

129 FERC ¶ 61,263
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

December 22, 2009

In Reply Refer To:
Algonquin Gas Transmission, LLC
Docket No. RP10-179-000

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

Attention: Janice K. Devers
General Manager, Tariffs and Commercial Development

Reference: Non-Conforming Agreements

Dear Ms. Devers:

1. On November 24, 2009, Algonquin Gas Transmission, LLC (Algonquin) filed seventy-four currently effective, non-conforming service agreements containing deviations identified by Algonquin as immaterial. Algonquin requests that the Commission accept the filed agreements as immaterially non-conforming agreements and, to the extent the Commission finds any such deviations material, grant any and all waivers necessary to allow the agreements to be effective as of their respective effective dates and in accordance with their respective terms. As discussed below, the Commission accepts Algonquin's non-conforming agreements, effective on their respective effective dates, subject to further review and order of the Commission.

2. Algonquin asserts that, following the Commission's order in *Southern Star*,¹ it undertook a review of all of its currently effective, Part 284 firm transportation agreements, except for those agreements executed through the online process.² As a

¹ Algonquin Transmittal at 1 (citing *Southern Star Central Gas Pipeline, Inc.*, 125 FERC ¶ 61,082 (2008)).

² Algonquin states that the online process does not permit changes to the agreements.

result of that review, Algonquin states that, on October 13, 2009, it filed thirty-three non-conforming service agreements in Docket No. RP10-46-000 containing possible material deviations from its forms of service agreements. Algonquin states that in its October 13 filing it also identified, but did not include, additional non-conforming service agreements containing deviations that it believed to be immaterial in nature.

3. Algonquin states that, on November 12, 2009, the Commission issued an order in Docket No. RP10-46-000 accepting and suspending subject to further review and order by the Commission its thirty-three non-conforming service agreements.³ However, Algonquin states that the Commission noted in that order that it would not make a finding with respect to those contracts that Algonquin described as containing immaterial deviations, but did not include with its filing.⁴ In the instant filing, Algonquin states that it is submitting the remaining seventy-four non-conforming agreements that contain deviations Algonquin believes to be immaterial.

4. Algonquin states that similar to the agreements filed in the October 13 filing, the majority of the agreements in the instant filing were entered into prior to the Commission's clarification of policies and regulations governing the identification and filing of materially non-conforming provisions in the 2003 Policy Statement.⁵ Algonquin states that both it and its shippers have relied on the tendered contracts in making important market and investment decisions. Algonquin further states that modifying the contracts at this time could cause significant economic harm to the parties. Algonquin, therefore, requests that the Commission, to the extent it finds any of the filed agreements to be materially non-conforming, accept those contracts for filing and grant any and all waivers necessary to allow those contracts to be effective and remain in effect.

5. Public notice of Algonquin's filing was issued on December 1, 2009. Interventions and protests were due as provided in section 154.210 of the Commission's regulations, 18 C.F.R. § 154.210 (2009). Pursuant to Rule 214, 18 C.F.R. § 385.214 (2009), all timely motions to intervene and any 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 this proceeding or place additional burdens on existing parties. No protests or adverse comments were filed.

³ *Algonquin Gas Transmission, LLC*, 129 FERC ¶ 61,117 (2009) (November 12 Order).

⁴ *Id.* n.16.

⁵ Algonquin Transmittal at 2 (citing *Natural Gas Pipeline Negotiated Rate Policies and Practices*, 104 FERC ¶ 61,134 (2003), *order on reh'g*, 114 FERC ¶ 61,042 (2006) (2003 Policy Statement)).

6. If a pipeline and a shipper enter into a contract that materially deviates from the pipeline's form of service agreement, the Commission's regulations require the pipeline to file the contract containing the material deviations with the Commission.⁶ In *Columbia Gas Transmission Corporation*,⁷ the Commission clarified that a material deviation is any provision in a TSA that (a) goes beyond filling in the blank spaces with the appropriate information allowed by the tariff, and (b) affects the substantive rights of the parties.⁸ However, not all material deviations are impermissible. If the Commission finds that such deviation does not constitute a substantial risk of undue discrimination, the Commission may permit the deviation.⁹ Therefore, there are two general categories of material deviations: (a) provisions the Commission must prohibit because they present a significant potential for undue discrimination among shippers, and (b) provisions the Commission can permit without a substantial risk of undue discrimination. Moreover, if the Commission determines the agreement contains a material deviation that is permissible, the Commission's regulations require the pipeline to file tariff sheets that reference the materially deviating contract.¹⁰

7. Algonquin has presented the Commission with numerous non-conforming service agreements. These agreements contain various deviations from Algonquin's tariff. The Commission has not completed its review of these service agreements. Since the Commission has yet to complete its review of the service agreements, and because they

⁶ 18 C.F.R. § 154.1(d) (2009).

⁷ *Columbia Gas Transmission Corp.*, 97 FERC ¶ 61,221 (2001) (*Columbia*).

⁸ In *Natural Gas Pipeline Negotiated Rate Policies and Practices*, 104 FERC ¶ 61,134 at P 27, the Commission stated "[s]ince there would appear to be no reason for the parties to use language different from that in the form of service agreement other than to affect the substantive right of the parties, this effectively means that all language that is different from the form of service agreement should be filed with the Commission." *Id.* P 32.

⁹ *Columbia*, 97 FERC ¶ 61,221 at 62,004.

¹⁰ 18 C.F.R. § 154.112(b) (2009).

have been in effect for a significant period already, the Commission will accept all of the filed service agreements, effective on their respective effective dates, subject to further review and order of the Commission.¹¹

By direction of the Commission.

Nathaniel J. Davis, Sr.,
Deputy Secretary.

¹¹It appears that, contrary to the requirements of section 154.1(d) of the Commission's regulations, 18 C.F.R. § 154.1(d) (2009), Algonquin failed to file the non-conforming contracts in a timely manner. Algonquin is reminded that it must submit required filings on a timely basis or face possible sanctions by the Commission.