

153 FERC ¶ 61,094  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Norman C. Bay, Chairman;  
Philip D. Moeller, Cheryl A. LaFleur,  
Tony Clark, and Colette D. Honorable.

Transcontinental Gas Pipe Line Company, LLC

Docket No. RP14-46-002

ORDER ON REHEARING

(Issued October 27, 2015)

1. Piedmont Natural Gas Company, Inc. (Piedmont) requested rehearing of the Commission's April 15, 2014 Order on Compliance Filing in this proceeding.<sup>1</sup> In that order, the Commission found that language submitted by Transcontinental Gas Pipe Line Company, LLC (Transco) clarifying certain sections of its firm rate schedules related to receipt point scheduling priorities<sup>2</sup> was consistent with longstanding practices on the Transco system. The Commission found that the parties opposing Transco's proposal had failed to provide support for the Commission to find under section 5 of the Natural Gas Act (NGA) that Transco's existing scheduling practices are unjust and unreasonable. Accordingly, the Commission accepted Transco's proposed tariff language. For the reasons discussed below, the Commission denies Piedmont's request for rehearing.

**Background**

2. On October 16, 2013, Transco filed various clarifications and revisions to its tariff records. As here relevant, Transco proposed to revise section 4.1(a)(i) of its firm rate schedules to add the underlined language below:

Transportation service under this rate schedule shall consist of: (a) the receipt of gas on behalf of buyer up to buyer's TCQ quantity (plus fuel retained pursuant to the provisions of Section 3.7 hereof and injection fuel under Seller's Rate Schedules GSS, if applicable) at (i) primary points of receipt

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<sup>1</sup> *Transcontinental Gas Pipe Line Co., LLC*, 147 FERC ¶ 61,033 (2014) (April 2014 Order).

<sup>2</sup> These include Rate Schedules FT, FT-G, FTN and FDLS.

which include the furthest upstream point(s) of receipt specified in the executed service agreement and all points of receipt within buyer's firm contract path, or (ii) at secondary point(s) of receipt pursuant to Section 2.8 hereof; (b) the transportation of gas through Seller's pipeline; (c) the delivery of equivalent quantities (dts) of natural gas (less fuel retained pursuant to the provisions of Section 3.7 hereof) by Seller to buyer, or for buyer's account, at ((i) the point(s) of delivery specified in the executed agreement ("traditional delivery point(s)"), (ii) the point(s) of delivery within buyer's firm contract path upstream of buyer's traditional delivery point(s) ("non-traditional delivery points")), or (iii) secondary delivery points pursuant to Section 2.8 of this rate schedule.

3. Transco contended that this proposal did not change the receipt point rights of its firm shippers, but simply clarified section 4.1(a)(i) consistent with the existing specific provisions of its tariff concerning shipper priority at receipt points. The North Carolina Utilities Commission (NCUC), however, protested the proposal, stating that it degrades the existing primary receipt point rights of firm shippers. NCUC argued that, if a firm shipper had a contract path from zone 1 to zone 5, that shipper could, under Transco's proposal, nominate service at any receipt point within its contract path and obtain an equal primary firm scheduling priority with other firm shippers whose service agreements list that point as their primary receipt point. As a result, NCUC asserted that firm shippers, with primary rights at the point, might only receive a *pro rata* share of their nominated service if there is insufficient capacity at the receipt point to schedule all the nominations.

4. In the November 15, 2013 Order accepting and suspending Transco's filing,<sup>3</sup> the Commission stated that it was unable to determine whether Transco's proposed tariff language changed the existing scheduling priorities for firm shippers at receipt points. Therefore, the Commission directed Transco to explain how: (1) it currently schedules firm service on its system, with particular emphasis on how it determines the relative priority of a firm transaction scheduled from (a) a shipper's primary receipt point listed in its service agreement and (b) a receipt point within a shipper's contract path but not listed in its service agreement; and (2) its proposed revision of section 4.1 of its firm rate schedules is consistent with its existing scheduling practices.

5. In its compliance filing and subsequent answer to adverse comments, Transco stated that its proposed revisions to section 4.1(a)(i) of its firm rate schedules are intended to harmonize that general provision concerning the nature of the firm service

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<sup>3</sup> *Transcontinental Gas Pipe Line Co., LLC*, 145 FERC ¶ 61,130 (2013).

provided under those rate schedules with its other more specific existing tariff provisions governing the priority rights of firm shippers at receipt points. Transco stated that, absent the revisions, section 4.1(a)(i) could limit the primary receipt point rights of a shipper to only those points identified in the shippers' service agreement, thus excluding receipt points along the shipper's firm contract path. Transco argued that so restricting a shipper's primary receipt points would be inconsistent with other provisions of its tariff that do not restrict primary receipt point rights to only those identified in the shipper's service agreement. Transco stated that its proposal does *not* create "new" receipt point rights that change or degrade the scheduling priorities or receipt point rights of firm shippers.

6. Transco explained that section 28.2(a) of its GT&C and various unchanged provisions in its firm rate schedules govern how it schedules firm service on its system and the relative priority of each firm transaction.<sup>4</sup> Transco stated that those tariff provisions generally treat all mainline firm service, other than service outside a shipper's primary path, as having the same, highest scheduling priority. Transco stated that GT&C section 28.2(a) provides that Transco "shall give first priority to firm transportation service scheduled within firm transportation contract entitlements. . ." GT&C section 28.2(a)(i) then provides that "[t]o the extent capacity remains," Transco will next allocate capacity to firm shippers scheduling service pursuant to the sections in each of its firm rate schedules which permit firm shippers to schedule secondary firm service outside their firm contract path.<sup>5</sup> Transco stated that its firm rate schedules provide that each firm shipper's contract path is established by the receipt and delivery points set forth in its executed service agreement.<sup>6</sup>

7. Transco also stated that its firm rate schedules also contain provisions governing firm scheduling priorities at receipt and delivery points. Transco explained that the receipt point scheduling priorities work in the same manner as the mainline scheduling priorities in GTC section 28.2(a), described above. For example, according to Transco, section 4.3 of Rate Schedules FT, FT-G, and FTN<sup>7</sup> provide that, if Transco cannot schedule all firm nominations at a receipt point, it shall first reduce quantities nominated

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<sup>4</sup> Compliance Filing at 5. Transco stated that section 4.5 of Rate Schedule FDLS was revised to adapt its terminology to corresponding firm rate schedules FT, FT-G, and FTN.

<sup>5</sup> Section 2.8 of Rate Schedules FT and FT-G, section 2.5 of Rate Schedule FTN, and section 2.6 of Rate Schedule FDLS.

<sup>6</sup> *See*, for example, section 2.9 of Rate Schedule FT.

<sup>7</sup> The same provision appears in section 4.4 of Rate Schedule FDLS.

at that receipt point which are outside the firm shippers' contract path. Transco further explained that, if a further reduction is required, the remaining firm nominations at that receipt point (*i.e.*, all nominated quantities which are within the firm shippers' contract path) will be allocated based upon the shippers' "relative TCQ [transportation contract quantity] quantities on that segment of [Transco's] pipeline system." Transco stated that the Commission has previously recognized that these provisions effectively treat all receipt points with a firm shippers' contract path as primary receipt points.<sup>8</sup>

8. With regard to delivery points, Transco stated that, under section 4.5 of its firm rate schedules, each shipper's service agreement specifies its "traditional" delivery point(s), which are primary delivery points.<sup>9</sup> Transco explained that all delivery point(s) within the shipper's primary path, *i.e.*, "non-traditional delivery points" are available to the shipper "subject to certain conditions."<sup>10</sup> Transco stated that, under section 4.5, a shipper has access to all delivery points within the shipper's contract path. However, *unlike receipt points* within a shipper's contract path, Transco asserted that a shipper's access to a "non-traditional" delivery point within that shipper's firm contract path may be subordinate to firm service scheduled by a shipper for which that delivery point is a "traditional" delivery point.

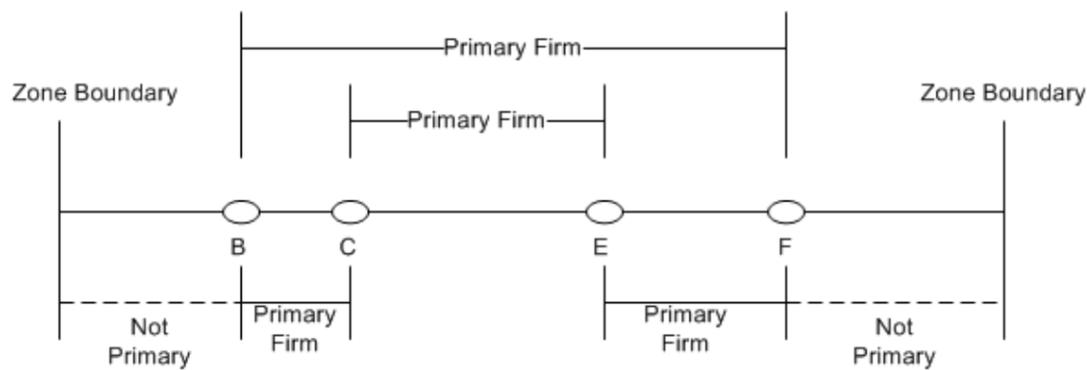
9. Transco provided the following example to illustrate how firm transportation is scheduled on its system under the tariff provisions described above:

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<sup>8</sup> Compliance Filing at 7 (citing *Transcontinental Gas Pipe Line Corp.*, 75 FERC ¶ 61,210 at 61,703, n.11, in which the Commission stated "Transco's currently effective tariff does not identify receipt points as 'primary.' However, Transco's tariff does permit shippers access to all receipt points within a shipper's contract path and such points are considered primary points as the term is used by the Commission in Order No. 636.").

<sup>9</sup> Transco stated that the Commission characterizes "traditional" delivery points, as defined in section 4.5 as primary points. *See* Compliance Filing at 6, n.10 (citing 75 FERC ¶ 61,210 at 61,704, n.14).

<sup>10</sup> These conditions include: (a) operating and tariff limitations at such point(s); (b) confirmation and acceptance by the delivery point operator and (c) may be further subordinate to any firm services scheduled to such point(s) which are traditional FT, FTN or FT-G delivery points of another firm shipper. *See* Compliance Filing at 6.



Transco stated this example assumes that a shipper, *i.e.*, Shipper X, has a firm transportation contract entitlement path determined by a receipt point at point B and a “traditional” delivery point at point F, and that such points are specifically identified in Shipper X’s firm transportation service agreement. Under its tariff, Transco stated that it evaluates Shipper X’s priority along its entire contract path as “primary” firm. If Shipper X nominates at receipt point C for delivery to a “non-traditional” delivery point E, which is all in the primary path, Transco concludes that the receipt point C on the nominated path is a primary point. Even though receipt point C is not specifically listed on the service agreement, Transco explained that it is within Shipper X’s firm transportation contract entitlements. Transco stated that it is only when Shipper X nominates outside of its firm transportation contract entitlements, *i.e.*, outside the primary path of B to F, that Shipper X will be subject to the lower scheduling priority under section 28.2(a)(i) of the GT&C.

10. Subsequently, a number of rounds of comments and reply comments and answers were filed. Three parties, including Piedmont, asserted that Transco’s proposal changes and/or degrades the primary receipt rights of shippers whose receipt point rights are specified in their service agreements, because the proposed language would give shippers that do not have such points specified in their service agreements similar priority rights. Piedmont argued that Transco’s interpretation of primary receipt point rights on its system is different than the customary prioritization of such rights, which normally are established by specifically designating those points in a service agreement as primary

points. Other parties supported Transco's proposal.<sup>11</sup> Transco filed answers to the parties' comments, including a January 24, 2014 Answer, summarizing the origin of these tariff provisions in a series of settlements restructuring Transco's services to provide unbundled open access transportation consistent with Order No. 636.

11. Based on this record, in the April 2014 Order, the Commission held that Transco's proposed tariff language merely clarifies section 4.1(a)(i) of the relevant firm rate schedules in order to make that provision consistent with Transco's longstanding primary receipt point right and scheduling and allocation practices. The Commission stated that Transco had shown, and no party had disputed the fact, that these practices have been the same on Transco's system since it unbundled its transportation service from its sales service shortly before and during the restructuring of its operations pursuant to Order No. 636. Moreover, the Commission determined that it had previously accepted these practices.<sup>12</sup> Therefore, the Commission concluded that the proposed tariff language did not degrade or change rights or practices on the Transco system.

12. In reaching its conclusion, the Commission discussed the fact that, during the development of Transco's current tariff governing receipt point rights, in the late 1980s and early 1990s, Transco and its customers negotiated the terms of the priorities on the Transco system, in large part, to ensure that the historical flexibility on that system would be preserved as Transco unbundled its sales and transportation services. The Commission noted that under a 1991 Comparability Settlement, firm shippers were not assigned (and Transco did not allocate) specific receipt point capacity entitlements at each receipt point.<sup>13</sup> Rather, every receipt point along the path of the firm shipper's contract entitlement was specified on the shipper's firm service agreement, together with an identification of the shipper's capacity entitlement in the segment of Transco's system on which a particular receipt point was located. If an allocation of capacity at a specific receipt point among shippers was required, then the Comparability Settlement provided

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<sup>11</sup> The parties supporting Transco's proposal included National Grid Gas Delivery Companies (National Grid) and the UGI Distribution Companies (UGI).

<sup>12</sup> See *Transcontinental Gas Pipe Line Corp.*, 55 FERC ¶ 61,446, *order on reh'g*, 57 FERC ¶ 61,345 (1991); *Transcontinental Gas Pipe Line Co.*, 75 FERC ¶ 61,210 (1996) and *Transcontinental Gas Pipe Line Corp.*, 96 FERC ¶ 61,352 (2001).

<sup>13</sup> *Transcontinental Gas Pipe Line Corp.*, 55 FERC ¶ 61,446.

for a *pro rata* allocation at that specific point that is based on the firm contract entitlements of those shippers in that segment of Transco's system.<sup>14</sup>

13. The Commission pointed out that each of the settlements and filings made by Transco was accepted by the Commission as conforming to its policies, including the Commission's approval of Transco's tariff revisions to comply with the Commission's open access and restructuring policies in Order Nos. 636 and 637. We noted that, in 1996, the Commission expressly recognized that Transco's tariff treats all points *within a firm shipper's contract path* as primary. There, the Commission stated that "Transco's currently effective tariff does not identify receipt points as 'primary.'" However, the Commission concluded that Transco's tariff permits shippers access to all receipt points within a shipper's contract path and such points are considered primary points as the term is used by the Commission in Order No. 636.<sup>15</sup> Moreover, when Transco filed to comply with the requirements of Order No. 637 (that pipelines provide a higher priority for secondary firm within-the-path transactions than those outside the path), the Commission found that Transco's existing tariff complied with those requirements.<sup>16</sup>

14. The Commission accepted Transco's explanation that, over time, specifying each receipt point along the path of the shipper's contract entitlement on each service agreement became unwieldy due to constant changes in the availability of receipt points, the shifting of gas supplies and the removal and addition of receipt point facilities on Transco's system.<sup>17</sup> Thus, in light of the history on Transco's system and based upon the record in this case, the Commission concluded that the proposed clarification of section 4.1(a)(i) simply clarifies that section by making it consistent with the longstanding receipt point rights and scheduling and allocation practices on Transco's system, which originated in settlements approved by the Commission.

15. Accordingly, the Commission determined that it would have to act under section 5 of the NGA in order to require Transco to modify its existing scheduling priorities. The Commission found that, given the history on Transco's system, the parties opposing

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<sup>14</sup> April 2014 Order, 147 FERC ¶ 61,033 at P 22 (citing *Transco*, 55 FERC ¶ 61,446, *order on reh'g*, 57 FERC ¶ 61,345(1991)).

<sup>15</sup> *Id.* P 23 (citing *Transco*, 75 FERC ¶ 61,210, at 61,704, n.14 (1996)).

<sup>16</sup> *Id.* (citing *Transcontinental Gas Pipe Line Corp.*, 96 FERC ¶ 61,352, at 62,308 (2001)).

<sup>17</sup> Because such changes required constant amendments to service agreements, relying on section 4.1 of its tariff, Transco began specifying in a shipper's firm service agreements only those receipt points that were necessary to define the shipper's contract path or the shipper's contract entitlement within that path. *Id.* P 24.

Transco's existing practice had failed to provide any support for the Commission to find Transco's treatment of primary receipt point rights and its method of scheduling and allocating capacity to be unduly discriminatory or unjust and unreasonable. The Commission stated that the record in this case reflects that, for the last quarter of a century, Transco has provided both highly flexible and apparently highly reliable firm transportation service due in large part to the historical design and operation of the Transco system. The Commission stated that it had not been made aware of any instance in which primary receipt point capacity of any firm shipper has been curtailed as a result of Transco's scheduling practices.

16. Further, in response to the arguments of the parties opposing Transco's proposal, specifically that Transco's currently effective receipt point rights and scheduling and allocation practices are different from those on other pipelines, the Commission stated that application of our policies to a particular case must be based on the facts and circumstances in the particular case.<sup>18</sup> We stated that, in the *Tennessee Gas Pipeline Co.* cases relied on by the opposing parties,<sup>19</sup> Tennessee historically limited its shippers' primary point rights to those expressly listed in their contracts and refused to permit those rights to exceed the shippers' mainline contract demand. The Commission therefore determined that Tennessee's proposal to elevate the scheduling priority for firm transactions from a secondary receipt point to a primary delivery point and giving it the same priority as a firm transaction from a primary receipt point to a primary delivery point would have altered the pipeline's historical practice of giving a scheduling priority to service from the primary receipt points listed in the shipper's contract to the primary delivery points. We stated that, in contrast, Transco is simply continuing its historical practice, agreed to in several settlements, to treat all receipt points within each shipper's primary path as primary receipt points.<sup>20</sup> The Commission found no evidence that this practice had affected the reliability of firm shipper services on the Transco system. Accordingly, the Commission concluded that application of the policy in *Tennessee I* to

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<sup>18</sup> *Id.* P.26 (citing *Pacific Gas & Electric Co. v. FPC*, 506 F. 26 at 33, 3-39 (D.C. Cir. 1974)).

<sup>19</sup> The Piedmont Comments relied on *Tennessee Gas Pipeline Co.*, 135 FERC ¶ 61,208, at P 27 (2011), *reh'g*, 139 FERC ¶ 61,050 (2012) (*Tennessee I*). The NCUC and NJR Comments relied on *Tennessee Gas Pipeline Co., L.L.C.*, 145 FERC ¶ 61,058, at P 3 (2013) (*Tennessee II*).

<sup>20</sup> *See* April 2014 Order, 147 FERC ¶ 61,033, at P 9, note 7 (citing Compliance Filing at 5-6 citing *Transco*, 75 FERC ¶ 61,210, at p. 61,704, n.14 (1996); *also* citing 75 FERC ¶ 61,210, at 61,702, n.10 (noting that section 4.1 of Rate Schedule FT already provided shippers access to all receipt points on Transco's mainline that are within the shipper's contract path)).

the facts and circumstances of Transco's system was not warranted and had not been supported.<sup>21</sup>

### **Request for Rehearing**

17. On May 15, 2014, Piedmont filed a request for rehearing, contending that the Commission should (1) reject Transco's proposed clarification of section 4.1(a)(i) of its firm rate schedules and (2) require Transco to make whatever other tariff changes are necessary to restrict the highest scheduling priority solely to transactions a shipper nominates from the primary receipt points listed in its service agreement to the primary delivery points listed in those agreements.

18. Piedmont argues that Transco's clarification regarding receipt point rights is contrary to Commission policy and precedent.<sup>22</sup> Piedmont further argues that the Commission's justification for finding Transco's clarification of section 4.1(a)(i) to be reasonable and that it does not change or degrade shipper's primary receipt point rights because Transco has historically applied its tariff in this manner is not a valid basis for continuing Transco's allegedly unlawful practice. Piedmont contends that, under Commission precedent, primary rights at a receipt and/or delivery point are established by the specific designation of those points in a service agreement as primary receipt and delivery points, which Piedmont argues typically trump any secondary utilization of those points by shippers whose primary point rights (*i.e.* contractually specified) lie elsewhere. Piedmont argues that Transco's receipt point allocation is inconsistent with the Commission's precedent that shippers nominating gas to the firm receipt and delivery points expressly listed in their service agreements receive priority over shippers utilizing "secondary" receipt points.

19. Piedmont contends that a shipper using a receipt point specified in its contract can have its rights at that point degraded by a shipper scheduling service at that point using firm within-the-path contract rights. Piedmont argues such an action was confirmed by Transco in its Compliance Filing, when it stated that "[b]uyers scheduling service at a

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<sup>21</sup> The proposal in *Tennessee I* involved a modification proposed by Tennessee to its existing scheduling priorities. Unlike the practice on the Transco system, the contracts of firm shippers on the Tennessee system specify the receipt and delivery points to which the shipper will have primary rights. *See Tennessee I*, 135 FERC ¶ 61,208, at P 23.

<sup>22</sup> Piedmont contends that the Commission's recently reaffirmed policy is that "primary to primary point transactions must be afforded the highest scheduling priority, consistent with firm shippers' contractually guaranteed firm right to ship gas from the primary receipt points specified in their contracts to their primary delivery points." Piedmont Rehearing at 6 (citing *Tennessee II*, 145 FERC ¶ 61,058, at P 3).

receipt point within their firm contract path, whether or not that receipt point is specified in the service agreement, are allocated capacity at that point first.”<sup>23</sup> Thus, Piedmont argues that Transco’s interpretation and clarification of its tariff allows secondary “in-the-path” transactions to have the same priority as a primary transaction, which it maintains violates the Commission’s “firm is firm” policy.<sup>24</sup> Piedmont states, while it is true the Commission has afforded secondary “in-the-path” transactions priority over secondary “outside-the-path” transactions,<sup>25</sup> it is unfamiliar with any instance where the Commission has deviated from its policy and elevated a secondary “in-the-path” transaction to the same priority as a primary transaction at either a receipt or a delivery point.

20. Piedmont states that in *Tennessee I* the pipeline proposed to elevate the scheduling priority for firm transactions from a secondary receipt point to a primary delivery point to the same priority as a firm transaction from a primary receipt point to a primary delivery point. However, according to Piedmont, the Commission stated that a “shipper pays reservation charges based on primary points not on secondary points. Piedmont argues that the secondary rights to delivery points are based on Commission regulations and are by definition inferior to primary point rights. Piedmont states that the reservation charge a customer pays is based on its contract with the pipeline for receipt and delivery of gas at particular points. Further, Piedmont states that the contract does not guarantee the same level of security if other points are used. Rather, Piedmont argues that the Commission’s regulations require [a pipeline] to provide service to those other points if it can.”<sup>26</sup> Therefore, Piedmont requests that the Commission reject Transco’s proposed clarification of section 4.1(a)(i) and require Transco to make whatever other tariff changes are necessary in order to conform its tariff to Commission policy and precedent. For the reasons discussed below, the Commission denies rehearing.

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<sup>23</sup> Piedmont Rehearing at 5 (citing Transco Compliance Filing at 5).

<sup>24</sup> Piedmont Rehearing at 6 (citing *Tennessee Gas Pipeline Co.*, 73 FERC ¶ 61,083, at 61,206 (1995)).

<sup>25</sup> Piedmont Rehearing at 5 (citing *Regulation of Short-Term Natural Gas Transportation Services, and Regulation of Interstate Natural Gas Transportation Services*, Order No. 637-A, FERC Stat. & Regs. ¶ 31,099 at pp. 31,596-98 (2000)).

<sup>26</sup> Piedmont Rehearing at 6 (citing *Tennessee I*, 135 FERC ¶ 61,208, at P 18 and P 23 (quoting *Tennessee Gas Pipeline Co., L.L.C.*, 73 FERC ¶ 61,083, at 61,206 (1999))).

## Discussion

21. In the April 2014 Order, the Commission found that Transco's proposed revision to section 4.1(a)(i) of its firm rate schedules clarified that section to be consistent with other provisions of its GT&C and its firm rate schedules which implemented Transco's longstanding practice of treating all receipt points within a firm shipper's contract path as primary points. The Commission also found that this practice originated in Transco's 1991 Comparability Settlement; and the Commission recognized and approved this practice in subsequent orders concerning Transco's restructuring its services in order to provide unbundled open access transportation service consistent with Order Nos. 636 and 637. Accordingly, the Commission concluded that, in order to require Transco to restrict firm shipper's primary receipt point rights to the receipt points listed in their service agreements, the Commission would have to act under NGA section 5.

22. In its rehearing request, Piedmont does not contest the Commission's interpretation of Transco's existing tariff, as implemented pursuant to the 1991 Comparability Settlement and subsequent Commission orders, as treating all receipt points within a shipper's contract path as primary receipt points. Nor does Piedmont present any argument that the specific, existing tariff provisions cited by Transco<sup>27</sup> as providing for such treatment of within-the-path receipt points should not be interpreted as Transco interprets them. To the contrary, Piedmont requests that the Commission require Transco to modify its tariff so as to limit each firm shipper's primary receipt points to those listed on its service agreement, thereby ensuring that a shipper with a particular receipt point listed in its service agreement will have a scheduling priority at that point over other firm shippers using that point on a within-the-path basis. In order to take the action sought by Piedmont, the Commission would have to move beyond accepting or rejecting Transco's proposed modification of section 4.1(a)(i) of its firm rate schedules to require Transco to modify the existing parts of its tariff which it did not propose to modify. As the United States Court of Appeals for the District of Columbia Circuit has held, the Commission must act under NGA section 5 in order to do this.<sup>28</sup>

23. The Commission continues to find that the circumstances of this case do not justify initiating an NGA section 5 proceeding to consider modifying Transco's longstanding scheduling practices and tariff provisions in the manner requested by Piedmont. Piedmont contends that Transco's existing scheduling practices and tariff provisions violate the Commission's holdings in *Tennessee I* and *Tennessee II* and

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<sup>27</sup> These provisions include GT&C section 28.2 and sections 2.8 and 4.3 of Rate Schedules FT and FT-G, sections 2.5 and 4.3 of Rate Schedule FTN, and sections 2.6 and 4.4 of Rate Schedule FDLS.

<sup>28</sup> *Western Resources, Inc. v. FERC*, 9 F.3d 1568, 1579 (D.C. Cir. 1993).

therefore Transco's scheduling practices are unjust and unreasonable. The Commission finds that Piedmont's reliance on *Tennessee I* and *Tennessee II* is misplaced.

24. As Piedmont states, in *Tennessee I*, the Commission rejected that pipeline's proposal pursuant to NGA section 4 to elevate the scheduling priority for firm transactions from a secondary receipt point to a primary delivery point to the same level as primary receipt point to primary delivery point transactions when a capacity restriction is within the shipper's primary capacity path. However, there are significant differences in the circumstances on the Tennessee and Transco systems. Tennessee's tariff provides that a firm shipper's primary receipt point capacity may not exceed its mainline contract demand.<sup>29</sup> Thus, when shippers contract with Tennessee for firm service, they are limited in the amount of primary receipt point capacity they may reserve in their service agreements; and they are guaranteed a firm right to ship gas only from those primary receipt points designated in their service agreements to the designated primary delivery points, and not between any other points.<sup>30</sup> In rejecting Tennessee's proposal to give the same scheduling priority to within-path transactions using secondary receipt points as to transactions using primary receipt and delivery points, the Commission held that "the scheduling priorities in Tennessee's tariff should be consistent with the contractual rights of its shippers. Because Tennessee's firm service agreements provide its firm shippers a guaranteed firm right to ship gas from primary receipt points to primary delivery points, the scheduling priorities in its tariff should give that service priority over service using a combination of primary and secondary rights."<sup>31</sup>

25. Transco uses a different contracting model than Tennessee when it enters into service agreements with firm shippers. As a result, Transco's firm shippers do not have the same contractually guaranteed firm right to use particular receipt points, as Tennessee's firm shippers have. Thus, the contractual basis of our holding in *Tennessee I* concerning the scheduling priority of firm service from primary receipt to primary delivery points does not exist on Transco.

26. Unlike Tennessee, Transco's tariff contains no limit on the amount of primary receipt point capacity a firm shipper may reserve. To the contrary, as described above, Transco's 1991 Comparability Settlement provided for every receipt point along each firm shipper's contract path to be specified on the shipper's firm service agreement. If an allocation of capacity at a specific receipt point among firm shippers was required, then the Comparability Settlement provided for a *pro rata* allocation at that point based on the

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<sup>29</sup> See section V(2)(a) of Tennessee's GT&C.

<sup>30</sup> See *Tennessee I*, 139 FERC ¶ 61,050, at P 18.

<sup>31</sup> *Id.*

firm contract entitlements of those shippers in that segment of Transco's system. In a 1996 order, the Commission expressly recognized that Transco's tariff provisions implementing this aspect of the 1991 Comparability Settlement treat all receipt points within a firm shipper's contract path as primary receipt points.<sup>32</sup>

27. Because each of Transco's firm shippers has primary receipt point rights up to its mainline contract demand at all the receipt points within its contract path, each shipper has primary receipt point rights substantially in excess of its mainline contract demand. As a result, shippers on Transco, unlike those on Tennessee, have no contractually guaranteed firm right to use the capacity at any particular receipt point on Transco's system up to their mainline contract demand. If multiple firm shippers nominate service at a particular within-path receipt point in excess of the capacity at that point, they are subject to a *pro rata* reduction in their nominations based on their mainline contract demands. However, Transco's treatment of all within-path receipt points as primary points provides the offsetting benefit of giving its firm shippers substantial flexibility to access natural gas supplies at all the different receipt points in their contract path, albeit subject to *pro rata* reductions. The 1991 Comparability Settlement gave firm shippers these rights in order to give them the same flexibility to access natural gas supplies at different receipt points as Transco had when it provided a bundled sales service.

28. Given the history of Transco's system and its different contracting practices from those of Tennessee, Piedmont has failed to provide any support for a Commission finding that Transco's treatment of primary receipt point rights and its scheduling practices are unjust and unreasonable or unduly discriminatory. The record in this case reflects that, for the last quarter of a century, Transco has provided both highly flexible and apparently highly reliable firm transportation service. As UGI stated, Transco's firm shippers rely upon this flexibility, including the flexibility accorded by the broad primary receipt point rights provided by Transco's tariff. Piedmont has failed to provide evidence showing that Transco's contracting and scheduling practices have interfered with the reliability of its firm service. In fact, in its comments in this case, Piedmont stated that it is "unaware of any instance in which" Transco's treatment of all within-path receipt points as primary points "has caused an allocation of Piedmont's primary firm capacity on the Transco system."<sup>33</sup> While Piedmont suggests that this is "apparently" not true for all firm Transco shippers, Piedmont is the only Transco shipper still seeking a change in Transco's existing scheduling priorities.

29. Moreover, the Commission finds no basis for finding that Transco's existing contracting and scheduling practices are unduly discriminatory. By providing all firm

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<sup>32</sup> *Transco*, 75 FERC ¶ 61,210, at 61,704 n.14 (1996).

<sup>33</sup> See Piedmont January 6, 2014 comments at 2-3.

shippers with primary rights at all the receipt points within their contract paths, Transco provides the same primary point rights to all its firm shippers. In addition, the provision for *pro rata* reductions in the firm shippers' receipt point scheduling nominations based on each shipper's contract demand when the nominations of multiple shippers exceed receipt point capacity is not unduly discriminatory. Under that methodology, each shipper is able to schedule the same proportion of that shipper's contracted for capacity, for which the shipper is paying reservation charges.

30. The Commission also observes that, in order to modify Transco's scheduling priorities consistent with *Tennessee I*, as requested by Piedmont, it would be necessary to modify Transco's firm contracting practices to be consistent with those used by Tennessee. As discussed above, our requirement that Tennessee limit the highest scheduling priority to primary receipt point to primary delivery point transactions was premised on the fact that Tennessee's firm service agreements provides its shippers a guaranteed firm right to ship gas from their primary receipt points to their primary delivery points. However, in order to provide that right, a pipeline must limit the primary point capacity each shipper may reserve in its service agreement as necessary to insure that the pipeline can, in fact, guarantee that, absent a *force majeure* event, it can provide service up to each firm shipper's mainline contract demand from its primary receipt point to its primary delivery point. Tennessee does this in a not unduly discriminatory manner by limiting the amount of primary receipt and delivery point capacity each shipper may reserve to the amount of its mainline contract demand.

31. However, Transco has never imposed such a limit. As Transco has explained, in the early years of providing unbundled transportation service, Transco listed on its firm shippers' service agreements every receipt point within their contract path. However, over time, specifying each such receipt point on each service agreement became unwieldy due to constant changes in the availability of receipt points, the shifting of gas supplies and the removal and addition of receipt point facilities on Transco's system. Because such changes required constant amendments to service agreements, relying on section 4.1 of its tariff, Transco began specifying in a shipper's firm service agreement only those receipt points that were necessary to define the shipper's contract path or the shipper's contract entitlement within that path. As a result, some firm shippers on Transco's system, particularly those with older service agreements, may have significantly more receipt point capacity listed on their current service agreements than other shippers, as compared to their mainline contract demands. In such circumstances, requiring Transco to modify its existing scheduling priorities, as requested by Piedmont, could unduly discriminate among firm shippers, unless the Commission also required Transco to adopt a not unduly discriminatory upper limit on the primary receipt point capacity firm shippers may reserve similar to that imposed by Tennessee, and required Transco to modify any existing firm service agreements which might contain primary receipt points in excess of that limit.

32. The Commission concludes that Piedmont has not justified Commission action under NGA section 5 to require Transco to modify its longstanding contracting and scheduling practices. Those practices appear to have worked well to provide firm shippers reliable and flexible service. Transco has demonstrated that the addition of its proposed language to section 4.1(a)(i) does not result in any change in the way firm services are currently scheduled or allocated on its system. Transco proved, and no party disputed the fact, that these practices have been the same on Transco's system since it unbundled its transportation service from its sales service before and during the restructuring of its operations pursuant to the Commission's open access and restructuring policies. The Commission accepted Transco's practices in large part due to the flexibility they provided on the Transco system, including the flexibility accorded the broad primary receipt point rights. A Commission requirement now that Transco modify those practices could cause significant disruptions in Transco's existing contractual arrangements with its firm shippers.

33. Finally, while Piedmont asserts that the record in this case was inadequate to justify approval of Transco's proposed tariff revision, the record before us is quite extensive. In addition to the protest to Transco's initial filing, the record contains numerous rounds of pleadings and opportunities to present evidence to the Commission, including (a) Transco's compliance filing, (b) reply comments supporting and opposing the filings, (c) Transco's Answer and (d) reply comments to Transco's Answer. During all these rounds, Piedmont was free to provide evidence it believed relevant to the record. However, Piedmont failed to provide any evidence that would support a reversal of our decision. In light of the record before us, there is no basis to conclude that Transco's treatment of primary receipt point rights and its method of scheduling and allocating capacity are unduly discriminatory or unjust and unreasonable. Therefore, we find that our approval of Transco's clarification of section 4.1(a)(i) is consistent with the objectives of the Commission's open-access regulations and prior Commission policy and precedent. Thus, we conclude that the decision in this case is reasonable and based upon a complete and adequate record.

The Commission orders:

Piedmont's request for rehearing is denied.

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.