

119 FERC ¶ 61,255
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Suedeem G. Kelly, Marc Spitzer,
Philip D. Moeller, and Jon Wellinghoff.

Transcontinental Gas Pipe Line
Corporation

Docket Nos. RP01-245-019
RP01-245-021
RP01-245-022
RP06-569-001

ORDER DENYING REHEARING AND ACCEPTING COMPLIANCE FILINGS

(Issued June 7, 2007)

1. This order denies Transcontinental Gas Pipe Line Corporation's (Transco) request for rehearing of the Commission's October 3, 2006 Order directing compliance filing.¹ This order also accepts various compliance filings submitted by Transco.

Background

2. On August 31, 2006, pursuant to Article VI of its settlement in Docket No. RP01-245, Transco filed a general section 4 rate case in Docket No. RP06-569-000. In its transmittal letter in Docket No. RP06-569-000, Transco stated that it had not reflected in its filing the resolution of any of the reserved cost allocation issues litigated in Docket No. RP06-569-000. Transco asserted that the reason for this is that in Article VII of the Docket No. RP01-245 settlement the parties agreed that the final resolution of the reserved issues would be made effective "prospectively only after a final Commission order no longer subject to rehearing." Transco submitted that the Commission had not issued a final order no longer subject to rehearing on the reserved issues in Docket No. RP01-245, because it had remanded the storage cost allocation issue for further hearing and established a technical conference to address the Zone 4 pooling issue. Transco stated that once the Commission issues a final order no longer subject to

¹ *Transcontinental Gas Pipe Line Corporation*, 117 FERC ¶ 61,009 (2006).

rehearing on the reserved issues, Transco will adjust the rates in Docket RP06-569-000 as necessary to reflect, on a prospective basis, the Commission's resolution of those reserved issues.

3. In its protest in Docket No. RP06-569, Indicated Shippers sought summary rejection of Transco's general section 4 rate filing because it did not reflect the Commission's final resolution of most of the cost allocation issues which the settlement in Docket No. RP01-245 had reserved for litigation on the merits. Indicated Shippers stated that these issues included, among other things, the allocation of Administrative and General costs (A&G) to incremental services, the allocation of A&G costs to Transco's LNG service, and the allocation of storage costs to incremental services and the transportation component of bundled services. Indicated Shippers asserted that nothing in the settlement supports Transco's interpretation that it need not implement the Commission's resolution of any reserved issue until the Commission has resolved all of the reserved issues in a final order no longer subject to rehearing. Indicated Shippers contended that Transco is obligated to follow final Commission orders in which the Commission directed Transco to modify its cost allocation methods in certain respects. Indicated shippers argued that Transco must follow those directives in its new rate filing.

4. On September 29, 2006, the Commission issued an order, accepting and suspending Transco's section 4 filing in Docket No. RP06-569 to be effective March 1, 2007.² On October 3, 2006, the Commission issued an order in the Docket No. RP01-245 proceeding directing Transco to submit a filing complying with the Commission's various directives in that proceeding. The Commission stated that based upon Transco's statements in its transmittal letter in Docket No. RP06-569-000 and Indicated Shippers' protest in that docket, it appeared there is a disagreement over Transco's filing obligations as a result of the orders in the Docket No. RP01-245 proceeding. The Commission found that clarification was necessary so that the Commission's determinations in Docket No. RP01-245 are implemented and those determinations can be properly reflected in Transco's current rate case in Docket No. RP06-569-000.

5. The Commission found that Article VII of the Docket No. RP01-245 settlement lists a description of the various reserved issues separately and each description is followed by provision stating "the resolution of such issue to be effective prospectively only after a final Commission order no longer subject to rehearing." The Commission interpreted this as meaning a final order pertaining to a particular issue. The Commission found that there is nothing in the settlement that states that all issues must be finally resolved before the final findings on any particular issue are implemented. The

² *Transcontinental Gas Pipe Line Corporation*, 116 FERC ¶ 61,314 (2006).

Commission found that the fact that the storage cost allocation issue was remanded to the ALJ and the Zone 4 pooling issue was set for technical conference does not relieve Transco of its obligation to implement the Commission's findings on the other reserved issues that have been resolved by a "final Commission order no longer subject to rehearing." Accordingly, Transco was directed to make a compliance filing to implement the Commission's findings in the various orders in Docket No. RP01-245-000. The Commission stated that after it had reviewed the filing and found that Transco had complied, Transco would be directed to reflect the Commission's Docket No. RP01-245 findings in its current rate case filing in Docket No. RP06-569.

6. On November 2, 2006, Transco filed *pro forma* tariff sheets to comply with the directives of the October 3, 2006 Order. On March 1, 2007, a letter order was issued in Docket No. RP01-245-020 which found that Transco's *pro forma* tariff sheets complied with the October 3, 2006 Order and required Transco to file actual tariff sheets to be effective March 1, 2007. Also, on November 2, 2006, Transco filed a request for rehearing of the October 3, 2006 Order directing compliance filing. On November 17, 2006, Indicated Shippers filed an answer to Transco's request for rehearing.

7. On February 28, 2007, Transco filed revised tariff sheets in Docket No. RP06-569-001 to place into effect rates that were suspended until March 1, 2007, in the proceeding (see Appendix A). The rates were adjusted (1) to eliminate costs associated with facilities not placed into service by February 28, 2007, and (2) to incorporate intervening filings which have been accepted since Transco's initial filing in this docket (which was suspended). In addition, Transco determined that it incorrectly applied onshore transmission negative salvage depreciation rate to its solar turbines in its original filing, and has recalculated that herein resulting in a decrease in Transco's cost of service of \$1.2 million. The instant filing reflects an overall \$14.3 decrease in Transco's cost of service.

8. Also on February 28, 2007, Transco filed revised tariff sheets in Docket No. RP01-245-021 to implement the terms of a Commission approved uncontested settlement agreement between Transco and its customers regarding allocation of costs among certain storage facilities (see Appendix B).³ By the terms of the settlement, the rates take effect March 1, 2007. By their own terms, certain of those tariff sheets supercede certain sheets also filed on February 28 in Docket No. RP06-569-001.

9. On March 9, 2007, in Docket No. RP01-245-022, Transco filed the tariff sheets listed in Appendix C to comply with the March 1, 2007 Order. The filing reflects the

³ *Transcontinental Gas Pipe Line Corporation*, 117 FERC ¶ 61,232 (2006).

resolution of Issue XII: The allocation of costs to Transco's incrementally priced transportation services and to Transco's bundled storage services; and Issue XIII: The allocation of A&G costs to Transco's LNG service. Transco states that the rates filed in its compliance filing are based on the cost of service underlying Transco's motion filing in Docket No. RP06-569-000 filed on February 28, 2007, to be effective March 1, 2007. Transco also states that the compliance filing incorporates the terms of the settlement of Issue IX: The unbundling of the Emergency Eminence Storage Withdrawal Service, which was approved by the Commission on November 27, 2006.⁴ Transco requests that certain tariff sheets be effective March 1, 2007, and that certain other tariff sheets be effective April 1, 2007, to incorporate changes included in its March 1, 2007 electric power tracker filing in Docket No. RP07-338-000.

Public Notice, Interventions and Protests

10. Public notice of Transco's filing in Docket No. RP06-569-001 was issued on March 5, 2007. Public notice of Transco's filing in Docket No. RP01-245-021 was issued on March 7, 2007. Public notice of Transco's filing in Docket No. RP01-245-022 was issued on March 14, 2007. Interventions and protests were due as provided in section 154.210 of the Commission's regulations (18 C.F.R. § 154.210 (2006)). Pursuant to Rule 214 (18 C.F.R. § 385.214 (2006)), all timely filed motions to intervene and any motions to intervene out-of-time filed before the issuance date of this order are granted. Granting late intervention at this stage of the proceeding will not disrupt the proceeding or place additional burdens on existing parties. No protests were filed.

Transco's Request for Rehearing

11. Transco asserts that the Commission's purported clarification of the settlement – requiring a piecemeal implementation of the resolutions of the reserved issues – ignores other terms of Article VII of the settlement, and is contrary to Article VII and to the intent of the parties to the settlement.

12. Transco states that Article VII of the settlement provides in section A that “the issues listed below are reserved for resolution pursuant to hearing or further settlement, provided that the final resolution of each issue will be made effective as indicated below” Transco states that following that provision are numbered paragraphs that describe each of the reserved issues. Transco states that within each of the numbered paragraphs is a statement indicating how the resolution of such issue is to be made effective. Transco states that for all of the issues except one, the resolution of the issues is to be made

⁴ *Id.*

“effective prospectively only after a final Commission order no longer subject to rehearing.” Transco states that the one exception to this approach is Reserved Issue 6, relating to the rate treatment for the costs of the facilities associated with Transco’s Mobile Bay expansion project. Transco states that for that issue, the participants reserved the right to argue that “the final resolution . . . shall apply retroactive to September 1, 2001 under NGA Section 4 or shall be applied prospectively under NGA Section 5.”

13. Transco asserts that Article VII of the settlement thus reserved issues for resolution pursuant to the hearing or pursuant to further settlement, and addresses how the resolution is to be made effective. Transco contends that for all but one of the issues, the resolution is to be made effective “prospectively only after a final Commission order no longer subject to rehearing.” Transco states that, of those issues, only one issue was resolved pursuant to settlement, and that resolution was made effective “prospectively only after a final Commission order no longer subject to rehearing” on the settlement. Transco states that the remaining issues, however, are being resolved “pursuant to hearing.” Transco argues that the “final Commission order no longer subject to rehearing” referred to after the description of such issues is a final (*i.e.*, last) Commission order no longer subject to rehearing in the hearing or on the further settlement, not a final (*i.e.*, no longer subject to rehearing) Commission order “pertaining to a particular issue.” Transco argues that, at this point, there is no final Commission order no longer subject to rehearing with respect to the hearing on the reserved issues in Docket No. RP01-245.

14. Transco states that the Commission recently issued an order in Docket No. RP01-245-016 which, among other things, remanded one of the reserved issues for further hearing and established a technical conference to address another such issue. *Transcontinental Gas Pipe Line Corp.*, 115 FERC ¶ 61,268, *reh’g denied by operation of law*, 116 FERC ¶ 61,104 (2006). Transco contends that the Commission has not yet issued a final, (*i.e.*, last) order no longer subject to rehearing on the reserved issues litigated in Docket No. RP01-245 hearing as contemplated by the settlement. Accordingly, Transco states that it has not made a filing to implement the resolution of the reserved issues litigated in the Docket No. RP01-245 proceeding and did not reflect the resolution of such reserved issues in its August 31, 2006 general rate case filing in Docket No. RP06-569.

15. Transco asserts that by interpreting Article VII as meaning a final Commission order “pertaining to a particular issue,” the Commission is adding a concept to Article VII that simply is not there. Transco argues that if the parties to the settlement had intended that the resolution of a reserved issue be implemented following a final Commission order “pertaining to [that] particular issue,” they easily could have included those words in Article VII.

16. Transco argues that its interpretation also is consistent with its implementation of the resolutions of reserved issues under settlement agreements in prior Transco rate proceedings, which contained essentially the same terms addressing the implementation of the resolutions of the reserved issues as are contained in the Agreement. Transco asserts that like Article VII of the Agreement, Article VI of the June 19, 1996 Stipulation and Agreement in Docket No. RP95-197 provided that the resolution of the reserved issues in that proceeding was to be “effective prospectively only after a final Commission order no longer subject to rehearing.” Transco contends that in the RP95-197 proceeding, even though certain issues became “final” at different points in time during that proceeding, it was only after the last Commission order in the reserved issue proceeding became final that it implemented Commission’s resolutions on all of the reserved issues in that proceeding.

17. Transco submits that the Indicated Shippers and the Commission knew of Transco’s interpretation of Article VII of the settlement with respect to the implementation of the resolutions of the reserved issues at the time the settlement was entered into due to Transco’s consistent interpretation of the provisions governing the implementation of the resolutions of reserved issues under settlement agreements in prior Transco rate proceedings. Transco asserts that until the Indicated Shippers’ motion filed in Docket No. RP06-569, Transco had no reason to believe that the Indicated Shippers or the Commission harbored a contrary interpretation of Article VII of the settlement. Transco contends that rather than clarify the settlement consistent with the intent of the parties and the rules of contract interpretation, the Commission has improperly modified Article VII to require a piecemeal implementation of the resolutions of the reserved issues.

Discussion

18. Transco has taken the position that the Commission’s findings on the reserved issues in the Docket No. RP01-245 rate case do not have to be implemented until a final order on all issues has been issued. As a consequence, Transco has not reflected any of the Docket No. RP01-245 findings in the current rate case in Docket No. RP06-569-000. It was that failure that prompted Indicated Shippers to file a motion which the Commission addressed in the October 3, 2006 Order that is the subject to Transco’s rehearing request.

19. Even though the only outstanding issue in the Docket No. RP01-245 case concerns pooling in Zone 4, Transco maintains that various cost allocation issues that have been finally decided need not be implemented until a final order, *i.e.*, last order, is issued on Zone 4 pooling. The Commission rejects Transco’s argument and stands by its interpretation of the settlement in the October 3, 2006 Order that since various cost

allocation issues have been finally decided, those findings must be implemented in the instant docket and reflected in the current rate case in Docket No. RP06-569-000.

20. Transco asserts, among other things, that the settlement language in Docket No. RP01-245 is identical to the settlement language in the Docket No. RP95-197 case and that it did not implement the findings in that rate case until all issues were resolved and the final order, *i.e.*, last order was issued. The Commission rejects this argument because there was never a dispute in that proceeding with respect to the implementation of the Commission's findings and the Commission never interpreted the Docket No. RP95-197 settlement language.

21. Except for reserved issue 6 concerning the Mobile Bay lateral, each of the other reserved issues contained a description of the issue followed by the phrase "the resolution of such issue to be effective prospectively only after a final Commission order no longer subject to rehearing." (Emphasis added). As the Commission found in the October 3, 2006 Order, this means that a finding must be implemented after a final order is issued pertaining to a particular issue. If Transco did not want to implement any of the Commission's findings until all issues were resolved, it would have been easy enough to draft such language in the settlement. The settlement could have indicated an exception for the Mobile Bay lateral issue and then state that the resolution of all other issues will be effective after a final Commission order resolving all issues. Transco's insertion of a separate sentence referring to "such issue" indicates an intent to treat each issue separately.

22. The tariff sheets in Transco's February 28, 2007 filing in Docket No. RP06-569-001, to place into effect rates that were suspended until March 1, 2007, are accepted. The tariff sheets in Transco's February 28, 2007 filing in Docket No. RP01-245-021, to implement a settlement regarding the allocation of costs among certain storage facilities, are accepted. It should be noted that certain tariff sheets in Docket No. RP01-245-021 will supercede tariff sheets filed in Docket No. RP06-569-001. The tariff sheets in Transco's March 9, 2007 filing in Docket No. RP01-245-022, to implement the findings on certain cost allocation issues, are accepted. It should be noted that certain tariff sheets in Docket No. RP01-245-022 will supercede tariff sheets in Docket No. RP01-245-021. Because the rates in all three filings reflect the rates which are being placed into effect subject to refund in Transco's current rate case proceeding in Docket No. RP06-569, they are accepted subject to the outcome of that proceeding.

23. In the Explanation of Changes for Issue XII in the filing Transco states that the rates reflect continuation of the existing Dth-mile allocation of transmission O&M costs among its non-incremental and incremental services. In an order on rehearing issued August 5, 2005, in this proceeding, the Commission denied Transco's request for rehearing of this issue and directed Transco to directly assign O&M costs to incremental

and non-incremental services to the extent possible in future rate cases.⁵ Within 30 days of the date of this order, Transco is directed to file revised tariff sheets to reflect assignment of direct O&M costs to the extent possible in its ongoing rate case in Docket No. RP06-569 to be effective March 1, 2007.

The Commission orders:

(A) Transco's request for rehearing is denied.

(B) The tariff sheets listed in the Appendices are accepted to be effective March 1, 2007, and April 1, 2007, subject to the outcome of the proceeding in Docket No. RP06-569.

(C) Within 30 days of the date of this order, Transco is directed to file revised tariff sheets to reflect assignment of direct O&M costs to the extent possible in its ongoing rate case in Docket No. RP06-569, to be effective March 1, 2007.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

⁵ *Transcontinental Gas Pipe Line Corporation*, 112 FERC ¶ 61,170 (2005).

Appendix A

Tariff Sheets filed in Docket No. RP06-569-001

Effective March 1, 2007

FERC Gas Tariff, Third Revised Volume No. 1

Sub Forty-Fifth Revised Sheet No. 27
Sub Eighteenth Revised Sheet No. 27A
Sub Thirty-Fifth Revised Sheet No. 28
Sub Sixtieth Revised Sheet No. 28A
Sub Thirty-Third Revised Sheet No. 28B
Sub Thirty-Ninth Revised Sheet No. 28C
Eleventh Revised Sheet No. 33
Substitute Second Revised Sheet No. 33A
Substitute Fourth Revised Sheet No. 33B
Substitute Original Sheet No. 33C
Substitute Original Sheet No. 33D
Substitute Original Sheet No. 33E
Substitute Fourth Revised Sheet No. 34
Sub Forty-Second Revised Sheet No. 35
Sub Fourteenth Revised Sheet No. 35.01
Sub Thirty-Seventh Revised Sheet No. 35A
Sub Fifty-Sixth Revised Sheet No. 38
Sub Thirtieth Revised Sheet No. 40
Sub 27th Revised Sheet No. 40.01
Sub 24th Revised Sheet No. 40.02
Sub Twenty-Ninth Revised Sheet No. 40C
Sub Twenty-Seventh Revised Sheet No. 40I
Sub Eighteenth Revised Sheet No. 40J
Sub Fifteenth Revised Sheet No. 40J.01
Sub Twelfth Revised Sheet No. 40J.02
Sub Tenth Revised Sheet No. 40J.03
Sub Twenty-Sixth Revised Sheet No. 40K
Sub Fourteenth Revised Sheet No. 40L
Substitute Ninth Revised Sheet No. 40M
Sub Seventh Revised Sheet No. 40M.01
Sub Fifth Revised Sheet No. 40M.02
Sub Fifth Revised Sheet No. 40M.03
Sub Eleventh Revised Sheet No. 40O

Substitute Seventh Revised Sheet No. 40P
Sub Fourth Revised Sheet No. 40P.01
Sub Fourth Revised Sheet No. 40P.02
Sub Fifth Revised Sheet No. 40P.03
Substitute Ninth Revised Sheet No. 40Z
Sub First Revised Sheet No. 40Z.01
Sub Twenty-Fifth Revised Sheet No. 42
Sub Fourteenth Revised Sheet No. 42.01
Sub Twenty-Second Revised Sheet No. 45
Sub Thirteenth Revised Sheet No. 45.01
Sub Eighteenth Revised Sheet No. 45A
Sub Twenty-Third Revised Sheet No. 46
Sub Twenty-Third Revised Sheet No. 47
Substitute Eighth Revised Sheet No. 54
Substitute Twelfth Revised Sheet No. 61
Substitute Eighth Revised Sheet No. 61A
Substitute Third Revised Sheet No. 134
Substitute Second Revised Sheet No. 135G
Substitute First Revised Sheet No. 135H
Substitute Third Revised Sheet No. 155D
Substitute Fifth Revised Sheet No. 249R
Substitute Sixth Revised Sheet No. 249U

Appendix B

Tariff Sheets Filed in Docket No. RP01-245-021

Effective March 1, 2007

FERC Gas Tariff, Third Revised Volume No. 1

Twenty-Fourth Revised Sheet No. 1
Thirteenth Revised Sheet No. 2
Forty-Sixth Revised Sheet No. 27
Nineteenth Revised Sheet No. 27A
Original Sheet No. 27B
Thirty-Sixth Revised Sheet No. 28
Sixty-First Revised Sheet No. 28A
Fortieth Revised Sheet No. 28C
Fifteenth Revised Sheet No. 35.01
Thirty-Eighth Revised Sheet No. 35A
Fifty-Seventh Revised Sheet No. 38
Twenty-Eighth Revised Sheet No. 40.01
Twenty-Fifth Revised Sheet No. 40.02
Thirtieth Revised Sheet No. 40C
Twenty-Eighth Revised Sheet No. 40I
Nineteenth Revised Sheet No. 40J
Sixteenth Revised Sheet No. 40J.01
Twenty-Seventh Revised Sheet No. 40K
Fifteenth Revised Sheet No. 40L
Tenth Revised Sheet No. 40M
Eighth Revised Sheet No. 40M.01
Twelfth Revised Sheet No. 40O
Eighth Revised Sheet No. 40P
Fifth Revised Sheet No. 40P.01
Twenty-Sixth Revised Sheet No. 42
Fourteenth Revised Sheet No. 45.01
Nineteenth Revised Sheet No. 45A
Twenty-Fourth Revised Sheet No. 46
Twenty-Fourth Revised Sheet No. 47
Ninth Revised Sheet No. 54
Second Revised Sheet No. 163C
Sixth Revised Sheet No. 164

Second Revised Sheet No. 205

Fourth Revised Sheet No. 229

Second Revised Sheet No. 230

Third Revised Sheet No. 249F

Second Revised Sheet No. 249G

Fifth Revised Sheet No. 249H

Third Revised Sheet No. 249I

Fifth Revised Sheet No. 249J

Fifth Revised Sheet No. 497

Fifth Revised Sheet No. 497A

Second Revised Sheet No. 497B

Second Revised Sheet No. 497C

Appendix C

Tariff Sheets Filed in Docket No. RP01-245-021

Effective March 1, 2007

FERC Gas Tariff, Third Revised Volume No. 1

First Revised Forty-Sixth Revised Sheet No. 27
Twentieth Revised Sheet No. 27A
First Revised Sheet No. 27B
First Revised Sixty-First Revised Sheet No. 28A
First Revised Fortieth Revised Sheet No. 28C
First Revised Fifteenth Revised Sheet No. 35.01
First Revised Fifty-Seventh Revised Sheet No. 38
First Revised Twenty-Eighth Revised Sheet No. 40.01
First Revised Thirtieth Revised Sheet No. 40C
First Revised Twenty-Eighth Revised Sheet No. 40I
First Revised Nineteenth Revised Sheet No. 40J
First Revised Twenty-Seventh Revised Sheet No. 40K
First Revised Fifteenth Revised Sheet No. 40L
First Revised Tenth Revised Sheet No. 40M
First Revised Twelfth Revised Sheet No. 40O
First Revised Eighth Revised Sheet No. 40P
Second Revised Sheet No. 40Z.01
First Revised Twenty-Sixth Revised Sheet No. 42
First Revised Fourteenth Revised Sheet No. 45.01
First Revised Twenty-Fourth Revised Sheet No. 46
First Revised Twenty-Fourth Revised Sheet No. 47
First Revised Ninth Revised Sheet No. 54

Effective April 1, 2007

Substitute Forty-Seventh Revised Sheet No. 27
Substitute Sixty-Second Revised Sheet No. 28A
Substitute Forty-First Revised Sheet No. 28C
Substitute Sixteenth Revised Sheet No. 35.01

Substitute Fifty-Eighth Revised Sheet No. 38
Substitute Twenty-Ninth Revised Sheet No. 40.01
Substitute Thirty-First Revised Sheet No. 40C
Substitute Twenty-Ninth Revised Sheet No. 401
Substitute Twentieth Revised Sheet No. 40J
Substitute Twenty-Eighth Revised Sheet No. 40K
Substitute Sixteenth Revised Sheet No. 40L
Substitute Eleventh Revised Sheet No. 40M
Substitute Thirteenth Revised Sheet No. 40O
Substitute Ninth Revised Sheet No. 40P
Twenty-Seventh Revised Sheet No. 42
Substitute Fifteenth Revised Sheet No. 45.01
Substitute Twenty-Fifth Revised Sheet No. 46
Substitute Twenty-Fifth Revised Sheet No. 47
Substitute Tenth Revised Sheet No. 54