

121 FERC ¶ 61,212
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

November 29, 2007

In Reply Refer To:
Iroquois Gas Transmission System, L.P.
Docket No. RP98-18-029

Iroquois Pipeline Operating Company
One Corporate Drive, Suite 600
Shelton, CT 06484

Attention: Paul W. Diehl, Senior Attorney

Reference: First Revised Sheet No. 6F, Original Sheet No. 6F.01, and Third Revised Sheet Nos. 6G and 6H to FERC Gas Tariff, First Revised Volume No. 1

Dear Mr. Diehl:

1. On November 1, 2007, Iroquois Gas Transmission System, L.P. (Iroquois) filed the referenced tariff sheets pursuant to section 32 of its General Terms and Conditions (GT&C). The tariff sheets set forth the essential elements of negotiated rates applicable to two firm service agreements between Iroquois and Consolidated Edison Company of New York (Con Edison). The agreements, Contract No. R-560-14 and Contract No. R-560-15, are referred to as the "Interim Agreements." Iroquois requests waiver of the 30-day notice requirement and proposes that the tariff sheets take effect on November 1, 2007 through the term of those agreements.¹ Iroquois' proposed tariff sheets are accepted effective November 1, 2007, as proposed, subject to the conditions set forth below.

¹ The term provision of each of the Interim Agreements between Iroquois and Con Edison reflects the fact that these two contracts are intended to provide firm service to Con Edison, on an interim basis, pending completion and service commencement of a new firm service that Iroquois will provide to Con Edison in conjunction with its construction of the MarketAccess Project, a facilities expansion project which was approved by the Commission in Docket No. CP02-31-002.

2. Section 32.1(c) of Iroquois' tariff requires it to submit tariff sheets setting forth certain information concerning negotiated rate agreements not later than the date service commences under a negotiated rate or negotiated formula. In accordance with its tariff, Iroquois filed tariff sheets reflecting the Interim Agreements with Con Edison for firm service under Rate Schedule RTS on an interim basis, pending completion and service commencement of a new firm service that Iroquois will provide to Con Edison in conjunction with its construction of the MarketAccess Project, which the Commission approved in December 2006 in Docket No. CP02-31-002.² That project will enable Iroquois to provide Con Edison firm transportation service from Iroquois' interconnection with Algonquin Gas Transmission LLC (Algonquin) in Brookfield, Connecticut to Hunts Point, New York in the Bronx.³ At the same time the Commission approved Iroquois' MarketAccess Project, the Commission also approved projects proposed by Millennium Pipeline Co. (Millennium) and Algonquin, which will enable Con Edison to obtain firm transportation from Corning, New York along Millennium and Algonquin to the Brookfield interconnection with Iroquois. Iroquois states that because the Interim Agreements with Iroquois contain certain deviations from Iroquois' form of service agreement, it is filing redlined and unmarked versions of the Interim Agreements highlighting the differences from the form of service agreement.

3. As discussed below, the Commission finds that the Interim Agreements deviate materially from the form of service agreement. However, the Commission finds that the deviations are permissible, subject to further explanation by Iroquois. Therefore, the referenced tariff sheets, as well as the Interim Agreements, are accepted for filing as non-conforming agreements to be effective November 1, 2007, as requested.⁴ This acceptance is subject to Iroquois submitting a filing which includes (1) the Interim Agreements in its tariff listing of non-conforming agreements and (2) an explanation of the flexible receipt point provision in Contract No. R-560-14.

² *Millenium Pipeline Co.*, 117 FERC ¶ 61,319 (2006), *reh'g*, 119 FERC ¶ 61,319 (2007).

³ Currently, Iroquois can only deliver gas into, but not receive gas from, Algonquin, because pressure on the Iroquois system is higher than that on Algonquin. As part of the MarketAccess Project, Iroquois will build a transfer compressor which will enable it to receive gas from Algonquin.

⁴ Waiver of the Commission's notice provisions is granted pursuant to 18 C.F.R. § 154.207 (2007).

4. Public notice of the filing was issued on November 2, 2007. Interventions and protests were due on or before November 13, 2007. Pursuant to Rule 214 (18 C.F.R. § 385.214 (2007)), all timely filed motions to intervene and any motions to intervene out-of-time filed before the issuance date of this order are granted. Granting late intervention at this stage of the proceeding will not disrupt the proceeding or place additional burdens on existing parties. No protests or adverse comments were filed.

Description of the Filing

5. The first Interim Agreement provides that: (1) service shall be rendered under Contract No. R-560-14, pursuant to Rate Schedule RTS; (2) the daily contract demand for the RTS service shall be a maximum of 64,000 Dth; (3) the primary receipt point for the RTS service shall be Brookfield, Connecticut, at the interconnection with Algonquin, and the primary delivery point shall be Hunts Point, New York; and (4) the negotiated demand charge shall be \$13.6875 per Dth, with a provision for demand charge credits under certain circumstances.⁵

6. The second Interim Agreement provides that: (1) service shall be rendered under Contract No. R-560-15, pursuant to Rate Schedule RTS; (2) the daily contract demand for the RTS service shall be a maximum of 36,000 Dth; (3) the primary receipt point for the RTS service shall be Hunts Point, New York, and primary delivery point shall be Brookfield, Connecticut; and (4) the demand charge applicable to the winter season (October 1 through April 1) shall be \$19.3146 per Dth and the demand charge applicable to the summer season (April 1 through October 1) shall be \$2.2813 per Dth, with a provision for demand charge credits similar to that in Contract No. R-560-14.⁶

7. In addition to the above provisions, Iroquois states that the two agreements contain certain provisions that differ from its form of service agreement, but which it nevertheless does not consider to be material deviations from that form. First, Iroquois states that, because of the interim nature of both agreements, their term provisions differ from the form of service agreement. Both agreements provide that service shall begin November

⁵ Specifically, Iroquois states that the shipper shall receive a credit for the daily equivalent of the demand charge payments applicable to certain specified volumes that the shipper requests, on a secondary basis, at specified points and that Iroquois is unable to schedule for reasons other than events of force majeure. *See* Original Sheet No. 6F.01, note 6.

⁶ *See* Third Revised Sheet No. 6H, note 5.

1, 2007 and continue until the earlier of January 1, 2010 or commencement of service of Iroquois' MarketAccess Project. Iroquois states that it currently anticipates that it will be ready to commence service on its MarketAccess Project facilities on the anticipated in-service date of November 1, 2008. However, Con Edison has the right to defer service on the MarketAccess Project until its other service providers (Millennium and Algonquin) are ready to commence service on their pipelines. Accordingly, these Interim Agreements may extend for a term ending as late as January 1, 2010.

8. Second, Iroquois states that the negotiated rate under Contract No. R-560-14 also deviates from the form of service agreement by affording Con Edison certain rights to change, on a monthly basis, its primary receipt point, up to certain specified volumes, with a corresponding adjustment to the maximum daily quantity (MDQ). Specifically, the shipper is afforded the option, on a monthly basis, of converting up to 54,000 Dt/d of primary receipt point rights at Brookfield, Connecticut to a proportionately smaller volume (up to 30,000 Dt/d) of primary receipt point rights at Waddington, New York, the furthest upstream point on Iroquois' system near the United States-Canada border. This Contract No. R-560-14 also provides for a re-determination of the demand charge associated with the lesser volume in order to ensure that the shipper's ultimate demand charge obligation to Iroquois remains the same. Iroquois asserts that the basis for the proportionate reduction to shipper's contract MDQ when it switches primary rights from Brookfield to Waddington is that Iroquois' system facilities are able to provide the full contractual level of primary firm service from Brookfield (the farther downstream point), but is only able to provide the proportionately lower volume on a primary firm basis from Waddington (the farthest upstream point and correspondingly longest transportation path on Iroquois' system).

9. To the extent the Commission considers the primary receipt points and MDQ adjustment provisions to be negotiated non-rate terms of service, Iroquois requests that such terms be specifically approved. Iroquois also states that, while it is not able to provide such flexibility on a general basis, it was able and willing to accommodate Con Edison's request for primary receipt flexibility. Iroquois explains that it accommodated Con Edison's request because of: (1) the specific capacity that was available to support Con Edison's service request (30,000 Dth of firm capacity available from the upstream, Waddington, receipt point); (2) the customer's need for primary firm service from a point at which upstream supplies were assured; and (3) the upstream supplies at Brookfield were perceived as being subject to significant variables relating to the development of the Millennium Project. Iroquois submits that, under these unique circumstances, such approval would be just and reasonable and not unduly discriminatory or preferential.

Discussion

10. The Commission finds that both interim agreements contain material deviations from Iroquois' form of service agreements. Therefore, the Commission accepts Iroquois' filing, subject to the conditions discussed below.

11. The Commission's regulations require that pipelines include in their tariff a form of service agreement and file any contract that deviates materially from the *pro forma* service agreement.⁷ In addition, a pipeline must include in Volume 1 of its tariff a listing of all contracts containing material deviations.⁸ In *Columbia*, the Commission found that a material deviation is "any provision of a service agreement which goes beyond the filling in of the spaces in the form of service agreement with the appropriate information provided for in the tariff and that affects the substantive rights of the parties."⁹ However, not all material deviations are impermissible. If the Commission finds that a deviation does not constitute a substantial risk of undue discrimination, the Commission may permit the deviation.¹⁰

12. Consistent with *Columbia*, the Commission finds that the Interim Agreements at issue here deviate materially from Iroquois' form of service agreement. The provision in each agreement that it will continue until the earlier of January 1, 2010 or commencement of service of Iroquois' MarketAccess Project goes beyond filling in the blank for the date the contract will terminate and affects the substantive rights of the parties. The same is true of the provision in Contract No. R-560-14 concerning Con Edison's right to switch its primary receipt point between Brookfield and Waddington

⁷ 18 C.F.R. §§ 154.1(d) and 154.110 (2007). In its policy statement issued July 25, 2003, the Commission held that a material deviation included any provision in a service agreement that: (1) goes beyond filling-in-the-blank spaces with the appropriate information provided for in the tariff; or (2) affects the substantive rights of the parties. *Natural Gas Pipeline Negotiated Rate Policies and Practices*, 104 FERC ¶ 61,134 at P 27 (2003).

⁸ 18 C.F.R. § 154.112(b) (2007).

⁹ *Columbia Gas Transmission Corp.*, 97 FERC ¶ 61,221 at 62,002 (2001) (*Columbia*).

¹⁰ *Id.* at 62,004.

and make a corresponding change in its MDQ. Therefore, Iroquois must file a revised tariff sheet adding both Interim Agreements to its list of nonconforming contracts.

13. While the provision concerning the term of the two agreements is a material deviation, the Commission finds that it does not present a substantial risk of undue discrimination and therefore is permissible. That provision does not provide Con Edison a different quality of service than Iroquois provides its other shippers, nor does the provision adversely affect the service provided to other shippers. The term provision simply reflects the special circumstance that these contracts were entered into on an interim or “bridge” basis to afford Con Edison the necessary additional firm service on a temporary basis until the completion of Iroquois’ MarketAccess Project and related projects being constructed by Algonquin and Millennium.

14. However, the Commission finds that Iroquois must provide a further explanation of the flexible primary receipt point and contract demand adjustment provision in Contract No. R-560-14, before the Commission can determine whether it is a permissible material deviation that does not present a substantial risk of undue discrimination. The Commission has generally held that contractual provisions which permit shippers to modify primary points without following the usual tariff procedures and/or adjust contract demand are valuable rights which may only be provided under generally applicable tariff provisions.¹¹ The Commission has also been concerned that a special right for one shipper to change its primary point could harm other shippers seeking primary point capacity from the pipeline.

15. The Commission recognizes that the instant contract is intended, at least in part, to provide Con Edison on an interim basis a portion of the service which will be provided in full once the MarketAccess Project is completed. However, Iroquois has not explained how the flexible primary point provision in the Interim Agreement relates to the service Con Edison will receive after the MarketAccess Project is placed into service, and what primary point provisions will be contained in Con Edison’s contract for service on the MarketAccess Project. In addition, Iroquois also has not explained the extent to which other shippers may be adversely affected by the flexible primary point provision in the Interim Agreement.

16. Therefore, the Commission accepts these Interim Agreements and the referenced tariff sheets subject to Iroquois, within 15 days of the issuance of this letter order, filing:

¹¹ *ANR Pipeline Co.*, 103 FERC ¶ 61,223 at P 21-26 and cases cited, *reh’g denied as here relevant*, 105 FERC ¶ 61,112 at P 15 (2003).

(1) a revised tariff sheet listing these non-conforming Interim Agreements in its tariff;
and (2) a further explanation and justification for the flexible primary receipt provision in
Contract No. R-560-14.

By direction of the Commission.

Kimberly D. Bose,
Secretary.