

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. RP03-258-003

ORDER ON REHEARING

(Issued September 23, 2003)

1. This order addresses Consolidated Edison Company of New York, Inc's (Con Ed) request for rehearing of the Commission's March 31, 2003 order accepting Iroquois Gas Transmission System, L.P.'s (Iroquois) tariff sheets implementing Extended Receipt and Extended Delivery service (ER/ED service) for firm shippers on its system.¹ As discussed below, rehearing is denied.

Background

2. Iroquois has two rate zones and four reservation charge rates for rate schedule RTS (Firm Reserved Transportation Service): Zone 1, Zone 1 MFV, Zone 2, and Inter-Zone. On February 14, 2003, Iroquois filed revised tariff sheets to change the rates and General Terms and Conditions (GT&C) of its tariff to implement an extended service option that would permit any RTS shipper whose primary contract path lies only within Zone 1 or Zone 2 to obtain firm transportation service on a secondary basis in a zone outside that zone up to the shipper's RTS contract demand. Iroquois proposed that ER/ED service would be the lowest priority secondary firm service below other secondary firm service.² The ER/ED service also is not protected from bumping due to intra-day nominations.³ Iroquois proposed that the rate for ER/ED service would be a volumetric rate equal to the otherwise applicable 100 percent load factor interruptible transportation (IT) rate and such rate would be paid in addition to the RTS reservation

¹Iroquois Gas Transmission System, L.P., 102 FERC & 61,354 (2003).

² See Eighth Revised Sheet No. 58.

³See Original Sheet No. 60D.01.

and commodity charges. Iroquois stated that the ER/ED service is modeled after and is consistent with Tennessee Gas Pipeline Company's (Tennessee) tariff permitting a similar service and extends, on a secondary basis, a shipper's existing firm transportation path to downstream or upstream zones, respectively. Iroquois stated that ER/ED service provides the following benefits to the shippers utilizing the service: (1) A shipper only pays when it uses the extended service; (2) Recourse rates and negotiated rates are available to the shippers; (3) A shipper receives higher priority than it would under an interruptible service contract, but lower priority to firm and secondary firm service; and (4) A shipper must request an extended receipt and/or delivery point by nominating daily on Iroquois Electronic Bulletin Board (EBB). The filing was protested.

3. On March 31, 2003, the Commission issued an order accepting the tariff sheets implementing ER/ED service, subject to condition. The issues presented by the protests were whether ER/ED service should have a higher scheduling and curtailment priority than interruptible service and, if so, at what rate. Consolidated Edison Company of New York (Con Ed) protested the filing, asserting that the rate is discriminatory against shippers who pay higher inter-zonal rates and that the priority should not be higher than for IT service since the service is interruptible. Regarding the issue of appropriate priority, the Commission found that Iroquois' proposal was similar to services on Tennessee and other pipelines with priorities higher than interruptible service. The Commission reasoned that a shipper receiving ER/ED service is engaging in a single transaction that takes place pursuant to its underlying firm RTS contract within the firm contract demand provided for in that contract. Accordingly, the Commission further found that since the ER/ED service is pursuant to a firm contract, it makes sense that it receives a higher priority than interruptible service. With respect to the rate for ER/ED service, the Commission found that the proposed rates were not consistent with the policy set forth in the Commission's February 24, 2003 order in Texas Eastern Transmission, LP,⁴ which dealt with a similar proposal, because it treats a single shipment of gas as two separate transactions. Based on the policy expressed in the Texas Eastern order, the Commission determined that Iroquois should charge a 100 percent load factor volumetric rate based on the difference between the reservation charge already paid for the existing zone, *i.e.*, the Zone 1 or Zone 2 reservation charge, and the reservation charge for the single, multiple zone transaction, *i.e.*, the Inter-Zone rate.⁵ The Commission also ruled that the ER/ED rates should include the Inter-Zone commodity charge. The Commission recognized that these rates should be somewhat lower than what Iroquois proposed, but consistent with Texas Eastern, such rates will enhance competition with appropriate recovery of the costs of providing the additional service.

⁴102 FERC & 61,198 (2003) (Texas Eastern).

⁵Iroquois Gas Transmission System, L.P., 102 FERC & 61,354 at P 14 (2003).

4. On April 30, 2003, Con Ed filed a request for rehearing of the March 31, 2003 order. Con Ed's request for rehearing is discussed below.

Discussion

5. Con Ed, an Inter-Zone RTS customer, asserts that the March 31, 2003 order is inconsistent with Commission precedent prohibiting pipelines from providing secondary firm service in zones for which the shippers are not paying reservation charges. Con Ed cites two cases in which the Commission found that the payment of an incremental rate for service on a lateral does not entitle the shipper to secondary firm rights on the mainline.⁶ Con Ed submits that Transco and Tennessee could be read as to address only the rights of shippers paying incremental rates for service on laterals. However, Con Ed asserts that such a reading would ignore other Commission precedent and the Commission's regulations addressing segmenting. Con Ed states that Order No. 636-A enunciated a controlling general principle that "a shipper gets flexibility in receipt and delivery points for the part of the system for which it pays a reservation charge."⁷ Con Ed states that this general principle is incorporated in 18 CFR ' 284.7(d), which states that "an interstate pipeline that offers transportation service under subpart B or G of this part must permit a shipper to make use of the firm capacity for which it has contracted by segmenting that capacity." Therefore, Con Ed argues that Transco and Tennessee are consistent with the correlative general principle that a shipper does not get flexibility in receipt and delivery points for the part of the system for which it does not pay a reservation charge. Con Ed asserts that the March 31, 2002 order unreasonably skews competition by giving secondary delivery point rights to a class of customers paying far less. Further, Con Ed also asserts that the order skews competition for sales in the secondary market and is an inequitable degradation of the value of Con Ed's rights. Finally, Con Ed asserts that the Commission's order is inconsistent with precedent that provides that pipelines can provide new firm service only to the extent that firm primary capacity is available.⁸

6. At the outset, it is important to note that Con Ed has mischaracterized the ER/ED service and Commission policy. First, ER/ED service is not equal in priority to the secondary point rights Con Ed and other Inter-Zone shippers have as it incorrectly claims

⁶Citing, Transcontinental Gas Pipe Line Corporation, 78 FERC & 61,333 at 62,438 (1997) (Transco) and Tennessee Gas Pipeline Company, 95 FERC & 61,096 at 61,285 (2001) (Tennessee).

⁷Citing, FERC Stats. & Regs. Regulations Preambles & 30,950 at 30,585 (1992).

⁸Citing Tennessee Gas Pipeline Company, 96 FERC & 61,191 at 61,831 (2001).

throughout its request for rehearing. As is clear from Iroquois' description of the service and its proposed tariff provisions, RTS shippers who utilize the ER/ED service option do not receive secondary firm flexible receipt and delivery point rights as those rights were defined by Order No. 636-A or 637, et seq. for service within the zone for which a reservation charge is paid. As its third priority of service below primary and "Alternate" point firm services,⁹ ER/ED service is given the lowest firm priority above interruptible and is not protected from intra-day bumping. Accordingly, the central premise on which Con Ed's request for rehearing is based is simply wrong; Con Ed and other Inter-Zone RTS shippers have a higher priority than ER/ED service when they utilize their secondary point flexibility anywhere on Iroquois' system.

7. Second, the policy Con Ed cites, requiring pipelines to accord secondary firm rights to shippers in zones for which a reservation charge is paid, does not prohibit Iroquois from voluntarily offering enhanced services like ER/ED in other zones if it wishes and the only issue is whether the rate charged for the service is just and reasonable. In an order issued June 4, 2003, on rehearing of its February 24, 2003 order in Texas Eastern, the Commission clarified that there is nothing in Commission policy that requires a pipeline to grant a right to extended service beyond the primary zone.¹⁰ Unlike the flexibility rights that all firm shippers must be accorded under Order No. 636-A and 637, et seq., as part of their firm service rights within the zone for which they pay a reservation charge, the ER/ED service rights only are offered as an additional service option to these shippers for an additional charge. ER/ED shippers pay commodity charges in addition to their reservation and commodity charges under their RTS contracts to receive an enhanced form of RTS firm service with limited rights to extend their receipts or deliveries to a zone outside their primary contract path zone on a low priority basis. These enhanced rights can be offered voluntarily by Iroquois and are not required to be provided by pipelines under Order No. 636-A or 637, et seq. Thus, there is no conflict with the Commission's flexible point policies.

8. Finally, the Commission's action here is not inconsistent with precedent requiring firm capacity to be available for the sale of new firm services. That requirement only applies to the sale of primary point capacity and ER/ED capacity is not primary point

⁹ See Eighth Revised Sheet No. 58 to Iroquois' FERC Gas Tariff, First Revised Volume No. 1. Similarly, Texas Eastern had proposed four categories of "secondary firm" service for scheduling and curtailment purposes, with its extended services assigned the lowest priority within that secondary firm category. See Sub. Original Sheet No. 648 to Texas Eastern's FERC Gas Tariff, Seventh Revised Volume No. 1 (withdrawn).

¹⁰ Texas Eastern Transmission, LP, 103 FERC ¶ 61,278 at P 22 (2003).

capacity.

9. Con Ed argues that the March 31, 2003 order also conflicts with Commission precedent which normally provides that capacity should go to those valuing it the most.¹¹ Con Ed states that Iroquois' tariff requires the scheduling of firm services before interruptible services precisely because paying reservation charges for a firm service should give a customer the right to call on its capacity 365 days per year. Con Ed states that, however, the March 31, 2003 order gives secondary firm delivery point rights in Zone 2 to customers paying no reservation charges for that zone. Con Ed asserts that this gives Zone 1 RTS customers a higher scheduling priority for Zone 2 ER/ED Service than a Zone 2 ITS customer wanting to use the same delivery point and willing to pay the higher ITS maximum rate. Con Ed argues that this outcome conflicts with Commission precedent which normally provides that capacity should go to those valuing it the most. Further, Con Ed argues that place interruptible customers paying 100 percent load factor rates at a competitive disadvantage vis a vis firm customers purchasing ER/ED services for what it asserts are lower rates.

10. The Commission disagrees with Con Ed's argument that acceptance of the ER/ED Service conflicts with the principle of awarding capacity to those shippers valuing it most. Con Ed's argument is flawed because it compares only the additional volumetric charge that the RTS shipper must pay for ER/ED service with the ITS rate that the interruptible customer would pay for deliveries in the same zone. As Con Ed recognizes, however, the RTS shipper utilizing the ER/ED service option also must pay the RTS reservation rate as well. For the same reason, its claim of a competitive disadvantage for ITS customers is incorrect.¹²

11. Con Ed asserts that the Commission's single transaction analysis is without merit. It asserts that Order No. 636-A establishes that ER/ED service is not a single transaction with the RTS service. Con Ed submits that if the Zone 1 RTS shipper wants to expand its delivery point capability to include out of path delivery points in Zone 2, it must obtain

¹¹Citing, Northern Natural Gas Company, 62 FERC & 61,075 at 61,428 (1993) and Amoco Energy Trading Corporation v. El Paso Natural Gas Company, 89 FERC & 61,165 at 61,499 (1999).

¹²In any event, as Iroquois asserted at pages 3-4 in its March 14, 2003, answer to Con Ed's protest to the underlying filing, it is not a realistic scenario that an ITS shipper would pay a higher rate for a lower priority service than an ER/ED shipper would pay. Iroquois stated that it intends to charge ER/ED shippers the maximum rate. Iroquois also stated that if it could command a higher rate for ITS service, it certainly would not choose to discount ER/ED Service.

that capacity from the pipeline or from another shipper via capacity releasing. Con Ed states that, here, the upstream shipper is obtaining the Zone 2 capacity from Iroquois via the ER/ED mechanism. Con Ed asserts that this is a separate transaction from the one in which the Zone 1 RTS shipper obtained its Zone 1 capacity. Con Ed posits a scenario whereby it asserts a Zone 1 RTS shipper may use ER/ED service to increase the volumes it may have Iroquois transport. Con Ed posits that, in addition to a primary point Zone 1 transportation of a shipper's 10,000 dth/d contract demand in Zone 1, that shipper may utilize a downstream Zone 1 receipt point on a secondary basis and get delivery of an additional 10,000 dth/d at a Zone 2 delivery point utilizing ER/ED service, for a total of 20,000 dth/d. It asserts that there must be a second transaction, the ER/ED transaction, allowing the second 10,000 dth/d to move. It is on this basis that Con Ed asserts that two separate transactions, not a single transaction, are involved in providing ER/ED service.

12. The Commission disagrees with Con Ed's contention that ER/ED service is not a single transaction with the RTS service. When an RTS shipper uses the ER/ED service a single transportation transaction occurs because the ER/ED service is premised upon the shipper having a Zone 1 or Zone 2 only RTS firm contract to obtain transportation in that zone. The ER/ED service option only extends the transportation into the next zone, but at a low priority. Thus, the ER/ED service is not a stand alone service for which any shipper can contract and, therefore, without the use of the underlying firm RTS contract, the shipper cannot receive ER/ED service under Iroquois' tariff. For that reason, Con Ed's scenario involving the use of segmented capacity rights also does not detract from the single transaction concept. To obtain the additional 10,000 dth/d service in Zone 2 with the ER/ED service option, the Zone 1-only shipper must use its RTS capacity rights in Zone 1. Under Con Ed's scenario, although the shipper would have secondary firm rights to schedule capacity at the Zone 1 receipt point, it would only have the low priority ER/ED scheduling rights at the Zone 2 delivery point. Thus, the transaction involves a single transportation service using RTS capacity with a Zone 2 delivery point on a low priority basis upon payment of the additional ER/ED charge. The fact that this second transaction is in addition to the primary point to primary point service the shipper also receives in Zone 1 does not detract from the fact that it is, in and of itself, a single transportation service transaction involving the use of firm RTS capacity rights.

13. Con Ed asserts that the Commission's finding, that Con Ed and other Inter-Zone customers are not harmed because their within-contract volumes receive a higher priority than the ER/ED volumes, is incorrect. Con Ed submits that ER/ED services reduces the value of secondary firm capacity in downstream zones by adding to the number of entities with rights to obtain "such capacity" and places Con Ed at a competitive disadvantage by adding competitors paying only ER/ED rates. Con Ed also claims that ER/ED customers will be able to use ER/ED service in addition to primary point deliveries where Con Ed will be unable to obtain additional firm service in either Zone 1

or 2 unless it can obtain short-term firm capacity. Further, it asserts that ER/ED service will place customers paying Inter-Zone demand charges at a competitive disadvantage in the secondary market by adding competitors delivering in Zone 2 "on a secondary basis" without paying Zone 2 reservation charges and only paying lower ER/ED charges on a usage basis. In sum, it asserts that ER/ED service at the rate mandated by the Commission "unduly discriminates against Inter-Zone customers by providing superior service to Zone 1 and Zone 2 customers than to Inter-Zone customers or by providing virtually identical service at substantially lower rates."¹³ Con Ed contends that a finding that Iroquois may not provide ER/ED Service would cure the undue discrimination in Iroquois' proposal. Con Ed submits that should the Commission affirm its approval of the ER/ED concept, it still must address the matter of undue discrimination by requiring Iroquois to make ER/ED Service available to Inter-Zone customers. Con Ed states that under this approach an Inter-Zone customer would have the right to ER/ED Service in both Zones 1 and 2 and could utilize both its RTS and ER/ED service on the same day.

14. The Commission disagrees with Con Ed's contention that it is harmed by ER/ED service. As already discussed above, ER/ED service has a lower priority than Con Ed's primary and secondary firm service. Thus, the Commission does not believe that competition in the secondary market will be adversely affected. Nor will Con Ed's rights be adversely affected by the addition of shippers using ER/ED service. ER/ED service is the lowest priority of firm service and as such would not be as attractive in the capacity release market as higher priority secondary firm capacity. This would likely be reflected in the price ER/ED released capacity would receive in the secondary market as compared to RTS Inter-Zone firm secondary service. Accordingly, for the same reasons, Con Ed's objection to adding more shippers in other zones is without merit. The Commission also rejects Con Ed's request to make ER/ED Service available to Inter Zone RTS shippers as unnecessary. By paying Inter-Zone reservation charges for Inter-Zone service, Con Ed automatically has secondary firm rights in both of Algonquin's zones in addition to its primary point rights in such zones and would gain nothing by paying an extra ER/ED charge to obtain lower priority ER/ED service.

15. Con Ed states that the Commission must address what Con Ed asserts is the inconsistency in Commission precedent as to the appropriate rate for this service. Con Ed states that there is only one distinction between the Iroquois ER/ED service and the Tennessee's extended delivery service upon which the Iroquois service was modeled: Tennessee charges the 100 percent load factor rate for its service, *i.e.*, a rate equal to the IT rate, the very rate proposed by Iroquois and rejected by the Commission in the March 31, 2003 order herein. Con Ed asserts that the March 31, 2003 order nowhere explains why a 100 percent load factor rate is appropriate for the Tennessee ER/ED

¹³ Con Ed Request for Rehearing at 12.

service and is unlawful for the Iroquois ER/ED service.

16. The Commission denies Con Ed's request for rehearing on this issue. To begin, Con Ed has mischaracterized Tennessee's extended delivery service rate as being a 100 percent load factor rate based on Tennessee's full reservation charges. The rate Tennessee proposed, which was accepted by the Commission, was a volumetric rate that was not designed on 100 percent load factor basis and, in fact, was lower than Tennessee's IT rate.¹⁴ In any event, the design of the ER/ED rate is based on sound rate design concepts. Consistent with the Commission's February 24, 2003 order in Texas Eastern Transmission System, LP order,¹⁵ the Commission here determined that the appropriate rate for ER/ED Service is a 100 percent load factor rate based on the difference between the reservation charge already exacted for the existing zone and the reservation charge for the single, multiple zone transaction. The Commission found that the rate proposed by Iroquois was contrary to Texas Eastern because it treated a single shipment of gas as two separate transactions. As the Commission found in Texas Eastern, treating the shipment as two transactions would allow Iroquois to double collect its cost of service.¹⁶ In the March 31, 2003 order, the Commission found that, consistent with Texas Eastern, such rates will enhance competition, and will provide Iroquois with appropriate recovery of the costs of providing the additional service. The ER/ED rates are designed to provide the same revenue on a 100 percent load factor basis from the RTS shipper paying, for example, the Zone 1 reservation and commodity rate plus the ER/ED volumetric for a Zone 2 delivery as the Inter-Zone RTS shipper pays. The likelihood that the Zone 1-only shipper using the ER/ED option will generally pay less overall than the Inter-Zone shipper because the ER/ED shipper only pays the additional ER/ED charge when it uses the ER/ED service option simply reflects the Commission's consideration of the low priority of ER/ED service in designing the appropriate ER/ED rate.

¹⁴Tennessee proposed a mileage-based volumetric rate for its extended delivery point service priced cheaper than the interruptible rate that was only charged when used. Tennessee Gas Pipeline Co., 66 FERC & 61,317 at 61,996 n. 10 (1994).

¹⁵Texas Eastern Transmission System, LP, 102 FERC & 61,198 at P 20-25 (2003).

¹⁶Id. at P 23, Footnote 21.

17. Accordingly, for the reason discussed above, Con Ed's request for rehearing is denied.

The Commission orders:

Con Ed's request for rehearing is denied.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.