

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
William L. Massey, and Nora Mead Brownell.

Transcontinental Gas Pipe Line Corp.

Docket No. RP92-137-052

ORDER ON REMAND

(Issued July 30, 2003)

1. The Court of Appeals for the District of Columbia Circuit remanded this proceeding to the Commission for a second time.¹ In this proceeding, Transcontinental Gas Pipe Line Corporation (Transco) seeks to require certain firm transportation customers to take, and pay for, service on the supply laterals in its production area.² Those 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. In the orders most recently reviewed by the Court, the Commission rejected Transco's proposal on the ground that it would improperly require the FT conversion customers to contract for additional service not included in their existing service agreements. The Court found that the Commission had failed to reconcile its decision in this case with other Commission orders rejecting a different proposal by Transco to change how it provides service on its production area laterals. On remand, the Commission reaffirms its prior holding.

¹Exxon Mobil Corp. v. FERC, 315 F.3d 306 (D.C. Cir. 2003), remanding Transcontinental Gas Pipe Line Corp., 95 FERC ¶ 61,322, reh'g, 96 FERC ¶ 61, 61,142 (2001).

²Transco called its proposed firm rates "firm-to-the-wellhead" rates (FTW). This was a misnomer since firm service did not go all the way to the wellhead, but only to the gathering systems. Nonetheless, the name has been used throughout this proceeding and the Commission will use it here for the sake of continuity.

I. Background

2. Transco's production area runs from Texas through Louisiana and into Mississippi.³ It contains a production area mainline and supply laterals that go from the mainline to gathering systems. Transco has three rate zones in the production area, and each zone contains both production area mainline and supply laterals.

3. The issue in this case is how Transco should recover the fixed costs of the supply laterals. Specifically, the issue is whether the Commission should accept Transco's proposal to require its former firm bundled sales customers who converted to firm transportation under Rate Schedule FT pursuant to two settlements approved in 1991 (FT conversion customers) to take and pay for service on the supply laterals.⁴

4. Transco's FT conversion customers currently do not receive, or pay for, such service. The 1991 settlements provided for those shippers to receive service under Rate Schedule FT only on the production area mainline.⁵ As a result, the primary receipt points listed in their service agreements are all on the production area mainline. In addition, in a 1995 order, the Commission held that, since the reservation charge paid by FT shippers is only for service on the production mainline, the FT shippers cannot use secondary points on the supply laterals.⁶

³See the schematic in *Transcontinental Gas Pipe Line Corp.*, 95 FERC ¶ 61,322 at 62,129 (2001).

⁴55 FERC ¶ 61,446 (1991); Order granting and denying reh'g in part, 57 FERC ¶ 61,345 (1991); reh'g, 59 FERC ¶ 61,279 (1992); aff'd in part and remanded, *Elizabethtown Gas Co. v. FERC*, 10 F.3d 866 (D.C. Cir. 1993).

⁵This point is discussed in detail below.

⁶*Transcontinental Gas Pipe Line Corp.*, 73 FERC ¶ 61,361 at 62,128 (1995). The Commission explained:

In the production area, the reservation charge is for service on the mainline facilities. A shipper pays a separate IT rate for service on the supply laterals (IT-feeders). Consequently, an FT shipper can use secondary receipt points for capacity covered by the reservation charge, i.e., the mainline facilities not subject to the IT feeder system.

5. Transco only provides Rate Schedule IT interruptible service on the supply laterals, with the exception of a few firm contracts held by shippers other than the FT-conversion shippers. The 1991 settlements gave IT service that is supplying or "feeding" the FT service of the FT-conversion customers priority over other IT service. IT service that has this priority is known as IT-Feeder service. The FT conversion customers have not contracted for the IT-Feeder service. Rather, producers and marketers use the IT-Feeder service to transport gas on the supply laterals, and on the production area mainline as well, to the FT-conversion shippers' receipt points on the production area mainline.

6. Transco has made two different proposals to provide firm service on the supply area laterals, the first in a filing in Docket No. RP93-136-000 that was consolidated with Transco's general Section 4 rate case in Docket No. RP92-137-000 and the second in a limited Section 4 filing in Docket No. RP98-381-000.

A. The Docket No. RP93-136-000 Proposal

7. This is the proposal addressed by the orders remanded to the Commission. Specifically, Transco proposed to modify Rate Schedule FT in order to give the FT-conversion shippers new service rights on the supply laterals as part of their existing service under Rate Schedule FT. Transco also proposed to remove the interruptible feeder priority from its IT Rate Schedule.⁷ Transco has styled this proposal as creating a "firm to the wellhead" (FTW) firm transportation rate and service structure.⁸

8. Transco proposed to implement the new FTW service rights for the FT-conversion shippers by adding the following provision to Rate Schedule FT:

(b) Flexible Capacity and Receipt Point Service on Production Area Laterals Upstream of Station 85:

Through each of Seller's production area laterals upstream of Seller's Station 85 (excluding Seller's Mobile Bay Lateral), each Conversion Buyer will be entitled to flexible capacity and receipt point service to arrange

⁷Second Revised Sheet No. 171, Limited Section 4 Rate Filing, Docket No. RP93-136-000 (June 4, 1993).

⁸The proposal is somewhat mislabeled in that Transco does not propose to provide firm service on its gathering systems all the way to the wellhead supply sources. Rather, the proposal is to expand open access firm transportation service from the production area mainline to the supply laterals and to charge firm, two-part rates for that service.

transportation to its firm capacity entitlements on Seller's system. Such rights to flexible service shall be subordinate to Seller's existing certificated firm service arrangements on such production area laterals.

To the extent that the scheduled request for service by Conversion Buyers on production area laterals exceed [sic] available capacity, each Conversion Buyer shall be entitled to its pro rata share of available capacity determined in proportion [sic] to the quantities scheduled by Buyer.⁹

Transco proposed to revise its capacity allocation provisions to provide that if it were required to allocate capacity on its system, it would give first priority to firm transportation service scheduled within firm transportation contract entitlements and then, ratably as a class, to FT-conversion customers and their agents scheduling volumes on the supply laterals.¹⁰

9. Transco described the nature of the new FTW firm entitlements in its testimony. Exhibit 30 at 2-3; Exhibit 31 at 15-16. The FT-conversion shippers would not have specific contract entitlements on each supply lateral. Instead, they would have flexible capacity rights on the supply laterals. This meant they could schedule firm transportation service on any of the supply laterals upstream of Station 85 (except the Mobile Bay lateral).¹¹ Each shipper could schedule up to its full transportation contract quantity (TCQ). The amount the FT-conversion shipper actually received each day would be determined by the nomination process. If the FT-conversion shippers scheduled requests for service on a supply lateral that exceeded available capacity, then each FT-conversion shipper would receive a pro rata share of available capacity based on the quantities nominated by the FT-conversion shippers on the supply lateral to be allocated (after the scheduling of point-to-point entitlements of non-conversion FT and X Rate Schedule shippers). The testimony stated, "In other words, each FT conversion shipper maintains flexible firm service on all of TGPL's supply laterals within the bounds of (I) a minimum pro rata entitlement of available capacity based on daily FT nominations and (ii) a

⁹Original Sheet No. 164A, Limited Section 4 Rate Filing, Docket No. RP93-136-000 (June 4, 1993).

¹⁰Section 28.2(a), Substitute Second Revised Sheet No. 337; Sections 7(b) and (c) and Section 7.5, Original Sheet No. 164A; Limited Section 4 Rate Filing, Docket No. RP93-136-000 (June 4, 1993).

¹¹Station 85 is located close to the Mississippi-Alabama border where the Mobile Bay lateral connects to Transco's system. 76 FERC at 61,054 n.11.

maximum entitlement based on the FT shipper's firm TCQ capacity entitlements." Ex. 30 at 3.

10. Transco also included a transportation and aggregation balancing (TABS) service in its proposal. The TABS service consisted of permitting an agent to schedule the FT-conversion shipper's supply area entitlements on the FT shipper's behalf. TABS agents could add together capacity entitlements for multiple FT-conversion shippers. Transco thought that the party that would usually nominate supply lateral transactions would be a producer or aggregator acting as a TABS party for several FT shippers. Ex. 31 at 15.¹²

11. Transco also proposed an FT Excess Service which permitted FT-conversion shippers to transport in excess of their telescoped firm capacity entitlements upstream of Station 65 if they paid the 100 percent load factor rate. FT Excess Service would have a priority inferior to FT and superior to IT. The FT Excess Service was capped at the shipper's full contract quantity at Station 65.

12. The Commission first addressed the FTW proposal in Opinion No. 405 *et seq.* The Commission found Transco could offer firm service on its supply laterals and charge a two-part rate for the new firm service. 76 FERC at 61,064. The Commission found that such rates were not anti-competitive, so long as shippers are given a choice between purchasing a higher priority firm service on the supply laterals with a reservation charge or purchasing a lower quality interruptible service without a reservation charge. However, the Commission rejected Transco's proposal, because it did not give the FT-conversion customers the required choice of service options on the supply laterals. 76

¹² TGPL designed the nomination and capacity allocation process [for its proposed firm-to-the-wellhead service structure] on supply laterals under TABS service in order to preserve the procedures which exist under IT-feeder rate design. Under IT-feeder rate design, service on supply laterals is not firm, and accordingly is allocated under the IT Rate Schedule (assuming all transactions are at maximum rate) on the basis of nominations. It was to preserve this current method of capacity allocation that TGPL proposed supply lateral allocation for TABS service based on nominations."

Ex. 31 at 16.

FERC at 61,060-61.¹³ The Commission's rejection of Transco's proposal was without prejudice to Transco making a new Section 4 proposal to provide firm service on the supply laterals with two-part rates, under which shippers, including the FT conversion customers, would be given a choice whether obtain firm or interruptible service on the supply laterals. 76 FERC at 61,062; 77 FERC at 62,126-28.

B. Docket No. RP98-381-000 Limited Section 4 Proposal

13. On August 31, 1998, as suggested by Opinion No. 405, Transco made a new limited Section 4 filing to implement new firm transportation services on the supply laterals. This proposal differed from Transco's first proposal. Instead of proposing to provide the firm service on the supply laterals under its existing Rate Schedule FT, Transco proposed to provide such service pursuant to a newly established, separate FTSL Rate Schedule. FTSL service would be limited to the supply laterals and would not include any rights to service on the production area mainline, through the use of secondary points or otherwise. Service under Rate Schedule FT service would remain limited to the production area mainline, with FT shippers continuing to have no rights to use secondary receipt points on the production area supply laterals. As in the FTW proposal, Transco proposed to eliminate the IT-feeder service. Transco proposed that the maximum rate for FTSL service on the supply laterals would be the same as the maximum Rate Schedule FT rate for FT service on the production area mainline in the zone in which the supply lateral is located. Transco proposed to allocate FTSL capacity

¹³76 FERC at 61,061. It elaborated further in Opinion No. 405-A:

Transco's proposed unilateral change [to firm two-part rates on the supply laterals] results in an abrogation of the contracts signed by the FT-conversion shippers and a significant transformation of Transco's tariff provisions. FT-conversion shippers entered into contracts with the understanding that they would be charged a one-part volumetric rate pursuant to the settlement provisions instituting the IT-feeder rate design. Here, Transco proposed to modify this agreement into a rate comprised of two-parts, one of which, the reservation fee must be paid whether the service is utilized or not. This constitutes a fundamental change to the rate design, not a mere cost reallocation. A cost reallocation will not change a one-part rate into a two-part rate; it will only change the level of existing charges. In this circumstance, the customers should have a choice and not be unilaterally converted from a one-part to a two-part rate structure. 77 FERC at 62,127.

through an open season, in which shippers currently receiving IT-feeder service on the supply laterals would have the option of choosing regular interruptible service or bidding for the FTSL service.

14. The Commission¹⁴ rejected Transco's FTSL proposal as unjust and unreasonable, in part, because it denied both FT and FTSL shippers the right to use flexible receipt and delivery points throughout the rate zones for which they have contracted and paid for capacity.¹⁵ The Commission pointed out that, under Transco's proposal, it would have the same maximum rate in effect for all firm shippers within each production area rate zone, both the FT shippers and the FTSL shippers. Thus, both sets of firm shippers would be paying for service throughout the zone, even though they would only be entitled to service on certain facilities within the zone. The Commission found that this violated the Commission's policy established in Order No. 636 that firm shippers should have the right to use secondary points throughout the zones for which they pay a reservation charge. As a result, the Commission found, the FTSL proposal would not provide an adequate opportunity for aggregation of supplies and would diminish the effectiveness of Station 65 as an aggregation and trading point. Shippers would have to enter into multiple contracts (e.g., an FTSL and an interruptible contract), make multiple nominations to bring gas to Station 65, and would be paying Transco's access charge twice.

15. The Commission also stated:

It is true, as Transco points out, that while the IT-feeder service was in effect, the Commission made an exception to its general receipt and delivery point policy, because the IT-Feeder service itself provided shippers with the flexibility to access receipt and delivery points throughout the production area. Since Transco in this filing is proposing to discontinue the IT-Feeder service, with its flexibility, and replace it with a firm service,

¹⁴Order Accepting and Suspending Tariff Sheets Subject to Further Conditions and Establishing Briefing Schedule and Technical Conference, 84 FERC ¶ 61,337 (September 30, 1998); Order on Mobile-Sierra Doctrine and on Rehearing, 85 FERC ¶ 61,357 (December 16, 1998); Order Following Technical Conference and Rejecting Tariff Sheets, 86 FERC ¶ 61,175 (February 24, 1999); Order Denying Requests for Rehearing, Stay, and Clarification, 88 FERC ¶ 61,135 (July 29, 1999).

¹⁵The Commission also rejected the proposal, because it would reduce market centers and competition.

there is no longer any basis for permitting Transco to deny shippers the receipt and delivery point flexibility attendant to firm service.¹⁶

C. Court review of Commission orders

16. Indicated Shippers, representing primarily producers and marketers currently contracting for the IT-Feeder service, appealed Opinion No. 405 rejecting Transco's Docket No. RP93-136-000 FTW proposal to amend Rate Schedule FT to include firm service on the supply laterals. There was no appeal of the orders rejecting Transco's FTSL proposal.

17. In Exxon Corporation v. FERC, 206 F.2d 47 (D.C. Cir. 2000), the Court remanded Opinion No. 405 on the ground that the Commission had not adequately explained its finding that the proposed change to Rate Schedule FT would only be just and reasonable if the FT-conversion customers were given a choice whether to purchase the new firm service on the supply laterals to be offered under Rate Schedule FT or purchase a lower quality interruptible service. The Court pointed out that the FT-conversion shippers' contracts contained Memphis clauses which permit Transco to make Section 4 filings to modify the rates, terms and conditions of Rate Schedule FT service. Opinion No. 405 had also treated the FT-conversion shippers as if they had contracted for the IT-Feeder service on the supply laterals, in addition to Rate Schedule FT service. Given that the Commission had found firm service on the supply laterals with two-part rates would be just and reasonable, the Court did not understand why the Memphis clauses did not permit Transco to unilaterally impose its FTW proposal on the FT-conversion shippers. 206 F.3d at 52.

18. In our order responding to the Court's remand, the Commission clarified that the FT-conversion shippers had not contracted for the IT-Feeder service on the supply laterals. Rather, they only had contracts for Rate Schedule FT service on the production area mainline, and, consistent with this fact, the primary receipt points listed in the FT service agreements were all on the production area mainline. The Commission also found that the FT-conversion shippers had no right to use secondary points on the supply laterals. In these circumstances, the Commission held, Transco's FTW proposal would improperly require the FT conversion customers to take, and pay for, service for which they had not contracted.

¹⁶86 FERC at 61,609.

19. The Commission's order on remand was appealed to the Court. In Exxon Mobil Corp. v. FERC, 315 F.2d 306 (D.C. Cir. 2003), the Court again remanded this case. The Court held that the Commission had not adequately reconciled its findings in the order on remand on Transco's FTW proposal with its orders rejecting Transco's FTSL proposal. In particular, the Court was concerned that the Commission had made inconsistent statements with regard to whether Transco could impose secondary firm service on the FT-conversion customers without modifying their contracts. As a result, the Court concluded that the Commission had not adequately responded to contentions that Transco's FTW proposal could be accepted as a proposal to provide such secondary firm rights.

20. On rehearing of the order on remand, the Commission explained its finding that the FT-conversion shippers have no secondary point rights on the supply laterals, as follows:

This fact is the result of applying Commission policy to the Transco system. Under Commission policy, firm shippers have the right to use secondary receipt and delivery points only on those parts of the system for which they pay reservation charges under their firm contracts. The Commission applied this policy to Transco's system as follows: "In the production area, the reservation charge is for service on the mainline facilities. A shipper pays a separate IT rate for service on the supply laterals (IT-Feeders). Consequently, an FT shipper can use secondary receipt points for capacity covered by the reservation charge, i.e. the mainline facilities not subject to the IT-Feeder system."¹⁷

21. However, the Court pointed out that the orders rejecting the FTSL proposal held that the FT-conversion shippers' current lack of secondary point rights on the supply laterals is due to the fact the Commission has "made an exception to its general receipt and delivery point policy, because the IT-Feeder service itself provided shippers with the flexibility to access receipt and delivery points throughout the production areas."¹⁸ The Court also pointed out that the FTSL orders had found that, if Transco eliminated the IT-Feeder service, there would no longer be "any basis for permitting Transco to deny shippers the receipt and delivery point flexibility attendant to firm service," id., despite

¹⁷96 FERC at 61,610, quoting Transcontinental Gas Pipe Line Corp., 73 FERC ¶ 61,361 at 62,128 (1995).

¹⁸Transcontinental Gas Pipe Line Corp., 86 FERC at 61,609.

the fact Transco's firm zone rates did not include the costs allocated to service on the supply laterals.

22. The Court held that the Commission had not explained why, under the logic in the FTSL orders, Transco's FTW proposal in the instant case to eliminate the IT-Feeder service and require the FT-conversion shippers to take and pay for service on the supply laterals would entail modification of their contracts, since the FTSL orders seem "to indicate that the Commission's general policy would give the FT conversion shippers secondary rights on the supply laterals without the need for contract modification."¹⁹

II. Discussion

23. The Commission finds that its opinions here are not inconsistent and do not result in inconsistent application of Commission policy.

24. To understand the basis for the Commission's decisions here, it is important first to understand the interaction between the Commission's flexible point policy and pipeline-shipper contracts. The Commission's flexible point policy distinguishes between primary points and secondary points. Firm contracts between pipelines and their shippers typically provide that the pipeline will transport up to a specified contract demand from a primary receipt point or points listed in the contract to specified primary delivery points also listed the contract. This provision specifies the shipper's guaranteed firm right to service, and the pipeline must reserve sufficient capacity at the primary points and the intervening mainline to be able to guarantee this service. Under Commission policy, pipelines must permit shippers to change their primary points, as long as there is sufficient unsubscribed capacity available that the pipeline can guarantee firm service at the new point and the change does not reduce the reservation charges due to the pipeline. However, the Commission has held that, because the primary points are listed in the contract, "an existing shipper's change from one primary point to some other point requires a change in its contract with" the pipeline.²⁰

25. The Commission also requires that firm shippers be permitted to use all other points in the zones for which they pay reservation charges on a secondary basis. However, unlike service at a primary point, a shipper has no guaranteed firm right to use a secondary point, since shippers using the point as their primary point have priority over shippers using the point as a secondary point. Thus, the pipeline need not reserve

¹⁹Exxon Mobil, 315 F.3d at 311.

²⁰Tennessee Gas Pipeline Co., 94 FERC ¶ 61,097 at 61,402 (2001).

Capacity to be able to serve a firm shipper at a secondary point. Unlike with primary point changes, the Commission has treated secondary point rights as a right which can be given a shipper without changing its contract.²¹ The Commission has explained that shipper contracts include a provision incorporating the terms and conditions in the pipeline's tariff into the service agreement, thereby automatically giving the shippers any increased rights arising from changes in the terms and conditions. Thus, the Commission has implemented its secondary point policy by acting under NGA Section 5 to require pipelines to modify the terms and conditions of service in their tariffs to provide firm shippers the right to use secondary points throughout the zones for which they pay. "This has not been considered to improperly modify the shippers' individual service agreements."²²

26. With this background, we now address the contention that Transco's proposal to amend Rate Schedule FT to require the FT conversion shippers to take and pay for service on the supply laterals would not modify the FT conversion shippers' contracts. For us to accept that contention based on the Commission's flexible point policy, we would have to find that Transco's proposal only entails giving the FT-conversion shippers secondary point rights on the supply laterals. This is because the Commission has only found that giving firm shippers secondary point rights does not change their contracts. However, if Transco's proposal entails giving the FT-conversion shipper's primary rights on the supply laterals, then its proposal would constitute an impermissible, unilateral contract change.

A. Distinction between FTW proposal and secondary point rights

27. We find that Transco's FTW proposal would give the FT-conversion shippers primary point rights on the supply laterals, not just secondary point rights. Therefore, consistent with the Commission's flexible point policy, implementing Transco's proposal would require changing the FT-conversion shipper's contracts, not just changing the terms and conditions of service in Transco's tariff.

28. The Commission recognizes that the provision Transco proposes to add to its FT rate schedule would not have assigned the FT-conversion shippers primary point rights at specific points on the supply laterals. However, the FTW proposal would not provide these shippers only with secondary point rights. Rather, as discussed below, the proposal entailed giving the FT-conversion shippers the highest possible priority for service on the

²¹Regulation of Short-term Natural Gas Transportation Services, 101 FERC ¶ 61,127 at 61,527-9 (2002).

²²101 FERC at 61,528.

supply laterals such that Transco would have had no additional firm capacity on the laterals to sell to other shippers as primary capacity. In contrast, had the rights obtained by the FT customers been considered only secondary rights, Transco would have had lateral capacity to sell to new shippers as primary rights, with the highest priority.

29. It may well be that providing the ordinary, point specific type of primary rights would not be desirable on Transco's supply laterals. That is because the supply laterals are extremely narrow so that each shipper would have obtained a very low level of primary point rights. The laterals also provide access to different gas supply sources, and the relative desirability of those supplies may vary over time, based on price changes and other factors. If shippers receiving firm service on the supply laterals were required to obtain defined primary rights at specific points on individual supply laterals, they may have had less flexibility to shift their purchases among the supplies attached to all the supply laterals as the desirability of the different supplies changes over time. Other pipelines have sought to address the issue of providing supply lateral flexibility in a variety of ways, including providing flexibility in excess of contract demand and market aggregation services.²³

30. Transco sought to address this situation by providing FT shippers flexible primary capacity rights on the supply laterals. This would allow each shipper to schedule up to its full transportation contract quantity (TCQ) on any supply lateral. The amount the FT-conversion shipper actually received each day would be determined by the nomination process. If the FT-conversion shippers scheduled requests for service on a supply lateral that exceeded available capacity, then each FT-conversion shipper would receive a pro rata share of available capacity based on the quantities nominated by the FT-conversion shippers on the supply lateral to be allocated (after the scheduling of point-to-point entitlements of non-conversion FT and X Rate Schedule shippers).

31. While Transco's proposal would not give the FT-conversion shippers point-specific primary points on the supply laterals, it is still properly treated as giving them primary firm rights on the supply laterals, not just secondary point rights. That is because

²³Tennessee Gas Pipeline Company, FERC Gas Tariff, Fifth Revised Volume No. 1, Seventh Revised Sheet No. 316 (Shippers exceeding their contract demand on a lateral would receive scheduling priority lower than shippers within their contract demand, but higher than interruptible service); Texas Eastern Transmission Corporation, 62 FERC ¶ 61,015, at pp. 61,074 -76 (1993) (shippers have preferential capacity that enables them to use capacity in excess of their segment capacity in the access (production) area to the extent other shippers are not using capacity).

Transco's FTW proposal would require it to reserve capacity on the supply laterals in order to provide the FT-conversion shippers a guaranteed firm service on the supply laterals. If Transco were only proposing to give the FT-conversion shippers secondary rights on the supply laterals, it would be free to sell the entire firm capacity on the supply laterals (other than that previously sold to non-conversion FT and X Rate Schedule shippers) to other shippers. Since the FT-conversion shippers' primary receipt points would remain on the production area mainline, the supply laterals would be outside their primary path and they would have no primary point rights on the supply laterals. Thus, Transco would be under no obligation to reserve any firm capacity on the supply laterals for the FT-conversion shippers. However, since the purpose of the proposal is to require the FT-conversion shippers to take firm to the wellhead service, the proposal clearly requires Transco to reserve sufficient capacity on the supply laterals so as to be able to provide the FT-conversion shippers a guaranteed firm service on the supply laterals. Such service constitutes primary firm service. As such, under the Commission's flexible point policy, imposing such a service on a shipper requires a change in its contract, and cannot be accomplished through a simple change in the pipeline's terms and conditions of service.

32. The Court's finding that our previous order on remand failed to adequately explain why Transco's FTW proposal would modify the FT-conversion shippers' contracts arose largely from the previous remand order's response to the following contention by Indicated Shippers. They contended that the fact the FT-conversion shippers do not currently have rights on the supply laterals is the result of an exemption from Commission policy, and not their contracts. Indicated Shippers asserted that the Commission made an exception to its flexible receipt and delivery point policy with respect to Transco's production area because the IT-Feeder service provided FT-conversion shippers with flexible access to receipt points. Therefore, Indicated Shippers argued, eliminating the IT-Feeder priority and adopting FTW rates lifts the exemption, rather than abrogating the FT-conversion shippers' contracts.

33. In the previous order on remand, we responded to this contention by stating that the FT-conversion shippers' current lack of secondary point rights on the supply laterals is the result of applying Commission policy that firm shippers only have secondary point rights on the part of the system for which they pay, and was not an exception to that policy.²⁴ We now clarify our response to this contention, as well as the interaction between Transco's rate design and firm shippers' secondary point rights.

²⁴96 FERC at 61,609-10.

34. As long as the IT-Feeder service was in effect, the Commission found that Transco's firm shippers should not have secondary point rights on the laterals, even though they paid rates for the zones. Each of Transco's production area rate zones include both production area mainline and supply laterals. As discussed above, the Commission ordinarily requires pipelines to give shippers secondary point rights throughout the zones for which they are paying reservation charges. Since the FT-conversion shippers pay reservation charges for service in the production area rate zones and those zones include the supply laterals, ordinarily those shippers would be considered to be paying rates that include the cost of the supply laterals. And, on that basis, the FT-conversion shippers would, under Commission policy, be entitled to secondary point rights on the supply laterals as part of the terms and conditions of service in the tariff, without any change in their contracts.

35. However, due to the nature of the IT-Feeder service, the Commission found that the firm shippers should not be given flexible secondary point rights on the laterals, because they do not pay rates for the laterals. Transco allocates costs to each of its rate zones and then calculates rates for each zone based on the CD for each zone. In determining firm rates, Transco imputes a contract demand level for interruptible service (which includes the IT Feeder volumes). Based on these imputed CDs, Transco determines the maximum firm rate for the zone. Thus, the greater the amount of interruptible transportation, the lower the firm rate for the zone.

36. With the IT-Feeder rates in effect, Transco does not sell firm service on the supply laterals. Since shippers must contract for IT-Feeder service to move gas from the gathering systems to the production area mainline, substantial volumes flow under the IT Rate Schedule. As a result, Transco's rates reflect significant imputed contract demand for the IT-Feeder service, reducing the FT rates paid by the FT-conversion shippers in each zone. For that reason, the Commission found that as long as the IT-Feeder was in effect firm shippers would not be entitled to secondary points on the laterals even though they were paying the full zone rates. This is because, due to the imputed IT volumes, the firm shippers' rates were reduced by the IT service on the supply laterals, so, in effect, the firm shippers were not paying for the laterals. Whether characterized as an application of Commission policy, or as an exception to the Commission's general flexible point policy (85 FERC, at 61,609), the Commission found that, as long as the IT-Feeder system is in effect, firm shippers are not entitled to flexible point rights on the laterals because they are not paying for those costs.

37. But once the IT-Feeder service is removed, Transco would be providing the same service as other pipelines, and firm shippers paying the full zone rate should be entitled to

flexible secondary point rights throughout the zones for which they pay.²⁵ Thus, the Commission agrees with the Indicated Shippers that Transco could provide the FT-conversion shippers with secondary point rights on the supply laterals without modifying their contracts. However, that was not Transco's proposal in the FTW filing. As part of its FTW proposal to require FT conversion shippers to take firm service on the supply laterals, Transco proposed not only to eliminate IT-Feeder service, but also to provide firm shippers with primary rights (rather than secondary rights) on the supply laterals. It is the requirement that the FT-conversion shippers take primary service on the laterals that modifies the FT-conversion shippers' contracts. This fact justifies rejection of the FTW proposal as an impermissible unilateral contract change.

38. Moreover, Transco's proposal to require the FT-conversion shippers to take primary rights on the supply laterals may have a significantly different effect on their rates than simply giving the FT-conversion shippers secondary point rights on the supply laterals. The FTW proposal is more likely to shift the costs of the supply laterals to the FT-conversion shippers than a proposal only to give the FT-conversion shippers secondary point rights on the supply laterals. The elimination of the IT-Feeder service would reduce the volumes used to design the FT rates, since the rate design volumes would no longer include any imputed contract demand associated with IT-Feeder service.²⁶ The resulting increase in the FT rates would result in the FT-conversion shippers paying for service throughout the production area rate zones, including on the supply laterals. As discussed above, under Transco's FTW proposal, there would have been no firm primary capacity available for sale to other shippers on the supply laterals. Thus, under the proposal, the firm conversion customers would have been forced to absorb the full increase in rates.

39. Had Transco instead proposed only that the FT shippers be accorded normal secondary rights, Transco would have had firm capacity available for sale on the laterals, with the highest priority of service. Any sales of such firm capacity would have then reduced the impact of the elimination of the IT-Feeder service change on the existing FT-conversion customers. Indeed, in Opinion No. 405, the Commission required that

²⁵See the discussion of the FTSL order, *infra*, where the Commission explained why shippers should have flexible point rights when the IT-Feeder service is eliminated.

²⁶Transco's limited Section 4 filing submitted on June 4, 1993 in Docket No. RP93-136-000, Schedule K-1, page 1, reflects the elimination of IT-Feeder volumes from the allocation and rate design of FT Rates. A comparison of the Rate Design Workpapers (Mobile Bay Rolled-in & IT Feeder), Page 1 in Docket No. RP92-108-000 confirms that no IT-Feeder volumes were allocated to FT rates.

Transco have an open season to determine whether other shippers would be interested in obtaining firm capacity on the supply laterals.²⁷

40. In summary, Transco's FTW proposal went beyond merely providing secondary rights on the laterals. It resulted in changing the FT-conversion shippers' contracts to provide them with the highest priority of service on the laterals, and would have required them to fully absorb all the costs occasioned by the elimination of the IT-Feeder service, without the possibility of having those costs reduced by the sale of additional firm service in the zone.

41. The Commission concludes that, because Transco's FTW proposal would require the FT-conversion shippers to take primary firm service on the supply laterals for which they have not contracted, it would modify their contracts in a manner not authorized by their Memphis clauses. A Memphis clause in a contract authorizes the pipeline to make unilateral Section 4 filings to change the rates, terms, and conditions under which the pipeline will provide the service included in the customer's contract. It does not authorize the pipeline to require the customer to take and pay for additional service for which the customer has not contracted.²⁸ Accordingly, since Transco's FTW proposal goes beyond changing the rates, terms, and conditions for the service which is included in the FT-conversion shippers' existing contracts, the Commission finds that Transco has not met its Section 4 burden to show that the FTW proposal is just and reasonable, nor have its customers satisfied their burden under Section 5 to justify imposition of the FTW proposal.

B. Consistency with FTSL orders

42. The Commission's orders on Transco's FTSL service are fully consistent with the above analysis. Transco's FTSL proposal, like its FTW proposal, included the elimination of the IT-Feeder priority. However, unlike the FTW proposal, the FTSL proposal would institute a separate firm service on the laterals, and both the FTSL shippers and the FT-conversion shippers would have been charged the existing Zone rates. The Commission rejected the FTSL proposal because it did not give FTSL shippers secondary firm rights

²⁷Transcontinental Gas Pipe Line Corporation, 76 FERC ¶61,021, at 61,062 (1996).

²⁸Exxon Mobil Corp. v. FERC, 315 F.3d at 310. ("Petitioners . . . point to no case in which a Memphis Clause has been used to force a pipeline customer to take additional service rather than to accept changes in the rates, terms, or conditions of service already agreed upon.")

on the production area mainline in the zone for which they paid, and did not give the FT shippers, including the FT-conversion shippers, secondary firm rights on the supply laterals in the zones for which they paid.

43. Transco proposed that the rates for FTSL service would be the rate applicable to the relevant production area zone. It did not propose, for example, to establish new zones on the laterals with different rates. In light of the proposed elimination of the IT-Feeder service, the Commission found that its prior holding regarding flexible point rights needed to be reevaluated. As the Commission stated:

It is true, as Transco points out, that while the IT-Feeder service was in effect, the Commission made an exception to its general receipt and delivery point policy, because the IT-Feeder service itself provided shippers with the flexibility to access receipt and delivery points throughout the production area. Since Transco in this filing is proposing to discontinue the IT-Feeder service, with its flexibility, and replace it with a firm service, there is no longer any basis for permitting Transco to deny shippers the receipt and delivery point flexibility attendant to firm service.²⁹

Since, under Transco's FTSL filing, all firm shippers would be paying the same zone rate, both the FTSL and FT shippers would be paying reservation charges for service throughout the production area zones. Thus, under the Commission's general policy, secondary point rights would apply in order to provide firm shippers with the ability to access all points within the zones for which they pay.

44. The Commission explained why from a competitive and flexibility standpoint the elimination of the IT-Feeder service required the use of flexible point rights on the supply laterals.

Under the current system, the IT-Feeder system operates as a surrogate for flexible receipt and delivery point rights because it provides firm shippers, as well as producers and marketers who supply firm shippers, with secondary rights on the production area mainline. For instance, a producer using the IT-Feeder system on a supply lateral receives secondary point rights (lower than firm service, but higher than ordinary interruptible service) to move gas on the production area mainline to feed a firm shipper's contract. In contrast, with the replacement of the IT-Feeder with the FTSL services as

²⁹86 FERC at 61,609.

proposed by Transco, shippers with FTSL service would receive firm secondary delivery point rights only on the supply laterals. They would lose the flexibility to move gas on the production area mainline essentially on a secondary basis, with a higher priority than ordinary interruptible service.³⁰

45. These reasons for the rejection of the FTSL proposal are consistent with our reasoning in also rejecting the FTW proposal. As discussed above, we have recognized that the FTW proposal's elimination of the IT-Feeder service and corresponding changes in the rates for FT service would justify giving the FT-conversion shippers secondary firm point rights on the supply laterals, the same thing we found should occur in connection with the FTSL proposal's elimination of the IT-Feeder system. However, the FTW proposal did not seek just to give the FT-conversion customers secondary firm rights on the supply laterals. Rather, it sought to impose on those customers primary firm rights, which the Court itself recognized exceeded the Memphis clause. It is for that reason that we have rejected the FTW proposal as an improper modification of the FT-conversion shippers' contracts.

46. The orders on the FTSL proposal used this very distinction in explaining why the rejection of the FTSL proposal for failure to provide secondary point rights to the FT-conversion customers was not inconsistent with Opinion No. 405 and would not, in effect, reinstate the firm to the wellhead proposal considered in that Opinion:

A significant difference between the firm-to-the-wellhead proposal rejected in Opinion No. 405 and the provision of secondary point access in this filing is the nature of access shippers would acquire. In Transco's filing giving rise to Opinion No. 405, firm production area mainline shippers would have been required to pay for and receive primary rights on the production area laterals. In contrast, if Transco were to provide flexible point rights to the shippers with firm entitlements on the production area mainline, they would acquire only secondary point access to receipt points on the supply laterals with a lower priority than shippers obtaining primary point rights by subscribing to FTSL firm service on the supply lateral. Thus, the Commission's determination here would not recreate the firm-to-the-wellhead proposal rejected in Opinion No. 405.³¹

³⁰86 FERC at 61,610.

³¹86 FERC at 61,610 n. 17.

47. Thus, there is no inconsistency in the Commission's handling of the two cases, because they involved the application of the same policies to very different proposals by Transco.

48. Although the Commission has rejected Transco's specific proposals as considered in Opinion No. 405 and the FTSL proceeding, the Commission made clear that Transco is still free to make other Section 4 filings to eliminate the IT-Feeder system without providing firm shippers with primary point rights on the laterals.³² It could propose, for example, that the laterals be considered new zones with different firm and interruptible rates than existing zones. If the filing was a full section 4 filing, Transco could propose new firm rates that reflect a projected loss of IT volumes, and a projected increase for any additional firm service subscribed during the open season. In making such a proposal, of course, Transco would need to justify its projections and might have to show that its existing zones are not too large and in conflict with the principle that rates should reflect differences in mileage.

The Commission orders:

(A) The issues on remand are addressed as discussed in the body of this order.

(B) Transco's FTW proposal is rejected as unjust and unreasonable for the reasons stated in this order.

By the Commission.

(S E A L)

Linda Mitry,
Acting Secretary.

³²88 FERC ¶ 61,135 at 61,372 (finding that Transco can make a Section 4 filing to eliminate the IT-Feeder service as long as such filings accommodate flexible aggregation and pooling).