

FEDERAL ENERGY REGULATORY COMMISSION  
WASHINGTON, D.C. 20426

November 30, 2005

In Reply Refer To:  
Transcontinental Gas Pipe Line  
Corporation  
Docket No. RP06-65-000

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

Attention: Scott Turkington  
Director, Rates and Regulatory

Reference: Revision to Penalty Provisions

Dear Mr. Turkington:

1. On October 31, 2005, Transcontinental Gas Pipe Line Corporation (Transco) submitted tariff sheets<sup>1</sup> to revise the Overrun Charges and Operational Flow Order (OFO) Penalty provision in the General Terms and Conditions (GT&C) of its FERC tariff. The Commission accepts the tariff sheets effective December 1, 2005, as requested.
2. Pursuant to section 18.4 of its GT&C, Transco currently charges a penalty for unauthorized daily overruns taken in excess of an allowable variation for a particular day.<sup>2</sup> The current penalty is \$2.50 per Dth up to 50 Dth in excess of the allowed variation and \$25 per Dth for any additional unauthorized daily overrun taken on such day. Section 52.5 of Transco's GT&C provides for a penalty of \$25 per Dth for all daily unauthorized OFO imbalances.

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<sup>1</sup> Seventh Revised Sheet No. 278 and Fourth Revised Sheet No. 374T to FERC Gas Tariff, Third Revised Volume No. 1.

<sup>2</sup> Section 18.2 of the GT&C states that the allowable daily variation is 3.5 percent during October through April and 5.0 percent during May through September.

3. In the instant filing, Transco proposes to revise section 18.4 to increase the penalty applicable to certain unauthorized daily overruns from \$25 per Dth to the higher of (i) \$50 per Dth or (ii) three times the highest weekly Reference Spot Price for the current month applicable to the zones(s) in which the unauthorized daily overrun occurs. Similarly, Transco proposes to revise section 52.5 to increase the \$25 per Dth unauthorized OFO imbalance penalty to the higher of (i) \$50 per Dth or (ii) three times the highest weekly Reference Spot Price for the current month applicable to the zones(s) in which the OFO imbalance occurs.

4. Transco contends that the significant increase in natural gas prices and the decline in available Gulf Coast supplies due to recent hurricanes result in the current penalties not being sufficient to deter shippers from violating the tariff. Transco states that the tariff protections at issue exist to protect the operational integrity of Transco's system, and as such asserts that in order for its penalties to perform as intended, they must serve as an effective deterrent to behavior that may threaten operational integrity. In the current natural gas market, Transco argues, the existing penalty of \$25 per Dth is not an effective deterrent. Transco further explains that Commission precedent supports the use of index pricing for unauthorized overrun and OFO penalty pricing and that its proposed revisions are similar to other proposals recently approved by the Commission.<sup>3</sup> Transco adds that the amounts collected through imposition of the any penalties will be distributed back to buyers in accordance with section 54 of its GT&C.

5. Notice of Transco's filing was issued on November 3, 2005 with interventions and protests due as provided in section 154.210 of the Commission's regulations, 18 C.F.R. § 154.210 (2005). Indicated Shippers,<sup>4</sup> Process Gas Consumers Group (PGC), the Transco Municipal Group (TMG) and the Municipal Gas Authority of Georgia (Gas Authority) filed protests to the filing. Pursuant to Rule 214, 18 C.F.R. § 385.214 (2005), all timely motions to intervene and any motions to intervene out-of-time filed before the issuance date of this order are granted. Amerada Hess Corporation (Amerada Hess) filed a motion for leave to intervene out of time and comments. Granting late intervention at this stage of the proceeding will not disrupt the proceeding or place additional burdens on existing parties.

6. PGC, Indicated Shippers, TMG and the Gas Authority protest Transco's proposed use of a price floor of \$50 per Dth for the overrun and OFO penalties. The parties contend that \$50 is excessive, unduly punitive and is not supported by specific data demonstrating that the proposed increase is necessary to deter shipper behavior that would threaten system integrity. PGC, TMG and the Gas Authority assert that the use of

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<sup>3</sup> See, *Viking Gas Transmission Co.*, 112 FERC ¶ 61,098 (2005); *Midwestern Gas Transmission Co.*, 112 FERC ¶ 61,345 (2005); *Guardian Pipeline, LLC*, 113 FERC ¶ 61,086 (2005).

<sup>4</sup> The Indicated Shippers joining in this protest are: Chevron U.S.A. Inc., ConocoPhillips Company, Exxon Mobil Corporation and Shell Offshore Inc.

the proposed index alone (without the \$50 minimum) would provide more than adequate incentive for shippers to remain in balance because it would automatically adjust with changes in gas prices. PGC further contends that Transco's proposed increase in penalties goes too far by setting an unduly high minimum penalty. PGC points to the U.S. Court of Appeals for the D.C. Circuit which recognized that pipelines may structure their penalty rates to deter arbitrage, but cautioned that pipelines "should not go too far" in their efforts.<sup>5</sup> PGC, Indicated Shippers and Amerada Hess have also proposed alternatives to Transco's proposed unauthorized overrun and OFO penalties ranging from 1.5 times the highest weekly index price to three times the mid point price for the daily index price for the flow day on which the penalty was incurred.

7. The Commission finds that the proposed penalty level is reasonable and accepts the tariff sheets effective December 1, 2005. Penalties are designed to provide an economic disincentive to shippers that might take actions which could threaten the operational integrity of the pipeline in the absence of such penalties. For a penalty to be effective, it must be at a level sufficient to make its incurrence economically undesirable when compared with other choices. Given the current increased gas prices and the possibility of even higher prices in the near future, Transco's current penalties are capped at levels that may no longer act as a deterrent for actions that might threaten pipeline operations. While PGC, Amerada Hess, and Indicated Shippers propose an alternative to the penalties which Transco submitted, Transco's penalty structure for unauthorized overruns and unauthorized OFO imbalances are for critical periods; thus Transco has met its burden of showing that the revisions are just and reasonable.<sup>6</sup> These tariff provisions state that they are in effect to protect the operational integrity of the pipeline and penalties are not assessed unless the pipeline's operational integrity is threatened. Penalties are assessed only on those shippers who take actions that may compromise

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<sup>5</sup> *Industrials v. FERC*. No. 04-1250, 2005 U.S. App. Lexis 22162, at 5 (D.C. Cir. Oct. 14, 2005) (*Industrials v. FERC*).

<sup>6</sup> *See, e.g., SGC Pipeline, Inc.*, 104 FERC ¶ 61,159 at P 53 (2003) (accepting \$50 penalty for OFO violations); *Maritimes & Northeast Pipeline, L.L.C.* 100 FERC ¶ 61,030 at P 82 (2002) (same). Even if the Commission had not earlier accepted \$50 penalties, PGC's argument that Transco is "going too far" misconstrues the *Industrials v. FERC* court case that used such language in the context of cash-out rules to minimize arbitrage. The instant filing regards system integrity; thus, the pipeline has greater latitude in setting penalties.

pipeline operations, and penalty revenues are credited to shippers which abide by the relevant tariff provisions. In addition, the Commission has recently approved similar provisions on other pipelines as just and reasonable levels for penalties.<sup>7</sup>

8. In further support of their contention that the increase in penalties should be rejected, Indicated Shippers and Amerada Hess state that because of the considerable uncertainty regarding the recovery of Gulf Coast production in the aftermath of the 2005 hurricanes, a cooperative effort between producers and pipelines is necessary, in order to respond quickly to sudden production changes. Indicated Shippers point out that production may be restored at a particular receipt point, only to decline suddenly if the newly repaired or replaced equipment malfunctions. Indicated Shippers contend that the substantial penalties proposed may in fact jeopardize Transco's system integrity by threatening suppliers attempting to restore supplies in the Gulf of Mexico. Should issues related to post hurricane production develop on Transco's system, the Commission expects that Transco and the parties will cooperate to find a workable solution during the recovery period, or, if necessary, that Transco would seek waiver of its tariff.

9. Protestors have also raised concerns regarding when the unauthorized overrun penalty set forth in section 18.4 of Transco's GT&C will apply. TMG and the Gas Authority request that the Commission require Transco to revise the language of section 18.4 of its GT&C to make clear that, consistent with Order No. 637, the overrun penalty will only apply during critical periods. Relatedly, Amerada Hess requests that the Commission reject Transco's proposal to increase penalty for overruns in circumstances in which system integrity is not threatened, *i.e.*, in non-OFO conditions.

10. In Docket No. RP01-236-001 *et. al.*, the Commission directed Transco to explain why the overrun penalty applied on non-critical days in light of the Commission's policy regarding such penalties.<sup>8</sup> In its response, in Docket No. RP01-236-003 *et. al.*, Transco stated that it would only assess an unauthorized overrun penalty if no interruptible capacity were available along the transportation path.<sup>9</sup> Transco also stated that section 18.3 of its GT&C provides that an unauthorized overrun occurs only when a shipper exceeds its contract entitlements and interruptible capacity is limited.<sup>10</sup> In its March 29, 2002 Order, the Commission accepted Transco's explanation that it would only assess an

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<sup>7</sup> *E.g.*, *Columbia Gas Corp.*, 113 FERC ¶61,191(2005); *Viking Gas Transmission Co.*, 112 FERC ¶ 61,098 (2005); *Midwestern Gas Transmission Co.*, 112 FERC ¶ 61,345 (2005); *accord Northwest Pipeline Corp.*, 100 FERC ¶ 61,347 P 77 (2002) (approving tariff containing Operational Flow Order penalty equal to the greater of \$10.00/Dth or four times the highest absolute price reflected in the local daily price survey with no tolerance bands).

<sup>8</sup> *Transcontinental Gas Pipe Line Corp.*, 96 FERC ¶ 61,352 at 62,314 (2001).

<sup>9</sup> *Transcontinental Gas Pipe Line Corp.*, 98 FERC ¶ 61,366 at 62,576 (2002).

<sup>10</sup> *Id.*

unauthorized overrun penalty if no interruptible capacity was available along the transportation path.<sup>11</sup> Consistent with our finding in the March 29, 2002 Order, Transco may only assess unauthorized overrun charges during critical periods when there is no interruptible capacity available along the transportation path. The Commission's finding in the March 29, 2002 Order also satisfies Amerada Hess's interest in confirming that Transco will assess an unauthorized overrun penalty only during a critical period – *i.e.*, when interruptible capacity is limited.

By direction of the Commission.

Magalie R. Salas,  
Secretary.

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<sup>11</sup> *Id.*