

FEDERAL ENERGY REGULATORY COMMISSION  
WASHINGTON, D.C. 20426

May 27, 2004

In Reply Refer To:  
Transcontinental Gas Pipe Line Corporation  
Docket No. RP04-267-000

Transcontinental Gas Pipe Line Corporation  
2800 Post Oak Blvd.  
Houston, TX 77251-1396

Attention: Marg Camardello  
Manager of Tariffs and Certificates

Reference: Second Revised Sheet No. 329 to FERC Gas Tariff, Third Revised Volume  
No. 1

Dear Ms. Camardello:

1. On April 27, 2004, Transcontinental Gas Pipe Line Corporation (Transco) filed the referenced tariff sheet to modify the payment options available to requesting parties for costs incurred by Transco for interconnect facilities. The modifications proposed by Transco require requesting parties to use as its default payment methodology to directly reimburse Transco via an advanced payment for all reimbursable costs. However, the parties may mutually agree that the requesting party may pay Transco through an incremental facilities charge. For the reasons discussed below we will reject Transco's proposed changes to the tariff.

**Details of Filing**

2. Transco is proposing to modify section 20.7(a) of its General Terms and Conditions (GT&C), to provide that the costs incurred by Transco for interconnect facilities will be directly reimbursed in advance by the party requesting the interconnect, unless Transco and the requesting party mutually agree to an incremental facilities charge for recovery of such costs. Transco states that it is making this proposal to relieve the unreasonable burden placed on Transco under its current interconnect policy which allows the requesting party to unilaterally elect either (a) to reimburse Transco in advance for the costs of the interconnect or (b) to pay Transco for such costs through an incremental facilities charge applied to the requesting party's firm transportation service agreements with Transco.

3. Transco further states, in the event a requesting party in its sole discretion elects the incremental service charge, Transco must assume the financial burden up front, of constructing the interconnect facilities with the risk of cost recovery over future periods. Transco notes that the cost of an interconnect facility can be several million dollars in advance cash outlay.

### **Public Notice and Interventions**

4. Public notice of Transco's filing was issued on April 30, 2004. Interventions and protests were due as provided in section 154.210 of the Commission's regulations.<sup>1</sup> Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, all timely motions to intervene and all motions to intervene out of time filed before issuance of this order are granted.<sup>2</sup> Granting late intervention will not disrupt the proceeding or place additional burdens on existing parties. The Process Gas Consumers Group (PGC) filed a protest and Calpine Corporation (Calpine) filed comments in this proceeding.

5. PGC protests the attempt by Transco to reformulate its interconnect policy as potentially limiting shippers opportunities to request and receive interconnects. PGC states that the Commission found in Docket No. RP98-430-000, Transco's previous proposal concerning payment options for interconnects, in which Transco had proposed three payment options for parties requesting an interconnect: advance payment; a cost based incremental facilities charge; and a negotiated incremental facilities charge, that Transco must modify its proposal "to permit the requesting party to elect either the advance payment option or incremental facilities charge option. The tariff can continue to require mutual agreement for the negotiated rate option."<sup>3</sup>

6. PGC states that it is not arguing the fact that Transco needs to include the negotiated incremental facilities options in its tariff but believes that Transco must make both of the cost-based payment options available to shippers requesting an interconnect without requiring Transco's approval for these options. PGC further states that with either method Transco will be reimbursed for its cost, though at different times.

7. Calpine, though not opposing Transco's proposed modification of GT&C section 20.7, requests the Commission require Transco to amend its GT&C section 20.5 to comply with the Commission's Interconnection Policy. Calpine states that as currently

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<sup>1</sup> 18 C.F.R. § 154.210 (2003).

<sup>2</sup> 18 C.F.R. § 385.214 (2003).

<sup>3</sup> Transcontinental Gas Pipe Line Corp., Order on Compliance Filing, 95 FERC ¶ 61,245 at p. 61,848 (2001).

written, the language allows Transco too much discretion to deny a requesting party's ability to construct interconnecting facilities for reasons other than the five conditions set out in the Commission's Interconnection Policy as set forth in Panhandle Eastern Pipe Line Company.<sup>4</sup> Calpine further states that Transco's GT&C section 20.5 is unduly vague. Transco's GT&C section 20.5 states:

Responsibilities. Subject to the foregoing, the construction, ownership, operation and maintenance of the interconnect facilities will be **mutually agreed upon** between Seller and the requesting party. Seller shall have the right to be the custody transfer party at the interconnect. (emphasis added)

8. Calpine argues that Transco could deny interconnection simply by withholding its consent unless the party seeking interconnection agrees that Transco would construct the facilities. Calpine further argues that the Commission stated in its Interconnection Policy that the pipeline would not be required to expand its system or construct the interconnection itself and that the Interconnection Policy "simply requires the pipeline to grant access" if certain conditions are met.<sup>5</sup>

9. On May 18, 2004, Transco filed an answer to the protests and comments filed by intervening parties. While the Commission's Rules of Practice and Procedure generally prohibit answers to protests, the Commission will accept the answer to provide a better understanding of the issues in this proceeding.<sup>6</sup>

## **Discussion**

### **Transco's Proposed Tariff Language**

10. The proposed filing is substantially similar to a previous request by Transco to alter their tariff regarding the discretion the shipper has in choosing a method of payment for construction of interconnect facilities. In an order issued on May 17, 2001, the Commission denied Transco's earlier request to alter its tariff to provide that both parties must mutually agree to the method of payment.<sup>7</sup>

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<sup>4</sup> 91 FERC ¶ 61,037 (2000).

<sup>5</sup> Id.

<sup>6</sup> 18 C.F.R. § 385.213(a)(2) (2003).

<sup>7</sup> Transcontinental Gas Pipe Line Corp., 95 FERC ¶ 61,245 at p. 61,848 (2001).

11. In the May 17, 2001 Order, the Commission determined that Transco must alter its proposed tariff to “permit the requesting party to elect either the advance payment option or incremental facilities charge option.”<sup>8</sup> The Commission reasoned that the required change would “establish cost-based recourse options that the interconnection customer could choose over the negotiated rate option, which is what is required under current Commission policy for negotiated rates.”<sup>9</sup> Further, the Commission stated:

By virtue of the fact that an interconnection may adversely affect Transco's revenues, Transco already has an incentive to deny a request for interconnection. This language gives Transco the discretion to deny an interconnection by simply refusing to agree on the particular payment option selected by the requesting party from the options Transco has included in its tariff.<sup>10</sup>

12. Transco’s filing seeks to establish the advance payment option as the default and adds that, similar to the tariff proposal rejected in the May 17, 2001 Order, upon mutual agreement, parties may opt for an incremental facilities charge. Transco states that the proposed changes will “relieve the unreasonable burden placed on Transco under its current interconnect policy” and provide “a more balanced approach” to allocating the financial burden of constructing interconnections.<sup>11</sup> It states that, in the event the requesting party, in its sole discretion, elects the incremental facilities charge, Transco must assume the financial burden, up front, of constructing the interconnect facilities with the attendant risk of cost recovery over future periods. In a footnote to its filing, Transco states that the cost of constructing an interconnect can be several million dollars in advance cash outlay. In its Answer, Transco further states that, while it would intend to collect the full amount of such costs through the surcharge, “that collection would not be assured because of the attendant risks of cost recovery (e.g., construction risk, contract risk, and creditworthiness risk).” In short, Transco is concerned that, having paid for the interconnect up front, it may not recover its out-of-pocket cash outlay due to unforeseen subsequent events if its reimbursement is spread out over future surcharge payments from the shipper. These are risks that are always attendant with incremental projects. However, the Commission stated in its April 14, 2000 Order in ANR Pipeline Co. v. Transcontinental Gas Pipe Line Corp., the Commission “will not preclude pipelines or

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<sup>8</sup> Id.

<sup>9</sup> Id.

<sup>10</sup> Id.

<sup>11</sup> See Transmittal Letter at page 1.

other parties from seeking, on a case-by-case basis, recovery of economic losses associated with an interconnection.”<sup>12</sup> Moreover, Transco may seek a remedy for breach of contract in state court and can adequately protect itself from creditworthiness risk prior to commencing any interconnect project by application of its tariff’s creditworthiness requirements. Hence, the risks it raises are outweighed by the potential for Transco to avoid having to interconnect simply by refusing to agree to the payment choice of the shipper, which the Commission found unreasonable in the May 17, 2001 Order. Transco has failed to support its claim that the existing tariff places an unreasonable burden on it. Nor has Transco demonstrated that the circumstances have changed to permit Transco to eliminate the shippers’ discretion to choose a method of payment. We find that Transco’s current argument is no different than the economic feasibility arguments proffered in its previous filing, which the Commission rejected in the May 17, 2001 Order.

14. Transco claims that its proposed tariff language is consistent with the Commission’s statement in the May 17, 2001 Order<sup>13</sup> that pipelines must permit new interconnections provided that "the party seeking the interconnection must be willing to bear the costs of construction." In its Answer, Transco asserts that the Commission’s Interconnection Policy, established in Panhandle, does not require a pipeline to offer, much less be forced to agree to, an incremental facilities charge and only requires the pipeline to grant access if certain conditions are met. The Commission is not suggesting that shippers are not responsible for paying the costs of construction; shippers requesting interconnections are required to pay Transco for the costs of the interconnection. However, it is reasonable that the shipper determines when and how they will pay Transco for such construction costs. Thus, under the Commission's Interconnection Policy, provided the other conditions are also met, Transco must grant access and permit the interconnect when the shipper is willing to pay for the interconnect, regardless of what payment method the shipper chooses. As observed in the May 17, 2001 Order, requiring the pipeline to accept reimbursement by an incremental surcharge is consistent with the requirement to “establish cost-based recourse options that the interconnection customer could choose over the negotiated rate option.”<sup>14</sup>

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<sup>12</sup> 91 FERC ¶ 61,066 at p. 61,244 (2000).

<sup>13</sup> 95 FERC ¶ 61,245 at p. 61,845 (citing ANR Pipeline Co. v. Transcontinental Gas Pipe Line Corp., 91 FERC ¶ 61,066 (2000), reh'g denied, 93 FERC ¶ 61,277 (2000)).

<sup>14</sup> Id. at p. 61,846.

15. In its filing and in its Answer,<sup>15</sup> to support its proposal, Transco cites other pipelines' tariff language that is similar to the language proposed by Transco insofar as the language provides for mutual agreement between the pipeline and interconnecting party. Transco has not shown when and under what circumstances the other tariff provisions were initially implemented, including whether they were protested as is the case here, and has not cited any Commission order accepting the cited provisions that addressed the issues raised by the protests in the instant proceeding. Therefore, we are unpersuaded by this argument in the context of this contested proceeding.

### **Calpine's Comment**

16. As stated above, Calpine has no objection to Transco's proposed change to section 20.7, but seeks to clarify and amend section 20.5 of Transco's tariff. This proceeding involves a requested change to section 20.7 of Transco's tariff. It is not appropriate to address Calpine's comment in this proceeding. No notice has been issued to address any comments or amendments to section 20.5 of the tariff. If Calpine has a specific proposal for the tariff to be revised, it should request such action separately from this proceeding.

By direction of the Commission.

Linda Mitry,  
Acting Secretary.

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<sup>15</sup> Transco Answer at p. 5.