

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Transcontinental Gas Pipe Line Corporation

Docket No. IN02-1-002

ORDER GRANTING REQUEST FOR LIMITED WAIVER
OF STIPULATION AND CONSENT AGREEMENT

(Issued October 8, 2004)

1. The Commission grants the request of Transcontinental Gas Pipe Line Corporation (Transco), through its agent Williams Power Company (Williams Power), for a limited waiver of Part IV, Paragraph 3.c of the Stipulation and Consent Agreement¹ (Consent Agreement) between the Office of Market Oversight and Investigations' Division of Enforcement (Enforcement) and Transco, Williams Power (then named Williams Energy Marketing & Trading Company (WEM&T)), and The Williams Companies, Inc. (collectively, Transco, *et al.*).

2. The limited waiver would allow Transco, with Williams Power as agent, to provide firm, open access sales service under Transco's Rate Schedule NS to two entities, the Delaware Division of Chesapeake Utilities Corporation and the Maryland Division of Chesapeake Utilities Corporation (collectively, the Chesapeake Utilities). The Chesapeake Utilities previously purchased bundled sales service from Eastern Shore Natural Gas Company (Eastern Shore). In turn, Transco, using Williams Power as agent, provided Eastern Shore with a firm sales service, bundled with transportation and storage service, pursuant to Rate Schedule FS service agreements. The FS service agreements were not open access agreements: the Commission approved them on a case-specific basis. Eastern Shore no longer offers bundled service, having established an open access

¹ *Transcontinental Gas Pipe Line Corp.*, Order Approving Stipulation and Consent Agreement and Requiring Payment of Civil Penalty, 102 FERC ¶ 61,302 (2003).

tariff² in compliance with Order No. 636.³ The Commission approved Transco's abandonment of its Rate Schedule FS service to Eastern Shore in Docket No. CP02-99-000.⁴ The Commission later clarified that Transco may offer the abandoned capacity under Rate Schedule NS to the Chesapeake Utilities, in Docket No. CP02-99-001, in a February 4, 2003 Order.⁵

3. On the record in this matter, the Commission's grant of the requested limited waiver is in the public interest because the limited waiver furthers the Commission's open access policies in Order No. 636 by facilitating Eastern Shore's establishment of its open access tariff and by effectuating Transco's conversion of its sales service to Eastern Shore under bundled, case-specific certificate authority to sales service to the Chesapeake Utilities under open access authority.

Background

The Consent Agreement

4. Transco, *et al.* and Enforcement entered into the Consent Agreement to resolve Enforcement's allegations relating to an investigation of apparent violations by Transco of the Natural Gas Act, 15 U.S.C. §§ 717 *et seq.* (2000), the Natural Gas Policy Act of

² *Eastern Shore Natural Gas Co.*, 81 FERC ¶ 61,013 (1997).

³ Pipeline Service Obligations and Revisions to Regulations Governing Self-Implementing Transportation Under Part 284 of the Commission's Regulations, and Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol, Order No. 636, 57 Fed.Reg. 13,267 (1992), FERC Stats. & Regs., Regulations Preambles 1991-1996 ¶ 30,939 (1992), *order on reh'g*, Order No. 636-A, 57 Fed. Reg. 57,911 (1992), FERC Stats. & Regs., Regulations Preambles [1991-1996] ¶ 30,950 (1992), *order on reh'g*, Order No. 636-B, 61 FERC ¶ 61,272 (1992), *reh'g denied*, 62 FERC ¶ 61,007 (1993), *aff'd in part and remanded in part*, *United Distribution Co. v. FERC*, 88 F.3d 1105 (D.C. Cir. 1996), *on remand*, Order No. 636-C, 78 FERC ¶ 61,186 (1997), *cert. denied*, *Associated Gas Distributors v. FERC*, 520 U.S. 1224, 117 S.Ct. 1723 (1997), *order on reh'g*, Order No. 636-D, 83 FERC ¶ 61,210 (1998).

⁴ *Transcontinental Gas Pipe Line Corp.*, 100 FERC ¶ 61,309 (2002), Order Denying Rehearing and Granting Clarification, 102 FERC ¶ 61,120 (2003).

⁵ *Transcontinental Gas Pipe Line Corp.*, 102 FERC ¶ 61,120. The Commission found that the effective date of Transco's abandonment of the Rate Schedule FS service to Eastern Shore would be the date on which Transco and the Chesapeake Utilities execute service agreements under Rate Schedule NS. *Id.* at PP 6-7.

1978, 15 U.S.C. §§ 3301 *et seq.* (2000), and various Commission regulations, primarily the Commission's standards of conduct for interstate pipelines with marketing affiliates, 18 C.F.R. Part 161 (2002). Enforcement alleged in the Consent Agreement that Transco, among other things, allowed certain WEM&T employees to have access to nonaffiliated customers' data, without contemporaneously making those data available publicly, and allowed a WEM&T scheduling optimization program to have access to Transco databases, without allowing nonaffiliated customers' optimization programs to have such access. Transco, et al. stated in the Consent Agreement that it neither admitted nor denied the allegations.

5. Part IV of the Consent Agreement sets forth the civil penalties and remedies to which Transco, et al. agreed to resolve the allegations. Of relevance here, Paragraph 3.c of Part IV prohibits Williams Power from, among other things, entering into agency agreements with respect to transportation capacity on Transco held by new sales customers.⁶ Other relevant provisions of Part IV are: Paragraph 3.b.1, which states that an entity subject to Paragraph 3.a., such as Williams Power, may acquire transportation capacity on Transco that is released by another nonaffiliated shipper; Paragraph 2.a, which states that Transco shall notify its FS customers by April 1, 2003, that, effective April 1, 2005, Transco intends to terminate Rate Schedule FS service; and Paragraph 2.b, which states that Transco may execute NS service agreements to sell gas that Transco is obligated to purchase under its gas purchase contracts that remained as of March 17, 2003.

The Current Request

6. On December 5, 2003, Transco, with Williams Power as agent, filed a request that the Commission grant a limited waiver of Part IV, Paragraph 3.c of the Consent Agreement, to permit Transco, with Williams Power as agent, to execute Rate Schedule NS sales agreements with the Chesapeake Utilities. Transco attached to its request copies of proposed NS service agreements with the Chesapeake Utilities in which Transco "by and through its agent" Williams Power is identified as "Seller." In Article IV of each proposed NS agreement, Buyer appoints Seller as Buyer's agent for the purpose of arranging for the transportation on Transco, pursuant to Transco's Rates Schedules FT and IT, of gas sold to Buyer under the agreement. In Article IV of each proposed NS agreement, Buyer also appoints Seller as Buyer's exclusive agent for purposes of managing storage services, formerly bundled in Transco's FS service, that Transco would provide to Buyer under Rate Schedule ESS.

⁶ Paragraph 3.c. places this prohibition on any entity "subject to Paragraph 3.a. of Article IV." 102 FERC at 61,961. Paragraph 3.a. refers to WEM&T as one of the entities subject to it. *Id.* Pursuant to Paragraph 9 of Part V of the Consent Agreement, Williams Power, as successor of WEM&T, is subject to the Consent Agreement. 102 FERC at 61,963.

7. Transco asserts that execution by Williams Power, as agent for Transco, of the proposed NS sales agreements would constitute “transactions with new sales customers” that Williams Power is permitted pursuant to Paragraph 3.c. of Part IV of the Consent Agreement. However, Transco argues that without a waiver of Paragraph 3.c’s prohibition of agency agreements with respect to such new sales customers’ transportation service on Transco, the Consent Agreement would preclude the agency arrangements as to Rates Schedules FT, IT and ESS set forth in Part IV of the proposed NS agreements.

8. Transco argues that a waiver of Paragraph 3.c’s prohibition on marketing affiliates of Transco entering into agency agreements relating to new sales customers’ transportation capacity on Transco is appropriate to allow the execution of the two NS agreements because they will replace existing Rate Schedule FS service provided by Transco to Eastern Shore. Further, according to Transco, the two NS agreements are for sales of lower maximum daily quantities than the Rate Schedule FS service, so the agreements will decrease the level of Transco’s sales service that includes agency arrangements on the Transco system provided by Williams Power as agent for Transco.

9. Transco also asserts that the execution of the two agreements is supported by Paragraph 3.b.1, which allows marketing affiliates of Transco to acquire capacity released by a non-affiliated shipper; Paragraph 2.a, which states Transco’s intention to terminate Rate Schedule FS by April 1, 2005; and Paragraph 2.b, which allows Transco to execute NS service agreements to sell gas that Transco is obligated to purchase under remaining gas purchase contracts.

10. Transco further states that the requested waiver will be in effect only until October 31, 2004, as Transco has informed the Chesapeake Utilities that Transco intends to terminate the two agreements on that date, the end of their primary term.

Interventions

11. Eastern Shore and the Chesapeake Utilities submitted timely motions for leave to intervene, expressing support for Transco’s request. No protests or adverse filings were submitted. Timely, unopposed motions to intervene are granted by operation of Rule 214 of the Commission’s Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2004). Therefore, the motions to intervene of Eastern Shore and the Chesapeake Utilities are granted.

Discussion

12. As stated above, Paragraph 3.c of Part IV of the Consent Agreement prohibits Williams Power from entering into agency agreements with respect to new sales customers' transportation capacity on Transco.⁷ Execution of the agreements with the Chesapeake Utilities that are attached to Transco's request would represent Williams Power entering into agency agreements with respect to new sales customers' transportation capacity on Transco.

13. To foster open access under Order No. 636, the Commission encourages pipelines' establishment of open access tariffs and the conversion of bundled service or contract-specific service into open access service.⁸ This policy applies to Transco's Rate Schedule FS service.⁹ Consistent with this policy, Paragraph 2.a of Part IV of the Consent Agreement states that Transco intends to terminate its bundled Rate Schedule FS service effective April 1, 2005.¹⁰ Granting the requested waiver will facilitate Transco's termination of its Rate Schedule FS service by allowing for the conversion of the Rate Schedule FS service agreements between Eastern Shore and Transco, on behalf of the Chesapeake Utilities, into Rate Schedule NS service agreements between the Chesapeake Utilities and Transco. By effectuating the NS service agreements, the requested waiver will reduce the overall level of firm sales service that Transco undertakes pursuant to agency arrangements with Williams Power. Moreover, because the Commission clarified, prior to the execution of the Consent Agreement and its approval by the Commission, that Transco may offer NS service to the Chesapeake Utilities, the requested waiver is appropriate to enable the Chesapeake Utilities to receive that service from Transco.

The Commission finds:

The limited waiver requested by Transco of Part IV, Paragraph 3.c of the Consent Agreement, as it applies to executing the Rate Schedule NS service agreements with the Chesapeake Utilities, is in the public interest.

⁷ 102 FERC at 61,961.

⁸ See Order No. 636; see also *Transcontinental Gas Pipe Line Corp.*, 63 FERC ¶ 61,194 (1993) (Transco's Order No. 636 compliance proceeding).

⁹ *Transcontinental Gas Pipe Line Corp.*, 102 FERC ¶ 61,120 at P 5 (2003).

¹⁰ 102 FERC ¶ 61,302 at 61,961.

The Commission orders:

Paragraph 3.c. of Part IV of the Consent Agreement is waived on the limited basis described in this order.

By the Commission.

(S E A L)

Linda Mitry,
Acting Secretary.