UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Transcontinental Gas Pipe Line Corporation Docket No. RP01-245-016

ORDER ON REHEARING, REMANDING ISSUE FOR FURTHER HEARING AND ESTABLISHING TECHNICAL CONFERENCE

(Issued May 30, 2006)

1. On August 5, 2005, the Commission issued an order on rehearing of an order on initial decision in Transcontinental Gas Pipe Line Corporation's (Transco) general section 4 rate proceeding.[1] This order addresses a number of requests for rehearing concerning the Station 85 pooling point, the allocation of storage costs, the unbundling of the Emergency Eminence Storage Service, the rate treatment of electric power costs for the South Coast expansion, the conversion of GSS and LSS storage service to Part 284 service, and replacement shippers' ability to contingency rank services.[2] With respect to the allocation of certain storage costs between and among storage and transportation services, the order remands the issue to the Chief Administrative Law Judge (ALJ) to appoint an ALJ for a further hearing. This order also establishes a technical conference

[1] *Transcontinental Gas Pipe Line Corporation*, 112 FERC ¶ 61,170 (2005). A full procedural history and background of the case can be found in the December 3, 2002 initial decision, *Transcontinental Gas Pipe Line Corporation*, 101 FERC ¶ 63,022 (2002), and the March 26, 2004 Order on initial decision, *Transcontinental Gas Pipe Line Corporation*, 106 FERC ¶ 61,299 (2004).

[2] Requests for rehearing were filed by Transco, Consolidated Edison Company of New York, Inc. (ConEd) and Philadelphia Gas Works (PGW), Indicated Shippers, KeySpan Delivery Companies (KeySpan), SCANA Energy Marketing, Inc. (SCANA). A request for clarification was filed by Piedmont Natural Gas Company, Inc. (Piedmont).

to address the issue of the appropriate method of conducting pooling in Transco's Zone 4. The order finds that there are certain aspects of the operation of the current Zone 4 pool at Station 85 that are unclear from the present record. A technical conference will provide an opportunity to clarify the present operation of the Station 85 pooling point and consider whether improvements could be made in the way pooling is conducted in Zone 4.

Discussion

Unbundling of the Emergency Eminence Storage Withdrawal Service

2. Transco's Eminence storage facility in Covington, Mississippi is an underground, salt dome storage field with a working capacity of 15 Bcf, daily withdrawal capability of 1.5 Bcf, and daily injection capability of 0.1 Bcf. The Eminence facility is used to provide two separate services. The first is a contract storage service under Rate Schedule ESS (Eminence Storage Service). The second is the Emergency Eminence Storage Withdrawal Service which is embedded in the FT service of FT shippers. Section 6 of Rate Schedule FT governs the Emergency Eminence Withdrawal Service and provides that it is available to shippers that have transportation entitlements at the point on Transco's mainline system where the mainline facilities and the Eminence facilities interconnect, as a backup supply during *force majeure* events.

3. In this proceeding, the Commission directed Transco to unbundle the Emergency Eminence Service currently embedded in the FT rate schedule from the FT service and put it into a separate rate schedule so that shippers with transportation entitlements at Covington can decide whether to take the service, whereas previously they had to take the service. The Commission found that the bundling of the Emergency Eminence Service with the FT service was unjust and unreasonable and that there were no operational justifications for continued bundling of the service.

4. The August 5, 2005 Order, however, granted Transco's request that each FT shipper with entitlements at Covington be required to subscribe to a proportionate share of the unbundled Emergency Eminence Service until the termination of the underlying FT contract from which Eminence Service is unbundled. FT shippers originally entered into FT service agreements including the embedded Emergency Eminence service as part of the Rate Settlement in Docket No. RP87-7-000, which the Commission approved in 1991.[3] The August 5, 2005 Order found that both the Rate Settlement and the FT Service

[3] *Transcontinental Gas Pipe Line Corporation*, 55 FERC ¶ 61,446 (1991), *reh'g*, 59 FERC ¶ 61,279 (1992), *affirmed in part and remanded in part, Elizabethtown Gas Co. v. FERC*, 10 F.3d 866 (D.C. Cir. 1993).

agreements permitted changes pursuant to the just and reasonable standard and that there was sufficient evidence to find that the continued bundling of the Emergency Eminence Storage service is unjust and unreasonable. However, the Commission did not believe there was sufficient evidence to support section 5 action to permit the existing FT customers to terminate their current contractual commitments to purchase the Emergency Eminence Storage service before the expiration of those commitments. The Commission found that Transco's proposal would be a reasonable transition until the underlying FT contracts expire and shippers are given the opportunity to decide whether they want to sign up for the unbundled Emergency Eminence Storage service. Transco's proposal will also avoid the possibility of Transco having to absorb up to $13 million in annual costs related to the Emergency Eminence Service if the existing FT customers were allowed to terminate their current contractual obligations to take that service at this time.

5. KeySpan requests clarification that the Commission's order means that Transco will be required to provide its affected FT customers with separate contracts for Emergency Eminence Service and FT service, and that those separate contracts will have concurrent primary terms consistent with the underlying terms of the existing bundled service agreements. KeySpan asserts that the significance of this clarification is that it will ensure that shippers are able to terminate their Emergency Eminence Service agreements at the expiration of the primary term (or at any time thereafter as provided in the agreement) without terminating the associated FT agreement.

6. KeySpan states that Transco's existing FT agreements generally contain a primary term and an "evergreen" clause, which states that the agreements continue beyond the primary term unless terminated upon at least three years' written notice. KeySpan states that following the unbundling of the Emergency Eminence Service, it does not object to executing a service agreement for that service that contains the same primary term and evergreen clause as its current FT service agreements. KeySpan contends that such a result is consistent with the August 5, 2005 Order. KeySpan submits that since the intent of unbundling is to provide customers with greater choices, it should not be required to terminate its FT agreement in order to terminate or modify its Emergency Eminence Service Agreement.

7. Piedmont also seeks clarification that the Commission's requirement that "each FT shipper with entitlements at Covington be required to subscribe to a proportionate share of the unbundled Emergency Eminence Service until the termination of the underlying FT contract"[4] means until the initial term of such FT contract is completed. Piedmont

[4] Transcontinental Gas Pipe Line Corporation, 112 FERC ¶ 61,270, at P 122 (2005).

asserts that a literal reading of the Commission’s decision on rehearing would mean existing customers like Piedmont would be compelled to pay for unwanted EES service in perpetuity because they could not afford to terminate their FT contracts with Transco. Piedmont submits that a requirement for Transco to unbundle EES service that can never be implemented as a practical matter is not meaningful. Piedmont argues that if the trigger for complete unbundling of EES service is the termination of underlying FT contracts, then it is difficult to perceive how the Commission’s decision provides for unbundling at all with respect to existing shippers. Piedmont contends that the Commission’s requirement that existing FT shippers be required to subscribe to a proportionate share of “unbundled” EES service until the termination of their respective FT contracts is unduly discriminatory because it creates obligations on existing FT shippers that will not be placed on new Transco FT shippers.

8. Transco filed an answer to the requests for clarification of KeySpan and Piedmont. Transco asserts that KeySpan’s and Piedmont’s requests are unsupported and are not a clarification of the August 5, 2005 Order. Transco asserts KeySpan and Piedmont are seeking a fundamental change to the August 5, 2005 Order.

<u>Commission Decision</u>

9. Upon further review of the August 5, 2005 Order’s discussion concerning the unbundling of the Emergency Eminence Service, the Commission finds that its decision can be subject to different interpretations and, therefore, clarification is required. KeySpan and Piedmont are concerned with the language in the order which states that the affected shippers must take “a proportionate share of the unbundled Emergency Eminence Service until the <u>termination</u> of the underlying FT contract” (Emphasis added). They are concerned that the unbundling decision would be meaningless if termination were the triggering factor because shippers such as KeySpan and Piedmont do not want to terminate their FT contracts. The Commission did not intend to require that existing FT shippers terminate their FT service altogether, in order to stop taking the unbundled Emergency Eminence Service. Such a requirement would leave the existing FT shippers with only two choices: either take both the FT service and the Emergency Eminence Service or take neither service. That would effectively nullify the Commission's decision to unbundle the Emergency Eminence Service from the associated FT transportation service in order to give shippers the choice of which services to purchase, with respect to existing FT shippers.

10. In the August 5 Order, the Commission found that there was not “sufficient evidence to support section 5 action to permit the existing FT customers to terminate their *current contractual commitments* to purchase the Emergency Eminence Storage Service

before the *expiration of those commitments* [emphasis supplied]."[5] The Commission explained that the FT customers had freely entered into the FT contracts containing the embedded Emergency Eminence Storage Service and Transco had made certain investments in reliance on those contracts. Therefore, requiring existing FT customers to continue to take the Emergency Eminence Storage Service "would be a reasonable transition until the underlying FT contracts expire and shippers are given the opportunity to decide whether they want to sign up for the unbundled Emergency Eminence Storage Service."[6]

11. In this order, the Commission clarifies that an existing FT shipper's "current contractual commitments" will "expire" when its current contract reaches the end of its initial or primary term, and the FT shipper has given the contractually required notice to terminate the contract. At such time, each existing FT shipper must, consistent with the August 5 Order, be given the opportunity to decide whether it wants to continue to take the unbundled Emergency Eminence Storage Service. The Commission finds that allowing the existing FT shippers to stop taking the Emergency Eminence Storage Service when their current contractual commitments expire is consistent with any reasonable reliance interest Transco may have had at the time it agreed to the Rate Settlement. That is because the Rate Settlement permitted the Commission to order the instant change in the Emergency Eminence Storage Service pursuant to the just and reasonable standard and permitted the FT shippers to terminate their contracts after giving the contractually required notice at the end of the primary terms of those contracts.

12. In order to implement this decision, the Commission orders Transco to break the existing FT shippers' bundled FT contracts into (1) an Emergency Eminence Service contract requiring the proportionate share commitment discussed in the order and (2) an unbundled FT contract. Both of these contracts will have initial terms and notice of termination provisions consistent with each FT shipper's current bundled FT contract. At the end of the initial term, shippers can decline to renew their Eminence contracts, while still being able to retain and renew the unbundled FT contract. This is a reasonable balance that will allow affected shippers to decide whether they want to retain an unbundled Eminence Service while giving Transco a reasonable transition period to full unbundling without having to absorb stranded costs if shippers were allowed to immediately terminate their Eminence contracts. Accordingly, the Commission grants the requests for clarification filed by KeySpan and Piedmont, as discussed above.

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[5] *Id.*

[6] *Id.*

Limited Part 284 Conversion of Certain Bundled Storage Services

13. Following its restructuring consistent with Order No. 636, Transco continued to provide a number of individually certificated, bundled storage and transportation services pursuant to Part 157 of the Commission's regulations. Transco provides these services in its market area, under Rate Schedules GSS and LSS. The storage facilities used for these services are located in Pennsylvania at the western end of Transco’s Leidy Line. The bundled transportation services provide for transportation from the storage fields to the GSS and LSS customers’ delivery points in Zones 4-6. For both the GSS and LSS services, Transco performs a so-called “middleman role.” In this role, it acts as operator for its customers of the two services, scheduling use of the services with the pipelines that operate the storage fields, based on overall system requirements, using the aggregate contract rights of its customers who contract for the services. All of Transco’s firm transportation customers receive no-notice service under Rate Schedule FT and there is no requirement that they have GSS or LSS storage service in order to receive no-notice service under Rate Schedule FT. No-notice customers are permitted to take any amount of gas from the system up to the aggregate daily maximum contract quantities, regardless of the amount they scheduled, without incurring daily scheduling or imbalance penalties. Transco also does not require its customers to take gas at uniform or other prescribed hourly rates during the day. When the GSS customers are not using the GSS transportation capacity, Transco uses it to transport gas from its storage facilities to the city gates, and vice versa, to accommodate the hourly and daily swings in customers’ demand and to restore or reduce line pack.

14. In this proceeding, there were two proposals with respect to the conversion of certain bundled storage services. Several shippers requested that Transco be required to give its customers the option of converting their GSS storage service entitlements to unbundled open access storage and transportation service under Part 284. As pertinent here, SCANA requested a more limited type of Part 284 conversion. SCANA mainly wanted the right to release GSS and LSS storage capacity pursuant to Part 284 but stated that it would not be opposed to incorporating as many characteristics of Part 284 service to the GSS and LSS conversion as was operationally feasible and in the public interest. The Commission denied the requests for both the full and limited Part 284 conversion of the GSS and LSS storage services. The Commission found that no party had met their section 5 burden of showing that the existing GSS and LSS services were unjust and unreasonable and that their proposals were just and reasonable. The Commission recognized that while the Commission’s policy favors the unbundling of services, the Commission has allowed the continuation of bundled services where there are countervailing considerations. The Commission found such countervailing considerations here, on the ground that unbundling and conversion of Transco’s GSS and LSS services to Part 284 service would compromise its operational flexibility and

Transco's ability to perform no-notice service in the manner that it performs it today, for example, by allowing hourly and daily flexibility.

15. SCANA asserts that the Commission erred by failing to apply its prior findings that bundled service is *per se* unjust and unreasonable thus misallocating the burden of proof on the issue of whether shippers should have the option of converting GSS and LSS storage service to Part 284 service. SCANA asserts that the GSS and LSS service should be converted to Part 284 with all Part 284 characteristics which are operationally feasible. SCANA asserts that Transco's strongest reason for not pursuing conversion to Part 284 has been that it performs a "middleman" role, and that if GSS and LSS storage customers were to receive full receipt and delivery point flexibility and segmentation rights for the transportation capacity currently bundled with GSS and LSS service, Transco may not be able to offer existing customers their present level of flexibility and reliable service. However, SCANA asserts that under its proposal, Transco would convert GSS and LSS to Part 284 in the same manner as it converted LGA service. SCANA contends that it would limit any point flexibility or segmentation rights so that Transco would only grant such rights after it studied its system to determine that the flexibility of other customers would not be affected. SCANA contends that much of the record evidence on the Part 284 conversion was directed toward the PECO proposal which included full point flexibility and segmentation rights for the transportation element of GSS and LSS service. However, SCANA argues that because its plan limits such rights to the extent Transco considers necessary for operational concerns, these concerns have been fully met.

Commission Decision

16. On rehearing, SCANA has simply reiterated and repackaged arguments that it has already made in this proceeding. The Commission properly found that SCANA, as well as other proponents of Part 284 conversion, did not meet their burden of proof under section 5 of the NGA of showing that Transco's current bundled GSS and LSS storage services were unjust and unreasonable and that their proposals were just and reasonable. The Commission recognized that, while its policy is that unnecessary bundling of services is unjust and unreasonable, there may be countervailing considerations which would allow the continuation of bundled services. Such circumstances were found here. As the Commission stated in the August 5 Order, Transco provides no-notice service to all FT customers, regardless of whether they contract for GSS, LSS or other storage service. FT customers receive the benefit of not being subject to imbalance or scheduling penalties. The Commission further found that this flexibility is possible because of Transco's middleman role where it is able to use the transportation embedded in the GSS and LSS services when its customers are not using it.

17. SCANA again reiterates is contention that limiting point flexibility and segmentation rights as was done with respect to the conversion of LGA service would alleviate concerns about adverse impacts on the Transco system. As the Commission already stated in the August 5, 2005 Order, conversion of the LGA service was voluntary and not protested. The LGA service was an LNG delivery service that was used during the winter period by a limited number of customers that does not have the impact on system-wide operational flexibility as a Part 284 conversion of the GSS and LSS services. Further, limitations on segmentation and point flexibility do not address all the concerns with respect to Part 284 conversion of GSS and LSS service. As the Commission found, "permitting GSS and LSS customers to release the transportation component of GSS service would reduce Transco's access to the GSS transportation capacity which enables Transco to move gas around its system to support no-notice customers' hourly and daily swings particularly during the winter months."[7] While SCANA does not emphasize it here, its main goal in trying to obtain a conversion of GSS service to Part 284 service is to obtain capacity release rights. As SCANA stated in its April 26, 2004 request for rehearing in this proceeding, "[w]hile SCANA only needs these services to be releasable, SCANA would not oppose the Commission incorporating as many characteristics of Part 284 open access transportation to the GSS and LSS conversion as the Commission determines to be in the public interest."[8] SCANA's arguments on rehearing have already been fully addressed in this proceeding, and, accordingly, its request for rehearing is denied.

<u>Replacement Shippers' Ability to Contingency Rank Services</u>

18. Contingency ranking is a means of allocating to particular shippers and services any differences between actual deliveries at a point and the amounts that were scheduled to be delivered. This enables Transco to bill shippers appropriately for services received and determine who may incur penalties or must cash out imbalances. SCANA sought a modification to Transco's tariff to ensure that all shippers, including replacement shippers, were eligible to contingency rank their storage assets and not just delivery point operators.

19. In this proceeding, the Commission reversed the ALJ, finding that the initial decision's holding that Transco must modify its tariff to allow replacement shippers to contingency rank Part 284 services is flawed. The Commission stated that the ALJ failed

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[7] Transcontinental Gas Pipe Line Corporation, 112 FERC ¶ 61,270, at P 18 (2005).

[8] April 26, 2004 Request for Rehearing of South Carolina Pipeline Corporation and SCANA Energy Marketing, Inc. at 11.

to take into account the operational considerations of why contingency ranking rights are limited to delivery point operators. The Commission stated that Transco transfers physical custody of gas volumes to delivery point operators at delivery points. For this reason, the delivery point operator "is responsible for confirming the flows of gas entering its system, ranking the gas that flows into its system, and contingency ranking third party gas and/or its own transportation and storage services." Ex. T-52 at 36. The Commission stated that when there is a difference between the amount scheduled to be delivered at a particular delivery point and the amount actually delivered, the difference is simply an overall amount that, in the first instance, is attributable only to the delivery point operator. This is because the only measurement that Transco has is a measurement taken at the delivery point operator's city gate of the total deliveries taken off Transco's system and accepted onto the downstream facilities. Therefore, the Commission found that there has to be one person with the ultimate authority to decide how to divide the overall difference between scheduled and actual deliveries among shippers and their services. This person is the delivery point operator since it controls and confirms the flows entering its downstream facilities.

20. The Commission stated that a replacement shipper that is not a delivery point operator lacks a physical delivery point and is not responsible for confirming flows. The Commission stated that by failing to address the operational justification for limiting contingency ranking rights to delivery point operators, the ALJ failed to show that Transco's current tariff is unjust and unreasonable. The Commission stated that the ALJ's determination that all shippers should have contingency ranking rights is based only on facts related to a unique circumstance – the unbundled retail market behind the AGL delivery points on the Transco system. The Commission found that it would not be appropriate to make changes to Transco's tariff that would apply throughout the entire system based on evidence alleging that contingency ranking could work based on certain limited circumstances affecting only a limited geographic area on Transco's system, *i.e.*, its interconnection with AGL.

21. In its August 5, 2005 Order, the Commission affirmed that contingency ranking is not a right that belongs to all no-notice shippers on Transco's system and is therefore not transferable to replacement shippers. The Commission stated that contingency ranking rights are limited to delivery point operators for various operational reasons. The Commission also found that SCANA's issue was largely moot, because SCANA's request for contingency ranking rights was premised on the Commission granting its request for partial unbundling of the GSS and LSS service to permit Atlanta Gas Light to release those storage services to Georgia marketers, including SEMI, a Georgia marketer owned by SCANA. The Commission stated that SCANA desired contingency ranking so that if SEMI were able to obtain a capacity release from Atlanta of GSS/LSS service, SEMI could contingency rank its GSS service. However, SEMI would have no need or

purpose for contingency ranking rights without GSS capacity. The Commission stated that, without GSS capacity, the only service SEMI receives from Transco is the FT service Atlanta releases to it. Thus, it has only one service that can be allocated any difference between actual and scheduled deliveries, rendering contingency ranking of several services a moot issue. Moreover, the Commission pointed out that, as an FT replacement shipper, SEMI gets no-notice service on Transco, which includes no imbalance or scheduling penalties. SEMI receives the same no-notice service that Atlanta has and its service will be first through the meter with the result that it incurs no imbalances on Transco's system. The Commission stated that the problem that SEMI faces is that Atlanta charges for imbalances on Atlanta's system. Atlanta calculates the difference between receipts onto Atlanta's system and deliveries to SEMI's retail customers and charges for imbalances accordingly. The Commission found that this is a problem beyond the Commission's jurisdiction, since it involves imbalances on Atlanta and not on the Transco system.

22. On rehearing, SCANA asserts that the Commission erred in overturning the ALJ's ruling that replacement shippers must be provided the right to contingency rank services. SCANA contends that the Commission was incorrect in finding the contingency ranking issue largely moot because it did not permit the conversion of the GSS and LSS services. SCANA states that Atlanta Gas Light releases WSS storage capacity to SCANA and therefore SEMI could purchase other storage services from Transco on an open access basis. SCANA also asserts that it is incorrect to dismiss contingency ranking as affecting only one geographical area, Georgia, when retail restructurings are occurring in Pennsylvania and New Jersey. SCANA contends that it is important to establish the scope of contingency ranking and no-notice rights to foster these pro-competitive programs.

23. SCANA asserts that Transco's refusal to allow a replacement shipper to designate the replacement shipper's own storage account prevents replacement shippers from receiving no-notice flexibility. SCANA asserts that there are two elements necessary for a replacement shipper to have its imbalance served by Transco's no-notice service. First, the delivery point operator (for example, Atlanta Gas Light) must report the volumes it has allocated to each shipper at the delivery point in a manner that attributes at least some of any imbalance to the replacement shipper. If the delivery point operator assumes third party volumes are "first through the meter," then any imbalance will almost certainly be attributed to the delivery point operator, rather than third parties such as the replacement shipper. However, SCANA states that state commissions can order LDC delivery point operators such as Atlanta Gas Light to allocate delivered volumes by different methods that would attribute imbalances to third parties (for example *pro rata*), including replacement shippers. The second element SCANA states is necessary for a replacement shipper to have its imbalance served by Transco's no-notice service is that Transco must

permit the replacement shipper to have any imbalance attributed to it credited or debited to its own storage account. SCANA accordingly asks the Commission to require Transco to allow a replacement shipper to designate its own storage account for this purpose, so that state commissions can address the first element.

24. SCANA also contends that contingency ranking does not arise in the normal section 5 context because Transco's tariff does not contain any provision which limits contingency ranking to point operators. SCANA submits that while section 18.1 of Transco's General Terms and Conditions (GT&C) requires delivery point operators to designate a contingency ranking sequence, the tariff in no way prohibits other parties from also designating a sequence. SCANA argues that if Transco seeks to enforce a restriction limiting contingency ranking to delivery point operators, it must expressly include such a requirement in its tariff.[9] SCANA asserts that because no such limitation is stated in its tariff, Transco has the burden to file to establish such a provision under section 4 of the NGA and to demonstrate that its proposal is just and reasonable. SCANA contends that the August 5, 2005 Order erred by attempting to shift this burden to SCANA under section 5.

Commission Decision

25. The Commission rejects SCANA's argument that its request that replacement shippers have the ability to contingency rank services was not properly addressed pursuant to section 5 of the NGA. SCANA itself sought a modification to Transco's tariff. SCANA's initial brief in this case states that "section 18.1 of the General Terms and Conditions in Transco's tariff currently provides that contingency ranking is to be performed by delivery point operators only." SCANA Initial Brief at 21. SCANA then stated that section 18.1 "does not provide assurances that contingency ranking is available to shippers who are not their own deliver point operators. The tariff in that respect is therefore unjust, unreasonable and unduly discriminatory, and should be amended to require delivery point operators to reflect the contingency ranking preferences of each shipper behind that delivery point operator." Id. The ALJ in this proceeding also recognized that SCANA was seeking a change pursuant to section 5 when he stated that "SCANA proposes to modify the language in Transco's tariff to

[9] *Citing, Transcontinental Gas Pipe Line Corporation*, 83 FERC ¶ 61,050, at 61, 293 (1998).

reflect the Commission's Order No. 637, in that all Transco's storage assets – those held by each shipper, not just the delivery point operators – must be eligible for ranking."[10]

26. The Commission also rejects SCANA's argument that because Transco's tariff does not specifically prohibit shippers other than delivery point operators from contingency ranking, other shippers could avail themselves of this right and that Transco was required to file pursuant to section 4 to limit such rights. Section 18.1 of Transco's tariff provides that delivery point operators have the ability to contingency rank services. By stating that the tariff lacks a prohibition against other shippers from contingency ranking, SCANA is attempting to create a right that does not exist. The fact that a specific type of shipper, *i.e*, a delivery point operator, is given a specific right to contingency rank services does not require Transco to state in its tariff that others are prohibited from exercising are right. Further, SCANA's argument flies in the face of its own arguments requesting modification to the tariff and the basic contractual interpretation principle that the inclusion of one is the exclusion of another. Finally, the 1998 Transco order which SCANA cites is not applicable here because, in that proceeding, there was a specific tariff provision allowing telephone confirmations which Transco attempted to argue was meaningless. Such is not the case here.

27. SCANA also argues that the Commission is incorrect in stating that the issue of contingency ranking is largely moot or that it is limited to one geographic area. While SCANA may now argue otherwise, its focus in this proceeding has been that Part 284 conversion of GSS and LSS service and contingency ranking of that service were necessary for it to take full advantage of retail unbundling in Georgia as a marketer in that state. Moreover, SCANA makes no assertion that it has any interest in retail unbundling in the other states that may be considering such unbundling. In any event, the fact that SCANA now asserts that contingency ranking might affect retail unbundling in other states or that SCANA has interest in contingency ranking storage services other than GSS or LSS, does not change the fact that SCANA has not met its burden of proof by showing that Transco's current tariff is unjust and unreasonable and that its proposed replacement is just and reasonable.

28. As the Commission explained in the March 26, 2004 Order on initial decision,[11] contingency ranking is appropriately limited to delivery point operators for operational reasons. When there is a difference between the amount scheduled to be delivered at a

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[10] *Transcontinental Gas Pipe Line Corporation*, 101 FERC ¶ 63,022, at P 62 (2002).

[11] 106 FERC ¶ 61,299 at P 25.

particular delivery point and the amount actually delivered, the difference is simply an overall amount that, in the first instance, is attributable only to the delivery point operator. Therefore, there has to be one person with the ultimate authority to decide how to divide the overall difference between scheduled and actual deliveries among the shippers at the point and their services. Transco may reasonably require that this person be the delivery point operator, since the delivery point operator controls and confirms the flows entering its downstream facilities. Thus, as described by Transco's witness, the delivery point operator is appropriately responsible for "ranking the gas that flows into its system, and contingency ranking third party gas and/or its own transportation and storage services." Ex. T-52 at 36.

29. As the Commission further explained in the March 26 Order,[12] transactions ranked as having flowed first through delivery point will generally not be considered to have any imbalance between the scheduled and delivered amounts. Thus, those transactions will generally not incur any penalty or trigger a need for cashing out an imbalance, with the result that there is no need for the customers in those transactions to seek the alternate remedy of treating their scheduling variances as storage injections or withdrawals. Transco's witness testified that the delivery point operators generally rank third party transactions as flowing through the delivery point before their own transactions. The third parties are thus less likely to incur imbalances, and have less need to contingency rank the services to be used to account for such discrepancies, including storage services that were not actually scheduled. While SCANA states that delivery point operators are not required to treat third party transactions as first through the meter, it makes no assertion that Atlanta Gas Light uses a different ranking method. SCANA contends only that the Georgia Public Service Commission could require Atlanta Gas Light to use a different method that would be more likely to attribute imbalances to replacement shippers such as SEMI. However, there is nothing to indicate that the Georgia Public Service Commission has any interest in doing that. The Commission thus reaffirms its conclusion that SCANA and SEMI have little need for the ability to contingency rank their services.

30. In any event, Transco allows a delivery point operator to contingency rank "third party gas and/or its own transportation and storage services" as the services to be used in resolving differences between scheduled and actual deliveries services. Thus, the March 26 Order found that an LDC delivery point operator could designate its replacement shipper's no-notice service as a service to "take the swing" and designate the replacement shipper's storage account as the storage service to be used in resolving any discrepancy between scheduled and actual deliveries. Thus, SEMI's storage account

[12] *Id.* P 26.

could be used for crediting or debiting imbalances, if Atlanta Gas Light were willing to include SEMI's storage service in the contingency ranking it supplies to Transco. The Commission assumes that the delivery point operator will consult with other shippers when making these ranking decisions. However, since delivery point operators such as Atlanta Gas Light are not within the Commission's jurisdiction, the Commission will not direct that such delivery point operators exercise their contingency ranking roles in any particular manner. Rather, just as SCANA states that a state commission could order an LDC delivery point operators to use a particular method for attributing imbalances among the shippers using the point, so also the state commission could order an LDC delivery point operator to use a particular method for contingency ranking the storage services to which any imbalances are to be credited or debited.

31. For all of the above reasons, the Commission reaffirms its holding that SCANA has not met its section 5 burden of showing that Transco's existing tariff provisions and practices concerning contingency ranking are unjust and unreasonable or that its proposed alternative is just and reasonable. Therefore, SCANA's request for rehearing is denied.

Transportation Electric Power (TEP) Costs for the SouthCoast Project

32. Transco's system includes approximately 350 compressors that are powered by either natural gas or electricity. Pursuant to existing sections 38 and 41 of the General Terms and Conditions of Transco's tariff, Transco recovers the fuel and electric power costs associated with operating these units from all its mainline transportation customers on a system-wide basis. Transco recovers the electric costs through its Transportation Electric Power (TEP) surcharge, and makes annual TEP filings March 1 of each year to be effective for the period April 1 through March 31. As a result, Transco has consistently included the costs of operating any compressors added in expansions in its system fuel reimbursement percentages and its system electric power surcharge. Transco did not propose any changes to its fuel and electric power cost recovery methodology in the instant section 4 rate filing. Rather, a number of parties requested changes pursuant to section 5 for the recovery of fuel and electric power costs for the SouthCoast expansion project, as well as two other projects not at issue in the instant rehearing requests.

33. With respect to SouthCoast, the Commission issued a certificate for that expansion in 2000. That project expanded Transco's existing system in Alabama and Georgia by adding mainline looping, as well as a gas powered compressor at Station 105 in Alabama, and an electric powered compressor at Station 115 in Georgia. The Commission applied

its 1999 Pricing Policy[13] in the SouthCoast certificate proceeding, and required that Transco design the base rates for that expansion on an incremental basis, since rolling in the fixed costs of that expansion would increase the existing FT customers' rates. However, the Commission did not require any change in Transco's practice of recovering the fuel and electric costs of operating the expansion compressors on a rolled-in basis. In the initial decision, the ALJ determined that the parties met their section 5 burden and directed that Transco's tariff be amended to reflect incremental fuel and electric power charges for the SouthCoast expansion. The Commission affirmed that aspect of the ALJ's decision in its March 26, 2004 Order on the initial decision.

34. However, in its August 5, 2005 Order, the Commission granted rehearing of its order that Transco establish incremental charges to recover the fuel and electric costs of the SouthCoast expansion. The Commission stated that, under the 1999 Policy Statement, a showing that Transco's current system-wide TEP and/or fuel charges require its existing shippers to subsidize additional fuel or electric power costs incurred in order to serve the SouthCoast shippers would justify requiring an incremental charges to the SouthCoast shippers. The Commission stated that the proponents of section 5 action to require an incremental electric charge have the burden of showing that such subsidization is occurring.

35. In the August 5 Order, the Commission found that the evidence presented by the proponents of section 5 action with respect to the additional electric powered compression added at Station 115 was insufficient to justify a finding that the existing shippers are subsidizing the electric costs of that compression. In the March 26 2004 Order, the Commission had found that the evidence shows that Transco's generally applicable electric charges went up between 11 and 17 percent depending on rate zone as a result of the SouthCoast expansion. This finding was based on evidence submitted by Consolidated Edison concerning Transco's March 1, 2001 filing in Docket No. RP01-258 to revise its TEP rates for the annual period beginning April 1, 2001 (March 2001 TEP filing). That was Transco's first TEP filing after the November 1, 2000 in-service date of the SouthCoast facilities. In that filing, Transco projected that its total annual electric power costs at Station 115 for the year beginning April 1, 2001 would be $6,441,428, of which $3,374,082 would be associated with the additional compression at Station 115 added as part of the SouthCoast expansion. In response to a data request from

[13] *Policy Statement concerning Certification of New Interstate Natural Gas Pipeline Facilities*, 88 FERC ¶ 61,227 (1999), 90 FERC ¶ 61,128 (2000), *reh'g*, 92 FERC ¶ 61,094 (2000).

Consolidated Edison, Transco recalculated what its proposed TEP rates would have been, if it had not added compression at Station 115. Transco's response showed that, on a 100 percent load factor basis, the proposed rates in the March 2001 TEP filing were between 11 and 17 percent higher that they would have been absent the SouthCoast expansion.[14]

36. On rehearing of the March 26, 2004 Order, Transco Municipal Group contended that the evidence presented by Consolidated Edison was insufficient to show that the new compression at Station 115 will increase the electric power costs incurred by the existing FT shippers. The Transco Municipal Group pointed out that Transco's projection, in its March 2001 TEP filing, of the electric costs it would incur in the year beginning April 1, 2001 turned out to be substantially in error. That projection was that the electric power costs at Station 115 would more than double from the $3,041,454 incurred during the period February 2000 through January 2001, which was mostly before the November 1, 2000 in-service date of the SouthCoast expansion, to over $6.4 million during the year beginning April 1, 2001. However, Transco Municipal Group stated that Transco's March 1, 2002 TEP filing in Docket No. RP02-183-000 shows that Transco's actual electric power costs at Station 115 for the period February 2001 through January 2002 were only $1,945,116,[15] far below the over $6.4 million Transco had projected for much the same period. Moreover, Transco Municipal Group pointed out, the actual costs of $1,945,116 for the February 2001 through January 2002 period after the in-service date of the SouthCoast expansion were significantly less than the actual costs of $3,041,454 for the February 2000 through January 2001 period generally before the in-service date of the SouthCoast expansion. The Transco Municipal Group also asserted that in its March 2002 TEP filing, Transco projected that the total electric power costs at Station 115 would continue to be about $1.9 million during the period April 2002 through March 2003.[16] Transco Municipal Group stated that focusing on actual costs one cannot conclude on this record that the addition of SouthCoast compression caused cost increases that are being borne by existing shippers and that the Commission's conclusion regarding subsidy rests on a flawed foundation.

37. In the August 5, 2005 Order, the Commission granted rehearing and allowed Transco to continue to charge system-wide electric charge to SouthCoast shippers, rather than taking section 5 action to require Transco to implement incremental electric or fuel charges to those customers. The only evidence of subsidization in the current record is

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[14] Ex. No. CE-24 at 4. Ex. No. CE-26.

[15] Ex. TM-2 at 4.

[16] Ex. TM-2 at 3.

the evidence Consolidated Edison presented that the TEP rate proposed in Transco's March 2001 TEP filing based on projected data for the year beginning April 2001 would have been lower if the projected costs and throughput for the SouthCoast expansion had been removed. However, the record also showed that Transco's actual electric power costs at Station 115 were substantially less during the year February 2001 through January 2002, after the in-service date of the SouthCoast expansion than they had been in the year before the in-service date, and Transco projected in its March 2002 TEP filing that that would continue to be the case.

38. The August 5 Order stated that the reduced electric power costs at Station 115 after the SouthCoast expansion went into service are not necessarily inconsistent with a finding that the existing shippers are subsidizing the SouthCoast shippers' electric power costs. For example, the August 5 Order stated that if there were reasons why electric power costs at Station 115 went down after the in-service date of the SouthCoast expansion unrelated to the existence of the SouthCoast expansion, such that the existing shippers' electric power costs would have gone down even more absent the SouthCoast expansion, the Commission could find that the existing shippers are improperly subsidizing the SouthCoast shippers. However, the Commission found that the record contains no exploration of why the electric power costs at Station 115 went down by about one third after the SouthCoast expansion went into service. Thus, the Commission found that it had no basis on which to determine whether the SouthCoast expansion contributed to the cost reduction, such that the existing shippers were actually benefited rather than being required to subsidize additional costs, or whether the cost reduction was entirely unrelated to the SouthCoast expansion. The Commission concluded that the section 5 burden to show that the existing system-wide TEP rates are unjust and unreasonable with respect to the SouthCoast expansion was not met.

39. On rehearing, ConEd and PGW assert that the Commission's August 5 Order was in error and that the Commission should require Transco to establish incremental TEP charges for the SouthCoast project. ConEd and PGW assert that the August 5 Order erred in finding that the evidence of record is insufficient to justify a finding that that the existing shippers are subsidizing the electric costs of the SouthCoast expansion. ConEd and PGW assert that they have demonstrated that Transco's TEP rates were between 11 and 17 percent higher, depending on the rate zone, for the twelve months commencing April 1, 2001, solely as a result of the SouthCoast expansion. ConEd and PGW argue that the August 5 Order erred in relying on incomplete information concerning the TEP rates to be paid by Transco's customers for the twelve months commencing April 1, 2002. ConEd asserts that information did not address the fundamental question, *i.e.*, whether Transco's system customers were subsidizing SouthCoast TEP costs. ConEd and PGW assert that the August 5 Order also erred in determining that ConEd and PGW

had not met their burden of proof based on evidence the August 5 Order admits does not demonstrate that system customers are not subsidizing the SouthCoast project.

Commission Decision

40. As stated earlier, Transco did not propose to change the methodology by which it recovers fuel and electric power costs on a system-wide basis. Rather, a number of parties such as ConEd and PGW argued that fuel and electric power costs for various expansion projects, such as SouthCoast, should be recovered on an incremental basis. Therefore, the parties seeking incremental rates had the section 5 burden of showing that the existing methodology of recovering fuel and electric power costs on a system-wide basis was unjust and unreasonable. On rehearing, ConEd and PGW have not provided any new arguments or evidence to show that Transco's existing system-wide TEP charges are unjust and unreasonable because existing shippers are subsidizing the incremental South Coast shippers.

41. ConEd and PGW argue that "[b]y its own admission, Transco created and imposed TEP charges on its system customers that were 11-17% higher than they would have been absent the SouthCoast project." Rehearing at 6. ConEd and PGW further state that "there is nothing theoretical, speculative, or ambiguous about these April, 2001 to March 2002 TEP charges. They were levied by Transco and were paid by Transco's customers." *Id*. ConEd and PGW argue that the admitted 11-17% increase in Transco's TEP charges for the year commencing April 1, 2001 resulting solely from Transco's estimate of future South Coast TEP costs is enough to meet its section 5 burden.

42. The Commission disagrees. Any section 5 action by the Commission to require Transco to establish an incremental charge to recover the fuel and electric power costs of the SouthCoast expansion must be prospective only. Thus, the Commission has no authority under NGA section 5 to provide Transco's pre-expansion shippers any relief from the fact they may have been required to subsidize the electric power or fuel costs of the SouthCoast expansion shippers during some past period. Rather, the issue for the Commission in this proceeding is whether Transco's existing system-wide TEP and fuel charges will, *in the future*, require its pre-expansion shippers to subsidize the electric power and fuel costs of the SouthCoast expansion shippers, since any section 5 action taken in this proceeding can only affect Transco's future rates. Thus, we look to Transco's past experience with its electric power and fuel costs only for the purpose of projecting whether the SouthCoast expansion will cause increased costs for the pre-expansion shippers in the future. In addition, consistent with NGA section 5, ConEd and PGW have the burden of proof on this issue.

43. ConEd's evidence that Transco's March 2001 TEP filing in Docket No. RP01-258-000 included an 11 to 17 percent rate increase due to the projected costs and throughput of the SouthCoast expansion does not provide a reliable basis for projecting the effect of the SouthCoast expansion on Transco's future electric power and fuel costs in 2006 and thereafter. As ConEd and PGW concede in their rehearing request, "Transco's RP01-258 TEP charges were premised on TEP cost projections that proved to be incorrect."[17] In fact, Transco's subsequent March 2002 TEP filing in Docket No. RP02-183-000 shows that Transco's actual electric power costs at Station 115 decreased by about one third after the SouthCoast expansion went into service,[18] and Transco projected that the total electric power costs at Station 115 would remain at the lower level.[19] Since actual experience has shown the projections in Transco's March 2001 TEP filing to be wrong, the Commission is unwilling to rely on those projections as the basis for acting under NGA section 5 to order a prospective change in Transco's electric power and fuel cost recovery mechanisms. ConEd and PGW having presented no other evidence in support of their requested section 5 action, the Commission must conclude that they have failed to satisfy their burden of proof on this issue.

44. The Commission recognizes that even though Transco's electric power costs decreased it is still possible that existing shippers are subsidizing SouthCoast expansion shippers. However, ConEd and PGW have not made such a showing here. The evidence ConEd and PGW presented to show subsidization was premised on an inaccurate projection that the SouthCoast expansion would lead to an overall increase in Transco's electric power costs. It is not possible to draw from that evidence any inference as to whether subsidization will occur under the opposite scenario, than has actually occurred, of a decrease in overall electric power costs. If ConEd and PGW are able to show in the future, based on actual experience, that the SouthCoast expansion shippers are being

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[17] ConEd rehearing request at 6. Transco's March 2001 TEP filing projected that the electric power costs at Station 115 would be over $6.4 million during the year beginning April 1, 2001. However, Transco's March 1, 2002 TEP filing shows that Transco's actual electric power costs at Station 115 for the period February 2001 through January 2002 were only $1,945,116. Ex. TM-2 at 4.

[18] See Ex. CE-1, p. 18 which shows actual TEP costs from February 2000- January 2001, generally before the November 1, 2000 in-service date of the SouthCoast expansion, of $3,041, 454 compared to Ex. TM-2, p.2, Tr. at 888, which shows actual TEP costs, from February 2001-January 2002, after the SouthCoast in service date, of $1,945,116.

[19] Ex. TM-2 at 3.

subsidized by existing shippers through the system-wide TEP charge, they would be able to meet their section 5 burden of proof with respect to establishing incremental TEP rates for SouthCoast shippers. Accordingly, ConEd and PGW's request for rehearing is denied.

The Allocation of Certain Storage Costs Between and Among Storage and Transportation Services

45. This issue involves allocation of costs associated with Transco's storage facilities among its transportation and storage customers. Transco owns both supply area and market area storage facilities. In the supply area, Transco owns the Hester, Eminence, and Washington storage fields in Louisiana and Mississippi. Transco allocates 15 percent of the cost of the Washington storage field, 75 percent of the cost of the Hester storage field and 60 percent of the cost of the Eminence storage field to transportation services. In the market area, Transco partially owns the Wharton and Leidy storage fields and allocates 15 percent of those costs to certain transportation customers Transco does not allocate any of the costs associated with storage services purchased by Transco from third parties to transportation services. Those costs are allocated only to storage rate schedules (GSS (DTI), LSS, SS-2, and S-2) that rely on those purchased storage services.

46. In this rate case, Transco proposed to continue its existing allocation of storage costs between storage and transportation services. AGL and other parties contended that the level of storage costs currently allocated to transportation services is too low. AGL presented evidence which, among other things, compared Transco's daily aggregate physical injection and withdrawal activity for each day over a three-year period to actual daily injections and withdrawals allocated to storage customers. AGL asserted that the excess of the physical activity over the injections and withdrawals allocated to storage customers showed Transco's use of storage to provide transportation services. Based on that evidence, AGL and the other parties requested that the Commission require an increase in the overall level of storage costs allocated to transportation. They also asked that the Commission require that a portion of the costs of the storage services purchased from third parties be included in that allocation.

47. The Commission initially affirmed the ALJ's finding that AGL had not satisfied its burden under NGA section 5 of showing that Transco's existing method for allocating storage costs to transportation services was unjust and unreasonable. On rehearing, KeySpan argued, among other things, that the Commission had erred in not finding that Transco's allocation of storage costs to transportation services unduly discriminates among storage services. KeySpan asserted that there no basis for giving some storage services the benefit of having a significant percentage of their costs allocated to transportation, while other storage services receive no such benefit. KeySpan cited evidence showing that Transco operates its entire system on an integrated basis, including

storage and line pack, to manage hourly swings, no-notice service, and shipper imbalances. KeySpan argued that since all storage services are relied upon to support those transportation related system management activities, costs related to all storage services should be just and reasonable to allocate at least 15 percent of the costs associated with the contract storage services under Rate Schedules GSS (DTI), LSS, SS-2 and S-2 should be allocated to transportation services.

48. The Commission granted in part and denied in part rehearing on this issue. The Commission found that there was credible evidence that Transco uses the facilities associated with Rate Schedules GSS (DTI), LSS, SS-2 and S-2 to manage its system for both storage and transportation customers, without allocating any of the costs of those facilities to transportation customers. Thus, while similarly situated storage customers under Rate Schedules WSS, GSS(Transco) and storage customers using the Hester storage field receive the benefit of having a portion of the storage costs associated with their service to transportation customers, storage customers under the above listed rate schedules do not receive that benefit. The Commission concluded that this constituted an unduly discriminatory treatment of those storage customers. The Commission directed Transco to submit a proposal to allocate costs associated with all storage facilities to transportation customers. However, the Commission found that KeySpan had not demonstrated that the overall level of storage costs allocated to transportation services is unreasonably low, and denied rehearing on that issue. The Commission directed Transco to submit a proposal to allocate costs associated with all storage facilities to transportation customers. The Commission capped the total amount of storage costs to be reallocated at $6.8 million, the amount of Hester, GSS (Transco) and WSS storage costs currently allocated to transportation services.

49. No party seeks rehearing of the Commission's holding that Transco's current allocation of storage costs unduly discriminates among storage services. KeySpan, however, argues that the Commission erred by capping the costs to be reallocated at $6.8 million and by leaving open the possibility that Transco could reduce the current allocation to transportation of 15 percent of storage costs associated with Rate Schedules WSS, LSS, S-2, SS-2, GSS (Transco) and GSS (DTI). KeySpan argues that there is no basis for the Commission to reduce the allocation of WSS, GSS (Transco) or Hester storage costs to transportation services. KeySpan first argues that the April 12 Settlement entered into by the parties prohibits reducing the allocation because it settles storage cost allocation issues with the exception of certain listed issues, among them, the issue of the allocation of certain storage costs between and among storage and transportation services presented in the testimony of a number of parties. KeySpan argues that, since none of those parties continues to advocate reducing the percentage of storage costs allocated to transportation services, the Commission has no basis to reduce them. KeySpan also argues that there is no substantial evidence to support a reduction of the allocation

percentages. Finally, Keyspan argues that the Commission erred in permitting Transco to submit a proposal to reallocate storage costs. At the very least, KeySpan states that if the Commission permits Transco to file a revised allocation of costs, parties must be given the opportunity to review and contest that proposal.

50. National Fuel Gas Supply Corporation (National Fuel) filed an answer to KeySpan's request for rehearing. National Fuel states that KeySpan has merely rehashed and restated it prior arguments regarding the overall level of storage costs to be allocated to transportation services. In light of our findings below, the Commission rejects National Fuel's answer.

51. Transco filed a motion for clarification asking the Commission to clarify that any subsequent change in the rates of an upstream storage service provider between Transco rate cases would simply be tracked through the relevant storage service rates pursuant to the tariff tracker provision contained in Transco's contract storage service rate schedules.

Commission Decision

52. The Commission grants in part and denies in part KeySpan's request for rehearing of this issue. Article III of the April 12 Settlement reserved for hearing "the issue of the allocation of certain storage costs between and among storage and transportation services presented in the prepared testimony filed on November 15, 2001 on behalf of" a number of identified parties, including KeySpan and Commission staff. The Commission does not interpret this provision as limiting the Commission's resolution of the reserved storage allocation issues solely to the positions advocated by the identified parties. As the parties must have understood when they entered into the settlement, the Commission's responsibility under the NGA is to determine just and reasonable rates. Thus, when a particular allocation issue is litigated at hearing, if the Commission determines that none of the parties' positions would lead to a just and reasonable result, the Commission may, and indeed must, adopt a different result that does produce just and reasonable rates.

53. In this case, the Commission has determined that Transco's existing allocation of storage costs to transportation services is unjust, unreasonable, and unduly discriminatory. That is because Transco allocates a portion of the costs of some storage services to transportation, but no costs of other storage services, despite the fact that the record shows that Transco uses all its storage facilities in performing transportation service. No party contests this holding. Having determined that the existing allocation is unjust and unreasonable, NGA section 5 requires that the Commission now determine the

just and reasonable allocation of these costs.[20] However, the Commission has reluctantly concluded that the parties failed to present sufficient credible evidence at the hearing in this proceeding to permit the Commission to determine the just and reasonable percentages of costs that Transco should allocate from each storage service to its transportation services. The Commission therefore remands this issue for further hearing, as discussed below.

54. Transco's current allocation of varying percentages of the costs of different storage facilities to transportation has developed over time through various rate case settlements as different storage facilities have been developed and added to its system.[21] As a result, the existing allocation percentages are not based on any particular allocation formula or methodology. They are, in essence, an historical accident, without any principled basis. Moreover, in this case, Transco proposed simply to continue the existing allocation percentages. When those percentages were challenged at the hearing, Transco did not come forward with a proposed allocation formula or methodology for allocating the storage costs between storage and transportation. Rather, it confined its evidentiary presentations to showing why the proposed allocation methodologies of the other parties were not just and reasonable. Similarly, Commission staff took the same approach as Transco.

55. In its earlier orders in this case, the Commission has agreed with Transco and Commission staff that KeySpan has not shown that its proposed allocation of storage costs is just and reasonable, and the Commission reaffirms that conclusion here. However, in light of our uncontested holding in the August 5 Order that the existing allocation is also unjust, unreasonable, and unduly discriminatory, we are now left with a record that contains no substitute allocation methodology for these costs which the Commission could adopt under NGA section 5 as just and reasonable. While we found in the August 5 Order that the record shows that Transco uses all its storage facilities to provide flexibility to both storage and transportation customers, and therefore at least some costs of each facility should be allocated to transportation, that does not mean that the same percentage of the costs of each facility should be so allocated. Transco's various storage facilities are located in different places, some in the production area and some in the market area. Moreover, the storage customers may have varying patterns of

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[20] *Office of Consumers' Counsel, State of Ohio v. FERC*, 783 F.2d 206, 236 (D.C. 1986)("the Commission has no authority to decline to issue a remedy where a clear violation has been found")

[21] *See, e.g. Transcontinental Gas Pipe Line Corp*., 77 FERC ¶ 61,118, at 61,454 (1986).

use of their particular facilities. As a result, Transco may rely on some facilities more than others to support its transportation service. However, the record contains no evidence which would enable the Commission to develop an allocation methodology that would reflect Transco's actual use of its various storage facilities to support transportation.

56. In these circumstances, the Commission is left with no choice but to remand this issue to the ALJ for the development of a record which will permit the Commission to carry out its responsibility under NGA section 5 to remedy the existing unjust, unreasonable, and unduly discriminatory allocation of these costs. At the hearing, Transco and all other parties will have an opportunity to propose a just and reasonable methodology to allocate the costs of each of Transco's storage facilities between storage and transportation services. Since, as discussed above, the existing allocations are not based on any particular methodology, the parties' proposed methodologies should be used to determine the overall allocation of storage costs to transportation, as well as the allocation from each individual facility. Thus, the Commission grants KeySpan's request for rehearing to remove the overall cap on the storage costs that parties may propose to allocate to transportation. Parties may advocate either an increase or a decrease in the overall level of storage costs allocated to transportation.

Including the Destin Shubuta Interconnect and Other Receipt Points as Part of the Station 85 Pooling Point

57. Transco has established a number of physical pooling points on its system, where shippers may aggregate supplies from a number of different upstream receipt points.[22] Shippers buy and sell gas at the pooling points, and the purchasers then transport the gas away from the pooling point in a separate transaction from the shipment of the gas to the pooling point.

58. The issue here involves access to Transco's Station 85 pooling point. Station 85 is on Transco's mainline in the middle of its Zone 4. The capacity of Transco's mainline is greater downstream of Station 85, than upstream of that point.[23] Transco's Mobile Bay

[22] Transco has pooling points at (1) Station 30, the demarcation between Zones 1 and 2, (2) Station 45, the demarcation between zones 2 and 3, (3) Station 65, the demarcation between Zones 3 and 4, (4) a pooling point at Station 85 in Zone 4, and (5) a pooling point at Station 165 in Zone 5, as well as various other pooling points. Tr. at 535.

[23] Ex. No. T-13 at 9.

lateral connects with the mainline at Station 85. The Mobile Bay lateral is in a separate rate zone, known as Zone 4A/4B. As a result, shippers on the Mobile Bay lateral may deliver gas to the Station 85 pooling point pursuant to their contracts for service in Zone 4A/4B without paying a Zone 4 transportation rate. The Mobile Bay lateral was the only major connection to a supply area in Zone 4, until Destin Pipeline Company (Destin) went into service in 1999. Destin interconnects with Transco's mainline at Shubuta, Mississippi, which is in Zone 4 approximately 27 miles upstream from Station 85.[24] Shippers on Destin desiring to deliver gas to the Station 85 pooling point must enter into a contract with Transco for transportation service in Zone 4 from the Shubuta receipt point to the Station 85 pooling point.[25] Because Transco's Zone 4 was already fully subscribed for firm service when Destin commenced service, the Destin shippers delivering gas to Station 85 generally do so under interruptible transportation agreements, paying the Zone 4 IT rate.

59. In this proceeding, BP, a shipper on Destin, has contended that Transco's operation of the Station 85 pooling point unduly discriminates in favor of its affiliate, TEMCO, a shipper on the Mobile Bay lateral. BP relies primarily on the fact that shippers on the Mobile Bay lateral need not pay a Zone 4 rate to reach Station 85, while all other shippers, including the Destin shippers, must pay such a charge to reach Station 85. BP has contended that the Commission should act under NGA section 5 to require Transco to replace its physical pool at Station 85 with a paper pool that would encompass all mainline receipt points in Zone 4. Under this approach, no shipper delivering gas to the Zone 4 paper pooling point would have to pay a Zone 4 rate.

60. The ALJ decided this issue in favor of BP. In its March 26 Order on initial decision, the Commission reversed the ALJ, finding that BP had not met its burden under NGA section 5 to show that Transco's operation of the Station 85 pooling point was unduly discriminatory. However, in its August 5 Order, the Commission granted BP's request for rehearing. The Commission found that Transco operates the Station 85 pooling point differently from the way it operates all other pooling points. The Commission explained that shippers accessing pools in all rate zones, including Zone 4, must pay the transportation rate for that zone, except that Transco does not assess a Zone 4 transportation charge to the Mobile Bay lateral shippers. The Commission found that this was different than the way Transco treats all other shippers. For example, shippers in Zone 3, who are in a separate zone just like the Mobile Bay lateral shippers, must nevertheless pay the Zone 4 rate to access the Station 85 pooling point.

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[24] Ex. No. T-52 at 58.

[25] Tr. at 551-553.

61. The Commission also found that the fact Transco assesses two transportation charges, one for moving gas to the Station 85 pool and one for taking gas away from that pool, violates Order No. 587-F.[26] The Commission stated that order established a policy of permitting a transportation charge to a pool or from a pool, but not both. The Commission accordingly directed Transco to cease charging two charges for access to the pool at Station 85.

62. The Commission affirmed the ALJ on the lack of competition at Station 85 pool. The Commission stated that the lack of physical capacity to transport gas to Station 85 (Transco's Zone 4 firm transportation capacity is fully subscribed), coupled with the fact that the pool is operated only as a physical pool, effectively restricts the use of the pool to Mobile Bay Shippers. In addition, the uneconomic charges Transco assesses the non-Mobile Bay shippers restricts the receipt points from which the pool can be accessed to one, rather than the multiple receipt points that the Commission envisions in a competitively functioning pool. The Commission affirmed the ALJ's finding that virtual pooling would bring more gas supplies, suppliers and marketers into the pooling process and would enhance the competitive environment. The Commission also found that TEMCO receives unduly preferential treatment because it does not have to pay the additional Zone 4 rate, and while TEMCO is not the only shipper on the Mobile Bay lateral, it is the largest with 58% of Zone 4A and 100% of Zone 4B.

63. The Commission found that BP's paper pooling proposal at Station 85 is consistent with the pooling operations conducted by a number of other major pipelines that are similarly situated to Transco. The Commission accordingly directed Transco to adopt paper pooling.

64. In its request for rehearing of the August 5 Order, Transco contends that the Commission incorrectly found that Transco operates its Station 85 pool differently from all other pools. Transco states that it maintains the Station 85 pool on the same basis and terms as other pools on its system, particularly those at Stations 30, 45, 50 and 62 in Zones 1, 2, and 3, which comprise Transco's production area. Transco asserts that all shippers moving gas from an upstream receipt point to a pooling point must pay the transportation charges in its tariff applicable to the physical gas movement in question. If the gas must move across a portion of the rate zone in which the pooling point is located, then the shipper must pay that zone's rate. However, Transco points out, the Mobile Bay shippers do not transport gas on the Zone 4 facilities to get to the Station 85 pooling

[26] *Standards for Business Practices of Interstate Natural Gas Pipelines*, FERC Stats. & Regs., Proposed Regulations 1988-1998 ¶ 32,527, at 33,351 (1997)(Order No. 587-F).

point; they deliver gas directly to the pooling point using the Zone 4A or 4B facilities for which they pay. Thus, according to Transco, it is the location and physical configuration of the Station 85 pooling point that dictates the applicable charges into the pool, and the Mobile Bay shippers should not pay the Zone 4 rate because they do not use Zone 4 to reach that pool.

65. Transco also argues that adoption of BP's paper pooling proposal would be inconsistent with the design of its rates and services in Zones 1 through 3, in its Production Area. Zones 1 through 3 each include both mainline facilities and supply laterals.[27] However, the firm service Transco offers in the production area is limited to the mainline. Shippers must enter into separate interruptible transportation (IT) service agreements in order to use the supply laterals. Such IT service that supplies or "feeds" firm service at the pooling points in Zones 1 through 3 is given a priority over other IT service, and thus is known as "IT-Feeder service."[28] Currently, for the most part, producers and marketers (and not the firm mainline shippers) use the IT-Feeder service to transport gas on the supply laterals, and on the production area mainline as well, to reach the firm mainline customers, generally at pooling points. The firm shippers then transport the gas away from the pooling points under their firm contracts. Thus, "under the IT-Feeder rate design two transactions are needed to move gas through the production area rate zones on a firm basis – the interruptible service on the supply laterals and the firm service on the production area mainline."[29] Transco states that it includes both the contract demand represented by the firm service and imputed contract demand represented by the IT service in the volumes used to design its production area rates. This causes the per unit rates for the production area zones to be lower than they would otherwise be.[30] Similarly, Transco includes IT transactions used to reach pooling points in market area zones, such as Zone 4, in its rate design volumes.

66. Transco contends that the paper pooling advocated by BP is wholly incompatible with Transco's IT-feeder rate design. It would relieve BP and other shippers using IT

[27] *See Transcontinental Gas Pipe Line Corp.*, 95 FERC ¶ 61,322, at 62,128-9 (2001), for a full description of Transco's production area and the services offered there.

[28] The priority for IT service feeding firm contracts also applies in Transco's market area, including Zone 4.

[29] *Transcontinental Gas Pipe Line Corp.*, 107 FERC ¶ 61,156, at P 48 (2004), *aff'd*, *ExxonMobil v. FERC*, 430 F.3d 1166 (D.C. Cir. 2005).

[30] *Id*.

service in Zone 4 to reach Station 85 of having to pay for that service. Transco states that this would be contrary to the treatment of shippers in Zones 1 through 3 who use and pay for IT-Feeder service to reach the pooling points in those zones. Transco argues that the paper pooling proposal would also be inherently preferential to BP and other Zone 4 shippers, while discriminating against shippers in other rate zones who do have to pay for transportation of gas to pooling points. In addition, Transco states that BP's paper pooling proposal would also raise cost recovery issues for Transco, since the volumes used to design its current rates include all interruptible transportation to Station 85 from mainline receipt points in Zone 4.

67. Transco maintains that nothing in Order 587-F or in the GISB standards prohibits charges both into and out of a pool. The Commission has declined to require paper pooling in general in Order No. 587-F and specifically in various Transco rate proceedings (see p 17-18). Transco contends that the statement in Order No. 587-F on which BP and the Commission on rehearing relied is not "policy," and at any rate, policy should not be applied blindly without a valid rationale for applying it in a particular case. Transco argues that the Commission appears unreasonably influenced by Transco's affiliate relationship with TEMCO. It states that numerous other shippers have gas transported to Station 85 over the Mobile Bay lateral on the same terms as TEMCO.

Commission Decision

68. Transco's request for rehearing raises significant issues concerning the appropriate method of conducting pooling in Zone 4 in light of its IT-Feeder rate design and capacity constraints upstream of Station 85. The Commission has concluded these issues cannot be adequately addressed on the present record. Accordingly, the Commission will establish a technical conference to permit the parties and Commission staff to further explore these issues, before the Commission reaches a final determination whether pooling as it is now conducted in Zone 4 is consistent with Commission policy, and, if not, what modification of the current system would be appropriate.

69. NAESB Standard 1.3.18 provides, "Deliveries from receipt points should be able to be delivered directly into at least one pool and delivery points should be able to receive quantities from at least one pool, excluding non-contiguous facilities."[31] The Commission adopted this standard in Order No. 587.[32] In *Transcontinental Gas Pipe*

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[31] 18 C.F. R. § 284.12(a)(1)(i) (2005), Nominations Related Standard 1.3.18.

[32] *Standards for Business Practices of Interstate Natural Gas Pipelines*, FERC Stats. & Regs., Regulations Preambles ¶ 31,038 (1998)(Order No. 587).

Line Corp, 78 FERC ¶ 61,210 at 61,903 (1997), the Commission interpreted this requirement to mean that "gas must be able to be delivered from every receipt point and pipeline interconnect directly to a pooling point." In Order No. 587-F, the Commission stated, "Some pipelines currently offer paper pools, while others offer physical pooling in which shippers may have to pay a transportation charge to move gas into the pool. When a pool exists in a rate zone, the charge for shipment in that zone must be incurred either for shipment to the pool or shipment out of the pool."[33] However, the Commission did not modify the NAESB standards concerning pooling in Order No. 587-F.

70. When Transco filed to comply with Order No. 587, the Commission required it "to clarify how the operation of its IT-Feeder system with its mainline production area pooling points allows all points to deliver to the pool, or revise its tariff to provide for pooling of gas supplies as stated in the" NAESB standard.[34] In response, Transco stated that its tariff contained no restriction preventing gas from any receipt point from being delivered to any pooling point on its system. The Commission found Transco's clarification to be sufficient. The Commission also rejected a request by Natural Gas Clearinghouse (NGC) that Transco be required to set up a paper pooling system, in addition to its IT-Feeder system. NGC argued that, because NAESB required that gas from receipt points be able to be delivered directly "directly" into at least one pool, shippers should not be required to obtain and pay for IT transportation in order to reach a pool. The Commission responded:

> The standards simply require that there be pooling accessible by all points. They are not concerned with any rate consequences, such as whether poolers might incur an IT transportation expense, or with whether there is physical or paper pooling. Nor does the Commission consider that the word "directly" requires that every receipt point must be contiguous with a pool. Rather, the plain English meaning simply implies that gas can go in an uninterrupted course to the pool. Paper pooling accomplishes this. However, NGC has not demonstrated that Transco's IT Feeder system does not also allow this direct connection.[35]

[33] Order No. 587-F, at 33,351.

[34] *Transcontinental Gas Pipe Line Corp*, 78 FERC at 61,903.

[35] *Transcontinental Gas Pipe Line Corp*, 79 FERC ¶ 61,172, at 61,807 (1997).

Thus, the Commission has found that, as a general matter, Transco's use of its IT-Feeder system in conjunction with pooling complies with the NAESB pooling requirements. The Commission sees no reason to alter that conclusion in this proceeding with respect to pooling in Transco's production area. However, in Transco's Order No. 587 proceeding, no party raised, and the Commission did not consider, any specific issues concerning the operation of Transco's Station 85 pooling point, which is outside the production area. And Destin did not interconnect with Transco until 1999, two years after the orders on Transco's compliance with Order No. 587. Thus, the holdings in those orders are not conclusive with respect to whether Transco's current method of conducting pooling in Zone 4 complies with the NAESB requirements.

71. There appear to be differences between the production area and Zone 4, which may affect how pooling should be structured in Zone 4. Most significantly, while Transco relies heavily on its IT-Feeder system to justify its approach to pooling, the IT-Feeder system is only fully in effect in the production area. A key component of the IT-Feeder system is the fact Transco does not offer firm service on the supply area laterals in each of the three production area rate zones. However, Transco does offer firm service throughout Zone 4, both upstream and downstream of the station 85 pooling point.

72. Because Transco does not offer firm service on the production area supply laterals, all gas entering Transco's system at receipt points on those laterals must flow to production area pooling points under interruptible service agreements. This means that gas received at each receipt point on the supply laterals upstream of each production area pooling point has the same ability to reach that pooling point as gas received at any other receipt point on those supply laterals. Moreover, the Commission has held that the interruptible service on the supply laterals is essentially firm, since it feeds firm service. For this reason, the Commission continues to find that gas from all receipt points in the production area can flow directly to pooling points without interruption, consistent with NAESB Standard 1.3.18.

73. The fact Transco offers firm service throughout Zone 4 creates a different situation in that zone. Transco has less capacity in Zone 4 upstream of Station 85, than downstream. Moreover, all firm capacity in Zone 4 was fully subscribed before Destin interconnected with Transco, and remained so at least up to the time of the hearing in this proceeding.[36] As a result, the gas received at Zone 4 receipt points upstream of the Station 85 pooling point may or may not be able to reach that pooling point, depending

[36] Tr. at 543, 558, 736, and 738-9.

upon what service is used to move the gas to Station 85 and the level and types of service requests Transco receives on a particular day. For example, on days when firm customers make full use of their firm capacity, shippers on Destin cannot obtain interruptible service to transport their gas to the Station 85 pooling point. In short, unlike in the production area, we cannot find that gas received at each Zone 4 receipt point necessarily has the same ability to go in an uninterrupted course directly to the Station 85 pooling point. This suggests that, as we found in the August 5 order, Transco's current method of conducting pooling in Zone 4 may not fully comply with NAESB Standard 1.3.18.

74. However, this does not mean that BP's proposal to replace the current physical pool at Station 85 with a single paper pool for all receipts into Zone 4 is appropriate. As Transco points out, BP's proposal ignores the physical service constraints that exist in Zone 4. Even when a pipeline implements paper pooling, the Commission has found it appropriate to take into account physical constraints on the movement of gas through the system. For example, in *Northwest Pipeline Co*., 80 FERC ¶ 61,361 at 62,240-2 (1997), the Commission found that, in determining what gas is available to a pool, the pipeline can take constraint points on the system into account. "Under paper pooling, the aggregation of the gas is basically an accounting and administrative service."[37] For this to be true, gas received from the receipt points included in a paper pool should be readily available for delivery out of the pool. In *Northwest*, the Commission found that, where gas from particular receipt points is not readily available for delivery out of the pool, the pipeline could treat those receipts points as not associated with the pool, and thus require pooling parties to obtain transportation capacity rights to move gas from the non-associated receipt points to the pool.[38]

75. It does not appear from the record developed at the hearing in this case that gas received at the Destin receipt point, or other Zone 4 receipt points upstream of Station 85, can be assumed to be readily available for delivery downstream of Station 85. Thus, a single paper pool covering all of Zone 4 would not appear to be appropriate. However,

[37] *Northwest*, 80 FERC at 62,241.

[38] *See also Williams Natural Gas Co.*, 80 FERC ¶ 61,085, at 61,299 (1997). The Commission also found in *Northwest*, 80 FERC at 62,242, that it is appropriate for the pipeline "to charge both for transporting gas from the non-associated receipt point(s) to the pool and again when gas is taken away from the pool and delivered to the designated delivery points."

consistent with NAESB standard 1.3.18, receipt points upstream of Station 85 should have direct access to a pool. This might be accomplished by establishing a second Zone 4 pool upstream of Station 85, or by permitting gas received in Zone 4 upstream of Station 85 to be pooled at Station 65 in Zone 3. However, the record developed at the hearing in this proceeding contains no evidence concerning such questions as: (1) the feasibility of establishing a separate paper pool for Zone 4 receipts upstream of Station 85 and how such a separate pool might be structured, (2) what effect such a paper pool might have on the current firm and interruptible transportation rate structure in Zone 4, (3) whether Transco already permits pooling at Station 65 of gas received at the Destin/Shubuta receipt point (and other Zone 4 receipt points), and (4) if so, whether the Destin/Shubuta receipt point could be considered to have direct access to the Station 65 pool, thus satisfying the requirements of NAESB Standard 1.3.18 concerning access to a pool.

76. A technical conference will provide the parties an opportunity to further explore these issues, as well as whether there has been any change in Transco's operations since the hearing that is relevant to the resolution of these issues. These include: (1) whether Transco's firm capacity upstream of Station 85 is still fully subscribed, (2) if not, what percentage of that firm capacity is currently subscribed, and (3) whether any shippers on Destin have been able to obtain firm capacity in zone 4.

77. In addition, there are certain aspects of the operation of the current Station 85 that are unclear from the present record. A technical conference will provide an opportunity to clarify the present operation of the Zone 85 pooling point and consider whether improvements could be made which would increase the ability of parties to use that point for pooling gas supplies.[39] For example, BP in its request for rehearing of the March 26, 2004 order in this proceeding asserted that firm, Zone 4 shippers using primary or secondary receipt points upstream of Station 85 must pay the Zone 4 usage and fuel charges twice in order to obtain the administrative benefits of using the Station 85 pooling point: once to transport gas to the pooling point and a second time to transport gas away from the Station 85 pooling point to its ultimate delivery point.[40] BP cited

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[39] In this connection, the Commission notes that, at the time of Transco's filing to comply with Order No. 587-F, the Commission had not yet issued Order No. 587-M adopting NAESB Standards 1.3.64 through 1.3.77, which requires pipelines to provide title transfer tracking. At the technical conference, parties may consider the appropriate coordination of title transfer tracking and pooling on Transco's system.

[40] BP's April 26, 2004 rehearing request at 6-7.

certain Transco tariff sheets in support of this assertion.[41] BP asserted that this is a further economic barrier to using the Station 85 pooling point for pooling any gas other than gas received from the Mobile Bay lateral.

78. If, in fact, Transco does require firm Zone 4 shippers to pay two usage and fuel charges in the situation described by BP that would appear to violate the Commission's policy that pipelines should not consider nomination to and from pooling points for pool members with through transportation contracts as splitting the contracted transportation service into two billable components. Rather, in such circumstances, billing should be based on either the contract's pool receipts or deliveries, but not both.[42] However, the Commission sees nothing in the tariff sheets cited by BP that clearly indicates one way or the other whether Transco imposes Zone 4 usage and fuel charges twice in the circumstances described by BP. Nor has the Commission found other evidence in the record that clearly resolves this issue. A Transco witness testified that Zone 4 firm shippers can and do obtain supplies at the Destin/Shubuta receipt point "at no additional transportation cost."[43] However, it is not clear whether the situation that witness was describing included use of Station 85 to pool supplies.[44]

79. Thus, the technical conference should explore whether there are any instances where Transco charges a firm transportation charge for shipment of gas from an upstream receipt point to Station 85 and a separate (and second) firm transportation charge for shipment of the gas to a delivery point that is downstream of Station 85, and if so what those instances are and whether such charges are consistent with Commission policy concerning pools. Similarly, the technical conference should explore the circumstances in which Transco charges an interruptible transportation charge for shipment of gas from an upstream receipt point to Station 85 and a separate (and second) interruptible or firm

[41] Transco Third Revised Volume No. 1: Fifteenth Revised Sheet No. 40.02, Eighteenth Revised Sheet No. 44.

[42] *See* Order No. 587-F, FERC Stats. & Regs., Proposed Regulations 1988-1998 ¶ 32,527 at 33,351, stating "when a pool exists in a rate zone, the charge for shipment in that zone must be incurred either for shipment to the pool or shipment out of the pool."

[43] Ex. No. T-52 at 61.

[44] *See* Tr. at 553 and 732-3, where Transco's witness appeared to state that a firm shipper using secondary point rights to pick up gas supplies at the Destin/Shubuta receipt point would not have access to the Station 85 pool, if it moved the gas across Zone 4 in a single transaction.

transportation charge for shipment of the gas to a delivery point that is downstream of Station 85.

80. Accordingly, the Commission directs that staff conduct a technical conference in this proceeding concerning the issues discussed above and report back to the Commission within 150 days of the issuance of this order.

The Commission orders:

(A) The requests for rehearing of the August 5, 2005 Order are granted in part and denied in part, as discussed above.

(B) The requests for clarification concerning the issue of the unbundling of the Emergency Eminence Storage Withdrawal Service are granted as discussed above.

(C) The issue concerning the allocation of certain storage costs between and among storage and transportation services is remanded to the Chief ALJ to appoint an ALJ for a further hearing consistent with the discussion above.

(D) Commission Staff is directed to convene a technical conference to address the issue of the appropriate method of conducting pooling in Zone 4, and to report back to the Commission within 150 days of the date of this order.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.