136 FERC ¶ 61,220
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

(September 29, 2011)

In Reply Refer To:
Transcontinental Gas Pipe Line
Company, LLC
Docket Nos. RP11-2470-000
RP11-2471-000
RP11-2470-001
RP11-2471-001

Transcontinental Gas Pipe Line Company, LLC
PO Box 1396
Houston, TX 77251

Attention: Stephen A. Hatridge, Senior Counsel

Reference: Non-Conforming Service Agreement and Negotiated Rate

Ladies and Gentlemen:

1. On September 7, 2011, Transcontinental Gas Pipe Line Company, LLC (Transco) filed in Docket No. RP11-2470-001 a tariff record[1] providing the non-conforming Rate Schedule FT service agreement (Contract No. 9115188) and negotiated rate with Angola LNG Supply Services LLC (Angola LNG). Further, on September 8, 2011, Transco filed in Docket No. RP11-2471-001 revised tariff records[2] to update its list of non-conforming service agreements to include the service for Angola LNG.[3] Transco requests that the

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[1] Contract No. 9115188, Angola LNG, Pascagoula Expansion Agreement dated 9/7/11, 0.0.0 to Original Volume No. 1A, FERC NGA Gas Tariff.

[2] Section 1, List of Non-Conforming Service Agreements, 3.1.0 to Fifth Revised Volume No. 1, FERC NGA Gas Tariff.

[3] Initially on August 30, 2011, Transco filed in Docket Nos. RP11-2470-000 and RP11-2471-000, respectively, the non-conforming service agreement with Angola LNG and the updated list of non-service agreement respectively, which were superseded by the instant two filings.

Commission grant any waiver to permit the tariff records to become effective September 30, 2011. The Commission accepts the agreement and tariff record, to become effective September 30, 2011 as requested, subject to condition and further review.

2. The Angola LNG non-conforming agreement provides for contract capacity "step-down" rights, which grant Angola LNG the unilateral right to reduce its total contract quantity at the same negotiated rate per dth of contract quantity, if Angola LNG agrees to a first or second extension of its initial contract term. Angola LNG is the sole anchor shipper for the Pascagoula Expansion. Transco urges the Commission to accept the step-down provision, citing *Ruby* and *Guardian* as precedent that "a step-down provision is a permissible non-conforming deviation … [given] the unique circumstances involved with the construction of new energy infrastructure."[4] In addition, the agreement specifies the negotiated rate and the pressure that Angola LNG will deliver gas to Transco.

3. Public notice of the filings was issued on September 8, 2011 and September 14, 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 motion to intervene out-of-time filed before the issuance 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.

4. Granting a shipper the unilateral right to reduce its total contract quantity at the same negotiated rate when signing an extension is a valuable right. Accordingly, the Commission has generally required that such provisions be offered to shippers pursuant to not unduly discriminatory conditions in the pipeline's generally applicable tariff.[5] While Transco has tariff authority to negotiate extensions, its tariff does not state that shippers may use the extension as a method to unilaterally step down their capacity commitment.

5. Absent such a tariff provision, the Commission has permitted a non-conforming step-down provision for anchor shippers, but only if the pipeline offered all anchor

[4] Transmittal letter in RP11-2470-000 at 3 (citing *Ruby Pipeline Co*., 128 FERC ¶ 61,224 (2009) (*Ruby*); *Guardian Pipeline, L.L.C.*, 121 FERC ¶ 61,259 (*Guardian*) (2007)).

[5] *Tennessee Gas Pipeline Co.*, 97 FERC ¶ 61,225, at 62,029-30 (2001).

shippers such a right in an open season for the new pipeline. As the Commission explained in *Questar*,

> *Ruby* involved an open season for a new pipeline. In that open season, the pipeline offered all anchor shippers willing to enter into contracts with terms of 15 years or more for service on the proposed pipeline an optional right to reduce their MDQs during the last four years of the contract. One shipper entered into a precedent agreement which included that right, to be set forth as a non-conforming provision in that shipper's service agreement. The Commission found that provision and several other non-conforming provisions to be permissible, because they "reflected the unique circumstances involved with the construction of new energy infrastructure and provide needed financial security for all parties to ensure that Ruby's proposed project will be constructed and placed in operation."[6]

6. Like *Ruby*, the present filing involves an open season notice for a new pipeline, but the present record is silent on whether Transco offered step-down rights in its open season notice. If step-down rights were only offered to Angola LNG and not to all potential expansion shippers through the open season notice, then the Commission would be compelled to find that Transco offered this valuable right on an unduly discriminatory basis. Accordingly, the Commission directs Transco to clarify whether it offered contract step down rights to all shippers participating in the open season for the Pascagoula Expansion. If so, the Commission can approve the non-conforming provision. If not, Transco must either eliminate the deviating provision, offer it to all similarly situated shippers in a generally applicable tariff provision, or provide further explanation for why the Commission should not find this provision unduly discriminatory under the unique circumstances in which it was offered to Angola.

By direction of the Commission

Kimberly D. Bose,
Secretary.

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[6] *Questar Pipeline Co*., 132 FERC ¶ 61,152, at P 10 (*Questar*) (2009)).