicant's proposal. If residual adverse effects on these interest groups are identified after efforts have been made to minimize them, we will evaluate the project by balancing the evidence of public benefits to be achieved against the residual adverse effects. This is essentially an economic test. Only when the benefits outweigh the adverse effects on economic interests will we proceed to complete the environmental analysis where other interests are considered.

15. As stated, the threshold requirement is that the applicant must be prepared to financially support the project without relying on subsidization from its existing customers. Service on the proposed facilities will be incrementally priced. The Commission has previously determined that where a pipeline proposes to charge an incremental rate for new construction, the pipeline satisfies the threshold requirement that the project will not be subsidized by existing shippers.<sup>9</sup> Thus, the Commission finds that the proposal submitted by Algonquin satisfies the threshold requirement of the Certificate Policy Statement.<sup>10</sup>

16. Algonquin's J-2 pipeline is located at the end of its system. The cost of the new facilities will be recovered from the shippers who use and benefit from the new capacity.<sup>11</sup> Algonquin's proposal will result in no degradation of service. Indeed, in

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<sup>9</sup> See, e.g., *Transcontinental Gas Pipe Line Corp.*, 98 FERC ¶ 61,155 (2002).

<sup>10</sup> In the February 14 settlement order, Mirant argued that the proposed incremental rate would violate the Certificate Policy Statement. The Commission stated that because only NSTAR and the other shippers that use the J-2 Facilities will bear the cost of the new pipeline loop there will be no improper subsidization of the new facilities by existing customers. *NSTAR v. Algonquin*, 122 FERC ¶ 61,131 at P 29.

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

view of the condition of the existing J-2 pipeline, Algonquin's proposed project is needed to ensure maintenance of reliable service. The proposed project will also have no adverse effects on existing pipelines in the region or their customers. Further, Algonquin has co-located nearly the entire proposed J-2 Loop within existing public roadways and utilities rights-of-way. Thus, the potential for adverse impacts to landowners and communities has been minimized.<sup>12</sup>

17. Algonquin's proposed project will provide capacity to transport additional supplies to meet increasing demand by NSTAR for its customers, who are part of the growing market in New England. The new J-2 Loop Facilities also allow Algonquin to service the existing J-2 pipeline without disrupting the service of the existing J-2 customers. Thus, based on the benefits Algonquin's project will provide to the market and the minimal adverse effects on existing customers, other pipelines, landowners, or communities, we find that Algonquin's proposal is consistent with the Certificate Policy Statement. Based on this finding and the results of our environmental review, as discussed below, we further find under section 7 of that NGA that Algonquin's proposal is required by the public convenience and necessity.

## **B. Rates**

### **1. Recourse Rate**

18. Algonquin provides its firm services on its existing lateral lines (including the Brayton Point, Manchester Street, Canal, Cape Cod and Northeast Gateway laterals) under Rate Schedule AFT-CL. Algonquin provides its interruptible services on these lateral lines under Rate Schedule AIT-2.

19. Algonquin proposes an illustrative initial reservation rate of \$5.2045 per Dth, per month and \$0.0 commodity charge for firm services on the J-2 Facilities under Rate Schedule AFT-CL. Algonquin also proposes an illustrative initial interruptible J-2 rate under Rate Schedule AIT-2 of \$0.1711 per Dth, based on a 100 percent load factor rate of the proposed firm rate on the J-2 Facilities and an authorized overrun commodity charge of \$0.1711 per Dth. These proposed recourse rates reflect estimated total cost for the J-2 Facilities of \$35,308,000, which consists of \$34,544,705 for the J-2 Loop and \$508,895

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<sup>12</sup> On July 2, 2008, the Mayor of the City of Somerville, Massachusetts filed a letter stating that Algonquin has been extremely proactive in soliciting the City's input during the development of the pipeline alignment and that the proposed route is acceptable to the community.

or the existing J-2 pipeline and billing determinants of 140,000Dth/d.<sup>13</sup> Algonquin estimated an annual cost of service of \$8,743,521 for the J-2 Facilities (\$8,544,705 for the proposed J-2 Loop and \$198,816 for the existing J-2 pipeline), using depreciation rates of 5.0 percent for the J-2 Loop and 1.81 percent for the existing J-2 pipeline, as well as an overall rate of return of 10.37 percent.<sup>14</sup> Algonquin states that, consistent with the terms of the settlement, when it files its actual tariff sheets it will recalculate these rates to reflect actual construction costs.

20. The Commission has reviewed Algonquin's proposed cost of service, allocation and rate design, including its proposed overall rate of return, and finds that they reflect Algonquin's currently approved cost-of-service determinants. Accordingly, we will approve the proposed initial recourse rates for services using the existing J-2 pipeline Facilities and the proposed J-2 Loop.

## 2. Negotiated Rate Agreement

21. Algonquin has a negotiated rate agreement with NSTAR for firm service under proposed Rate Schedule AFT-CL. NSTAR is the only firm shipper on the existing J-2 pipeline and has subscribed all of the firm capacity on the J-2 Facilities following construction of the proposed loop. In this certificate proceeding, we establish initial recourse rates but do not make determinations regarding specific negotiated rates for proposed services.<sup>15</sup> Algonquin's negotiated rate agreements must comply with the Commission's Alternative Rate Policy Statement,<sup>16</sup> which, among other things, addresses

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<sup>13</sup> The Commission stated in the February 14 settlement order at P 36 that Algonquin must 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.

<sup>14</sup> Algonquin designed the rates using the cost-of-service factors underlying current rates approved in Docket No. RP99-262-000. *Algonquin Gas Transmission Co.*, 87 FERC ¶ 61,008 (1999). Further, the 5 percent depreciation rate for the proposed J-2 Loop is based on the 20-year contract term with NSTAR consistent with service authorized under Rate Schedule AFT-CL. *Algonquin Gas Transmission Co.*, 83 FERC ¶ 61,200 (1998); 81 FERC ¶ 61,220 (1997); 81 FERC ¶ 61,019 (1997).

<sup>15</sup> *CenterPoint Energy - Mississippi River Transmission Corp.*, 109 FERC ¶ 61,007, at P 19 (2004); *ANR Pipeline Co.*, 108 FERC ¶ 61,028, at P 21 (2004); *Gulfstream Natural Gas System, LLC*, 105 FERC ¶ 61,052, at P 37 (2003); *Tennessee Gas Pipeline Co.*, 101 FERC ¶ 61,360, at n.19 (2002).

<sup>16</sup> *Alternatives to Traditional Cost-of-Service Ratemaking for Natural Gas Pipelines and Regulation of Negotiated Transportation Services of Natural Gas Pipelines*, 74 FERC ¶ 61,076 (1996), *order granting clarification*, 74 FERC ¶ 61,194

(continued)

the Commission's procedures and requirements for charging negotiated rates, and with the Commission's decision in *NorAm Gas Transmission Company*.<sup>17</sup> Thus, Algonquin must file any negotiated rate contracts, or numbered tariff sheets, not less than 30 days nor more than 60 days, prior to placing the J-2 Loop in service, stating for each shipper the negotiated rate, the applicable gas volume to be transported, the applicable receipt and delivery points, and an affirmation that the affected service agreement does not deviate in any material respect from the form of service agreement in Algonquin's *pro forma* tariff. Algonquin must also disclose any other agreement, understanding, negotiation, or consideration associated with the negotiated agreement. If any service agreements contain non-conforming provisions, Algonquin must clearly delineate the differences between the non-conforming rate agreements and its form of service agreement in redline and strikeout.<sup>18</sup> Finally, in accordance with section 154.312 of the Commission's regulations,<sup>19</sup> Algonquin must also maintain separate and identifiable accounts for volumes transported, billing determinants, rate components, surcharges and revenues associated with proposed incremental J-2 Facilities service and its negotiated rates in sufficient detail so that they can be identified in Statements G, I, and J in any future NGA section 4 or 5 rate case. Such measures will insure that existing system-wide customers will not subsidize incremental service on the J-2 Facilities.

### 3. Interruptible Credits

22. Algonquin proposes to add the following sentence to existing Section 41.1(a) of the General Terms & Conditions (GT&C) in its tariff:

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(1996), *order denying reh'g and clarification*, 75 FERC ¶ 61,024 (1996), *reh'g denied*, 75 FERC ¶ 61,066 (1996); *pet. for review denied*, *Burlington Resources Oil & Gas Co. v. FERC*, 172 F.3d 918 (D.C. Cir. 1998); *Natural Gas Pipeline Negotiated Rate Policies and Practices*, 104 FERC ¶ 61,134 (2003), *order on reh'g and clarification*, 114 FERC ¶ 61,042 (2006), *order dismissing reh'g and denying clarification*, 114 FERC ¶ 61,304 (2006); *criteria modified*, *Rate Regulation of Certain Natural Gas Storage Facilities*, FERC Stats. and Regs., Regulations Preambles 2006-2007, ¶ 31,220 (2006) (Order No. 678), *order on clarification and reh'g*, 117 FERC ¶ 61,190 (2006) (Order No. 678-A) (Alternative Rate Policy Statement).

<sup>17</sup> 77 FERC ¶ 61,011 (1996).

<sup>18</sup> *See, e.g., Natural Gas Pipeline Company of America*, 124 FERC ¶ 61,154, at P 33 (2008), and *Columbia Gas Transmission Corporation*, 122 FERC ¶ 61,021, at P 44 (2008).

<sup>19</sup> 18 C.F.R. § 154.312 (2008).

The credit available under this Section 41 for revenues under Rate Schedule AIT-2 attributable to service on the J-2 Facility shall apply only to Service Agreements for service on the J-2 Facility under Rate Schedule AFT-CL.<sup>20</sup>

23. Section 41.1(c)(ii) provides that Algonquin will credit the applicable firm Rate Schedule AFT-CL service agreements 50 percent of the excess eligible Rate Schedule AIT-2 revenues.<sup>21</sup>

24. Hess requests that the Commission clarify that revenues from interruptible services on the J-2 Facilities under Rate Schedule AIT-2 will be credited to all firm J-2 shippers, including replacement shippers under Rate Schedule AFT-CL. In its answer, Algonquin states that its proposed addition to section 41.1(a) of the GT&C of its tariff is intended to provide for credits for interruptible services on the J-2 Facilities to all firm J-2 shippers under Rate Schedule AFT-CL, including replacement shippers. Algonquin states that its tariff contains similar provisions for each of its other existing laterals. The Commission finds that Algonquin's clarification that firm J-2 replacement shippers will receive interruptible credits adequately addresses Hess's concern.

25. In addition, Hess contends that Algonquin's proposal to credit only 50 percent of the J-2 interruptible revenues to firm J-2 shippers is contrary to Commission policy and precedent and should be rejected as unjust and unreasonable. Hess emphasizes the Commission's long-standing policy that a pipeline either (1) allocate costs and volumes to new interruptible service or (2) credit 100 percent of the new interruptible service's revenues, less the pipeline's variable costs of providing the interruptible services, to all shippers, firm and interruptible, using the new capacity.<sup>22</sup> Hess further emphasizes that, although the Commission has held that negotiated rate shippers and a pipeline are allowed to agree to share the interruptible revenues, the Commission's general policy is that a pipeline must credit a lateral's other firm and interruptible shippers 100 percent of their proportional share of the interruptible revenues, less the pipeline's variable costs to provide the interruptible service.<sup>23</sup> Since Algonquin has not allocated costs and volumes to the new J-2 interruptible services, Hess argues that Algonquin should be required to credit 100 percent of the J-2 interruptible revenues, net of variable costs, to all J-2

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<sup>20</sup> Pro Forma Sheet No. 609.

<sup>21</sup> First Revised Sheet No. 610 to FERC Gas Tariff, Fifth Revised Volume No. 1.

<sup>22</sup> *Citing Wyoming Interstate Co. Ltd. (WIC)*, 121 FERC ¶ 61,135, at P 9 (2007), and *East Tennessee Natural Gas LLC*, 114 FERC ¶ 61,122, at P31 (2006).

<sup>23</sup> *Citing WIC*, 121 FERC ¶ 61,135 at P 9-11.

shippers, firm and interruptible, except shippers such as NSTAR with negotiated rate agreements that include specific interruptible revenue sharing provisions.

26. We will deny Hess's request that we require Algonquin to credit 100 percent of its interruptible J-2 service revenues and that interruptible shippers also receive credits. Interruptible service on the J-2 lines will be provided pursuant to Rate Schedule AIT-2. The treatment of Rate Schedule AIT-2 revenues is addressed at section 41.1(c) of the GT&C in Algonquin's tariff. This section provides at 41.1(c)(ii) that 50-percent of eligible interruptible revenues will be credited to eligible services, and the remaining 50 percent will be retained by Algonquin. Algonquin does not propose to change this provision. Section 41.1 also provides that the credit shall apply to service agreements under firm transportation rate schedules. Similarly, Algonquin does not propose to change that provision. Although Hess contends that each of Algonquin's laterals should be treated separately for interruptible revenue credit purposes, just as each is treated as a separate service for determining the applicable firm rates, to date the same revenue crediting requirements have been applied to all of Algonquin's laterals as a group, and we see no compelling reason to single out the J-2 Facilities for revenue crediting purposes. If Hess believes Algonquin's tariff provisions limiting its required crediting of revenues from interruptible services on its laterals are no longer just and reasonable, it may initiate a separate proceeding under section 5 of the NGA.

27. In response to Hess's request for clarification regarding how the revenues eligible for crediting from the J-2 Facilities will be determined, Algonquin states that crediting of interruptible J-2 revenues will be determined in accordance with GT&C section 41.1. As defined in that section, the interruptible J-2 revenues eligible for crediting, or Excess Eligible Revenues, will be those revenues stemming from commodity and authorized overrun charges for J-2 services under Rate Schedule AIT-2 that exceed the dollar amount allocated to interruptible J-2 services. Since Algonquin has not allocated any costs to interruptible services on any of its laterals under Rate Schedule AIT-2, the Excess Eligible Revenues from interruptible services on the J-2 Facilities will be all revenues stemming from commodity and authorized overrun charges for J-2 services under Rate Schedule AIT-2, net of variable costs. Fifty percent of these Excess Eligible Revenues will be credited to NSTAR and/or firm replacement shippers, as applicable. The Commission finds that Algonquin's clarification on this issue adequately addresses Hess's concern.

28. Lastly, Hess asks the Commission to clarify that NSTAR should only receive revenue credits for its proportionate share of the total J-2 interruptible revenues.

Algonquin's currently-effective tariff provisions provide that NSTAR is entitled to an interruptible revenue credit proportionate to its share of total firm contract demand.<sup>24</sup>

#### **4. Estimated Cost of Construction**

29. The Massachusetts AG filed a protest requesting that the Commission find that Algonquin did not adequately support its estimated cost submission in Exhibit K, suggesting that Algonquin's cost estimates for the J-2 Loop project are overstated and asking that the initial recourse rates be conditioned on a review of the final costs of constructing the J-2 Loop.

30. In its answer, Algonquin states that its Exhibit K to its application includes a breakdown of the cost estimate into each of the operating units listed in section 157.14 of the Commission's regulations. Algonquin asserts that Exhibit K includes a description of the "Cost Basis of Facility Estimates," and that the information it provided for this application is consistent with the information it provided in other certificate applications which have been approved by the Commission. Algonquin also states that the information is consistent with other interstate pipelines' certificate applications that have been approved by the Commission.

31. Algonquin asserts that the Massachusetts AG bases its claim that Algonquin's costs for the proposed J-2 Loop Facilities are overstated on comparison with the estimated costs of a 2.2-mile long distribution pipeline proposed for construction in 2001 by NSTAR, which ranged from \$5.3 million, for the preferred route option, to \$9.4 million, for an alternative route.<sup>25</sup> Algonquin contends that this comparison is completely inapposite. Algonquin states that the pipeline industry is experiencing significant increases in project costs, particularly since 2002.

32. Algonquin states that construction of the NSTAR pipeline did not require the "substantial acquisition of private rights-of-way or associated mitigation payments." Algonquin estimates such costs at almost \$7 million for its 2-mile long, J-2 Loop project. Algonquin also states that its estimate includes potential compensation for any business interruptions occasioned by construction of the J-2 Loop.

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<sup>24</sup> Section 41.1(d) of the GT&C, First Revised Sheet No. 610 to FERC Gas Tariff, Fifth Revised Volume No. 1.

<sup>25</sup> Algonquin notes that actual cost of NSTAR's 2.2-mile long pipeline project totaled \$14.7 million, a sizable increase over the estimates referred to by the Massachusetts AG in its protest.

33. Further, Algonquin asserts that labor and material costs have increased significantly in recent years and that the Commission has acknowledges this fact.<sup>26</sup> Algonquin contends that the industry has seen prices for steel pipe approximately double over the past three years and that costs for equipment used in pipeline construction has similarly increased. Algonquin also states that engineering costs have increased by approximately one third in the past four years, and as labor has become both more expensive and less experienced efficiency has declined.

34. The Commission accepts that Algonquin's cost projections in the instant filing are based on its best projection of the expected costs for the proposed J-2 Loop Facilities. Algonquin is required by section 157.20(c)(3) of the Commission's regulations to file, within six months after the authorized facilities have been constructed, an updated statement showing actual costs incurred and explaining any significant differences between those costs and the estimates submitted in this proceeding. If appropriate, action can be initiated under section 5 at that time. Moreover, as discussed in the February 14 order approving Algonquin's and NSTAR's settlement, Algonquin has agreed with NSTAR to update its rates for the J-2 Loop to reflect the actual costs of construction.<sup>27</sup> In view of these considerations, the Massachusetts AG's protest is denied.

## **5. Tariff Sheets**

35. Algonquin included pro forma tariff sheets to reflect the rates and services for the J-2 Facilities, as applicable, and they are substantively identical to the pro forma tariff sheets included with the settlement. Thus, Algonquin is required to file, not less than thirty days, nor more than sixty days, prior to its proposed effective date, tariff sheets consistent with its pro forma tariff sheets.

### **C. Engineering**

36. The Commission has determined that the proposed J-2 Loop project is properly designed to accommodate the agreed-upon 140,000 Dth/day of service to NSTAR. The proposed looping facilities will allow Algonquin to perform pipeline integrity tests on the existing J-2 pipeline while maintaining its service to NSTAR.

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<sup>26</sup> *Citing, Transcontinental Gas Pipe Line Corporation*, 121 FERC ¶ 61,083 (2007) (accepting increased maximum rates to recover increased costs for labor and materials); *Golden Pass Pipeline LP*, 117 FERC ¶ 61,015 (2006) (accepting increased rates to recover increased costs for materials and construction).

<sup>27</sup> *NSTAR v. Algonquin*, 122 FERC ¶ 61,131 at P 42.

**D. Environmental**

37. On July 3, 2008, we issued a *Notice of Intent to Prepare an Environmental Assessment for the Proposed J-2 Loop Project; Request for Comments on Environmental Issues; and Notice of Site Visit* (NOI). As a result of a subsequent route change that would affect parties who had not received the NOI, we issued a *Notice of Intent to Prepare an Environmental Assessment for the Proposed J-2 Loop Project and Route Modification and Request for Comments on Environmental Issues* (Modification NOI) on October 21, 2008. Both NOIs were sent to property owners affected by the proposed facilities; federal, state, and local government agencies; elected officials; Native American tribes; environmental and public interest groups; and local libraries and newspapers.

38. The Commission staff prepared an environmental assessment (EA) for Algonquin's project. The EA was issued for public comment and placed in the record on December 2, 2008.<sup>28</sup> The analysis in the EA included the project's purpose and need; geology and soils; water resources, fisheries, and wetlands; vegetation and wildlife; land use, recreation, and visual resources; cultural resources; air quality and noise; reliability and safety; cumulative impacts, and alternatives. The EA also addressed all substantive environmental comments received in response to the NOIs.

39. In response to the NOIs, we received comments from the Massachusetts Facilities Siting Board (Siting Board), the Massachusetts State Historic Preservation Office (SHPO), and the Mayor of the City of Somerville. In response to the NOI, the SHPO commented that the proposed pipeline route may include intact portions of features relating to the Middlesex Canal, a National Register of Historic Places eligible property. In response to the Modification NOI, the SHPO indicated that it reviewed a State Archaeologist's permit application, which included the Treatment Plan for the Middlesex Canal, and found it "technically adequate." As discussed in the EA, our staff reviewed the Treatment Plan and found it acceptable. The SHPO also requested that a Memorandum of Agreement (MOA) be developed because of the potential for an adverse effect to the Middlesex Canal. The EA stated that staff will prepare an MOA for the Middlesex Canal. In addition, we have modified EA recommendation 8.a. (adopted and set forth in the Appendix as Environmental Condition 8.a.) to include work in

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<sup>28</sup> The period specified for submitting comments on the EA ended on January 2, 2009. We received one comment letter on the EA from NSTAR. In its letter, NSTAR states that it supports the Commission's prompt issuance of a certificate to Algonquin to facilitate the ability of NSTAR and Algonquin to meet the objectives of the settlement approved by the Commission in Docket No. RP07-395-000 on February 14, 2008.

environmentally sensitive areas to ensure that the status of the Middlesex Canal is reported in the weekly reports when construction occurs in the canal location.

40. Also in its response to the Modification NOI, the SHPO indicated that no historic properties would be affected by the Pearl Street Modification route. The EA stated that staff determined there would be no affect on historic properties by use of the Pearl Street Modification.

41. The NOI response from the Siting Board asked that we require Algonquin to cooperate with the City of Somerville authorities to protect public safety, use appropriate signage, provide for vehicle access, notify the City of Somerville Housing Authority (Housing Authority) prior to construction adjacent to property the Housing Authority owns or manages, provide for repaving of streets, and provide for screening of aboveground facilities. The Siting Board also commented that Algonquin should consult with the City of Somerville and the Massachusetts Bay Transportation Authority (Transportation Authority) regarding the proposed Green Line Extension Project.

42. The EA described Algonquin's response to the Transportation Authority comments. Algonquin stated it intends to work with the Cities of Somerville and Medford to undertake measures to protect public safety during construction, including the use of signage and police or civilian flagmen. Algonquin will cooperate with the Cities of Somerville and Medford to ensure vehicle access to driveways during construction and will also work with affected landowners to provide access to off-street parking during construction and to notify them prior to opening any trench that could block vehicle access. Algonquin also agreed to provide the requested notice to the Housing Authority. The City of Somerville and Algonquin have reached an agreement regarding the repair of streets and sidewalks. Algonquin stated it will screen the aboveground facilities at MP 0.0. To avoid conflicts with the proposed Green Line Extension Project, Algonquin consulted with the City of Somerville, the Transportation Authority, and the Massachusetts Executive Office of Transportation to develop the Pearl Street Modification.

43. The EA also discussed comments filed by the City of Somerville's mayor. The mayor first commented in response to the Commission's notice of Algonquin's application (73 Fed. Reg. 29,131). In that letter, the mayor stated that Algonquin has been proactive in soliciting the city's input, has worked cooperatively with the city, and that the proposed project route is an acceptable route. Subsequently, in response to the Modification NOI, the mayor filed a letter stating that he supports the Pearl Street Modification, and that the city's review concluded the modification represents an acceptable reroute.

44. Based on the discussion in the EA, we conclude that if constructed in accordance with Algonquin's application, its supplements, and the conditions imposed in the

Appendix, approval of this proposal would not constitute a major federal action significantly affecting the quality of the human environment.

45. Any state or local permits issued with respect to the jurisdictional facilities authorized herein must be consistent with the conditions of this certificate. The Commission encourages cooperation between interstate pipelines and local authorities. However, this does not mean that state and local agencies, through application of state or local laws, may prohibit or unreasonably delay the construction and replacement of facilities approved by this Commission.<sup>29</sup>

#### **E. Conclusion**

46. For the reasons set forth herein we find, subject to the conditions below, that the public convenience and necessity requires issuance of the requested certificate under NGA section 7(c) for the proposed J-2 Loop. Thus, we grant the requested authorizations to Algonquin.

47. The Commission on its own motion, received and made a part of the record in this proceeding all evidence, including the application and exhibits thereto, submitted in support of the authorizations sought herein, and upon consideration of the record,

#### **The Commission orders:**

(A) A certificate of public convenience and necessity is issued to Algonquin authorizing it to construct and operate the J-2 Loop as described herein and in the application.

(B) Algonquin shall construct and make available for service the facilities authorized within one year from the date of this order in accordance with section 157.20(b) of the Commission's regulations.

(C) The certificate issued to Algonquin is conditioned on its compliance with the NGA and all relevant Commission regulations, in particular with Part 154 and paragraphs (a), (c), (e) and (f) of section 157.20 of the regulations.

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<sup>29</sup> See, e.g., *Schneidewind v. ANR Pipeline Co.*, 485 U.S. 293 (1988); *National Fuel Gas Supply v. Public Service Commission*, 894 F.2d 571 (2d Cir. 1990); and *Iroquois Gas Transmission System, L.P.*, 52 FERC ¶ 61,091 (1990) and 59 FERC ¶ 61,094 (1992).

(D) Algonquin's proposed incremental recourse rates are approved, subject to Algonquin updating its recourse rates to reflect the most recent estimate of actual costs of construction the J-2 Loop. Algonquin must file actual tariff sheets consistent with the pro forma tariff sheets filed in this proceeding and reflecting the revised initial recourse rate not less than 30 days, and not more than 60 days, prior to the commencement of service on the J-2 Loop.

(E) If Algonquin enters into a negotiated rate contract with NSTAR, Algonquin is directed to file not less than 30 days, nor more than 60 days prior to the commencement of service, either its negotiated rate contract, or numbered tariff sheet, as detailed in the body of the order.

(F) The certificate issued in Ordering Paragraph (A) above is conditioned on Algonquin's compliance with the environmental conditions included in the Appendix to this order.

(G) Algonquin shall notify the Commission's environmental staff by telephone, e-mail, and/or facsimile of an environmental noncompliance identified by other federal, state or local agencies on the same day that such agency notifies Algonquin. Algonquin shall file written confirmation of such notification with the Secretary of the Commission within 24 hours.

(H) Northeast Energy Associates, LP's motion to intervene out-of-time is granted.

(I) Hess's and Algonquin's motions for leave to file answers are granted.

By the Commission. Commissioner Kelliher is not participating.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.

**Appendix****Environmental Conditions  
J-2 Loop Project  
Docket No. CP08-256-000**

1. Algonquin Gas Transmission, LLC (Algonquin) shall follow the construction procedures and mitigation measures described in its application and supplements, including responses to staff data requests, and as identified in the environmental assessment (EA), unless modified by the Commission Order. Algonquin must:
  - a. request any modification to these procedures, measures, or conditions in a filing with the Secretary of the Commission (Secretary);
  - b. justify each modification relative to site-specific conditions;
  - c. explain how that modification provides an equal or greater level of environmental protection than the original measure; and
  - d. receive approval in writing from the Director of the Office of Energy Projects (OEP) **before using that modification.**
2. The Director of OEP has delegated authority to take whatever steps are necessary to ensure the protection of all environmental resources during construction and operation of the project. This authority shall allow:
  - a. the modification of conditions of the Commission Order, and
  - b. the design and implementation of any additional measures deemed necessary (including stop-work authority) to assure continued compliance with the intent of the environmental conditions as well as the avoidance or mitigation of adverse environmental impact resulting from project construction and operation.
3. **Prior to any construction**, Algonquin shall file an affirmative statement with the Secretary, certified by a senior company official, that all company personnel, environmental inspectors (EI), and contractor personnel will be informed of the EI's authority and have been or would be trained on the implementation of the environmental mitigation measures appropriate to their jobs **before** becoming involved with construction and restoration activities.
4. The authorized facility location shall be as shown in the EA, as supplemented by filed alignment sheets. **As soon as they are available, and before the start of construction**, Algonquin shall file with the Secretary any revised detailed survey alignment maps/sheets at a scale not smaller than 1:6,000 with station positions for all facilities approved by the Commission Order. All requests for modifications of

environmental conditions of the Order or site-specific clearances must be written and must reference locations designated on these alignment maps/sheets.

Algonquin's exercise of eminent domain authority granted under NGA section 7(h) in any condemnation proceedings related to the Order must be consistent with these authorized facilities and locations. Algonquin's right of eminent domain granted under Natural Gas Act (NGA) section 7(h) does not authorize it to increase the size of its natural gas pipeline to accommodate future needs or to acquire a right-of-way (ROW) for a pipeline to transport a commodity other than natural gas.

5. Algonquin shall file with the Secretary detailed alignment maps/sheets and aerial photographs at a scale not smaller than 1:6,000 identifying all route realignments or facility relocations, and staging areas, pipe storage yards, new access roads, and other areas that would be used or disturbed and have not been previously identified in filings with the Secretary. Approval for each of these areas must be explicitly requested in writing. For each area, the request must include a description of the existing land use/cover type, documentation of landowner approval, whether any cultural resources or federally listed threatened or endangered species will be affected, and whether any other environmentally sensitive areas are within or abutting the area. All areas shall be clearly identified on the maps/sheets/aerial photographs. Each area must be approved in writing by the Director of OEP **before construction in or near that area.**

This requirement does not apply to extra workspace allowed by our *Upland Erosion Control, Revegetation, and Maintenance Plan*, and/or minor field realignments per landowner needs and requirements which do not affect other landowners or sensitive environmental areas such as wetlands.

Examples of alterations requiring approval include all route realignments and facility location changes resulting from:

- a. implementation of cultural resources mitigation measures;
  - b. implementation of endangered, threatened, or special concern species mitigation measures;
  - c. recommendations by state regulatory authorities; and
  - d. agreements with individual landowners that affect other landowners or could affect sensitive environmental areas.
6. **Within 60 days of the acceptance of this Certificate and prior to construction,** Algonquin shall file an initial Implementation Plan with the Secretary for review and written approval by the Director of OEP. Algonquin must file revisions to the plan as schedules change. The plan shall identify:

- a. how Algonquin will implement the construction procedures and mitigation measures described in its application (including responses to staff data requests), identified in the EA, and required by the Commission Order;
  - b. how Algonquin will incorporate these requirements into the contract bid documents, construction contracts (especially penalty clauses and specifications), and construction drawings so that the mitigation required at each site is clear to onsite construction and inspection personnel;
  - c. the number of EIs assigned, and how the company will ensure that sufficient personnel are available to implement the environmental mitigation;
  - d. company personnel, including EIs and contractors, who will receive copies of the appropriate material;
  - e. the training and instructions Algonquin will give to all personnel involved with construction and restoration (initial and refresher training as the project progresses and personnel change);
  - f. the company personnel (if known) and specific portion of Algonquin's organization having responsibility for compliance;
  - g. the procedures (including use of contract penalties) Algonquin will follow if noncompliance occurs; and
  - h. for each discrete facility, a Gantt or PERT chart (or similar project scheduling diagram), and dates for:
    - (1) the completion of all required surveys and reports;
    - (2) the mitigation training of onsite personnel;
    - (3) the start of construction; and
    - (4) the start and completion of restoration.
7. Algonquin shall employ at least one EI for the J-2 Loop Project. The EI(s) shall be:
- a. responsible for monitoring and ensuring compliance with all mitigation measures required by the Commission Order and other grants, permits, certificates, or authorizing documents;
  - b. responsible for evaluating the construction contractor's implementation of the environmental mitigation measures required in the contract (see condition 6 above) and any other authorizing document;
  - c. empowered to order correction of acts that violate the environmental conditions of the Order, and any other authorizing document;
  - d. a full-time position, separate from all other activity inspectors;
  - e. responsible for documenting compliance with the environmental conditions of the Order, as well as any environmental conditions/permit requirements imposed by other federal, state, or local agencies; and
  - f. responsible for maintaining status reports.

8. Algonquin shall file updated status reports prepared by the head EI with the Secretary on a **weekly** basis **until all construction and restoration activities are complete**. On request, these status reports will also be provided to other federal and state agencies with permitting responsibilities. Status reports shall include:
  - a. the current construction status of the project, work planned for the following reporting period, and work in environmentally sensitive areas;
  - b. a listing of all problems encountered and each instance of noncompliance observed by the EI(s) during the reporting period (both for the conditions imposed by the Commission and any environmental conditions/permit requirements imposed by other federal, state, or local agencies);
  - c. a description of corrective actions implemented in response to all instances of noncompliance, and their cost;
  - d. the effectiveness of all corrective actions implemented;
  - e. a description of any landowner/resident complaints which may relate to compliance with the requirements of the Commission Order, and the measures taken to satisfy their concerns; and
  - f. copies of any correspondence received by Algonquin from other federal, state or local permitting agencies concerning instances of noncompliance, and Algonquin's response.
  
9. Algonquin shall develop and implement an environmental complaint resolution procedure for at least 2 years following the completion of construction. The procedure shall provide landowners with clear and simple directions for identifying and resolving their environmental mitigation problems/concerns during construction of the project and restoration of the ROW. **Prior to construction**, Algonquin shall mail the complaint procedures to each landowner whose property would be crossed by the project.
  - a. In its letter to affected landowners, Algonquin shall:
    - (1) provide a local contact that the landowners should call first with their concerns; the letter should indicate how soon a landowner should expect a response;
    - (2) instruct the landowners that if they are not satisfied with the response, they should call Algonquin's Hotline; the letter should indicate how soon to expect a response; and
    - (3) instruct the landowners that if they are still not satisfied with the response from Algonquin's Hotline, they should contact the Commission's Enforcement Hotline at (888) 889-8030 or at [hotline@ferc.gov](mailto:hotline@ferc.gov).

- b. In addition, Algonquin shall include in its status report a copy of a table that contains the following information for each problem/concern:
  - (1) the identity of the caller and the date of the call;
  - (2) the identification number from the certificated alignment sheet(s) of the affected property and the location by MP;
  - (3) a description of the problem/concern; and
  - (4) an explanation of how and when the problem was resolved, will be resolved, or why it has not been resolved.
10. Algonquin must receive written authorization from the Director of OEP **before commencing service** from the project. Such authorization will only be granted following a determination that rehabilitation and restoration of the ROW and other areas of project-related disturbance are proceeding satisfactorily.
11. **Within 30 days of placing the certificated facilities in service**, Algonquin shall file an affirmative statement with the Secretary, certified by a senior company official:
  - a. that the facilities have been constructed in compliance with all applicable conditions, and that continuing activities will be consistent with all applicable conditions; or
  - b. identifying which of the Certificate conditions Algonquin has complied with or will comply with. This statement shall also identify any areas affected by the project where compliance measures were not properly implemented, if not previously identified in filed status reports, and the reason for noncompliance.
12. Algonquin shall not begin implementation of any treatment plans/measures (including archaeological data recovery); construction of facilities; or use of all staging, storage, or temporary work areas, and new or to-be-improved access roads **until**:
  - a. Algonquin files any comments from the Middlesex Canal Association and the Medford Historical Commission;
  - b. Algonquin files any additional information requested by the State Historic Preservation Office and/or the historical commissions and association, and any resulting comments;
  - c. Algonquin files any comments by the Somerville Historic Preservation Commission on the Middlesex Canal draft Treatment Plan;
  - d. the Advisory Council on Historic Preservation is afforded the opportunity to comment; and

- e. the Director of OEP reviews and approves all reports and plans and notifies Algonquin in writing that it may proceed.

All material filed with the Commission containing **location, character, and ownership** information about cultural resources must have the cover and any relevant pages therein clearly labeled in bold lettering: "**CONTAINS PRIVILEGED INFORMATION--DO NOT RELEASE.**"