

145 FERC ¶ 61,233  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

Iroquois Gas Transmission System, L.P.

Docket No. RP13-1041-000

ORDER ON TARIFF RECORDS

(Issued December 19, 2013)

1. On July 2, 2013, Iroquois Gas Transmission System, L.P. (Iroquois) filed proposed tariff records (July 2013 Filing).<sup>1</sup> Iroquois sought to revise the non-*force majeure* reservation charge crediting provisions in its General Terms and Conditions (GT&C) to comply with Commission policy. The Commission accepted and suspended 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.<sup>2</sup> In this order, the Commission accepts the revised tariff records subject to Iroquois filing revised tariff records and, pursuant to section 5 of the Natural Gas Act (NGA), either to modify certain tariff provisions or show cause why it should not be required to do so, as discussed below.

**I. Background**

2. In *NGSA*,<sup>3</sup> 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 (Division of Audits) to include in future pipeline audits an examination of whether the

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<sup>1</sup> The revised tariff records are listed in the Appendix to this order.

<sup>2</sup> *Iroquois Gas Transmission System, L.P.*, 144 FERC ¶ 61,077 (2013) (July 2013 Order).

<sup>3</sup> *Natural Gas Supply Ass'n, et al.*, 135 FERC ¶ 61,055, at PP 2 & 12, *order on reh'g*, 137 FERC ¶ 61,051 (2011) (*NGSA*).

pipeline's tariff complies with the Commission's reservation charge crediting policy.<sup>4</sup> Finally, the Commission encouraged shippers that believe that a pipeline is not taking appropriate action to comply with Commission policy to file a complaint seeking relief pursuant to section 5 of the NGA, or raise the issue in any section 4 filing by the pipeline.<sup>5</sup>

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. With respect to non-*force majeure* outages, where the curtailment occurred due to circumstances within a pipeline's control, including planned or scheduled maintenance, the Commission requires the pipeline to provide firm shippers a full reservation charge credit for the amount of primary firm service they nominated for scheduling which the pipeline failed to deliver. The Commission requires that the pipeline provide partial reservation charge credits during *force majeure* outages in order to share the risk of an event not in the control of the pipeline. 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).<sup>6</sup> 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.<sup>7</sup>

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"<sup>8</sup> 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

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<sup>4</sup> NGA, 135 FERC ¶ 61,055 at P 13.

<sup>5</sup> *Id.*

<sup>6</sup> 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), as clarified by, *Rockies Express Pipeline LLC*, 116 FERC ¶ 61,272, at P 63 (2006).

<sup>7</sup> *Northern Natural Gas Co.*, 141 FERC ¶ 61,221, at P 20 (2013) (*Northern*).

<sup>8</sup> *El Paso Natural Gas Co.*, 105 FERC ¶ 61,262, at P 15 (2003).

expected. The U.S. Court of Appeals for the District of Columbia Circuit (D.C. Circuit) affirmed this policy in *North Baja Pipeline, LLC v. FERC*,<sup>9</sup> stating:

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 any reservation charge credits when firm service is curtailed due to a non-*force majeure* event. Section 21.2<sup>10</sup> of Iroquois' GT&C

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<sup>9</sup> *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*).

<sup>10</sup> Section 21.2, proposed to be renumbered as section 21.4, 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.

provides that it must refund reservation charges during curtailments attributed to *force majeure* to the extent the reimbursable reservation charges are not covered by the shipper's insurance but are covered by Iroquois' insurance. If Iroquois curtails or interrupts service, section 20.3 of its 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.

#### A. Audit Report

6. On January 4, 2013, the Division of Audits issued a letter order and Audit Report<sup>11</sup> 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."<sup>12</sup> 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."<sup>13</sup>

7. The Audit Report<sup>14</sup> also addressed reservation charge crediting for curtailments due to *force majeure* events.<sup>15</sup> The Audit Report recognized that existing section 21.2 of Iroquois' tariff requires it to refund reservation charges during curtailments attributed to *force majeure* if the reimbursable reservation charges are covered by Iroquois' insurance and not by the shipper's insurance. The Audit Report noted that this tariff language was the result of a Commission-approved stipulation and agreement<sup>16</sup> between Iroquois and

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<sup>11</sup> *Audit of FERC Form No. 2, Standards for Pipeline Business Operations and Communications, Reporting Requirements identified in § 284.13, and select tariff provisions*, Docket No. PA12-7-000 (Jan. 4, 2013) (Audit Report).

<sup>12</sup> Audit Report at 11.

<sup>13</sup> Audit Report at 13.

<sup>14</sup> Audit Report at 13.

<sup>15</sup> Audit Report at 13-14.

<sup>16</sup> *See* Stipulation and Agreement, Docket Nos. RP94-72-004, RP94-72-005, and FA92-59-004 at Article V, section 5.3 (filed June 19, 1995) (1995 Settlement). *See also Iroquois Gas Transmission System, L.P.*, 71 FERC ¶ 61,358 (1995) (*Iroquois*). Section 5.3 required Iroquois to "use due diligence to evaluate whether it is feasible and

(continued...)

its shippers.<sup>17</sup> The Audit Report further noted that, while the method in Iroquois' tariff varied from the No-Profit and Safe Harbor methods, that does not automatically invalidate it because the Commission has stated that it would examine whether an alternative approach would achieve a similar sharing of the risk as the two approved approaches.<sup>18</sup>

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."<sup>19</sup>

### **B. Details of the Filing**

9. Iroquois made the July 2013 Filing to comply with the directives 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 proposed 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' July 2013 Filing did not address the merits of the issue of whether existing section 21.2,<sup>20</sup> providing firm shippers reservation charge credits for outages due to *force majeure* events equal to any insurance proceeds received by Iroquois, is 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.

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economic to procure additional business or other business interruption or other insurance to cover reimbursement of [reservation] charge payments by firm shippers during insurable events of *force majeure* on Iroquois' system." Iroquois was required to provide a reasonable opportunity to affected shippers to make recommendations regarding Iroquois' action. Iroquois reflected its determination regarding insurance in revised tariff sheets.

<sup>17</sup> Audit Report at 13, n.18.

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

<sup>19</sup> Audit Report at 15.

<sup>20</sup> The July 2013 Filing renumbered the relevant part of section 21.2 as section 21.4.

10. Iroquois proposed to revise section 20.2 of its GT&C 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 proposed 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 a Firm Reserved Transportation service (RTS) contract or renominated as specified in section 20.2(f)(vi) under an RTS contract up to Shipper’s Maximum Equivalent Quantity. Where advance notice of a non-*force majeure* outage is given, the maximum potential volumes to which reservation charge credits apply would be the lesser of: (a) the average of the immediately preceding seven days of service received by the shipper under its RTS contract for the affected Primary Receipt and Delivery Points or (b) the volume actually delivered pursuant to the RTS contract for the affected Primary Receipt and Delivery Points on the same calendar day of the immediately preceding year. Iroquois also proposed in 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.

12. 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; (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; (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); (4) Shipper elects and is able to make up lost service as provided in section 20.3; (5) Iroquois is able to restore service during the affected Gas Day and Shipper fails to re-submit its nomination in a later cycle; and (6) the Shipper is provided service pursuant to a negotiated rate agreement and such agreement does not explicitly require reservation charge credits. In addition, Iroquois proposed in section 20.2(f)(v) to not provide credits when the interruption 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; (3) the conduct or operations of the upstream operator of Shipper’s Receipt Point not controlled by Iroquois; (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 Shipper; (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.

13. Iroquois proposed 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.” Iroquois also proposed 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.

14. Iroquois proposed 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) 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, (2011 Act) for a two-year period, effective August 1, 2013, to be consistent with recent Commission decisions.<sup>21</sup>

15. The filing was protested by Consolidated Edison Company of New York, Inc. (Con Ed) and Indicated Shippers.<sup>22</sup> Indicated Shippers also filed a request for clarification. Iroquois filed an answer to the protests proposing modifications to its filing (Answer).

### C. The July 2013 Order

16. The Commission stated, in the July 2013 Order, that the protestors had raised issues which warranted further examination and Iroquois had filed a detailed Answer proposing modifications to its filing to address some of those concerns. Accordingly, the Commission gave the protestors and other parties an opportunity to respond to that Answer. In addition, the Commission explained that, while it 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, it requires that any alternative cost-sharing formula achieve an equitable sharing in the same ballpark as those approved methods. In order to analyze whether existing GT&C section 21.2, renumbered, in part, as section 21.4, provides for risk sharing in the “same ballpark” as the No-Profit and Safe Harbor methods, the Commission directed Iroquois to provide the following information:

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<sup>21</sup> Citing, e.g., *Gulf South Pipeline Company, LP*, 141 FERC ¶ 61,224 (2012) (*Gulf South I*), order on reh’g, 144 FERC ¶ 61,215 (2013) (*Gulf South II*).

<sup>22</sup> For purposes of this proceeding, the Indicated Shippers are: BP Energy Company, ConocoPhillips Company, and Hess Corporation.

- (1) (a) a copy of the insurance policy or policies which provide the insurance proceeds; (b) identification of the specific applicable provision(s) in the insurance policy or policies which may be used to provide the proceeds; 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; and
- (2) for each interruption of firm service due to *force majeure* event which has occurred since the effectiveness of section 21.2, (1) the duration; (2) the quantity of gas not delivered to each firm shipper; (3) the total insurance proceeds received by Iroquois with respect to each interruption of service; and (4) the amount of reservation charge refunds actually provided to each firm shipper with respect to each interruption of service.

**D. Response, Comments, and Answers**

17. Iroquois filed a response to the July 2013 Order (Response). Iroquois responds that it purchases and currently maintains Property All Risk insurance policies that include business interruption coverage with National Union Fire Insurance Company of Pittsburgh, PA, and American Insurance Company, each for 50 percent of Iroquois' total coverage.<sup>23</sup> Iroquois states that each insurance policy contains a Business Interruption Section which outlines the terms and conditions of that coverage and general information relating to the coverage limits, deductible period relating to claims including business interruption event claims, and provisions for both covered events, exclusions, and procedures for making claims in the Declarations section and other sections of the policies. Iroquois further states that its insurance coverage, which includes business interruption events, is up to a maximum limit of \$75,000,000 per occurrence with a

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<sup>23</sup> Copies of the two insurance policies were attached in Attachment A to the Response. Iroquois asserts that these insurance policies are highly confidential and commercially sensitive documents, the disclosure of which would cause Iroquois and its insurance providers harm. Iroquois further states that these documents comprise privileged information which should be treated on a confidential basis and not subject to public disclosure, citing 18 C.F.R. § 388.112 (2013). Iroquois requests treatment of Exhibit A as privileged.

deductible period of thirty days before coverage applies. Iroquois states that, in the event of a covered *force majeure* event, Iroquois would submit a claim for the value of the capacity impaired during the event subject to the policy's terms and conditions. Iroquois further states that it would then remit the corresponding insurance proceeds to its firm shippers whose service was curtailed, in whole or in part, during the *force majeure* event.

18. Iroquois states that its cost for the two insurance policies is \$582,755 for the 2013/2014 policy year (6/30/13-6/30/14). Iroquois further states that its current transportation service rates are based on negotiated settlements entered into in Iroquois' last general NGA section 4 rate increase proceeding, in Docket No. RP03-589-000, and its NGA section 4 rate proceeding to establish rates for its Eastchester Extension Project service, at Docket No. RP04-136-000 which were uncontested and approved by Commission order.<sup>24</sup> Iroquois asserts that because both settlements provided for rates agreed to on a comprehensive or "black box" basis, there is no attribution of any portion of the rates to particular elements of Iroquois' cost of service.

19. Iroquois states that it has experienced two *force majeure* events since the effectiveness of existing section 21.2 on July 31, 1995. Those events were unplanned outages on: (1) June 29, 2005, at its Dover Compressor Station due to a lightning strike of 42 hours; and (2) January 29, 2010, at one of the two transfer compressors at Brookfield (the interconnection with Algonquin) which affected receipt nominations at Brookfield of 21 hours. Iroquois Exhibit B to its Response indicates that only the latter outage resulted in a loss of primary firm service to a shipper.

20. Con Ed and Indicated Shippers filed comments on the Response. Iroquois filed an answer to the Comments (Answer to Comments) and Indicated Shippers filed an answer to Iroquois' Answer to Comments (Answer to Answer).<sup>25</sup> Iroquois' Answer, Answer to Comments, and Response and the comments on the Response will be discussed below.

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<sup>24</sup> Citing *Iroquois Gas Transmission System, L.P.*, 105 FERC ¶ 61,121 (2003) and *Iroquois Gas Transmission System, L.P.*, 109 FERC ¶ 61,059 (2004).

<sup>25</sup> The Commission's Rules of Practice and Procedure do not permit answers to responses or answers 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 to Comments and Indicated Shippers' Answer to Answer since it will not delay the proceeding, may assist the Commission in understanding the issues raised, and will ensure a complete record.

## II. Discussion

### A. Insurance Proceeds for Force Majeure Outages

#### 1. Iroquois' Tariff

21. Existing section 21.2 of Iroquois' GT&C, renumbered in relevant part as section 21.4 in the July 2013 Filing, provides that Iroquois must credit reservation 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.

#### 2. Positions of the Parties

22. Indicated Shippers argues that section 21.2 does not equitably share the risk because, to the extent that reservation charges are not covered by insurance, the shipper would not receive credits. Iroquois contends that Indicated Shippers have failed to carry their burden of proof. Iroquois argues that section 21.2 requires it to provide reservation charge credits if and to the extent that it obtains insurance recovery and is a Commission-approved reservation charge crediting provision which reflects a longstanding and collaboratively developed allocation of risks between Iroquois and its customers that remains appropriate and consistent with Commission policy.

23. Iroquois contends that existing section 20.3 also provides shippers the right to submit make-up nominations above daily contract entitlement levels for service on subsequent days following the *force majeure* outage, without further reservation charge responsibility. Iroquois asserts that it loses the opportunity to charge third parties for that service and the associated revenue, while the shippers get the benefit of such additional service without additional cost with the exception of the firm usage charges for the service is taken.

24. Iroquois asserts that the Audit Report refers to the Commission's willingness to consider other approaches that result in a similar sharing of the risk as the approved No-Profit and Safe Harbor methods.<sup>26</sup> Iroquois further asserts that *NGSA* further reinforces the concept of equitable sharing of the risk developed by the Commission in *North Baja*. Iroquois asserts that the Audit Report noted this tariff language is the result of a 1995 Settlement citing to the *NGSA* decision for the premise that the Commission is open to other approaches that achieve a similar sharing of risk to the approved No-Profit and Safe Harbor methods. Iroquois contends that *NGSA* reinforces the "equitable sharing" of risk

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<sup>26</sup> Citing Audit Report at 14.

developed in *North Baja* and that the Commission will examine the treatment of *force majeure* service interruptions to ensure that there is a careful balancing of risk between shippers and pipelines.<sup>27</sup>

25. Iroquois asserts that it and its shippers crafted this insurance proceed-limited reservation charge credit as a part of the 1995 Settlement approved by the order issued June 19, 1995.<sup>28</sup> Iroquois asserts that, in an August 28, 1995 letter order accepting Iroquois' revised tariff sheets, the Commission 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*."<sup>29</sup> Iroquois further asserts that this allocation of risks through both the make-up gas rights and the insurance proceeds crediting has been in place since the 1995 Settlement and remained in place through subsequent Iroquois rate proceedings and NGA section 4 rate settlements. Iroquois argues that, while there is no current moratorium on tariff changes, the currently effective, settlement-generated, reservation charge crediting method for *force majeure* instances remains just and reasonable.

26. In its comments, Indicated Shippers argues that Iroquois has shifted most, if not all, of the risk to the shippers. Indicated Shippers contends that Iroquois has failed to consider situations where both Iroquois and the shipper are unable to recover the reservation charges through their insurance and where the make-up service Iroquois offers is not adequate or possible. Indicated Shippers further contends that the No-Profit method lends itself to a more equitable type of risk sharing than the Safe Harbor method.

27. In its Answer to Comments, Iroquois argues that it bears the risk of losses that far exceed its recovery of reservation charges, including all risks associated with property damage to its system; the costs of necessary repairs, replacement, maintenance, and other costs associated with addressing and resolving the *force majeure* event; the risks associated with third party damages; loss of interruptible service revenues; and internal time, labor, and management costs associated with addressing and resolving such unforeseen and unplanned for events. Iroquois asserts that these costs may or may not be covered by its insurance and, in any event, are Iroquois' to bear in the first instance, even

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<sup>27</sup> Citing *NGSA*, 135 FERC ¶ 61,055 at P 18 and *North Baja*, 483 F.3d 819, 822.

<sup>28</sup> Citing *Iroquois*, 71 FERC ¶ 61,358.

<sup>29</sup> Citing *Iroquois Gas Transmission System, L.P.*, Docket No. RP95-406-000, at 1 (Aug. 28, 1995) (delegated letter order).

if there may be an opportunity to recover some of those costs through insurance or its rates at a future time.

### 3. Commission Determination

28. The Commission requires pipelines to provide partial reservation charge credits during *force majeure* outages in order to share the risk of loss for which neither the pipeline nor its shippers are at fault. The Commission has approved two partial crediting methods for pipelines to share that risk. Partial credits may be provided pursuant to: (1) the Safe Harbor method under which reservation charges must be credited in full to the shippers after a short grace period, *i.e.*, 10 days or less, when no credit is due the shipper, and (2) the No-Profit method, under which the pipeline provides partial credits starting on the first day of the interruption in service, equal to the portion of the pipeline's reservation charge that represents the pipeline's return on equity and associated income taxes, thereby requiring the pipeline to forego its profit during the *force majeure* outage.

29. In addition, as the D.C. Circuit stated in *North Baja*, the Commission permits pipelines to use other cost-sharing formulas, so long as they achieve "an equitable sharing in the same ballpark."<sup>30</sup> When pipelines have proposed mechanisms to share the risk of *force majeure* outages which differ from the approved methods, the Commission has carefully analyzed whether those proposals provided for risk sharing in the same ballpark as the approved methods and has rejected alternative proposals which were found not to be in the same ballpark.<sup>31</sup>

30. Iroquois argues that it equitably shares the risk of *force majeure* outages consistent with Commission policy because section 21.2 of its existing tariff requires it to refund reservation charges collected from shippers during *force majeure* outages "if and to the extent that" Iroquois is reimbursed for such reservation charges through insurance proceeds. Iroquois also points out that section 20.3 of its tariff provides that, in the event of an outage, shippers will be given the opportunity on a subsequent day to make up such loss of service, provided that such make-up service shall not interfere with the service priorities set forth in section 4 of Iroquois GT&C.

31. The Commission finds that Iroquois' existing reservation charge crediting provisions for *force majeure* outages do not provide for risk sharing in the same ballpark

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<sup>30</sup> 483 F.3d 819, 822.

<sup>31</sup> See, e.g., *North Baja*; *Kern River Gas Transmission Co.*, 139 FERC ¶ 61,044, at PP 36-40 (2012); *Northern*, 141 FERC ¶ 61,221 at PP 64-74; *Texas Gas Transmission, LLC*, 141 FERC ¶ 61,223, at PP 57-68 (2012) (*Texas Gas*).

as the Safe Harbor and No Profit Methods, and therefore those provisions are unjust and unreasonable. Iroquois states, in its Response, that its insurance coverage for business interruptions includes a deductible period of 30 days before coverage applies. Therefore, because existing GT&C section 21.2 only requires Iroquois to provide reservation charge credits if it is reimbursed by its insurance, existing section 21.2 effectively provides Iroquois a 30-day safe harbor period during which it need not provide any reservation charge credits for a *force majeure* outage. This is three times as long as the 10-day safe harbor period permitted under the approved Safe Harbor Method.

32. In *Texas Gas*,<sup>32</sup> the Commission found that a proposed 20-day safe harbor period did not provide for equitable sharing in the same ballpark as the approved methods. In that case, the pipeline sought to justify a safe harbor in excess of the standard 10 days on the ground that its usage charge included 6.7 percent of its fixed costs and therefore it would absorb that portion of its fixed costs starting on Day 1 of a *force majeure* outage. However, the Commission found that this fact “does not justify doubling the ordinary 10 day Safe Harbor period to 20 days,”<sup>33</sup> and the Commission explained how, even taking into account the pipeline’s rate design, its proposal would not provide shippers nearly as much relief during *force majeure* outages as would the approved Safe Harbor Method. Here, Iroquois’ existing method of providing credits during *force majeure* outages imposes even more of the risk of *force majeure* outages than the proposal rejected in *Texas Gas*. Iroquois uses a standard straight fixed variable rate design with no fixed costs included in its usage charge. Therefore, unlike the pipeline in *Texas Gas*, it does not absorb any portion of its fixed costs during the 30-day period before shippers can receive any credits based on Iroquois’ insurance coverage. Moreover, that 30-day period is 50 percent longer than the 20-day safe harbor rejected in *Texas Gas*.

33. In addition, existing GT&C section 21.2 does not require that Iroquois maintain any particular level of insurance coverage or even any insurance at all. The current insurance policies are for the policy year of June 30, 2013 to June 30, 2014,<sup>34</sup> and Iroquois has not demonstrated that its current insurance policies will not be revised or terminated without the consent of its shippers or this Commission. Iroquois’ tariff accordingly provides no assurance that it will continue to provide credits for *force majeure* outages even in the limited circumstances where it currently provides such credits.

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<sup>32</sup> *Texas Gas*, 141 FERC ¶ 61,223 at PP 57-68.

<sup>33</sup> *Id.* P 62.

<sup>34</sup> Iroquois Response at 3.

34. Iroquois also argues that its tariff provides for cost sharing in the same ballpark as our approved risk sharing methods because it offers shippers make-up service after a *force majeure* outage without additional cost above usage charges. However, the fact that make-up service may be available to shippers and that Iroquois foregoes an opportunity to earn revenues from other shippers when such service is utilized does not support tripling the ordinary 10-day safe harbor. Make-up service after an outage does not provide relief to a shipper who needed gas during the outage and therefore may have been forced to make alternative arrangements to obtain such gas. Also, as Indicated Shippers suggests, make-up service may not be possible. Under section 20.3, shippers are only given a make-up opportunity after an outage if the make-up service does not preclude or interfere with the service priorities set forth in section 4. Therefore, the potential of make-up service does not provide the reserved service which was nominated and for which the shipper paid the reservation charges. Further, while Iroquois may forego revenue from other shippers to the extent make-up service is used, it retains the reservation charges paid by the shipper using the make-up service and will also collect usage charges from that shipper.<sup>35</sup> Therefore, Iroquois will not lose the opportunity to earn revenue for the make-up service.

35. Iroquois also contends that it has not shifted all of its risks of its *force majeure* events to the shipper because its total losses due to the outage, *i.e.*, property damage, repair, replacement, and maintenance costs, may exceed its recovery of reservation charges and with its make-up service it has foregone the opportunity to earn revenues from other shippers for such service.<sup>36</sup> However, as Indicated Shippers points out,<sup>37</sup> the risk to which the Commission refers in its reservation charge crediting policy is the risk related to the availability and use of reserved firm transportation service, not the risk of Iroquois' other potential losses due to the outage. Also, shippers may incur a range of losses during a *force majeure* outage which partial reservation charge credits will not compensate. For example, shippers may incur greater costs to obtain gas from another source or they may be unable to obtain gas during an outage and thus lose various business opportunities and the profits associated with those opportunities.

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<sup>35</sup> As discussed below, the Commission is accepting Iroquois' proposal in its revised tariff language to exempt shippers from receiving reservation charge credits if they elect to use make-up service after an outage.

<sup>36</sup> Iroquois Answer to Comments at 4.

<sup>37</sup> Indicated Shippers Answer to Answer at 3.

36. Further, the terms of the 1995 Settlement do not prevent the Commission from requiring Iroquois to modify its existing tariff provisions concerning reservation charge crediting to be consistent with current Commission policy. Iroquois points out that Article V, section 5.3, in the 1995 Settlement required it to evaluate whether to obtain insurance to cover the reimbursement of firm shippers for reservation charges paid during a *force majeure* outage. Shortly after approval of the 1995 Settlement, Iroquois filed revised tariff sheets, including existing section 20.2 of its GT&C. Iroquois states that the Commission's August 28, 1995 letter order accepting those tariff sheets<sup>38</sup> described the filing as resulting from the 1995 Settlement's requirement that Iroquois look into obtaining additional insurance. Accordingly, Iroquois argues that section 20.2 reflects a longstanding allocation of risks continued through subsequent rate proceedings and section 4 rate settlements. Iroquois concludes that requiring it to modify section 20.2 would be contrary to the Commission's statement in *NGSA* that:

Where the pipeline and its shippers have entered into currently effective agreements that include provisions that differ from the Commission's reserve charge crediting policy, and which the Commission has accepted, those agreements need not be changed.<sup>39</sup>

37. Iroquois' reliance on our statement in *NGSA* regarding currently effective agreements which conflict with Commission policy is misplaced. In making that statement, we cited *Kern River Gas Transmission Co.*,<sup>40</sup> in which the Commission did not require the pipeline to modify service agreements with particular shippers which contained individually negotiated provisions regarding reservation charge credits which were still in effect. Here, there is no currently effective agreement between Iroquois and its shippers requiring the existing *force majeure* reservation charge crediting provision to remain in place. The 1995 Settlement, by its express terms, terminated when new rates became effective pursuant to Iroquois' next section 4 general rate case in Docket No. RP97-126-000 filed on November 29, 1996,<sup>41</sup> and Iroquois recognizes that there is

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<sup>38</sup> *Iroquois Gas Transmission System, L.P.*, Docket No. RP95-406-000 (August 28, 1995) (delegated letter order).

<sup>39</sup> Iroquois Answer at 16-17 (citing *NGSA*, 135 FERC ¶ 61,055 at n.12).

<sup>40</sup> 132 FERC ¶ 61,111, at P 16 (2010) (*Kern River*).

<sup>41</sup> Article VII of the 1995 Settlement provides that provisions of the settlement, including Article V, section 5.3, would terminate on the date the new rates became effective. The new rates in Docket No. RP97-126-000 were accepted by the Commission

(continued...)

currently no moratorium on tariff revisions.<sup>42</sup> Moreover, while the current insurance proceeds crediting method may have resulted from evaluation of insurance required by the terms of the 1995 Settlement, the insurance proceeds methodology itself was neither part of nor agreed to in the settlement.<sup>43</sup> Therefore, the insurance proceeds crediting methodology ultimately reflected in Iroquois' tariff was not part of the 1995 Settlement and that settlement has terminated in any case. Accordingly, there is no prohibition in the 1995 Settlement or elsewhere, on Iroquois' shippers seeking revisions or the Commission from initiating an investigation of section 20.2 pursuant to NGA section 5.

38. Iroquois' characterization without citation that it was the "conclusion" of Audit Staff that Iroquois' existing method is just and reasonable is incorrect.<sup>44</sup> The Audit Staff reached no such conclusion. The Audit Report merely indicated that the Commission would examine whether Iroquois' alternative approach would achieve a similar sharing of the risk as the two approved methods.<sup>45</sup> This order reflects such examination of whether section 20.2 complies with that Commission policy. The Commission finds that Iroquois' existing method conflicts with established Commission policy which requires partial reservation charge crediting for *force majeure* outages that achieves equitable risk sharing in the same ballpark as the approved Safe Harbor and No-Profit methods.

39. Accordingly, section 20.2 does not achieve equitable risk sharing in the same ballpark as the approved Safe Harbor and No-Profit methods as required by Commission policy. Therefore, Iroquois is directed, pursuant to NGA section 5, within thirty days of the date of this order, either to file tariff revisions to conform to the Commission's reservation charge crediting policy regarding reservation charge credits for *force majeure* events, consistent with the discussion above, or explain why it should not be required to do so.

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to be effective on January 1, 1997, subject to refund and conditions. *Iroquois Gas Transmission System*, 77 FERC ¶ 61,352 (1996).

<sup>42</sup> See *Southern Natural Gas Co.*, 135 FERC ¶ 61,056, at P 15, *order on reh'g*, 137 FERC ¶ 61,050 (2011) (*Southern*).

<sup>43</sup> The tariff language in section 20.2 was not part of the settlement or contained in the attached *pro forma* tariff provisions, but was filed in a separate docket a month after approval of the Settlement.

<sup>44</sup> Iroquois Answer at 17.

<sup>45</sup> Audit Report at 14.

**B. Confirmation Requirement****1. Iroquois Proposal**

40. Iroquois' proposed section 20.2(a) provides that for non-*force majeure* outages reservation charge credits "shall apply to volumes nominated and, if applicable, confirmed properly and timely. . . ."

**2. Positions of the Parties**

41. Con Edison is concerned about the reference to confirmation of nominations. Con Edison recognizes that it is generally reasonable for Iroquois not to provide reservation charge credits if its inability to schedule service is because the operator of upstream or downstream facilities failed to confirm the nomination. However, Con Edison objects that the requirement that volumes be "confirmed properly" would violate Commission policy if both Iroquois and an upstream pipeline are unable to provide service on the applicable day, for example because both pipelines have scheduled maintenance on that day. In that event, Iroquois' inability to provide service would not be "solely" due to the upstream pipeline, and therefore Iroquois should be required to provide credits.<sup>46</sup> Con Ed requests that Iroquois be required to clarify that the exception from crediting an upstream pipeline does not confirm a nomination will not apply if Iroquois is otherwise unable to provide service or improperly refuses to confirm service.

42. Iroquois asserts that the "confirmed properly" limitation is consistent with *Gas Transmission Northwest LLC*,<sup>47</sup> where the Commission accepted the requirement that shipper nominations be confirmable because it is reasonable for the pipeline be exempted from providing reservation charge credits when it would not have been able to deliver such service in any event due to factors outside the pipeline's control, i.e., due to the act or omission of the shipper or an upstream or downstream facility operator. Iroquois asserts that the requirement that the inability to provide service is not due "solely" to the conduct of the upstream pipelines in *Paiute* was limited to simultaneous *force majeure* events on two connected pipelines.<sup>48</sup> Iroquois argues that the "if applicable" clause acknowledges circumstances in which confirmation would not be required due to the circumstances on Iroquois making such requirement unnecessary or unreasonable.

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<sup>46</sup> Citing *Paiute Pipeline Co.*, 139 FERC ¶ 61,089 (2012) (*Paiute*).

<sup>47</sup> 141 FERC ¶ 61,101, at PP 39-40 (2012) (*GTN*).

<sup>48</sup> Citing *GTN*, 141 FERC ¶ 61,101 at P 41.

### 3. Commission Determination

43. As Iroquois explains, the scheduling process entails the shipper submitting a scheduling nomination to the pipeline, the pipeline obtaining confirmation from the upstream and downstream entities that they can deliver the gas to the pipeline's receipt point and take it away from the pipeline's delivery point, and the pipeline then scheduling the gas that is properly nominated and confirmed.<sup>49</sup> Hence, confirmation of nominations is an act performed by the upstream and downstream entities, not the pipeline. For that reason, the Commission held in *GTN*, that it is acceptable to base reservation charge credits for both *force majeure* and non-*force majeure* events on "confirmable nominations,"<sup>50</sup> so long as the pipeline's inability to schedule service nominated by the shipper is solely due to the failure of an upstream or downstream entity outside the pipeline's control to confirm the shipper's nomination.

44. However, as Iroquois recognizes,<sup>51</sup> the Commission in *GTN*,<sup>52</sup> required the pipeline to narrow the scope of its exemption from crediting for nominated amounts not "confirmed" to events outside the pipeline's control, i.e., due to conduct of a shipper or an upstream or downstream facilities operator. In situations, where Iroquois could not schedule primary firm service regardless of the ability of the upstream and downstream entities to confirm the shipper's nomination, it should provide credits. One such situation, as discussed in *Paiute*,<sup>53</sup> is where a *force majeure* event affects the facilities of both Iroquois and an upstream pipeline. In such a situation, Iroquois' inability to provide service would not be caused solely by the upstream pipeline, and Iroquois should provide partial reservation credits. The same principle would apply in the situation described by Con Edison, where both the upstream pipeline and Iroquois are unable to provide service, because each is performing routine maintenance on its system. In that situation, it is reasonable to require Iroquois to provide full reservation charge credits, consistent with Commission policy, because it could not have provided service even if the upstream pipeline was not performing maintenance. As the Commission recently explained, in *Gulf South II*, the exemption from providing reservation charge credits due to the conduct

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<sup>49</sup> See NAESB Standard 1.3.2 establishing deadlines for the pipeline's receipt of completed confirmations from upstream and downstream connecting parties.

<sup>50</sup> *GTN*, 141 FERC 61,101 at P 42.

<sup>51</sup> Iroquois' Answer at 4.

<sup>52</sup> *GTN*, 141 FERC 61,101 at P 42.

<sup>53</sup> 139 FERC ¶ 61,089 at P 31.

of upstream or downstream entities is limited, in both *force majeure* and non-*force majeure* circumstances, to when an outage is due solely to the conduct of others not controllable by the pipeline.<sup>54</sup>

45. Iroquois asserts that its proposed section 20.2(a) is consistent with the above-described Commission policy, because the limitation of credits to nominated volumes that are “confirmed properly and timely” is modified by the phrase “if applicable.” However, this phrase is vague and fails to define the circumstances in which the confirmation requirement is and is not applicable.

46. Therefore, consistent with our decision in *GTN*, Iroquois is directed, within thirty days of the date of this order, to file revised tariff records which specify that any exemption from crediting for nominated amounts not confirmed is limited to events not within the control of Iroquois, i.e., due to conduct of the shipper or by an upstream or downstream facilities operator. In addition, Iroquois is also directed to file revised tariff records, within thirty days of the date of this order, expressly applying this limitation to the proposed exemptions in section 20.2(f)(v) based on various types of conduct by the shipper or upstream or downstream facilities operators, consistent with the discussion above.

### **C. Calculation of Maximum Potential Volumes**

#### **1. Iroquois’ Proposal**

47. Proposed section 20.2(a) provides, in part, that, when Iroquois gives advance notice of a non-*force majeure* outage, the maximum potential volumes eligible for credits are the lesser of (i) the average of the *immediately preceding seven days* or (ii) “*the volume actually delivered under Shipper’s RTS contract between 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).*” [Emphasis added.]

#### **2. Positions of the Parties**

48. Indicated Shippers objects to Iroquois’ proposal to base reservation charge credits on the *lesser* of usage during the seven days immediately before notice of the outage or usage on the same calendar day in the prior year. Indicated Shippers requests that Iroquois be required to eliminate any reliance on usage during the prior year. If the Commission declines to eliminate references to prior year deliveries, Indicated Shippers requests that the Commission require Iroquois to use the *greater* of usage during the

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<sup>54</sup> *Gulf South II*, 144 FERC ¶ 61,215 at P 68.

seven days immediately preceding advance notice of the outage or usage during the corresponding seven days of the prior year. Indicated Shippers contends that shippers, who are not responsible for the service interruptions, should not be penalized if their demand has increased over the prior year.

49. Iroquois asserts that its proposed alternative calculation methods reduce the risk that the seven days average of service immediately prior to notice of the outage will not be representative of actual shipper nominations on the affected outage day(s) if, for example, the weather was unusually cold during those seven days (which could, in fact, have contributed to or caused the need for maintenance or repairs), or if the prior period occurs before a reduction in the shipper's Maximum Equivalent Quantity (for example, at the end of a month or season). Iroquois further asserts that it would be unreasonable to protect shippers from contract increases but fail to protect the pipeline in the event of contract decreases. Iroquois also submits that if an outage lasts one day, the most comparable period of time to that outage may be the same day of the previous year. Iroquois contends that it has chosen a reasonable and objective method consistent with Commission policy.

50. Con Ed argues that use of the prior year's volumes to calculate maximum potential volumes is only acceptable if contract entitlement levels are unchanged, and that, if the levels have increased, credits should not be limited to the lower prior year level. Iroquois agrees with Con Ed and states that it would be willing to modify the proposed tariff language to add, 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).

Con Ed states that this proposed addition is acceptable.

### **3. Commission Determination**

51. The Commission rejects Iroquois' proposal to base credits on the lesser of (1) current year usage or (2) past year usage, when advance notice of an outage is given. Iroquois seeks to justify that proposal on the grounds that usage during the seven days immediately preceding notice of the outage may have been unusually high, for example because of unusually cold weather, and therefore the prior year's usage may be more representative. However, it is equally possible that unusual circumstances during the immediately preceding seven days, such as unusually warm weather, may have caused the shippers' usage during that period to be unusually low, and its higher usage during the

prior year to be more representative. Iroquois has not explained why usage during the prior year should only be taken into account to reduce the amount of credits Iroquois must provide, and not increase the amount of credits.<sup>55</sup>

52. While we hold that Iroquois' proposal to use the lesser of current year usage and past year usage is unjust and unreasonable, we will not require Iroquois to base credits solely on shipper' usage during the seven days immediately preceding advance notice of the outage, as requested by Indicated Shippers. The Commission has recognized that there is no perfect method of estimating the amount of service a shipper would have used during an outage, if the pipeline had not given advance notice of the outage.<sup>56</sup> The Commission has accordingly accepted proposals to base credits on usage during the seven days immediately preceding notice of the outage,<sup>57</sup> proposals to base credits on usage during a representative period in a prior calendar year,<sup>58</sup> and proposals to use an average of usage during several prior years.<sup>59</sup> Therefore, in its filing to comply with this order, Iroquois may propose to calculate reservation charge credits based on any reasonably representative measure of historical usage, including an average of several years' usage, so long as its proposal is not structured so as to minimize the amount of credits it must give.

53. However, if Iroquois proposes to include usage during a prior year in its calculation of reservation charge credits, it must include in its proposal some method of taking into account changes in a shipper's maximum contract demand since the prior year in question, such as the method it proposed in response to Con Edison's protest on this issue.

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<sup>55</sup> Indicated Shippers' alternative proposal to base credits on the greater of current year usage or past year usage suffers from the same defect, only in reverse.

<sup>56</sup> *Texas Gas*, 141 FERC ¶ 61,223 at P 79.

<sup>57</sup> *Southern*, 137 FERC ¶ 61,050 at P 21; *TransColorado Gas Transmission Co., LLC*, 139 FERC ¶ 61,229, at PP 36-41 (2012). If Iroquois proposes to base credits on usage on usage during the seven days immediately preceding its notice of the outage, as opposed to the seven days immediately preceding the outage, its proposed tariff language should expressly so state.

<sup>58</sup> *Dominion Transmission, Inc.*, 142 FERC ¶ 61,154, at PP 35-41 (2013).

<sup>59</sup> *Texas Gas*, 141 FERC ¶ 61,223 at P 79.

54. Therefore, Iroquois is directed, within thirty days of the date of this order, to file revised tariff records consistent with the discussion above.

**D. Exemption for Refusal of Delivery**

**1. Iroquois' Proposal**

55. Proposed section 20.2(f)(v)(F) provides an exception to the requirement to provide reservation charge credits for non-*force majeure* outages due to “the Shipper’s refusal or inability to accept delivery of gas for which Transporter has met its obligations under this FERC Gas Tariff.”

**2. Positions of the Parties**

56. Con Ed argues that a shipper may have good cause to refuse to accept delivery, particularly when Iroquois does not tender gas that meets its own gas specifications, citing section 9.6(d)(1). Con Ed further argues that the Commission has agreed that if a firm shipper refused to accept deliveries at its primary point due to failure of the transporter to make deliveries consistent with its tariff obligations, the shipper should obtain reservation charge credits.<sup>60</sup>

57. Iroquois agrees with Con Ed that a shipper may refuse delivery of gas that does not meet Iroquois’ obligations under its FERC Gas Tariff without losing eligibility for reservation charge credits. However, Iroquois asserts that the exemption in section 20.2(f)(v)(F) already addresses Con Ed’s concern, by limiting the exemption from crediting to “the Shipper’s refusal or inability to accept delivery of gas *for which Transporter has met its obligations under this FERC Gas Tariff.*” [Emphasis added.] Iroquois contends that, therefore, section 20.2(f)(v)(F) is consistent with the Commission’s determination in *National Fuel*,<sup>61</sup> that the crediting exemption does not apply when a shipper refuses to accept deliveries because of a failure by the pipeline to comply with its obligations under its tariff, and no further change is necessary. In its comments to the Iroquois’ Response, Con Ed states that it continues to believe that section 20.2(f)(v)(F) must be revised to expressly preserve the shipper’s right to refuse to accept deliveries when such refusal is authorized by Iroquois’ tariff.

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<sup>60</sup> Citing *National Fuel Gas Corp.*, 143 FERC 61,103, at P 38 (2013) (*National Fuel*).

<sup>61</sup> *Id.*

### **3. Commission Determination**

58. As Iroquois points out, and Con Ed agrees,<sup>62</sup> this proposed crediting exemption is expressly limited to circumstances where it has met its obligations under the tariff consistent with *National Fuel*. However, Con Ed requests that the section be clarified to expressly recognize that credits will not be denied due to a shipper's exercise of its right to refuse to accept deliveries as authorized by Iroquois' tariff. The only example provided by Con Ed of such authorized refusal is pursuant to section 9.6(d)(1). That section requires a failure by Iroquois to meet its gas quality specification obligations under its tariff which would amount to a failure by Iroquois to meet its obligations under the tariff and, therefore, would not result in an exemption from reservation charge crediting under Iroquois' proposal. Accordingly, the Commission denies Con Ed's request as unnecessary.

#### **E. Exemption for Failure to Renominate**

##### **1. Iroquois' Proposal**

59. Section 20.2(f)(vi) includes an exception to the requirement to provide reservation charge credits for non-*force majeure* outages "[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."

##### **2. Positions of the Parties**

60. Con Ed argues that section 20.2(f)(vi) should be rejected because when a shipper nominates gas and Iroquois fails to schedule that gas, the shipper will seek an alternative supply. Once the shipper has made alternative arrangements for supply, it is unlikely it will be able to cancel them if Iroquois returns to service. Therefore, the shipper should not have to bear the costs of an alternative service and also be denied reservation charge credits. In response to that concern, Iroquois stated in its July 22, 2013 Answer that it would be willing to modify section 20.2(f)(vi). Con Ed offers the following modification to Iroquois' proposed language:

To 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 either has nominated and been scheduled service on another pipeline *or has made any alternative arrangements for delivery of gas* as a result of Transporter's

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<sup>62</sup> Con Ed Comments at 6.

non-*force majeure* interruption of service, and provided verification of such arrangements to Iroquois. [Con Ed's additional language emphasized.]

61. In response to Con Ed's proposed language, Iroquois states in its September 30, 2013 Answer to Comments that it would be willing to agree to the following revision:

To 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 either has nominated and been scheduled service on another pipeline or has made ~~any~~ *equivalent* alternative arrangements for delivery of gas as a result of Transporter's non-*force majeure* interruption of service, and provided verification of such arrangements to Iroquois. [Iroquois' proposed revised language emphasized.]

62. Iroquois asserts that the change from "any" to "equivalent" is necessary and reasonable because it limits the pipeline's reservation charge crediting obligation to only those volumes that the customer would in fact have nominated on Iroquois but for its receipt of that same quantity from another source.

### **3. Commission Determination**

63. The Commission believes that Con Ed's proposal to allow the shipper to remain eligible for reservation charge credits when it has made any alternative arrangements for gas deliveries is reasonable. However, Iroquois' proposed revision to specify "equivalent" alternative volumes is vague. The Commission believes that additional language directly referencing the gas nominated by the shipper would adequately satisfy Iroquois' concern with Con Ed's proposed language.<sup>63</sup> Accordingly, Iroquois should revise proposed section 20.2(f)(vi) to state that:

To 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 either has nominated and been scheduled service on another pipeline or has made

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<sup>63</sup> Consistent with the Commission's clarification in *Wyoming Interstate Co., Ltd.*, 130 FERC ¶ 61,091, at P 17 (2010), if the shipper's alternative supply subsequently uses more capacity in the intraday cycles its credits may appropriately be reduced.

*alternative arrangements for delivery of such gas as a result of Transporter's non-force majeure interruption of service, and provided verification of such arrangements to Iroquois.*  
[Revised language emphasized]

Therefore, Iroquois is directed, within thirty days of the date of this order, to file revised tariff records containing this revised substitute language, as discussed above.

**F. Negotiated Rate Agreements - Section 20.2(f)(vii)**

**1. Iroquois' Proposal**

64. Iroquois' proposed section 20.2(f)(vii) provides that reservation charge credits for non-*force majeure* outages will not be provided if a shipper's negotiated rate agreement does not explicitly require reservation charge credits. Proposed section 20.2(d) provides that Iroquois may, as part of a negotiated rate agreement, negotiate with the shipper the amount of any reservation charge credits to be afforded under section 20.2.

**2. Positions of the Parties**

65. Con Ed contends that Iroquois' proposed limit on the eligibility of negotiated rate agreements for reservation charge credits should only apply to negotiated rate agreements entered into after the effective date of the subject tariff provisions. Con Ed argues that the exclusion of credits for pre-existing negotiated rate agreements would result in the improper retrospective application of a tariff. Con Ed states that Iroquois' *pro forma* service agreement for firm service incorporates its GT&C, and therefore Iroquois' negotiated rate customers have always been eligible for whatever reservation charge credits may be provided by the GT&C, as they may change from time to time, on the same basis as Iroquois' recourse rate and discounted rate shippers. Con Ed accordingly contends that Iroquois should not be permitted to deny reservation charge credits to negotiated rate shippers who entered into negotiated rate agreements before the effective date of tariff language restricting reservation charge credits to negotiated rate contracts that expressly provide for them.

66. Iroquois argues that Con Ed ignores that, prior to its proposed tariff revision, Iroquois' tariff did not provide reservation charge credits for non-*force majeure* outages and, therefore, the economic basis on which Iroquois agreed to any pre-existing negotiated rates was that it would not be subject to non-*force majeure* reservation crediting risk. Iroquois further argues that it would be unreasonable to upset that economic bargain and give negotiated rate shippers an additional benefit. However, with respect to *force majeure* outages, Iroquois confirms that section 21.5 which permits the negotiation of reservation charge credits for *force majeure* events does not affect the crediting rights of current negotiated rate agreement holders have under the pre-existing tariff provisions.

### 3. Commission Determination

67. The Commission finds that it is unreasonable for Iroquois to apply its proposed new contractual prerequisite for negotiated rate contracts to qualify for reservation charge credits to agreements entered into before the effective date of the proposed tariff language. When Iroquois entered into its existing negotiated rate agreements, its negotiated rate shippers had no notice that they could be excluded from the benefit of any improved reservation charge crediting provisions that might be included in Iroquois' GT&C in the future, unless they negotiated a contractual provision providing for such credits. To the contrary, Article III, section 4 of Iroquois' *pro forma* service agreement for all firm services contains a *Memphis* clause providing that Iroquois' GT&C as revised from time to time is incorporated into those service agreements.<sup>64</sup> Moreover, Iroquois' tariff did not contain any provision authorizing it to negotiate reservation charge crediting provisions with negotiated rate shippers which differed from those contained in its GT&C.<sup>65</sup> Rather, Iroquois' GT&C treated negotiated rate shippers in the identical manner as recourse rate and discounted rate shippers for purposes of reservation charge credits. GT&C section 21.2 provided all firm shippers with a right to reservation charge credits for *force majeure* outages based on Iroquois' insurance coverage, without any distinction as to the type of rate paid by those shippers. Thus, when the existing negotiated rate shippers negotiated their contracts with Iroquois, they had every reason to believe that any future changes to the reservation charge crediting provisions in Iroquois' GT&C would apply to them, just as the current GT&C reservation charge crediting provisions applied to them.

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<sup>64</sup> Pro Forma Gas Transportation Contract for Firm Reserved Service, Article III, section 4 provides, in part, that:

This Contract and all terms and conditions contained or associated herein are subject to the provisions of the RTS Rate Schedule and of the General Terms and Conditions of Transporter's FERC Gas Tariff as such may be revised or superseded from time to time, which RTS Rate Schedule and General Terms and Conditions are by this reference made a part hereof.

<sup>65</sup> Iroquois' *pro forma* tariff for Firm Reserved Service only provides that negotiated demand rates are in lieu of only the "Maximum Transportation Demand Rate." Pro Forma Gas Transportation Contract for Firm Reserved Service, Article III, section 2.

68. Iroquois, however, relies on the fact that its tariff did not provide reservation charge credits for non-*force majeure* outages when it entered into the existing negotiated rate agreements, to argue that the economic basis on which it agreed to any pre-existing negotiated rates was that it would not be subject to non-*force majeure* reservation charge crediting.<sup>66</sup> However, if Iroquois intended that its negotiated rate agreements be insulated from any future changes in the reservation charge crediting provisions included in its GT&C, it should have included such a provision in the negotiated rate agreements and sought Commission approval of such a deviation from the *pro forma* service agreement then in effect.<sup>67</sup> Absent such a provision, the Commission has held that service agreements with a *Memphis* clause “automatically give shippers any increased rights which may be provided by changes in the terms and conditions of service in a pipeline’s tariff.”<sup>68</sup>

69. When discounted rate shippers have contended that the *Memphis* clause in their contracts should not operate to incorporate into their contracts a new surcharge, the Commission has refused to exempt them from the new surcharge if the discounted rate agreement contained no provision limiting the operation of the *Memphis* clause.<sup>69</sup> As the Commission explained in *Natural Gas Pipeline Co. of America*:<sup>70</sup>

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<sup>66</sup> Iroquois’ reliance on acceptance of a similar tariff provision regarding *force majeure* outages in *Empire State Pipeline, et al.*, 116 FERC ¶ 61,074, at P 154, *order on reh’g*, 117 FERC ¶ 61,139 (2006) (*Empire*) is misplaced. As Con Ed argues, in contrast with this case, *Empire* concerned the authorization to construct and operate new facilities not the application of proposed tariff provisions to pre-existing agreements.

<sup>67</sup> See *Kern River Gas Transmission Co.*, 135 FERC ¶ 61,050, at PP 32-33 (2011), permitting individually negotiated reservation charge crediting provisions to remain in place despite a change in the pipeline’s generally applicable reservation charge crediting provisions in its GT&C.

<sup>68</sup> *Regulation of Short-Term Natural Gas Transportation Services, and Regulation of Interstate Natural Gas Transportation Services*, 101 FERC ¶ 61,127, at P 46 (2002), *reh’g denied*, 106 FERC ¶ 61,088, at PP 64-65 (2004), *aff’d*, *AGA v. FERC*, F.3d (D.C. Cir. 2005).

<sup>69</sup> See *Sea Robin Pipeline Co., LLC*, Opinion No. 516-A, 143 FERC ¶ 61,129, at PP 146-151 (2013); *High Island Offshore System, LLC*, 145 FERC ¶ 61,155, at PP 16-20 (2013).

<sup>70</sup> *Natural Gas Pipeline Co. of America*, 70 FERC ¶ 61,317, at 61,967-8 (1995).

The Commission does not involve itself in the drafting of discount agreements, and the parties to such agreements must be mindful that rates are subject to change. Accordingly, we find no basis on which to offer relief to parties now finding themselves disadvantaged by the terms they negotiated.<sup>71</sup>

Accordingly, just as a shipper should be mindful when it enters into a service agreement that changes the pipeline makes to its GT&C pursuant to NGA section 4 will be incorporated into the service agreement, so also should the pipeline understand that changes to its GT&C required by the Commission pursuant to NGA section 5 will also be incorporated into all existing service agreements, absent an express provision otherwise.<sup>72</sup>

70. In drafting its pre-existing negotiated rate agreements, Iroquois failed to recognize the clear possible result of the *Memphis* clause in its tariff and include language to limit or preclude application to those contracts of a revision to the GT&C to conform its reservation charge crediting provisions to Commission policy. Iroquois is a sophisticated party, and if continued application of its then existing reservation charge crediting provisions regardless of future changes was an essential part of the economic bargain reflected in its existing negotiated rate agreements, it is reasonable for the Commission to expect that Iroquois would have included language in the negotiated rate agreements so stating.<sup>73</sup> Iroquois did not do so.

71. In these circumstances, we find it unreasonable and inequitable for Iroquois to retroactively apply to already executed negotiated rate contracts a requirement that such agreements include explicit language authorizing reservation charge credits in order to qualify for such credits. Acceptance of Iroquois' proposal with respect to existing negotiated rate agreements would unreasonably deny reservation charge credits to shippers which were unaware of Iroquois' future contracting requirement and to which the shippers otherwise would be entitled under the operation of the *Memphis* clause.

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<sup>71</sup> *Id.* at 61,968.

<sup>72</sup> See *Union Pacific Fuels, Inc., et al., v. FERC, et al.*, 129 F.3d 157 (D.C. Cir. 1997).

<sup>73</sup> *Ohio Power Co. v. FERC*, 744 F.2d 162, 167 n.5 (D.C. Cir. 1984) (major public utility experienced in making rate filings can properly be held to the letter of the language it drafted, i.e., is fairly chargeable with ability to state what it means); *Papago Tribal Utility Authority v. FERC*, 610 F.2d 914, 929 (D.C. Cir. 1979) (major public utility is fairly chargeable with ability to state what it means)).

Therefore, Iroquois is directed to file revised tariff records, within thirty days of the date of this order, revising section 20.2(f)(vii) to apply only to negotiated rate contracts entered into after the effective date of that tariff provision consistent with the discussion above.

**G. Negotiated Rate Agreements - Sections 20.2(d) and 21.5**

**1. Iroquois' Proposal**

72. Iroquois' proposed section 20.2(d) states that Iroquois may, as part of the negotiated rate, negotiate with the shipper "the amount of the Demand Charge Credit to be afforded, if any[.]" Proposed section 21.5 similarly provides that Iroquois may negotiate the amount of the *force majeure* reservation charge credits in a negotiated rate agreement.

**2. Positions of the Parties**

73. Indicated Shippers argues that Iroquois' ability to negotiate the amount of reservation charge credits should be expressly limited to rate relief and may not include a discriminatory term and condition of service. Indicated Shippers further argues that Iroquois should not be permitted to condition a negotiated rate agreement on a shipper's foregoing credits due to the unequal bargaining power between the pipeline and its shippers.

74. Iroquois argues that section 20.2(d) specifically is limited to negotiating "the amount of the Demand Charge Credit to be afforded, if any[.]" Iroquois contends that this language does not afford the parties any authority to negotiate, non-rate terms or conditions of service.

**3. Commission Determination**

75. The Commission denies Indicated Shippers' request for clarification of sections 20.2(d) and 21.5. Those sections are already expressly limited to authorizing shippers to negotiate to the amount of the reservation charge credits. Further, there is no need to clarify that those provisions do not include the ability to negotiate terms and conditions of service and unduly discriminatory terms and conditions of service which are already prohibited in any case.<sup>74</sup>

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<sup>74</sup> *Southern LNG Inc.*, 130 FERC ¶ 61,146, at P 42 (2010), cited by Indicated Shippers, concerned a proposal to add a blank for filling in the negotiated rate provision

(continued...)

## H. Outages to Comply with PHMSA Orders

### 1. Iroquois' Proposal

76. Iroquois' proposed section 20.4 provides reservation charge credits, calculated pursuant to section 21.4 applicable to *force majeure* events for outages to comply with orders issued by PHMSA pursuant to section 60139(c) of Chapter 601 of Title 49 of the United States Code concerning verification and confirmation of MAOP for a two-year period, effective August 1, 2013.

### 2. Positions of the Parties

77. Indicated Shippers argues that Iroquois' tariff should include a bright line rule that it will provide partial reservation credits for such outages according to the No-Profit or Safe Harbor methods, rather than limiting credits to any insurance proceeds provided by section 21.4. Iroquois contends that it would apply the same reservation charge crediting requirement as specified for all *force majeure* outages.

78. Indicated Shippers also argues that Iroquois should be directed to add the Commission requirement that when Iroquois provides notice of an outage required to comply with a PHMSA order issued under section 60139(c), the notice must identify the PHMSA order with which it is complying consistent with a Commission requirement for such tariff provisions.

79. Iroquois argues that the language already explicitly limits the outages to those to comply with orders from PHMSA pursuant to section 60139(c) and it is unclear at this point what the form of any such PHMSA order may take. Iroquois 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 concerns with the Commission. However, Iroquois states that, if the Commission requires uniformity in pipeline tariff language addressing this issue, Iroquois 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.

Indicated Shippers supports this proposed language.

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in an existing *pro forma* service agreement not the express limited right to negotiate credits being considered in this case.

### **3. Commission Determination**

80. The positions taken by both Indicated Shippers and Iroquois are based on the correct assumption that Iroquois should provide partial reservation charge credits during outages due to PHMSA section 60139(c) orders in the same manner as it provides credits during *force majeure* outages. However, as discussed above, the Commission has made a finding pursuant to NGA section 5 that Iroquois' treatment of *force majeure* outages pursuant to existing section 21.2, which is utilized in this proposed section, conflicts with Commission policy and is unjust and unreasonable. Our requirement above that Iroquois revise its tariff to provide partial reservation charge credits consistent with Commission policy will ensure that it also provides partial credits during outages to comply with PHMSA order under section 60139(c) consistent with Commission policy.

81. Further, the Commission requires express tariff language that the notice of an outage required to comply with a PHMSA order issued under section 60139(c) must identify the PHMSA order with which it is complying.<sup>75</sup> The language Iroquois proposed in its Answer, to which Indicated Shippers agrees, complies with that requirement. Therefore, Iroquois is directed, within thirty days of the date of this order, to file revised tariff records containing the language to which it has agreed.

#### **I. Force Majeure Definition**

##### **1. Iroquois' Tariff**

82. The definition of *force majeure* events in existing section 21.2 includes "the binding order of any court or governmental authority which has been resisted in good faith by all reasonable legal means."

##### **2. Positions of the Parties**

83. Indicated Shippers contends that Iroquois should be required to clarify that "the binding order of any court or governmental authority which has been resisted in good faith by all reasonable legal means" is limited to governmental actions that are "not reasonably within the control of the pipeline" consistent with Commission policy.

84. Iroquois argues that this clarification is unnecessary because section 21.2 states that the definition of *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 required resistance substantially limits the

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<sup>75</sup> *Gulf South I*, 141 FERC ¶ 61,224 at P 45.

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.

### **3. Commission Determination**

85. The Commission has considered similar existing tariff provisions which included in the definition of *force majeure* governmental actions “resisted in good faith by all reasonable legal means” in several cases. The Commission explained that outages resulting from governmental actions may be treated as resulting from a *force majeure* event only when the governmental requirement pertains to matters which are not reasonably in the pipeline’s control and are unexpected.<sup>76</sup> The Commission found that to the extent this existing tariff language treats all outages for testing, repair, and maintenance to comply with governmental orders as *force majeure* events it was over-inclusive and in conflict with Commission policy.<sup>77</sup>

86. Accordingly, the Commission finds that the Iroquois’ existing tariff provision defining *force majeure* events to include, among other things, “the binding order of any court or governmental authority which has been resisted in good faith by all reasonable legal means” is unjust and unreasonable. Therefore, pursuant to section 5 of the NGA, Iroquois is directed, within thirty days of the date of this order, either to (1) revise this provision to clarify that it does not apply to regulatory requirements that are within the pipeline’s control or expected, or (2) show cause why it should not be required to do so.

#### **J. Make-up Gas Provision**

##### **1. Iroquois’ Proposal**

87. Proposed section 20.2(f)(iv) provides an exemption from Iroquois’ obligation to provide reservation charge credits if the shipper elects and is able to make up lost service as provided in section 20.3.

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<sup>76</sup> See, e.g., *Algonquin Gas Transmission, LLC*, 143 FERC ¶ 61,082, at PP 24-25 (2013) (*Algonquin*); *Texas Eastern Transmission, LP*, 140 FERC ¶ 61,216, at PP 82-88 (2012) (*Texas Eastern*); *GTN*, 141 FERC ¶ 61,101 at PP 47-49. See also *TransColorado Gas Transmission Co.*, 144 FERC ¶ 61,175, at PP 35-44 (2013) and *Gulf South II*, 144 FERC ¶ 61,215 at PP 31-34 (clarifying the distinction between government actions that may be treated as *force majeure* events and those which may not).

<sup>77</sup> *GTN*, 141 FERC ¶ 61,101 at P 49; *Texas Eastern*, 140 FERC ¶ 61,216 at P 88.

88. Proposed section 20.3 provides that:

In the event interruption or curtailment occurs, Shipper shall be given the opportunity on a subsequent day or days to make-up such loss of service provided that such make-up service shall not preclude or interfere with the service priorities set forth in Section 4. In the event such make-up service is provided, Shipper shall be obligated to pay the Transportation Commodity Charge for such service under the applicable Rate Schedule.

## **2. Positions of the Parties**

89. Indicated Shippers requests clarification that (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. Indicated Shippers asserts that Iroquois has confirmed that Iroquois intends to provide full reservation charges if a shipper is offered make-up service but does not accept it.

90. In its Answer, 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 the exemption of make-up service in section 20.2(f)(iv) expressly states that the shipper loses eligibility for reservation charge credits “[i]f Shipper *elects and* is able to make up lost service as provided in Section 20.3.” (Emphasis added.)

## **3. Commission Determination**

91. The Commission believes that if Iroquois is ready, willing, and able to provide the make-up service and the shipper elects to use it, there is no need to limit the exemption from reservation charge credits to make-up service which the shipper actually utilizes. Further, there is no need to clarify that the shipper will incur payment obligations only if the make-up service is used because there is no obligation to pay for such service which is not used in Iroquois’ proposed tariff provisions. Therefore, Indicated Shippers’ request for clarification is denied.

### **K. Curtailment**

#### **1. Iroquois’ Tariff**

92. Section 20.2 of Iroquois’ existing GT&C is revised and in a retitled section 20 concerning impairment of deliveries for non-*force majeure* events and renumbered as section 20.1 to state:

Routine Repair and Maintenance. Transporter shall have the right to interrupt *or curtail* service in whole or in part on all or a portion of its system from time to time, without liability except as provided in Section 20.2 to perform routine repair, maintenance, and other construction or testing procedures on Transporters system as necessary to maintain operational capability on Transporters system or to comply with applicable regulatory requirements. [Emphasis added.]

## 2. Commission Determination

93. The existing language in section 20.2, as retained in proposed section 20.1, contains a provision regarding Iroquois' curtailment of service which does not comply with Commission policy regarding curtailment.<sup>78</sup> The Commission finds that this reference to curtailment is unjust and unreasonable. The Commission has found that pipelines may only "curtail" service in an emergency situation or when an unexpected capacity loss occurs after the pipeline has scheduled service, and the pipeline is therefore unable to perform the service which it has scheduled. The term "routine repair, maintenance, and other construction or testing procedures" is not limited to such an emergency situation or an unexpected loss of capacity, and the pipeline should take outages required for routine repair, maintenance, and improvements into account when it is scheduling service, rather than curtailing service after it is scheduled. If an interruption of service is required for activities such as routine repair, maintenance or improvements, and other construction or testing procedures then the pipeline should not confirm shipper nominations to schedule service that it will not be able to provide for the period of the outage. Accordingly, the Commission has held that pipelines should plan activities such as routine repair, maintenance, and other construction or testing procedures and should not curtail confirmed scheduling nominations in order to perform those routine activities. Therefore, Iroquois is directed to file revised tariff records, pursuant to section 5 of the NGA, within thirty days of the date of this order, to remove from the authorization to "curtail" service to perform any routine repair, maintenance, and other construction or testing procedures consistent with Commission policy, or explain why it should not be required to do so.

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<sup>78</sup> See, e.g., *Texas Eastern*, 140 FERC ¶ 61,216 at P 96; *CenterPoint Energy Gas Transmission Co., LLC*, 144 FERC ¶ 61,195, at P 75 (2013); *Gulf South I*, 141 FERC ¶ 61,224 at P 88, *aff'd*, *Gulf South II*, 144 FERC ¶ 61,215 at PP 73-74; *Algonquin*, 143 FERC ¶ 61,082 at P 30.

The Commission orders:

(A) The tariff records listed in the Appendix to this order are accepted to become effective January 1, 2014, subject to conditions, as discussed in this order.

(B) Within thirty (30) days of the date of this order, Iroquois is directed to file revised tariff records, to be effective January 1, 2014, modifying the tariff changes it filed pursuant to NGA section 4, consistent with the discussion in the body of this order.

(C) Within thirty (30) days of the date of this order, Iroquois is directed, consistent with the discussion in the body of this order, pursuant to NGA section 5, either to modify certain existing provisions in its tariff or explain why it should not be required to do so.

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](#)