

137 FERC ¶ 61,203  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;  
Philip D. Moeller, John R. Norris,  
and Cheryl A. LaFleur.

Transcontinental Gas Pipe Line Company, LLC

Docket No. CP11-4-001

ORDER DENYING REHEARING

(Issued December 15, 2011)

1. On March 28, 2011, the Commission issued an order (March 28 Order) approving Transcontinental Gas Pipe Line Company, LLC's (Transco) abandonment of firm natural gas storage and transportation services being provided to Atlanta Gas Light Company (Atlanta Gas) under case-specific certificate authority.<sup>1</sup> Atlanta Gas filed a request for rehearing of the March 28 Order. As discussed below, we will deny rehearing.

**Background**

2. In 1987, the Commission granted Transco case-specific certificate authority to provide a bundled storage and transportation service to Atlanta Gas and five other local distribution companies (LDCs) under Rate Schedule SS-1.<sup>2</sup> To provide the storage component of its SS-1 service, Transco purchased firm storage service from UGI Central Penn Gas, Inc. (CPG) at the Tioga Storage Pool in Tioga County, Pennsylvania.<sup>3</sup>

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<sup>1</sup> *Transcontinental Gas Pipe Line Company, LLC*, 134 FERC ¶ 61,238 (2011).

<sup>2</sup> *Transcontinental Gas Pipe Line Corp.*, 40 FERC ¶ 61,185 (1987), *reh'g denied*, 42 FERC ¶ 61,354 (1988).

<sup>3</sup> CPG, a local distribution company, is the successor in interest to North Penn Gas Company. Until April 1, 2011, CPG provided NGA-jurisdictional interstate storage service to Transco pursuant to section 284.224 of the Commission's regulations under a limited jurisdiction certificate issued in *North Penn Gas Co.*, 59 FERC ¶ 61,137 (1992). In an order issued October 21, 2010, the Commission authorized CPG to abandon its storage service to Transco using capacity at the Tioga Storage Pool, effective

(continued...)

Because the Tioga Storage Pool is not connected directly to Transco's system, Transco's Rate Schedule SS-1 customers contracted separately with Dominion Transmission, Inc. (Dominion) to provide transportation to and from the Tioga Storage Pool and an interconnection between Transco's and Dominion's systems at Leidy in Potter County, Pennsylvania (Leidy-Dominion). The transportation of storage injection and withdrawal volumes between the SS-1 customers' city gates and the Leidy-Dominion point comprised the transportation component of Transco's SS-1 service.

3. In 1999, the Commission affirmed an Administrative Law Judge's directive that Transco unbundle its SS-1 service because Transco did not use the SS-1 service volumes for system flexibility or to support its no-notice service, and the SS-1 customers, not Transco, had full control over the gas stored under Rate Schedule SS-1.<sup>4</sup> Accordingly, Transco proposed to provide its previously-bundled SS-1 service under two separate non-open-access rate schedules: Rate Schedule SS-1 Section 7(c) Storage Service and Rate Schedule SS-1 Section 7(c) Transportation Service. As an alternative to these services, which would be provided under case-specific certificate authority, Transco also proposed to offer its existing SS-1 customers the option of electing to receive open-access storage service under Transco's new Part 284 SS-1 Open Access Storage Service rate schedule. Any SS-1 customers electing to convert to the Part 284 storage service could also sign up for corresponding open-access transportation service under Transco's existing Part 284 Rate Schedule FT. In December 2002, the Commission approved both Transco's new rate schedules for unbundled, case-specific SS-1 storage and transportation services and Transco's new Part 284 rate schedule for open-access SS-1 storage service.<sup>5</sup>

4. All five of Transco's SS-1 customers located in its Zone 6 elected to convert to unbundled open-access storage and transportation services under Transco's Rate

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April 1, 2011. In the same order, the Commission issued a blanket certificate pursuant to Part 284, Subpart G of the Commission's regulations authorizing CPG's new interstate affiliate, UGI Storage Company (UGI Storage), to acquire and operate CPG's storage facilities at the Tioga Storage Pool to provide open-access storage services at market-based rates. *See UGI Storage Company, et al.*, 133 FERC ¶ 61,073 (2010), *order denying reh'g*, 134 FERC ¶ 61,239 (2011).

<sup>4</sup> *See Transcontinental Gas Pipe Line Corp.*, 87 FERC ¶ 61,087, at 61,390 (1999), *reh'g denied*, 94 FERC ¶ 61,362 (2001).

<sup>5</sup> *Transcontinental Gas Pipe Line Corp.*, 101 FERC ¶ 61,298 (2002).

Schedule SS-1 Open Access Storage Service and Rate Schedule FT.<sup>6</sup> Only Atlanta Gas, the sole Rate Schedule SS-1 customer in Transco's Zone 4, elected to continue to receive non-open-access services under the new SS-1 Section 7(c) Storage Service and SS-1 Section 7(c) Transportation Service rate schedules. Atlanta Gas and Transco executed the storage and service agreements, effective January 1, 2003.

5. On September 23, 2009, CPG notified Transco of its intent to terminate, effective March 31, 2010, the storage service to Transco that Transco was, in turn, using to provide storage services to its SS-1 storage customers, including Atlanta Gas. CPG provided the notice in anticipation of abandoning, by transfer to its new interstate affiliate, UGI Storage, its storage capacity used for providing the service to Transco. In turn, Transco notified all of its SS-1 storage customers of its intent to terminate their SS-1 storage and related transportation services, effective March 31, 2010, which was also the end of the primary terms of its service agreements with those customers. Subsequently, Transco and its SS-1 storage customers, including Atlanta Gas, entered into a March 10, 2010 Letter Agreement which addressed certain transitional issues, including the conditions pursuant to which Transco would agree to provide SS-1 storage service for one additional year, through March 31, 2011.<sup>7</sup>

6. In accordance with the terms of the March 10, 2010 Letter Agreement, Transco (1) exercised its one-time right to extend the storage service it was receiving from CPG for one year, through March 31, 2011, and (2) extended its service agreements with Atlanta Gas and the Rate Schedule SS-1 Open Access Storage Service customers for one more year, through March 31, 2011. Additionally, the March 10, 2010 Letter Agreement provided that "AGL [Atlanta Gas] and Transco agree to negotiate in good faith toward a resolution, which may include a termination, for storage and transportation service to AGL, if any, that would be effective April 1, 2011,"<sup>8</sup> and if Atlanta Gas and Transco

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<sup>6</sup> The five SS-1 storage customers in Transco's Zone 6 were Public Service Electric and Gas Company, Long Island Lighting Company, The Brooklyn Union Gas Company, South Jersey Gas Company, and Elizabethtown Gas Company.

<sup>7</sup> Transco's and the SS-1 customers' Letter Agreement was accepted for filing by an unpublished letter order issued June 10, 2010, in Docket No. RP10-734-000, by the Director of the Division of Pipeline Regulation, Office of Energy Market Regulation.

<sup>8</sup> Letter Agreement at page 5, paragraph 5. The agreement also provides that after March 31, 2011, Transco will have no further obligations to provide storage service to customers under Rate Schedule SS-1 Open Access Storage Service which was for storage service using capacity that Transco had reserved under an agreement with CPG, which was transferring the capacity with Commission approval to UGI Storage effective April 1, 2011.

could not reach an agreement by October 1, 2010, that “Transco may file for abandonment of the certificated service to Atlanta Gas under Rate Schedule SS-1 Section 7(c) Storage Service and/or Rate Schedule SS-1 Section 7(c) Transportation Service.”<sup>9</sup>

7. Atlanta Gas and Transco could not reach an agreement regarding continuation of service after March 31, 2011. Therefore, Transco filed its October 7, 2010 application for authority to abandon the storage service and related firm transportation service being provided to Atlanta Gas under case-specific certificate authority.

### **March 28 Order**

8. The Commission, in the March 28 Order, authorized Transco to abandon its firm Rate Schedule SS-1 Section 7(c) storage and transportation services to Atlanta Gas, notwithstanding Atlanta Gas’s protest asserting that Transco had failed to demonstrate that the abandonment of the services is permitted by the public convenience or necessity. Specifically, Atlanta Gas claimed that Transco must overcome a presumption in favor of continued service, and that Transco failed to do so.

9. In response to Atlanta Gas’s claim that an applicant for abandonment of Part 157 service under case-specific certificate authority must overcome a presumption in favor of continuation of that service, the Commission noted that standard urged by Atlanta Gas had been articulated to address concerns existing during the natural gas shortages in the early 1970s, when local distribution companies and other customers relied on bundled gas sales services where interstate pipelines found and secured the customers’ gas supplies. The Commission explained that in assessing whether “public convenience or necessity permit” an abandonment of unbundled transportation or storage services, the Commission must look at the factors existing at the time abandonment is sought. The Commission stated that today, given the Commission’s unbundling requirements and other open-access policies, natural gas customers can now locate their own supplies and utilize an open-access interstate transportation grid to access a large number of different supply sources. Hence, the Commission stated that “with respect to service provided pursuant to case-specific Part 157 certificates, the Commission now, in essence, presumes that the conversion of that service to service under the open-access regime of Part 284 is appropriate, unless it is otherwise demonstrated in a given case that such conversion would be unreasonable.” The Commission found that there were acceptable alternative storage and transportation services available to Atlanta Gas, hence Atlanta Gas failed to demonstrate why it would be unreasonable for the Commission to allow Transco to abandon its services for Atlanta Gas under case-specific certificate authority.

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<sup>9</sup> *Id.*

### **Rehearing Request**

10. Atlanta Gas asks the Commission on rehearing to require that Transco reinstate Rate Schedule SS-1 Section 7(c) transportation service for Atlanta Gas to transport storage injection and withdrawal volumes on a firm basis to and from Transco's Leidy interconnection with National Fuel Supply Gas Corporation (National Fuel),<sup>10</sup> with which Atlanta Gas has entered into an agreement for storage service to replace the storage service heretofore provided by Transco using storage capacity operated by CPG.<sup>11</sup>

11. In the event the Commission denies rehearing, Atlanta Gas requests the Commission to commence a proceeding under sections 5 and 7 of the NGA to explore how Transco's remaining service agreements under case-specific certificates<sup>12</sup> can be modified, assigned, unbundled and/or converted to open-access services under Part 284 of the Commission's regulations. Additionally, Atlanta Gas asks the Commission to "consider whether Transco's 'middleman' role with respect to its no-notice services should be continued or modified" in the event Atlanta Gas's rehearing request is denied.

12. Transco, PSEG Energy Resources & Trade LLC (PSEG Energy Resources), and National Grid Gas Delivery Companies<sup>13</sup> filed answers to Atlanta Gas's rehearing request in view of Atlanta Gas's alternative request that the Commission establish a proceeding under sections 5 of the NGA to address issues related to the continuing

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<sup>10</sup> Under Transco's Rate Schedule SS-1 Section 7(c) service, transportation was provided to and from Transco's interconnection at Leidy with Dominion, which has an interconnection with the Tioga Storage Pool. However, Transco interconnects with pipelines other than Dominion at Leidy.

<sup>11</sup> Atlanta Gas did not participate in UGI Storage's open season for storage service utilizing the capacity acquired from CPG.

<sup>12</sup> Such services include Transco's liquefied natural gas service to Atlanta Gas under Rate Schedule LG-A, as well as Transco's Rate Schedule GSS, LSS, and SS-2 bundled, Part 157 services.

<sup>13</sup> The National Grid Gas Delivery Companies include: The Brooklyn Union Gas Company d/b/a/National Grid NY; KeySpan Gas East Corporation d/b/a National Grid; Boston Gas Company and Colonial Gas Company, collectively d/b/a National Grid; EnergyNorth Natural Gas, Inc. d/b/a National Grid NG; 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, Inc.

availability of Transco's storage services under case-specific certificates for which Transco serves a 'middleman' role by reserving storage capacity that it relies upon to provide its no-notice services for its own customers. To the extent that Atlanta Gas's request for alternative relief raises new issues that were not addressed in the March 28 Order, the parties are entitled to file an answer pursuant to Rule 213(a)(3) of the Commission's Rules of Practice and Procedure. Accordingly, we will accept Transco's, PSEG Energy Resource's, and the National Grid Gas Delivery Companies' answers to Atlanta Gas's rehearing request.

### **Presumption of Continued Service**

13. Atlanta Gas argues that the Commission wrongly determined that there is no longer a presumption in favor of continued service by pipelines upon expiration of their agreements for services provided under Part 157 case-specific certificate authority, but instead a new presumption that the abandonment of Part 157 service is appropriate at contract expiration unless it is otherwise demonstrated that such abandonment would be unreasonable. The linchpin of Atlanta Gas's argument is that this shift of presumptive burden is inconsistent with the Commission's statutory duty under the NGA to protect the ultimate consumers of gas, and the judicially-recognized adjunct of that duty that the Commission must ensure that consumers have continuous access to needed supplies of natural gas.<sup>14</sup>

14. In its protest to Transco's application for abandonment authorization, Atlanta Gas relied on *Transcontinental Gas Pipe Line Corp. v. FPC (Transco v. FPC)*<sup>15</sup> in support of its claim that a pipeline applying for authorization to abandon Part 157 service being provided under case-specific certificate authority must overcome a presumption in favor of the pipeline continuing that service. As noted above, the Commission explained in the March 28 Order why Atlanta Gas's expectation of continued reliance on a standard developed and applied during the gas shortages of the 1970s was misplaced in view of today's very different market conditions and availability of an open-access interstate transportation grid that did not exist when that standard was used by the Commission. On rehearing, Atlanta Gas again cites *Transco v. FPC*, as well as *Michigan Consolidated Gas Co. v. FPC*,<sup>16</sup> for the principles (i) that there is a presumption in favor of continued

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<sup>14</sup> Citing *Sunray Mid-Continent Oil Co. v. FPC*, 239 F.2d 97, 101 (10<sup>th</sup> Cir. 1956), *rev'd on other grounds*, 353 U.S. 944 (1957)

<sup>15</sup> 488 F.2d 1325, 1330 (D.C. Cir. 1973), *cert. denied sub nom, Natural Gas Pipeline Co. v. Transcontinental Gas Pipe Line Corp.*, 417 U.S. 921 (1974).

<sup>16</sup> 283 F.2d 204, 214 (D.C. Cir. 1960), *cert denied*, 364 U.S. 913 (1960).

service, i.e., “an obligation deeply imbedded in the law, to continue service,” and (ii) the burden of proof in an abandonment proceeding “is on the applicant for abandonment to show that the public convenience and necessity permits abandonment, that is, that the public interest will in no way be disserved by abandonment.” Atlanta Gas contends that the Commission had no authority to replace the judicially-accepted presumption in favor of continued service after expiration of the service agreement for services under Part 157 case-specific certificate authority with a new presumption that the conversion of Part 157 service to service under the open-access regime of Part 284 is appropriate, unless it is shown to be unreasonable in a given case.

### **Commission Response**

15. In the Commission’s view, there is no inconsistency between either the Commission’s general statutory duty under the NGA to protect the ultimate consumers of gas, or the specific duty to ensure that consumers have continuous access to needed supplies of natural gas, and the Commission’s decision to replace the presumption enunciated in *Transco v. FPC* that service under case-specific Part 157 certificate authority should continue after expiration of the underlying service contracts with a new presumption that upon expiration of service agreements for Part 157 service under case-specific certificates, the conversion of that service to Part 284 service under the open-access regime is appropriate, unless it is shown in a given case to be unreasonable. The Commission’s duty to protect ultimate natural gas consumers is what drives the Commission’s open-access regime goal of ensuring for all consumers the non-discriminatory, open-access availability of jurisdictional services.

16. As the Commission made clear in the March 28 Order, while the Commission remains statute-bound under NGA section 7(b) to allow an abandonment of jurisdictional service only if the “public convenience or necessity permit” the abandonment, the factors that the Commission must evaluate in order to determine the overall public interest are dictated by needs and demands at the time the abandonment authorization is sought. The Commission explained in the March 28 Order, that *Transco v. FPC* involved the question of the proper standard to be applied in natural gas abandonment proceedings in the early 1970s, during a nation-wide critical natural gas shortage and preceding the Commission’s development of its open-access policies. The March 28 Order went on to state that “[t]he factors that the Commission must evaluate in order to determine the overall public interest are dictated by needs and demands at the time the abandonment authorization is sought.”<sup>17</sup> The current presumption explained in the March 28 Order relies on the reasonable expectation that services, to the extent they are still needed by a customer upon expiration of an agreement for service under Part 157 case-specific certificate

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<sup>17</sup> 134 FERC ¶ 61,238 at P 39.

authority, can and will be adequately replaced with similar service under Part 284. The Commission has found that the provision of services under the open-access regime now in place, which serves to maximize utilization of the interstate grid and helps to ensure the receipt of services by those who value the services most, benefits the public.<sup>18</sup> Thus, the presumption that the public convenience and necessity will permit the abandonment of Part 157 services upon the expiration of the underlying service agreements is a reasonable one. In any given case, shippers will have the opportunity to demonstrate that alternate service under Part 284 will not be adequate. However, the Commission is not required to find that the public convenience and necessity will not permit a particular abandonment just because an individual shipper's private interest may be better served by continuing to receive a service that cannot be duplicated on an open-access basis. The Commission does not believe that this conflicts with its statutory duty under the NGA to ensure that consumers have continuous access to needed supplies of natural gas.<sup>19</sup>

### **Consistency with Existing Commission Precedent**

17. Atlanta Gas asserts that it had shown that it needs the same firm SS-1 storage and transportation from Transco now that it needed when it entered into the service agreements for those services,<sup>20</sup> and that the loss of Transco's SS-1 Section 7(c) storage service on a design day may force Atlanta Gas to curtail service to between 12,000 and 15,000 firm service customers. Atlanta Gas claims, therefore, that because it continues to

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<sup>18</sup> See *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. ¶ 30,939, *order on reh'g*, Order No. 636-A, FERC Stats. & Regs. ¶ 30,950, *order on reh'g*, Order No. 636-B, 61 FERC ¶ 61,272 (1992), *order on reh'g*, 62 FERC ¶ 61,007 (1993), *aff'd in part and remanded in part sub nom. United Distribution Cos. v. FERC*, 88 F.3d 1105 (D.C. Cir. 1996), *order on remand*, Order No. 636-C, 78 FERC ¶ 61,186 (1997), Order No. 636, FERC Stats. & Regs. ¶ 30,939 at 30,392-93.

<sup>19</sup> See *Maislin Industries, U.S. v. Primary Steel, Inc.*, 497 U.S. 116, 131 (1990), (citing *American Trucking Assn., Inc. v. Atchison, T. & S.F.R. Co.*, 387 U.S. 397,416 (1967) ([an agency] has both the authority and expertise generally to adopt new policies when faced with new developments in the industry’’)).

<sup>20</sup> In its initial protest and intervention in this proceeding, Atlanta Gas stated that it relied on Transco's SS-1 Section 7(c) storage and transportation service for up to 20,918 dekatherms of peak-day supply, an amount that represented 4.2 percent of Atlanta Gas's total peak-day demand on the Transco system. See Atlanta Gas's intervention and protest, at p. 4.

require Transco's SS-1 Section 7(c) transportation and storage services to serve its firm customers' needs, the Commission's approval of the abandonment of those services cannot be reconciled with Commission precedent, as enunciated in *Transcontinental Gas Pipe Line Corp. (Transco 2004)*,<sup>21</sup> wherein the Commission stated that:

[u]nder NGA Section 7(b), the Commission can only grant abandonment by finding, after due hearing, that the present or future public convenience and necessity permit such abandonment. To the extent the FT conversion shippers are still using their historical capacity to serve the needs of their customers, the Commission could not find that abandonment is in the public convenience and necessity.<sup>22</sup>

18. Atlanta Gas asserts that the Commission's March 28 Order in this proceeding failed to explain or justify its departure from its ruling in *Transco 2004*.

### **Commission Response**

19. In pertinent part, the cited *Transco 2004* order addressed the extent to which Transco's shippers receiving firm transportation service under Transco's Part 284 open-access blanket certificate and Rate Schedule FT were entitled to invoke the rights of first refusal (ROFR) by shippers provided for in section 284.221(d) of the Commission's regulations in light of the fact that, pursuant to a settlement, Transco had given up the right to exercise that section's pre-granted authority. While Atlanta Gas is correct that the Commission stated in *Transco 2004* that "[t]o the extent the FT conversion shippers are still using their historical capacity to serve the needs of their customers, the Commission could not find that abandonment is in the public convenience and necessity," the issue of the proper standard to be applied in an application for abandonment was not before the Commission in that proceeding.

20. The Commission's explanation for the current presumption policy in the March 28 Order was thorough and reasoned. The above-quoted language in *Transco 2004* that Atlanta Gas relies on simply restates the standard as detailed in *Transco v. FPC*, the case on which Atlanta Gas relied in its protest to Transco's abandonment application. As summarized above, the Commission explained in the March 28 Order why that standard is not appropriate given the Commission's current open-access policies.<sup>23</sup> Moreover, and

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<sup>21</sup> 106 FERC ¶ 61,299 (2004).

<sup>22</sup> *Id.* at P 12.

<sup>23</sup> *See* 134 FERC ¶ 61,238 at P 38, 39.

more importantly, as explained below, Atlanta Gas is no longer entitled to the SS-1 Section 7(c) transportation service under case-specific certificate authority by virtue of the very terms of that service.

21. In its rehearing request, Atlanta Gas states that it “recognizes that the Commission has authorized UGI to abandon the firm storage service that was purchased by Transco to provide Rate Schedule Section 7(c) Storage Service to AGL.” Atlanta Gas states that it was able to replace the SS-1 storage service that it formerly purchased from Transco by securing a more costly replacement storage service from National Fuel.<sup>24</sup> At the time it filed its rehearing request, Atlanta Gas was evaluating whether to seek judicial review of the Commission’s orders approving UGI Storage’s acquisition from CPG of the storage capacity that was used for the storage service Transco purchased from CPG to provide the Rate Schedule SS-1 Section 7(c) Storage Service to Atlanta Gas.<sup>25</sup> However, Atlanta Gas did not file such a petition for review and those orders are now final. Consequently, Transco is no longer able to provide that storage service to Atlanta Gas.

22. Therefore, under the terms and conditions of Transco’s Rate Schedule SS-1 Section 7(c) Transportation Service, Transco has no obligation to provide the firm transportation service Atlanta Gas insists it is entitled to. Under Section I of that rate schedule, such transportation service is available only when “Buyer is a purchaser of service under Seller’s Rate Schedule SS-1 Section 7(c) Storage Service.” Additionally, section 2 of Transco’s Rate Schedule SS-1 Section 7(c) Transportation Service states “that in the event [CPG] fails for any reason whatsoever to provide service to [Transco] under its agreement with [Transco] that underlies [Transco’s] Rate Schedule SS-1 Section 7(c) Storage Service, then [Transco’s] obligation to provide service hereunder shall be reduced accordingly.” Atlanta Gas has not explained why, under any reasonable interpretation of these sections of Transco’s rate schedule, it is entitled to any Rate Schedule SS-1 Section 7(c) Transportation Service when it no longer purchases Rate Schedule SS-1 Section 7(c) Storage Service from Transco.

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<sup>24</sup> See Rehearing Request at p. 5, March 28 Order; 134 FERC ¶ 61, 238 at P 42. In addition, Transco notes in its answer that Atlanta Gas has elected to convert its Rate Schedule SS-1 Section 7(c) transportation service to Part 284 firm transportation service under Transco’s Rate Schedule FT, effective April 1, 2011.

<sup>25</sup> See *UGI Storage Company, et al.*, 133 FERC ¶ 61,073 (2010), *order denying reh’g*, 134 FERC ¶ 61,239 (2011).

### **Other Allegations of Error**

23. Finally, Atlanta Gas alleges several instances in which the March 28 Order relied on “unsupported and erroneous interpretations of fact, law, and policy”. First, Atlanta Gas contends *Transcontinental Gas Pipe Line Corp. (Transco 1991)*,<sup>26</sup> on which the Commission relied in applying its current presumption and policy allowing pipelines’ abandonment of services under Part 157 case-specific certificates upon expiration of the underlying contracts, is premised on the notion that requiring pipelines to continue providing shippers service under Part 157 case-specific certificates under existing terms may allow the shippers to continue receiving favorable treatment not available to other shippers, possibly leading to distortions in the gas and transportation markets. Atlanta Gas asserts that notwithstanding this concern the Commission nevertheless should require that Transco continue providing its service for Atlanta Gas under case-specific certificate authority in this case since Transco has been doing so for over twenty years. Because Transco has been able to do it for twenty years, Atlanta Gas reasons that it should continue to be required to do it.

24. Second, Atlanta Gas claims that there is no basis for the Commission’s conclusion that “too much of Transco’s system flexibility was being devoted to ensuring the delivery of [Atlanta Gas’s] summer injection volumes at the expense of other customers.” Finally, Atlanta Gas challenges the Commission’s finding that Atlanta Gas is receiving “a quality of service beyond that available to other shippers on the Transco system.” In this regard, Atlanta Gas asserts that the transportation service it receives under Rate Schedule SS-1 Section 7(c) is, in fact, identical to the transportation service that Transco provides other customers under bundled storage and transportation services, including Rate Schedules GSS and LSS.

### **Commission Response**

25. The Commission’s current policy favors Part 284 service over Part 157 service. Atlanta Gas’s attention to the above quoted observation in *Transco 2004* notwithstanding, the Commission’s policy, set forth in *Transco 1991* and reaffirmed in *Tennessee Gas Pipeline Company*,<sup>27</sup> is that when Part 157 transportation service agreements have expired and proper notice of intent to terminate is given pursuant to the contracts’ terms, conversion of those contracts to Part 284 service would be reasonable unless shown otherwise under the particular circumstances. While the Commission has observed that “allowing the shipper to continue the arrangement under existing terms *may* allow the

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<sup>26</sup> 55 FERC ¶ 61,466 (1991).

<sup>27</sup> 71 FERC ¶ 61,207 (1995).

shipper to obtain favorable treatment not available to other shippers,”<sup>28</sup> it is not a requirement to find that such favorable treatment would exist in a given case.

26. In this case, as noted above, it is not possible to allow Transco to continue its Rate Schedule SS-1 Section 7(c) transportation arrangement with Atlanta Gas under existing terms since Atlanta Gas no longer purchases storage service from Transco. Hence, any transportation service Atlanta Gas might receive after the termination of the underlying storage service that CPG has been providing Transco is not identical to the transportation service that Transco provides other customers under bundled storage and transportation services, as Atlanta Gas claims.

27. Finally, with respect to the summer injection season, Transco asserted that in order to assure that it could provide firm summer season injection transportation service to Atlanta Gas it had to rely on “its role as the system operator and ability to access available system flexibility as it may exist from time to time during the summer.”<sup>29</sup> Atlanta Gas did not challenge that claim. It follows that other customers would be impacted from time to time if Transco was required to rely on system flexibility to ensure Atlanta Gas’s summer injection volumes on a firm basis through the summer season. Transco also stated in its application that Atlanta Gas could use interruptible transportation on Transco’s system, as well as transportation services of other pipelines, for storage injections.<sup>30</sup> Atlanta Gas never argued that it would be unable to rely on these alternative services during the summer injection season to meet its summer injection requirements. In its protest, Atlanta Gas claimed only that it could not rely on interruptible service to meet peak day and winter season service needs of its firm customers. Thus, even if the Commission’s conclusion that “too much of Transco’s system flexibility was being devoted to ensuring the delivery of [Atlanta Gas’s] summer injection volumes at the expense of other customers” was an overstatement, Atlanta Gas failed to show that it would be unreasonable for Atlanta Gas to rely on available, alternative Part 284 services to meet its summer injection transportation service needs.

### **Request for Proceedings under NGA Sections 5 and 7**

28. In the event the Commission denies rehearing, Atlanta Gas requests the Commission to commence a proceeding under sections 5 and 7 of the NGA to explore

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<sup>28</sup> *Transco 1991*, 55 FERC ¶ 61,446 at p. 62,363; *Tennessee*, 71 FERC ¶ 61, 207 at p. 61,760.

<sup>29</sup> Transco’s application at p. 12.

<sup>30</sup> *Id.*, at p. 11.

how Transco's remaining Part 157 service agreements can be modified, assigned, unbundled and/or converted to open-access services under Part 284 of the Commission's regulations, and to "consider whether Transco's 'middleman' role with respect to its no-notice services should be continued or modified."

29. Transco asserts that Atlanta Gas's alternative request for proceedings is a request for relief other than a request for rehearing, involving matters outside the scope of this proceeding. Transco further asserts, because this alternative relief request is in the nature of a complaint it was improper under the Commission's rules of procedure to include it as a part of a request for rehearing proceeding.<sup>31</sup> Moreover, Transco states, Atlanta Gas's alternative relief request fails to set forth the specific elements that must be contained in a complaint under the Commission's rules, specifically Rule 206.<sup>32</sup>

30. In addition to being procedurally improper, Transco asserts that Atlanta Gas's request that the Commission initiate a proceeding under sections 5 and 7 of the NGA would involve an examination of "issues" related to Part 157 services that are wholly unrelated to the subject matter of this proceeding. Transco states that unlike the SS-1 Section 7(c) services that were the subject of this proceedings, the services Atlanta Gas wants to examine are bundled, Part 157 storage and transportation services. Transco states that, unlike Rate Schedule SS-1 Section 7(c) services, "the Commission has repeatedly found that both the existing bundled Part 157 nature of Transco's Rate Schedule GSS and LSS services and Transco's "middleman" role in managing those services play a critical role in maintaining Transco's operational flexibility and its ability to continue to provide high quality no-notice firm transportation service to its customers."<sup>33</sup>

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<sup>31</sup> See, e.g., *Northeast Utilities Service Co.*, 52 FERC ¶ 61,336, at 62,318, n. 45 (1990) (citing *Louisiana Power & Light Co.*, 50 FERC ¶ 61, 040 (1990)).

<sup>32</sup> 18 C.F.R. § 385.206(b)(1) – (11) (2010).

<sup>33</sup> See *Transcontinental Gas Pipe Line Corp.*, 65 FERC ¶ 61,023, at 61,926-27 (1993); see also, *Transcontinental Gas Pipe Line Corp.*, 106 FERC ¶ 61,299, at P 29-53 (2004), *order on reh'g*, 112 FERC ¶ 61,170, at P 17-21 (2005).

31. PSEG Energy Resources<sup>34</sup> and National Grid Gas Delivery Companies<sup>35</sup>, both customers of Transco's bundled, Part 157 services, share a concern over the effect of the March 28 Order on the continuing availability of Transco's bundled Part 157 services. PSEG Energy Resources, on one hand believes that the element of uncertainty concerning the availability of Transco's existing bundled Part 157 services in the future can be addressed without the need to initiate a formal proceeding. In particular, PSEG Energy Resources states that any proceeding should not examine or bring into question Transco's "middleman" role, which allows Transco to continue to provide the operational flexibility and no-notice service that its firm transportation customers have enjoyed for years.

32. National Grid Gas Delivery Companies support Atlanta Gas's claim that the Commission should restore the presumption in favor of continued service for both Transco's bundled Part 157 services and the upstream storage services that Transco purchases to provide those Part 157 bundled services. National Grid Gas Delivery Companies further agree with Atlanta Gas's request that the Commission convene a proceeding to explore how to assure Transco's customers that the bundled Part 157 services it provides will continue to be available to customers in the future. However, National Grid Gas Delivery Companies oppose any examination in such a proceeding of Transco's "middleman" role, or whether Transco's Part 157 services should be unbundled. According to National Grid Gas Delivery Companies, service availability issues can be resolved without having to unbundle those services or eliminate Transco's "middleman" role.

### **Commission Response**

33. Atlanta Gas's request for alternative relief in the nature of a proceeding under sections 5 and 7 of the NGA is denied. The matters of Transco's other services which require NGA section 7(b) abandonment authorization to terminate, and Transco's "middleman" role with respect to any other service, are not issues within the scope of this proceeding. In the event Transco files for abandonment authorization for any of those services, after providing the required notice to terminate such services upon expiration of the contract term, the Commission will apply the policy explained in the March 28 Order. In that event, if any affected shipper can show that termination of that service would be unreasonable under the particular circumstances of that case, the Commission will not

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<sup>34</sup> PSEG Energy Resources is an affiliate of the PSEG referenced in fn 6.

<sup>35</sup> While The Brooklyn Union Gas Company is one of the National Grid Gas Delivery Companies, as indicated in above at P 4, The Brooklyn Union Gas Company previously converted its case-specific SS-1 service on Transco to open-access service.

terminate that service. However, those other services are not before the Commission in this proceeding, and issues regarding conversion of those services are not ripe for Commission determination.

34. Moreover, questions pertaining to Transco's role as "middleman," and any examination as to whether that role should be modified or continued, are issues beyond the scope of this proceeding. Transco sought and obtained in its Order No. 636 restructuring proceeding the right to act as "middleman" in order to provide bundled Part 157 services. If Atlanta Gas seeks to modify or eliminate that role, the proper course would be to file a complaint pursuant to the Commission's rules, and not to raise it as an aside in a request for rehearing.<sup>36</sup>

The Commission orders:

Atlanta Gas's request for rehearing and alternative request for proceedings under sections 5 and 7 of the NGA are denied, as discussed in the body of this order.

By the Commission.

( S E A L )

Kimberly D. Bose,  
Secretary.

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<sup>36</sup> See *Louisiana Power & Light Co.*, 50 FERC ¶ 61,040 (1990); see also, *Northeast Utilities Service Co.*, 52 FERC ¶ 61,336, at 62,318 n.45 (1990).