UNITED STATES OF AMERICA 100 FERC ¶ 61,275
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
William L. Massey, Linda Breathitt,
and Nora Mead Brownell.

Iroquois Gas Transmission System, L.P. Docket No. CP02-52-000

PRELIMINARY DETERMINATION ON NON-ENVIRONMENTAL ISSUES

(Issued September 19, 2002)

1. On December 14, 2002, Iroquois Gas Transmission System, L.P. (Iroquois) filed an application in Docket No. CP02-52-000 under section 7(c) of the Natural Gas Act (NGA) and Part 157 of the Commission's regulations for a certificate of public convenience and necessity to construct, own, and operate its Eastern Long Island Expansion Project (ELI Project). The ELI Project consists, among other things, of new pipeline and compressor facilities to provide approximately 175,000 dekatherms per day (Dth/d) of firm transportation service to eastern Long Island, New York. We find issuing this preliminary determination is in the public interest because it provides certainty concerning the economic aspects of Iroquois' proposal.

2. We are making a preliminary determination on the non-environmental issues in this proceeding. These findings support issuance of the certificate to Iroquois, subject to the conditions discussed below. However, this order does not consider or evaluate any of the environmental issues in this proceeding. Those issues are still pending and will be addressed in a subsequent order when the environmental review and analysis are complete. Thus, final approval and issuance of the certificates is dependent on a favorable environmental review and nothing in this order limits our actions regarding our environmental analysis.

I. **Background and Proposal**

3. Iroquois requests authorization to construct and operate: (1) 29.1 miles of 20-inch pipeline from a point offshore of Milford, Connecticut to a point in Brookhaven, Suffolk County, New York; (2) a new compressor unit, with 20,000 (nominal) horsepower, in Milford, Connecticut; (3) cooling facilities at the Dover, New York compressor station;

(4) various ancillary facilities at the Brookfield, Connecticut meter station;[1] (5) various ancillary facilities associated with a new interconnection with the facilities of KeySpan Energy Delivery Long Island in Brookhaven, New York; and (6) other necessary facilities, such as a tap valve in Long Island Sound, three mainline valves, pig launchers/receivers and temporary facilities, including pipe yards, storage yards, access roads and staging areas.

4. Iroquois states that the facilities are designed to provide approximately 175,000 Dth/d of firm transportation service to eastern Long Island. Iroquois has executed precedent agreements with the following shippers:

Consolidated Edison Energy, Inc., 10,000 Dth/d;
Engage Energy America, LLC, 50,000 Dth/d;
Long Island Power Authority, 160,000 Dth/d;
Mirant Americas, Inc., 80,000 Dth/d; and
New York Power Authority, 40,000 Dth/d.

5. Iroquois states that because the precedent agreements currently provide for firm transportation of 340,000 Dth/d, which exceeds the capacity of the proposed facilities, pro-ration of capacity among the shippers may be necessary. Iroquois states that it expects to make a decision on any such pro-ration no later than March 1, 2003.

6. The total cost of the ELI Project is estimated to be about $105 million. Iroquois proposes to charge shippers its firm transportation rate in effect under its RTS rate schedule, plus an incremental surcharge, which, in total, is designed to recover the costs of the proposed facilities.

II. Procedural Issues

A. Notice and Interventions

7. Notice of Iroquois' application was published in the Federal Register on January 4, 2002 (67 Fed. Reg. 578). Twenty-three parties filed timely, unopposed motions to

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[1]The ELI Project is dependent upon Iroquois' request in Docket No. CP02-31-000 to construct and operate the Brookfield Compressor Station. The Commission will issue an order in that proceeding at a later date. Whatever decision is rendered in Docket No. CP02-31-000 may affect the rate treatment and the facility configuration approved here.

intervene. Timely unopposed motions to intervene are granted by operation of Rule 214 of the Commission's Regulations.[2] The Public Service Commission of New York filed a notice of intervention. ProGas U.S.A., Inc., Orion Power Holdings, Inc., and Briarpatch Enterprises, Inc. filed motions to intervene out-of-time. The Commission finds that granting the motions to intervene out-of-time will not delay, disrupt, or otherwise prejudice this proceeding or place an additional burden on existing parties. Therefore, for good cause shown, these late-filed motions to intervene in this proceeding are granted. The Appendix to this order lists all interveners. Several parties filed comments concerning the ELI Project. There were no protests. The comments are addressed below in the Discussion section.

B. Motion to Consolidate/Connecticut Moritarium

8. The Long Island Pine Barrens Society (Pine Barrens Society), the Connecticut Attorney General, (Connecticut AG), and Iroquois filed motions to consolidate the instant proceeding with that involving Islander East Pipeline Company, L.L.C. (Islander East) application in Docket No. CP01-384-000, et al..[3] The motions to consolidate are addressed in the Islander East proceeding which is being issued concurrently with this order. Generally, the Commission determines that there is sufficient forecasted long-term market demand to support findings that both projects will be needed by 2010. It also finds that the two projects propose to serve different shippers and that Iroquois' proposed ELI Project cannot provide the same reliability and competition that can be provided by the Islander East Project. Therefore, the Commission determines that the two projects are not mutually exclusive and do not require that the Commission conduct an Ashbacker Radio Corp. v. FCC[4] hearing.

9. On April 12, 2002 the Governor of Connecticut issued Executive Order No. 26 that prohibits state agencies from approving any utility projects that cross Long Island Sound, among other things, until June 15, 2003. Similarly, on June 3, 2002, the Connecticut Legislature enacted Public Act No. 02-95, which imposed a one-year

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[2] 18 CFR § 385.214 (2001)

[3] In Docket No. CP01-384-000, et al., Islander East proposes to construct and operate a new interstate pipeline that will cross Long Island Sound and transport gas from an interconnect with Algonquin Gas Transmission Company (Algonquin) in Connecticut to Long Island.

[4] 326 U.S. 327, 329-31 (1945)

moratorium on utility crossings in Long Island Sound. Both actions created a task force to assess the environmental impact of such crossings and to determine the present and future energy needs of Connecticut. Many Connecticut local and federal officials, representatives, agencies, and individuals filed requests with the Commission urging that it honor the Connecticut moratorium.[5]

10. As stated in our order in the Islander East proceeding, whenever possible the Commission tries to process an application for a proposed pipeline within the time frame requested by the applicant. The processing of a certificate application is a process that requires in-depth analysis of extensive data, studies, and other detailed information. In this proceeding, the Commission is only issuing Iroquois a preliminary determination on the non-environmental issues related to its application. We do not believe that issuance of a preliminary determination conflicts with the Connecticut moratorium. If necessary, we will revisit this issue when the Commission is prepared to take final action in this proceeding.

C. Environmental Comments

11. Numerous landowners, landowner and environmental groups, municipal governments, and state agencies have filed interventions or comments stating their concerns or opposition to the proposed ELI Project. These comments concern various environmental issues, including: the impact on property values and existing business operations, the impact on wildlife and vegetation, the impact on wetlands and Long Island Sound, the impact to shellfishing, safety, and the impact on water wells and septic systems. Many of these parties request that the Commission examine alternate locations and routes. This preliminary determination will discuss all non-environmental issues concerning the project. An environmental impact statement (EIS) is being prepared and will address all the environmental concerns raised by the parties. A subsequent Commission order will discuss the findings of the EIS.

12. Since both Iroquois' ELI Project and Islander East's proposed project use the same route on Long Island, the Pine Barrens Society request that the Commission review the feasibility of Islander East and Iroquois operating a jointly owned single pipeline once it hits the mainland in Long Island. The draft EIS for the ELI Project and the final EIS for

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[5]We note that the Commission also received letters from New York officials and representatives urging that the Commission continue to process the Long Island Sound projects.

the Islander East project discuss the impact of constructing a single 12-mile pipeline instead of duel pipelines. While the two EISs state that a one pipeline alternative on Long Island Sound would have some environmental benefits, the proposed and recommended mitigation measures would significantly reduce the impact of the two pipelines.[6]

13. A one pipeline alternative requires extensive cooperation between the parties and a willingness of the parties to enter into a coordinated business arrangement. To date, neither party has indicated any willingness to enter into negotiations to attempt to coordinate a workable arrangement to construct a one-pipeline alternative. However, should both projects receive final certificates,[7] the project sponsors might find it beneficial to coordinate their efforts concerning the proposed pipelines located onshore on Long Island.[8] For example, the pipelines might want to consider a lease arrangement involving a single pipe, as such arrangements have the potential to reduce the cost of a project because of the reduced amount of construction involved. Accordingly, we encourage Islander East and Iroquois to explore potential mutually beneficial arrangements that could minimize the potential impact on the Long Island Pine Barrens.

III. Discussion

14. Since the applications pertain to facilities used for the transportation of natural gas in interstate commerce subject to the jurisdiction of the Commission, Iroquois' proposal is subject to the requirement of NGA subsections 7(c) and (e).

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[6]ELI Project Draft EIS at 4-19 and Islander East Project final EIS at 4-11.

[7]According to Islander East's proposed construction schedule, it does not intend to commence construction onshore on Long Island until May 2003.

[8]After an initial protest by ANR Pipeline Company (ANR) against Guardian Pipeline Company's (Guardian) proposed pipeline in Illinois and Wisconsin, ANR agreed to lease facilities to Guardian that would interconnect ANR's facilities with the proposed Guardian pipeline and replace 0.17 mile of pipeline with 0.8 mile of pipeline would disturb 10 acres less of primarily agricultural land. See Guardian Pipeline Co., 99 FERC ¶ 61,201 (2002).

A. Project Need and the Certificate Policy Statement

15. On September 15, 1999, the Commission issued a Policy Statement to provide guidance as to how we will evaluate proposals for certificating new construction.[9] The Policy Statement established criteria for determining whether there is a need for a proposed project and whether the proposed project will serve the public interest. The Policy Statement explains that in deciding whether to authorize the construction of major new pipeline facilities, the Commission balances the public benefits against the potential adverse consequences. Our goal is to give appropriate consideration to the enhancement of competitive transportation alternatives, the possibility of overbuilding, subsidization by existing customers, the applicant's responsibility for unsubscribed capacity, the avoidance of unnecessary disruptions of the environment, and the unneeded exercise of eminent domain in evaluating new pipeline construction.

16. Under this policy, the threshold requirement for pipelines proposing new projects is that the pipeline must be prepared to financially support the project without relying on subsidization from the existing customers. The next step is to determine whether the applicant has made efforts to eliminate or minimize any adverse effects the project might have on the applicant's existing customers.

17. The Commission also considers potential impacts of the proposed project on other pipelines in the market and those existing pipelines' captive customers, or landowners and communities affected by the route of the new pipeline. If residual adverse effects on these interest groups are identified after efforts have been made to minimize them, the Commission will evaluate the project by balancing the evidence of public benefits to be achieved against the residual adverse effects. This is essentially an economic test. Only when the benefits outweigh the adverse effects on economic interests will the Commission then proceed to complete the environmental analysis where other interests are considered.

1. Subsidization

18. Iroquois is proposing to recover the project's costs through an incremental rate associated only with the transportation services on the ELI Project. The Commission has

[9]Certification of New Interstate Natural Gas Pipeline Facilities (Policy Statement), 88 FERC ¶ 61,227 (1999); order clarifying statement of policy, 90 FERC ¶ 61,128 (2000); order further clarifying statement of policy, 92 FERC ¶ 61,094 (2000).

previously determined that where a pipeline proposes to charge incremental rates for new construction, the pipeline satisfies the Commission's threshold requirement of no-subsidization of expansion costs by existing customers.[10]

2. Benefits

19. Iroquois states that the proposed facilities will be fully integrated into its existing system and will be used to effectuate deliveries to customers throughout its system in the most efficient manner. It states that the additional compressor unit will provide greater system reliability because it decreases the loss of deliverability that would result if a unit were to go down. It also states that adding an additional delivery point with KeySpan in Long Island will improve reliability and flexibility that it can offer to existing shipper that currently deliver gas to its other Long Island delivery point. Similarly, it states that the new delivery point at Brookfield will also provide additional flexibility to its existing shippers.

20. The New York PSC states that additional pipeline capacity is needed to serve growth in the eastern Long Island area resulting from a number of proposed gas-fired electric generation facilities and substantial growth in the core gas market residential heating loads. Mirant American's Energy Marketing, L.P. and Mirant New York, Inc. (jointly Mirant) state that the ELI Project will facilitate the construction of new generating plants near their proposed loads, thereby reducing the need for new electric transmission facilities. In this way, they assert that the ELI Project furthers the Commission's policy of increasing electric supplies in the region. Additionally, they assert that the expansion will be integrated into the existing Iroquois system and will increase the system's ability to serve Iroquois' existing shippers in a reliable and efficient manner. Further, it will enable Mirant and the other expansion shippers to acquire capacity that would otherwise be unavailable, and to deliver gas to their markets on the Iroquois system on a secondary basis.

3. Effects on Existing Customers and Other Pipelines

21. Several of Iroquois' existing customers filed comments expressing concerns that Iroquois' proposed ELI Project will adversely impact their existing service. Connecticut

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[10] See Kern River Gas Transmission, 95 FERC ¶ 61,022 at 61,059 (2001); Texas Eastern Transmission Corp., 93 FERC ¶ 61,273 at 61,886 (2000); and Transcontinental Gas Pipe Line Corp., 92 FERC ¶ 61,285 at 61,975 (2000).

Natural Gas Corporation and Southern Connecticut Gas Company (Southern Connecticut) contend that the proposed ELI Project will adversely impact the operating pressures at their Milford, Connecticut delivery point with Iroquois. Southern Connecticut states that lower operating pressures at the Milford interconnect will adversely affect its operations and the operations of Total Peaking Services, L.L.C.'s liquefied natural gas facility in the vicinity. Southern Connecticut suggests that the proposed Milford Compressor Station be constructed in such a manner so that Southern Connecticut's delivery point will be on the discharge side of the compressor station.

22. In response, Iroquois states that the contract delivery pressure to Southern Connecticut at Milford is 350 psig and that design pressures at Milford will be substantially higher than the contracted pressure after the proposed facilities are constructed. Further, Iroquois states if it moves its delivery point as Southern Connecticut suggests, it would reduce the capacity of the expansion project by about 2,500 Mcf/d.

23. Analysis of Iroquois' new delivery design pressure at the Milford delivery point indicates that the pressure will decrease from the current level to 625 psig and 647 psig in the winter and summer, respectively. As stated, Iroquois' contracted pressure with Southern Connecticut is 350 psig. Therefore, the reduced pressure is still well in excess of Iroquois' contractual obligation and will provide an acceptable level of pressure for Southern Connecticut.

24. Iroquois contends that the proposed ELI Project will provide access to Sable Island gas through a backfeed with Algonquin and Tennessee Gas Pipeline Company (Tennessee). Algonquin states that Iroquois did not provide enough detailed information with its application to enable Algonquin to determine how the Brookfield Interconnect between Algonquin and Iroquois will operate and how Iroquois will be able to physically receive gas from Algonquin.

25. KeySpan raises similar concerns and states that in order for Iroquois to obtain access to Sable Island gas on a firm basis, some arrangement will have to be made on the upstream pipelines that interconnect with Iroquois. KeySpan asserts that to the extent that these arrangements require further modifications to the Iroquois, Algonquin, or Tennessee pipeline systems, such modifications may affect the services provided by those pipelines to KeySpan.

26. In response, Iroquois provided more information concerning a potential interconnect with Algonquin. A review of this information shows that Iroquois'

proposed modification of the Brookfield Compressor Station from a mainline compressor to a booster compressor will enable Iroquois to physically receive up to 196,400 Mcf/d from Algonquin's 30-inch diameter mainline, which is sufficient to meet its existing contractual obligations and provide the new 175,000 Dth/d of capacity required by the expansion shippers.

27. Niagara Mohawk Power Corporation (Niagara Mohawk) requests that the Commission determine the impact of the ELI Project on Iroquois' existing level of flexibility and the availability of any additional Zone 1 firm capacity that may result from the expansion. In response, Iroquois states that the proposed facilities would not have a negative effect on its system-wide flexibility. Review of the flow diagrams and flow models submitted by Iroquois confirm that the proposed expansion will not adversely affect existing flexibility on Iroquois' system. The pressures in Zone 1 on Iroquois' system, the location of Niagara Mohawk's transportation path, will remain roughly the same. Zone 2 flexibility should be improved by the addition of the Milford Compressor Station which should stabilize downstream pressures. No additional Zone 1 capacity will be created by the expansion.

4. Impacts on Landowners

28. Iroquois states that the proposed route for the ELI Project minimizes landowner impacts. Of the approximately 29.1 total miles of new pipeline, 17.1 miles are in Long Island Sound. Iroquois asserts that the proposed on-shore segment was selected to maximize the use of existing utility and transportation corridors in order to minimize impacts to landowners. Iroquois states that it has engaged in an outreach program with the affected localities to identify ways to minimize landowner impacts.

29. The ELI Project would impact about 2,700 acres offshore and approximately 150 acres onshore during construction. There is no existing pipeline right-of-way for the proposed pipeline, so temporary and permanent easements will be required. Iroquois expects to obtain temporary and permanent easements on 51 parcels totaling about 93.7 acres; 79.4 acres will be for permanent easements. Iroquois estimates that it will have to condemn two parcels totaling 3 acres.

5. Project Need and Certificate Policy Statement Conclusion

30. As stated, the ELI Project can proceed without subsidies. Further, as discussed above, we find that the proposed project will not adversely affect or degrade service to

Iroquois' existing shippers. Further, the Commission finds that the ELI Project will increase the reliability and flexibility of Iroquois' system and provide access to increased gas supplies to meet forecasted market demand for Long Island markets. We find that these benefits will outweigh any adverse impacts arising from the lack of negotiated easements.

31. Therefore, consistent with the Policy Statement and NGA section 7, we preliminarily find approval of Iroquois' proposal is in the public convenience and necessity. We will require Iroquois to execute contracts for the full capacity of the ELI Project and for the terms of service represented in the precedent agreements prior to commencing construction.

B. Rate Issues

1. Initial Rate

32. Iroquois proposes to charge an incremental rate for the ELI Project service. Specifically, the proposed firm rate consist of three components: (1) a demand rate under Rate Schedule RTS-Zone 2 of $6.4794 per Dth, as adjusted;[11] (2) an incremental reservation surcharge of $1.5907 per Dth, which is designed to recover the difference between the RTS rate and the total cost of service to operate the ELI Project; and (3) a fuel charge to recover the incremental fuel consumed, up to a maximum fuel retention rate of 2.71percent. Iroquois states that the proposed rates is a one-part rate that is designed to recover the fixed costs through the reservation charges. While Iroquois' proposed rate does not recover variable costs through a commodity charge, Iroquois states that its existing RTS-2 rate does includes a commodity rate of $0.0024 per Dth.

33. Iroquois explains that the proposed rate is based on a total cost of service of $16,947,257 for the first year of service and a throughput of 175,000 Dth per day, which is based on 100 percent load factor with billing determinates of 2,100,000 Dth. The RTS-2 reservation charge rate of $6.4794 per Dth recovers $13,606,740 of the first year cost of service resulting in a $3,340,517 deficit to be recovered by the reservation surcharge of $1.5907 per Dth. The return on equity component is 12.38 percent, which

[11] Iroquois' rate moratorium is in effect until January 1, 2004. Thereafter, the $6.4797 per Dth reservation rate maybe adjusted upward or downward.

is based on Iroquois' rate settlement in Docket No. RP97-126.[12] Iroquois proposes a capital structure of 75 percent equity and 25 percent debt, with a debt cost of 7.75 percent.

34. Commission policy under Order No. 636 dictates that pipelines cannot discount their rates below the minium rate. In proposing a one-part rate under the RTS rate schedule and failing to charge a commodity charge, Iroquois is, in essence, assessing a rate that is below its minium rate. As such, the proposed rate allows the ELI Project shippers to receive the rights, responsibilities, and access of a Part 284 shipper without having to pay at lease the minimum required rate. In order to receive such service, Iroquois must charge its expansion shippers the full RTS - Zone 2 rate, including both the demand and the commodity charge. Therefore, we will require that Iroquois revise its rates and charge a two-part rate, including the commodity charge for the RTS - Zone 2 rate. Iroquois is required to file within 30 days of the commencing service a tariff sheet reflecting the revised rates for the ELI Project shippers.

2. Cost Overruns

35. Under the Policy Statement, the Commission urges pipelines and project customers to apportion the risks of construction cost overruns in their service contracts[13] While the contracts between Iroquois and each ELI Project shipper do not currently contain the cost sharing language encouraged by the Policy Statement, Iroquois indicates that it intends to finalize its contracts with the ELI Project shippers on either January 1, 2003 or March 1, 2003, depending on the shipper. It states that at that time it will enter into a mutually agreeable cost sharing structure with the shippers that will be in a manner consistent with the Policy Statement.[14] The Commission strongly urges Iroquois and the ELI Project shippers to enter into a cost sharing agreement on cost overruns.

3. Fuel

36. Iroquois proposes to assess the ELI shippers a fuel in-kind charge of a maximum retention rate of 2.17 percent, to recover the incremental fuel required to operate the compressor stations to provide the proposed service. Iroquois explains that the actual

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[12] Iroquois Gas Transmission System, L.P., 84 FERC ¶ 61,086 (1998).

[13] 88 FERC ¶ 61,227 at 61,747 (1999).

[14] Iroquois' data response filed May 16, 2002 at question 10.

fuel to provide the proposed transportation service will not only be consumed by the proposed Devon compressor station, but by a combination of numerous compressor units on its system. Iroquois anticipates that the fuel recovery mechanism will be the subject of a future fuel retention filing. Further, it states that if the actual fuel consumed is higher than the projected 2.17 percent, Iroquois will file for an adjustment to the fuel retention percentage applicable to the ELI project.[15]

37. To protect Iroquois' existing customers and properly assign costs to the parties benefitting from the project, Iroquois will be required to charge the ELI Project shippers for the incremental fuel used and line loss to operate compressor stations to provide the proposed service. Additionally, we will require that Iroquois develop a mechanism to track the fuel costs from the various compressor facilities used to provide the ELI Project service. To insure the proper matching of costs to the customers benefitting from the ELI Project and for the tracking the cost of this project, Iroquois is required to maintain separate books and records reporting the costs, revenue, and fuel costs for the ELI Project in a separate account. This information must be in sufficient detail so that the data can be identified in Statements G, I, and J in any future NGA section 4 or 5 rate cases.[16]

4. Financial Responsibility

38. KeySpan requests that the Commission condition any certificate authorization on Iroquois' filing a tariff provision that would guarantee that Iroquois' existing customers will be no worse off as a result of the construction and operation of any new facilities. Since Iroquois is charging an incremental surcharge rate for the ELI Project, Iroquois will be financially liable for project costs and will not be able to shift any such costs to existing shippers. If the project is not fully subscribed when the contracts expire, Iroquois alone bears the risk of recovering the cost of the project.[17] KeySpan's request is denied.

C. Design Capacity and Operating Conditions

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[15]Id. at question 13.

[16]See Transcontinental Gas Pipe Line Corp., 94 FERC ¶ 61,194 at 61,704, reh'g granted in part, 95 FERC ¶ 61,096 at 61,284 (2001); and 98 FERC ¶ 61,155 at 61,554 (2002).

[17]Id., see also Tennessee Gas Pipeline Co., 97 FERC ¶ 61,094 at 61,486 (2001).

39. In NGA section 7(c) cases, the Commission will review and approve the design capacity of a project. Analysis of Iroquois' proposal concludes that the facilities are properly designed to provide up to 175,000 Dth per day of firm transportation service for ELI shippers from Iroquois' existing Brookfield interconnect with Algonquin to the proposed interconnect with KeySpan in Brookhaven, New York.

40. KeySpan states that Iroquois is proposing to construct a new delivery point with KeySpan's downstream gas distribution facilities. However, KeySpan maintains that modification of KeySpan's facilities may be necessary to accommodate the incremental Iroquois deliveries and that Iroquois has not entered into any agreements with KeySpan concerning this proposed interconnect or had any discussions with appropriate KeySpan officials about the nature and extent of facilities that KeySpan may need to construct. KeySpan contends that while Iroquois claims that the necessary construction will be minor in nature, it is not clear that that will be. Additionally, KeySpan asserts that two of Iroquois' precedent agreements are dependent on a determination that the newly proposed interconnect with KeySpan will be a New York Facilities System (NY Facilities) delivery point. KeySpan states that there is no agreement by the NY Facilities operators to treat the proposed facilities as NY Facilities.

41. In response, Iroquois states that it has met with KeySpan representatives to discuss issues relating to interconnect and non-jurisdictional facilities on KeySpan and that further discussion would take place over the next several months. We anticipate that KeySpan's concern will be addressed. We note that it is likely that the interconnect with KeySpan will be constructed under Iroquois' blanket certificate.

D. <u>Environment</u>

42. On August 23, 2002, Commission staff issued the draft EIS for Iroquois' ELI Project. The draft EIS discuss impacts that could occur as a result of the construction and operation of the ELI Project under these general headings: geology, minerals resources and soils; land ownership and land use; recreation and public interest areas; visual resources and aesthetics; water resources, fisheries, and wetlands; coastal and marine resources; cultural resources; vegetation and wildlife; endangered and threatened species; air quality and noise; hazardous waste; socioeconomics and pipeline safety. The draft EIS also evaluates possible alternatives to the proposed projects or portions of the projects, and make recommendations on how to lessen or avoid impacts on the various resource areas.

43. Comments on the draft EIS are due on or before October 18, 2002. All comments on the draft EIS will be considered and a final EIS will be published that will include recommendations to the Commission.

E. Conclusion

44. For the above-discussed reasons, we find, subject to completion of our environmental review and Iroquois' acceptance of the conditions set forth below, that the benefits of Iroquois' proposal will outweigh any potential adverse effects and therefore will be consistent with the Policy Statement and NGA section 7. Accordingly, we are making preliminary determinations that the public convenience and necessity require the granting of the requested authorization to Iroquois.

45. At a hearing held on September 18, 2002, the Commission, on its own motion, received and made a part of the record all evidence, including the application and exhibits thereto, submitted in this proceeding, and upon consideration of the record,

The Commission orders:

(A) A preliminary determination is made that Iroquois' application under NGA section 7(c) to construct, operate and maintain natural gas facilities, as described and conditioned herein, and as more fully described in the application, would, on the basis of all pertinent non-environmental issues, be required by the public convenience and necessity.

(B) Any certificate and authority issued in a final order in this proceeding will be conditioned, as discussed in this order, on the following:

(1) Iroquois' completing the authorized construction within two years of the final order; and

(2) Iroquois' complying with paragraphs (a), (c), (e), and (f) of section 157.20 of the Commission's regulations;

(C) Iroquois is required to file within 30 days of commencing service a tariff sheet pursuant to Part 154 setting forth the incremental rates for the ELI shippers. Such rates will include a commodity charge.

(D) Iroquois shall assess the ELI shippers an incremental fuel charge for the fuel used to operate the compressor stations to provide the proposed transportation service.

(E) Iroquois shall maintain separate books and records reporting the costs, revenue, and fuel costs for the ELI Project in a separate account in sufficient detail so that the data can be identified in any future NGA section 4 or 5 rate case.

(F) The preliminary determination made in Ordering Paragraph (A) above contemplates issuance, after completion of pending review of all environmental matters raised by the application, of a final order of the Commission determining that the proposals are required by the public convenience and necessity, in accordance with NEPA and NGA section 7(c).

(G) Iroquois shall execute contracts for the level of service and for the terms of service represented in the precedent agreements prior to commencing construction.

(H) Motions to intervene out-of-time are granted.

(I) Motions to consolidate are denied.

By the Commission.

(S E A L)

Linwood A. Watson, Jr.,
Deputy Secretary.

Interventions

Algonquin Gas Transmission Company
Athens Generating Company, L.P.
Briarpatch Enterprises, Inc.
Brookfield Neighborhood Coalition
Canadian Association of Petroleum Producers
Central Pine Barrens Joint Planning and Policy Commission
Connecticut Attorney General
Conoco Inc.
Consolidated Edison Company of New York, Inc.
Consolidated Edison Energy, Inc.
Duke Energy Trading & Marketing, L.L.C.
Giamboi, Joseph
Husky Gas Marketing, Inc.
Islander East Pipeline Company, L.L.C.
KeySpan Utilities Services, L.L.C
Long Island Pine Barrens Society
Millennium Pipeline Company, L.P.
Mirant Americas Energy Marketing, L.P. and Mirant New York, Inc.
New Jersey Natural Gas Company
New York State Department of Environmental Conservation
Niagara Mohawk Power Corporation
Orion Power Holdings, Inc.
ProGas U.S.A., Inc.
Public Service Commission of the State of New York
Ricci, Bruno
Southern Connecticut Gas Company and Connecticut Natural Gas Corporation
Virginia Power Energy Marketing, Inc.