

144 FERC ¶ 61,077
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Philip D. Moeller, John R. Norris,
Cheryl A. LaFleur, and Tony Clark.

Iroquois Gas Transmission System, L.P.

Docket No. RP13-1041-000

ORDER ACCEPTING AND SUSPENDING TARIFF RECORDS SUBJECT TO
REFUND AND CONDITIONS AND FURTHER REVIEW

(Issued July 31, 2013)

1. On July 2, 2013, Iroquois Gas Transmission System, L.P. (Iroquois) filed proposed tariff records.¹ Iroquois seeks to revise the non-*force majeure* reservation charge crediting provisions in its General Terms and Conditions (GT&C) and add conforming tariff language to comply with Commission policy. Iroquois' filing was protested and Iroquois filed an answer. As discussed below, the Commission accepts and suspends the tariff records subject to refund and conditions and further Commission action effective January 1, 2014, or a date set forth in a subsequent order.

Background

2. In *Natural Gas Supply Association, et al.*,² the Commission encouraged interstate pipelines to review their tariffs to determine whether their individual tariff complies with the Commission's policy concerning reservation charge credits, and, if not, make an appropriate filing to comply. The Commission also directed the Division of Audits of the Office of Enforcement to include in its future audits of interstate pipelines an examination of whether the pipeline's tariffs comply with the Commission's reservation

¹ The revised tariff records are listed in the Appendix to this order.

² 135 FERC ¶ 61,055 at PP 2, 12, *order on reh'g*, 137 FERC ¶ 61,051 (2011) (NGSA).

charge crediting policy.³ Finally, the Commission encouraged shippers that believe that a pipeline is not taking appropriate action to comply with Commission policy to file a complaint, seek relief pursuant to section 5 of the Natural Gas Act (NGA), or raise the issue in any section 4 filing by the pipeline.⁴

3. In general, the Commission requires all interstate pipelines to provide reservation charge credits to their firm shippers during both *force majeure* and non-*force majeure* outages. The Commission requires pipelines to provide full reservation charge credits for outages of primary firm service caused by non-*force majeure* events and partial reservation charge credits during *force majeure* outages, to allow risk sharing for events for which neither party is responsible. Partial credits may be provided pursuant to: (1) the No-Profit method under which the pipeline gives credits equal to its return on equity and income taxes starting on Day 1, or (2) the Safe Harbor method under which the pipeline provides full credits after a short grace period when no credit is due (i.e., 10 days or less).⁵ The Commission has stated that pipelines may also use some other method which achieves equitable sharing in the same ball park as the first two methods.⁶

4. The Commission has defined *force majeure* outages as events that are both unexpected and uncontrollable. The Commission has held that routine, scheduled maintenance is not a *force majeure* event, even on “pipelines with little excess capacity,”⁷ where such maintenance may require interruptions of primary firm service. Commission policy recognizes that even if such outages are considered to be uncontrollable, they are expected. The U.S. Court of Appeals for the District of Columbia Circuit affirmed this policy in *North Baja Pipeline, LLC v. FERC*,⁸ stating:

³ NGA, 135 FERC ¶ 61,055 at P 13.

⁴ *Id.*

⁵ See, e.g., *Tennessee Gas Pipeline Co.*, Opinion No. 406, 76 FERC ¶ 61,022 (1996), *order on reh’g*, Opinion No. 406-A, 80 FERC ¶ 61,070 (1997) (*Tennessee*), as clarified by, *Rockies Express Pipeline LLC*, 116 FERC ¶ 61,272, at P 63 (2006).

⁶ *Northern Natural Gas Co.*, 141 FERC ¶ 61,221, at P 20 (2013) (*Northern*).

⁷ *El Paso Natural Gas Co.*, 105 FERC ¶ 61,262, at P 15 (2003).

⁸ *North Baja Pipeline, LLC v. FERC*, 483 F.3d 819, 823 (D.C. Cir. 2007), *aff’g*, *North Baja Pipeline, LLC*, 109 FERC ¶ 61,159 (2004), *order on reh’g*, 111 FERC ¶ 61,101 (2005) (*North Baja*).

Although some scheduled maintenance interruptions may be uncontrollable, they certainly are not unexpected. There is nothing unreasonable about FERC's policy that pipelines rates should incorporate the costs associated with a pipeline operating its system so that it can meet its contractual obligations.

5. Iroquois' current tariff does not provide for any reservation charge credits when firm service is curtailed due to a non-*force majeure* event. If Iroquois curtails or interrupts service, section 20.3 of its General Terms and Conditions of Service (GT&C) gives shippers an opportunity to make up such loss of service on a subsequent day by scheduling service above their daily contract entitlement levels, if capacity is available. Section 21.2⁹ of Iroquois' GT&C provides that Iroquois must refund demand charges during curtailments attributed to *force majeure* to the extent the reimbursable demand charges are not covered by the shipper's insurance but are covered by Iroquois' insurance.

⁹ Section 21.2 provides in part that:

Transporter shall be obligated to refund demand charges collected from firm shippers applicable to days in which firm service is interrupted, if and to the extent that Transporter is reimbursed for such demand charges through insurance proceeds and such shipper is not recompensed for such demand charges through any other primary insurance. Such refunds shall be computed by allocating to each firm shipper for which service was interrupted a pro rata share of the attributable insurance proceeds received by Transporter based on the proportion that the eligible amount of each such shippers affected demand charge payments bear to the sum of the eligible amounts of all such shippers affected demand charge payments. The affected demand charge payments for each shipper shall be computed by multiplying the daily applicable Transportation Demand Rate by the quantity of gas not delivered by reason of the interruption in firm service, not to exceed such shippers Maximum Input Quantity. The eligible amount of such affected demand charge payments shall be the portion of the affected demand charge payments for which the shipper is not eligible to be recompensed through other primary insurance.

Audit Report

6. On January 4, 2013, the Division of Audits issued a letter order and audit report¹⁰ in Docket No. PA12-7-000 after completing an audit of Iroquois. The Audit Report found, among other things, that “Iroquois’ tariff did not include language consistent with the Commission’s reservation charge crediting policy.”¹¹ Specifically, the Audit Report found that the opportunity for “make-up” service in the event of interruptions of service in section 20.3 of Iroquois existing tariff was “absent any explicit language that satisfies a Commission policy that requires pipelines to provide shippers a full reservation charge credit for the amount of primary firm service they scheduled but failed to deliver due to a non-*force majeure* curtailment.”¹²

7. The Audit Report¹³ also addressed reservation charge crediting for curtailments due to *force majeure* events.¹⁴ The Audit Report recognized that section 21.2 of Iroquois’ tariff requires it to refund reservation charges during curtailments attributed to *force majeure* if the reimbursable demand charges are covered by Iroquois’ insurance and not by the shipper’s insurance. The Audit Report noted that this tariff language is the result of a Commission-approved stipulation and agreement¹⁵ between Iroquois and its shippers.¹⁶ The Audit Report further noted that the fact that the method in Iroquois’ tariff

¹⁰ *Audit of FERC Form No. 2, Standards for Pipeline Business Operations and Communications, Reporting Requirements identified in § 284.13, and select tariff provisions in Iroquois Gas Transmission System, L.P., Docket No. PA12-7-000 (Jan. 4, 2013) (Audit Report).*

¹¹ Audit Report at 11.

¹² Audit Report at 13.

¹³ Audit Report at 13.

¹⁴ Audit Report at 13-14.

¹⁵ See section 5.3 of the June 19, 1995 Stipulation and Agreement in Docket Nos, RP94-72-004, RP94-72-005, and FA92-59-004. Section 5.3 required Iroquois to use due diligence to determine whether it was feasible and economic to obtain insurance for reservation charge credits for outages due to *force majeure* events. Iroquois reflected such insurance in revised tariff sheets (*Iroquois Gas Transmission System, L.P.*, 71 FERC ¶ 61,358 (1995) (*Iroquois*)).

¹⁶ Audit Report at 13, n.18.

varied from the No-Profit and Safe Harbor methods does not automatically invalidate it and that the Commission has stated that it would examine whether an alternative approach would achieve a similar sharing of the risk as these two approved approaches.¹⁷

8. The Audit Report concluded that Iroquois had agreed to the recommendation that Iroquois “either file revisions to its tariff concerning reservation charge credits for non-*force majeure* interruptions to conform with Commission policy, or show cause why it should not be required to do so.”¹⁸

Details of the Filing

9. Iroquois states that the purpose of this filing is to comply with the directive in the Audit Report to file tariff revisions concerning reservation charge credits for non-*force majeure* interruptions to conform to Commission policy, or show cause why it should not be required to do so. Iroquois proposes to revise its tariff to provide for full reservation charge credits for outages of firm service due to non-*force majeure* events, subject to various conditions. Iroquois’ filing does not address the merits of the issue of whether insurance proceeds provided to shippers for outages due to *force majeure* events pursuant to section 21.2 in its current tariff are an alternative approach which would result in an equitable sharing of the risk similar to the approved No-Profit and Safe Harbor methods consistent with Commission policy.

Non-Force Majeure Events

10. Iroquois states that it proposes to revise section 20.2 of its tariff to provide reservation charge credits when: (1) scheduled primary firm service cannot be delivered due to a non-*force majeure* service event and (2) when nominated and confirmed primary firm service cannot be scheduled due to a non-*force majeure* service interruption, in accordance with proposed section 20.2(a)-(f).

11. Iroquois proposes to revise section 20.2(a) to provide reservation charge credits for outages due to non-*force majeure* events for volumes nominated and, if applicable, confirmed properly and timely under an Firm Reserved Transportation service (RTS) contract or renominated as specified in section 20.2(f)(vi) under an RTS contract up to

¹⁷ Audit Report at 14 (citing *NGSA*, 135 FERC ¶ 61,055 at P 18 (citing *North Baja*, 483 F.3d 819, 822)).

¹⁸ Audit Report at 15.

Shipper's Maximum Equivalent Quantity.¹⁹ Where advance notice of a non-*force majeure* outage is given, the maximum potential volumes to which demand charge credits apply would be the lesser of: (a) the average of the immediately preceding seven days of service received by the Shipper under the affected RTS contract for the affected pair of Primary Receipt and Delivery Points or (b) the volume actually delivered under the Shipper's RTS contract between the affected RTS contract for the affected pair of Primary Receipt and Delivery Points on the same calendar day of the immediately preceding year, assuming such RTS contract was then in effect ("lesser of" provision). Iroquois asserts that it proposes this "lesser of" provision to prevent overcrediting when the immediately preceding seven days occur during a period of unusually high demand, and the calendar day of the immediately preceding year may be more representative in such circumstances. Iroquois further asserts that use of historical, objective measures where the pipeline has given advanced notice is consistent with the Commission's policy concerning potential gaming.²⁰

12. Iroquois further proposes in section 20.2(b) to calculate the reservation charge credits to Shippers other than Replacement Shippers, by multiplying the volumes determined in section 20.2(a) by the daily equivalent of the demand charge applicable to the Shipper under its RTS contract. For Replacement Shippers, Iroquois would calculate the reservation charge credit based on the lesser of the Replacement Shipper's or the original Shipper's applicable daily demand charge which Iroquois asserts was the amount it could collect under the Commission's capacity release rules and its tariff. Iroquois proposes to add section 20.2(d) to provide that it may, as part of a negotiated rate agreement, negotiate with the Shipper the amount of the reservation charge credit.

13. Iroquois' proposed section 20.2(f) includes a number of exceptions to the requirement to provide reservation charge credits. These exceptions include situations where: (1) Schedule 1 or Schedule 2 of Shipper's RTS contract indicates that service is provided via Backhaul and Exchange Transportation service and Transporter's interruption of service is necessitated by insufficient offsetting forwardhaul service;²¹

¹⁹ Iroquois asserts that this limitation is consistent with the Commission's policy concerning the confirmation of non-delivered volumes, citing *Tuscarora Gas Transmission Co.*, 123 FERC ¶ 61,109, at P 14 (2008); *Tennessee Gas Pipeline*, 139 FERC ¶ 61,050, at P 100 (2012) (*Tennessee*), (citing *Natural Gas Pipeline Co. of America*, 106 FERC ¶ 61,310, at P 15, n.10 (2004) (*Natural*)).

²⁰ (Citing *Southern Natural Gas Co.*, 135 FERC ¶ 61,056 at PP 33-34, *order on reh'g*, 137 FERC ¶ 61,050 (2011) (*Southern*)).

²¹ Iroquois asserts that the Form of Service Agreement for Rate Schedule RTS service, Schedules 1 and 2, includes optional language for backhaul and exchange

(continued...)

(2) the shipper fails to properly nominate in accordance with section 4 of the GT&C or otherwise fails to comply with its obligations under its RTS contract or applicable provisions of Iroquois' tariff;²² (3) quantities are nominated from an Alternate Receipt or to an Alternate Delivery Point notwithstanding that such alternative transportation path may have primary priority status under GT&C section 4.2(b)(1);²³ (4) Shipper elects and is able to make up lost service as provided in section 20.3;²⁴ (5) Iroquois is able to restore service during the affected Gas Day and Shipper fails to re-submit its nomination in a later cycle;²⁵ and (6) the Shipper is provided service pursuant to a negotiated rate agreement and such agreement does not explicitly require reservation charge credits.²⁶ In addition, Iroquois proposes in section 20.2(f) not to provide credits when the interruption of firm service is due to: (1) Shipper's negligence or willful misconduct, (2) the conduct or operations of the downstream operator of the Shipper's Delivery Point not controlled by Iroquois,²⁷ (3) the conduct or operations of the upstream operator of Shipper's Receipt Point not controlled by Iroquois,²⁸ (4) Shipper's failure to comply with any portion of Iroquois' tariff, (5) the failure (in whole or in part) of supply or upstream or downstream transportation service applicable to Iroquois' affected transportation service for

services that states "Shipper acknowledges that the service provided hereunder is Backhaul and Exchange Transportation service, and therefore receipts are dependent upon offsetting forwardhaul service. . ." (citing Second Revised Sheet Nos. 148A and 148B).

²² (Citing *CenterPoint Energy Gas Transmission Co., LLC*, 139 FERC ¶ 61,064, at PP 26-27 (2012); *Southern*, 137 FERC ¶ 61,050 at P 19.)

²³ (Citing *NGSA*, 135 FERC ¶ 61,055 at P 27; *Tennessee Gas Pipeline Co.*, 73 FERC ¶ 61,083, at 61,206 (1995).)

²⁴ Iroquois asserts that, in such circumstances, the Shipper is actually receiving the service and therefore should not be eligible for a credit.

²⁵ (Citing *Wyoming Interstate Co.*, 130 FERC ¶ 61,091 at PP 14-17 (2010) (*WIC*).)

²⁶ (Citing *Empire State Pipeline*, 116 FERC ¶ 61,074 at P 154, *order on reh'g*, 117 FERC ¶ 61,319 (2006).)

²⁷ (Citing, e.g., *Portland Natural Gas Transmission System*, 143 FERC ¶ 61,181 (2013); *Tennessee*, 139 FERC ¶ 61,050 at P 100, (citing *Natural*, 106 FERC ¶ 61,310 at P 15, n.10.)

²⁸ *Id.*

Shipper,²⁹ (6) the Shipper's refusal or inability to accept delivery of gas for which Iroquois has met its tariff obligations, and (7) the installation of new facilities designed in whole or in part to provide service to the Shipper.

Force Majeure Events

14. Iroquois proposes to clarify its tariff definition of *force majeure* and revise section 21.2 to include "emergency or otherwise unexpected non-routine repairs or maintenance activities not within the Transporter's control."³⁰ Iroquois also proposes to add section 21.5 to allow Iroquois and shippers to agree as part of a negotiated rate agreement to the amount of reservation charge credits due under section 21.

Pipeline Safety Act

15. Iroquois proposes in section 20.4 to provide reservation charge credits, calculated pursuant to section 21.4 applicable to *force majeure* events, for outages to comply with orders issued by Pipeline and Hazardous Materials Safety Administration (PHMSA) pursuant to section 60139(c)(1) of Chapter 601 of Title 49 of the United States Code, added by section 23(a) of the Pipeline Safety, Regulatory Certainty and Job Creation Act of 2011, for a two-year period, effective August 1, 2013, to be consistent with recent Commission decisions.³¹

Public Notice, Interventions, Protests, Request for Clarification, and Answer

16. Public notice of Iroquois' filing was issued on July 3, 2013. Interventions and protests were due as provided by section 154.210 (18 C.F.R. § 154.210 (2013)). Pursuant to Rule 214, 18 C.F.R. § 385.214 (2013), all timely motions to intervene and any unopposed motions to intervene out-of-time filed before the 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. Protests were filed by Consolidated Edison Company of New York, Inc. (Con Ed) and Indicated Shippers.³² Indicated

²⁹ (Citing, e.g., *Paiute Pipeline Company*, 139 FERC ¶ 61,089, at P 30 (2012), *order on reh'g*, 142 FERC ¶ 61,021 (2013) (*Paiute*)).

³⁰ (Citing *Orbit Storage Co.*, 126 FERC ¶ 61,095 at PP 40, 41, 45 (2009).)

³¹ (Citing *Gulf South Pipeline Company, LP*, 141 FERC ¶ 61,224 (2012) (*Gulf South*)).

³² For purposes of this proceeding, the Indicated Shippers are: BP Energy Company, ConocoPhillips Company, and Hess Corporation.

(continued...)

Shippers also filed a request for clarification. Iroquois filed an answer to the protests (Answer).³³

17. Con Edison asserts that the proposed provision in section 20.2(a) that reservation charge credits would apply to volumes nominated “and, if applicable, confirmed properly” would violate Commission policy if: (1) Iroquois and an upstream pipeline are unable to provide service because Iroquois’ inability to provide service is not “solely” due to the upstream pipeline,³⁴ or (2) a notice of interruption or curtailment is posted prior to confirmation and Iroquois refuses to confirm the nomination for outages due to events within the pipeline’s control³⁵ or calculates credits based on the gas scheduled not on the amount nominated by the shipper.³⁶

18. Con Ed objects to the proposed exemption from the reservation charge credit requirement in section 20.2(f)(v)(F) due to a shipper’s “refusal” to accept delivery. Con Ed asserts that a shipper may well have good cause to refuse to accept delivery, i.e., when Iroquois tenders gas that does not meet its tariff’s gas quality specifications.³⁷ Con Ed argues that section 20.2(f)(v)(F) should be modified to preserve a shipper’s right to reservation charge credits when the shipper’s refusal to accept deliveries is authorized by Iroquois’ tariff.³⁸

19. Con Ed argues that Iroquois should eliminate section 20.2(f)(vi) which proposes to deny reservation charge credits to the extent Iroquois “is able to restore service during the affected Gas Day and Shipper fails to resubmit its nomination in a later cycle.” Con Ed

³³ The Commission’s Rules of Practice and Procedure do not permit answers to protests unless otherwise ordered by the decisional authority. 18 C.F.R. § 385.213(a)(2) (2013). However, the Commission finds good cause to accept Iroquois’ Answer since it will not delay the proceeding, may assist the Commission in understanding the issues raised, and will ensure a complete record.

³⁴ (Citing *Paiute*, 139 FERC ¶ 61,089.)

³⁵ (Citing, e.g., *Tennessee*, 139 FERC ¶ 61,050 at P 100.)

³⁶ (Citing *Alliance Pipeline, L.P.*, 141 FERC ¶ 61,260, at P 18 (2012).)

³⁷ (Citing GT&C section 9.6(d)(i), as granting Receiving Parties the right to refuse delivery of out-of-specification gas.)

³⁸ (Citing *National Fuel Gas Supply Corp.*, 143 FERC ¶ 61,103, at P 38 (2013).)

asserts that the Commission has previously required pipelines to provide reservation charge credits even when a shipper does not resubmit its nomination in subsequent cycles, recognizing that alternate arrangements may have been made.³⁹

20. Con Ed and Indicated Shippers both object to Iroquois' proposed "lesser of" provision in section 20.2(a), which defines the maximum potential volumes to which the reservation charge credits are calculated, when Iroquois has given advance notice of the interruption, as the lesser of (i) the average of the immediately preceding seven days or (ii) the volumes actually delivered on the same calendar day of the immediately preceding year assuming the shipper's RTS contract was then in effect. Con Ed contends that this "lesser of" provision is acceptable only if the contract demand in the RTS contract is unchanged from the prior year and has not increased.⁴⁰ Con Ed argues that Iroquois should be required to clarify that the volumes to which reservation charge credits apply will be adjusted to reflect changes in the customer's RTS contract demand during the past year.

21. Indicated Shippers argues that the calculation of reservation charge credits should be limited to a shipper's historical average of usage exclusive of gas days when service is unavailable or curtailed. Indicated Shippers contends that Iroquois should be required to add language to the provision to specify that the seven days applicable to determining the historical average are the seven days "immediately preceding the service interruption," rather than the seven days immediately preceding the date on which advance notice of the outage is given.⁴¹ Indicated Shippers also contends that Iroquois must remove from the provision the language that would permit Iroquois to set the maximum potential volumes as the volumes actually delivered to the shipper on the same calendar day as the prior year. Indicated Shippers asserts that this is not a "comparable period"⁴² because it only considers the volumes delivered on one specific day. Indicated Shippers further asserts that it may distort the maximum potential volumes for crediting, especially if it takes into account a gas day when firm service was unavailable or curtailed. Indicated Shippers contends that, to the extent the Commission does not eliminate the references to prior year deliveries, it should nevertheless require Iroquois to use the greater, rather than the

³⁹ (Citing *WIC*, 130 FERC ¶ 61,091 at P 17; *Southern*, 135 FERC ¶ 61,056 at P 37.)

⁴⁰ (Citing *Dominion Transmission, Inc.*, 142 FERC ¶ 61,154, at PP 38-39 (2013).)

⁴¹ (Citing *Southern*, 137 FERC ¶ 61,050 at PP 20-21.)

⁴² (Citing *Kern River Gas Transmission Co.*, 139 FERC ¶ 61,044, at P 49 (2012), *order on reh'g*, 140 FERC ¶ 61,146 (2012) (*Kern River*).)

lesser, of the immediately preceding period or the prior year's period because shippers, who are not responsible for the service interruption, will not be penalized if demand has increased over the prior year.

22. Indicated Shippers argues that Iroquois' reservation charge crediting provision for *force majeure* events providing reservation charge credits to the extent they are not covered by the shipper's insurance but are covered by Iroquois' insurance, as set forth in section 21.4, is not consistent with Commission policy because it does not share the risk of the curtailments between the pipeline and the shippers. Indicated Shippers contends that the Commission should direct Iroquois to modify its tariff to provide reservation charge credits for *force majeure* events utilizing the No-Profit method, the Safe Harbor method, or "any other method provided it results in the same type of risk-sharing as the two approved methods do."⁴³ Indicated Shippers asserts that, under the currently effective section 21.4, in order for a shipper to be kept whole with respect to reservation charges, a shipper must incur the cost of insurance, and, in the event the reservation charges are not covered by either Iroquois' or the shipper's insurance, the shipper would not receive a refund of the reservation charges.

23. Indicated Shippers contends that Iroquois should be required to revise its definition of *force majeure* in section 21.2 which includes "the binding order of any court or governmental authority which has been resisted in good faith by all reasonable legal means" to clarify that only governmental actions that are "not reasonably within the control of the pipeline" are considered *force majeure* events consistent with Commission policy.⁴⁴

24. Indicated Shippers contends that Iroquois' proposals to allow negotiation of reservation charge crediting with shippers in negotiated rate agreements in sections 20.2(d) for non-*force majeure* events and 21.5 for *force majeure* events, should be limited to rate relief. Indicated Shippers asserts that the Commission has permitted pipelines to negotiate reservation charge credits with negotiated rate shippers but has required that the relief be limited to rate relief.⁴⁵ Indicated Shippers further asserts that a negotiated rate provision may not include a discriminatory term and condition of service and, given the unequal bargaining power between a pipeline and its shippers, a pipeline should not be

⁴³ (Citing *NGSA*, 135 FERC ¶ 61,055 at P 16.)

⁴⁴ (Citing *Rockies Express Pipeline L.P.*, 139 FERC ¶ 61,275, at 19 (2012) (citing *Tennessee*, 139 FERC ¶ 61,050 at P 80).)

⁴⁵ (Citing *Southern LNG Inc.*, 130 FERC ¶ 61,146, at P 42 (2010); *Golden Triangle Storage, Inc.*, 134 FERC ¶ 61,036, at PP 7-8 (2011).)

allowed to require a waiver of the credits in order for the shipper to obtain a negotiated rate. Indicated Shippers argues that the Commission should direct Iroquois to revise proposed sections 20.2(d) and 21.5 to expressly limit the negotiated relief to rate relief and equate the credit to the negotiated reservation charge.

25. Con Ed contends that Iroquois' proposal to deny reservation charge credits when "the shipper is provided service pursuant to a Negotiated Rate Agreement and such agreement does not explicitly require" reservation charge credits in section 20.2(f)(vii) should be limited to negotiated rate agreements entered into on or after the effective date of the tariff revisions. Con Ed contends that given the absence of prior tariff authority for negotiated reservation charge credits, Iroquois should not be permitted to deny reservation charge credits based on negotiated rates agreements entered into prior to the effective date of such authority.⁴⁶

26. Indicated Shippers argues that proposed section 20.4 must require Iroquois to identify the specific PHMSA order with which it is complying. Indicated Shippers asserts that the Commission, in permitting partial reservation charge crediting for outages resulting from PHMSA orders issued under section 60139(c) for a two-year transitional period, has required that the pipeline, when it provides notice of an outage required to comply with a PHMSA order issued pursuant to section 60139(c), to identify the specific PHMSA order with which it is complying.⁴⁷

27. In its request for clarification, Indicated Shippers requests clarification that, under section 20.3 which addresses make-up service on Iroquois' system, (i) a shipper is entitled to full reservation charge credits if make-up service is offered or made available by Iroquois but is not utilized by the shipper, and (ii) a shipper will incur payment obligations for make-up service only if the shipper utilizes make-up service.

28. In its Answer, Iroquois' argues that no change is necessary in proposed section 20.2(a) which specifies that "demand charge credits shall apply to volumes nominated and, *if applicable*, confirmed properly . . ." (emphasis added). Iroquois clarifies that it would not deny credits if the confirmation failure was the fault of, or otherwise within the control of, Iroquois and not caused by the act or omission of a third party. Iroquois asserts that its proposed language is consistent with this clarification.

⁴⁶ (Citing, e.g., *El Paso Natural Gas Co.*, 114 FERC ¶ 61,305 at P 284 (2006); *Kern River Gas Transmission Co.*, 75 FERC ¶ 61,228, at 61,756 (1996); and *ANR Pipeline Co.*, 64 FERC ¶ 61,140 (1993).)

⁴⁷ (Citing *Gulf South*, 141 FERC ¶ 61,224 at PP 40-47.)

Iroquois confirms that there is no place in the process for Iroquois to “refuse to confirm the nomination.”

29. Iroquois agrees with Con Edison that Iroquois should not be allowed pursuant to its proposed “lesser of” provision to limit reservation charge credits to the lower prior year level, if the shipper has subsequently increased its contract demand. Iroquois states that it would be willing to add the following language at the end of paragraph 20.2(a): “provided, however, that if the Maximum Equivalent Quantity in the affected RTS contract is higher than it was on the specified day of the immediately preceding calendar year, then the maximum specified volumes to which demand charge credits may apply shall be solely as specified in clause (i).”

30. However, Iroquois disagrees with Indicated Shippers and argues that the seven days of service used in the calculation should be those immediately preceding the advance notice of the outage not the pre-outage service days when the shipper already has knowledge of the outage. Iroquois argues that, if an outage lasts one day, the same day in the prior year may be the most comparable period of time. Iroquois further argues that these alternative calculation methods reduce the risk that the prior seven days average will not be representative of actual shipper nominations on the affected outage day(s) and it would be unreasonable, in developing an anti-gaming methodology, to protect shippers in the event of contract demand increases but fail to protect the pipeline in the event of contract demand decreases.

31. With respect to its proposed crediting exemptions, Iroquois asserts that its tariff language actually agrees with Con Edison that the exemption when a shipper refuses to accept delivery, should not apply when the shipper has good cause to refuse to accept delivery. However, Iroquois points out that its proposed exemption is limited to situations in which the shipper refuses to accept delivery of gas “*for which Transporter has met its obligations under this FERC Gas Tariff*” (emphasis added). Iroquois argues that, therefore, the exemption does not apply when a Shipper refuses to accept deliveries because of a failure by Iroquois to comply with its tariff obligations, and no further change is necessary. Iroquois also argues that Con Ed’s objection to the exemption in section 20.2(f)(vi) when Iroquois “is able to restore service during the affected Gas Day and Shipper fails to re-submit its nomination in a later cycle” would provide reservation charge credits when a shipper does not nominate on another pipeline, conflicts with Commission precedent. However, Iroquois states that it is willing to modify section 20.2(f)(vi) to state “[t]o the extent Transporter is able to restore service during the affected Gas Day and Shipper fails to re-submit its nomination in a later cycle, *unless, after receiving notice of Transporter’s interruption, Shipper has nominated and been scheduled service on another pipeline as a result of Transporter’s non-force majeure interruption of service, and provided verification of such information to Iroquois*” (emphasis added).

32. Iroquois contends that the provision in section 20.2(f)(vii) that credits will not be provided if the RTS service is pursuant to a Negotiated Rate Agreement that does not explicitly require credits is appropriate. Iroquois argues that it would be unreasonable for the Commission to upset the previous economic bargain as Con Ed requests. However, Iroquois acknowledges that Con Ed's concern would have more merit in the case of *force majeure*, and confirms that its clause in section 21.5 permitting the negotiation of reservation charge credits for *force majeure* events does not affect the crediting rights that its current Negotiated Rate Agreement holders have under its pre-existing tariff provisions. With respect to Indicated Shippers' request that the ability to negotiate should be limited to rate relief, Iroquois asserts that section 20.2(d) specifically provides that the ability to negotiate is limited to "the amount of the Demand Charge Credit to be afforded, if any" and does not include non-rate terms or conditions of service.

33. Iroquois contends that proposed section 20.4 is consistent with recent Commission precedent concerning outages to comply with PHMSA orders issued pursuant to section 60139(c). Iroquois asserts that it is unnecessary to identify the specific PHMSA order with which it is complying since it already explicitly limits these outages to those "to comply with orders from [PHMSA] pursuant to section 60139(c)," and it is unclear at this point what form any such PHMSA order may take. Iroquois further asserts that, if Indicated Shippers or any other shipper has a concern about whether an outage qualifies for treatment under this section, it can contact Iroquois for additional information and, if necessary, raise its concerns with the Commission or its Staff. However, Iroquois states that, if the Commission requires uniformity in pipeline tariff language addressing this issue, it would not object to adding the following sentence at the end of section 20.4: "Notices of outages pursuant to this section shall identify the specific PHMSA order or requirement with which Transporter is complying." Iroquois argues, with respect to Indicated Shippers' argument concerning the type of crediting necessary, that Iroquois would apply the same reservation charge crediting requirement as specified for *force majeure* outages.

34. Iroquois argues that, with respect to its existing tariff provisions the protests necessarily seek changes pursuant to section 5 of the NGA and the protestors have failed to meet their dual burden of proving both that Iroquois' existing, approved tariff language has become unjust and unreasonable and that the change proposed would be just and reasonable. Iroquois contends that its tariff provisions concerning *force majeure* outages appropriately share the risk between Iroquois and the Shipper, and therefore are consistent with Commission policy. Iroquois asserts that section 21.4 requires it to provide reservation charge credits to its firm shippers in the event of *force majeure* outages if and to the extent Iroquois obtains insurance recovery for such reservation charge credits. Iroquois further asserts that it provides its shippers the right to submit make-up nominations above their daily contract entitlement levels for service on subsequent days following the conclusion of the *force majeure* outage.

35. Iroquois contends that the methodology reflects a longstanding bargain between Iroquois and its shippers. Iroquois asserts that its make-up service allows shippers additional service without additional cost with the exception of the firm usage charges they pay when service is taken. Iroquois contends that the insurance proceed-limited reservation charge credit was a part of a rate case settlement approved by the Commission by order issued June 19, 1995.⁴⁸ Iroquois further contends that, in an August 28, 1995 letter order accepting Iroquois' revised tariff sheets, the Commission acknowledged and described the bargain, stating “[u]nder the stipulation, Iroquois was obligated to look into obtaining additional insurance. This insurance would cover the reimbursement of firm shippers for demand charges paid while Iroquois was unable to provide service due to instances of *force majeure*.”⁴⁹ Iroquois argues that, consistent with the recognition in the Audit Report that this approach is the result of a settlement and that the Commission is open to such approaches that achieve a similar sharing of the risk as the approved methods, Iroquois' settlement-generated crediting policy for *force majeure* events remains just and reasonable. Iroquois further argues that Indicated Shippers have made no attempt to apply the Commission's generic policy to Iroquois' specific factual circumstances or to demonstrate that Iroquois' shippers are harmed by its current treatment of reservation charge credits in the case of *force majeure* outages.

36. Iroquois also argues that its existing *force majeure* definition is appropriate, and it is unnecessary to specify that only actions required under a binding order of any court or governmental authority that are “not reasonably within the control of the pipeline” are considered *force majeure*. Iroquois asserts that section 21.2, which states that *force majeure* includes the “binding order of any court or governmental authority *which has been resisted in good faith by all reasonable means*.” (Emphasis added.) Iroquois contends that this resistance requisite substantially limits the universe of court or governmental orders subject to this category by its terms and, if the binding order is unsuccessfully resisted, then it is beyond the reasonable control of the pipeline.

37. In response to Indicated Shippers' request for clarification, Iroquois responds that its make-up tariff provisions are clear. Iroquois states that it has confirmed that a shipper would not lose eligibility for reservation charge credits if it is offered but declines to utilize make-up service following a non-*force majeure* outage. Iroquois asserts that this interpretation is explicitly acknowledged in proposed section 20.2(f)(iv), which specifies that, in non-*force majeure* circumstances, Shipper loses eligibility for reservation charge credits “[i]f Shipper *elects and* is able to make up lost service as provided in

⁴⁸ (Citing *Iroquois*, 71 FERC ¶ 61,358.)

⁴⁹ (Citing the August 28, 1995 Letter Order, *Iroquois Gas Transmission System, L.P.*, Docket No. RP95-406-000, at 1.)

Section 20.3” (emphasis added). Iroquois argues that no further clarification is necessary.

Discussion

38. The Commission accepts Iroquois’ proposed tariff records for filing and suspends their effectiveness for the period set forth below. The protestors have raised a number of issues which warrant further examination. In addition, Iroquois has filed a detailed Answer to the protests in which it proposes various modifications to its original tariff filing to address some, but not all, of the protestors’ concerns. Therefore, the Commission will give the protestors and other parties an opportunity to respond to that Answer before making a final determination in this proceeding. In addition, the Commission requires additional factual information about the operation of Iroquois’s existing GT&C section 21.2 concerning the reservation charge credits it provides during *force majeure* outages in order to assess whether that section is consistent with Commission policy. While the Commission permits pipelines to provide partial credits during *force majeure* outages under a cost-sharing formula other than the approved No-Profit or Safe Harbor Methods, the Commission requires that any alternative cost-sharing formula achieve an equitable sharing in the same ballpark as the No Profit and Safe Harbor methods.⁵⁰ In order to analyze whether GT&C section 21.2 provides for risk sharing in the “same ballpark” as the No Profit and Safe Harbor methods, the Commission directs Iroquois to provide the following information:

- (1) Provide (a) a copy of the insurance policy or policies which provide the insurance proceeds for outages referred to in section 21.2; (b) identification of the specific applicable provision(s) in the insurance policy or policies which may be used to provide the proceeds used to calculate reservation charge credits pursuant to section 21.2; and (c) Iroquois’ costs to obtain and maintain this insurance and the extent to which, if any, such costs are reflected in the rates paid by individual shippers.
- (2) For each interruption of firm service due to *force majeure* event which has occurred since the effectiveness of section 21.2, provide (1) the duration of the *force majeure* event; (2) the quantity of gas not delivered to each firm shipper by reason of the interruption of service; (3) the total insurance proceeds received by Iroquois with respect to each

⁵⁰ *Northern*, 141 FERC ¶ 61,221 at P 20. See also *Kern River*, 139 FERC ¶ 61,044 at PP 36-40 (rejecting alternative cost sharing formula because it did not provide for sharing in the same ballpark as the No Profit or Safe Harbor methods).

interruption of service; and (4) the dollar amount of reservation charge refunds actually provided to each firm shipper with respect to each interruption of service.

39. The Commission requires Iroquois to provide the above information within 20 days of the date of this order. Parties may respond, within 40 days of the date of this order, to Iroquois' Answer and the informational filing required by this order. The Commission will address the merits of Iroquois' filing in a subsequent order after considering the pleadings permitted by this order.

Suspension

40. Based upon a review of the filing, the Commission finds that the proposed tariff records have not been shown to be just and reasonable, and may be unjust, unreasonable, unduly discriminatory, or otherwise unlawful. Accordingly, the Commission accepts the tariff records for filing, subject to refund, and suspends their effectiveness for the period set forth below, subject to the conditions set forth in this order.

41. It is the Commission's policy generally to suspend rate filings for the maximum period permitted by statute if preliminary study leads the Commission to believe that the filing may be unjust, unreasonable, or that it may be inconsistent with other statutory standards.⁵¹ It is also recognized however, that shorter suspensions may be warranted under circumstances in which suspension for the maximum period may lead to harsh and inequitable results.⁵² Such circumstances do not exist here. Accordingly, the Commission will exercise its discretion to suspend the tariff sections for the maximum period to be effective January 1, 2014, subject to refund and the conditions as set forth in the body of this order and in the ordering paragraphs below.

The Commission orders:

⁵¹ See *Great Lakes Gas Transmission Co.*, 12 FERC ¶ 61,293 (1980) (five-month suspension).

⁵² See *Valley Gas Transmission, Inc.*, 12 FERC ¶ 61,197 (1980) (one-day suspension).

(A) The tariff records listed in the Appendix to this order are accepted and suspended to become effective January 1, 2014, or a date set forth in a subsequent order, subject to refund and conditions and further review.

(B) Iroquois is directed to make an informational filing as discussed above within 20 days of the date of this order.

(C) Parties may file comments on Iroquois' Answer and informational filing within 40 days from the date of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

Appendix

Iroquois Gas Transmission System, L.P. FERC NGA Gas Tariff Iroquois Gas Transmission System, L.P.

[Sheet No. 41, General Terms and Conditions - TOC, 2.0.0](#)
[Sheet No. 84, GT&C, § 20 – Impairment of Deliveries, 2.0.0](#)
[Sheet No. 84A, GT&C, § 20 – Impairment of Deliveries, 2.0.0](#)
[Sheet No. 84B, GT&C, § 20 – Impairment of Deliveries, 0.0.0](#)
[Sheet No. 84C, GT&C, § 21 – Force Majeure and Remedies, 0.0.0](#)
[Sheet No. 85, GT&C, § 21 – Force Majeure and Remedies, 2.0.0](#)
[Sheet No. 86, GT&C, § 21 – Force Majeure and Remedies, 2.0.0](#)