

127 FERC ¶ 61,206
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Transcontinental Gas Pipe Line Corporation

Docket Nos. RP01-245-025
RP01-245-026

ORDER ON REHEARING AND COMPLIANCE

(Issued May 29, 2009)

1. On January 25, 2008 Transcontinental Gas Pipe Line Corporation (Transco) and the KeySpan Delivery Companies (KeySpan),¹ filed requests for rehearing of the Commission's December 26, 2007 Order in the captioned docket.² The Commission's December 26 Order addressed comments from a technical conference regarding the appropriate method of conducting pooling in Transco's Rate Zone 4, denied a request that the Commission act pursuant to section 5 of the Natural Gas Act (NGA)³ to establish paper pooling points in Transco's Rate Zone 4 by BP Energy Company (BP) and granted a request for rehearing by Transco of the Commission's August 5, 2005 Order in the

¹ KeySpan states that the KeySpan Delivery Companies are comprised of: The Brooklyn Union Gas Company d/b/a KeySpan Energy Delivery NY; KeySpan Gas East Corporation d/b/a KeySpan Energy Delivery LI; and Boston Gas Company, Colonial Gas Company, EnergyNorth Natural Gas, Inc., and Essex Gas Company d/b/a KeySpan Energy Delivery NE. The KeySpan Delivery Companies are now subsidiaries of National Grid USA.

² *Transcontinental Gas Pipe Line Corp.*, 121 FERC ¶ 61,294 (2007) (December 26 Order).

³ 15 U.S.C. § 717d (2006).

captioned proceeding.⁴ In addition, on January 25, 2008, Transco filed *pro forma* tariff sheets to comply with the Commission's December 26 Order.

2. As discussed below, the Commission denies the instant requests for rehearing and rejects the language contained on Transco's *pro forma* tariff sheets. Further, Transco is directed to file actual tariff sheets reflecting tariff language consistent with the discussion in the body of this order within 30 days of the date of this order.

1. Background

3. The instant proceeding has an extensive background originating in an NGA section 4 rate case filed by Transco on March 1, 2001, which the Commission accepted and suspended subject to the outcome of hearing procedures.⁵ Subsequently, Transco filed a Settlement proposal which was approved by the Commission on July 2, 2002.⁶ This Settlement resolved many issues, but reserved fourteen issues for a hearing before an Administrative Law Judge (ALJ).⁷ In subsequent orders on the ALJ's initial decision⁸ and approving further settlements,⁹ the Commission resolved all issues but the one involving Transco's operation of its pooling point at Station 85.

4. Briefly, as set forth in the December 26 Order Transco has eight physical pooling points on its system, where a shipper may aggregate supplies it has transported from any receipt point on Transco's system for disaggregation to other shippers. The purchasing shippers then transport the gas away from the pooling point to the ultimate delivery point

⁴ *Transcontinental Gas Pipe Line Corp.*, 112 FERC ¶ 61,170 (2005) (August 5, 2005 Order).

⁵ *Transcontinental Gas Pipe Line Corp.*, 94 FERC ¶ 61,360, *order on reh'g*, 95 FERC ¶ 61,268 (2001).

⁶ *Transcontinental Gas Pipe Line Corp.*, 100 FERC ¶ 61,085 (2002).

⁷ *Id.*

⁸ *Transcontinental Gas Pipe Line Corp.*, 106 FERC ¶ 61,299 (2004), *order on reh'g*, 112 FERC ¶ 61,170 (2005), *order on reh'g*, 115 FERC ¶ 61,268 (2006), *affirming in part and reversing in part, Transcontinental Gas Pipe Line Corp.*, 101 FERC ¶ 63,022 (2002).

⁹ *Transcontinental Gas Pipe Line Corp.*, 101 FERC ¶ 61,298 (2002) and *Transcontinental Gas Pipe Line Corp.*, 117 FERC ¶ 61,232 (2006).

off Transco's system.¹⁰ Transco treats the physical movement of gas to and from a pooling point as two separate transactions. Thus, a shipper desiring to transport gas to a pooling point must schedule, and pay for, firm or interruptible service under Rate Schedules FT or IT from the receipt point where the gas enters Transco's system to the pooling point.¹¹ In addition, a purchaser of gas at the pooling point must separately schedule, and pay for, firm or interruptible service from the pooling point to the ultimate delivery point.

5. Station 85 is located on Transco's mainline in the middle of its Rate Zone 4. Therefore, shippers that transport gas from upstream receipt points on Transco's mainline to the Station 85 pooling point use the Zone 4 mainline, and Transco charges a Zone 4 rate for such deliveries to the Station 85 pooling point under either its Rate Schedule FT or IT. Transco's Mobile Bay lateral interconnects with Transco's mainline at Station 85 and is in a separate rate zone, known as Zone 4A/4B. As a result, shippers on the Mobile Bay lateral may deliver gas directly to the Station 85 pooling point pursuant to their contracts for service in Zone 4A/4B. Thus, the Mobile Bay shippers do not transport gas on Zone 4 facilities to get to the Station 85 pooling point and do not pay a Zone 4 transportation rate. This Mobile Bay lateral was the only major connection to a supply area in Zone 4, until Destin Pipeline Company (Destin) went into service in 1999. Destin interconnects with Transco's mainline at Shubuta, Mississippi, which is in Zone 4 approximately 27 miles upstream from Station 85.¹²

6. Before the ALJ in this proceeding, BP Energy Co. (BP) maintained that the Commission should require Transco to establish paper pooling in Zone 4 so that shippers need not purchase and pay for any service in order to ship gas to the Station 85 pooling point from an upstream Zone 4 mainline receipt point, such as the Shubuta receipt point at which gas from Destin Pipeline Company (Destin) enters Transco's Zone 4. BP, a Destin shipper, argued that this is necessary so that shippers accessing the Station 85

¹⁰ Five of these eight pooling points (at Stations 30, 45, 50, 62, and 65) are in Transco's production area, which encompasses its Rate Zones 1 through 3. The other three pooling points are in Transco's market area, including at Station 85 in Zone 4, and at Stations 165 and 210 in Zones 5 and 6 respectively.

¹¹Each shipper bringing gas supplies to a pooling point has its own, separate pool at that point. Transco's August 18, 2006 Initial Comments at 6. Transco's Pooling Rate Schedule permits shippers to transfer gas supplies between pools at the same point without charge.

¹²Ex. No. T-52 at 58.

pooling point from the mainline upstream of Station 85 are treated the same as shippers accessing that pooling point from the Mobile Bay lateral.

7. The ALJ found for BP on this issue. Subsequently, the Commission agreed and found that Transco's operation of the Station 85 pooling point was unjust and unreasonable.¹³ The Commission also found that Transco assesses two transportation charges, one for gas delivered to and one for gas taken away from the Station 85 pool in violation of the statement in Order No. 587-F that, "When a pool exists in a rate zone, the charge for shipment in that zone must be incurred either for shipment to the pool or shipment out of the pool."¹⁴ The Commission therefore directed Transco to cease charging two charges for access to the pool at Station 85.

8. Transco requested rehearing of this August 5, 2005 decision and argued that the Commission erred in requiring it to adopt BP's paper pooling proposal. Transco argued that it did not operate its Station 85 pool differently from its other pools. Transco asserted that if the gas must move across a portion of the rate zone in which the pooling point is located, then the shipper must pay the rate applicable to that zone. Transco pointed out that Mobile Bay shippers do not transport gas on the Zone 4 facilities to get to the Station 85 pooling point because they deliver gas directly to the pooling point using the Zone 4A or 4B facilities. Thus, according to Transco, the Mobile Bay shippers should not pay the Zone 4 rate because they do not use Zone 4 to reach that pool. Transco also contended that the paper pooling advocated by BP was incompatible with Transco's IT-feeder rate design and that the paper pooling proposal would relieve BP and other shippers using IT service in Zone 4 to reach Station 85 of having to pay for that service. Transco also asserted that nothing in Order 587-F or in the North America Energy Standards Board (NAESB) standards prohibits charges both into and out of a pool.

9. On May 30, 2006, the Commission ordered that a technical conference be held to address the appropriate method of conducting pooling in Transco's Zone 4.¹⁵ That order included a finding that Transco's request for rehearing of the August 5, 2005 Order raised significant issues concerning the appropriate method of conducting pooling in Zone 4 which could not be adequately addressed on the present record. Therefore, the Commission directed that staff conduct a technical conference to clarify certain facts

¹³ *Transcontinental Gas Pipe Line Corp.*, 112 FERC ¶ 61,170 (2005) (August 5, 2005 Order).

¹⁴ *Standards for Business Practices of Interstate Natural Gas Pipelines*, FERC Stats. & Regs., ¶ 32,527 at 33,351 (1996) (Order No. 587-F).

¹⁵ *Transcontinental Gas Pipe Line Corp.*, 115 FERC ¶ 61, 268 (2006).

concerning the operation of pooling in Zone 4. The Commission also directed that the technical conference should explore whether there were any instances where Transco would charge a firm transportation charge for shipment of gas from an upstream receipt point to Station 85 and a separate (and second) firm transportation charge for shipment of the gas to a delivery point that is downstream of Station 85.

10. Further, the Commission concluded that it could not find that BP's proposal to replace the current physical pool at Station 85 with a single paper pool for all receipts into Zone 4 was appropriate because the proposal ignored the physical service constraints that exist in Zone 4. However, the Commission stated that, consistent with NAESB standard 1.3.18, receipt points upstream of Station 85 should have direct access to a pool and reasoned that this might be accomplished by establishing a second Zone 4 pool upstream of Station 85, or by permitting gas received in Zone 4 upstream of Station 85 to be pooled at Station 65 in Zone 3. Therefore, the Commission also required that the technical conference explore various issues regarding the feasibility of establishing a separate paper pool for Zone 4 receipts upstream of Station 85.

2. The December 26 Order

11. In the December 26 Order, the Commission generally granted Transco's request for rehearing. The Commission rejected BP's request that the Commission require Transco to replace its physical pool at Station 85 with a paper pool that would encompass all mainline receipt points in Zone 4. Such a paper pool would permit shippers, such as BP, to deliver gas to a Zone 4 paper pooling point without having to pay a Zone 4 rate.

12. The Commission found that nothing in the NAESB standards adopted by Order No. 587, and left in place by Order No. 587-F, prohibits pipelines from requiring a shipper to purchase and pay for any transportation service necessary to move its gas to a pooling point. The Commission explained that, "Order No. 587-F expressly recognized that some pipelines 'offer physical pooling in which shippers may have to pay a transportation charge to move gas into the pool,'"¹⁶ and declined to modify the NAESB standards to prohibit that practice. Thus, Order No. 587-F clearly permits pipelines to charge for any transportation service necessary to move gas to a physical pooling point. It is true, as BP points out, that Order No. 587-F continued, "[W]hen a pool exists in a rate zone, the charge for shipment in that zone must be incurred either for shipment to the pool or shipment out of the pool."¹⁷ However, that was simply a finding that pipelines should not charge twice for shipments within a zone. Order No. 587-F did not find that the charge must be imposed solely on the downstream transportation away from the zone

¹⁶ Order No. 587-F at 33,351.

¹⁷ *Id.*

as BP requests here, instead of on the upstream transportation to the pooling point. In fact, Order No. 587-F expressly found that those advocating paper pooling had not provided sufficient justification for “imposing the transportation charge on the outbound transportation in all situations.”¹⁸

13. The Commission thus concluded that Transco’s requirement that BP purchase and pay for interruptible transportation service in order to pool its gas at the Station 85 pooling point is consistent with NAESB Standards.

14. However, the Commission required Transco to make one change in the rates its charges for Zone 4 pooling transactions. The Commission pointed out that Order No. 587-F set forth the Commission’s policy that, when a physical pooling point is in the middle of a zone, as the Station 85 pooling point is, the pipeline may not charge for both (1) the shipment within the zone to the pooling point, and (2) the shipment away from the pooling point. The Commission found that Transco had expressly stated in its comments following the technical conference that it imposes double Zone 4 usage and fuel charges for mainline shipments within that zone both to and from the Station 85 pooling point.¹⁹ The Commission concluded that such double usage and fuel charges were contrary to Commission policy.

15. Therefore, while the Commission permitted Transco to continue to require BP or any other shipper to purchase and pay for any necessary service to move gas to the Station 85 pooling point, the Commission required Transco to modify its tariff so that shippers taking gas from the Station 85 pool will not incur Zone 4 usage and fuel charges which have already been incurred for shipping the same gas to the pooling point. The Commission emphasized that its holding applied only to pooling at the Station 85 pooling point in Zone 4, and does not affect Transco’s current method of conducting pooling in its production area.

16. On rehearing, Transco contends that the Commission erred in finding that Order No. 587-F requires Transco to eliminate its usage and fuel charges for taking gas from the Station 85 pooling point. Transco also asserts that the Commission’s requirement went beyond the Station 85 pooling issue reserved by the parties in the April 12, 2002 Settlement, and thus violated that Settlement. On rehearing, KeySpan also argues that, after the Commission found that BP had failed to meet its burden of proof to demonstrate that Transco’s existing physical pooling practice in Zone 4 was unjust and unreasonable, the Commission erred in determining that Transco should be required to modify its tariff. KeySpan argues that the Commission’s decision to require Transco to modify its Zone 4

¹⁸ 121 FERC ¶ 61,294 at P 56.

¹⁹ *Citing*, Initial comments of Transco at 7.

3. Discussion

17. The Commission denies the requests for rehearing by Transco and KeySpan. For the reasons discussed below, the Commission finds that one aspect of Transco's existing method of physical pooling in Zone 4 is unjust, unreasonable, and unduly discriminatory: Transco's imposition of double Zone 4 usage and fuel charges for shipments both to and from the Station 85 pooling point. Once those double charges are eliminated, Transco's physical pooling method will be just and reasonable and not unduly discriminatory, and accordingly there is no basis for the Commission to take broader action under NGA section 5 to require Transco to adopt BP Energy's paper pooling proposal. The Commission also holds that its requirement that Transco eliminate the double Zone 4 usage and fuel charges is within the scope of the pooling issue reserved by the April 12, 2002 settlement in this case.

3.1. Double Zone 4 Usage and Fuel Charges

18. Transco contends that the Commission erred in holding that its practice of charging Zone 4 usage and fuel charges for shipments both to and from the Station 85 pooling point is contrary to Commission policy. It asserts that the Commission based this holding on the single sentence in Order No. 587-F that, "When a pool exists in a rate zone, the charge for shipment in that zone must be incurred either for shipment to the pool or shipment out of the pool."²⁰ Transco argues that this sentence was not intended to establish a new Commission policy on the rate structure applicable to physical pooling points. It asserts that, to the contrary, Order No. 587-F was only discussing why the Commission had decided to reject a proposal that it modify the NAESB business standards requiring all pipelines to establish paper pools. Transco asserts that in the course of this discussion the Commission distinguished paper pools from physical pools, by stating that in physical pools "shippers may have to pay a transportation charge to

²⁰ Order No. 587-F at 33,351. Subsequently, in Order 597- G, the Commission again reiterated this point:

When a pool exists in a rate zone, a charge for transportation must be assessed either for gas coming into the zone or for gas leaving the zone. In appropriate circumstances, the Commission has recognized that pipelines may charge for transportation into pools. *Standards for Business Practices of Interstate Natural Gas Pipelines*, Order No. 587-G, FERC Stats. & Regs., Regulations Preambles July 1996-December 2000 ¶ 31,062 at 30,695 (Apr. 16, 1998).

move gas into the pool. When a pool exists in a rate zone, the charge for shipment in that zone must be incurred either for shipment to the pool or shipment out of the pool.”²¹ Transco argues that this language was merely intended to differentiate physical pooling from paper pooling, the issue under consideration in that particular part of Order No. 587-F, not establish a policy against double charges for shipments within a rate zone to and from a physical pooling point. Transco further argues that, even if Order No. 587-F was intended to establish such a policy, the Commission must justify application of that policy in each individual case.²²

19. As the Commission explained in *Transcontinental Gas Pipe Line Corp.*,²³ one of the Commission's goals in Order No. 636 was to establish a pipeline structure that would facilitate the meeting of gas purchasers and sellers in a national gas market.²⁴ This marketplace could occur either at points of interconnection between pipelines or at pooling points, where shippers can aggregate supplies from multiple receipt points.²⁵ The Commission prohibited pipelines from adopting policies that would inhibit the development of market centers at pipeline interconnects²⁶ or the development of pooling.²⁷ While Order No. 636 did not mandate that pipelines establish pooling areas, the industry and the Commission subsequently recognized the importance of pooling in

²¹ Transco Rehearing Request at p.7, *citing*, Order No. 587-F at 33,351.

²² Transco rehearing request at 8, *citing Panhandle Eastern Pipe Line Co. v. FERC*, 198 F.3d 266, 269 (D.C. Cir. 1999).

²³ 86 FERC ¶ 61,175, at 61,613 (1999).

²⁴ Order No. 636, 57 Fed. Reg. 13,267 (Apr. 16, 1992), FERC Stats. & Regs. Regulations Preambles Jan. 1991-June 1996 ¶ 30,939, at 30,427-28 (Apr. 8, 1992).

²⁵ Pooling is defined as (1) the aggregation of gas from multiple physical and/or logical points to a single physical or logical point, and/or (2) the dis-aggregation of gas from a single physical or logical point to multiple physical and/or logical points. 18 C.F.R. 284.10(b)(1)(i) (1998), Nominations Related Standards 1.2.3.

²⁶ 18 C.F.R § 284.8(b)(4) (1998); 18 C.F.R. § 284.9(b)(4) (1998).

²⁷ Order No. 636, ¶ 30,939, at 30,428; Order No, 636-B, 61 FERC ¶ 61,272, at 62,012 (pipelines may not implement rates or terms and conditions of service that inhibit the creation or development of pooling areas).

creating a more competitive and liquid gas market. Accordingly, in Order No. 587,²⁸ the Commission required pipelines to offer pooling and also adopted NAESB Standard 1.3.17, providing that “if requested by a shipper or supplier on a transportation service provider’s system, the transportation service provider should offer at least one pool.”²⁹

20. In Order Nos. 587-F and 587-G, the Commission considered a proposal to require pipelines “to establish so-called ‘paper pools’ in zones, segments, or rate areas where shippers can deliver gas without an additional transportation charge.”³⁰ In rejecting that proposal, the Commission reiterated that “pooling is an important aspect of the marketplace.”³¹ However, the Commission found that those advocating paper pooling had not shown why paper pools are necessary to achieve the benefits of pooling. The Commission explained, “Some pipelines currently offer paper pools, while others offer physical pooling in which shippers may have to pay a transportation charge to move gas into the pool. When a pool exists in a rate zone, the charge for shipment in that zone must be incurred either for shipment to the pool or shipment out of the pool. The marketers and producers advocating paper pooling do not provide sufficient justification for imposing the transportation charge on the outbound transportation in all situations.”³² In Order No. 587-G, the Commission again determined not to mandate “paper pooling in which those delivering gas into the pool are assessed no transportation charges.”³³ The Commission reiterated its position from Order No. 587-F that: “when a pool exists in a rate zone, a charge for transportation must be assessed either for gas coming into the zone or for gas leaving the zone. In appropriate circumstances, the Commission has recognized that pipelines may charge for transportation into pools.”

21. Order Nos. 587-F and 587-G’s statement that the charge for a shipment in a zone must be incurred either for shipment to the pool or shipment out of the pool was not intended merely to describe physical pooling in order to differentiate it from paper pooling, as Transco asserts. Rather, that statement was part of the Commission’s

²⁸*Standards for Business Practices of Interstate Natural Gas Pipelines*, FERC Stats. & Regs., Regulations Preambles July 1996 – December 2000 ¶ 31,038 (1996) (Order No. 587).

²⁹ 18 C.F. R. § 284.12(a)(1)(i) (2005), Nominations Related Standard 1.3.18.

³⁰ Order No. 587-F, at 33,351.

³¹ Order No. 587-G at 30,695.

³² Order No. 587-F at 33,351.

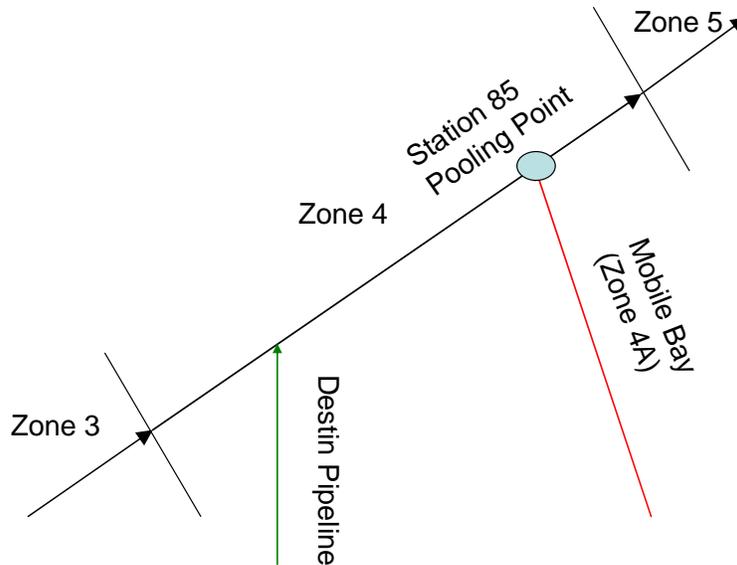
³³ Order No. 587-G, at 30,682

rationale for why there was no need to require paper pooling in order to achieve the benefits of pooling. The Commission was explaining that, when a pool is in a rate zone, there would be only one charge for shipments within that zone, whether a pipeline had a paper pool or a physical pool. In the case of a paper pool, that single charge would be “on the outbound transportation in all situations.” In the case of a physical pool, that single charge might be on either the shipment to the pool or the shipment out of the pool. However, in no event would there be a charge on both shipments. The Commission’s essential point was that, whether a pipeline had a paper pool or a physical pool within a rate zone, transactions using the pool would not incur a rate disadvantage, as compared to transactions not using the pool. Regardless of whether a pool was used and what type of pool it was, shipments through the pool would incur only one usage and fuel charge. This enables shippers to aggregate supplies from multiple receipt points at a physical pool as efficiently as at a paper pool, and on this basis the Commission concluded there was no need to require paper pools.

22. Because this aspect of Order Nos. 587-F and 587-G was a statement of policy, not a regulation, the Commission recognizes that it must justify application of that policy in this case. Transco does not contest that it does charge Zone 4 usage and fuel charges twice for mainline shipments using the Station 85 pooling point, once for the Zone 4 shipment to the pooling point and a second time for the Zone 4 shipment away from the pooling point.

23. We reaffirm our conclusion that imposing double usage and fuel charges in these circumstances is unreasonable.³⁴ Permitting the pipeline to charge twice for pooling will defeat the Commission’s purpose in requiring pipelines to provide pooling without incurring a rate disadvantage.

³⁴ The only charges at issue on rehearing of the December 26 Order are usage and fuel charges.



24. The purpose of pooling is to permit producers or shippers to aggregate gas supplies at a single point so that the total package of gas can be sold to customers at the pooling point. Under the Commission regulations, pooling points also can be used to transfer gas title.³⁵ Producers or shippers bringing in gas on Destin will want to pool that gas with other gas being brought to Transco on Mobile Bay or other gas transported in Zone 4. Because Transco currently charges Zone 4 usage and fuel charges for both inbound and outbound Zone 4 pool transactions, producers and shippers have a financial disincentive to take advantage of pooling.

25. Transco argues that the double charge is appropriate, because the two shipments are separate transactions, often for different shippers, and thus it is not charging twice for the same service. Moreover, Transco states that it includes the billing determinants associated with each transaction in the volumes it uses to design its rates, and thus the two charges do not lead to Transco over recovering its cost of service. Transco maintains that if it does not charge for pooling under its current billing determinants, it will underrecover its cost of service. KeySpan is similarly concerned that the Commission's

³⁵ 18 C.F.R. § 284.12(a)(1)(1), Nomination Related Standards 1.3.64 (“the Transportation Service Providers (TSP) should be responsible for accommodating Title Transfer Tracking (TTT) services at all points identified by the TSP as pooling points, where TTT services are requested”).

actions will decrease the usage charges collected by Transco in Zone 4 and increase the fuel costs borne by other shippers.³⁶

26. The fact Transco includes the billing determinants for both transactions in its rate design volumes and may not be overrecovering its cost of service does not mitigate the adverse effect its policy has on pooling, as discussed above, nor does it eliminate the double charge for pooling because shippers will be paying more to pool than if they do not pool. For example, if a shipper bringing gas onto the Transco system at the Zone 4 Destin interconnection does not use the Station 85 pooling point and ships the gas through Zone 4 to a delivery point in a downstream zone, the Zone 4 usage and fuel charges would only be paid once. However, if the gas were aggregated with other gas at the Station 85 pooling point, and then shipped to the same delivery point in a downstream zone, the Zone 4 usage and fuel charges would have to be paid twice. Thus, shippers must incur additional charges in order to obtain the benefits of the more competitive and liquid gas market made possible by pooling.³⁷ This discourages shippers from using the Station 85 pooling point to aggregate supplies, contrary to the Commission's goal in Order No. 636 of establishing a pipeline structure that would facilitate the meeting of gas purchasers and sellers in a national gas market.

27. Moreover, the actual service provided by Transco is exactly the same whether pooling is used or not. Regardless of whether shippers use the Station 85 pooling point to aggregate gas supplies, the molecules of gas at issue flow in an uninterrupted manner through the zone. Thus, Transco incurs the same fuel and other variable costs to move the gas through Zone 4 in both the pooling and non-pooling situations, yet it charges twice as much in the pooling situation. That is contrary to the basic ratemaking principle that “properly designed rates should produce revenues from each class of customers *which match, as closely as practicable, the costs to serve each class of individual*

³⁶ Key Span argues that there is no evidence of (i) whether transporting gas downstream of Station 85 within Zone 4 causes Transco to incur incremental fuel costs that will now be passed on to other shippers, (ii) what the impact of this change is likely to be, and (iii) why this shift in fuel responsibility is just and reasonable. KeySpan argues that the absence of a showing of evidence of this impact compels the Commission to grant rehearing of its December 26 Order.

³⁷ This effect is caused because the Station 85 pooling point is in the middle of the zone rather than at the zone boundary. Had the pooling point been at the Zone boundary only one Zone 4 rate would be assessed.

customer.”³⁸ Because Transco incurs the same variable costs, including fuel costs, to serve the class of shippers using the Station 85 pooling point and the class not using the pooling point, it should charge the same Zone 4 usage and fuel charges to each class. Thus, Transco’s practice of charging shippers using the Station 85 pooling point Zone 4 usage and fuel charges for both the shipments to and from the Station 85 pooling point leads to an unjust and unreasonable over-allocation of variable costs to shippers using that pooling point.³⁹ Transco’s practice is also unduly discriminatory, because it gives preferential treatment to shippers who do not use the Station 85 pooling point or who access the point from the Mobile Bay lateral, because those shippers do not incur double Zone 4 usage and fuel charges.

28. In the above example, shippers using the Mobile Bay lateral pay the applicable rate for that lateral, but are permitted to pool gas at Station 85, and to sell that gas to a customer with only one Zone 4 rate applied to the shipper that acquires to subject gas at Station 85. In contrast, shippers using the Destin lateral must pay for transportation on Destin, the Zone 4 rate to transport to the Station 85 pooling point, and the shipper picking up gas at Station 85 must pay a second Zone 4 rate. A simple example illustrates how Transco’s pooling charges creates a disincentive to pool and discriminates between shippers even though Transco does not overrecover its costs. Suppose Transco has Zone 4 usage costs of \$150, 50 Dth of shipments by a producer on the Mobile May Lateral pooled at the Station 85 pooling point, and 50 Dth of shipments by a producer from the Destin interconnect pooled at the Station 85 pooling point. Transco would attribute 150 Dth of billing determinants to these transactions.⁴⁰ Transco does not overrecover its costs, since it would establish a usage rate of \$1 Dth applicable to 150 Dth.

³⁸ *K N Energy, Inc. v. FERC*, 968 F.2d 1295 at 1300-1 (D.C. Cir, 1992), quoting *Alabama Electric Cooperative, Inc. v. FERC*, 684 F.2d 20, 27 (D.C. Cir. 1982)(emphasis in original).

³⁹ The Commission agrees with Transco that Transco’s inclusion in its rate design volumes of the billing determinants associated with both the shipments to, and from, the pooling point will not permit Transco to overrecover its cost of service. However, the problem articulated by the Commission relates to an unjust and unreasonable allocation of the cost of service among customer classes, not an overrecovery of the cost of service.

⁴⁰ 50 Dth for the Mobile Bay customer picking up the Mobile Bay lateral gas, 50 Dth for the Destin shipper moving gas to Station 85, and 50 Dth for the Destin customer picking up the gas at Station 85.

Source of Gas	Producer Zone 4 Volumes (Dth)	Customer Zone 4 Volumes (Dth)	Usage Cost of Pooling			Usage Cost of Not Pooling
			To St. 85	From St. 85	Total	
Mobile Bay	0	50		\$50	\$50	\$50
Destin	50	50	\$50	\$50	\$100	\$50

29. Although Transco does not overrecover its cost of service, the combined cost of pooling for the Destin producer and customer picking up the gas at Station 85 is \$100 while the cost to the Mobile Bay shipper and the shipper picking up its gas is only \$50.⁴¹ Moreover, since the Destin shipper and its customer can avoid this extra payment by exchanging gas at the Destin interconnect, the efficiency that pooling is designed to create is severely diminished, since these shippers have an incentive to reduce their costs by not pooling.⁴²

30. The manner in which Transco currently determines billing determinants does not govern the determination of whether its tariff is reasonable. In the December 26 Order, the Commission required that Transco modify its methodology so that shippers taking gas from a Station 85 pool will not also incur Zone 4 usage and fuel charges which have already been incurred for shipping the same gas to the pooling point. The Commission did not mandate a new rate for Transco to charge for Zone 4 service; it only stated that certain shippers taking gas would not be required to pay again for Zone 4 service. If Transco finds that it is underrecovering its cost of service and wishes to redesign its Zone 4 rates it is entitled to propose any change in a NGA section 4 rate case where it may show that its proposal is just and reasonable. In any such proceeding, Transco's customers will have an opportunity to examine the effects of such a proposed change including a showing of the impact of the proposed change to various customers.

31. For all of the above reasons, the Commission concludes that Transco's current operation of its Zone 4 physical pooling point at Station 85 is unjust and unreasonable, to

⁴¹ If Transco did not double count the pooling transactions, its usage rate could go to \$1.50/Dth (\$150/100 Dth). Therefore, the double counting of pooling transactions benefits the Mobile Bay shippers who participate in the Station 85 pool at the expense of the Destin shippers who participate at the Station 85 pool.

⁴² Shippers will pool only when the benefits of pooling exceed the extra cost imposed on the pooling transaction.

the extent that shippers taking gas from a Station 85 pool must incur Zone 4 usage and fuel charges which have already been incurred for shipping the same gas to the pooling point. Such additional charges improperly inhibit the use of Station 85 pools, contrary to Order Nos. 587-F, 587-G, and Order No. 636. In addition, Transco's current operation of its Zone 4 pooling leads to an unjust, unreasonable, and unduly discriminatory allocation of Transco's Zone 4 variable costs among the shippers using this Zone.

32. Consistent with the above discussion, the Commission clarifies and corrects several statements in the December 26 Order. As explained below, these statements were made in the context of BP's contention that physical pooling is unjust and unreasonable and that Transco should be required to implement paper pooling. These statements were not intended to apply to the question of charging twice for the same service, which the Commission found unjust and unreasonable in the December 26 Order.

33. As Transco points out in its rehearing request, the December 26 Order included a statement that "[b]ecause Transco's operation of its Station 85 pooling point is not unjust and unreasonable the Commission need not enter into a lengthy discussion of the merits of BP's proposal for a paper pool which would include the Destin Shubuta connection."⁴³ The statement that Transco's operation of its Station 85 pooling point is not unjust and unreasonable was overbroad, and did not reflect all the holdings of the December 26 Order. The December 26 Order did find that BP had not shown certain aspects of Transco's operation of the Station 85 pooling point were unjust and unreasonable. Specifically, the December 26 Order found that (1) Transco's operation of Station 85 as a physical pool, and (2) its requirement that BP and any other shipper purchase and pay for any necessary service to move gas to the Station 85 pooling point were not unjust and unreasonable.

34. However, the December 26 Order also held that these two findings were "subject to one condition," namely that Transco must "modify its tariff so that shippers taking gas from a Station 85 pool will not also incur Zone 4 usage and fuel charges which have already been incurred for shipping the same gas to the pooling point."⁴⁴ Because the Commission could only order this change in Transco's existing tariff pursuant to NGA section 5, implicit in the December 26 Order's direction that Transco make this change was a finding that Transco's existing practice of charging Zone 4 usage and fuel charges for shipments both to and from the Station 85 pooling point was unjust and unreasonable.

⁴³ 121 FERC ¶ 61,294 at P 66. In addition, the Commission began the Discussion section of the order with a similar statement. *Id.* P 53.

⁴⁴ *Id.* P 57.

35. Therefore, the general statements in the December 26 Order that Transco's operation of its Station 85 pooling point is not unjust and unreasonable did not reflect the actual holdings of that order, which were that BP has not shown that Transco's operation of a physical pooling point at Station 85 with the imposition of Zone 4 usage and fuel charges to move gas to Station 85 is unjust and unreasonable, but Transco's imposition of a second Zone 4 usage and fuel charge to move the subject gas away from Station 85 is unjust and unreasonable. In this order, the Commission is reaffirming each of those holdings, with additional discussion above explaining why the double usage and fuel charges are unjust and unreasonable.

36. Similarly, the Commission clarifies the statement in the December 26 Order that "Transco's operation of the Station 85 pooling does not unduly discriminate in favor of Mobile Bay shippers."⁴⁵ In the December 26 Order, the Commission held that it is not unduly discriminatory for Transco to charge a Zone 4 rate to BP and other shippers moving gas from upstream mainline receipt points to the Station 85 pooling point, while not charging the Mobile Bay shippers a Zone 4 rate to move gas to Station 85. That is because no Zone 4 transportation service is required for the Mobile Bay shippers to move their gas to Station 85, while such service is required for BP and the other shippers to bring their gas to Station 85. The Commission reaffirms its holding that Transco's different treatment of shipments of gas to Station 85 depending upon whether those shipments were over the Zone 4 mainline or over the Mobile Bay lateral is not unduly discriminatory.

37. However, requiring the Zone 4 mainline shipments of gas from the Station 85 pooling point to incur a second Zone 4 usage and fuel charge is unduly discriminatory. Under Transco's zonal rate design, shipments in a particular zone incur the same zonal charge, regardless of length of any particular shipment. Thus, relatively short transactions within a zone are charged the same zone rate as shipments the full distance of the zone. In this context, Transco's practice of singling out mainline Zone 4 shipments using the Station 85 pooling point for double Zone 4 usage and fuel charges, while all other Zone 4 shipments, including those of Mobile Bay shippers taking gas away from the Station 85 pooling point, incur only one Zone 4 usage and fuel charge, is unduly discriminatory.

3.2. Consistency with Prior Orders

3.2.1. Prior Transco Orders

38. Transco asserts that the Commission's requirement that Transco modify its operation of pooling in Zone 4 is contrary to a number of prior Commission orders,

⁴⁵ 121 FERC ¶ 61,294 at P 62.

including orders approving Transco's pooling and associated rate structure. As discussed below, these orders all related to different aspects of Transco's system and are not inconsistent with the policy applied to the Station 85 pooling point in Zone 4, which, as discussed above, involves different and special considerations. Moreover, the Commission has fully articulated its reasons behind its findings so that even if the Commission's actions did constitute a modification of its previous policy, such findings are consistent with the Commission's obligations to fully explain any change in its policies.⁴⁶

3.2.1.1. NAESB Standards Compliance Orders

39. Transco argues that, when it filed to comply with Order No. 587's adoption of NAESB Standards 1.3.17 and 1.3.18 requiring pipelines to offer at least one pool, the Commission approved Transco's proposed pooling structure in orders issued in March and May 1997.⁴⁷ Transco points out that the May 1997 Order specifically stated that:

The [GISB] standards simply require that there be pooling accessible by all points. They are not concerned with any rate consequences, such as whether poolers might incur an IT transportation expense, or with whether there is physical or paper pooling. . . . In any event, the Commission finds that pooling on Transco meets the requirements of the GISB standards and, therefore, NGC's [Natural Gas Clearinghouse] rehearing request is denied. 79 FERC ¶ 61,172 at 61,897 (1997).

Accordingly, Transco argues that it is unreasonable for the Commission now to determine, without any intervening changes to the operation of the Station 85 pool, that Transco's pooling service and rate structure in Zone 4 are contrary to Commission policy.⁴⁸

⁴⁶ See, *Mich. Pub. Power Agency v. FERC*, 365 U.S. App. D.C. 313, 405 F.3d 8 (D.C. Cir. 2005); *B&J Oil & Gas v. FERC*, 359 U.S. App. D.C. 214, 353 F.3d 71 (D.C. Cir. 2003); *Consol. Gas Supply Corp. v. Fed. Power Comm'n*, 172 U.S. App. D.C. 162, 520 F.2d 1176 (D.C. Cir. 1975)(change in policies must be explained by reasoned analysis).

⁴⁷ Transco rehearing request at 9, citing, *Transcontinental Gas Pipe Line Corp.*, 78 FERC ¶ 61,210, *order on reh'g*, 79 FERC ¶ 61,172 (1997).

⁴⁸ Transco rehearing request at 9-10.

40. The Commission's March and May 1997 Orders on Transco's filings to comply with Order No. 587 were issued before the Commission's November 12, 1997 statement of policy in Order No. 587-F that the charge for a shipment in a zone must be incurred either for shipment to the pool or shipment out of the pool. Thus, the policy applied in the December 26 Order and this order had not been established at the time of the March and May 1997 Orders cited by Transco. Moreover, those orders focused solely on the operation of pooling primarily in Transco's production area. As the Commission previously explained in the May 30, 2006 Order in this proceeding,⁴⁹

In Transco's Order No. 587 proceeding, no party raised, and the Commission did not consider, any specific issues concerning the operation of Transco's Zone 4 pooling point at Station 85, which is outside the production area. And Destin did not interconnect with Transco until 1999, two years after the orders on Transco's compliance with Order No. 587. *Thus, the holdings in those orders are not conclusive with respect to whether Transco's current method of conducting pooling in Zone 4 complies with the NAESB requirements.* (Emphasis added)

41. The other orders cited by Transco involving its system were issued after Order No. 587-F. Transco argues that those orders gave the Commission numerous opportunities to elevate the "dicta in question to the status of Commission policy on the rate structure applicable to physical pools . . . , including when it discussed the operation and rate effect of pooling points on Transco's system," but the Commission has never done so.⁵⁰ First, the Commission notes that Order No. 587-F was clearly designated as a "Notice of Proposed Rulemaking (NOPR) and a Statement of Policy."⁵¹ Therefore, the Commission did not see the need to elevate the language in question to the level of Commission policy, as suggested by Transco, because the Commission clearly indicated that it was establishing policy in Order No 587-F. In addition, none of the following cases, cited by Transco as vehicles wherein the Commission should have set forth its policy, further Transco's position.

⁴⁹ *Transcontinental Gas Pipe Line Corp.*, 115 FERC ¶ 61,268, at 61,973 (2006).

⁵⁰ Transco rehearing request at 10.

⁵¹ *Standards For Business Practices of Interstate Natural Gas Pipelines*, FERC Stats. & Regs., Proposed Regulations 1988-1998 ¶ 32,527 at 33,331 (Nov. 12, 1997).

3.2.1.2. ANR Pipeline Co. v. Transcontinental Gas Pipe Line Corp., 86 FERC ¶ 63,010 (1999)

42. The first post-Order No. 587-F order Transco cites involving its system is *ANR Pipeline Co. v. Transcontinental Gas Pipe Line Corp.*, 86 FERC ¶ 63,010 (1999). However, the cited order was not issued by the Commission, but rather was an Administrative Law Judge's initial decision. Moreover, the proceeding involved a complaint by ANR Pipeline Co. (ANR) that Transco had improperly rejected ANR's request to construct an interconnection with Transco in its production area. Thus, that case involved the Commission's policies concerning when a pipeline must grant an interconnection request, not the Commission's policies concerning pooling. Following the initial decision, the Commission granted ANR's complaint based upon a revised interconnection policy announced in another case.⁵² There is thus nothing in the Commission's orders in that complaint proceeding which is inconsistent with the Commission's holdings in the December 26 Order in this proceeding.

3.2.1.3. FTSL and IT Feeder Orders

43. Transco argues that in *Transcontinental Gas Pipe Line Corp.*, 86 FERC ¶ 61,175 at 61,612-16, *order on reh'g*, 88 FERC ¶ 61,135, at 61,368-73 (1999)(FTSL Orders), the Commission examined the operation and rate structure applicable to pooling at production area physical pooling points on Transco's system. Transco asserts that those orders included a procedural overview of the regulatory history of pooling and identified the Commission's requirements for pooling. However, Transco asserts that the Commission did not make any mention of a policy that, when a pool is in a rate zone, there can only be one charge for shipments within that zone. Transco argues the Commission's failure to mention this aspect of Order No. 587-F in those orders proves that the Commission did not view its language in Order No. 587-F, as establishing a new policy for physical pooling.

44. Those orders addressed a proposal by Transco to eliminate its IT-Feeder service in its production area, and replace it with three new firm transportation services on its production area supply laterals, to be provided under proposed Rate Schedules FTSL-1, FTSL-2, and FTSL-3. The Commission rejected Transco's proposal because Transco had failed to show that its proposed revision to the pooling arrangements in its production area were consistent with Commission flexible receipt and delivery point requirements,

⁵²*ANR Pipeline Co. v. Transcontinental Gas Pipe Line Corp.* 91 FERC ¶ 61,066, *reh'g denied*, 93 FERC ¶ 61,277 (2000), *citing*, *Panhandle Eastern Pipe Line Co.*, 79 FERC ¶ 61,016, *reh'g denied*, 81 FERC ¶ 61,295 (1997).

and, therefore, Transco had failed to show that its proposed new services in the production area were just and reasonable.

45. In its instant rehearing request, Transco does not point to any holding or statement in the FTSL Orders that is inconsistent with the Commission's holdings in the December 26 Order in this case. The FTSL Orders' rejection of Transco's filing is entirely consistent with the Commission's holdings in this case. That is because, as we have explained, Transco's existing pooling arrangements in its production area constitute a special accommodation to the method Transco chose to provide flexibility to access gas supplies in the production area when it filed its open access tariff. Under this tariff, although Transco includes the supply laterals as part of a zone, the production area rate design treats these laterals as if they are a separate zone; the firm shippers do not pay to cover the costs of transportation on the laterals and have no rights on those laterals, while the lateral costs are covered by interruptible service.⁵³ As the December 26 Order explained:

In any event, the Commission has held that, because Transco does not offer firm service on its production area supply laterals, firm shippers on the production area mainline do not pay for service on the supply laterals even though the supply laterals may be in the same rate zone. *Therefore, in a production area rate zone, Transco may charge both the applicable IT rate for interruptible service to a production area pooling point and the FT rate for firm service from the pooling point in the same zone, without violating the policy against double charges for service within the same zone to and from a pooling point.* However, this same reasoning does not apply in Zone 4, because Transco offers firm service throughout Zone 4, unlike in the production area.⁵⁴ (Emphasis added).

⁵³ The FTSL orders specifically indicated that Transco could file to implement the more standard use of firm service on the supply laterals used by other pipelines and suggested some potential methods that could be considered. 88 FERC ¶ 61,135 at 61,372.

⁵⁴ *Transcontinental Gas Pipe Line Corp.*, 121 FERC ¶ 61,294 at P 58, citing *Transcontinental Gas Pipe Line Corp.*, 107 FERC ¶ 61,156, at P 46-47 (2004), *aff'd*, *Exxon Mobil Corp. v. FERC*, 430 F.3d 1166 (D.C. Cir. 2005), which explains in greater detail how Transco's IT-Feeder rate design achieves "virtually the same result" as establishing a separate rate zone for the production area supply laterals.

46. The fact that Transco does not offer firm service on its production area supply laterals means that in the production area, two transactions are required to move gas through the production area rate zones on a firm basis regardless of the use of pooling points—interruptible service on the supply laterals moving gas to the production area pooling points and firm service on the production area mainline taking gas away from the production area pooling points. In fact, the FTSL orders relied on by Transco recognized this very point, stating that as long as the IT-Feeder rate design were in effect, Transco was entitled to an exception from the general policy that firm shippers have flexible point rights throughout the zone on which their rates are based.⁵⁵ Moreover, in rejecting the proposed FTSL service, the Commission did consider the potential effect of Transco's proposal on pooling, finding that it would impose added costs for pooling. Relying on an analysis similar to the one used here, the Commission found that under Transco's FTSL proposal, the costs of pooling gas at Station 65 (a point uniquely suited to aggregation and trading) would increase compared to the cost of pooling under the IT-Feeder rate design.⁵⁶

47. Further, the production area pooling approach is limited to the special rate design in that area and does not, and should not, apply to Zone 4. Unlike the situation in the production area, Transco does not design its Zone 4 rate in a manner that prohibits firm shippers from using certain points in the Zone. In Zone 4, firm shippers retain all rights to access all points within the zone. In the production area, the same interruptible transportation transaction is necessary to move gas to the pooling point for all shippers, and shippers have no financial incentive (or ability) to avoid these costs by not engaging in pooling. In contrast, as shown above, under Transco's current pooling approach, shippers on the Mobile Bay lateral can pool at Station 85 with lower usage rates than others bringing in gas from competing pipelines. Moreover, because there is no limitation on the use of firm service in Zone 4, Transco's approach to pooling creates financial incentives for shippers to avoid pooling, which is at odds with Commission policy. The Commission concludes that the FTSL Orders, having only discussed pooling in Transco's production area, contain nothing inconsistent with our holdings in this case concerning pooling in Zone 4.

⁵⁵ *Transcontinental Gas Pipe Line Corp.*, 86 FERC ¶ 61,175, at 61,609 (1999).
See also Transcontinental Gas Pipe Line Corp., 107 FERC ¶ 61,156, at P 47 n.32 (2004).

⁵⁶ 88 FERC ¶ 61,135 at 61,369 (comparing the cost of pooling under the FTSL proposal and the existing IT-Feeder rate design).

3.2.1.4. Transcontinental Gas Pipe Line Corp., 110 FERC ¶ 61,337 at 62,324 (2005)

48. The third post-Order No. 587-F order Transco cites is *Transcontinental Gas Pipe Line Corp.*, 110 FERC ¶ 61,337, at 62,324 (2005). Transco asserts that in this case the Commission recognized that gas moved to a pool and gas moved from a pool were two separate transactions and transportation rates would apply to both transactions. The Commission can find no support for Transco's positions at the pages cited by Transco and in any event this abandonment proceeding focused on facilities Transco held in its production area (Zone 1) which as the Commission delineated above renders the discussion inapposite to the instant matter.

3.2.1.5. Transco's 1-Line System Orders

49. Transco argues that in its acceptance of Transco's 1-Line computer system, the Commission also found that Transco's Pooling Rate Schedule and Pooling Service Agreement which Transco had proposed as a part of its new business system was "generally consistent with Commission policy."⁵⁷ Transco also states that the Commission found that "Transco's efforts to formalize the availability of pooling service on its system, and to delineate the procedures applicable to that service for the benefits of shippers on the Transco system, appear reasonable."⁵⁸ Transco argues that by this action the Commission approved Transco's pooling provisions after the issuance of Order No. 587-F, while failing to mention the rate policy the Commission claims it established in years earlier in Order No. 587-F.

50. Transco is correct in that the Commission found its Pooling Rate Schedule and Pooling Service Agreement generally consistent with the Commission policies. However, in the cited order the Commission also stated that "Transco is not proposing to charge a rate for pooling service in the instant proceeding."⁵⁹ Therefore, Transco's assertion that the Commission, if it had a new rate policy, would have further embellished it in this proceeding is without merit because rates for the pooling service were simply not at issue in the proceeding and, therefore, the Commission had no need to discuss rates for the pooling service. In any event, a failure to find a tariff provision unjust and

⁵⁷ Transco request for rehearing at 11, *citing, Transcontinental Gas Pipe Line Corp.*, 96 FERC ¶ 61,352, at 62,321 (2001).

⁵⁸ *Id.*

⁵⁹ *Transcontinental Gas Pipe Line Corp.*, 96 FERC ¶ 61,352 at 62,321 (2001).

unreasonable when the issue is not raised, does not preclude the Commission from making such a finding in an appropriate case in which the issue is litigated.⁶⁰

3.2.1.6. Other Orders (Northwest Pipeline Co., 80 FERC ¶ 61,361 (1997))

51. Transco asserts that its rate structure for the operation of the Station 85 pool is consistent with Commission policy because the Commission has acknowledged that shipping gas to a pool and away from a pool are two separate transactions and that it is appropriate to assess each transaction with its own transaction charge. In support of this position Transco cites *Northwest Pipeline Co.*, 80 FERC ¶ 61,361 (1997) (*Northwest*). Transco states that in *Northwest*, the Commission found that it was appropriate for Northwest to charge both for transporting gas from the non-associated receipt points to the pool and again when the gas is taken away from the pool and delivered to the designated delivery point. Transco asserts that the Commission also explained that when two separate transactions take place, allowing a transportation charge for each transaction “is consistent with the treatment provided to capacity holders not engaged in a pooling transaction when the segments release their firm capacity into separate packages.” *Id.* at 62,241.

52. Each pooling case must be decided on its facts. *Northwest*, while correctly decided based on the facts of that proceeding is inapposite to the instant proceeding.⁶¹ Unlike Transco, Northwest proposed to utilize paper pooling, with no transportation charge, to comply with the Commission’s requirement that every receipt point be associated with at least one pool. Northwest proposed that every receipt point on the pipeline would be associated on its system with a pool and that no charge would be imposed for poolers using that associated pooling point.

53. Northwest proposed to charge for injecting gas into a pool only when the pooler went outside of the pool associated with its receipt point; in effect, the shipper sought to effectuate transportation by moving the gas to a pool not associated with that receipt point. Northwest maintained that the association of receipt points with specific pools ensured that pooling parties would not use pooling to bypass mainline constraint points or to avoid paying transportation charges for the capacity rights that are needed to pass through the constraint points on its system. The Commission found that Northwest’s proposal to create geographical pools and to associate the adjacent receipt points with

⁶⁰ See *GTN Corp. v. FERC*, 504 F.3d 1318, 1320 (2007) (acceptance of tariff sheets does not turn every provision of tariff into policy or precedent).

⁶¹ Moreover, *Northwest* (September 25, 1997) was decided before Order No. 587-F (November 12, 1997).

particular pools was an appropriate basis for establishing paper pooling on its system.⁶² In the context of the use of non-associated pools, the Commission stated:

The Commission also concludes that it is appropriate for Northwest to charge both for transporting gas from the nonassociated receipt point(s) to the pool and again when gas is taken away from the pool and delivered to the designated delivery points.⁶³

54. The Commission explained that this finding was consistent with the fact that Northwest had a postage stamp rate design. Because under such a rate design (one charge for transportation anywhere on the system) assessing two charges if a nonassociated receipt point was involved “would recognize that there are two separate transactions: first, the transportation of the gas for the aggregator from nonassociated receipt points to designated nonassociated pool, and second, the transportation of the gas needed by the shipper to take gas away from the pool.” *Id.*

55. In contrast to *Northwest*, Transco does not offer free paper pooling and has not provided any pool in Zone 4 that can be reached without incurring the double charge Zone 4 transportation. As the Commission found in Order No. 587-F, and found here, pipelines can comply with the Commission’s requirement that every receipt point have an associated pool by charging poolers for transportation to the receipt point. However, the Commission found that pipelines choosing to charge for transportation to the pool cannot charge the same transportation charge twice: once for transportation to the pool and a second time for transportation out of the pool.⁶⁴ Unlike *Northwest*, in which the pipeline imposed no double charge for poolers using associated points, Transco imposes a charge for poolers wishing to move gas from the Destin interconnect to the associated Station 85 pool. We continue to find that permitting the pipeline to require the payment of a double

⁶² 80 FERC at 62,239.

⁶³ 80 FERC at 62,242.

⁶⁴ In Order No. 587-F, the Commission stated:

Some pipelines currently offer paper pools, while others offer physical pooling in which shippers may have to pay a transportation charge to move gas into the pool. When a pool exists in a rate zone, the charge for shipment in that zone must be incurred either for shipment to the pool or out of the pool. *Id.* at 33,351.

charge is inconsistent with the efficiency that the Commission sought to achieve by mandating pooling.⁶⁵

3.3. Consistency with Settlement

56. Article VII, section A of the April 12, 2002 Settlement in this rate case reserved the following issue for hearing:

the issue of the inclusion of the Destin Interconnection with Transco at Shubuta, Alabama as part of the Station 85 pooling point in Transco's Zone 4 presented in the prepared testimony filed November 15, 2001 on behalf of BP Energy Company, the resolution of such issue to be effective prospectively only after a final Commission order no longer subject to rehearing.

57. Both Transco and KeySpan state that the Commission's action abrogates the 2002 Settlement by requiring Transco to make changes to its rate structure, which go beyond the issue reserved by this section of the Settlement. They view the Settlement as solely reserving the issue whether the Commission should adopt BP's proposal to require Transco to adopt a paper pooling and thus include Destin in the Station 85 pooling point. They conclude that by rejecting BP's paper pooling proposal the Commission resolved the issue that was reserved for litigation under the April 12 Stipulation, and therefore the Commission's requirement that Transco stop imposing usage and fuel charges for shipments both to and from the Station 85 pooling point improperly went beyond the reserved issue.

58. The Commission's actions did not abrogate the April 12 settlement as argued by these parties, because the Commission's actions are within the scope of the reserved issue. The April 12 settlement reserved the issue of the inclusion of the Destin interconnection as part of the Station 85 pooling point "presented in the prepared testimony filed November 15, 2001 on behalf of BP." BP's prepared testimony included the following:

Q. Do you believe that the pooling design in Transco's Zone 4 is unduly discriminatory and preferential?

⁶⁵ If pipelines could charge the pooler and the shipper purchasing the gas the Zone 4 rate twice, shippers and poolers would have a significant disincentive to ever pool gas, which is inconsistent with the Commission's goal to use pooling as a method to simplify, and make more efficient, gas transactions.

A. Yes. As Transco's pooling design in Zone 4 conveys the advantages of pooling, without the incurrence of additional transportation costs, only to shippers delivering gas at Station 85 via Transco's Mobile Bay Lateral, Transco's Zone 4 pooling design is preferential and discriminates against shippers using pipelines not affiliated with Transco.⁶⁶

59. As discussed above, the Commission has, consistent with these assertions in BP's prepared testimony, found under NGA section 5 that Transco's existing pooling design in Zone 4 is unjust, unreasonable, and unduly discriminatory. Shippers using the Station 85 pooling point who transport gas in Zone 4 both to and from the Station 85 pooling point incur double Zone 4 usage and fuel charges. These shippers include shippers like BP, who bring gas onto Transco's mainline from interconnections with unaffiliated pipelines upstream of Station 85, and then seek to use the Station 85 pooling point. By contrast, shippers who do not use the Station 85 pooling point, or who access that point from the Mobile Bay Lateral, only incur the Zone 4 usage and fuel charges once. Thus, the Commission's holding that Transco's current operation of pooling in Zone 4 is unjust, unreasonable, and unduly discriminatory is within the scope of the reserved pooling issue, because that holding encompasses the very contentions BP made in its prepared testimony referred to by Article VII of the settlement.

60. The Commission having made this finding, NGA section 5 requires that the Commission "determine the just and reasonable rate, . . . rule, . . . [or] practice . . . to be thereafter observed and in force." In its prepared testimony, BP proposed that the Commission remedy Transco's current unjust and unreasonable operation of pooling at Station 85 by requiring Transco to adopt paper pooling in Zone 4. Transco and KeySpan rely on that aspect of BP's prepared testimony to interpret the language in Article VII reserving the Station 85 pooling issue as restricting the Commission to taking only one of two actions in response to BP's testimony: either accept or reject BP's paper pooling proposal. Under that interpretation, once the Commission agrees with BP that Transco's current operation of pooling at Station 85 is unjust and unreasonable, there would be only one remedy available to the Commission: adoption of BP's paper pooling proposal. That proposal would, consistent with the requirements of NGA section 5, eliminate the double usage and fuel charges which we have found to be unjust, unreasonable, and unduly discriminatory. Therefore, if the settlement did restrict the Commission from adopting any other remedy, the Commission would have to reconsider the December 26 Order's rejection of that remedy.

⁶⁶ Prepared testimony of Jeffery A. Holligan, at 10-11.

61. However, the Commission does not interpret Article VII as so narrowly restricting the types of remedy that the Commission may impose under NGA section 5, once it finds Transco's current operation of the Station 85 pooling point to be unjust and unreasonable. Article VII reserves "*the issue of the inclusion of the Destin Interconnection with Transco . . . as part of the Station 85 pooling point in Transco's Zone 4*" presented in BP's prepared testimony. Article VII contains no express language limiting the types of remedies the Commission might impose, if it agreed with BP that Transco's current operation of pooling in Zone 4 is unjust and unreasonable. It is not unusual for the Commission, when presented with an issue, to resolve that issue in a manner different from that proposed either by the party raising the issue or the opposing parties. Thus, it should come as no surprise to the parties in this case that the Commission might take a middle course on the pooling issue raised by BP and adopt a more narrow remedy than that sought by BP, while rejecting the position of the opposing parties that the Commission should do nothing. If the parties had intended to restrict the types of remedies the Commission might impose, then they could have drafted Article VII to more clearly do that.

62. As we have previously discussed, Commission policy does not require that pipelines adopt paper pooling. Rather, a pipeline may use a physical pool, so long as transactions using the pool do not incur a rate disadvantage, as compared to transactions not using the pool. Such a physical pool enables shippers to aggregate supplies from multiple receipt points at a physical pool as efficiently as at a paper pool, and thus is consistent with Commission policy concerning pooling. Therefore, Transco may retain Station 85 as a physical pooling point and may continue to charge the Zone 4 rate for mainline shipments to the Station 85 pooling point, so long as Transco modifies its tariff to provide that shipments of the subject gas away from the Station 85 pooling point will not incur a second usage and fuel charge. The Commission has concluded that requiring Transco to modify its tariff in this limited manner is the preferable method of remedying its current unjust and unreasonable operation of pooling in Zone 4, rather than requiring Transco to implement paper pooling in Zone 4. This method will allow Transco to retain physical pooling, consistent with its use of physical pooling elsewhere on its system and consistent with our findings that Commission policy permits physical pooling.

63. For all of the above reasons, the Commission denies rehearing of the December 26 Order.

4. Compliance Filing

64. On January 25, 2008, Transco filed *pro forma* tariff sheets to comply with the Commission's December 26 Order.⁶⁷ Transco submits that the instant *pro forma* tariff

⁶⁷ Transco submits Pro Forma Sheet No. 158, Pro Forma Sheet No. 171, Pro
(continued...)

sheets reflect (a) new provisions to the Rates and Charges section of Rate Schedules FT, IT, FT-G and FT-N to provide that shippers taking gas from a Station 85 pool will not incur Zone 4 usage and fuel charges which have already been incurred by the shipper for transporting the same gas to that pool; and (b) revisions to certain pooling provisions in Section 28 of the General Terms and Conditions (GT&C) to permit Transco to properly administer and invoice the application of Zone 4 usage and fuel charges as specified above.

65. Transco points out the December 26 Order directed it to modify its tariff so that shippers taking gas from a Station 85 pool will not also incur Zone 4 usage and fuel charges which have already been incurred for shipping the same gas to the pooling point.⁶⁸ Transco states that to comply with this directive, it must distinguish between the volumes of gas at the Station 85 location that have already incurred Zone 4 usage and fuel charges and the volumes of gas at the Station 85 location that have not incurred such charges. Transco states that to accomplish this, it proposes to establish one additional pool at the same mile post location as the existing Station 85 pool which it will designate as the Station 85 - Mainline pool. Transco proposes that this new Station 85 - Mainline pool will only be available for volumes of gas pooled at the Station 85 location that have incurred the applicable Zone 4 usage and fuel charges for transportation to that location.

66. Transco asserts that the existing Station 85 pool will only be available for volumes pooled at the Station 85 location that have not incurred Zone 4 usage and fuel charges for transportation to that location (e.g. transportation from receipt points in Zones 4A and 4B on the Mobile Bay lateral and receipts at interconnects located at the same mile post as Station 85). Transco states that gas received at the Station 85 - Mainline pool for transportation away from that pool will not incur Zone 4 usage and fuel charges, whereas gas received at the Station 85 pool for transportation away from that pool will incur the applicable Zone 4 usage and fuel charges.

Forma Sheet No. 199A, Pro Forma Sheet No. 224, and Pro Forma Sheet No. 341 to its Third Revised Volume No. 1.

⁶⁸ Specifically, the Commission stated:

Accordingly, while we will permit Transco to continue to require BP or any other shipper to purchase and pay for any necessary service to move gas to the Station 85 pooling point, *we direct Transco to modify its tariff so that shippers taking gas from a Station 85 pool will not also incur Zone 4 usage and fuel charges which have already been incurred for shipping the same gas to the pooling point.* 121 FERC at P57. (emphasis added).

67. Transco states that it proposes to prohibit pool to pool transfers between the Station 85 -Mainline pool and the Station 85 pool so that it may properly administer and invoice activity at the Station 85 pooling location.

68. Lastly, Transco requests that the Commission accept the language on the subject *pro forma* tariff sheets and direct it to file actual tariff sheets no less than 30 days prior to the anticipated effective date of the actual tariff sheets. Transco submits that this is consistent with Article VII of the approved Agreement in Docket No. RP01-245, which reserved the Station 85 pooling issue for hearing or further settlement and also provided that the resolution of that issue would be made effective “prospectively only after a final Commission order no longer subject to rehearing.”

69. Transco asserts that tariff sheets submitted in the instant filing are subject to a final Commission order on rehearing in this proceeding and even after obtaining such approval Transco must dedicate significant time and resources to effectuate the necessary modifications to Transco’s 1 Line service delivery system and provide training to its customers about the pooling modifications. Transco asserts that it will take at least 120 days following the issuance of a final Commission order approving the *pro forma* tariff sheets before it will be ready to implement the Commission's findings. Therefore, Transco requests that it be directed to file actual tariff sheets no later than 30 days prior to the anticipated ready for service date of the modifications to its 1 Line service delivery system.

4.1. Notice and Protests

70. Notice of Transco’s filing in Docket No. RP01-245-026 was issued on January 30, 2008. Protests were due February 6, 2008. No protests were filed.

4.2. Discussion

71. The Commission has reviewed the language contained on the *pro forma* tariff sheets submitted by Transco to comply with the December 26 Order and finds that the proposed language does not comply. Transco’s proposal to create separate Station 85 and Station 85 Mainline Pools and prohibit transfers between the two pools has the effect of preventing shippers from pooling gas transported to Station 85 over the Zone 4 mainline with gas transported to Station 85 over the Mobile Bay lateral. That is contrary to the Commission’s pooling policy discussed earlier in this order. Transco argues that it must require separate pooling of the Zone 4 mainline gas and Mobile Bay gas, because there is a problem distinguishing whether gas that enters a pool has or has not paid for the Zone 4 usage and fuel charges. In short, Transco is relying on limitations in its accounting and billing system to avoid full compliance with the December 26 Order. However, Transco would not appear to have a problem with billing a single usage and fuel charge either to all gas scheduled to be delivered to the Station 85 pooling point or all gas scheduled to be received from Station 85. Thus it appears that Transco could allow each shipper to have

a single pool at Station 85 and permit pool to pool transfers, while still recovering a single Zone 4 usage and fuel charge with respect to all gas pooled at Station 85 no matter what its source. The Commission requires Transco to file tariff language that complies with the requirements of the December 26 Order, using either of the above two methods or some other billing method consistent with the above discussion. Accordingly, the Commission rejects the language contained on the subject *pro forma* tariff sheets and directs Transco to file actual tariff sheets no later than 30 days from the issuance of the instant order.

The Commission orders:

(A) The requests for rehearing are denied as discussed in the body of this order.

(B) The language on Transco's instant *pro forma* tariff sheets is rejected as not in compliance with the Commission's December 26 Order in the captioned docket. Transco is directed to file actual tariff sheets reflecting tariff language consistent with the discussion in the body of this order within 30 days of the date of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.