

137 FERC ¶ 61,117
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

November 10, 2011

In Reply Refer To:
Transcontinental Gas Pipe Line
Company, LLC
Docket Nos. RP12-18-000 and RP12-19-000

Transcontinental Gas Pipe Line Company, LLC
P.O. Box 1396
Houston, TX 77251

Attention: Marg Camardello, Manager
Certificates & Tariffs

Reference: Non-Conforming Agreements – Patriots Energy Group

Dear Ms. Camardello:

1. On October 13, 2011, Transcontinental Gas Pipe Line Company, LLC, (Transco) filed tariff records¹ in Docket No. RP12-18-000 to report two non-conforming agreements that it entered into with Patriots Energy Group (PEG). On October 13, 2011, Transco also filed revised tariff records in Docket No. RP12-19-000 to add the two non-conforming service agreements to the list of non-conforming agreements set forth in its tariff. The Commission will accept the contracts and the associated tariff record subject to conditions as discussed below.

2. Transco states that on March 1, 2011, it received Commission authorization to abandon firm transportation service provided under Rate Schedule FT to the City of Laurens, South Carolina (Laurens) and the City of Shelby, North Carolina (Shelby).²

¹ See Appendix.

² Unpublished Director Letter Order issued in *Transcontinental Gas Pipe Line, LLC*, Docket No. CP10-487-000 on March 1, 2011.

That firm transportation service resulted from the conversion of bundled firm sales service provided under Transco's Rate Schedule PS to firm transportation service under Rate Schedule FT. This conversion was permitted pursuant to the provisions of a 1990 Settlement in Docket No. RP87-7 *et al.* (Settlement).³ Transco states that its sales service under Rate Schedule PS was a seasonal service, and that upon the conversion of Rate Schedule PS sales service to firm transportation service under Rate Schedule FT, the seasonal nature of the service was preserved by section 2.4 of Rate Schedule FT which stated:

Transportation service available to a Buyer hereunder pursuant to a conversion from Seller's PS Rate Schedule shall be limited to the period commencing on December 1 of each year through the last day of February of the following year unless otherwise specified in the Service Agreement.⁴

3. Transco states that after receiving the abandonment authorization from the Commission for its service to Laurens and Shelby, it offered the abandoned firm transportation capacity in open seasons held pursuant to Section 49 of the General Terms and Conditions of Transco's FERC Gas Tariff. Transco states that PEG submitted the winning bids for the capacity. Therefore, Transco and PEG executed two service

³ *Transcontinental Gas Pipe Line Corp.*, 55 FERC ¶ 61,446, at 62,381 (1991). This Settlement provided in Article XII and Article IV that pregranted abandonment would not apply to the Rate Schedule FT service agreements resulting from the conversion of the firm sales service under Rate Schedule PS. Therefore, case-specific NGA section 7(b) abandonment is necessary to terminate service to FT shippers who converted from Rate Schedule PS.

⁴ The Settlement further provided that Transco's generally applicable FT rates shall apply to converted PS and ACQ service based on billing determinants in service agreements. As a result, in its filed service agreements with PEG, Transco has amended Exhibit A of its *pro forma* agreement to create a new column listing appropriate billing determinants as well as including the following footnote:

In order to effectuate the cost allocation and rate design allocation approved in the Settlement in Docket No. RP87-7 *et al.*, the parties recognize that the quantities reflected herein shall be considered Buyer's applicable TCQ Quantities for the purpose of billing the rates and charges hereunder, and such billing determinants are subject to change through rate filings of Seller pursuant to the terms and conditions of Article V hereof.

agreements under Rate Schedule FT, one (Contract No. 9115348) for 207 dt/day of service effective September 3, 2011 and one (Contract No. 9116176) for 104 dt/day of service effective November 1, 2011. Transco states that, as was the case with the service it provided to Laurens and Shelby, and as provided in Section 2.4 of Rate Schedule FT, the service provided to PEG under these new service agreements is a seasonal service commencing on December 1 of each year through the last day of February the following year.⁵ The agreements do not provide for service the other nine months of each year. These contracts provide for terms of service through April 1, 2033.

4. Public notice of the filing was issued on October 17, 2011. Interventions and protests were due as provided in section 154.210 of the Commission's regulations (18 C.F.R. § 154.210 (2011)). Pursuant to Rule 214 (18 C.F.R. § 385.214 (2011)), all timely filed motions to intervene and any unopposed motions to intervene out-of-time 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 or adverse comments were filed.

5. If a pipeline and a shipper enter into a contract that materially deviates from the pipeline's form of service agreement, the Commission's regulations require the pipeline to file the contract containing the material deviations with the Commission.⁶ In *Columbia Gas*, the Commission clarified that a material deviation is any provision in a service agreement that: (a) goes beyond filling in the blank spaces with the appropriate information allowed by the tariff, and (b) affects the substantive rights of the parties.⁷ However, not all material deviations are impermissible. If the Commission finds that such deviation does not constitute a substantial risk of undue discrimination, the Commission may permit the deviation.⁸ Therefore, there are two general categories of material deviations: (a) provisions the Commission must prohibit because they present a significant potential for undue discrimination among shippers, and (b) provisions the Commission can permit without a substantial risk of undue discrimination.

6. The Commission finds that Transco's instant non-conforming proposal, which permits PEG to utilize a seasonal service, is unduly discriminatory and therefore constitutes an impermissible material deviation from Transco's form of service agreement. Transco provided seasonal service to Laurens and Shelby after they

⁵ Transco Transmittal Letter at p. 2.

⁶ 18 C.F.R. § 154.1(d) (2011); 18 C.F.R. § 154.112(b) (2011).

⁷ *Columbia Gas Transmission Corp.*, 97 FERC ¶ 61,221, at 62,002 (2001).

⁸ *Id.*

converted to Rate Schedule FT service, pursuant to the 1990 Settlement in accordance with Section 2.4 of its Rate Schedule FT. However, as noted by Transco, service to Laurens and Shelby was abandoned, and Transco offered their capacity for sale in an open season. Transco states that PEG obtained the capacity in the open season. PEG is not a conversion customer that at one time held capacity under Transco's PS Rate Schedule. Therefore, service to PEG by use of abandoned and resold capacity is not contemplated by the 1990 Settlement. Moreover, although Transco asserts that Section 2.4 of Rate Schedule FT provides it with authority to offer this seasonal service to PEG, it is clear that section 2.4 only applies to shippers "pursuant to a conversion from Seller's PS Rate Schedule." Therefore, Section 2.4 cannot apply to the service proposed for PEG.

7. The Commission finds that the ability to obtain a seasonal service is a valuable right that is not currently provided for by Transco's tariff except pursuant to the provisions of the 1990 Settlement.⁹ Therefore, the Commission finds that to permit such a service for PEG constitutes a substantial risk of undue discrimination. Accordingly, the Commission will accept the PEG contracts subject to the condition that Transco either eliminate the provisions granting seasonal service or revise its tariff to offer the right to access seasonal service to all shippers pursuant to not unduly discriminatory conditions. Accordingly, the Commission accepts the proposed contract as submitted subject to the conditions set forth above and accepts the proffered tariff record subject to our actions herein.

By direction of the Commission. Commissioner Spitzer is not participating.

Nathaniel J. Davis, Sr.,
Deputy Secretary.

⁹ *Granite State Gas Transmission, Inc.*, 112 FERC ¶ 61,201, at P 4 (2005).

Appendix

Docket No. RP12-18-000

Transcontinental Gas Pipe Line Company, LLC
Original Volume No. 1A
FERC NGA Gas Tariff

Accepted Effective September 3, 2011
Contract No. 9115348, Patriots Energy Group, FT Agreement dated 9/27/11, 0.0.0

Accepted Effective November 1, 2011
Contract No. 9116176, Patriots Energy Group, FT Agreement dated 9/27/11, 0.0.0

Docket No. RP12-19-000

Transcontinental Gas Pipe Line Company, LLC
Fifth Revised Volume No. 1
FERC NGA Gas Tariff

Accepted Effective November 13, 2011
Section 1, List of Non-Conforming Service Agreements, 4.0.0