

107 FERC ¶ 61,059
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
Nora Mead Brownell, Joseph T. Kelliher,
and Suedeen G. Kelly.

Iroquois Gas Transmission System, L.P.

Docket No. RP04-136-002

ORDER ON COMPLIANCE

(Issued April 20, 2004)

1. On February 19, 2004, Iroquois Gas Transmission System, L.P. (Iroquois) filed an explanation and supporting testimony on rates for secondary access on its Eastchester Extension Project (Eastchester) in compliance with the Commission's order issued January 30, 2004,¹ which accepted and suspended Iroquois' Eastchester rates subject to refund and established a hearing. As discussed below, this order accepts and suspends the rates for secondary access service on Eastchester subject to the outcome of the ongoing hearing procedure and conditions established herein. This order benefits the public by ensuring that Iroquois' recourse rates will be just and reasonable.

Background

2. The Commission in the January 30, 2004 Order established a hearing to examine Iroquois' proposed rates for its Eastchester project, which extended Iroquois' system from Northport on Long Island, New York to an interconnect with Consolidated Edison Company of New York, Inc. (ConEd) in the Bronx, New York, with a projected capacity of 230,000 Dth per day.² The route for the Eastchester project required Iroquois to construct a pipeline from the onshore point at Northport across Long Island Sound and

¹ Iroquois gas Transmission System, L.P., 106 FERC ¶ 61,092 (2004) (January 30, 2004 Order).

² Iroquois Gas Transmission System, L.P., 95 FERC ¶ 61,355 (2001); order on reh'g and issuing certificates, 97 FERC ¶ 61,379 (2001); order on reh'g, 98 FERC ¶ 61,273 (2002); order denying reh'g, 101 FERC ¶ 61,093 (2002).

the East River to the onshore terminus at Hunts Point in the Bronx. To complete the Eastchester project, Iroquois constructed over 36 miles of 24-inch pipeline and more than doubled the compression on its system, adding over 54,000 horsepower at various points on Iroquois' existing system, with an estimated construction cost in 2001 of \$210 million.

3. In this proceeding, Iroquois filed to change the Commission's approved initial Part 284 daily RTS reservation rate of \$0.4234 per Dth for the Eastchester project to recover additional construction and operating costs for the pipeline which was placed into service on February 5, 2004. Iroquois proposed to increase the incremental maximum Eastchester daily RTS reservation rate to \$0.84444 per Dth with a \$0.00 usage charge, based on a total cost of service of \$70.9 million and an annual throughput of 83,950,000 Dth. Iroquois proposed an interruptible rate of \$0.8444 per Dth, which was designed on a 100% load factor basis.

4. As part of its filing, Iroquois proposed Secondary Access Rates, which would be paid by firm shippers on Iroquois' system who are not currently Eastchester shippers, but who want to use service delivery points on the Eastchester project on a secondary basis. For each unit of secondary access service on Eastchester, existing Iroquois shippers will pay an additional amount which, when added to the unit charge for their primary Zone 1 or Zone 2 service on Iroquois, will bring their total charge up to the level of the incremental recourse rate for the Eastchester service. The proposed Secondary Access Rates reflect proposed changes effective at various dates in the future.

5. The January 30, 2004 Order set Iroquois' proposed Eastchester rates for hearing. Among other things, the Commission observed that Iroquois reported revenue of \$6,575,716 prior to placing the Eastchester facilities into service. The Commission found that in order for Iroquois to recover the requested cash working capital allowance of \$121,156, it must perform a fully developed and reliable lead-lag study.³

6. The Commission also found in the January 30, 2004 Order that Iroquois had failed to adequately support, justify, and provide supporting documentation for the proposed secondary access service.⁴ The Commission accordingly required Iroquois to file within 15 days of the order an explanation and support for the proposed secondary access service, including the priority of service between firm, interruptible, and secondary access rate service, cost justification, impact on capacity release market, projected

³ A lead-lag study calculates the cash working capital allowance based on the average time between the pipeline's payment of expenses and its receipt of revenue from its customers.

⁴ January 30, 2004 Order at P 22.

revenues, volumes, supporting testimony, and tariff sheets in sufficient detail to permit the Commission to evaluate the proposed service as required by section 154.202 of the Commission's regulations.

Compliance Filing

7. Iroquois proposes to comply with the January 30, 2004 Order concerning the secondary access service by filing supplemental direct testimony by Witnesses Johnston and Rupff providing the additional information requested by the Commission. Iroquois contends that the Eastchester service will be provided under its existing firm (RTS) and interruptible (ITS) rate schedules and the existing provision of the General Terms and Conditions (GT&C) of its FERC Gas Tariff. Iroquois contends that the Eastchester secondary access rights are a function of the flexible point rights available to all firm RTS shippers, and secondary access priorities are governed by Iroquois' GT&C provisions applicable to scheduling and allocation of capacity and curtailment. Iroquois argues that since its existing tariff provides for scheduling and allocation of capacity, no new tariff provisions are required to implement the Eastchester secondary access service.

8. Iroquois also addressed two other issues in the January 30, 2004 Order, concerning \$6,75,716 of revenues collected prior to the commencement of service on Eastchester and the cash working capital allowance. Iroquois clarifies that the revenues collected relate to the commencement of limited operation of Eastchester-related facilities authorized in letters issued by the Director of the Office of Energy Projects (OEP), which allowed Iroquois to place certain new compression in service in advance of the remainder of the Eastchester facilities.⁵ Additionally, the January 30, 2004 Order found that since Iroquois proposed a cash working capital allowance of \$121,156 and directed Iroquois to perform a lead-lag study to support such a request.⁶ Iroquois clarifies that the entire \$121,156 relates to prepaid insurance detailed on Schedule E-2 of the application in accordance with section 154.312(e)(2) of the Commission's regulations, and that Iroquois' rate filing does not include a request for a cash working capital allowance.

Notice of Filing, Interventions, and Protests

9. Iroquois' application was noticed with protests due March 12, 2004, as provided in section 154.210 of the Commission's regulations. ConEd filed a request for clarification of one aspect of the compliance filing, and Iroquois filed an answer to ConEd's request

⁵ See OEP letters issued May 29, 2002, June 21, 2002, August 29, 2002, and November 1, 2002 in Docket No. CP00-232.

⁶ January 30, 2004 Order at P 20.

for clarification.⁷ There were no other protests or adverse petitions to the compliance filing.

Discussion

10. The Commission finds that Iroquois has adequately complied with the requirement that it clarify the priority to be given to the secondary access service. Iroquois states that requests by firm non-Eastchester RTS shippers to schedule secondary access service in the Eastchester rate zone will be governed by the existing provisions of the GT&C of its tariff. The secondary access service is, by definition, service outside a firm shipper's primary contract path. Iroquois' tariff at section 4.2 (e) (1), (2), and (3) of the GT&C provides that firm shippers who nominate service using secondary points outside their primary contract path will have a lower priority for such service than firm shippers nominating service at their primary points or secondary points within their primary contract path, but a higher priority than interruptible service. Iroquois' priority governing secondary access to Eastchester capacity is consistent with Commission policy, has not been protested, and is therefore accepted.

11. While Iroquois has explained in its compliance filing that secondary access service for non-Eastchester RTS shippers would be provided under its existing tariff provisions which stipulates the priority of service and general terms and conditions of service, Iroquois has failed to provide any cost data to support the proposed rates nor has Iroquois projected the throughput or revenues for the proposed secondary access service. In addition, it is unclear whether or not the proposed secondary access rates are consistent with the Commission's policy set forth in Texas Eastern.⁸ The Commission determined in Texas Eastern, that the proper rate for firm shippers transporting to secondary points outside their zone is the rate representing a single transportation transaction encompassing both the existing and new zones, rather than the rate computed as if shipper had conducted two separate transactions. Accordingly, the Commission ruled that Texas Eastern could charge a 100% load factor rate based on the difference between the reservation charge already being paid by the shipper for its existing primary service and the reservation charge for the single, multiple zone transaction using the new zone. The Commission found that charging the lower single rate would enhance competition,

⁷ While the Commission's Rules of Practice and Procedure generally prohibit answers to protests or answers, the Commission will accept the answer to allow a better understanding of the issues. See 18 C.F.R. § 385.213(a)(2) (2003).

⁸ Texas Eastern Transmission, LP, 102 FERC ¶ 61,198 at P 21-24 (2003). (Texas Eastern).

and would provide Texas Eastern with appropriate recovery of its costs in providing the additional service.

12. Iroquois currently has two rate zones on its system with separate rates for each zone, an inter-zone rate, and has created a third zone for the Eastchester project with Eastchester rates designed on an incremental basis. It is unclear from the proposal whether or not Iroquois is treating the secondary access rates as a single shipment of gas as required by Texas Eastern or two separate transactions, which when added together would result in a rate higher than the single transaction rate. The Commission finds that the secondary access rate is an issue which is more appropriately addressed in the ongoing hearing proceeding. During the hearing, the parties can explore issues, including but not limited to the costs, rate design, throughput, revenues, and treatment of those revenues for the secondary access rate service. Further, the Administrative Law Judge (ALJ) should determine whether Iroquois has designed secondary access rates to comply with Texas Eastern.

13. Finally, it does not appear that the secondary access rate includes the various usage charges specified in the RTS rate schedule for service in Zones 1 and 2.⁹ Therefore, Iroquois is required within 15 days of the date of this order to revise its tariff to charge a usage charge for secondary access rates that involves transportation in either Zone 1 or Zone 2 on Iroquois' system.

14. In its request for clarification, ConEd raises an issue as to which shippers must pay the Eastchester incremental rates. ConEd argues that the prepared supplemental direct testimony included in Iroquois' compliance filing is not fully responsive to the Commission's January 30, 2004 Order. ConEd contends that Iroquois' supplemental direct testimony fails to answer a question fundamental to the Commission's inquiries, specifically, under what circumstances a customer will be charged the Eastchester incremental rates. ConEd states that the closest that Iroquois comes to answering this question is provided in the definition of "Eastchester Shipper" in Sheet 48A of Iroquois' tariff.¹⁰

⁹ Iroquois' tariff at 10th Revised Sheet No. 4A provides for a usage charge for Extended Receipt (ER) and Extended Delivery (ED) service which are applicable to transactions outside an RTS Shipper's primary contract path, but it is unclear whether such a usage charge is applicable to the secondary access service.

¹⁰ Iroquois defines Eastchester Shippers on Original Sheet No. 48A as:

1. Shippers nominating under an RTS contract with Hunts Point specified as a Primary Point, regardless of the nominated Delivery Point.
2. Shippers nominating under an RTS contract with any point other than Hunts Point specified as a Primary Delivery Point, whose primary path

(continued...)

15. ConEd states that this definition of Eastchester Shipper does not provide (1) an objective method to determine whether a shipper's "primary path capacity" should be treated as having been "provided by the compression or piping installed as part of the Eastchester Expansion" for purposes of the second clause of the definition and (2) a definition of Eastchester Shipper applicable to interruptible shippers (with the exception of interruptible shippers nominating Hunts Point as the delivery point as noted in the definition of "Eastchester Shipper" in Sheet 48A). ConEd requests that Iroquois be required to provide clarification on these concerns in order to fully comply with the Commission's January 30 Order.

16. On March 17, 2004, Iroquois submitted an answer to ConEd's request for clarification. In its answer, Iroquois claims that its supplemental direct testimony provided additional and complete support on Eastchester "secondary access service" and how it relates to the priority of service of other firm and interruptible service. Iroquois asserts that the questions that ConEd raised in its request for clarification were actually initially raised by ConEd in its discovery requests filed on March 8, 2004, in the hearing proceeding initiated by the January 30, 2004 Order. Iroquois argues that to the extent that ConEd has any questions regarding Iroquois' rate filing, ConEd can submit discovery requests in accordance with the procedural schedule established by the Presiding ALJ, and Iroquois will provide its responses in accordance with the procedural schedule.

17. The Commission has previously approved the definition of "Eastchester Shipper" set forth in Iroquois' tariff, and Iroquois did not propose to modify that definition in the current proceeding. Clearly, firm shippers whose primary path includes Hunts Point, the terminus of the extension to Iroquois' pipeline, should be treated as Eastchester shippers and the definition in Iroquois' tariff so provides. Similarly, interruptible shippers receiving service in the Eastchester rate zone would be considered Eastchester shippers. However, since the Eastchester expansion included the construction of compressors in Zones 1 and 2 it also added capacity in those zones, and Iroquois' tariff includes an incremental fuel charge applicable to shippers receiving additional service in Zones 1 and 2 made possible by the addition of compression. The tariff definition of Eastchester shippers includes such Zone 1 and 2 shippers when it states that Eastchester shippers include shippers nominating under an RTS contract "with any point other than Hunts

capacity is provided by the compression or piping installed as part of the Eastchester Expansion, regardless of the nominated Delivery Point.

3. Replacement Shippers nominating under a capacity release contract utilizing capacity acquired from a Shipper meeting the criteria in #1 or #2 provided above.

4. Shippers nominating with Hunts Point as the Delivery Point.

Point specified as a Primary Delivery Point whose primary path capacity is provided by the compression or piping installed as part of the Eastchester expansion.”

18. The Commission recognizes that there may be disagreements as to precisely which Zone 1 and 2 shippers should be treated as having primary path capacity provided by the compression installed as part of the Eastchester expansion, and therefore the Commission finds that this issue may be further explored at hearing, as suggested by Iroquois. However, under no circumstances should shippers which entered into a firm FTS contract with Iroquois for service only in Zones 1 and 2 for service that commenced before the compressors for the Eastchester project were placed into service be treated as Eastchester shippers. Since there was sufficient capacity to serve those shippers absent the addition of compression, they did not benefit from the expansion and should not be subject to the incremental fuel charge at least for the term of their current contracts (so long as they do not obtain service in the Eastchester rate zone). Such a finding is consistent with the Commission’s policy, that existing shippers during the term of their respective contracts should not be required to pay for an expansion constructed to serve other customers.

19. Lastly, Iroquois has satisfactorily addressed the Commission’s concerns regarding its collection of \$6,575,716 in revenues related to Eastchester service prior to the commencement of service on February 5, 2004, by explaining that it was authorized to start operating the compressors included in the project before that date. In addition, with regard to the Commission’s direction that Iroquois perform a lead-lag study to support its claimed cash working capital allowance of \$121,156, Iroquois has satisfactorily explained that it is not in fact, requesting a cash working capital allowance. Therefore, no lead-lag study is required.

The Commission orders:

(A) Iroquois is directed to file revised tariff sheet(s) within 15 days of the date of issuance of this order, as discussed in the body of this order.

(B) The issues of secondary access rates and the definition of “Eastchester Shipper” and primary path are set for hearing in the ongoing hearing proceeding in this docket.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.