154 FERC ¶ 61,211
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Norman C. Bay, Chairman;
Cheryl A. LaFleur, Tony Clark,
and Colette D. Honorable.

Transcontinental Gas Pipe Line Corporation — Docket Nos. RP06-569-008, RP07-376-005 (consolidated)

ORDER ON REMAND

(Issued March 17, 2016)

1. This order addresses the United States Court of Appeals for the District of Columbia Circuit (D.C. Circuit) opinion in *BNP Paribas Energy Trading GP v. FERC*,[1] vacating and remanding the Commission's decision to accept Transcontinental Gas Pipe Line Corporation's (Transco)[2] proposal to charge BNP Paribas Energy Trading GP (Paribas)[3] and South Jersey Resources Group, LLC (South Jersey) (collectively, replacement shippers) a new incremental rate for storage service at the Washington Storage Field under Rate Schedule Washington Storage Service-OA (WSS-OA) service, which was higher than the rate paid by Transco's historic shippers.

[1] 743 F.3d 264 (2014) (*BNP Paribas*).

[2] Transco has since changed its name to Transcontinental Gas Pipe Line Company, LLC.

[3] *Transcon. Gas Pipe Line Corp.*, Opinion No. 507, 130 FERC ¶ 61,043 (2010), *reh'g denied*, Opinion No. 507-A, 139 FERC ¶ 61,002 (2012). In the underlying proceedings at the Commission, the Commission used the name Fortis Energy Marketing & Trading GP or "Fortis" because that was the previous name of the company Paribas before it changed its name. However, because the Court uses the name "Paribas" in *BNP Paribas*, the Commission will also use this name when referring to the company.

2. As discussed more fully below, the Commission reverses its decision in Opinion Nos. 507 and 507-A that Transco's incremental rate proposal for the replacement shippers is just and reasonable. We find that Transco has not satisfied its burden under NGA section 4 to show that its proposal to allocate to the replacement shippers all costs related to its purchases of new base gas is just and reasonable. We further determine that Transco must continue to design its rates for service under Rate Schedules WSS/WSS-OA[4] on a fully rolled-in basis, as it has since the inception of these services. In addition, we direct Transco to file revised Rate Schedules WSS/WSS-OA tariff record within 30 days of the date of this order reflecting the rates established within this order. We further direct Transco to refund the amounts collected in excess of the WSS-OA service rate ordered herein to the replacement shippers from March 1, 2007 and file a refund report consistent with the discussion below.

I. <u>Background</u>

A. <u>Proceedings Before the Commission</u>

3. A full discussion of the background of these proceedings and the establishment of the Washington Storage Field was included in Opinion No. 507 and Opinion No. 507-A. Therefore, we will not repeat those discussions at length herein.

4. Transco's Washington Storage Service originated in the mid-1970s. The field has a total storage capacity of 120 Bcf consisting of a working gas volume of 75 Bcf, a base gas volume of 45 Bcf, and maximum deliverability[5] of 913,237 Dekatherm (Dth) per

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[4] Rate Schedule WSS only applies to historic customers under the traditionally certificated service who did not convert to Rate Schedule WSS-OA. Because the rates for service under each rate schedule are the same, we will largely use Rate Schedule WSS-OA to reference both in this order.

[5] The terms "deliverability" and "withdraw" are used interchangeably by the parties and in this order. Maximum deliverability, or maximum withdrawal capability, represents the certificated maximum ability of the field to withdraw gas when both base and working gas are at their certificated maximum inventory level. As top gas is withdrawn, the ability of the field to deliver gas declines. Shippers' contract withdrawal rights also decline as top gas is withdrawn. In the case of Transco, the contract decline curve is referred to as "rachets" and these ratchets are memorialized in the tariff. *See* Transcontinental Gas Pipe Line Company, LLC, FERC NGA Gas Tariff, Firth Revised Volume No. 1, Section 3.1, Rate Schedule WSS-Open Access, 0.0.0, at Section 7.2 for the withdraw ratchets effective for the period applicable to this proceeding.

day.[6] On February 26, 1975, the Commission approved a settlement (1975 Settlement) proposed by Transco and issued a certificate to provide individually certificated contract storage service at the Washington Storage Field under Rate Schedule WSS.[7] At that time, Transco faced severe supply problems, and its curtailment of service to its high priority industrial customers had "reached extraordinary proportions."[8] The Commission found that development of the Washington Storage Field was the best available means of providing extra volumes of gas during the winter heating season.

5. The 1975 Settlement provided that Transco's customers desiring WSS service would provide the base gas volumes necessary to support their top gas storage capacity entitlements.[9] As agreed in the settlement, section 9.1 of the Rate Schedule WSS provided that Transco would inform each WSS customer (historic shipper) of the quantity of base gas to be supplied by that customer for each increment of its storage capacity. Each historic shipper would then supply the required base gas volumes from volumes that would otherwise be available to it for purchase under Transco's then existing bundled firm sales rate schedules. The customers' firm entitlements to purchase gas would be

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[6] On December 6, 2010, Transco filed an application, in Docket No. CP11-45-000, under section 7(b) of the Natural Gas Act (NGA) requesting authorization to partially abandon storage deliverability at its Washington Storage Field. Transco requested and was granted by the Commission authorization to reduce the maximum storage deliverability for its Rate Schedule WSS-OA customers from 913,237 Dth per day to 817,104 Dth per day. This request and authorization did not change the Washington Storage Field's certificated base and working gas volumes, *See Transcontinental Gas Pipe Line Co., LLC*, 134 FERC ¶ 61,251 (2011). All WSS-OA customers agreed to reduce their contract withdrawal rights by 10.5 percent, the same percentage as the percentage reduction in the total deliverability of the field. *Id.* P 4. These changes became effective May 1, 2011 (*Transcontinental Gas Pipe Line Co., LLC,* Docket No. RP11-2028-000 (May 19, 2011) (delegated letter order). As the record in the instant proceeding predates these changes, the maximum deliverability figure of 913,237 Dth per day is used throughout this order.

[7] *Transcon. Gas Pipe Line Corp.*, 53 FPC 628 (1975) (*Transco*). Amendments to Rate Schedule WSS were subsequently authorized by the following orders: 56 FPC 1351 (1976); 58 FPC 1960 (1977); 1 FERC ¶ 61,172 (1977); 4 FERC ¶ 61,271 (1978); 6 FERC ¶ 61,232 (1979); 11 FERC ¶ 62,003 (1980); 12 FERC ¶ 62,287 (1980); 16 FERC ¶ 62,212 (1981).

[8] *Transco*, 53 FPC at 631.

[9] *Id.* at 630; *see also Transcon. Gas Pipe Line Corp.*, 87 FERC ¶ 61,184, at 61,704 (1999) (1999 Conversion Order).

temporarily reduced by the amount of base gas being supplied, coupled with a credit to their sales reservation charges. In addition, pursuant to the 1975 Settlement, section 9.5 of Rate Schedule WSS provided that Transco would be the owner of the base gas injected into the Washington Storage Field (and incur the gas purchase cost), but the historic shippers would have the right to purchase their respective share of the base gas at historic cost from Transco at the time the customer terminated service from the field.[10]

6. Transco injected the original base gas volumes into the Washington Storage Field, consistent with these provisions of the 1975 Settlement and the WSS Rate Schedule. Transco expanded the capacity of the storage field several times between 1975 and 1981, each time buying gas that the historic shippers had been entitled to take themselves and giving those shippers the right to repurchase the gas at historic cost on terminating service.[11] On the above occasions, Transco's costs were rolled into its rate base.

7. After its Order No. 636 restructuring proceeding, Transco continued to provide only an individually certificated, non-open access service at its Washington Storage Field until 1998. In 1998, Transco proposed to implement a new Rate Schedule WSS-OA to permit its shippers to convert from the existing Rate Schedule WSS firm storage service to open access service at the Washington Storage Field under Transco's blanket certificate and Part 284 of the Commission's regulations. The Commission accepted that proposal subject to various modifications.[12] As finally approved, Transco's proposal allows each historic WSS customer, including those converting to WSS-OA service, to retain its existing right to repurchase the specific volume of base gas that it supplied as part of the development of the Washington Storage Field if the customer terminated service from the field. New WSS-OA customers are not required to supply base gas, but in turn, these shippers do not have the WSS base gas repurchase rights that historic

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[10] *See Transco*, 53 FPC at 630. This base gas arrangement was listed in section 9.1 and section 9.5 of Transco's then existing WSS tariff on file with the Commission.

[11] A certificate for the final increase in working gas (also referred as "top gas") storage capacity was issued to Transco for the Washington Storage Field on September 30, 1980, increasing its working gas capacity to 75 Bcf. *See Transcontinental Gas Pipe Line Corp.*, 12 FERC ¶ 62,287 (1980). The total working gas storage capacity and the total base gas required to support that working gas capacity's withdraw capability has not increased since the completion of that expansion.

[12] *Transcon. Gas Pipe Line Corp.*, 85 FERC ¶ 61,119 (1998), *order on reh'g*, 87 FERC ¶ 61,184 (1999).

shippers possess under the tariff.[13] Transco's tariff provides that it has an ongoing obligation to maintain sufficient base gas to support the total top gas requirements of its customers.

8. Because Transco's Washington Storage Field is fully subscribed, the need to purchase base gas would only arise if one of the field's historic shippers exited the field and exercised its option to purchase its share of base gas along with the arrival of a replacement shipper at the field. However, if a historic shipper withdrew its base gas entitlement from the Washington Storage Field and no replacement shipper sought to take that shipper's place, Transco would not automatically be required to purchase replacement base gas.

9. During the period 2005-2006, two of Transco's historic shippers permanently released their Washington Storage Field capacity rights. PSEG Energy Resources and Trade (PSEG) released its capacity to Paribas, and South Jersey Gas Company (South Jersey Gas) released its capacity to its affiliate, South Jersey. Both PSEG and South Jersey Gas also exercised their right to purchase approximately 3.4 million Dth of base gas at its historic cost of approximately $0.89 per Dth. At that time, the price of gas was approximately $6 per Dth. To support the top gas needs of its shippers at the Washington Storage Field, Transco purchased approximately 3.4 million Dth of base gas.

10. On August 31, 2006, Transco filed an NGA general section 4 rate case in Docket No. RP06-569-000 in which it proposed, among other things, new bifurcated tariff rates for service at its Washington Storage Field. The historic shippers would continue to pay a rate based on their proportionate share of the historic base gas and the replacement shippers would pay an incremental rate based on the cost of replacing 3.4 million Dth of base gas.

11. On November 28, 2007, the parties filed an uncontested Stipulation and Agreement of Settlement (2007 Settlement) of the Docket No. RP06-569-000 rate case and another proceeding not at issue here. The 2007 Settlement resolved all issues in the section 4 rate case, except for one reserved issue: Whether Transco's proposal under section 4 of the NGA to establish incremental rates under its Rate Schedule WSS-OA to be applicable to Paribas and South Jersey to recover Transco's cost of purchasing replenishment base gas is just and reasonable.

[13] *Id*. at 61,707-61,708.

12. Regarding the litigation of the reserved issue, the participants to the proceeding filed a Stipulation.[14] The Stipulation provided, among other things, that the inputs for determining the ultimate rates for the replacement shippers were agreed to: 1) parties will base their testimony and exhibits on the fixed cost component ($19.2 million) of the total Rate Schedules WSS/WSS-OA cost-of-service shown in Appendix B, Statement I, Exhibit No. T-1, page 30 of Transco's March 9, 2007 Compliance Filing; and 2) any compliance filing made by Transco to implement the outcome of the litigation of the reserved issue will be based on the WSS cost of service underlying the agreement.

13. These issues were the subject of hearing in July 2008 before the presiding Administrative Law Judge (ALJ). On November 21, 2008, the ALJ issued an initial decision and certified that decision to the Commission.[15] With regard to Transco's NGA general section 4 rate proposal, the ALJ ruled that Transco's incremental rate proposal was not a just and reasonable method to allocate costs for the replenishment of base gas at the Washington Storage Field. The ALJ also ruled that, to the extent the *1999 Certificate Policy Statement*[16] applies at all, it supports the imposition of rolled-in rate treatment for the replenishment of base gas at the Washington Storage Field. Specifically, the ALJ reasoned that all base gas serves the top gas deliverability of all shippers; therefore, it was impossible to attribute any portion of base gas to any one or more customers other than pro rata according to each customer's top gas volume. In addition, the ALJ stated that the principle of cost causation supported the imposition of rolled-in rate treatment for the replenishment of the base gas for both historic and incremental customers receiving storage service for Transco's Washington Storage Field, because no one customer's top gas requirement can be said to cause more base gas cost than any other customer's. Accordingly, the ALJ held that Transco's incremental rate proposal violated section 4 of the NGA because it was unlawfully discriminatory against the replacement storage customers.

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[14] Transco, Stipulation and Agreement, Docket Nos. RP06-569-000, *et al.*, filed November 28, 2007. When discussing the Settlement in this order, we will use the term "2007 Settlement" and when discussing the Stipulation, we will use the term "Stipulation."

[15] *Transcon. Gas Pipe Line Corp*., 125 FERC ¶ 63,020 (2008).

[16] *Certification of New Interstate Natural Gas Pipeline Facilities*, 88 FERC ¶ 61,227 (1999) (*1999 Certificate Policy Statement*), *clarified*, 90 FERC ¶ 61,128 (*1999 Certificate Policy Statement Rehearing Order*), *clarified*, 92 FERC ¶ 61,094 (2000).

14. Several parties filed exceptions to this decision with the Commission. In Opinion No. 507, the Commission reversed the ALJ's decision,[17] and in Opinion No. 507-A,[18] the Commission denied Paribas and South Jersey's request for rehearing of Opinion No. 507. The Commission determined that the *1999 Certificate Policy Statement* was inapplicable to the facts of the proceeding and it reversed the ALJ's ruling that the *1999 Certificate Policy Statement* weighed against Transco's showing that its bifurcated rate proposal is just and reasonable. The Commission further stated that, under the statutory scheme set forth in the NGA, the pipeline has the initiative through a section 4 filing to propose how it will recover its costs and, if the pipeline shows that its proposed rates are just and reasonable, the Commission must accept those rates, regardless of whether other just and reasonable rates may exist.[19] The Commission also pointed out that in *ConEd* the court recognized that, "while incremental treatment may be required at one end of the rate-setting continuum, and rolled-in pricing required at the other, in between the two extremes lie a series of intermediate points in which both these recovery methods would satisfy section 4's just and reasonable test."[20] The Commission found that Transco had satisfied its section 4 burden to show that its proposed incremental rates were just and reasonable, and therefore, the Commission accepted Transco's proposal.

15. The Commission rejected Paribas and South Jersey's contention that Transco's use of an incremental rate base is contrary to the cost causation ratemaking principle set forth in *K N Energy* that "all approved rates reflect to some degree the costs actually caused by the customer who must pay them."[21] The Commission stated that, as is generally true in cases involving a choice between incremental and rolled-in rates for integrated pipeline services, this case presented alternative methods of analyzing cost causation, depending upon whether the focus is on the pipeline's operations or on the events enabling each customer to join the system. On the one hand, because Transco operates the Washington Storage Field on an integrated basis, all base gas injected into the field serves the top gas' deliverability needs of all WSS/WSS-OA customers, regardless of when each shipper joined the system. On the other hand, the Commission stated, the permanent capacity releases to Paribas and South Jersey were the "most immediate and proximate" cause of

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[17] Opinion No. 507, 130 FERC ¶ 61,043.

[18] Opinion No. 507-A, 139 FERC ¶ 61,002.

[19] *See W. Res., Inc. v. FERC*, 9 F.3d 1568, 1578-79 (D.C. Cir. 1993); *Consol. Edison Co. v. FERC*, 165 F.3d 992 (D.C. Cir. 1999) (*ConEd*).

[20] *ConEd*, 165 F.3d at 1004.

[21] *K N Energy, Inc. v. FERC*, 968 F.2d 1295, 1300 (D.C. Cir. 1992) (*K N Energy*).

Transco's need to purchase new base gas in 2005 and 2006.[22] Those releases enabled PSEG and South Jersey Gas to exercise their right to purchase the approximately 3.4 million Dth of base gas attributable to them, thereby requiring Transco to purchase replacement base gas so that it could serve the top gas deliverability rights transferred to Paribas and South Jersey.

16. The Commission stated that, because these alternative analyses of cost causation are both factually accurate, the relative weight to be given to each in resolving the rolled-in versus incremental rate issue turns on equitable factors and other public interest considerations. The Commission held that equitable factors supported Transco's proposed incremental rates. These included the fact the historic shippers provided essential support for Transco to proceed with the Washington Storage Field by providing the necessary base gas out of their gas purchase entitlements during a period of severe gas shortages. In addition, PSEG and South Jersey Gas' capacity releases to Paribas and South Jersey did not improve the quality of the historic shippers' service. The historic shippers received the same service before and after the base gas injections required by PSEG and South Jersey's exit from the system.

17. Similarly, the Commission found that it was not unduly discriminatory for Transco to charge the replacement shippers a different rate from the historic shippers. The Commission held that the two customer classes were not similarly situated because the historic shippers, unlike the replacement shippers, had contributed base gas for Transco's use necessary for the establishment and expansion of the storage field.

18. Finally, the Commission rejected Paribas' and South Jersey's argument that the Commission's approval of Transco's incremental rate proposal is inconsistent with its policy concerning the interconnection of new electric generation resources to the existing transmission network. The Commission stated that policy is not relevant to this case, because the resolution of this case turns on equitable considerations arising from the unique circumstances concerning the development of the Washington Gas Storage Field during a period of severe gas shortages.

B. Proceedings Before the D.C. Circuit

19. Paribas appealed Opinion Nos. 507 and 507-A to the D.C. Circuit and South Jersey intervened in support of Paribas' appeal.

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[22] *See id*. at 1302 (citing the statement in *K N Energy* that the Commission traditionally focuses on "the most immediate and proximate cause of the cost incurred.").

20. In *BNP Paribas*, the D.C. Circuit vacated and remanded the Commission's underlying decisions. Specifically, the D.C. Circuit stated that the Commission failed to explain:

> how its decision manifested the cost causation principle. It particularly failed to explain how or why or in what sense the historical [shippers'] *continued demand* did not share, *pro rata*, in causing the need for the new base gas, or, to put the same issue in terms that the Commission often treats as equivalent, how or what or in what sense the historical [shippers] did not share proportionately in the benefits provided by the new base gas.[23]

21. The D.C. Circuit found two flaws in the Commission's rationale for holding that Transco's proposed incremental rates were consistent with the principle of cost causation.

22. First, the D.C. Circuit found that the Commission had not supported its finding that the case presents two factually accurate methods of analyzing cost causation, depending on whether the focus is on the pipeline's operations or on the events enabling each customer to join the system.[24] The D.C. Circuit was not persuaded that the exiting historic shippers' releases to the replacement shippers could be viewed as the most immediate and proximate cause of Transco's need to purchase base gas to be able to serve the replacement shippers. The D.C. Circuit explained,

> [o]n its face, this alternative focus on the exiting shippers' release doesn't seem to support the Commission's idea that the *replacement shippers'* demand is *the* cause of the need for the additional 3.4 million dekatherms of base gas. It still places the replacement shippers in the position of any new customer whose demand, *coupled with that that of the prior customers*, necessitates some new investment. Thus the Commission's characterization of *both* alternative views as "factually accurate" seems highly questionable.[25]

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[23] *BNP Paribas*, 743 F.3d at 266.

[24] *Id*. at 268.

[25] *Id*. (emphasis in original).

23. As a result, the D.C. Circuit found the Commission's reliance on equity to be "shaky."[26]

24. Second, the D.C. Circuit held that the Commission had failed to explain why the historic shippers' earlier support for the project, which left them entitled to buy back their gas and resell it at current prices, gives them a special equitable claim in perpetuity. The D.C. Circuit stated,

> [e]quity's conscience is famously "as long as the chancellor's foot"; to reconcile its use with the APA's rejection of arbitrariness requires both that the justification for shifting to "equity" and the reasons that make an outcome equitable be set forth with clarity and logic. They are missing here, and the Commission doesn't really advance its judgment that the replacement shippers' demand can be viewed as the sole cause of the base gas need by pinning on that demand the undefined label "immediate and proximate cause."[27]

25. Next, the D.C. Circuit found the Commission failed to address a specific point raised by Paribas in the proceeding that the Commission's decision in the Transco proceeding was inconsistent with its application of the cost causation principles in the electricity sector when integration of a new electricity generator requires upgrades to the transmission network.[28] The D.C. Circuit stated that Paribas had argued before the Commission that the Commission in those cases inquires whether the upgrade benefits all users of the grid or just the additional generator, and does not require the new generator to bear costs incurred for the development of equipment that benefits all users of the network.[29] The D.C. Circuit stated that Transco, in support of the Commission's

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[26] *Id*. at 269.

[27] *Id*.

[28] Paribas cited *Midwest Indep. Transmission Sys. Operator*, 129 FERC ¶ 61,060, at PP 53-56 (2009); *Standardization of Generator Interconnection Agreements and Procedures*, Order No. 2003, FERC Stats. & Regs. ¶ 31,146 (2003), *order on reh'g*, Order No. 2003-A, FERC Stats. & Regs. ¶ 31,160, at PP 585-586, *order on reh'g*, Order No. 2003-B, FERC Stats. & Regs. ¶ 31,171 (2004), *order on reh'g*, Order No. 2003-C, FERC Stats. & Regs. ¶ 31,190 (2005), *aff'd sub nom. Nat'l Ass'n of Regulatory Util. Comm'rs v. FERC*, 475 F.3d 1277 (D.C. Cir. 2007); and *Pub. Serv. Co. of Colo.*, 62 FERC ¶ 61,013, at 61,061 (1993).

[29] *BNP Paribas*, 743 F.3d at 269-270.

underlying orders, suggested that the failure of the Commission to address this inconsistency is immaterial because the Commission permits incremental rates in network upgrades in certain circumstances. Nevertheless, the D.C. Circuit found that, even assuming the circumstances for allowing incremental rates are present here, the Commission did not address the issue and allow Paribas to argue against the applicability of incremental rates in this case. The D.C. Circuit stated that it was not suggesting that the Commission regulates, or should regulate, the natural gas and electric industries identically because it often does not. However, the D.C. Circuit stated that the Commission must point to distinguishing factors and not dismiss a material argument.

26. Finally, the D.C. Circuit opined that, although it was vacating and remanding the Commission's decision, it was not suggesting that the Commission should ignore the complex history of the Washington Storage Field in its deliberations.[30] The D.C. Circuit then stated:

> [t]he historic shippers have consistently refrained from leaving the field and reaping the potential windfall from exercising their contingent option to purchase their share of the base gas. By so refraining, they annually incur, as a cost of continuing to take service, the foregone return on the proceeds of selling that gas. It may be that the Commission could, consistent with regarding all shippers as causing the need for the purchase of additional base gas in proportion to their use of the field, nevertheless require the replacement shippers to pay the incremental cost, while allowing the historic shippers to pay the previously calculated rate and continue to forego the annualized return from exercise of their buy-back option. If this analysis is correct, such a rate treatment could subject all shippers to similar incentives for similar use of the field.[31]

27. The D.C. Circuit stated, however, that because the Commission did not broach such an inquiry, it would be improper for the D.C. Circuit to adopt it.

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[30] *Id*. at 270.

[31] *Id*.

C. Parties' Post-Remand Pleadings

28. On June 6, 2014, Paribas filed a motion (June 6 filing) requesting that the Commission issue an order on remand directing payment of refunds and other relief consistent with the D.C. Circuit's order vacating and remanding Opinion Nos. 507 and 507-A. Paribas specifically requests that the Commission: (i) affirm, in all respects, the ALJ's decision in the Initial Decision that Transco's proposed direct allocation of base gas purchase costs to Paribas and South Jersey is unlawful; and (ii) direct Transco to make the immediate payment of full refunds, with interest per the Commission's regulations to Paribas and South Jersey.

29. On June 23, 2014, South Jersey filed an answer supporting Paribas' June 6 filing and further requesting that the Commission direct Transco to revise its WSS-OA Rate Schedule by removing the incremental rates for the replacement shippers. On June 23, 2014, Transco[32] and the WSS Customer Group both filed in opposition to Paribas' June 6 filing. On July 8, 2014, South Jersey filed a reply to Transco's opposition.

D. October 16 Order

30. On October 16, 2014, the Commission issued an order[33] stating that it would reopen the record for the purpose of allowing the participants in this proceeding an opportunity to present written evidence and argument concerning the issues raised by the D.C. Circuit's decision. The Commission stated that it was interested in hearing the participants' views on the D.C. Circuit's alternate theory by which Transco's incremental rate proposal might be found just and reasonable and the consistency of Transco's incremental rate proposal with Commission policy concerning incremental rate treatment of electric network upgrades. Specifically, the Commission directed the participants to address the following questions in their briefs to the Commission: (1) Is it reasonable for Transco to use incremental rates to protect its historic storage customers from subsidizing base gas purchases to serve Paribas and South Jersey, similar to the Commission's approval of incremental rates to protect native load from subsidizing electric network upgrades? (2) Has Transco proposed to design Paribas and South Jersey's rates in a manner similar to the incremental rates the Commission has permitted to be charged to electric interconnection customers, so that costs associated with preexisting facilities are excluded? (3) Alternatively, has Transco proposed to include costs of preexisting facilities in those rates in a manner that is inconsistent with the Commission's policies

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[32] Transco asserts that it has been authorized to state that the Transco Municipal Group, an active party to the proceeding, supports incremental rates for the replacement shippers and the instant opposition filed by Transco.

[33] *Transcon. Gas Pipe Line Corp.*, 149 FERC ¶ 61,030 (2014) (October 16 Order).

concerning the design of incremental rates described above? (4) If so, what adjustments in Transco's rate proposal would be necessary to render it consistent with the Commission's incremental rate design policies? (5) Is there a reason why inclusion of the costs of existing facilities in Paribas and South Jersey's incremental rates is reasonable, even if seemingly inconsistent with the policies described above?

31. To give the participants an opportunity to settle the proceeding, the Commission suspended the briefing schedule on the above issues, and established settlement judge procedures. Finally, the Commission asserted that, if the settlement procedures were unsuccessful, interested participants were directed to file briefs on the issues listed above within 60 days of the date the Chief Administrative Law Judge (Chief Judge) terminates the settlement procedures and reply briefs are due within 90 days of the termination of settlement procedures.

32. On October 23, 2014, the Chief Judge established settlement judge procedures in the above captioned dockets. The parties held several settlement discussions. On November 6, 2014, the Settlement Judge reported that the parties had reached an impasse in their efforts to reach a settlement and recommended that settlement judge procedures be terminated. On November 18, 2014, the Chief Judge returned the case to the Commission for further action.

E. Parties' Briefs and Rate Proposals

33. On February 6, 2015, Transco, the WSS Customer Group, Commission Trial Staff (Trial Staff), Paribas, and South Jersey filed initial briefs, and on March 6, 2015, Trial Staff, Transco, South Jersey, Paribas, and the WSS Customer Group filed reply briefs.

1. Parties' Initial Briefs

34. In its initial brief, Transco states its proposed incremental rates for the replacement shippers are a reasonable allocation of cost responsibility in the circumstances of this case, and Transco submitted the testimony of Alexander Kirk (Witness Kirk) and Ronald Goetze (Witness Goetze) in support of the arguments in its initial and reply briefs.[34]

35. Transco asserts that the historic shippers long ago provided base gas for the Washington Storage Field in proportion to their respective service entitlements. Transco states that allocating to the replacement shippers the cost of the approximately 3.4 million Dth of base gas it purchased to replace the gas taken by the two departing shippers makes

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[34] Transco also references some testimony from its case in chief and these witnesses will be identified as necessary within this order.

each shipper responsible for the actual cost of its proportional share of the total base gas necessary to exploit the full capacity of the field. Transco argues that to allocate a portion of the cost of the replacement base gas to the historic shippers would require them to bear a disproportional share of the cost of base gas needed to operate the field at full capacity (i.e., it would require them to bear not only the cost of the base gas they each contributed historically but also a portion of the base gas injected for the replacement shippers). Moreover, Transco argues that the D.C. Circuit has upheld Commission orders requiring direct assignment of the costs of operating and maintaining expansion facilities, even when those facilities are operationally indistinguishable from the non-expansion facilities.[35]

36. Transco states that incremental rates for the purchase of the base gas at the Washington Storage Field are more efficient than rolled-in rates. Transco states Witness Kirk explains that a rolled-in rate for historic shippers will change each time a historic shipper exercises its purchase option while an incremental rate does not depend on the number of historic shippers that exercise their option. Witness Kirk asserts that an incremental rate sufficient to recover the replacement base gas costs would only be charged to each replacement shipper taking service and historic shippers would be unaffected. Witness Kirk argues that rolled-in rates would require Transco to charge a higher revised storage rate to all customers each time Transco purchases replacement base gas. Therefore, Witness Kirk states that rolled-in rate treatment for historic customers creates a "first mover" advantage because historic customers would have a strong incentive to exercise their base gas purchase option before others to avoid paying the higher rolled-in rate.

37. The WSS Customer Group[36] states in its initial brief that, on remand, the Commission should more fully explain and ratify its correct determination that an incremental approach to base gas related rates for the replacement shippers is appropriate.

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[35] Transco Initial Brief at 11 (citing *Transcon. Gas Pipe Line Corp.*, 106 FERC ¶ 61,299, at PP 191-92 (2004), *order on reh'g*, 112 FERC ¶ 61,170, at PP 107-12 (2005), *order on reh'g*, 115 FERC ¶ 61,286 (2006), *order on reh'g*, 121 FERC ¶ 61,294 (2007), *Transcon. Gas Pipeline Corp. v. FERC*, 518 F.3d 916 (2007) (*Transco Cherokee*)).

[36] The WSS Customer Group is a group of historic shippers, each of which is a party to the proceeding and which collectively hold 81 percent of the firm storage capacity rights under the WSS-OA Rate Schedule. The members are: Atlanta Gas Light/Pivotal Utility Holdings, Inc., The Brooklyn Union Gas Company d/b/a National Grid NY and KeySpan Gas East Corporation d/b/a National Grid, Consolidated Edison Company of New York, PECO Energy, Philadelphia Gas Works, Piedmont Natural Gas Company, Inc., Public Service Company of North Carolina, Inc., Washington Gas Light Company, and the Patriot's Energy Group.

The WSS Customer Group submitted the testimony of George Briden (Witness Briden) in support of the arguments in its initial and reply remand briefs. The WSS Customer Group argues that the touchstone for determining how additional or incremental costs should be allocated to customers receiving service from natural gas companies subject to Commission jurisdiction is the cost causation principle. The WSS Customer Group asserts that, as the testimony in this case makes clear, the replacement shippers were the cost causers. In addition, the WSS Customer Group argues that it is also clear that an incremental approach to the replacement shippers' rates for base gas related costs is not unduly discriminatory because there are real differences between historic and replacement shippers. The WSS Customer Group contends these differences justify the conclusion that replacement shippers should pay incremental rates for the new base gas purchases to support their WSS service.

38. Paribas and South Jersey jointly submitted testimony from John Reed (Witness Reed) in support of the arguments in their respective initial and reply briefs. In its initial brief, Paribas states that Witness Reed's testimony explains that Transco's rate proposal is contrary to Commission ratemaking policy because it is a form of "stacked rates" because Transco requires the replacement shippers to share, on an equal basis with all other WSS-OA entitlements, 100 percent of the WSS-OA facility costs and bear 100 percent of the costs of the incremental facilities (i.e., the base gas costs).[37]

39. In its initial brief, South Jersey states that incremental rate treatment is not required to prevent the historic shippers from subsidizing base gas purchases since all base gas serves all the top gas capacity and deliverability needs of all customers. South Jersey argues that, although the Commission is concerned that, without approval of Transco's proposed incremental rates, the historic shippers might subsidize the replacement shippers, the inverse will occur if Transco's proposed incremental rates are approved. South Jersey asserts that the proposed rate to the replacement shippers attempts to collect costs related to the replacement gas in dispute and costs related to the provision of WSS-OA service for historic customers. South Jersey states, as its Witness Reed's testimony proves, this proposal is actually an improper "stacked" rate and the rate creates a subsidy of the historic shippers by the replacement shippers.[38] South Jersey argues Witness Reed confirms that "a true incremental rate in this case would recover from the new customers only the costs related to the replacement of base gas, not the

[37] Paribas Initial Brief at 11-12 (citing Exhibit FS-19 at 16-17).

[38] South Jersey Initial Brief at 14 (citing Exhibit FS-19 at 16).

existing costs used to service historic customers."[39] Moreover, South Jersey argues that "stacked" rates are inequitable and discouraged by the Commission.[40]

40. Finally, South Jersey asserts that Transco has not properly accounted for preexisting facilities in the proposed "incremental" rate. South Jersey argues that incremental rates, by design, are meant to recover the additional or incremental expenses related to new service from only those customers that obtain the new service. South Jersey states that this ensures that incremental rates, which are not intended to impose the costs of upgrades that benefit an entire system upon only select customers, are truly incremental.

41. Trial Staff states in its initial brief that it continues to support its original rate proposal: that a portion of base gas purchase by Transco was necessary to support and maintain the historic shippers' service and therefore, this portion should be allocated to those shippers. Trial Staff states, in data responses provided to Trial Staff, Transco conceded that, in the absence of any new storage customers to replace the terminated contracts, it would have to purchase 1.32 Mcf of base gas to support and maintain the storage service of its historic customers. Trial Staff argues that no one in this proceeding has challenged that calculation. Trial Staff asserts, if the Commission were to adopt the full incremental rates proposed by Transco, the replacement shippers would subsidize the historic shippers by paying their base gas costs. On the other hand, Trial Staff contends that fully rolled-in rates, as suggested by the replacement shippers, would require the historic customers to subsidize the purchase price of the base gas to service the needs of the replacement shippers. Therefore, Trial Staff states that its rate proposal is the only one that comports with the tenets of ratemaking.

2. Reply Briefs

42. In its reply brief, Transco continues to support its incremental rate proposal as just and reasonable. Transco also states that the replacement shippers and Trial Staff wrongly assert that approval of Transco's proposed incremental rates for the replacement shippers would require them to subsidize the historic shippers' use of the Washington Storage Field. Transco argues that the fact that it operates the Washington Storage Field on a fully integrated basis is immaterial to the issues before the Commission on remand because direct assignment of costs incurred to serve new customers is warranted even

[39] *Id*.

[40] South Jersey Initial Brief at 14 (citing *Transcon. Gas Pipe Line Corp,* 110 FERC ¶ 61,337 (2005); *N. Natural Gas Co.*, 117 FERC ¶ 61,117 (2006), *order on reh'g*, 119 FERC ¶ 61,035 (2007)).

when a pipeline's facilities are operated on a fully integrated basis.[41] Transco states that, as the Commission explained, Transco's obligation to purchase base gas only arises when a new shipper obtains service, rather than when a historic customer exercises its base gas purchase option. Accordingly, Transco states there is a direct link between the commencement of service by the replacement shippers and Transco's purchase of the base gas at issue here.

43. Next, Transco states that the replacement shippers' claims that its proposed rates are impermissible stacked rates do not withstand scrutiny. Transco argues that the replacement shippers provide no evidence but Witness Reed's conclusory statement that Transco's rates fit that description. Transco contends that each of the orders cited by South Jersey in support of this proposition involve a situation where a shipper would have been required to pay twice for the same service.[42] Transco states that, as Witness Goetze explains, Transco's proposed rates do not constitute impermissible stacked rates because it is not requiring the replacement shippers to pay the full existing WSS-OA rate plus the incremental base gas costs.[43] Transco asserts Witness Goetze testifies that the base rate underlying the rates for the replacement shippers excludes costs associated with the historic Washington Storage Field base gas, and instead, only includes the cost of the replacement base gas.[44]

44. Finally, Transco states that Trial Staff's partially rolled-in rate proposal is grounded on removing a subsidy where no subsidy exists and is based on the hypothetical that replacement shippers did not take the exact same capacity released by the exiting historic customers. Moreover, Transco states that, although it continues to support its initial rate proposal, should the Commission decide to reverse Opinion Nos. 507 and 507-A and find that Transco's proposed WSS-OA rates for the replacement shippers are not just and reasonable, the appropriate remedy would be the establishment of a rolled-in rate, effective as of March 1, 2007, when Transco placed its proposed rates into effect in this proceeding.

45. In its reply brief, the WSS Customer Group continues to support Transco's incremental rate proposal for the replacement shippers as just and reasonable. The WSS Customer Group states that the historic and ongoing distinctions between the two classes of shippers (i.e., historic and replacement) provides support for incremental rates.

[41] Transco Reply Brief at 20.

[42] Transco Reply Brief at 33-34.

[43] Transco Reply Brief at 34 (citing Exhibit T-105 at 3-5).

[44] *Id*.

Relying on the testimony of Witness Reed, the WSS Customer Group states Paribas incorrectly suggests that Transco's rate proposal is a form of impermissible stacked rates because replacement shippers are required to pay facility costs as well as the costs associated with Transco's purchase of additional base gas.[45] The WSS Customer Group argues that Transco's proposal is not rate-stacking, but rather, it is fully consistent with the Commission's earlier rulings on incremental rates in Transco's NGA section 4 rate proceeding in Docket No. RP01-245.[46]

46. The WSS Customer Group states Trial Staff's partial rolled-in rate proposal is flawed and should not be adopted by the Commission. The WSS Customer Group states Trial Staff's position is unsustainable because it is built on the hypothetical premise unsupported by the record that the replacement shippers have not succeeded to the capacity rights of their respective releasing shipper because the top gas capacity entitlements of the releasing shippers are unsubscribed. Further, the WSS Customer Group argues that Trial Staff's analysis also fails to recognize that a disproportionate allocation of base gas responsibility between historic and replacement shippers will result if Trial Staff's recommendation is accepted.

47. In its reply brief, Paribas argues that the Commission should not adopt Trial Staff's alternative rate proposal as it has already been rejected by the Commission and ALJ as unjust and unreasonable. Paribas states Witness Reed explains that Trial Staff's proposal should be rejected because it is irreconcilable with the D.C. Circuit's identical determination regarding cost causation: that service entitlements of the historic and replacement shippers in the aggregate caused the need for the base gas purchases. Paribas argues that Trial Staff's rate proposal is predicated on the view that the historic shippers are entitled to a "hold harmless" rate level, a view inconsistent with the Commission's general policy against acquired service rights by incumbent customers.[47]

48. In its reply brief, South Jersey reiterated its position that Transco's proposed rate for the replacement shippers is an impermissible stacked rate and therefore, unjust and unreasonable. South Jersey states that it supports almost all of the positions in Trial Staff's brief with the exception of its proposal for partially rolled-in rates. South Jersey argues that this position has already been rejected by the D.C. Circuit and it is inconsistent with the D.C. Circuit's holding that all shippers caused the need for the

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[45] WSS Customer Group Reply Brief at 11-12 (citing Paribas Initial Brief at 10).

[46] WSS Customer Group Reply Brief at 12 (citing *Transco Cherokee*, 121 FERC ¶ 61,294 Commission held that the cost of additional electric power used to operate expansion compressors must be charged incrementally to expansion shippers).

[47] Paribas Reply Brief at 11 (citing Exhibit FS-24 at 10).

purchase of additional gas in proportion to their use of the Washington Storage Field. South Jersey argues that this proposal also calls for stacked rates and further subsidization of the historic shippers' costs. South Jersey contends Witness Reed testifies that Trial Staff disproportionately assigns the cost of the new base gas to the replacement shippers, based on what amounts to a "hold harmless" approach and this amounts to an entitlement to service under a continuation of cost levels which excluded the effects of expansions.[48]

49. In its reply brief, Trial Staff continues to support its proposal of a part incremental/part rolled-in rate. Trial Staff argues that Transco's argument that rolled-in rates are inefficient in comparison to Transco's incremental rate proposal is erroneous. Trail Staff states that Transco's argument is based on the false premise that rolled-in rates create a "first mover" advantage in which historic shippers rush to terminate storage service and re-contract so as to obtain a lower rolled-in rate than shippers who wait. Trial Staff argues that Transco must file a general rate case to recover its purchase costs of replenishment of base gas from historic shippers, which takes a number of months to prepare for filing. Trial Staff contends that these shippers know that they will not have the opportunity before the rates are filed by Transco to terminate and re-contract for service without others following suit.

F. Commission Information Request

50. On April 27, 2015, the Commission sent a letter to Transco requesting additional information on its Rate Schedules WSS/WSS-Open Access. On May 18, 2015, Transco filed the additional information (Transco May 2015 filing) requested by the Commission.

II. Discussion

51. Upon consideration of the D.C. Circuit's opinion in *BNP Paribas*, the parties' briefs, and the information in Transco's May 2015 filing, we find that Transco has not satisfied its burden under NGA section 4 to show that its proposal to allocate to the replacement shippers all costs related to its purchases of new base gas is just and reasonable. We further determine that Transco must continue to design its rates for service under Rate Schedules WSS/WSS-Open Access on a fully rolled-in basis, as it has since the inception of these services.

52. This case presents a difficult cost allocation issue, because of the unique circumstances arising from the historic shippers' grandfathered right to purchase their respective share of base gas when they terminate service. Ordinarily, when a shipper terminates its contract and departs the system, the pipeline's capacity to provide service is

[48] South Jersey Reply Brief (citing Exhibit FS-24 at 11).

unaffected, and the pipeline need not incur any costs in order to continue to serve both its remaining customers and any new customers who contract for service on the turned back capacity. Here, however, a historic shipper's exercise of its right to purchase its share of base gas when it terminates its contract reduces Transco's ability to withdraw gas from storage. Moreover, because of the mechanics of how storage fields operate, the reduction in Transco's ability to withdraw gas from storage exceeds the contractual withdrawal rights of the departing historic shipper. Thus, as illustrated by the facts of this case, a historic shipper's termination of its contract would require Transco to purchase some additional base gas in order to continue to satisfy the existing storage withdrawal rights of its remaining historic shippers. Transco must, of course, purchase even more base gas in order to be able to serve any replacement shipper who obtains the capacity of the departing shipper, as in this case.

53. In this case, we must decide whether Transco's proposal to allocate incrementally the costs associated with the base gas purchases Transco made in order to both (1) maintain its remaining historic shippers' existing level of service and (2) serve the two replacement shippers is just and reasonable.[49] Transco's base gas costs are included in its rate base. Therefore, the costs associated with the base gas costs at issue in this proceeding include (1) a return on equity on the portion of the rate base financed with equity, together with an income allowance, and (2) debt costs for the portion of the rate base financed with debt. However, because base gas is not considered to depreciate in value, these costs do not include any depreciation allowance in order to recover the actual costs of the base gas purchase.

54. The Commission generally decides cost allocation issues using the "cost causation" principle. As the D.C. Circuit stated in *K N Energy*, that principle "requires that 'rates reflect to some degree the costs actually caused by the customer who must pay [for] them.'"[50] Further, the D.C. Circuit stated in *BNP Paribas* that "it has come to be well established that . . . rates should be based on the costs of providing service to the utility's customers."[51] Compliance with this principle is evaluated by "comparing the costs assessed against a party to the burdens imposed or the benefits drawn by that

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[49] Transco purchased 3,318,523 Dth of gas at a cost of $20,470,313 as base gas for the Washington Storage Field. Exhibit T-2 at 2. Transco provided a study showing that Transco would have had to inject 1.32 Mcf of this amount to support and maintain the historical shippers' service, if the replacement shippers had not obtained the capacity of the departing shippers. The parties do not dispute this study. Trial Staff Initial Brief at 19-20 (Exhibit No. S-1 at 7 and S-2 at 1).

[50] *K N Energy*, 968 F.2d at 1300.

[51] *BNP Paribas*, 743 F.3d at 266 (quoting *K N Energy*, 968 F.2d at 1300).

party."[52] The Commission and the courts have also recognized that, "because every shipper is economically marginal the costs of increased demand may equitably be attributed to every user, regardless of when it first contracted with the pipeline."[53]

55. In this case, there is no dispute that all base gas, regardless of when Transco purchased it, serves the top gas capacity and deliverability needs of all customers as a whole, including both the historic shippers and the replacement shippers. In that sense, the demands of both the historic shippers and the replacement shippers for Washington Gas Storage service cause Transco to incur all of its base gas costs, including the costs incurred as a result of the departure of PSEG and South Jersey, and all current shippers, whether historic or new, benefit equally from the incurrence of those costs.

56. In light of the D.C. Circuit's decision, we have reexamined whether there are any alternative grounds that could justify Transco's proposal to allocate the costs associated with its purchases of replacement base gas to the two replacement shippers, rather than rolling those costs into the rates of all the shippers. In the discussion below, we first consider whether the rolled-in vs. incremental rate policies adopted in the Commission's *1999 Certificate Policy Statement* would justify allocating these costs to the replacement shippers on an incremental basis. Second, we consider whether such an allocation could be justified using the opportunity cost theory suggested by the D.C. Circuit. For the reasons discussed below, we find that neither of these grounds can justify allocating these costs other than on a fully rolled-in basis. We also find, upon reconsideration, that circumstances surrounding the original development of the Washington Storage Field, including the 1975 Settlement providing the historic shippers the right to purchase their share of the base gas, do not provide an equitable basis to require the replacement shippers to pay the full costs of the purchase of replacement base gas.

A. Rolled-in vs. Incremental Rate Policies

57. The Commission issued the *1999 Certificate Policy Statement* to provide an analytical framework for deciding when a proposed project is required by the public convenience and necessity. As part of the analytical framework established by that policy statement, the Commission changed the focus of its rolled-in versus incremental rate policy so that the primary goal is to achieve efficient pricing signals to expansion shippers and existing pipeline customers, while remaining within the pipeline's revenue requirement. Under this policy, the Commission generally requires incremental initial

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[52] *Midwest ISO Transmission Owners,* v. *FERC,* 373 F.3d 1361, 1369 (D.C. Cir. 2004) (Midwest ISO); s*ee also K N Energy,* 968 F.2d at 1300-1301.

[53] Order No. 637-A, FERC Stats. & Regs. ¶ 31,099, at 31,647 (2000) (citing *Se. Mich. Gas Co. v. FERC,* 133 F.3d 34, 41 (D.C. Cir. 1998)).

rates for expansion projects, so that the expansion shippers will have to pay the full costs of the projects, without subsidy from the existing shippers through rolled-in pricing. The Commission explained that the threshold requirement that expansions of existing systems be able to proceed without subsidies from existing customers is necessary to ensure that the market finds a project viable, because either the expansion shippers or the pipeline must be willing to fully fund the project.[54] The Commission also stated that the no-subsidy policy "protect[s] captive customers from rate increases during the terms of their contracts that are unrelated to the costs associated with their service."[55] The Commission stated that raising rates of existing shippers during the term of their long-term contracts in order to subsidize expansions for new shippers reduces rate certainty and increases contractual risk. The Commission has required incremental rates in order to accomplish these goals, despite recognizing that the demands of both existing and new shippers cause the need for an expansion,[56] and the D.C. Circuit has affirmed Commission orders implementing this policy.[57]

58. However, the Commission's certificate policy also recognizes that rolled-in rates may be justified for expansion projects designed to improve the service of existing customers by replacing existing capacity, improving reliability, or providing additional flexibility. Toward that end, the *1999 Certificate Policy Statement* uses three factors which, if satisfied, lean toward rolled-in rate treatment for the project: (i) whether new facilities are needed to improve service to existing customers; (ii) whether increased rates are related to improvements in service; and (iii) whether raising rates to existing customers would not constitute a subsidy to new incremental customers. However, there

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[54] *1999 Certificate Policy Statement Rehearing Order*, 90 FERC ¶ 61,128 at 61,392. The Commission also stated that the no-subsidy requirement helps ensure that existing pipelines do not have an unfair advantage in competition for new construction with new entrant pipelines who have no existing shippers to subsidize the construction.

[55] *Id*. at 61,393. Subsequently, when a pre-expansion shipper's contract expires, it could be required to pay a higher rate than its existing vintage rates, if the pipeline is fully subscribed and there is a competing bid higher than the pre-expansion rate. *Id*. at 61,394-95.

[56] *Id*.

[57] *See Transcon. Gas Pipe Line, Co. v. FERC*, 518 F.3d 916 (D.C. Cir. 2008).

must be a specific benefit from the project for existing shippers, rather than generalized benefits resulting from the project being integrated into the system.[58]

59. The Commission applies these policies to the determination of whether to approve incremental or rolled-in rates both when it first certificates an expansion project under NGA section 7 and subsequently in any NGA section 4 rate case in which the pipeline proposes to roll the costs of an expansion project into its system rates.[59] In a section 7 certificate proceeding, the Commission generally only determines the initial rates for the proposed expansion. Because the Commission lacks authority to modify the pipeline's rates for service on its existing system absent action under NGA section 5,[60] the Commission does not implement rolled-in rates in a section 7 certificate proceeding. However, in section 7 proceedings, the Commission does consider requests by pipelines for predeterminations that the pipeline may roll in the costs of an expansion project in a future section 4 rate case, absent a significant change in circumstances. Consistent with the *1999 Certificate Policy Statement*, the Commission has granted such requests based upon findings that either (1) rolling in the project's costs will not increase system rates

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[58] *1999 Certificate Policy Statement Rehearing Order*, 90 FERC ¶ 61,128 at 61,393-94.

[59] Pursuant to this policy, the Commission has approved incremental rates for expansions of storage fields, with the cost of additional base gas required for the expansion included in the incremental rate. *Columbia Gas Transmission, LLC,* 122 FERC ¶ 61,021 (2008). *Natural Gas Pipeline Co. of America,* 124 FERC ¶ 61,154, at PP 24-25 (2008).

[60] *See Panhandle E. Pipe Line Co., v. FERC,* 613 F.2 1120 (1979) (*Panhandle*) (In *Panhandle,* the court held that the Commission may not condition the issuance of a certificate under section 7 on the pipeline modifying previously approved just and reasonable rates for services not under consideration in the certificate proceeding. The court found that an extension of the Commission's conditioning authority under section 7(e) to previously approved rates for services not before the Commission in the certificate proceeding would emasculate the role of section 5, dilute the protections provided in sections 4 and 5 against rate instability, and eliminate the section 5 protections to be invoked prior to a rate reduction order.).

and thus will not require existing shippers to subsidize the expansion[61] or (2) the project provides specific benefits to existing shippers.[62] The Commission has rejected requests for predetermination when the pipeline failed to make either of these showings in its certificate proceeding.[63]

60. Because the Commission applies the standards in the *1999 Certificate Policy Statement* in making predeterminations in section 7 proceedings whether the pipeline may roll in the costs of an expansion in a future section 4 rate case, it follows that the Commission applies those same standards in any section 4 rate case where the pipeline does propose to roll in the costs of an expansion. Moreover, in *Transco Cherokee,*[64] the Commission found that the standards in the *1999 Certificate Policy Statement* must also be applied when a pipeline proposes to roll in the costs of an expansion project in a NGA section 4 rate case. The Commission explained that the Commission's goal of no subsidies by existing shippers would be undercut if a pipeline could simply sign shippers up for an expansion under incremental rates and then turn around and propose rolled in rates without satisfying the requirement of showing either that a roll-in would not increase the rates of non-expansion shippers or that the expansion provided specific benefits to those shippers. In that case, the Commission found that Transco had not made the necessary showings to justify rolling in the costs of its Cherokee expansion.[65]

61. In Opinion No. 507, we found that the *1999 Certificate Policy Statement* was inapplicable to the facts of this proceeding, because it was intended to provide guidance as to the analytical framework the Commission would use to evaluate proposals for

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[61] *Transcon. Gas Pipe Line Co.*, 136 FERC ¶ 61,009, at P 23 (2011) (*Transco*) (new compression and looping). *Tex. E. Transmission, LP,* 153 FERC ¶ 61,311, at P 33 (2015) (new compression). *Trunkline Gas Co., LLC,* 153 FERC ¶ 61,300, at PP 48-50 (2015) (liquefaction facilities). In cases where a roll-in of the costs of an expansion will lower the pipeline's existing system rates, the Commission generally approves an initial rate equal to the pipeline's existing system rates.

[62] *Transco*, 136 FERC ¶ 61,009 at P 22 (replacement of existing compression) *ANR Pipeline Co*., 139 FERC ¶ 61,049, at P 47 (2012) (new compressor unit).

[63] *See, e.g*., *Fla. Gas Transmission Co*., 117 FERC ¶ 61,242 (2006); *Se. Natural Gas Transmission Co.*, 115 FERC ¶ 61,328 (2006). In such cases, the Commission approves an incremental initial rate higher than the pipeline's existing system rate.

[64] 106 FERC ¶ 61,299 at P 73.

[65] *Id*. PP 75-76.

certificating new construction.[66] The Commission explained that there was no "construction" or "expansion" in this case requiring certificate authorization, but only the replenishment of base gas at a preexisting facility.[67] However, on remand, we find that the analysis we have used to determine whether the costs of an expansion should be borne solely by the new shippers or whether existing shippers should also be allocated a share of the project costs provide a reasonable framework for resolving the cost allocation issue in the unique circumstances of this case.

62. While Transco already had certificate authority to maintain its preexisting level of base gas and therefore did not need to apply for a new certificate to purchase replacement base gas, the fact remains that the purchase of replacement base gas entailed an expansion of the withdrawal capacity of the Washington Storage Field above the level it would have been without the purchase. It is undisputed that PSEG and South Jersey's purchase of their share of the base gas in the Washington Gas Storage Field reduced Transco's capacity to withdraw natural gas from that field. As a result, Transco needed to purchase the replacement base gas in order to increase the withdraw capacity of the storage field so that it could maintain its remaining historic shippers' existing level of service and serve the two new replacement shippers. Thus, the issue of how to allocate the costs associated with the purchase of base gas necessary to increase the withdrawal capacity of the Washington Storage Field back to its prior level raises similar concerns as the issue of how to allocate the costs of an initial expansion of capacity to serve new customers that requires certificate authorization. In both cases, the pipeline has made an investment to increase the capabilities of its system, and the Commission must address the question of whether it is reasonable to allocate the cost of the new investment to all the pipeline's customers, old and new, or allocate those costs only to the new customers.

63. Under the *1999 Certificate Policy Statement*, this issue is resolved based on two factors: (1) whether the new investment provides specific benefits to existing shippers and (2) whether rolling in the cost of the new investment increases rates for the existing shippers. Below, we consider these two factors in turn.

1. <u>Specific Benefit to Historic Shippers</u>

64. As already described, PSEG and South Jersey Gas' purchase of approximately 3.4 million Dth of base gas reduced Transco's ability to withdraw gas from the Washington Storage Field below the level of the remaining historic shippers' contractual storage withdrawal entitlements. As a result, Transco has conceded, in response to a data request from Trial Staff that, in the absence of any new storage customers to replace the

[66] Opinion No. 507, 130 FERC ¶ 61,043 at PP 62-63.

[67] *Id*.

terminated contracts, it would have to purchase 1.32 Mcf of the 3.18 Mcf of base gas it actually purchased to support and maintain the storage service of its historic customers.[68] No one in this proceeding has challenged Transco's determination of that amount.

65. The Commission finds that Transco's purchase of at least the 1.32 Mcf of base gas necessary to support and maintain the storage service of the historic customers provides a specific benefit to those shippers justifying rolling in the costs associated with that portion of Transco's purchase of replacement base gas. On rehearing of the *1999 Certificate Policy Statement*, the Commission clarified that "existing customers should pay the costs of projects designed to improve their service by replacing existing capacity."[69] The record in this case shows that Transco's purchase of 1.32 Mcf of base gas was necessary to replace the storage withdrawal capacity necessary to serve the remaining historic customers that would otherwise be lost as a result of departing customers' purchase of their share of the base gas.

66. Moreover, permitting roll-in of the costs associated with the 1.32 Mcf of base gas purchases necessary to maintain the remaining historic customers' service levels is consistent with the Commission's predetermination in *Transco*[70] that Transco could roll in certain compressor replacement costs. In that case, the Commission issued a certificate for Transco's Mid-Atlantic Connector (MAC) Expansion Project. That project included construction of a new compressor station to replace an existing compressor. A portion of the horsepower provided by the new compressor was necessary to maintain service to Transco's existing shippers. The Commission granted Transco a predetermination of rolled-in rate treatment for "the costs of the replacement portion of the project in its next general rate proceeding."[71] The Commission explained that rolled-in rate treatment is reasonable where "the costs incurred are attributable to the maintenance of safety and reliability for the benefit of existing customers."[72]

67. Transco opposes rolling in the cost of the 1.32 Mcf portion of the base gas purchase necessary to maintain service to the remaining historic customers, contending that the rationale that Opinion No. 507 used to reject Trial Staff's partial rolled-in rate

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[68] Trial Staff Initial Brief at 19-20 and n.39 (Exhibit S-3, page 2, Rate Base, l. 10).

[69] 90 FERC ¶ 61,128 at 61,393.

[70] 136 FERC ¶ 61,009 at P 22.

[71] *Id.*

[72] *Id.*

proposal remains valid.[73] However, Transco does not argue that the 1.32 Mcf figure it supplied in response to Trial Staff's data request was incorrect. Rather, Transco argues that the attribution of 1.32 Mcf of base gas for the purpose of achieving service at contract levels was based on a hypothetical situation that did not occur. The Commission disagrees. Transco was certificated to operate the Washington Storage Field with a working gas volume of 75 Bcf, a base gas volume of 45 Bcf, and maximum deliverability of 913,237 Dekatherm (Dth) per day.[74] Prior to PSEG's and South Jersey Gas' departures, Transco clearly purchased base gas volumes to the certificated maximum. However, with PSEG's and South Jersey Gas' withdrawal of their base gas, the issue becomes what base gas was necessary to maintain the working gas capacity requirements of its remaining customers. Transco does not have an obligation to provide base gas if it is not necessary to support top gas entitlements of its customers.[75] Transco was under a contractual obligation to serve its firm storage customers. However, it is Transco's management discretion as to what assets are necessary to meet contractual obligations. Pipelines are not required to invest and construct facilities to meet maximum coincidental

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[73] Opinion No. 507, 130 FERC ¶ 61,043 at P 35 states:

> Commission determines that this is unreasonable. First, Commission Staff's partial rolled-in rate proposal is based on the hypothetical assumption that Transco would need to purchase approximately 1.3 million Mcf of base gas to support historic customers if Fortis and South Jersey had not signed on as replacement customers. However, this did not occur because Fortis and South Jersey did sign on as replacement customers and Transco purchased 3.3 million Dth of base gas to support Fortis and South Jersey's deliverability entitlements. The 3.3 million Dth gas purchase by Transco is the same quantity of base gas that PSEG and South Jersey Gas purchased upon exiting Transco's system. Finally, acceptance of Commission Staff's proposal would mean that the historic customers and replacement customers have the same status under Transco's WSS/WSS-OA tariff, and as explained more fully within this order, these customers are not similarly situated.

[74] *See supra* note 7.

[75] *1999 Conversion Order*, 87 FERC at 61,707-08; Opinion No. 507, 130 FERC ¶ 61,043 at P 7.

peak firm contract requirements.[76] Thus Transco is correct that the estimated base gas necessary to serve remaining customers through only the Washington Storage Field could have been considered hypothetical. As Transco points out, Transco operates its system on an integrated basis.[77] As long as Transco satisfies its contractual obligations to its storage customers for capacity and deliverability, it does not matter what assets Transco actually uses to provide those services. Therefore, there was and is no obligation, including no certificate obligation, for Transco to acquire assets not necessary to satisfy contract obligations. If Transco can utilize other assets without incurring additional investment costs, all parties may benefit. However, if Transco acquired assets not necessary to provide contract obligations, such expenditures may be deemed unnecessary investment [78] or imprudent.[79] The historical fact, as Transco agrees, is that Transco did invest and acquire replacement base gas. No party, including Transco, alleges that Transco's purchase of replacement base gas was not necessary to provide contracted firm storage service. And, in the Stipulation, all parties agreed that the replacement base gas' costs are recoverable costs. As costs that may be recovered through a jurisdictional rate should be costs related to providing the service, Trial Staff's assumption that a portion of the replacement base gas was necessary for Transco to meet contractual firm storage services has a sound basis.

68. The Commission finds that Trial Staff has supported its proposal that the 1.32 Mcf portion of the replacement base gas was necessary for Transco to provide firm contract storage services from the Washington Storage Field to the remaining historic customers. Accordingly, the costs associated with that portion of the replacement base gas portion should be rolled into the historic shipper's rates.

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[76] *El Paso Natural Gas Co*., 104 FERC ¶ 61,045, at P 74 (2003).

[77] Transco Initial Brief at 11. The Commission notes, in further confirmation that Transco operates its system on an integrated basis, the Stipulation provides that 10 percent of the Washington Field Storage costs are allocated to the transmission function. Exhibit T-2, at p. 3:16.

[78] Otherwise known as "gold plating": making an investment that increases the rate base and the corresponding return without necessarily creating a corresponding benefit to the pipeline's customers. *Fuel Retention Practices of Natural Gas Companies*, 120 FERC ¶ 61,255, at P 18 (2007).

[79] *National Fuel Gas Supply Corp*., 44 FERC ¶ 61,293, at 62,055 (1988) (quoting from *New England Power Co.*, 31 FERC ¶ 61,047, at 61,084 (1985), *aff'd*, 42 FERC ¶ 61,016, at 61,070, *reh'g denied*, 43 FERC ¶ 61,285 (1988)).

2. **Whether Roll-in Causes Rate Increase**

69. We now turn to the issue of whether the *1999 Certificate Policy Statement* would permit a roll-in of the costs associated with the remaining 1.86 Mcf of Transco's 3.18 Mcf replacement base gas purchase. Transco's purchase of this additional amount of base gas was only necessary to increase Transco's ability to withdraw gas from storage back to the level necessary to provide service to the two new replacement shippers. Thus, the incremental 1.86 Mcf purchases did not provide the type of specific benefits to the remaining historic shippers that would justify a roll-in. In these circumstances, the *1999 Certificate Policy Statement* would permit a roll-in of the incremental costs of that purchase, if such a roll-in does not cause an increase in the rates of the remaining historic shippers.

70. The Commission uses the following method to determine whether rolling the costs of an expansion into the rates paid by the existing shippers will increase their rates. First, the Commission calculates an illustrative incremental rate for the expansion. It does this by determining the incremental cost of service of the expansion based only on the additional costs to be incurred as a result of providing the incremental services, including the cost of the incremental facilities required to serve expansion shippers and any incremental operating costs.[80] The Commission divides this cost of service by the incremental billing determinants associated with the expansion. The incremental design capacity is the source of the incremental billing determinants.[81]

71. Second, the Commission determines a baseline "system" rate, with which to compare the illustrative incremental rate. The baseline system rate reflects the costs of serving the pipeline's existing customers if the new capacity provided by the expansion is not constructed. Ordinarily in a certificate proceeding, the Commission uses the pipeline's existing and currently effective system rate for a comparable service as the baseline system rates, because that rate cannot include any costs associated with the incremental services, as the incremental costs and services did not exist at the time the pipeline's prior general rate case when its system costs and rates were established. Also, the pipeline's current costs and revenues for its existing services are not before the Commission in a section 7 proceeding, and therefore the Commission cannot calculate an

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[80] *Trailblazer Pipeline Co.*, 95 FERC ¶ 61,258, at 61,904 (2001) (*Trailblazer*) ("The incremental rate developed for this expansion project is designed to fully recover the costs of the expansion. Specifically, it includes the estimated costs for operating the expansion facilities and, as is acceptable, does not include any cost associated with the existing system.").

[81] *Equitrans, L.P.*, 136 FERC ¶ 61,046, at P 20 (2011); *Cameron Interstate Pipeline, LLC*, 147 FERC ¶ 61,230, at P 43 (2014).

updated "baseline" system rate that would reflect any costs to be incurred as part of the project to benefit existing shippers. However, when, as here, the rolled-in vs. incremental rate issue arises in a NGA section 4 rate case, all of the pipeline's costs and revenues are before the Commission, and therefore the Commission can calculate an updated "baseline" system rate. In doing this, the Commission can allocate to the baseline system rate, any portion of the expansion project costs incurred to provide specific benefits to existing system customers.

72. Third, the Commission compares the illustrative incremental rate with the baseline "system" rate. If the illustrative incremental rate of a project, or portion of a project, that does not provide specific benefits to existing customers is higher than the system rate, the Commission requires the pipeline to use an incremental rate for that project. This avoids requiring the existing shippers to subsidize the costs of an expansion that does not benefit them, consistent with the *1999 Certificate Policy Statement*. However, if the illustrative incremental rate is below the system rate, the Commission requires the pipeline to use the system rate as the initial stated rate in a certificate proceeding and permits the pipeline to roll the costs of the project into its system rates in a section 4 rate case.

73. Through the Stipulation agreed to by the parties in this NGA section 4 rate case, and as supplemented by Transco's filing of electronic spreadsheets containing the formulas underlying the proposed rate designs of Trial Staff and Transco,[82] the record contains all the data necessary both to calculate an illustrative incremental WSS-OA rate for the two new replacement shippers and to calculate a baseline system WSS-OA rate for that service. Due to the Stipulation reached by the parties, there are no issues with regard to the cost of service, functionalization, cost classification or rate design.[83] Transco provided Exhibit T-2 that it states represents the agreed-upon cost of service, functionalization, cost classification and rate design.[84] Transco supplied an electronic spreadsheet version of both Exhibits T-2 and S-3 in a data response,[85] to which Paribas

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[82] Transco Data Response filed May 18, 2015.

[83] There are four steps in rate design: functionalization of the cost of service; classifying the cost of service between fixed and variable costs; allocating costs to jurisdictional and non-jurisdictional services, to customer classes and/or to zones; and finally rate design. *Interstate Natural Gas Pipeline Rate Design*, 47 FERC ¶ 61,295, at p. 62,052 n.14 (1989), describing the Commission's "rate design process" as including four steps and stating that the last step, determining unit rates for each service, "is also known as rate design."

[84] Exhibit T-1, at pp. 3-4:1-19.

[85] Transco Data Response filed May 18, 2015.

and South Jersey agree that those exhibits' math is correct.[86] Commission review of Exhibit T-2 indicates that the parties also have agreed that the WSS-OA reservation charges will be calculated on the basis of the *Equitable* rate design applicable to storage rates.[87]

a. <u>Illustrative Incremental Rate</u>

74. A threshold issue in calculating an illustrative incremental rate in this case is whether, if we were to approve incremental rate treatment for the costs associated with Transco's replacement base gas purchases, we should establish separate incremental rates for each replacement shipper based on the specific base gas purchases related to each shipper's joining the system or a single incremental rate applicable to both shippers. The *1999 Certificate Policy Statement* does not address whether individual incremental shippers should be assessed individually calculated incremental rates. However, many NGA section 7 applications are supported by more than one new shipper. Commission regulations,[88] policies[89] and court findings[90] actively encourage combining shippers' requests for similar and similarly located services into a single project. Pipelines and the Commission rarely propose or require individually calculated incremental recourse rates for each shipper that is part of a single project. Transco itself has proposed multiple projects with multiple shippers along with proposed incremental recourse rates for the services to be rendered. But Transco typically proposes a single recourse rate for those

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[86] Paribas and South Jersey Comments on the Transco Data Response, filed December 1, 2015.

[87] *Equitable Gas Co.,* 36 FERC ¶ 61,147 (1986) (*Equitable*). The *Equitable* methodology is explained in detail at *Consolidated Gas Transmission Corp*., 47 FERC ¶ 61,171, at 61,565, *reh'g denied* , 49 FERC ¶ 61,041 (1989). The *Equitable* methodology provides for a 50/50 split of storage function fixed costs between a rate component based on capacity determinants and a rate component based on deliverability determinants. Storage related variable costs are not at issue in this proceeding.

[88] 18 C.F.R. § 157.208(a) and (b) (2015): "The certificate holder shall not segment projects . . . ."

[89] *Gulf S. Pipeline Co., L.P,* 95 FERC ¶ 61,132 (2001): "The Commission requires pipelines to hold open seasons with respect to capacity expansions as a means of evaluating and ensuring that projects are correctly sized." *See also* 18 C.F.R. §§ 157.33 through 157.37 (2015) for an outline of how open seasons may be conducted.

[90] *Del. Riverkeeper Network v. FERC,* 753 F.3d 1304 (DC Cir. 2014).

projects, rather than calculating separate incremental recourse rates for individual shippers within a single project.

75. Transco purchased the incremental base gas between April and November 2006. Transco states that it is proposing to collect the increased cost of service related to the replacement base gas from the buyer(s) on whose behalf the newly injected base gas will be purchased, and thus proposes to allocate separate incremental costs and calculate separate incremental rates for Paribas and South Jersey.[91] Trial Staff also proposed to allocate separate incremental costs and calculate separate incremental rates for Paribas and South Jersey. However, Trial Staff seems to have adopted Transco's individual incremental allocations and rate calculations without comment.

76. The Commission finds that, for the purpose of applying the *1999 Certificate Policy Statement's* analytical method in this NGA section 4 rate case, combining the incremental base gas cost and the incremental services into a single project is more consistent with the underlying assumptions of the methodology than allocating incremental costs to the individual shippers. First, if Transco had to apply for a certificate authorization to acquire the incremental base gas for the new shippers and given the proximity of the timing of the acquisitions, the Commission would have expected Transco to have combined the two purchases into a single proposal. The incremental base gas costs would most likely have been combined into a single incremental set of costs and not individually allocated to each incremental customer.

77. Second, NGA section 4 costs of service are typically calculated on an annual basis. However, pipeline costs are not necessarily incurred on an even, monthly basis. For example, a new plant may enter service within the test period, not at beginning of the test period. Notwithstanding, plant costs related to the newly in-service plant are permitted to be part of the cost of service. Costs such as *ad valorem* taxes may be assessed only once a year.[92] Pipelines are permitted to annualize such lumpy costs and include these costs in their cost of service. The fact that costs are incurred on a lumpy basis is not a basis for requiring separate cost of services and their allocation to separate services and customers.

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[91] Exhibit T-1 at 5:12-15.

[92] *Portland Natural Gas Transmission Sys.*, 129 FERC ¶ 63,027, at P 150 (2009) (discussing that *ad valorem* taxes are assessed once a year, and that this "lumpy" cost, for the purpose of projecting an appropriate revenue requirement, is then spread across a 12 month period). *See also ISO New England Inc.*, 150 FERC ¶ 61,065, at P 34 (2015) (discussing "lumpy" plant investments to meet load.).

78. We will thus calculate a single illustrative incremental rate that would apply to both Paribas and South Jersey. Consistent with the discussion in the preceding section, the rate base used in calculating this illustrative rate should not include the entire $20,470,313 cost of Transco's purchase of 3.18 Mcf of replacement base gas for the Washington Storage Field. Since we have held that the cost of 1.32 Mcf of that purchase should be allocated to the rates of the historic shippers, the rate base we have used in calculating the illustrative incremental rate only includes the $12,372,488 cost of Transco's purchase of the remaining 1.86 Mcf of replacement base gas.[93] This is consistent with our holding in Transco's Mid-Atlantic Connector Expansion Project.[94] In that case, the Commission first found that certain compression costs were replacement costs necessary to improve the reliability of existing customers.[95] Thereafter, when we performed its analysis as to whether to grant a predetermination of rolled-in treatment, we only used the costs associated with the expansion project, not the full cost of service.[96]

79. Applying this analytical approach, the Commission finds that the rate base used to calculate the illustrative incremental rate for Rate Schedule WSS-OA should not include any plant costs not related to the replacement of base gas. Accordingly, consistent with Commission policy, the illustrative incremental rates are properly calculated using a rate base that includes only Transco's cost of purchasing the 1.86 Mcf of replacement base necessary to serve the additional demand of Paribas and South Jersey. As shown in Appendix A, this results in a rate base for purposes of calculating the illustrative incremental rates of $12,372,488. Using that rate base, we then calculate an incremental cost of service of $2,050,545.[97] Applying the incremental customers' billing determinants, the resulting illustrative incremental rates are $0.02794 per Dth for the deliverability charge and $0.00033 per Dth for the capacity charge.[98]

b. Baseline System Rate

80. We now turn to the determination of the appropriate baseline rate with which to compare the illustrative incremental rate. Because the issue of whether to roll in the costs

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[93] Exhibit S-3 at 2:6(D) plus (E).

[94] *Transcon. Gas Pipe Line Co., LLC,* 136 FERC ¶ 61,009 (2011).

[95] *Id*. P 22.

[96] *Id*. P 23.

[97] Appendix A, p. 4:3(D) plus (E) plus p. 4:4(D) plus (E).

[98] *Id*. at 4:14(D) and (E).

associated with Transco's purchase of replacement base gas is a reserved issue in Transco's Docket No. RP06-569-000 general NGA section 4 rate case, our calculation of a baseline WSS-OA rate must reflect the updated cost allocations and billing determinants in that rate case, as provided in the Stipulation. In addition, since Transco has already incurred the cost of purchasing the replacement base gas, it is appropriate to include in the baseline rate the costs associated with the purchase of the 1.86 Mcf of replacement base gas which we have found are properly allocated to the historic shippers.

81. Both Transco's Exhibit T-2[99] and Trial Staff's Exhibit S-3[100] propose allocating a portion of Gas Plant in Service rate base costs to the incremental services. The rate base amount at issue is $52,790,126.[101] Paribas argues that the proposal to charge new customers all of the embedded plant costs other than the replacement base gas costs equates to a "stacked" or "incremental plus" rate that is not consistent with Commission practice when examining whether incremental rates are appropriate, and that such an allocation would provide unwarranted benefits to existing customers.[102] Transco responded that it did not allocate any Gas Stored Underground – Non-current to the incremental shippers, but did not address its allocation of Gas Plant in Service.[103] Trial Staff appears to have adopted Transco's allocation of Gas Plant in Service proposal without comment.[104] Neither party expanded upon their rationale in their briefs on remand, rather incorporating the positions that they had originally stated.

82. The Commission agrees with South Jersey and Paribas that, under the Commission's policies, an incremental rate should not include existing plant costs used to serve the pre-expansion historic customers. The Commission's longstanding policy is to design incremental rates for a project based on the fixed costs of the new facilities to be added and to exclude existing facility costs embedded in the pipeline's current

[99] Exhibit T-2, at 3, l 4.

[100] Exhibit S-3, at 3, l 4.

[101] Exhibit T-2, at 3:14(B) minus the rate base amount attributed to the 3.18 Mcf of replacement base gas at p. 1:9(D) plus 1:14(D).

[102] Exhibit FS-24at 12:1-6. South Jersey Initial Brief at 14 (citing Exhibit FS-19 at 16). Paribas Initial Brief at 11-12 (citing Exhibit FS-19 at 16–17).

[103] Exhibit T-105 at 4-5:13-4.

[104] Trial Staff Brief at 17. Trial Staff's Exhibit S-3 did slightly modify Transco's Exhibit T-2 Gross Plant in Service allocation determinants to reflect Trial Staff's allocation of base gas to existing shippers.

transportation rates.[105] When the Commission calculates illustrative incremental rates in a certificate proceeding, the Commission assumes that the existing system rate recovers all of the pipeline's existing cost of service, including embedded plant-related fixed costs such as return, income taxes, depreciation and some *ad valorem* taxes. Accordingly, the incremental rate is designed to recover only the costs related to the new investment necessary to serve new shippers. Otherwise, the incremental rate would permit a double recovery of the pipeline's existing fixed costs. The Commission has held that incremental rates should be designed in the same manner in NGA section 4 rate cases.[106]

83. Transco and WSS Customer Group argue that the *Transco Cherokee* order on the Cherokee/SouthCoast Expansion supports allocating a portion of the pipeline's embedded costs to the replacement shippers. Transco and WSS Customer Group's reliance on the *Transco Cherokee* order is misplaced. In the part of the *Transco Cherokee* order they rely on, the Commission rejected Transco's proposal to recover its *variable* fuel and electric power costs of running compressors in rolled-in rates. Instead, the Commission required Transco to charge the Cherokee and SouthCoast expansion shippers Transco's existing fuel and electric charges, plus a surcharge to recover any additional fuel costs attributable to the proposed expansion.[107] The Commission found that this was necessary to avoid requiring existing shippers to subsidize the increased variable fuel and power costs resulting from the Cherokee and SouthCoast expansions.[108]

84. The Commission has the same objective in designing incremental rates whether those rates recover fixed costs in a reservation charge or variable costs in a volumetric usage charge. That objective is to ensure that the rates of the existing shippers do not increase as a result of an expansion that does not benefit them. However, the

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[105] *E.g., Trailblazer*, 95 FERC at 61,904.

[106] *Nw. Pipeline Corp.*, 71 FERC ¶ 61,253, at 61,976 (1995).

[107] *Transco Cherokee*, 106 FERC ¶ 61,299 at P 124. The Commission stated that the structure of the fuel and electric charges was to as described in *Nw. Pipeline Corp.*, 99 FERC ¶ 61,365, at P 37 (2002). In that case, the Commission clarified that the pipeline was not to charge the expansion shippers twice for existing rolled-in compressor costs. The Commission stared, the "Incremental fuel surcharge is intended to amount to the difference between the proposed incremental fuel rate and the existing compressor fuel rate. We prefer that Northwest break out the total incremental fuel charge into these two separate components. Separately stating the components of the total amount allows all customers to more easily discern the current compressor fuel costs from compressor fuel costs attributable to expansion capacity." *Id.*

[108] *Id.* P 122.

Commission accomplishes this objective differently depending upon whether it is designing an incremental reservation charge to recover the plant costs of an expansion or an incremental usage charge to recover additional fuel or electric power costs. The Commission designs an incremental reservation charge to recover all of fixed costs associated with the additional plant investment required for the expansion, while excluding all fixed costs associated with existing embedded plant investment. There is no need to reflect existing plant costs in the incremental reservation charge to protect existing customers from a rate increase, because the existing shippers would pay those costs regardless of whether the expansion was built. Indeed, the Commission used this very approach in the earlier part of the *Transco Cherokee* order concerning the incremental reservation charges recovering the fixed plant costs associated with the Cherokee project.[109] However, with variable fuel and electric power costs incurred by the pipeline on a current basis based on the usage of both the existing and expansion shippers, the Commission requires the pipeline to charge all the shippers its existing fuel and power charges, with an additional surcharge to the expansion shippers designed solely to recover the incremental fuel usage caused by the expansion. The end result is the same as with the incremental reservation charge: the pre-expansion shippers pay the same rates as they would have without the expansion.

85. Notwithstanding South Jersey's and Paribas' position with regard to the allocation of existing rate base to only historical shippers, no party to this proceeding has calculated a baseline WSS-OA rate consistent with that approach or our findings in this order. However, the record is adequate for the Commission to do this calculation. Appendix A contains the Commission's work papers deriving a baseline system rate for the purpose of completing the analysis required by the *1999 Certificate Policy Statement*. Using Trial Staff's Exhibit S-3 allocation of incremental base gas to existing customers and allocating all existing plant costs to existing customers, the Commission calculates the imputed baseline cost of service to be $17,169,765.[110] Applying the remaining historic shippers' billing determinants to that cost of service results in a baseline deliverability charge of $0.02894 per Dth and a capacity charge of $0.00034 per Dth.[111]

c. Comparison of Illustrative Incremental Rate with Baseline System Rate

86. Based on the above calculations, we find that the illustrative incremental $0.02794 per Dth deliverability charge and $0.00033 per Dth capacity charge for Paribas and South

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[109] *Id*. PP 72-73.

[110] Appendix at p. 4: l. 1(C).

[111] *Id*. at 4: l. 12(D) and (E).

Jersey are lower than the baseline $0.02894 per Dth deliverability charge and $0.00034 per Dth capacity charge the historic shippers would have had to pay absent the incremental replacement base gas investment to serve Paribas and South Jersey. This demonstrates that, once the costs of the 1.32 Mcf replacement base gas purchases necessary for Transco to continue to serve the remaining historic shippers are allocated to those shippers, the costs of the remaining 1.86 Mcf base gas purchases necessary to also serve Paribas and South Jersey may be rolled in without requiring the historic shippers to subsidize the incremental customers. In these circumstances, the framework we have used to address rolled-in vs. incremental rate issues under the *1996 Certificate Policy Statement* justifies requiring Transco to roll in the costs associated with its base gas purchases.

87. While the Commission recognizes that the considerations underlying the *1999 Certificate Policy Statement's* no-subsidy policy are not fully applicable in this case, that fact does not justify reaching a different result in this case than would be reached under the analytical framework established by the policy statement. A primary reason for our general policy that pipeline expansions be priced incrementally is to ensure that pipelines only construct new capacity that the market needs by placing the pipeline (or expansion shippers) at risk for any expansion capacity that is not subscribed. In this case, the need for Transco to purchase replacement base gas arises from PSEG and South Jersey Gas' permanent release of their capacity, rather than the pipeline's decision to expand its system to serve new customers. PSEG and South Jersey Gas' decisions to permanently release their capacity were presumably driven by their determinations that the economic benefits of purchasing their share of the existing base gas outweighed the value of continuing to contract for the WSS-OA service, although their ability to permanently release their capacity did require that they find replacement shippers willing to contract for the service. However, the fact that the goal of providing proper price signals to the pipeline concerning the need for an expansion may not be applicable here simply means that one of the primary bases for our general policy of requiring incremental rates for expansions does not exist here, thus providing further support for rolled-in rates in this case.

88. A second goal of the *1999 Certificate Policy Statement* is to protect a pipeline's existing shippers from rate increases during the terms of their contracts caused by expansions, unless the expansions directly benefit them, for example by replacing existing capacity. This aspect of the *1999 Certificate Policy Statement* is directly relevant to this case. As described in detail above, the analytical framework we have used in implementing the *1999 Certificate Policy Statement* supports a finding that Transco's purchase of replacement base gas benefits the historic shippers by replacing the capacity necessary to serve them. In addition, the fact that the base gas purchases also enabled the replacement shippers to join the system mitigated the rate increase that would have occurred if PSEG and South Jersey had left the system without any new shippers joining the system.

89. We also note that our concern with protecting existing shippers from rate increases during the terms of their contracts was based on our conclusion that existing shippers generally enter into long-term service agreements "with the expectation that increases in their rates will be related to the costs and usage of the system for which they subscribe and not based on construction needed to serve other shippers."[112] However, in this case Transco's need to purchase replacement base gas arose from the very terms of the historic shippers' long-term contracts. Transco and the historic shippers agreed in their 1975 Settlement that each historic shipper would have the right to purchase its respective share of base gas from Transco at the time the customer terminated storage service from the Washington Storage Field. When Transco converted that storage service to open access in 1998 and 1999, the parties agreed that the historic shippers would retain these base gas purchase rights after the conversion. As described above, it is inherent in how the Washington Storage Field operates that a departing historic shipper's purchase of its base gas will decrease Transco's ability to withdraw gas from storage by more than the departing shipper's withdrawal rights. It follows that the base gas purchase rights the historic shippers agreed to in the 1975 Settlement inevitably trigger a requirement for Transco to purchase replacement base gas whenever a historic shipper terminates service, regardless of whether a new shipper takes over the capacity. Moreover, Transco historically rolled its base gas purchase costs into the rates of all its historic shippers, despite the fact those purchases were made at varying costs over a five year period. Thus, the historic shippers could not reasonably expect that they would necessarily be insulated from the costs of any future base gas purchases Transco might be required to make as a result of a historic shipper's exercise of its contractual right to purchase its share of the base gas.

90. We conclude that it is both reasonable and equitable to allocate to the remaining historic shippers the costs associated with Transco's purchase of the base gas necessary to continue to provide service to them, given that the need to purchase this base gas arises from provisions of a settlement they agreed to and, as discussed above, this allocation is consistent with the *1999 Certificate Policy Statement*. Once these costs are allocated to the historic shippers, the analysis above shows that rolling in the costs associated with Transco's additional purchases of base gas necessary to serve the replacement shippers benefits the historic shippers by leading to lower rates than if the replacement shippers had not taken over the capacity of the departing historic shippers.

B. <u>Opportunity Cost Analysis</u>

91. As described above, at the end of its decision, the D.C. Circuit stated it was not suggesting that the Commission should ignore the complex history of the Washington

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[112] *1999 Certificate Policy Statement Rehearing Order*, 90 FERC ¶ 61,128 at 61,393.

Storage Field. The D.C. Circuit then stated that the historic shippers have consistently refrained from terminating their service and exercising their base gas purchase rights. As a result, the historic customers annually incur, as a cost of continuing to take service, the foregone return on the proceeds of selling that gas. The D.C. Circuit stated that it may be that the Commission could, consistent with regarding all shippers as causing the need for the purchase of additional base gas in proportion to their use of the field, nevertheless require the replacement shippers to pay the incremental costs, while allowing the historic shippers to pay the previously calculated rate, and continue to forego the annualized return from exercise of their buy-back option. The D.C. Circuit stated that, if this analysis is correct, such a rate treatment could subject all shippers to similar incentives for similar use of the field.

92. In the October 16 Order on Remand, the Commission requested that the parties address this issue in their briefs.

1. <u>Parties' Briefs</u>

93. In their initial briefs, both Transco and the WSS Customer Group state that the historic shippers have incurred and will continue to incur as long as they continue to take service under Rate Schedule WSS-OA, a significant opportunity cost related to the unrealized gain on the base gas they contributed to the Washington Storage Field.[113] Both Transco and the WSS Customer Group presented prepared testimony of their witnesses attempting to calculate this opportunity cost. Each witness asserts that the opportunity cost is the return on equity that an historic shipper could have earned on its net gain from purchasing the base gas from Transco at the $0.89 per Dth price provided in the tariff and reselling the gas at the current market price. However, the two witnesses use different assumptions to calculate the asserted opportunity cost.

94. Transco's Witness Kirk calculated different opportunity costs for each year during the period 2006 through 2007. He assumed that the historic shippers could have resold the base gas at the average Henry Hub price for the year in question. He also assumed the historic shippers could have earned a return on the net gain equal to the allowed rate of return on equity for regulated gas utilities as reported by Public Utilities Fortnightly for each year during the same period including an allowance for federal and state income taxes. Transco explained that this is a reasonable proxy for the unknown value of each shipper's expected annual rate of return because most of the historic shippers are regulated gas distribution companies, and therefore would expect to earn a return comparable to the pre-tax equivalent of their allowed return on equity, if they invested in their primary business the proceeds from selling the share of the base gas.[114] Transco's

[113] WSS Customer Group Initial Brief at 13.

[114] Transco Initial Brief at 22.

witness then averaged his calculated annual returns for each year to determine an average annual opportunity cost incurred by the historic shippers during each year they do not purchase and resell their share of the base gas.

95. The WSS Customer Group's witness Briden calculated a single annual opportunity cost incurred in each year. He assumed that the historic shippers could have resold the base gas at the same $6 per Dth price at which Transco purchased the replacement base gas.[115] He also assumed that the historic shippers could have earned a return equal to the 15 percent overall return reflected in Transco's rates. [116]

96. The witnesses of both Transco and the WSS Group assert that the opportunity costs they calculated added to the historic shippers' existing rates impose approximately the same costs on the historic shippers as Transco's proposed incremental rates impose on the two replacement shippers.[117] Transco states that Witness Kirk further testifies that, in light of the opportunity costs incurred by historic shippers, charging replacement shippers incremental rates promotes economic efficiency.[118]

97. Paribas, South Jersey, and Trial Staff all oppose the opportunity cost theory of supporting incremental rates for the replacement shippers. Paribas states Witness Reed explains in his testimony that there is no opportunity cost under the historic shippers' deferred purchase option, simply because none of the historic shippers has ever made any investment in the base gas.[119] Because there is no investment, Paribas argues no historic shipper is foregoing any return on this investment when each shipper makes a unilateral decision not to terminate storage service during the shipper's upcoming rollover period. Next, Paribas states that, as Witness Reed explains, the Commission's ratemaking analysis is based upon the objective costs incurred by the interstate pipeline of providing jurisdictional service, not the individual opportunity cost each non-jurisdictional customer may experience in contracting and paying for that service.[120] Paribas further argues that, as these costs are highly variable, it would be impossible to fix accurate rates for the purpose of the filed rate doctrine.

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[115] WSS Customer Group Initial Brief (citing Exhibit GEB-1 at 12).

[116] *Id*.

[117] Transco Initial Brief at 20 (citing Exhibit No. T-100 at 19-26).

[118] Transco Initial Brief at 25 (citing Exhibit No. T-100 at 24-26).

[119] Paribas Initial Brief at 6 (citing Exhibit FS-19 at 8-9).

[120] Paribas Initial Brief at 8 (citing Exhibit FS-19 at 12).

98. Paribas also argues that both Transco's and the WSS Customer Group's avoided cost calculations are defective because they both rely upon incorrect inputs for gas prices and the historic shippers' cost-of-capital. Paribas further argues that Transco's and the WSS Customer Group's opportunity cost testimonies fail because both incorrectly assume the historic shippers' avoided cost is the only relevant economic factor in the decision to exercise the deferred purchase gas option.[121] Paribas contends that such arguments ignore the countervailing benefits associated with the historic shippers' base gas purchase option (free storage of base gas volumes, gain from making current market sales of gas acquired from Transco at its imbedded book cost). For example, Paribas states Witness Reed clarifies that, by making a decision to defer exercising the purchase option, a historic shipper is not involuntarily incurring an actual cost and that shipper is instead making an affirmative determination that they will be better off by preserving this option and continue storage service.[122]

99. South Jersey makes similar arguments as Paribas. It states that there is no so called "opportunity" or "foregone revenue opportunity" incurred by the historic shippers. South Jersey states that under Rate Schedule WSS-OA, the historic shippers still retain the right to purchase base gas at historic costs any time they elect to terminate or permanently release their storage capacity. South Jersey argues that this is a valuable economic benefit not enjoyed by replacement shippers and thus lends no support to imposing adversely discriminatory rates on replacement shippers.

100. Moreover, South Jersey asserts that the historic customers cannot suffer an opportunity cost or foregone revenue opportunity related to investments made by Transco. South Jersey states Witness Reed explains in his testimony that, for there to be an opportunity cost, there would have to be an actual investment on the part of the historic shippers.[123] South Jersey asserts that there has been no such investment because Transco purchased the base gas for the Washington Storage Field. South Jersey states Witness Reed testifies that, "[n]ot having an investment in the base gas makes it impossible for the historic [shippers] to be incurring a foregone return as an opportunity to take storage service. Even if one substitutes the term "deferred value" for foregone return, the historic shippers receive valuable services in exchange for choosing to defer the removal of the base gas they are entitled to remove."[124]

[121] Paribas Reply Brief at 6 (citing Exhibit FS-24 at 5).

[122] Paribas Reply Brief at 6 (citing Exhibit FS-24 at 4-5).

[123] South Jersey Initial Brief at 6 (citing Exhibit FS-19 at 8-9).

[124] South Jersey Initial Brief at 9-10 (citing Exhibit FS-19 at 9).

101. Notwithstanding the above, South Jersey argues that, even if the Commission determined that an opportunity cost did exist with respect to the historic shippers, opportunity costs do not and should not play any role in the Commission's own ratemaking principles. South Jersey states that Witness Reed confirms that the Commission "does not use allocated costs among rate payers by requiring one subset of identically-situated customers to indemnify a second subset of customers for opportunity costs, especially where these costs are not caused by the first subset."[125] Finally, South Jersey states the Commission should not attempt to ascertain why certain shippers have made particular business decisions, or whether those decisions were sound because such an approach would be entirely subjective and import into the ratemaking process things that have nothing to do with the cost of providing service.

102. Trial Staff argues that the historic shippers' ability to buy back and resell their respective share of base gas at a significant profit is a benefit and not a cost to them. Trial Staff states the buy-back and resell-for-profit option that the historic shippers' alone possess is consideration provided by Transco in a settlement to the historic shippers, which allowed Transco to obtain the base gas volumes necessary to establish and develop the Washington Storage Field. Trial Staff asserts the historic shippers essentially made an investment for the future when they nominated gas volumes for Transco: one which the historic shippers may cash out when they no longer receive WSS storage service. Moreover, Trial Staff argues the majority of historic customers have voluntarily chosen not to permanently release their WSS entitlements preferring to wait for their payout presumably because the continuation of storage service is more valuable to them.

103. In its reply brief, Transco states the replacement shippers mistakenly contend that the historic shippers cannot incur opportunity costs in choosing to continue their service because they have made no investment in the historic base gas in the Washington Storage Field. In fact, Transco states that Witness Kirk confirms that an investment is not a prerequisite to the incurrence of opportunity cost.[126] Next, Transco replies that Trial Staff and the replacement shippers argue erroneously that refraining from exercising a base gas purchase option cannot entail an opportunity cost for the historic shippers because the option represents an economic benefit. Transco asserts that Witness Kirk explains that the benefit of the option for the historic shippers is not inconsistent with the opportunity cost associated with the historic shippers' election to continue their WSS-OA service.[127]

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[125] South Jersey Initial Brief at 10-11 (citing Exhibit FS-19 at 12).

[126] Transco Reply Brief at 13 (citing Exhibit T-104 at 2-3).

[127] Transco Reply Brief at 14 (citing Exhibit T-104 at 4-6).

104. Transco argues that, rather than address the implications of the historic shippers' opportunity cost, the replacement shippers and Trial Staff each argue that it would be poor policy for the Commission to base rates on opportunity costs. Transco asserts that all the remand is exploring is whether the historic shippers' role in the development of the Washington Storage Field supports the conclusion that Transco's proposed rates for the replacement shippers are just and reasonable and not unduly discriminatory. Therefore, Transco states that the replacement shippers' and Trial Staff's claims that the Commission's consideration of the opportunity cost factor would have adverse consequences for ratemaking in general is an exaggeration of how the D.C. Circuit contemplated the opportunity cost could enter into the Commission's decision on remand.

105. In its reply brief, the WSS Customer Group states the replacement shippers' Witness Reed incorrectly claims that there is no opportunity cost associated with retaining service in the Washington Storage Field and that the historic shipper's base gas purchase rights represent a cost-free option to such customers.[128] The WSS Customer Group argues that the witness confuses the benefits of a negotiated base gas purchase right with the costs of not exercising that right. First, the WSS Customer Group states Witness Briden confirms that this purchase option is not "free" because it is a bargained for right for which consideration was given in a settlement with Transco.[129] Next, the WSS Customer Group states that it is beyond dispute that historic shippers have the right to purchase base gas upon the termination of storage service at Transco's historic cost and that by not exercising this right, historic shippers incur an ongoing opportunity cost in the amount of the return on monetized value of the base gas subject to purchase. The WSS Customer Group states Witness Briden explains that just because the majority of historic shippers have not exercised their base gas purchase option does not mean that there is no opportunity cost; it only means that, on balance, historic shippers find it beneficial to continue service at the Washington Storage Field.[130]

106. The WSS Customer Group also states that, contrary to WSS Customer Group's assertions, the Commission has recognized opportunity costs as a legitimate factor in designing rates in section 4 NGA proceedings.[131]

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[128] WSS Customer Group Reply Brief at 5 (citing Exhibit FS-24 at 12).

[129] WSS Customer Group Reply Brief at 6 (citing Exhibit GEB-3 at 11).

[130] WSS Customer Group Reply Brief at 6 (citing Exhibit GEB-3 at 4).

[131] WSS Customer Group Reply Brief at 7 (citing Exhibit GEB-3 at 6-7, for example, Witness Briden states the Commission has explicitly considered opportunity costs in evaluating NGA section 4 filings in several prior instances involving the imposition of daily scheduling penalties. *See El Paso Natural Gas Co*., 139 FERC

(continued...)

2. **Commission Decision**

107. While the D.C. Circuit in *BNP Paribas* posited an alternate "opportunity" cost or "foregone revenue" theory by which the Commission might have found Transco's incremental rate proposal just and reasonable, we decline to apply this analysis to determining whether Transco's proposed incremental rates are just and reasonable.[132] Transco filed this proceeding under NGA section 4 in order to modify rates for service on its system. Historically, the Commission determines these rates based on the jurisdictional pipeline's cost-of-service based on specific cost and revenue inputs representing the pipeline's own business operations over a certain period of time. It would be difficult and impractical for the Commission to factor in the opportunity costs of non-jurisdictional shippers into this analysis, because such information does not represent the pipeline's costs of providing jurisdictional service. It would also be speculative and subjective because different shippers may very well have different financial/operational reasons for deciding to continue their WSS storage service, rather than terminating service and purchasing their base gas. The Commission has no reliable way of determining what investment opportunities the various historic customers may have or what profits they might make on such investments. Different historic shippers might have widely varying investment opportunities, and there is no guarantee that any such investment would, in fact, have been profitable.

108. Notably, no party cites cases where the Commission has factored in the opportunity costs of non-jurisdictional customers in a proceeding to consider the jurisdictional rates of a public utility. The WSS Customer Group states the Commission has used opportunity cost analysis in NGA section 4 proceedings in the past and lists several cases supporting its argument; however, we find that the referenced cases are distinguishable.[133] The cases WSS Customer Group cites are instances in which the Commission allowed jurisdictional pipelines to charge shippers scheduling penalties equal to the pipeline's rate for interruptible service. The Commission explained that the interruptible rate represented the pipeline's opportunity cost, because if the shipper had

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¶ 61,096 (2012); *Columbia Gas Transmission Corp*., 124 FERC ¶ 61,122 (2008); *Columbia Gulf Transmission Co*., 119 FERC ¶ 61,128, at P 29 (2007), *order on reh'g*, 124 FERC ¶ 61,121, at P 6 (2008); *Natural Gas Pipeline of Am.*, 103 FERC ¶ 61,174, at P 63 (2003) (*Natural*)).

[132] Moreover, storage service and the historical shippers' right to purchase base gas at the historical cost of $.89 per Dth are benefits that are not easily quantified in rate-making proceeding. The repurchase right is a benefit that is not shared by the replacement shippers.

[133] *See supra* note 97 with list of cases cited by the WSS Customer Group.

not scheduled service in excess of what it actually used, the pipeline might have been able to sell the capacity as interruptible service.[134] We did not factor in the opportunity costs of the non-jurisdictional shippers.

109. The Commission also finds that the historic shippers' participation in the development of the Washington Storage Field during the late 1970s and early 1980s pursuant to a settlement entered into four decades ago does not justify exempting them from paying a share of the costs associated with Transco's purchase of replacement base gas. As discussed above, allocating a share of those costs to the historic customers is consistent with cost causation principles and the *1999 Certificate Policy Statement* because without those purchases Transco could not have provided the full amount of storage service the historic shippers have contracted for. Moreover, it is inherent in how the Washington Storage Field operates that a departing historic shipper's exercise of its rights under the 1975 Settlement to purchase its share of the base gas will decrease Transco's ability to withdraw gas from storage by more than the departing shipper's withdrawal rights, thereby requiring Transco to purchase replacement base gas. Moreover, Transco historically rolled its base gas purchase costs into the rates of all its historic shippers, despite the fact those purchases were made at varying costs over a five year period. Thus, the historic shippers could not reasonably expect that they would necessarily be insulated from the costs of any future base gas purchases Transco might be required to make as a result of a historic shipper's exercise of its contractual right to purchase its share of the base gas.

110. Transco argues that approving its incremental rate proposal based on the opportunity cost theory will help keep historic shippers on the system. Transco suggests that rolled-in rates would create an incentive for historic shippers to terminate their contracts and exercise the base gas purchase option, in order to avoid paying the higher rolled-in rate resulting from other historic shipper's exercise of that option. However, the historic shippers are local distribution companies with service obligations to their retail customers, and therefore their ability to depart the system appears speculative at best. In fact, about 99 percent of the historic shippers' service agreements have expired giving them the opportunity to depart the system, but the historic shippers have renewed their contracts 221 times.[135] In any event, the historic shippers having reserved the right to purchase their base gas when exiting the system, we do not see a basis to approve Transco's proposed rates for the purpose of discouraging shippers from exercising that right. This is particularly so, since as previously discussed, Transco's proposed incremental rate is inconsistent with our policies concerning the design of its incremental

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[134] *Natural*, 103 FERC ¶ 61,174 at P 63 n.48.

[135] Exhibit FS-22.

rates because it includes (1) some preexisting system costs and (2) that portion of the replacement base gas purchases that provide specific benefits to the historic shippers.

C. <u>Consistency of Rate Design Proposals with Policy for Electric Network Transmission Upgrades</u>

111. As referenced above, the D.C. Circuit stated in *BNP Paribas* that the Commission failed to address Paribas' contention that the Commission's approval of Transco's proposal to charge the replacement shippers an incremental rate was inconsistent with the Commission's general practice of allowing the roll-in of the costs of electric network upgrades necessary to all new electric generators to connect to an existing transmission network. The D.C. Circuit stated, "when Paribas pointed out the apparent inconsistency between FERC's action here and its management of the electricity sector the Commission brushed it off as not relevant to this case."[136] The D.C. Circuit also noted that Transco, intervening in support of the Commission, suggested that there was no inconsistency because the Commission permits incremental rates for electric network upgrades in certain circumstances. However, the D.C. Circuit stated that the Commission did not rely on that rationale for rejecting Paribas' reliance on its analogy to the Commission's electric network upgrade policy, and therefore, the Commission's decision could not be affirmed on that basis.

112. In this order, the Commission is reversing its prior decision approving Transco's incremental rate proposal and requiring Transco to roll in the costs associated with its base gas purchases. Accordingly, the Commission need not address Paribas' contention that the Commission's prior approval of incremental rates was inconsistent with it policy concerning the rate treatment of the cost of electric network upgrades to interconnect a new electric generator. Nonetheless, there is no inconsistency between our rejection in this order of Transco's incremental rate proposal and our policy concerning the rate treatment of network upgrades required to connect an electric generator.

113. As we explained in Order No. 2003-A:

> The Commission's policy for pricing [electric] transmission services does not differ in any fundamental way from the pricing policy for natural gas pipelines as set forth in our [1999 Certificate] Policy [Statement]. There the Commission adopted a threshold requirement of no financial subsidies for pipeline expansions in order to ensure that existing customers of the pipeline do not subsidize service to a new customer. In this order, we are clarifying that the Transmission Provider

[136] *BNP Paribas*, 743 F.3d at 269.

> has the opportunity to charge the Interconnection Customer the higher of an incremental cost rate or embedded cost rate under all circumstances. Accordingly, our interconnection pricing policy is entirely consistent with our pricing policy for pipeline expansions.
>
> In conclusion, we believe that our interconnection pricing policy is reasonable because it provides efficient incentives for new generation, while our 'higher of' ratemaking standard prevents subsidization of merchant generation and prevents undue discrimination by native load or other Transmission Customers. The policy ensures that all Transmission Customers (including the Interconnection Customer when it takes transmission delivery service) will bear a fair share of the cost of the Transmission System, reflecting the fact that all customers benefit from having a Transmission System that provides reliable service and supports new, competitive generation options.[137]

114. The outcome of this case turns on a fact not present in the ordinary case involving network upgrades to interconnect a new electric generator: Transco's purchase of replacement base gas was necessary not only to serve the replacement shippers, but also to maintain the existing level of service to the historic shippers. Accordingly, in this case, ordinary cost causation principles require an allocation to the historic shippers of that portion of the replacement base gas purchases necessary to maintain service to the historic shippers. Once that allocation is made, rolling in the costs associated with the additional base gas purchases necessary to also serve the replacement shippers produces a higher rate than a properly designed incremental rate applicable solely to the replacement shippers. Therefore, our requirement that Transco roll these costs into its WSS-OA rates applicable to all Washington Storage Field shippers is consistent with the "higher of" ratemaking standard used for network upgrades necessary to interconnect new electric generators. As we have held above, these costs may be rolled in without requiring the historic shippers to subsidize the replacement shippers, and rolled-in rates ensure that all WSS-OA shippers bear a fair share of the costs of providing storage service to them. This is consistent with both the *1999 Certificate Policy Statement* and the electric interconnection policy.

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[137] *Id.* PP 589-90.

D. Compliance Filing and Refunds

115. Consistent with the discussion above, the Commission rejects Transco's proposal in its Docket No. RP06-569-000 general section 4 rate case to charge incremental rates to Paribas and South Jersey. Accordingly, the Commission requires Transco to maintain its existing rolled-in rate design for its Rate Schedule WSS-OA rates, including rolling in the costs associated with its purchase of approximately 3.4 million Dth of base gas at the Washington Storage Field. We now turn to the issue of the actions Transco must take in order to implement our holdings in this order.

116. The Rate Schedule WSS/WSS-OA rates at issue became effective, subject to refund, March 1, 2007.[138] Article VII, Section A of the Stipulation settling Transco's Docket No. RP06-569-000 rate case reserved the issue of Transco's proposal to establish incremental rates for Paribas and South Jersey for resolution in this proceeding. Article IV of the Stipulation provides that, after final resolution of the reserved issue, Transco shall refund "the difference, if any, between the amount collected under the Settlement Rates since March 1, 2007, and the amount that would have been collected under the Settlement Rates, as adjusted by such final order on the" reserved issue." Article IV also provides that Transco shall not surcharge any customer to recover any undercollections that might result from the Commission's resolution of the reserved issue.

117. Transco proposed a rate increase in its next general section 4 rate case in Docket No. RP12-993-000, and the revised Rate Schedule WSS-OA rates went into effect, subject to refund, effective March 1, 2013.[139] Pursuant to the terms of the Docket No. RP12-993-000 Settlement, Rate Schedule WSS-OA's rates were a reserved issue subject to the outcome of the *BNP Paribas* proceeding.[140] Transco's effective Rate Schedule WSS-OA rates for the periods at issue are shown in the table below:[141]

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[138] *Transcon. Gas Pipe Line Corp.*, 116 FERC ¶ 61,314 (2006).

[139] *Transcon. Gas Pipe Line Co., LLC*, 140 FERC ¶ 61,251 (2012).

[140] *Transcon. Gas Pipe Line Co., LLC*, 145 FERC ¶ 61,205, at P 9 (2013).

[141] Transco's April 27, 2015 Data Response No. 1.

Line No.	Rate Period Effective Date	End Date	WSS/WSS - Open Access Rate Schedule		Demand Rate	Capacity Rate
	(A)	(B)	(C)		(D) ($)	(E) ($)
1	3/1/2007	2/28/2013	WSS/WSS-OA - Historical Customer		0.02067	0.00024
2	3/1/2007	2/28/2013	WSS-OA - Fortis Energy Marketing & Trading	1/	0.05262	0.00062
3	3/1/2007	2/28/2013	WSS-OA - South Jersey Resources Group LLC		0.04744	0.00056
4	3/1/2013	Current	WSS/WSS-OA - Historical Customer		0.02198	0.00023
5	3/1/2013	Current	WSS-OA - Paribas Energy Trading GP		0.05754	0.00061
6	3/1/2013	Current	WSS-OA - South Jersey Resources Group LLC		0.05179	0.00055

118. Within 30 days of the date of this order, Transco must submit a compliance filing recalculating the rates for Rate Schedule WSS/WSS-OA on a rolled-in basis consistent with the findings of this order and the costs agreed to by the terms of the Stipulation.[142] Transco must also file revised tariff records, effective March 1, 2007 through today reflecting the revised rates.[143] Transco is required to file supporting work papers in electronic format showing the derivation of the rolled-in rates for the effective periods.

119. Both Transco and South Jersey raise issues as to the extent of Transco's refund obligation with respect to the recalculated rates. While Transco does not dispute that Paribas is entitled to refunds from the March 1, 2007, date should the Commission order rolled-in rate treatment for the base gas purchase, Transco contends it should not be required to make any refunds to South Jersey. South Jersey not only contends it is

[142]Based upon the Stipulated costs and billing determinants for the Docket No. RP06-569-000 rate period, we calculate that the rolled-in deliverability charge is $0.02894 per Dth and the capacity charge is $0.00034 per Dth. Appendix A, p. 4:14(D) and (E).

[143] The period of March 1, 2007 through today spans the period that the Commission changed its electronic tariff system. Transco is not required to file revised electronic tariff sheets in the FASTR format, as the Commission no longer maintains that system. For the period of March 1, 2007 through July 20, 2010, Transco is required to file a rate summary tariff sheet(s) document with content similar to Transco's Third Revised Volume No. 1 Tariff, Sub Twentieth Revised Sheet No. 27A. In the same compliance filing, Transco is required to file tariff records for the period of July 20, 2010 forward. This filing should be an eTariff compliance filing using Type of Filing Code (TOFC) 580, with no Associated Filing Identifier at either the Filing or Tariff Record levels. The Filing Title should include "Docket No. RP07-569-008 Compliance Filing." This compliance filing will be given a new docket number.

entitled to refunds, it seeks refunds that would reduce its rates below the recalculated level required by this order. We discuss these arguments below.

1. Parties' Briefs

120. In its initial brief, Transco states, assuming arguendo, that the Commission on remand reverses its holdings in Opinion Nos. 507 and 507-A, South Jersey would not be entitled to relief. Transco argues that South Jersey has not properly reserved its right to challenge its proposed Rate Schedule WSS-OA rate. Transco asserts that section 19 of the NGA sets forth the method for seeking relief from a final Commission order and this section states a party aggrieved by an order of the Commission may file in a D.C. Circuit of appeals of the United States.[144] In addition, Transco argues that, when the Commission considers a rate accepted in one of its orders, its review is generally limited to the specific disputed rate.[145] Transco contends the Commission has made it clear that, when a particular rate is challenged, "as a matter of course, any refunds ordered would apply to all customers served under that rate."[146]

121. Transco argues that both Paribas and South Jersey take service under Rate Schedule WSS-OA, but they do not pay the same rate because the rate schedule has a different rate for each replacement shipper. Transco argues that, although South Jersey litigated this matter before the Commission, only Paribas petitioned for judicial review of Opinion Nos. 507 and 507-A at the D.C. Circuit. Therefore, Transco contends that, if the Commission reverses itself on appeal, South Jersey has not preserved its right for refunds.

122. In its initial brief, South Jersey states that the Commission should require Transco to make refunds to both replacement shippers equal to the difference between the rates they have paid since March 1, 2007 and the rates charged to the historic shippers during that period. South Jersey asserts that the historic shippers are entitled to refunds down to the rates charged to the historic shippers, as opposed to a higher recalculated rolled-in rate, because the rates actually charged the historic shippers are the only valid "filed" rate approved by the Commission pursuant to the NGA. Furthermore, South Jersey contends that Transco should be required to continue to charge that rate to the replacement

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[144] Transco Initial Brief at 44 (citing *E. Tenn. Natural Gas Co. v. FERC,* 863 F.2d 932, 942 (D.C. Cir. 1988) (*East Tennessee*)).

[145] Transco Initial Brief at 44 (citing *East Tennessee*, 863 F.2d at 942).

[146] Transco Initial Brief at 44-45 (citing *Allegheny Elec. Coop.*, 58 FERC ¶ 61,096, at 61,349 n.29 (1992)).

shippers until it files a new general section 4 rate case to roll in the costs of the replacement base gas purchases.

123. In its reply brief, Transco states that South Jersey states that it should receive refunds based on the difference between the historic shipper WSS-OA rate and the incremental rate that South Jersey has paid since March 1, 2007 and that it should pray prospectively the same rate the historic shippers currently pay. Transco asserts that this argument has no foundation. Transco states that, should the Commission reject Transco's incremental rate, there is no foundation for South Jersey's claim that any relief be based on the current rate applicable to the historic shippers. Transco argues that the relevant legal principle in this regard is NGA section 5(a) which states that, when the Commission determines that a pipeline's rate is not just and reasonable, it "shall determine the just and reasonable rate . . . to be thereafter observed and in force, an shall fix the same by order."[147]

124. In its reply brief, South Jersey states, as a matter of law, South Jersey, as an intervenor before the D.C. Circuit is treated as an original party. South Jersey states Transco incorrectly argues that, even if the Commission reverses Opinion Nos. 507 and 507-A, South Jersey is not entitled to relief because it did not properly preserve its right to challenge Transco's rate before the D.C. Circuit. South Jersey answers that it has fully participated in this proceeding, including through the appellate process before the D.C. Circuit. South Jersey argues that Transco's assertion disregards the undisputed legal principle that an intervenor is for all intents and purposes treated as an original party. Additionally, South Jersey argues that the cases cited by Transco do not support its proposition. South Jersey states *East Tennessee* stands for the proposition that in a NGA section 4 case, an aggrieved party may receive retroactive refunds pursuant to a permitted exception to the filed rate doctrine.[148] Therefore, South Jersey argues that Transco's position lacks any merit.

2. <u>Commission Decision</u>

125. Because we have reversed our decision in Opinion Nos. 507 and 507-A that Transco's proposed WSS-OA incremental rate for the replacement shippers is just and reasonable, we order Transco to provide refunds to Paribas and South Jersey from March 1, 2007. Transco disputes South Jersey's claim for relief because it contends South Jersey did not preserve its rights by appealing the Commission's orders. We do not find

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[147] Transco Reply Brief at 44 (citing 15 U.S.C. § 717c(d) (2012)).

[148] South Jersey Reply Brief at 18 (citing *East Tennessee*, 863 F.2d 932, 942) South Jersey also states the cases *Allegheny Electric* and *N.C. Electric* cited by Transco do not support Transco's claims either).

such arguments persuasive. When we modify a decision following a court remand, our standard practice is to require refunds to all customers affected by our legal error, not just those who appealed our prior decision.[149] Moreover, in this case, while South Jersey did not itself file an appeal, it did intervene in the court proceeding in support of Paribas. While Transco proposed a different per unit rate for South Jersey than for Paribas, Transco proposed to use the same incremental rate design for both Paribas and South Jersey's rates and set forth those rates in the same rate schedule. Therefore, we find no basis for Transco's claim that South Jersey somehow waived its right to refunds in this proceeding, particularly given that Article IV of the Stipulation expressly provides for refunds to affected parties within 60 days after a final Commission order on the reserved issue that is no longer subject to rehearing.

126. However, we reject South Jersey's contention that it is entitled to refunds down to the level of the historic shippers' existing WSS-OA rate historic shippers and to pay that same rate prospectively until such time as Transco establishes a new WSS-OA rate in a new general section 4 rate case. This argument is contrary to Article IV of the Stipulation. That article provides for Transco to refund "the difference, if any, between the amount collected under the Settlement Rates since March 1, 2007, and the amount that would have been collected under the Settlement Rates, as adjusted by such final order on the" reserved issue. In this order, we are requiring Transco to adjust the WSS-OA rates by rolling in the costs of Transco's replacement base gas purchases. Accordingly, the Stipulation provides for Transco to make refunds down to the level of the adjusted rates required by this order. The Stipulation also provides that Transco may not impose any surcharges on the historic shippers for past periods. Accordingly, we require Transco to pay refunds consistent with the provisions of the Stipulation.[150]

<u>The Commission orders</u>:

(A) The decision in Opinion Nos. 507 and 507-A that Transco's incremental rate proposal for the replacement shippers is just and reasonable is hereby reversed.

(B) Transco has not satisfied its burden under NGA section 4 to show that its proposal to allocate to the replacement shippers all costs related to its purchases of new base gas is just and reasonable.

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[149] *Williston Basin Interstate Pipeline Co.*, 68 FERC ¶ 61,322, at 62,318-19 (1994).

[150] Transco should use TOFC 670, and associate that filing with the tariff record compliance filing required above. The Refund Report will be assigned the same docket number as the compliance filing.

(D) Transco shall file a revised Rate Schedule WSS-OA tariff record within 30 days of the date of this order reflecting the rates established within this order.

(E) Transco is directed to refund to the replacement shippers all amounts collected in excess of the WSS-OA service rate ordered herein from March 1, 2007. Transco must file a refund report within 30 days of the date Transco makes those refunds consistent with the deadline provided by the Stipulation.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

Appendix A
Rate Schedule WSS/WSS-OA Incremental Rate Analysis

Docket Nos. RP06-569-008 and RP06-376-005
R.Sch. WSS-OA Incremental Analysis
Page 1 of 4

Transcontinental Gas Pipe Line Corporation
Allocation of Washington Underground Storage Fixed Costs between
Rate Schedule WSS/WSS-Open Access Non-Incremental and Incremental Base Gas Customers
For the 12 Months Ending 05/31/06, as Adjusted

Line No.	Particulars	Total	Fixed	Deliverability	Capacity
	(A)	(B)	(C)	(D)	(E)
1	Total WSS/WSS Open Access Costs 1/	$ 19,220,310			
1a	Less: S-3 adj. Base case Return	$0			
	Less: S-3 adj. Base Case Taxes	$0			
		$19,220,310	$19,220,310	$9,610,155	$9,610,155
2	Less: Return (Page 3, Column B, Line 17)	7,529,130	7,529,130	3,764,565	3,764,565
3	Less: Taxes (Page 4, Column B, Line 18)	3,503,475	3,503,475	1,751,737	1,751,738
4	Total (excluding Return and Taxes)	$8,187,705	$8,187,705	$4,093,853	$4,093,852
5	**Deliverability and Capacity (Dt) for Non-Incremental and Incremental Base Gas Customers**				
6	Non-Incremental Base Gas Customers			812,694	69,078,865
7	Incremental Base Gas - Fortis			48,706	4,140,000
8	Incremental Base Gas - S. Jersey			51,837	4,406,135
8	Total			913,237	77,625,000
9	**Deliverability and Capacity Percentages for Non-Incremental and Incremental Base Gas Customers**				
10	Non-Incremental Base Gas Customers			100.00%	100.00%
11	Incremental Base Gas - Fortis			0.00%	0.00%
12	Incremental Base Gas - S. Jersey			0.00%	0.00%
13	Total			100.00%	100.00%
14	**WSS/WSS-Open Access Costs (excluding Return and Taxes) Allocated to Non-Incremental and Incremental Base Gas Customers 3/**				
15	Non-Incremental Base Gas Customers	$8,187,705	$8,187,705	$4,093,853	$4,093,852
16	Incremental Base Gas - Fortis	0	0	0	0
17	Incremental Base Gas - S. Jersey	0	0	0	0
18	Total	$8,187,705	$8,187,705	$4,093,853	$4,093,852
19	**WSS/WSS-Open Access Return and Taxes for Non-Incremental and Incremental Base Gas Customers**				
20	Non-Incremental Base Gas Taxes (Page 3)	$2,724,477	$2,724,477	$1,362,239	$1,362,238
21	Non-Incremental Base Gas Return (Page 2)	6,257,583	6,257,583	3,128,792	3,128,791
22	Incremental Base Gas Taxes - Fortis (Page 3)	420,008	420,008	210,004	210,004
23	Incremental Base Gas Return - Fortis (Page 2)	685,572	685,572	342,786	342,786
24	Incremental Base Gas Taxes - S. Jersey (Page 3)	358,990	358,990	179,495	179,495
25	Incremental Base Gas Return - S. Jersey (Page 2)	585,975	585,975	292,988	292,987
26	Total	$11,032,605	$11,032,605	$5,516,304	$5,516,301
27	**Total WSS/WSS-Open Access Costs Allocated to Non-Incremental and Incremental Base Gas Customers**				
28	Non-Incremental Base Gas Customers	$17,169,765	$17,169,765	$8,584,884	$8,584,881
29	Incremental Base Gas - Fortis	1,105,580	1,105,580	552,790	552,790
30	Incremental Base Gas - S. Jersey	944,965	944,965	472,483	472,482
31	Total	$19,220,310	$19,220,310	$9,610,157	$9,610,153

Docket Nos. RP06-569-008 and RP06-376-005
R.Sch. WSS-OA Incremental Analysis
Page 2 of 4

Transcontinental Gas Pipe Line Corporation
WSS/WSS-Open Access Rate Base and Return for Non-Incremental and Incremental Base Gas Customers
For the 12 Months Ending 05/31/06, as Adjusted

Line No.	Particulars	WSS Service 2/	Non-Incremental Base Gas Customers	Incremental Base Gas Fortis	Incremental Base Gas S. Jersey
	(A)	(B)	(C)	(D)	(E)
1	Capacity (Dt)	77,625,000	69,078,865	4,140,000	4,406,135
2	Allocation Percentage - Capacity	100.00%	100.00%	0.00%	0.00%
3	Cost of Plant:				
4	Gas Plant in Service	$95,911,481	$95,911,481	$0	$0
5	Gas Plant Leased to Others	0	0	0	0
6	Gas Stored Underground - Non-Current 4/	46,175,192	33,802,704	6,670,792	5,701,696
7	Total Cost of Plant	142,086,673	129,714,185	6,670,792	5,701,696
8	Accumulated Provision For Depreciation				
9	and Amortization	-63,900,107	-63,900,107	0	0
10	Net Plant	78,186,566	65,814,078	6,670,792	5,701,696
11	Working Capital	504,085	504,085	0	0
12	Accumulated Deferred Income Taxes	-5,430,212	-5,430,212	0	0
13	Customer Advances for Construction	0	0	0	0
14	Rate Base	$73,260,439	$60,887,951	$6,670,792	$5,701,696
15	Return @ 11.45%	$8,388,320	$6,971,670	$763,806	$652,844
16	Allocated to Transportation Services (10.2427%) 3/	-859,190	-714,087	-78,234	-66,869
17	**Return Allocated Rate Schedules WSS/**	$7,529,130	$6,257,583	$685,572	$585,975
18	**WSS-Open Access Services**				
19					
20					
21					
22	3/ Line 15 multiplied by capacity allocation factor on Page 29, Line 4, Column F of the March 9, 2007 Filing in Docket No. RP01-245-022.				
23	4/ Reflects an allocation of incremental base gas costs consistent with Staff's proposal at Exhibits S-1 and S-3.				

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Transcontinental Gas Pipe Line Corporation
WSS/WSS-Open Access Income Taxes for Non-Incremental and Incremental Base Gas Customers
For the 12 Months Ending 05/31/06, as Adjusted

Line No.	Particulars	WSS Service	Non-Incremental Base Gas Customers	Incremental Base Gas Fortis	Incremental Base Gas S. Jersey
	(A)	(B)	(C)	(D)	(E)
1	Allocation Percentage - Capacity 2/	100.00%	100.00%	0.00%	0.00%
2	Return @11.45%	$8,388,320	$6,971,670	$763,806	$652,844
3	Effect of Tax Adjustments:				
4	Adjustment to Reflect Amortization to Provide				
5	for Unfunded Deferred Federal Taxes	-1,386	-1,386	0	0
6	Adjustment to Reflect Amortization to Provide				
7	for Unfunded Deferred State Taxes	7,841	7,841	0	0
8	Adjustment to Reflect Amortization of				
9	Equity Portion of AFUDC	53,877	53,877	0	0
10	Interest & Debt Expenses	-2,087,923	-2,087,923	0	0
11	Net Taxable Income After Taxes	$6,360,729	$4,944,079	$763,806	$652,844
12	Federal Income Taxes @ 53.85%	3,425,253	2,662,387	411,310	351,556
13	State Income Taxes (Line12 * 13.767381%)	471,568	366,541	56,627	48,400
14	Principal Amount of Overfunded Taxes	-1,386	-1,386	0	0
15	Principal Amount of Unfunded State Taxes	7,841	7,841	0	0
16	Total Income Taxes	$3,903,276	$3,035,383	$467,937	$399,956
17	Allocated to Transportation Services (10.2427%) 4/	-399,801	-310,906	-47,929	-40,966
18	**Total Income Taxes Allocated to WSS/**	$3,503,475	$2,724,477	$420,008	$358,990
19	**WSS-Open Access Storage Services**				
20					
21					
22					
23	4/ Line 16 multiplied by capacity allocation factor on Page 29, Line 4, Column F of the March 9, 2007 Filing in Docket No. RP01-245-022.				

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	Transcontinental Gas Pipe Line Corporation				
	Rate Design and Test of Rate Design				
	For Rate Schedules WSS/WSS-Open Access				
	For the 12 Months Ending 05/31/06, as Adjusted				
Line No.	Particulars	Reference	Total	Deliverability	Capacity
	(A)	(B)	(C)	(D)	(E)
	Rate Schedule WSS / WSS-Open Access - Deliverability and Capacity				
1	**Cost of Service**				
2	Non-Incremental Base Gas Customers	Page 1, Line 28	$17,169,765	$8,584,884	$8,584,881
3	Incremental Base Gas - Fortis	Page 1, Line 29	1,105,580	552,790	552,790
4	Incremental Base Gas - S. Jersey	Page 1, Line 30	944,965	472,483	472,482
5	Total		$19,220,310	$9,610,157	$9,610,153
6	**Billing Determinants (Dt)**				
7	Non-Incremental Base Gas Customers	Page 1, Line 6 Columns D & E multiplied by 365		296,633,310	25,213,785,725
8	Incremental Base Gas - Fortis	Page 1, Line 7 Columns D & E multiplied by 365		17,777,690	1,511,100,000
9	Incremental Base Gas - S. Jersey	Page 1, Line 8 Columns D & E multiplied by 365		18,920,505	1,608,239,275
10	Total			333,331,505	28,333,125,000
11	**Rates**				
12	Illustrative Baseline Historic Customers' Rate	Line 2 / Line 7		$0.02894	$0.00034
13	Illustrative Incremental Rate	(Line 3+4)/(Line 8+9)		$0.02794	$0.00033
14	Average Rate	Line 5/Line 10		$0.02883	$0.00034