

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
William L. Massey, and Nora Mead Brownell.

Iroquois Gas Transmission System, L.P. Docket No. CP02-20-001

ORDER DENYING REHEARING

(Issued September 17, 2003)

1. On June 13, 2003, Athens Generating Company, L.P. (Athens Generating) filed a timely request for rehearing of a May 14, 2003 Letter Order issued by the Office of Energy Projects (OEP).
2. The May 14 Letter Order granted Iroquois Gas Transmission System, L.P. (Iroquois) a one-year extension to construct and operate certificated facilities. In its rehearing request, Athens Generating contends that the May 14 Letter Order interferes with the contractual agreement of the parties to have the authorized facilities completed and in service by September 1, 2003. In this Order, the Commission denies Athens Generating's request for rehearing, holding that the Letter Order does not interfere with the parties' contractual agreement.

I. Background

3. In Iroquois Gas Transmission System, L.P., 99 FERC ¶ 61,261 (June 3, 2002), we authorized Iroquois to construct and operate a 10,000 horsepower compressor unit at its Athens compressor station in Athens, New York. It was contemplated that the additional compression would provide up to 70,000 Dth per day of firm transportation service to Athens Generating for use at Athens Generating's new 1,080 MW gas-fired electric generating facility in Athens. Ordering paragraph (C) in the June 3 Order required Iroquois to construct and make the proposed compressor unit available for service within 18 months of the date of the order, i.e., by December 3, 2003.¹
4. On November 15, 2002, Athens Generating, as well as three of its affiliates, filed an application under Section 203 of the Federal Power Act requesting authority to transfer jurisdictional assets to a new company to be owned by the financial institutions that are lenders to Athens Generating and its three affiliates. The proposals by Athens

¹ On July 2, 2002, Iroquois accepted the certificate. Also, on July 2, Iroquois entered into a 15-year firm service agreement, as amended, with Athens Generating.

Generating and its affiliates were part of an arrangement to restructure their debt obligations. On June 5, 2003, we authorized the transfer of assets to Athens Generating's lenders.²

5. On April 22, 2003, Iroquois submitted a letter to the Commission, asserting that “[t]here is uncertainty at this time regarding anticipated changes in the ownership of the Athens [Generating] electric generation plant and the potential impact of such changes on the timing of completion and operation of the plant.” In the letter, Iroquois also stated that it has “investigated alternative means to provide the firm transportation service requested by Athens [Generating]” and has “determined that it will have the ability to make adequate capacity available to serve the transportation needs of Athens [Generating] until questions regarding the long-term status of this customer are resolved.” For this reason, Iroquois requested a one-year extension of the construction deadline for the compressor unit from December 3, 2003, until December 3, 2004. On May 14, 2003, OEP issued a Letter Order granting Iroquois’ request for a one-year extension.

II. Request for Rehearing

6. Athens Generating asserts that Iroquois agreed that the proposed compressor unit was required and that Iroquois agreed to construct and place in service the compressor unit by September 1, 2003. By extending the construction deadline for one year, Athens Generating contends that the Letter Order interfered with the contractual agreement of the parties to have the compressor unit completed and in service by September 1.

7. In addition, Athens Generating contends that its application for authority to transfer jurisdictional assets to a new entity has no impact on the completion or operation of the electric generating facility and that Iroquois should not be allowed to evade its obligations by referencing the existence of Athens Generating’s Federal Power Act filing. Moreover, Athens Generating contends that Iroquois provides no basis to support its claim that Iroquois can meet the firm transportation obligations of Athens Generating without the construction of the compressor unit, nor does Iroquois explain how capacity is now available when Iroquois previously asserted that it was not. Athens Generating states that it cannot be assured of the same quality and reliability of service for which it contracted absent the timely construction of the compressor unit.

8. Finally, Athens Generating speculates that Iroquois’ request for an extension of time is an attempt to impose credit support requirements.

² Athens Generating Co., L.P., 103 FERC ¶ 61,290, as amended, 104 FERC ¶ 62,076 (2003).

III. Answer to Request for Rehearing

9. Iroquois contends that it is under no obligation to construct and place the compressor unit into service prior to the commencement of service to Athens Generating. Iroquois cites its service agreement with Athens Generating, which merely provides that Iroquois is obligated to have in place “the natural gas facilities required to enable [Iroquois] to render transportation service to [Athens Generating].” Iroquois points out that when Athens Generating requested firm transportation service, Iroquois determined that new facilities would be required to make firm service available. However, because of substantial changes in energy markets since the time that Athens Generating requested service, Iroquois states that it has determined that it will have sufficient capacity available to commence firm service to Athens Generating without constructing the authorized compressor unit. Iroquois asserts that it plans to commence firm service under the service agreement on September 1, 2003, and defer construction of the compressor unit until the compressor is necessary to render firm service to Athens Generating.³ Finally, Iroquois maintains that it was “reasonable and necessary to proceed cautiously” with respect to new facility investment and defer construction in light of Athens Generating’s Federal Power Act filing.

10. Iroquois asserts that it has no current plans to revisit the credit support requirements applicable to Athens Generating.

IV. Response to Data Request

11. In an August 18, 2003 response to a data request asking Iroquois to describe how firm capacity has become available on its system and in a September 5 answer to Athens Generating, Iroquois contends that it has 2,017 Dth per day of turn-back capacity; that it has the right to recall up to 30,000 Dth per day of capacity from Sempra Energy Trading Corporation; that a bankruptcy court has terminated, effective September 5, two long-term firm transportation contracts totaling 52,702 Dth per day with US Gen New England, Inc; and that it has received indications from some of its firm shippers that they may be willing to release summer 2004 capacity on a short-term basis. Iroquois states that it is “confident that in the short run it will have sufficient capacity on its system to meet the firm service obligation under its contract with Athens Generating.”

³ Iroquois asserts that it is not required to commence service on September 1, contending that the service agreement provides that service shall not commence until the later of September 1 or the “date on which the natural gas facilities required to enable [Iroquois] to render transportation service to [Athens Generating] . . . are constructed, installed, and made operational.”

12. On September 2, 2003, Athens Generating filed an answer to Iroquois' data request, contending that Iroquois failed to develop a plan for having capacity available by September 1. Athens Generating contends that Iroquois should not be permitted to rely on the outcome of uncertain events, like a potential capacity solicitation or rejection of contracts, to avoid its obligation to provide firm transportation service. Finally, Athens Generating asserts that it should not be required to pay firm transportation rates for what appears to be non-firm service.

V. Discussion

13. Our regulations do not permit answers to requests for rehearing.⁴ We may, however, waive this rule for good cause. We will do so in this proceeding in order to ensure a complete and accurate record that clarifies the issues and aids us in our decision making.

14. Construction deadlines, as contained in Ordering Paragraph (C) in the June 3 Order, are routinely imposed on certificate applications to ensure that the facts, analysis, and rationale regarding a particular proposal do not grow stale.⁵ If an applicant fails to construct the authorized facilities by the construction deadline, the certificate will lapse. However, to retain the flexibility to respond to the factual circumstances of each case, construction deadlines may be extended for good cause.⁶

15. Here, OEP properly extended the construction deadline. By extending the deadline, Iroquois was merely given more time to construct the authorized compressor unit before the certificate lapsed. The extension does not have any impact on the contractual agreement between the parties in this case.⁷ The terms of the contract continue to govern in regard to when Iroquois must commence service to Athens Generating.

⁴ See 18 C.F.R. § 385.213(a)(2) (2003).

⁵ KN Wattenberg Transmission Limited Liability Company, 92 FERC ¶ 61,214 (2000).

⁶ See 18 C.F.R. § 385.2008 (2003).

⁷ On September 3, 2003, Iroquois filed a response to a data request stating that it commenced firm transportation service to Athens Generating on September 1.

16. For these reasons, we conclude that the May 14 Letter Order did not interfere with the service agreement between the parties. Thus, we will deny Athens Generating's request for rehearing.

The Commission orders:

Athens Generating's request for rehearing is denied.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.