126 FERC ¶ 61,266
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

March 25, 2009

In Reply Refer To:
Iroquois Gas Transmission System, L.P.
Docket Nos. RP09-283-000 and
RP09-283-001

Iroquois Pipeline Operating Company
One Corporate Drive, Suite 600
Shelton, CT 06484

Attention: Paul W. Diehl
Senior Attorney

Reference: Order Nos. 712 and 712-A Compliance Filing

Dear Mr. Diehl:

1. On January 26, 2009, Iroquois Gas Transmission System, L.P. (Iroquois) filed revised tariff sheets[1] proposing modifications to its tariff to comply with the capacity release requirements promulgated by Order Nos. 712 and 712-A.[2] On February 11, 2009, Iroquois also filed proposed Seventh Revised Sheet No. 50B of its FERC Gas Tariff, First Revised Volume No. 1, to correct the revision number and include two modifications previously approved by the Commission that were inadvertently omitted from the previously filed sheet.[3] The Commission finds good cause to grant waiver of the 30-day

[1] *See* Appendix. Moreover, Iroquois is directed in any future filings to comply with the dictates of 18 C.F.R. § 154.201(a) (2008), which require that pipelines either highlight, background shade, bold, or underline *all* new numbers and text in the marked version of the pages to be changed or superseded [emphasis added].

[2] *Promotion of a More Efficient Capacity Release Market*, Order No. 712, 73 Fed. Reg. 37,058 (June 30, 2008), FERC Stats. & Regs. ¶ 31,271 (2008), *order on reh'g*, Order No. 712-A, 73 Fed. Reg. 72,692 (Dec. 1, 2008), FERC Stats. & Regs. ¶ 31,284 (2008).

[3] *Iroquois Gas Transmission System, L.P.*, Docket No. RP06-216-002 (June 14, 2006) (unpublished letter order).

notice period[4] to permit the revised tariff sheets to be accepted on January 27, 2009, as proposed, subject to further modifications as discussed below.

2. In Order Nos. 712 and 712-A, the Commission removed the maximum rate ceiling on capacity releases of one year or less that take effect within one year after the pipeline is notified of the release. The Commission also modified its regulations in order to facilitate asset management arrangements (AMAs) by relaxing the Commission's prohibition on tying and on its bidding requirements for certain capacity releases. The Commission further clarified that its prohibition on tying does not apply to conditions associated with gas inventory held in storage for releases of firm storage capacity. Finally, the Commission waived its prohibition on tying and bidding requirements for capacity releases made as part of a state-approved retail access program. In its filing, Iroquois proposes several changes to the capacity release provisions in the General Terms & Conditions (GT&C) of its tariff to reflect the various changes in the capacity release regulations made by Order Nos. 712 and 712-A.

3. Public notice of Docket Nos. RP09-283-000 and RP09-283-001 was issued on January 29, 2009 and February 13, 2009, respectively. Interventions and protests were due as provided for in section 154.210 of the Commission's regulations.[5] Pursuant to Rule 214,[6] all timely filed motions to intervene and any motions to intervene out-of-time before the issuance date of this order are granted. Granting late intervention at this stage of the proceeding will not disrupt this proceeding or place additional burdens on existing parties. Adverse comments were filed by BP Canada Energy Marketing Corporation (BP). A limited protest and request for modifications was filed by the National Grid Gas Delivery Companies (National Grid).[7]

4. On February 13, 2009, Iroquois filed an answer to the requests for modifications. The Commission's Rules of Practice and Procedure do not permit answers to protests. However, the Commission finds good cause to accept Iroquois' answer since it will not delay the proceeding, and will assist the Commission in understanding the issues raised.

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[4] 18 C.F.R. § 154.207 (2008).

[5] 18 C.F.R. § 154.210 (2008).

[6] 18 C.F.R. § 385.214 (2008).

[7] The National Grid Distribution Companies is comprised of the following: The Brooklyn Union Gas Company; KeySpan Gas East Corporation; Boston Gas Company, Colonial Gas Company, and Essex Gas Company; EnergyNorth Natural Gas Inc.; Niagara Mohawk Power Corporation; and The Narragansett Electric Company, all subsidiaries of National Grid USA.

Iroquois' answer is accepted.[8] The comments, limited protests, and answer are discussed below.

5. The Commission finds that Iroquois' proposed tariff revisions are generally consistent with Order Nos. 712 and 712-A and the Commission's capacity release policies. Accordingly, the Commission accepts Iroquois' tariff sheets, subject to conditions, as discussed below.[9]

6. National Grid requests that Iroquois be required to modify its tariff to explicitly provide that a releasing shipper may elect to agree to assume responsibility for its replacement shipper's charges from the pipeline, in lieu of any requirement that such replacement shipper satisfy Iroquois' creditworthiness standards.

7. National Grid contends that in its experience, certain small marketers may find it extremely burdensome to comply with pipeline creditworthiness requirements. National Grid further states that, while Commission policy requires replacement shippers to satisfy pipeline creditworthiness standards, the Commission has determined that pipelines "could give the releasing shipper the option of . . . assuming liability for the usage charge in the event of the replacement shipper's default."[10] National Grid asserts that, given the Commission's support for retail unbundling as evidenced by Order No. 712 and elsewhere, there is no reason why the Commission should not require Iroquois and other pipelines to permit releasing shippers to agree to assume liability for pipeline charges for the benefit of small marketers operating on their systems.

8. Iroquois, in its answer, responds that National Grid's requests are unrelated to the regulatory changes promulgated in Order Nos. 712 and 712-A and, therefore, should be denied.

9. The Commission finds National Grid's request that Iroquois be required to afford releasing shippers the right to assume responsibility for a replacement shipper's charges is outside the scope of Order No. 712 and unsupported by National Grid. Moreover, Iroquois did not propose to modify its tariff to include National Grid's suggestion and

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[8] 18 C.F.R. § 385.213(a)(2) (2008).

[9] The Commission directs Iroquois to correct the spelling of its "Nineth" Revised Sheet No. 92 to "Ninth" Revised Sheet No. 92.

[10] National Grid Protest at P 18, (*citing Dominion Cove Point LNG, LP*, 104 FERC ¶ 61,184, at P 7 (2003), *citing Regulation of Short-Term Natural Gas Transportation Services and Regulation of Interstate Natural Gas Transportation Services*, Order No. 637, FERC Stats. and Regs. ¶ 31,091, at 31,299 (2000)).

National Grid has not shown that Iroquois' tariff is unjust and unreasonable without such modification. National Grid argues that the Commission has stated that pipelines could give the releasing shipper the option to assume liability for the usage charge in the event of a replacement shipper's default. However, this finding by the Commission concerned an option, not a mandate, that the pipelines could permit for their shippers.[11] Therefore, National Grid's request is denied. The Commission will not require Iroquois to modify its tariff in this regard. Iroquois, of course, is free to propose any additional creditworthiness provisions to the Commission for consideration.

10. National Grid requests that the Commission require Iroquois to modify its tariff to clearly state, as in *Texas Eastern Transmission LP*, that rates paid by replacement shippers for releases with terms of one year or less, which are not subject to the maximum rate cap, will be final and therefore not subject to refund.[12]

11. In *Texas Eastern*, the Commission found that it was consistent with Order No. 712 to deem rates paid by replacement shippers for terms of one year or less to be final and not subject to refund.[13] The Commission explained that, as a result of Order No. 712, the pipeline's maximum rates no longer apply to such short-term releases. Therefore, replacement shippers are not entitled to any refunds when the Commission finds that the maximum rates proposed by the pipeline in a section 4 rate case are too high. The Commission finds that the discussion in *Texas Eastern* provides sufficient guidance on this issue and that the suggested tariff revisions to expressly require that Iroquois make such refunds to the releasing shipper are unnecessary. Accordingly, the Commission denies National Grid's request.

12. Section 284.8(h)(4) of the regulations, as adopted by Order No. 712-A, exempts from bidding any prearranged release "that will be utilized by the replacement shipper to provide the gas supply requirement of retail consumers pursuant to a retail access program approved by the state agency with jurisdiction over the local distribution company that provides delivery service to such retail consumers." Iroquois proposes to define "Retail Choice Program" for purposes of this bidding exemption in section 28.2(g) of its GT&C as a program that "requires that a Replacement Shipper utilize its released capacity to provide the gas supply requirement of retail consumers." National Grid contends that Iroquois' definition improperly requires that replacement shippers under such programs must utilize the released capacity to serve retail consumers. National Grid

[11] *Id*.

[12] National Grid Protest at P 16 (*citing Texas Eastern Transmission, LP*, 125 FERC ¶ 61,396, at P 13 (2008) (*Texas Eastern*)).

[13] *Id*.

contends that there is a difference between a state retail access program that “requires” a replacement shipper to utilize its released capacity to serve retail consumers and a retail choice program that permits or requires a release of capacity that “will be utilized by the replacement shipper to provide the gas supply requirements of retail consumers. . . ,” as defined in section 284.8(h)(4) of the Commission’s regulations. Accordingly, National Grid requests that Iroquois be directed to revise section 28.2(g) of its GT&C to define a “Retail Choice Program” as a state regulated program described in 18 C.F.R. § 284.8(h)(4) of the Commission’s regulations.

13. In its answer, Iroquois stated that it has no objection to modifying the retail choice program definition in proposed section 28.2(g) of its GT&C as suggested by National Grid. We find that incorporation of the definition contained in 18 C.F.R. § 284.8(h)(4) of the Commission’s regulations will eliminate confusion concerning the nature of the qualifying state-regulated retail access program under Order Nos. 712 and 712-A. Accordingly, the Commission directs Iroquois to file a revised tariff sheet containing such a modification.

14. Section 284.8(h)(2) of the regulations, as adopted by Order No. 712-A, provides that, when a release is exempt from bidding because its term is 31 days or less, the releasing shipper may not roll over or extend the release to the same replacement shipper using the 31-day or less bidding exemption until at least 28 days after the first release. Section 284.8(h)(2) also states that the 28-day hiatus does not apply to any re-releases to the same replacement shipper that is posted for bidding or that qualifies for any of the other exemptions from bidding. BP contends that Iroquois did not revise its tariff to state that the 28-day hiatus period restricting roll-overs is not applicable to the re-release of capacity that is otherwise exempt from the bidding requirements, as stated in section 284.8(h)(2) of the Commission’s regulations. BP requests that Iroquois amend the capacity release tariff provision in section 28.5 of its GT&C to allow re-releases of capacity during the 28-day restricted period if the release otherwise qualifies for another exemption from competitive bidding, including if the release is to an asset manager or a marketer in a state-regulated retail access program.[14]

15. Iroquois, in its answer, agrees that it did not memorialize the 28-day hiatus exemption language of the Commission’s regulations. Iroquois claims that it is already complying with that required exemption and will continue to do so. However, Iroquois states that it has no objection to memorializing this regulatory language if the Commission determines it is necessary or preferable.

[14] Section 28.5 of the proposed tariff provides for exceptions to the capacity release notice, bidding and allocation requirements of section 28.

16. Existing section 28.5 of Iroquois' GT&C provides that the 28-day hiatus does not apply to releases that are posted for bidding or that qualify for the exemption from bidding for maximum rate releases set forth in section 28.5(b) of its GT&C. However, Iroquois did not propose to modify section 28.5 to provide that the 28-day hiatus requirement also will not apply to releases that qualify for the new exemptions from bidding for releases to asset managers and marketers participating in retail access programs, which Iroquois has set forth in section 28.5(c) of its GT&C. Accordingly, the Commission directs Iroquois to revise section 28.5 of its GT&C to include asset manager and retail access releases among the types of releases that are exempt from the 28-day hiatus.

17. The Commission accepts the tariff sheets listed in the Appendix to this order to be effective on January 27, 2009, subject to the conditions discussed above in the body of this order. Iroquois is directed to file revised tariff sheets consistent with this discussion, within 15 days of the date of this order.

By direction of the Commission.

Nathaniel J. Davis, Sr.,
Deputy Secretary.

cc: All Parties

Appendix

Iroquois Gas Transmission System, L.P.
FERC Gas Tariff, First Revised Volume No. 1
Tariff Sheets Accepted, Effective January 27, 2009, Subject to Conditions

Thirty-First Revised Sheet No. 4
Original Sheet No. 4.01
Second Revised Sheet No. 4C
Original Sheet No. 4D
Seventh Revised Sheet No. 50B
Nineth Revised Sheet No. 92
Seventh Revised Sheet No. 94
Seventh Revised Sheet No. 95
Sixth Revised Sheet No. 95A
Sixth Revised Sheet No. 97
Third Revised Sheet No. 99
First Revised Sheet No. 99A
First Revised Sheet No. 101A
Fifth Revised Sheet No. 105
First Revised Sheet No. 105A
Eighth Revised Sheet No. 106
Second Revised Sheet No. 158A
Second Revised Sheet No. 161A
Eighth Revised Sheet No. 162
Third Revised Sheet No. 167