121 FERC ¶ 61,295
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Suedeen G. Kelly, Marc Spitzer,
Philip D. Moeller, and Jon Wellinghoff.

Transcontinental Gas Pipe Line Corporation Docket No. RP01-245-016

ORDER ON REHEARING FOLLOWING TECHNICAL CONFERENCE

(Issued December 26, 2007)

1. This order addresses comments filed after a technical conference regarding the appropriate method of conducting pooling in Transcontinental Gas Pipe Line Corporation's (Transco) Rate Zone 4.[1] This order also generally grants Transco's pending request for rehearing in this proceeding concerning the pooling issue.[2]

I. Background

2. In this general section 4 rate case, the Commission approved a settlement which settled many issues, but reserved fourteen issues for a hearing before an Administrative Law Judge (ALJ).[3] In subsequent orders on the ALJ's initial decision[4] and approving further settlements,[5] the Commission has finally resolved all but one of the reserved issues. The remaining issue involves Transco's operation of its pooling point at Station 85.

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[1] The Commission established the technical conference in *Transcontinental Gas Pipe Line Corp*., 115 FERC ¶ 61,268 (2006) (May 30, 2006 Order).

[2] Transco requested rehearing of the Commission's order in *Transcontinental Gas Pipe Line Corp*., 112 FERC ¶ 61,170 (2005) (August 5, 2005 Order).

[3] *Transcontinental Gas Pipe Line Corp*., 100 FERC ¶ 61,085 (2002).

[4] *Transcontinental Gas Pipe Line Corp*., 106 FERC ¶ 61,299 (2004) (March 26, 2004 Order), *reh'g*, 112 FERC ¶ 61,170 (2005), *reh'g*, 115 FERC ¶ 61,268 (2006), affirming in part and reversing in part the ALJ's initial decision in *Transcontinental Gas Pipe Line Corp*., 101 FERC ¶ 63,022 (2002).

[5] *Transcontinental Gas Pipe Line Corp*., 101 FERC ¶ 61,298 (2002) and *Transcontinental Gas Pipe Line Corp*., 117 FERC ¶ 61,232 (2006).

3. Transco has eight physical pooling points on its system, where a shipper may aggregate supplies it has transported from any receipt point on Transco's system for disaggregation to other shippers. The purchasing shippers then transport the gas away from the pooling point to its ultimate delivery point off Transco's system. Five of the pooling points (at Stations 30, 45, 50, 62, and 65) are in Transco's production area, which encompasses its Rate Zones 1 through 3. The other three pooling points are in Transco's market area, including at Station 85 in Zone 4, and at Stations 165 and 210 in Zones 5 and 6 respectively. Transco treats the physical movement of gas to and from a pooling point as two separate transactions. Thus, a shipper desiring to transport gas to a pooling point must schedule, and pay for, firm or interruptible service under Rate Schedules FT or IT from the receipt point where the gas enters Transco's system to the pooling point.[6] In addition, a purchaser of gas at the pooling point must separately schedule, and pay for, firm or interruptible service from the pooling point to the ultimate delivery point.

4. Station 85 is on Transco's mainline in the middle of its Zone 4. Therefore, shippers who transport gas from upstream receipt points on Transco's mainline to the Station 85 pooling point use the Zone 4 mainline, and Transco charges a rate for such deliveries to the Station 85 pooling point under either its Rate Schedule FT or IT. Transco's Mobile Bay lateral, however, interconnects with Transco's mainline at Station 85 and is in a separate rate zone, known as Zone 4A/4B. As a result, shippers on the Mobile Bay lateral may deliver gas directly to the Station 85 pooling point pursuant to their contracts for service in Zone 4A/4B, without paying a Zone 4 transportation rate.

5. The Mobile Bay lateral was the only major connection to a supply area in Zone 4, until Destin Pipeline Company (Destin) went into service in 1999. Destin interconnects with Transco's mainline at Shubuta, Mississippi, which is in Zone 4 approximately 27 miles upstream from Station 85.[7] Shippers on Destin desiring to deliver gas to the Station 85 pooling point must enter into a contract with Transco for transportation service in Zone 4 from the Shubuta receipt point to the Station 85 pooling point.[8]

6. BP Energy Co. (BP), a shipper on Destin, has contended throughout this proceeding that the fact it must pay the Zone 4 rate in order to access the Station 85 pooling point is contrary to Commission policy concerning pooling and unduly discriminates in favor of shippers on the Mobile Bay lateral, including Transco's affiliate

[6] Each shipper bringing gas supplies to a pooling point has its own, separate pool at that point. Transco's August 18, 2006 Initial Comments at 6. Transco's Pooling Rate Schedule permits shippers to transfer gas supplies between pools at the same point without charge.

[7] Ex. No. T-52 at 58.

[8] Tr. 551-553.

Transco Energy Marketing Company (TEMCO), who need not pay the Zone 4 rate to reach the Station 85 pooling point. BP requests that the Commission act under section 5 of the Natural Gas Act (NGA) to require Transco to replace its physical pool at Station 85 with a paper pool that would encompass all mainline receipt points in Zone 4. Under this approach, no shipper delivering gas to the Zone 4 paper pooling point would have to pay a Zone 4 rate.

A. <u>Commission Approval of Transco's Production Area Pooling</u>

7. The Commission first required pipelines to offer pooling in Order No. 587, issued in 1996.[9] In that order, the Commission defined pooling as the aggregation of gas from multiple physical or logical points to a single physical or logical point. The Commission also adopted North American Energy Standards Board (NAESB) Standard 1.3.17, providing "If requested by a shipper or supplier on a transportation service provider's system, the transportation service provider should offer at least one pool." Order No. 587 also adopted NAESB Standard 1.3.18, which provides, "Deliveries from receipt points should be able to be delivered directly into at least one pool and delivery points should be able to receive quantities from at least one pool, excluding non-contiguous facilities."[10]

8. At the time of Order No. 587, Transco had already established its pooling points at Stations 30, 45, 50, 62, and 65 in its production area and at Station 85 in Zone 4. In its December 1996 filing to comply with Order No. 587, Transco adopted both of the above two standards. However, several parties, including Natural Gas Clearinghouse (NGC), questioned whether Transco's existing pooling arrangements in fact complied with the NAESB standards. Specifically, they argued that Transco's requirement that shippers purchase and pay for interruptible transportation service in order to transport gas from most production area receipt points to production area pooling points violated the requirement in NAESB Standard 1.3.18 that shippers be able to deliver gas "directly" into a pool. NGC requested that the Commission require Transco to implement a paper pool that would permit shippers to pool supplies without paying for interruptible service.[11]

9. This issue arose out of Transco's service arrangements in its production area.

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[9] *Standards for Business Practices of Interstate Natural Gas Pipelines*, FERC Stats. & Regs., Regulations Preambles July 1996 – December 2000 ¶ 31,038 (1996) (Order No. 587).

[10] 18 C.F. R. § 284.12(a)(1)(i) (2005), Nominations Related Standard 1.3.18.

[11] *Transcontinental Gas Pipe Line Corp.*, 78 FERC ¶ 61,210, at 61,903 (1997), *reh'g denied, Transcontinental Gas Pipe Line Corp.*, 79 FERC ¶ 61,172, at 61,807 (1997).

Transco's three production area rate zones each include both mainline facilities and supply laterals.[12] However, Transco does not offer any firm service on the production area supply laterals. Production area firm service is limited to the mainline. Thus, shippers must enter into separate interruptible transportation service agreements in order to use the supply laterals. Such interruptible service that supplies or "feeds" firm service at pooling points is given a priority over other interruptible service, and thus is known as "IT-Feeder service."[13] The firm shippers then transport the gas away from the pooling points under their firm contracts. Thus, "under the IT-Feeder rate design two transactions are needed to move gas through the production area rate zones on a firm basis – the interruptible service on the supply laterals and the firm service on the production area mainline."[14]

10. In its first order on Transco's compliance filing, the Commission found that NAESB Standard 1.3.18 does not "require that deliveries to the pooling point be free of charge."[15] The Commission also found that "use of IT transportation to get supplies to a pooling point is not contrary to the standard."[16] However, the Commission did state that, under this standard, "gas must be able to be delivered from every receipt point and pipeline interconnect directly to a pooling point. Although we do not intend to disturb Transco's existing IT-Feeder service, it is not clear from Transco's tariff that receipt points outside the production area can deliver to the pool. Transco is directed to clarify how the operation of its IT-Feeder system with its mainline production area pooling points allows all points to deliver to the pool, or revise its tariff to provide for pooling of gas supplies as stated in the" NAESB standard.[17]

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[12] *See Transcontinental Gas Pipe Line Corp.*, 95 FERC ¶ 61,322, at 62,128-9 (2001), for a full description of Transco's production area and the services offered there.

[13] Currently, for the most part, producers and marketers (and not the firm mainline shippers) use the IT-Feeder service to transport gas on the supply laterals, and on the production area mainline as well, to reach the firm mainline customers, generally at pooling points. The priority for interruptible service feeding firm contracts also applies in Transco's market area, including Zone 4. Transco's September 1, 2006 Reply Comments at 6-7.

[14] *Transcontinental Gas Pipe Line Corp.*, 107 FERC ¶ 61,156, at P 48 (2004), *aff'd*, *ExxonMobil v. FERC*, 430 F.3d 1166 (D.C. Cir. 2005).

[15] *Transcontinental Gas Pipe Line Corp*, 78 FERC ¶ 61,210, at 61,903 (1997).

[16] *Id*.

[17] *Id*.

11. In response, Transco stated that its tariff contained no restriction preventing gas from any receipt point from being delivered to any pooling point on its system. The Commission found Transco's clarification to be sufficient. The Commission also denied NGC's request for rehearing of the Commission's failure to require Transco to set up a paper pooling system, in addition to its IT-Feeder system. NGC argued that, because NAESB required that gas from receipt points be able to be delivered "directly" into at least one pool, shippers should not be required to obtain and pay for IT transportation in order to reach a pool. The Commission responded:

> The standards simply require that there be pooling accessible by all points. They are not concerned with any rate consequences, such as whether poolers might incur an IT transportation expense, or with whether there is physical or paper pooling. Nor does the Commission consider that the word "directly" requires that every receipt point must be contiguous with a pool. Rather, the plain English meaning simply implies that gas can go in an uninterrupted course to the pool. Paper pooling accomplishes this. However, NGC has not demonstrated that Transco's IT Feeder system does not also allow this direct connection.[18]

12. Subsequently, in Order No. 587-F, the Commission refused to modify the NAESB standards to require paper pooling. In that order, the Commission stated, "Those advocating paper pooling standards have not provided a sufficient rationale for those standards at this time. Some pipelines currently offer paper pools, while others offer physical pooling in which shippers may have to pay a transportation charge to move gas into the pool. When a pool exists in a rate zone, the charge for shipment in that zone must be incurred either for shipment to the pool or shipment out of the pool. The marketers and producers advocating paper pooling do not provide sufficient justification for imposing the transportation charge on the outbound transportation in all situations."[19]

B. <u>Prior Orders in this Case</u>

13. In this case, BP does not seek to modify Transco's operation of pooling on any part of its system other than at Station 85 in Zone 4. Thus, it states that it is not seeking a change in Transco's IT-Feeder system in its production area or the requirement that shippers purchase and pay for IT service to take gas from receipt points on the production area supply laterals to the production area pooling points. However, BP does contend that the Commission should require Transco to establish paper pooling in Zone 4 so that

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[18] *Transcontinental Gas Pipe Line Corp*, 79 FERC ¶ 61,172, at 61,807 (1997).

[19] Order No. 587-F, FERC Stats. & Regs., Proposed Regulations 1988-1998 ¶ 32,527, at 33,351 (1997) (Order No. 587-F).

shippers need not purchase and pay for any service in order to ship gas to the Station 85 pooling point from an upstream Zone 4 mainline receipt point, such as the Shubuta receipt point at which gas from Destin enter Transco's Zone 4. BP argues that this is necessary so that shippers accessing the Station 85 pooling point from the mainline upstream of Station 85 are treated the same as shippers accessing that pooling point from the Mobile Bay lateral.

14. The ALJ found for BP on this issue. In its order on the initial decision, the Commission reversed the ALJ, and held that BP had not shown that Transco's current operation of the Station 85 pool is unjust and unreasonable.[20] However, the Commission then granted BP's request for rehearing of the order on initial decision, and found that Transco's operation of the Station 85 pooling point is unjust and unreasonable. The Commission found that Transco operates that pooling point differently from the way it operates all other pooling points. The Commission stated that shippers accessing pools in all rate zones must pay the transportation rate for that zone, except that Transco does not assess a Zone 4 transportation charge to shippers accessing the Station 85 pooling point from Mobile Bay lateral.

15. The Commission also found that Transco assesses two transportation charges, one for gas delivered to and one for gas taken away from the Station 85 pool in violation of the statement in Order No. 587-F that, "When a pool exists in a rate zone, the charge for shipment in that zone must be incurred either for shipment to the pool or shipment out of the pool." The Commission therefore directed Transco to cease charging two charges for access to the pool at Station 85.

16. The Commission also affirmed the ALJ's finding of a lack of competition at Station 85 pool. The Commission stated that the lack of physical capacity to transport gas to Station 85 (Transco's Zone 4 firm transportation capacity is fully subscribed) coupled with the fact that the pool is operated only as a physical pool effectively restricts the use of the pool to Mobile Bay Shippers. In addition, Commission found that the uneconomic charges Transco assesses the non-Mobile Bay shippers restrict the receipt points from which the pool can be accessed to one, rather than the multiple receipt points that the Commission envisions in a competitively functioning pool. The Commission affirmed the ALJ's finding that virtual pooling would bring more gas supplies, suppliers and marketers into the pooling process and would enhance the competitive environment. The Commission also found that TEMCO receives unduly preferential treatment because it doesn't pay the additional Zone 4 rate, and while TEMCO isn't the only shipper on Mobile Bay, it is the largest with 58 percent of Zone 4A and 100 percent of Zone 4B. The Commission accordingly directed Transco to adopt BP's paper pooling proposal.[21]

[20] March 26, 2004 Order at P 175-180.

[21] August 5, 2005 Order at P 172-177.

17. On rehearing, Transco contended that the Commission erred in requiring it to adopt BP's paper pooling proposal. Transco argued that the Commission incorrectly found that Transco operates its Station 85 pool differently from all other pools. Transco asserted that all shippers moving gas from an upstream receipt point to a pooling point must pay the transportation charges in its tariff applicable to the physical gas movement in question. If the gas must move across a portion of the rate zone in which the pooling point is located, then the shipper must pay that zone's rate. However, Transco pointed out, the Mobile Bay shippers do not transport gas on the Zone 4 facilities to get to the Station 85 pooling point; they deliver gas directly to the pooling point using the Zone 4A or 4B facilities for which they pay. Thus, according to Transco, it is the location and physical configuration of the Station 85 pooling point that dictates the applicable charges into the pool, and the Mobile Bay shippers should not pay the Zone 4 rate because they do not use Zone 4 to reach that pool.

18. Transco contended that the paper pooling advocated by BP is wholly incompatible with Transco's IT-feeder rate design, under which shippers use interruptible service in order to transport gas from production area supply laterals to production area pooling points. Transco stated that it includes both the contract demand represented by the firm service and imputed contract demand represented by the IT service in the volumes used to design its production area rates. This causes the per unit rates for the production area zones to be lower than they would otherwise be. Similarly, Transco stated that it includes IT transactions used to reach pooling points in market area zones, such as Zone 4, in its rate design volumes.

19. However, Transco stated, BP's paper pooling proposal would relieve BP and other shippers using IT service in Zone 4 to reach Station 85 of having to pay for that service. Transco stated that this would be contrary to the treatment of shippers in Zones 1 through 3 who use and pay for IT-Feeder service to reach the pooling points in those zones. Transco argued that the paper pooling proposal would also be inherently preferential to BP and other Zone 4 shippers, while discriminating against shippers in other rate zones who do have to pay for transportation of gas to pooling points. In addition, Transco stated that BP's paper pooling proposal would also raise cost recovery issues for Transco, since the volumes used to design its current rates include all interruptible transportation to Station 85 from mainline receipt points in Zone 4.

20. Transco maintained that nothing in Order 587-F or in the NAESB standards prohibits charges both into and out of a pool. It pointed out that the Commission declined to require paper pooling in Order No. 587-F. Transco contended that the statement in Order No. 587-F concerning charging only once for transportation in the zone in which a pool is located is not "policy," and at any rate, policy should not be applied blindly without a valid rationale for applying it in a particular case. Transco argued that the Commission appeared to be unreasonably influenced by Transco's

affiliate relationship with TEMCO. It stated that numerous other shippers have gas transported to Station 85 over the Mobile Bay lateral on the same terms as TEMCO.

21. In its May 30, 2006 Order, the Commission found that Transco's request for rehearing raised significant issues concerning the appropriate method of conducting pooling in Zone 4 which could not be adequately addressed on the present record. Therefore, the Commission directed that staff conduct a technical conference to clarify certain facts concerning the operation of pooling in Zone 4.

22. The Commission recognized that it had found in Transco's Order No. 587 compliance proceeding that Transco's use of its IT-Feeder system in conjunction with pooling complies with the NAESB pooling requirements. The Commission stated that in this proceeding it would not require Transco to change its method of conducting pooling in its production area. However, the Commission found that its holdings in the Order No. 587 compliance proceeding were not conclusive with respect to whether Transco's operation of its Station 85 pooling point complies with the NAESB requirements. No party in the Order No. 587 compliance proceeding raised any issue concerning the Station 85 pooling point, which is outside the production area, and Destin did not go into service until after that proceeding.

23. The Commission found that there appeared to be differences between the production area and Zone 4, which may affect how pooling should be structured in Zone 4. The Commission stated that Transco's IT-Feeder system permits gas from all production area receipt points to flow directly to the production area pooling points without interruption, consistent with NAESB Standard 1.3.18. However, the same finding cannot be made with respect to pooling in Zone 4. The Commission stated that this was because the IT-Feeder system is only fully in effect in the production area. The IT-Feeder system requires shippers to use IT service to transport gas from receipt points on the production area supply laterals to the production area pooling points, because Transco does not offer firm service on the supply area laterals. Moreover, the interruptible service on the supply laterals is essentially firm, since it feeds firm service. Thus, all gas received on the production area supply laterals has the same ability to reach a pooling point.

24. However, the Commission found that this is not true in Zone 4. Unlike in the production area, Transco offers firm service throughout Zone 4, and shippers on Destin have been unable to obtain firm capacity in Zone 4 because capacity in that zone was fully subscribed when Destin commenced operation. As a result, the gas received at Zone 4 receipt points upstream of the Station 85 pooling point may or may not be able to reach that pooling point, depending upon the level and types of service requests Transco receives on a particular day. For example, on days when firm customers make full use of their firm capacity, shippers on Destin cannot obtain interruptible service to transport their gas to the Station 85 pooling point. Thus, gas received at each Zone 4 receipt point

does not have the same ability to go in an uninterrupted course directly to the Station 85 pooling point. The Commission stated that this suggests that Transco's current method of conducting pooling in Zone 4 may not fully comply with NAESB Standard 1.3.18.

25. However, the Commission found that this does not mean that BP's proposal to replace the current physical pool at Station 85 with a single paper pool for all receipts into Zone 4 is appropriate. The Commission stated that BP's proposal ignores the physical service constraints that exist in Zone 4. It does not appear from the record developed at the hearing in this case that gas received at the Destin receipt point, or other Zone 4 receipt points upstream of Station 85, can be assumed to be readily available for delivery downstream to Station 85. Thus, a single paper pool covering all of Zone 4 would not appear to be appropriate. However, the Commission stated that, consistent with NAESB standard 1.3.18, receipt points upstream of Station 85 should have direct access to a pool. This might be accomplished by establishing a second Zone 4 pool upstream of Station 85, or by permitting gas received in Zone 4 upstream of Station 85 to be pooled at Station 65 in Zone 3.

26. Accordingly, the Commission directed that the technical conference explore: (1) the feasibility of establishing a separate paper pool for Zone 4 receipts upstream of Station 85 and how such a separate pool might be structured, (2) what effect such a paper pool might have on the current firm and interruptible transportation rate structure in Zone 4, (3) whether Transco already permits pooling at Station 65 of gas received at the Destin/Shubuta receipt point (and other Zone 4 receipt points), and (4) if so, whether the Destin/Shubuta receipt point could be considered to have direct access to the Station 65 pool, thus satisfying the requirements of NAESB Standard 1.3.18 concerning access to a pool. In addition, the Commission stated that the technical conference should consider whether there have been changes in Transco's operations since the hearing, including: (1) whether Transco's firm capacity upstream of Station 85 continues to be fully subscribed, (2) if not, what percentage of that firm capacity is currently subscribed, and (3) whether any shippers on Destin have been able to obtain firm capacity in Zone 4.

27. Finally, the Commission stated it was unclear whether Transco requires firm shippers using primary and secondary points upstream of Station 85 to pay the Zone 4 usage and fuel charges twice in order to obtain the administrative benefits of using the Station 85 pooling point, once to transport gas to the point and second time to transport the gas away from the point. The Commission held that if Transco does require firm Zone 4 shippers to pay two usage and fuel charges, that would appear to violate the Commission's policy that pipelines should not consider nomination to and from pooling points for pool members with through transportation contracts as splitting the contracted transportation service into two billable components. Rather, in such circumstances,

billing should be based on either the contract's pool receipts or deliveries, but not both.[22] Thus, the technical conference should explore whether there are any instances where Transco charges a firm transportation charge for shipment of gas from an upstream receipt point to Station 85 and a separate (and second) firm transportation charge for shipment of the gas to a delivery point that is downstream of Station 85. The Commission also stated the technical conference should explore the circumstances in which Transco charges an interruptible transportation charge for shipment of gas from an upstream receipt point to Station 85 and a separate (and second) interruptible or firm transportation charge for shipment of the gas to a delivery point that is downstream of Station 85.

C. Technical Conference

28. At the technical conference, staff established a schedule for the parties to file initial and reply comments on the issues for which the Commission requested additional information.

1. Initial comments

29. In its initial comments, Transco stated that all eight of its pools are operated in the same manner. All the pools can be accessed by any upstream or downstream shipper on Transco's system, subject only to the availability of capacity. Thus, Transco confirmed that gas received at the Destin Interconnect can be transported to any of the eight pools on the Transco system, including the upstream Station 65 pool in Zone 3, using a transportation service agreement under Rate Schedule IT or Rate Schedule FT. Transco argued that its existing physical pooling structure was approved over 10 years ago and that Transco's allocation of costs and rate design have reflected that structure since that time. Transco further argued that the Commission has not established standardized pooling requirements, but rather has recognized that pipelines differ with respect to physical characteristics, tariffs, business practices and customer expectations.

30. With respect to the issue of charging for transportation both into and out of a pool, Transco stated that the two charges do not constitute a double charge because the billing determinants upon which Transco's transportation rates are designed are split between inbound and outbound transportation. Transco argued that if the transportation charge is eliminated from either the upstream or downstream leg of the transportation path the cost associated with those billing determinants will be allocated to the other leg, thus increasing the rate for that transportation.

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[22] *See* Order No. 587-F at 33,351, stating "when a pool exists in a rate zone, the charge for shipment in that zone must be incurred either for shipment to the pool or shipment out of the pool."

31. In response to the Commission's question concerning current availability of firm capacity in Zone 4, Transco stated that BP Energy has had opportunity to obtain firm capacity within Zone 4 but has not done so. Transco stated that it posted available turnback capacity in November 2005 and a shipper obtained part of the capacity. Approximately 30,000 dth/day (including capacity between Destin/Shubuta and Station 85) remains unsubscribed. In addition, Transco recently conducted an open season to explore firm transportation expansion opportunities on its system and BP did not participate in the process.

32. Transco stated that certain alternative pooling structures raised at the conference would change Transco's longstanding rate and service structure and would, in certain instances, eliminate transportation charges from receipt point interconnects into the pools, thus creating a favored class of shippers at the expense of other shippers. The first alternative raised would permit shippers to access upstream pools through the use of a free backhaul service. Transco stated that this is beyond the limited issue reserved for hearing, i.e. Transco's pooling structure at Station 85. Transco argued that the Commission has recognized that charging for backhaul transportation is appropriate, and also, that if Transco ceases to charge for backhaul service, even though it is still physically transporting gas in backhaul transactions, Transco will have to allocate the costs incurred for this service to other transportation services. Transco states that this would be a departure from Commission policy.

33. Transco states that the second alternative raised at the conference, widening the Station 85 pool to include additional points within Zone 4 is also not workable on its system. Transco argues that this would create a paper pool and would eviscerate Transco's physical pooling structure. Transco relates that physical transportation through the segment would still have to occur, and Transco's entire Zone mainline capacity is essentially fully subscribed. Thus, there is a very real, physical constraint which makes paper pooling in Zone infeasible. Finally, Transco argues again that a paper pool on its system would permit shippers to avoid paying for transportation, and a shift of costs to other shippers which are not responsible for creating those costs.

34. Transco repeats its arguments (previously expressed in other pleadings in this proceeding) that pooling in Zone 4 is not unique, and that if the Commission were to adopt BP's paper pooling proposal Zone 4 would be inherently preferential to BP and other Zone 4 shippers.

35. Transco concludes that BP has failed to demonstrate, under NGA section 5, that Transco's current pooling structure is unjust, unreasonable, and unduly discriminatory, and has failed to demonstrate how its proposal would work in Zone 4 given Transco's rate and service structure.

36. In its initial comments BP explained its paper pooling proposal. BP explained that paper pooling involves the non-physical aggregation of gas supply. Under BP's proposal, gas supplies that are to enter Transco's system from interconnect receipt points in Zone 4 would first be available to be nominated for virtual aggregation into a paper pool by a pooler, then be disaggregated from the pool by a pooler under a disaggregation nomination identifying the business entity the gas was being disaggregated to, and subsequently nominated for transportation by a shipper with contractual transportation rights. BP argued that the step-like increases in capacity in the downstream direction on Transco's mainline are not a limiting factor on the ability to pool or to physically transport gas, but rather limit who may purchase the pooled gas (only those with contractual transportation rights on Transco). BP argued that the physical characteristics of Transco's pipeline do not prevent gas from being readily available for delivery out of the paper pool if Transco adopts a procedure which requires the pooler to confirm the volume to be delivered from the pool to the nominating shipper by receipt point (or any other procedure that facilitates correlation of receipt points into the pipeline and shipper priorities to utilize those points prior to scheduling gas for transportation).

37. BP argued that its proposal would not jeopardize Transco's IT-feeder system, because that system is only in effect upstream of Zone 4 in Transco's production area, and BP's proposal only affects Zone 4. In addition, BP stated that its paper pooling proposal would not affect Transco's revenues to any meaningful degree, because it is unlikely that shippers have used significant amounts of IT service to access the physical pool at Station 85and thus that service has not generated any significant IT revenues. BP emphasized that its pooling proposal is not an attempt to avoid transportation charges in Zone 4. BP maintained that to the extent transportation is needed to move gas away from Zone 4 mainline receipt points, such transportation would continue to be needed under BP's proposal, and Transco would continue to receive revenue for that transportation.

38. BP stated that virtually all other major interstate pipelines provide paper pooling, including Transco's affiliate Northwest Pipeline Corporation (Northwest). BP stated that Northwest is a bidirectional flow pipeline on which there may be physical constraints both upstream and downstream of a designated pool and that Northwest's paper pooling is consistent with BP's proposal for Transco.

39. BP stated that the alternative pooling proposals posited in the Commission's May 30 order do not adequately resolve BP's concerns. In the first case – a separate paper pool for Zone receipt points upstream of Station 85 – BP stated that there is little potential for meaningful aggregation from multiple receipt points because gas available for pooling would be limited to the Destin receipt point and other minor locations. In the second case – including the Destin receipt point in the upstream Station 65 pool – BP argued that because the Station 65 pool is in Zone 3 there would be additional Zone 4 to Zone 3 backhaul charges or Zone 3 to Zone 4 forward haul charges for parties utilizing

the Station 65 pool, whereas a paper pool in Zone 4 would not involve the additional inter-zonal charge.

40. BP argued that Transco's physical pool at Station 85 violates the Commission's pooling regulations and policies by: (1) permitting Transco to charge two transportation charges to access the Zone 4 pool; (2) limiting the Zone 4 pool to only one receipt point; (3) permitting Transco to discriminate in favor of its marketing affiliate; and (4) imposing an economic barrier to pooling by requiring the payment of an additional transportation charge for deliveries at interconnects other than Station 85.

41. The Transco Municipal Group and the Municipal Gas Authority of Georgia (TMG) filed comments in support of Transco's existing pooling structure. KeySpan Delivery Companies filed similar comments.

42. SCANA Energy Marketing, Inc. (SCANA) filed comments in support of BP's proposal. SCANA stated that Transco's point-specific pool may have made sense when the Mobile Bay later was built, but since then Destin and other new supply sources have been added. In addition, a number of liquefied natural gas (LNG) proposals involve pipeline-to-pipeline interconnects with Transco, and that Transco should therefore adopt a new pooling mechanism that not only eliminates the disparity between Destin and Mobile Bay shippers, but that also enhances aggregation capabilities at all new interconnections.

43. Indicated Shippers filed comments arguing that Transco operates its Station 85 pool the same way it operates all other pools and thus, there cannot be a conclusion that Transco operates that pool in an unduly discriminatory or preferential manner. In addition, Indicated Shippers argued that the Commission should make clear that Transco may not impose Zone 4 mainline rates on Mobile Bay shippers for accessing the Station 85 pool. Indicated Shippers states that Mobile Bay shippers' rates are not before the Commission in this proceeding, because that was not one of the issues reserved for hearing by the Stipulation and Agreement approved by the Commission in this case.[23]

2. Reply Comments

44. In its reply comments, Transco argued that it operates the Station 85 pool just like it operates all of its other pools, as recognized by other participants in this proceeding (Keyspan and Indicated Shippers). Transco maintains that to create a paper pool within Zone 4 would indeed make that pool unique and unlike any other pool on Transco's system, and inherently preferential to BP.

45. Transco explained that its IT feeder service is a high priority interruptible

[23] *Transcontinental Gas Pipe Line Corp.,* 100 FERC ¶ 61,085 (2002).

transportation service that feeds a firm receipt point from which Transco provides firm transportation service. Transco stated that, while most IT feeder transactions take place on supply laterals in the production area, they do occur elsewhere on Transco's system, including in Zone 4. Transco also explained that the Commission's statement in the May 30 order that gas from production area laterals must flow to production area pooling points is incorrect. Transco stated that under an IT feeder transaction gas can flow outside of the production area, including to the Station 85 pool.

46. Transco said that BP is incorrect in asserting that Transco charges the same shipper for both deliveries into the pool and deliveries from the pool. Transco explains that a single shipper transporting gas through the pooling point pays only one charge. When the pool is utilized, a shipper transports gas to the pool where title to the gas is transferred, and a separate shipper, under a separate transportation contract, transports the gas away from the pool. Transco explained that there is no overcollection of costs because the separate transactions are reflected in the billing determinants upon which Transco's rate are designed.

47. Transco also maintained that BP's claim that Transco limits the Station 85 pool to one receipt point is also untrue, and that all pools on its system, including Station 85, can be accessed by any upstream or downstream shipper from any receipt point, subject only to the availability of available transportation capacity to transport the gas to the pooling point.

48. Transco also disputed BP's claim that because similarly situated pipelines have instituted paper pooling Transco should also be required to provide paper pooling. Transco stated that the Commission and NAESB have recognized that different pipelines have evolved differently in terms of their physical operations and customer requirements. Transco cited NAESB Standard 1.2.3 which defines pooling as aggregation/disaggregation at physical and/or logical points, and pointed out that this Standard is incorporated by reference into the Commission's regulations (at 18 C.F.R. § 284.12(a)). Transco continued to maintain that its IT feeder system and path-based system must also be considered. Transco also argued that nowhere has the Commission mandated that all pipelines must institute paper pooling.

49. Transco argued that BP has not demonstrated that its proposal is just and reasonable. Transco stated that BP's explanation of its proposal in its initial comments fails to clear a number of ambiguities, and that BP has therefore failed to fully justify its proposal. Transco maintained that BP failed to acknowledge that a change in pooling would require changes to Transco's rate design and cost allocation methodology or in the alternative would require Transco to absorb losses of transportation revenues.

50. In its reply comments, BP contested Transco's assertions that the Zone 4 pool is operated the same as all other pools on Transco's system. BP asserted that in no other

zone is a pooling point deemed to exist simultaneously in two rate zones (Zones 4 and 4A) as Station 85 effectively is for rate purposes (shippers in Zones 4A/4B pay those rates and not the Zone 4 rate to access Station 85). BP asserted that Transco maintains that arrangement to unduly discriminate in favor of its affiliate TEMCO, and to make the price of gas of competing shippers less attractive.

51. BP stated that paper pooling will not affect Transco's existing transportation arrangements and will not affect Transco's revenues. BP argued that under paper pooling, all gas, including gas that is first pooled for administrative purposes, will be transported only under Transco's transportation rate schedules. The IT feeder system which is used mostly in the production area will not be affected by paper pooling in zone 4, and because shippers taking gas from the paper pool will use Transco's transportation services there will be no impact on Transco's transportation revenues. BP continued to maintain that paper pooling on Transco would be similar to other pipelines, even though they may have different operational and physical characteristics.

52. TMG and Keyspan again opposed BP's proposal, while Cherokee County Cogeneration Partners, L.P. and Northeast Energy Associates (Cherokee and Northeast) filed reply comments in support of BP's proposal.

II. Discussion

53. Upon further consideration after reviewing Transco's request for rehearing and the technical conference pleadings, the Commission generally grants Transco's rehearing request and finds that BP has not satisfied its burden under NGA section 5 of showing that Transco's existing method of pooling is unjust and unreasonable and that its proposal to require Transco to adopt paper pooling in Zone 4 is just and reasonable.

54. In Order No. 587-F, the Commission held that it would not require pipelines to adopt paper pooling.[24] Therefore, while NAESB Standard 1.3.18 requires that shippers be able to deliver gas from every receipt point directly into at least one pool, the Commission permits pipelines to satisfy that requirement through the establishment of physical pooling points at specific locations on their systems. Transco has established eight such physical pooling points, including the pooling point at Station 85 in the middle of Zone 4. BP's fundamental objection to the physical Station 85 pooling point is that shippers must purchase and pay for transportation service in Zone 4 in order to move gas from upstream mainline receipt points to the pooling point. For a shipper without firm capacity in Zone 4, such as BP, this means it must purchase and pay for Zone 4 IT service in order to move its gas to a pool at the Station 85 pooling point, and it will only be able to obtain that service on days when firm shippers are not using all of their capacity. BP argues that this (1) is inconsistent with the NAESB requirement that gas from every

[24]Order No. 587-F at 33,351.

receipt point have direct access to a pooling point and (2) unduly discriminates in favor of shippers on the Mobile Bay lateral who do not have to pay the Zone 4 rate to access the Station 85 pooling point.

A. Consistency with NAESB Standards

55. There is nothing in the NAESB standards adopted by Order No. 587, and left in place by Order No. 587-F, that prohibits pipelines from requiring a shipper to purchase and pay for any transportation service necessary to move its gas to a physical pooling point. As the Commission found in Transco's Order No. 587 compliance proceeding, the NAESB standards "are not concerned with any rate consequences, such as whether poolers might incur an IT transportation expense, or with whether there is physical or paper pooling. Nor does the Commission consider that the word 'directly' requires that every receipt point must be contiguous with a pool."[25] Thus, the Commission clearly contemplated that Transco could require a shipper without firm capacity in a zone to purchase interruptible service in order to move gas its receipt point to a physical pooling point in the same zone, without violating the NAESB Standard 1.3.18 concerning direct access from every receipt point to a pooling point. If a shipper's receipt point is not contiguous with a physical pooling point, some form of transportation service will be necessary to move the gas from the receipt point to the physical pooling point. And, if on a given day, requests for service between the two points exceed the pipeline's capacity, the pipeline will have to allocate the available capacity, with interruptible service having a lower priority than firm.

56. BP suggests that the orders in Transco's Order No. 587 compliance proceeding no longer reflect current Commission policy on pooling, because they were issued before the Commission clarified its pooling policy in Order No. 587-F. However, Order No. 587-F expressly recognized that some pipelines "offer physical pooling in which shippers may have to pay a transportation charge to move gas into the pool,"[26] and declined to modify the NAESB standards to prohibit that practice. Thus, Order No. 587-F clearly permits pipelines to charge for any transportation service necessary to move gas to a physical pooling point. It is true, as BP points out, that Order No. 587-F continued, "When a pool exists in a rate zone, the charge for shipment in that zone must be incurred either for shipment to the pool or shipment out of the pool."[27] However, that was simply a finding that pipelines should not charge twice for shipments within a zone. Order No. 587-F did not find that the charge must be imposed solely on the downstream transportation away from the zone as BP requests here, instead of on the upstream transportation to the

[25] *Transcontinental Gas Pipe Line Corp.*, 79 FERC ¶ 61,172, at 61,807 (1997).

[26] Order No. 587-F at 33,351.

[27] *Id.*

pooling point. In fact, Order No. 587-F expressly found that those advocating paper pooling had not provided sufficient justification for "imposing the transportation charge on the outbound transportation in all situations."[28]

57. We therefore find that Transco's requirement that BP purchase and pay for interruptible transportation service in order to pool its gas at the Station 85 pooling point is consistent with NAESB Standards 1.3.17 and 1.3.18, subject to one condition. As discussed in the previous paragraph, when a physical pooling point is in the middle of a zone, as the Station 85 pooling point is, the pipeline may not charge both for the shipment within the zone to, and from, the pooling point. Therefore, the Commission directed that the technical conference explore whether Transco charges two Zone 4 usage and fuel charges: a usage and fuel transportation charge for shipment of gas from an upstream receipt point to Station 85 and a separate (and second) usage and fuel charge for shipment of the gas from the pooling point to a downstream delivery point. In its comments following the technical conference, Transco made clear that it does impose such double Zone 4 usage and fuel charges for mainline shipments both to and from the Station 85 pooling point.[29] Accordingly, while we will permit Transco to continue to require BP or any other shipper to purchase and pay for any necessary service to move gas to the Station 85 pooling point, we direct Transco to modify its tariff so that shippers taking gas from a Station 85 pool will not also incur Zone 4 usage and fuel charges which have already been incurred for shipping the same gas to the pooling point.

58. This holding applies only to pooling at the Station 85 pooling point in Zone 4, and does not affect Transco's current method of conducting pooling in its production area. The settlement in this rate case only reserved for a merits decision the issue of the conduct of pooling in Zone 4. In any event, the Commission has held that, because Transco does not offer firm service on its production area supply laterals, firm shippers on the production area mainline do not pay for service on the supply laterals even though the supply laterals may be in the same rate zone.[30] Therefore, in a production area rate zone, Transco may charge both the applicable IT rate for interruptible service to a production area pooling point and the FT rate for firm service from the pooling point in the same zone, without violating the policy against double charges for service within the same zone to and from a pooling point. However, this same reasoning does not apply in Zone 4, because Transco offers firm service throughout Zone 4, unlike in the production area.

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[28] *Id.*

[29] Initial comments of Transco at 7.

[30] *Transcontinental Gas Pipe Line Corp*, 107 FERC ¶ 61,156 at P 46-47.

B. Undue Discrimination

59. BP emphasizes that shippers on the Mobile Bay lateral do not have to pay the Zone 4 rate to reach the Station 85 pooling point. BP argues that this is unduly discriminatory, asserting that the Mobile Bay shippers are the only shippers on Transco's system that have access to a pooling point without paying the IT rate for the zone in which the pooling point lies. The Commission rejects this contention.

60. The Mobile Bay shippers must pay a just and reasonable rate to move their gas to the Station 85 pooling point just as BP does. It is true that the Mobile Bay shippers pay a Zone 4A/4B rate to reach the pooling point, while BP pays a Zone 4 rate. But this difference in rate treatment is a function of the physical location of the Station 85 pooling point. That point is in the middle of Zone 4, at the interconnection with the Mobile Bay lateral which is in the separate Zone 4A/4B. As a result, when shippers such as BP move gas from upstream mainline receipt points to the Station 85 pooling point, Transco must provide physical transportation through Zone 4, and Transco may reasonably charge for this service. However, because the pooling point is at the boundary between Zones 4 and 4A/4B, no Zone 4 transportation service is required for the Mobile Bay shippers to move gas to the Station 85 pooling point. Rather, Transco appropriately charges them the Zone 4A/4B rate for the physical transportation they do receive, which is along the Mobile Bay lateral. The Zone 4 rate is to recover costs Transco incurs to provide transportation services within or across Zone 4. To require Mobile Bay shippers to pay that rate would require them to pay for a service which they do not require and do not use.[31]

61. Moreover, the placement of the Zone 4 pooling point is not arbitrary, as BP has argued, but rather is at the junction of Transco's mainline and the largest supply lateral within Zone 4. This is similar to the placement of the pooling points in Transco's production area, which are at the junction of the mainline and a supply lateral and usually at a zone boundary. For example, the Station 30 pooling point is at the boundary of Zones 1 and 2, the Station 45 pooling point at the boundary of Zones 2 and 3, and the Station 65 pooling point at the boundary of Zones 3 and 4. Therefore, if any shipper in a production area rate zone wishes to move gas to a pooling point at the downstream boundary of that zone, Transco would charge that shipper only the rate for that zone. When the purchaser of the gas then transports it away from the pooling point across the

[31] The fact BP pays an interruptible rate while the Mobile Bay shippers pay a firm rate simply reflects the fact that BP is using an interruptible service to reach the Station 85 pooling point, while the Mobile Bay shippers use a firm service. As Transco pointed out in its comments after the technical conference, BP has had an opportunity to purchase at least some firm service in Zone 4, but has not done so. As of the date of the technical conference, Transco had 30,000 dth/day of unsubscribed capacity available in Zone 4, and there have also been opportunities for BP to purchased released firm capacity.

downstream zone, Transco would charge the second zone rate for that physical downstream transportation. The treatment of the Mobile Bay shippers is no different.

62. Our conclusion that Transco's operation of the Station 85 pooling does not unduly discriminate in favor of the Mobile Bay shippers is buttressed by the fact that Destin's owners, including BP's predecessor Amoco, chose to route that pipeline so that it interconnected with Transco upstream of Station 85, despite Transco's suggestion that they build the pipeline to Station 85.[32] Transco had established the physical Station 85 pooling point in 1992, seven years before Destin was built. Thus, Destin's owners had full knowledge of Transco's pool structure and Zone 4 capacities when they determined the route of the Destin pipeline.

63. The Commission concludes that there is nothing arbitrary about Transco's designation of Station 85 as the pooling point in Zone 4 and it is not unjust, unreasonable, or unduly discriminatory for Transco to permit Mobile Bay shippers to access the pool without paying a separate Zone 4 transportation rate for which those shippers would receive no transportation service in return for paying that rate.

64. As to the issue of competition at the Station 85 pooling point, Transco is under no obligation to operate a pool at Station 85. The NAESB standards specify that pipelines must provide at least one pool where gas can be aggregated from multiple receipt points and disaggregated to multiple delivery points. Transco has pools at several points along its mainline and is not required to operate a pool at Station 85. Sections 284.7(b)(3) and 284.9(b) of the Commission prohibit interstate pipelines from including in their tariffs any tariff provisions that inhibit the development of market centers and there is no evidence to indicate that Transco does not comply. Any third party, including BP, can avail itself of pooling at any point on Transco's system, including the Destin Shubuta connection.

65. The Commission also finds that the affiliate relationship between Transco and TEMCO does not in and of itself provide a basis for a finding of unduly discriminatory treatment in favor of TEMCO. As the Commission found in the March 26 order, TEMCO, while the largest shipper in Zone 4A/4B, is not the only shipper. TEMCO subscribes to 100 percent of the capacity on Zone 4b, the Mobile Bay Expansion, and to 58 percent of the capacity on Zone 4A, the Mobile Bay Lateral. There are numerous other shippers over Zone 4A. Transco conducted an open season for that capacity, and the fact that its affiliate TEMCO contracted for a portion and is the majority does not mean in and of itself that TEMCO is given preferential treatment. The Commission finds that there is insufficient evidence for a finding of undue discrimination in favor of TEMCO.

[32] Tr. at 733-735.

C. **Other Issues**

66. Because the Commission determines that Transco's operation of its Station 85 pooling point is not unjust and unreasonable the Commission need not enter into a lengthy discussion of the merits of BP's proposal for a paper pool which would include the Destin Shubuta connection. As already discussed, the Commission has declined to require paper pooling on pipeline systems in the past and will not require it here. In addition, ordering paper pooling to include the Destin Shubuta connection would permit BP to avoid transportation charges and would ultimately result in cost shifting to other shippers.

67. In our order establishing the technical conference, we suggested that the parties consider two alternatives to BP's paper pooling proposal in order to improve the ability of mainline Zone 4 shippers upstream of Station 85 to take advantage of pooling. These were (1) to establish a second Zone 4 pool upstream of Station 85 or (2) to permit gas received in Zone 4 upstream of Station 85 to be pooled at Station 65 in Zone 3. However, no party supported the first alternative of establishing a second pooling point in Zone 4. Given this fact, the Commission will not pursue this alternative any further in this proceeding. As for the second alternative, Transco states that it does permit shippers in any downstream zone to backhaul gas to a pooling point in an upstream zone, subject to payment of the just and reasonable backhaul rates in its tariff. Accordingly, this option is available to shippers, if they are willing to pay the applicable backhaul rate and the Commission has no basis to require Transco not to charge for such backhauls.

68. Finally, Indicated Shippers requested the Commission to clarify that its prior orders in this case did not authorize Transco to impose Zone 4 mainline rates on Mobile Bay shippers for accessing the Station 85 pooling point as a means of curing any undue discrimination in the operation of that pooling point. Above, we have held that no such charge would be appropriate, because the Mobile Bay shippers do not receive any transportation service in Zone 4.

The Commission orders:

(A) Transco's request for rehearing of the August 2005 order is granted in part and denied in part as discussed above.

(B) Transco is directed, within 30 days of this order, to file revised tariff sheets consistent with the discussion in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.