

123 FERC ¶ 61,029
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

April 11, 2008

In Reply Refer To:
Transcontinental Gas Pipe Line
Corporation
Docket No. RP08-272-000

Transcontinental Gas Pipe Line Corporation
P.O. Box 1396
Houston, TX 77251-1396

Attention: Charlotte Hutson
Manager-Rates

Reference: Rate Schedule SS-2 Tracker Filing

Dear Ms. Hutson:

1. On March 14, 2008, Transcontinental Gas Pipe Line (Transco) filed revised tariff sheets¹ proposing to establish procedures to track the fuel retention attributable to storage-related transportation service purchased by Transco from National Fuel Gas Supply Corporation (National Fuel) under National Fuel's Rate Schedule X-54. For the reasons discussed below, Transco's revised tariff sheets are accepted and suspended, to be effective November 1, 2007, and April 1, 2008, subject to refund and conditions and to Transco providing additional clarification and explanation of its proposal, and further subject to the outcome of Docket Nos. RP01-245-023, *et al.*

¹ First Revised Forty-Fourth Revised Sheet No. 28C and Substitute Forty-Fifth Revised Sheet No. 28C to Transco's FERC Gas Tariff, Third Revised Volume No. 1. The proposed effective dates of the tariff sheets are November 1, 2007 and April 1, 2008, respectively. The latter revised tariff sheet contains revised electric power tracker rates that are subject to the outcome of Transco's compliance filing in Docket Nos. RP01-245-023, *et al.* and subsequent revisions.

Background

2. Transco states that it uses the service it purchases under National Fuel's Rate Schedule X-54 to provide service to its customers under Rate Schedule SS-2.² Transco states that, on January 23, 2008, National Fuel submitted for filing in Docket No. RP08-170-000 certain revised tariff sheets which clarify and revise the retained fuel provisions of Rate Schedule X-54. The National Fuel filing indicated that although Rate Schedule X-54 permits National Fuel to retain transportation fuel, National Fuel had not done so. Therefore, National Fuel proposed to amend section 2.3 (Fuel Allowance Provision) of its Rate Schedule X-54, to allow it to recover fuel for the period of December 1, 2006, through March 31, 2007, through a one time reduction of 37,361 Dth from Transco's storage inventory under its contract with National Fuel pursuant to National Fuel's storage Rate Schedule SS-1. National Fuel further proposed to amend the Fuel Allowance Provision to provide that National Fuel will retain, effective November 1, 2007, 0.5 percent of the gas delivered by Transco for transportation under Rate Schedule X-54. National Fuel also proposed to change section 2.3 of Rate Schedule X-54 to provide that, beginning April 2008 and each April thereafter, National Fuel will compare the retained volume under Rate Schedule X-54 during the preceding months of April through March with the metered volumes of gas used for compressor fuel for those same preceding months and will make an adjustment no later than May 1 to Transco's storage inventory under its Underground Storage Agreement with National Fuel for the difference between the retained volume and the metered volume. The filing was unopposed and the Commission issued an unpublished letter order approving the revisions to National Fuel's Rate Schedule X-54, effective November 1, 2007.

Summary of the Tariff Filing

3. In its March 14, 2008 tariff filing, Transco states that section 8 of its Rate Schedule SS-2 authorizes it to pass through to its customers the quantity of fuel retained by National Fuel under Rate Schedule X-54 to support Transco's Rate Schedule SS-2 service. Transco further states that because of the Commission's approval of the changes to National Fuels' tariff discussed above, it is proposing two separate conforming adjustments pursuant to section 8 of Rate Schedule SS-2. First, Transco proposes to make an adjustment to its Rate Schedule SS-2 customers' storage inventory levels to collect the one-time storage inventory adjustment of 37,361 Dth based on the actual fuel retention percentage for the period of December 1, 2006, through March 31, 2007.³

² Transco also purchases storage service from National Fuel under National Fuel's Rate Schedule SS-1 to provide the bundled storage services Transco provides under Transco's Rate Schedule SS-2.

³ The actual fuel retention percentage is calculated by dividing the 37,361 Dth by the total withdrawal nominations under Rate Schedule X-54.

Second, Transco proposes to retain 0.5 percent from storage withdrawal quantities nominated for delivery by its Rate Schedule SS-2 customers, with an effective date of November 1, 2007. Transco states that, in accordance with the Fuel Allowance Provision of National Fuel's Rate Schedule X-54, National Fuel will notify Transco of any differences between the fuel retained and the metered volumes of gas used for compressor fuel no later than May 1 of each year. Transco states that, subsequent to receiving this notification from National Fuel, Transco will recalculate the fuel retention percentage to reflect the percentage actually retained by National Fuel. Transco states that it will then use the calculated actual fuel retention percentage to make the appropriate adjustments to its Rate Schedule SS-2 customers' storage inventory balances.

4. Transco proposes to revise the rate sheet of its tariff showing Rate Schedule SS-2 rates by adding a footnote setting forth a description of the process it will follow to apply the 0.5 percent Fuel Allowance and annual storage inventory adjustment attributable to National Fuel's Rate Schedule X-54.

Notice, Interventions, and Protests

5. Public notice of the filing was issued on March 17, 2008. Interventions and protests were due on March 26, 2008. Pursuant to Rule 214 (18 C.F.R. § 385.214 (2007)), all timely filed motions to intervene and any motion 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. UGI Distribution Companies⁴ and Consolidated Edison Company of New York, Inc. filed motions to intervene. New Jersey Natural Gas Company (New Jersey Natural) filed a motion to intervene and protest.

6. In its protest, New Jersey Natural argues that Transco's proposal is unjust and unreasonable and asks the Commission to either reject it or suspend it for the maximum period and establish a technical conference. First, New Jersey Natural asserts that Transco's proposal is procedurally deficient because Transco's current tariff and Rate Schedule SS-2 do not provide for Transco to adjust its customers' storage inventories as contemplated under the true-up mechanisms proposed in the filing and the proposal is not consistent with the requirements of section 154.403 of the Commission's regulations for establishing a new mechanism. New Jersey Natural states that Section 38 of Transco's tariff does not provide for Transco to make increases and decreases to the fuel retention percentages applicable to its tariff's transportation and storage services, and does not provide for Transco to true-up fuel retention through direct adjustments to its storage customers' storage gas inventories. Therefore, New Jersey Natural states, Transco does not have the authority to make such prior period adjustments to its Rate Schedule SS-2

⁴ The UGI Distribution Companies are UGI Utilities, Inc. and UGI Penn Natural Gas, Inc.

customers as proposed. New Jersey Natural asserts that in *Crossroads Pipeline Co.*,⁵ the Commission stated that “when implementing a new tracker and true-up mechanism, a pipeline may not include in the initial true-up any underrecoveries that occurred prior to the effective date of the tariff provision,” and explained that such a true-up would violate the filed rate doctrine and the rule against retroactive rate making.

7. New Jersey Natural states that although section 8 of Rate Schedule SS-2 provides for Transco to retain fuel equivalent to that retained by any Supplier, Transco overstates the scope of the language with respect to authorizing its newly proposed retroactive storage gas inventory adjustments. New Jersey Natural states that nothing in Rate Schedule SS-2 puts customers on notice that Transco may true-up past period overrecoveries and underrecoveries in any manner other than making adjustments to the stated fuel retention percentage.

8. Further, New Jersey Natural asserts that Transco’s filing fails to meet the requirements of section 154.403 which, for example, requires that a pipeline that adjusts its fuel percentage “must state within the general terms and conditions of its tariff, the methodology and time of the adjustments,” and proceeds to enumerate what items must be included in the general terms and conditions. New Jersey Natural states that Transco has failed to comply with this requirement because it has not proposed changes to its General Terms and conditions. Further, New Jersey Natural states that the changes Transco proposes to footnote 2 of Rate Schedule SS-2 lack needed specificity as to how adjustments will be made, including the following issues: (i) if Transco uses any SS-2 storage for system balancing, how those volumes will be tracked and adjusted; (ii) what is the exact timing of the Transco inventory adjustments to its SS-2 customers; and (iii) when Transco makes these inventory adjustments, whether SS-2 customers will be required to pay any injection or withdrawal charges.

9. New Jersey Natural also argues that because the service Transco provides under Rate Schedule SS-2 is Part 157 individually certificated section 7(c) service, Transco may not seek to make these changes through this application, but must seek to amend the section 7 certificate applicable to the service.

10. Second, New Jersey Natural argues that Transco’s proposal to recover underrecoveries over the time periods of December 1, 2006 through March 31, 2007 and November 1, 2007 through March 31, 2008 violates the filed rate doctrine and the rule against retroactive ratemaking because it does not meet the two-part test established in *TransColorado*⁶ applicable to recovery of prior period fuel costs. New Jersey Natural

⁵ 121 FERC ¶ 61,249, at P 10 (2007).

⁶ *TransColorado Gas Transmission Company*, 112 FERC ¶ 61,135 (2005) (*TransColorado*).

states that under this test, pipelines may recover fuel costs for prior periods only if: (1) the underlying tariff indicates an intent to provide a true-up mechanism; and (2) the pipeline establishes that the losses are the type of losses for which recovery was contemplated and demonstrates with reasonable accuracy the amount of the adjustment it seeks to recover. New Jersey Natural asserts that Transco's proposal fails to meet the first prong of this test because the tariff does not indicate that Transco will true-up past period fuel retention through adjustments to customers' storage gas inventories.

11. Third, New Jersey Natural states that Transco's proposal to each year reconcile with National Fuel any under or over recovery of fuel retained by National Fuel under Rate Schedule X-54 to support Transco's Rate Schedule SS-2 service and then make adjustments to its Rate Schedule SS-2 customers' storage inventory balances is unjust and unreasonable because it deprives customers of the rate certainty needed to make informed economic decisions with respect to the cost of using gas in storage relative to other alternatives and is inconsistent with the Commission's general practice of approving fuel true-ups whereby the fuel rate for the next period reflects any true-up for the previous period.

12. New Jersey Natural states that it is concerned that retroactive storage inventory adjustments create a pricing mismatch where customers may be required to replace lower cost gas in storage with more expensive gas well after the time period when the gas was used, as opposed to the traditional tracker and true-up mechanism where fuel is true-up and the fuel percentage is adjusted on a prospective basis.

13. New Jersey Natural states that it did not intervene in the National Fuel proceeding because it is not a customer of National Fuel and there was no indication in that filing that Transco would seek to make similar changes to its Rate Schedule SS-2.

Discussion

14. Although we find that the instant proposal is not barred by the rule against retroactivity, we find that Transco's proposal is not sufficiently clear to enable the Commission to determine whether the proposal is just and reasonable and, therefore, we direct Transco to provide revised tariff provisions and further clarification and explanation of its proposal as detailed below within 20 days of this order, and will accept and suspend its filing subject to refund and to the conditions discussed below.

15. First, regarding the issue of retroactivity raised by New Jersey Natural, we find that Transco's tariff permits and requires the instant filing to track the subject fuel-related changes from National Fuel under Rate Schedule X-54 effective on the proposed date. The relevant portion of Transco's tariff for purposes of the Commission's decision on this issue is section 4.1(c) of Transco's Rate Schedule SS-2, and not section 38 of

the GT&C.⁷ Section 4.1(c) provides that Transco must file to track any changes in National Fuel's charges that affect Transco's SS-2 rates within 30 days of the order authorizing the National Fuel rate changes and further provides that the effective date of the Transco rate changes must coincide with the effective date of the National Fuel changes, in this case, November 1, 2007. The changes in fuel charged by National Fuel to Transco and National Fuel's Rate Schedule X-54 fuel recovery methodology tariff changes, which Transco is required to track, were accepted by the Commission in Docket No. RP08-170-000, effective November 1, 2007, and therefore may not be challenged here. New Jersey Natural's forum for opposing the fuel changes to be tracked was in National Fuel's proceeding. New Jersey Natural's failure to intervene in National Fuel's proceeding on the grounds that National Fuel did not indicate there that Transco would be filing to seek similar charges under Rate Schedule SS-2 is without merit as Transco's tariff clearly provides that Transco must track those charges. All Rate Schedule SS-2 customers, including New Jersey Natural, may intervene in all National Fuel X-54 and SS-1 rate filing proceedings since they affect their Rate Schedule SS-2 rates.

16. The Commission finds that New Jersey Natural is correct that 154.403(c) requires this fuel tracker provision to be in the GT&C and not in a footnote to a rate sheet. However, because this tracker is limited to Rate Schedule SS-2, we find that it should be moved to the SS-2 Rate Schedule and not be included in the general tariff provisions applicable to all shippers. Further, New Jersey Natural is correct that the proposal is not clear and does not meet the requirements of section 154.403. Transco is directed to provide clarifying tariff language that explains how the proposal will work and that contains the information required by the regulations. In addition, Transco is directed to respond to the questions raised in New Jersey Natural's protest, including how Rate Schedule SS-2 Injection Allowances are to be treated.

17. Also, Transco is directed to respond to New Jersey Natural's concerns that retroactive storage inventory adjustments create a pricing mismatch and explain why the traditional tracker and true-up mechanism, which avoids this problem, could not be implemented on Transco's system. Transco must also explain how it intends to account for the subject storage balance adjustments. Further, Transco must explain how billing for storage services will be affected under Rate Schedule SS-2 due to the changes in customers' storage inventories to reflect the passthrough of National Fuel's fuel charges.

⁷ We note that, if section 38 did apply, it would authorize the recovery of the past un-recovered fuel costs for the periods at issue here. Section 38.7 provides that prior period adjustments can be made that relate to the twenty-four month period prior to the beginning of the Deferral Period, which precedes the relevant period here of December 1, 2006, through March 31, 2007.

18. Further, Transco's proposal does not specify a specific filing date or effective date of future filings under the proposed tariff provision presumably because National Fuel's Rate Schedule X-54 does not establish a specific effective date of the annual true-up adjustment in Transco's SS-1 inventory which National Fuel must make by May 1 each year and which Transco must track. However, since section 4.1(c) of Transco's Rate Schedule SS-2 requires Transco to file to track such changes within 30 days of National Fuel's changes to coincide with the effective date of such changes, we believe the intent is for Transco to file by June 1 to implement the changes effective May 1. Accordingly, Transco is directed to file to revise its tariff to clarify that any filing pursuant to Rate Schedule SS-2 to track National Fuel's Rate Schedule X-54 adjustments for fuel must be made by June 1 of each year, with an effective date of May 1.

19. Therefore, the Commission waives the 30-day notice requirement to permit the November 1, 2007, and April 1, 2008 effective dates, and accepts and suspends the tariff sheets listed in footnote 1 herein for a shortened suspension period, to be effective November 1, 2007, and April 1, 2008, respectively, subject to refund and the conditions of this order, and subject to outcome of Docket No. RP01-245-023, *et al.*

By direction of the Commission.

Kimberly D. Bose,
Secretary.