

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 Nos. RP96-359-026 and
RP96-359-027

ORDER ON COMPLIANCE AND CLARIFICATION

(Issued November 3, 2005)

1. On August 2, 2005, Transcontinental Gas Pipe Line Corporation (Transco) filed a request for clarification or, in the alternative, rehearing of a July 5, 2005 Commission Letter Order (July 5, 2005 Order).¹ In the July 5, 2005 Order, the Commission accepted an amendment to a negotiated rate agreement between Transco and Carolina Power & Light Company (Carolina), subject to two conditions, one of which required Transco to offer, as appropriate, the same pressure range in the amendment to other shippers. On August 4, 2005, Transco submitted a filing to comply with the July 5, 2005 Order. On August 16, 2005, Piedmont Natural Gas Company, Inc. (Piedmont) filed a response, protesting the compliance filing and the request for clarification as to the pressure requirement. On August 30, 2005, both Carolina and Transco filed answers. As more fully discussed below, the Commission grants Transco's requested clarification, further clarifies the rights of Piedmont and other shippers for access to the Iredell delivery point, and accepts the compliance filing. The rehearing request is dismissed as moot.

I. Background

2. On June 6, 2005, Transco filed an amendment dated May 25, 2005, (May 25, 2005 amendment) to a May 4, 2001 negotiated rate service agreement under Rate Schedule FT (May 4, 2001 service agreement) between Transco and Carolina.² The May 25, 2005 amendment revised Exhibit B to the May 4, 2001 service agreement which set forth the

¹ Transcontinental Gas Pipe Line Corporation, 112 FERC ¶ 61,030 (2005).

² Transco's May 4, 2001 service agreement with Carolina (contract no. 1042064) was filed in Docket No. RP96-359-008 and accepted by a Director's letter order on April 17, 2002.

points of delivery and applicable delivery pressures under the service agreement. The existing Exhibit B of the May 4, 2001 agreement reflected two delivery points: Transco's Compressor Station 160 at milepost 1369.44 on its mainline in Rockingham County, North Carolina and Compressor Station 165 at milepost 1412.99 on its mainline in Pittsylvania County, Virginia, with maximum daily quantities (MDQ) of 70,000 dth/d and 5,000 dth/d, respectively at each point. Exhibit B did not specify delivery pressures at either delivery point.

3. In the June 6, 2005 filing, Transco proposed three modifications to Exhibit B. First, the proposed Exhibit B added a reference to a delivery point at Transco's Iredell Meter Station located at milepost 1287.1 on Transco's main transmission line in Iredell County, North Carolina, with an MDQ at that point of 75,000 dth/d. The proposed revised Exhibit B also included the addition of two new footnotes as follows:

- 2 Deliveries to or for the account of Buyer shall be at an hourly rate of up to six percent (6%) of the applicable [MDQ].
- 3 Deliveries at Station 165 and 160 will be at Seller's line pressure at such points of delivery. Deliveries at Iredell will be at the pressure required to meet Buyer's capacity needs under the service agreement, but in no event shall Seller be obligated to make such deliveries at pressures greater than 780 psig nor less than 675 psig.

4. Piedmont requested clarification of footnotes 2 and 3 of Exhibit B as they relate to the addition of the Iredell Meter Station as a delivery point under the Carolina service agreement. Piedmont stated that it was concerned that, because the Iredell Meter Station is an interconnection point of receipt and deliveries between Piedmont and Transco, any specific contractual rights granted to other shippers delivering gas to the Iredell Meter Station could affect the service that Piedmont provides on the distribution side of the meter. Regarding the hourly-flow provision in footnote 2, Piedmont was concerned that this provision would accord Carolina and others delivering quantities for or on behalf of Carolina a greater level of delivery flexibility than Piedmont or other similarly situated shippers. Piedmont stated it does not object to the proposed provision provided it is also accorded the same delivery flexibility. As to footnote 3, Piedmont sought clarification of the amount of delivered quantities that are guaranteed by footnote 3 to the Buyer and sought assurance that the rights of Piedmont at the Iredell Meter Station are not diminished or affected in any manner. Piedmont stated that since it delivers gas to the Iredell delivery point for its system sales customers, and because other parties also make deliveries to this point, it would be impossible for Transco to determine which dekatherms are moving through the point, and for what part of the gas day the pressure guarantee applies. Piedmont argued that, as a matter of practicality and fairness, all quantities of gas delivered at the Iredell delivery point should receive the same quality of service if the Commission approves the new delivery point for Carolina as part of

Transco's filing, and that Transco amend its applicable service agreements and its tariff accordingly.

5. On June 30, 2005, Transco submitted an answer stating that it assures Piedmont that the amendment does not affect the rights of Piedmont or any other party delivering gas at the Iredell Meter Station. Transco further stated that the amendment does not affect Transco's obligation to provide service to Piedmont or any other shipper at the Iredell Meter Station in accordance with the provisions as set forth in Transco's service agreements and tariff. Transco stated that the sole purpose of the amendment was to correctly set forth the points of delivery to Carolina and the delivery pressures applicable thereto. Transco stated that the Iredell delivery point is the direct result of Carolina's participation in Transco's Sundance Expansion Project and that Transco and Carolina intended the Iredell Meter Station to be a "traditional delivery point" in their May 4, 2001 service agreement. It stated that, pursuant to section 4.5 of its rate Schedule FT and its tariff, "Piedmont may use the Iredell Meter Station as a non-traditional delivery point and Piedmont will receive the same quality of service at the Iredell Meter Station as other Rate Schedule FT shippers using that meter as a non-traditional delivery point."³

6. By order issued July 5, 2005, the Commission accepted Transco's revised Exhibit B to the instant negotiated rate agreement to be effective June 7, 2005, subject to two conditions regarding footnotes 2 and 3. First, the Commission directed Transco to either file a revised Exhibit B to remove footnote 2 from its service agreement with Carolina or to revise its tariff to make this provision generally available to similarly situated Rate Schedule FT shippers. The Commission reasoned that footnote 2 is contrary to the uniform hourly delivery rate provided by Transco's tariff⁴ and constitutes a material deviation to Transco's pro forma service agreement. Therefore, the Commission concluded that the proposed revision caused the agreement to be non-conforming and potentially unduly discriminatory against other shippers.

7. Second, regarding the Iredell delivery point pressure provisions of proposed footnote 3, the Commission directed Transco to offer all shippers, and modify the service agreements where appropriate, the same delivery pressures offered to Carolina at the Iredell delivery point. The Commission reasoned that, although Transco's pro forma service agreement allows the Seller and Buyer to specify the points of delivery and

³ Transco June 30, 2005 Answer, Docket No. RP96-359-024 at 2-3.

⁴ See Fourth Revised Sheet No. 158 to FERC Gas Tariff, Third Revised Volume No. 1. section 4.2 (Receipts and Deliveries) provides that "[B]uyer shall deliver, or caused to be delivered to Seller the scheduled daily quantities hereunder as nearly as possible at uniform hourly rates." Transco proposed in its filing to provide for deliveries to Carolina at an hourly rate of up to 6% of the applicable MDQ.

delivery pressure,⁵ which allows Transco to vary pressure at delivery points on its system, Transco cannot operationally distinguish delivery pressure guarantees at a delivery point that serves multiple shippers.

8. On August 2, 2005, Transco filed a request for clarification or, in the alternative, a request for rehearing of the Commission's July 5, 2005 Order concerning footnote 3. Transco seeks clarification (as more fully discussed below) that its priority of service, performed pursuant to its tariff and Commission precedent, complies with the Commission's directive and that, as a result, it is not appropriate for Transco to amend any service agreements at this time. In the alternative, Transco requests rehearing of the Commission's directive. Subsequently, on August 4, 2005, Transco submitted a filing to comply with the Commission's July 5, 2005 Order. In the August 4, 2005 compliance filing, Transco stated that it chose to revise Exhibit B by removing footnote 2. However, the filing was silent as to the requirements of the July 5, 2005 Order regarding the Iredell delivery point pressure provision in footnote 3.

9. Public notice of the compliance filing was issued, allowing for protests to be filed as provided in section 154.210 of the Commission's regulations. On August 16, 2005 Piedmont filed a timely response, protesting the compliance filing, arguing that Transco has not fully complied with the Commission's directive as it relates to footnote 3 and that, accordingly, the Commission should reject the compliance filing. Piedmont also responded to Transco's request for clarification. On August 30, 2005, both Transco and Carolina filed answers to Piedmont's response.

II. Procedural Issues

10. In its answer, Transco asserts that Piedmont's response is procedurally estopped and should be rejected. Transco argues that Piedmont's response should have been filed as a protest to Transco's June 6, 2005 filing or as a request for rehearing of the July 5 order and, therefore should be rejected as untimely. Further, Transco argues that the response focuses on Transco's request for rehearing and should be rejected because responses to requests for rehearing are not permitted.⁶

⁵ Article III, Points(s) of Delivery of Transco's pro forma service agreement provides that "Seller shall redeliver to Buyer or for the account of Buyer the gas transported hereunder at the following point(s) of delivery and at a pressure(s) reflected in Exhibit B." See, Fourth Revised Sheet No. 436 to FERC Gas Tariff, Third Revised Volume No. 1.

⁶ Answer at 3-4 (citing *El Paso Natural Gas Co.*, 111 FERC ¶61,374 (2005); *Transcontinental Gas Pipe Line Corp.*, 99 FERC ¶61,002 (2002)).

11. The Commission finds that Piedmont's response is a timely filed protest to the compliance filing and comment on Transco's request for clarification. The Commission, therefore, accepts Piedmont's response. As to Transco's claim that the answer is to its request for rehearing, we note that Transco filed its pleading as a request for clarification, to which answers lie,⁷ and only asked that it be considered a request for rehearing in the alternative, which would lie only if the Commission denies its requested clarification. Further, Transco itself raised issues in its request for clarification that arguably go beyond the narrow clarification question raised regarding compliance, including its claimed nexus between the construction of the Iredell delivery point and related facilities modifications to its Sundance Expansion Project and predicate service agreement, which Piedmont contests. Rather than attempt to parse out arguments, we will address all issues raised in the pleadings to permit a full airing of the issues raised by the filings in this proceeding. Finally, although the Commission's Rules of Practice and Procedure generally prohibit answers to protests or answers,⁸ under the circumstances of this case, the Commission will accept the answers of Transco and Carolina in this proceeding to allow a better understanding and clarification of the issues.

III. Discussion

A. Request for Clarification

1. Arguments of the Parties

12. As noted above, the subject amendment to Transco and Carolina's service agreement adds a reference to the Iredell Meter Station as a delivery point, establishing a 75,000 MDQ at that point and, in footnote 3, a delivery pressure for the Iredell delivery point of whatever delivery pressure Carolina requires to meet its capacity needs under its service agreement with Transco, provided that the pressure is within a range of 675 psig to 780 psig. The Commission determined that this provision is permissible under Transco's tariff because Transco can specify pressures at delivery points. However, the Commission found that Transco cannot operationally distinguish delivery pressure guarantees at a delivery point that serve multiple shippers. Therefore, the Commission directed Transco to offer shippers the same delivery pressures offered to Carolina at the Iredell delivery point and to, where appropriate, modify the service agreements. Transco seeks clarification that its priority of service performed pursuant to its tariff and Commission precedent complies with this directive. Alternatively, if the Commission denies clarification, Transco seeks rehearing. Specifically, Transco seeks clarification that, given the application of Transco's tariff provisions (described below) to these circumstances, it is not required to amend any firm transportation agreements in order to

⁷ 18 C.F.R. §385.213(a)(3) (2005).

⁸ 18 C.F.R. § 385.213(a)(2) (2005).

comply with the Commission's requirement in the July 5, 2005 Order to deliver gas to shippers at the Iredell Meter Station at the pressure set forth in the revised Exhibit B and that the July 5, 2005 Order does not change any provisions in its tariff applicable to deliveries.⁹

13. Transco explains that Carolina is the only firm transportation shipper on the Transco system that has the Iredell Meter Station as a delivery point on its Rate Schedule FT service agreement. Transco states that the specification of the Iredell Meter Station as a "traditional delivery point" in Carolina's service agreement is the direct result of Carolina's participation in Transco's Sundance Expansion Project.¹⁰ Transco explains that facilities were added to its system under the Sundance Expansion Project to accommodate Carolina's firm deliveries to the Iredell Meter Station at the pressure specified in revised Exhibit B. Transco explains that the Iredell Meter Station is not identified as a "traditional" delivery point on any other Rate Schedule FT shipper's service agreement, and that it has not constructed mainline facilities to support the addition of the Iredell Meter Station as a traditional delivery point to any other shipper's service agreement. Therefore, Transco concludes that it is not appropriate for it to amend any service agreements at this time.

14. Transco further explains that the Iredell Meter Station is, however, located within the transportation path of several Rate Schedule FT shippers, including Piedmont. Transco contends that, pursuant to Transco's tariff and Commission policy, shippers may receive gas at delivery points located within their firm transportation path.¹¹ As a result, Transco states that shippers other than Carolina can and currently do receive gas service at the Iredell Meter Station. Transco states that it agrees with the Commission's observation that, when a delivery point serves multiple shippers, Transco cannot operationally meet different pressure obligations at that point. As a result, Transco states that all deliveries at the Iredell Meter Station will be at the pressure specified in the amendment to Carolina's service agreement (subject to certain operating limitations).

⁹ In its Answer, Carolina confirms that, in the May 25, 2005 amendment, Transco and Carolina sought to accurately reflect the terms applicable to firm transportation service that they agreed to at the time the May 4, 2001 service agreement was executed, including specifically the Iredell Meter Station as a delivery point with the applicable pressure for deliveries at that point.

¹⁰ Clarification/Rehearing Request at 3.

¹¹ Clarification/Rehearing Request at 4 and note 2 (*citing* Regulation of Short-Term Natural Gas Transportation Services and Regulation of Interstate Natural Gas Transportation Services III FERC Stats. & Regs. Regulations Preambles 31,091 (February 9, 2000); Order on Rehearing, III FERC Stats. & Regs. Regulations Preambles 31,099 (May 19, 2000); and Order Denying Rehearing, 92 FERC ¶61,062 (2000)).

Transco states that, in the event the total amount of gas requested to be delivered at the Iredell Meter Station exceeds the capacity at which Transco can meet the pressure obligation specified in the subject amendment with Carolina, such capacity will be allocated pursuant to the provisions set forth in section 4.5 of Rate Schedule FT.¹²

15. Specifically, Transco states that section 4.5 of Rate Schedule FT provides that a shipper's ability to receive service at a "non-traditional" delivery point is subject to the operating limitations at that point and may be subordinate to firm services scheduled to the point which is a "traditional" point of another shipper, i.e., "delivery points upstream of the FT shipper's traditional delivery points are available to the shipper provided that they may be subordinate to firm services scheduled at a traditional point."¹³ Transco submits that these deliveries will continue to be performed in accordance with the provisions in its tariff and the Commission's orders interpreting the same, including specifically the priority of service at delivery points.¹⁴

16. In its response, Piedmont notes its earlier request in its protest to Transco's June 6, 2005 filing that, should the Commission approve the new delivery point for Carolina, all quantities delivered to the Iredell Meter Station (whether delivered to Carolina, Piedmont, or any other shipper), receive the same "quality of service."¹⁵ Piedmont also notes Transco's claim that the specification of the Iredell Meter Station as a "traditional" point is a direct result of Carolina's participation in Transco's Sundance Expansion Project and asserts that Transco has not offered shippers at the Iredell delivery point service agreements reflecting the same delivery pressures offered Carolina. Piedmont argues that Transco's statements regarding the Sundance Project facilities and negotiated delivery rights to Carolina at the Iredell Meter Station lack both historical certificate authorization and contractual support. Piedmont states that Transco's certificate application for the Sundance Expansion Project and the subsequent service agreement fail

¹² Section 4.5 of Transco's Rate Schedule FT provides that the executed service agreement shall specify the shipper's traditional FT delivery points and describes non-traditional delivery points as those delivery points upstream of such traditional FT delivery points located within shipper's TCQ entitlement.

¹³ Answer at 4-5 (*citing Transcontinental Gas Pipe Line Corp.*, 74 FERC ¶ 61,296 at 61,951 (1996) and *Transcontinental Gas Pipe Line Corp.*, 75 FERC ¶ 61,210 at 61,703 (1996)). Section 4.5 of Transco's Rate Schedule FT provides firm shippers with access to all delivery points on Transco's system within the shipper's contract path, subject to operating conditions and other shipper's using such points as traditional delivery points.

¹⁴ Answer at 4 and note 3 (*citing section 4.5 of Rate Schedule FT. See also sections 18 and 28 of the General Terms & Conditions of Transco's FERC Gas Tariff*).

¹⁵ Response at 1-2.

to support the claim that the facilities were to be built to specifically accommodate Carolina's firm deliveries to the Iredell Meter Station for Carolina's Sundance capacity of 75,000 dth/d at pressures expressly between 675 psig and 780 psig, *i.e.*, the pressure specified in revised Exhibit B.¹⁶ According to Piedmont, only two delivery points are listed, which do not include the Iredell Meter Station.

17. Piedmont further argues that nowhere in the Sundance Expansion Project design submitted by Transco does it show that facilities were to be constructed specifically to accommodate firm deliveries to Carolina of 75,000 dth/d at the Iredell Meter Station, at pressures expressly between 675 psig and 780 psig. Piedmont argues that this provision could negatively impact deliveries to other shippers, particularly in light of what Piedmont asserts is Transco's attempt to draw a distinction between Carolina and all other shippers delivering to the Iredell Meter Station.¹⁷ Piedmont further contends that Transco has created a new distinction, namely that the Iredell Meter Station is a "traditional delivery point" for Carolina, to support its amendment. Piedmont asserts that Transco's use of the term "traditional delivery point" is not defined in its tariff and that, historically, there has been no material distinction between the use of the Iredell delivery point by either Carolina or Piedmont. Piedmont states that, for both shippers, the Iredell Meter Station has been a delivery point within their primary transportation path.¹⁸ Piedmont alleges that Transco will not provide other shippers' deliveries at the Iredell Meter Station at the same delivery pressures as Carolina's deliveries and claims this "failure" is "simply discriminatory."¹⁹

18. In its answer, Transco responds that the Iredell Meter Station is a delivery point located on the mainline of Transco's system at milepost 1287.1 in Iredell County, North Carolina. To date, according to Transco, Carolina is the only shipper with the Iredell Meter Station identified as a delivery point on its firm transportation service agreement with Transco. Transco explains that the Iredell Meter Station is also an interconnect

¹⁶ Response at 3. Piedmont attaches to its response the August 11, 1999 precedent agreement between Transco and Carolina for the MDQ of 75,000 dth/d and the May 4, 2001 Service Agreement. It also states that the amendment seems improper because it appears to add 75,000 dth/d on top of the existing 75,000 dth/d in the original agreement for a total of 150,000 dth/d, whereas the Sundance capacity subscribed to Carolina is 75,000 dth/d. *Id.* at 4 note 4.

¹⁷ Response at 4.

¹⁸ Response at 4, note 5.

¹⁹ Response at 5.

between Transco and Piedmont's Sandhills Pipeline.²⁰ Transco states that the Sandhills Pipeline, formerly designated as the "Richmond Lateral," was constructed in approximately 1999 by Carolina and North Carolina Natural Gas Company ("NCNG"), then an affiliate of Carolina. Transco states that, in 2003, Piedmont acquired the pipeline as part of its merger with NCNG. Transco states that the Sandhills Pipeline serves Carolina's Richmond County Power Plant ("Richmond Plant") which operates at a minimum pressure of 500 psig. It explains that Carolina and NCNG constructed the Richmond Lateral to connect Transco's mainline at the existing Iredell Meter Station to Carolina's Richmond Plant, which was also under construction at the time. As a result, Transco states that all gas receipts into Piedmont's Sandhills Pipeline, including those at the Iredell Meter Station, and all deliveries from Piedmont's Sandhills Pipeline, including deliveries at Carolina's Richmond Plant, must meet certain flow conditions in order for Piedmont to satisfy the delivery pressure requirement at the Richmond Plant.

19. Transco further explains that Carolina is a customer of Piedmont on the Sandhills Pipeline and that Carolina is also the delivery point operator at the Iredell Meter Station.²¹ Transco states that Carolina's designation as delivery point operator means that if the total amount of gas requested to be delivered at the Iredell Meter Station exceeds the capacity at which Transco can meet its obligations, Carolina, as the delivery point operator, can allocate the deliveries, including Piedmont's deliveries, in accordance with the provisions set forth in Transco's tariff.²² Transco asserts that Piedmont's frustration with any perceived "negative impact" on its deliveries at the Iredell Meter Station, including its concern that deliveries to Carolina at the Iredell Meter Station "trump deliveries to all other shippers" is the result of Piedmont permitting its customer (Carolina) to be the delivery point operator.²³ Transco also rejects Piedmont's claim that the addition of the Iredell delivery point MDQ of 75,000 dth/d may result in doubling Carolina's total MDQ to 150,000 dth/d if added to the existing 75,000 dth/d of capacity at

²⁰ Answer at 4 and note 4.

²¹ Answer at 5 and note 5 where Transco explains that Carolina was designated as the delivery point operator pursuant to an agreement between Carolina's affiliate NCNG which once owned the Sandhills Pipeline. As such, it states, Carolina executed an interconnect agreement with Transco at the Iredell Meter Station. At that time, it states, Carolina was designated as delivery point operator at the Iredell Meter Station. Transco states that it has never received any documentation that the interconnect agreement has been assigned to any other party and, consequently, Carolina remains the delivery point operator at the Iredell Meter Station.

²² Answer at 5. (*citing, e.g.,* section 4.5 of Rate Schedule FT and sections 18 and 28 of the General Terms & Conditions of Transco's FERC Gas Tariff.)

²³ Answer at 5 (*citing* Response at page 4).

the other two existing delivery points. It clarifies that Carolina's total MDQ remains at 75,000 dth/d.

20. As to Piedmont's comments that the Iredell delivery point and pressure requirement fall outside the scope of the certificate approved for the Sundance Expansion Project, Transco states that its certificate application referenced a proposed Iredell delivery point as well as Carolina's and NCNG's proposed construction of the Richmond Lateral (now, Sandhills Pipeline) to connect to what was the then under construction Richmond Plant. Transco asserts that, until the future delivery point was developed, Transco and Carolina selected the existing two downstream delivery points in Exhibit B (Stations 160 and 165) in order to ensure that all upstream delivery points, including Iredell which was then unknown, would be included within Carolina's contract primary path. Further, Transco states: "When the Iredell Meter Station was constructed for [Carolina], Transco modified certain facilities at Station 150 to accommodate the pressure range requested by [Carolina] for deliveries at the Iredell Meter Station under varying flow conditions on Transco's mainline As a result, these facilities were added at [Carolina's] sole expense."²⁴ Transco adds that other facilities were added to its mainline as part of the Sundance Expansion Project to accommodate Carolina's 75,000 dth/d transportation capacity at points downstream of the Iredell Meter Station. Transco reiterates its statement that the omission of the Iredell Meter Station as a delivery point from Exhibit B to the May 4, 2001 service agreement was unintentional and that it and Carolina seek to accurately reflect the terms applicable to the firm transportation capacity that it and Carolina agreed to as part of the Sundance Expansion Project; specifically, their agreement to include the Iredell Meter Station as a traditional delivery point with the applicable pressure for deliveries at that point.

2. Commission Decision

21. The Commission grants Transco's requested clarification to the extent set forth below and, accordingly, dismisses its alternate request for rehearing as moot. Based on the record, we find that the pressure provision in the subject amendment constitutes an operating limitation under section 4.5 of Transco's Rate Schedule FT that applies to all firm deliveries at the Iredell delivery point regardless of whether other shippers have scheduled deliveries at that point.²⁵ The record reflects that the purpose of the amendment's pressure limitation is to memorialize existing pressure requirements of Carolina attributable to pressure limitations of Carolina's Richmond Plant. These pressure requirements also necessarily apply to gas flow on the Sandhills Pipeline which

²⁴ Request for Clarification at 9.

²⁵ Because it is an operating limitation at that point, the subject pressure limitation also applies to any other deliveries to the Iredell delivery point, such as those pursuant to service agreements for interruptible service.

directly connects Transco's mainline at the Iredell delivery point to the Richmond Plant. The instant pressure limitation, thus, has been a de facto limitation for deliveries at that delivery point all along despite the former absence of a formal contractual obligation to that effect. Because, as discussed below, the Iredell delivery point is only a secondary point under other shippers' service agreements, and therefore need not be listed in their service agreements, these other firm shippers need not revise their agreements to reflect this pressure limitation in the same manner as Transco and Carolina have done for what is now a primary ("traditional") delivery point listed in Exhibit B to their service agreement. If, however, any other shipper does enter into a firm service agreement or amendment establishing the Iredell delivery point as a traditional primary point, such shipper must reflect the same pressure limitation in Exhibit B to their service agreement as is reflected in the May 25, 2005 amendment to Exhibit B of the Carolina service agreement, i.e., the pressure required by Carolina to meet its capacity needs under its service agreement with Transco, provided that such pressure is within a range of 675 to 780 psig.

22. Accordingly, since all existing Rate Schedule FT service agreements incorporate that pressure requirement to the extent they are used to provide service to that delivery point, and our July 5, 2005 Order only required Transco to offer such pressure provisions "as appropriate," Transco need not offer that pressure provision to such other shippers as a modification to their existing contracts.

23. However, Transco's clarification request and Piedmont's response also raise issues regarding the proper allocation of firm capacity at the Iredell delivery point and certificate authorization. Based on the record, we find that Carolina has firm, primary point capacity allocation rights under Transco's tariff at that delivery point and all other firm shippers have secondary point rights at that point. Contrary to Piedmont's allegation about Transco's use of the term "traditional" as a new distinction that is not defined in its tariff, section 4.5 of Transco's Rate Schedule FT delineates between "traditional" and "non-traditional" points, which we find is consistent with the Commission's policies regarding the delineation between "primary" and "secondary" points for purposes of capacity allocation. Transco and Carolina executed a contract amendment to establish that point as a "traditional delivery point," which therefore qualifies Carolina for the higher priority accorded such points, consistent with Commission policy regarding primary point rights. For any firm shipper on Transco, such as Piedmont, if the Iredell delivery point lies within their firm contract path under their service agreement with Transco, that shipper may use their flexible point rights to access the Iredell delivery point on a secondary basis. As such, their priority is secondary to Carolina's at that point. The question of whether Transco did or did not receive specific certificate

authorization for the construction of that point, as discussed below, is irrelevant to the question of what priority applies at that delivery point.²⁶

24. Further, there is no showing of undue discrimination since the Iredell point was constructed for the express purpose of providing access of Carolina's gas on Transco to Carolina's Richmond Plant. Transco indicates, without contradiction, that Carolina paid for the related facility modifications and construction of the Iredell delivery point. Moreover, nothing bars Piedmont, or any other shipper for that matter, from entering into a contract amendment to establish the Iredell point as a primary ("traditional") delivery point on Transco's system provided, however, that firm, primary point capacity is available at that point. Finally, although it is a fact that other shippers on Transco, including Piedmont, will now have a lower, secondary point priority for service vis-à-vis Carolina, who now holds primary point capacity rights at that point as a result of the amendment, that is consistent with Commission policy.

25. Turning to the certificate issues raised by the pleadings, Transco was authorized under its blanket construction certificate to modify facilities and construct the Iredell delivery point.²⁷ Moreover, it is exceedingly late for Piedmont to question the way in which the Iredell delivery point came into existence or the fact that Transco and Carolina subsequently entered into a contract amendment to designate that point as a "traditional" (primary) delivery point subject to the stated pressure restriction. Certainly, Piedmont must have known of the Iredell delivery point construction because it is at the interconnect with the Richmond Lateral, later renamed as the Sandhills Pipeline, that Piedmont acquired as part of its merger with NCNG. Further, it appears undisputed that the purpose of that interconnect and delivery point on Transco was to enable gas to be delivered from Transco's mainline to Carolina's Richmond Plant via the Richmond Lateral, which also had pressure constraints associated both with Transco's system at that point and with the Richmond Plant. Accordingly, we can find no basis to upset the May 25, 2005 amendment entered into by Transco and Carolina to memorialize their intent to provide primary point service to Carolina from the Iredell Meter Station point on Transco's mainline subject to certain pressure limitations unique to Transco's system and Carolina's needs relative to its Richmond Plant once it was established where Carolina's primary delivery point would be located on Transco's mainline.

²⁶ In that regard, we can find no basis to find that the May 25, 2005 amendment conflicts with any certificate authorization.

²⁷ Transco's Exhibit F-1 to its application for certificate authorization for its Sundance Expansion Project, at pages 8-9, included its statement that modification of certain mainline facilities and construction of the Iredell delivery point would be under section 157.211(a)(1) of the Commission's regulations, which grants blanket certificate authorization for construction of certain delivery points without prior Commission approval. *See* 18 C.F.R. § 157.211(a)(1) (2005).

B. Compliance Filing

26. In the subject June 6, 2005 filing, footnote 2 in revised Exhibit B provided that Transco will make deliveries to Carolina at an hourly rate up to 6% of the applicable MDQ. In the July 5, 2005 Order, the Commission directed Transco to either file a revised Exhibit B to its service agreement with Carolina to remove that footnote or to revise its tariff to make that provision generally available to similarly situated rate Schedule FT shippers. In its August 4, 2005 compliance filing, Transco states that it has chosen to revise Exhibit B by removing footnote 2. Accordingly, Transco attached a second amendment to the service agreement between Transco and Carolina that contains the required revision and requests that the Commission approved it effective June 7, 2005. We find that the proposed amendment complies with the Commission's July 5, 2005 Order and accept it, as requested, effective June 7, 2005.

27. However, as noted above, the August 4, 2005 compliance filing did not contain any reference to the obligation of the July 5, 2005 Order regarding the Iredell delivery point pressure provision in footnote 3. In the compliance protest portion of its response, Piedmont argues that Transco has not fully complied with the July 5, 2005 Order. Piedmont states that Transco has not offered shippers at the Iredell Meter Station modified service agreements reflecting the same delivery pressures offered to Carolina and, therefore, requests that the Commission reject the August 4, 2005 filing.

28. Consistent with our grant of Transco's request for clarification in the discussion above, we find that Transco is in compliance with the July 5, 2005 Order regarding the footnote 3 Iredell delivery point pressure provision. We agreed above that the pressure limitation in the subject amendment constitutes an operating limitation under section 4.5 of Transco's Rate Schedule FT that applies to all deliveries at the Iredell delivery point regardless of which shipper has scheduled deliveries at that point. Accordingly, since all other existing contracts for deliveries under Rate Schedule FT to that point are for secondary point deliveries and currently incorporate that pressure requirement, and our July 5, 2005 Order only required Transco to offer such pressure provisions "as appropriate," Transco need not offer that pressure provision to other shippers as a modification to their existing contracts. It only is obligated to do so if and to the extent that it enters into a contract or amendment with another shipper for primary point service at that point. Although Transco was remiss in failing to explain in its August 4, 2005 compliance filing that it would not be offering such contracts or amendments and its rationale for not doing so, we cannot find that Transco failed to comply with our July 5, 2005 Order regarding the footnote 3 directive by not offering the pressure limitation as described above to other shippers.

The Commission orders:

(A) The Commission grants Transco's request for clarification as discussed above and dismisses the request for rehearing as moot.

(B) The Commission accepts Transco's August 4, 2005 filing which revises Exhibit B to its service agreement with Carolina by removing footnote 2, to be effective June 7, 2005.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.