

154 FERC ¶ 61,265
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Transcontinental Gas Pipe Line Company, LLC

Docket No. RP16-696-000

ORDER ACCEPTING FOR FILING AND SUSPENDING TARIFF RECORDS
SUBJECT TO REFUND

(Issued March 30, 2016)

1. On March 1, 2016, Transcontinental Gas Pipe Line Company, LLC (Transco) filed a revised tariff record¹ pursuant to section 4 of the Natural Gas Act (NGA), proposing a new incremental rate for WGL Midstream, Inc. (WGL) for storage service at the Washington Storage Field under Rate Schedule Washington Storage Service-Open Access (WSS-OA). Transco states that it is proposing the new incremental rate because previous shippers exercised their right to reacquire their contributions to base gas at the Washington Storage Field, and Transco needs to replace the base gas to serve WGL, the replacement shipper. Transco proposes an effective date of April 1, 2016.

2. On March 17, 2016, the Commission issued an order² in Docket Nos. RP06-569-008 and RP07-376-005, in which it ruled on a similar proposal by Transco to establish an incremental rate for WSS-OA service under almost identical circumstances. For the reasons discussed below, we direct Transco to provide a supplemental filing calculating WGL's WSS-OA rates in accordance with the guidelines established by the Commission in the Order on Remand. Transco should include in its supplemental filing supporting work papers and any additional information used to develop its rates. If Transco believes that the Commission should deviate from the rolled-in rate analysis adopted by the

¹ Transcontinental Gas Pipe Line Company, LLC, FERC NGA Gas Tariff, Fifth Revised Volume No. 1, [Section 3.1, Rate Schedule WSS-Open Access Rates, 9.0.0](#).

² *Transcontinental Gas Pipe Line Corp.*, 154 FERC ¶ 61,211 (2016) (Order on Remand).

Commission in Order on Remand, Transco shall submit support for this argument along with the supplemental filing ordered herein. Accordingly, we accept for filing and suspend Transco's proposed tariff record, to be effective April 1, 2016, subject to refund and to a subsequent order in this proceeding reviewing Transco's supplemental filing.

I. Background and Filing

A. Legal History Prior to Order on Remand

3. Opinion Nos. 507 and 507-A³ contain a full discussion of the background of the establishment of the Washington Storage Field and Transco's proposal to charge replacement shippers incremental rates for WSS-OA service. As described there, Transco developed the Washington Gas Storage Field pursuant to a settlement approved by the Commission in 1975 (1975 Settlement),⁴ which obligated the shippers at the time to supply base gas for the storage field, but also gave those shippers the right to repurchase that gas at historical cost when terminating their contracts.⁵ In the late 1990s,

³ *Transcontinental Gas Pipe Line Corp.*, Opinion No. 507, 130 FERC ¶ 61,043 (2010), *reh'g denied*, Opinion No. 507-A, 139 FERC ¶ 61,002 (2012).

⁴ *Transcontinental Gas Pipe Line Corp.*, 53 FPC 628 (1975) (*1975 Transco*). Amendments to Rate Schedule WSS were subsequently authorized by the following orders: 56 FPC 1351 (1976); 58 FPC 1960 (1977); 1 FERC ¶ 61,172 (1977); 4 FERC ¶ 61,271 (1978); 6 FERC ¶ 61,232 (1979); 11 FERC ¶ 62,003 (1980); 12 FERC ¶ 62,287 (1980); 16 FERC ¶ 62,212 (1981).

⁵ *See 1975 Transco*, 53 FPC at 630. The 1975 Settlement provided that Transco's customers desiring WSS service would provide the base gas volumes necessary to support their top gas storage capacity entitlements. As agreed in the settlement, section 9.1 of Rate Schedule WSS provided that Transco would inform each WSS customer (historic shipper) of the quantity of base gas to be supplied by that customer for each increment of its storage capacity. Each historic shipper would then supply the required base gas volumes from volumes that would otherwise be available to it for purchase under Transco's then existing bundled firm sales rate schedules. The customers' firm entitlements to purchase gas would be temporarily reduced by the amount of base gas being supplied, coupled with a credit to their sales reservation charges. In addition, pursuant to the 1975 Settlement, section 9.5 of Rate Schedule WSS provided that Transco would be the owner of the base gas injected into the Washington Storage Field (and incur the gas purchase cost), but the historic shippers would have the right to purchase their respective share of the base gas at historic cost from Transco at the time the customer terminated service from the field. This base gas arrangement was listed in section 9.1 and section 9.5 of Transco's then existing WSS tariff on file with the

(continued ...)

the Commission accepted Transco's proposal to implement a new Rate Schedule WSS-OA to enable the historic shippers at the Washington Gas Storage Field to convert from the existing individually certificated Rate Schedule WSS service to Part 284 open access service under Rate Schedule WSS-OA.⁶ The historic rate Schedule WSS shippers retain their right to repurchase their share of base gas when they terminate their contracts, even if they convert to Rate Schedule WSS-OA service. New Rate Schedule WSS-OA shippers are not required to supply base gas and accordingly have no right to repurchase such gas if they terminate service.

4. Until recently, only two of Transco's historic shippers had permanently released their Washington Storage Field capacity and exercised their repurchase rights. Approximately one year ago, PSEG Energy Resources and Trade released its capacity to BNP Paribas Energy Trading GP (Paribas)⁷, and South Jersey Gas Company released its capacity to its affiliate, South Jersey Resources Group, LLC (South Jersey). In order to compensate for the expense of replacing this base gas, Transco proposed to charge Paribas and South Jersey incremental rates.

5. In Opinion No. 507 and Opinion No. 507-A,⁸ the Commission ruled that Transco's proposal to charge Paribas and South Jersey incremental rates was just and reasonable, and rejected arguments that it was required to apply the 1999 Certificate Policy Statement.⁹ The Commission found that Transco had satisfied its section 4 burden to

Commission. *See also Transcontinental Gas Pipe Line Corp.*, 87 FERC ¶ 61,184, at 61,704 (1999).

⁶ *Transcontinental Gas Pipe Line Corp.*, 85 FERC ¶ 61,119 (1998), *reh'g*, 87 FERC ¶ 61,184.

⁷ In the underlying proceedings at the Commission, the Commission used the name Fortis Energy Marketing & Trading GP or "Fortis" because that was the previous name of the company Paribas before it changed its name. However, because the Court uses the name "Paribas" in *BNP Paribas Energy Trading GP v. FERC*, the Commission will also use this name when referring to the company. 743 F.3d 264 (D.C. Cir. 2014) (*BNP Paribas*).

⁸ *Transcontinental Gas Pipe Line Corp.*, Opinion No. 507, 130 FERC ¶ 61,043, *reh'g denied*, Opinion No. 507-A, 139 FERC ¶ 61,002.

⁹ *Certification of New Interstate Natural Gas Pipeline Facilities*, 88 FERC ¶ 61,227 (1999) (1999 Certificate Policy Statement), *clarified*, 90 FERC ¶ 61,128 (1999 Certificate Policy Statement Rehearing Order), *clarified*, 92 FERC ¶ 61,094 (2000).

show that its proposed incremental rates were just and reasonable. Paribas appealed the Commission's rulings before the Court of Appeals for District of Columbia Circuit (D.C. Circuit) and South Jersey intervened in support of Paribas' appeal.

6. In *BNP Paribas*, the D.C. Circuit vacated and remanded the Commission's underlying decisions. Specifically, the D.C. Circuit stated that the Commission failed to explain how its decision manifested the cost causation principle.¹⁰ The D.C. Circuit vacated and remanded the Commission's rulings rather than directing a result, noting the complex history of the Washington Storage Field in its deliberations, as well as alternative arguments that had not been fully discussed before the Commission.¹¹ On October 16, 2014, the Commission issued an order stating that it would reopen the record in light of the D.C. Circuit's decision.¹²

B. Order on Remand

7. On March 17, 2016, the Commission issued the Order on Remand. In the Order on Remand, the Commission re-evaluated Transco's proposed incremental rates for WSS-OA service for Paribas and South Jersey in light of the D.C. Circuit's guidance. The Commission reversed its decision in Opinion Nos. 507 and 507-A that Transco's incremental rate proposal for the replacement shippers was just and reasonable and ruled that Transco must continue to design its rates for service under Rate Schedules WSS/WSS-OA on a fully rolled-in basis, as it has since the inception of these services. Accordingly, the Commission directed Transco to file revised Rate Schedules WSS and WSS-OA tariff sheets and records and pay refunds to the replacement shippers.

8. The Commission noted that it generally decides cost allocation issues using the "cost causation" principle, which "requires that 'rates reflect to some degree the costs actually caused by the customer who must pay [for] them.'"¹³ The Commission then

¹⁰ *BNP Paribas*, 743 F.3d at 266.

¹¹ *Id.* at 270.

¹² *Transcontinental Gas Pipe Line Corp.*, 149 FERC ¶ 61,030 (2014). The Commission stated that it was interested in hearing the participants' views on alternate theories by which Transco's incremental rate proposal might be found just and reasonable, and on the consistency of Transco's incremental rate proposal with other Commission policy. On April 27, 2015, the Commission sent a letter to Transco requesting additional information on its Rate Schedules WSS/WSS-OA.

¹³ *K N Energy, Inc. v. FERC*, 968 F.2d 1295, 1300 (D.C. Cir. 1992).

applied this principle to address the particular circumstances of the Washington Storage Field and the 1975 Settlement. As the Commission noted:

Ordinarily, when a shipper terminates its contract and departs the system, the pipeline's capacity to provide service is unaffected, and the pipeline need not incur any costs in order to continue to serve both its remaining customers and any new customers who contract for service on the turned back capacity. Here, however, a historic shipper's exercise of its right to purchase its share of base gas when it terminates its contract reduces Transco's ability to withdraw gas from storage. Moreover, because of the mechanics of how storage fields operate, the reduction in Transco's ability to withdraw gas from storage exceeds the contractual withdrawal rights of the departing historic shipper. Thus, as illustrated by the facts of this case, a historic shipper's termination of its contract would require Transco to purchase some additional base gas in order to continue to satisfy the existing storage withdrawal rights of its remaining historic shippers. Transco must, of course, purchase even more base gas in order to be able to serve any replacement shipper who obtains the capacity of the departing shipper, as in this case.¹⁴

9. Noting that the D.C. Circuit had rejected the Commission's original reasons for justifying incremental rates, the Commission considered in turn alternative legal and equitable grounds that could justify Transco's proposal, but ultimately rejected these alternative arguments.¹⁵

10. As it relates to the instant case, the most pertinent part of Order on Remand is the Commission's use of the 1999 Certificate Policy Statement's¹⁶ analytical framework to conclude that incremental rates were not just and reasonable for the replenishment of base gas at Transco's Washington Storage Field.¹⁷ Pursuant to the 1999 Certificate

¹⁴ *Order on Remand*, 154 FERC ¶ 61,211 at P 52.

¹⁵ *Id.* P 56.

¹⁶ 1999 Certificate Policy Statement, 88 FERC ¶ 61,227, *clarified*, 1999 Certificate Policy Statement Rehearing Order, 90 FERC ¶ 61,128, *clarified*, 92 FERC ¶ 61,094.

¹⁷ *Order on Remand*, 154 FERC ¶ 61,211 at PP 69-72.

Policy Statement, the Commission considered two factors: (1) whether Transco's purchase of replacement base gas provided specific benefits to its existing shippers and (2) whether rolling in the costs associated with the purchase of replacement base gas increased rates for the existing shippers.¹⁸ Based on Transco's response to a data request, the Commission found that, in the absence of any new storage customers to replace the terminated contracts, Transco would have had to purchase 1.32 Mcf of replacement gas in order to maintain the storage service of its remaining historic shippers. Accordingly, the Commission found that Transco's purchase of that amount of base gas provided a specific benefit to the historic shippers justifying rolling in the costs associated with that portion of Transco's purchase of replacement base gas.¹⁹

11. The Commission then turned to the issue of whether the 1999 Certificate Policy Statement would permit a roll-in of the costs associated with the remaining 1.86 Mcf of Transco's 3.18 Mcf replacement base gas purchase. The Commission found that this portion of the base gas purchase did not provide a specific benefit to the historic shippers and therefore could only be rolled in if such a roll-in did not cause an increase in the rates of the remaining historic shippers.²⁰ The Commission stated that it uses the following framework to determine whether rolling the costs of an expansion into the rates paid by existing shippers will increase their rates:

First, the Commission calculates an illustrative incremental rate for the expansion. It does this by determining the incremental cost of service of the expansion based only on the additional costs to be incurred as a result of providing the incremental services, including the cost of the incremental facilities required to serve expansion shippers and any incremental operating costs.²¹ The Commission divides this cost of service by the incremental billing determinants associated with the expansion. The incremental design

¹⁸ *Id.* P 63.

¹⁹ *Id.* PP 64-68.

²⁰ *Id.* P 69.

²¹ *Trailblazer Pipeline Co.*, 95 FERC ¶ 61,258, at 61,904 (2001) (“The incremental rate developed for this expansion project is designed to fully recover the costs of the expansion. Specifically, it includes the estimated costs for operating the expansion facilities and, as is acceptable, does not include any cost associated with the existing system.”).

capacity is the source of the incremental billing determinants.²²

Second, the Commission determines a baseline “system” rate, with which to compare the illustrative incremental rate. The baseline system rate reflects the costs of serving the pipeline’s existing customers if the new capacity provided by the expansion is not constructed. ...[W]hen, as here, the rolled-in vs. incremental rate issue arises in a NGA section 4 rate case, all of the pipeline’s costs and revenues are before the Commission, and therefore the Commission can calculate an updated “baseline” system rate. In doing this, the Commission can allocate to the baseline system rate, any portion of the expansion project costs incurred to provide specific benefits to existing system customers.

Third, the Commission compares the illustrative incremental rate with the baseline “system” rate. If the illustrative incremental rate of a project, or portion of a project, that does not provide specific benefits to existing customers is higher than the system rate, the Commission requires the pipeline to use an incremental rate for that project. This avoids requiring the existing shippers to subsidize the costs of an expansion that does not benefit them, consistent with the *1999 Certificate Policy Statement*. However, if the illustrative incremental rate is below the system rate, the Commission requires the pipeline to use the system rate as the initial stated rate in a certificate proceeding and permits the pipeline to roll the costs of the project into its system rates in a section 4 rate case.²³

12. Based on its analysis under this framework, the Commission concluded that, once the costs of the 1.32 Mcf replacement gas purchases necessary for Transco to continue to serve the remaining historic shippers are allocated to those shippers, the costs of the remaining 1.86 Mcf base gas purchases necessary to also serve the two replacement shippers may be rolled in without requiring the historic shippers to subsidize the

²² *Equitrans, L.P.*, 136 FERC ¶ 61,046, at P 20 (2011); *Cameron Interstate Pipeline, LLC*, 147 FERC ¶ 61,230, at P 43 (2014).

²³ Order on Remand, 154 FERC ¶ 61,211 at PP 70-72.

incremental customers. The Commission accordingly concluded that rolled-in rates were a reasonable and equitable means of allocation, because, among other reasons, rolled-in rates would lead to lower rates than if the replacement shippers had not taken over the capacity of the departing historic shippers. Accordingly, the Commission required Transco to maintain its existing rolled-in rate design for its Rate Schedule WSS-OA rates, including rolling in the costs associated with its purchase of approximately 3.18 Mcf of base gas at the Washington Storage Field.²⁴

C. Current Filing

13. After the Court's ruling in *BNP Paribas* but before the Commission issued its ruling in Order on Remand, two additional historic shippers, Southwestern Virginia Gas Company (SWVA) and UGI Central Penn Gas, Inc. (UGI), terminated their contracts for storage service at the Washington Storage Field, and exercised their options to re-acquire their base gas. Transco conducted two open seasons to sell the storage capacity that became available as a result of the departure of SWVA and UGI; WGL contracted for all of that capacity, effective April 1, 2016. In this filing, Transco proposes a new incremental rate under Rate Schedule WSS-OA to recover the increase in the cost of service from replacing base gas in order to serve WGL.²⁵

14. Transco states that pursuant to Section 8.1 of Rate Schedule WSS-OA it is obligated to maintain sufficient base gas to support the total top gas capacity entitlements of its customers. Transco states it is purchasing a total quantity of replenishment base gas equivalent to the total base gas quantities purchased by SWVA and UGI (10,449 Dth and 200,945 Dth, respectively), in order to serve WGL and maintain the base gas to support the total top gas capacity entitlements of its customers.

15. In order to fund this replenished base gas cost, Transco proposes a new incremental rate, to be imposed solely on WGL for its use of the Washington Storage Field. Transco calculates an incremental demand charge of \$0.03114/Dth, a storage capacity quantity charge of \$0.00033/Dth, a quantity injected charge of \$0.01456/Dth, and a quantity withdrawn charge of \$0.01456/Dth.

²⁴ *Id.* P 115.

²⁵ As discussed previously, the Commission had not issued Order on Remand at the time that Transco made its filing; therefore, Transco does not discuss *BNP Paribas* or the Order on Remand in the instant filing.

II. Notice and Responsive Pleadings

16. Public notice of Transco's filing was issued on March 2, 2016. Interventions and protests were due March 14, 2016, as provided in section 154.210 of the Commission's regulations.²⁶ Pursuant to Rule 214,²⁷ all timely motions to intervene and any motions to intervene out-of-time filed before the issuance date of this order are granted. Granting late intervention at this stage of the proceeding will not disrupt this proceeding or place additional burdens on existing parties.

17. Paribas and South Jersey filed joint comments. They noted that (as of the March 14, 2016 date of their comments), the Commission had yet to issue an order following the D.C. Circuit's remand of Opinion Nos. 507 and 507-A. They argued that the instant case presented the same circumstances as in *BNP Paribas*, and requested that the Commission rule on the instant proceeding in a manner consistent with, and without prejudice towards, their own interests in *BNP Paribas*.

III. Discussion

A. Requirements to Support Case in Chief

18. Based upon our review of the record, it appears that the instant proposal to charge WGL incremental rates for its use of the Washington Storage Field is nearly identical to Transco's previous proposal to impose incremental rates for Paribas' and South Jersey's use of the Washington Storage Field. Accordingly, to determine whether the instant proposal is just and reasonable, we must conduct the same analysis that the Commission conducted in the Order on Remand.

19. In the Order on Remand, the Commission relied upon the extensive record that the parties had developed earlier in the proceedings. In the present case, Transco has only submitted an appendix providing a basic overview of its calculations. We, therefore, cannot find that Transco has adequately supported its case in chief. However, because Transco submitted the instant filing before the Commission issued Order on Remand, it could not have been certain that it would be required to support its proposal under Order on Remand's standards. Accordingly, we do not reject the instant filing, but instead accept and suspend it, effective April 1, 2016, subject to refund and to further review, and subject to Transco providing a supplemental filing, within 30 days of the date of this order, that updates its filing in light of Order on Remand.

²⁶ 18 C.F.R. § 154.210 (2015).

²⁷ 18 C.F.R. § 385.214 (2015).

20. In particular, we direct Transco to provide evidence that considers, separately, how operating and financial conditions on the Washington Storage Field were affected by (1) the termination of service with SWVA and UGI, (2) the sale of base gas to SWVA and UGI, (3) the purchase of base gas to ensure continuity of service to existing shippers, and (4) the purchase of base gas to ensure service to the new storage customer, WGL. Specifically, Transco must state what portion of its purchase of replacement base gas would have been required to continue to serve its remaining historic shippers, in the absence of WGL contracting for service under Rate Schedule WSS-OA. Transco must also provide rate calculations which (1) allocate to the remaining historic shippers any costs of the base gas purchases necessary to maintain service to them and (2), based on that allocation, compare an illustrative incremental rate with a baseline system rate calculated consistent with the methodology used in the Order On Remand. Transco should include in its supplemental filing supporting work papers in electronic format and with formulas, and any additional information used to develop its rates. If Transco believes that the Commission should deviate from the rolled-in rate analysis adopted by the Commission in Order on Remand, Transco shall submit support for this argument along with the supplemental filing. The Commission shall give all parties to this proceeding the opportunity to provide further comments within 15 days of Transco submitting its supplemental filing.

B. Suspension

21. Based upon a review of the filing, the Commission finds that Transco's proposed tariff record has not been shown to be just and reasonable, and may be unjust, unreasonable and unduly discriminatory or otherwise unlawful. Accordingly, the Commission shall accept for filing and suspend Transco's proposed tariff record for five months, to be effective April 1, 2016, subject to refund and to a subsequent order in this proceeding.

22. The Commission's policy regarding rate suspensions is that rate filings generally should be suspended for the maximum period permitted by statute where preliminary study leads the Commission to believe that the filing may be unjust, unreasonable, or that it may be inconsistent with other statutory standards.²⁸ It is recognized, however, that shorter suspensions may be warranted in circumstances where suspension for the maximum period may lead to harsh and inequitable results.²⁹ Such circumstances exist

²⁸ See *Great Lakes Gas Transmission Co.*, 12 FERC ¶ 61,293 (1980) (five-month suspension).

²⁹ See *Valley Gas Transmission, Inc.*, 12 FERC ¶ 61,197 (1980) (one-day suspension).

here, where Transco's tariff currently contains no rate that would be applicable to service to WGL that is due to commence on April 1, 2016. Therefore, the Commission will suspend the proposed tariff records, to be effective April 1, 2016, subject to refund and to a subsequent order in this proceeding.

The Commission orders:

(A) The tariff record listed in footnote 1 is accepted for filing and suspended, to be effective April 1, 2016, subject to refund and to a subsequent order in this proceeding.

(B) In order to support its case in chief, Transco must provide the information described in the above order, within 30 days of the date of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.