121 FERC ¶ 61,214
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

November 29, 2007

In Reply Refer To:
Iroquois Gas Transmission System, L.P.
Docket No. RP08-41-000

Iroquois Gas Transmission System, L.P.
One Corporate Drive, Suite 600
Shelton, Connecticut 06484-6211

Attention: Paul W. Diehl, Senior Attorney

Reference: Second Revised Sheet No. 8 to
FERC Gas Tariff, First Revised Volume No. 1

Mr. Diehl:

1. On October 31, 2007, Iroquois Gas Transmission System, L.P. (Iroquois) filed the above referenced tariff sheet, as well as contract amendments and associated letter agreements for two of its shippers: Contract No. R-590-01 with Yankee Gas Services (Yankee Gas) and Contract No. R-510-01 with Central Hudson Gas & Electric Corporation (Central Hudson). The purpose of these agreements is to allow these shippers to extend the terms of their firm transportation contracts on Iroquois' system to match the terms of their recently extended upstream firm transportation contracts on TransCanada PipeLines, Ltd (TransCanada). The referenced tariff sheet is accepted effective December 1, 2007, subject to conditions as discussed below. The contract amendments and associated letter agreements are also accepted for filing, subject to conditions.

2. Public notice of the filing was issued on November 2, 2007. Interventions and protests were due as provided in section 154.210 of the Commission's regulations (18 C.F.R. § 154.210 (2006)). Pursuant to Rule 214, 18 C.F.R. § 385.214, all timely motions to intervene and any motions to intervene out-of-time filed before the issuance date of this order are granted. No adverse comments or protests were filed.

3. Iroquois states that the firm service agreements of its initial shippers are scheduled to expire in 2011 and 2012. It states that those shippers have been negotiating extensions of their contracts for upstream transportation service on TransCanada Pipelines Ltd.

(TransCanada), as well as their gas supply contracts. Accordingly, Iroquois' initial shippers have also sought to negotiate extensions of their contracts with Iroquois, so that the term provisions of those contracts will correspond with the revised term provisions of the upstream contracts.

4. Iroquois has executed contract amendments and letter agreements with Yankee Gas and Central Hudson in order to extend their service agreements. Iroquois states that each letter agreement contains nonconforming provisions. Specifically, Iroquois states that the letter agreement with Central Hudson not only extends its service agreement through November 1, 2017, but also provides Central Hudson with a unilateral option to extend the contract for all or any portion of its contract demand for a second five-year period, through November 1, 2022, without any requirement to match competing bids under a right of first refusal (ROFR) process. In exchange for this unilateral right to extend the contract for five years, Central Hudson has agreed that it will forgo any ROFR rights for any portion of its contract demand which it does not extend. However, if Central Hudson does exercise its option to extend the contract for an additional five years, it will be eligible for a ROFR at the end of the extended contract. Iroquois states that it allowed this option so that Central Hudson could coordinate its firm transportation contract rights on Iroquois with the extension options included under its upstream firm transportation contracts.

5. Iroquois states that Yankee Gas has elected to extend its current firm transportation agreement with Iroquois for a ten year period, *i.e.*, until November 1, 2022, without breaking its transportation contract extension into a five-year primary term with a second five year option.[1] However, according to Iroquois, Yankee Gas' firm transportation service on Iroquois relies in part upon firm transportation contracts which Iroquois has with Tennessee Gas Pipeline (Tennessee) and Algonquin Gas Transmission System (Algonquin).[2] Thus, the letter agreement provides that Iroquois will work with Tennessee and Algonquin to extend these transportation arrangements, which include ROFR rights for Iroquois, to match the term of Yankee Gas' extended transportation service on Iroquois, including continued ROFR rights thereafter. Additionally, the letter

[1] Consistent with Iroquois' form of service agreement for the subject service, the revised service agreement will continue year to year after November 1, 2022 unless terminated by either party upon 12 month's prior notice.

[2] Iroquois states that it was permitted to enter into these transactions with downstream pipelines as part of the initial certification process approving the construction and operation of its system. Iroquois October 31, 2007 filing at 2, note 2 (*citing Iroquois Gas Transmission System, L.P.*, 62 FERC ¶ 61,167 at 62,151 (1993); *Iroquois Gas Transmission System, L.P.*, 53 FERC ¶ 61,194 (1990)).

agreement sets forth certain options for Iroquois and Yankee Gas in the event that Iroquois is required to extend those contracts for terms that are either longer, or shorter, than the extended term of the subject Iroquois-Yankee Gas service agreement or to the extent Iroquois is unable to recover the costs of those contracts, which are included in its Account No. 858.

6. Iroquois states that it is continuing to negotiate contract extensions with its other firm shippers, and Iroquois is willing to offer similar non-conforming terms to all similarly situated customers.

7. The Commission's regulations require that pipelines include in their tariff a form of service agreement and file any contract that deviates materially from the *pro forma* service agreement.[3] In *Columbia*, the Commission found that a material deviation is "any provision of a service agreement which goes beyond the filling in of the spaces in the form of service agreement with the appropriate information provided for in the tariff and that affects the substantive rights of the parties."[4] However, not all material deviations are impermissible. If the Commission finds that a deviation does not constitute a substantial risk of undue discrimination, the Commission may permit the deviation.[5]

8. Article V, section 3 of Iroquois' form of service agreement for firm transportation service provides that the service agreement will continue in effect until an agreed-upon expiration date, "and year to year thereafter unless terminated by either party upon twelve (12) months prior written notice to the other."[6] There is no provision in Iroquois' form of service agreement for providing the shipper a unilateral option to extend a contract for an agreed-upon period following the primary term, such as Iroquois has agreed to give Central Hudson. The Commission has found that such a provision is a valuable right that must be provided on a not unduly discriminatory basis pursuant to a generally applicable tariff provision.[7] Iroquois has stated its willingness to offer similar contract extension

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[3] 18 C.F.R §§ 154.1(d) and 154.110 (2007).

[4] *Columbia Gas Transmission Corp*., 97 FERC ¶ 61,221 at 62,002 (2001) (*Columbia*). *Natural Gas Pipeline Negotiated Rate Policies and Practices*, 104 FERC ¶ 61,134 at P 27 (2003).

[5] *Columbia* at 62,004.

[6] Sixth Revised Sheet No. 145.

[7] *Saltville Gas Storage Co. L.L.C.*, 110 FERC ¶ 61,324 at P 16 (2005). *See also Northern Natural Gas Company*, 113 FERC ¶ 61,032 at P 11 (2005), and *ANR Pipeline Co.*, 97 FERC ¶ 61,224 at 62,025-6 (2001), making a similar finding with respect to

(continued)

rights to similarly situated shippers. Accordingly, the Commission accepts the Central Hudson contract amendment and letter agreement, subject to the condition that, within 30 days, Iroquois revise its form of service agreement and/or other tariff provisions in order to offer such contract extension rights to similarly situated shippers on a not unduly discriminatory basis.

9. The contract amendment and letter agreement extending Yankee Gas' service agreement are consistent with Iroquois' form of service agreement, except for the provisions concerning the Iroquois' efforts to negotiate similar extensions of its own contracts with Tennessee and Algonquin. These material deviations address the relatively unique circumstance that Iroquois' original certificate authorization provided for it to make deliveries to Yankee Gas using capacity that Iroquois contracted for on the other two pipelines. Moreover, these deviations do not affect the quality of service Iroquois provides either to Yankee Gas or its other shippers.[8] Accordingly, the Commission accepts the material deviations in the Yankee Gas contract amendment and letter agreements.

10. Therefore, the Commission accepts the above referenced tariff sheet and the contract amendments and associated letter agreements for Central Hudson and Yankee Gas, subject to the condition applicable to the Central Hudson agreements described above.

By direction of the Commission.

Nathaniel J. Davis, Sr.,
Deputy Secretary.

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contract demand reduction rights.

[8] *See ANR Pipeline Co.*, 97 FERC at 62,024-5, and case cited.

cc: All Parties
Public File

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