112 FERC ¶ 61,170
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Nora Mead Brownell, and Suedeen G. Kelly.

Transcontinental Gas Pipe Line Corporation Docket No. RP01-245-015

ORDER ON REHEARING

(Issued August 5, 2005)

1. On March 26, 2004, the Commission issued an order on initial decision on thirteen issues that were reversed for hearing by a settlement in Transcontinental Gas Pipe Line Corporation's (Transco) general section 4 rate proceeding in Docket No. RP01-245-000.[1] The order affirmed in part and reversed in part the initial decision. A number of parties requested rehearing of the March 26, 2004 Order. This order generally denies rehearing but grants rehearing on a limited number of issues.

Discussion

Rights of FT Conversion Buyers

2. The issue before the ALJ was what rights should FT conversion buyers have upon expiration of their current FT service agreements. These customers are Transco's former bundled sales customers who converted to firm transportation service under Rate Schedule FT pursuant to settlement agreements approved by the Commission in 1991 before the issuance of Order No. 636. At the time of the settlements, section 284.221(d) of the Commission's regulations, as adopted by Order No. 436, authorized pre-granted abandonment under NGA section 7 of all contracts upon expiration of the contract, with no right of first refusal (ROFR). In Order No. 636, in order to protect captive customers, the Commission tempered the pipelines' pre-granted abandonment authority by giving shippers a right of first refusal upon expiration of their contracts. The 1991 settlements provided for the FT conversion shippers to be exempt from such pre-granted

[1] The initial decision was issued December 3, 2002. *Transcontinental Gas Pipe Line Corporation*, 101 FERC ¶ 63,022 (2002). The Commission's March 26, 2004 Order can be found at 106 FERC ¶61,299 (2004). A full procedural history and background of the case can be found in the initial decision and the March 26, 2004 Order.

abandonment. Specifically, Article IV of the FT conversion shippers' contracts provides that (1) after their initial term, the contracts remain in effect until terminated by either party on three years notice, (2) pre-granted abandonment will not apply, and (3) Transco may not exercise its right to terminate so long as the shipper is willing to pay rates no less favorable than Transco is otherwise able to collect from third parties for such service. Thus, Transco cannot terminate service to an FT conversion shipper without obtaining an individual grant of abandonment authorization from the Commission pursuant to NGA section 7.

3. Several parties argued that the contracts and tariffs are unjust and unreasonable because they lock conversion buyers into production area mainline capacity indefinitely. The parties requested that the conversion buyers at the end of the primary term of their contract be given the right to terminate existing arrangements and to renominate for capacity with a ROFR. For example PSCNY proposed that, at the end of the contract, a conversion shipper would state what capacity it wanted to keep, for example, it could state that it only wanted market area capacity. The pipeline would then post the capacity for third party bids. If a third party put in a bid for the production area and market area capacity, the existing shipper would have to match that bid for the whole path in order to exercise its ROFR. The ALJ found that the FT conversion shippers freely entered into contracts that provided full abandonment protection under section 7 of the NGA and did not seek a ROFR clause. The ALJ found that the parties had not met the public interest standard of the *Mobile-Sierra* doctrine[2] nor had they demonstrated that the existing contracts were unjust and unreasonable. Accordingly, the ALJ determined that no modification of the contracts or tariff was warranted.

4. In the March 26, 2004 Order, the Commission affirmed the ALJ's finding that the existing contractual and tariff rights afforded to the FT conversion shippers are just and reasonable and warrant no modification. The Commission held that it need not determine whether the public interest standard is applicable in this proceeding, because the Commission found that even using the just and reasonable standard in NGA section 5 the parties seeking ROFR rights want the Commission to use, they did not meet their burden of showing the existing contracts without ROFR rights are unjust and unreasonable. The Commission found that the exercise of a ROFR was a means for long-term captive customers to avoid pre-granted abandonment in the absence of contractual provisions to extend the contract duration. The Commission found that the conversion buyers do not need a ROFR to avoid pre-granted abandonment because their contracts specifically provide that pre-granted abandonment does not apply. The Commission stated that under

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[2] *United Gas Pipe Line Co. v. Mobile Gas Services*, 350 U.S. 332 (1956); *FPC v. Sierra Pacific Power Co*., 350 U.S. 348 (1956).

NGA section 7(b), it can only grant abandonment by finding "after due hearing" that "the present or future public convenience or necessity permits such abandonment." The Commission stated that, to the extent the FT conversion shippers are still using their historical capacity to serve the needs of their customers, the Commission could not find that abandonment is in the public convenience and necessity. As the Commission stated in the prior order, in an abandonment proceeding, the FT conversion shippers would have the opportunity to state that they still require a part of their capacity, but no longer need the remainder of their capacity and therefore desire the Commission to deny abandonment with respect to the part of their capacity they still need, but grant abandonment as to the remainder.

5. PSCNY filed a request for clarification, or, in the alternative, rehearing. PSCNY states that while the Commission declined to grant the specific relief proposed by PSCNY, the Commission's March 26 Order does provide guidance with respect to the transition process that could be used to allow the FT conversion shippers to be released from existing service agreements. PSCNY asserts that further clarification of the process is necessary to confirm the rights of the respective parties and to verify that FT conversion shippers are not worse off than other firm shippers in their ability to balance supply flexibility with protection of required capacity. Although it is implicit in the March 26 Order, PSCNY asserts that the Commission should confirm that an FT conversion shippers would be entitled to request, and would not be prejudiced in obtaining, only partial abandonment of its service even if the FT conversion shipper terminated the underlying service agreement with Transco.

6. PSCNY submits that the Commission's failure to confirm that FT conversion shippers would be entitled to retain a volumetric portion of their capacity under a terminating service agreement (by matching any competing bid) leaves these customers in a bind, *i.e.*, the customer seeking a volumetric reduction could provide notice of termination and fail to obtain Commission approval of a volumetric reduction, thereby risking termination of the complete contract. PSCNY contends that this leaves FT conversion shippers worse off than customers entitled to the ROFR under the Commission's regulations. PSCNY argues that an FT conversion shipper knowing only that it had the right to request that abandonment of a contract be only partial would still be unlikely to take the risk of terminating the contract absent some mechanism that guaranteed that the customer could keep the capacity it wished to retain. In order to address this situation, PSCNY argues that the Commission should clarify that, in a section 7 abandonment proceeding, an FT conversion shipper would be entitled to a condition on the abandonment allowing it to retain a volumetric portion of its capacity it wished to keep under a terminating service agreement so long as the FT conversion shipper was willing to match any higher bid for that portion of the capacity.

7. PSCNY asserts that without some assurance that the Commission will grant conditions on abandonment requested by the customer, the shipper still faces the prospect that its proposed conditions will be denied or unsought conditions will be imposed. In other words, PSCNY states that should an FT conversion shipper wish to make any modification to its service under a terminated service agreement, the ultimate disposition of all the capacity under that agreement, as well as the terms under which the customer might retain the capacity, will largely be beyond the customer's control. PSCNY submits that because an FT conversion shipper would likely be unwilling to take such a risk, the March 26 Order threatens to preserve the status quo in which FT conversion shippers remain locked into service agreements, regardless of the economic sense of the contracts. PSCNY asserts that in order to address this issue, the Commission should clarify that Conversion Buyers may make termination of their service agreements with Transco contingent upon the Commission granting the abandonment conditions requested by the FT conversion shipper in a section 7 proceeding. PSCNY argues that this clarification is reasonable inasmuch as the Commission's grant of the requested conditions will necessarily be consistent with the public convenience and necessity, and, if the requested conditions are denied, or conditions unacceptable to the customers are imposed, service will continue to be provided under a contract that assures Transco will receive rates as high as any other shipper is willing to pay. If the Commission declines to grant clarification as requested above, PSCNY requests rehearing of the March 26 Order.

Commission Decision

8. The Commission clarifies that any FT conversion shipper who terminates its contract with Transco is entitled to argue in the section 7 abandonment proceeding that it still needs to retain a portion of their capacity and that the Commission should only grant a partial abandonment of its service. The Commission made such a statement in the March 26 Order and reiterates it here to the extent PSCNY believes that statement was not explicit enough. The Commission, however, cannot grant PSCNY's requests for clarification that FT conversion shippers are entitled to retain certain capacity or that an FT conversion shipper's termination of its service agreement is contingent on the Commission granting certain abandonment conditions. PSCNY, in essence, is requesting that that Commission make certain determinations on how it would act in an abandonment proceeding prior to knowing the specifics of a particular case. The Commission does not believe that such determinations are appropriate. As the Commission stated in the March 26 Order, "[t]o the extent the FT conversion shippers are still using their historical capacity to serve the needs of their customers, the Commission could not find that abandonment is in the public convenience and necessity." The Commission finds that a section 7 abandonment proceeding will provide FT conversion shippers with adequate protections. While the abandonment is pending, the FT conversion shippers would continue to receive service under their contracts. Further,

since an FT conversion shipper would have to provide three years notice of termination to Transco, it would provide that shipper with adequate time to negotiate a new contract with Transco or to make alternative arrangements to meet its needs. The Commission expects that a prudent shipper would engage in such business activities and would not simply assume that an abandonment proceeding would result in a certain way. Accordingly, PSCNY's request for clarification is granted in part and its request for rehearing is denied.

Limited Part 284 Conversion of Certain Bundled Storage Services

9. Following its restructuring consistent with Order No. 636, Transco continued to provide a number of individually certificated, bundled storage and transportation services pursuant to Part 157 of the Commission's regulations. Transco provides these services in its market area, under Rate Schedules GSS and LSS. The storage facilities used for these services are located in Pennsylvania at the western end of Transco's Leidy Line. The bundled transportation services provided for transportation from the storage fields to the GSS and LSS customers' delivery points in Zones 4-6. For both the GSS and LSS services, Transco performs a so-called "middleman role." In this role, it acts as operator for its customers of the two services, scheduling use of the services with the pipelines that operate the storage fields, based on overall system requirements, using the aggregate contract rights of its customers who contract for the services. All of Transco's firm transportation customers receive no-notice service under Rate Schedule FT and there is no requirement that they have GSS or LSS storage service in order to receive no-notice service under Rate Schedule FT. No-notice customers are permitted to take any amount of gas from the system up to the aggregate daily maximum contract quantities, regardless of the amount they scheduled, without incurring daily scheduling or imbalance penalties. Transco also does not require its customers to take gas at uniform or other prescribed hourly rates during the day. When the GSS customers are not using the GSS transportation capacity, Transco uses it to transport gas from its storage facilities to the city gates, and vice versa, to accommodate the hourly and daily swings in customers' demand and to restore or reduce line pack.

10. The Settlement in this rate case reserved for hearing two issues concerning the unbundling of Rate Schedules GSS and LSS and their conversion to Part 284 open access service. These were: (1) whether to grant the request by PECO and Dominion that Transco be required to provide its Rate Schedule GSS customers the option to convert their GSS storage entitlements to unbundled open access storage and transportation entitlements under Part 284, and (2) whether to grant a request by South Carolina Pipeline Corporation (SCPC) and SCANA Energy Marketing, Inc. (SEMI) (collectively SCANA) for a more limited change in Rate Schedules GSS and LSS, that would permit

customers to release their capacity as provided under Part 284, but not give customers such other Part 284 rights such as receipt and delivery point flexibility.

11. In the March 26, 2004 Order, the Commission affirmed the ALJ's decision that neither PECO nor SCANA met their section 5 burden of showing that the current GSS service is unjust and unreasonable and that their proposals are just and reasonable. The Commission first addressed PECO's request that GSS customers be given an option to convert to unbundled open access storage and transportation service. The Commission stated that while PECO was correct in asserting that the Commission's policy favors unbundling of services, the Commission has allowed the continuation of bundled service when there are countervailing considerations. The Commission agreed with the ALJ's finding that such circumstances exist here. The Commission stated that while it was not Transco's burden to show that its current bundled GSS service is just and reasonable, Transco put forth testimony explaining why it is necessary to maintain the existing, individually certificated, bundled GSS service and why unbundling and conversion to Part 284 service would compromise Transco's operational flexibility and its ability to perform no-notice service in the manner in which it performs such service today. The Commission stated that Transco explained that unbundling the GSS transportation component would reduce the available transportation capacity that Transco could use in its middleman role, thus reducing Transco's operating flexibility. The Commission found that Transco would not be able to consistently support the same level of no-notice service, *i.e.*, hourly and daily swing flexibility that FT customers enjoy today. GSS customers can only use the transportation component of their service when they make injections or withdrawals. When the GSS customers are not using the GSS transportation capacity, Transco uses it in its middleman role to transport gas from its storage facilities to the city gates, and vice versa, to accommodate the hourly and daily swings in its no-notice customers' demands and restore or reduce line pack. If the transportation component of the GSS service were unbundled and converted to a Part 284 open access service, the GSS customers could use the transportation service for purposes other than transporting gas injected into or withdrawn from the GSS storage facilities. GSS customers would have the rights to release the capacity to others and to use delivery points other than their city gates, including off-system using the various pipeline interconnections on Transco's system. Ex. T-52 at 16. As a result, Transco would likely have less access to the GSS transportation capacity to move gas around its system to support no-notice customers' hourly and daily swings, particularly during the winter when cold weather and rapid changes in weather often lead to substantial swings in the no-notice customers' demands. Ex. T-52 at 17-18.

12. The Commission next addressed SCANA's more limited request that the GSS and LSS customers be permitted to engage in capacity release pursuant to the Commission's Part 284 regulations. SCANA asserted that this limited conversion would have no

adverse impact on Transco because such service could not be segmented and would not have receipt and delivery point flexibility.

13. The Commission affirmed the ALJ's finding that SCANA has not met its section 5 burden to justify providing capacity release rights to Rate Schedule GSS and LSS customers, while in all other respects those services remain in essence Part 157 services. The Commission stated that while SCANA asserts that it is seeking a conversion to a limited Part 284 service, its request is essentially to allow Part 157 service to have capacity release rights. Under SCANA's proposal, other elements of Part 284 open access transportation, such as segmentation and flexible point rights, would not attach to the service. The Commission stated that the ALJ was correct in his finding that the Commission has considered and rejected in Order Nos. 636-A and B the proposition that Part 157 customers should have the ability to participate in the capacity release mechanism established under Part 284 of the Commission's regulations. The Commission concluded that SCANA had not presented any arguments in this proceeding before the ALJ or on exceptions which convinces the Commission to depart from its longstanding policy.

14. No party has sought rehearing of the order's rejection of PECO's and Dominion's request for complete conversion of the GSS storage service to a Part 284 service. SCANA, however, filed a request for rehearing on the issue of the limited conversion of GSS and LSS service to permit holders of that service to engage in capacity release. Prior to discussing SCANA's request for rehearing, it is important to understand SCANA's interest in this issue. SCANA owns a marketer, SEMI, and a South Carolina intrastate pipeline, SCPC. SEMI participates in the unbundled retail market in Georgia. Through that program, it takes releases of Atlanta's Part 284 no-notice FT service on Transco. Because Atlanta's GSS and LSS services are Part 157 services, Atlanta cannot release them. Instead, Atlanta keeps the storage services and the costs are passed through to marketers under Atlanta's Marketer Accessible Retained Storage (MARS) service. Atlanta treats each marketer's daily imbalance on Atlanta's system as a sale to MARS or a sale from MARS. SEMI would like to take release of Atlanta's GSS and LSS service, then buy its own gas, and use that to support its no-notice service on Transco. SCPC, the pipeline, would like to be able to unbundle its service in South Carolina and release its GSS service to South Carolina marketers.

15. SCANA asserts that the March 26 Order places great emphasis on the limited conversion label to reject summarily the SCANA proposal as being inconsistent with the Commission's policy against allowing Part 157 shippers to participate in the Part 284 capacity release mechanism. SCANA submits that it does not propose to limit artificially the scope of the converted Part 284 GSS and LSS service. While SCANA only needs these services to be releasable, SCANA states that it would not oppose the Commission incorporating as many characteristics of Part 284 open access transportation to the GSS

and LSS conversion as the Commission determines to be in the public interest. However, SCANA states that as the order found, incorporating all characteristics of Part 284 open access to the GSS and LSS conversion would lead to operational problems. SCANA states that Transco does not have sufficient main line capacity to accommodate the full unbundling of GSS and LSS storage, accompanied by all of the segmentation and point flexibility rights provided under Part 284 open access. SCANA states that Transco renders this service using its so-called middleman role. SCANA contends that it meets that operational concern by proposing that Transco give the converted GSS and LSS Part 284 open access service as many Part 284 characteristics as are operationally feasible. SCANA asserts that the converted Part 284 open access GSS and LSS would (i) be open access, (ii) be subject to the same penalties as all other Part 284 services, (iii) be subject to the ROFR procedure rather than abandonment, (iv) be subject to selective rate discounting, (v) be subject to operational flow orders, and (vi) be subject to the capacity release regulations. SCANA states that the only difference between the converted GSS and LSS and all other Part 284 open access services would be limitations on segmentation and point flexibility dictated by operational constraints.

16. SCANA argues that the March 26 Order does not explain adequately why Rate Schedules GSS and LSS should not be treated consistently with the conversions of Rate Schedules SS-1 and LGA.[3] SCANA states that as the Commission noted in connection with Rate Schedule SS-1, unnecessary bundling of services such as storage and transportation is per se unjust and unreasonable. SCANA states that here, Atlanta Gas is unnecessarily bundling the GSS and LSS storage capacity with the sales of MARS gas and FINSS local sales service, respectively. SCANA states that if the conversion were permitted, the GSS and LSS capacity could be released to the marketers, and the marketers could control the cost of the gas being injected or withdrawn from the GSS and LSS storage that is released. SCANA states that, instead, the marketers face price uncertainty because Atlanta Gas sells the MARS gas at a price that depends on the behavior of all other Georgia marketers. Finally, SCANA asserts that the Commission failed to consider the anticompetitive effects of Transco's refusal to adjust its services to accommodate Georgia retail restructuring.

[3] Citing, *Transcontinental Gas Pipe Line Corporation*, 87 FERC ¶ 61,087 at 61, 398 (1999), *order on reh'g*, 94 FERC ¶61,362 (2001), *order rejecting compliance filing*, 101 FERC ¶61,154 (2002); and *Transcontinental Gas Pipe Line Corporation*, 92 FERC ¶ 61,145 (2000).

Commission Decision

17. The Commission denies SCANA's request for rehearing. SCANA has failed to meet its NGA section 5 burden to show that the existing Part 157 service is unjust and unreasonable and the replacement services are just and reasonable. Transco currently provides no-notice service to all FT customers, regardless of whether they contract for GSS, LSS or other storage service. FT customers receive the benefit of not being subject to imbalance or scheduling penalties. This flexibility is possible because of Transco's middleman role where it is able to use the transportation embedded in the GSS and LSS services when its customers are not using it.

18. On rehearing, SCANA now argues that while it only needs capacity release rights for the bundled storage services it is willing to accept as part of a limited conversion as many characteristics of Part 284 services as operationally feasible. SCANA's proposal appears to be an effort to avoid the fact that it simply wants capacity release rights as a Part 157 shipper in contravention of Commission policy. However, the fact that SCANA now asserts that its limited conversion proposal is not as limited as the Commission believed fails to take into account that the Commission's analysis rejecting a full conversion of certain bundled storage services is equally applicable to SCANA's proposal. As discussed above, and in greater detail in the March 26 Order at paragraphs 44-48, the unbundling of the GSS and LSS storage services would adversely affect Transco's middleman role which is crucial to Transco's operational flexibility and ability to provide Transco's no-notice customers with the level of service that they receive today. As SCANA itself has stated, the most important aspect of Part 284 service it seeks is capacity release. In its discussion rejecting the full conversion of the bundled storage services, the Commission recognized that permitting GSS and LSS customers to release the transportation component of GSS service would reduce Transco's access to the GSS transportation capacity which enables Transco to move gas around its system to support no-notice customers' hourly and daily swings particularly during the winter months.

19. The Commission also explained in the March 26 Order why the unbundling of the SS-1 rate schedule is inapplicable here. The Commission stated that it ordered the unbundling of SS-1 service because Transco had no control over the gas stored under the SS-1 service and therefore the bundling of transportation and storage did not add any system benefit or system flexibility to Transco's own system operation. Unlike SS-1 service, when GSS transportation and storage capacity is not being used, Transco is able to accommodate substantial swings in customers' demand, manage excess gas on the system by making injections into storage, move gas from supply area storage to market area storage, and minimize the effects on customers of maintenance and construction related outages of mainline facilities.

20. The Commission also finds that SCANA's reliance on Transco's conversion of Rate Schedule LGA to open access transportation is inapplicable. The conversion of Rate Schedule LGA to the new Rate Schedules LNG and LNG-R was a voluntary conversion instituted by Transco and was not protested by any party.[4] The service was for the delivery of liquefied natural gas (LNG) and was a no-notice winter peaking service that was used on a limited basis by a few customers and had unique operational characteristics because deliveries were accomplished through backhaul displacement. Because of these characteristics certain constraints were placed on flexible receipt and delivery point rights to ensure that existing customers' service was not degraded. It is inappropriate to compare such service to the GSS and LSS services which are integral to Transco's operational flexibility.

21. Finally, the Commission's decision here is not a failure to accommodate Georgia retail restructuring. The Commission's decision rejecting SCANA's limited conversion proposal as well as SCANA's request for contingency ranking rights were based on the effects on Transco's entire system. It would not be just and reasonable to make changes to Transco's system that would compromise its operational flexibility and service to existing no-notice customers based on facts limited to certain geographical areas or changes that were designed to benefit customers in only certain states.

Replacement Shippers' Ability to Contingency Rank Services

22. The issue before the ALJ concerned the scope of shippers' rights to "contingency rank" their services. Contingency ranking is a means of allocating to particular shippers and services any differences between actual deliveries at a point and the amounts that were scheduled to be delivered. This enables Transco to bill shippers appropriately for services received and determine who may incur penalties or must cash out imbalances.

23. At the hearing, SCANA sought a modification to Transco's tariff to ensure that all shippers, including replacement shippers, were eligible to contingency rank their storage assets and not just delivery point operators. The ALJ found that Transco must modify its existing tariff to provide replacement shippers with the right to contingency rank with respect to no-notice service. The ALJ determined that nowhere in Transco's tariff is it designated that those who receive contingency ranking rights must be delivery point operators. The ALJ found that the data exists for Transco to determine the volumes delivered to replacement shippers at the city gate. The ALJ concluded that although it may be complex to install, Transco must be fair to all its shippers and grant each shipper contingency ranking rights on its system, and implement a system to do exactly that.

[4] *Transcontinental Gas Pipe Line Corporation*, 92 FERC ¶ 61,145 (2000).

24. The Commission reversed the ALJ, finding that the initial decision's holding that Transco must modify its tariff to allow replacement shippers to contingency rank Part 284 services is flawed. The Commission stated that the ALJ failed to take into account the operational considerations of why contingency ranking rights are limited to delivery point operators. The Commission stated that Transco transfers physical custody of gas volumes to delivery point operators at delivery points. For this reason, the delivery point operator "is responsible for confirming the flows of gas entering its system, ranking the gas that flows into its system, and contingency ranking third party gas and/or its own transportation and storage services." Ex. T-52 at 36. The Commission stated that when there is a difference between the amount scheduled to be delivered at a particular delivery point and the amount actually delivered, the difference is simply an overall amount that, in the first instance, is attributable only to the delivery point operator. This is because the only measurement that Transco has is a measurement taken at the delivery point operator's city gate of the total deliveries taken off Transco's system and accepted onto the downstream facilities than had been scheduled to be taken. Therefore, the Commission found that there has to be one person with the ultimate authority to decide how to divide the overall difference between scheduled and actual deliveries among shippers and their services. This person is the delivery point operator since it controls and confirms the flows entering its downstream facilities.

25. The Commission stated that a replacement shipper that is not a delivery point operator lacks a physical delivery point and is not responsible for confirming flows. The Commission stated that by failing to address the operational justification for limiting contingency ranking rights to delivery point operators, the ALJ failed to show that Transco's current tariff is unjust and unreasonable. The Commission stated that the ALJ's determination that all shippers should have contingency ranking rights is based only on facts related to a unique circumstance – the unbundled retail market behind the AGL delivery points on the Transco system. The Commission found that it would not be appropriate to make changes to Transco's tariff that would apply throughout the entire system based on evidence alleging that contingency ranking could work based on certain limited circumstances affecting only a limited geographic area on Transco's system, *i.e.*, its interconnection with AGL.

26. SCANA requested rehearing of this ruling. SCANA's interest in the contingency ranking issue is twofold. First, assuming the Commission orders Transco to allow Atlanta to release GSS and LSS capacity to marketers, including SEMI, then SCANA wants SEMI to be able to do its own contingency ranking, so that it can use its own gas from GSS storage to take the swing on any no-notice imbalance. Then it would not incur imbalances on Atlanta's system and would not incur costs under Atlanta's MARS service. Second, SCANA's pipeline, SCPC, is the delivery point operator and thus has the contingency ranking rights.

27. SCANA argues that the March 26 Order erred in finding that contingency ranking is not an essential element of Transco's no-notice service and finding that contingency ranking of replacement shippers' gas is not feasible. SCANA asserts that the essential element of its proposal is not that the downstream entity must be forced to communicate with its customers, but that each shipper delivering gas to that point is entitled to have one or more services identified to take the swing. SCANA contends that if the Commission does not want to give each shipper the right to a separate contingency ranking, then at a minimum the Commission should allow each shipper to designate at least one Transco storage rate schedule to take the swing. SCANA submits that the March 26 Order does not explain how a Transco no-notice shipper can enjoy its rights without associating storage service to take the swing. SCANA argues that the claim that no-notice and contingency ranking rights are separate and distinct should be rejected.

28. SCANA also argues that contingency ranking by replacement shippers is technically feasible. SCANA submitted an affidavit to sponsor a methodology that it states could feasibly work for the allocation of no-notice volumes to the marketers. SCANA asserts that if a delivery point operator is willing to provide Transco with values for each shipper located behind the delivery point, Transco's computer system can be programmed to allow for the appropriate injections or withdrawals from those shipper's storage inventories. SCANA asserts that it strains belief that Transco has technical capability to perform the necessary computer operations for behind the meter allocations at receipt points while Transco claims that it would be impossible to implement similar behind the meter allocations at delivery points. SCANA argues that the Commission's concern for uniform rules should lead it to grant rehearing and provide the no-notice replacement shippers on Transco with the same meaningful flexibility that is enjoyed by similarly situated, no-notice shippers on other interstate pipelines. SCANA submits that Georgia marketers should not be deprived of those rights because theoretically there could be unforeseen complications elsewhere on the Transco system.

29. Transco filed a motion to strike the additional evidence and alternative proposals contained in SCANA's request for rehearing. Transco asserts that SCANA has improperly used its request for rehearing to introduce new evidence and alternative proposals. Transco submits that Commission precedent instructs that new evidence and new proposal offered at the rehearing stage must be rejected because they present an untenable moving target for interested parties, contrary to basic notions of due process and administrative efficiency. SCANA filed an answer asserting that it has not changed its position and that new matters are permitted on rehearing. SCANA asserts that Transco's motion to strike should be rejected and the new evidence and SCANA's entire rehearing should be permitted.

Commission Decision

30. On rehearing, SCANA continues to argue that because it is not permitted to contingency rank its services as a replacement shipper it is being denied rights that are available to no-notice shippers on Transco's system as well as other pipeline systems. SCANA is seeking to modify Transco's tariff under section 5 and, thus, it has the burden to show that Transco's existing provisions are not just and reasonable and its proposed solution is just and reasonable. As discussed more fully below, the Commission finds that SCANA has not met that burden. As the Commission explained in the March 26 Order, contingency ranking is not a right that belongs to all no-notice shippers on Transco's system and is therefore not transferable to replacement shippers. Rather, as discussed in the March 26 Order, contingency ranking rights are limited to delivery point operators for various operational reasons.

31. In any event, this issue is largely moot. SCANA's request for contingency ranking rights is premised on the Commission granting its request for partial unbundling of the GSS and LSS service to permit Atlanta to release those services to Georgia marketers, including SEMI. If that were to occur, SCANA wants contingency ranking so that if SEMI gets a capacity release from Atlanta of GSS/LSS service, SEMI can contingency rank its GSS service. However, above, the Commission has rejected SCANA's request to require Transco to permit capacity release of GSS and LSS service. SEMI has no need or purpose for contingency ranking rights without GSS capacity. Without GSS capacity, the only service SEMI receives from Transco is the FT service Atlanta releases to it. Thus, it has only one service that can be allocated any difference between actual and scheduled deliveries, rendering contingency ranking of several services a moot issue. Moreover, as an FT replacement shipper, SEMI gets no-notice service on Transco, which includes no imbalance or scheduling penalties. SEMI receives the same no-notice service that Atlanta has and its service will be first through the meter with the result that it incurs no imbalances on Transco's system. The problem that SEMI faces, which SCANA is trying to remedy with its rehearing request, is that Atlanta charges for imbalances on Atlanta's system. Atlanta calculates the difference between receipts on to Atlanta's system and deliveries to SEMI's retail customers and charges for imbalances accordingly. This, however, is a problem beyond the Commission's jurisdiction since it involves imbalances on Atlanta and not on the Transco system.

32. On rehearing, SCANA sets forth an alternative proposal concerning contingency ranking and even includes an affidavit of how it asserts its methodology will feasibly work for the allocation of no-notice volumes to the marketers. The Commission finds that it would be inappropriate to consider an alternative proposal after the hearing has been completed and the record is closed. To entertain a new proposal on rehearing would

prevent Transco and other interested parties from having the opportunity to respond to SCANA's contentions.[5] The Commission also rejects SCANA's argument that Georgia marketers should not be deprived of contingency ranking rights because theoretically there could be unforeseen complications elsewhere on the Transco system. The Commission reiterates its finding that it is not appropriate to make changes to Transco's tariff that would apply throughout the entire system based on evidence alleging that contingency ranking could work based on certain limited circumstances affecting only a limited geographic area on Transco's system, *i.e.*, its interconnection with AGL. Accordingly, SCANA's request for rehearing is denied.

Rate Treatment of the Mobile Bay Expansion Project

33. In this rate case, Transco proposed to roll in the costs of its Mobile Bay Expansion Project, as well as the costs of three other expansions (the SunBelt, Pocono and Cherokee Expansion Facilities) which are discussed in the next section of this order. When each of these four projects were certificated and put into service, the Commission's policy concerning rolled-in vs. incremental rates was set forth in its 1995 *Pricing Policy for New Existing Facilities Constructed by Interstate Pipelines* ("1995 Pricing Policy Statement").[6] However, before Transco filed this rate case, the Commission issued its 1999 *Policy Statement concerning Certification of New Interstate Natural Gas Pipeline Facilities* ("1999 Pricing Policy Statement"),[7] revising its policy.

34. Under the 1995 Pricing Policy Statement, in deciding whether to approve rolled-in rates, the Commission sought to provide as much up-front assurance as possible of how an expansion would be priced so that the pipeline and expansion shippers could make informed investment decisions. Therefore, the Commission permitted pipelines to request in the certificate proceeding a determination of whether rolled-in rates would be appropriate in the next rate case. The Commission stated it would consider the extent to which the new facilities were integrated with the existing facilities and the specific system benefits produced by the project. When the roll-in of the costs of the new facilities caused a small rate impact (less than five percent), the proponents of roll-in only needed

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[5] *Office of Consumers' Counsel, Ohio v. FERC*, 783 F.2d 206, 232 (D.C. Cir. 1986). (The Commission's reliance "on *ex parte* submissions appearing in a posthearing brief . . . violate[s] fundamental canons of due process.")

[6] 71 FERC ¶ 61,241 (1995), *reh'g denied*, 75 FERC ¶ 61,105 (1996).

[7] 88 FERC ¶ 61,227 (1999), 90 FERC ¶ 61,128 (2000), *reh'g*, 92 FERC ¶ 61,094 (2000).

to make a general showing of system benefits. If the rate impact was above five percent, the proponents of rolled-in rates had to show that the benefits were proportionate to the rate impact. The 1995 Pricing Policy Statement provided that the rate design decided in the certificate order would apply to the pricing of the facilities in the first rate case after the facilities go into operation, unless the parties demonstrate that circumstances have changed significantly between the time the certificate is issued and the pipeline files the rate case.

35. Under the 1999 Pricing Policy Statement, the Commission changed the focus of its rolled-in versus incremental rate policy so that the primary goal is to achieve efficient pricing signals to expansion shippers and existing pipeline customers, while remaining within the pipeline's revenue requirement. Under this new policy, when a project is first certificated, the Commission requires that existing shippers not be required to subsidize the expansion. This generally means that expansions will be priced incrementally so that expansion shippers will have to pay the full costs of the project, without subsidy from the existing customers through rolled-in pricing. This will help ensure that the market finds the project viable, because either the expansion shippers or the pipeline must be willing to fully fund the project. However, subsequently, when a pre-expansion shipper's existing contract expires it could be required to pay a higher rate than its existing vintaged rate. This would occur where: (1) the pipeline is fully subscribed; and (2) there is a competing bid higher than the pre-expansion rate. In addition, the Commission suggested rolled-in rates could be approved before the expiration of current contracts if the facilities are needed to improve service for existing customers, the increase in rates is related to improvements in service, and raising existing customers' rates does not constitute a subsidy of an expansion by existing customers.

36. The Commission certificated the Mobile Bay Expansion Project on January 30, 1998 in Docket No. CP97-92 (81 FERC ¶ 61,104 and 82 FERC ¶ 61,084). The project involved the construction of supply area facilities from Compressor Station 82 in Alabama extending offshore. The expansion included both new pipeline and compressors at Stations 82 and 83. The project had a projected cost of approximately $120.2 million.

37. In its certificate application, Transco proposed to render the new transportation service under its Rate Schedule FT and Part 284 of the Commission’s regulations. Once approved and constructed, the project facilities would initially become part of Transco’s Rate Zone 4A, and Transco would charge the Rate Schedule FT maximum rate for Zone 4A as an initial rate for the entire project capacity as soon as Phase I service commenced. Transco stated that it intended to file, in its first rate case following the in-service date of Phase II of the project, tariff sheets to roll in the costs of the project facilities and create a new Zone 4B, which would include all of the new facilities upstream of existing Station

No. 82. Pursuant to the 1995 Pricing Policy Statement, Transco requested that the Commission grant a preliminary determination for rolled-in rate treatment.

38. In its certificate order, the Commission granted the request. The Commission computed the net FT demand rate impact for Rate Zone 4A shippers would be approximately 4.79 percent after the creation of a new rate zone (Zone 4B). The Commission found that the 100 percent load factor Zone 4A FT rate was approximately 4.98 percent higher than the existing rate, and the effect on the other zones is considerably less, between approximately 2 and 3 percent. The Commission also found that Transco provided evidence of system benefits by the new facilities, primarily by giving Transco's existing customers increased access to gas supply sources in the Mobile Bay area. The Commission concluded that, unless circumstances materially change between the date of issuance of the order and Transco's filing of its first general rate proceeding after all facilities are placed in service, Transco may roll in the costs of the proposed facilities in such rate case. Transco, 81 FERC ¶ 61,104 at 61,383-61,384.

39. The actual construction cost was $154.2 million. The Mobile Bay Expansion Project was placed in service, in part, in August 1998 (Phase I) and in total in November 1998 (Phase II). The project has a capacity of 350,000 Mcf/d, though the project also reflects the relinquishment of 86,152 Mcf/d of capacity on the original Mobile Bay facilities which comprise Transco's Zone 4A. The only shipper to sign a long-term contract for capacity from the expansion project was Transco's marketing affiliate, Williams Energy Services Company (WESCO), who contracted for all 350,000 Mcf/d of the capacity at the applicable maximum rate. WESCO subsequently assigned the capacity to another Transco Marketing affiliate, Transco Energy Marketing Company (TEMCO).

40. The Commission's certificate orders granting the predetermination for rolled-in rates were appealed to Court. The Commission and Transco sought to have the appeals dismissed on the ground that the certificate orders made no final decision on the rolled-in rate issues, with the result that the appellants were not yet aggrieved. The Court granted the motion, but emphasized that, as a result, all issues concerning the roll-in of the Mobile costs "remain open for contest when Transco files its rate case . . . including the footing of the presumption of roll-in rates itself." *Brooklyn Union*, 190 F.3d at 374.

41. In the suspension order in this proceeding, the Commission found that since the purpose of the predetermination was to provide as much up-front assurance as possible of how an expansion would be priced so that the pipeline and the expansion shippers could make informed investment decisions, the parties could reasonably be expected to have relied on the Commission's application of the 1995 Pricing Policy to any proposal by Transco to roll-in the costs of the Mobile Bay Project. Therefore, the Commission

determined that the rate treatment of the Mobile Bay Project should be determined in this rate case based on the 1995 Pricing Policy Statement.

42. The ALJ rejected Transco's proposal to roll-in the Mobile Bay costs in the rate case. The ALJ determined that circumstances have changed that prevent Transco from rolling-in the costs of the Mobile Bay Project. The ALJ found that the changed circumstance is that a Transco affiliate is the only shipper subscribed to the Mobile Bay Project. The ALJ held that the fact that a Transco affiliate would benefit 100 percent from an expansion for which it shouldered only 41 percent of the costs is an unreasonable subsidization by existing customers and an undue preference between corporate affiliates. The ALJ also found that while Transco has created the opportunity for benefits to accrue to the entire system, those benefits are largely unrealized today. The ALJ determined that the Mobile Bay and Cherokee Projects should be grouped into one project, thus yielding one calculation to determine the revenue responsibility for existing customers. The ALJ found that the revenue responsibility of rolling-in the Mobile Bay and Cherokee facilities exceeds the maximum five percent that the 1995 Pricing Policy sets.

43. The Commission reversed the ALJ and found Transco's proposal to roll in the costs of the Mobile Bay expansion to be just and reasonable. In light of the court's decision in *Brooklyn Union*, the Commission stated that it had reviewed the evidence as if there had been no predetermination in the certificate proceeding and the Commission was addressing the roll-in issue under the 1995 Pricing Policy Statement for the first time in this section 4 rate proceeding. The Commission thus stated it would use the same standards and type of analysis as was used to decide the rolled-in rate issues in Transco's last section 4 rate case, where the Commission applied the 1995 Pricing Policy Statement to various expansions for which there had been no predetermination on the rolled-in vs. incremental rate issue in the certificate proceedings. *See Transco*, 87 FERC ¶ 61,087 (1999), *reh'g denied*, 94 FERC ¶ 61,362 (2001). Based on that analysis, the Commission found that Transco had supported the roll-in of the Mobile Bay costs, even without the benefit of any presumption arising from a predetermination in the certificate proceeding.

44. The Commission rejected the ALJ's finding that the Mobile Bay and Cherokee Projects must be grouped together for purposes of determining the rate impact. The Commission stated that, since it was requiring the Cherokee project to be incrementally priced, there was no reason to include costs of that project in determining the rate impact of rolling in the Mobile Bay costs. Based on the evidence presented, the Commission found that the rate impact was below five percent. As a result, the 1995 Policy Statement only required that Transco make a general showing of benefits from the expansion in order to justify rolling in the costs. The Commission found that Transco made an adequate general showing of system benefits in order to justify its section 4 roll-in proposal, since the project affords increased access to different sources of gas supply in the Mobile Bay region, where the development of resources continues to expand and the

project is fully integrated with the rest of Transco's system. The Commission also determined that there was no reason to believe that Transco improperly favored its affiliate or that there was an improper subsidy of Transco's affiliate due to the roll-in proposal.

45. On rehearing, ConEd requests that the Commission find that Transco has not satisfied its burden under NGA section 4 to show that its proposed rolled-in rates for the Mobile Bay project are just and reasonable. ConEd asserts that Transco should provide refunds for the period commencing September 1, 2001, the effective date of the rolled-in rates for Mobile Bay in this proceeding. ConEd argues that the multiple Mobile Bay investments by Williams entities are geared to enhancing overall corporate profits. ConEd argues that the evidence established more than Transco's motivation for the Mobile Bay roll-in proposal. ConEd states that it also (1) rebutted the theoretical underpinning of applying the 5 percent test to a supply lateral, *i.e.*, that the attachment of new supplies is a benefit sufficient to offset up to a 5 percent increase in system rates, (2) established the illogic of applying such a test to the Mobile Bay project, given its anticompetitive implications, and (3) demonstrated the significantly changed circumstances since the Mobile Bay certificate case, which make applying that test to Transco's Mobile Bay roll-in proposal entirely unreasonable.

46. ConEd contends that not only does Transco state that the Mobile Bay gas is less attractive to Transco's customers than it was before the Alliance project, [8] the amount of the gas supply benefit is less than one-half the potential presented in the Mobile Bay certificate case.[9] ConEd also asserts that because a new Williams Pipeline, Gulfstream, receives gas from Mobile Bay facilities – before the gas reaches the Transco mainline at Station 85 – and deliver that gas to Florida, Transco's system customers do not even receive all of the now less attractive Mobile Bay gas.[10] ConEd argues that the logic of applying the 5 percent test to the Mobile Bay facilities was challenged by evidence establishing its anticompetitive impact. ConEd submits that the Mobile Bay facilities receive a $17 million annual subsidy as a result of Transco's roll-in proposal, yet there is no subsidy for competing non-affiliated facilities bringing gas to Transco's mainline.

47. ConEd asserts that the March 26 Order erred in according the 1995 policy the status of a rule and in ignoring evidence and arguments against the application of that

[8] Tr. at 364-65.

[9] Ex. BP-30 at 1.

[10] Ex. BP-33.

policy. ConEd states that in the March 26 Order the Commission reviewed the evidence as if there had been no Mobile Bay roll-in predetermination. ConEd asserts that if there had been no predetermination, there would be no reason to apply the 1995 policy to Transco's proposal. ConEd states that the suspension order makes it clear that the only reason it elected to apply the 1995 policy to the roll-in proposal is that it had granted a predetermination in the Mobile Bay certificate case. ConEd argues that having effectively voided the predetermination, the Commission should have applied the 1999 policy to Transco's proposal, and should have found the proposal inconsistent with the policy's prohibition against subsidies.

48. ConEd contends that the March 26 Order erred in refusing to aggregate Mobile Bay and Cherokee. ConEd asserts that, as found by the ALJ, the only reasonable conclusion in light of the tests used by the Commission in Transco's last rate case is that Mobile Bay and Cherokee "should be considered together, as part of the Transco Mobile Bay investment strategy for purposes of evaluating the 1995 Policy's 5 % impact test." 101 FERC ¶ 63,022 at P 127. ConEd asserts that the only reason for even considering the question of aggregation is to permit the Commission to determine whether the costs of the two projects should be considered for purposes of the 5 percent test. ConEd states that if this question can be avoided simply by agreeing that one project will be incrementally priced, the 5 percent test would be meaningless.

49. ConEd asserts that the March 26 Order's subsidy and competition analysis are wrong. ConEd asserts that contrary to the Commission's finding there is evidence showing that TEMCO would pay only about 40 percent of the Mobile Bay costs while having a contract for 100 percent of the capacity. Ex. CE-24 at 2, Ex. CE-25 and Tr. 488. ConEd asserts that BP identified the competitive harm rolled-in pricing for Mobile Bay creates for Destin and Dauphin Island Gathering System, which both gather gas from the same areas as does Mobile Bay and they parallel Mobile Bay coming ashore. ConEd asserts that Destin and Dauphin Island are harmed in two ways. First, Transco is able to provide TEMCO a cost advantage in supplying gas at the Transco mainline. Second, the lower Mobile Bay rates give Transco an advantage in attaching new supplies. ConEd asserts that all Mobile Bay costs must be assigned to the Mobile Bay rates to reflect the true cost of providing the service.

50. Pennsylvania OCA asserts that the Commission's order is arbitrary and capricious because the Commission overlooked evidence that overwhelmingly supports the denial of rolled-in rate treatment for the Mobile Bay project. Pennsylvania OCA asserts that in determining whether the Mobile Bay project exceeded the 5 percent threshold established in the 1995 Pricing Policy, the Commission did not address the merits of arguments raised by those opposing roll-in as to whether the Mobile Bay and Cherokee projects were part of a single project. Pennsylvania OCA contends that the Commission overlooked evidence demonstrating that these projects were constructed in contiguous

locations at the same time. Pennsylvania OCA argues that the intent of Transco's parent in approving these projects further demonstrates an intent to treat these projects as part of a single strategy to move gas out of the Mobile Bay to Transco's southeastern markets. Pennsylvania OCA submits that these two projects satisfy the standards set forth in Transco's last rate case relating to roll-in issues for the Leidy Line expansion projects for treating multiple projects as a single project for purposes of conducting the 5 percent threshold impact analysis. Pennsylvania OCA argues that the Commission should have treated the Mobile Bay and Cherokee expansion projects as a single project.

51. Pennsylvania OCA asserts that the Commission's determination that the Mobile Bay facilities create general system benefits because those facilities provide access to new sources of gas supplies and system-wide reliability is contrary to the record evidence. Pennsylvania OCA argues that the record demonstrates that the Mobile Bay facilities provide no substantial incremental gas supply access benefits not already provided to pre-expansion shippers. Pennsylvania OCA contends that the evidence also demonstrates that Transco's affiliate, TEMCO, is the primary beneficiary of the project and that almost 100 percent of the gas transported on the Mobile Bay facilities is owned by TEMCO. Pennsylvania OCA asserts that the Mobile Bay facilities do not provide system-wide reliability. Pennsylvania OCA argues that despite Transco's general claim of reliability benefits, the record demonstrates that the Mobile Bay line is a supply lateral, and as such, cannot provide any substantial reliability of flexibility benefits to pre-expansion shippers on Transco's mainline system.

52. Pennsylvania OCA contends that the Commission erred in finding that rolled-in rate treatment for the Mobile Bay facilities would not result in unreasonable subsidization of Transco's marketing affiliate. Pennsylvania OCA argues that the evidence demonstrates that Transco's affiliate has contracted for 100 percent of the 350 MMcf per day of the Mobile Bay capacity. Pennsylvania OCA also asserts that Transco's affiliate had contracted with a supplier in the Gulf of Mexico with production facilities near the terminus of the Mobile Bay facilities to move 350 MMcf per day of gas supplies on the Mobile Bay facilities from the producing region served by those facilities. Pennsylvania OCA asserts that the fact that the record contained no evidence as to whether other gas supplies were available in the producing area reveals little about whether Transco's affiliate receives the vast majority of the benefits from the Mobile Bay facility. Pennsylvania OCA submits that the Commission's rationale that all shippers had an equal opportunity to subscribe to the Mobile Bay capacity is irrelevant. Pennsylvania OCA asserts that the evidence demonstrates that only Transco's affiliate wanted the capacity and in fact, only Transco's affiliate uses the capacity despite the fact that the Mobile Bay facilities are used less than 50 percent of the time.

53. Pennsylvania OCA asserts that the Commission's sole reason for finding no subsidization of the affiliate exists is based on its finding that there was no assurance that Transco's affiliates would renew their contracts for the Mobile Bay capacity at the expiration of a 15 year contract and, therefore, capacity could be available for subscription by others during the remaining service life of the facilities. Pennsylvania OCA contends that this finding imposes an unreasonable and impossible standard on those challenging rolled-in rate treatment since it requires challengers to prove something unknown about the future. Pennsylvania OCA asserts that by focusing on an impossible standard to satisfy, the Commission ignored the substantial evidence in this case that Transco's affiliates will pay only 38 percent of the annual cost of the Mobile Bay facilities if rolled-in rate treatment is allowed, thus forcing non-affiliated shippers to subsidize 62 percent of the costs of these facilities which they neither want nor use.

Commission Decision

54. The Commission denies rehearing on this issue. Rehearing applicants make three primary contentions: (1) that the Commission should have applied the 1999 Pricing Policy Statement instead of the 1995 Pricing Policy Statement, (2) that the Commission should have grouped the Mobile Bay expansion with the Cherokee expansion for purposes of determining rate impact, and (3) that rolling in the costs of the Mobile Bay expansion improperly requires Transco existing customers to subsidize over 60 percent of the costs of that expansion, whose only customer is an affiliate of Transco. These contentions are addressed below.

55. On the question of which Pricing Policy Statement to apply, the rehearing applicants point out that the March 26 Order stated that the Commission had reviewed the evidence concerning the roll-in of the Mobile Bay costs as if there had been no predetermination in the certificate proceeding. They argue that, if there was no predetermination on the Mobile Bay project, there is no reason the 1995 Pricing Policy should apply, since the Commission's reason for applying the 1995 Pricing Policy to the Mobile Bay expansion was that Transco and the Mobile Bay shipper had relied on the predetermination in making their investment decisions. They further argue that the 1999 Policy should apply and the roll-in should be rejected because of the prohibition against subsidies.

56. The Commission rejects this contention. The Commission stated that it would review the evidence as if there had been no predetermination in the certificate proceeding in order to be responsive to the D.C. Circuit's concerns when it dismissed the appeals of the predetermination in *Brooklyn Union*. The court stated that, when Transco filed to roll in the costs of the Mobile Bay expansion pursuant to NGA section 4, "petitioners must have a full opportunity to challenge the roll-in rates, including the footing of the presumption of roll-in rates itself." *Brooklyn Union*, 190 F.3d at 374. Ordinarily, under

the 1995 Policy Statement, a predetermination of rolled-in rates in the certificate proceeding created a presumption for rolled-in rates in the section 4 rate case, which can only be rebutted by a showing of a significant change in circumstances since the certificate proceeding. Our intent in stating that we would review the evidence as if there had been no predetermination was to make clear that, in this case, we were not applying such a presumption and were taking a fresh look at whether rolling in the Mobile Bay costs is justified under the 1995 Pricing Policy Statement.

57. However, this does not undercut our reasons for analyzing whether these costs should be rolled in pursuant to the policies established in the 1995 Pricing Policy Statement. Under the 1995 Pricing Policy Statement, the purpose of the predetermination was to provide as much up-front assurance as possible of how an expansion would be priced so that the pipeline and expansion shippers could make informed investment decisions. Since the Commission issued such a predetermination for the Mobile Bay expansion, the Commission believes that Transco and its affiliate who contracted for the capacity could reasonably rely on the Commission examining Transco's subsequent section 4 proposal to roll in the costs of that expansion pursuant to the policies in the 1995 Pricing Policy Statement. In fact, the Commission addressed this issue earlier in this proceeding on rehearing of the suspension order. The Commission recognized that the court's opinion in *Brooklyn Union* indicated that certain issues concerning Transco's roll-in proposal would be open for contest in the present rate case. These issues included the role of Transco's affiliate, Transco's cost estimates, and whether projects were segmented to avoid the 5 percent rule.[11] However, the order also recognized that the court's opinion specifically dealt with the application of the 1995 Policy. In the order the Commission stated that "[c]onsistent with the Court's decision, parties may raise these issues at the hearing in this case. However, these issues all go to whether rolled-in rates are justified under the 1995 Pricing Policy Statement. For example, the issue whether the rate impact is less than five percent is only relevant under the 1995 Pricing Policy Statement."[12] Thus, using the 1999 Policy, as suggested by the petitioners, is not required by the court's opinion and would render the Commission's assurance that the roll-in proposal would be analyzed under the 1995 Policy Statement meaningless.

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[11] *Brooklyn Union*, 190 F.3d at 374.

[12] *Transcontinental Gas Pipe Line Corporation*, 95 FERC ¶ 61,268 at 61,950 (2001).

58. We now turn to the issue of the rate impact of rolling in the Mobile Bay costs. Under the 1995 Pricing Policy Statement, the pipeline need only make a general showing of benefits to justify a roll-in with a rate impact of less than five percent.[13] However, if the rate impact is greater than 5 percent, the proponent of rolled-in rates must show that the benefits are proportionate to the rate impact. It is undisputed on the present record that the rate impact of rolling in the actual costs of the Mobile Bay expansion is less than five percent.[14] The five percent test could only be exceeded if the Mobile Bay project were grouped with the Cherokee project for purposes of determining rate impact. Rehearing applicants contend that the Commission erred in failing to group those two projects together for purposes of determining rate impact. They point out that the March 26 Order stated (at P 99) that, in this case, the Commission would apply the "same standards and type of analysis as was used to decide the rolled-in rate issues in Transco's last section 4 rate case," citing *Transcontinental Gas Pipe Line Corporation*, 87 FERC ¶ 61,087 (1999), *reh'g denied*, 94 FERC ¶ 61,362 (2001). However, they contend that the Commission then failed to apply the standards developed in that case for purposes of determining whether several projects are so closely related to one another that they should be grouped together for purposes of determining rate impact.

59. The issue of whether to group the Mobile Bay and Cherokee projects together for purposes of determining rate impact arises in a different context in this case, than any of the project grouping issues addressed in Transco's previous rate case. In the previous rate case, Transco proposed to roll in the costs of twelve different expansion projects, and the Commission applied the 1995 Pricing Policy Statement to all twelve projects. Thus, the issue of whether the rate impact of Transco's roll-in proposal in the previous case exceeded five percent arose with respect to all of the projects, requiring the Commission to determine whether and how all the projects should be grouped for purposes of determining rate impact. Here, however, over Transco's objection, the Commission has determined that the issue whether to roll in the Cherokee project should be decided based on the 1999 Pricing Policy Statement, which contains no five percent test. And, as

[13] "In determining the rate impact of a project, the pipeline should calculate the effect on revenue responsibility for each Firm Rate Schedule under its currently effective rate design and under the pipeline's preferred rolled-in rate design. This comparison effectively shows the impact on each service of rolling-in the expansion costs, without complicating factors such as varying load factors or rate design changes." 1995 Policy Statement, 71 FERC at 61,917.

[14] Ex. CE-25, page 4 of 13, shows the revenue impact on non-Mobile Bay customers' Rate Schedule FT reservation rate revenue responsibility as 4.03 percent. Staff's Ex. S-36 shows an almost identical revenue responsibility impact.

discussed above, the Commission has rejected Transco's proposed roll-in of the Cherokee costs as inconsistent with the 1999 Pricing Policy Statement. Thus, in this case the costs of the Cherokee expansion are not going to be rolled in, regardless of the outcome of the Mobile Bay roll-in issue.

60. Rehearing applicants contend that the fact the Cherokee costs will not be rolled in should not be taken into account in deciding whether the Mobile Bay and Cherokee projects should be grouped together for purposes of applying the five percent rate impact test. They point out that the 1995 Pricing Policy Statement expressly stated that "Pipelines should not break projects into small segments solely to qualify for the 5 percent test for each project."[15] They assert that not grouping several closely related projects together simply because one will continue to be priced incrementally would permit pipelines to game the five percent test by agreeing to continue incremental pricing for one project, while rolling in the costs of another. The Commission rejects this contention. The Commission's concern in the 1995 Pricing Policy Statement was that pipelines might break projects into separate parts so that both parts could meet the five percent test and obtain rolled-in pricing. That cannot happen here, since the Commission has held that the Cherokee project must continue to be priced incrementally. Moreover, in the 1995 Pricing Policy Statement, the Commission suggested that one way to mitigate significant price increases from rolled-in rate proposals would be to "roll-in a portion of the expansion costs and collect the remainder through incremental rates charged to the expansion shippers."[16] Thus, the 1995 Pricing Policy Statement did not prohibit dividing projects, with one part to be rolled in and the other part to remain incrementally priced. In these circumstances, the Commission has concluded that the rate impact issue for the Mobile Bay expansion should be determined based upon the actual potential rate impact faced by Transco's existing shippers, rather than including non-Mobile Bay costs in the rate impact analysis even though those costs cannot and will not be rolled in.

61. In any event, even applying the same analysis the Commission used in the previous rate case, the Commission would not group the Mobile Bay and Cherokee projects together for purposes of determining rate impact. The Mobile Bay and Cherokee projects were not proposed or certificated simultaneously. The Mobile Bay project is an expansion of a supply lateral to enable producers and marketers of gas to compete for a share of markets throughout the Transco system. The only shipper on the expansion is a gas marketer, TEMCO. Cherokee is a mainline expansion that provides shippers with greater access to gas supplies throughout the Gulf Coast region. The Cherokee expansion

[15] 71 FERC at 61,917.

[16] 71 FERC at 61,918.

shippers are two distribution companies, Atlanta Gas Light and City of Toccoa. Neither the Mobile Bay expansion nor the Cherokee expansion originated in a comprehensive proceeding like the Northeast U.S Pipeline Projects proceeding and neither was part of a series of projects by multiple companies like the Niagara Import Point Projects. The Mobile Bay and Cherokee projects are entirely distinct from one another. While Station 85, the intersection of the Mobile Bay lateral with Transco's mainline, is the most upstream primary receipt point for the Cherokee expansion shippers, it is not their only available receipt point and they are in no way obligated to obtain supplies at Station 85 or from the Mobile lateral at all. There is no evidence to suggest that either project in any sense depended upon, or would not have gone forward in the absence of the other project.

62. Further, the Commission finds that the additional evidence submitted at the hearing in this case (Ex. KSD-7) does not show that Mobile Bay was being segmented for purposes of passing the 5 percent test. The Transco authorization for expenditure states that the "project will provide additional supply required for Transco to meet the growth needs of its customers in the Southeast. By enlarging the market at Station 85 Transco will be able to build economic expansions into its southern market area as is evidenced by the proposed Cherokee and Cumberland expansion projects." However, as Transco stated in its brief opposing exceptions, Ex. KSD-7 does not indicate in any way that the Cherokee and Mobile Bay projects were considered part of a single mutually dependent project. In fact, that exhibit shows that Transco's Board of Directors authorized the capital expenditure for the Mobile Bay expansion separately from, and without even considering the cost of the Cherokee project. Accordingly, the Commission finds that its decision not to aggregate Mobile Bay and Cherokee for purposes of the 1995 Policy's five percent test was correct.

63. Rehearing applicants also argue that, even accepting that the rate impact of rolling-in the Mobile Bay facilities is less than five percent, the Commission erred in failing to take into account the unique circumstances of this case, where roll-in allegedly requires Transco's existing customers to subsidize over 60 percent of the costs of a project that only benefits Transco's affiliate TEMCO which holds 100 percent of the capacity. ConEd points out that Transco's own response to a data request indicates that the annual cost of service of the Mobile Bay project is $27,975,063 and, under its roll-in proposal, only $10,600,592 of that cost of service would be allocated to TEMCO.[17] ConEd asserts that this means that Transco's existing customers will be required to subsidize the Mobile Bay project to the tune of $17,374,471 each year. Rehearing applicants contends that this annual subsidy has a significant anti-competitive impact, since it gives TEMCO a competitive advantage over its competitors, including two

[17] Citing Ex. CE-24 and CE-25 and Tr. 488.

competing small pipelines, Destin and the Dauphin Island Gathering System. They state that Transco has 17 mainline interconnections where it receives gas from other pipelines. Yet, while there is no subsidy for the competing non-affiliated facilities bringing gas to the Transco mainline, the Mobile Bay facilities will receive a $17 million annual subsidy.

64. Petitioners also rely heavily on the fact that Transco's affiliate owns all the capacity and that the court in *Brooklyn Union* indicated that the relationship with the affiliate should trigger a hard look by the Commission at the rolled-in proposal in this rate case. Petitioners claim that, while the Transco affiliate contracted for 100 percent of the Mobile Bay capacity, the rolled-in rates would result in the affiliate paying only 40 percent of the Mobile Bay costs. The other 60 percent, they contend, are recovered by non-Mobile Bay shippers. This attribution of cost recovery, the Petitioners contend, results in non-Mobile Bay shippers subsidizing the Mobile Bay facilities.

65. The Commission recognizes that Transco's data response shows that rolling in the costs of the Mobile Bay Expansion will increase Transco's annual system-wide cost of service by $27,975,063, but only $10,600,592 of that cost of service will be allocated to the Mobile Bay expansion shippers, *i.e.*, TEMCO.[18] In this sense, the existing shippers may be said to be subsidizing the remaining $17,374,471 of the Mobile Bay costs. However, the petitioners' emphasis on what they argue is a subsidy to Transco's affiliate does not negate the fact that the impact on system wide rates, when calculated as provided by the 1995 Pricing Policy Statement,[19] is less than five percent. The very same exhibit relied on by rehearing applicants shows that the roll-in will only increase the existing FT customers' reservation rates by 4.03 percent. The roll-in causes such a small percentage rate increase, because the $17,374,471 increase in revenue responsibility for the existing FT shippers is so small relative to the over $400 million of Transco's non-Mobile Bay cost of service that is allocated to the FT shippers.[20] In fact, whenever the cost of an expansion was small compared to the pipeline's overall cost of service, the 1995 Pricing Policy Statement's five percent permitted expansions that generated insufficient revenues to cover their incremental costs nevertheless to be treated as having minimal rate impact. As shown in Appendix A, a hypothetical small failed project

[18] Ex. CE-25 at 3.

[19] *See* footnote 13 *supra*.

[20] Transco designs its rates based on a system-wide cost of service. Thus, it does not assign the costs of particular facilities to the rate zones in which they are located. Rather it develops allocation factors for each zone that are applied to the overall cost of service. In this rate case, the parties agreed by settlement to those allocation factors, and no party contests the allocation factors used to design the rolled-in Zone 4B rate.

100 percent supported by non-incremental shippers can nevertheless have a minimal revenue responsibility impact.

66. Rehearing applicants suggest that, in such situations, the five percent test in the 1995 Pricing Policy Statement should not be applied to approve roll-ins that require the existing customers subsidize such a large percentage of the costs of an expansion with potentially anti-competitive effects. The United States Court of Appeals for the District of Columbia Circuit rejected a similar contention in *Midcoast Interstate Transmission, Inc. v. FERC*, 198 F.3d 960, 970 (D.C. Cir. 2000). In that case, the Commission granted Southern Natural Gas Co. (Southern) a predetermination for rolled-in rates for an expansion to serve several customers whose contracts for service on Midcoast were expiring.[21] On appeal, Midcoast contended that the 1995 Pricing Policy Statement should not be applied to "cases . . . that involve questions of fair competition."[22] Midcoast argued that "application of the policy will distort market realities because large pipeline systems, such as Southern's, can readily absorb the rolled-in costs of new projects without experiencing a rise in system-wide rates that will exceed the policy's five percent limit. As a result, the cost of the expansion facilities is subsidized by the larger pipeline's existing system-wide customers to the detriment of the smaller competitor."[23]

67. The court rejected these contentions, stating: "Midcoast's argument ignores the independent purpose of the Pricing Policy, which was to 'provide parties with greater certainty about the rate design that will be applied to' new pipelines, thereby allowing them to make better decisions as to such matters as the amount of capacity to develop. The Commission . . . felt that such certainty was needed to encourage efficient growth in the natural gas industry as a whole following the Commission's restructuring of the industry to convert pipelines into common carriers. In deciding to encourage efficient pipeline expansion by offering greater rate certainty at the outset in circumstances that could affect the balance of market forces, FERC exercised the kind of judgment on matters of policy that Congress has entrusted to it."[24] Here, also, the Commission sought, pursuant to the 1995 Pricing Policy Statement, to provide parties with greater certainty about the rate design to be applied to the Mobile Bay expansion, and the

[21] *Southern Natural Gas Co.*, 76 FERC ¶ 61,122 (1996).

[22] *Id*. at 970.

[23] *Id.*

[24] *Id*. at 970-971 (citations omitted).

Commission

finds that the interest in maintaining that rate certainty outweighs any of the potential anti-competitive effects described by the rehearing applicants.[25]

68. The Commission recognizes that in this case, unlike in *Midcoast*, the expansion shipper, TEMCO, is affiliated with Transco. In the 1999 Policy Statement, the Commission moved to criteria for evaluating whether to grant predetermination of rolled-in treatment similar to what they wish the Commission to apply retroactively to Mobile Bay. The Commission takes seriously issues concerning favoritism towards affiliates which would result in undue preference towards the affiliate or undue discrimination against other shippers. However, here the evidence does not show that Transco granted its affiliate any undue preference. As the Commission found in the March 26 Order, when Transco held an open season for the Mobile Bay expansion, it gave notice that it would propose an initial rate for the project equal to its existing Zone 4A rate and that in its first rate case after the expansion it would propose to roll in the costs of the expansion and create a new Zone 4B rate for the expansion. Thus, all shippers were given the opportunity to bid on the Mobile Bay capacity and were aware that Transco would be seeking to roll-in the rates. For example, the March 26 Order stated BP Production Company discussed becoming a shipper on Mobile Bay but ultimately decided that there were economic advantages to shipping on Destin. Just because Transco's affiliate became the sole shipper on the Mobile Bay Expansion is not evidence of affiliate favoritism. Moreover, the 1995 Pricing Policy does not focus on whether particular shippers, affiliated or not, are beneficiaries of rolled-in pricing. Rather, the emphasis is on how the rolled-in treatment affects the revenue responsibility and system benefits. By requiring a showing of systems benefits and rate impact of 5 percent or less, the Commission ensured that existing shippers do not receive dramatic increases in rates that are disproportionate to the benefits they receive from the expansion.

69. In applying the 1995 Policy Statement, the Commission is also applying the policy concerning benefits adopted in Opinion Nos. 406 and 406-A, 76 FERC ¶ 61,022 (1996) and 80 FERC ¶ 61,070 (1997). That policy states that a pipeline need not show a high level of benefits to support a section 4 proposal to roll-in costs as the Commission would have to show to order a roll-in under section 5.[26] Here, the fact that Transco's affiliate

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[25] In the 1999 Pricing Policy Statement, the Commission changed course and now focuses on the actual rate subsidy that a roll-in would cause, rather than the percentage rate increase as under the 1995 Pricing Policy Statement. The Commission also considers effects on, among other, competing pipelines. However, for the reasons already discussed above, the Commission had determined not to apply this change in policy in this case.

[26] *Transcontinental Gas Pipe Line Corporation*, 94 FERC ¶ 61,362 (2001).

has a contract for 100 percent of the capacity also does not negate the fact the Transco has adequately shown that the Mobile Bay expansion provides system wide benefits including increased access to different sources of gas supply in the Mobile Bay region. As we also found in the March 26 order, the ability of the supply to access Transco's mainline downstream of Station 85 adds to system-wide reliability when there are supply emergencies, or capacity or other difficulties, such as compression or pipeline outages in Transco's traditional production area. In addition, even though the Zone 4B capacity is under contract to TEMCO, it is subject to capacity release and available for interruptible transportation, and, in fact, TEMCO capacity has been released from time to time. Ex. T-47 at 25-26. Finally, while petitioners argue that system benefits are not accruing because the throughput on the Mobile Bay expansion is less than 50 percent. This, however, ignores both the fact that at 50 percent, Mobile Bay was a significant contributor of throughput[27] to Transco's downstream mainline throughput which has both operational and financial[28] benefits for all on the system, and that the unutilized Mobile Bay capacity was available to others under interruptible contracts. They do not point to anything in the 1995 Policy Statement or in the Mobile Bay certificate orders which indicate that rolled-in pricing was contingent on any particular throughput level. Accordingly, for the reason discussed above, the Petitioners requests for rehearing are denied.

Rate Treatment of the SunBelt, Pocono and Cherokee Expansion Facilities

70. In this rate case, Transco proposed to roll in the costs of its incrementally priced Cherokee, SunBelt and Pocono expansion facilities on a prospective basis. The Commission issued a certificate for the SunBelt Expansion Project on December 2, 1996 in Docket No. CP96-16 (75 FERC ¶ 61,072, 77 FERC ¶ 61,249 and 79 FERC ¶ 61,346). The project involved the expansion of Transco's mainline system from Louisiana to North Carolina and created 145,666 Mcf/d of new mainline capacity. The SunBelt expansion facilities include new compression at five existing compressor stations, as well as new compression at each of two new compressor stations in Alabama and Georgia. The SunBelt project increased Transco's mainline capacity by approximately 103,500

[27] *See* Appendix C, Page 2 of 2 of the April 12, 2001 Settlement in Docket No. RP01-245-008, *et al.* which shows the throughput for a Zone 4A to 4A haul at 164,115, 315 Dth.

[28] Either in the form of a commodity transported under an existing transportation contract thereby utilizing capacity reserved by a shipper, or the basis of renewed or new contracts to ship the Mobile Bay gas thereby retaining or adding mainline billing determinants.

Dth/d from Station 65 at the Louisiana-Mississippi border to Station 85, the point at which Transco's Mobile Bay Lateral interconnects with the mainline system, and by approximately 150,765 Dth/d from Station 85 to various delivery points upstream of Station 145 at the South Carolina-North Carolina border. The SunBelt facilities went into service in November 1997.

71. The Commission issued a certificate for the Pocono Expansion Project on June 26, 1997 in Docket No. CP97-328 (79 FERC ¶ 61,393). The Pocono project consists of the installation of pipeline loop on Transco's Leidy Line in Lycoming County, Pennsylvania. This pipeline loop provides capacity for an additional 35,000 Dth/d of firm service from the Leidy market hub. The Pocono facilities also went into service in November 1997.

72. The Commission certificated the Cherokee Expansion Project on September 30, 1997 in Docket No. CP97-331 (80 FERC ¶ 61,398, 82 FERC ¶ 61,019 and 84 FERC ¶ 62,046). The Cherokee expansion added approximately 87,070 Dth/d of firm capacity to Transco's mainline system in the southern market area of Alabama and Georgia through the addition of both pipeline looping and compression. The Cherokee facilities went into service in November 1998.

73. Each project was fully subscribed under long-term, firm service agreements at the time of construction and is so today. Ex. T-40 at 6.

74. While the Sunbelt, Pocono, and Cherokee projects were, like the Mobile Bay project, certificated after the 1995 Pricing Policy Statement but before the 1999 Pricing Policy Statement, the Commission's certificate orders did not grant any presumption that Transco could roll in the costs of these three projects in its next section 4 rate case. Rather, the Commission required that Transco implement incremental rates for each of the three projects. In the Pocono and Cherokee certificate orders, the Commission held that those expansions must remain incrementally priced unless the proponents of rolled-in rates could show a significant change circumstances in the next rate case.

75. In these circumstances, the Commission held in both the March 28, 2001 Suspension Order in this case[29] and a May 25, 2001 Order denying rehearing of the March 28 Order,[30] that Transco's proposal to roll in the costs of these projects should be determined based on current Commission policy as set forth in the 1999 Pricing Policy

[29] 94 FERC ¶ 61,360 (2001).

[30] 95 FERC ¶ 61,268 (2001).

Statement. The Commission stated that current policy should be applied to newly filed rolled-in rate proposals, unless the pipeline and expansion shippers had reasonably and detrimentally relied on obtaining rolled-in rates under the earlier 1995 Pricing Policy Statement in making their decisions to invest in an expansion project. Since the Commission had not made any predetermination in the certificate proceedings for these three projects, the Commission found the parties could not have relied on the Commission's approval of future rolled-in treatment for these facilities pursuant to the 1995 Pricing Policy Statement.

76. The Commission affirmed the ALJ’s rejection of Transco’s proposal to roll in the costs of these three projects. The Commission found that the ALJ correctly determined that the 1999 Pricing Policy applied because this threshold issue had been fully addressed in the suspension order and rehearing of the suspension order in this proceeding. The Commission also found that rolling in the costs of the Cherokee and Pocono expansion would increase the revenue responsibility of existing shippers. The Staff’s analysis showed that rolling in the costs of the Cherokee expansion would produce an overall average system transportation rate increase of 1.710 percent under one study and 1.458 percent under another study. With respect to the Pocono facilities, Staff’s analysis shows an overall average system transportation rate increase of 0.152 percent under one study and 0.118 percent under another study. Given those rate increases, the Commission concluded that allowing Transco to roll in the costs of these two projects would be inconsistent with the 1999 Pricing Policy Statement.

77. With respect to the SunBelt expansion, the Commission recognized that, under Staff’s analysis, the SunBelt roll-in will produce an overall average system transportation rate decrease of 0.018 percent under one study and a 0.0024 percent rate decrease under another study. However, Staff’s analysis also showed that on a more detailed rate zone by rate zone basis rate increases as well as decreases were shown in the various zones. For example, under one study the percentage rate change by zone ranged from a decrease of 2.2 percent to an increase of 1.4 percent. The Commission accordingly agreed with the ALJ’s finding that incremental rates should remain because, while it is true that there may be an overall system rate decrease, it would be inconsistent with the 1999 Pricing Policy to have non-expansion shippers in certain zones experience a rate increase and, therefore, financially subsidize expansion shippers through rolled-in rates.

78. The Commission recognized that the 1999 Pricing Policy Statement does permit existing customers’ rates to be increased, if an expansion project improves their service. However, there must be a specific benefit from the project for existing shippers rather than generalized benefits resulting from the project being integrated into the system. Here, the Commission found, Transco had not made any effort to show any real improvement in the existing customers’ services, such as the need for fewer OFOs, better access to competitive gas supplies, etc. The Commission accordingly concluded that

Transco had not met its section 4 burden to show that roll-in of the Cherokee, Pocono and SunBelt projects is just and reasonable.

79. On rehearing, Transco asserts that the Commission's rejection of Transco's proposal to roll-in the costs of the SunBelt, Pocono and Cherokee expansion projects unlawfully relies on application of the 1999 Pricing Policy Statement and is unsupported by the record. Transco argues that the 1995 Pricing Policy was the prevailing policy when the projects were certificated and that the Commission assured pipelines that the 1999 Pricing Policy would not be applied retroactively if the certificate had already issued and investment decisions had been made. Transco argues that in *Great Lakes* the Commission declined to apply a new rate policy to a previously certificated project.[31] Transco also argues that, more specifically, the courts and the Commission have recognized that the 1999 Certificate Policy should not apply retroactively.[32] Finally, Transco argues that, even if the 1999 Pricing Policy Statement is applied, a roll-in of the costs of the SunBelt, Pocono and Cherokee expansion costs can be justified.

<u>Commission Decision</u>

80. The principal issue raised on rehearing is whether the Commission should have applied the 1995 or 1999 Certificate Policy Statement in deciding whether the Sunbelt, Pocono and Cherokee expansion facilities should be priced on a rolled-in or incremental basis. While the Commission has previously addressed this issue in the suspension order in this case and on rehearing of that order, Transco makes a number of arguments in its instant rehearing request that the Commission has not previously addressed. Therefore, the Commission addresses those contentions in this order.

81. Transco contends that the courts have held that the purpose of a policy statement is to provide guidance of a non-binding nature as to the policies the Commission will apply in future cases.[33] Transco argues that this court precedent precludes application of the 1999 Pricing Policy Statement in this case. The Commission disagrees. The court addressed the issue of the application of new policy statements in pending cases on

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[31] Citing, *Great Lakes Gas Transmission L.P.*, 72 FERC ¶ 61,081 at 61,427 (1995) (Great Lakes).

[32] Citing, *MidCoast Interstate Transmission Inc. v. FERC*, 198 F.3d 960, 965 (D.C. Cir. 2000); *Southern Natural Gas Co.,* 90 FERC ¶ 61,145 at 61,464 (2000); Millenium Pipeline Co. L.P., 97 FERC ¶ 61,292 at 62,317 (2001).

[33] Citing *Cmty. Nutrition Inst. v. Young*, 818 F.2d 943, 946 (D.C. Cir. 1987).

appeal from the Commission's orders on Transco's proposal in its last rate case to roll in the costs of twelve other expansions in *Consolidated Edison Company of New York, Inc. v. Federal Energy Regulatory Commission*, 315 F.3d 316 (D.C. Cir. 2003), *affirming Transcontinental Gas Pipe Line Corporation*, 87 FERC ¶ 61,087 (1999), *reh'g denied*, 94 FERC ¶ 61,362 (2001). The Commission issued its 1999 Pricing Policy Statement while rehearing of the Commission's order on initial decision in the earlier rate case was pending. In its subsequent order on rehearing in the earlier rate case, the Commission decided not to apply the new policy statement in that rate case, since the hearing in that rate case had already been conducted under the 1995 Pricing Policy Statement. That order on rehearing was issued on the same day as the suspension order in this case requiring that Transco's proposal to roll in the Sunbelt, Pocono and Cherokee expansion costs must be analyzed pursuant to the 1999 Pricing Policy Statement.

82. On appeal from the orders in the earlier rate case, the court rejected arguments that the Commission had erred in continuing to apply the 1995 Pricing Policy Statement in that case, since the parties had already developed an evidentiary record highlighting the factors relevant to the 1995 Pricing Policy Statement and reopening the record would have wasted significant time and money. However, the court expressly recognized that the Commission does have discretion to apply a new policy statement in pending cases. The court noted that the appellants had cited Commission orders in previous cases, where the Commission had applied new policies in pending adjudications, and then stated: "but this is neither surprising nor impermissible. FERC merely exercised its discretion to apply new policies in ongoing adjudications."[34] The court also found that the Commission had reasonably distinguished its decision not to apply the 1999 Pricing Policy in the earlier rate case from its contemporaneous decision to apply that policy in this rate case, pointing out that the hearing in the earlier rate case had already been completed when the 1999 Pricing Policy Statement issued but in this rate case the hearing was not conducted until after the 1999 Pricing Policy Statement issued.

83. The Commission continues to believe that it has reasonably applied the 1999 Pricing Policy Statement to Transco's proposal in the instant case to roll in the costs of the Sunbelt, Pocono and Cherokee expansion facilities. The Commission's general preference is to determine the justness and reasonableness of currently pending rate proposals based on its current policies concerning what constitutes a just and reasonable rate. Since the rates are proposed to be in effect indefinitely into the future, it makes sense that those rates comply with current policies, absent a showing that application of current policies would be inefficient, as we found in Transco's previous rate case, or

[34] 315 F.3d at 324.

inequitable, as we found above with respect to the Mobile Bay expansion. No such showing has been made here.

84. As the Commission earlier determined in the rehearing of the suspension order in this proceeding, the facts and circumstances surrounding the certification of the Sunbelt, Pocono, and Cherokee expansions show that Transco and the expansion shippers could not have reasonably relied on application of the 1995 Pricing Policy. The Commission issued its 1995 Pricing Policy on May 31, 1995. Before the issuance of the policy statement, Transco held an open season to determine interest in the SunBelt expansion in which customers executed 20 year precedent agreements for the full capacity of the expansion at the maximum rate. On October 10, 1995, Transco filed its certificate application for SunBelt and proposed to recover the costs of the expansion on an incremental basis. The Commission approved the non-environmental aspects of the certificate on April 12, 1996, without any mention of the 1995 Policy Statement.[35] On April 4, 1997, Transco filed a new certificate application for its Pocono project, which included a portion of the looping facilities proposed in the substantially larger SeaBoard expansion. Transco proposed an initial incremental rate for the Pocono expansion project. The Commission approved Transco's certificate application on June 26, 1997.[36] On April 9, 1997, Transco filed a certificate application for its Cherokee expansion facility, which it proposed to price incrementally. The Commission approved Transco's application subject to environmental review on September 30, 1997.[37]

85. In its certificate applications for its three expansion projects, Transco reserved the right to propose a rolled-in rate for the expansion facility costs in its next general rate proceeding. However, unlike the situation with respect to the Mobile Bay expansion, Transco did not seek a predetermination in favor of rolled-in rates under the 1995 Pricing Policy for any of these three projects. Unlike the up front determination the Commission made in the Mobile Bay order, the Commission did not issue an explicit predetermination of any kind regarding rolled-in treatment for the SunBelt, Pocono and Cherokee facilities. As the Commission stated, reservations of rights cannot justify reasonable reliance that the Commission will take any particular action. Therefore, parties could not have relied on the Commission's approval of future rolled-in treatment for these facilities pursuant to the 1995 Pricing Policy.

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[35] *Transcontinental Gas Pipe Line Corp.*, 75 FERC ¶ 61,072 (1996), *order on reh'g*, 77 FERC ¶ 61,249 (1996).

[36] *Transcontinental Gas Pipe Line Corp.*, 79 FERC ¶ 61,393 (1997).

[37] *Transcontinental Gas Pipe Line Corp.*, 80 FERC ¶ 61,398 (1997).

86. The Commission also finds that its orders in other cases cited by Transco are distinguishable from the facts here. In *Great Lakes*, the parties had greater reason to rely on a future roll-in than here. The Commission certificated the project at issue in that case with initial rates equal to the pipeline's then effective system-wide Part 284 rate, and the pipeline indicated that it would file for rolled-in rates quickly. Thus, the project in *Great Lakes* did not start service with incremental rates as the projects at issue here did. Moreover, the Commission did not impose any requirement that the pipeline show a change in circumstance in order to justify its promised quick roll-in proposal or in any manner raise questions about the pipeline's ability to roll in the expansion costs in its next rate case.

87. Both *MidCoast Interstate Transmission Inc. v. FERC*, 198 F.3d 960, 965 (D.C. Cir. 2000) and *Southern Natural Gas Co.*, 90 FERC ¶ 61,145 at 61,464 (2000), involved situations where the Commission issued certificates before the 1999 Pricing Policy Statement issued, which included predeterminations for rolled-in rates pursuant to the 1995 Pricing Policy Statement. Thus, both those cases were similar to the Commission's treatment of Mobile Bay, where we have applied the 1995 Pricing Policy Statement because of the parties' reasonable reliance on predeterminations granted by the Commission because there we granted a predetermination with respect to rolled-in rates pursuant to the 1995 Pricing Policy Statement before the 1999 Pricing Policy statement issued.

88. Finally, *Millenium* involved a certificate application for an entirely new pipeline. Thus, no issue concerning rolled-in vs. incremental rates arose in that case, because there were no preexisting system-wide rates. In that case, the pipeline had prepared its certificate application, including negotiating contracts with customers, before the 1999 Pricing Policy Statement issued. That policy statement not only modified the Commission's policy concerning rolled-in vs. incremental rates, but also various criteria to determine whether the Commission should issue a certificate in the first place. These criteria affect how the certificate application is prepared and what the pipeline must do before the application is filed to show a market need for the project and to minimize the adverse effects on existing customers, other pipelines, captive customers, landowners and communities. Since Millenium's application was prepared based on the old requirements, the Commission determined it would not be equitable to apply a new policy to the pending application. However, with respect to Transco's expansion projects here, we are only addressing the issue of the rate to be charged for service commencing after the project was approved and went into service and where there was no reliance on any predetermination of rolled-in rates granted during the certificate proceeding.

89. The Commission agrees with Transco that the issue is whether the pipeline and its customers reasonably and detrimentally relied on the use of the 1995 standard to determine whether to approve the rolled-in rate proposal, as opposed to relying on the

rolled-in rate proposal actually being approved. However, the Commission has consistently found reliance only when the project was certificated as rolled-in, as in *Great Lakes*, or a predetermination on rolled in rate treatment was granted as with the Mobile Bay project and in *Midcoast* and *Southern*. In other cases, everything is too indefinite for there to be a claim of reasonable reliance. A project may start with incremental rates and then the Commission policies change and it is clear that the rolled-in versus incremental policy has had a number of changes over time. As the Commission said in the rehearing of the suspension order, it had stated in the certificate orders for these projects that the parties in this proceeding would have to show a change in circumstances to justify a rolled-in rate proposal and it makes sense now to take into account all changes in circumstances including changes in Commission policy.

90. The Commission also disagrees with Transco's argument that the 1999 Policy applies only to the construction of new facilities and not to proposals to roll in the costs of facilities which existed at the time the 1999 Policy was issued. Transco is correct in asserting that a purpose of the new policy concerning no subsidization of expansion projects by existing shippers was to ensure that new projects are sized optimally by requiring the expansion shippers to bear the full costs of the expansion. However, the policy was also designed to protect captive customers from bearing the costs of expansion projects during the terms of their contracts and that principle is still relevant here.

91. Finally, on rehearing, Transco asserts that applying the 1999 Policy Statement to its three expansion projects is poor public policy because it evinces a purely mechanical test of whether the costs of a particular expansion increases or decreases the rate for the pipeline's non-incrementally priced services. The Commission rejects Transco's assertion that the Commission merely mechanically applied the 1999 Policy Statement. The Commission considered the benefits of the projects and explained that there had to be real improvements in service to justify a roll-in. The Commission stated in the prior order that there must be a specific benefit from the project for existing shippers rather than generalized benefits resulting from the project being integrated into the system. As the Commission stated there has been no showing of real improvements such as fewer OFO's or better access to competitive gas supplies. Transco does not contest the Commission findings on rehearing but simply reiterates its argument of generalized system benefits. As the Commission stated at paragraph 77 of the prior order, the Commission's decision rejecting rolled-in pricing now does not mean that the expansions must always be incrementally priced. Transco will have the opportunity to seek rolled-in treatment of the expansion projects when the current contracts expire provided certain conditions are satisfied.

Fuel and Electric Power Charges for Mobile Bay, Cherokee and SouthCoast Expansions

92. Transco' system includes approximately 350 compressors that are powered by either natural gas or electricity. Pursuant to existing sections 38 and 41 of the General Terms and Conditions of Transco's tariff, Transco recovers the fuel and electric power costs associated with operating these units from all its mainline transportation customers on a system-wide basis. Transco recovers the electric costs through its Transportation Electric Power (TEP) surcharge, and makes annual TEP filings March 1 of each year to be effective for the period April 1 through March 31. As a result, Transco has consistently included the costs of operating any compressors added in expansions in its system fuel reimbursement percentages and its system electric power surcharge. Transco did not propose any changes to its fuel and electric power cost recovery methodology in the instant section 4 rate filing. Rather, a number of parties requested changes pursuant to section 5 for the recovery of fuel and electric power costs for the Mobile Bay and Cherokee expansions discussed above, as well as for another expansion, the SouthCoast expansion project.

93. The Commission issued a certificate for the SouthCoast expansion in 2000. That project expanded Transco's existing system in Alabama and Georgia by adding mainline looping, as well as a gas powered compressor at Station 105 in Alabama, and an electric powered compressor at Station 115 in Georgia. The Commission applied its 1999 Pricing Policy in the SouthCoast certificate proceeding, and required that Transco use an incremental rate design for that expansion, since rolling in the costs of that expansion would increase the existing FT customers' rates.

94. At the hearing, the parties argued that applying system-wide fuel and electric charges to the Mobile Bay, Cherokee and SouthCoast expansions would result in Transco's existing shippers providing subsidies to the expansion shippers. The parties argued that the proper remedy was the establishment of incremental charges whereby fuel and electric power costs of new compression installed in these projects would be assigned to each individual expansion.

95. The ALJ determined that the parties met their section 5 burden and directed that Transco's tariff to be amended to reflect incremental fuel and electric power costs for the Mobile Bay, Cherokee and SouthCoast expansions. The Commission reversed the ALJ with respect to the Mobile Bay project and affirmed that ALJ with respect to the Cherokee and SouthCoast projects. The Commission found that since it determined that the costs of the Mobile Bay Expansion should be rolled-in, it follows that the fuel costs

for the compression installed for Mobile Bay should be recovered on a system-wide basis as provided by Transco's tariff. No party seeks rehearing of that decision.

96. With respect to Cherokee and SouthCoast, the Commission found that to continue to charge system-wide rates to those expansion shippers would result in existing shippers subsidizing expansion shippers in contravention of the 1999 Pricing Policy Statement. The Commission found that the annual cost of electricity used by the compressors added at Stations 115 and 125 as part of the Cherokee expansion is $2,380,399, but the Cherokee expansion shippers pay only $135,151 annually in electricity costs, resulting in a $2,245,248 subsidy from existing shippers. With respect to SouthCoast, the Commission found that the new SouthCoast Station 115 compression increased Transco's generally applicable TEP surcharges by 11 to 17 percent depending on rate zone. The Commission also found that Transco's generalized assertion that the added compression benefits the entire system because of its integrated nature was not enough to overcome the prohibition against subsidies to expansion shippers. Accordingly, the Commission directed Transco to submit a compliance filing containing incremental fuel and electric charges for the Cherokee and SouthCoast expansions.

97. Transco, the Transco Municipal Group, and Cherokee County Cogeneration requested rehearing of the Commission's holdings concerning the Cherokee and SouthCoast expansions. These parties assert that the Commission erred in affirming the ALJ and directing Transco to file incremental fuel and electric charges for the Cherokee and SouthCoast expansion projects. Transco asserts that the evidence presented in this proceeding demonstrates (1) that Transco maximizes system operational efficiency by routinely using all of its facilities to serve all of its customers without regard for which services the customers have scheduled or in fact use, and (2) that such operations make it impossible to associate use of any particular facility with any particular service or group of customers. Transco argues that these facts confirm that Transco's tariff provides for a just and reasonable allocation of costs. Transco contends that it would be unjust and unreasonable to allocate costs that benefit all customers to only a few of those customers. Transco also submits that none of the parties seeking section 5 changes to Transco's system-wide electric power allocation offered any specific alternative methodology for isolating and assigning Transco's compressor electric power costs to the SouthCoast and Cherokee expansion projects.

98. Transco Municipal Group's rehearing contains many of the same arguments set forth by Transco. In addition, Transco Municipal Group asserts that the conclusion that SouthCoast shippers are being subsidized is not based on substantial evidence. Transco Municipal Group asserts that the evidence showing that new SouthCoast Station 115 compression increased Transco's generally applicable electric power charges for compression between 11 and 17 percent was based on faulty electric power cost projections made by Transco in its March 2001 TEP filing. Transco Municipal Group

asserts that when actual operating experience is used the record shows that before the in service date of the SouthCoast expansion the electric power costs at Station 115 exceeded $3 million and that during the year following the in-service date the electric power costs incurred at Station 115 were less than $2 million. Transco Municipal Group asserts that, focusing on actual costs, one cannot conclude that the addition of the SouthCoast project caused cost increases that are being borne by existing shippers.

99. Transco Municipal Group also argues that the Commission's conclusion that Cherokee shippers are subsidized erroneously focuses on one cost element and ignores the benefits that the Cherokee expansion and its shipper provide to the Transco system. Transco Municipal Group asserts that the only evidence available to support the Commission's conclusion that Cherokee shippers are being subsidized by existing customers is that, during a single time period, Cherokee shippers paid electric power charges that were less than the electric power costs incurred at the new electric powered compressors that were added as part of that expansion project. Transco Municipal Group asserts that the Commission has failed to take into account the fact that Cherokee shippers pay both electric power charges and fuel charges even though the compression for the Cherokee project is electric. Transco Municipal Group also assert that the method Transco uses to calculate fuel charges results in shippers paying the costs of fuel in their zone as well as the fuel incurred in other zones. Transco Municipal Group thus concludes that the Commission has failed to consider the contribution that the incremental Cherokee shippers make to the costs of the entire system.

100. Cherokee Cogeneration argues that the Commission should clarify that it is not the intent of the March 26 Order to require that all fuel and electric power costs associated with the operation of expansion facilities be the assigned responsibility of expansion shippers, regardless of the actual usage by these shippers of their entitlements. Cherokee Cogeneration asserts that the Commission should grant rehearing and deny ConEd's request that fuel and electric costs associated with the operation of expansion facilities be the assigned responsibility of expansion shippers because ConEd has not met its NGA section 5 burden to propose a just and reasonable cost assignment.

Commission Decision

101. As stated above, Transco did not seek to change its current system-wide fuel and electric power allocation methodology in its section 4 filing. Therefore, the proponents of incremental charges to recover these costs had the burden under NGA section 5 to show that the current system-wide charges are unjust and unreasonable and to come up with the just and reasonable replacement methodology. Based upon a further review of the evidence presented in this proceeding, the Commission grants rehearing of its order that Transco establish incremental charges to recover the fuel and electric costs of the

SouthCoast expansion. The Commission grants rehearing in part and denies rehearing in part of the Commission's similar findings with respect to Cherokee.

102. We first address the requests for rehearing with respect to SouthCoast. In the SouthCoast certificate order, the Commission held that the 1999 Policy Statement should apply to that project. Under that policy, a showing that Transco's current system-wide TEP and/or fuel charges require its existing shippers to subsidize additional fuel or electric power costs incurred in order to serve the SouthCoast shippers would justify requiring an incremental charges to the SouthCoast shippers. However, the proponents of section 5 action to require an incremental electric charge have the burden of showing that such subsidization is occurring. The Commission has concluded that the current record provides an insufficient basis upon which to meet that burden. First, although the SouthCoast expansion included a gas fired compressor at Station 105, the proponents of section 5 action presented no evidence or argument in favor of an incremental fuel charge to recover the costs of running that compressor. Accordingly, there is no basis to require incremental charges for the fuel used to power the Station 105 gas powered compressor.

103. The Commission finds that the evidence the proponents of section 5 action with respect to the additional electric powered compression added at Station 115 is insufficient to justify a finding that the existing shippers are subsidizing the electric costs of that compression. In the March 26 Order, the Commission found that the evidence shows that Transco's generally applicable electric charges went up between 11 and 17 percent depending on rate zone as a result of the SouthCoast expansion. This finding was based on evidence submitted by Consolidated Edison concerning Transco's March 1, 2001 filing in Docket No. RP01-258 to revise its Transportation Electric Power (TEP) rates for the annual period beginning April 1, 2001 (March 2001 TEP filing). That was Transco's first TEP filing after the November 1, 2000 in-service date of the SouthCoast facilities. In that filing, Transco projected that its total annual electric power costs at Station 115 for the year beginning April 1, 2001 would be $6,441,428, of which $3,374,082 would be associated with the additional compression at Station 115 added as part of the SouthCoast expansion. In response to a data request from Consolidated Edison, Transco recalculated what its proposed TEP rates would have been, if it had not added compression at Station 115. Transco's response showed that, on a 100 percent load factor basis, the proposed rates in the March 2001 TEP filing were between 11 and 17 percent higher that they would have been absent the SouthCoast expansion.[38]

[38] Ex. No. CE-24 at 4. Ex. No. CE-26.

104. In its rehearing request, Transco Municipal Group contends that the evidence presented by Consolidated Edison was insufficient to show that the new compression at Station 115 will increase the electric power costs incurred by the existing FT shippers. The Transco Municipal Power Group points out that Transco's projection, in its March 2001 TEP filing, of the electric costs it would incur in the year beginning April 1, 2001 turned out to be substantially in error. That projection was that the electric power costs at Station 115 would more than double from the $3,041,454 incurred during the period February 2000 through January 2001, which was mostly before the November 1, 2000 in-service date of the SouthCoast expansion, to over $6.4 million during the year beginning April 1, 2001. However, Transco Municipal Group states that Transco's March 1, 2002 TEP filing in Docket No. RP02-183-000 shows that Transco's actual electric power costs at Station 115 for the period February 2001 through January 2002 were only $1,945,116,[39] far below the over $6.4 million Transco had projected for much the same period. Moreover, Transco Municipal Group points out, the actual costs of $1,945,116 for the February 2001 through January 2002 period after the in-service date of the SouthCoast expansion were significantly less than the actual costs of $3,041,454 for the February 2000 through January 2001 period generally before the in-service date of the SouthCoast expansion. The Transco Municipal Group also asserts that in its March 2002 TEP filing, Transco projected that the total electric power costs at Station 115 would continue to be about $1.9 million during the period April 2002 through March 2003.[40] Transco Municipal Group states that focusing on actual costs one cannot conclude on this record that the addition of SouthCoast compression caused cost increases that are being borne by existing shippers and that the Commission's conclusion regarding subsidy rests on a flawed foundation.

105. The Commission will grant rehearing and allow Transco to continue to charge system-wide electric charge to SouthCoast shippers, rather than taking section 5 action to require Transco to implement incremental electric or fuel charges to those customers. The only evidence of subsidization in the current record is the evidence Consolidated Edison presented that the TEP rate proposed in Transco's March 2001 TEP filing based on projected data for the year beginning April 2001 would have been lower if the projected costs and throughput for the SouthCoast expansion had been removed. However, the record also shows that Transco's actual electric power costs at Station 115 were substantially less during the year February 2001 through January 2002, after the in-service date of the SouthCoast expansion than they had been in the year before the in-

[39] Ex. TM-2 at 4.

[40] Ex. TM-2 at 3.

service date, and Transco projected in its March 2002 TEP filing that that would continue to be the case.

106. The reduced electric power costs at Station 115 after the SouthCoast expansion went into service is not necessarily inconsistent with a finding that the existing shippers are subsidizing the SouthCoast shippers' electric power costs. For example, if there were reasons why electric power costs at Station 115 went down after the in-service date of the SouthCoast expansion unrelated to the existence of the SouthCoast expansion, such that the existing shippers' electric power costs would have gone down even more absent the SouthCoast expansion, the Commission could find that the existing shippers are improperly subsidizing the SouthCoast shippers. However, the present record contains no exploration of why the electric power costs at Station 115 went down by about one third after the SouthCoast expansion went into service. Thus, the Commission has no basis on which to determine whether the SouthCoast expansion contributed to the cost reduction, such that the existing shippers were actually benefited rather than being required to subsidize additional costs, or whether the cost reduction was entirely unrelated to the SouthCoast expansion. In these circumstances, the Commission cannot meet its section 5 burden to show that the existing system-wide TEP rates are unjust and unreasonable with respect to the SouthCoast expansion. Since the proponents of change have not met the first prong of their section 4 burden, there is no need to address arguments concerning whether they have presented a just and reasonable replacement method.

107. We now turn to the Cherokee expansion project. Above, the Commission has reaffirmed its holding that the 1999 Pricing Policy Statement must be applied to this project. Thus, as with the SouthCoast expansion, a showing that Transco's existing shippers are subsidizing additional fuel or electric power costs incurred in order to serve the Cherokee shippers would justify requiring incremental charges to the Cherokee shippers.

108. The compression added as part of the Cherokee expansion is all electric powered, and no party sought an incremental fuel charge for that project. Therefore, to the extent that the March 26 Order suggested there should be an incremental fuel charge for that project, the Commission grants rehearing and will not require such an incremental fuel charge. However, the Commission denies rehearing with respect to the requirement that Transco establish an incremental TEP charge for the Cherokee project. In the March 26 Order, the Commission found that the annual cost for electric compression for the

Station 115 and Station 125 Cherokee compressors was approximately $2.3 million,[41] while the Cherokee shippers paid only $135,151 of electricity costs, resulting in a $2.2 million subsidy. The rehearing applicants do not challenge these facts. Rather, they claim that the Commission failed to take into account various benefits which the new electric compressors provide the existing shippers.

109. First, the rehearing petitioners claim that the compressors are fully integrated with Transco's system and are used to serve everyone. However, as the Commission has already held above, under the 1999 Pricing Policy Statement, such a claim of generalized system benefits is not enough to justify requiring the existing shippers to subsidize the uncontested increase in electric costs caused by the Cherokee project. The claim of generalized system benefits is the same argument that the Commission has rejected with respect to the roll-in of the Cherokee facility costs above. There is no showing that the added compression at Stations 115 and 125 has improved the quality of service received by the existing shippers. While the petitioners claim that the added compression provides redundancy and potential backup when older compressors are out of service or undergoing maintenance,[42] there has been no showing that there were any service interruptions in the past which would have been prevented by the installation of the new compressors.

110. Second, the rehearing applicants contend that the Commission has failed to take into account the benefit to existing customers from the fact that the Cherokee shippers contribute to Transco's fuel costs, even though their expansion did not include any gas-fired compression.[43] This is because the Cherokee shippers are subject to Transco's fuel

[41] There was no electric powered compression at Stations 115 and 125 before the Cherokee expansion. The SouthCoast expansion also included electric compression at Station 115. The record contains undisputed evidence that 47.6 percent of the electric compression at Station 115 is associated with the Cherokee expansion and the remainder with the SouthCoast expansion. Transco's actual electric expenses at Station 115 during the period September 2000 through August 2001 were $3,659, 705, of which 47.6 percent, or $1,742,020 is attributable to the Cherokee expansion. Its actual electric expenses at Station 125 were $638,379. Thus, the total electric expenses at the two Stations during September 2000 through August 2001 were $2,380,399. During the same period Transco collected a total TEP charges from the Cherokee shippers of $135,151. Ex. No. CE-8 at 14.

[42] Citing Ex. T-47 at 45 and Ex. T-48 at 16-35.

[43] Citing Ex. T-47 at 38-39.

retention charges for the zones in which they receive service.[44] The rehearing applicants suggest that the use of the Cherokee shippers' transportation quantities in deriving the fuel retention percentages and their payment of such charges reduce the fuel costs borne by the existing shippers. However, they point to no evidence in the record that seeks to quantify this benefit, or even shows that such a benefit has occurred. The Commission treats fuel as a variable cost, because a pipeline's use of fuel tends to increase as its throughput increases. Since the Cherokee shippers' gas does flow through portions of the system operated with gas-fired compression, it is possible that their expansion caused an increase in fuel use at the relevant compressors equal to their contribution to fuel costs. Given the uncontested evidence that the annual electric power costs of the Cherokee compressors is over $2 million, but the Cherokee shippers pay less than $150,000 of those costs, the opponents of section 5 action, including Transco, cannot simply sit back and make vague allegations of offsetting benefits and then contend that the proponents of section 5 action have failed to meet their burden of showing that the existing shippers are subsidizing the additional electric power costs incurred as a result of the Cherokee expansion. This is particularly the case, where Transco has possession of the information needed to estimate the value of any benefit accruing to existing customers from the Cherokee shippers' contribution to fuel costs.

111. Third, the rehearing applicants make various other allegations of offsetting benefits from the Cherokee expansion to the existing shippers. For example, the rehearing applicants contend that the Commission has failed to account for the potential reduction in Transco's capital costs for complying with the requirement in the Clean Air Act (CAA) that it reduce NOx emissions. They state that the added Cherokee electric compression could be used to reduce the combustion of gas at existing compressors, with an attendant reduction in NOx emissions, with the result that there could be a lesser need to install similar facilities elsewhere on the system in order to reduce NOx emissions. However, they again point to no evidence that combustion of gas at existing compressors has in fact been reduced. The Commission concludes that all these alleged benefits are simply too speculative and unsupported to be taken into account.

112. Finally, rehearing applicants contend that if the Commission continues to require that an incremental electric charge be implemented, the Cherokee shippers should be exempted from Transco fuel retention percentages. However, the Commission has held that "expansion shippers are to pay both the compressor fuel rate charged to existing shippers and any additional fuel costs attributable to the proposed expansion, with the

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[44] The Cherokee shippers' receipt points are at Station 85 and they take delivery downstream in Zone 4.

additional fuel costs captured in the surcharge.[45] Since fuel is a variable cost, it is appropriate that the expansion shippers pay the full fuel costs incurred on their behalf, as well as the electric costs incurred on their behalf. The Cherokee shippers do receive service on portions of the system that make use of gas-fired compression. Therefore, it is appropriate that they pay their appropriately allocated share of those costs.

Unbundling of the Emergency Eminence Storage Withdrawal Service

113. Transco's Eminence storage facility in Covington, Mississippi is an underground, salt dome storage field with a working capacity of 15 Bcf, daily withdrawal capability of 1.5 Bcf, and daily injection capability of 0.1 Bcf. The Eminence facility is used to provide two separate services. The first is a contract storage service under Rate Schedule ESS (Eminence Storage Service). The second is the Emergency Eminence Storage Withdrawal Service which is embedded in the FT service of FT shippers. Section 6 of Rate Schedule FT governs the Emergency Eminence Withdrawal Service and provides that it is available to shippers that have transportation entitlements at the point on Transco's mainline system where the mainline facilities and the Eminence facilities interconnect, as a backup supply during force majeure events.

114. In Transco's general section 4 rate case in Docket No. RP95-197-000,[46] the Commission ordered a change in the allocation of the costs of the Eminence storage fields that are included in the FT rates. Because not all FT shippers have mainline entitlements at Covington, Mississippi, (where Eminence interconnects with the mainline), not all FT shippers were able to use the Emergency Eminence Storage Service embedded in the FT rate schedule. The Commission ordered that the costs be allocated only to FT shippers that have mainline entitlements at Covington and that this be accomplished by placing the costs in a separate charge to be paid by all FT shippers with mainline entitlements at Covington.

115. At the hearing in this rate case, Staff and AGL each made somewhat different proposals to unbundle the Emergency Eminence Storage Service currently embedded in the FT rate schedule from the FT service and put it into a separate rate schedule so that shippers with transportation entitlements at Covington can decide whether to take the service, whereas previously they had to take the service. Transco opposes each proposal. Staff's proposal would require Transco to unbundle its Emergency Eminence Service

[45] *Northwest Pipeline Corp.*, 99 FERC ¶ 61,365 at 62,541 (2002).

[46] *Transcontinental Gas Pipe Line Corp.*, 82 FERC ¶ 63,019 at 65,191-2 (1998), *order on initial decision*, 87 FERC ¶ 61,087 (1999).

from Rate Schedule FT and create a separate Emergency Eminence Service. Only those shippers who nominate unbundled Emergency Eminence Service would be required to pay for it. Transco would be at risk for any unsubscribed Emergency Eminence capacity. AGL's proposal is to provide shippers with a one-time, all-or-nothing opportunity to acquire additional storage rights under Rate Schedule ESS, and at the same time to eliminate Transco's obligation to provide Emergency Eminence backup service to converting shippers to the extent that customers elect to convert these emergency backup rights to storage rights.

116. The Commission affirmed the ALJ's holding that Transco must unbundle the Emergency Eminence Storage Service in the manner proposed by Staff. The Commission held that the ALJ correctly found that the bundling of the Emergency Eminence Storage Withdrawal Service with the FT service is unjust and unreasonable and that Staff's unbundling proposal was just and reasonable. The Commission found that customers should have the option of choosing whether to contract for separate and distinct services. Here, the ALJ found that there are no operational or other justifications for continued bundling of the service. The Commission found that Transco had not presented any evidence on exceptions to contradict this conclusion. Transco did not argue that it uses the Eminence storage service in performing FT service. Rather, Transco described the service as an alternative to receiving transportation service when the transportation service must be curtailed. The Commission stated that, as shown in the testimony, no shipper opposed the proposals and no shipper has utilized the Emergency Eminence force majeure capabilities since 1998. The Commission affirmed the ALJ's finding that Staff's proposal was a just and reasonable replacement because it implements the Commission policy of unbundling services to the greatest extent possible absent special circumstances that would justify the bundling of services.

117. Transco filed a request for rehearing asserting that the March 26 Order's unbundling of Emergency Eminence Storage Withdrawal Service is unwarranted. Transco asserts that the record does not support a finding that the existing Emergency Eminence Service is unjust and unreasonable. Transco contends that Staff never considered why the Emergency Eminence Service was created or how its proposal would affect the utility of the service. Transco asserts that the Staff did not explain why unbundling Emergency Eminence Service is justified even though no customer asked for or supported the full unbundling that Staff advocated. Transco asserts that the record does not support the Commission's implicit finding that the present structure of the FT service, with the longstanding embedded Emergency Eminence Service component, is now unjust and unreasonable. Transco argues that as signatory parties to the 1990 Gas

Inventory Charge (GIC) settlement with Transco,[47] Transco's customers mutually agreed to enter into FT service agreements, with Emergency Eminence Service as a component of FT service, and to collection of Emergency Eminence Service costs as part of Transco's charges for FT service for customers eligible to use the emergency back-up supply component. Transco asserts that the Commission's unbundling order unlawfully abrogates that agreement. Transco submits that none of those customers advocated the unbundling of the Emergency Eminence Service that the Commission has directed in the March 26 Order. Transco asserts that even assuming arguendo that the March 26 satisfied the first prong of the Commission's burden under section 5, there is no basis in the record for the Commission to find that imposing on Transco the risk of recovery of the entire, $13 million annual Emergency Eminence Service costs is a just and reasonable alternative. Transco asserts that if the Commission upholds its order directing the unbundling of the Emergency Eminence Service from FT service, it should ensure that Transco continues to receive the benefit of the settlement agreements with its customers and should not leave Transco potentially holding the bag for $13 million in annual costs related to the Emergency Eminence Service. Transco contends that if the Commission does not reverse the unbundling directive of the March 26 Order, the Commission should require each FT shipper with entitlements at Covington to subscribe to its proportionate share of Emergency Eminence Service until the termination of the underlying FT contract from which the Emergency Eminence Service is unbundled.

Commission Decision

118. On rehearing, Transco asserts that the Commission did not take into consideration how unbundling would affect the Emergency Eminence Service and did not show why the current bundled service is unjust and unreasonable. The Commission disagrees with Transco's argument. As the Commission stated in the March 26 Order, unnecessary bundling of service is per se unjust and unreasonable unless there are countervailing considerations. The ALJ found that there were no operational or other justifications for continued bundling of the Emergency Eminence Service. Transco has not presented any evidence in this proceeding to show that there are countervailing considerations which would justify continued bundling of the Emergency Eminence Service. As the Commission determined, Eminence Storage service is not used for performing FT service. Rather, it is an alternative to transportation service when transportation service must be curtailed. As the Commission pointed out in the March 26 Order, no shippers opposed the unbundling and no shipper has utilized the Emergency Eminence Service since 1998. On rehearing, Transco does not present any arguments that a bundled Emergency Eminence storage service is needed for operational reasons. It merely argues

[47] *Transcontinental Gas Pipe Line Corporation*, 55 FERC ¶ 61,446 (1991).

that the Commission is altering the fundamental nature of the service. Such an argument is not persuasive because any time services are unbundled the nature of the services is changed.

119. Transco also argues that the Commission's decision to unbundle the Emergency Eminence Service unlawfully abrogates Transco's 1990 Comparability Settlement in Docket No. CP88-391. That settlement and a related Rate Settlement in Docket No. RP87-7 provided for the unbundling of Transco's sales and transportation services shortly before Order No. 636. The Commission approved the two settlements in the same order.[48] In its rehearing request, Transco contends that Article III, section A of the Comparability Settlement provided that Transco's customers would permanently convert their LTFT service agreements to service under Transco's Rate Schedule FT. Transco also states that pursuant to the Rate Settlement, FT service included, and still includes, the Emergency Eminence Storage Service. Transco states that Article VI of the Comparability Settlement provided for the expansion of the Eminence Storage Field to enable Transco to provide that component of FT service and for the allocation to FT service of the associated costs. Article X of the Comparability Settlement provides, "the parties hereto agree that they shall be bound by the terms hereof and that the settlement continue in effect regardless of any future administrative or court action concerning, among other things, (1) Order Nos. 436/500 or successor orders, and (2) the appropriate methodology for recovery of Order No. 94 costs incurred by pipelines." Transco accordingly argues that the Comparability settlement does not include a *Memphis* clause authorizing parties to seek unilateral changes in its terms and thus the Commission can only modify or abrogate the settlement if the public interest so requires.

120. The Commission rejects this contention. As Transco itself states in its rehearing request, it was the Rate Settlement which provided for the FT service to include the Emergency Eminence Storage Service. The Rate Settlement contains a broad *Memphis* clause permitting Transco "to file and place in effect any changes in rates or modification, additions, or deletions to its FERC Gas Tariff employing different concepts or methods form those reflected herein." That provision also states that "except as expressly provided by this Agreement, the other parties hereto preserve their rights under the Natural Gas Act."[49] Moreover, the contracts Transco entered into with its FT customers pursuant to the two settlements contain *Memphis* clauses permitting Transco to

[48] *Transcontinental Gas Pipe Line Corporation*, 55 FERC ¶ 61,446 (1991), *reh'g*, 59 FERC ¶ 61,279 (1992), *affirmed in part and remanded in part*, *Elizabethtown Gas Co. v. FERC,* 10 F.3d 866 (D.C. Cir. 1993).

[49] Article XIX, section 4 of the Rate Settlement.

make filings to change the rate, terms, and conditions of their service. The Commission has interpreted the Comparability and Rate Settlements as permitting Transco to file rate changes pursuant to section 4 to another term of the FT Rate Schedule agreed to in the Rae Settlement (the priority for IT service feeding FT service) without the need for the Commission to make a public interest finding under *Mobile/Sierra* doctrine.[50]

121. The Commission finds no reason to come to a different interpretation with respect to shippers proposing changes concerning the Emergency Eminence Service. There is no mention of the Emergency Eminence Service in Article X of the Comparability Settlement. Rather, the intent of that provision appears to have been to make the settlement, particularly the provisions concerning Transco's recovery of various transition costs related to Transco's former bundled sales service, to continue despite the fact that the Commission policies concerning the recovery of such transition costs was in a state of flux and subject to court review.

122. While the Commission denies rehearing of the requirement that Transco unbundle the Emergency Eminence Storage service, the Commission will grant Transco's request that each FT shipper with entitlements at Covington be required to subscribe to a proportionate share of the unbundled Emergency Eminence Service until the termination of the underlying FT contract from which Eminence Service is unbundled. Although there is sufficient evidence to find that the continued bundling of the Emergency Eminence Storage service is unjust and unreasonable, the Commission does not believe there is sufficient evidence to support section 5 action to permit the existing FT customers to terminate their current contractual commitments to purchase the Emergency Eminence Storage service before the expiration of those commitments. Transco's shippers freely entered into the FT contracts containing the embedded Emergency Eminence Storage Service and Transco made certain investments to support the service. The Commission finds that Transco's proposal would be a reasonable transition until the underlying FT contracts expire and shippers are given the opportunity to decide whether they want to sign up for the unbundled Emergency Eminence Storage service. Transco's proposal will also avoid the possibility of Transco having to absorb up to $13 million in annual costs related to the Emergency Eminence Service if the existing FT customers were allowed to terminate their current contractual obligations to take that service at this time. Accordingly, Transco's request for rehearing is denied in part and granted in part as discussed above.

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[50] *Transcontinental Gas Pipe Line Corporation*, 85 FERC ¶ 61,357 at 62,389 (1998). The Commission found that there were "no provisions of the Comparability or Rate Settlements that would bar Transco from filing a new section 4 rate case to change the rates and terms and conditions of the IT-Feeder service."

Credit for Use of Right of Way for Fiber Optics

123. The issue before the ALJ was whether Transco should credit its existing customers with a value for service provided to its then affiliate, Williams Communications Company (WCC, formerly Vyvx), for the cost-free access to Transco's existing jurisdictional assets, and whether such an agreement should result in a rate credit to existing customers. Transco entered into an agreement with WCC under which Transco would not object to WCC's seeking from landowners easements to install a fiber optic system over some of the same land for which Transco already held easements for its pipeline. In exchange, WCC gave Transco an indefeasible right of use of two "dark" fibers in its new cable for Transco to use for telecommunications in its jurisdictional operations. Certain parties argued that the agreement was not an arm's length agreement since it was between affiliates, and that Transco's customers should be given a revenue credit for the transaction. The ALJ found that the parties did not meet their burden on the issue. The ALJ found that the parties did not offer convincing evidence showing that Transco gave its own existing right of way to WCC. The ALJ held that the evidence demonstrates that Transco agreed not to object when WCC sought to obtain its own right of way from landowners along Transco's existing right of way. The ALJ found that a revenue credit was not appropriate because the parties did not demonstrate that existing customers specifically funded the arrangement between Transco and WCC.

124. In its March 26 Order on initial decision, the Commission affirmed the ALJ's decision. The Commission found that while it is true that the transaction is between affiliates and that may have been an important factor in allowing WCC to go forward in the communications business, there was no showing that the assets paid for by ratepayers, namely Transco's easement for installing and operating a pipeline, was being used and therefore a credit was not warranted.

125. North Carolina requested rehearing on this issue. North Carolina asserts that the Commission repeats the ALJ's error of placing the burden of proof on the parties seeking a revenue credit. North Carolina argues that in a section 4 rate increase proceeding the burden of proof is on the pipeline. North Carolina asserts that even if the burden of proof rested with the interveners, that burden was met. North Carolina contends that its evidence included extensive analysis of the market value of these transactions and concluded that the pipeline had not received the measure of compensation it would have received in an arm's length transaction. North Carolina states that the Commission stated that "there is no showing that the assets paid for by ratepayers, namely Transco's easement for installing and operating a pipeline, are being used which would warrant a credit." North Carolina states Transco was to provide the property rights and land required to construct attendant facilities necessary to operate the fiber optic facilities, such as sites for regeneration facilities, optical amplifier facilities, and terminal/junction

facilities. (Ex. T-56, 1997 Agreement). In addition, North Carolina states that Transco was to maintain the telecommunications right-of way and to perform numerous functions necessary for the operation of the telecommunication system. North Carolina states that like the initial decision, the Commission's decision cites the alleged "benefit to customers" accruing from the two dark fibers as a reason for denying a credit to customers for the affiliate's free use of Transco's right of way. North Carolina submits that the two dark fibers are a benefit to Transco's customers only if they create a net benefit, which has not been determined, since no valuation studies were offered into evidence by Transco. Accordingly, North Carolina requests that the Commission grant rehearing and provide an appropriate remedy to Transco's ratepayers.

Commission Decision

126. The Commission rejects North Carolina's argument that the burden of proof was inappropriately shifted to the proponents of a revenue credit in this proceeding. Since this was a section 4 rate increase proceeding, the burden of proof was on Transco to establish that it rates were just and reasonable. Pursuant to section 154.301(c) of the regulations, a pipeline "must be prepared to go forward at a hearing and sustain, solely on the material submitted with its filing, the burden of proving that the proposed changes are just and reasonable." While Transco has the ultimate burden under section 4, once Transco submitted its case-in-chief supporting its proposed rates, the interveners were required to come forward with evidence raising a serious doubt about Transco's prudence in not seeking greater compensation from WCC.[51] The ALJ determined that the proponents of the revenue credit had not done so. The ALJ never indicated that this issue was being analyzed under section 5 with the burden of proof being placed on North Carolina and the other parties. Rather, the ALJ found that the parties had not "marshaled enough evidence for me to convincingly conclude that the agreement resulted in an unjust or unfair circumstance with the current ratepayers shouldering more of the cost than they should." I.D. at P 336. As Transco correctly pointed out in its brief opposing exceptions, "the simple fact of the matter was that their evidence did not persuasively challenge

[51] *See, U-T Offshore System*, 69 FERC ¶ 61,109 at 61,085 (1994) stating "U-TOS bears the initial burden and the shippers' burden only comes into play to rebut U-TOS' case-in-chief. This is consistent with the Natural Gas Act." *See also, Indiana Municipal Power Agency v. FERC,* 56 F.3d 247 at 253 (D.C. Cir. 1995) which states that the prudence standard "requires a complainant alleging that some aspect of a utility's rate or practice is unjust or unreasonable to present evidence sufficient to raise serious doubt that a reasonable utility manager, under the same circumstances and acting in good faith, would not have made the same decision and incurred the same costs."

Transco's support of its filed-for cost-of-service, which cost-of-service had thereafter been largely settled with only this one cost issue reserved for hearing." Transco Brief Opposing Exceptions at 77.

127. Here Transco has satisfied its ultimate burden of showing that its agreement with its affiliate was reasonable. There is nothing in the record to justify finding that a reasonable utility manager would not have made the same decisions. As the Commission found in the prior order, Transco's easements that it negotiated and purchased from third party landowners permitted Transco only to install, operate and service its own pipelines, and nothing else. The easements did not include the right to install fiber optic wires. Thus, WCC had to negotiate and pay for its own right of way from landowners. Transco simply agreed not to object to WCC seeking its own right of way within Transco's right of way in exchange for the dark fibers.

128. North Carolina argues that jurisdictional assets were used because the agreement between Transco and WCC contained a provision that Transco was to provide property rights and land for certain attendant facilities and required Transco to maintain the right-of way. While it is correct that the agreement between Transco and WCC included a provision that Transco would provide WCC with certain property rights and land for attendant facilities, the evidence presented in this case focused only on the value of WCC's use of the Transco right-of-way. As the ALJ found, Transco did not give WCC its own right-of-way but simply agreed not to object to WCC seeking its own right-of-way along the existing pipeline right of way. In fact, North Carolina's own witness stated that neither she nor the Staff witness "ascribed any specific value to the property rights Transco made available to WCC for purposes of constructing the land stations along the fiber optic route" Ex. UN-2 at 9. North Carolina also fails to mention that while the agreement between Transco and WCC provides that Transco was to maintain the right of way, Transco was to receive compensation for such maintenance. WCC specifically agreed to pay Transco $1500 per month of right of way mowing costs and agreed to reimburse Transco for actual maintenance costs associated with the portion of the right-of-way occupied by the fiber optics. Ex. T-55 at 9 and Ex. T-56 at 3.

129. Finally, the Commission rejects North Carolina's argument that the Commission erred in stating that there were benefits to Transco's customers. North Carolina asserts that Transco did not establish a net benefit to customers through valuation studies. Since North Carolina and the other proponents of a revenue credit did not persuasively challenge Transco's support for its cost-of-service on this issue, it could rely on its case-in-chief and was not required to further support its case with specific evidence. Transco did, however, show that by lighting the fibers it obtained a high quality fiber optic system with ample capacity for its current and projected telecommunications needs. Transco also showed that by entering the agreement with WCC it was able to obtain the use of a fiber optic system which it estimated would cost $24-60 million if it had to obtain its own

right of way from landowners since the existing Transco right-of-way did not include the right to lay cable. Ex. T-55 at 7. The initial decision as well as the Commission's March 26, 2004 did not solely rely on the benefit to customers for its decision. As the initial decision found it was not "demonstrated that existing customers have, in any way, specifically funded the arrangement between Transco and WCC." I.D. at P 333. Once that finding was made, any additional analysis concerning the revenue credit was unnecessary. The ALJ and the Commission simply observed that, in addition to not being funded by ratepayers, the arrangement between Transco and WCC gave Transco "a valuable asset, enhancing Transco's jurisdictional services." I.D. at P 334. Accordingly, for this reason discussed above, North Carolina's request for rehearing is denied.

<u>The Allocation of Certain Storage Costs Between and Among Storage and Transportation Services</u>

130. The issue before the ALJ was how certain storage costs should be allocated among storage and transportation services. Transco owns both supply area and market area storage facilities. In the supply area Transco owns the Hester, Eminence and Washington storage fields in Louisiana and Mississippi. Transco currently allocates 15 percent of the cost of Washington storage, 75 percent of the cost of Hester storage, and 60 percent of the cost of the Eminence field to transportation customers. In the market area, Transco partially owns the Leidy and Wharton fields and allocates approximately 15 percent of those costs to certain transportation customers. In addition, Transco owns and operates an LNG storage facility in Carlstadt, New Jersey.

131. AGL (joined by KeySpan and others) argued since Transco's tariff permits transportation customers to create imbalances, Transco must be constantly ready to manage these imbalances through its use of storage, and that it is unjust and unreasonable not to allocate more of the cost of those storage facilities to transportation customers. AGL's witness Yardley conducted a study of Transco's storage operations and advocated an increase in the amount of storage costs allocated to transportation customers.

132. Transco and Staff argued that AGL relied on a flawed analysis of Transco's storage usage to draw its conclusions that Transco's current method of allocating storage costs to transportation customers is unjust and unreasonable.

133. The ALJ found that Transco effectively demonstrated that the analysis upon which AGL relied to reach its conclusions was flawed and therefore the conclusions were not valid. The ALJ found that AGL did not demonstrate that Transco's current allocation of storage costs to transportation customers is unjust and unreasonable, thus failing the carry its necessary burden under section 5. Furthermore, the ALJ found that Transco's method obtains results that are consistent with the Commission's preferred Equitable method for allocating storage costs.

134. The Commission affirmed the ALJ for the reasons stated in the initial decision. The Commission agreed with the ALJ that AGL had not met its section 5 burden of showing that Transco's current allocation methodology results in unjust and unreasonable rates. The Commission agreed with the ALJ who had faulted AGL's analysis of Transco's storage usage and had found conclusions based on that analysis to be questionable.

135. Indicated Shippers argues on rehearing that the Commission erred in failing to address and adopt Indicated Shippers' proposal that all storage costs that are allocated to transportation be allocated on a volumetric basis among all system and incremental transportation services, including the transportation component of bundled services. Indicated Shippers states that Transco allocates Hester storage costs to system transportation services, but not to incremental transportation services or to the transportation component of bundled storage services. Indicated Shippers states that Staff agrees with its position that Hester costs should be allocated to incremental transportation customers and to the transportation component of bundled storage services, and that the only parties opposing that position, Transco and Energy Associates stated at hearing that they no longer opposed Indicated Shippers and Staff's proposal. Leidy, Wharton, and Washington storage costs are allocated to system and incremental customers but not to the transportation component of bundled storage services. Indicated Shippers argues that since storage is used to support all transportation services, all services should bear their relevant share of those costs. Furthermore, the same transmission facilities are used to provide bundled services as to provide system transportation services.

136. The Commission grants rehearing of Indicated Shippers' position that storage costs should be allocated not only to system transportation services but also to both incremental transportation services and to the transportation component of bundled storage services on a volumetric basis. Transco allocates storage costs to system transportation services on a volumetric basis and must do the same with incremental and bundled storage services. The Commission concurs with Indicated Shippers that all of Transco's transportation and bundled storage services are no-notice services and that storage is used to support these services and that the same facilities are used to support all three services. Therefore, to the extent that Transco allocates storage costs to system transportation services, it must also do so on the same basis to incremental transportation services and the transportation component of bundled services.

137. On rehearing, KeySpan argues that the Commission erred in failing to find Transco's existing allocation of storage costs to transportation customers to be unjust, unreasonable, and unduly discriminatory. KeySpan states that while in its March 26 Order the Commission found that AGL and KeySpan had failed to demonstrate that the overall amount of storage costs allocated to system transportation is unjustly and

unreasonably low, the Commission did not explicitly address the issue of whether the existing allocation is unduly discriminatory in terms of which storage costs are included in the overall amount allocated to system transportation. Keyspan points out that Transco currently allocates to all transportation services 15 percent of the costs of the Washington storage field used to provide Rate Schedule WSS storage service and the Transco-owned portion of the Wharton and Leidy storage fields used to provide Rate Schedule GSS storage service. However, Transco does not allocate to transportation services any of the costs of the storage services it purchases from third parties to perform storage service under Rate Schedules GSS(DTI), LSS, SS-2 and S-2. KeySpan argues that this different treatment of different storage fields is unduly discriminatory from the storage customers' perspective.[52] KeySpan states that Transco operates all its storage facilities, both owned and purchased, to manage the hourly and daily flexibility afforded to transportation customers. KeySpan argues that to allocate costs associated with some storage facilities to transportation services but not other, similarly situated storage services, is unduly discriminatory.

138. While Keyspan does not contest the March 26 Order's finding that its witness had not supported his proposal to increase the overall amount of storage costs allocated to transportation service to between 22.5 and 26.2 percent, KeySpan argues that the overall allocation of storage costs to transportation services as a result of the March 26 Order is unreasonably low. That is because with the unbundling of Emergency Eminence Withdrawal Service costs associated with the Eminence will no longer be allocated to transportation services. In addition, the Commission has approved the allocation of some of the storage costs to the transportation component of bundled services, thereby decreasing the per unit allocation to transportation customers.

139. In its March 26 Order the Commission upheld the ALJ's finding that AGL's (as joined by KeySpan) analysis of Transco's storage operation was flawed in part because Keyspan assumed that storage benefits only transportation customers. KeySpan argues that witness Yardley made it clear that the use of storage for system purposes benefited storage customers as well as transportation customers. KeySpan states that its failure to analyze how line pack, compression and other tools used for system operations benefit storage customers provides no basis for the Commission to conclude that Transco's existing storage cost allocation is not unjust and unreasonable. KeySpan argues that the Commission should determine that an increased allocation of 15 percent of storage costs of Rate Schedules GSS (DTI), LSS, SS-2 and S-2 to transportation services would be just and reasonable.

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[52] Transco allocates about 75 percent of the costs of its Hester storage field to transportation services. Keyspan does not contest that allocation.

140. KeySpan raises valid points regarding the disparate treatment of different storage fields for the purpose of allocating storage costs to transportation services. Similarly situated customers must be treated similarly unless there are factual differences present which would warrant different treatment. As KeySpan points out, there is ample record evidence in this proceeding that Transco operates all of its storage facilities, both owned and purchased, on an integrated basis to provide the hourly and daily flexibility that its transportation customers take advantage of. Transco's witness Cunningham testified that "Transco operates all of its facilities, including the Leidy Line and the storage connected to it, as a single, fully integrated system. Transco uses all of its facilities to serve all of its customers."[53] In addition, a Transco response to a Keyspan Data request[54] stated similarly:

> QUESTION KSE-1-54:
>
> Does Transco utilize both the storage services purchased from Dominion Transportation and National Fuel Gas Supply Corporation in connection with Rate Schedule LSS to provide daily and hourly flexibility to services other than Rate Schedule LSS?
>
> RESPONSE:
>
> Yes. Transco operates its system on a totally integrated basis, including storage and line pack, to manage hourly swings, no-notice service and shipper imbalances for all storage and transportation customers.

There can be little question that Transco does use the facilities associated with Rate Schedules GSS (DTI), LSS, SS-2 and S-2 to provide flexibility to both storage and transportation customers without allocating any of the costs associated with those facilities to transportation customers. While similarly situated customers of other storage rate schedules receive the benefit of having a portion of their costs allocated to the transportation customers which benefit from use of those storage facilities, customers under the above listed rate schedules do not receive that benefit. This is unduly discriminatory treatment of those customers. The Commission grants rehearing in part on this issue and directs Transco to submit a proposal to allocate costs associated with all storage facilities to transportation customers.

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[53] Ex. T-13 (LGC-1) at 6.

[54] Ex. DPY-3 at 8.

141. Keyspan also argues on rehearing that the level of storage costs allocated to transportation customers is unreasonably low, in large part because the March 26 Order directed the unbundling of the Emergency Eminence Withdrawal Service and permitted the FT customers with entitlements at Covington to choose whether to continue receiving the service, with Transco placed at risk for any Emergency Eminence Withdrawal Service capacity that remains unsubscribed following the unbundling. Keyspan contends that this causes a shift of approximately $13.5 million away from transportation customers. Earlier in this order the Commission modified the March 26 Order's ruling. While the Commission is continuing to require Transco to offer the Emergency Eminence Withdrawal Service on an unbundled basis, it is requiring the FT customers to continue to take that service for the remainder of their current contracts. Therefore the $13.5 million of Eminence costs previously allocated to transportation customers under Rate Schedule FT will remain allocated to those contractually entitled to that service at least until their current contracts expire. With that premise removed, KeySpan has not demonstrated that Transco's allocation of storage costs to transportation customers is unreasonably low, and the Commission denies rehearing on the issue of the overall level of storage costs allocated to transportation services. The Commission directs Transco to reallocate the approximately $6.8 million in storage costs currently allocated to transportation services from storage services as advocated by KeySpan and listed in Exhibit DPY-19.

Allocation of Costs to Transco's Incrementally Priced Transportation Services and to Transco's Bundled Storage Service

142. Transco currently allocates Operation and Maintenance (O&M) and Administrative and General (A&G) costs among customers using factors based on demand Dth-miles and commodity Dth-miles, with the mileage component being contract path miles. Transco increases the allocation to incremental and GSS services by ten percent and decreases the allocation to non-incremental services by a like amount. Transco then allocates O&M costs among rate zones using Dth-miles, and allocates A&G costs among rate zones using contract demand and commodity volumes.

Allocation of O&M Expenses to Incremental Services

143. Staff argued before the ALJ that Transco's allocation of O&M costs is unjust and reasonable and that since O&M costs are direct costs, they should be directly assigned wherever possible. Staff advocated a bifurcation of the allocation process by first directly assigning O&M costs between the incremental transportation sub-function and the non-incremental sub-function. Once that is accomplished, Staff agreed with Transco's use of Dth-miles to allocate O&M costs across rate zones. Staff conceded that Transco does not currently maintain its accounting records so that O&M costs can be directly assigned to

the proper sub-functions, but that Transco should be required to maintain its records in the future so as to be able to directly assigned O&M costs.

144. Transco maintained that it currently cannot collect the data required for direct assignment of O&M costs. Transco argued that no one method for allocating O&M costs is the "correct" method, and its methodology which has been in place for years is just and reasonable. Transco further argued that the method which Staff advocated is unworkable and incompatible with the way Transco's system operates.

145. The ALJ found Transco's arguments unpersuasive and ruled in favor of the Staff position. The ALJ directed Transco to establish accounting systems to capture the cost data necessary to directly assign O&M costs between incremental and non-incremental shippers.

146. The Commission ruled that since Transco does not currently account for O&M costs in a manner that would permit direct assignment, the most reasonable approach for this case is to permit Transco to allocate costs based on its current Dth-mile method. However, the Commission affirmed the ALJ's finding that Transco must modify its accounting for O&M costs to permit direct assignment of those costs to the maximum extent possible in future cases.

147. In its petition for rehearing, Transco argues that the integrated nature of its system operations precludes direct assignment of O&M costs to individual services. Transco argues that Staff has not met its burden to demonstrate that Transco's existing allocation methodology is unjust and unreasonable, and that the Commission incorrectly relied on a Michigan Gas Storage Company[55] in finding that Transco must directly assign O&M costs.

148. As stated in the March 26 Order, the Commission prefers direct assignment of O&M costs where possible. In the post Order No. 636 environment, matching cost incurrence with cost responsibility as closely as possible helps to ensure that services are priced as they should be, and furthers the Commission's goal of competition in the industry. The Commission recognized that in this case it is not possible for Transco to directly assign O&M costs, but that Transco must modify its accounting treatment of these costs so that in the future it can directly assign costs where possible. To do otherwise results in a mismatch of cost incurrence and cost responsibility, the subsidization of one group of customers by another group and thus, unjust and

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[55] 87 FERC ¶61,038 (1999)

unreasonable rates. Staff has demonstrated this to be the case here and therefore met its burden of proof.

149. Although the Michigan Gas case which the Commission relied on in part in reaching its conclusions in the March 26 Order involved allocation of costs that the parent company incurred in providing services to the subsidiary, the company argued that it could not directly assign the costs because of the integrated nature of its operations, much as Transco has argued that the integrated nature of its operations prohibits direct assignment of O&M costs. The Commission stated in the Michigan Gas case that while it would not require Michigan Gas to directly assign costs in that case, in future rate cases Michigan must directly assign those costs. The Commission made the same finding in the instant Transco case, and Transco has not presented a persuasive argument to the contrary on rehearing. In addition, the Commission's 1999 Pricing Policy Statement[56] and §154.309 of the Commission's regulations requires maintenance of separate accounts for incremental facilities so that costs can be more closely matched to the services for which they were incurred. The Commission denies Transco's request for rehearing of the Commission finding on the issue of allocation of O&M costs to incremental and non-incremental customers.

Allocation of A&G Costs

150. The issue before the ALJ was how to allocate A&G costs between incremental and non-incremental shippers. Currently, Transco allocates A&G costs based on Dth-mile factors. Staff argued that this results in rates that are unjust and unreasonable because incremental shippers are subsidized by system shippers under that allocation methodology. Staff and Indicated Shippers argued that the Commission has found in numerous instances that A&G costs are not mileage sensitive and should not be allocated on a mileage basis. Staff argued that the K-N method is the Commission's long-preferred methodology for allocating A&G costs and the methodology which results in just and reasonable rates. Under the K-N method, A&G costs are allocated on the basis of plant ratios and labor ratios. However, since Transco has not identified direct labor costs associated with incremental facilities, Staff advocated allocating A&G costs based on gross plant factors. Staff maintained the result of such an allocation is that the incremental shippers would begin to shoulder their fair share of the burden of A&G costs and system shippers would no longer subsidize incremental shippers. Indicated Shippers advocated allocating A&G costs on a volumetric basis.

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[56] *Certification of New Interstate Natural Gas Pipeline Facilities*, 88 FERC ¶ 61,227 (1999), *order clarified*, 90 FERC ¶ 61,128 (2000), *clarified*, 92 FERC ¶ 61,094 (2000).

151. The ALJ found that the Commission has established in numerous proceedings that A&G costs do not vary with miles of haul and thus should not be allocated using mileage-based factors. In addition, the ALJ found that the Commission has a clear preference for the K-N methodology for allocating A&G costs. The ALJ ruled that continuing to permit system shippers to subsidize incremental shippers would clearly be unjust and unreasonable and a change to Transco's method for allocating A&G costs is necessary to remedy this inequity. The ALJ also concluded that there is no basis for concluding that A&G costs are significantly related to throughput, and therefore rejected Indicated Shippers' position that Transco's A&G costs should be allocated on a volumetric basis.

152. The ALJ found that Staff's proposal is the most feasible method to allocate A&G costs, and is the Commission's preferred method, and directed Transco use the K-N method to allocate A&G costs using the gross plant procedure advocated by Staff. The ALJ also directed Transco to establish methods to collect data that will enable Transco to directly assign O&M costs and thus utilize both plant and labor ratios in future allocations of A&G costs.

153. The Commission affirmed the ALJ for the reasons stated in the initial decision. The Commission stated that Staff and Indicated Shippers demonstrated that Transco's Dth-mile basis for allocating A&G costs is unjust and unreasonable because there is no significant relationship between incurrence of A&G costs and length of haul. The Commission stated its policy that A&G costs should be allocated based on direct labor ratios for labor-related costs and plant ratios for plant-related costs. In addition, the Commission ruled that where there are no direct labor ratios available, plant ratios are acceptable surrogates for the full application of the K-N methodology.

154. On rehearing Transco argues that the Commission's finding was not based on reasoned decision making. Transco states that its existing allocation methodology is a long-settled practice and that no opponent has demonstrated that it is unjust and unreasonable. Transco argues that there is no evidence that there is a connection between gross plant associated with services and the incurrence of A&G costs. Transco states that replacing its mileage-based allocation with a gross plant allocation results in the allocation of more A&G costs to newer, more expensive facilities without any demonstration that there is a correlation between the two.

155. Indicated Shippers argues that while the Commission correctly directed Transco to change its current Dt-mile method for allocating A&G costs between incremental transportation and system transportation services, the Commission erred in replacing the Dt-mile method with the KN method rather than with the volumetric method based on throughput. Indicated Shippers argues that while the K-N methodology is the Commission's preferred methodology for allocating A&G costs among the transmission,

storage and gathering functions, there is no reason to apply that methodology when allocating costs between system and incremental shippers within the transmission function. Indicated Shippers argues that the K-N methodology results in less cost being allocated to incremental shippers than does a volumetric allocation.

156. Transco's witness Briden used a regression analysis to support allocation of A&G costs based on a Dth-mile basis, and Transco argues that there is no evidence to support the allocation of A&G costs based on gross plant. However, Staff witness Burtt duplicated Dr. Briden's study using Dth-miles, throughput, and gross plant, and concluded that there is at least as great a correlation between incurrence of A&G costs and gross plant as there is for Dth-miles and throughput. Thus, there is evidence as presented by Staff that there is a basis upon which to conclude that gross plant is a valid allocation factor for A&G costs. Likewise, the Commission has stated its preference allocating A&G costs between incremental and system shippers based on the K-N methodology. The fact that this results in less cost being allocated to incremental shippers than does a volumetric allocation does not in itself invalidate the K-N method. Likewise, the fact that this results in more costs being allocated to newer and more expensive facilities does not in itself make that allocation methodology invalid. As both the ALJ and the Commission have point out, cost allocation is not an exact science, but the Commission has stated both that there is no relationship between A&G cost incurrence and length of haul, and that the Commission has a preference for allocating A&G costs to functions and sub-functions based on the K-N method. Neither Transco nor Indicated Shippers have presented arguments on rehearing that persuade the Commission otherwise. The Commission denies rehearing of this issue.

<u>The Allocation of A&G Costs to Transco's LNG Service</u>

157. Transco currently allocates A&G costs among its services utilizing the K-N method with the exception of its allocation to the LNG services under Rate Schedules LG-A, LNG, and LNG-R. Transco makes two adjustments to the K-N method by (1) eliminating some of the A&G expense accounts from the allocation process, and (2) eliminating some of the direct labor from the calculation of the direct labor allocation factor. Staff argued that such adjustments result in a $2.1 million subsidization of LNG customers by other system customers. Transco and NUI argued that Transco's existing allocation methodology has been used for over thirty years and that Staff has not shown the practice to be unjust and unreasonable. The ALJ found that the Staff had demonstrated that Transco's existing methodology results in unjust and unreasonable rates to general system customers because they are subsidizing the LNG services.

158. In the March 26 Order, the Commission affirmed the ALJ on this issue for the reasons stated in the initial decision. The Commission stated that the increased emphasis on competition in the marketplace since restructuring under Order No. 636 dictates that

services be priced to reflect the true cost of providing those services as closely as possible, and that excluding costs in this instance results in rates that are unjust and unreasonable.

159. On rehearing, Transco basically reiterates arguments it used before the ALJ and before the Commission in exceptions to the ALJ's decision. Transco argues that Staff relied on the need for consistency in the application of the K-N methodology to arrive at its position, that Transco's current allocation methodology is an established practice, and that Staff did not show that this allocation methodology results in unjust and unreasonable rates. The Commission denies rehearing of this issue for the reasons stated in the March 26 Order. The Commission advocates pricing services in a manner that reflects the true cost of providing those services wherever possible. Excluding cost categories from certain groups of customers, even though those customers benefit from the incurrence of those costs, results in a subsidization of those customers by other customer groups. The Commission determined in its initial order on the ALJ's decision that this results in rates for those other customers that are unjust and unreasonable, and Transco has not presented any new arguments to the contrary in its petition for rehearing. Therefore, the Commission denies rehearing.

Including the Destin Shubuta Interconnect and Other Receipt Points as Part of the Station 85 Pooling Point

160. The issue here involves Transco's policies regarding access to its pooling point at Station 85 in Zone 4. Station 85 is the only physical pooling point in Transco's Zone 4 and only shippers with contractual rights to make physical deliveries at the point may use the pooling service. The Mobile Bay Project connects with Transco's mainline at Station 85. At the time it was placed into service, the Mobile Bay Project was the only major connection to a supply area in Zone 4. That changed when Destin Pipeline went into service in 1999. Destin connects with Transco at Shubuta, Mississippi, approximately 27 miles upstream of Station 85.

161. BP argued that the way Transco operates the Station 85 pooling point is unjust and unreasonable for a number of reasons, among them, that Transco accords unduly preferential treatment to its affiliate TEMCO, that Transco charges a transportation rate for delivering gas to the pool as well as a one for taking gas away from the pool, and that unlike other major pipelines, Transco does not provide for paper pooling at the Station 85 pool.

162. Transco argued that it has designed all of its pooling consistently across its system, that BP has not shown that other shippers will make use of the pooling point at Station 85, and that BP is merely attempting to avoid the Zone 4 transportation rate and gain free transportation to the pooling point.

163. The ALJ found that BP had met its section 5 burden by demonstrating that Transco's existing pool at Station 85 is unjust and unreasonable because it is unduly discriminatory. The ALJ found that Transco does not treat all points consistently across its system and only at the Zone 4 pool can a shipper access the pool without paying the zone rate for the zone in which the pool is located. In addition, contrary to Commission policy, Transco charges a transportation charge to shippers bringing gas to the Zone 4 pool and another transportation charge to transport from the pool to downstream points. The ALJ found that this double charging is unjust and unreasonable and impedes competition.

164. The ALJ took note of the fact that Transco has an affiliate relationship with TEMCO, the only shipper in Zone 4 that does not pay the IT rate for transportation to the pooling point. The ALJ stated that Transco has mischaracterized BP's motives in seeking access to the Station 85 pooling point. The ALJ found that, in addition to being unjust and unreasonable, the Station 85 pool arrangement is contrary to Commission policy. Commission policy is that there should be a charge into or out of a pool, but not both. Transco charges both. Shippers should have access to a pool from multiple receipt points, and Transco permits only one.

165. The ALJ found that the virtual pooling proposal which BP puts forth is a just and reasonable alternative to Transco's arrangement. It will promote competition by giving more buyers and sellers access to the Zone 4 pool. It will infuse more natural gas supplies, suppliers and marketers into the pooling process, thus broadening the market.

166. The Commission found that the ALJ erred in finding that Transco operates its Station 85 pool differently than it operates other pools. The Commission found that while Mobile Bay Pipeline shippers do not pay the Zone 4 IT rate to get gas to the pooling point at Station 85 as other shippers do, they do pay the Zone 4A/4B IT rates. The Commission found that the rate differential resulting in lower rates for Zones 4A/4B is due to Transco's rate design which is not at issue in this case. The Commission reversed the ALJ's finding that Transco's charging one transportation charge for delivery into the pool and another for delivery from the pool is unjust and unreasonable. The Commission cited a previous decision in a Transco case as support for its conclusion. The Commission also reversed the ALJ's finding that Transco accords unduly preferential treatment to its affiliate TEMCO. The Commission stated that there are other, non-affiliated shippers on Mobile Bay Pipeline which receive the same treatment that TEMCO receives.

167. On rehearing BP argues that the Commission erred in several areas. BP states that the Commission erred in concluding that the Station 85 pool in Zone 4 does not operate differently from other pools on Transco's system. Shippers accessing the Station 85 pool from Zones 4A and 4B do not pay a Zone 4 transportation rate while all other shippers

accessing that pool do. Shippers in other Transco rate zones accessing pooling points from a lateral must pay the zone transportation rate in addition to the lateral rate. BP argues that Transco's operation of the Station 85 pooling point is unjust and unreasonable and accords unduly preferential treatment to TEMCO.

168. BP argues that the Commission erred in concluding that Transco's pool at Station 85 does not violate the proscription against double transportation charges to and from the pool. BP points that Order No. 587-F permits a transportation charge into or out of a pool, but not both. Transco charges two charges for access to a pool, one to transport gas to the pool and another to transport gas away from the pool.

169. BP states that the Commission erred in failed to address evidence that the Station 85 pool is uncompetitive, ineffective and inefficient, in violation of other Commission pooling regulations and policies. Transco erects economic barriers to shippers, other than Mobile Bay Pipeline shippers, who wish to access the pool by charging the Zone 4 transportation rate for deliveries to and from the pool. BP argues that Transco denies all shippers access to at least one pool in violation of NAESB requirements because there is transportation capacity available because all of Transco's firm capacity in Zone 4 is fully subscribed. BP states that this situation can be remedied by Transco implementing paper pooling. BP argues that the Station 85 pool does not include multiple receipt points in contradiction of the NAESB definition of a pool. BP and other shippers are denied the benefits of the competition that ensues when gas supplies can be aggregated from multiple receipt points. BP states that this situation also can be remedied by the institution of paper pooling.

170. BP argues that the Commission erred in failing to find that the Station 85 pool does not result in preferential treatment of Transco's affiliate, TEMCO. BP states that TEMCO is the largest shipper on the Mobile Bay Pipeline and is granted preferential treatment over other from other receipt points in Zone 4 because TEMCO enjoys free access to the Station 85 pool. BP states that nowhere in the record did any party rebut BP's testimony that TEMCO receives favorable treatment.

171. BP argues that the Commission erred in failing to address the fact that Transco's pooling structure is inconsistent with pooling on all other similarly situated pipelines. The ALJ found that BP paper pooling proposal is consistent with the paper pooling on many other similarly situated pipelines, and is therefore just and reasonable.

172. The Commission grants rehearing and affirms the ALJ on the issue of Transco's pooling point at Station 85. The Commission finds that Transco operates its Station 85 pooling point differently from the way it operates all other pooling points on its system. Shippers accessing pools in all rate zones must pay the transportation rate for that zone. Shippers in Zone 4 are no exception. However, Transco does not charge a Zone 4

transportation charge to shippers accessing the Station 85 pooling point from Mobile Bay Pipeline in Zone 4A/4B. This is different from the way Transco charges shippers at all other pooling points. As BP points out, Zone 4A/4B is a separate rate zone just as Zone 3 is a separate rate zone. Shippers in Zone 3 who wish to access the Station 85 pooling point must pay the Zone 4 transportation rate in addition to the Zone 3 rate in order to access the pool. However, the shippers in Zone 4A/4B, of which Transco's affiliate TEMCO is the largest, do not pay the Zone 4 rate. Transco's own witness Cunningham conceded this point. The Commission finds that Transco's operation of the Station 85 pooling point to be unjust and unreasonable because it is operated differently than all other pooling points on Transco's system.

173. Transco does indeed assess a transportation charge for gas supplies moving to the pool and a separate charge for gas supplies leaving the pool, as BP has alleged. This fact was affirmed by Transco's witness Cunningham. Current Commission policy as enunciated in Order No. 587-F is to permit a transportation charge to a pool or from a pool, but not both. Transco in effect double charges in contravention of this policy. In the March 26 Order the Commission relied on a Transco decision which took place in 1996 and which predates the current policy. The Commission directs Transco to comply with Order No. 587-F and cease charging two charges for access to the pool at Station 85.

174. The Commission affirms the ALJ on the issue of the lack of competition at the Station 85 pool. As BP argues, the restrictions placed on shippers which effectively deny them use of the pool are anti-competitive and result in contravention of Commission policy. The lack of physical capacity to transport gas to Station 85 coupled with the fact that the pool is operated as a physical pool only, restricts effective access to the pool to the Mobile Bay shippers, with TEMCO being the largest of those shippers. This arrangement, coupled with the uneconomic charges assessed to shippers other than Mobile Bay shippers, also restricts the receipt points to one rather than the multiple receipt points that the Commission envisions in a competitively functioning pool. Transco's Rate Schedule Pooling defines pooling as the aggregation of gas from multiple physical and/or virtual receipt points to a single physical or virtual point. However, in the case of the Station 85 pool, there are physical and economic barriers which prevent this. Transco is directed to remove economic barriers which inhibit the availability of pooling at Station 85 to non-Mobile shippers and which accord an unfair competitive advantage to Mobile Bay shippers.

175. The very high Herfindahl-Hirshman Index (HHI) of 4423 which BP presented as evidence and which was not disputed, indicates that there is very little competition at the pooling point. BP also presented evidence that the introduction of paper pooling on Transco's system would reduced the HHI to 1931. While this index is still higher than an index of 1000 which indicates a competitively functioning market, it would be a vast improvement over the situation which currently exists. The ALJ found that paper pooling

would bring more gas supplies, suppliers and marketers in to the pooling process, and would enhance the competitive environment considerably. The Commission concurs with the ALJ for the reasons stated in the initial decision and directs Transco to institute paper pooling at the Station 85 pooling point.

176. The Commission finds that TEMCO does receive preferential treatment by receiving access to the Station 85 pool without paying an additional Zone 4 rate, unlike shipper from other receipt points. Although TEMCO is not the only shipper receiving this treatment, it is by far the largest, having subscribed 100 percent of the Zone 4B firm capacity and 58 percent of the Zone 4A firm capacity. TEMCO's affiliate relationship with Transco cannot be ignored, and the Commission finds that TEMCO receives unduly discriminatory treatment vis-a-vis other Zone 4 shippers.

177. Finally, the ALJ correctly observes that BP's paper pooling at Station 85 is consistent with the pooling operations conducted by a number of other major pipelines that are similarly situated to Transco. BP provided evidence at the hearing and on brief that there are numerous pipelines which operate paper pooling points like BP advocates for Transco's Station 85, and the Commission has found them all to be just and reasonable. The Commission finds that the ALJ has correctly held that Transco's current pooling arrangement at Station 85 is unjust and unreasonable and unduly discriminatory and directs Transco to institute paper pooling.

The Commission orders:

(A) The requests for rehearing are granted and denied as discussed above.

(B) Transco is directed to submit a filing to comply with the directives of this order within 30 days of the date of this order. Transco is directed to include supporting workpapers in both hard copy and electronic versions.

By the Commission.

(S E A L)

Linda Mitry,
Deputy Secretary.

Appendix A

Table 1

Example Impact on Revenue Responsibility of Rolling-in Small Project

		Pipeline Revenue Requirement	Billing Determinants	Rate	Percent impact
		a	b	c	d
1	Existing System	$400,000,000	50,000,000	$8.00	
2	Incremental	$10,000,000	100,000		Customer Revenue Responsibility Impact
3	Rolled-in	$410,000,000	50,100,000	$8.18	2.30%
		Rolled-in Revenue Responsibility			Responsibility for Incremental
4	Existing System	$409,181,637		$8.18	91.82%
5	Formerly Incremental	$818,363		$8.18	8.18%