

144 FERC ¶ 61,038  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

Algonquin Gas Transmission, LLC	Docket Nos. RP13-238-000 RP13-238-001 RP12-39-000 RP12-39-001 and RP12-39-002
Algonquin Gas Transmission, LLC	RP13-1040-000

ORDER ON REHEARING AND TECHNICAL CONFERENCE AND  
ESTABLISHING HEARING PURSUANT TO NGA SECTION 5

(Issued July 18, 2013)

1. In Docket Nos. RP12-39-000 and RP13-238-000, Algonquin Gas Transmission, LLC (Algonquin) submitted a tariff record in accordance with the Fuel Reimbursement Quantity (FRQ) provisions of its tariff. Repsol Energy North America Corporation (Repsol) protested both filings on the ground that Algonquin proposed to impose fuel charges on certain transactions which had previously been treated as backhauls exempt from fuel charges. In Docket No. RP12-39-000, the Commission accepted Algonquin's proposal without suspension, effective December 1, 2011 (2011 Fuel Filing).<sup>1</sup> Repsol requested rehearing, contending that the Commission had erred in approving Algonquin's proposal to no longer treat the subject transactions as fuel-exempt backhauls. In Docket No. RP13-238-000, the Commission accepted and suspended Algonquin's proposal, effective December 1, 2012, and established a technical conference to consider whether the transactions at issue are in fact no longer backhauls eligible for the exemption from

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<sup>1</sup> *Algonquin Gas Transmission, LLC*, 137 FERC ¶ 61,169 (2011) (November 30, 2011 Order).

fuel charges provided by Algonquin's tariff (2012 Fuel Filing).<sup>2</sup> Algonquin filed a request for rehearing, seeking clarification that the issue of whether the definition of backhaul in its tariff should be modified under section 5 of the Natural Gas Act (NGA) will not be considered in these limited section 4 proceedings and that it will be able to recover any refunded fuel charges. These Fuel Filings and the issues raised in them were addressed at a Technical Conference.

2. For the reasons discussed below, the Commission denies Repsol's request for rehearing of the 2011 Fuel Filing, grants Algonquin's clarification request, and lifts the suspension on the tariff record in the 2012 Fuel Filing. In addition, pursuant to section 5 of the NGA, the Commission will establish a hearing in a new proceeding to investigate and determine whether Algonquin's tariff provision concerning exemptions from its fuel charges is just and reasonable.

### **I. Background**

3. Historically, Algonquin provided natural gas transportation service in a west to east direction from an interconnection with Texas Eastern Transmission LP in Lambertville, New Jersey to market areas in New England. On November 1, 2003, Algonquin placed into service its HubLine Project 2003 facilities,<sup>3</sup> which comprise a 29.4 mile, 30 inch pipeline extending from Algonquin's interconnection with Maritimes' Phase III facilities in Beverly, Massachusetts to an interconnection with Algonquin's mainline in Weymouth, Massachusetts in the Boston metropolitan area.<sup>4</sup> This expansion allowed additional Canadian and LNG gas supplies to flow from Maritimes into Algonquin's market area. The HubLine facilities do not include any compression. However, compression facilities on the Maritimes system cause gas on the HubLine facilities to flow in an east to west direction. As discussed further below, gas flows from the HubLine onto Algonquin's Mainline also result in east to west gas flows on nearby portions of the Mainline.

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<sup>2</sup> *Algonquin Gas Transmission, LLC*, 141 FERC ¶ 61,160 (2012) (November 28, 2012 Order).

<sup>3</sup> *Algonquin Gas Transmission Co.*, Docket No. CP01-5-004, (October 24, 2003) (delegated letter order).

<sup>4</sup> *Maritimes & Northeast Pipeline, L.L.C and Algonquin Gas Transmission Co.*, 97 FERC ¶ 61,345 (2001), as amended in 99 FERC ¶ 61,277 (2002); and 95 FERC ¶ 61,077 (2001) (Preliminary Determination).

4. On November 1, 2010, Algonquin put into service its HubLine/East to West Project (E2W Project).<sup>5</sup> The E2W Project included piping modifications at Algonquin's Hanover Compressor Station in Morris County, New Jersey to permit reverse flow of gas and backhaul capability along Algonquin's entire mainline.<sup>6</sup> The purpose of that project was to enable Algonquin to bring additional volumes of natural gas onto its system at the interconnection between Maritimes and the HubLine 2003 Project. Algonquin also stated that the E2W Project would provide enhanced deliverability along its entire mainline.

5. There are six other compressor stations on the Algonquin system, all to the east of the Hanover Compressor Station. The eastern-most compressor station, in Burillville, Rhode Island, is bi-directional. The other four compressor stations operate in a west-to-east direction only, but the Cromwell compressor station in central Connecticut will be modified to be bi-directional as part of Algonquin's New Jersey-New York Project in Docket No. CP11-56-000.<sup>7</sup>

6. Section 32 of Algonquin's General Terms and Conditions (GT&C) provides for it to recover its fuel use and lost and unaccounted for gas (LAUF) through a tracking mechanism. Each year Algonquin makes an annual filing to update the Fuel Reimbursement Percentages (FRPs) through which it recovers projected fuel use and LAUF.<sup>8</sup> Section 32.1 of Algonquin's tariff provides that the Fuel Reimbursement Quantity (FRQ) retained from each customer shall be determined by:

multiplying Customer's receipts at the Point(s) of Receipt by the Fuel Reimbursement Percentage ("FRP"), *except in the case of*

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<sup>5</sup> *Algonquin Gas Transmission Co.*, Notice of Commencement of Service, Docket No. CP08-420-000 and CP08-420-001 (November 8, 2010).

<sup>6</sup> *See Algonquin Gas Transmission, LLC*, 130 FERC ¶ 61,011, at PP 3 and 39-40 (2010) (E2W Certificate Order), authorizing the E2W Project. That project also included installing approximately 2.6 miles of 12-inch pipeline along its E-3 System in New London County, Connecticut that will replace a segment of 6-inch pipeline from MP0.0 in Norwich, Connecticut to MP2.559 at the E-4 Tap.

<sup>7</sup> *Texas Eastern Transmission, LP, et al.*, 139 FERC ¶ 61,138 (2012).

<sup>8</sup> In addition, section 32.5 of Algonquin's GT&C provides that Algonquin will calculate surcharges or refunds designed to amortize the net monetary value of the balance in the FRQ Deferred Account at the end of the previous accumulation period (the 12-month period ending on the preceding July 31).

*Backhauls and/or Forward haul components of transportation on the HubLine Mainline facilities in which case the FRQ shall be zero. During the term of the Service Agreements executed hereunder, Algonquin will periodically track changes in its requirement to retain gas in-kind in compensation for the quantities of Company Use Gas used to provide service for Customers.*<sup>9</sup>

Section 1 of Algonquin's GT&C defines a "backhaul" as the movement of gas:

*from a Point of Receipt to a Point of Delivery such that the contractual direction of movement on the mainline is at all times and at all points along the path in a direction opposite to the actual flow of gas in the pipeline.*<sup>10</sup>

7. In its 2011 Fuel Filing, in Docket No. RP12-39-000, Algonquin also submitted a tariff record<sup>11</sup> pursuant to section 32 of its GT&C to revise its FRP for the calendar period beginning December 1, 2011, and its allocation of the surcharge amounts for the July 31, 2011 balance of the FRQ deferred account. Algonquin also submitted its actual fuel use and LAUF data associated with service on its Ramapo Expansion Project, as previously required by the Commission.<sup>12</sup>

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<sup>9</sup> Algonquin Gas Transmission, LLC's FERC NGA Gas Tariff, Algonquin Database 1, [32., Fuel Reimbursement Quantity, 2.1.0](#) (emphasis added).

<sup>10</sup> Algonquin Gas Transmission, LLC's FERC NGA Gas Tariff, Algonquin Database 1, [1., Definitions, 4.0.0](#) (emphasis added).

<sup>11</sup> Algonquin Gas Transmission, LLC's FERC NGA Gas Tariff, Algonquin Database 1, [12., Fuel Reimbursement Percentages, 2.0.0](#).

<sup>12</sup> *See Millennium Pipeline Co., et al.*, 117 FERC ¶ 61,319, at P 107 (2006) (December 21, 2006 Order), *reh'g, sub nom. Empire State Pipeline, et al.*, 119 FERC ¶ 61,173 (2007). The Commission authorized Algonquin to render service under its Ramapo Expansion Project and required Algonquin to delineate actual fuel use and LAUF associated with the Ramapo Expansion Project service in its annual fuel tracker filings under section 32 of the GT&C of its tariff to ensure that only expansion shippers be assessed fuel costs attributable to expansion service. The Ramapo Expansion facilities were placed into service on November 1, 2008. Algonquin Gas Transmission, LLC, Request for Extension of Time, Docket No. CP06-76-000, at 1 (filed Nov. 26, 2008).

8. In its 2011 Fuel filing, Algonquin proposed to modify its prior practice of treating all east-to-west mainline transactions as exempt backhaul transactions. Algonquin asserted that in the E2W Certificate Order the Commission held that, after completion of the E2W Project, transactions under contracts for service on the Algonquin Mainline that were previously defined as exempt backhauls would no longer be backhauls and therefore would be subject to fuel charges. Thus, because Algonquin had placed its E2W Project into service in November 2010, Algonquin proposed to treat east-to-west mainline transactions as forward hauls subject to its fuel charges.

9. Repsol protested Algonquin's treatment of the east-to-west transactions, contending that the east-to-west transactions were still backhauls and therefore the Commission should reject Algonquin's proposal to impose fuel charges on those transactions and direct Algonquin to reinstitute the fuel charge exemption for east-to-west mainline transactions. In response, Algonquin argued that, among other things, Repsol's protest was a collateral attack on issues that had already been raised and rejected by the Commission in the E2W certificate proceedings.<sup>13</sup> In the November 30, 2011 Order, the Commission agreed with Algonquin that the issues raised by Repsol had been discussed and ruled on in the E2W Certificate Order. The Commission noted that the E2W Certificate Order determined that Algonquin's gas tariff defines backhaul as "the movement of gas from a Point of Receipt to a Point of Delivery such that the contractual direction of movement on the mainline is at all times and at all points along the path in a direction opposite to the actual flow of gas in the pipeline."<sup>14</sup> (Emphasis added). The E2W Certificate Order then held that, because the actual flow of gas on certain parts of Algonquin's mainline will at times be west to east and at other times east to west after completion of the E2W Project, "the contractual direction of movement will not be opposite to the actual flow of gas at all times and at all points along the contractual path."<sup>15</sup>

10. The Commission determined that Algonquin had demonstrated that gas flows on its system in both an east to west and a west to east direction and reemphasized that because the contractual flow of gas will not be opposite to the actual flow of gas at all times and at all points along the contractual path, those transactions that previously would have been defined as a backhaul pursuant to Algonquin's tariff no longer meet the

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<sup>13</sup> E2W Certificate Order, 130 FERC ¶ 61,011 at P 40.

<sup>14</sup> See Algonquin Gas Transmission, LLC's FERC NGA Gas Tariff, Algonquin Database 1, [1., Definitions, 4.0.0.](#)

<sup>15</sup> E2W Certificate Order *supra*, P 40.

definition for a backhaul and are appropriately subject to fuel charges. Therefore, we rejected Repsol's protest and accepted Algonquin's tariff record to be effective December 1, 2011, as proposed.

11. On December 30, 2011, Repsol requested rehearing of the November 30, 2011 Order arguing, among other things, that it was error to treat the E2W Certificate Order as a blanket authorization to charge every transaction on Algonquin's Mainline for fuel. On January 17, 2012, Algonquin filed an answer to Repsol's rehearing request. On August 10, 2012, the Commission Staff issued a Data Request to get additional information in order to have a more complete record. Algonquin submitted its response and Repsol filed comments. Both parties then submitted a second round of comments.

12. In its 2012 Fuel Filing, in Docket No. RP13-238-000, Algonquin submitted a revised tariff record with revised FRPs, to be effective December 1, 2012.<sup>16</sup> Algonquin's filing reflected its proposed FRP for the calendar period beginning December 1, 2012 and its allocation of the surcharge amounts for the July 31, 2012 balance of the FRQ Deferred Account. As in the previous fuel proceeding, Repsol protested Algonquin's application of the FRPs to east-to-west transactions, again arguing that the Commission should reject Algonquin's proposal to impose its fuel charges on east-to-west mainline transactions on its system and direct Algonquin to reinstitute the fuel charge exemption for east-to-west mainline transactions. Algonquin responded as it had in the 2011 Fuel Filing in Docket No. RP12-39-000.

13. In the November 28, 2012 Order, the Commission accepted and suspended Algonquin's proposed tariff record effective December 1, 2012, subject to refund and subject to the outcome of a technical conference and further order of the Commission. The Commission stated that, after a review of Algonquin's response to the August 10, 2012 Data Request in Docket Nos. RP12-39-000 and RP12-39-001, it could not determine without additional information whether the direction of gas flows on all parts of Algonquin's system have changed, such that the transactions previously treated as backhaul transactions no longer qualify as backhauls. The Commission also stated that it is not clear whether the existing definition of backhaul in Algonquin's tariff, requiring that the contractual direction of movement on the mainline be opposite to the actual direction of gas flow "at all times and at all points along the path" continues to be just and reasonable, based on current circumstances on Algonquin's system. Therefore, the Commission directed its Staff to convene the technical conference to address the issues

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<sup>16</sup> Algonquin Gas Transmission, LLC's FERC NGA Gas Tariff, Algonquin Database 1, [12., Fuel Reimbursement Percentages, 3.0.0.](#)

raised by Algonquin's filings in the proceedings in both the 2011 and 2012 Fuel Filings.<sup>17</sup> Algonquin requested rehearing of the November 28, 2012 Order, seeking clarification that the definition of "backhaul" in its tariff is not an issue in these proceedings and that Algonquin will be able to recover any fuel charges that may be refunded, or alternatively rehearing.

14. On November 29, 2012, Staff issued a data request to which Algonquin filed a response on January 4, 11 and 14, 2013. A technical conference was held on January 23, 2013. Subsequent to the technical conference, Algonquin and Repsol filed their technical conference presentations with the Commission, Algonquin submitted clarifications to its earlier data responses, the New England Local Distribution Companies<sup>18</sup> filed initial comments, and Algonquin and Repsol filed initial and reply comments.

## **II. Discussion**

15. Repsol continues to oppose the application of Algonquin's system-wide fuel charges to east-to-west transportation transactions on Algonquin's Mainline, including those originating from the HubLine facilities.<sup>19</sup> Repsol maintains that there is no basis to impose fuel charges on transportation transactions involving gas delivered to the Algonquin Mainline in the easternmost portion of its system. Repsol continues to argue that transactions involving gas received in the eastern part of the system, such as off the HubLine, must continue to be treated as fuel-exempt backhauls just as they were treated prior to the E2W Project. Algonquin, in turn, claims that Repsol's arguments are an attempt to re-litigate the Commission's decision in the E2W Certificate Order.

16. Below, we reject Algonquin's contention that the E2W Certificate Order held that all Mainline transactions would necessarily be subject to the FRP rate after the E2W Project went into service. However, we find that actual gas flows on Algonquin's Mainline are bi-directional, including on the eastern most part of its Mainline. Therefore,

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<sup>17</sup> November 28, 2012 Order, 141 FERC ¶ 61,160 (2012).

<sup>18</sup> Bay State Gas Company, Connecticut Natural Gas Corporation, New England Gas Company, Northern Utilities, Inc., City of Norwich, Department of Public Utilities, NSTAR Gas Company, The Southern Connecticut Gas Company and Yankee Gas Services Company.

<sup>19</sup> The HubLine facilities include a 29.4 mile, 24 inch pipeline extending from Weymouth, Massachusetts, to an interconnect with Maritimes & Northeast Pipeline L.L.C.'s Phase III facilities in Beverly, Massachusetts.

we find that Algonquin's current assessment of the FRP rate to all east-to-west transactions on the Mainline is consistent with its existing tariff. However, as more fully discussed below, Commission policy and the record in these proceedings require further investigation pursuant to NGA section 5 concerning whether section 32's exemptions from fuel charges continue to be just and reasonable. Accordingly, the Commission establishes a hearing on that issue.

**A. E2W Certificate Order Findings**

17. In the E2W proceeding, Algonquin stated that the E2W Project would result in bi-directional gas flows throughout its system, with the result that east-to-west transactions would no longer meet the definition of backhaul under its tariff; and thus, shippers that were not previously assessed fuel charges for qualifying backhauls would now be subject to them.<sup>20</sup> While Repsol was an intervenor in the certificate proceedings, it was Consolidated Edison Company of New York, Inc. and Orange and Rockland Utilities, Inc. (ConEdison) that opposed Algonquin's proposal to assess fuel charges on its historical backhauls. ConEdison insisted that, unless Algonquin could demonstrate that the backhaul transportation that it provides to shippers no longer qualifies as a "backhaul" as defined in its tariff, Algonquin should not be permitted to assess fuel charges pursuant to the tariff.<sup>21</sup> The Commission's response was:

Because the actual flow of gas on certain parts of Algonquin's mainline will at times be west to east and at other times east to west after completion of the Amended E2W Project, the contractual direction of movement will not be opposite to the actual flow of gas at all times and at all points along the contractual path. Therefore, to the extent that transactions under contracts that previously would have been defined as backhauls pursuant to Algonquin's tariff no longer meet the definition for backhaul, those transactions will be subject to fuel charges pursuant to the fuel reimbursement provisions of Algonquin's tariff.<sup>22</sup>

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<sup>20</sup> E2W Certificate Order, 130 FERC ¶ 61,011 at P 22.

<sup>21</sup> *Id.* PP 35-36.

<sup>22</sup> *Id.* P 40.

18. Here, Algonquin argues<sup>23</sup> that, in the E2W Certificate Order, the Commission authorized Algonquin to construct and operate the E2W Project to permit reverse flow of gas and backhaul capability along Algonquin's entire mainline. In addition, Algonquin states that the Commission determined that "[b]ecause the actual flow of gas on certain parts of Algonquin's mainline will at times be west to east and at other times east to west after completion of the [E2W Project], the contractual direction of movement will not be opposite to the actual flow of gas at all times and at all points along the contractual path." As a result, Algonquin continues, the Commission concluded that "to the extent that transactions under contracts that previously would have been defined as backhauls pursuant to Algonquin's tariff no longer meet the definition for backhaul, those transactions will be subject to fuel charges pursuant to the fuel reimbursement provisions of Algonquin's tariff." Accordingly, Algonquin claims that there are no contracts for service on the Algonquin mainline which are classified as backhauls under Algonquin's tariff. With this understanding, Algonquin states that it modified its LINK System to remove the backhaul designation on mainline contracts and to eliminate the "Backhaul" fuel-exemption for mainline nominations in an east-to-west direction.

### **Commission Determination**

19. The Commission does not agree with Algonquin's contention that the E2W Certificate Order found that no transaction on the Algonquin mainline could qualify for the tariff backhaul exemption after the E2W Project went into service. Algonquin accurately quotes the E2W Certificate Order, but projects a Commission finding that is not there. The Commission stated "*to the extent that transactions under contracts that previously would have been defined as backhauls pursuant to Algonquin's tariff no longer meet the definition for backhaul, those transactions will be subject to fuel charges pursuant to the fuel reimbursement provisions of Algonquin's tariff.*" (Emphasis added.) This statement did not change the then and currently effective definition of a backhaul under Algonquin's tariff. And, indeed, in an NGA section 7 proceeding such as the E2W project, the Commission could not have changed the tariff language or tariff rates applicable to existing Algonquin customers without making an NGA section 5 finding.<sup>24</sup> The E2W Certificate Order did not make any NGA section 5 finding. Rather, the E2W

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<sup>23</sup> Algonquin's Initial Comments to the Technical Conference, Docket No. RP12-39-000; Docket No. RP13-238-000.

<sup>24</sup> See *Panhandle Eastern Pipe Line Co. v. FERC*, 613 F.2d 1120 (D.C. Cir. 1979), *cert. denied*, 448 U.S. 889 (1980); see also *Iroquois Gas Transmission System, L.P.*, 53 FERC ¶ 61,194 (1990); *Independence Pipeline Company, et. al.*, 89 FERC ¶ 61,283 (1999).

Certificate Order was explicit in using the term “to the extent.” In other words, if existing transactions under contracts continue to meet the definition for backhauls pursuant to Algonquin’s tariff, those transactions would continue to be free of the FRP as provided by section 32.1 of Algonquin’s GT&C.

20. Section 1 of Algonquin’s tariff defines a “backhaul” as the movement of gas:

from a Point of Receipt to a Point of Delivery such that the contractual direction of movement on the mainline is *at all times and at all points along the path in a direction opposite to the actual flow of gas in the pipeline.*<sup>25</sup>

Thus, the determination whether Mainline service from a particular receipt point to a particular delivery point qualifies as a backhaul turns on a comparison of the contractual direction of the movement of gas along that path to the actual flow of gas along that path.

21. Algonquin argues that the E2W Certificate Order made all transactions on all Mainline Paths subject to the FRP because of the change in the capability of the mainline system to reverse flow. However, Algonquin’s tariff definition of backhaul is not based on the capability of the mainline to reverse flow, i.e. whether the system is designed to permit reverse flows. Rather, the tariff definition turns on whether there are actual bi-directional gas flows on a particular Mainline path such that the contractual direction of flow along that path cannot be “at all times and at all points along the path” in a direction opposite to the actual flow. Thus, the fact that Algonquin now has the capability to reverse flow is insufficient to remove the backhaul exemption from all possible Mainline paths, unless there are actual bi-directional gas flows on all such paths. Algonquin suggests that, given its system’s complexity and the market dynamics, comparing a transaction’s contract direction of flow to the system’s design direction of flow is a reasonable application of the tariff definition of backhaul and its FRQ mechanism. However, the existing tariff definition does not provide for such a comparison, and until that provision is changed under either NGA section 4 or 5 it must be applied as written.

22. The E2W Certificate Order did not find that the E2W Project would cause actual bi-directional gas flows on all paths on Algonquin’s Mainline. In fact, that order stated only that “the actual flow of gas on *certain* parts of Algonquin’s mainline will at times be west to east and at other times east to west after completion of the [E2W Project]....” (Emphasis added). Thus, while the E2W Certificate Order permitted Algonquin to build

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<sup>25</sup> Algonquin Gas Transmission, LLC’s FERC NGA Gas Tariff, Algonquin Database 1, [1., Definitions, 4.0.0](#) (emphasis added).

facilities that would permit the reverse flow of gas and backhaul *capability* along Algonquin's entire mainline, it made no finding that there would be actual reverse gas flows along the entire mainline. Moreover, the E2W Certificate Order did not change Algonquin's tariff, and Algonquin must abide by the existing terms of section 32 of its tariff.

23. Therefore, we now turn to the issue whether Algonquin has shown, based on the record in this proceeding, that there are bi-directional gas flows on the Mainline contractual paths that Repsol contends should continue to be eligible for treatment as exempt backhauls.

**B. Repsol's Contract Direction for Movement of Gas and Direction of Actual Flow on the Mainline System**

24. Repsol contends that the FRP should not apply to transactions with receipt points on the HubLine in the eastern end of the system and delivery points on the mainline east of the Hanover compressor in New Jersey. Repsol contends that such fuel-exempt treatment is required by the exemption for backhaul transactions in section 32 of Algonquin's GT&C. Repsol points out that section 32 defines backhauls as "movement[s] of gas from a Point of Receipt to a Point of Delivery such that the contractual direction of movement on the mainline is at all times and all points along the path in a direction opposite to the actual flow of gas in the pipeline." Repsol states that, consistent with this provision, Algonquin programmed its LINK system to exempt from fuel charges all transactions scheduled from receipt points on the HubLine<sup>26</sup> to delivery points along the Mainline, until the E2W Project went into service. Repsol argues that since the E2W Project went into service, gas has continued to flow in a west-to-east direction, at least in the eastern portion of the Algonquin system, because of the increased gas volumes from the Marcellus region.<sup>27</sup> Repsol contends that "[t]he anticipated flow from east-to-west along the entirety of the Mainline did not materialize and there is no longer any reasonable expectation that it will in the future."<sup>28</sup>

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<sup>26</sup> Algonquin defines the HubLine, for FRP purposes, as from the interconnection with Maritimes at Beverly/Salem (Station Nos. 00215/01215) and the entire I-9 lateral. Algonquin's January 30, and February 1, 2013 Clarifications.

<sup>27</sup> Repsol's Protest, Docket No. RP13-238-000 at pp. 4-5.

<sup>28</sup> Repsol's Initial Comments at p. 2.

25. To the extent that actual flow did reverse on certain mainline segments located on the eastern end of Algonquin's system, Repsol contends that reversal was accomplished through compression provided by Maritimes, not compression provided by Algonquin's compressors, and/or pre-existed the E2W Project; and that notwithstanding these reversals Algonquin had continued to provide the backhaul exemption.<sup>29</sup> Further, Repsol states that Algonquin identified east to west receipt and delivery point combinations in its LINK system as backhauls.<sup>30</sup> Therefore, Repsol argues that the backhaul exemption in Algonquin's tariff, which has not changed, should continue to apply to those paths on Algonquin's system that continue to remain backhauls, even after the E2W Project was placed into service. For these reasons, Repsol requests that the fuel-exemption on the volumes received at Salem/Beverly should be restored.<sup>31</sup>

26. Algonquin responds that it has provided information on the record that demonstrates that actual Mainline gas flows have been in the same direction as the contractual path of the transactions Repsol seeks to exempt, at some points on that path and for at least some time during the periods at issue in these two proceedings. The definition of backhaul, Algonquin continues, compares the contractual direction of movement to actual gas flows, without consideration as to what operational factors may have caused actual flows contrary to the contractual direction, such as whether Algonquin provided the necessary compression, the source of supply, or intermediate segments along the contract path. Further, Algonquin states that contractual paths found not exempt from the FRQ through the backhaul exemption are not subject to later re-evaluation for FRQ exemption eligibility as those contractual paths are not "at all times and at all points along the path in a direction opposite to the actual flow of gas in the pipeline."<sup>32</sup> Therefore, Algonquin concludes, the contractual paths Repsol seeks to exempt do not qualify for the backhaul exemption of the FRQ.<sup>33</sup>

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<sup>29</sup> *Id.* pp. 6-7.

<sup>30</sup> *Id.* p. 4.

<sup>31</sup> *Id.* p. 2-3.

<sup>32</sup> Algonquin's Initial Comments at pp. 6-7.

<sup>33</sup> *Id.* pp. 5-6.

### **Commission Determination**

27. As noted above, Commission Staff sent Algonquin a data request on November 29, 2012, to which Algonquin filed responses on January 4, 11 and 14, 2013. In response to Question No. 6, Algonquin provides information on 25 firm contracts and one interruptible contract with Repsol. Algonquin provided contract numbers and representative dates wherein the actual flow of at least one mainline segment within the contract path was in the same east to west direction as the contract direction for the movement of gas during the projected periods of the two proceedings at issue here. Algonquin reports that, with the exception of two contracts,<sup>34</sup> there were instances wherein the actual flow on at least one segment of the Mainline System was opposite to the contract direction for the movement of gas. Moreover, the segments in question included Mainline segments in the immediate vicinity of the HubLine.

28. Repsol argues, as noted above, that there may have been operational reasons that could explain why actual flow did reverse on certain Mainline segments located on the eastern end of Algonquin's system that did not involve compression provided by Algonquin's compressors and/or pre-existed the E2W project. However, the criteria established by the tariff for evaluating whether the backhaul exemption applies is not dependent upon, as Repsol contends, operational reasons such as sources of compression, supply or pre-existing conditions. The evaluation of each contract path as to whether it qualifies for the backhaul exemption is whether the "movement of gas from a Point of Receipt to a Point of Delivery such that the contractual direction of movement on the mainline is at all times and at all points along the path in a direction opposite to the actual flow of gas in the pipeline."

29. Thus, Algonquin's current tariff only requires a comparison of the contractual direction of the gas movement with the actual gas flow direction. If at any point or any time the actual gas flow was in the same direction as the contractual movement of the gas, the contract path cannot qualify for the backhaul exemption. Algonquin's tariff

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<sup>34</sup> Contract Nos. 783624 and 78365. These two contracts were for receipts from two Ramapo points located in Rockland, New York, for delivery downstream to a point in Fairfield, Connecticut. As actual flow on Algonquin's western Mainline System is traditionally west to east, the Commission speculates that these two contracts' contract path were mostly in the same direction as actual flows. Thus the issue of the Backhaul exemption most likely does not arise for these two contracts. Algonquin also reported that interruptible Contract No. 510441 never had nominations or scheduled quantities during the projected periods. As such, the applicability of the FRQ to services under this contract is not at issue in this proceeding.

contains no provision permitting a further inquiry into the cause of any actual gas flows in the same direction as the contractual movement of the gas, or whether Algonquin incurred fuel costs in connection with such gas flows.

30. Thus, Algonquin's data response indicates that the transactions with receipt points on the HubLine in the eastern end of the system and delivery points anywhere on the mainline do not qualify for the backhaul exemption in Algonquin's existing tariff. The tariff definition of backhaul is specific that the contractual path direction must be opposite of the actual flow "at all points along the path." And while actual gas flows may only be in the same direction as the contractual movement of the gas sporadically, the tariff provides that the contract direction must be opposite of the actual flow "at all times." Thus, if the actual flow is in the same direction as the contractual direction of movement on the Mainline System even once, the backhaul exemption from the application of the FRQ is lost.

31. Repsol alleges that Algonquin, in the past, permitted some transaction to be eligible for the backhaul exemption when, if the backhaul provision of its tariff were strictly applied, the transaction may not have qualified. Algonquin did not directly respond to this allegation.<sup>35</sup> However, the fact that Algonquin may in the past have exempted transactions from fuel charges, despite the fact that such an exemption was contrary to the unambiguous provisions of its filed tariff, does not justify continuing an exemption not authorized by the filed tariff.

32. Repsol argues that "[t]he anticipated flow from east-to-west along the entirety of the Mainline *did not materialize* and there is no longer any reasonable expectation that it will in the future."<sup>36</sup> (Emphasis added). Repsol is unclear whether this contention was meant to apply to the comparison of the contract direction as compared to the actual Mainline System gas flows under its contracts for transportation service on Algonquin's Mainline System.

33. Above, we found that Algonquin has demonstrated that Repsol's contracts no longer qualified to receive the backhaul exemption from the assessment of the FRQ. The Commission, therefore, denies Repsol's rehearing request. However, we also found that Algonquin improperly assumed that the E2W Certificate Order modified the terms of its tariff, and Algonquin eliminated the FRQ exemption for all backhaul contracts effective

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<sup>35</sup> Algonquin did respond to it in terms of Repsol's suggestion as a remedy. As we reject Repsol's protest later in this order, the issue of remedy is moot.

<sup>36</sup> Repsol's Initial Comments at p. 2.

November 1, 2010. As Algonquin provided only representative data documenting that contracts with Repsol did not qualify for the backhaul exemption, it is not clear as to when the change of status date, as provided by the tariff, occurred for any given contract. Notwithstanding, no party requests any retroactive changes in Algonquin's past fuel charges to individual customers or its fuel rates in these two proceedings. Therefore, the Commission closes these two fuel proceedings.

### **C. Establishment of a Hearing Proceeding**

34. Repsol requests that, if the Commission finds that Algonquin's existing tariff does not require it to exempt transactions with receipt point on the HubLine and delivery points on the Mainline, the Commission direct Algonquin to revise its tariff by adding language which exempts those transactions from the FRQ. Repsol submits that the section 5 burden of demonstrating that the relief sought is just and reasonable is met in this case because it is fully supported by data discussed in its pleadings and it simply codifies in the tariff the practice of how the FRQ was administered prior to the E2W Project.<sup>37</sup> Repsol points out that Algonquin's existing tariff exempts all transactions on the HubLine from fuel charges, despite the north-to-south gas flows on that line. Repsol contends that that exemption is justified by the fact that the north-to-south gas flows on the HubLine are effected through the compression provided by Maritimes, and therefore Algonquin does not incur any fuel costs in connection with those gas flows. Repsol contends that the same reasoning requires a fuel-exemption for at least some transactions with a receipt point on the HubLine and a delivery point on the Mainline, particularly in the Boston metropolitan area. Repsol contends that any actual gas flows in the same direction as the contractual direction of such transactions must be due to the Maritimes' compression and therefore Algonquin incurs no fuel costs in those transactions either. Therefore, Repsol contends that the failure of Algonquin's tariff to provide an exemption for those transactions is unjust and unreasonable and the Commission should require Algonquin to modify its tariff to provide such an exemption.

35. In its request for rehearing of the November 28, 2012 Order in Docket No. RP13-238-000, Algonquin seeks clarification or rehearing that the issue of whether the definition of backhaul in its tariff should be modified under NGA section 5 will not be considered in these limited section 4 proceedings.

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<sup>37</sup> *Id.* pp. 13-14.

### **Commission Determination**

36. In *Western Resources Inc. v. FERC*, 9 F.3d 1568, 1579-1580 (D.C. Cir. 1993), the court held that, before the Commission can impose its own tariff provision in a proceeding commenced under NGA section 4, the Commission must find both that the pipeline's existing tariff is unjust and unreasonable and that the replacement is just and reasonable. These are the two standards by which we now examine Repsol's proposed changes to Algonquin's tariff.

37. The Commission finds that the record produced in this proceeding is insufficient to support a finding that Algonquin's existing tariff provisions concerning exemptions from fuel charges are unjust and unreasonable under NGA section 5. However, the Commission finds that Repsol has raised sufficient questions concerning the justness and reasonableness of those provisions to justify establishing a hearing in a separate docket on this issue. Because we are establishing this hearing in a separate docket, we grant Algonquin's request for clarification that the issue of whether the definition of backhaul in its tariff should be modified under NGA section 5 will not be considered in these limited section 4 proceedings.

38. Algonquin's existing tariff contains two exemptions from fuel charges. In addition to the backhaul exemption discussed in the preceding sections, the tariff exempts all transportation on the HubLine from fuel charges, including forwardhauls. The parties agree that the predominant north to south flows on the HubLine, which has no compressors, are effected through the compression provided by Maritimes. It thus appears that Algonquin has provided an exemption from fuel charge for transactions limited to the HubLine on the ground that such transactions do not cause Algonquin to incur fuel costs. Repsol contends, in essence, that the same reasoning justifies a fuel-exemption for at least some transactions with a receipt point on the HubLine and a delivery point on the Mainline, particularly in the Boston metropolitan area.

39. The Commission only permits pipelines to exempt transactions along a particular transportation path from fuel charges, if the pipeline can demonstrate that those transactions do not require the use of fuel.<sup>38</sup> The Commission also requires that the

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<sup>38</sup> See e.g., *Ozark Gas Transmission, LLC*, 122 FERC ¶ 61, 295, at P 11 (2008) (citing *Colorado Interstate Gas Co.*, 112 FERC ¶ 61,199, at P 19 (2005)). Absent a showing that a transaction does not consume fuel, an exemption from fuel charges would constitute an impermissible discount of the pipeline's variable cost of fuel. See § 284.10(c)(4) of the Commission's regulations, stating that a pipeline's minimum rate "must be based on the average variable costs which are properly allocated to the service

(continued...)

pipeline specifically identify any fuel-exemptions in its tariff.<sup>39</sup> As we have stated previously, these requirements are necessary to “assure that *there will be non-discriminatory selection of exempted transactions* and to avoid unwarranted cost shifts to other customers.”<sup>40</sup>

40. Repsol’s contentions raise the issue of whether Algonquin’s existing tariff provisions concerning fuel-exemptions may be unduly discriminatory. Having exempted north-to-south transactions occurring solely on the HubLine from fuel charges on the ground that such gas flows on the HubLine are caused by Maritimes’ compression and not Algonquin’s compression, it could be argued that other transactions involving a receipt point on the HubLine and a delivery point on the Mainline, in which any east-to-west gas flows on the Mainline occur solely because of Maritimes’ compression, should also be exempted from Algonquin’s fuel charges in order to avoid undue discrimination. To the extent that Mainline gas flows are always in the opposite direction of the contractual path of such transactions, except when Maritimes’ compression causes gas to flow in the same direction, it could be argued that such transactions do not consume fuel and thus are similarly situated to the currently exempted HubLine transactions. However, the current record is insufficient to provide a basis for us to find that any Mainline east-to-west gas flows in the eastern part of Algonquin’s system are in fact attributable solely to Maritimes’ compression. Moreover, even if this is true for some Mainline transactions, the record provides no basis for the Commission to identify on which parts of Algonquin’s system that would be true. One factor complicating the analysis is that the eastern most compressor on Algonquin’s system, in Burillville, Rhode Island, is bi-directional, and there is no record evidence concerning the extent to which the operation of that compressor may affect gas flows in the transactions for which Repsol seeks a fuel charge exemption.

41. Also, on occasion gas delivered off the HubLine is delivered on a forward haul west-to-east basis on the Mainline part of Algonquin’s system east of Mendon in the Boston metropolitan area. This service may have required the use of mainline compression, or it may have been rendered using Maritimes’ compression. Further, Algonquin states that there are times when gas has flowed south to north on the

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to which the rate applies,” and *Mississippi River Transmission Corp.*, 98 FERC ¶ 61,119 at 61, 352 (2002).

<sup>39</sup> *El Paso Natural Gas Co.*, 129 FERC ¶ 61, 280, at P 26 (2009).

<sup>40</sup> *Northern Natural Gas Co.*, 82 FERC ¶ 61, 270, at 62,062 (1998) (emphasis supplied).

HubLine.<sup>41</sup> This flow implies that compression from Algonquin's Mainline can and has been used to provide service on the HubLine, such that an exemption of all transactions on the HubLine without regard to the direction of their flow may not be just and reasonable. The Commission concludes that the instant proceeding does not contain the facts necessary to determine whether the currently effective FRP calculation methodology in Section 32 is still just and reasonable and otherwise lawful; and, if it is not, what just and reasonable method should replace it on a prospective basis. Therefore, the Commission will create a new proceeding in Docket No. RP13-1040-000 and set these issues for hearing before an Administrative Law Judge.

42. For the reasons discussed above, the Commission denies Repsol's request for rehearing and grants Algonquin's requested clarification. Accordingly, the Commission removes the refund condition on the tariff record in the 2012 Fuel Filing and closes both fuel filing proceedings.

The Commission orders:

- (A) Repsol's request for rehearing in Docket No. RP12-39-001 is denied;
- (B) Algonquin's clarification request in Docket Nos. RP13-238-001 and RP12-39-002 is granted, rendering the rehearing request as moot;
- (C) The refund condition on the tariff record in Docket No. RP13-238-000 is removed and Docket Nos. RP12-39-000, RP12-39-001, RP12-39-002, RP13-238-000 and RP13-238-001 are hereby closed;
- (D) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act and by the Natural Gas Act, particularly section 5 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the Natural Gas Act, a public hearing shall be held concerning whether Algonquin's tariff provisions concerning fuel-exemptions are unjust, unreasonable, or otherwise unlawful; and

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<sup>41</sup> Algonquin's January 11, 2013 Response to Question No. 11(b).

(E) A Presiding Administrative Law Judge, to be designated by the Chief Administrative Law Judge for that purpose pursuant to 18 C.F.R. § 375.304, shall, within thirty (30) days of the date of this order, convene a prehearing conference in these proceedings in a hearing or conference room of the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. The prehearing conference shall be held for the purpose of clarification of the positions of the participants and consideration by the presiding judge of any procedural issues and discovery dates necessary for the ensuing hearing. The Presiding Administrative Law Judge is authorized to conduct further proceedings in accordance with this order and the Commission's Rules of Practice and Procedure.

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.