

121 FERC 61,150
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Sudeen G. Kelly, Marc Spitzer,
Philip D. Moeller, and Jon Wellinghoff.

Iroquois Gas Transmission System, L.P.

Docket Nos. RP07-443-001
RP07-443-000

ORDER ESTABLISHING HEARING
AND CLARIFYING PRIOR ORDER

(Issued November 15, 2007)

1. As discussed below, the Commission is establishing a hearing in the above-captioned proceeding to address specific gas quality and interchangeability issues on Iroquois Gas Transmission System, L.P. (Iroquois) that have been stipulated by the parties to be contested issues requiring Commission resolution. The Commission will also clarify its prior order in this proceeding with regard to the issues that may be addressed at the hearing regarding mitigation costs.

Background

2. On May 4, 2007, Iroquois filed revised tariff sheets pursuant to section 4 of the Natural Gas Act (NGA) to revise its tariff with respect to gas quality and interchangeability in light of anticipated changes in the source of natural gas supplies that it will transport. Iroquois stated that while it is currently able to receive gas supplies only from TransCanada PipeLines Limited, it was recently authorized by the Commission to construct and operate a transfer compressor station in Brookfield, Connecticut that will enable it to physically receive natural gas supplies from Algonquin Gas Transmission LLC commencing in November 2008. In addition, Iroquois stated, Broadwater Energy LLC and Broadwater Pipeline LLC have proposed to deliver regasified LNG to Iroquois commencing on or after November 1, 2010.

3. On June 27, 2007, the Commission issued an order¹ accepting and suspending the proposed tariff sheets, to be effective December 1, 2007, subject to conditions and to the outcome of a technical conference. On September 10, 2007, a technical conference was

¹ 119 FERC ¶ 61,325 (2007) (June 27, 2007 Order).

held to address the issues raised by Iroquois' filing. At the conclusion of the technical conference, Iroquois and the other parties agreed to develop and submit to the Commission a list of contested issues requiring Commission resolution. The parties also agreed to submit initial comments on the contested issues on October 22, 2007 and reply comments on November 19, 2007.

4. On September 24, 2007, Iroquois submitted a list of contested issues. Iroquois states that the parties have agreed to stipulate that only the following issues require resolution by the Commission in this proceeding:

1. **Nitrogen:** Should there be a separate nitrogen limit? If so, what is the appropriate nitrogen limit?
2. **Oxygen:** What is the appropriate oxygen limit?
3. **Wobbe Index Range:** What is the appropriate Wobbe Index Range?
4. **Sulfur:** What is the appropriate sulfur limit?
5. **Hydrocarbon Constituent Compounds:** (a) Should Iroquois set a limit for ethane and/or propane? If so, what should the limit or limits be? (b) What is the appropriate limit or limits for C4+ compounds?
6. **Remedies:** (a) Should entities be required to notify Iroquois upon their receipt of unacceptable non-conforming gas? (b) Should an entity rejecting non-conforming gas be required to pay all Demand and Commodity charges associated with such rejected deliveries?

5. Iroquois states that with respect to issues 1, 3, 4, and 5(b), it has the burden under Section 4 of the NGA to show that its proposed tariff changes are just and reasonable. Iroquois further states that with respect to issues 2, 5(a), 6(a) and 6(b), any party proposing to change Iroquois' existing tariff language has the burden under Section 5 of the NGA to demonstrate that Iroquois' existing, approved tariff has become unjust, unreasonable, unduly discriminatory or unduly preferential, and to demonstrate that its own proposal would be just and reasonable.

6. Iroquois states that it circulated the Stipulation to all the parties in this proceeding, and that every party has either authorized Iroquois to represent that it agrees to, or does not oppose, this Stipulation or has not responded to Iroquois' communications regarding the Stipulation. Iroquois asks that the contested issues for disposition in this proceeding be narrowed to the issues specified in the Stipulation, and that all other aspects of Iroquois' May 4, 2007 filing be accepted without modification.

Discussion

7. Upon review of the list of stipulated contested issues submitted by Iroquois, the Commission finds that they raise questions of fact that are best resolved in the context of an evidentiary hearing. Therefore, the Commission will establish a hearing in this proceeding before an Administrative Law Judge to develop a record on the stipulated contested issues. The Commission clarifies that the issues to be addressed at the hearing are limited to the gas quality and interchangeability issues stipulated as contested by the parties in Iroquois' September 24, 2007 filing. The comments and reply comments filed by the parties in accordance with the procedure established at the technical conference will be part of the hearing record.

8. The Commission further clarifies that the hearing is to address the stipulated issues in the context of the Commission's *Policy Statement on Provisions Governing Natural Gas Quality and Interchangeability in Interstate Natural Gas Pipeline Company Tariffs* (Policy Statement).² As the Commission explained in the June 27, 2007 Order, the Policy Statement established five principles for pipelines and parties to follow to create gas quality and interchangeability standards. First, the Policy Statement states that only gas standards that are in the tariff can be enforced. Second, the Policy Statement states that gas standards need to be flexible to allow pipelines to balance safety and reliability concerns with the importance of maximizing supply, as well as recognizing the evolving nature of the science underlying gas quality and interchangeability specifications. Third, the Policy Statement states that pipelines and customers should develop gas quality and interchangeability specifications based on technical requirements. Fourth, the Policy Statement states that pipelines and customers are encouraged to use the Natural Gas Council Plus (NGC+) interim guidelines as a common scientific reference point for resolving gas quality and interchangeability issues. And lastly, the Policy Statement states that to the extent that pipelines and their customers cannot resolve disputes over gas standards, then those issues should be brought before the Commission.

9. The Policy Statement specifically recognizes the importance of providing pipelines and their customers with the flexibility needed to maximize the introduction of new supply into the grid and of encouraging rather than impeding the movement of gas to the grid and the ultimate consumers. The Policy Statement recognizes that imports of liquefied natural gas (LNG) are expected to increase and seeks to lower potential barriers to these imports while at the same time ensuring the safety and reliability of the grid.³ In the case of Iroquois, the Commission does not expect imported LNG to have the same gas characteristics as Iroquois' historic supply sources.

² 115 FERC ¶ 61,325 (2006).

³ *Id.* at P 24 - 25.

10. We understand that, consistent with the Policy Statement, Iroquois has engaged in discussions with its customers concerning the proposed gas quality and interchangeability tariff provisions, and has brought to the Commission the issues that the parties were unable to resolve. While we therefore find it appropriate to set these issues for hearing, we encourage the parties to continue to attempt to reach a consensus on these issues.

11. Finally, in order to further clarify the scope of the hearing, the Commission will address the request for clarification of the June 27, 2007 Order filed by the New England Local Distribution Companies (New England LDCs). In the June 27, 2007 Order, the Commission stated that:

Consistent with the Commission's recent decision in *AES Ocean Express v. Florida Gas Transmission Co.*, Opinion No. 495, [AES] the Commission will not provide for the recovery of any mitigation costs incurred by nonjurisdictional downstream gas users in this proceeding. Therefore, the issue of mitigation costs will not be addressed at the technical conference.⁴

12. The New England LDCs ask the Commission to clarify that the quoted portion of the June 27, 2007 Order does not mean that the entire subject of mitigation costs will not be addressed in this proceeding, and that the parties are not precluded from raising the issue of mitigation costs in arguing that Iroquois' proposed gas quality standards are not just and reasonable.

13. The Commission clarifies that the June 27, 2007 Order was not intended to preclude the parties from arguing in this proceeding that the proposed gas quality and interchangeability standards are not just and reasonable because of excessive cost burdens they would impose on customers. In *Algonquin Gas Transmission, L.L.C. (Algonquin)*,⁵ the Commission explained that it would not provide for the recovery of any mitigation costs incurred by non-jurisdictional downstream gas users in that proceeding and stated that therefore "the issue of mitigation costs *recovery* will not be addressed at the technical conference." In Opinion No. 495, *AES v. Florida Gas*,⁶ the Commission stated that "[i]n determining the justness and reasonableness of those standards, one factor the Commission must consider is the effects those standards will have on downstream gas transporters and users, including whether those standards may impose excessive cost burdens on downstream entities. (Opinion No. 495 at P 270).

⁴ June 27, 2007 Order at P 21.

⁵ 120 FERC ¶ 61,114 at P 18 (emphasis added) (2007).

⁶ 119 FERC ¶ 61,075 at P 270 (2007).

14. Thus, consistent with Opinion No. 495 and *Algonquin*, issues regarding the *recovery* of mitigation costs will not be considered in this proceeding and may not be addressed at the hearing. However, the question of whether the costs that the proposed standards may place on customers are excessive is relevant to the issue of the justness and reasonableness of the proposed standards. Therefore, to the extent that evidence on such costs is related to resolution of the stipulated contested issues, it is within the scope of this proceeding and may be addressed at the hearing.

The Commission orders:

(A) Pursuant to the Commission's authority under the NGA, particularly sections 4, 5, and 15, and the Commission's rules and regulations, a public hearing is to be held in this proceeding concerning the lawfulness of Iroquois' filing with regard to the stipulated issues.

(B) A presiding administrative law judge, to be designated by the Chief Administrative Law Judge for that purpose pursuant to 18 C.F.R. § 375.304 (2007), must convene a prehearing conference in this proceeding to be held within 20 days after issuance of this order, in a hearing or conference room of the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. The prehearing conference shall be held for the purpose of clarification of the positions of the participants and establishment by the presiding judge of any procedural dates necessary for the hearing. The presiding administrative law judge is authorized to conduct further proceedings in accordance with this order and the Commission's Rules of Practice and Procedure.

(C) The request for clarification of the New England LDCs is granted.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.