

124 FERC ¶ 61,080
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, DC 20426

July 23, 2008

In Reply Refer To:
Iroquois Gas Transmission
System, L.P.
Docket Nos. RP07-443-000
RP07-443-001

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

Attention: Paul W. Diehl
Attorney for Iroquois Gas Transmission System, L.P.

Reference: Order on Stipulation and Settlement Agreement

Dear Mr. Diehl:

1. On March 7, 2008, Iroquois Gas Transmission System, L.P. (Iroquois) filed an Offer of Settlement, including a Stipulation and Agreement and *pro forma* tariff sheets, (Settlement) to resolve all of the issues in Docket Nos. RP07-443-000 and RP07-443-001. On March 27, 2008, Iroquois, the New England Local Distribution Companies,¹ Repsol Energy North America Corporation, Statoil Natural Gas LLC, Shell NA LNG LLC, Broadwater Energy LLC, Broadwater Pipeline LLC and Trial Staff filed initial comments in support of the Settlement and Dominion Transmission, Inc. filed comments providing that it did not support or oppose the Settlement. On April 16, 2008, the Presiding Administrative Law Judge certified the Settlement to the Commission as an uncontested settlement.²

¹ The New England Local Distribution Companies consist of Bay State Gas Company, Connecticut Natural Gas Corporation, New England Gas Company, NSTAR Gas Company, Northern Utilities, Inc., City of Norwich, Department of Public Utilities, The Southern Connecticut Gas Company, and Yankee Gas Services Company.

² *Iroquois Gas Transmission System, L.P.*, 123 FERC ¶ 63,007 (2008).

2. The Settlement consists of the following terms.
3. Article I provides a background and introduction to Iroquois' tariff change filing and the process which led to the development and filing of the Settlement.
4. Article II specifies and describes the agreed upon changes to Iroquois' gas quality tariff provisions. The Settlement's *pro forma* tariff sheets (Settlement Sheets) are attached to the Settlement as Appendix A. This section also confirms that the Settlement is a comprehensive resolution of all issues in this proceeding. Article II requires Iroquois to file with the Commission to implement the Settlement Sheets within 30 days of the effective date of the Settlement, as defined therein.
5. As set forth in Article II and specifically on the Settlement Sheets, the Settlement provides for certain gas quality standards at delivery points and other standards at receipt points. The receipt point standards are flexible and require Iroquois to accept any supplies of natural gas so long as Iroquois determines that those supplies, after blending, will allow Iroquois to meet the delivery point specifications. The Settlement Sheets establish the phased implementation of certain specifications (specifically, the Wobbe Index range specification, the nitrogen plus oxygen upper limit, and the total non-methane hydrocarbon upper limit), with the transition period to commence on the Settlement's Effective Date (or earlier, to the extent that a specification is already in effect) and continue until January 1, 2012, when the three identified specifications change. The Settlement Sheets also clarify and modify Iroquois' tariff procedures in the event that non-conforming gas is introduced into the pipeline's system.
6. Article III describes the agreement with respect to posting procedures for hourly average chromatograph data from selected chromatographs. Section 3.1 specifies Iroquois' public posting responsibilities with respect to selected chromatograph readings, and section 3.2 specifies that Iroquois will install and operate a gas chromatograph or other gas quality measurement equipment downstream of the Broadwater LNG Project by the time that it commences the receipt of regasified LNG from Broadwater.
7. Article IV discusses the effective date and term of the Settlement. The effective date is defined in Section 4.1 as the first day of the month immediately following the date that the Commission's order approving the settlement without modification or condition becomes final. Article IV states that the Settlement shall become effective on the effective date and continue for a term ending five years from the date the Settlement is filed with the Commission for approval.
8. Section 4.3 states that the Settlement is an integrated, non-severable package, and further provides that, if the Commission approves the Settlement with a material modification adverse to Iroquois or any Consenting Party, the adversely affected party shall be deemed to have accepted such modification subject to a right to seek rehearing

unless the adversely affected party provides notice of its refusal to accept the Settlement as modified, in which case the Settlement shall be deemed withdrawn and null and void *ab initio*.

9. Section 4.4 provides Iroquois or another party a limited right to seek a change to the Settlement Sheets during the term of the Settlement. Such limited rights are for instances in which the Commission has ordered an industry-wide change and instances in which a proponent of a change is able to demonstrate a material change in circumstances from those in existence as of the date the Settlement was filed, and section 4.4 further states that absent a material change in circumstances the actual or estimated costs to comply with the Settlement Sheets or to accept gas that complies with the Settlement Sheets does not justify a change. Any change sought pursuant to section 4.4 of the settlement shall be subject to the just and reasonable standard of review.

10. Article V defines Consenting and Contesting Parties. The Consenting Parties known as of the date of filing the Settlement are set forth in Appendix B to the Settlement.

11. Article VI sets forth certain reservations and conditions with respect to the Settlement. Section 6.1 specifies that the Settlement resolves all issues in this proceeding. Section 6.2 specifies “During the term of this Settlement, any modification to this Settlement or the Settlement Sheets, other than as set forth in section 4.4 above, must satisfy the ‘public interest’ standard of review as set fort[h] in *United Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 U.S. 348 (1956) and *FPC v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956).” Section 6.3 specifies that the Settlement shall be binding on the successors and assigns of Iroquois and the Consenting Parties. Section 6.4 confirms that the participants hereto are not, by agreeing to this settlement, accepting any principles or methods of regulation for purposes of any other proceeding and that no “settled practice” is being established by this Settlement. Section 6.5 specifies that the Settlement is subject to Rule 602 of the Commission’s Rules of Practice and Procedure.

12. Article VII states that approval of the Settlement constitutes any and all waivers of Commission rules and regulations necessary to enact the Settlement.

13. The subject Settlement resolves all issues in this proceeding, and is uncontested. However, in light of *Maine Pub. Util. Comm’n v. FERC*, 520 F.3d 464, 477-78 (D.C. Cir. 2008), the Commission may not accept the standard of review provided in Article VI, Section 6.2 as currently written. As such, the settlement is approved conditioned on the settling parties revising the standard of review applicable to non-settling third parties. An acceptable substitute provision applicable to non-settling third parties would be the “most stringent standard permissible under applicable law.” Iroquois should, within thirty days

of this order, file a revised standard of review provision consistent with this precedent.³ Subject to this condition, the Settlement appears to be fair and reasonable and in the public interest and is hereby approved pursuant to Rule 602(g) of the Commission's Rules of Practice and Procedure.⁴ The Commission's conditional approval of this Settlement does not constitute approval of, or precedent regarding, any principle or issue in this proceeding.

14. This letter order terminates Docket No. RP07-443-000 and -001.

By direction of the Commission. Commissioners Wellinghoff and Kelly
dissenting in part with a separate statement
attached.

Kimberly D. Bose,
Secretary.

³ Cf. *Southern Star Central Gas Pipeline, Inc.*, 124 FERC ¶ 61,016, at P 14 (2008).

⁴ 18 C.F.R. § 385.602(g) (2008).

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Iroquois Gas Transmission System, L.P.

RP07-443-000

RP07-443-001

(Issued July 23, 2008)

WELLINGHOFF and KELLY, Commissioners, dissenting in part:

The proposed standard of review in the settlement would have the Commission apply the “public interest” standard of review, with the exception of limited circumstances set out in section 4.4, when it considers changes to the agreement that may be sought by any of the parties, a non-party, or the Commission acting *sua sponte*.

The majority finds that, in light of the U.S. Court of Appeals for the District of Columbia Circuit’s (D.C. Circuit) decision in *Maine Public Utilities Commission v. FERC*,¹ the Commission may not accept the settlement’s proposed standard of review. The majority, however, approves the settlement, conditioned upon the parties revising the standard of review provision consistent with the Commission’s decision in *Duke Energy Carolinas, LLC*.²

We continue to disagree with the majority’s characterization of the D.C. Circuit’s holding in *Maine PUC* as to the applicability of the “public interest” standard. For the reasons set forth in our dissents in *Duke Energy Carolinas, LLC* and *Westar Energy, Inc.*,³ we respectfully dissent in part.

Jon Wellinghoff
Commissioner

Sudeen G. Kelly
Commissioner

¹ 520 F.3d 464 (D.C. Cir. 2008) (*Maine PUC*).

² 123 FERC ¶ 61,201 (2008).

³ 123 FERC ¶ 61,252 (2008).