139 FERC ¶ 61,217
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Philip D. Moeller, John R. Norris,
and Cheryl A. LaFleur.

Iroquois Gas Transmission System, L.P. Docket No. RP12-295-000

ORDER ACCEPTING TARIFF RECORDS
SUBJECT TO CONDITIONS

(Issued June 14, 2012)

1. On January 6, 2012, Iroquois Gas Transmission System, L.P. (Iroquois) filed revised tariff records[1] (January 2012 Filing). Iroquois proposed modifications to section 4 (Nominations, Allocating Capacity and Scheduling) and section 5 (Curtailment) of its FERC Gas Tariff (Tariff) of General Terms and Conditions (GT&C) to update and clarify the priority rights of its transportation and other services. On February 3, 2012, the Commission accepted and suspended the revised tariff records to be effective July 6, 2012, subject to refund, conditions, and further review.[2] As discussed below, the Commission accepts the revised tariff records to be effective July 6, 2012, subject to conditions.

Iroquois' Proposal

2. Section 4 of Iroquois' existing GT&C generally provides that firm service using primary receipt and delivery points will have the highest or "first tier" priority for purposes of scheduling and curtailment. Section 4 further provides that nominations to schedule firm service at secondary points within the shipper's primary path will be treated as nominations for service using primary points and therefore, included in the first tier priority. Section 4 provides that other nominations for firm service at secondary points will have the next highest or "second tier" priority. If there is insufficient capacity to render the full level of such secondary firm service, service in the second tier priority category is scheduled based on price, with shippers paying a higher percentage of the

[1] The revised tariff records are listed in the Appendix to this order.

[2] *Iroquois Gas Transmission System, L.P.*, 138 FERC ¶ 61,093 (2012) (February 2012 Order).

applicable maximum reservation charge being scheduled before those paying a lower percentage. The Commission approved Iroquois' existing tariff provisions concerning the allocation of out-of-path secondary firm service by price in 1997 in *Iroquois Gas Transmission System, LP*.[3] All other services are assigned various lower priorities.

3. In its January 2012 Filing,[4] Iroquois stated that the current priority scheme in GT&C section 4 only governs the allocation of mainline transportation path capacity on the pipeline.[5] Therefore, Iroquois stated, the existing tariff did not specify the priority rules that should apply in the event of a constraint at a receipt or delivery point, as opposed to in the transportation path. Iroquois stated that, based on discussions with many of its shippers, it proposed to revise GT&C section 4 to establish allocation priority rules applicable to scheduling and curtailment of capacity at receipt and delivery points separate from the priority rules applicable to transportation path capacity. Specifically, Iroquois proposed a new section 4.2(a), providing that, when capacity at a point is constrained, firm shipper nominations to use the point as a primary point would always have the highest, or "first tier," priority status. Unlike the priority rules for mainline capacity, Iroquois proposed that nominations for service at secondary points within a firm shipper's primary path would not be treated as nominations for primary firm service.

4. Iroquois proposed that firm shipper nominations to use a secondary point within the rate zones for which the shipper is paying a reservation charge would have the next highest, or "second tier," priority. Requests for service within that tier would be scheduled based on price, with shippers paying a higher percentage of the applicable maximum reservation charge being scheduled before those paying a lower percentage. Iroquois proposed that firm shippers nominating Extended Receipt and Extended Delivery (ER/ED) service at secondary points outside the rate zones for which they were paying a reservation charge would have the next highest, or "third tier," priority.[6] Again requests for service within this tier would be scheduled by price; however, because firm

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[3] *Iroquois Gas Transmission System, LP*, 80 FERC ¶ 61,199 (1997), *reh'g denied*, 82 FERC ¶ 61,200 (1998) (*Iroquois*).

[4] *See* the February 2012 Order, 138 FERC ¶ 61,093 at PP 2-7, for a detailed discussion of Iroquois' proposal.

[5] Iroquois also proposed certain minor, non-substantive housekeeping changes to conform term usage within the tariff, correct typos, and otherwise provide clarification.

[6] Iroquois' ER/ED service permits a shipper with a service agreement for firm transportation service to use a rate zone outside the primary path under that agreement. For example, a shipper taking firm service only in Zone 1 could use ER/ED service to schedule service in Zone 2 up to the contract demand in its firm service agreement, subject to the scheduling priority rules described above. *See Iroquois Gas Transmission System, L.P.*, 102 FERC ¶ 61,354, at P 15 (2003), for an explanation of the derivation of the volumetric rate applicable to ER/ED service.

shippers must pay a volumetric usage charge for ER/ED service, the scheduling priority would be based on the percentage of the applicable maximum usage charge paid by each shipper, rather than a percentage of the maximum reservation charge. Iroquois proposed to assign other services various lower scheduling priorities for service at constrained points.

5. Iroquois proposed to set forth its priority rules for allocating mainline transportation path capacity in a separate section 4.2(b) of its GT&C. Consistent with its existing tariff, proposed section 4.2(b)(1) provides that nominations for mainline service using both primary receipt and primary delivery points will have the highest, or "first tier," priority for purposes of scheduling and curtailment. Also, as under the existing tariff, section 4.2(b)(1) provides that nominations for firm service using secondary receipt and delivery points which are both within the shipper's primary path will be treated as nominations for service using primary points and therefore, included in the first tier priority. However, Iroquois proposed to modify its existing mainline capacity allocation priorities concerning nominations for firm service using secondary receipt and/or delivery points which do not qualify for treatment as nominations for primary firm service.

6. Specifically, Iroquois proposed to distinguish, for scheduling, between secondary firm nominations depending on whether the constraint being experienced by the pipeline is within or outside the nominating shipper's primary path. Thus, Iroquois proposed that the second tier priority category, at GT&C section 4.2(b)(2), apply to firm nominations where the constrained path segment is within a shipper's primary path, and Iroquois proposed a new, third tier priority category, at GT&C section 4.2(b)(3), for firm nominations at secondary points where the constrained path segment is outside the nominating shipper's primary path. Iroquois proposed to schedule capacity within each of these tiers based on price, with shippers paying a higher percentage of the applicable maximum reservation charge being scheduled before those paying a lower percentage. Iroquois proposed that nominations of ER/ED service at secondary points outside the rate zone zones covered by the firm shipper's reservation charge would have the next highest, or fourth tier, priority, and that nominations of service in this tier be scheduled by price, with shippers paying a higher percentage of the applicable maximum usage charge being scheduled before those paying a lower percentage.[7] Iroquois proposed to assign other services, including interruptible services, various lower priorities.

7. In addition to the above proposed changes to its scheduling priorities, Iroquois proposed in section 4.2 that each day it would determine the 25,000 Dth of system linepack reserved for unscheduled imbalances with point operators receiving service under Operational Balancing Agreements (OBA) to the extent operationally available and shall post notice on its website when such quantities are not available due to a capacity constraint or Operational Flow Order (OFO).

[7] Curtailments within each firm priority tier are on a *pro rata* basis.

8. No party protested the January 2012 Filing. However, two parties requested clarification of Iroquois' proposal. Con Edison Company of New York, Inc. (Con Edison) requested clarification that the 25,000 Dth of system linepack reserved for unscheduled imbalances with OBA point operators receiving service will be deemed operationally available prior to the allocation of interruptible services. Hess Corporation (Hess) filed a request for clarification concerning capacity release. Hess states that sections 4.2(a) and (b) include provisions requiring Iroquois, when it "has insufficient capacity to render the full level of service nominated" at secondary points to make an allocation "based on the highest percentage of the Maximum Demand Rate for the service being provided" and a similar provision requiring nominations of ER/ED service to be allocated based on the "Maximum Commodity Rate." Hess seeks clarification that allocation for released capacity will be through reference to the applicable rate of the original contract holder.

9. On January 20, 2012, Iroquois filed an answer generally agreeing to the two requested clarifications and proposing a third clarification discussed below (Answer).

<u>February 2012 Order</u>

10. In the February 2012 Order, the Commission accepted and suspended the revised tariff records to be effective July 6, 2012, subject to refund and conditions and further review. The Commission noted that it had recently rejected proposals by Tennessee Gas Pipeline Company (Tennessee) and Great Lakes Gas Transmission Limited Partnership (Great Lakes) to schedule secondary firm service by price,[8] reasoning that the shipper's contracted price for firm service bore no relation to the value to the shipper at a later time of service to a secondary point, and therefore the pipelines' proposals were not consistent with allocating capacity to the highest valued use. The February 2012 Order also stated that requests for rehearing of the orders in *Tennessee I* and *Great Lakes* were pending. Accordingly, the Commission permitted the parties in this proceeding to submit briefs addressing whether and how *Tennessee I* and *Great Lakes* should affect its actions on Iroquois' January 2012 Filing, including the extent to which the Commission should permit allocation of secondary firm capacity based on price.

[8] *Tennessee Gas Pipeline Co.*, 135 FERC ¶ 61,208, at PP 40-44 (2011) (*Tennessee I*) and *Great Lakes Gas Transmission Limited Partnership*, 136 FERC ¶ 61,070, at P 20 (2011) (*Great Lakes*). The Commission has issued an order on rehearing in *Tennessee Pipeline Co., L.L.C.*, 139 FERC ¶ 61,050 (2012) (*Tennessee II*). Rehearing of *Great Lakes* is pending.

Comments

11. Iroquois,[9] Sequent Energy Management, LP (Sequent),[10] BG Energy Merchants, LLC (BGEM), and New Jersey Natural Gas Company/NJR Energy Services Company (New Jersey Natural) submitted comments.

12. Iroquois asserts that its long-standing, successful secondary firm out-of-path methodology of allocating mainline transportation capacity by price is just and reasonable and should not be modified under section 5 of the Natural Gas Act (NGA). Iroquois points out that in *Tennessee I* and *Great Lakes*, the pipelines proposed to allocate secondary firm capacity based on the actual transportation rate paid by each shipper under its contract, or "absolute price." Iroquois states that, by contrast, it allocates secondary firm capacity based on the relative percentage of the shipper's reservation charge (or usage rate for ER/ED service nominations) to the maximum reservation (or usage) rate applicable to that shipper. Iroquois argues that this method resolves any claims of undue discrimination among shipper classes. Iroquois contends that scheduling solely by absolute price on systems with additive rate zones, such as Tennessee, Great Lakes, and Iroquois, generally favors long haul shippers who pay higher rates, because they are transporting gas through more rate zones than a short haul shipper. Iroquois further contends that scheduling by percentage of maximum rate alleviates the discrimination against short haul shippers, because a short haul shipper paying the same percentage of its applicable maximum rate as a long haul shipper will receive the same scheduling priority.

13. Iroquois also contends that the Commission's concern about the attenuated relationship between a shipper's contracted price for firm service and the value it may place on service to a secondary point at a later time is not present on its system. Iroquois asserts that its long-term firm contracts are overwhelmingly based on the maximum lawful rate and there is little risk that shippers under long term contracts will have an inferior priority based on price. Iroquois further asserts that it typically sells below-maximum rate firm transportation service on a short term (i.e., one year or less) basis and shippers consider the implications of their discounted rates on secondary out-of-path

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[9] Iroquois asserts in its comments (at 12-14) that the priority it provides secondary within-the-path nominations as primary service is consistent with *Tennessee I*. In this proceeding, no party objects to Iroquois' proposal for scheduling secondary within-the-path nominations.

[10] Sequent also filed an untimely motion to intervene which Iroquois states it does not oppose. Granting late intervention at this stage of the proceeding will not disrupt this proceeding or place additional burdens on existing parties. Therefore, the Commission grants Sequent's motion to intervene.

allocation priority. Similarly, Iroquois states that the daily usage rates firm shippers pay for ER/ED service specifically reflects the shipper's current valuation of using secondary firm capacity outside of the rate zones for which they are paying a reservation charge.

14. The other commenters argue that, consistent with *Tennessee I* and *Great Lakes*, the Commission should require Iroquois to eliminate the economic scheduling provisions for secondary firm out-of-path capacity. Sequent asserts that the Commission, in *Tennessee I* and *Great Lakes*, recognized that economic scheduling mechanisms do not promote allocative efficiency. Sequent contends that the economic scheduling of secondary firm nominations has significant impacts upon shippers and their customers by increasing the shippers' administrative and transactions costs. Sequent contends that scheduling by price also reduces their flexibility to source different supplies and to deliver to alternate markets, thereby impairing the basic reliability and value of their firm services. Sequent further contends that these economic allocation schemes significantly interfere with and, in some cases, effectively invalidate certain Asset Management Arrangements (AMA) arrangements.

15. BGEM argues that, because most capacity release transactions occur at discounted rates, a provision that schedules firm transportation on price will make the pipeline's own capacity much more valuable than released capacity. BGEM further argues that shippers will be reluctant to accept an inferior released product if they can acquire a "more firm" product from the pipeline which conflicts with Commission policy goal of creating robust secondary market. BGEM contends that these provisions, which favor long haul shippers paying higher maximum rates, are a deterrent to segmentation and flexible points. BGEM further contends that the Commission's long-standing policy is that "firm is firm," and a shipper paying for firm service should have the expectation that it will receive firm service even if the service is at a discounted or negotiated rate.

16. New Jersey Natural argues that price-based allocation methodologies can result in undue discrimination against short haul shippers, existing and legacy shippers, and shippers purchasing from the pipeline over shippers purchasing released capacity because the total revenue collected from them is very likely to be less than other shippers. New Jersey Natural recognizes that Iroquois' methodology that ranks shippers based on the highest percentage of the maximum demand rate does not as readily discriminate among different groups of shippers as the use of the absolute price. New Jersey Natural asserts that, while short haul, legacy, and replacement shippers are not necessarily disadvantaged, the potential for discrimination still exists. New Jersey Natural further asserts that negotiated rate shippers would enjoy a lower quality of firm service and apparently be discriminated against relative to higher paying recourse rate shippers.

17. New Jersey Natural further argues that Iroquois' methodology could discriminate against replacement shippers procuring released capacity. New Jersey Natural asserts that many replacement shippers pay a lower rate than the recourse rate simply because

that is the rate that the market will bear. New Jersey Natural further asserts that, while it is not clear whether the highest percentage of maximum demand rate allocation would be based on the rate paid by the releasing or the replacement shipper, if based on the latter, then replacement shippers could necessarily receive a less valuable quality of firm service than the releasing shipper and other shippers may have enjoyed. New Jersey Natural contends that there may also be a situation involving a daisy chain of re-releases where a maximum reservation rate shipper releases to a replacement shipper at a below maximum rate and then there are several re-releases of that same capacity at various other rates. New Jersey Natural further contends that the value of the releasing shipper's capacity is lessened making it harder to release.

18. New Jersey Natural argues that, because Iroquois' methodology potentially unjustly discriminates against negotiated rate and replacement shippers, there could also be an adverse impact on state retail unbundling and customer choice programs in which a local distribution company's capacity is released to marketers serving retail choice customers. New Jersey Natural contends that the result would be a substantial devaluing of the capacity and reduced expectation of service, which could have a chilling effect on affected state retail unbundling and customer choice programs as well as AMAs. New Jersey Natural further contends that the potential for these adverse impacts are not consistent with the Commission's flexible receipt and delivery point and other policies to promote open access firm transportation.

Iroquois' Answer to Comments

19. On March 9, 2012, Iroquois submitted an answer to the comments. Iroquois argues that the commenters fail to appreciate the material differences between its allocation methodology and those at issue in *Tennessee I* and *Great Lakes*. Iroquois contends that its use of the relative percentage of the shipper's agreed rate to the maximum rate applicable to that shipper avoids the discrimination against short-haul shippers inherent in the absolute price proposals at issue in *Tennessee I* and *Great Lakes*.

20. Iroquois also contends that, contrary to the commenters' assertions, its allocation method does not adversely affect replacement shippers in capacity releases. Iroquois points out that, in its Answer to Hess's request for clarification, it agreed to clarify that, when a replacement shipper is using an out-of-path secondary point, Iroquois will allocate the released capacity based on the applicable rate of the releasing shipper, not the rate paid by the replacement shipper. Iroquois states that this gives replacement shippers, including asset managers under AMAs, the same secondary out-of-path point rights that exist under the original releasing shipper's contract. Iroquois further asserts that its long term firm contracts are overwhelmingly based on the maximum lawful rate, and therefore, there is little risk that AMA replacement shippers with released capacity from long term firm contracts will have an inferior priority based on price.

21. Iroquois argues that a shipper's decision to demand a discounted rate for service, which may affect its ability to access out-of-path secondary points, is that shipper's choice based on market conditions not the result of undue discrimination. Iroquois asserts that awarding constrained capacity to a shipper that was willing to pay a higher rate is the embodiment of allocative efficiency since it awards the capacity to the shipper that values it most. Iroquois further asserts that its methodology not only provides flexibility, but as the Commission noted in *Tennessee I*, maximizes the revenue helping the pipeline recover its approved costs and other shippers by avoiding or mitigating future discount adjustments.

Discussion

22. The Commission accepts Iroquois' January 2012 Filing, effective July 6, 2012, subject to the conditions discussed below. In addition, the Commission finds that Iroquois' allocation of secondary firm capacity by price is just and reasonable and, therefore, will not require any modification of that allocation method under NGA section 5.

Scheduling Priority Based on Price

23. In the January 2012 Filing, Iroquois did not propose to revise its existing Tariff which utilizes the percentage of maximum rate, with those paying the higher percentage of the maximum applicable rate being scheduled ahead of those paying a lower rate. Sequent, BGEM, and New Jersey Natural rely on *Tennessee I* and *Great Lakes* to contend that the Commission should act under NGA section 5 to require Iroquois to eliminate its existing tariff provisions allocating secondary firm out-of-path capacity and instead allocate such capacity on a *pro rata* basis. On rehearing in *Tennessee II*, the Commission reconsidered its determination in *Tennessee I,* and found that pipelines should be permitted to allocate out of path secondary firm capacity based upon either (1) percentage of maximum rate or (2) absolute price subject to the condition that all maximum rate shippers are scheduled before any secondary service is scheduled for non-maximum rate shippers.[11] As discussed below, the Commission finds that Iroquois' existing method of allocating out of path secondary firm capacity is consistent with *Tennessee II*, and therefore the Commission will not require Iroquois to modify that method.

24. BGEM contends that scheduling out of path secondary firm service by price is contrary to the Commission's long-standing policy that "firm is firm," and a shipper paying for firm service should have the expectation that it will receive firm service even if the service is at a discounted or negotiated rate. However, that policy only applies to the scheduling of primary firm service.[12] In *Tennessee II*, the Commission explained that

[11] *Tennessee II*, 139 FERC ¶ 61,050 at PP 40-48.

[12] *Iroquois*, 82 FERC ¶ 61,200 at 61,790.

a firm shipper has no absolute entitlement to service at secondary points, and therefore allowing the scheduling of secondary capacity on a price basis is reasonable.[13] As the Commission stated in *Iroquois*[14] when it originally approved Iroquois' method of scheduling out of path secondary firm service,

> For example, since scheduling occurs on a daily basis, a certain point may not be available as a secondary point on particular day if the capacity at that point is being used by another firm shipper as its primary point capacity. In that sense, secondary firm capacity rights are conditional. Thus, because the nature of firm service at secondary points is conditional and not absolute, a scheduling mechanism for secondary points that recognizes differing degrees of priority among firm shippers may be appropriate.

25. Sequent states that the Commission, in *Tennessee I* and *Great Lakes*, recognized that scheduling out of path secondary firm service by price does not promote allocative efficiency, because the shipper's contracted price for firm service bears no relation to the value to the shipper at a later time of service to a secondary point. In *Tennessee II*, the Commission continued to recognize that the exact value that a shipper places on its secondary firm capacity on the day in question is difficult to discern. However, the Commission stated that it seems reasonable that the best substitute for that value may be the shipper's firm contract rate, which reflects the total package for firm services that includes those secondary rights. As Iroquois argues in its comments in this proceeding, shippers may place value on their secondary points at the time they enter into their entire firm service packages, as evidenced by the practice of discounting or negotiating the rate applicable at certain points on a primary and secondary basis.

26. In any event, as the Commission stated in *Tennessee II*, the *pro rata* allocation method advocated by Sequent is also an imperfect method of allocating secondary firm capacity. Under that method, when secondary firm capacity is constrained, no shipper is able to schedule all the secondary firm capacity it desires, and a shipper's *pro rata* share of the available capacity may be insufficient to be of any value to the shipper. Given that there is no perfect method of allocating secondary firm service, the Commission concluded in *Tennessee II* that it is reasonable to permit pipelines to schedule secondary firm service either on a *pro rata* basis or according to price.

Sequent, BGEM, and New Jersey Natural argue that Iroquois' scheduling provisions for secondary firm out-of-path capacity must be eliminated due to the undue discrimination between shippers which it creates. They contend that there is discrimination against short

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[13] *Tennessee II*, 139 FERC ¶ 61,050 at P 44.

[14] 80 FERC ¶ 61,199 at 61,801.

haul shippers. However, as the Commission held in *Panhandle Eastern Pipeline Co*.[15] and *Iroquois*, and reaffirmed in *Tennessee II*, use of the percentage of maximum rate to schedule secondary firm service, as opposed to absolute price, alleviates any concern about undue discrimination against short haul shippers. For example, a shipper with firm service only in Iroquois' Zone 1 will have the same scheduling priority for secondary firm service as a shipper with firm service in both Zones 1 and 2, if each shipper is paying the same percentage of the maximum rate applicable to their respective service agreements.[16]

27. New Jersey Natural, Sequent, and BGEM also contend that Iroquois' tariff provisions concerning scheduling firm service by price adversely affects replacement shippers under capacity releases, including asset managers and marketers in retail unbundling programs who have obtained transportation capacity through capacity releases. New Jersey Natural, Sequent, and BGEM assert that releasing shippers generally release their capacity at discounted rates lower than their own rates. Therefore, use of the replacement shipper's rate to determine its scheduling priority for secondary firm service would reduce the quality of service received by replacement shippers. For the same reason, these commenters contend that use of the replacement shipper's rate could disrupt AMAs and state retail unbundling and customer choice programs involving capacity releases to asset managers or marketers at rates lower than the releasing shipper's rate.

28. These concerns are addressed by Iroquois' agreement in its January 20, 2012 answer to clarify that, when a replacement shipper is using an out-of-path secondary point, Iroquois will allocate the released capacity based on the applicable rate of the releasing shipper, not the rate paid by the replacement shipper. Thus, replacement shippers, including asset managers under AMAs, will have the same secondary out-of-path point rights that exist under the original releasing shipper's contract.

29. Iroquois' clarification that it will use the original releasing shipper's rate to schedule secondary firm service is consistent with the Commission's holdings in *Iroquois* and *Panhandle II*, approving those pipelines use of the releasing shipper's rate to determine the secondary firm scheduling priority for released capacity.[17] In addition, Iroquois' use of the releasing shipper's rate is consistent with our finding in *Tennessee II*

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[15] 78 FERC ¶ 61,202, at 61,872-3 (1997) (*Panhandle I*); 80 FERC ¶ 61,198, at 61,791 (1997), *reh'g denied*, 82 FERC ¶ 61,199 (1998) (*Panhandle II*).

[16] Similarly, use of the percentage of maximum rate avoids giving a preference to expansion shippers who may be subject to a higher incremental rate for service on the expansion.

[17] *See Panhandle II*, 80 FERC ¶ 61,198 at 61,794, and *Iroquois*, 80 FERC ¶ 61,199 at n.27.

that "pipelines may propose to use either the releasing shipper's rate or, subject to conditions, the replacement shipper's rate, for scheduling secondary firm service by price."[18] In *Tennessee II*, the Commission found the pipelines proposal to use the replacement shipper's rate reasonable, on the ground that the replacement shipper's rate represents the value placed on the capacity by the shipper which will be using it during the term of the release.[19] On the other hand, as the Commission found in *Iroquois* and *Panhandle II*, the releasing shipper's rate represents the revenue the pipeline will retain for providing the released service, and using that rate to schedule the replacement shipper's secondary firm service allows the releasing shipper to pass on to its replacement shipper the benefit of any higher rate that the releasing shipper may be paying to the pipeline. Moreover, use of the releasing shipper's rate addresses the commenters' concerns about disruption of AMAs and retail unbundling programs. Accordingly, the arguments that Iroquois' use of percentage of the maximum rate will result in impermissible undue discrimination are rejected as speculative and unsupported and contrary to the Commission's determination in *Tennessee II*. Therefore, it is appropriate in this case to apply the decision in *Tennessee II* and accept Iroquois' use of percentage of the maximum rate and the original releasing shipper's rate for scheduling secondary firm service.

Clarifications

30. In its Answer, Iroquois agrees to Con Edison's requested clarification. Iroquois confirms that it will determine the availability of up to 25,000 Dth of system linepack for imbalances with point operators based on current linepack conditions, after shipper nominations and OBA payback quantities are requested, but before allocations of capacity are made to interruptible services. Iroquois does not believe any tariff language modifications are necessary. Alternatively, Iroquois agrees, if the Commission prefers, to a tariff revision adding a clause as follows:

> [to the extent operationally available], based on current linepack conditions, shipper nominations and OBA payback quantities requested prior to the close of each nomination cycle, but before allocations of capacity to interruptible services.

31. Iroquois also agrees with Hess' requested clarification concerning how Iroquois will apply the allocation tiers that are based on price for released capacity. Iroquois confirms that its practice is to refer to the reservation rate or usage rate, as applicable based on the language of the relevant tariff section, of the original contract holder in determining the applicable rate for scheduling or curtailment allocations based on rate as

[18] *Tennessee II*, 139 FERC ¶ 61,050 at P 50.

[19] *Id*. P 54.

set forth in its Tariff. Iroquois states that this is appropriate since the original contract holder's rate is the rate that will ultimately be collected by Iroquois regardless of the rate for the released capacity. Iroquois proposes a further tariff revision for clarification that adds a clause in both the scheduling and curtailment sections as follows:

> Where the service subject to allocation is based on a capacity release and the allocation tier is based on rate, Transporter shall refer to the rate applicable to the original releasing shipper.

32. Finally, in its Answer, Iroquois states that in discussing its filing with interested parties, it was made aware of a potential ambiguity with respect to revised section 5.2, Curtailment of Transportation Capacity. Iroquois further states that the ambiguity concerns the general paragraph which follows section 5.2(e), which states:

> For the purposes of curtailing capacity pursuant to this Section 5, Transporter will assess the value of a Negotiated Rate or a rate under a Negotiated Rate Formula in accordance with the provisions of Section 32 of these General Terms and Conditions; such rate shall in no event exceed the Recourse Rate.

Iroquois states that because this paragraph follows section 5.2(e), which specifies the fifth tier of Iroquois' curtailment of firm service allocation mechanism there is a concern that this paragraph could suggest that its Tariff bases firm curtailment on rate. Iroquois further states that this was not its intent; rather, the quoted paragraph was intended to apply only to those allocation tiers that by their terms base curtailment allocation on rate (sections 5.2(b) and (d)).

33. Iroquois asserts that this same ambiguity appears in section 5.1 which specifies the mechanism for curtailment of point capacity. Iroquois states that it is willing to clarify this matter by eliminating the tier specific provisions and inserting, at the end of both section 5.1 and 5.2, the following revised paragraph:

> For the purpose of curtailing capacity by rate pursuant to this Section 5.1 [5.2], Transporter will assess the value of a Negotiated Rate or a rate under a Negotiated Rate Formula in accordance with the provisions of Section 32 of these General Terms and Conditions; such rate shall in no event exceed the Recourse Rate. Shippers that are paying the same percentage of the applicable Maximum Commodity Rate(s) for such service shall be curtailed on a pro-rata basis.

Iroquois believes the insertion of the words “by rate” and elimination of duplicative paragraphs within each section will more clearly convey that this provision will only apply when the curtailment allocation is specified to be made based on rate.

34. Iroquois has agreed to and proposes clarifications which the Commission finds are reasonable. Therefore, the Commission accepts Iroquois revised tariff records subject to Iroquois Filing, within thirty days of the date of this order, revised tariff records consistent with its proposed clarifications.

The Commission orders:

Iroquois’s revised tariff records are accepted to become effective July 6, 2012, subject to conditions, as discussed in this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

Appendix

Iroquois Gas Transmission System, L.P.
FERC NGA Gas Tariff
Iroquois Gas Transmission System, L.P.

Sheet No. 57B, GT&C, § 4 – Nominations, Allocating & Scheduling, 3.0.0
Sheet No. 57C, GT&C, § 4 – Nominations, Allocating & Scheduling, 2.0.0
Sheet No. 57D, GT&C, § 4 – Nominations, Allocating & Scheduling, 0.0.0
Sheet No. 57E, GT&C, § 4 – Nominations, Allocating & Scheduling, 0.0.0
Sheet No. 57F, GT&C, § 4 – Nominations, Allocating & Scheduling, 0.0.0
Sheet No. 58, GT&C, § 4 – Nominations, Allocating & Scheduling, 2.0.0
Sheet No. 58A, GT&C, § 4 – Nominations, Allocating & Scheduling, 2.0.0
Sheet No. 59, GT&C, § 4 – Nominations, Allocating & Scheduling, 2.0.0
Sheet No. 59A, GT&C, § 4 – Nominations, Allocating & Scheduling, 2.0.0
Sheet No. 60E, GT&C, § 5 – Curtailment, 2.0.0
Sheet No. 60F, GT&C, § 5 – Curtailment, 2.0.0
Sheet No. 61, GT&C, § 6 – Balancing and Penalty Provisions, 2.0.0
Sheet No. 61A, GT&C, § 6 – Balancing and Penalty Provisions, 0.0.0
Sheet No. 61B, GT&C, § 6 – Balancing and Penalty Provisions, 0.0.0