UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Algonquin Gas Transmission, LLC) Docket No. RP16-618-000

MOTION FOR LEAVE TO INTERVENE OUT-OF-TIME AND POST-TECHNICAL CONFERENCE COMMENTS OPPOSING WAIVER OF CAPACITY RELEASE PROVISIONS OF THE NATURAL GAS SUPPLY ASSOCIATION

Pursuant to Commission's May 12, 2016 "Notice Establishing Comment Period" in the referenced proceeding, the Natural Gas Supply Association ("NGSA") respectfully moves for leave to intervene out-of-time and submits comments opposing Algonquin Gas Transmission, LLC's ("Algonquin") request for a waiver of the Commission's capacity release bidding requirements..

NGSA represents integrated and independent energy companies that produce and market domestic natural gas. Established in 1965, NGSA encourages the use of natural gas within a balanced national energy policy and supports the benefits of competitive markets. NGSA promotes increased supply and the reliable, efficient delivery of natural gas to customers.

I. MOTION FOR LEAVE TO INTERVENE OUT-OF-TIME

As producers and marketers of natural gas, our members have a substantial interest in ensuring that they can continue to operate in a competitive well-functioning market for interstate natural gas transportation. Given that Algonquin's waiver request will impact, not only the functioning of the secondary market, but the functioning of the natural gas market as a whole, NGSA has a significant interest in the issues raised herein. Therefore, NGSA is an interested party, and its intervention and participation will be in the public interest. NGSA is not now, and will not be, adequately represented by any other party in this proceeding, and may be bound or adversely affected by the Commission's action herein. NGSA therefore moves to intervene in this proceeding with full rights as a party hereto.

Good cause exists to permit NGSA's motion to intervene out of time in this proceeding. NGSA became aware that the issues raised in this proceeding may affect its members upon the issuance of the Commission's notice setting Algonquin's proposal for technical conference and the technical conference subsequently held on May 9, 2016.[1] The Commission has not yet ruled on Algonquin's proposal in this case. NGSA agrees to accept the record in this case as developed to date and submits that no disruption will result and that no party will be unduly prejudiced by the Commission's grant of intervention to NGSA at this stage in the proceeding. Given NGSA's interest in this proceeding, the lack of any Commission ruling on Algonquin's proposal, and the absence of any undue prejudice or delay, Commission precedent supports granting NGSA's intervention in this proceeding.[2]

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[1] *Algonquin Gas Transmission, LLC,* Notice of Technical Conference, Docket No. RP16-618-000 (April 15, 2016).

[2] *See, e.g., UGI Sunbury, LLC,* 155 FERC ¶ 61,115, at P 9 (2016) (granting late-filed motion to intervene given movant's interest in the proceeding and the absence of disruption to the proceedings or burden to existing parties); *Entergy Services, Inc.,* 155 FERC ¶ 61,096, at P 18 (2016) (granting late-filed motion to intervene given movant's interest in the proceeding, the early stage of the proceeding, and the absence of undue prejudice or delay); *Southwest Power Pool, Inc.,* 147 FERC ¶ 61,003, at P 16 (2014) (same).

II. EXECUTIVE SUMMARY

Algonquin requests that the Commission waive certain capacity release bidding requirements to enable certain qualifying electric distribution companies ("EDCs") with existing or new firm transportation capacity to release their firm capacity on a prearranged and priority basis to natural gas-fired electric generators under a state-approved electric reliability program, without subjecting them to current capacity release bidding requirements. Algonquin's request for waiver raises significant concerns about the impact such a waiver, and possibly similar waivers to follow, may have on the functioning of the natural gas market. We support the concept of EDCs holding pipeline contracts to underpin new pipeline infrastructure. However, NGSA believes that the waiver is unduly discriminatory, provides preferential and subsidized access to capacity for a select few, will impact the competitiveness of the primary and secondary firm transportation capacity markets, and could also distort interruptible capacity and natural gas commodity markets.[3] Furthermore, EDCs' release of primary capacity to generators can be accomplished through the existing capacity release rules without sacrificing the competitiveness of the natural gas market. For these reasons, NGSA does not believe a waiver of the capacity release rules is warranted and therefore, we oppose Algonquin's request.

NGSA has been and continues to be a strong advocate for alleviating current capacity constraints in New England, which if left unaddressed, may lead to electric

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[3]For example, preferential allocations of capacity to generators can influence all of the decisions generators make in the natural gas procurement process including the type of services, the level of services and the price they are willing to pay. Such decisions will influence the overall level of competition in the natural gas market, including the resulting market price for delivered gas.

reliability concerns and/or to spikes in the price of natural gas and electric power during peak periods. While supportive of new pipeline infrastructure for New England, NGSA believes that the best approach to solving New England's infrastructure constraints is to focus on market-based solutions in the power market structure, rather than to seek changes to the natural gas market that would compromise its functioning. In fact, changes to ISO-New England's ("ISO-NE") power market structure have already been approved or are underway that are intended to improve the market price signals to generators, which should provide generators with a greater ability to be compensated for procuring firm natural gas transportation.

III. COMMENTS

1. The well-functioning competitive natural gas market should not be compromised to provide a regulatory quick fix to pipeline funding issues that are an outgrowth of a lack of proper market signals in regional power markets.

The Commission should refrain from granting a waiver of the capacity release rules as a quick fix to work around issues that are an outgrowth of inaccurate price signals in regional power markets. Such a solution would instead impose dysfunction in the natural gas market while sidestepping the underlying problems that should be addressed by competitive power market solutions.

The natural gas market is highly competitive due, in large part, to the Commission's pro-competitive market policies, including the implementation of the capacity release program more than two decades ago. With the inception of this program as well as the incremental improvements made to increase the flexibility afforded to shippers when releasing capacity, the Commission provided the foundation for the vibrant and competitive secondary natural gas market we enjoy today. Given this success, utmost caution should be taken before making any changes that may diminish the competitiveness of the natural gas market.

The capacity release bidding rules were established to allow for expeditious and flexible releases of primary firm pipeline capacity, in a transparent and not unduly discriminatory manner, to the shipper placing the highest value on the capacity. However, as pointed out by a number of technical conference participants, granting Algonquin's waiver request will lead to adverse market impacts. Some, such as ENGIE Gas & LNG, expressed concern that the waiver will create an unlevel playing field and strip them of their ability to serve that market by subsidizing generator capacity. Tenaska, a large marketer and asset manager, further explained that holding the targeted capacity off the market would inhibit their ability to provide services that would optimize and most efficiently utilize the existing and newly-acquired capacity held by the EDC's. Also, to the extent a generator has already committed to firm transportation arrangements in order to reliably meet their power obligations; they would now be at a competitive disadvantage relative to other generators not holding firm contracts but that will now receive a preferential allocation of firm capacity directly assigned from the EDCs. Thus, ironically, the requested waiver actually discourages generators from taking actions to make firm transportation commitments that may have otherwise served to underpin new pipeline infrastructure.

While this proceeding is focused on a single pipeline's request for waiver, we cannot ignore the high likelihood that granting this waiver will result in other pipelines in New England and in other organized power markets requesting similar waivers of the capacity release rules. Therefore, we cannot look at Algonquin's request in isolation. Broad expansion of similar waivers would effectively create a favored customer class for natural gas secondary capacity in regional power markets, thereby unduly discriminating against all other natural gas users. This or similar waivers also would confer an advantage to EDCs participating in open seasons for primary firm capacity and as explained earlier, could also impact the availability and pricing of all gas market products. At the conference, the EDCs stated that a primary reason for needing direct assignment to generators is their lack of confidence that generators will be willing to match the highest bid in order to obtain the EDC's capacity. Such actions turn competition on its head by shutting out parties that value the capacity the most while protecting those that are unlikely to value it as highly.[4]

Given that the EDCs that intend to hold firm contracts for the new pipeline capacity have stated in other forums that the waiver is preferred but not required, we strongly question how granting this waiver could possibly outweigh the potential adverse impacts such an exemption could have on the natural gas market.[5]

2. Recent efforts to improve regional power market signals should be given an opportunity to work.

NGSA has been and continues to be a strong advocate for ensuring that adequate pipeline infrastructure is in place in New England to address current capacity

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[4] Panelists speculated that the impending subsidy to generators through direct assignment of the EDCs' primary capacity could already be influencing generator-contracting decisions. (*See* ENGIE and Exelon statements.)

[5] *See, e.g.*, Prepared Direct Testimony of James G. Daly, Vice President, Energy Supply for Eversource Energy Service Company, MDPU Docket No. D.P.U. 15-181 at 74 (Dec. 18, 2015).

constraints. NGSA has filed comments in numerous Commission proceedings advocating and supporting power market solutions that will provide generators with a greater opportunity to be compensated for actions they take to ensure they can meet their power market obligations. As most relevant here, NGSA supported ISO-NE's pay-for-performance proposal to provide incentives in its capacity market for increased reliability, which the Commission approved and is slated to take effect in 2018.[6] Most recently, NGSA supported the Commission's proposed energy price formation reforms to better align dispatch and settlement intervals and to remove current restrictions on shortage pricing. [7]

ISO-NE's pay-for-performance and the proposed energy price reforms are both positive steps toward more accurate market price signals that should give generators added confidence that they will be compensated for making advance arrangements to procure fuel and related transportation on a firm basis. As more generators sign firm transportation contracts, this should, in turn, support the building of new pipeline infrastructure in areas in which there is a market need for increased pipeline capacity. Therefore, before resorting to other means outside of the regional power market, the Commission should allow these recent power market reforms to take effect and assess whether these actions produce the intended results.

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[6] *See ISO New England Inc. and New England Power Pool,* 147 FERC ¶ 61,172, *order on compliance,* 149 FERC ¶ 61,009 (2014), *order denying reh'g,* 153 FERC ¶ 61,223 (2015), *order denying reh'g,* 153 FERC ¶ 61,224 (2015).

[7] *Settlement Intervals and Shortage Pricing in Markets Operated by Regional Transmission Organizations And Independent System Operators,* Notice of Proposed Rulemaking, Docket No. RM15-24-000, "Comments of the Natural Gas Supply Association" (Filed Nov. 30, 2015).

3. The EDCs can successfully effectuate releases to generators in New England utilizing the currently effective capacity release rules.

The Commission has made incremental improvements to the capacity release program over the years in order to provide more flexible release options for natural gas market participants (*e.g.* recall rights, segmentation, prearranged deals, and asset management agreements under Order No. 712).[8] Based on the flexibility afforded in these current rules, there are numerous ways in which the EDCs can effectively and reliably release capacity to generators as contemplated by the various state programs under consideration in New England. For instance, the EDCs could release capacity to generators on a prearranged basis for deals that are greater than one year at the maximum tariff rate. Alternatively, shorter-term releases could be prearranged for one month or less and if consecutive months are required, the generator could still retain the released capacity as long as it simply matches the highest bid.[9]

Alternatively, the EDCs could choose a third-party asset manager to manage their pipeline contracts in order to make the most efficient use of each EDC's primary

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[8] *Promotion of a More Efficient Capacity Release Market,* Order No. 712, FERC Stats. & Regs. ¶ 31,271, *order on reh'g,* Order No. 712-A, FERC Stats. & Regs. ¶ 31,284 (2008), *order on reh'g,* Order No. 712-B, 127 FERC ¶ 61,051 (2009).

[9] At the technical conference, parties claimed that the EDCs have made assertions in state proceedings that the state funding programs would still be beneficial and move forward absent the requested waiver. If this is accurate, it seems that the EDCs also understand that the current capacity release rules are sufficiently flexible to accomplish their intended objectives. The only hurdle identified at the conference was that the EDCs are uncertain about whether generators would be willing to match the highest bid for a short-term release. However state programs could be designed to encourage generators to match the highest bids, especially if the capacity allocation is indeed for "electric reliability purposes" as stated in Algonquin's request for waiver.

capacity. Optimizing the use of the EDCs' pipeline capacity will mitigate the costs paid by electric ratepayers that are assessed charges to recoup the costs associated with the firm contracts held by the EDCs. While use of an asset management arrangement would not allow the EDCs to hold gas off the market for sole use by generators, the additional capacity made available in the New England market as a consequence of the EDCs' firm pipeline contracts would increase the likelihood that generators could attain pipeline capacity when needed.

Additionally, multi-party contracting, as proposed in Order No. 809, could be an alternative option for New England participants to consider as a solution to supporting new pipeline infrastructure. In Order No. 809, the Commission accepted the concept multi-party firm transportation contracts and required that pipelines implement tariff provisions to allow for when requested by a shipper because it would "provide shippers, including gas-fired generators, with greater flexibility and facilitate more efficient use of pipeline capacity."[10] Given that Algonquin has already incorporated provisions in its tariff to accommodate multi-party contracts, at a minimum, the Commission and market participants should be aware of whether such concepts were considered and if so, understand why such an alternative was rejected.

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[10] Order 809, *Coordination of the Scheduling Processes of Interstate Gas Pipelines and Public Utilities*, 151 FERC ¶ 61,049 (2015) at P 143.

IV. CONCLUSION

For the reasons outlined above, NGSA opposes Algonquin's request for waiver of its capacity release provisions and encourages the Commission to promptly reject this request so that the stakeholders can have greater certainty and can work toward a market-based solution to their pipeline infrastructure issues without delay. While NGSA strongly encourages eliminating capacity constraints in New England, we do not believe that imposing market dysfunction in the natural gas market is the solution.

Respectfully submitted,

/s/ *Patricia W. Jagtiani*

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Certificate of Service

I hereby certify that I have this day served the foregoing document upon each person designated on the official service list compiled by the Secretary in this proceeding.

Dated at Washington, DC this 27th day of May 2016.

/s/ *Patricia W. Jagtiani*