

107 FERC ¶ 61,092
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

April 30, 2004

In Reply Refer To:
Transcontinental Gas Pipe Line Corporation
Docket No. RP04-232-000

Transcontinental Gas Pipe Line Corporation
2800 Post Oak Boulevard
Houston, TX 77251-1396

Attention: Marg Carmardello
Manager, Tariffs and Certificates

Reference: Fourteenth Revised Sheet No. 250, First Revised Sheet No. 331, and Sheet No. 332 to FERC Gas Tariff, Third Revised Volume No. 1

Dear Ms. Carmardello:

1. On March 26, 2004, Transcontinental Gas Pipe Line Corporation (Transco) filed the referenced tariff sheets proposing to allow shippers to consolidate multiple service agreements under the same rate schedule for different contract demand quantities into a single service agreement to increase the administrative ease for the shippers by reducing the number of contracts to be managed. Transco's tariff sheets are accepted effective May 1, 2004, subject to modification and clarification.

Details of Filing

2. Transco is proposing to add a new section 22 to its General Terms and Conditions (GT&C) under which shippers may consolidate multiple service agreements under a rate schedule into a single service agreement under that rate schedule in a not unduly discriminatory manner. Section 22.1 provides the threshold requirements which must be met in order to consolidate the service agreements. The criteria are as follows: (1) the service agreements have the same contract path; (2) the service agreements are under the same rate schedule and have the same rate; (3) none of the service agreements pertain to capacity acquired through temporary capacity release; (4) the service agreements have the same termination date under the consolidated service agreement; and (5) the service agreements have no seasonal differences.

3. Providing that the above threshold requirements are met, Transco will agree to the consolidation of the service agreements subject to the following conditions as set forth in proposed section 22.2: (1) Transco's and the shipper's rights and obligations under the consolidated service agreements will be the same as their collective rights and obligations under the individual service agreements to be combined; (2) the consolidation will not affect Transco's ability to provide firm service to the shipper or other shippers; (3) the consolidation will not place an unreasonable burden or impose an adverse financial impact on Transco; and (4) any regulatory authorizations required to effectuate the consolidation are granted in a manner that is acceptable to Transco and the shipper.

4. Section 22.3 states that if termination of service agreements is required as part of the consolidation process, this termination will not initiate right of first refusal procedures, or initiate the procedures for allocating available firm capacity as set forth in Transco's tariff. Finally, section 22.4 states that consolidating service agreements will be done on a not unduly discriminatory manner.

Public Notice and Interventions

5. Public notice of Transco's filing was issued on March 30, 2004. Interventions and protests were due as provided in section 154.210 of the Commission's regulations.¹ Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, all timely motions to intervene and all motions to intervene out of time filed before the issuance of this order are granted.² Granting late intervention will not disrupt the proceeding or place additional burdens on existing parties. The Cherokee County Cogeneration Partners, L.P. (Cherokee), and Northeast Energy Associates (Northeast) filed out of time comments in this proceeding.

6. Cherokee and Northeast state that Transco has included certain safeguards designed to prevent an expansion of a shipper's rights due to a combination of contracts and to prevent such a combination from interfering with the services Transco provides to other shippers. Cherokee and Northeast state that these qualifications may be satisfied at the time the individual contracts are combined, however, there can be no complete assurance that future changes to Transco's tariff, or future changes in Transco's underlying operating conditions will not result in an alteration in the rights of the shipper whose contracts have been combined. Therefore, in order to eliminate this possibility, Cherokee and Northeast suggest the Commission should direct Transco to add a new section 22.4 which includes the following language as part of its tariff:

¹ 18 C.F.R. § 154.210 (2003).

² 18 C.F.R. § 385.214 (2003).

Seller may advise Buyers under previously combined service agreements that separate nominations are required, with such nominations subject to separate allocations, if Seller determines that separation is necessary to ensure that the rates, terms, and conditions applicable to each underlying component contract are distinctly maintained.

7. Cherokee and Northeast state that this proposed change will enable Transco to provide shippers a source of flexibility while at the same time ensuring that existing shippers will not be adversely impacted by this change. Cherokee and Northeast further state that similar language was approved by the Commission in Columbia Gas Transmission Corporation.³

8. In addition, Cherokee and Northeast are concerned with Transco's proposed language in section 22.3. Cherokee and Northeast state that in taking section 22.1(d) together with section 22.3, Transco and a shipper could "mutually agree" to extend the term of any service agreement as part of the "consolidation process" without triggering any requirement that the underlying capacity be made available to all interested shippers via an open season prior to any extension. Cherokee and Northeast request the Commission direct Transco (1) to clarify its intentions in this regard, and (2) file modified tariff language as necessary to preclude circumvention of the Commission's policies with respect to a shipper's right to retain capacity after the termination or expiration of contracts.

Answer of Transco

9. On April 22, 2004 Transco filed an answer to Cherokee's and Northeast's comments.⁴ Transco states that Cherokee and Northeast have not demonstrated that Transco's proposed section 22 is unjust and unreasonable. Transco also states that Cherokee and Northeast's proposed section 22.4 is unworkable, inappropriate, and unnecessary.

10. In response to Cherokee's and Northeast's request for a new section 22.4, Transco states that it is true that Transco's proposal is designed to achieve similar goals, i.e. administrative convenience in managing multiple service agreements, however, the method by which Transco will accomplish that consolidation is different from that of Columbia.

³ Columbia Gas Transmission System, 105 FERC ¶ 61,261 (2003).

⁴ While the Commission's Rules of Practice and Procedure generally prohibit answers to protests, the Commission will accept the answer to provide a better understanding of the issues in the proceeding. 18 C.F.R. § 385.213(a)(2) (2003).

11. Transco states that under Columbia's provisions, shippers are permitted to combine multiple service agreements under the same rate schedule with varying terms of service for different contract quantities into a single service agreement, and the terms of service and contract demand quantities for each service agreement to be combined are set forth in appendices to the single service agreement. As a result, the identities of each underlying component contract are distinctly maintained which enables Columbia to require separate nominations if the need arises.

12. Transco states that under its proposal the identity of "each underlying contract" will not be distinctly maintained. Transco states that if the proposed requirements of sections 22.1 and 22.2 are satisfied, Transco would amend one of the existing service agreements, or would exercise a new service agreement to reflect the consolidated capacity rights and terminate the remaining service agreements, or would execute a new service agreement to reflect the consolidated capacity rights and terminate the pre-existing service agreements. Transco further states that under its proposal, the amended or new service agreement will reflect only the consolidated rights and there will be no separate rights that could be nominated.

13. Further, Transco states that Cherokee's and Northeast's proposed section 22.4 is unnecessary. Transco states that under sections 22.2(a) and (b), it will permit consolidation if the rights and obligations under the consolidated agreement will be the same as the collective rights and obligations under the individual service agreements prior to consolidation. Transco states it would not permit consolidation if the consolidation would alter allocation priorities or would increase service rights through a constraint point.

14. In response to Cherokee's and Northeast's request for clarification, Transco states that section 44 of its existing tariff permits Transco and a Buyer to mutually agree to an extension of the term of a Part 284 service agreement.⁵ In approving the provisions of section 44 Transco states the Commission found "that the proposal will provide an opportunity for existing customers and Transco to work out mutually agreeable

⁵ Section 44 provides the following:

Prior to the expiration of the term of a Part 284 service agreement and prior to Seller's posting the availability of capacity under Seller's Right of First Refusal provisions, if applicable, Seller and Buyer may mutually agree to an extension of the term of the service agreement (the exact length of which is to be negotiated on a case-by-case basis, in a not unduly discriminatory manner).

extensions of existing Part 284 service agreements.”⁶ Transco states that the Commission observed in approving section 44 that “any negotiations for an extension of capacity must be finalized prior to” the posting of the capacity subject to the service agreement as “available capacity” under the terms of Transco’s tariff.

15. In regard to service provided under part 157 of the Commission’s regulation, Transco states that absent a specific condition to the contrary in the NGA section 7(c) certificate authorizing service, Transco and a Buyer may negotiate an extension of the term of a Part 157 service agreement prior to the implementation of any abandonment authorization for that service granted by the Commission.

16. Transco also states in order to implement the consolidation of service agreements that termination of a service agreement is required as part of the consolidation process, which will not initiate right-of-first-refusal procedures, or initiate the procedures for allocating available firm capacity as set forth in section 49 of the General Terms and Conditions, since the capacity rights subject to the terminated service agreements will be consolidated under the amended or new service agreement.

Discussion

17. We will accept Transco’s tariff sheets effective May 1, 2004 subject to modification and clarification as discussed below. Transco’s answer generally responds to the concerns posed by Cherokee and Northeast. Transco’s proposal provides Transco’s customers with a means of consolidating multiple service agreements into a single service agreement in order to simplify the administration of multiple service agreements. Additionally, Transco’s threshold criteria and conditions to combine service agreements are narrowly tailored and should prevent the shipper from being adversely affected.

18. We also find that part of Transco’s consolidation threshold requirement, i.e., requiring service agreements to have the same contract path, should ensure that the allocation priority or service rights through a constraint point will not be altered as a result of the service agreement consolidation.

19. With regard to the concern that the combining of service agreements could prevent underlying capacity to be made available in an open season, Transco explains in its answer that section 44 of its GT&C (Extension of Service Agreement) permits the extension of service agreements on a case by case basis, in a not unduly discriminatory manner. Since Transco’s tariff provisions do permit Transco to extend service agreements, in a not unduly discriminatory manner, Transco is directed to include a

⁶ 87 FERC ¶ 61,109 at 61,434 (1999).

reference to section 44 in its proposed section 22.1 to provide all parties a further reference to this fact.

20. Lastly, one of the conditions set forth in section 22.2(a) for combining contracts states that the Buyer's and Seller's rights and obligations under the consolidated service agreement will be the same as Buyer's and Seller's collective rights and obligations under the individual service agreements prior to consolidation. This provision, however, is incomplete. The new service agreement, or the amended service agreement, along with the GT&C should set forth all of the rights of a shipper. Therefore, Transco is directed to revise its tariff to require that all rights and obligations specified in the individual service agreements must be specified in the consolidated service agreement.

21. Transco is directed to file its clarification and modification within 10 days of the issuance of this order.

By direction of the Commission. Commissioner Kelly is not participating.

Linda Mitry,
Acting Secretary.