UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
William L. Massey, and Nora Mead Brownell.

Algonquin Gas Transmission Company	Docket Nos.	RP00-331-002 RP00-331-003 RP01-23-004 RP01-23-005 RP03-176-000

ORDER ON REHEARING AND COMPLIANCE FILINGS

(Issued July 23, 2003)

1. On February 27, 2002, the Commission issued an order accepting with modifications Algonquin Gas Transmission Company's (Algonquin) compliance filings to Order Nos. 637, 587-G and 587-L (February 27, 2002 Order).[1] This order first addresses the requests for rehearing of the February 27, 2002 Order, and then addresses Algonquin's filing to comply with the directives of the February 27, 2002 Order. Finally, this order addresses Algonquin's filing to comply with the Commission's Order On Remand[2] (Remand Order) in response to the decision by the United States Court of Appeals in Interstate Natural Gas Association of America v. FERC.[3] As more fully explained in the order, we accept some tariff sheets to become effective September 1, 2003, subject to the conditions of this order, and reject other tariff sheets. We further direct Algonquin to file revised tariff sheets to reflect the modifications set forth below within 20 days of the date of this order. This order benefits customers by enhancing pipeline transportation services consistent with the Commission's policies in Order No. 637.

[1] Algonquin Gas Transmission Co., 98 FERC ¶ 61,211 (2002) (Algonquin).

[2] 101 FERC ¶ 61,127 (2002), reh'g pending.

[3] Interstate Natural Gas Ass'n of America v. FERC, 285 F.3d 18 (D.C. Cir. 2002) (INGAA).

I. Procedural Background

2. On June 15, 2000 in Docket No. RP00-331-000, Algonquin filed pro forma tariff sheets to comply with Order No. 637. On August 3, 2001, in Docket No. RP00-331-001, Algonquin filed revised pro forma tariff sheets (August 3, 2001 Filing).

3. On February 27, 2002 the Commission accepted Algonquin's revised compliance filings with modifications. On or before March 29, 2002, in Docket Nos. RP00-331-002 and RP01-23-004, Algonquin, Algonquin Municipals,[4] Dynegy Marketing and Trade (Dynegy), New England Local Distribution Companies (NE LDCs),[5] and Northeast Energy Associates (Northeast) filed requests for rehearing or clarification of the February 27, 2002 Order. On May 31, 2002, Algonquin filed a supplement to its rehearing request in light of the INGAA decision.[6]

4. On May 29, 2002 in Docket Nos. RP00-331-003 and RP01-23-005, Algonquin filed tariff sheets to comply with the Commission's February 27, 2002 Order (May 29, 2002 Filing). Algonquin proposed to implement the revised tariff sheets in two phases, noting that the Phase I changes could be implemented on or after July 1, 2002 and the Phase II changes could be implemented on or after April 1, 2003.[7] On June 28, 2002,

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[4]The City of Norwich, Connecticut, Department of Public Utilities, and the Town of Middleborough, Massachusetts, Municipal Gas and Electric Department.

[5]NE LDCs consist of Bay State Gas Company, Bristol and Warren Gas Company, Connecticut Natural Gas Corporation, Fall River Gas Company, NSTAR Gas Company (formerly Commonwealth Gas Company), Northern Utilities, Inc., The Providence Gas Company, The Southern Connecticut Gas Company, and Yankee Gas Services Company.

[6]Algonquin's Supplement, as well as a number of other filings made by other parties, are technically not permitted under the Commission's Rules of Practice and Procedure. However, the Commission will accept Algonquin's Supplement, as well as all the other filings, since they aid the Commission in the resolution of the issues.

[7]The February 27, 2002 Order directed Algonquin to specify which tariff changes it could implement immediately, and which tariff changes would require additional time and the amount of additional time Algonquin needed. Algonquin's May 29, 2002 compliance filing included Appendices A, B, C, and D. Algonquin stated that Appendix A contained revised tariff sheets that it could implement on or after July 1, 2002, the Phase I changes included tariff sheets that reflected the Commission's discounting policy but subject to any subsequent Commission modifications in response to the INGAA

(continued...)

Algonquin filed a motion to answer protests and comments to its compliance filing, and a request for phased approval (the June 28, 2002 motion). On November 21, 2002, Algonquin advised the Commission that its proposed implementation date of April 1, 2003 for the Phase II changes was no longer realistic, and instead it proposed July 1, 2003, for implementing Phase II.

5. On December 2, 2002, in Docket No. RP03-176-000, Algonquin filed tariff sheets to comply with the Remand Order (December 2, 2002 Filing).

II. Public Notice, Interventions and Protests

6. Algonquin's May 29, 2002 Filing was noticed on June 6, 2002. Algonquin Municipals, Central Hudson Gas & Electric Corp., Dynegy, KeySpan Energy Delivery New England (KeySpan), NEG Shippers, NE LDCs, and Northeast filed comments or protests to the May 29, 2002 compliance filing.

7. Algonquin's December 2, 2002 Filing was noticed on December 6, 2002 with interventions, comments and protests due on or before December 13, 2002. NE LDCs protested Algonquin's filing. KeySpan filed timely comments and Calpine filed out-of-time comments. On December 23, 2002, Algonquin filed an Answer in response to the protest and comments.

8. Pursuant to Rule 214 (18 C.F.R. § 385.214 (2002)), all timely filed 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 the proceeding or place additional burdens on existing parties.

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[7](...continued)
decision. The Phase II changes consisted of (a) Appendix B which contained revised tariff sheets that it could implement on or after April 1, 2003, including clarification of mainline priority at secondary points, modification of provisions relating to the curtailment of excess hourly flexibility, addition of provisions relating to the availability of excess hourly flexibility at secondary points, and addition of provisions on partial day capacity release and recall, (b) Appendix C which included revised tariff sheets that implement on or after April 1, 2003, those directives in the February 27, 2002 Order that are the subject of the Commission's order on remand of INGAA; and (c) Appendix D which contained alternate tariff sheets that reflect the tariff provisions Algonquin would implement on or after April 1, 2003, in lieu of those provisions contained in Appendix C, and are the same tariff sheets as those submitted with the August 3, 2001 Filing.

III. February 27, 2002 Order Rehearing Issues

A. Scheduling Equality

9. Algonquin proposed to modify the capacity release time line to reflect the revised NAESB[8] capacity release time line found in Version 1.5 of NAESB standard 5.3.2. This standard was developed to comply with the Commission's scheduling equality requirement. The February 27, 2002 Order accepted the proposal subject to the outcome of the proposed rulemaking in Docket No. RM96-1-000 to adopt Version 1.5 of the NAESB standards. The February 27, 2002 Order also accepted Algonquin's proposal to allow releasing shippers the added option of allowing partial day recalls.

10. On March 11, 2002, the Commission issued Order No. 587-N[9] that required interstate pipelines to permit releasing shippers to recall released capacity, first on an interim basis, and then on a final basis in accordance with the standards adopted by NAESB. The order required pipelines to make the interim tariff filings by May 1, 2002.

11. In its request for rehearing, Algonquin stated that its proposed tariff modifications reflected the revised NAESB capacity release time line found in Version 1.5 of NAESB standard 5.3.2., as well as the partial day recall that the Commission had recently adopted in Order No. 587-N. Algonquin also stated that since major software changes must be made to implement these options it requested that the Commission clarify that Algonquin will only have to implement partial day release and recall on its system only once.

12. Subsequently, on May 1, 2002, the Commission adopted Version 1.5 of the NAESB standards in Order No. 587-O.[10] On the same day, in Docket No. RP02-259-000, Algonquin filed revised tariff sheets to comply with Order No. 587-N. On June 26, 2002, the Commission accepted Algonquin's filing, effective July 1, 2002, subject to

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[8]North American Energy Standards Board, formerly the Gas Industry Standards Board (GISB).

[9]Standards for Business Practices of Interstate Natural gas Pipelines, FERC Stats. & Regs. Regulations Preambles ¶ 31,125 (March 11, 2002).

[10]Standards for Business Practices of Interstate Natural gas Pipelines, FERC Stats. & Regs. Regulations Preambles ¶ 31,129 (May 1, 2002).

conditions.[11] On August 28, 2002, the Commission, by delegated letter order, accepted Algonquin's revised tariff sheets to comply with the June 26, 2002 order.

13. On August 12, 2002 in Docket No. RP02-492-000, Algonquin filed tariff sheets to comply with Order No. 587-O, including tariff sheets incorporating time lines found in Version 1.5 of NAESB standard 5.3.2, and also included provisions relating to partial day recall. On September 27, 2002, the Commission issued an order which conditionally accepted Algonquin's August 12, 2002 filing.[12] The September 27 order, however, required Algonquin to eliminate certain restrictions on the quantity of gas that can be released on a partial day basis.

14. Since the Commission has accepted Algonquin's revised tariff sheets on partial day releases and recall in other proceedings, those issues are moot in this proceeding, and we reject the tariff sheets filed in this proceeding on these items. Any outstanding issues as to those matters will be addressed in the other proceedings identified above.

B. Segmentation

1. The LUQ Issue

a. Background

15. In its August 3, 2001 Filing, Algonquin proposed tariff language that would limit firm capacity holder's use of secondary delivery points downstream of their primary delivery point within the same zone to the lowest unutilized quantity (LUQ). Under the proposed language, LUQ was defined as the difference between a shipper's mainline contract demand and the highest quantity of gas scheduled to be delivered within the Transportation Path for a firm service agreement.

16. The February 27, 2002 Order held that Algonquin's LUQ proposal would unduly limit segmentation and was not operationally justified. The order further stated that Algonquin's LUQ limitation was not consistent with Order No. 637, which requires treating each segment as equal to the contract demand of the original contract, because Algonquin limits the amount a shipper can segment to a secondary point outside the path to the difference between its mainline contract demand and the quantity of gas scheduled.

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[11] Algonquin Gas Transmission Co., 99 FERC ¶ 61,339 (2002).

[12] Algonquin Gas Transmission Co., 100 FERC ¶ 61,374 (2002), Order on Rehearing and Compliance Filing, 102 FERC ¶ 61,149 (2003).

Since Algonquin failed to provide any operational justification for limiting segmentation through the LUQ limits, the order directed Algonquin to remove or revise the LUQ provision to be consistent with Commission policy.

b. Rehearing Request

17. Algonquin asserts that the Commission erred in rejecting its LUQ proposal. Algonquin states that the segmentation required by Order No. 637 applies only to capacity for which a customer has contracted. It contends that its customers contract for a defined transportation path subject to the specified quantities. As such, Algonquin asserts that, contractually customers have no rights to segment outside the transportation path. Algonquin contends that since segmentation relates to the "ability of shippers to divide their capacity," and that capacity is defined in the shipper's contract, which definition does not include out of path deliveries.

c. Commission Ruling

18. The Commission rejects Algonquin's rehearing request, as it did in the rehearing order in Texas Eastern Transmission LP, 102 FERC ¶ 61,198 (2003) (Texas Eastern II), where the same arguments were made in the rehearing request by the pipeline. As we explained in Texas Eastern II, Algonquin's arguments that shippers cannot segment outside their contract path ignores the receipt and delivery point flexibility that Algonquin was required to provide to its customers in Order No. 636. In Order No. 636, the Commission required each pipeline to provide firm shippers with the ability to change receipt and delivery points and to use all receipt and delivery points on a secondary basis because "a shipper gets flexibility in receipt and delivery points for the part of the system for which it pays a reservation charge."[13] It was on these bases that the Commission directed a change in both the tariff and contractual rights under section 5 of the NGA.[14]

19. In implementing segmentation in Order No. 637, the Commission recognized that shippers already had the right to use secondary points, and therefore should have the same

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[13]Order No. 636-A, FERC Stats. & Regs. Regulations Preambles ¶ 30,950, at 30,585 (1992); see also Great Lakes, supra n 14.

[14]The discussion concerning the right to segment outside the transportation path applies to replacement shippers as well because they also have the right to add or change primary points outside their transportation path to points within the zones for which they are paying. See Great Lakes Gas Transmission Limited Partnership, 101 FERC ¶ 61,206 (2002) (Great Lakes).

right in segmented transactions. As the Commission explained, "the shipper has the right to segment outside of its path because it is paying the full rate for the [zone], and, therefore, has the right to use all points within the [zone] for which it pays."[15] This right is not an extension of the shipper's contract rights, as Algonquin contends. Rather, it is simply the exercise of the shipper's rights to move to secondary points that is already found in Algonquin's tariff.

20. Algonquin's contention that permitting segmentation outside of a shipper's contract path conflicts with contract rights is inconsistent with the flexible receipt and delivery point requirement of its tariff, required by Order No. 637, and is, in effect, a collateral attack on the flexible receipt and delivery point policy adopted in Order No. 636[16] and Algonquin's restructuring proceeding.[17] Moreover, Algonquin's argument that the Commission is modifying its contracts is unavailing in any event.

21. In Order No. 636, the Commission implemented its flexible receipt and delivery point policies by modifying under Section 5 of the Natural Gas Act (NGA) the terms and conditions of service in the Algonquin's tariff. These revisions to the pipeline's tariff do not impermissibly modify or extend individual service agreements. They do not extend the shipper's primary rights to service as provided in the contract, as Algonquin claims. Rather, they require only a change in the terms and conditions of Algonquin's tariff, to allow shippers to use, on a secondary basis, all points within the zones for which the shipper pays. In Order No. 637, the Commission did not modify or change existing contract rights, it simply applied its existing flexible point policies to segmentation.

2. Winter/Summer Issues

[15]Order No. 637, FERC Stats. Regs. Regulations Preambles ¶ 31,091 at 31,592.

[16]These policies on segmentation and flexible receipt and delivery points were not challenged in the appeal of Order No. 636. See United Distribution Companies v. FERC, 88 F.3d 1105 (D.C. Cir., 1996) .

[17] Algonquin Gas Transmission Co., 62 FERC ¶ 61,132(1993), Order on Compliance Filing and Granting and denying Requests for Rehearing, 63 FERC ¶ 61,188(1993), Third Order on Compliance Filing, and Second Order on Rehearing, 65 FERC ¶ 61,019(1993), Fourth Order on Compliance Filing and Third Order on Rehearing, 65 FERC ¶ 61,353(1993).

a. Background

22. In its August 3, 2001 filing, Algonquin had proposed that for the winter period, (November 1 through March 31) the aggregate deliveries a shipper may make would be limited at all points during a gas day (whether primary or secondary) to the customer's MDTQ. For example, shippers could segment their capacity, but total deliveries could not exceed their MDTQ for all points, whether within or outside the path. Algonquin claims that this limitation is needed on operational grounds.

23. The February 27, 2002 Order reviewed the arguments advanced by Algonquin, and concluded that Algonquin had not provided sufficient data to justify its claim that segmentation is operationally infeasible during the winter period to support its proposed limitations. The order stated that Algonquin did not provide any transient computer modeling analysis of its system or of its theoretical example to demonstrate that segmentation causes detrimental effects on linepack and system pressures; even though the testimony stated that the Algonquin system is designed on a transient state basis. The Commission stated "we believe that Algonquin should provide segmentation to secondary delivery points outside the Base Flow Path on a year round basis up to the MDTQ in any segment, subject to a review by Algonquin's engineering staff for operational feasibility," 98 FERC at 61,773.

b. Rehearing Request

24. In its request for rehearing Algonquin reiterates the evidence it had submitted which the February 27, 2002 Order had discussed, and found wanting. For example it claims its evidence shows that segmentation will case a drop in line pack and pressure during the winter which is needed in its hourly service. Algonquin argues that the Commission chose to completely ignore this evidence. It argues that in light of the unpredictability and the high probability of interruptions that could affect firm customers, segmented service is unlikely to ever be available on its system during the winter months, and is simply not an operationally feasible option. It asserts that while the Commission referred to the evidence, the Commission indicated, without explanation that this evidence was not credible, and such ruling constitutes error. Algonquin also claims that in many instances the Commission was wrong in its assessment of the evidence presented. Moreover, Algonquin contends that the Commission used the wrong standard in assessing the evidence presented. It contends that the Commission could have addressed a data request to Algonquin for further information the Commission stated was wanting in the prior submission. Algonquin argues that it was up to the Commission to show that winter segmentation is feasible on the Algonquin system, and in light of the evidence presented by Algonquin showing its infeasibility, the Commission failed to meet its NGA section 5 duty to demonstrate feasibility, and to show that Algonquin's tariff is

unjust and unreasonable and that the Commission's replacement provision was just and reasonable.

c. Commission Ruling

25. We deny rehearing. The Commission has considered Algonquin's evidence on its operating and design characteristics. Thus, the February 27, 2002 Order stated that Algonquin's concern as to the likelihood of segmentation causing interruptions of interruptible and secondary service on the Algonquin system, including within-day interruptions of service, should be dealt with during the scheduling process, and segmented transportation with a higher priority should be scheduled ahead of lower priority services. The order specifically recognized that the winter might present different considerations and stated "While it is conceivable that during the winter period there may be less opportunities for segmentation, given system operations, it is not clear that Algonquin's requirement that shippers can only segment when total deliveries do not exceed its MDTQ at delivery points will be necessary in all cases."[18] A data request or other general information at this juncture would not give us any reason to change our ruling because the determination of operational feasibility is a day-to-day matter. Although Algonquin is not required to permit a segmentation if that segmentation is not operationally feasible, it has not shown that a blanket limitation on segmentation is justified. Accordingly, we adhere to our ruling that Algonquin's blanket restrictions on segmentation during the winter period cannot be permitted.

3. Contracts with Maximum Daily Delivery Obligations

a. Rehearing Request

26. Algonquin seeks clarification, or, alternatively, rehearing that when a customer has multiple primary delivery points and associated maximum daily delivery obligations (MDDO), which in sum may exceed mainline MDTQ, that the customer may not use segmentation to exceed its MDTQ. Algonquin states it has some older contracts with MDDOs which in sum may exceed the MDTQ, subject to the limitation that the customer's takes on any given day may not exceed MDTQ. In such an instance, it states that a customer could release a segment of its capacity with one primary delivery point to another shipper, the effect of which arguably could permit the releasing customer the ability to deliver at a primary delivery point up to the MDTQ and grant the replacement customer the same right at a second primary delivery point. Algonquin asks the

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[18] 98 FERC at 61,774.

Commission to clarify that the combined release/replacement, or other form of segmentation, cannot exceed the contract MDTQ.

b. Commission Ruling

27. The Commission grants Algonquin's request for clarification. Algonquin is correct in its contention that on no segment can the MDTQ of the customer be exceeded.

C. Mainline Scheduling/Curtailment Priorities at Secondary Points

1. Background

28. The February 27, 2002 Order,[19] approved Algonquin's proposed tariff provisions on scheduling and curtailment priorities at secondary points. The Commission found that the revisions were consistent with the requirement of Order No. 637 with regard to within the path capacity allocation. In addition, the order specifically rejected proposals by protestors to require Algonquin to modify its tariff to provide a priority for within the path transactions from secondary points of receipt to primary points of delivery because Algonquin provided a priority for secondary points within the path over any secondary point outside the path.

29. The February 27, 2002 Order also noted that Section 6.2 and 6.4 of certain of Algonquin's firm rate schedules[20] appeared to conflict with Algonquin's proposed Section 48.3 of the General Terms and Conditions of Algonquin's tariff (GT&C). The Commission therefore required Algonquin to modify the rate schedules to conform to Section 48.3 or explain why there is no conflict.

2. Requests for Rehearing

30. Algonquin Municipals and NE LDCs request rehearing of the February 27, 2002 Order's rejection of their proposal to require Algonquin to modify its tariff to provide a priority for within the path transactions from secondary points of receipt to primary points of delivery. Generally, they repeat the arguments they made in response to Algonquin's August 3, 2001 Filing which were adequately addressed by the February 27, 2002 Order. For example, Algonquin Municipals argue that the use of secondary receipt points by an LDC, particularly during critical times, is vital to assure that it may provide reliable and

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[19] Algonquin, 98 FERC at 61,776.

[20] The rate schedules noted were AFT-1, AFT-E, AFT-IS, AFT-ES, and AFT-CL.

competitively priced service to its customers. Similarly, the NE LDCs contend that failure to assign higher priority to firm service at primary delivery points would undermine reliability of the gas supply for LDCs and other firm transportation customers. In addition, NE LDCs note that the Commission approved a different priority for Algonquin's upstream affiliate, Texas Eastern Transmission, L.P. (Texas Eastern).[21] NE LDCs contend that there is no reason why the same priority cannot be adopted for Algonquin.

3. Commission Ruling

31. The Commission denies rehearing. As the Commission explained in Texas Eastern II,[22] although Algonquin and Texas Eastern's tariff provisions set forth scheduling priorities in a different manner, they both are consistent with Order No. 637-A's directive by according a higher priority to secondary points within the path over secondary points outside the path.[23] The Commission has not required a specific order of priority to allocate capacity between shippers that are either within or outside the path. The Commission did not, for example, specify whether a shipper moving from a secondary receipt point inside its path to a primary delivery point should have priority over a shipper moving from a primary receipt point to a secondary delivery point inside its path. Thus, to the extent there are scheduling conflicts over two secondary within-the-path transactions, the pipeline is free to choose any reasonable method of resolving such a conflict.

32. In the August 31, 2001 Filing, Algonquin proposed new tariff language in Sections 23, 24 and 48 of the GT&C to specify the scheduling and curtailment procedures for firm transportation service involving secondary points. As relevant here, Algonquin proposed to schedule firm service at secondary points in the following order: first to secondary points within the base flow path and then secondary points where either the receipt or delivery, or both, are outside the base flow path. Algonquin proposed revisions to the order of curtailment to, among other things, curtail service at secondary points outside the base flow path before curtailing service to secondary points within the base flow path.

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[21]Citing Texas Eastern Transmission, L.P., 98 FERC ¶ 61,215 at P 49 and P 52 (Texas Eastern I).

[22]102 FERC at 61,560 P 33.

[23]The difference between them is that while Algonquin's tariff has two levels of priority, within-the-path, or outside the path, Texas Eastern's tariff also establishes priority within each of these two categories.

33. The February 27, 2002 Order addressed concerns raised by several parties with respect to within the path priority. The 2002 Order stated:

> We find that Algonquin's proposed revisions are consistent with the requirement of Order No. 637 with regard to within the path capacity allocation. The proposed revisions provide a priority for secondary within the path transactions over transactions that have one or both secondary points outside the path. We find that Algonquin's proposal is reasonable and complies with Order No. 637. We therefore reject the proposal that Algonquin modify its tariff proposal to provide a priority for within the path transactions from secondary points of receipt to primary points of delivery.[24]

34. Upon further review of Algonquin's tariff, the Commission finds that the February 27, 2002 Order, while focusing on issues concerning scheduling of firm transportation service, did not address the appropriateness of Algonquin's proposal with respect to curtailment of firm transportation service. The Commission finds that GT&C Sections 24.4 and 48.3(b) of Algonquin's proposed tariff do not conform with the Commission's policy for the curtailment of firm service. In Order No. 636-B, the Commission held that once secondary firm capacity is scheduled, primary firm capacity does not have a higher priority for purposes of bumping or curtailing firm service.[25] Thus, "once primary and secondary points have been scheduled, curtailment would treat such points on an equal pro rata basis."[26] The firm shipper with secondary points pay the same firm reservation rates as a shipper with scheduled primary capacity, and will rely on the scheduled firm service to meet its market deliveries. Accordingly, Algonquin is directed to revise its tariff to provide that scheduled firm service will be curtailed on a pro rata basis.

D. Discount Provisions

1. Background

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[24] 98 FERC ¶ 61,211 at 61,176 (2002).

[25] Order No. 636-B, 61 FERC ¶ 61,272 at 62,013 (1992). See also, Northwest Pipeline Corporation, 63 FERC ¶ 61,124 at 61,812-13 (1993); and Algonquin Gas Transmission Co., 62 FERC ¶ 61,132 at 61,896 (1993).

[26] Williston Basin Interstate Pipeline Co., 62 FERC ¶ 61,144 at 62,052 (1993).

35. In the February 27, 2002 Order, the Commission stated that it had adopted a new policy in CIG/Granite State[27] that permits a shipper to retain a discount when it moves to segmented points or secondary points through a streamlined request process in which the pipeline processes requests for discounts within two hours. The Commission explained that it had adopted that policy since its discount and segmentation policies can best be balanced by adoption of a policy under which a shipper with a discounted rate that seeks to use an alternate receipt or delivery point (whether through segmentation, capacity release, or its own exercise of flexible receipt and delivery point rights) can continue to receive a discounted rate if the pipeline has granted a discount to a similarly situated transaction at the alternate point.[28]

36. Under this policy, there is a rebuttable presumption that a shipper holding a discount at a point will retain a discounted rate if it chooses to segment, release capacity, or use its flexible receipt and delivery point rights to move gas to another point at which the pipeline has granted discounts for its firm or interruptible transportation services.[29] The pipeline can rebut this presumption by demonstrating that the segmented or secondary point transaction is not similarly situated to the transactions receiving the discount at the secondary point. The Commission placed the burden on the pipeline to justify a denial of a discount, because the Commission was concerned that pipelines may not have the same incentive to offer discounts to segmented transactions or to secondary points that compete directly with their sale of primary capacity.

37. In order to comport with the Commission's requirement to ensure nomination equality,[30] the Commission further required pipelines to process requests for discounts

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[27]Colorado Interstate Gas Co., 95 FERC ¶ 61,321 (2001) (CIG); Granite State Gas Transmission, Inc., 96 FERC ¶ 61,273 (2001), reh'g denied, 98 FERC ¶ 61, 019 (2002) (Granite State).

[28]See Paiute Pipeline Co., 96 FERC ¶ 61,167, at 61,750 (2001) (explaining that the CIG discount policy applies to the use of secondary points whether through capacity release transactions, segmentation, or the use of flexible receipt or delivery points).

[29]The shipper seeking to move its point must pay the higher of its contractual rate or the discount rate being offered at the alternate point. See CIG, 95 FERC ¶ 61,321 at 62,121 n. 38.

[30]18 C.F.R § 284.12 (c)(1)(ii) (2001).

within two hours of the time the request is submitted.[31] This processing requirement ensures that shippers requesting the continuation of discounts can submit nominations at each of the four standard nomination opportunities provided by the pipeline.

38. The February 27, 2002 Order directed Algonquin to file tariff sheets implementing the rebuttable presumption policy along with a procedure for processing requests to retain discounts at each scheduling opportunity provided by the pipeline.

2. Rehearing Requests

39. In its request for rehearing, Algonquin asserts that in the February 27, 2002 Order the Commission imposed a new discount policy. Algonquin argues that the Commission failed to satisfy any burden of proof standard – much less the heightened evidentiary standards of NGA Section 5 – in imposing the new discount policy. Algonquin asserts that Order No. 637 did not require this discount policy, and therefore the provisions imposed by the February 27, 2002 Order are beyond the scope of the Order No. 637 compliance. Algonquin also argues that the Commission did not discuss any failings of its existing discount policies or related tariff provisions, which were designed to provide market-responsive elective discounts. Further, Algonquin argues that the discount policy must be applied prospectively, and that the Commission should not change the terms of any existing agreements. Algonquin also requests that he Commission clarify that the 2-hour rule is not applicable after normal business hours or on weekends.[32] In its supplement to its request for rehearing, Algonquin contends that the INGAA decision

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[31]The Commission has further provided that "if a pipeline and its shippers can reach agreement on a standard processing period for discount requests that retains the nomination equality requirement of the Commission's regulations, such an agreement also could be an acceptable method of implementing the discount policy." Granite State Gas Transmission Inc., 98 FERC ¶ 61,019 (2002).

[32]There is no need for any clarification since the February 27, 2002 order clearly stated that. The Commission stated that" pipelines, of course, can choose shorter periods for processing. Moreover, the Commission has recognized that pipelines may not have staff to process discount requests overnight. Therefore, pipelines must act on overnight requests to retain discounts received after 4 p.m. by no later than 8:30 a.m. CCT the next business day, and need not process requests on weekends. See National Fuel Gas Supply Corp., 98 FERC ¶ 61,123 (2002). Pipelines providing for additional nomination opportunities after the 6:00 p.m. Evening Nomination cycle need not process corresponding discount requests for nominations coming after the 6:00 p.m. standard nomination time period until 8:30 a.m. the next business day." 98 FERC at 61,778 n.44.

contains dicta that support granting rehearing and not applying the new CIG/Granite State policy to it.

40. Algonquin Municipals contend that the Commission did not reasonably or adequately address its request to prohibit Algonquin from engaging in monopoly price discrimination through its discounting policies. Algonquin Municipals request that the Commission expressly rule that Algonquin may not engage in monopoly price discrimination by refusing to provide discounts solely on the basis that the involved shipper lacks alternatives to Algonquin's service.

3. Commission Ruling

41. Algonquin argues that the Commission failed to address the burden of proof as required by Section 5 of the NGA. As we have explained in other proceedings,[33] the Commission adopted the CIG/Granite State discount policy in furtherance of its policy of enhancing competition. This new policy is applicable to all pipelines. However, under the policy a pipeline may rebut the presumption under that policy. Algonquin has not shown or even suggested why the policy should not be applied to it other than to observe that the policy is new and not specified in Order No. 637, and to claim, without support, that its existing tariff already enhances competition.

42. Algonquin contends that the discount policy must be applied prospectively and the terms of existing agreements cannot be changed. Although the change is to be applied prospectively, upon the effectiveness of the relevant tariff sheets, the terms of existing agreements will be changed to reflect these new provisions and incorporate the new policy. Thus, consistent with our rulings in other cases, the policy applies prospectively to shippers under existing discount agreements when those shippers seek to use secondary points. The Commission has found that allowing discounts to be limited to specific points is unjust and unreasonable, because it reduces competition and is unduly discriminatory insofar as it treated similarly situated shippers at the same point differently. The CIG/Granite State policy merely grants to the shipper using an alternate point the right to continued discounts the same as similarly situated transactions at that point. Accordingly, provisions in Algonquin's tariff or in its contracts that are inconsistent with the Commission's CIG/Granite State Policy are unjust and unreasonable.[34]

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[33]See, e.g., Texas Eastern II at 102 FERC at 61,561-62, PP 36-49.

[34]Algonquin has not identified any special terms in specific existing contracts which it claims would entitle those contracts to different treatment.

43. In response to Algonquin's supplement to its request for rehearing, we note that the INGAA decision did not refer to the CIG/Granite State policy in any way. The only discount issue to which the opinion referred was the treatment of discounts for throughput calculations, and as to that matter, the Court held the issue was not ripe. For the above reasons, we deny Algonquin's request for rehearing on the discount policy issue.

44. With respect to the request for rehearing by the Algonquin Municipals, the Commission has explained that Order No. 436 found that allowing selective discounts to meet competition would benefit even customers that did not receive discounts, since those customers would be protected from rate increases that would otherwise ultimately occur if pipelines lost volume through inability to respond to competition. This is so because selective discounting allows a pipeline to maximize throughput by lowering prices to retain and attract business which benefits all customers by spreading fixed cost recovery over more units of service.[35] The purpose of discounting is to generate greater throughput, and cost recovery, than would otherwise exist if only the pipeline's higher, filed ceiling rates were offered. Accordingly, it follows that under this policy, pipelines may selectively grant discounts based upon this elasticity of demand of their customers and that shippers with different demand elasticities are not similarly situated and entitled to the same discount. For example, granting a discount to a customer that would leave the system without the discount is thus fully consistent with existing Commission policy. Therefore, the Commission denies rehearing on this issue and rejects Algonquin Municipal's request that Algonquin be required to grant discounts to shippers without alternatives.

E. Excess Hourly Flows

1. Background

45. Algonquin's existing tariff provides for a scheduling penalty equal to the AIT-1 rate for hourly flows in excess of 104% of 1/24th of the daily scheduled volumes upon one hours notice to the shippers when operating conditions so require in order to ensure deliveries of scheduled quantities to all firm customers. In its August 3, 2001 Filing, in

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[35] See Texas Eastern I, 98 FERC at 61,837-38. See also Williston Basin Interstate Pipeline Co., 85 FERC ¶ 61,247 at 62,028-29 (1998).

order to expressly state the priority for this "hourly swing service," Algonquin proposed a new Section 49(a). Algonquin stated that although the priority has not been explicitly provided for in the tariff, its practice is to provide this "hourly swing service"on an uninterruptible basis whereby shippers could exceed the hourly flow obligations. The new Section 49(a) would give its firm customers the right to take the delivery of gas at primary delivery points at hourly rates in excess of 104% of 1/24th of scheduled daily quantity (or 6 percent of daily scheduled quantity for customers formerly under Rate Schedules F-1 and WS-1) as long as the excess hourly flow rate does not adversely affect Algonquin's ability to meet its firm obligations to customers or otherwise affect safe and reliable operation of its system. Although it is not a firm service, Algonquin proposed that excess hourly flexibility at primary delivery points would have priority over all other interruptible and secondary services. Algonquin also proposed that if necessary, it would limit excess hourly flow rates to 1/24th uniform hourly flow or the 6 percent hourly flow rate, as applicable under each contract.

46. The February 27, 2002 Order found, in principle, that Algonquin's proposed excess hourly flexibility proposal generally to be consistent with Order No. 637 since it appeared to enhance shippers' contractual rights. However, the February 27, 2002 Order directed Algonquin to provide that such service must be provided at both primary and secondary delivery points. Further, the order found the part of the proposal providing that excess hourly flexibility has priority over all other interruptible and secondary services is inconsistent with Commission policy with respect to scheduling because it provided firm shippers using primary points with the ability to bump both scheduled firm and interruptible service at any point during the day simply by requesting an increase in hourly flows. Therefore, the February 27, 2002 Order required that excess hourly service have the lowest priority for scheduling and curtailing to ensure that it would not affect the service of other customers that already have gas flowing under scheduled services. The February 27, 2002 Order also directed Algonquin to explain the notice it will provide for limiting hourly flow rates. Finally, the February 27, 2002 Order directed Algonquin to explain whether its proposal to limit hourly flow rates would only relate to curtailments of service.

2. Rehearing Requests and Protests on Priority for Excess Hourly Flows

47. Algonquin, and the majority of parties in this proceeding objected to the Commission's ruling on the priority for excess hourly flows. The objections were raised in both the rehearing requests and the protests to Algonquin's May 29, 2002 compliance filing.

48. In its request for rehearing, Algonquin emphasizes that the purpose of its proposed Section 49 is to provide a ranking among various types of transactions where none now exists, and that it wishes to make clear that it is not its intent to preclude customers from making deliveries at secondary points from enjoying excess hourly flows provided it is able to accommodate such excess hourly flows. Algonquin states that there is nothing inherent in the Commission's regulations that precludes recognition and appropriate ranking of excess hourly flow transactions at primary points. Algonquin further contends that the result of the February 27, 2002 Order is a substantial reduction or elimination of excess hourly flows for every customer. It asserts that, because customers are permitted by the February 27, 2002 Order to indefinitely multiply their MDTQ both inside and outside their transportation paths, only subject to the no overlap rule, and because secondary transactions must be scheduled, and once scheduled are firm, there will be little, if any, flexibility available to provide excess hourly flows.

49. Several parties, including Algonquin Municipals, NE LDCs and KeySpan, request that on rehearing the Commission reverse its position on the priority for excess hourly flows. They contend that (1) Algonquin's firm customers have always had the right to vary the hourly flows for their daily contract quantities; (2) primary service requirements for hourly demands in excess of uniform takes have always been provided on a priority basis over interruptible and secondary service; and (3) the Commission's decisions will imperil Algonquin's customers' ability to serve human needs requirements.

50. On the other hand, Dynegy supports the Commission's rejection of Algonquin's proposal to schedule hourly flexibility for primary firm service before alternate-point service. However, Dynegy does not agree that hourly flexibility should have a specific priority below interruptible service. Dynegy states that hourly flexibility should be provided automatically whenever there is operational available flexibility.

3. Commission Ruling

51. After reviewing Algonquin's existing tariff and its proposal on excess hourly flows, the Commission has determined to deny rehearing but modify the February 27, 2002 Order to reject Algonquin's compliance proposal. The Commission concludes that Algonquin's current tariff more appropriately reflects Commission policy on scheduling priority, and that the way in which proposed Section 49 is intended to operate is not clear, and that the section as drafted, would violate established Commission policy. Further, as explained below, the Commission directs Algonquin to cease the practice it claims it engages in under its existing tariff, which is reflected in the rejected proposed tariff provision.

52. Algonquin's currently effective tariff provides firm shippers and interruptible shippers with the ability to tender quantities of gas in excess of the maximum daily transportation quantity when, in Algonquin's reasonable judgment, transportation of such gas can be accomplished without detriment to other customers.[36] In fact, such quantities are "deemed" Authorized Overrun Quantities. Algonquin's Proposed Section 49 sought to introduce a new priority requirement stating "Excess hourly flexibility at Primary Delivery Points shall have priority over all other interruptible and secondary services." (Emphasis added).

53. The February 27, 2002 Order required that excess hourly service have the "lowest priority" for scheduling and curtailing, otherwise a firm shipper's ability to change hourly takes may affect the service of other customers that already have gas flowing under scheduled services.[37] On rehearing, several parties object that this improperly subordinates the rights of firm service customers to hourly demands in excess of uniform takes to the rights of interruptible and secondary services.

54. Upon further review, the Commission rejects proposed Section 49, because the tariff provision is unclear, and, as drafted, conflicts with Commission policy and precedent regarding scheduling priorities. The proposed tariff language does not explain how this provision will be implemented, how it relates to existing tariff provisions regarding scheduling, or what effect it will have on already scheduled service to primary and secondary points. Allowing excess hourly flows by one shipper to bump scheduled secondary firm service is inconsistent with Commission policy. The Commission's long-standing policy, since the implementation of Order No. 636, is that once scheduled, all firm services, including those at secondary points, have the same priority and should be treated similarly for the purpose of curtailment.[38] With respect to interruptible service, Section 23.3 of the GT&C in Algonquin's tariff, in accordance with Commission policy, limits the ability to bump scheduled interruptible service, providing that scheduled interruptible service cannot be bumped or curtailed in order to provide a higher priority firm service unless such curtailment or bumping occurs prior to the Intra-Day 2

[36]See, e.g., Section 2.3 of Rate Schedules AFT-1 and AIT-1.

[37]Algonquin, 98 FERC at 61,783.

[38]See Order No. 636-B, 61 FERC ¶ 61,272 at 62,013; see also Transwestern Pipeline Co., 99 FERC ¶ 61,380 at 62,608 (2002); Northwest Pipeline Co., 63 FERC ¶ 61,124 at 61,813 (1993), order on reh'g, 65 FERC ¶ 61,007 (1993).

Nomination cycle.[39] Algonquin's proposal, however, would permit bumping of interruptible after the Intra-Day 2 Nomination cycle. Thus, the proposed priority in Section 49 would be inconsistent with Commission policies regarding scheduling priorities.

55. Because the language of Section 49 is unclear, Algonquin may not have intended that its priority provision operate to bump or curtail scheduled service. It instead may have intended the provision to provide that in the event Algonquin has to limit excess hourly flow rights, it will first limit such rights to firm secondary and interruptible shippers before limiting excess hourly flows to primary delivery points. For example, if in order to meet its scheduled firm service commitments, Algonquin is unable to provide excess hourly flow rates to all shippers, it may have intended that the tariff provision would first require firm secondary and interruptible shippers to limit their excess hourly flows while permitting firm shippers at primary points to continue excess hourly flows. However, even if this is what was intended, such a provision still conflicts with Commission policy, because, as discussed above, the Commission has found that once scheduled all firm service (whether primary or secondary) should be accorded the same priority with respect to curtailment of service rights.

56. Algonquin must file revised tariff sheets to delete the proposed Section 49 and any other tariff references to the new proposed hourly flow priority rejected above.

57. Further, in light of Algonquin's claimed practice of providing such excess hourly flow service with the same priority as reflected in its proposed section 49(a), Algonquin is directed to cease such practice and conform to the directives set forth above regarding curtailment and bumping.[40] Because Algonquin has an hourly scheduling penalty, and firm customers have a maximum hourly transportation quantity (MHTQ),[41] by scheduling a daily volume, shippers must be considered to have also scheduled 1/24 of such daily volumes each hour such that a failure by Algonquin to provide such an hourly flow

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[39] See Reliant Energy Gas Transmission Company, 94 FERC ¶ 61,322, at 62,199-200 (2001) (not permitting interruptible service to be bumped after the Intra-Day 1 nomination cycle).

[40] Of course, Algonquin may, in its discretion, continue to not invoke the hourly scheduling penalty set forth in Section 23.4(b) of its tariff provided it does so on a not unduly discriminatory manner.

[41] Section 31.2 of Algonquin's tariff also provides for a penalty for overruning the MHTQ following notice that system operations require adherence to the MHTQ.

constitutes curtailment or bumping which must adhere to the tariff curtailment and bumping provision.

F. Penalties

1. Background

58. In its August 3, 2001 Filing, Algonquin proposed tariff sheets which addressed what it asserted is the problem of arbitrage on its system. Specifically, Algonquin proposed to: (1) change its monthly cashout mechanism to a weekly cashout procedure; (2) eliminate the tiers incorporated in its existing cashout provision; and (3) reduce the tolerance levels that apply to the cashouts. Under Algonquin's proposal, if an imbalance is not eliminated, weekly imbalances would be cashed out in accordance with revised Section 25 of the GT&C. If the weekly imbalance is less than or equal to four percent, the weekly cashout amount would be based on the average of the applicable daily midpoint prices for the Gas Week. If the imbalance is greater than four percent, the weekly cashout amount would be based on the highest applicable Common Price for the Gas Week applied to the entire weekly imbalance. Algonquin proposed to calculate the cashout amount by multiplying the applicable weekly index price as reported in Gas Daily for the "AGT Citygate" by the actual quantities of excess delivery or deficiency of receipts for the Gas Week.

59. A number of parties filed comments in opposition to Algonquin's August 3, 2001 Filing asserting that the proposed changes (a) are not operationally justified and, thus, beyond the scope of what is permitted under Order No. 637, and (b) contrary to the moratorium contained in Section 4.01 of Algonquin's March 4, 1999 Settlement (1999 Settlement).[42]

60. The February 27, 2002 Order held that Algonquin's proposed imbalance and penalty proposals, which seek to increase Algonquin's penalties, or make them more stringent, are beyond the scope of Order No. 637, and rejected the proposed increases. The Commission explained that Order No. 637 required pipelines to examine whether their existing penalty provisions are necessary and appropriate to protect against system reliability problems, and if not, to narrowly design penalties to deter only conduct that is actually harmful to the system. The Commission stated that Order No. 637 was not an opportunity for pipelines to file to increase penalties or make their penalty provisions more stringent.

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[42] Algonquin Gas Transmission Co., 87 FERC ¶ 61,008 (1999).

61. The Commission further held while normally a pipeline could file such tariff changes under Section 4 of the NGA, Algonquin's 1999 Settlement prohibits the type of tariff changes that it has proposed here since in Sections 4.02 of the 1999 Settlement, Algonquin expressly waived its right to impose any new penalties or increase any imbalance or penalty rates or charges. The Commission recognized that Section 4.07[43] provides an exception to the rate moratorium for changes required by Commission orders of "general applicability", but found that Algonquin's proposed imbalance and penalty changes did not fall within that exception because such changes were not required by Order No. 637. The Commission further found that Algonquin's existing monthly cashout penalties remain just and reasonable given the tools Algonquin provides shippers to manage imbalances.

2. Request for Rehearing

62. Algonquin argues that the Commission's rulings are inconsistent with the language of the 1999 Settlement and Order No. 637, as well as cases following Order No. 637. Algonquin asserts that the Commission has selectively applied the Rate Moratorium by finding that the Section 4.07 "order of general applicability" exception to the rate moratorium applies to the general bar on rate and tariff changes in Section 4.01, but does not apply to the more specific bar on penalty and imbalance changes in Section 4.02. Algonquin asserts that the Commission has not explained why the 1999 Settlement precludes Algonquin from altering the monthly cashout, but does not preclude the Commission's order that Algonquin must pay interest on collected penalty revenues.

63. Algonquin argues that its proposed changes fall within the "rules of general applicability" since the Commission has already held that cashout and penalty modifications are "within the scope" and "squarely within the requirements" of Order No. 637, and are made "under the authority of Order No. 637."[44] Algonquin points to the Commission's statement in Order No. 637 that "pipelines may be able to change the methods by which they cashout imbalances to eliminate the incentives for shippers to

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[43]That section states: During the Rate Moratorium Period, such Rate Moratorium shall not relieve Algonquin of any obligations it might otherwise have to file changes in rates or terms and conditions of service as required by legislation or Commission rule, regulations, or order of general applicability, such as rules adopted by the Commission implementing recommendations of the Gas Industry Standards Board. All parties and participants shall be free to object to any such filing by Algonquin.

[44]Algonquin cites to Texas Gas Transmission Corp., 96 FERC ¶ 61,318 at 62,218 (2001), and Gulf South Pipeline Co. L.P. , 98 FERC ¶ 61,068 (2002).

borrow gas from the pipeline because the cashout price is less than the market price for gas."[45] Algonquin also cites the Commission's statement in Order No. 637-A that "the fact that arbitrage is occurring not only across pipeline systems but within pipeline systems demands that pipelines revise the level and structure of their penalty provisions to minimize the opportunity for arbitrage."[46] Algonquin further cites to cases following Order No. 637 which approved changes to pipeline cashout mechanisms, in which the Commission recognized that "one of the goals stated in Order No. 637 was to reduce the possibility of arbitrage,"[47] and that "to the extent that changes to a cashout mechanism are necessary to remove the incentive for arbitrage, such changes are appropriate under Order No. 637."[48]

3. Commission Ruling

64. The major issue presented on rehearing is whether Algonquin can use the inquiry under Section 5 of the NGA, initiated by Order No. 637, as to whether existing penalty structures are unjust and unreasonable, as an opportunity to by-pass the provisions of a rate settlement signed by Algonquin, which expressly prohibited Algonquin from filing under Section 4 of the NGA to make its existing penalties more stringent.[49] We adhere to the ruling in the February 27, 2002 Order that Algonquin should not be permitted to take advantage of the generic proceeding initiated by Order No. 637 to avoid its obligations under the 1999 Settlement. However, since the Rate Moratorium in the 1999 Settlement has now expired, Algonquin is free to propose changes to its cash out provisions (or any other provisions in its tariff) under a Section 4 proceeding.

65. Algonquin argues that its proposed cashout and penalty changes fall within the Section 4.07 exception to the Rate Moratorium because they were "required by . . . Commission rule." Thus, the issue presented here is whether Order No. 637 required Algonquin to make the kinds of changes to its cashout mechanism it has proposed. Both the determination whether Algonquin's proposed cashout and penalty changes are

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[45]Order No. 637 at 31,314-15.

[46]Order No. 637-A at 31,607.

[47]Gulf South Pipeline Co., L.P., 98 FERC ¶ 61,068 at 61,181 (2002)

[48]Transcontinental Gas Pipe Line Corp., 98 FERC ¶ 61,213 at 61,813 (2002).

[49]There is no dispute that Algonquin's proposal to move to a weekly cashout mechanism and to decrease tolerance makes its cashout provision more stringent and increases the number and levels of its penalty provisions.

properly within the scope of Algonquin's Section 5 Order No. 637 compliance filing, and whether they fall within the Section 4.07 exception turn on whether Algonquin was required to tighten its cashout mechanism to respond to arbitrage problems. Order No. 637 did not require such changes, and therefore Algonquin is in error, and rehearing is denied.

66. As explained in Texas Eastern II, Order No. 637 instituted Section 5 proceedings to examine pipelines' existing penalties, imbalance management mechanisms, and OFOs to ensure that they are not unjust and unreasonable.[50] Clearly, pipelines were neither required, nor permitted, to expand those penalties. That the Commission did not intend for pipelines to propose tighter, more strict cashout provisions or to increase the amount and level of their penalties is consistent with the overall thrust of the Commission's policy on penalties in Order No. 637.

67. Algonquin, however, maintains that its proposed cashout and penalty changes were required by Order No. 637 because language in the preamble of Order No. 637 and in Order No. 637-A specifically contemplated revisions to cashout and penalty provisions to address arbitrage. Therefore, it argues, its proposed changes which it made to address the arbitrage problem are consistent with, and within the scope of, Order No. 637.

68. Although Order No. 637 articulated a number of policies and goals with respect to imbalance management services, penalties, cashout mechanisms, and arbitrage, not all of those policies required pipelines to make revisions to their tariffs. Order No. 637 did not require pipelines to make any changes to their cashout mechanisms, nor did it require pipelines to propose changes to their system management programs to reduce or otherwise address problems of arbitrage.[51] While the Commission in the preamble of Order No. 637 emphasized that discouraging or reducing the possibility of arbitrage was one of its goals, and stated, as Algonquin points out, that "pipelines may be able to change the methods by which they cashout imbalances to eliminate the incentives for shippers" to game the system,[52] this statement did not require pipelines to make penalty structures more stringent. The Commission was specifically looking for solutions to

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[50]Texas Eastern II, 102 FERC at P 97-106.

[51]Pipelines, however, could use the fact that arbitrage is a problem on their systems to justify not lowering or relaxing their existing penalties or cashout provisions in their individual Order No. 637 compliance filings.

[52]Order No. 637 at pp. 31,314-15. .

address this matter that did not involve a tightening of cashout provisions and penalties.[53] Indeed, the Commission in Order Nos. 637 and 637-A specifically criticized the pipelines' typical response of escalating tolerances and imbalances as a response to arbitrage.[54]

69. Algonquin further argues that the Commission has allowed changes to pipelines' cashout mechanisms in other "Order No. 637 cases,"[55] and therefore, the Commission has erred in this case in rejecting its weekly cashout proposal here. Algonquin is mistaken because the cases it cites are separate NGA Section 4 proceedings, not compliance filings to implement the requirements of Order No. 637. In those cases pipelines proposed changes to their cashout mechanisms in Section 4 filings, which the Commission then evaluated under the policies of Order No. 637. The various statements by the Commission in those cases, which Algonquin cites, to the effect that changes to a pipeline's cashout mechanism to remove the incentive for arbitrage "are appropriate under Order No. 637" were meant to reflect that such changes are consistent with the policies of Order No. 637, not that such proposed tariff changes are appropriately made in, or within the scope of, Order No. 637 compliance filings. The Commission has consistently rejected pipeline proposals in Order No. 637 compliance filings to increase existing penalties.[56]

70. Algonquin argues that it is arbitrary for the Commission to find that the 1999 Settlement precludes Algonquin from altering its monthly cashout provision, but does not preclude the Commission from requiring Algonquin to pay interest on the collected penalty revenues that it credits.[57] The Commission's action is not inconsistent because

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[53]However, Order No. 637 did not flatly prohibit a pipeline from proposing to modify or tighten their cashout procedures or to increase their penalties, as pipelines always have the opportunity to justify higher or additional penalties as just and reasonable through a Section 4 filing.

[54]Order No. 637 at 31,308 and Order No. 637-A at 31,607.

[55]Algonquin cites Transcontinental Gas Pipe Line Corp., 98 FERC ¶ 61,213 (2002); Gulf South Pipeline Co., L.P., 98 FERC ¶ 61,068 (2002); and Texas Gas Transmission Corp., 96 FERC ¶ 61,318, order on reh'g, 97 FERC ¶ 61,349 (2001).

[56]Columbia Gas Transmission Corp., 100 ¶ FERC 61,084 at 61,361 (2002), and cases cited therein at n. 80.

[57]In the February 27, 2002 Order, the Commission held that Algonquin must include interest when it credits accrued penalty revenues. 98 FERC at 61,788-90.

Order No. 637 required that pipelines credit penalty revenues to their shippers,[58] it did not require pipelines to make their cashout provisions more stringent or to propose changes in their penalty provisions to address arbitrage problems. Whether interest should be paid on the penalty revenues to be credited is merely part of the determination whether Algonquin's required revenue crediting mechanism is just and reasonable under NGA Section 5.[59] It is Commission policy to require interest on amounts to be credited.

71. Algonquin further asserts that the Commission did not evaluate the interrelationship of Algonquin's imbalance services, OFOs, and penalties, or analyze whether that overall program of system management would satisfy the goals of Order No. 637. Algonquin argues it will not be able to satisfy the goals of Order No. 637 or meet the requirements of new Section 284.12, particularly the requirement that pipelines provide imbalance management services, unless the proposed weekly cashout mechanism is adopted, because the current monthly cashout mechanism is being used as a free PAL service, making it certain that the new Rate Schedule PAL service will not be utilized.

72. Algonquin's existing monthly cashout mechanism does not prevent Algonquin from complying with any aspect of Order No. 637, and specifically the imbalance management requirement. Order No. 637 simply required that a pipeline offer imbalance management services; it did not require that shippers use imbalance management services or that pipelines ensure that shippers utilize such services. Algonquin could develop an imbalance management service with strong enough incentives to outweigh the attractiveness of shippers' reliance on the cashout mechanism.[60]

73. Thus, Algonquin has failed to show that its more restrictive penalty provisions were required by Order No. 637. Nor, as discussed above, has Algonquin shown that its penalty structure is so detrimental to its system or that arbitrage has so imperiled its system so as to require an override of the 1999 Settlement to ensure that Algonquin is able to operate its system.

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[58]The Commission permitted pipelines to propose their own penalty revenue crediting mechanism in their Order No. 637 compliance filings.

[59]In Order No. 637-A, the Commission specifically stated that it would address any questions regarding the implementation of revenue crediting in the individual compliance proceedings. Order No. 637-A at 31,610.

[60]The Commission notes that most pipelines have both a monthly cashout mechanism, and a park-and-loan or other such imbalance management service, yet it does not appear that those pipelines' monthly cashout systems prevent their shippers from utilizing the park and loan services.

G. Capping of OFO Penalties

1. Background

74. Algonquins proposed modifications to tie its curtailment and unauthorized overrun penalties to an index-based penalty. The February 27, 2002 Order approved the proposed change because the change to an index-based penalty can result in lower penalties, and thus was consistent with Order No. 637. However, the Commission capped the indexed penalty to no more than the existing charges of $25 and $15 per Dth respectively, because the 1999 Settlement prohibits an increase in penalties.

2. Rehearing Request

75. On rehearing, Algonquin argues that the Commission should not have capped the index-based penalties at the $15 and $25 level. It contends that index-based penalties have far more relevance to customer actions because they are based on market conditions, as contrasted to a flat penalty, which has no relationship to changing market conditions. For example, Algonquin argues that if a customer has the choice of shorting the pipeline and paying the unauthorized penalty of $15 per Dth versus purchasing gas at any price above $15 per Dth, the customer that makes an economically rational decision will generally choose the $15 per Dth unauthorized overrun penalty.

3. Commission Ruling

76. We deny Algonquin's request for rehearing. As explained above with reference to the cashout penalty, the 1999 Settlement precludes any increase in penalties but does not prohibit a decrease in penalties. The rule of "general applicability" exception in Section 4.07 of the settlement does not operate to permit the curtailment or unauthorized overrun penalties to increase above the existing penalty amounts. Further, increases to index-based penalties was not required by Order No. 637.

H. Limitations on Netting and Trading

1. Posted Points of Restriction

a. Background

77. In its August 3, 2001 Filing Algonquin included a provision providing for a Posted Point of Restriction in order to prevent a customer from achieving a transportation service via a trade that it could not have nominated and scheduled on the day the restriction was

in effect. Algonquin sought to limit the amount of transportation it could schedule on a given day during a month due to the restriction in order to maintain the integrity of the system. The February 27, 2002 Order found that Algonquin had not supported its proposal to limit trading through a Posted Point of Restriction. The order found that since netting and trading takes place after the date of the restriction, and can take place as late as the 17th business day of the following month, that preventing a trade across a restricted point would not alleviate the restriction nor aid in maintaining the integrity of the system. The February 27, 2002 Order directed Algonquin to remove the Posted Point of Restriction from its tariff.[61]

b. Rehearing Request

78. Algonquin states that the February 27, 2002 Order implicitly finds that there is no physical transportation involved when there is a Posted Point of Restriction. Algonquin states that this finding is in error since transportation physically occurs at the time the Posted Point of Restriction is in place. Algonquin states that since its operational impact area (OIA) is broadly drawn to include the entire system, it needs a mechanism to ensure that it will have flexibility to address operational issues as they arise. Algonquin argues that if the Posted Point of Restriction language is not included in the tariff, customers could circumvent Algonquin's operational restrictions after the posting of the restriction by completing via an imbalance trade after the fact what was restricted through the nomination/scheduling process. Algonquin states that limitations on imbalance trades at Posted Points of Restriction will be necessary at those times in which Algonquin would otherwise restrict scheduled quantities in those areas.

79. Algonquin provides the following explanation to support retaining a Posted Point of Restriction provision in its tariff. According to Algonquin, physical transportation occurs on Algonquin's system anytime there is a trade between shippers where a "due shipper" imbalance is upstream a "due pipe" imbalance. Algonquin argues that if a customer wanted to circumvent an operational restriction, the customer would simply go "due shipper" on the upstream side of the restriction and get another customer to go "due pipe" on the downstream side during the time the restriction is in place. Algonquin states that physical transportation has now occurred while the Posted Point of Restriction is in place. Algonquin states that, after the Posted Point of Restriction is lifted, the two customers can effect the trade to account for the physical transportation that took place

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[61] Algonquin, in its May 29, 2002 Filing removed the tariff provisions relating to trades across Posted Points of Restriction in compliance with the February 27, 2002 Order.

during the time of the restriction, and that the customer has utilized trading to evade the Posted Point of Restriction. According to Algonquin, its proposal is not a total ban on trading on the day or days the Posted Point of Restriction is in effect. Rather, trading may still occur on each side of the restriction while the restriction is in place.

80. Algonquin states that the Point of Restriction provision was protested only by NEG Shippers. It argues that the Commission has the burden of showing the justness and reasonableness of its revision, especially in light of apparent wide-spread customer acceptance of this provision, and in light of contrary rulings by the Commission in other Order No. 637 proceedings. For example, in the Commission's ruling on East Tennessee Natural Gas Company's Order No. 637 compliance plan, the Commission left room for East Tennessee's justification of the presence of the Posted Point of Restriction provision in the East Tennessee tariff, East Tennessee Natural Gas Company, 98 FERC ¶ 61,060 (2002).[62] The Commission's summary rejection of Algonquin's Posted Point of Restriction provision is inexplicably inconsistent with the Commission's ruling in East Tennessee.

81. Algonquin further contends that if limitations are not established for trades across the Posted Point of Restriction, Algonquin would have no meaningful way to enforce its customers' recognition and accommodation of the operationally necessary restriction. Algonquin states that netting and trading could be used to game the system which could result in additional operational difficulties.

c. Commission Decision

82. The Commission grants Algonquin's request in part to permit it to retain a Posted Point of Restriction limitation on trading with respect to OBAs, but not with respect to shipper traders. This is consistent with Commission action in other proceedings where the Commission has recognized that trading OBA imbalances raises different issues than trading of shipper imbalances and has allowed pipelines to impose limitations on OBA trading.[63] Under Algonquin's tariff, as in East Tennessee, OBA imbalances are essentially scheduling imbalances, and Algonquin has no scheduling penalties or other provisions to discourage and/or penalize scheduling misconduct by OBA operators. Accordingly,

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[62] See also Northwest Pipeline Corp., 96 FERC ¶ 61,020 (2001).

[63] See Maritimes & Northeast Pipeline, L.L.C., 103 FERC ¶ 61,316 (2003), East Tennessee Natural Gas Company, 103 FERC ¶ 61,237 (2003) (East Tennessee); Transcontinental Gas Pipe Line Corporation, 96 FERC ¶ 61,352, at 62,332 (2001); 98 FERC ¶ 61,365, at 62,575-76 (2002).

Algonquin's compliance filing to this order may include revised tariff language permitting a restriction on trading OBA imbalances that occur when there is a Posted Point of Restriction for OBA transactions.

83. However, the Commission rejects the Posted Point of Restriction proposed with respect to shippers that transport under non OBA agreements. In contrast to OBA transactions, Algonquin's firm rate schedules[64] provide for a scheduling penalty equal to 100 percent load factor usage charge for volumes that are delivered above and below tolerances for scheduled deliveries. Thus, under its own example, each shipper would be charged a penalty, and Algonquin has a mechanism in place to discourage conduct potentially harmful to its system operations.

2. Loss of Transportation Revenue

a. Background

84. In Order No. 587, the Commission stated that the pipeline must demonstrate a loss in transportation revenue due to netting and trading and if such a demonstration is made, the Commission would permit pipelines to collect for lost transportation revenue. The February 27, 2002 Order noted that Algonquin's proposed tariff language which would allow it to collect a transportation differential for traded volumes, when such volumes are in excess of deliveries, would not be justified. The Commission therefore, required Algonquin to explain why it is necessary to assess a transportation charge on traded volumes, especially in light of the fact that Algonquin's rates are designed on a postage-stamp basis. The Commission also ordered Algonquin to provide the amounts and details of any transportation revenue collected on traded imbalances since November 1, 2000.

b. Rehearing Request

85. Algonquin requests rehearing of the February 27, 2002 Order arguing that the proposed transportation charge on certain imbalance trading transactions was included to keep Algonquin whole for any loss of transportation revenues that it would otherwise collect, and in no way attempts to charge a fee for trading imbalances on its system.

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[64]See Section 3 of Rate Schedules AFT-1.

Algonquin's request for rehearing incorporates the examples and arguments set forth in its compliance filing.

86. In both its request for rehearing and compliance filing, Algonquin emphasizes that it will experience a loss of revenue on certain imbalance trades if the charge a transportation charge is not assessed. Algonquin also emphasizes that a “real physical transportation transaction” must occur for certain trades to be effectuated. Algonquin also takes exception to implications in the February 27, 2002 Order that it is not adhering to the billing and payment provisions of its tariff.

87. Algonquin states that it will experience a loss of revenue under certain imbalance trades if a transportation charge is not imposed. According to Algonquin, trades are allowed between rate schedules and a loss of revenue will occur when different transportation rates are involved. Algonquin provided the following example to explain when it will experience a loss of transportation revenue in the context of imbalance trading.

88. Assume Shipper A schedules 10,000 dekatherms ("Dth") under AFT-1, a firm rate schedule, but actually takes 12,000 Dth as its delivery point. Shipper A pays a commodity rate of $0.0188 on the 12,000 Dth actually delivered and is 2,000 Dth "due pipe." Shipper B schedules 10,000 Dth under another rate schedule, but actually takes 8,000 Dth at its delivery point. Shipper B pays a commodity rate of $0.2501 on the 8,000 Dth actually delivered and is 2,000 "due shipper." Shipper A and B conduct a trade of their respective imbalances. Algonquin states that unless it is allowed to charge Shipper B for the difference in rates, Algonquin will suffer a loss of revenue equal to 2,000 Dth multiplied by the difference between $0.2501 and $0.0188 or $462.60.

89. Algonquin further asserts that it is obvious from the above example that new forms of gaming will result if Algonquin is not allowed to collect the rate differential. Without the assessment of a transportation charge on certain imbalance trades, Algonquin contends that it would suffer a loss of transportation revenue.

90. Algonquin also claims that it is adhering to the terms of its tariff by imposing a transportation charge on certain imbalances as part of the cashout calculation. Algonquin states that the Commission's February 27, 2002 Order appears to assume that Algonquin would have already billed its transportation customers for transportation charges on the entire quantity delivered at the delivery point. According to Algonquin, this assumption is incorrect when Operational Balancing Agreements (OBA) are in effect since a shipper's actual deliveries at a point are deemed to be equal to its scheduled quantities. Algonquin states that under its existing rate schedules the tariff provides that it will base the customer's invoice on the quantity of gas delivered in the month under the applicable rate

schedule. Algonquin states that it calculates the transportation charges based on the total quantities allocated to the contracts under each transportation rate schedule. Further, the transportation charges are not provided for in the OBA agreements, which means that transportation charges are not assessed on delivered quantities in excess of those allocated to an OBA.[65]

91. Algonquin states that Section 25.10 (b) of the GT&C provides that "[t]he payment of cash out charges relating to excess deliveries shall be made in addition to the payment of transportation charges applicable to such excess deliveries." Algonquin states that this results in a transportation component being charged to all cashout parties with a net "due pipeline" balance. Algonquin contends that the charge is applicable to transportation agreements and OBAs that provide that end-of-month imbalances are resolved via the cashout mechanism. Algonquin asserts that the intent of this provision is to simply collect the applicable commodity rate for all quantities transported by Algonquin. Algonquin provides the following example to demonstrate what it asserts is the loss of transportation revenue:

> Assume Shipper A nominates a delivery of 10,000 Dth at its citygate delivery point, and is the only party delivering gas to that point. The actual quantity delivered at the point is 12,000 Dth. The delivery point is covered by an OBA (held by Party B) that provides that any contract balances will be resolved monthly via the cashout mechanism. The quantity allocated to Shipper A is 10,000 Dth - this is the quantity upon which Shipper A's transportation invoice is based. The additional flow of 2,000 Dth is allocated to Party B, and the resulting imbalance on Party B's OBA is resolved pursuant to Section 25 of the General Terms and Conditions of Algonquin's tariff.

92. Algonquin asserts that without the application of Section 25.10 (b) it would never receive the transportation revenue for the 2,000 Dth applied to Party B's OBA and that it is simply collecting the applicable transportation charges for all quantities transported on its system.

93. Algonquin provided the following clarifications with respect to whether it actually bills its rates on total deliveries. First, Algonquin clarifies that it does base each customer's invoice on the allocated quantity of gas delivered in the month for the customer's account under the applicable rate schedule. Second, it states that the

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[65]In its protest, NEG requests clarification from Algonquin that it does not collect a transportation charge twice. Algonquin’s May 29, 2002 Filing provides that clarification.

transportation charge assessed under its cash-out procedures is not in addition to the transportation charge permitted for total deliveries under Algonquin's rate schedule, rather it would apply only in the OBA-related example described in detail above.

c. Commission Decision

94. The Commission will permit Algonquin to assess a transportation charge for imbalance trades under the circumstance detailed above for transactions under an OBA, or when the delivery point is operated by an OBA party. The charging of a transportation charge under the OBA scenario discussed above is consistent with the Commission's action in Midwestern Gas Transmission Co., 101 FERC ¶ 61,310 (2002), and East Tennessee Natural Gas Company, 103 FERC ¶ 61,237 (2003). Algonquin's tariff, however, does not specify what transportation charge will be assessed when a trade takes place under an OBA. Algonquin is directed to file revised tariff language, along with a detailed explanation and examples, to expressly state what transportation charge will be assessed for imbalances under an OBA. Further, Algonquin's OBA example above does not fully address the reimbursement by the pipeline to the shipper should an overpayment result from a netting and trading transaction. This could occur where an OBA receipt point operator trades an underage below scheduled receipts to a delivery point OBA operator with an underage below scheduled deliveries. Accordingly, Algonquin must include tariff language that provides for crediting or refunding revenue as the result of netting and trading transactions which result in an overpayment to Algonquin.

95. However, with respect to the situation where the trading of imbalances takes place between shippers not covered by an OBA, the Commission rejects Algonquin's proposal to charge an additional transportation charge. As stated above, pursuant to the February 27, 2002 Order, Algonquin clarified that it bills shippers on quantities of gas delivered. Algonquin's tariff contains one operational impact area and does not have more than one transportation rate zone. Netting and trading of imbalances may occur between shippers under the same rate schedule (e.g., IT to IT) or under different rate schedules (e.g., FT to IT) and will not be affected by transportation rates for multiple rate zones. If a shipper chooses to trade the imbalance, i.e., purchase/sell the imbalance with another shipper, the shipper avoids cashing out with Algonquin which in turn eliminates the need for Algonquin to either purchase gas when a shipper is short or sell gas when the shipper has left gas on the system. Under Algonquin's example, Shipper A is billed the usage rate for the delivered 12,000 Dth. Similarly, Shipper B is billed for actual

deliveries of 8,000 Dth. Thus, Algonquin has been paid the appropriate transportation charges for the amount of gas it delivered on behalf of both Shippers A and B.[66]

96. Additionally, Algonquin will not receive more transportation revenue under its cashout mechanism than it receives if imbalances are netted and traded. Under Algonquin's cashout provision in GT&C Section 25.10(b), Imbalance Due Algonquin, transportation charges are paid for excess deliveries, which in Algonquin's example are assessed to Shipper A. Under GT&C Section 25.10(c), Imbalance Due Cash-out Party, a shipper that leaves too much gas on the system does not pay any additional transportation charges other than for what was delivered. There is no provision in its existing cash-out mechanism that would allow Algonquin to collect the difference in useage rates between rate schedules. Specifically, using Algonquin's example, Algonquin would not have collected any additional transportation revenue associated with Shipper B's excess 2,000 Dt left on the system. Therefore, Algonquin will not lose transportation revenues if a shipper chooses to net or trade an imbalance, even between different rate schedules, rather than to use Algonquin's cash-out mechanism. Accordingly, Algonquin may not charge an additional transportation charge to non-OBA shippers.

I. Revenue Crediting

1. Background

97. Order No. 637 required pipelines to credit all revenues from all penalties, net of costs, including imbalance, overrun, cashout, and OFO penalties to their shippers.[67] The Commission did not prescribe on a generic basis the details of the revenue crediting mechanism, including which shippers – non-offending or offending – would share in the penalty revenue, but permitted each pipeline to determine an appropriate revenue crediting method for its system.

98. In its August 3, 2001 Filing, Algonquin's proposed tariff sheets provide for the crediting of penalty revenues only to firm shippers and not to interruptible (IT) shippers.

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[66] This is in contrast to a pipeline that bills on scheduled volumes. In this circumstance, the Commission has found it is appropriate for a shipper to reimburse a pipeline for any shortfalls in transportation revenues. The Commission also required the pipeline to credit transportation revenues to a shipper should a netting and trading transaction result in an overpayment. See Kern River Gas Transmission Co., 99 FERC ¶ 61,220, at 61,917-18 (2002).

[67] 18 C.F.R. § 284.12(c)(2)(v) (2002).

The February 27, 2002 Order required Algonquin to modify its tariff to credit penalty revenues to non-offending IT shippers, as well to the firm shippers, citing Trailblazer.[68]

2. Rehearing Requests

99. Algonquin Municipals request that the Commission reverse its ruling that IT shippers be allocated penalty revenues. They assert that only firm shippers should be allocated penalty revenue. They argue that the Commission's holding, based merely on a ruling in Trailblazer,[69] is inconsistent with Order No. 637 which states that a "pipeline may assess penalties only to the extent necessary to prevent the impairment of reliable service."[70] They also maintain that penalties are designed to protect firm shippers that have paid demand charges for the assurance that they will receive reliable firm service. Further, Algonquin Municipals add that Commission precedents reflect the crediting of revenues only to firm shippers. Specifically, Algonquin Municipals assert that in implementing Order No. 636, the Commission required pipelines to credit revenues received from interruptible services to firm customers, in recognition of the principle that should be applied here, that revenues received from services for which there is no allocation of fixed costs should be used to offset the rates of firm customers for whom the pipeline system was built.

100. Dynegy notes that if penalty revenue credits are structured on the basis of paid reservation charges, then interruptible shippers would not receive penalty revenue credits since they would not pay reservation charges. In order to ensure that the Commission's policy on penalty revenue credits is enforced appropriately, Dynegy requests clarification that crediting entitlements be based on something other than reservation charges paid, and suggests using a shippers' maximum daily quantities.

3. Commission Ruling

101. We deny the request for rehearing of Algonquin Municipals. Commission policy requires that both firm and interruptible shippers share in the revenue crediting mechanism, since they are subject to the penalties that generate the revenue to be

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[68]Trailblazer Pipeline Co., 97 FERC ¶ 61,056 (2001) (Trailblazer).

[69]Id.

[70]Citing Order No. 637 at 31,317.

credited.[71] Moreover, this policy provides all shippers, including interruptible shippers, an incentive to adhere to the tariff provisions. The crediting of revenues from services to firm shippers, which Algonquin Municipals rely on to limit the crediting to firm shippers, is a different issue than who should share in penalty credits. While there may be some language in the preambles to Order No. 637 that appears to indicate that the penalty revenues are to be credited only to firm shippers, that language was in response to the contention of pipelines that they should keep the revenue, and did not address the instant issue. The Commissions regulations in § 284.12(b)(2)(v) provide that pipelines "must credit [penalty revenue] to shippers," and is not limited to firm shippers. Thus, the Commission has consistently held that all shippers are to share in the crediting of penalty revenue.[72]

102. In its rehearing request Dynegy asked for clarification that Algonquin may not base shippers' entitlement to penalty revenue credits on reservation charges paid but on some other more appropriate basis. In its May 29, 2002 compliance Filing, Algonquin proposed language in which entitlements are not based solely on reservation charges paid, but rather, on total charges paid. Thus Dynegy's concern has been allayed, and Dynegy did not protest this aspect of Algonquin's May 29, 2002 Filing.

IV. May 29, 2002 Compliance Filing

103. The Commission's February 27, 2002 Order found that Algonquin's August 31, 2001 pro forma tariff filing in Docket No. RP00-331-001et al., generally complied with the requirements of Order Nos. 637, 587-G and 587-L. The February 27, 2002 Order, among other things, directed Algonquin to refile the pro forma tariff sheets as actual tariff sheets with further tariff modifications with respect to: Scheduling Equality, Segmentation, Flexible Point Rights, Secondary Point Priority, Discounts, Imbalance Management Services, Netting and Trading, Operational Information, and Penalties in order to fully comply with Order No. 637. In summary, the February 27, 2002 Order directed Algonquin to: (1) credit the value of confiscated parked quantities under the PAL Service; (2) modify the minimum time frame, upon notice from Algonquin, to take delivery of parked gas or return loan quantities; (3) clarify the definition of transaction points for PAL Service; (4) revise the penalty revenue crediting provisions; (5) include a penalty cap through the end of Algonquin's rate moratorium period; (6) remove restrictions relating to trades across posted points of restriction; (7) remove daily and

[71] Equitrans, L. P., 101 FERC ¶ 61,018 (2002).

[72] See Columbia Gas Transmission Co., 100 FERC ¶ 61,344 at P 127 (2002).

weekly penalty cashout provisions; and (8) incorporate tariff language reflecting the discount policy as set forth in CIG/Granite State.[73]

104. In addition, the February 27, 2002 Order required Algonquin to: (1) clarify the mainline priority at secondary points; (2) modify the tariff provisions relating to the curtailment priority of excess hourly flexibility; (3) add provisions relating to the availability of excess hourly flexibility at secondary points; (4) add provisions on partial day capacity release and recall; (5) add tariff language permitting Replacement Customers to change primary points subject to capacity availability at requested points; (6) eliminate the Lowest Unutilized Quantity (LUQ) provisions; and (7) allow releasing customers to segment capacity.

105. On May 29, 2002, Algonquin made its filing to comply with the February 27, 2002 Order. Algonquin has generally complied with the February 27, 2002 Order, except as discussed as to certain issues in Part III above, and other issues arising from the compliance filing, which we will address below.

A. Flexible Point Rights

1. Background

106. In the February 27, 2002 Order,[74] the Commission noted that Algonquin had not specifically addressed whether it would permit flexibility in the selection of primary points in segmented releases. The order therefore interpreted Algonquin's existing tariff as permitting any firm shipper to be able to choose primary point rights for segmented transactions subject to the availability of capacity. The order also noted that if Algonquin proposes to restrict a segmenting shipper's flexibility in choosing primary points, it must justify such restrictions.

2. Compliance Filing

107. To provide clarity, in its May 29, 2002 compliance filing, Algonquin proposed to modify Section 6.1 and 6.3 of Rate Schedules AFT-1, AFT-E, AFT-1S, AFT-ES, and AFT-CL to expressly state that Replacement Customers have the right to change primary points subject to capacity availability at the requested points.

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[73]Colorado Interstate Gas Company, 95 FERC ¶ 61,321 (2001); Granite State Gas Transmission, Inc.,96 FERC ¶ 61,273 (2001) reh'g denied, 98 FERC ¶ 61, 019 (2002).

[74]Algonquin, 98 FERC at 61,775.

3. Protest

108. Dynegy objects to the modified language proposed by Algonquin because it provides that Replacement Customers will not be allowed to add Primary Points of Delivery or Receipt that are located outside of Replacement Customer's acquired contract path. Dynegy asserts that this modification (1) was not required by the February 27, 2002 Order, (2) was not justified, (3) is inconsistent with Order No. 637 which stated that for a segmented capacity release transaction to work, both the releasing and replacement shippers need the right to change their receipt and delivery points from the primary points in their contracts to use other available points.[75]

4. Commission Ruling

109. We agree with Dynegy that this limitation is inappropriate. Commission policy requires that pipelines must permit both the releasing shipper and the replacement shipper to obtain primary points up to their contract demand on any portion of the system for which they are paying, subject to the availability of capacity.[76] Accordingly this restriction must be removed.

B. Segmentation

1. Background

110. The February 27, 2002 Order directed Algonquin to revise its segmentation proposal. The order held that Algonquin's LUQ proposal would unduly limit segmentation and was not operationally justified. The order further stated that Algonquin's LUQ limitation was not consistent with Order No. 637, which requires treating each segment as equal to the contract demand of the original contract. The order, among other things, directed Algonquin to remove or revise the LUQ provision to be consistent with Commission policy.

2. Compliance Filing

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[75]Citing Order No. 637 at 31,301.

[76]Great Lakes Gas Transmission, 101 FERC at PP8-10; CenterPoint Energy-Mississippi River Transmission Corporation, 102 FERC ¶ 61,216 (2003).

111. Algonquin's revised tariff sheets removed all references to the LUQ provisions.[77] In addition, in compliance with the February 27, 2002 Order, Algonquin: (1) added Section 48.1(b) of the GT&C to provide details on the procedures for segmentation of capacity via the capacity release mechanism; (2) modified Section 14.2 of the GT&C to clarify that a customer can segment its capacity for release to a Replacement Customer, and (3) included a description of the capacity allocation process that will be applied in the event that the releasing customer and any of the replacement customers submit overlapping nominations that exceed the contractual entitlement of the Releasing Customer's original contract.

3. Protest

112. NEG Shippers state that Algonquin's segmentation proposal uses a "Base Flow Path" concept, which is defined as the path determined by the assumed gas flow in the service agreement under a firm transportation rate schedule executed by Algonquin and Customer. NEG Shippers state that Algonquin should clarify whether capacity and associated receipt and delivery points on a lateral are considered within the Base Flow Path of the mainline. According to NEG Shippers, since Algonquin provides priority to segmented transactions within the Base Flow Path and allows customers to segment and release only within their Base Flow Path, customers located on laterals – which includes the majority of customers on Algonquin's system – may not be able to take full advantage of segmentation unless their laterals are considered within the Base Flow Path.

4. Commission Ruling

113. Lateral customers on Algonquin's system under Rate Schedule AFT-CL are only entitled to firm service on a specific lateral. Rate Schedule AFT-CL customers do not have secondary rights other than points on a specific lateral. Therefore, Rate Schedule AFT-CL customers can only segment capacity on the specific lateral, and, as such the lateral capacity is not within the Base Flow Path on the mainline. Consistent with the Commission's February 27, 2002 Order, Algonquin filed revised tariff language in Section 48.2 of the GT&C to incorporate tariff language limiting the right of lateral customers under Rate Schedule AFT-CL to use secondary points to the extent they are located on the lateral. Accordingly, the Commission rejects NEG Shippers' requested clarification.

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[77] See Appendix C tariff sheets. However, the tariff sheets set forth in Appendix D to the May 29, 2002 Filing, among other things, did not remove references to the LUQ provisions. The Appendix D tariff sheets are not in compliance with the February 27, 2002 Order and are rejected.

C. Discount Provisions

1. Compliance Filing

114. The February 27, 2002 Order directed Algonquin to file revised tariff sheets implementing the rebuttable presumption discount policy, and the two-hour processing requirement. In its May 29, 2002 Filing Algonquin filed tariff sheets to modify Section 45 of the GT&C to reflect the CIG/Granite State policy. The proposed tariff sheets provide that Algonquin will respond to requests for discounts received on business days between 6:30 a.m. and 4:00 p.m within two hours of the time the request was received; for requests received at all other times, Algonquin will respond by 8:30 a.m. on the following business day. Proposed Section 45.3 also states that if a customer has previously requested a discount to a point and Algonquin has not agreed to that discount, Algonquin will not respond to a renewed discount request to the same point "unless rates for service applicable to that point have changed."

2. Protests

115. Northeast contends that Algonquin's proposed limitation of processing discount requests to business hours on business days undercuts the rebuttable presumption aspect of the Commission's discount policy by writing the presumption out of existence on nights, weekends and holidays. Northeast therefore requests that the Commission (a) clarify that it intends that all discounts be promptly processed; (b) reject Algonquin's proposed language with respect to the limitation of processing discount requests; and (c) order that any discounts not processed with the two-hour window be given a retroactive effective time in the event that Algonquin cannot rebut the eligibility presumption.

116. NEG Shippers contends that the proposed provision which states that Algonquin does not have to respond to renewed requests unless rates for service to that point have changed is unnecessary and an attempt by Algonquin to circumvent the CIG policy. NEG notes that a previously rejected request may become a valid request because the pipeline has either allowed a new shipper to receive a discount at a point or because of changes on the system. NEG states that the Commission should require Algonquin to evaluate each request and make a determination on the merits.

3. Commission Ruling

117. The Commission rejects Northeast's request as a collateral attack on the February 27, 2002 Order.[78] In that order the Commission specifically noted that pipelines may not have staff to process discount requests received after 4:00 pm. or on weekends. The Commission therefore found that requests received outside of business hours needed to be processed by 8:30 a.m. the next business day.

118. NEG objects to the provision that Algonquin has included that if Algonquin has already rejected a customer's request for a discount to a particular point, Algonquin need not respond to renewed discount requests unless rates for service applicable to that point have changed. In its answer, Algonquin contends that there is nothing in CIG or the National Fuel orders that is inconsistent with this provision. We understand the proviso to mean that Algonquin need not respond if it has not subsequently granted a discount at that point, and will require Algonquin to revise the tariff sheet to include this understanding.

. **D. Capping OFO Penalties**

1. Compliance Filing

119. Algonquin proposed modifications to tie its curtailment and unauthorized overrun penalties to an index-based penalty. The February 27, 2002 Order approved the proposed change because the change to an index-based penalty can result in lower penalties, and thus was consistent with Order No. 637. However, the Commission capped the indexed penalty to a no more than the existing charges of $25 and $15 per Dth respectively, because the 1999 Settlement prohibits an increase in penalties, 98 FERC at 61,786.

120. In its compliance filing, Algonquin modified Sections 24.6 (e), 24.8 and 31.2 of the GT&C to include a cap of $25 per Dth curtailment penalties and $15 per Dth on unauthorized overrun penalties. The revised tariff sheets provide that the penalty amounts will be no greater than the existing amounts until May 1, 2003.

2. Protests

121. Algonquin Municipals and NEG Shippers object to the provision that caps the penalties at the existing levels until May 1, 2003. They contend that Algonquin waived its right to file for penalty rate changes during the Rate Moratorium. Therefore, they

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[78] Algonquin, 98 FERC at 61,778 n. 44.

contend that Algonquin cannot file for a change until May 1, 2003. By limiting the caps until May 1, 2003, Algonquin Municipals and NEG Shippers contend that Algonquin is inappropriately attempting to effectuate an increase in penalty charges without having to make a filing or justifying such an increase.

3. Commission Ruling

122. We find that the existing penalties are just and reasonable. Thus, Algonquin may accept the cap of $25 for curtailment penalties or $15 for unauthorized overrun penalties, or continue its existing tariff provision without the proposed changes to an index-based penalty.

123. In its May 29, 2002 compliance filing, Algonquin proposed to establish an end date of May 1, 2003 for the caps to its curtailment and unauthorized overrun penalties. The end date was not required by the February 27, 2002 Order. Further, the proposal is inconsistent with the 1999 Settlement, in which Algonquin waived its right to file to increase its penalties before May 1, 2003, and which in no way provided for Commission preapproval of such changes. Therefore, Algonquin must refile to delete the "until May 1, 2003" proviso from Sections 24.6 (e), 24.8 and 31.2 of the GT&C.

124. However, since the May 1, 2003 moratorium date has been passed, this order is without prejudice to Algonquin exercising its rights under NGA Section 4 to establish an increased penalty rate.

E. Revenue Crediting

1. Background

125. In its August 3, 2001 Filing, Algonquin's proposed tariff sheets that provided for the crediting of penalty revenues only to firm shippers and not to interruptible (IT) shippers. The February 27, 2002 Order, among other things, required Algonquin to modify its tariff to credit penalty revenues to non-offending IT shippers, as well to the firm shippers, citing Trailblazer.[79] Additionally, the order found that a point operator should be entitled to receive any penalty revenue credits as a non-offending shipper during any month in which it did not incur penalties under its own transportation service agreements with Algonquin.

2. Compliance Filing

[79] Trailblazer Pipeline Co., 97 FERC ¶ 61,056 (2001) (Trailblazer).

126. Algonquin filed tariff sheets that allocate penalty revenues to both firm and interruptible non-offending shippers based on the ratio of the reservation and usage charges paid that month by each non-offending customer to the total amount of such charges paid during that month by all non-offending customers. The tariff sheets also provide that a point operator will be entitled to receive penalty revenue credits as a non-offending customer. The tariff states the following:

> For the purpose of this Section 23.4(e), the holder of an Operational Balancing Agreement for which the balance is cashed out shall be entitled to receive penalty revenue credits as a Non-offending Customer in any month it did not incur penalties under its own transportation agreements.

3. Protests

127. Algonquin Municipals contend that the revised tariff language in the compliance filing implies that Algonquin need not credit penalty revenues to a delivery point operator that did not incur any penalties if it corrected for imbalances by in-kind repayment. Algonquin Municipals therefore recommend that the tariff provision be revised as follows: "the holder of an Operational Balancing Agreement, regardless of whether imbalances are cashed out or handled in-kind, shall be entitled to receive penalty revenue credits..."

4. Commission Ruling

128. The Commission will require Algonquin to provide additional information on this issue. While the February 27, 2002 Order required point operators to participate in penalty revenue credits to the extent the point operator did not incur penalties under its own transportation contracts, it is not clear whether the tariff language relates to cash-out payments made on behalf of parties behind the delivery point, or whether all cash-out payments, including payments for a point operator's own transportation would enable the point operator to participate in penalty revenue credits. If it is the latter, the point operator may have incurred a cash-out penalty for its own transportation under Algonquin's imbalance resolution set forth in Section 25 of its tariff. The imbalance resolution tariff provision provides for increased charges depending on the level of imbalance cashed out, which constitutes a penalty.[80] Therefore, Algonquin should file additional information and proposed tariff language to address the circumstances for including or excluding point operator imbalance cash-outs. Additionally, it appears that

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[80]Section 25.10 of the GT&C provides for increased cash-out amounts using a factor ranging from 1.00 to 1.50 which is applied to an index price.

in-kind exchanges with a point operator should not place the point operator in a position for incurring a penalty. If this understanding is correct, Algonquin should clarify its tariff accordingly.

F. Excess Hourly Flow

1. Background

129. As discussed above in the rehearing section of this order, the February 27, 2002 Order found Algonquin's proposed Section 49 setting forth a priority for excess hourly flows generally acceptable, but directed Algonquin to refile to revise it to apply to secondary firm service, and to provide that it would have the lowest priority.

2. Compliance Filing

130. In its May 29, 2002 compliance filing, Algonquin filed revised tariff sheets to reflect that excess hourly flexibility has the lowest priority for curtailment purposes, with the exception of Rate Schedule PAL service. Algonquin also explained that it will continue to provide at least one hour's notice to customers when conditions would require limiting hourly flow rates. Finally, it clarified that the limitation of hourly flow rates relates to both scheduling and curtailments of service.

3. Protests and Answer

131. Dynegy contends that Algonquin has provided no explanation of its need of a one-hour notice period as proposed in its May 29, 2002 compliance filing. Dynegy therefore requests that Algonquin be required to explain why one hour is appropriate, or provide a greater notice period before penalties apply.

132. NEG Shippers contends that since customers will be relying on excess hourly flexibility to supply their generation plants or industrial facilities or local retail markets, Algonquin should provide more than one hour's notice before requiring customers to adhere to an "hourly flow obligation." They recommend a minimum advance notice of four hours. In response to these concerns, in its June 28, 2002 Motion, Algonquin states that the one-hour notice period is only needed to the extent that system operating conditions require adherence to an hourly flow rate. At such times, Algonquin explains, prompt action is required by shippers.

4. Commission Ruling

133. As discussed in the rehearing section of this order, the Commission is rejecting Algonquin's proposal, rather than requiring it to be modified. Accordingly, the subject tariff sheets are rejected as moot.

G. Imbalance Management Services

1. Background

134. In its August 3, 2001 Filing for Rate Schedule PAL service, Algonquin proposed to charge a shipper that failed to redeliver loaned gas 150 percent of the highest daily price for the AGT Citygate posting. In the February 27, 2002 Order, the Commission held that proposed penalty was unnecessarily punitive. The Commission stated that a daily highest or lowest price can greatly vary from the actual cost of the gas when the imbalance occurred, and thus could unduly increase imbalance penalties. The Commission, therefore required Algonquin to revise its Rate Schedule PAL penalty provision to conform with this Commission policy that Order No. 637 was not intended to increase penalties. The Commission also required Algonquin to specify a minimum time period for PAL shippers to respond to operational notifications to unpark or return loaned gas.

2. Compliance Filing

135. In its May 29, 2002 Filing, Algonquin modified Section 7.6 of its Rate Schedule PAL to charge 150 percent of the average weekly Gas Daily posting for the high "Common" price for the AGT Citygate. Algonquin also proposes to confiscate parked gas or penalize a shipper for failure to return loaned quantities if the pipeline notifies the shipper that the transaction must be interrupted and the shipper fails to comply within one day.

3. Protests

136. Dynegy objects to Algonquin's proposal to incorporate a minimum of one day for shippers to respond to operational notifications to unpark or return loaded gas. Dynegy requests that consistent with Texas Eastern's proposal, Algonquin be required to incorporate a minimum time period of three days. Dynegy also requests that Algonquin be required to clarify that park and loan penalties will be waived if the pipeline is not able to schedule the shipper's nomination to unpark or redeliver gas.[81]

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[81]Dynegy raises the same issue in its rehearing request.

137. In the February 27 Order, the Commission addressed a concern raised by Northeast regarding the priority of both flowing gas and gas balances under Rate Schedule. The Commission found that Algonquin's explanation acceptable that Rate Schedule PAL service is interruptible and that it has the lowest priority for scheduling and curtailment purposes. However, in its comments (not a rehearing request), Northeast states that it is "uncomfortable" with the idea that PAL balances will be curtailed when such imbalances could be causing the operational problems leading to the need for curtailment. Northeast therefore requests that the Commission reiterate that all PAL services, both flowing gas and outstanding balance, are the first to be curtailed or interrupted. Northeast also requests that Algonquin provide a clarification or new tariff language to address this concern.

138. NEG Shippers contends that Algonquin's proposal to use 150 percent of the weekly average of the high daily price does not comply with the "spirit" of the February 27, 2002 Order. It explains that the proposal is unnecessarily punitive because a single spike in the gas price could increase the penalty level for a Rate Schedule PAL customer. It also contends that a 50 percent adder to the average price of gas is too harsh and recommends a 10 percent adder instead.

139. NEG Shippers also asserts that Algonquin's proposed revisions in its May 29, 2002 Filing make certain language in the PAL Rate Service schedule obsolete by making a transportation service agreement a requirement to use of the PAL service. NEG Shippers explains that when Rate Schedule PAL service was limited to two points, transportation service agreements were necessary. However, the proposed revision in Section 1 (c) requires that customers not only have a PAL Service Agreement, but also have a transportation service agreement. NEG Shippers asserts that since PAL service is now available at all points on Algonquin's system, and therefore a customer might not need transportation service, and such a requirement could be considered a tying arrangement. NEG Shippers therefore recommends that the proposed revision be removed from Rate Schedule PAL.

4. Commission Ruling

140. The Commission grants Northeast's "request" for clarification and clarifies that all PAL services, including outstanding balances, have the lowest priorities for curtailment and interruptible purposes. The Commission, however, denies Northeast's request for additional clarification or tariff language. The Commission is not persuaded that PAL balances will cause the operational problems leading to curtailments since Section 2.5 of Rate Schedule PAL specifically provides that PAL service will only be provided when Algonquin has the operational flexibility to provide the service without detriment or disadvantage to Algonquin's firm obligations or other interruptible services.

Further, Section 7 provides that a PAL customer, upon 24 hour notification, may be required to remove or return quantities of gas which were parked or loaned.

141. The Commission denies NEG Shippers' request to require Algonquin to use a 10 percent adder as a PAL penalty rather than a 50 percent adder. In the February 27, 2002 Order, the Commission implicitly approved the concept of the 50 percent adder. However, the Commission agrees with NEG Shippers that Algonquin's proposal to use the average weekly "Common" price is not appropriate, and does not comply with the February 27, 2002 Order. Indeed, the use of an average postings for the high price has no relation to the average price for the week since the high end of each day is not representative of the weekly average. Therefore, to reflect the requirement in the February 27, 2002 Order, and to consistent with our ruling in Texas Eastern II,[82] Algonquin must file revised tariff sheets that base the penalty on 150 percent of the average weekly price.

142. While not exactly clear, NEG Shippers' other concern with Algonquin's proposed PAL Service revision seems to be that Algonquin is now requiring a transportation service agreement as a prerequisite to use the PAL service even if no transportation is involved. While this situation does not seem likely to occur unless the park or loan is at a pipeline interconnection point, we will require Algonquin to revise Section 1 (c) to include the proviso that no transportation service agreement is necessary if there is no associated transportation for the PAL service.

143. With respect to Dynegy's request for clarification regarding waiving park and loan penalties when the pipeline is not able to schedule the shipper's nomination, the Commission notes that pursuant to Section 7.4 of Rate Schedule PAL a shipper has the option of suspending the daily charge if the pipeline is not able to schedule service. Consistent with that provision, the penalty would not seem to apply when the pipeline can't schedule the nomination. Accordingly, Algonquin must file revised tariff sheets to clearly state that the penalty does not apply when it is not able to schedule the nomination.

144. The Commission finds that Algonquin's proposal to adopt a one-day notification for unparking or returning loaned gas complies with the February 27, 2002 Order. In that order, the Commission required Algonquin to establish a time frame of between one to three days, consistent with our policy on this issue. Although Algonquin chose a different time period than Texas Eastern, it is in full compliance with our order. Accordingly, Dynegy's request to require a minimum time frame of three days is denied.

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[82]Texas Eastern II, 102 ¶ 61,198 at P 135.

V. Compliance With Remand Order

A. Compliance Filing

145. Ordering Paragraph B of the Commission's October 31, 2002 Order on Remand.[83] required the following: "pipelines that the Commission has found must permit segmentation on their systems must file [by December 2, 2002] revised tariff sheets to expressly permit segmented transactions consisting of forwardhauls up to contract demand and backhauls up to contract demand to the same point at the same time."

146. On December 2, 2002, in Docket No. RP03-176-000, Algonquin filed revised primary and alternative tariff sheets in compliance with Ordering Paragraph B. Algonquin submits its primary tariff sheets to provide that a shipper may segment its capacity by simultaneously transporting its full contract demand in a forwardhaul and its full contract demand in a backhaul to the same point. Algonquin requests that the tariff provisions contained herein, become effective concurrently with the Phase II compliance tariff sheets filed in its May 29, 2002 Compliance filing. Concurrently with this compliance filing, Algonquin filed a Request for Rehearing of the Remand Order regarding the forwardhaul and backhaul issue, and Algonquin states that it submitted these tariff sheets subject to the outcome of the Remand Order proceeding. In addition, Algonquin submitted alternate tariff sheets that not only include the proposed forwardhaul/backhaul tariff provisions but also the LUQ tariff provisions rejected by the Commission in its February 27, 2002 Order. The alternate tariff sheets would replace the primary sheets if the Commission granted rehearing on the LUQ issue.

B. Protest and Comments

147. NE LDCs protested Algonquin's filing, and KeySpan and Calpine filed comments. They all urge rejection of the alternate tariff sheets as inconsistent with the February 27, 2002 Order which rejected the proposed LUQ provision.[84]

C. Commission Ruling

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[83]Regulation of Short-Term Natural Gas Transportation Services, and Regulation of Interstate Natural Gas Transportation Services, 101 FERC ¶ 61,127 (2002).

[84]In its December 23, 2002 Answer, Algonquin merely repeats that the proposed alternate tariff sheets would become effective if the Commission granted rehearing on the LUQ issue.

148. The Commission accepts Algonquin's primary tariff sheets which allows forwardhauls and backhauls to the same point, as being generally in compliance with the Remand Order, subject to Algonquin filing a compliance filing, within 20 days of the date of this order, containing the modifications discussed below, effective September 1, 2003. The Commission rejects the alternate tariff sheets since they reflect the LUQ proposal that was rejected in the February 27, 2002 Order, and we have denied rehearing of that ruling earlier in this order.

149. Algonquin proposes in Section 48.1(A)(1) of its GT&C that:

> In addition to any other transportation rights under the applicable rate schedule and related service agreements, Algonquin shall receive, transport and deliver to or for the account of a Customer under Rate Schedule AFT-1, AFT-E, AFT-1S, AFT-ES and AFT-CL on a segmented basis scheduled quantities of gas to or from (i) any point within Customer's Base Flow Path, and (ii) any secondary points located outside of the Base Flow Path of such service agreement for the Gas Day subject to the following requirements:
>
> (a) aggregate quantities of gas received, transported or delivered under a Customer's Service Agreement, and, if such contract is the result of capacity release, the aggregate quantities of gas received, transported or delivered by all other Customers utilizing capacity rights derived from the original firm contract, shall not exceed the Customer's MDTQ or segment entitlements under such Service Agreement in any segment or at any point; and
>
>> (b) such service on a segmented basis shall not impair Algonquin's ability to render firm service and shall not adversely affect system operating conditions.

150. In its Remand compliance filing, Algonquin added Section 48.1(A)(2) to its GT&C to state that:

> For the purpose of determining whether any overlapping transactions exceed in aggregate (based on all relevant Customer utilization) the contract entitlements of the original firm contract in any segment or at any point (including, without limitation, the MDTQ or segment entitlements), a transaction that involves movement of gas in the same direction as that contemplated by the Primary Point(s) of Receipt and the Primary Point(s) of Delivery on the firm service agreement and a transaction that involves movement of gas that is counter to the direction contemplated by the Primary Point(s) of Receipt and the Primary Point(s)

of Delivery on the firm service agreement that are nominated to the same delivery point for the same gas flow date and time shall not be deemed to be an overlap at that delivery point; provided, however, in no event shall Algonquin be obligated to deliver on a primary firm basis at that delivery point a quantity in excess of the MDDO applicable to that delivery point. For the purpose of determining whether any overlapping nominations in a segment exceed, in the aggregate (based on all relevant Customer utilization) the contract entitlements of the original firm contract in any segment or at any point (including without limitation, the MDTQ or segment entitlements), a transaction that involves movement of gas in the same direction as that contemplated by the Primary Point(s) of Receipt and the Primary Point(s) of Delivery on the firm service agreement and a transaction that involves movement of gas that is counter to the direction contemplated by the Primary Point(s) of Receipt and the Primary Point(s) of Delivery on the firm service agreement that are nominated on the same segment for the same gas flow date and time shall be deemed to be an overlap on the segment.

151. While Section 48.1(A)(1)(a) of the GT&C appears to take away the right to do a forwardhaul-backhaul to the same point, Section 48.1(A)(2) later provides that right. Section 48.1(A)(1)(a) states that Algonquin shall receive, transport and deliver "aggregate quantities of gas received, transported or delivered under a Customer's Service Agreement, and, if such contract is the result of capacity release, the aggregate quantities of gas received, transported or delivered by all other customers utilizing capacity rights derived from the original firm contract, shall not exceed the Customer's MDTQ, or segment entitlements under such Service Agreement in any segment or at any point" (emphasis added). However, Section 48.1(A)(2) provides that: "For the purpose of determining whether any overlapping nominations in a segment exceed, in the aggregate (based on all relevant Customer utilization) the contract entitlements of the original firm contract in any segment or at any point (including without limitation, the MDTQ or segment entitlements), a [forwardhaul backhaul] transaction ... shall not be deemed to be an overlap at that Point of Delivery" (emphasis added). Thus, Algonquin's tariff allows a shipper to segment its capacity utilizing multiple receipt and delivery points and does not restrict shippers from making simultaneous forwardhaul and backhaul deliveries to points within its transportation path. The tariff further provides that a shipper is permitted, to receive or deliver gas outside its primary capacity path, but the transaction will be assigned a lower priority than transactions within the shipper's primary path.[85]

152. Nonetheless, the prohibition against exceeding contract entitlements "at any point" in Section 48.1(A)(1)(a) of Algonquin's GT&C could mislead shippers as to their rights to

[85]Proposed Section 48.1(A)(4) of Algonquin's GT&C.

conduct forwardhauls and backhauls to the same point. The Commission can discern no reason for Algonquin to provide in Section 48.1(A)(1)(a) of its GT&C that shippers cannot exceed the aggregate at any point, and, therefore, the Commission will require Algonquin to remove this language from Section 48.1(A)(1)(a) of its GT&C.

153. Lastly, Algonquin proposes to revise Section 48.3(c) of its GT&C to include the following:

> In addition, for any movement of gas that traverses a segment(s) in which the total nominated quantity for that contract exceeds the firm contractual entitlement, the quantity in excess of the contractual entitlement shall be deemed to be outside of the Customer's Base Flow Path.

154. Algonquin provides no explanation of why this tariff language is required by the Remand Order and is necessary in order to implement forwardhauls and backhauls to the same point, and the purpose or intent of this provision is not clear. The Commission, therefore, will reject the second sentence of Section 48.3(c) since it was not required by the Remand Order. However, to the extent Algonquin believes that this tariff language is necessary in order to implement the requirements of the Remand Order, Algonquin, when its makes its compliance filing, should provide a detailed explanation why the tariff language is necessary.

VI. Further Procedures

155. In its June 28, 2002 motion, Algonquin states that it needs two weeks after the issuance of a Commission order to integrate software modifications into its computer system. Algonquin also requests an effective date on the first of the month following the two-week time period, so that the changes will become effective at the start of the billing cycle. Algonquin is directed to file revised tariff sheets within 20 days of the date of this order to reflect the modifications discussed above. The tariff sheets should have an effective date of September 1, 2003, subject to the conditions of this order.

The Commission orders:

(A) Except to the extent rejected as discussed in the text above, the proposed tariff sheets are accepted, to be effective September 1, 2003, subject to the conditions of this order.

(B) Within 20 days of the date of this order, Algonquin must file revised tariffs sheets in accordance with the discussion above.

By the Commission.

(S E A L)

Linda Mitry,
Acting Secretary.

Algonquin Gas Transmission Company
Docket No. RP00-331-002, et al.

FERC Gas Tariff
Fourth Revised Volume No. 1

First Revised Sheet No. 9
First Revised Sixth Revised Sheet No. 20
Original Sheet No. 38
Sheet No. 39
Fourth Revised Sheet No. 100
First Revised Sheet No. 107
Second Revised Sheet No. 108
Alt Second Revised Sheet No. 108
Second Revised Sheet No. 109
Alt Second Revised Sheet No. 109
First Revised Sheet No. 123
Third Revised Sheet No. 125
Second Revised Sheet No. 126
Alt Second Revised Sheet No. 126
Second Revised Sheet No. 127
First Revised Sheet No. 141
First Revised Sheet No. 142
Alt First Revised Sheet No. 142
Third Revised Sheet No. 143
Alt Third Revised Sheet No. 143
First Revised Sheet No. 144
First Revised Sheet No. 159
Second Revised Sheet No. 161
Alt Second Revised Sheet No. 161
Second Revised Sheet No. 162
Alt Second Revised Sheet No. 162
Second Revised Sheet No. 163
First Revised Sheet No. 246
Eighth Revised Sheet No. 247
Alt Eighth Revised Sheet No. 247
Eighth Revised Sheet No. 248
Alt Eighth Revised Sheet No. 248
Original Sheet No. 249
Sheet Nos. 250 - 254
Original Sheet No. 255
Original Sheet No. 256
Original Sheet No. 257
Original Sheet No. 258
Original Sheet No. 259
Original Sheet No. 260
Sheet Nos. 261 - 599
Tenth Revised Sheet No. 600
Second Revised Sheet No. 605
Alt Second Revised Sheet No. 605 **
First Revised Sheet No. 605
Sheet Nos. 606 - 609
Third Revised Sheet No. 615
Third Revised Sheet No. 637
Alt Third Revised Sheet No. 637
Second Revised Sheet No. 637
Fourth Revised Sheet No. 638
Second Revised Sheet No. 638A
Third Revised Sheet No. 639
Fifth Revised Sheet No. 640
Third Revised Sheet No. 641
Third Revised Sheet No. 648
Fifth Revised Sheet No. 650
Third Revised Sheet No. 651
Fifth Revised Sheet No. 660
Second Revised Sheet No. 661

Fifth Revised Sheet No. 662
Fourth Revised Sheet No. 662
Third Revised Sheet No. 663
Third Revised Sheet No. 664
Third Revised Sheet No. 665
Second Revised Sheet No. 665
Third Revised Sheet No. 666
Second Revised Sheet No. 666
Third Revised Sheet No. 667
Second Revised Sheet No. 667

Appendix A
Page 2 of 2

Algonquin Gas Transmission Company
Docket No. RP00-331-002, et al.

FERC Gas Tariff
Fourth Revised Volume No. 1

Third Revised Sheet No. 668
Second Revised Sheet No. 669
Second Revised Sheet No. 670
Second Revised Sheet No. 671
Second Revised Sheet No. 672
Second Revised Sheet No. 673
Second Revised Sheet No. 674
Second Revised Sheet No. 675
First Revised Sheet No. 677
Sixth Revised Sheet No. 679
Fifth Revised Sheet No. 680
Sixth Revised Sheet No. 680A
First Revised Sheet No. 681
Second Revised Sheet No. 682
Second Revised Sheet No. 684
First Rev First Revised Sheet No. 685
Fifth Revised Sheet No. 686
Fourth Revised Sheet No. 687
Sixth Revised Sheet No. 709
Second Revised Sheet No. 709A
Eighth Revised Sheet No. 710
Seventh Revised Sheet No. 710
First Revised Sheet No. 711
First Revised Sheet No. 716
Second Revised Sheet No. 717
Original Sheet No. 719
Alt Original Sheet No. 719 **
Original Sheet No. 720
Alt Original Sheet No. 720 **
Original Sheet No. 721
Alt Original Sheet No. 721 **
Original Sheet No. 722
Alt Original Sheet No. 722 **
Original Sheet No. 723
Sheet No. 723 **
Original Sheet No. 724
Sheet Nos. 725 - 798
Fourth Revised Sheet No. 799
Sheet Nos. 947 - 949
Original Sheet No. 950
Original Sheet No. 951
Original Sheet No. 952

Original Sheet No. 953
Sheet Nos. 954 - 1099

** Tariff Sheet Rejected

Appendix B

Algonquin Gas Transmission Company
Docket No. RP00-331-002, <u>et</u> <u>al</u>.

FERC Gas Tariff
Fourth Revised Volume No. 1

Tariff Sheets Filed in Docket No. RP03-176-000:

<u>Accepted Tariff Sheets</u>:
First Revised Sheet No. 719
Original Sheet No. 719A

First Revised Sheet No. 720
First Revised Sheet No. 721
Original Sheet No 721A
First Revised Sheet No. 723

Tariff Sheets Rejected:
Third Revised Sheet No. 605
Alt First Revised Sheet No. 719
Alt Original Sheet No. 719A
Alt First Revised Sheet No. 720
Original Sheet No. 720A
Alt First Revised Sheet No. 721
First Revised Sheet No. 722