

122 FERC ¶ 61,102  
FEDERAL ENERGY REGULATORY COMMISSION  
WASHINGTON, D.C. 20426

February 5, 2008

In Reply Refer To:  
Iroquois Gas Transmission System, L.P.  
Docket No. RP98-18-031

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

Attention: Paul W. Diehl, Senior Attorney

Re: Compliance Filing - Third Revised Sheet No. 8 to FERC Gas Tariff, First  
Revised Volume No. 1

Dear Mr. Diehl:

1. On December 14, 2007, Iroquois Gas Transmission System, L.P. (Iroquois) filed the referenced tariff sheet and an explanation and justification of a non-conforming contract provision according flexible point rights to comply with the Commission's November 29 Letter Order (November 29 Order) in Docket No. RP98-18-029.<sup>1</sup> The revised tariff sheet lists, as non-conforming in Iroquois' tariff listing of non-conforming agreements, two interim negotiated rate agreements (Contract Nos. R-560-14 and R-560-15) with Consolidated Edison Company of New York, Inc. (Con Edison). The tariff sheet is accepted to be effective November 1, 2007, as proposed. However, as discussed below, the Commission finds that the flexible receipt point provision in Contract No. R-560-14 presents a significant risk of undue discrimination and must be removed.

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<sup>1</sup> *Iroquois Gas Transmission System, L.P.*, 121 FERC ¶ 61,212 (2007).

2. On November 1, 2007, Iroquois filed revised tariff sheets to set forth the essential elements of negotiated rates under two service agreements between Iroquois and Con Edison for firm service pursuant to Rate Schedule RTS, to be effective November 1, 2007, on an interim basis pending completion and service commencement of a new firm service that Iroquois will provide Con Edison in conjunction with Iroquois' construction of the MarketAccess Project approved in 2006 in Docket No. CP02-31-002.<sup>2</sup> 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.<sup>3</sup> 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.

3. The Contract No. R-560-14 Rate Schedule RTS service agreement provides that: (1) the daily contract demand for the RTS service shall be a maximum of 64,000 Dth; and (2) the primary receipt point shall be Brookfield, Connecticut, at the interconnection with Algonquin, and the primary delivery point shall be Hunts Point, New York. The other Interim Agreement provides that: (1) the daily contract demand for the RTS service shall be 36,000 Dth; and (2) the primary receipt point for the RTS service shall be Hunts Point, New York, and primary delivery point shall be Brookfield, Connecticut.

4. Contract No. R-560-14 deviates from Iroquois' 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.

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

<sup>3</sup> 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.

Iroquois asserted 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).

5. In the November 29 Order, the Commission found that the agreements were non-conforming and, therefore, directed Iroquois to list the interim negotiated rate agreements with Con Edison in its tariff listing of non-conforming agreements. In addition, the Commission found 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 could determine whether it is a permissible material deviation that does not present a substantial risk of undue discrimination. The Commission stated that such provisions are valuable rights which must be provided only under generally applicable tariff provisions. However, the Commission recognized 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, the Commission found that Iroquois had not explained how the flexible primary point provision in Contract No. R-560-14 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 had not explained the extent to which other shippers may be adversely affected by the flexible primary point provision in the Interim Agreement. Therefore, the Commission directed Iroquois to provide a further explanation and justification for the flexible primary receipt provision in Contract No. R-560-14.

6. In the instant filing, Iroquois provided an explanation for the flexible receipt point provision afforded Con Edison in Contract No. R-560-14. First, Iroquois confirms that Con Edison's MarketAccess contract for firm transportation service (to become effective following the Interim Agreements' terms and after the necessary facilities have been constructed and placed into service) will have a maximum daily quantity of 100,000 Dt/d, a primary receipt point of Brookfield, Connecticut, and a primary delivery point of Hunts Point, New York. Iroquois states that, as is the case in Contract No. R-560-14, Con Edison will also be afforded 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, Iroquois states that Con Edison 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. Iroquois states that, if such option is exercised to its full extent in any month, the maximum daily quantity under the service agreement for that month would decrease from 100,000 Dt/d to

76,000 Dt/d and there would be a re-determination of the demand charge associated with the lesser volume in order to ensure that Con Edison's ultimate demand charge obligation to Iroquois remains the same. Iroquois asserts that, as was the case for Contract No. R-560-14, Iroquois was able to afford Con Edison this primary receipt point flexibility in the MarketAccess contract for firm transportation service because Iroquois is using the same 30,000 Dt/d of firm capacity previously under contract with Con Edison and available from the upstream, Waddington, New York, receipt point to provide 54,000 Dt/d of primary receipt point capacity from the downstream point of Brookfield, Connecticut.

7. Further, Iroquois states that it would not be able to afford this right to change a primary receipt point to other shippers having Brookfield, Connecticut as a primary receipt point since the firm capacity that other such Brookfield shippers have contracted for on Iroquois does not result from previously unsubscribed capacity originating from Waddington, New York. Iroquois states it would also not be able to provide such receipt point flexibility on a general basis given operational constraints and the potential negative impact on availability of capacity for sale to third parties. In this regard, Iroquois states that it has determined that in order to provide Con Edison the specified primary receipt point flexibility, Iroquois will be required to reserve transportation capacity from the alternate primary receipt point that will limit the capacity Iroquois may be able to offer to other shippers on a primary point basis in the future. Similarly, Iroquois states that, if Con Edison exercises its primary receipt point conversion rights as set forth in the MarketAccess firm transportation service agreement, the amount of secondary firm and interruptible transportation capacity that can be offered to other shippers will be reduced.

8. Public notice of Iroquois' filing was issued on December 19, 2007, allowing for protests to be filed on or before December 26, 2007. No adverse comments or protests were filed.

9. As the November 29 Order stated, 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.<sup>4</sup> The Commission has 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.

10. Nevertheless, when the Commission initially reviewed Iroquois' November 1 filing, it appeared that this case could present special circumstances that might render the

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<sup>4</sup> *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).

instant flexible primary receipt point and contract demand adjustment provision acceptable. That was because the provision was included in a contract which was intended 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. It therefore appeared possible that the flexible primary receipt point and contract demand adjustment provision in Contract No. R-560-14 was itself a temporary arrangement that helped replicate the service which Con Edison would receive after completion of the MarketAccess Project without the need for a continuation of this non-conforming provision. In such circumstances, the Commission was willing to consider an exception to its general policy in order to allow the provision, if other shippers were not harmed. For that reason, the Commission requested a further explanation of the justification for this provision and how it relates to the service which Con Edison will receive after the MarketAccess Project goes into service.

11. However, Iroquois's compliance filing makes clear that the flexible primary receipt point and contract demand adjustment provision is not such a temporary arrangement. Rather, it is a special right which Iroquois has offered only to Con Edison which will continue in effect after the MarketAccess Project goes into service and thus be a permanent part of Con Edison's service agreements. As such, it violates the Commission's policy 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. Moreover, the flexible primary receipt point provision in Contract No. R-560-14 will limit the capacity Iroquois may be able to offer to other shippers on a primary point basis. Iroquois will have to reserve 30,000 Dt/d of primary firm capacity from Waddington, New York, to Brookfield, Connecticut so that it will be available for Con Edison to use in any month when it exercises its flexible primary point rights, and therefore that capacity will not be available on a primary firm basis to other shippers. The Commission accordingly finds the flexible primary receipt point and contract demand adjustment provision to be unduly discriminatory. Therefore, the Commission directs Iroquois to remove this provision from its contract. The Commission's

acceptance of the Contract No. R-560-14 is subject to the condition that, within 15 days of this order's issuance, Iroquois make a filing removing the flexible receipt point provision from that agreement.

By direction of the Commission.

Kimberly D. Bose,  
Secretary.