130 FERC ¶ 61,109
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Marc Spitzer, Philip D. Moeller,
and John R. Norris.

Transcontinental Gas Pipe Line Corporation Docket Nos. RP01-245-029
RP01-245-030

ORDER ON REHEARING AND COMPLIANCE

(Issued February 18, 2010)

1. On June 29, 2009, Transcontinental Gas Pipe Line Corporation (Transco) filed revised tariff sheets comprising two separate billing options to comply with the Commission's May 29, 2009 order in the captioned docket.[1] The May 29, 2009 Order required Transco to implement a billing methodology to impose a single usage and fuel charge either to all gas scheduled to be delivered to the Station No. 85 pooling point or all gas scheduled to be received from Station No. 85, or some other billing method consistent with the May 29, 2009 Order. On June 29, 2009, Transco also filed to request rehearing of the Commission's May 29, 2009 Order. As discussed below, the Commission will accept Transco's tariff sheets comprising its Option 1 proposal,[2] which

[1] *Transcontinental Gas Pipe Line Corp.,* 127 FERC ¶ 61,206 (2009) (May 29, 2009 Order).

[2] The tariff sheets in Transco's proposed Option 1 accepted as in compliance with the May 26, 2009 Order are: Third Revised Sheet No. 81; First Revised Sheet No. 183; First Revised Sheet No. 211; First Revised Sheet No. 267; and First Revised Sheet No. 280 to Transco's Fourth Revised Volume No. 1. The tariff sheets comprising Transco's second option to be rejected as moot are: Alternate Third Revised Sheet No. 81; Alternate First Revised Sheet No. 183; Original Sheet No. 183A; Alternate First Revised Sheet No. 211; Alternate First Revised Sheet No. 267; Alternate First Revised Sheet No. 280; Original Sheet No. 280A; Second Revised Sheet No. 290; First Revised Sheet No. 291; First Revised Sheet No. 418; and First Revised Sheet No. 419 to Transco's Fourth Revised Volume No. 1.

charges a single usage fuel charge to all gas scheduled to be received from the Station No. 85 and deny Transco's request for rehearing.

Background

2. As set forth by the May 29, 2009 Order, the instant proceeding has an extensive background [3]originating in a Natural Gas Act (NGA) section 4 rate case filed by Transco on March 1, 2001, which the Commission accepted and suspended subject to the outcome of hearing procedures.[4] Currently, one issue concerning the operation of Transco's pooling point at Station No. 85, remains to be resolved in this proceeding.[5]

3. In brief, as set forth in the May 26, 2009 order, 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 the ultimate delivery point off Transco's system.[6] Of import in the instant case, Station 85 is located on Transco's mainline in the middle of Rate Zone 4. Shippers that 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 Zone 4 rate for such deliveries to the Station 85 pooling point under

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[3] 127 FERC ¶ 61,206 at P 3.

[4] *Transcontinental Gas Pipe Line Corp.*, 94 FERC ¶ 61,360, *order on reh'g*, 95 FERC ¶ 61,268 (2001).

[5] After this initial rate case was set for hearing, a settlement resolving many issues in this matter was subsequently approved by the Commission reserving fourteen issues for hearing, *Transcontinental Gas Pipe Line Corp.*, 100 FERC ¶ 61,085 (2002). Subsequently, on orders on the Administrative Law Judge's (ALJ) decision, *Transcontinental Gas Pipe Line Corp*., 106 FERC ¶ 61,299 (2004), *order on reh'g*, 112 FERC ¶ 61,170 (2005), *order on reh'g*, 115 FERC ¶ 61,268 (2006), *affirming in part and reversing in part*, *Transcontinental Gas Pipe Line Corp*., 101 FERC ¶ 63,022 (2002), and, in orders approving further settlements, *Transcontinental Gas Pipe Line Corp*., 101 FERC ¶ 61,298 (2002) and *Transcontinental Gas Pipe Line Corp*., 117 FERC ¶ 61,232 (2006), the Commission narrowed the remaining issues to those concerning the operation of Station 85.

[6] Five of these eight 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.

either its Rate Schedule FT or IT. Those shippers buying gas at the Zone 4 pooling point also must pay a Zone 4 transportation rate to ship gas from the pooling point.

4. Transco's Mobile Bay Lateral interconnects with Transco's mainline at Station 85 (which is in Transco's Zone 4) but this Mobile Bay Lateral 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 rate. Customers buying Mobile Bay Lateral gas pay a Zone 4 transportation rate. In contrast to other Zone 4 shippers, therefore, only one Zone 4 transportation rate is charged for Mobile Bay Lateral transactions.

5. In the May 29, 2009 Order, the Commission considered an earlier December 26, 2007 Order, that discussed comments from a technical conference regarding the appropriate method of conducting pooling in Transco's Rate Zone 4 and denied a request that the Commission act pursuant to section 5 of the Natural Gas Act (NGA) to establish paper pooling points[7] in Transco's Rate Zone 4.[8] Specifically, in the December 26, 2007 Order, the Commission found that Transco's adoption of physical pooling (in which a shipper must purchase and pay for transportation service in order to pool gas at the Station 85 pooling point)[9] was consistent with Commission policy that did not require the adoption of paper or virtual pooling.

6. However, the Commission concluded that Transco's tariff under which it charges twice for the usage and fuel charges was contrary to Commission policy and unjust and unreasonable. The Commission found such double charges inconsistent with Order No. 587-F in which the Commission stated that when a pipeline employs physical pooling, the pipeline may not charge for both (1) the shipment within the zone to the pooling point, and (2) the shipment away from the pooling point.[10]

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[7] Paper pooling refers to the establishment of a paper or virtual pool into which gas supplies may be injected without charge from anywhere within the zone. Transportation charges are assessed to the customers buying the gas at the pool.

[8] *Transcontinental Gas Pipe Line Corp*., 121 FERC ¶ 61,294 (2007).

[9] Unlike paper pooling, physical pooling requires that the shipper injecting gas transport the gas to the pooling point location, in this case Station 85.

[10] *Citing Standards for Business Practices of Interstate Natural Gas Pipelines*, FERC Stats. & Regs., ¶ 32,527 at 33,351 (1996) (Order No. 587-F) ("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

(continued …)

7. In the May 29, 2009 Order the Commission reaffirmed its finding that that imposing double usage and fuel charges for Zone 4 pooling was unreasonable and denied rehearing of the December 26, 2007 Order.[11] The Commission stated that permitting the pipeline to charge twice for pooling would defeat the Commission's purpose in requiring pipelines to provide pooling without incurring a rate disadvantage.

8. The May 29, 2009 Order also examined *pro forma* tariff sheets filed by Transco on January 25, 2008 to comply with the Commission's December 26, 2007 Order rejected these tariff sheets. The Commission stated:

> Transco's proposal to create separate Station 85 and Station 85 Mainline Pools and prohibit transfers between the two pools has the effect of preventing shippers from pooling gas transported to Station 85 over the Zone 4 mainline with gas transported to Station 85 over the Mobile Bay Lateral. That is contrary to the Commission's pooling policy discussed earlier in this order.[12]

9. The May 26, 2009 Order stated that Transco was relying on limitations in its accounting and billing system to avoid full compliance with the December 26 Order. Therefore, the Commission stated:

> Transco would not appear to have a problem with billing a single usage and fuel charge either to all gas scheduled to be delivered to the Station 85 pooling point or all gas scheduled to be received from Station 85. Thus it appears that Transco could allow each shipper to have a single pool at Station 85 and permit pool to pool transfers, while still recovering a single Zone 4 usage and fuel charge with respect to all gas pooled at Station 85 no matter what its source. The Commission requires Transco to file tariff language that complies with the requirements of the December 26 [2007] Order, using either of the above two methods or some other billing method consistent with the above discussion. Accordingly, the Commission rejects the language contained on the subject *pro forma* tariff sheets and directs

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pooling do not provide sufficient justification for imposing the transportation charge on the outbound transportation in all situations").

[11] 127 FERC ¶ 61,206 at P 23.

[12] 127 FERC ¶ 61,206 at P 71.

Transco to file actual tariff sheets no later than 30 days from the issuance of the instant order. [13]

Request for Rehearing

A. Transco's Arguments

10. On rehearing, Transco asserts that the May 29, 2009 Order erred because it did not explain either how Transco's January 25, 2008 compliance filing proposal failed to comply with the December 26, 2007 Order, or why Transco's proposal contravened the Commission's pooling policy. Secondly, Transco asserts that the directive of the May 26, 2009 Order that Transco must implement a pooling structure that will result in Transco providing transportation in Zone 4 without assessing the minimum applicable transportation usage rate or fuel retainage stated in Transco's tariff is contrary to Commission policy and Transco's FERC Gas Tariff. Lastly, Transco argues that the May 29, 2009 Order fails to recognize that Transco must implement time consuming modifications to its business system to ensure that all gas transported on Transco's Zone 4 mainline facilities is assessed Zone 4 usage and fuel charges only once. As discussed below, the Commission finds these arguments to be without merit and denies rehearing.

11. Specifically, Transco argues that, the May 29, 2009 Order fails to explain why Transco's January 25, 2008 Compliance Filing did not comply with the December 26, 2007 Order. Transco asserts that the December 26, 2007 Order directs 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."[14] Transco asserts that its January 25, 2008 Compliance Filing complied with both the Commission's general pooling policy and the December 26, 2007 Order.[15] Moreover, it asserts that its compliance filing is consistent with Order No. 587-F ("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") and with NAESB Standard 1.3.17 ("if requested by a shipper on a transportation service provider's system,

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[13] *Id*.

[14] *Citing* 121 FERC ¶ 61,206 at P 57.

[15] In brief, in the January 25, 2008 compliance filing, Transco proposed to establish two separate pools at the Station 85 pooling location to track the volumes that had incurred the applicable Zone 4 usage and fuel charges and to preclude transfers of gas between those pools to comply with the Commission's requirement that shippers pooling gas at that location be charged usage and fuel charges only once.

the transportation service provider should offer at least one pool"). Transco asserts that, as the Commission ordered, Transco's January 25, 2008 compliance filing proposal would ensure that Zone 4 usage and fuel charges are imposed only once for all gas pooled at Station 85.

12. Transco asserts that the May 29, 2009 Order rejected its compliance filing because Transco's proposal "has the effect of preventing shippers from pooling gas transported to Station 85 over the Zone 4 mainline with gas transported to Station 85 over the Mobile Bay Lateral. That is contrary to the Commission's pooling policy discussed earlier in this order."[16] Transco asserts that the Commission failed to identify the aspect(s) of the Commission's pooling policy with which Transco's January 25, 2008 Compliance Filing is inconsistent. Transco argues that the Commission's requirement that Transco permit each shipper to have a single pool at Station 85 and permit pool to pool transfers, will require it to implement a pooling structure that would permit shippers on its system to move gas in Zone 4 without incurring the minimum applicable transportation usage rate or fuel retainage. Transco asserts that this is contrary to Commission policy and Transco's FERC Gas Tariff.

13. Transco argues that the Station 85 pool is located at the intersection between Transco's mainline and the Mobile Bay Lateral. Transco asserts that Station 85 is used as a pooling point for gas transported on the mainline in Zone 4 from receipt points upstream and downstream of the pool, from the Mobile Bay Lateral and, from pipeline interconnects that deliver gas to Transco at the Station 85 pool. Transco also maintains that gas can be received at the Station 85 pool for delivery in Zone 4 (or for delivery in other zones that require use of the Zone 4 mainline) and Zone 4A.

14. Transco states that the May 29, 2009 Order determined that Transco could provide a single pool at Station 85, permit pool to pool transfers, and recover a single Zone 4 usage and fuel charge with respect to all gas pooled at Station 85. However, Transco points out that not all gas delivered to the pool at Station 85 pays Transco's Zone 4 mainline transportation usage charge and fuel retainage. Transco states that gas received from Zones 4A and 4B and the two pipelines interconnects at Station 85 do not pay such charges. Secondly, Transco argues that not all gas transported from the Station 85 pool pays the Zone 4 mainline transportation usage charge and fuel retainage upon delivery, such as gas delivered from the pool to points in Zone 4A.

15. Given this structure, Transco argues that if it establishes a single pool at Station 85 and assesses transportation usage charges and fuel retention to all shippers

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[16] *Citing* 127 FERC ¶ 61,206 at P 71.

only on transportation to the pool, or, alternatively, assesses such charges only on transportation away from the pool, as required by the May 29, 2009 Order, either method would permit a subset of transportation transactions to receive transportation without incurring usage and fuel retainage charges in Zone 4. For example, Transco argues that, if it modified its tariff so usage and fuel charges would be applied to all gas delivered out of the Station 85 pooling location, gas could be transported in Zone 4 from mainline receipt points upstream of Station 85 and then be delivered out of the pool to delivery points on the Mobile Bay Lateral in Zone 4A. Transco would charge the Zone 4A usage and fuel charges for the deliveries out of the pool and no usage or fuel charge for Zone 4 would apply to the upstream transportation into the pool. Therefore, Transco argues that this would result in the free use of the Zone 4 mainline facilities.[17]

16. Transco points out that the Commission's regulations do not allow pipelines to provide transportation service at rates below the pipeline's minimum usage charge (and fuel retainage),[18] and Transco's tariff does not permit it to provide firm or interruptible transportation without assessing at least the minimum applicable transportation rate and fuel retainage.[19]

17. Transco argues that if the Commission does not grant rehearing and accept Transco's January 25, 2008 Compliance Filing, then Transco seeks clarification that Commission approval of one of the methods deemed acceptable in the May 29, 2009 Order – such as electing to assess usage and fuel charges on all gas scheduled to be received from the Station 85 pool - will not, in those instances where no usage and fuel charges are assessed for transportation in Zone 4, constitute a violation of the Commission's regulations or Transco's tariff.

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[17] Transco also sets forth an example concerning a proposal to charge only for deliveries into a pool in which it attempts to show how this proposal would also lead to free transportation for shippers transporting gas in a certain manner on its system. The discussion here reflecting that such transportation would in fact incur a charge under Transco's rate structure would apply to either example. However, as set forth below, the Commission accepts Transco's compliance filing in which it proposes to charge only for deliveries from a pool. Therefore, the Commission will focus on Transco's example regarding charges for deliveries from the pool.

[18] *Citing* 18 C.F.R. § 284.l0(c)(5)(ii)(A) (2009).

[19] *Citing e.g.*, First Revised Sheet Nos. 40, 41, 79, and 81 of Transco's FERC Gas Tariff, Fourth Revised Volume No. 1.

B. **Commission Determination**

18. Transco seeks rehearing of the Commission's rejection of its proposal to institute two pools at Station 85, one pool for gas coming from the mainline and a second pool for gas on the Mobile Bay Lateral. It argues that the Commission's requirement for a single pool will result in shippers receiving transportation without the payment of the applicable fuel and usage charges in certain circumstances.

19. The Commission finds Transco's arguments to be without merit. As acknowledged by Transco, the Commission clearly identified the aspect of the pooling policy that the January 25, 2008 compliance filing violated: the requirement that pipelines implement pooling in such a way so that shippers may use such pools efficiently without incurring a rate disadvantage – a key aspect of the Commission's pooling policy.[20] The Commission has prohibited the adoption of any policy that would inhibit the development of market centers at pipeline interconnects[21] or the development of pooling.[22] In fact, the ability of shippers to gather gas at a pooling point and to transfer title to such gas between individual accounts within the pooling area is the very definition of pooling.[23] As the Commission has stated:

> The advantage of pooling to both shippers and producers is that pooling permits a producer to aggregate gas from different wells and laterals in the production area to a single pool and then sell to customers out of the pool. This allows the customer to submit a single nomination to the producer's pool for the gas it requires rather than having to submit individual

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[20] 127 FERC ¶ 61,206 at P 23.

[21] 18 C.F.R. § 284.7(b)(3) (2009).

[22] *Pipeline Service Obligations and Revisions to Regulations Governing Self-Implementing Transportation; and Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol*, Order No. 636, FERC Stats. & Regs., Regulations Preambles January 1991 – June 1996 ¶ 30,939, at 30,428; Order No. 636-B, 61 FERC ¶ 61,272, at 62,012 (1992) (pipelines may not implement rates or terms and conditions of service that inhibit the creation or development of pooling areas).

[23] Pooling is defined as (1) the aggregation of gas from multiple physical and/or logical points to a single physical or logical point, and/or (2) the dis-aggregation of gas from a single physical or logical point to multiple physical and/or logical points. NAESB Nominations Related Standards 1.2.3. *See* 18 C.F.R. § 284.12(a)(1)(ii) (2009) incorporating by reference NAESB standards.

> nominations to particular receipt points within the production area. Pooling also creates a more liquid gas market as shippers and producers can buy and sell gas at pooling points. [24]

20. Under Transco's proposal, put simply, shippers using the mainline would be unable to pool mainline gas with Mobile Bay Lateral gas, because Transco proposed that such gas must be segregated into two separate pools. This inhibits the utility and efficiency that the Commission sought to promote by requiring pooling.

21. Transco claims that its proposal is consistent with NAESB standard 1.3.17 which states: "If requested by a shipper or supplier on a transportation service provider's system, the transportation service provider should offer at least one pool." But Transco's proposal does not provide shippers or suppliers with a single pool at Station 85 in which to aggregate supplies; rather it requires shippers and suppliers to split their supplies into two pools. While the Commission has recognized that pipelines may need to establish multiple pools at different locations on their systems, Transco points to no policy allowing pipelines to establish two pools *at the same location*.

22. Transco also maintains its proposed two-pool approach is consistent with Order No. 587-F which required 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." While we agree that Transco's proposal would only charge for fuel and usage charges once, and thus is in compliance with this aspect of Order No. 587-F, such compliance does not obviate the fact that Transco's proposal is the antithesis of pooling because it requires shippers and suppliers to segregate, rather than aggregate, gas supplies at Station 85.

23. Indeed, the very purpose of a pool is to permit shippers and suppliers bringing in gas from multiple laterals or lines to aggregate those gas supplies at a single physical or virtual point.[25] In *Kern River Gas Transmission Co*.,[26] the Commission rejected a

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[24] *Tennessee Gas Pipeline Co.*, 128 FERC ¶ 61,032 (2009), *citing* 18 C.F.R. § 284.10(b)(1)(i) (2008), Nominations Related Standards 1.3.64 (pooling points used to effectuate title transfer nominations).

[25] As we stated in the May 29, 209 Order, "the purpose of pooling is to permit producers or shippers to aggregate gas supplies at a single point so that the total package of gas can be sold to customers at the pooling point." 127 FERC ¶ 61,206 at P 24. We also pointed out that one of the values of allowing pooling of all gas supplies is that shippers and producers can transfer title at the pool.

[26] 81 FERC ¶ 61,233 (1997).

pooling proposal by Kern River because it failed to permit shippers to aggregate gas from various locations at a pooling point:

> Pooling requires that the parties be able to aggregate supplies from multiple points to a single pooling point and disaggregate supply from that pooling point. This means, for example, that a shipper or non-shipper would be able to nominate gas from various receipt points or from other parties' pools into its pool and then would be able to nominate gas out of that pool to multiple delivery points.[27]

Transco's proposal conflicts with this Commission policy because it prevents shippers and suppliers from aggregating Mobile Bay Lateral gas with gas from the mainline.

24. Transco also argues that the Commission must accept its two-pool proposal because, from a practical perspective, it will be unable to collect Zone 4 usage and fuel charges for certain transactions under a one-pool approach. For example, it maintains that if it charges fuel and usage only for transactions that take away gas from the pool, it will not collect any Zone 4 usage and fuel charges when the take-away transportation is on the Mobile Bay Lateral, because it will charge only the Zone 4A usage and fuel rate.

25. The Commission finds that Transco has not substantiated its argument that designing a single pool rate structure under which it will not collect fuel and usage charges for transactions pooled at Station 85 is so impractical that the Commission should not impose this requirement. Indeed, Transco's own compliance filing in this proceeding illustrates that such a methodology is feasible.

26. In its June 29, 2009 Compliance filing, Transco proposed a rate structure (see Option 1 below) which among other things would charge usage and fuel charges to all gas delivered out of the Station 85 pooling location.[28] Transco asserts that if it were to adopt this approach, it would not be able to recover Zone 4 fuel and usage charges for pooled transactions where the gas moves from the mainline to the pool for delivery on the Mobile Bay Lateral. But Transco has not justified this position. No Zone 4 fuel and usage charges would be assessed against the transportation of gas to the Station 85 pool. However, Transco has failed to explain why it cannot assess Zone 4 fuel and usage charges to the delivery transaction. The shipper taking delivery out of the pool would

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[27] *Id*. at 61,970.

[28] *See* Proposed Third Revised Sheet No. 81.

pay the Zone 4 fuel and usage charges in connection with its use of the pool. Thus, fuel and usage charges for Zone 4 would be collected.

27. As shown by the rate structure proposed by Transco in Option 1, the fuel and usage charges for a non-pooled transaction with a receipt point in Zone 4 and a delivery point in Zones 4A or 4B is 2.09 percent, the same rate charged for a transaction with a receipt point in Zone 4 and a delivery point in Zone 4. Transco has not explained why for a pooled transaction in which one shipper transports gas from a Zone 4 receipt point to the Station 85 pooling point, and that gas is picked up by another shipper for delivery in Zones 4A or 4B, it cannot assess the same 2.09 percent rate for the shipper picking up the gas at the pooling point. In this way, there would be no differential between pooled and unpooled transactions and Transco would receive the 2.09 percent rate. Accordingly, the Commission rejects Transco's rehearing request assertion that the Commission's determination inevitably leads to the provision of transportation to some shippers without the collection of Zone 4 fuel and usage charges.[29]

28. Transco also argues that the May 29, 2009 Order fails to recognize that Transco must implement modifications to its business system to ensure that all gas transported on Transco's Zone 4 mainline facilities is assessed Zone 4 usage and fuel charges once and only once and that compliance with such directive requires that Transco implement modifications to its business system. Transco argues that, although the Commission directed it to use a billing method consistent with the May 29, 2009 Order, compliance with the Commission's order will require more than a billing adjustment and Transco must dedicate significant resources and time to develop and test the necessary programming modifications to its business system.

29. We deny rehearing because the difficulty of implementation does not justify the continuation of an unjust and unreasonable charge. Moreover, as discussed below, Transco in its compliance filing has proposed a reasonable date by which it can implement the Commission's requirement,[30] thus demonstrating that the Commission's requirement is not impossible or impractical to implement.

[29] Given this finding, the Commission also denies Transco's request for clarification that Commission's approval of one of its rate methods will not constitute a violation of the Commission's regulations or Transco's tariff if Transco does not charge the usage and fuel rate for certain transportation.

[30] Transco states that September 1, 2009, is the earliest date by which it can implement the required system programming changes.

Compliance Filing

A. Details of the Compliance Filing

30. On June 29, 2009, Transco filed revised tariff sheets to comply with the May 29, 2009 Order. Transco states that the May 29, 2009 Order directed Transco to file actual tariff sheets reflecting tariff language consistent with that order (i.e., billing a single usage and fuel charge either to all gas scheduled to be delivered to the Station 85 pooling point or all gas scheduled to be received from Station 85, or some other method). Transco asserts that the May 29, 2009 Order also found that the *pro forma* tariff sheets contained in its January 25, 2008 filing were not in compliance with the Commission's pooling policy because they prevented shippers from pooling Zone 4 mainline gas with Mobile Bay Gas. Transco states that it proposes to retain a single pool at Station 85 and to assess usage and fuel charges on gas scheduled to be received from the Station 85 pool (Option 1).

31. Transco has also considered the Commission's suggestion in the May 29, 2009 Order that it propose "some other billing method consistent with the above discussion."[31] As such, Transco proposes an alternative method (Option 2) to comply with the discussion in the May 29, 2009 Order. Transco asserts that each of its two options is a mutually exclusive, stand-alone independent proposal.

1. Option 1 - A Single Pool at Station 85 and the Assessment of Zone 4 Usage and Fuel Charges on Receipts from Station 85.

32. Transco proposes to assess usage and fuel charges on gas received from the Station 85 pool. Under this option, gas transported in Zone 4 that is delivered to the Station 85 pool will not be assessed Zone 4 usage and fuel charges. Under this proposal, Transco's Rate Schedules FT, IT, FT-G, FT-N, and the transportation fuel retention matrix will be modified as follows:

> (a) new provisions added to the Rates and Charges section of Rate Schedules FT, IT, FT-G, and FT-N to provide that shippers delivering gas to the Station 85 pool that use the Zone 4 mainline facilities will not incur Zone 4 usage and fuel charges; and (b) Transco's fuel retention matrix modified to provide that Zone 4 fuel will not be retained from gas that is delivered into the Station 85 pool using Transco's Zone 4 mainline.

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[31] Transco Transmittal Letter at p. 2, *citing* 127 FERC ¶ 61,206 at P 71.

33. Transco states that as a consequence of assessing usage and fuel charge to all receipts from the Station 85 pool, certain transactions that utilize Transco's Zone 4 mainline facilities will not incur any Zone 4 usage or fuel charges. Specifically, gas using Transco's Zone 4 mainline that is delivered into the Station 85 pool will not incur usage and fuel charges. Transco states that when those same volumes are received by Transco from the Station 85 pool and subsequently delivered to Zone 4A, 4B, or by displacement to a third party pipeline interconnect located at the Station 85 pooling location, there will be no assessment of Zone 4 usage and fuel charges since those deliveries do not require the use of Transco's Zone 4 facilities.

34. Transco requests that the Commission grant a waiver of section 284.10(c)(5)(ii) of the regulations and confirm that when Transco provides transportation on its Zone 4 mainline facilities without assessing any Zone 4 usage and fuel charges (as described in the above example) it will not be in violation of the regulations or Transco tariff.[32]

35. Transco proposes that the Option 1 tariff sheets be effective the later of September 1, 2009, which is the earliest date by which Transco can implement the required system programming changes, or the first day of the first month commencing at least 30 days after a final Commission order approving the proposed tariff sheets.

2. <u>Option 2 - A Single Pool at Station 85 and the Assessment of Zone 4 Usage and Fuel Charges on Delivery to Station 85.</u>

36. Transco also proposes a single pool at Station 85 and the assessment of Zone 4 usage and fuel charges on all pooled volumes using zone 4 facilities. Transco states that under this method if gas is transported on the Mobile Bay Lateral in Zone 4A and delivered into the Station 85 pool, those volumes would be assessed only the Zone 4A usage and fuel charges. When scheduled for delivery out of the pool for transportation on the Zone 4 mainline, there would be no assessment of Zone 4 usage and fuel charges.[33]

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[32] 18 C.F.R. § 284.10(c)(5)(ii) (2009) preludes a pipeline from charging a rate that is less than the minimum rate on file for that service.

[33] The tariff sheets implementing this proposal are contained in the filing's Appendix B and reflect:

> (a) new provisions to the Rates and Charges section of Rate Schedules FT, IT, FT-G, and FT-N to provide that shippers taking gas from the Station 85 pool will not incur Zone 4 usage and fuel charges which have already been incurred for transporting that same gas to the pool; (b) Transco's fuel retention matrix was modified to

(continued …)

37. Transco states that the implementation of Option 2 will require that shippers transacting business at the Station 85 pool provide Transco with more detailed nomination information compared to Option 1 and that this option is more complex and time consuming to implement. Transco estimates that the earliest it can implement this proposal is the later of May 1, 2010, or the first day of the month immediately following 10 months after a final Commission order approving the proposed tariff sheets. Transco requests under this option that the Commission also grant waiver of section 154.207 of its regulations requiring proposed tariff changes to be filed no more than 60 days before their proposed effective date.

B. Public Notice and Comments

38. Public notice of Transco's filing was issued on July 1, 2009, with comments due by July 13, 2009 as provided in section 154.210 of the Commission's regulations, (18 C.F.R. § 154.210 (2009)). NextEra Energy Resources, LLC (NextEra), National Grid Gas Delivery Companies (National Grid),[34] BP Energy Company (BP), Consolidated Edison Company of New York, Inc. and Philadelphia Gas Works (jointly, Con Edison) filed comments.

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provide that fuel will not be retained from gas received from the Station 85 pool when fuel has already been retained when that same gas was transported to the Station 85 pool; (c) certain provisions of Rate Schedule Pooling, and Section 28 of the General Terms and Conditions (GT&C) of the Tariff were modified to require shippers, when nominating gas away from the Station 85 pool, to provide information on the disaggregation nomination that will allow Transco to distinguish between those transactions supplied by gas that incurred Zone 4 usage and fuel charges when pooled and those transactions supplied by gas that did not incur such charges when pooled; and (d) Section 2.3 of Rate Schedule Pooling was modified to provide a mechanism for Transco to resolve volumetric discrepancies between the nomination delivered to the Station 85 pool and the pooling party's disaggregation nomination.

[34] The National Grid Gas Delivery Companies comprise: The Brooklyn Union Gas Company d/b/a National Grid NY; KeySpan Gas East Corporation d/b/a National Grid; Boston Gas Company, Colonial Gas Company, EnergyNorth Natural Gas, Inc. and Essex Gas Company, collectively d/b/a National Grid; Niagara Mohawk Power Corporation d/b/a National Grid; and The Narragansett Electric Company d/b/a National Grid, all subsidiaries of National Grid USA.

39. NextEra supports Transco's proposed Option 1 because it will be less complex to administer, and because it complies with the Commission's requirement that the same volume of gas moving through the Transco Station 85 pool not be assessed twice for Zone 4 usage and fuel charges. NextEra also points out that Option 1 can be implemented in a timely manner. NextEra asserts that Option 2 would require shippers to provide additional information with their scheduling nominations, which would de-standardize the industry-wide NAESB nomination process. In addition, it asserts that Option 2 would require unnecessary and costly computer upgrades by Transco and additional employee support. Finally, it states that Option 2 will not go into effect until May 1, 2010 at the earliest. NextEra also supports Transco's request for a waiver, to the extent one is necessary, of section 284.10(c)(5)(ii) of the Commission's Regulations in order to ensure that under this option cost responsibility will continue to follow cost causation.

40. BP supports Transco's proposed Option 1 and asserts that it complies with the Commission's May 29, 2009 Order and with the Commission's pooling policies. BP asserts that Option 1 ensures that transportation is charged only once for all pooled transactions in Zone 4. Second, BP asserts that Option 1 (unlike Option 2) eliminates the current discrimination and requires that Zone 4 transport charges are paid by shippers receiving gas at the Station 85 pool from the Mobile Bay Lateral, and also paid by shippers receiving gas at the Station 85 pool from the Destin pipeline. BP also argues that Transco's description of Option 1 as "free transportation" for certain shippers is misleading. BP states that there is no free transportation at issue. Rather, BP asserts that duplicative Zone 4 transportation charges are eliminated. Accordingly, in BP's view, no waiver of the Commission's regulations is necessary. Lastly, BP argues that Option 1 is far simpler to implement than Option 2 and that it can be implemented in a much more timely fashion.

41. National Grid argues that Transco's proposed Option 1 should be rejected because it is unduly discriminatory. National Grid points out Transco acknowledges that the effect of the Option 1 proposal is that certain transactions that involve the actual transportation of gas and cause Transco to use fuel in Zone 4 will not be assessed Zone 4 usage and fuel charges if the volumes transported in Zone 4 are subsequently delivered in Zone 4A or 4B or by displacement to a third party pipeline. National Grid states that this proposal establishes an unduly discriminatory framework in which some Zone 4 shippers would be required to subsidize other shippers contrary to Commission policy. [35] Indeed,

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[35] *Citing Dominion Transmission, Inc.*, 113 FERC ¶ 61,302, at P 11 (2005) (*citing Pipeline Service Obligations and Revisions to Regulations Governing Self-Implementing Transportation; and Regulation of Natural Gas Pipelines After Partial Wellhead*

(continued …)

Nation Grid asserts that Transco's Option 1 proposal goes well beyond ensuring that shippers do not pay Zone 4 usage and fuel charges twice, and instead would unlawfully require that some shippers would not pay these charges even once.

42. In regard to Option Two, National Grid requests the Commission to require Transco to clarify how it expects shippers to comply with proposed Section 28.1(a)(vii) of its General Terms and Conditions. National Grid states that under this proposed section, a shipper would be required to furnish Transco "deal type for all nominations with a receipt from the Station 85 pooling point which will denote gas that is subject to the Zone 4 usage and fuel retention and gas that is not subject to the Zone 4 usage and fuel retention." However, National Grid states that it is not clear how shippers are expected to obtain this information when arranging nominations from the Station 85 pool.

43. Con Edison states that Transco's Option 1 would permit gas to be transported both (a) on a forward-haul basis from upstream locations to Station 85 and (b) on a forward-haul basis from Station 85 to Transco's Zone 4A or to other pipeline interconnects at the same milepost as Station 85 without the imposition of Zone 4 usage and fuel charges. Con Edison argues that if certain transactions are exempted from paying Zone 4 usage and fuel charges, the costs will be borne by Transco's other customers, and it argues that such cross-subsidies should be prohibited by the Commission. Likewise, Con Edison argues that Transco's request for waiver must be denied because Transco may not exempt a class of transactions from paying the variable costs underlying its usage and fuel charges. Con Edison states that it takes no position on either Transco's Option 2 or on Transco's request for rehearing.

C. **Discussion**

44. The Commission finds that the tariff sheets proposed by Transco as part of Option 1 will result in a just and reasonable rate, and therefore, the Commission accepts such tariff sheets. Transco has not indicated a preference between charging for the transaction taking gas away from the pool or the transactions putting gas into the pool, and we find that Option 1 complies with the Commission orders and policies in a manner that provides greater administrative efficiency as the shipper would not have to supply, nor the pipeline process, additional nomination data. Accordingly, the tariff sheets listed in footnote two, as comprising Option 2, are rejected as moot.

45. Because of this action, and its finding in the rehearing order, the Commission finds that the comments of NextEra and BP supporting Option 1 are still valid and the

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Decontrol, Order No. 636, FERC Stats. and Regs., Regulations Preambles January 1991-June 1996 ¶ 30,939, at 30,431 (1992)).

concerns raised by Con Edison and National Grid concerning possible free transportation have been ameliorated. Moreover, as discussed above, the Commission also finds that it is unnecessary to grant waiver of Section 284.10(c)(5)(ii) of the regulations as proposed by Transco because it is not providing transportation to its shippers without their incurrence of the Zone 4 usage charge for the transportation.

46. Transco proposes that the Option 1 tariff sheets be effective the later of September 1, 2009, which is the earliest date by which Transco can implement the required system programming changes, or the first day of the first month commencing at least 30 days after a final Commission order accepting the proposed tariff sheets. The Commission finds that the proposed tariff sheets may become effective 30 days after the final Commission order accepting the proposed tariff sheets.

The Commission orders:

(A) The Commission accepts the Option 1 tariff sheets listed in footnote 2 to be effective 30 days after the final Commission order accepting the proposed tariff sheets.

(B) All other tariff sheets listed in footnote 2 are rejected as discussed in the body of this order.

(C) The Commission does not find good cause to grant waiver of its regulations as discussed in the body of its order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.