

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Algonquin Gas Transmission, LLC)
Maritimes and Northeast Pipeline, L.L.C.) Docket No. CP16-9-012
)
)

**REPLY BRIEF OF CONSERVATION LAW FOUNDATION, ACADIA CENTER,
NATURAL RESOURCES DEFENSE COUNCIL, SIERRA CLUB, AND SUSTAINABLE
FERC PROJECT**

Conservation Law Foundation, Acadia Center, Natural Resources Defense Council, Sierra Club, and Sustainable FERC Project respectfully submit this reply brief in response to the Federal Energy Regulatory Commission’s (Commission) February 18, 2021 order establishing briefing in the above-referenced proceeding (Briefing Order).¹ We respond specifically to the claims that Algonquin Gas Transmission, LLC² (Algonquin) raises in its initial brief³ regarding Condition 2 in the Certificate of Public Convenience and Necessity for the Atlantic Bridge Project⁴ (Certificate), which applies to the Weymouth Compressor Station (Compressor Station) at issue in this proceeding. Algonquin wrongly suggests that Condition 2 should be interpreted narrowly and that the Commission has no authority to revisit operation of the Compressor Station. On the contrary, the facts clearly support a finding that Algonquin has violated Condition 2, and the Commission therefore has authority under the Natural Gas Act (NGA) to

¹ *Algonquin Gas Transmission, LLC*, 174 FERC ¶ 61,126 (Feb. 18, 2021) [hereinafter Briefing Order].
² Algonquin Gas Transmission is a subsidiary of Spectra Energy (now known as Enbridge Inc.) and an operator of the Weymouth Compressor Station.
³ Initial Brief of Algonquin Gas Transmission, LLC under CP16-9 (Apr. 5, 2021) [hereinafter Algonquin Initial Brief].
⁴ *Algonquin Gas Transmission, LLC*, 158 FERC ¶ 61,061 (Jan. 25, 2017) [hereinafter Certificate].

modify or rescind the Compressor Station's authorization to operate⁵ (Authorization Order) and the Certificate as it pertains to the Compressor Station.

I. The Emergency Blowdowns Violate Condition Two of the Certificate, Giving the Commission Authority to Modify or Rescind the Certificate and Authorization Order or to Take Other Measures Deemed Necessary

Algonquin contends that “the Commission [cannot] rely on Environmental Condition No. 2 to expand its authority beyond that granted by Congress in the NGA.”⁶ This argument misses the point. Condition 2 does not expand the Commission's authority. It simply authorizes the Commission to modify conditions in the Certificate and take “any additional measures deemed necessary (including stop-work authority)” to ensure compliance with environmental conditions and avoid or mitigate adverse environmental impacts.⁷ This authority is entirely consistent with the NGA⁸ and case law interpreting it,⁹ which provide the Commission with clear legal authority to modify or rescind a certificate if the operator violates *any* condition of the certificate. Indeed, the Commission has not hesitated to rescind certificates when conditions were not satisfied.¹⁰

⁵ *Algonquin Gas Transmission, LLC*, Docket No. CP16-9-000, Accession No. 20200924-3034, at 1 (Sept. 24, 2020) [hereinafter Authorization Order].

⁶ Algonquin Initial Brief at 29.

⁷ Certificate at P253, app. B.

⁸ The Commission has the authority to modify or set aside the Authorization Order pursuant to 15 U.S.C. § 717r(a). The Commission has the authority to modify or rescind both the Authorization Order and the Certificate pursuant to 15 U.S.C. § 717o.

⁹ *See, e.g., Pub. Utilities Comm'n v. FPC*, 205 F.2d 116, 120 (3d Cir. 1953); *In re W. States Wholesale Nat. Gas Antitrust Litig.*, 633 F. Supp. 2d 1151, 1166 (D. Nev. 2007).

¹⁰ *See, e.g., Wyoming-California Pipeline Co.*, 70 FERC ¶ 61,041, 61,130 (1995) (revoking a certificate because the company failed to initiate construction within five years, “despite the fact that all parties were put on notice that construction was to be *completed*, and service initiated, within five years of the date certificate authorization was issued.”). In some circumstances, even a certificate holder's “anticipatory failure to comply with the conditions of its certificate” can justify revocation. *Pub. Utilities Comm'n v. FPC*, 205 F.2d 116, 120 (3d Cir. 1953) (upholding the Commission's revocation of a certificate because the company was unable to build a certificated gas pipeline due to financial and procurement difficulties).

The Commission has also asserted its authority to modify or rescind a certificate even in the absence of a violation if certain circumstances exist.¹¹

An analysis of Condition 2 is necessary to determine only whether the condition has been violated. If it has, the Commission can use its authority under the NGA to revoke or modify the Certificate. Our initial brief explains in detail how the first two emergency blowdowns at the Compressor Station violated Condition 2.¹² Further, just one day after that brief was filed, a *third* emergency blowdown happened at the Compressor Station that vented at least 10,000 more cubic feet of methane and an unknown quantity of volatile organic compounds into the surrounding area.¹³ This third unplanned emergency blowdown underscores the environmental, health, and safety risks of allowing the Compressor Station to continue operating.

Algonquin makes light of the emergency blowdowns, characterizing the incidents as if they do not merit concern. The company attempts to minimize the fact that venting methane gas and volatile organic compounds into the air causes adverse environmental impacts, stating that the first two blowdowns “resulted in emissions that fell well within the limits of the Air Permit . . . as well as the level of potential air emissions addressed in the Commission’s own EA.”¹⁴

This misleading characterization ignores the negative impacts that blowdowns have on air

¹¹ *Trunkline LNG Co. & Trunkline Gas Co. Ass’n of Businesses Advocating Tariff Equity*, 22 FERC ¶ 61,245, 61,442 (Feb. 28, 1983) (modifying or revoking a certificate even if no violation has occurred may be appropriate if there is “a compelling showing of a fundamental shift of a long-term nature in the basic premises on which the certificate was issued”).

¹² Condition 2 states: “The Director of [the Office of Energy Projects (OEP)] has delegated authority to take *whatever steps are necessary* to ensure the protection of all environmental resources during construction and operation of the Project. This authority shall allow: a. the *modification of conditions* of this Order; and b. the design and implementation of *any additional measures* deemed necessary (including stop-work authority) to ensure continued compliance with the intent of the environmental conditions as well as the avoidance or mitigation of adverse environmental impact resulting from construction and operation of the Project.” Certificate at P253, app. B (emphasis added).

¹³ Miriam Wasser, WBUR, *Weymouth Compressor Reports Another ‘Unplanned’ Gas Release. Third Time In 8 Months* (Apr. 6, 2021), <https://www.wbur.org/earthwhile/2021/04/06/weymouth-compressor-gas-release>.

¹⁴ Algonquin Initial Brief at 30.

quality, human health, and public safety. It also fails to acknowledge that several emergency blowdowns happening in a matter of months—including the first two incidents, which occurred less than three weeks apart—is not standard in the industry and was not anticipated when the Commission approved the Certificate.

To the contrary, the Commission thought the conditions in the Certificate and the mitigation measures in the EA would significantly minimize the risk and occurrence of a blowdown, noting: “The EA states that *blowdown events occur infrequently* and for short durations (1-to-5 minutes). It is unclear how many blowdowns may occur each year; however, *the conditions warranting a blowdown occur infrequently.*”¹⁵ The operation of the Compressor Station has proven these assumptions wrong. By any measure, three emergency blowdowns in less than eight months of operation qualify as a frequent occurrence. The persistence of this problem indicates that the continued operation of the Compressor Station poses an unacceptable risk of repeated and ongoing emergency blowdowns in the future if the Commission allows the station to continue operating.

These multiple unplanned releases of pollution negatively impact the health and safety of surrounding communities and violate the intent of environmental conditions in the Certificate. The current mitigation measures have failed to adequately protect surrounding communities from the environmental, health, and safety risks of repeated blowdowns in a densely populated urban area that includes two environmental justice populations. Under Condition 2, the Director of the Office of Energy Projects (OEP) or the Commission can therefore take “any additional measures deemed necessary” to stop these negative consequences from occurring. Such measures could

¹⁵ *Id.* at P223 (emphasis added).

include modifying or rescinding the Certificate as it pertains to the Compressor Station and modifying or rescinding the station's Authorization Order.¹⁶

Algonquin wrongly implies that the Commission is forever bound by the original terms of the Certificate and cannot modify them. The company contends that "The Commission cannot . . . impose conditions for the Weymouth Compressor Station to remain in service which are not found in the . . . Certificate."¹⁷ This argument lacks merit for two reasons. First, the Commission has legal authority under the NGA to rescind or modify the Certificate, including the conditions therein.¹⁸ Second, Condition 2 itself explicitly authorizes "the modification of conditions of this Order."¹⁹ If modification is needed to ensure the protection of environmental resources during operation of the Compressor Station, the Commission can do it. Indeed, the Commission has already confirmed that Condition 2 authorizes modification of conditions to ensure compliance with environmental conditions and the National Environmental Policy Act (NEPA).²⁰ In doing so, the Commission rejected arguments that Condition 2 was overly broad and should be "limited to making pragmatic adjustments to the environmental conditions."²¹

Algonquin attempts to defang Condition 2 by arguing that it "must be interpreted in light of longstanding Commission precedent limiting the scope of the same language."²² However, Commission precedent does not narrow the meaning of Condition 2 in the way that Algonquin

¹⁶ The Commission has the authority to modify or set aside the Authorization Order pursuant to 15 U.S.C. § 717r(a). The Commission has the authority to modify or rescind both the Authorization Order and the Certificate pursuant to 15 U.S.C. § 717o.

¹⁷ Algonquin Initial Brief at 30.

¹⁸ "The Commission shall have power to . . . prescribe, issue, make, amend, and rescind such orders, rules, and regulations as it may find necessary or appropriate to carry out the provisions of this chapter." 15 U.S.C. § 717o. *See also Pub. Utilities Comm'n v. FPC*, 205 F.2d 116, 120-21 (3d Cir. 1953) (holding that the Commission has legal authority to revoke a certificate if conditions are not met pursuant to 15 U.S.C. § 717f(e) and 15 U.S.C. § 717o).

¹⁹ Certificate at P253, app. B.

²⁰ *Texas E. Transmission Corp.*, 73 FERC ¶ 61,012, 61,019 (1995).

²¹ *Id.* at 61,018.

²² Algonquin Initial Brief at 29.

suggests. The Commission order that Algonquin cites to clarified similar (but not identical) language²³ in a certificate that was issued in 1993. The Commission order interpreting that certificate stated:

Condition 2 is intended to give the Director authority to enforce the terms and conditions of the certificate order. It is not intended to give the Director of OPR authority to take unrelated actions throughout the life of the project. Rather, it is intended to give the Director authority to ensure that Texas Eastern's [*sic*] complies with the environmental conditions and, if necessary, to modify these conditions in order to ensure National Environmental Policy Act (NEPA) compliance. It is also intended to provide expeditious resolution of unanticipated environmental situations the applicant may encounter during the construction and restoration of the project. Thus, the Director's delegated authority is limited to environmental matters within the scope of the ITP orders [concerning the project].²⁴

The Condition 2 at issue in that proceeding applied during construction, but not operation, of the project. That is why it did not authorize "unrelated actions throughout the life of the project."²⁵

In contrast, the Condition 2 at issue in this proceeding expressly applies during both construction *and operation*, and therefore *does* apply throughout the life of the project. Furthermore, the Commission's interpretation of Condition 2 is not nearly as cramped as Algonquin suggests. It broadly affirms the Director's authority to ensure compliance not only with the environmental conditions in the certificate, but also with NEPA. It affirms the Director's authority to modify conditions in the certificate. It even explains that Condition 2 is meant to ensure the "expeditious resolution of unanticipated environmental situations" such as the unexpected occurrence of

²³ The condition in that certificate stated: "The Director of OPR has delegation authority to take whatever steps are necessary to insure the protection of all environmental resources during construction of the project. This authority shall allow: a. the modification of conditions of the Order; and b. the design and implementation of any additional measures deemed necessary (including stop work authority) to assure continued compliance with the intent of the environmental conditions as well as the avoidance or mitigation of adverse environmental impact resulting from project construction." 71 FERC ¶ 61,298, at 62,172.

²⁴ *Texas E. Transmission Corp.* at 61,019.

²⁵ *Id.*

frequent and harmful blowdowns. Nothing in this interpretation suggests that the Commission would be overstepping its authority if it modifies the Certificate to address the harmful environmental impacts resulting from operation of the Compressor Station.

In another proceeding involving the interpretation of Condition 2, the Commission declined to limit the Director's discretion.²⁶ In that proceeding, a gas company argued that the Commission should allow the Director to exercise authority under Condition 2 "only in a 'fashion . . . consistent with various project details which, by reference, were approved' by the Director's order."²⁷ The Commission disagreed, noting: "The proposed language could be understood as a standard against which we would measure any exercise of the Director's authority to assure environmental compliance through modified or additional measures. We think such language may prejudge facts not before us now and *limit without good reason* the Director's authority."²⁸ This reasoning confirms that the Director may modify existing conditions or impose additional measures under Condition 2. It further indicates that Condition 2 should not be interpreted in the narrow, rigid fashion that Algonquin suggests. Instead, Condition 2 is meant to be flexible and provide the Director with discretion to ensure environmental compliance for particular projects as circumstances require. The fact that Condition 2 routinely appears in certificates²⁹ does not deprive the condition of meaning or reduce it to boilerplate; if anything, this prevalence indicates that environmental compliance is a fundamental condition that projects must satisfy during their construction and operation.

²⁶ *Columbia Gas Transmission Corp.*, 71 FERC ¶ 61,038, 61,158 (1995).

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Id.* at 61158 n.3 ("The Commission has used the same environmental condition in other proceedings.") (citing *Williams Natural Gas Company*, 70 FERC ¶ 61,304 (1995); *Questar Pipeline Company*, 70 FERC ¶ 61,131 (1995); and *Pacific Gas Transmission Company*, 70 FERC ¶ 61,016 (1995)).

Finally, Algonquin contends that Condition 2 does not authorize the “reevaluat[ion of] environmental effects whose nature and magnitude were accurately foreseen and considered in the Certificate Order.”³⁰ But the occurrence of three emergency blowdowns within a short time frame was *not* accurately foreseen or considered when the Commission issued the Certificate, as discussed above. Condition 2 clearly allows the Commission to address the negative environmental impacts that have occurred as a result of the blowdowns, and it allows the Commission to strengthen the current mitigation measures, which have not been effective at preventing blowdowns. The harms that occurred as a result of the blowdowns, and the likelihood of additional blowdowns, merit the modification or revocation of the Certificate as it applies to the Compressor Station, and the Commission has clear legal authority to take these actions under the NGA.

II. CONCLUSION

Thank you for the opportunity to submit this reply brief in response to the Commission’s February 18, 2021 Briefing Order and initial briefs filed in this proceeding. The three emergency blowdowns and resulting environmental harms make it clear that operation of the Compressor Station poses an unacceptable threat to public health and safety and additional measures are needed to mitigate or eliminate these threats. Therefore, the signatories respectfully request that the Commission use its authority under the NGA to rescind the Certificate as it pertains to the Compressor Station and rescind the Compressor Station’s Authorization Order.

Dated: May 5, 2021

Respectfully submitted,

³⁰ Algonquin Initial Brief at 29 (quoting *Texas Eastern Transmission Corp.*, 73 FERC ¶ 61,012 (1995)). The quoted language does not appear in the decision cited to, however.

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