

126 FERC ¶ 61,086  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Acting Chairman;  
Sudeen G. Kelly, Marc Spitzer,  
and Philip D. Moeller.

Transcontinental Gas Pipe Line Corporation

Docket No. RP09-183-000

ORDER GRANTING WAIVER

(Issued January 30, 2009)

1. On December 24, 2008, Transcontinental Gas Pipe Line Corporation (Transco) filed a request for waiver of the Commission's capacity release regulations in order to permit two permanent capacity release transactions to occur. Specifically, Transco requests waiver of section 284.8(h)(1) [18 CFR § 284.8(h)(1) (2008)] of the Commission's regulations to allow a portion of a negotiated rate transportation service agreement to be permanently released to two pre-arranged shippers, at a negotiated rate paid by the releasing shipper which is in excess of the maximum tariff rate. Transco requests the Commission grant the waiver on or before February 1, 2009, so that the parties may effectuate the applicable capacity release transactions by March 1, 2009. Transco further requests the Commission grant any and all waivers of its regulations necessary to permit these capacity releases to occur. As discussed below, the Commission grants waiver of sections 284.8(b)(2) and 284.8(e), effective the date of this order.

**Public Notice and Interventions**

2. Public notice of the filing was issued on December 29, 2008, with interventions and protests due as provided in section 154.210 of the Commission's regulations, 18 C.F.R. § 154.210 (2008). Pursuant to Rule 214, 18 C.F.R. § 385.214 (2008), all timely 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 adverse comments or protests were filed.

**Details of the Filing**

3. Transco states that it has a negotiated service agreement with Atmos Energy Corporation (Atmos), dated August 27, 2003, for Rate Schedule FT firm transportation service under Transco's Momentum Expansion Project. The negotiated rate is above Transco's existing maximum recourse rate for the service in question. Transco states that this agreement has a Transportation Contract Quantity (TCQ) of 6,000 dekatherms (Dth) per day. The agreement continues in effect until May 1, 2014 and thereafter until terminated by seller or buyer upon at least one year of notice.

4. Transco asserts that Atmos reached an agreement to release permanently 1,500 Dth per day to Municipal Gas Authority of Georgia (MGAG), and an additional 2,500 Dth per day to MGAG as agent for the City of Buford (Buford). Transco states that MGAG and Buford will agree to accept all the terms and conditions of the permanent release. These include that (1) Transco will permanently relieve Atmos of liability for the 4,000 Dth of capacity being released and (2) MGAG and Buford will "permanently assume liability for 1,500 Dth per day and 2,500 Dth per day, respectively, at the negotiated rate under their respective service agreement, thereby leaving Transco economically indifferent to the permanent releases."<sup>1</sup> Following receipt of the waiver requested in the instant filing, Transco states that it will effectuate the instant capacity release transactions in accordance with section 42 of the General Terms and Conditions (GT&C) of its FERC gas tariff, and that it will then file the negotiated rate agreements with MGAG and Buford for Commission approval.

5. Specifically, Transco requests that the Commission waive section 284.8(h)(1) of its regulations<sup>2</sup> to permit the instant pre-arranged permanent capacity release to be treated similar to pre-arranged maximum rate releases, which can be implemented without posting for bids from other shippers, and to allow the release to occur even though it is a

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<sup>1</sup> December 24, 2008 Transmittal Letter at 2.

<sup>2</sup> 18 CFR § 284.8(h)(1) (2008). As revised by Order Nos. 712 and 712-A, section 284.8(b)(2) of the Commission's regulations provides that capacity releases of more than one year may not exceed the applicable maximum rate. Promotion of a More Efficient Capacity Release Market, Order No. 712, 73 Fed. Reg. 37058 (June 30, 2008), FERC Stats. and Regs. ¶ 31,271, order on reh'g. and clarification, Order No. 712-A, 73 Fed. Reg. 72692 (Dec. 1, 2008), FERC Stats. and Regs. ¶ 31,284 (2008). The bidding requirements for capacity releases are set forth in sections 284.8(c) through (e). Section 284.8(h)(1)(iv) exempts from those bidding requirements "a release for more than one year at the maximum tariff rate."

release at a negotiated rate above Transco's maximum tariff rate. Transco avers that the Commission has previously granted such waivers under similar circumstances.<sup>3</sup>

### **Discussion**

6. In the *Transco* and *Northern Natural Gas Co.*, proceedings cited by Transco in the instant filing, the Commission waived the maximum rate cap provision, which was then set forth in section 284.8(h)(1), in order to permit pre-arranged, permanent releases at negotiated rates above the rate cap. In each of those cases, the releasing shipper was paying a negotiated rate in excess of the maximum rate, and the pipeline was willing to terminate the releasing shipper's contract, because the replacement shipper agreed to pay the pipeline the same negotiated rate as the releasing shipper had been paying. In addition, the replacement shipper was going to use the capacity for the same purpose as the releasing shipper had used it – in *Transco* to serve certain municipalities, and in *Northern Natural* to serve two ethanol plants. In granting the waivers, the Commission relied in part on the fact the replacement shipper was going to continue to use the capacity for the same purpose as the releasing shipper had used it.

7. In the instant proceeding, there is no indication that the replacement shippers, MGAG and Buford, will use the released capacity for the same purpose as the releasing shipper, Atmos, used it. Nevertheless, the Commission will waive its capacity release regulations in order to permit the instant permanent releases to take place. The Commission only requires a pipeline to allow a permanent capacity release, where the pipeline will be financially indifferent to the release.<sup>4</sup> Where, as here, the releasing shipper is paying a negotiated rate in excess of the maximum rate, waiver of the maximum rate is necessary to render the pipeline financially indifferent to the release. Therefore, denial of a waiver request in these circumstances would unnecessarily inhibit the use of permanent releases to transfer capacity which the releasing shipper no longer needs to a shipper that does need it.

8. Therefore, the Commission finds that here, where Atmos proposes to permanently release long term capacity to two replacement shippers found acceptable by Transco and willing to pay the same negotiated rate as Atmos, waiver of the applicable maximum rate cap is appropriate. First, all parties (releasing shipper, replacement shippers and pipeline)

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<sup>3</sup> Transco Transmittal letter at p.2, citing, *Transcontinental Gas Pipe Line Corp.*, 113 FERC ¶ 61,331 (2005) (*Transco*); *Northern Natural Gas Co.*, 117 FERC ¶ 61,354 (2006) (*Northern Natural*); *Northern Natural Gas Co.*, 125 FERC ¶ 61,149 (2008).

<sup>4</sup> *El Paso Natural Gas Co.*, 61 FERC ¶61,333, at 62,311-12 (1992) (*El Paso*); *Texas Eastern Transmission Corp.*, 83 FERC ¶ 61,092 (1998); *Midcontinent Express Pipeline LLC; Enogex Inc.*, 124 FERC ¶ 61,089, at P 123 (2008).

agree to the transaction. Second, no other shipper has protested that Atmos' choice of MGAG and Buford as its replacement shippers was unduly discriminatory. Third, there is no reason to post these releases for third parties to submit higher bids, because the Commission would not waive the applicable maximum rate to permit a release at a rate in excess of the negotiated rate the releasing shipper is currently paying. The Commission is only willing to waive the maximum rate as necessary to render the pipeline economically indifferent to the permanent release, and thereby avoid inhibiting the permanent release of the capacity. Allowing the release to take place at an even higher negotiated rate than the releasing shipper is currently paying is unnecessary for that purpose.

9. In the instant filing, Transco has requested waiver of all the Commission's regulations, including section 284.8(h)(1), that the Commission deems necessary to permit the subject capacity releases to occur. In its previous orders granting similar waivers, the Commission waived section 284.8(h)(1) because that was where the maximum rate cap was set forth. However, Order Nos. 712 and 712-A revised section 284.8 of the Commission regulations so that the maximum rate cap for long-term releases now appears in section 284.8(b)(2) of the Commission's regulations [18 CFR § 284.8(b)(2) (2008)]. Therefore, the Commission in this order grants waiver of section 284.8(b)(2) in order to permit the instant permanent releases to take place at the same negotiated rate as Atmos is currently paying. In addition, section 284.8(e) of the Commission's regulations [18 CFR § 284.8(e) (2008)] states in part that, "[t]he pipeline must allocate released capacity to the person offering the highest rate (not over the maximum rate) and offering to meet any other terms and conditions of the release." For the reasons discussed above, the Commission also finds good cause to grant waiver of this regulation.

The Commission orders:

The Commission grants waiver sections 284.8(b)(2) and 284.8(e) of its regulations, consistent with the discussion in the body of this order.

By the Commission. Commissioner Kelliher is not participating.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.