

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Neil Chatterjee, Chairman;
Richard Glick and Bernard L. McNamee.

Algonquin Gas Transmission, LLC

Docket Nos. RP16-618-000
RP16-618-001

ORDER REJECTING COMPLIANCE FILING AND TERMINATING PROCEEDING

(Issued December 19, 2019)

1. On September 23, 2016, Algonquin Gas Transmission, LLC (Algonquin) filed a revised tariff record¹ to comply with the Commission's August 31, 2016 order in the instant proceeding (August 2016 Order).² As discussed below, the Commission rejects the revised tariff record referenced in footnote no. 1. The August 2016 Order was issued subsequent to a technical conference established in this proceeding by Commission order dated March 31, 2016 (March 2016 Order),³ which had conditionally accepted Algonquin's February 23, 2016 tariff filing⁴ initiating this proceeding. For the reason discussed below, the Commission is terminating this proceeding. Therefore, the Commission dismisses as moot Algonquin's compliance filing, and rejects the tariff records referenced in footnote nos. 1 and 4.

Background

2. In Order No. 712,⁵ the Commission found that asset management arrangements (AMA) provide significant benefits to a variety of participants in the natural gas and electric marketplaces and to the secondary natural gas market itself by permitting capacity holders to use third party experts to manage their natural gas supply arrangements and their pipeline capacity to lower gas supply costs and achieve a more

¹ Algonquin Gas Transmission, LLC, FERC NGA Gas Tariff, Algonquin Database 1, [14., Capacity Release, 9.0.0.](#)

² *Algonquin Gas Transmission, LLC*, 156 FERC ¶ 61,151 (2016) (August 2016 Order).

³ *Algonquin*, 154 FERC ¶ 61,269 (2016).

⁴ Algonquin Gas Transmission, LLC, FERC NGA Gas Tariff, Algonquin Database 1, [14., Capacity Release, 7.0.0.](#)

⁵ *Promotion of a More Efficient Capacity Release Market*, Order No. 712, 123 FERC ¶ 61,286 (2008), *order on reh'g*, Order No. 712-A, 125 FERC ¶ 61,216 (2008), *order on reh'g*, Order No. 712-B, 127 FERC ¶ 61,051 (2009).

efficient use of the pipeline grid. Accordingly, Order No. 712 amended the Commission's regulations to exempt releases to an asset manager under a qualifying AMA from the capacity release bidding requirements.⁶ In order to qualify for the bidding exemption, the release must include a condition that the releasing shipper may call upon the replacement shipper to deliver to, or purchase from, the releasing shipper a volume of gas up to 100 percent of the daily contract demand of the released capacity for a period defined in the regulation.

3. On February 19, 2016, Algonquin proposed new Section 14.16 to the General Terms and Conditions (GT&C) of its tariff that would permit companies that provide electric retail service (Electric Distribution Companies or EDCs) which contract for firm transportation capacity on Algonquin as part of a state-regulated electric reliability program to make two types of capacity releases without complying with the Commission's capacity release bidding requirements.⁷ The proposed blanket bidding exemptions would apply to releases (1) by an EDC to an asset manager that would be required to use the released capacity to carry out the EDC's obligations under a state-regulated electric reliability program (EDC-to-asset manager release), and (2) by either the EDC or its agent or asset manager to a replacement shipper that would be required to provide electricity to the market serving the EDC (EDC-to-replacement shipper release).

4. On March 31, 2016, the Commission accepted and suspended Algonquin's filing, to be effective the earlier of September 1, 2016 or the date specified in a further order of the Commission, subject to refund and the outcome of a technical conference.⁸

5. On May 9, 2016, a technical conference was held in the instant docket. Subsequently, the Commission issued its August 2016 Order accepting Algonquin's proposal to exempt from bidding a release by an EDC to an asset manager under a state-regulated electric reliability program.⁹ The Commission stated that providing a waiver to enable EDCs to release their capacity to an asset manager pursuant to an AMA is consistent with the goals of Order No. 712.¹⁰ However, the Commission stated that in approving this waiver it would require that Algonquin remove its proposed statement in GT&C Section 14.16 that it "has no responsibility or liability for determining whether a

⁶ The AMA exemption is set forth in section 284.8(h)(1)(i) of the Commission's regulations. (18 C.F.R. §284.8(h)(1)(i) (2019)).

⁷ Section 14 of Algonquin's GT&C memorializes the Commission's capacity release bidding requirements in section 284.8 of the Commission's regulations. (18 C.F.R. § 284.8 (2019)).

⁸ *Algonquin*, 154 FERC ¶ 61,269.

⁹ August 2016 Order, 156 FERC ¶ 61,151 at P 38.

¹⁰ *Id.*

Customer is in compliance with its state-regulated electric reliability program.” The Commission held that “[a]s with all capacity release regulations, Algonquin is responsible for ensuring compliance with the provisions of its tariff, including verification that a release qualifies for any of the bidding exemptions.”¹¹

6. In the August 2016 Order, the Commission also rejected the proposed bidding exemption for releases by EDCs to replacement shippers.¹² The Commission stated that Algonquin did not make a sufficient showing that the proposed blanket exemption from bidding for capacity releases to natural gas-fired generators by EDCs participating in a state-regulated electric reliability program (or their agents and asset managers) was just and reasonable. The Commission held that Algonquin did not show why such a broad exemption was necessary in order for EDCs or their agents and asset managers to have the ability to direct their capacity releases to natural gas-fired generators in order to accomplish the goal of increasing electric reliability.¹³

7. The August 2016 Order conditioned its acceptance of the EDC-to-asset manager release exemption upon Algonquin filing revised tariff records within 30 days of its issuance. On September 30, 2016, Consolidated Edison Company of New York, Inc. and Orange and Rockland Utilities, Inc. jointly filed a motion for clarification of the August 2016 Order. They sought clarification that (1) asset managers acquiring capacity under the bidding exemption may not use the capacity to serve electric generators they control or with whom they are affiliated, (2) asset management agreements entered into by the EDCs must seek to maximize the value of the capacity to qualify for the exemption from competitive bidding, and (3) the exemption will not apply to the EDCs’ acquisition of natural gas to serve their own needs. On October 17, 2016, Sequent Energy Management, L.P. and Tenaska Marketing Ventures (jointly), Algonquin, and National Grid Electric Distribution Companies filed answers opposing the motion for clarification.

8. In the instant filing, Algonquin filed a revised tariff record in compliance with the directives of the August 2016 Order. The proposed tariff revision provides as follows:

14.16 Customers Participating in State-Regulated Electric Reliability Programs

A release by an electric distribution company to an asset manager when the asset manager is required to use the released capacity to carry out the electric distribution company’s obligations under a state-regulated electric

¹¹ *Id.*

¹² *Id.* P 35.

¹³ *Id.*

reliability program will be exempt from the bidding requirements of Section 14 of the General Terms and Conditions of this FERC Gas Tariff.

All other releases by the electric distribution company, or asset manager or agent for that distribution company, will be subject to any applicable bidding requirements of Section 14 of the General Terms and Conditions of this FERC Gas Tariff.

Notice of Filing, Interventions and Protests

9. Public notice of the filing was issued on September 26, 2016. Interventions and protests were due as provided in section 154.210 of the Commission's regulations.¹⁴ Pursuant to Rule 214,¹⁵ all timely filed motions to intervene and any unopposed motion to intervene filed out-of-time 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. No adverse comments or protests were filed.

Discussion

10. In its August 2016 Order, the Commission stated that AMAs provide significant benefits to a variety of participants in the natural gas and electric marketplaces and to the secondary natural gas market itself.¹⁶ The Commission also held that an EDC participating in a state-regulated electric reliability program should be permitted to avail itself of the benefits of AMAs, and that providing a waiver to enable EDCs to release their capacity to an asset manager pursuant to an AMA was consistent with the goals of Order No. 712. Therefore, the August 2016 Order accepted Algonquin's proposal to exempt from bidding an EDC's capacity release to an asset manager "when the asset manager is required to use the released capacity to carry out the [EDC's] obligations under the state-regulated electric reliability program."¹⁷

11. However, at the time the August 2016 Order was issued, no such state-regulated electric reliability program had been approved by a state utility regulatory authority in Algonquin's service area, and it does not appear that any such program is now under consideration in any state under which an EDC could potentially become a shipper on

¹⁴ 18 C.F.R. § 154.210 (2019).

¹⁵ 18 C.F.R. § 385.214 (2019).

¹⁶ August 2016 Order, 156 FERC ¶ 61,151 at P 36.

¹⁷ *Id.* P 38.

Algonquin's system.¹⁸ Therefore, because there is no existing state-regulated electric reliability program as envisioned by the August 2016 Order to support a blanket exemption, Algonquin's compliance filing is dismissed as moot, and the proceeding in this docket is terminated. As a result, the motion for clarification of the August 2016 Order filed by Consolidated Edison Company of New York, Incorporated and Orange and Rockland Utilities, Incorporated is also dismissed as moot.

The Commission orders:

- (A) Algonquin's compliance filing in this docket is dismissed as moot.
- (B) The tariff records described in footnote nos.1 and 4 are rejected.
- (C) The September 30, 2016, Motion for Clarification of the August 2016 Order is dismissed as moot.
- (D) The proceeding in this docket is terminated.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

¹⁸ See, e.g., *ENGIE Gas & LNG LLC v. Department of Public Utilities*, 475 Mass. 191, 56 N.E. 3rd 740 (2016) (Massachusetts Supreme Court order holding that the Department of Utilities was not authorized to review contracts entered into by EDCs for additional natural gas pipeline capacity); Letter Closing Docket issued August 3, 2018 by the State of New Hampshire Public Utilities Commission re DE 16-241 (Public Service Company of New Hampshire d/b/a Eversource Energy Petition for Approval of Gas Capacity Contract with Algonquin Gas Transmission, LLC, Gas Capacity Program Details, and Distribution Rate Tariff for Cost Recovery).