STATE OF NEW YORK DEPARTMENT OF PUBLIC SERVICE
THREE EMPIRE STATE PLAZA, ALBANY, NY 12223-1350
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January 17, 2006

Honorable Magalie R. Salas
Secretary
Federal Energy Regulatory Commission
888 First Street, N.E.
Room 1-A209
Washington, D.C. 20426

Re: Docket No. CP06-5-000 - Empire State Pipeline

Dear Secretary Salas:

For filing, please find the Notice of Intervention and Comments of the New York State Public Service Commission in the above-entitled proceeding. Should you have any questions, please feel free to contact me at (518) 486-2652.

Very truly yours,

Saul A. Rigberg
Assistant Counsel

Attachment

cc: Active Parties List

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Empire State Pipeline	Docket No. CP06-5-000
Empire Pipeline, Inc.	Docket No. CP06-6-000
	Docket No. CP06-7-000

COMMENTS OF THE PUBLIC SERVICE COMMISSION OF THE STATE OF NEW YORK IN SUPPORT OF PROJECT AND PROTEST TO RATES

The New York State Public Service Commission (NYPSC) submits these Comments in Support of Project and Protest to Rates pursuant to the Notice of Application issued on November 30, 2005 by the Secretary of the Federal Energy Regulatory Commission (FERC or Commission).[1] The NYPSC supports the request of Empire State Pipeline and Empire Pipeline, Inc. (collectively, Empire) for various certificates pertaining to its Empire Connector Project, which would allow pipeline construction, operation and provision of transportation services. However, the NYPSC protests the authorization of proposed initial rates because Empire has not demonstrated that such rates are consistent with the public interest.

[1] The NYPSC previously intervened in these dockets on November 3, 2005.

I. COMMUNICATIONS

Copies of all correspondences and pleadings should be addressed to:

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II. SUMMARY

The NYPSC supports Empire's request to construct the Empire Connection Project and urges the Commission to act expeditiously because this new pipeline is an integral aspect of Millennium Pipeline Company's proposed system (Millennium), and as we stated in our comments responsive to the Notice of Petition to Amend in Docket No. CP98-150-006, filed on January 17, 2006 (Millennium Comments), the need for new pipeline capacity into downstate New York is critical to the people and economy of New York State. The NYPSC protests the proposed initial rates because such rates have not been shown to be consistent with the public interest standard of Section 7 of the Natural Gas Act.

III. STATEMENT OF ISSUES

1. Whether FERC should expeditiously grant Empire's request for the certificates referenced in the Notice of Application. Yes.

2. Whether the proposed initial rates have been shown to be consistent with the public interest standard of Section 7 of the Natural Gas Act. No.

IV. COMMENTS IN SUPPORT OF PROJECT

As we stated in our Millennium Comments, natural gas prices have increased dramatically over the last several years, the result of tighter supplies and growing demand. The increased availability of affordable and reliable supplies of natural gas and enhanced infrastructure are important to the State’s economic development and growth. The Empire Connector Project, as a key aspect of Millennium, will provide such benefit.

The Empire Connector Project comprises expansion and extension of Empire's existing 157-mile natural gas pipeline from Victor, New York to an interconnection in Corning, New York with Millennium. Canadian supplies would be delivered by Empire to Millennium, for redelivery by Millennium to the Algonquin pipeline system, and then into downstate New York markets over the Iroquois pipeline and the Islander East pipeline. Together these proposals would add a considerable amount of capacity to transport Canadian supplies.

We stated in our Millennium Comments that moderate load growth downstate (two to three percent per year) is expected over the next several years in the core gas load (residential and commercial loads). The greatest growth is expected on Long Island, up to five percent per year. Currently, the combined peak day requirements (the maximum load that the system is designed to meet) of the downstate gas distribution utilities is approximately 3,500,000 dekatherms. The daily requirements of the downstate utilities over the next four years are expected to increase by 275,000 dekatherms. We note that Empire states that its proposed facilities will have a daily design capacity of 250,000 dekatherms in the winter and 221,000 dekatherms in the summer.

Incremental natural gas infrastructure would provide other potential benefits. Because the Empire Connection Project would access Canadian supplies and Millennium connects to the Algonquin pipeline, which serves New England, Millennium and Empire will provide regional benefits of enhancing the natural gas infrastructure to the entire region.

V. EMPIRE HAS NOT DEMONSTRATED THAT ITS PROPOSED RATES ARE CONSISTENT WITH THE PUBLIC INTEREST

Empire is proposing separate rates for the Empire Connector. For the reasons stated below, neither of these rates has been shown to be consistent with the standards of Section 7 of the National Gas Act.

a. Existing System Rates

Empire's proposed recourse rates for existing shippers are based on Empire's claimed cost-of-service of $41.9 million. A preliminary review of Empire's claimed cost-of-service raises numerous issues requiring further review.

First, Empire's proposed rates reflect a 14 percent return on equity. Empire asserts that this return is consistent with recent Commission cases, citing *Ingleside Energy Center, LLC*, 112 FERC ¶ 61,101 (2005); *Corpus Christi LNG, L.P*.; *Cheniere Corpus Christi Pipeline Company,* 111 FERC ¶ 61,081 (2005); and *Cheniere Sabine Pass Pipeline Company,* 109 FERC ¶ 61,234 (2004). The cases cited by Empire are distinguishable from the instant situation. This case involves rates for an existing pipeline. The cases cited by Empire all involve the return for LNG projects proposed by new entities. The Commission has made clear that the 14 percent return level is appropriate for cases involving the creation of "new legal entities". *Entrega Gas Pipeline, Inc.,* 113 FERC ¶ 61,327, at P 36 (2005) (holding that 12 percent return on equity is well within the range allowed by the Commission for other new recent pipeline infrastructure proposals). If Empire's return on equity is reduced to 12 percent, as recently authorized in the

Entrega case, the claimed cost-of-service would be reduced by approximately $2 million.

Empire's cost-of-service also includes in rate base a $36 million "acquisition adjustment," representing 45% of the amount paid for Empire by National Fuel Gas Supply Corporation in excess of net book value. The cost-of-service effect of this adjustment is approximately $5.7 million per year. Empire asserts that this adjustment is justified because its customers will receive $5.3 million in benefits. Empire's claim that its customers will receive annual net benefits in excess of $5 million raises disputed issues of facts requiring further review.

Empire also has inflated its cost-of-service by $2.1 million per year by increasing its actual Operation and Maintenance (O&M) expenses and property taxes for the period ended March 31, 2005, by an annual 4% inflation factor through November 1, 2007, the estimated in-service date of the Empire Connector. The inclusion of inflation adjustments is contrary to Commission precedent. *ANR Pipeline Co.*, 69 FERC ¶ 61,432 (1994).

The NYPSC notes that the removal of the inflation adjustment and acquisition premium and use of a 12 percent return on equity would reduce Empire's claimed cost-of-service by $9.8 million, from $41.9 million to $32.1 million. The adjusted cost-of-service of $32.1 million compares closely to Empire's existing revenues of $33.5 million.[2]

Given the Commission's lack of refund authority over initial rates, the cost issues raised herein, as well as other cost issues, must be resolved prior to the effective date of rates. To achieve this objective, the NYPSC requests that the Commission establish a technical conference to discuss all rate issues, or in the alternative, set the initial rates for hearing

[2] Exhibit N, Part 2, p. 13.

and appoint a settlement judge to facilitate efforts to settle the rate issues.

b. Empire Connector Rates

The proposed rates for the Empire Connector are based on the projected incremental costs of this new capacity. Many of the same issues raised with respect to the rates for the existing system are presented here. For example, Empire is requesting a 14% return on equity. As explained above, that level of return has been authorized for new legal entities. The proposed Empire Connector is an expansion of an existing system by an existing pipeline. Here, the situation is analogous to the proposed expansion of the Iroquois Gas Transmission System wherein the Commission set Iroquois' return on equity at 12.38 percent, which was based on Iroquois rate settlement governing its then-existing rates. *Iroquois Gas Transmission System,* 100 FERC ¶ 61,275 at P 33 (2002).

Empire's proposed rates also reflect projected O&M expenses and taxes, escalated by a 4 percent inflation factor through November 1, 2007. Given the fact that the proposed rates will not become effective until November 1, 2007, NYPSC suggests that the appropriate solution is to require Empire to file updated cost estimates based on actual data 60 day prior to the effective date of rates.

c. Rate Review

Empire states that the Commission will have the opportunity to undertake a comprehensive review of Empire's rates following a period of actual operations.[3] The Commission should require such review within a specified period after the effective date of rates. *Ingleside Energy Center, LLC; San Patricio Pipeline, LLC*, 112 FERC ¶ 61,101 at P 35 (2005)

[3] Exhibit N, Part 2, p. 14.

(requiring the filing of a cost and revenue study at the end of the first three years of operation). The appropriate period in this case may be two years in light of Empire's proposed three year amortization of deferred state income taxes. A three-year rate review, with prospective relief, would permit the company to recover such amortization ($1.6 million per year) for an additional year or two.

VI. CONCLUSION

The NYPSC supports Empire's request to construct and urges the Commission to act expeditiously because the need for new pipeline capacity into New York City is critical to the people and economy of New York State. However, the NYPSC protests the authorization of proposed initial rates because Empire has not demonstrated that such rates are consistent with the public interest.

Respectfully submitted,

Dawn Jablonski Ryman
General Counsel

By: Saul A. Rigberg
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the State of New York
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(518) 486-2652

Dated: January 17, 2006
Albany, New York

CERTIFICATE OF SERVICE

I, Diane McKenna, do hereby certify that I will serve on January 17, 2006 the foregoing Notice of Intervention and Comments of the Public Service Commission of the State of New York upon each of the parties of record via E-mail, and first class mail, indicated on the official service list compiled by the Secretary in this proceeding.

Date: January 17, 2006
Albany, New York

Diane T. McKenna