

106 FERC ¶ 61,217
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
Nora Mead Brownell, Joseph T. Kelliher,
and Suedeen G. Kelly.

Algonquin Gas Transmission Company

Docket Nos. RP04-24-001
RP04-24-002

ORDER ON COMPLIANCE AND REHEARING

(Issued March 4, 2004)

1. On November 26, 2003, Algonquin Gas Transmission Company (Algonquin) filed revised tariff sheets, supporting schedules and other documentation to establish new rates for service on incremental facilities, in compliance with the Commission's order issued on November 7, 2003.¹ On December 12, 2003, Algonquin supplemented its filing by providing its Statement P testimony. In addition, Algonquin and several other parties filed requests for clarification and/or rehearing of the November 7, 2003 Order. In this order, the Commission generally denies rehearing and clarification and accepts the proposed tariff sheets, subject to refund, modification and other conditions, and subject to the outcome of the hearing proceedings that are currently underway as established by the November 7, 2003 Order.

I. Background

2. By various Commission orders issued in Docket No. CP89-661, et al.,² Algonquin was authorized to construct and operate certain project-financed expansion facilities to provide service to New England Power Company (NEP) by delivery of gas to its

¹ Algonquin Gas Transmission Co., 105 FERC ¶ 61,180 (2003) (November 7, 2003 Order).

² ANR 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).

Manchester Street delivery point in Providence, Rhode Island, and the Brayton Point delivery point in Somerset, Massachusetts, under Part 157 Rate Schedules X-38 and X-37, respectively. Under Rate Schedule X-38, Algonquin was authorized to transport up to 35,455 Dth per day from Hanover, New Jersey, on a firm basis along the mainline to the interconnect with Algonquin's G Lateral at Mendon, Massachusetts, and up to 95,455 Dth per day on the G Lateral to the interconnect with a subsystem of the G Lateral about 15 miles south of the G Lateral interconnect with the mainline, then to the 3.9 mile Manchester Street Lateral and ultimately to the Manchester Street delivery point in Providence.³ Although the X-38 project was combined as a single project with the AFT-2 project, according to NEP, to provide the service for NEP to the Manchester Street delivery point under Rate Schedule X-38, Algonquin added mainline meters, added a mainline compressor at Chaplin, Connecticut, modified its Mendon meter station on its mainline, looped its E-1 system at Norwich, Connecticut, in addition to constructing the 3.9 mile Manchester Street Lateral.⁴ Under Rate Schedule X-37, Algonquin was authorized to transport up to 120,000 Dth per day solely for NEP on the ten-mile long Brayton Point Lateral from the interconnect with the G Lateral at Dighton, Rhode Island, located some 25 miles south of the interconnect of the G Lateral with the mainline, to the Brayton Point delivery point near Somerset, Massachusetts.⁵ The service for NEP to the Brayton Point delivery point under Rate Schedule X-37 was certificated as a lateral line only service solely for NEP on the Brayton Point Lateral, with NEP being separately responsible for contracting for gas to be transported on Algonquin's mainline and G-System Lateral to the Dighton receipt point.⁶

3. The rates for these NGA Section 7(c) Part 157 certificated services were designed as two-part reservation/usage rates to recover the incremental cost of the foregoing facilities, with NEP as the sole customer and Algonquin placed at risk for recovery of the cost of any underutilized capacity. After the X-37 and X-38 services to NEP were certificated, NEP was authorized to convert these NGA Section 7(c) Part 157 services to

³ See *New England Power Co. v. Algonquin Gas Transmission Co.*, 70 FERC ¶ 61,245 at 61,765 n. 9 (1995).

⁴ See *New England Power Co. v. Algonquin Gas Transmission Co.*, 76 FERC ¶ 61,143 at 61,791 n. 1 (1996). See also NEA request for rehearing at 2.

⁵ See *New England Power Co. v. Algonquin Gas Transmission Co.*, 70 FERC ¶ 61,245 at 61,765 n. 10 (1995). See also NEA request for rehearing at 2.

⁶ *ANR Pipeline Co., et al.*, 51 FERC ¶ 61,359 at 62,156 (1990).

open access Part 284 transportation services under Rate Schedules AFT-1(X-38) and AFT-CL(X-37), respectively.⁷ Under the 1994 Stipulation and Agreement governing the conversion of X-38 service from Part 157 to Part 284 service, the AFT-1(X-38) service included flexible receipt and delivery points pursuant to Rate Schedule AFT-1.⁸ Rate Schedule AFT-1 provides for open access Part 284 service at rates separately designed on an incremental basis for each of Algonquin's twelve converted former Part 157 services, including the converted former X-38 service. Rate Schedule AFT-CL provides for open access Part 284 lateral-only service on seven designated laterals, including the Brayton Point Lateral, at incremental rates. 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). As of October 9, 2003, when Algonquin filed revised rates in the instant docket, the two-part incremental rate for AFT-1(X-38) service consisted 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 AFT-CL(X-37) lateral line service consisted of a firm maximum reservation rate of \$1.6997 per Dth and maximum commodity charge of \$0.0021 per Dth.⁹

4. On October 9, 2003, Algonquin filed revised tariff sheets in the instant docket to establish what it characterized as "meter access charges" and a revenue crediting mechanism in Section 49 of the General Terms and Conditions (GT&C) of its tariff. Algonquin proposed 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, interruptible, or overrun basis, and would be charged in addition to any other charges they incur under their existing service contracts.

5. Algonquin asserted that it became necessary to propose these new charges because USGen, the successor to NEP's incremental rate contracts, declared bankruptcy and the Bankruptcy Court 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

⁷See *Algonquin Gas Transmission Co.*, 93 FERC ¶ 61,318 (2000) (X-37 conversion); *Algonquin Gas Transmission Co.*, 68 FERC ¶ 61,039 at 62,476-77 (1994) (X-38 conversion). See also, *Algonquin Gas Transmission Co.*, 68 FERC ¶ 61,365 at 62,476-77 (1994) ("If NEP converts [X-38] to Part 284 service, it will receive service like all customers under the terms and conditions applicable to that Part 284 service.")

⁸ *Algonquin Gas Transmission Co.*, 68 FERC ¶ 61,039 at 61,130 n. 17.

⁹See *Twenty-Third Revised Sheet No. 21 and Fifth Revised Sheet No. 36A to Algonquin's FERC Gas Tariff, Fourth Revised Volume No. 1.*

service under the contracts.¹⁰ Algonquin indicated that its proposal was made without prejudice to its pursuing any other claims that it may have against USGen in the bankruptcy proceeding.

6. Algonquin asserted 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. More specifically, it asserted 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 contended 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 asserted that absent approval of its proposal, the outstanding costs for these incremental facilities will be shifted to Algonquin's remaining solvent customers.

7. To recover the cost of what it asserted is the uncompensated service from other shippers, Algonquin proposed multi-part "meter access charges" consisting of both its existing incremental two-part reservation charges per Dth of Maximum Daily Delivery Obligation and usage charges, in addition to any other amounts otherwise payable to Algonquin. Algonquin also proposed a revenue crediting mechanism that provides that Algonquin shall credit the amount by which the meter access charges exceed the total costs of service underlying the former USGen contracts in a 12 month period. Algonquin explained that the credits would be apportioned among all customers that paid such meter access charges on the basis of the amounts paid.

8. In the November 7, 2003 Order, the Commission found that while Algonquin may revise its rates for the incremental services it provides under Section 4 of the NGA, the use of the so-called "meter access charges" were not supported. The Commission found that this is because 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 Commission explained that 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.

¹⁰On 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).

9. Moreover, the Commission observed that, 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, the Commission found that Algonquin's proposal resulted in existing shippers (under Rate Schedules AFT-1 and other rate schedules) that use the Manchester Street and Brayton Point delivery points paying for the costs of the incremental laterals as opposed to those shippers who have subscribed to the incremental service.

10. The November 7, 2003 Order, therefore, accepted the filing subject to Algonquin refiling to reflect the removal of its meter access charge tariff proposal from the accepted tariff sheets and to modify its proposed credit provision. The Commission also found, however, that because the one-part volumetric charges Algonquin calculated were based on the most recently-approved incremental costs of the AFT-1(X-38) and AFT-CL(X-37) services, and to help in marketing the capacity, those rates can be used to replace its existing two-part rates, provided that they are refiled to reflect updated test period costs.¹¹ The Commission also stated that, alternatively, Algonquin could file for a two-part firm rate, with an interruptible 100 percent load factor rate.¹² The Commission stated that such changes would be effective October 10, 2003. In addition, the Commission stated that, consistent with Commission policy, Algonquin could 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. The Commission stated that 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.¹³ The Commission stated that, in any such filing to change access to those points, Algonquin should propose interruptible rates and services and pro forma interruptible service agreements to provide service to those points.¹⁴

¹¹ The Commission intended to permit, but not require, Algonquin to file to change to one-part rates for AFT-1(X-38) and AFT-CL(X-37) services. See November 7, 2003 Order at PP 18 and 19. To the extent that the November 7, 2003 Order at P 20 inadvertently indicated that such a filing was mandatory, that ruling was not intended.

¹² November 7, 2003 Order at P 18.

¹³ Citing Texas Eastern Transmission, LP., 99 FERC ¶ 61,308 at 62,300-01 (2002) (Texas Eastern).

¹⁴ November 7, 2003 Order at P 20.

11. Additionally, the Commission found that, in light of the unique circumstances of this case, it is not necessary for Algonquin to file a general rate case in order to modify its incremental rates. However, the Commission explained that if Algonquin files to modify its incremental rates, it must file revised rates and supporting schedules and other documentation required by the Commission's regulations (18 C.F.R. § 154.303 (2003)), to reflect an updated incremental cost of service and billing determinants.¹⁵ The Commission established hearing procedures to provide interested parties with 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.

II. Requests for Rehearing

12. On December 8, 2003, Algonquin, USGen, and Northeast Energy Associates (NEA) filed requests for rehearing and clarification of the November 7, 2003 Order. On December 22, 2003, USGen filed an answer in response to Algonquin's request for rehearing, and on December 24, 2003, Algonquin filed an answer in response to the requests for rehearing filed by USGen and NEA.

13. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2003), prohibits answers to protests and other answers. We are not persuaded to waive this prohibition, and the answers of Algonquin and USGen are rejected.

Secondary Point Rights

14. In the November 7, 2003 Order, the Commission stated that, 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.¹⁶ The Commission stated that pipelines are not required to accord other shippers secondary rights on incrementally

¹⁵ The Commission stated that, due 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. November 7, 2003 Order at n. 15.

¹⁶ November 7, 2003 Order at P 18.

priced laterals if they do not pay for the incremental cost of the laterals on which those points are located.¹⁷ In its request for clarification or, in the alternative, rehearing, Algonquin requests that the Commission clarify that its ruling on secondary point rights applies also to incremental shippers utilizing what Algonquin refers as the "Manchester Street facilities" under Rate Schedule AFT-1(X-38) and that these shippers will only have secondary point rights "on the Manchester Street facilities." Algonquin asserts that restricting shippers that pay incremental rates for service "on the Manchester Street facilities" under Rate Schedule AFT-1(X-38) to secondary points located "on the path of the incremental facilities for which they pay" is not only equitable, but also consistent with Commission policy and Algonquin's historic treatment of those shippers "on incremental lateral line facilities," citing its AFT-CL rate schedule as support.¹⁸ In order to clarify its request, Algonquin included pro forma revision sections 6.2 (Secondary Points of Receipt) and 6.4 (Secondary Points of Delivery) of its Rate Schedule AFT-1 specifying that the only secondary points available to customers with contracts for firm service under Rate Schedule AFT-1(X-38) are those receipt and delivery points located "on" what the pro forma tariff sheets refer to as the "X-38 facilities."¹⁹ Although its reference to "X-38 facilities" is ambiguous, given that the X-38 project facilities include both mainline and lateral line facilities, we believe it is Algonquin's intent to refer only to the Manchester Street Lateral.

15. The Commission will grant clarification only in part. As we discuss in more detail below, the AFT-1(X-38) service is primarily a mainline service not limited to the Manchester Street Lateral and, as such, Algonquin's proposed pro forma tariff revisions regarding its AFT-1(X-38) service can only be accepted if and in the event that Algonquin also files to prospectively restructure its AFT-1(X-38) services and rates to set out a separate Manchester Street Lateral only service in Rate Schedule AFT-CL. In the absence of a change to such a separate lateral line service, under its current tariff, AFT-1(X-38) shippers have secondary point access to all other parts of its system, including the mainline facilities and the G-System Lateral and subsystem, that lie upstream and

¹⁷ Id.

¹⁸ Algonquin request for clarification or rehearing at 10.

¹⁹ Algonquin's proposed pro forma tariff changes to Section 6.4 of Rate Schedule AFT-1 states: "The only Secondary Points of Delivery available for use by Customer as Secondary Points of Delivery pursuant to a contract for firm transportation service on the X-38 pipeline facilities shall be interconnections between the facilities of Algonquin and the facilities of other operators located on the X-38 facilities." It proposes a similar change to Section 6.2 regarding receipt point access. See Pro Forma Sheet Nos. 108 and 109.

downstream of the Manchester Street Lateral. For the same reasons, in the Compliance Filing section of this order, we will be rejecting Algonquin's proposed tariff revisions that would bar secondary point access of other mainline shippers under Part 284 services to the Manchester Street delivery point or to AFT-1(X-38) capacity without prejudice to filing acceptable provisions that reflect a separate Manchester Street lateral line service and rates.

16. As set forth in more detail in the background section of this order, the AFT-1(X-38) service is primarily a mainline service from the receipt point at Hanover, New Jersey, to the Manchester Street delivery point at postage stamp rates, like its other AFT-1 rates. Only the last few miles of transportation are actually "on" the short, Manchester Street Lateral. Further, the facilities paid for in incremental AFT-1(X-38) rates are not limited to what Algonquin refers to as the "Manchester Street facilities," namely, the Manchester Street Lateral, and, instead are comprised of both mainline and lateral line facilities. As noted earlier herein, the X-38 project facilities included a compressor on Algonquin's mainline at Chaplin, Connecticut, modifications to the Mendon interconnect, and some mainline looping.²⁰ Finally, and again as noted earlier herein, under the 1994 Stipulation and Agreement governing the conversion of X-38 service from Part 157 to Part 284 service, Algonquin was required to provide shippers that use the converted X-38 service with flexible receipt and delivery points on its entire system, *i.e.*, along the mainline from Hanover, New Jersey, and both upstream and downstream of the Manchester Street Lateral system pursuant to Rate Schedule AFT-1, like all other AFT-1 shippers.²¹ This system-wide secondary point access is expressly reflected in its existing AFT-1 rate schedule.²² Since Algonquin's AFT-1 rates are all postage stamp rates with no rate zones on its system, this practice is consistent with Order Nos. 636 and 637.²³ Hence,

²⁰ Algonquin Gas Transmission Co., 76 FERC ¶ 61,143 at 61,791 n. 1 (1996).

²¹ Algonquin Gas Transmission Co., 68 FERC ¶ 61,039 at 61,130 n. 17 (1994). See also, 68 FERC ¶ 61,365 at 62,476-77 (1994) ("shippers that convert from Part 157 service to Part 284 service will receive service like all customers under the terms and conditions applicable to that Part 284 service.")

²² See First Revised Sheet Nos. 108 and 109 to Algonquin's FERC Gas Tariff, First Revised Volume No. 1.

²³ See, e.g., Order No. 636-A, FERC Statutes and Regulations, Regulations Preambles (January 1991 – June 1996) ¶ 30,950 at 30,585 ("a shipper gets flexibility in its receipt and delivery points for the part of the system for which it pays a reservation charge").

Algonquin's rate and service structure is different than the purely lateral-only services at issue in the Texas Eastern case, supra, or which are specifically covered by its Rate Schedule AFT-CL.

17. For the same reasons, we clarify that the statement in the November 7, 2003 Order, that Algonquin may file to limit access of other system shippers to the Manchester Street delivery point requires, as an adjunct, a filing to restructure its AFT-1(X-38) services to provide for a separate Rate Schedule AFT-CL lateral line only for service on the Manchester Street Lateral apart from upstream service to that facility. In the meantime, it must continue to permit secondary point access to other shippers to points on the Manchester Street Lateral and to permit an AFT-1(X-38) shipper secondary point access on all other parts of its system. Our action here is without prejudice to Algonquin making a filing proposing to prospectively change its AFT-1(X-38) rate and service structure as discussed above, subject to further comment by the parties and review of the Commission.²⁴ As discussed below, Algonquin may also consider filing similar revisions to its AIT-1 and AIT-2 rate schedules. However, we take no position here on the merits of any such proposals. Any such proposed revised rates and service restructuring will be an issue for the hearing already established in this case. Accordingly, the November 7, 2003 Order is clarified to the limited extent as set forth above, and to the extent not clarified as proposed by Algonquin, rehearing on this issue is denied.

Crediting Mechanism

18. Algonquin requests the Commission clarify that its crediting mechanism is not intended to result in over-crediting to its shippers, as any credit should be reduced to reflect any reduction in bankruptcy damages that result from the recovery of its costs through jurisdictional rates. Similarly, Algonquin states that the credit should be based on the amount of actual damages that it may receive, rather than any damages allowed by the bankruptcy court, but which may not be ultimately recovered. Algonquin believes that it should not be required to credit its customers until after the point at which the sum of the damages received by Algonquin and the payments for services pursuant to the revised rates for the Manchester Street and Brayton Point facilities cover Algonquin's outstanding cost of service for these facilities.²⁵

²⁴ In any such filing, Algonquin should remove the confusing and ambiguous references to "X-38 pipeline facilities" or capacity or to the certificate Docket and replace them with references only to the Manchester Street Lateral. Algonquin should also include a description of the lateral.

²⁵ Algonquin's request for clarification and rehearing at 6-7.

19. The Commission recognizes that there may be a difference between the amount of damages that may be awarded by the Bankruptcy Court and the amount of damages actually recovered by Algonquin later on through the bankruptcy proceeding. The Commission's intent is that Algonquin be required to credit amounts actually received through that process and, therefore, clarifies that the filing requirement arises if and at such time that Algonquin actually receives damages. Accordingly, we grant the request for clarification to that limited extent. Our decision is without prejudice to the parties raising this issue if and at such time that the Bankruptcy Court actually awards any contract rejection damages.

Limited Section 4 filing

20. In its request for rehearing, NEA argues that the Commission erred in finding that Algonquin can modify the incremental rates for service under Rate Schedules AFT-CL(X-37) and AFT-1(X-38) without filing a general NGA Section 4 rate case. USGen similarly contends that the Commission should not have excused Algonquin from filing a general Section 4 rate case to establish new rates. Contrary to the Commission's finding, USGen contends that there is nothing unique about a pipeline proposing new rates to recover the cost of turned-back capacity and the Commission should examine the cost responsibility of the facilities at issue in a general rate case.²⁶ Similarly, NEA states that the use of a limited Section 4 filing to set incremental rates is only permissible in situations where "(i) the filing addresses an identifiable, isolated costs, (ii) the filing implements new rates or services between general NGA Section 4 rate cases, and (iii) substantiation of the cost increase is straight-forward and the costs lend themselves to tracking."²⁷ NEA contends that none of these factors are present in Algonquin's situation and that Commission precedent dictates that Algonquin must file a general Section 4 rate case to restate its incremental rates.

21. NEA states that if Algonquin is permitted to make a limited Section 4 filing and its system-wide rates are not reviewed, unjust and unreasonable cost shifts will occur to the detriment of non-incremental shippers that do not receive AFT-CL(X-37) and AFT-1(X-38) service. Additionally, NEA argues that if Algonquin were to make any excess AFT-1(X-38) mainline capacity generally available to shippers, it would be doing so in competition with its firm shippers who are also offering their excess capacity for sale in the secondary market. As a result, NEA states that Algonquin's sale of excess mainline capacity will drive down the price of capacity in the secondary market, thereby increasing its revenue at the expense of "non-AFT-1(X-38)" shippers.

²⁶ USGen's request for rehearing at 11-14.

²⁷ NEA's request for rehearing at 7.

22. NEA asserts that such a result is incompatible with the “at risk” condition that the Commission imposed with respect to the costs of the AFT-1(X-38) facilities since a portion of Algonquin’s revenue stream could be recovered at the expense of non-incremental shippers. NEA contends that the only way to ensure that customers other than customers using AFT-CL(X-37) and AFT-1(X-38) service are shielded from risks associated with redesigning rates for the incremental services is to redesign the rates in a general Section 4 rate case where these issues can be taken into account.²⁸

23. The Commission retains the discretion to direct the conduct of its proceedings. It is within that discretion for the Commission to conclude that it will use a limited Section 4 rather than a general Section 4 proceeding if the circumstances warrant.²⁹ The Commission finds that a general “system-wide” Section 4 rate case is not warranted in this case because the proposed rates are designed on an incremental basis with only a limited potential impact on system-wide allocated costs like overheads and O&M expense. Further, Algonquin's Chief Financial Officer has testified, under oath, that the claimed incremental costs of service are supported by the company's books of account, and we have no basis at this juncture to believe otherwise.³⁰ The issue of whether the costs are accurate can be addressed at the hearing which will not be encumbered by a review of all of Algonquin's other rates.

24. The Commission also finds no merit with NEA’s argument that a general Section 4 rate case should be established because cost shifts will occur, which it asserts will be incompatible with the at-risk condition of this service. This cost-shifting, it asserts, will occur because the pipeline’s sale of excess AFT-1(X-38) mainline capacity will drive down the price of capacity in the secondary market, thereby increasing its revenue at the expense of non-AFT-1(X-38) shippers. Algonquin is not proposing to add wholly new services to create new competition with capacity releases; it is simply remarketing

²⁸ In a related argument, NEA claims that Commission cannot authorize the one-part rate structure without also violating the “no subsidy” prong of the Certificate Policy Statement. NEA states that in the absence of reviewing rates in the context of a general Section 4 rate case, there will be subsidies of the incremental costs from Algonquin’s remaining firm non-incremental customers. NEA’s request for rehearing at 18.

²⁹ See Tennessee Gas Pipeline Co., 58 FERC ¶ 61,160 at 61,482 (1992), order on tariff filing, 58 FERC ¶ 61,343 (1992) (permitting pipeline to use a limited Section 4 filing to propose new rates for service on incremental facilities.)

³⁰ Testimony of Sobra Harrington, Docket No. RP04-24-000, Exh. No. ___ (SLH-1) at 2.

existing capacity now available due to the termination of the USGen contract. However, even assuming, arguendo, that a decline in revenue will occur, that is not the same as a cost shift. The cost of service on which Algonquin's other maximum rates are based will not change simply because of a change in secondary release revenues. Such revenues are not factored into setting maximum rates for its various other services. Neither are AFT-1 costs and volumes factored into setting maximum rates for Algonquin's other services.

25. Moreover, while the Commission does not disagree with NEA's assertion that, if Algonquin sells excess AFT-1(X-38) capacity, it would be doing so in competition with its firm shippers who are also offering their own excess capacity for sale in the secondary market, the Commission finds nothing wrong with such competition. The pipeline's sale of excess capacity is consistent with the Commission's goal of encouraging competition in the transportation capacity market. Indeed, at the point when USGen's contracts were terminated, Algonquin not only had the right, but also the obligation, to make its excess AFT-1(X-38) capacity generally available. In any event, once again, all that Algonquin is doing is to continue to provide AFT-1(X-38) services to anyone who contracts for them. It is not "increasing" competition to any greater extent than existed when it provided AFT-1(X-38) service to USGen. Existing shippers should not expect to now be shielded from competition from such other pipeline services simply because they are temporarily available due to the termination of the USGen AFT-1(X-38) contract. Accordingly, rehearing is denied on this issue.

Alleged Conflict with Bankruptcy Code

26. USGen alleges that the Commission unlawfully interfered with its statutory right to reject uneconomic contracts under Section 365(a) of the Bankruptcy Code, and its right to the protection of the automatic stay (Section 362 of the Bankruptcy Code), which forbids both direct and indirect attempts to recover damages from a debtor outside the bankruptcy process.³¹ USGen argues that Algonquin's filing to set new rates for service on the Manchester Street and Brayton Point facilities is nothing more than an attempt to collect pre-petition damages from USGen outside the bankruptcy process.

27. The Commission finds that USGen's argument is based upon the false premise that the Commission has authorized Algonquin to file to recover pre-petition contract damages, and that its filing reflects such damages. Under its tortuous logic, USGen equates the filing to recover the existing approved cost of service of the AFT-1(X-38) service with a filing to make up for past losses which, in turn, USGen equates to damages at issue in the Bankruptcy proceeding. That is simply not true.

³¹ USGen's request for rehearing at 5-9.

28. Algonquin was not authorized to file rates that recover anything that might be characterized as "damages," including the recovery of past losses of any sort. Algonquin has the right under Section 4 of the NGA to file to change any of its rates. Algonquin was directed, however, to file revised rates to reflect the recovery of the updated cost of service (e.g., capital, operating and maintenance, administrative, and incremental costs of the X-37 and X-38 facilities), which by definition does not include "damages," in rates to be effective only on a prospective basis. In compliance with this directive, Algonquin simply filed proposed rates that reflect its claimed updated cost of service for the subject services. Moreover, the November 7, 2003 Order specifically noted that "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 under jurisdictional rates."³² Accordingly, despite any confusion caused by any statements Algonquin may have made in characterizing as the purpose of its filing to "mitigate losses,"³³ this case simply concerns the issue of setting prospectively effective maximum lawful transportation rates in a jurisdictional tariff, including the design of such rates, to recover the future expected costs of the jurisdictional services, which are issues within this Commission's exclusive jurisdiction. Therefore, we can find no basis for USGen's claim that this Commission has interfered with, or violated, any provision of the Bankruptcy Code or orders of the Bankruptcy Court.

Mobile-Sierra Claim

29. In a related argument, USGen contends that the Commission erred in finding that Algonquin's filing is not barred by the Mobile-Sierra doctrine.³⁴ USGen asserts that, since Algonquin agreed to terminate its contracts and seek any incurred damages in USGen's bankruptcy proceeding, Algonquin cannot now propose rate changes that are inconsistent with this contractual commitment.³⁵ USGen also notes that the Commission has not made a public interest finding that would otherwise permit the abrogation of terms in the parties' agreement to terminate the contracts.

³² November 7, 2003 Order at P 21.

³³ See, e.g., Algonquin filing of October 9, 2003, Docket No. RP04-24-000 at 4.

³⁴ United Gas Pipeline Co. v. Mobile Gas Serv. Corp., 350 U.S. 332, 345 (1956) (Mobile), and FPC v. Sierra Pacific Power Co., 350 U.S. 348, 355 (1956) (Sierra). The "Mobile-Sierra" doctrine provides that the Commission may exercise its rate-making authority to authorize a unilateral rate increase only when it is in the public interest to do so.

³⁵ USGen's request for rehearing at 9-11.

30. Once again, USGen's argument falls on the incorrect premise that the instant filing proposes to recover damages at issue in the bankruptcy proceedings. Further, as explained above, the Commission does not find that the parties' agreement to terminate the contracts by decree of the Bankruptcy Court's Consent Order foreclosed Algonquin's ability to remarket the available capacity or to propose changes in the applicable maximum lawful rates in its tariff. Our review of the Consent Order finds no reference to any provision of the consent agreement therein approved that either implicitly or explicitly prohibits Algonquin from exercising its right under NGA section 4 to file new maximum rates for future services.³⁶ Therefore, the Commission rejects the contention that Algonquin's rate filing violates the Mobile-Sierra doctrine.

Unilateral Exit Fee

31. Finally, as another variant to its ongoing theme that Algonquin is actually proposing here to recover damages from past losses, USGen argues that the Commission erred in failing to address its argument that Algonquin's rate proposal is tantamount to an exit fee. In its protest, USGen asserted Algonquin waived the right to make such a filing when it agreed to terminate the contracts, subject only to its rights as an unsecured creditor in the bankruptcy proceeding. USGen asserted that since it is the only customer that would take service behind the Manchester Street and Brayton Point delivery meters, Algonquin's filing must be viewed as a unilateral exit fee since Algonquin designed its new rates to recoup the same revenues it would have collected under the rejected contracts. As such, USGen requested that the Commission dismiss Algonquin's filing on the basis that it violates the Commission's prohibition on unilateral exit fees.

32. The Commission finds that Algonquin's proposal cannot be interpreted as an exit fee. We have already rejected its premise that the filing seeks to recover damages from past losses. Moreover, the rate filing itself does not reflect any charge that has the characteristics of an exit fee. An exit fee is a sum assessed a shipper who prematurely terminates a contract and the pipeline is paid by that former customer despite the fact that the customer no longer receives service from the pipeline. USGen owes nothing extra to Algonquin as a result of this filing and the filing simply establishes new maximum rates applicable to anyone who obtains service under the two subject rate schedules. USGen can only be assessed a charge if it resumes AFT-1(X-38) and/or AFT-CL(X-37) service. That cannot be considered an exit fee because it is the charge for service that USGen would be receiving. The fact that Algonquin's proposed maximum rates were designed to

³⁶ Notwithstanding, if USGen believes that the Consent Order does bar Algonquin from making this filing, such a claim should be raised with the Bankruptcy Court.

recoup the same revenues it would have collected under the rejected contracts, only reflects the fact that the filed maximum rates were designed to recover the pipeline's previously-approved cost of service which, again, by definition would not include recovery of damages. In any event, the November 7, 2003 Order directed Algonquin to reflect an updated cost of service which, once again, cannot include any damages for past losses, and which does not reflect the recovery of "the same revenues" as under its original proposal.³⁷ Accordingly, the Commission denies rehearing on this issue.

III. Compliance Filing

33. On November 26, 2003, Algonquin submitted revised tariff sheets to comply with the directives and findings of the Commission's November 7, 2003 Order. Algonquin proposes that the revised tariff sheets become effective October 10, 2003 consistent with the November 7, 2003 Order.³⁸

34. The November 7, 2003 Order accepted and suspended Algonquin's proposed rates for service to the Manchester Street and Brayton Point delivery point meters, subject to refund and conditions, and set the rate issues raised by the filing for hearing. The only mandatory compliance filing obligations were to delete reference to its rejected meter access charges and to modify its proposed credit provision. However, the Commission stated that Algonquin may file to revise its existing two-part incremental maximum rates and provide for a one-part volumetric maximum rate for firm AFT-1(X-38) and AFT-CL(X-37) services, provided that it calculates the revised maximum rates to reflect updated costs and data as required by the Commission regulations at Section 154.303. The November 7, 2003 Order set for hearing the issues of the revised cost data, design determinants, load factor, as well as the rate design for the firm AFT-1(X-38) and AFT-CL(X-37) services and any proposed interruptible rates and services. Further, the November 7, 2003 Order stated that Algonquin can propose to change its tariff to provide 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.³⁹

35. In its compliance filing, Algonquin proposes to replace the existing two-part AFT-1(X-38) rate for service to the Manchester Street point with what it asserts is a one-part,

³⁷ November 7, 2003 Order at P 23.

³⁸ See Appendix A and B for a listing of those tariff sheets. The tariff sheets listed in Appendix C are withdrawn, as proposed by Algonquin.

³⁹ November 7, 2003 Order at P 18.

100 percent load-factor designed volumetric rate for firm service of \$0.6138 per Dth, and to change the reference on its rate sheets from “(X-38)” to “(Manchester)”. Similarly, Algonquin states that it is proposing to replace the existing two part AFT-CL(X-37) rate for firm service to the Brayton Point meter with a one-part volumetric rate of \$1.0105 per Dth. It states that the proposed rates are based on an overall cost of service of approximately \$9.6 million for Rate Schedule AFT-1(X-38) to the Manchester Street meter and \$2.2 million for Rate Schedule AFT-CL(X-37) to the Brayton Point meter, based on the twelve months ended September 30, 2003. The proposed costs of service are based on a rate of return on common equity of 16%, cost of debt of 5.71% cost of debt, an overall return of 11.21%, and a capital structure of 46.49% debt and 51.51% equity.

36. The claimed \$9.6 million cost of service for AFT-1(X-38) transportation to the Manchester Street meter is composed of: \$2.7 million in operation and maintenance (O&M) costs; \$0.95 million in depreciation expenses reflecting a depreciation rate of 1.81%; \$0.4 million for taxes other than income; \$0.26 million in states and local taxes; \$1.5 million in federal income taxes; and \$3.7 million for overall return. The AFT-1(X-38) rates are designed on annual throughput of 15,678,484 Dth, which is 45 percent of the capacity of the pipeline.⁴⁰

37. The claimed \$2.2 million cost of service for AFT-CL(X-37) transportation to the Brayton Point meter on the Brayton Point Lateral is composed of: \$0.69 million in O&M costs; \$0.56 million in depreciation expenses reflecting a depreciation rate of 4.00%; \$0.2 million for taxes other than income; \$0.03 million in states and local taxes; \$0.2 million in federal income taxes; and \$0.5 million for overall return. The AFT-1(X-37) rates are designed on an annual throughput of 2,190,000 Dth, which is 5 percent of the capacity of the pipeline.⁴¹

38. Algonquin also proposes at Section 3 (i) of Rate Schedule AFT-1 and Section 3 (i) of Rate Schedule AFT-CL,⁴² a billing provision by which a customer electing to take firm service under Rate Schedules AFT-1(X-38) or AFT-CL(X-37) must pay for at least 80 percent of its contractual maximum daily transportation quantity (MDTQ) on an annual basis. Under the proposal, if a customer takes less than 80 percent of its MDTQ on an

⁴⁰ Testimony of Gregg E. McBride, Docket No. RP04-24-000, Exh. No. ___ (GEM-1) at 12.

⁴¹ Id.

⁴² See proposed tariff sheets Sub Revised Sheet No. 104 and First Revised Sheet No. 144.

annual basis, that customer will be charged as though it had taken 80 percent of its MDTQ. Algonquin contends that this billing provision is designed to accommodate any variations in load that customers, including electric generation plants, may experience during the year but also ensures that the AFT-1(X-38) and AFT-CL(X-37) capacity is used for its intended purposes and is consistent with Commission precedent.⁴³ Algonquin contends that the billing provision is intended to discourage gaming of the system, the use of the AFT-1 (X-38) and AFT-CL(X-37) capacity as a swing service for which Algonquin would not be compensated, and the hoarding of this pipeline capacity to the detriment of Algonquin and other parties that otherwise might occur in connection with a one-part volumetric rate.

39. Algonquin proposes to revise its tariff's secondary receipt and delivery point provisions as reflected, for example, in the following underscored language in proposed revised section 6.4 (Secondary Points of Delivery)⁴⁴ to its AFT-1 rate schedule:

"[A]ll interconnections between the facilities of Algonquin and the facilities of other operators shall be available for use by Customer as Secondary Points of Delivery with the exception of interconnections with the facilities of other operators accessible only through the utilization of pipeline capacity certificated to provide firm service under former Rate Schedules X-37 and X-38 pursuant to Commission authorization in Docket No. CP89-661. Interconnections accessible only through such X-38 pipeline capacity are available on a secondary basis only to those Customers with executed contracts for firm service on such X-38 pipeline capacity and pay therefore the Manchester firm rates as reflected on Tariff Sheet No. 21."

40. In addition, Algonquin proposes that for certain rate schedules, e.g., Rate Schedule AFT-E, beginning December 10, 2003, service which requires "the utilization of pipeline capacity certificated to provide firm service under former Rate Schedules X-37 and X-38 pursuant to Commission authorizations in Docket No. CP89-661 is not available" under such rate schedule.⁴⁵ Algonquin also proposes a new Rate Schedule AIT-2 to provide interruptible transportation service for customers "utilizing capacity which, absent the construction of the facilities constructed to provide firm service under former Rate Schedules X-37 and X-38 pursuant to Commission authorization in Docket No. CP89-

⁴³ See Northern Natural Gas Co., 93 FERC ¶ 61,139 (2000) and High Island Offshore System, 86 FERC ¶ 61,321 (1999).

⁴⁴ See proposed First Revised Sheet No. 109.

⁴⁵ See proposed Second Revised Sheet No. 116.

661, would not otherwise be available for service ("X-37/X-38 facility")."⁴⁶ It states that the proposed interruptible rates are one-part volumetric rates designed as the 100 percent load factor equivalent of the corresponding firm service two-part rates: \$0.6138 per Dth derived from the AFT-1(X-38) rates and \$1.0105 per Dth derived from the AFT-CL(X-37) rates. Algonquin asserts that revenues from service under Rate Schedule AIT-2 are not included as eligible revenues for crediting purposes pursuant to the interruptible transportation crediting mechanism set forth in General Terms and Conditions (GT&C) section 41 because the costs associated with Rate Schedule AIT-2 are not included in the underlying cost of service for the section 41 crediting mechanism.

41. Algonquin proposes a transition period during which shippers that transported gas on either a firm or interruptible basis on the Manchester Street or Brayton Point facilities between October 10, 2003 and December 9, 2003 will pay the proposed applicable AIT-2 rate. Algonquin contends that this transition period will allow Algonquin an opportunity to contact all customers who have used these points since October 10, 2003, and to tender contracts for service under the new rates and/or rate schedule.

42. Finally, Algonquin proposes to revise its originally-proposed crediting mechanism in section 49.2 of its GT&C, setting forth the procedure by which it will credit distributions recovered through the USGen bankruptcy proceeding after the final distribution from USGen bankruptcy proceeding. Algonquin proposes that, 90 days after the final distribution from USGen on the contract damages rejection claim, Algonquin will file the proposed plan with the Commission showing the appropriate portion of the distributions to be credited. The revised tariff language indicates that Algonquin will determine which distributions it deems to be appropriate to credit and the manner in which it will credit such amounts

IV. Public Notice and Interventions

43. Interventions and protests were due as provided in Section 154.210 of the Commission's regulations. Pursuant to Rule 214 (18 C.F.R. ' 385.214), any timely filed motion to intervene is granted unless an answer in opposition is filed within 15 days of the date such motion is filed. Timely filed motions are also granted in accordance with the conditions of Rule 214. Any motions to intervene out-of-time filed as of the date of this order are granted pursuant to 18 C.F.R. ' 214(d), since the Commission finds that granting intervention at this stage of the proceeding will not disrupt this proceeding or place additional burdens on existing parties.

44. Consolidated Edison Company of New York, Inc. and Orange and Rockland Utilities, Inc. (ConEdison/O&R) and New England Local Distribution Companies (New

⁴⁶ See proposed Original Sheet No. 274.

England LDCs) filed comments. Algonquin Municipals, NEA, and USGen (collectively, Protesters) filed protests. Additionally, Algonquin filed an answer to USGen's protest.⁴⁷ The protests, comments, and Algonquin's answer are addressed below.

V. Issues Raised by the Compliance Filing and Discussion

Mainline Access/Secondary Point Rights

45. In its protest to the compliance filing, Algonquin Municipals request that the Commission direct Algonquin to eliminate all proposed tariff revisions that deny general system shippers continued access to existing mainline capacity that was certificated to provide service under Rate Schedule AFT-1(X-38). Algonquin Municipals argue that the Commission must reject the proposed tariff revisions because they are outside the scope of the compliance filing.⁴⁸ Algonquin Municipals contend that Algonquin is proposing to eliminate access by its general system customers to significant capacity on Algonquin's mainline system in violation of the November 7, 2003 Order. Algonquin Municipals also argue that such a proposal to limit access to mainline capacity violates the Commission's open access mandate of Order No. 636, and should be rejected.

46. Similarly, ConEdison/O&R request that the Commission prohibit Algonquin from creating artificial shortages of mainline capacity by withholding AFT-1(X-38) capacity from the market. Further, ConEdison/O&R contend that Algonquin should be required to make this mainline AFT-1(X-38) capacity available under either Rate Schedule AIT-1 or a new Rate Schedule AIT-3 which is based only on the incremental cost of the AFT-1(X-38) mainline facilities. ConEdison/O&R contend that this issue should be summarily addressed or included in the previously established hearing.

47. NEA objects to Algonquin's proposed scheduling of capacity, arguing that segregation of capacity for scheduling purposes is impossible as a practical matter and does not reflect the true nature of the facilities. NEA contends that the proposed unique scheduling mechanism should be rejected. NEA further contends that Algonquin's proposal to deny shippers access to flexible receipt and delivery points outside their contract paths under Rate Schedule AFT-1(X-38) and AFT-CL(X-37) represents a

⁴⁷ While the Commission's Rules of Practice and Procedure generally prohibit answers to protests, the Commission will accept Algonquin's answer to allow a better understanding of the issues. See 18 C.F.R. § 385.213(a)(2) (2003).

⁴⁸ Algonquin Municipals cite Section 154.203(b) of the Commission's regulations which states that "[f]ilings made to comply with Commission order must include only those changes required to comply with that order."

collateral attack on the policies contained in Order No. 637 and an attempt by Algonquin to limit shippers' access to the flexibilities afforded under the Commission's Order No. 637 policy. NEA argues that since shippers under Rate Schedules AFT-1(X-38) and AFT-CL(X-37) are being asked to pay a premium rate for their service and should be permitted the full benefits afforded any other Part 284 shipper on Algonquin's system; Algonquin's proposal must be rejected.

48. USGen contends that Algonquin's development of its Manchester Street Service and the rates under Rate Schedule AIT-2 are inconsistent with the Commission's November 7, 2003 Order, regulations, and policies. USGen argues that Algonquin's AIT-2(X-38) service must be revised to provide secondary points over Algonquin's mainline system. USGen argues that it is necessary for the AIT-2(X-38) service to comply with the Commission's November 7, 2003 Order and the Commission's open access policy. Second, USGen argues that the Commission should reject Algonquin's proposal to double recover for Manchester Station service because Algonquin refuses to provide secondary rights for the AIT-2(X-38) service during the transition period.

49. New England LDCs state that they strongly support the position taken by Algonquin, and urges that customers under Rate Schedules AFT-1(X-38), AFT-CL(X-37), and AIT-2 should be entitled to use only secondary points that are located "within their respective contract paths on the "X-38 and X-37 facilities."⁴⁹ However, New England LDCs argue that it appears that Algonquin is seeking to change the method it currently uses to determine available operational capacity on its mainline for purposes of scheduling its other transportation services.⁵⁰ New England LDCs contend that the compliance filing does not provide a detailed explanation of how Algonquin will determine the available operational capacity for purposes of scheduling services other

⁴⁹ Comments of New England LDCs at 1-2.

⁵⁰ New England cites proposed First Revised Sheet No. 108, in which Algonquin proposes to add language referring to the "pipeline capacity" associated with former Rate Schedules X-37 and X-38 as follows:

"...with the exception of interconnections with the facilities of other operators accessible only through the utilization of pipeline capacity certificated to provide firm service under former Rate Schedules X-37 and X-38 pursuant to Commission authorizations in Docket No. CP89-661. Interconnections accessible only through such X-38 pipeline capacity are available on a secondary basis only to those Customers with executed contracts for firm service on such X-38 pipeline capacity and pay therefore[e] the Manchester firm rates as reflected on Tariff Sheet No. 21."

than Rate Schedules AFT-1(X-38) and AFT-CL(X-37). New England LDCs contend that Algonquin's proposal to change the method by which it determines the available operational capacity for purposes of scheduling services other than Rate Schedules AFT-1(X-38) and AFT-CL(X-37) is beyond the scope of the limited Section 4 proceeding authorized by the November 7, 2003 Order.

50. Algonquin filed an answer in response to USGen's protest. Algonquin contends that it does offer Shippers secondary point rights on the incremental facilities for which they are paying transportation service. Algonquin argues that it provides specified points along the Manchester Street facilities that are available on a secondary basis to customers contracting for service pursuant to either Rate Schedule AFT-1(X-38) or AIT-2, but consistent with Commission precedent, it is not offering shippers under Rate Schedule AFT-1(X-38) with secondary point access to mainline facilities outside the AFT-1(X-38) and AIT-2 contract path.⁵¹ Further, Algonquin claims that restricting access of shippers under open access rate schedules such as Rate Schedule AIT-1 with respect to secondary point rights on the Manchester Street facilities is consistent with the November 7, 2003 Order, which explicitly held that pipelines are not required to accord other shippers on incrementally priced laterals if they do not pay for the costs of the facilities on which the points are located.

51. The Commission agrees generally with the protests that Algonquin's proposed tariff revisions should be rejected or modified. Consistent with our discussion of these issues in the rehearing section of this order, including our clarification, the only appropriate restrictions Algonquin may place on secondary point access rights is with respect to the Rate Schedule AFT-CL lateral line services, including AFT-CL(X-37) service on the Brayton Point Lateral. In the absence of a filing to restructure its AFT-1(X-38) service to provide for a Manchester Street Lateral line only service under Rate Schedule AFT-CL, with separate upstream AFT-1(X-38) service and rates, no restrictions on secondary access by other Part 284 shippers to the Manchester Street delivery point are permissible. Similarly, nor are restrictions on access to that point under Rate Schedule AIT-1 permissible in the absence of such a rate and service restructuring.

52. Accordingly, we reject Algonquin's proposed tariff revisions reflecting limitations on access to the Manchester Street Lateral (including its various references to such terms as X-38 "facilities" or "interconnections") or to the capacity underlying the

⁵¹See, e.g., Algonquin Gas Transmission Co., 83 FERC ¶ 61,200 at 61,894 (1998) and 92 FERC ¶ 61,071 at 61,276 (2000) and Transcontinental Gas Transmission Corp., 79 FERC ¶ 61,286 at 62,250-51 (1997) and 87 FERC ¶ 61,113 at 61,464 (1999).

AFT-1(X-38) services.⁵² The proposed tariff sheets reflecting the subject access restrictions are accepted, to be effective the date of this order, subject to being refiled to reflect the removal of all such rejected provisions. Consistent with the above discussion in the rehearing section of this order, however, this action is without prejudice to Algonquin filing to prospectively restructure its AFT-1(X-38) and AFT-1 services and rates to reflect separate Manchester Street Lateral only services in Rate Schedule AFT-CL and AIT-2 and mainline (including other upstream laterals) AFT-1 service from Hanover to the inlet to the Manchester Street Lateral. As stated earlier, any such filing should remove all the confusing and ambiguous references to X-38 facilities or capacity certificated to provide X-38 service and refer, instead, to the Manchester Street Lateral, with a description of such lateral.

53. Finally, we reject all of Algonquin's proposed tariff "Transition" provisions which attempt to retroactively apply its AIT-2 rate and service changes, or otherwise retroactively modify service rights under its other existing rate schedules. To the extent not rejected or found inappropriate above, the underlying voluntarily-filed tariff proposals in its Compliance Filing modifying existing service obligations and creating new services can only be implemented on a prospective basis upon approval by the Commission.

Minimum Bill

54. NEA objects to Algonquin's proposed 80 percent take-or-pay restrictions, contending that they violate Commission policy and must be rejected.⁵³ USGen also objects to Algonquin's proposed minimum bill, contending that it is designed to guarantee revenue and is prohibited under Part 284.7(e) of the Commission's regulations. USGen contends that the Commission's regulations at Part 284.10 further bar the use of minimum bills with respect to volumetric rates. Further, USGen argues that the cases

⁵² These rejected provisions include Algonquin's proposed changes regarding such "X-38" facilities and/or capacity to Algonquin's Rate Schedules AFT-1, AFT-E, AFT-IS, AFT-ES, AIT-1, and to its proposed new Rate Schedule AIT-2 and associated pro forma service agreement (discussed later herein). In addition, Algonquin's proposed change from "(X-38)" to "(Manchester)" on the list of conversion services on its proposed rate sheets is rejected.

⁵³ Citing 18 C.F.R. § 284.7 (2003).

cited by Algonquin, Northern Natural and High Island do not support granting waiver.⁵⁴ USGen points out that Northern Natural involved optional volumetric firm throughput service, which was designed to provide a “pay as you go” billing that employed various usage parameters specific to the customer’s intended use of Northern to meet its requirements while High Island also provided a flexible billing mechanism. USGen argues that Algonquin’s proposed minimum bill is not a flexible billing mechanism tailored to shipper requirements but is designed to guarantee revenue prohibited under the Commission’s regulations.

55. Algonquin responds that its billing provision requiring customers electing firm service under Rate Schedules AFT-1(X-38) and AFT-CL(X-37) to pay for at least 80 percent of its contractual MDTQ on an annual basis is appropriate. Algonquin contends that its billing provision is similar to Northern Natural, ensuring that the AFT-1(X-38) and AFT-CL(X-37) capacity is used for its intended purposes. Algonquin argues that like Northern Natural, its billing provision is designed to prevent gaming on its system that would harm Algonquin and other parties, and to promote accurate scheduling of capacity on its facilities. Algonquin contends that the usage parameters in the billing provision discourage gaming of the system, the use of the AFT-1(X-38) and AFT-CL(X-37) services as swing services for which Algonquin would not be compensated, and the hoarding of this pipeline capacity to the detriment of Algonquin and other parties.

56. The Commission finds that Algonquin’s billing provision requiring a customer electing firm service under Rate Schedules AFT-1(X-38) and AFT-CL(X-37), to pay for at least 80 percent of its contractual MDTQ on an annual basis constitutes a minimum bill, which is prohibited by Part 284.7(e) of the Commission’s regulations. While Algonquin claims that its 80 percent billing provision is necessary to avoid gaming and to insure that the facilities are used for their intended purposes, its actual purpose is to guarantee revenue, which restrains competition resulting in higher gas prices. Further, the cases that Algonquin relies upon to support granting waiver of the minimum bill provision are not applicable.⁵⁵ In those cases, waiver of the minimum bill provision was granted to provide a flexible billing mechanism tailored to a shipper’s requirements. That is not the case in this proceeding since Algonquin proposed a minimum bill to guarantee revenue which is prohibited under the Commission’s regulations. We will therefore require Algonquin to remove the minimum provision at Rate Schedules AFT-1 and AFT-CL from its filing.

⁵⁴ See, e.g., Northern Natural Gas Co., 93 FERC ¶ 61,139 at 61,414-15 (2000) (Northern Natural) and High Island Offshore System Company, 93 FERC ¶ 61,321 (1999) (High Island).

⁵⁵ Id.

Crediting Mechanism

57. USGen requests that the Commission require Algonquin to revise its crediting provision at section 49.2 of the GT&C,⁵⁶ to make clear that Algonquin must file to credit the full contract damages attributable to future reservation charge obligations discharged by the Bankruptcy Court's order.

58. Algonquin argues in its answer that it has established at section 49.2 of its GT&C, the appropriate crediting mechanism to determine the effect of a ruling by the Bankruptcy Court, including any assumptions due to this proceeding, receipt of distributions from its damages claim, and the appropriate credit. Moreover, Algonquin claims that the crediting provision requires it to file the crediting plan for Commission approval and customers will have an opportunity at that time to comment on the specifics of the proposed crediting plan.

59. The Commission finds that Algonquin appears to have provided itself too much discretion in determining which distributions will be credited and the manner in which Algonquin will credit such amounts. The proposed tariff provision provides that Algonquin will deem which distributions are appropriately to be credited and the manner in which it will credit such amount. While the Commission agrees that it is appropriate for Algonquin to submit a filing within 90 days of the final distribution from USGen, Algonquin's filing must specifically provide all the details of the damages and indicate which of the damages are related to the subject transportation service for USGen to the Manchester Street and Brayton Point meters. In that filing, Algonquin may indicate damages it believes should be credited, but Algonquin is required to provide information on all the damages associated with the bankruptcy related to the subject transportation service for USGen so that the parties and the Commission can properly review the filing. As currently written the tariff permits Algonquin too much discretion to deem which costs from the bankruptcy are appropriate to credit and is beyond the scope of the November 7, 2003 Order. Accordingly, Algonquin is required to file a tariff sheet revising Section 49.2 in accordance with the above discussion.

⁵⁶ See proposed Section 49.2, Sub First Revised Sheet No. 724, of Algonquin's tariff:

“Within ninety (90) days after the receipt by Algonquin of the final distribution from USGen on Algonquin's contract rejection damages claim, Algonquin shall file a proposed plan with the Commission showing the distributions received by Algonquin and the portion, if any, of such distributions **which Algonquin deems to be appropriate to credit, and the manner in which Algonquin is to credit such amount.**” (emphasis added)

Proposed Interruptible Rate Schedule AIT-2

60. Algonquin proposes a new interruptible transportation service under Rate Schedule AIT-2 to provide service at points on what it describes as a "X-37/X-38 facility" on Algonquin's system.⁵⁷ The Rate Schedule AIT-2 service is available only on a lateral line "...at those points on an X-37/X-38 facility on Algonquin's system as specified in Customer's executed AIT Service Agreement..."⁵⁸ In conjunction with this new service, Algonquin proposes to limit access under Rate Schedule AIT-1 to such facilities. In its transmittal letter and in its Answer, Algonquin refers to the "X-38 facilities" as the Manchester Street facilities. Accordingly, although the filing is ambiguous, the AIT-2 service appears to only apply to the Manchester Street and Brayton Point Laterals. We find that the proposed service on the Brayton Point Lateral and the associated changes to Rate Schedule AIT-1 regarding that lateral line are just and reasonable as it is consistent with Commission policy regarding lateral line only services. However, consistent with our ruling above, in the absence of a filing to restructure its AIT-1(X-38) services to provide for a Manchester Street Lateral service under Rate Schedule AIT-CL, Algonquin must continue to provide AIT-1 service to all other points on its system, including the Manchester Street Lateral. Further, Algonquin's reference to an "X-37/X-38 facility" in its proposed tariff sheets is ambiguous. Therefore, the subject tariff sheets reflecting the proposed AIT-2 rate schedule and pro forma service agreement are accepted, effective as of the date of this order, subject to Algonquin filing revised sheets that reflect the removal of all references to "X-37/X-38 facilities" and to insert in its place reference only to the Brayton Point Lateral. Once again, this action is without prejudice to Algonquin filing to establish applicability of the AIT-2 Rate Schedule to interruptible service on the Manchester Street Lateral as part of a filing to restructure its AIT-1(X-38) services to set forth separate Manchester Street Lateral AIT-CL service and rates.

Cost of Service/Rate of Return

61. ConEdison/O&R raise several cost of service issues. ConEdison/O&R question why Algonquin's proposed capitalization and rate of return (11.21%) is not equal to the capitalization and rate of return approved in its prior rate case (10.37%) and Algonquin's hubline project.⁵⁹ Additionally, ConEdison/O&R question Algonquin's O&M costs,

⁵⁷ See proposed Original Sheet Nos. 274 – 277.

⁵⁸ See proposed section 2.1 of Rate Schedule AIT-2 at Original Sheet No. 274.

⁵⁹ See Algonquin Gas Transmission Co., 68 FERC ¶ 61,039 (1994) and 97 FERC ¶ 61,345 (2001).

arguing that if the Commission does reverse the “incremental costs” requirement, the Commission must ensure that Algonquin is not over-collecting its costs. ConEdison/O&R contend that the over-collection could occur if Algonquin’s other rates are premised on all or a portion of the O&M cost being attributed to Rate Schedule X-38 and X-37 service. ConEdison/O&R argue that at the very least, the double-collection should be reduced by requiring Algonquin to include Rate Schedule AIT-2 revenue in the GT&C Section 41 crediting mechanism.

62. NEA protested the compliance filing contending that Algonquin’s proposed rate of return on common equity of 16% is extremely high based on what the Commission has approved for other pipelines. NEA contends that this proposed rate of return, which is developed by adding a 75 basis point cost of equity “premium” over the proxy group’s estimated cost of equity, is unsupported. New England LDCs also point out that further analysis and discovery will be required to determine whether additional costs in Algonquin’s cost of service should have been allocated to Rate Schedules AFT-1(X-38) and AFT-CL(X-37).

63. The Commission finds that the parties have raised legitimate concerns regarding Algonquin’s cost of service calculations and the proposed rate of return which are more appropriately addressed in the ongoing hearing in this proceeding. During the hearing, the parties can explore the issues raised by the Protesters and rate case issues, including but not limited to, rate derivation, cost of service issues, rate design, rate of return, crediting mechanism, and throughput for firm and interruptible service.

Interruptible Transportation Rate Design

64. USGen contends in its protest that Algonquin must use a 100 percent load factor to develop its proposed interruptible rates instead of what it asserts is the proposed 45 percent load factor to develop the AIT-2(X-38) rate and the five percent load factor to develop the AIT-2(X-37) rate. USGen argues that absent developing the rates using a 100 percent load factor, Algonquin will be shifting the risk of under-collecting from itself to shippers taking interruptible service.

65. Algonquin contends in its answer that, consistent with the Commission’s November 7, 2003 Order and contrary to USGen’s claims, it is proposing to implement interruptible transportation rates for the AIT-2(X-38) and AIT-2(X-37) services that are equal to the 100 percent load factor derivative of the firm AFT-1(X-38) and AFT-2(X-37) rates, respectively.

66. The Commission directs that the justness and reasonableness of the proposed maximum rates, including costs, throughput level, and design of the rates, be set for hearing. The parties shall explore whether the firm rate should be determined on the design capacity of the facilities or the historical throughput levels as proposed by Algonquin. Since the Commission, as discussed above, is rejecting provisions of Rate Schedule AIT-2 related to service on the Manchester Street Lateral, the issue of whether Algonquin has correctly designed the AIT-2 rate for service on the Manchester Street Lateral based on a 100 percent load factor of the AFT-1(X-38) rates is moot.

Full Compliance with the Filing Regulations

67. New England LDCs contend that Algonquin should be required to fully comply with the Commission's regulations with regard to filing for changes in rates and tariffs. New England LDCs indicates that, for example, Algonquin did not file Statements G and I, nor did it file the workpapers related to the Statements included in its filing. USGen argues that Algonquin has failed to update its cost of service as required by the Commission's November 7, 2003 Order.

68. The Commission finds that contrary to New England LDCs and USGen's claims, Algonquin has complied with the Commission's regulations. The Statement G information pertains to revenue, credits and billing determinants which Algonquin provided in Schedule J which applies to billing determinates and derivation of rates, with Algonquin providing information on the historical deliveries of gas for the last five years to the Brayton Point and Manchester Street meters. Further, during the discovery process in the ongoing hearing proceeding the parties can solicit additional information to test the validity of the data, schedules, and testimony supporting Algonquin's filing, and accordingly, use that information to develop their testimony and position on Algonquin's filing.

Allocation of Costs

69. NEA argues that Algonquin has altered its allocation of system overhead expenses, *i.e.*, instead of basing the overhead allocation on a service's proportionate share of total system MDQ, as Algonquin has done in the past, Algonquin is now proposing to base the allocated transmission O&M, A&G, working capital and payroll taxes on gas plant in service. NEA contends that Algonquin should be directed to prepare cost studies demonstrating the actual incremental system costs due to performing the incremental services at issue in this case. NEA alleges that while Algonquin has allocated working capital to Rate Schedules AFT-1(X-38) and AFT-CL(X-37) it has not allocated intangible and general plant to the services performed under the rate schedules. NEA contends that this rate treatment is inappropriate that should either be rejected or examined during the hearing. NEA also questions the tax treatment for accumulated deferred income taxes and both the income tax allowance and property tax allowance for the Brayton Point

facilities under Rate Schedule AFT-CL(X-37). NEA argues that the proposed tax treatment is inappropriate and should either be rejected or examined during the hearing.

70. The Commission finds issues relating to allocation of costs (including system overhead expenses, working capital, intangible and general plant, etc.) are issues which are appropriately addressed in the ongoing hearing in this proceeding. Further, various tax treatment issues for accumulated deferred income taxes and income tax allowance and property tax allowance should also be examined in the ongoing hearing.

Fuel Reimbursement

71. ConEdison/O&R contend that since proposed Rate Schedule AIT-2 exempts "X-37" service from fuel reimbursement requirement,⁶⁰ the Commission should require Algonquin to collect lost and unaccounted for gas from Rate Schedule AFT-1(X-37) shippers.

72. The Commission finds that to ensure the proper matching of costs to the parties benefiting from a transportation service, shippers who receive interruptible service on the Brayton Point lateral under new Rate Schedule AIT-2 should be required to pay the fuel reimbursement quantity. Section 32.1 of the GT&C of Algonquin's existing tariff provides that all shippers on Algonquin's system are required to pay the Fuel Reimbursement Quantity except for "... Backhauls and/or Forwardhaul components of transportation on the [Algonquin's] Hubline Mainline facilities..."⁶¹ Since service on the Brayton Point lateral under Rate Schedule AFT-CL(X-37) is strictly lateral line service, and is similar to transportation service performed under its other lateral line rate schedules (AFT-CL) and does not involve transportation on Algonquin's Hubline Mainline facilities, any shipper transporting gas on the Brayton Point Lateral under Rate Schedule AIT-2 should be required to pay the Fuel Reimbursement Quantity. Therefore,

⁶⁰ See section 2.5 of proposed Original Sheet No. 274 which provides:

"Service hereunder utilizing former Rate Schedule X-37 facilities shall not require allowance for the Fuel Reimbursement Quantity, as defined in section 32 of the General Terms and Conditions of this tariff. Service hereunder utilizing former Rate Schedule X-38 facilities shall require

allowance for the Fuel Reimbursement Quantity, as defined in section 32 of the General Terms and Conditions of this tariff."

⁶¹ See Sixth Revised Sheet No. 686 to Algonquin's FERC Gas Tariff, Fourth Revised Volume No. 1.

Algonquin is required within 20 days of the date of this order to file to revise the AIT-2 Rate Schedule to provide that shippers receiving Rate Schedule AIT-2 service are required to pay for fuel reimbursement. The requirement should allay the concerns of ConEdison/O&R since Algonquin's Fuel Reimbursement Quantity includes an amount for lost and unaccounted for gas. However, the parties may examine the appropriateness of the Fuel Reimbursement Quantity and ConEdison/O&R's concerns whether lost and unaccounted for gas should be collected from Rate Schedule AIT-2 shippers, in the ongoing hearing proceeding.

Rate Schedule AIT-2 Revenue Crediting

73. ConEdison/O&R request that the Commission reject Algonquin's proposal to exclude Rate Schedule AIT-2 revenues from the interruptible revenue crediting mechanism in Section 41 of the GT&C of its tariff. If the Commission does not reject this proposal, ConEdison/O&R requests that this issue be set for hearing.

74. The Commission finds this is another rate issue which is more appropriately addressed in the ongoing hearing.

The Commission orders:

(A) The tariff sheets listed in Appendix A are accepted, to be effective October 10, 2003, subject to refund and conditions and the outcome of the ongoing hearing proceeding.

(B) The tariff sheets listed in Appendix B are accepted, to be effective the date of this order, subject to refund and conditions and the outcome of the ongoing hearing proceeding.

(C) 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.

Docket Nos. RP04-24-001 and RP04-24-002

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(D) Except to the limited extent granted, the requests for rehearing and/or clarification by Algonquin, USGen, and NEA are denied, as discussed in the body of this order.

(E) Issues raised by the subject filing are set for hearing in the ongoing hearing proceedings in this docket.

By the Commission.

(S E A L)

Linda Mitry,
Acting Secretary.

Docket Nos. RP04-24-001 and RP04-24-002

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Appendix A

Algonquin Gas Transmission Company
FERC Gas Tariff, Fourth Revised Volume No. 1

Tariff Sheets Accepted, Subject to Refund, Conditions, and the Outcome of the Hearing
Proceeding, Effective October 10, 2003

Twenty-Fourth Revised Sheet No. 21

Twenty-Fourth Revised Sheet No. 22

1st Rev Fifth Revised Sheet No. 36A

1st Rev Eleventh Revised Sheet No. 37

Sub First Revised Sheet No. 724

Appendix B**Algonquin Gas Transmission Company
FERC Gas Tariff, Fourth Revised Volume No. 1**

Tariff Sheets Accepted, Subject to Refund, Conditions, and the Outcome of the Hearing
Proceeding, Effective the Date of this Order

Seventh Revised Sheet No. 20
Original Sheet No. 42
Sheet Nos. 43 – 49
Fifth Revised Sheet No. 100
Sub Fourth Revised Sheet No. 104
First Rev First Revised Sheet No. 108
First Rev First Revised Sheet No. 109
Second Revised Sheet No. 116
1st Rev First Revised Sheet No. 126
First Revised Sheet No. 128
Third Revised Sheet No. 135
First Revised Original Sheet No. 142
1st Rev Second Revised Sheet No. 143
First Revised Original Sheet No. 144
First Revised Sheet No. 152
2nd Rev First Revised Sheet No. 161
1st Rev First Revised Sheet No. 162
First Revised Sheet No. 164
Second Revised Sheet No. 171
First Revised Sheet No. 176
First Revised Sheet No. 177
First Revised Sheet No. 244
Original Sheet No. 274
Original Sheet No. 275
Original Sheet No. 276
Original Sheet No. 277
Sheet Nos. 278 – 599
Sub 1st Rev Tenth Revised Sheet No. 600
Fourth Revised Sheet No. 615
Seventh Revised Sheet No. 679
Second Revised Sheet No. 716
Third Revised Sheet No. 717
Sheet Nos. 725 – 798
Fifth Revised Sheet No. 799
Original Sheet No. 966

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Original Sheet No. 967

Original Sheet No. 968

Sheet Nos. 969 - 1099

Appendix C

Algonquin Gas Transmission Company
FERC Gas Tariff, Fourth Revised Volume No. 1

Tariff Sheets Withdrawn

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
Original Sheet No. 725