

157 FERC ¶ 61,035  
FEDERAL ENERGY REGULATORY COMMISSION  
WASHINGTON, DC 20426

October 20, 2016

In Reply Refer To:  
Iroquois Gas Transmission System, L.P.  
Docket Nos. RP16-301-000  
RP16-1176-000

Wright & Talisman P.C.  
1200 G Street NW  
Suite 600  
Washington, DC 20005

Attention: Joseph S. Koury, Esq.

Dear Mr. Koury:

1. On January 21, 2016, the Commission instituted an investigation pursuant to section 5 of the Natural Gas Act (NGA) into the justness and reasonableness of the existing rates of Iroquois Gas Transmission System, L.P. (Iroquois).<sup>1</sup> The January 21 Order also established hearing procedures related to the investigation and required Iroquois to file a cost and revenue study within seventy-five days of the issuance of the January 21 Order.

2. On August 18, 2016, Iroquois filed an Offer of Settlement (Settlement) purporting to resolve all issues in the above-referenced proceeding. On August 29, 2016, the New England Local Distribution Companies, the National Grid Gas Delivery Companies, New Jersey Natural Gas Company, and NJR Energy Services Company filed joint comments in support of the Settlement. On that same date, Commission Trial Staff and the Canadian Association of Petroleum Producers, separately, filed comments in support of the Settlement. No other comments were filed. On September 12, 2016, the

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<sup>1</sup> *Iroquois Gas Transmission Sys., L.P.*, 154 FERC ¶ 61,028 (2016) (January 21 Order).

Settlement Judge certified the Settlement to the Commission as an uncontested settlement.<sup>2</sup> The terms of the Settlement are described briefly below.

3. Article I of the Settlement addresses rate matters. Section 1.1 states that Iroquois' base tariff recourse rates (Settlement Rates) shall be the rates prescribed in Pro Forma Sheet Nos. 4, 4.01, 4B, 4C, 4D, and 5A, which are contained in Appendix A to the Settlement. These revised tariff sheets provide three scheduled rate reductions to be effective September 1 of 2016, 2017, and 2018. Section 1.2 states that Iroquois will file revised tariff sheets reflecting the Settlement Rates within 15 days after the Settlement becomes effective. Section 1.3 provides that upon Iroquois filing the Settlement, Iroquois shall concurrently file a motion to place the Settlement Rates into effect on an interim basis as of September 1, 2016.<sup>3</sup> Section 1.4 states that Iroquois shall use the depreciation, amortization, and negative salvage rates prescribed in Appendix B to the Settlement.

4. Article II sets forth a rate moratorium and delineates the rights and obligations of the parties during the period in which the moratorium is in effect. Section 2.1 prohibits parties from requesting a change to the Settlement Rates prior to September 1, 2020. Sections 2.2 and 2.3 identify certain types of filings that are exempt from the moratorium. Section 2.4 describes shippers' rights to protest filings that Iroquois may make under Sections 2.2 or 2.3. Section 2.5 requires Iroquois to give shippers an opportunity to preview and comment on any section 4 tariff filings proposing generally applicable changes to Iroquois' services or general terms and conditions. Section 2.6 provides that the moratorium and all provisions of Article II shall terminate on August 31, 2020.

5. Article III addresses future rate filings under section 4 of the NGA. Section 3.1 provides that, upon conclusion of the moratorium, Iroquois shall file a general section 4 rate case no later than September 1, 2022. Section 3.1 further provides that Iroquois' obligation is extinguished if it files a general NGA section 4 rate case or the Commission: (1) approves a general rate settlement filed by Iroquois or (2) institutes an NGA section 5 investigation into Iroquois' rates. Section 3.2 requires Iroquois to provide shippers notice and an overview of any general section 4 rate filing 30 days prior to that filing.

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<sup>2</sup> *Iroquois Gas Transmission Sys., L.P.*, 156 FERC ¶ 63,044 (2016).

<sup>3</sup> On August 18, 2016, in Docket No. RP16-1176-000, Iroquois filed certain revised tariff records, to become effective on September 1, 2016, on an interim basis. On August 26, 2016, the Chief Administrative Law Judge issued an order in Docket Nos. RP16-301-002 and RP16-1176-000 approving the interim rates, while simultaneously terminating those dockets. *See Order of Chief Judge Granting Motion for Interim Implementation of Settlement Rates*, 156 FERC ¶ 63,035, at PP 6, 8 (2016).

6. Article IV provides that the Settlement shall be effective for a term commencing on September 1, 2016 and terminating after the end of the moratorium period, when new base tariff rates become effective. These new rates may result from: (1) the filing of a general rate case under section 4 of the NGA; (2) an investigation under section 5 of the NGA; or (3) a general rate settlement.

7. Article V prescribes the effective date and non-severability of the Settlement. Section 5.1 states that the provisions of the Settlement are not severable, and shall become effective on the date that a Commission order approving the Settlement is no longer subject to rehearing or judicial review. Section 5.2 states that if the Commission modifies the Settlement, any party to the proceeding may refuse to accept the modified Settlement and become a contesting party. Section 5.3 provides that it is the intent of the parties that if the Settlement is contested, the Commission will approve the Settlement for all non-contesting parties.

8. Article VI states that the Commission's approval of the Settlement shall constitute all waivers and provide all authority necessary under the NGA and the Commission's regulations for Iroquois to implement the Settlement.

9. Article VII addresses changes to the Settlement after it becomes effective and sets forth the standard of review. Section 7.1 states that the Settlement may not be modified except by written agreement of all non-contesting parties. Section 7.2 of the Settlement provides that:

[a]bsent an agreement pursuant to Section 7.1, and after the Settlement becomes effective in accordance with Article V, in the event the Commission considers changes to the settlement on behalf of any party, the standard of review shall be the "public interest" standard of review set forth in *United Gas Pipe Line Co. v. Mobile Gas Services Corp.*, 350 U.S. 332 (1956), *Federal Power Commission v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956), and *Morgan Stanley Capital Group Inc. v. Pub. Util. Dist. No. 1*, 554 U.S. 527 (2008). The standard of review for changes to the Settlement proposed by a non-party or the Commission acting *sua sponte* shall be the most stringent standard permissible under applicable law.

10. Because the Settlement appears to provide that the standard of review applicable to modifications to the Settlement proposed by third parties or the Commission acting *sua sponte* is "the most stringent standard permissible under applicable law," we clarify the framework that would apply if the Commission were required to determine the standard of review in a later challenge to the Settlement by a third party or by the Commission acting *sua sponte*.

11. The *Mobile-Sierra* "public interest" presumption applies to an agreement only if the agreement has certain characteristics that justify the presumption. In ruling

on whether the characteristics necessary to justify a *Mobile-Sierra* presumption are present, the Commission must determine whether the agreement at issue embodies either: (1) individualized rates, terms, or conditions that apply only to sophisticated parties who negotiated them freely at arm's length; or (2) rates, terms, or conditions that are generally applicable or that arose in circumstances that do not provide the assurance of justness and reasonableness associated with arm's-length negotiations. Unlike the latter, the former constitute contract rates, terms, or conditions that necessarily qualify for a *Mobile-Sierra* presumption. In *New England Power Generators Association v. FERC*,<sup>4</sup> however, the D.C. Circuit determined that the Commission is legally authorized to impose a more rigorous application of the statutory "just and reasonable" standard of review on future changes to agreements that fall within the second category described above.

12. Article VIII addresses reservations and conditions to the Settlement. Section 8.1 states that the parties waive no rights other than as specifically provided in the Settlement. Section 8.2 provides that the Settlement shall not be construed against any party as drafter. Section 8.3 states that the Settlement shall have no precedential effect. Moreover, except as specifically provided in the Settlement, no party shall be deemed to have consented to any principle, policy, or practice purportedly underlying its provisions. Section 8.4 states that Commission approval of the Settlement shall authorize Iroquois to implement the Settlement Rates on their effective dates without further filings, suspension, or new conditions.

13. The Settlement resolves all issues in dispute in these proceedings. The Settlement appears to be fair and reasonable and in the public interest, and is hereby approved. The Commission's approval of this Settlement does not constitute approval of, or precedent regarding, any principle or issue in these proceedings. Iroquois is directed to file revised tariff records in eTariff format,<sup>5</sup> within 15 days of the date of this order, to reflect the Commission's action in this order.

14. This order terminates Docket No. RP16-301-000.

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<sup>4</sup> *New England Power Generators Ass'n, Inc. v. FERC*, 707 F.3d 364, 370-71 (D.C. Cir. 2013).

<sup>5</sup> See *Electronic Tariff Filings*, Order No. 714, FERC Stats. & Regs. ¶ 31,276, at P 96 (2008).

By direction of the Commission.

Kimberly D. Bose,  
Secretary.