

254 FERC ¶ 61,106
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Norman C. Bay, Chairman;
Cheryl A. LaFleur, Tony Clark,
and Colette D. Honorable.

Iroquois Gas Transmission System, L.P.

Docket No. CP16-58-000

ORDER ISSUING CERTIFICATE AND APPROVING ABANDONMENT

(Issued February 18, 2016)

1. On January 15, 2016, Iroquois Gas Transmission System, L.P. (Iroquois) filed an application seeking authorizations that will enable Iroquois to enter into a payment-in-lieu-of-taxes (PILOT) transaction with the Schoharie County Industrial Development Agency (Agency).¹ Specifically, Iroquois requests: (1) authority to abandon by lease to the Agency a passive interest in certain jurisdictional facilities located in Schoharie County, New York; (2) a certificate of public convenience and necessity authorizing Iroquois to lease back the jurisdictional facilities; and (3) pre-granted authority for Iroquois to reacquire the leasehold interests when the lease and leaseback agreements expire. For the reasons discussed below, we will grant Iroquois' requests for certificate and abandonment authority and the requested pre-granted authority.

I. Background and Proposal

2. Iroquois is a limited partnership existing under the laws of Delaware. Iroquois is a natural gas company which owns pipeline facilities extending from the U.S.-Canadian border at Iroquois, Ontario, and Waddington, New York, through New York, western

¹ The Agency is a public benefit corporation created and empowered under New York law to grant tax exemptions in order to advance opportunities, health, general prosperity, and economic welfare of the people of New York and improve their standard of living. Under New York law, the Agency is exempt from taxation "upon any of the property acquired by it or under its jurisdiction or control or supervision or upon its activities." *See* N.Y. GEN. MUN. LAW § 874(1) (2015). The PILOT Agreement, therefore, enables fixed payments in lieu of taxes to be made, regardless of future tax valuations of Iroquois' Schoharie County property.

Connecticut, and under the Long Island Sound to South Commack, New York, and then extending back under the Sound to a terminus at Hunts Point in the Bronx.

3. On December 11, 2015, Iroquois executed a stipulation of settlement and order with the County of Schoharie, New York, four towns within Schoharie County, and the Schoharie County School District resolving multiple proceedings in which Iroquois was challenging its real property assessments and taxes paid for the years 2011 through 2015.² The settlement sets forth fixed payments Iroquois will make from 2016 through 2029 in lieu of paying taxes based on future property tax assessments applicable to those years.³

4. In order to effectuate the terms of the settlement, Iroquois and the Agency have entered into *pro forma* agreements whereby Iroquois will convey a leasehold interest in certain land and jurisdictional facilities located in Schoharie County, New York, to the Agency, and the Agency will simultaneously lease back these interests to Iroquois. Iroquois states that the lease and leaseback arrangement is necessary to afford tax exempt status to the land and jurisdictional facilities during the settlement period, allowing Iroquois to make the agreed fixed payments in lieu of taxes. Iroquois states that the agreements provide that all the benefits and burdens of ownership of the facilities will remain with Iroquois. The lease and leaseback will commence upon approval of the transaction by the Commission and will extend to December 31, 2030, or until Iroquois exercises its option to terminate the agreements and begin paying taxes.

5. The jurisdictional facilities that Iroquois proposes to lease to the Agency are located in Schoharie County, New York and include: (1) 12.4 miles of Iroquois' mainline; (2) Iroquois' existing meter and compressor station at Wright, New York; and (3) 53.2 acres of land on which the compressor and meter station is located.⁴

² The New York Supreme Court, County of Schoharie approved the settlement on December 29, 2015.

³ Iroquois states that these future payments are likely to be lower than the taxes that Iroquois would otherwise pay.

⁴ The facilities do not include the Wright Interconnection facilities which were authorized in 2014, but have not been constructed. *Constitution Pipeline Co., LLC*, 149 FERC ¶ 61,199 (2014).

6. Iroquois requests authorization pursuant to section 7(b) of the Natural Gas Act⁵ to abandon a passive leasehold interest in the facilities and a certificate of public convenience and necessity pursuant to section 7(c) of the Natural Gas Act⁶ to lease back the leasehold interest from the Agency. Iroquois also requests pre-granted authority to reacquire the leasehold interests from the Agency when the term of the agreements expires. Iroquois asserts that the proposed transaction will have no effect on jurisdictional services or on its operations and control over the jurisdictional facilities.

II. Notice and Interventions

7. Notice of Iroquois' application was issued on January 21, 2016, and published in the *Federal Register* on February 2, 2016 (81 Fed. Reg. 5438). Consolidated Edison Company of New York, Inc., New Jersey Natural Gas Company, and NJR Energy Services Company filed timely, unopposed motions to intervene. Timely, unopposed motions to intervene are granted by operation of Rule 214 of the Commission's Rules of Practice and Procedure.⁷ No comments were filed in opposition to Iroquois' proposal.

III. Discussion

8. Since the facilities subject to Iroquois' proposals are used to transport natural gas in interstate commerce, they are subject to the Natural Gas Act and the Commission's jurisdiction.

A. Lease and Leaseback Proposals

9. Iroquois' lease and leaseback agreements implement the terms of a court settlement through a PILOT transaction. The PILOT transaction ends ongoing litigation and allows Iroquois to control its ongoing tax cost exposure. Iroquois will maintain full control over the facilities and the lease and leaseback agreements will not have any effect on Iroquois' transportation customers. The agreements will also have no effect on Iroquois' certificated service obligations or the underlying certificates authorizing the construction and operation of the subject facilities. For these reasons, we conclude that Iroquois' proposal to enter into lease and leaseback agreements is required by the public convenience and necessity.⁸

⁵ 15 U.S.C. § 717f(b) (2012).

⁶ 15 U.S.C. § 717f(c) (2012).

⁷ 18 C.F.R. § 385.214(c) (2015).

⁸ *Tennessee Gas Pipeline Co.*, 121 FERC ¶ 61,303 (2007).

B. Pre-Granted Authorizations

10. We will grant Iroquois' request for pre-granted authority to reacquire the passive lease interest from the Agency when the lease and leaseback agreements expire.⁹ As described, Iroquois' proposal does not require it to take any action in order to reacquire the passive interest from the Agency. The ownership of the facilities will automatically revert to Iroquois on expiration of the lease. Thus, we find pre-granted authority is appropriate in this case.¹⁰

11. At a hearing held on February 18, 2016, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application, as supplemented, and exhibits thereto, and all comments submitted herein, and upon consideration of the record,

The Commission orders:

(A) A certificate of public convenience and necessity and abandonment authority are issued to Iroquois, authorizing it to implement the lease and leaseback agreements with the Agency, as more fully described in the body of this order and in the application.

(B) Iroquois' request for pre-granted authorization to reacquire the passive lease interest from the Agency is granted.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

⁹ As noted above, the agreements will expire on December 31, 2030, or at Iroquois' option.

¹⁰ See, e.g., *Tennessee Gas Pipeline Co.*, 121 FERC ¶ 61,303 (2007).