

105 FERC ¶ 61,180
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 No. RP04-24-000

ORDER ACCEPTING AND SUSPENDING TARIFF SHEETS,
SUBJECT TO REFUND AND CONDITIONS,
AND ESTABLISHING HEARING PROCEDURES

(Issued November 7, 2003)

1. On October 9, 2003, Algonquin Gas Transmission Company (Algonquin) filed revised tariff sheets¹ to establish what it classifies as “meter access charges” and a revenue crediting mechanism in Section 49 of the General Terms and Conditions (GT&C) of its tariff. Algonquin proposes that these charges would be applicable to system shippers for any deliveries to its M&R No. 0087 (Manchester Street) and M&R No. 0090 (Brayton Point) meters on a secondary firm basis, interruptible, or overrun basis. The Commission accepts and suspends the referenced tariff sheets to become effective October 10, 2003, subject to refund and conditions, and sets the rate issues raised by the filing for hearing. This order is in the public interest since it provides a mechanism for Algonquin to recover the cost of operating incremental facilities that serve those meter stations.

¹The proposed tariff sheets are listed in the Appendix.

Background

2. By various Commission orders issued in Docket No. CP89-661, et al.,² Algonquin was authorized to construct and operate project financed facilities to provide incremental service to New England Power Company (NEP) by delivery of gas to its Manchester Street delivery point in Providence, Rhode Island, and the Brayton Point delivery point in Somerset, Massachusetts, under Rate Schedules X-38 and X-37, respectively. For the service to the Manchester Street delivery point under Rate Schedule X-38, Algonquin looped its existing mainline and added compression and metering facilities to provide service along its mainline from Hanover, New Jersey, to Mendon, Massachusetts, and then constructed lateral lines from Mendon leading to the Manchester Street delivery point. The service to the Brayton Point delivery point, under Rate Schedule X-37, was certificated solely as a lateral line service, with Algonquin having constructed a short lateral line from Dighton, Massachusetts to the Brayton Point delivery point to deliver gas to NEP, requiring that NEP be responsible for gas delivered on Algonquin's mainline to Dighton.³

3. The rates for these Section 7(c) certificated services were designed as two-part incremental firm reservation rates to recover the incremental cost of the forgoing facilities, with NEP as the sole customer and Algonquin placed at risk for recovery of the

²ANR Pipeline Co., et al., 51 FERC ¶ 61,359 (1990); Algonquin Gas Transmission Co., order amending certificates, 56 FERC ¶ 61,235 (1991); Iroquois Gas Transmission System, L.P., et al., order issuing vacating and amending certificates, 57 FERC ¶ 61,047 (1991); order on reh'g, 57 FERC ¶ 61,350 (1991); order on reh'g, 59 FERC ¶ 61,094 (1992); Algonquin Gas Transmission Co., order amending certificate and denying reh'g, 63 FERC ¶ 61,206 (1993); and order amending certificate, 65 FERC ¶ 61,163 (1993).

³ANR Pipeline Co., et al., 51 FERC ¶ 61,359 at 62,156 (1990). Under contract #93002R1 (Rate Schedule X-38 service to the Manchester Street delivery point for NEP) Algonquin contracted to transport up to 35,455 Dth per day from Hanover, New Jersey, along the mainline to Mendon, Massachusetts, and up to 95,455 Dth per day from the interconnection of the mainline at Mendon to the Manchester Street delivery point. Under contract #99069 (Rate Schedule X-37 service to the Brayton Point delivery point for NEP) Algonquin contracted to transport up to 120,000 Dth per day from Dighton, Rhode Island, to the Brayton Point delivery point.

cost of the facilities providing service to NEP and its successors.⁴ The existing two-part incremental rate for service to the Manchester Street delivery point, consists of a maximum firm reservation rate of \$9.4003 per Dth and a commodity charge of \$0.0061 per Dth while the maximum rates for service to the Brayton Point delivery point consists of a firm maximum reservation rate of \$1.6997 per Dth and maximum commodity charge of \$0.21 per Dth.⁵ After the service to NEP was authorized, Algonquin was authorized to convert the Section 7(c) service to Part 284 transportation service with flexible delivery points.⁶ Following the conversion of the subject X-38 and X-37 services, NEP permanently assigned its rights to these services to US Gen New England, Inc. (USGen).

⁴ Under the “at risk” condition and the certificated rate design for service to NEP, Algonquin was precluded from shifting the cost recovery of the project to other shippers for whom the facilities were not constructed and who did not need or use them. See ANR Pipeline Co., et al., 51 FERC ¶ 61,359 at 62,157 (“by using the total capacity of the authorized facilities to design initial rates for Algonquin, we will place Algonquin at risk for any underutilization of the excess capacity in the laterals....”) See also Iroquois Gas Transmission System, L.P, et al., 57 FERC ¶ 61,047 at 61,169 (“[G]iven the uncertainties surrounding the DOE’s/FE import authority . . . Algonquin . . . must be placed at risk for any underrecovery of costs resulting from any shortfall in volumes.”). See generally, e.g., Williston Basin Interstate Pipeline Co., 50 FERC ¶ 61,073 at 61,192 (“The incremental rate was approved so that the risk of underutilization of the facilities and, therefore, the risk of underrecovery of the construction costs . . . would fall upon Williston Basin rather than its other customers.”)

⁵See Twenty-Third Revised Sheet No. 21 and Fifth Revised Sheet No. 36A to Algonquin’s FERC Gas Tariff, Fourth Revised Volume No. 1.

⁶Algonquin states that service for NEP to the Brayton Point meter was originally provided under Rate Schedule X-37 but was converted to Part 284 service under Rate Schedule AFT-CL(X-37). Citing Algonquin Gas Transmission Co., 93 FERC ¶ 61,318 (2000). Further, Algonquin states that service for NEP to the Manchester Street meter was originally provided under Rate Schedule X-38 but was converted to Part 284 service under Rate Schedule AFT-1(X-38) service. Citing Algonquin Gas Transmission Co., 68 FERC ¶ 61,039 (1994).

Algonquin's Proposed Meter Access Charges

4. Algonquin proposes to establish what it classifies as “meter access charges” applicable to deliveries on a secondary firm, interruptible, or overrun basis to the Manchester Street and Brayton Point meters by system shippers, to be effective October 10, 2003. Algonquin states that it is proposing these new charges because USGen, the successor to NEP’s incremental rate contracts, has declared bankruptcy and the Bankruptcy Court has rejected the AFT-1(X-38) and AFT-CL(X-37) contracts, leaving Algonquin without the ability to recover the costs of the facilities attributable to the service under the contracts.⁷ Algonquin indicates that this proposal is without prejudice to pursuing any other claims that it may have against USGen in the bankruptcy proceeding.

5. Algonquin asserts that under its current tariff, shippers under its Part 284 open access rate schedules are able to use these incremental facilities without paying the associated incremental rates. Further, it asserts that a Part 284 shipper can utilize its own contracts at the generally-applicable rates to make deliveries on a secondary point basis to the Manchester Street and Brayton Point meters. Algonquin contends that absent approval of this proposal, the additional capacity created by termination of the USGen contracts, together with the flexibility accorded shippers on Algonquin’s system, will permit service to the Manchester Street and Brayton Point meters at Algonquin’s generally applicable Part 284 rate using the incremental facilities constructed to serve the two meters. As such, Algonquin asserts that absent approval of its proposal, the outstanding costs for these incremental facilities will be shifted to Algonquin’s remaining solvent customers.

6. To recover the cost of the uncompensated service from other shippers, Algonquin proposes multi-part “meter access charges” in new Section 49.1 of the GT&C of its tariff consisting of both its existing incremental two-part reservation charges per Dth of Maximum Daily Delivery Obligation (MDDO) of \$9.4003 and \$1.6697 for service to the Manchester Street meter and Brayton Point meter, respectively, for service to these points on a primary firm basis, plus usage charges of \$0.6100 per Dth and \$0.5590 per Dth for service to the Manchester Street meter and Brayton Point meter, respectively, on a

⁷On August 8, 2003, the U.S. Bankruptcy Court for the District of Maryland (Greenbelt Division) authorized the rejection of USGen’s contracts with Algonquin effective September 11, 2003. See Case No. 03-30465 (PM).

secondary firm or interruptible basis and for service in excess of the customer's MDDO, in addition to any other amounts otherwise payable to Algonquin.⁸

7. Algonquin states that its proposed volumetric rate for the Brayton Point meter access charge is based on dividing the AFT-CL(X-37) cost of service, as reflected on Workpaper 3 of its rate case settlement approved in Docket No. RP99-262-000,⁹ by the annual volume determinants based on a 10% annual average load factor. Algonquin explains that the actual load for the 12-month period ending June 30, 2003 for the Brayton Point meter was 2.2%, with a five-year average load factor of 4.2%, but nonetheless has proposed the 10% load factor level. The proposed rate for the Manchester Street meter access charge is calculated by dividing the AFT-1(X-38) cost of service, as reflected in Workpaper 3 of its rate case settlement in Docket No. RP99-262-000, by the annual volume determinants based on a 50% annual average load factor. Algonquin asserts that the actual load factor for the 12-month period ending June 30, 2003 for the Manchester Street meter was 34.9%, with a five-year average load factor of 48.4%, but nonetheless has proposed the 50% load factor level. Further, it states that the cost of service used to design its proposed rates is derived from a settlement filed on March 4, 1998, which established rates for the Algonquin system with a rate moratorium that expired on May 1, 2003.¹⁰

8. Algonquin also proposes a revenue crediting mechanism in new Section 49.2 of the GT&C which provides that it shall credit the amount by which the meter access

⁸Proposed Section 49.1(b) reads:

Applicability. The charges under this Section 49 shall apply to service rendered under open access Rate Schedules AFT-1, AFT-E, AFT-1S, AFT-ES, and AIT-1 at the specific meters listed herein, except for service rendered at such meters pursuant to effective contracts under the specific Rate Schedules AFT-1(X-38) and AFT-CL(X-37). The charges under this Section 49 shall be billed and paid in addition to any other amounts otherwise payable to Algonquin.

⁹See Algonquin Gas Transmission Co., 87 FERC ¶ 61,008 (1999).

¹⁰Citing Id.

charges (together with the demand revenues received pursuant to re-marketed AFT-1(X-38) and AFT-CL(X-37) capacity) exceed the total costs of service underlying the former USGen contracts in a 12 month period. Algonquin states that the credits would be apportioned among all customers that paid such meter access charges on the basis of the amounts paid.

Public Notice and Interventions

9. Public notice of Algonquin's filing was issued on October 16, 2003. Interventions and protests were due as provided in Section 154.201 of the Commission's regulations Pursuant to Rule 214 (18 C.F.R. § 385.214 (2003)), 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.

10. Although Rule 213(a) of the Commission's Rules of Practice and Procedure (18 C.F.R. § 385.213(a) (2003)) does not allow for answers to protests, we acknowledge that Algonquin, on October 31, 2003, filed a response to the protests and comments, which appears to include some information responsive to the issues raised by the parties. Algonquin may incorporate by reference the relevant information from its answer in its filing in compliance with this order.

Protests and Comments

11. In its protest, USGen argues that the Commission should dismiss the filing because it is inconsistent with Algonquin's contractual obligations and is therefore unlawful under the Mobile-Sierra doctrine.¹¹ USGen contends that Algonquin is attempting to use a limited section 4 filing to unilaterally reinstate rates that were effectively terminated when the Bankruptcy Court rejected USGen's contracts. USGen also claims that Algonquin's meter access charge is tantamount to a unilateral exit fee since it is the only customer that takes service behind the Manchester and Brayton delivery meters.

12. Additionally, USGen argues that, as a result of the Bankruptcy Court's consent order, Algonquin has waived any right to collect an exit fee and its only available

¹¹Citing United Gas Pipe Line Co. v. Mobile Gas Service Corp. 350 U.S. 332 (1956) ("Mobile"); FPC v. Sierra Pacific Power Co., 350 U.S. 348 (1956) ("Sierra").

recourse is to seek damages as a unsecured creditor in the bankruptcy proceeding. Moreover, USGen asserts that Algonquin's proposal violates the orders of the Bankruptcy Court and the Bankruptcy Code. USGen asserts that Algonquin is clearly attempting to violate the automatic stay of the Bankruptcy Code by filing a proposal that would recoup losses that resulted from the rejection of its contracts. Therefore, for these reasons and others, USGen believes that the Commission should summarily reject Algonquin's proposal.

13. Algonquin Municipals¹² contend that the Commission must reject the notion that Algonquin has a right to shift costs to other customers into generally applicable rates. BP America Production Company and BP Energy Company filed comments raising several policy questions, including: (1) can a pipeline revise the incremental rate for an existing facility in a limited rate case as opposed to a general rate case; (2) if a limited filing is appropriate, must the pipeline include all cost and revenue information required of a general rate case filing; and (3) can the incremental rates for an under-utilized facility reflect the purported throughput on that facility as opposed to the capacity of the facility?

14. Calpine Corporation filed comments stating that if the Commission approves Algonquin's proposal, the proposed rates must reflect current cost data, particularly the depreciated cost of the incremental facilities. Consolidated Edison Company of New York, Inc. and Orange and Rockland Utilities, Inc. contend that Algonquin should not be permitted to over-recover its costs, arguing that if an AFT-1 customer delivers gas to the Manchester Street delivery point, then Algonquin will collect double rates, *i.e.*, both the AFT-1 mainline rate and the meter access charge. Additionally, Northeast Energy Associates protested the filing arguing that the proposal is inconsistent with Commission policy on bad debts which must be part of a section 4 rate case, and that Algonquin has failed to demonstrate a need for the proposed meter fees.

15. New England Local Distribution Companies (New England)¹³ filed comments objecting to the proposed revenue crediting mechanism. New England contends that

¹²Algonquin Municipals consist of: the City of Norwich; Connecticut Department of Public Utilities; and the Municipal Gas and Electric Department for the Town of Middleborough, Massachusetts.

¹³New England consists of: Bay State Gas Co.; Connecticut Natural Gas Corp.; New England Gas Co.; Northern Utilities, Inc.; NSTAR Electric & Gas Corp.; Southern Connecticut Gas Co.; and Yankee Gas Services Co.

using a single crediting mechanism for each of the two incremental services would create difficulties and cause cross-subsides between the services. Instead, New England states that there must be separate crediting mechanisms for each of the incremental services. Additionally, New England argues that the proposed crediting mechanism fails to take into account any recovery that Algonquin may realize as an unsecured creditor in the bankruptcy proceeding. New England contends that to ensure that no cost over recovery can occur, the credit mechanism must consider any recovery that Algonquin may receive in the USGen bankruptcy proceeding.

Discussion

16. Upon review of Algonquin's proposal, the Commission will accept and suspend Algonquin's revised tariff sheets, subject to refund, subject to conditions, and subject to the outcome of a hearing. Although we find its proposal is unsupported as drafted, we clarify below that Algonquin may re-file to correct the infirmities and tailor its rates and services to provide for a continuation of the recovery of its incremental costs of the subject facilities from appropriate shippers in incremental rates.

Charging Existing Shippers to "Access" Delivery Points on Laterals

17. Although the Commission recognizes that Algonquin can revise its rates for the incremental services it provides under section 4 of the NGA, the Commission concludes that the use of the so-called "meter access" charges proposed by Algonquin are not supported. There is no separate service, and no separate cost of service to be recovered by such additional charges, that is attributable solely to "accessing" a delivery point. The only actual service provided relative to deliveries of gas at the subject points would be the Part 284 transportation service to bring the shipper's gas to the respective delivery points, which is otherwise paid for in transportation rates the shipper separately pays. Moreover, under Algonquin's proposal, the incremental costs for the mainline are being charged to existing system shippers under Rate Schedule AFT-1 and other rate schedules through the proposed Manchester Street meter access charge, but payment of that charge does not permit the shipper to use mainline facilities. In addition, Algonquin's proposal results in existing shippers (under Rate Schedules AFT-1 and other rate schedules) that use the Manchester Street and Breton Point delivery points paying for the costs of the incremental laterals as opposed to those shippers who have subscribed to the incremental service.

18. Accordingly, Algonquin's proposed Section 49.1 is unsupported and acceptance of the subject tariff sheets is conditioned on it filing to remove that provision from the accepted tariff sheet and replace it with a rate for service on the incremental facilities. Consistent with Commission regulations, Algonquin may file to revise its existing two-part incremental maximum rate to provide for a one-part volumetric firm maximum rate for service, consistent with the remainder of this order.¹⁴ Algonquin also could file for a two-part firm rate, with an interruptible 100 percent load factor rate.¹⁵ In addition, consistent with Commission policy, Algonquin can propose that only shippers paying the incremental AFT-1(X-38) or AFT-CL(X-37) rates will have access to the Manchester Street and Brayton Point delivery points on the lateral line facilities. Pipelines are not required to accord other shippers secondary rights on incrementally priced laterals if they do not pay for the incremental cost of the laterals on which those points are located.¹⁶

Incremental Rates for Delivery to the Manchester Street and Brayton Point Lateral Points

19. Although Algonquin's proposed Section 49.1 mechanism for imposing additional "access charges" on system shippers is unsupported, the one-part volumetric charges it calculated are based on the most-recently approved incremental costs of the AFT-1(X-38) and AFT-CL(X-37) services and, therefore, can be used to replace its existing two-part rates for AFT-1(X-38) and AFT-CL(X-37) service, provided that they are re-filed to reflect updated test period costs, 18 C.F.R. § 154.303 (2003). Algonquin has indicated that it expects that no shipper will contract to pay reservation charges for the services formerly provided USGen and, therefore, a different rate design may help in marketing this capacity. However, due to the unique circumstances under which Algonquin has made this proposal, the Commission does not find that Algonquin must file a general rate

¹⁴The rates for AFT-1(X-38) service must include access to the mainline facilities that are recovered by the current AFT-1(X-38) incremental rate.

¹⁵Due to the at-risk condition with respect to these facilities, Algonquin cannot seek to recover lost revenues from shippers without AFT-1(X-38) or AFT-CL(X-37) service agreements covering these facilities, whether from discounts, throughput below projected levels, or other reasons.

¹⁶See *Texas Eastern Transmission, LP.*, 99 FERC ¶ 61,308 at 62,300-01 (2002) (While a shipper can use secondary points on the mainline for which it pays a reservation charge, the shipper does not have secondary rights to points on the lateral unless it pays a separate rate for service on those laterals.)

case in order to modify incremental rates; the costs it used to design the one-part charges are from a settlement of a prior rate case and are presumptively out of date. It is appropriate, in proposing new incremental rates, to reflect the most recent cost of service and billing determinants as required by the Commission's test period regulations.

20. Accordingly, we will accept the instant filing subject to Algonquin filing to remove the existing two-part incremental rates from Sheets 21, 22, 36A, and 37 of its tariff and replacing them with one-part volumetric incremental rates for firm AFT-1(X-38) and AFT-CL(X-37) services calculated to reflect the updated test period costs and data as required by the Commission's regulations, 18 C.F.R. § 154.303 (2003). In addition, consistent with any proposal to modify its tariff to limit access of system shippers to the subject points, Algonquin should propose interruptible rates, rate schedules, and pro forma service agreements to provide service to the Manchester Street and Brayton Point Lateral points on an interruptible basis. The issues of the appropriate design of the rates, and the costs to be recovered by such rates, are set for hearing. A hearing will provide interested parties an opportunity to examine and litigate the proposed rates, as revised, including revised cost data, billing determinants, load-factor, as well as the one-part rate design for the AFT-1(X-38) and AFT-CL(X-37) services, and any proposed interruptible rates and services.

The Proposed Crediting Provision

21. Algonquin has proposed in new Section 49.2 of the GT&C to establish a mechanism requiring it to credit excess recoveries from its proposed access charges to system the shippers who were to pay the proposed access charges to access the Manchester Street and Brayton Point delivery points. The protests object that it should include provisions to account for any damages Algonquin may obtain in the bankruptcy proceeding arising out of the termination of USGen's contract. We agree in principle with the protests that some provision should be made to credit damages attributable to future reservation charge obligations discharged by the Bankruptcy Court's order. However, the credit mechanism should not cover any portion of damages relating to past due reservation charges as such damages relate to past losses not recoverable in jurisdictional rates under the filed rate doctrine.¹⁷

22. In order to comply with this requirement, Algonquin must make a filing proposing an appropriate credit if and at such time as it is awarded damages in the bankruptcy proceeding. We agree with the protest that any such credit mechanism should reflect

¹⁷See City of Piqua v. FERC, 610 F.2d 950, 954 (D.C. Cir. 1979).

separate credits under each of the two incremental services. Algonquin's customers and interested parties would then have a right to be heard on whether the credit proposal is appropriate. Further, since proposed Section 49.2 was drafted only to require the credit of the amounts by which access charge revenues exceeded its settlement incremental cost of service, and we are requiring Algonquin to remove proposed Section 49.1 which would have authorized such charges, acceptance of the subject tariff sheets is conditioned on Algonquin filing to revise Section 49 to reflect only a mechanism for crediting allowed damages resulting from the bankruptcy proceedings as discussed above.

23. Consistent with the foregoing clarification and findings, the Commission accepts the filing subject to the following filing conditions: (1) proposed Section 49.1 must be deleted; (2) Algonquin may revise its tariff sheets 21, 22, 36A, and 37 to remove the existing two-part incremental rates and replace them with one-part incremental volumetric rates; (3) Algonquin must revise proposed Section 49.2 to reflect mechanisms for crediting appropriate damages that Algonquin recovers as a result of the bankruptcy proceedings; and (4) if it files to revise its incremental rates, Algonquin must file revised rates, and supporting schedules and other documentation required by the regulations (18 C.F.R. § 154.303 (2003)), to reflect an updated incremental cost of service and billing determinants. To provide the least delay in authority to provide service and charge rates that recover its incremental cost of service, all such tariff revisions shall be effective October 10, 2003.

Discussion of Issues Raised in the Protests

24. To the extent not addressed or rendered moot by the above discussion and rulings, we will now turn to certain issues raised in the protests. First, we reject the claim that the subject filing violates bankruptcy law and the Bankruptcy Court's order terminating the USGen contracts. The Commission is not challenging the order of the Bankruptcy Court dissolving USGen's contract. The Bankruptcy Court's action regarding the prior USGen/Algonquin contracts have nothing to do with the instant filing, which addresses the future service to be provided by Algonquin to the USGen's plants as of October 10, 2003, after USGen rejected the prior contracts under the Bankruptcy Code. Our review of the proposed rates is constrained only by NGA requirements, including that the rates be just and reasonable and not unduly discriminatory.

25. Next, we reject the contention that the instant filing violates Mobile-Sierra. Pursuant to Algonquin's tariff, the GT&C of Algonquin's tariff are incorporated into its Rate Schedule AFT-1 and other service rate schedules, pro forma service agreements, and contracts with its customers. Therefore, since Algonquin has proposed revisions to the GT&C of its tariff, if accepted, its Rate Schedule AFT-1 and other service agreements would be revised to reflect such changes. Thus, there is no Mobile-Sierra bar to the filing. In any event, since Algonquin is being required to remove proposed Section 49.1, this issue is effectively moot.

26. Calpine's claim that the filing should be rejected as inconsistent with Commission policy on the recovery of bad debts is effectively rendered moot. As filed, in the absence of support for its proposed access charges, Algonquin's filing was open to various characterizations of what Algonquin was actually attempting, including Calpine's characterization that it was just a device to recover bad debts of USGen from other shippers. However, as accepted herein with the forgoing conditions, Algonquin's tariff filing will simply establish maximum rates to recover remaining unrecovered incremental costs of transportation services provided to shippers who succeed to the rights USGen held under its now-terminated contracts for incremental service.

Suspension

27. Based on a review of the filing, the Commission finds that the proposed tariff sheets have not been shown to be just and reasonable, and may be unjust, unreasonable, unduly discriminatory, or otherwise unlawful. Accordingly, the Commission will accept the tariff sheets for filing, and suspend their effectiveness for the period set forth below, subject to the conditions in this order.

28. The Commission's policy regarding rate suspensions is that rate filings generally should be suspended for the maximum period permitted by statute where preliminary study leads the Commission to believe that the filing may be unjust, unreasonable, or that it may be inconsistent with other statutory standards. See Great Lakes Gas Transmission Co., 12 FERC ¶ 61,293 (1980) (five-month suspension). It is recognized, however, that shorter suspensions may be warranted in circumstances where suspension for the maximum period may lead to harsh and inequitable results. See, Valley Gas Transmission, Inc., 12 FERC ¶ 61,197 (1980) (minimum suspension). Such circumstances support a minimum suspension here because Algonquin would otherwise be forced to bear losses as a result of its inability to recoup the incremental costs that were previously recovered from USGen. Therefore, the Commission will accept and suspend the proposed tariff sheets and permit them to become effective October 10, 2003, subject to refund and conditions.

The Commission orders:

(A) Algonquin's request for waiver of the notice requirement is granted and the tariff sheets listed in the Appendix are accepted and suspended to be effective October 10, 2003, subject to refund, the conditions described in the body of this order, and to the outcome of the hearing established herein.

(B) Algonquin is directed to file revised tariff sheets within 20 days of the issuance of this order, as discussed in the body of this order.

(C) Pursuant to the authority of the Natural Gas Act, particularly Sections 4, 5, 8, and 15, and the Commission's rules and regulations, a public hearing is to be held in Docket No. RP04-24-000 concerning Algonquin's filing.

(D) 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, must convene a pre-hearing conference in this proceeding to be held within 30 days after issuance of this order, in a hearing or conference room of the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. The pre-hearing conference is for the purpose of clarification of the positions of the participants and establishment by the presiding judge of any procedural dates necessary for the hearing. The presiding administrative law judge is authorized to conduct further proceedings in accordance with this order and the rules of practice and procedure.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.

Appendix

Algonquin Gas Transmission Company
FERC Gas Tariff, Fourth Revised Volume No. 1
Tariff Sheets Accepted and Suspended Subject to Conditions Effective October 10, 2003

Fourth Revised Sheet No. 104
Fifth Revised Sheet No. 105
Fourth Revised Sheet No. 119
Fifth Revised Sheet No. 120
Third Revised Sheet No. 138
Fourth Revised Sheet No. 139
Fourth Revised Sheet No. 140
Fourth Revised Sheet No. 156
Fourth Revised Sheet No. 157
Second Revised Sheet No. 173
Third Revised Sheet No. 174
First Rev Tenth Revised Sheet No. 600
First Revised Sheet No. 724
Original Sheet No. 725
Sheet Nos. 726-798