123 FERC ¶ 61,171
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Suedeen G. Kelly, Marc Spitzer,
Philip D. Moeller, and Jon Wellinghoff.

Iroquois Gas Transmission, L.P. Docket No. RP98-18-033

ORDER ON REHEARING

(Issued May 16, 2008)

1. Iroquois Gas Transmission, L.P. (Iroquois) seeks rehearing of a Commission Letter Order issued February 5, 2008 (February 5 Order).[1] In that order, the Commission conditionally accepted a non-conforming, negotiated rate agreement (Contract No. R-560-14) and tariff sheet summary of that agreement, effective November 1, 2007. Because the Commission found that a flexible primary receipt point/contract demand adjustment provision in Contract No. R-560-14 presented a significant risk of undue discrimination, the Commission directed Iroquois to re-file to the interim service agreement by removing the flexible provision from that agreement. As discussed below, the Commission grants rehearing and accepts Contract No. R-560-14, but directs Iroquois to remove the foregoing provision from the permanent service agreement that supersedes Contract No. R-560-14.

Background

2. On November 1, 2007, Iroquois filed revised tariff sheets to set forth the elements of negotiated rates under two service agreements[2] between Iroquois and Consolidated Edison Company of New York, Inc. (Con Edison) for firm service pursuant to Iroquois' 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 a MarketAccess Project approved in 2006 in Docket No. CP02-31-002.[3] Iroquois stated that the project will

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[1] *Iroquois Gas Transmission System, L.P.*, 122 FERC ¶ 61,102 (2008).

[2] Contract Nos. R-560-14 and R-560-15. Only Contract No. R-560-14 contains the flexible primary receipt point/contract demand adjustment provision at issue here.

[3] *Millenium Pipeline Co., L.L.C., et al.,* 117 FERC ¶ 61,319 (2006), *reh'g*, 119 FERC ¶ 61,173 (2007).

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.[4] Iroquois stated that, 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.[5]

3. Contract No. R-560-14 provides that: (1) the daily contract demand 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. 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 Dth/d of primary receipt point rights at Brookfield, Connecticut to a proportionately smaller volume (up to 30,000 Dth/d) of primary receipt point rights at Waddington, New York, the furthest upstream point on Iroquois' system near the United States-Canada border. 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 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).

4. By order issued November 29, 2007 (November 29 Order),[6] the Commission found that the agreements were non-conforming and, therefore, directed Iroquois to list the agreements in its tariff listing of non-conforming agreements. Although the Commission found that certain provisions of each contract were permissible material deviations from Iroquois' form of service agreement, the Commission found that Iroquois

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[4] Iroquois stated that, currently, it can only deliver gas into, but not receive gas from, Algonquin, because pressure on the Iroquois system is higher than that on Algonquin. Iroquois stated that, as part of the MarketAccess Project, it will build a transfer compressor which will enable it to receive gas from Algonquin.

[5] *Millenium Pipeline Company, L.L.C., et al.*, *supra* note 3.

[6] *Iroquois Gas Transmission System, L.P.*, 121 FERC ¶ 61,212 (2007).

must provide a further explanation of the flexible primary receipt point/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. The Commission recognized that the 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/contract demand adjustment 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, the Commission stated that Iroquois had not explained the extent to which other shippers may be adversely affected by the flexible primary point provision in the Interim Agreement.

5. On December 14, 2007, to comply with the November 29 Order, Iroquois filed a revised tariff sheet listing the two interim negotiated rate agreements with Con Edison (Contract Nos. R-560-14 and R-560-15) and an explanation for the non-conforming contract provision of Contract No. R-560-14 which gives Con Edison flexible primary receipt point/contract demand adjustment rights (December 14 compliance filing).

6. Iroquois explained in its compliance filing that the flexible primary receipt point/contract demand adjustment provision afforded Con Edison in Contract No. R-560-14 was not a temporary arrangement intended to be in effect only until the MarketAccess Project goes into service. Rather, Iroquois stated that Con Edison's MarketAccess Project 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 include similar flexible receipt point and contract demand provisions. Specifically, Iroquois stated that such permanent contract 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 stated that Con Edison is afforded the option, on a monthly basis, of converting up to 54,000 Dth/d of primary receipt point rights at Brookfield, Connecticut to a proportionately smaller volume (up to 30,000 Dth/d) of primary receipt point rights at Waddington, New York. Iroquois explained that, if this 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 asserted that it 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 stated 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, because of operational constraints and the potential negative impact on availability of capacity for sale to third parties.

7. In the February 5 Order, the Commission stated it 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.[8] This is because of the Commission's concern that a special right for one shipper to change its primary point could harm other shippers seeking primary point capacity from the pipeline. Nevertheless, the Commission stated that when we initially reviewed Iroquois' November 1 filing, it appeared that this case could present special circumstances that might render the 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.

8. 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 stated it 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.

9. The Commission concluded, however, that Iroquois's compliance filing made clear that the flexible primary receipt point/contract demand adjustment provision did not appear to be such a temporary arrangement. Rather, the Commission determined that 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, the Commission concluded that the provision violates the Commission's policy that contractual provisions which permit shippers to

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[7] *See* December 14 compliance filing at 2.

[8] 122 FERC ¶ 61,102 at P 9, *citing 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).

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.

10. Moreover, the Commission stated that the flexible primary receipt point provision in Contract No. R-560-14 would limit the capacity Iroquois may be able to offer to other shippers on a primary point basis.[9] Therefore, the Commission concluded that this capacity will not be available on a primary firm basis to other shippers. Accordingly, the Commission found the flexible primary receipt point/contract demand adjustment provision to be unduly discriminatory and, therefore, directed Iroquois to remove this provision from its contract. The Commission conditioned its acceptance of Contract No. R-560-14 subject to Iroquois removing the flexible receipt point provision from that agreement.

11. On February 15, 2008, Iroquois requested rehearing of the February 5 Order. Iroquois also requested an extension of time to submit its compliance filing removing the flexible primary receipt point/contract demand adjustment provision from Contract No. R-560-14, as required by the February 5 Order, pending Commission consideration of its request for rehearing.[10] On March 3, 2008, Con Edison filed a reply supporting Iroquois' request that the Commission permit the flexible primary receipt point/contract demand provision to remain in effect for the duration of the interim service agreement. This matter is discussed below.

Discussion

12. In its request for rehearing, Iroquois states that it does not take issue with the Commission's requirement for it to remove the flexible primary receipt point/contract demand adjustment provision from the long-term service agreement entered into with Con Edison pursuant to the MarketAccess Project. Iroquois states that it is taking steps to revise the agreement with its customer and promises to file that agreement in its entirety at the time Iroquois makes its negotiated rate filing, prior to the commencement of permanent service under the MarketAccess Project. However, Iroquois requests that the Commission reconsider its decision ordering removal of the subject provision from the

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[9] The Commission stated that Iroquois will have to reserve 30,000 Dth/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.

[10] On February 20, 2008, the Commission extended the time for Iroquois to comply with the February 5 Order pending Commission consideration of Iroquois' request for rehearing.

interim service agreement and, on rehearing, accept the service agreement as filed for its temporary, interim duration because the agreement presents “special circumstances” that justify the provision for the limited term of the interim service agreement.

13. Iroquois states that, in its initial filing herein, it argued that the subject flexible primary receipt point/contract demand adjustment provision had been designed to reflect the fact that a portion of the new firm service contracted for by Con Edison in the MarketAccess Project was related to some turned-back capacity with a primary receipt point of Waddington. Further, it notes that it stated that, pending resolution of the significant variables perceived to be associated with completion of the Millenium Project (involving construction on several pipelines), the primary receipt point/demand adjustment provision would afford Con Edison primary point firm service at which upstream supplies were assured and, until the MarketAccess Project is placed in service, the only receipt point on the Iroquois system from which Iroquois can physically receive natural gas.

14. Specifically, Iroquois states that, as discussed at greater length in its initial filing, the agreement is in place to bridge the period during which the customer requires firm service but before the MarketAccess Project and other upstream pipeline construction projects under the NE-07 Project (a series of pipeline expansion projects known collectively as the Northeast-07 Project and is being undertaken by Millennium and Algonquin, in particular) is complete and in service. According to Iroquois, during this interim period, the need to access a second receipt point on a primary basis has unique significance for the customer here, and Iroquois is willing to accommodate this flexibility. Iroquois points out that no third party has objected to the provisions of this flexibility during this interim period under the subject contract. Therefore, Iroquois asserts that the flexible receipt point/contract demand reduction provision should be deemed acceptable in this unique and limited instance.

15. Upon reconsideration, the Commission grants rehearing and will allow the flexible primary receipt point/contract demand adjustment provision to remain in effect for the duration of Contract No. R-560-14, which is an interim agreement that will terminate upon the in-service date of the MarketAccess Project. As Iroquois and Con Edison explain, the adjustment provision will permit Con Edison to access gas supplies at Waddington, which Con Edison expects to be available during off-peak periods at a lower cost than at Brookfield until the integrated NE-07 and MarketAccess Projects go into service. At that time, Con Edison will have access to additional gas supplies at Brookfield, and accordingly the adjustment provision will no longer be needed. The capacity to be used to provide the interim Waddington to Brookfield service is capacity which Con Edison has turned back to Iroquois and is currently unsubscribed. No other shipper has indicated that it will be adversely affected by this interim arrangement between Iroquois and Con Edison. Since Iroquois will remove the provision from the long-term service agreements, the provision will not be a permanent part of Iroquois’

service agreements, which was the principal concern underlying the Commission's ruling in the February 5 Order. The Commission finds the special circumstances here justify the flexibility that is a part of the interim transportation arrangement Iroquois has agreed to provide Con Edison under Contract No. R-560-14 as a part of Con Edison's participation in the integrated NE-07 project. Accordingly, we will accept Contract No. R-560-14. However, consistent with the foregoing, we will direct that Iroquois remove the flexible primary point/contract demand adjustment provision from the permanent MarketAccess Project service agreement it files to supersede Contract No. R-560-14 upon its termination.

<u>The Commission orders</u>:

(A) Rehearing is granted and Contract No. R-560-14 is accepted as filed.

(B) Iroquois is directed to remove the flexible primary receipt point/contract demand adjustment provision from the permanent MarketAccess Project service agreement with Con Edison, as discussed above, and file such agreement 30 to 60 days prior to the commencement of service under the MarketAccess Project.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.