Tab 3

Docket No. R-11XXX
Item 53.64 (c)(4)

Philadelphia Gas Works

Pennsylvania Public Utility Commission
52 Pa. Code §53.61, et seq.

Item 53.64(c) Thirty days prior to the filing of a tariff reflecting an increase or decrease in natural gas costs, each Section 1307(f) gas utility seeking recovery of purchased gas costs under that section shall provide notice to the public, under § 53.68 (relating to notice requirements), and shall file the following supporting information with the Commission, with a copy to the Consumer Advocate, Small Business Advocate and to intervenors upon request:

(4) An annotated listing of Federal Energy Regulatory Commission or other relevant non-Commission proceedings, including legal action necessary to relieve the utility from existing contract terms which are or may be adverse to the interest of its ratepayers, which affect the cost of the utility's gas supply, transportation or storage or which might have an impact on the utility's efforts to provide its customers with reasonable gas service at the lowest price possible. This list shall include docket numbers and shall summarize what has transpired in the cases, and the degree of participation, if any, which the utility has had in the cases. The initial list filed under this paragraph shall include cases for the past 3 years. Subsequent lists need only update prior lists and add new cases.

Response:

Please see PGW's FERC Book attached for a synopsis of all cases pending before the Federal Energy Regulatory Commission.

PHILADELPHIA GAS WORKS

FERC BOOK

2010

Prepared and maintained by the Federal Regulatory Affairs Department of the Philadelphia Gas Works.

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Docket CP10-17
Transcontinental Gas Pipe Line Company, LLC
Waiver Request – Capacity Release Regulations

DATE FILED: November 12, 2009

BACKGROUND:

On November 12, 2009, Transcontinental Gas Pipe Line Company, LLC (Transco) filed, pursuant to section 7(b) of the Natural Gas Act and part 157 of the Federal Energy Regulatory Commission's (Commission) regulations, a request for permission to partially abandon firm transportation service provided to the City of Danville, Va., under Transco's Rate Schedule FT. Permission for the partial abandonment of Rate Schedule FT service to the City of Danville, Va. (Danville), is granted effective April 1, 2010, as requested.

Under the Rate Schedule FT service agreement dated February 1, 1992, Transco provides firm transportation to Danville of a total contract demand quantity of the dekatherm equivalent of up to 26,000 Mcf per day from receipt points located in Transco's zones 1, 2, 3, and 4 with deliveries to Danville's city gate delivery points in zone 5. Following authorization to abandon 10,000 Dth/d of firm transportation capacity, Danville intends to permanently release the capacity to a prearranged replacement buyer who will execute a new service agreement that is subject to pre-granted abandonment under Rate Schedule FT pursuant to Part 284 of the Commission's regulations.

Since the abandonment proposal requires no construction of facilities, the proposal qualifies as categorical exclusion under section 380.4(a)(27) of the Commission's regulations. Therefore, no environmental assessments are required. Further, Transco is reminded that it must file tariff sheets with the Commission to modify any tariff sheets that the aforementioned partial abandonment affects.

ACTIVITIES:

January 8, 2010 - Philadelphia Gas Works ("PGW") filed a motion to intervene to protect its interest in this case.

Docket RP10-278
Texas Eastern Transmission LP
Electric Power Cost Adjustment (EPC) Filing.

DATE FILED: December 30, 2009

BACKGROUND:

On December 30, 2009, Texas Eastern Transmission, LP (Texas Eastern) filed, pursuant to section 15.1 of the General Terms and Conditions of its FERC Gas Tariff, revised tariff sheets[1] to adjust the Electric Power Cost (EPC) components of its rates. The tariff sheets listed in the Appendix are accepted effective February 1, 2010, as proposed.

The filing reflects revised rates for each applicable zone and rate schedule, based upon the projected annual EPC required for the operation of transmission compressor stations with electric motor prime movers. The revised tariff sheets also reflect revised EPC Surcharges, which are designed to clear the balance in the Deferred EPC Account. The revised tariff sheets further reflect changes in Texas Eastern's EPC components for the Freehold, TIME, TIME II and M-1 Expansion Projects on Texas Eastern's system.

ACTIVITIES:

January 12, 2010 - Philadelphia Gas Works ("PGW") filed a motion to intervene to protect its interest in this case.

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1 See attached Appendix for a listing of the filed tariff sheets.

Docket RP10-288
Equitrans, L.P.
Non-Conforming Service Agreements

DATE FILED: December 31, 2009

BACKGROUND:

On December 31, 2009, Equitrans, L.P. (Equitrans) filed fourteen non-conforming exhibits 2 to its Big Sandy Rate Schedule FTS agreements (firm transportation service), one non-conforming exhibit 3 to a Rate Schedule LPS agreement (lending and parking service) and tariff sheets4 to list the agreements in the non-conforming agreements section of its tariff. Waiver of the 30-day notice requirement is granted and the non-conforming agreements listed in the Enclosure and the tariff sheets listed in footnote 3 are accepted for filing, effective January 1, 2010, as proposed.

ACTIVITIES:

January 12, 2010 - Philadelphia Gas Works ("PGW") filed a motion to intervene to protect its interest in this case.

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2 See Enclosure.
3 *Id.*
4 First Revised Sheet No. 318, Original Sheet No. 319 and Sheet Nos. 320 through 399 (Reserved for Future Use) to Equitrans' FERC Gas Tariff, Original Volume No. 1.

Docket RP06-569 & RP07-376
Transcontinental Gas Pipe Line Company, LLC
Washington Storage Service (WSS-OA) Issue

DATE FILED: January 21, 2010

BACKGROUND:

This order addresses exceptions to an Initial Decision[5] concerning the rates charged by Transcontinental Gas Pipe Line Corporation (Transco) for storage service at its Washington Storage Field in Louisiana. While Transco originally provided only an individually certificated non-open access service at that storage field pursuant to its Rate Schedule WSS, it now also offers an open access Part 284 service under Rate Schedule WSS-OA, and most of its historic WSS customers have converted to the open access service. At issue in this proceeding is the appropriate allocation of Transco's cost of purchasing base gas[6] between historic and new customers taking service under Rate Schedule WSS-OA. The Administrative Law Judge (ALJ) rejected Transco's proposal to allocate the costs of purchasing new base gas solely to new customers, holding that those costs should be shared equally between the historic and new customers. In this order, the Commission reverses the ALJ's Initial Decision.

<u>History of the WSS/WSS-OA Rate Schedules</u>

1. Transco's Washington Storage Service had its origins in the mid-1970s, well before the Commission initiated its open access transportation program with the issuance of Order No. 436 in 1985.[7] On February 26, 1975, the Commission approved a settlement proposed by Transco and issued a certificate to provide individually certificated contract storage service at the Washington Storage Field under Rate Schedule WSS.[8] At that time, Transco faced severe supply problems, and its curtailment of service to its high priority industrial customers had "reached extraordinary proportions."[9] 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.

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5 *Transcontinental Gas Pipe Line Corp.*, 125 FERC ¶ 63,020 (2008).
6 A base gas requirement is gas needed in storage to pressurize the reservoir to support top gas entitlements.
7 *Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol*, Order No. 436, FERC Stats. & Regs. ¶ 30,665 (1985).
8 *Transcontinental Gas Pipe Line Corporation*, 53 FPC 628 (1975). 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).
9 *Transco*, 53 FPC at 631.

2. As part of the settlement, Transco's customers desiring WSS service agreed to provide the base gas volumes necessary for the operation of the storage field.[10] The settlement provided that the participating sales customers would nominate base gas volumes from volumes that would otherwise be available to them for purchase under Transco's then existing bundled firm sales rate schedules. The customers' firm entitlements to purchase gas were temporarily reduced, coupled with a credit to their sales reservation charges. Transco injected the volumes into the Washington Storage Field as base gas, with Transco incurring the gas purchase cost and holding title to the gas.[11] In addition, the settlement provided that the customers would have the right to purchase their respective share of the base gas at historical cost from Transco at the time the customer terminated service from the field.[12]

3. 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. On September 1, 1998, Transco filed tariff sheets to implement a new Rate Schedule WSS-Open Access (WSS-OA) to accommodate requests by shippers to convert from existing Rate Schedule WSS firm storage service to open access service under Transco's blanket certificate and Part 284 of the Commission's regulations.

4. On October 28, 1998, the Commission approved Transco's proposed Rate Schedule WSS-OA, subject to conditions.[13] The conditions were, in pertinent part, that Transco revise proposed section 8.1 of its WSS-OA rate schedule to clarify whether new replacement customers were required to provide replenishment base gas and that Transco list in its WSS/WSS-OA tariff the specific volume of base gas that each existing customer converting from Rate Schedule WSS would have a right to repurchase.

5. On November 30, 1998, Transco refiled its tariff in compliance with the Commission's directives. Transco clarified that the right to repurchase base gas upon termination of service was limited to its historic WSS customers, and new WSS-OA customers would not be required to supply base gas. Consistent with this intent, the Commission required Transco to further modify the first sentence of section 8 of Rate Schedule WSS-OA to limit the right to repurchase base gas to "Buyers who are former Rate Schedule WSS customers, that have converted to service under this rate schedule."[14]

6. In order to clarify that new customers would not be required to supply base gas, the pipeline proposed amending section 8.1 of Rate Schedule WSS-OA to state: "At the time a Buyer [historic customer] exercises its right to purchase Base Gas, Seller [Transco]

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10 *Id.* at 630; *See also*, *Transcontinental Gas Pipe Line Corporation*, 87 FERC ¶ 61,184, at 61,704 (1999).
11 Ex. T-3 at 3.
12 53 FPC at 630. Ex. T-3 at 3-4. 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.
13 *Transcontinental Gas Pipe Line Corp.*, 85 FERC ¶ 61,119 (1998), *order on reh'g*. 87 FERC ¶ 61,184 (1999).
14 *Transco*, 87 FERC at 61,708.

will be responsible for replenishment of that portion of the Base Gas in the Washington Storage Field."15 The Commission interpreted this language to mean that Transco accepted responsibility for providing additional base gas injections if needed to support the entitlements of the WSS/WSS-OA customers. The Commission, however, did not consider Transco's language to be explicit enough and accordingly, Transco was ordered to modify its proposed tariff language. Specifically, the Commission stated that:

> Transco has an ongoing obligation to provide base gas sufficient to support the top gas entitlements of its customers under these rate schedules. But, Transco does not have an obligation to provide base gas if it is not necessary to support top gas entitlements of its customers. Therefore, simply because a former Rate Schedule WSS customer has terminated service and repurchased excess base gas under its rights grandfathered in that rate schedule, does not by itself trigger an obligation by Transco to inject base gas to replace or replenish the withdrawn volumes. Transco's obligation to inject base gas arises only upon the sale of the top gas capacity entitlement to a different customer.16

Therefore, the Commission ordered Transco to revise its tariff to provide that the pipeline is obligated to maintain sufficient base gas to support the total top gas requirements of its customers.

7. On June 14, 1999, Transco filed the revised tariff sheets in accordance with the Commission's previous directives. On July 27, 1999, the Commission approved Transco's revised tariff filing.17

Transco's Section 4 Rate Filing

8. Prior to this proceeding, three of Transco's historic customers, PSEG Energy Resources and Trade (PSEG), Columbia Gas of Virginia (Columbia VA), and South Jersey Gas Company (South Jersey Gas) permanently released their storage service rights under Rate Schedule WSS-OA to Fortis Energy Marketing & Trading GP (Fortis) (at the time Cinergy Marketing & Trading, LP), Entergy-Koch Trading LP (Entergy-Koch), and South Jersey Resources Group, LLC (South Jersey), an affiliate of South Jersey Gas. At the same time, the three historic customers exercised their right under Rate Schedule WSS-OA to purchase their respective shares of Washington Storage Field base gas. The historic customers purchased approximately 3.4 million Dth of base gas from the Washington Storage Field. At the time of the sale, the historic storage service customers each paid the purchase price of approximately $0.89 per Dth for the base gas; however, the market price of natural gas at the time was approximately $6.00 per Dth, or significantly higher than the historic rate afforded to South Jersey Gas, Columbia VA, and PSEG.

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15 *Transco*, 87 FERC at 61,707.
16 *Id.* at 61,707-61,708.
17 *Transcontinental Gas Pipe Line Corp.*, Docket No. RP98-394-003 (July 27, 1999) (unpublished letter order).

9. Because Transco's WSS and WSS-OA rate schedules require that Transco maintain sufficient base gas quantities to support the total top gas capacity entitlements of its customers, Transco purchased approximately 3.4 million Dth of replacement gas for the Washington Storage Field. At the time of purchase, gas prices were significantly higher than the price of the original injected base gas; therefore, the higher cost of the newly injected base gas increased the value of the rate base of the Washington Storage service, which in turn increased the return and taxes included in the cost of service.

10. On August 31, 2006, Transco filed a general rate case under Natural Gas Act (NGA) section 4. In its filing, Transco proposed to establish bifurcated rates for its historic WSS-OA shippers and its new shippers, including Fortis, Entergy-Koch, and South Jersey. It proposed to include the costs of the newly purchased base gas solely in the rate base used to calculate the three new shippers' rates, while the rate base used to calculate the historic shippers' rates continued to include only the lower cost base gas they had previously supplied to Transco before their conversion to open access service. Transco contended that the replenishment base gas was purchased on behalf of the new shippers, and therefore the costs associated with the newly purchased base gas should be allocated solely to the new shippers. Several parties intervened either protesting or supporting Transco's proposed bifurcated rates. On September 29, 2006, the Commission accepted and suspended Transco's tariff sheets to be effective March 1, 2007, subject to refund, conditions, and the outcome of the hearing established by the order.18

11. On November 28, 2007, the parties filed an uncontested Stipulation and Agreement of Settlement (Settlement Agreement) of the Docket No. RP06-569-000 rate case and another proceeding not at issue here. The settlement resolved all issues in the section 4 rate case, except for one reserved issue. The settling parties agreed, *inter alia*, in Article VII of the settlement agreement to reserve for resolution pursuant to hearing or further settlement the issue of Transco's proposal under NGA section 4 to establish bifurcated rates under Rate Schedule WSS-OA to recover Transco's cost of purchasing replenishment base gas. The settling parties further agreed to treat Entergy-Koch (whose interest was later transferred to Merrill Lynch) as a historic ratepayer under Rate Schedule WSS-OA. Finally, in remarks accompanying the agreement, Transco explained that proposed section 8.3 of Rate Schedule WSS-OA was being modified to provide that Transco would be allowed to submit a limited NGA section 4 rate case to recover *only from new buyers* any increase in the cost of service attributable to the replenishment of base gas to serve them when they contract for vacated capacity through a termination or a permanent capacity release by a terminating buyer.

12. The agreement was certified to the Commission for approval by the presiding ALJ on January 9, 2008. In the ALJ's certification of the Settlement Agreement to the Commission, the ALJ asserted that the sole issue remaining for consideration was Transco's proposal under NGA section 4 to establish bifurcated rates under Rate Schedule WSS-OA to Cinergy Marketing & Trading (and its successor Fortis) and South

18 *Transcontinental Gas Pipe Line Corp.*, 116 FERC ¶ 61,314 (2006).

Jersey to recover Transco's cost of purchasing replenishment base gas. On March 7, 2008, the Commission approved the agreement to become effective as proposed.19

13. Regarding the litigation of the reserved issue, the participants to the proceeding filed a stipulation. The stipulation provided that: 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; 2) Transco's restated direct testimony on the reserved issue will include an attached schedule reflecting its proposal, except that the incremental base gas purchases attributable to Merrill Lynch and the associated billing determinants will be treated on a non-incremental basis; and 3) 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.

14. In addition to the one reserved issue regarding incremental rates, Fortis and South Jersey raised in their prepared direct testimony the issue whether the base gas purchase option should be eliminated or whether the future sale of base gas should be deferred until abandonment is approved by the Commission.20 Several of the parties to the proceeding filed motions to strike and objected to the testimony and issues as being outside the scope of the parties' settlement. On May 19, 2008, the ALJ denied the motions and stated that he would reconsider the matter after parties have further delineated the issues in the proceeding.21 On June 24, 2008, Transco filed, among other things, a joint statement delineating the issues for consideration at trial. These issues were:

> (A) Whether Transco's proposal under section 4 of the NGA to establish incremental rates under its Rate Schedule WSS-OA to be applicable to Fortis and South Jersey to recover Transco's cost of purchasing replenishment base gas is just and reasonable.
>
> (B) Whether Fortis and South Jersey have established that the existing base gas purchase option under section 8.2 of Transco's Rate Schedule WSS-OA is unjust and unreasonable.
>
> (C) In the event that Fortis/South Jersey have carried their burden of proof regarding this issue, whether Fortis/South Jersey have demonstrated that their alternative proposal either to eliminate the existing base gas purchase options under Rate Schedule WSS-OA or to make the purchase options exercisable only if Transco has proposed and the Commission has approved a

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19 *Transcontinental Gas Pipe Line Corp.*, 122 FERC ¶ 61,213 (2008).

20 Fortis and South Jersey, April 10, 2008, Prepared Direct Testimony, Jones at 4.

21 Docket Nos. RP06-569-000 and RP07-367-000, Administrative Law Judge, *Order Denying Motions to Strike* at 2 (May 19, 2008).

reduction to Transco's WSS-OA capacity as just and reasonable.22

15. A one-day hearing on the one reserved issue and two additional issues was held on July 10, 2008 in which Transco, WSS Customer Group, Commission Staff, and the New York Public Service Commission (NYPSC) participated. Parties filed initial briefs on August 21, 2008, and reply briefs were filed on September 12, 2008. On November 21, 2008, the Presiding ALJ issued an Initial Decision and certified the decision to the Commission.

16.

17. On December 22, 2008, Fortis and South Jersey, Transco, WSS Customer Group, and Commission Staff filed exceptions to the ALJ's Initial Decision. On January 12, 2009, Fortis and South Jersey, Transco, and WSS Customer Group filed briefs opposing exceptions and on that same day, Transco Municipal Group (TMG) and the Municipal Gas Authority of Georgia (Municipal Gas) filed a brief on exceptions adopting certain exceptions filed by several parties to the proceeding.23

Discussion

Issue A: *Whether Transco's proposal under NGA section 4 to establish incremental rates under Rate Schedule WSS-OA applicable to Fortis and South Jersey to recover Transco's cost of purchasing replenishment base gas is just and reasonable and not unduly discriminatory or preferential.*

18. 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.24 As the Commission has stated, "The courts have long recognized that there is no single just and reasonable rate but instead that various rates may be just and reasonable."25 If the pipeline satisfies its burden under section 4 to show that its proposed rates are just and reasonable, the Commission must accept those rates, regardless of whether other just and reasonable rates may exist.26 As set forth more fully below, the Commission reverses the ALJ's determination that Transco's bifurcated rate proposal is not a just and reasonable method to allocate costs for the replenishment of base gas at the Washington Storage Field. The Commission further determines that Transco's rate proposal is not unduly discriminatory

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22 *See* Transco, June 24, 2008, Joint Statement of Issues and Witness and Exhibit Lists at 2-4 (discussing the issues to be discussed at trial).

23 Specifically, TMG and Municipal Gas adopted: 1) exception nos. 1-3 filed by the WSS Customer Group; 2) exception nos. 1-2 filed by Transco; and 3) exception nos. 1-7 filed by Commission Staff.

24 *ANR Pipeline Co. v. FERC*, 771 F.2d 507, 513 (D.C. Cir. 1985).

25 *Tennessee Gas Pipeline Co.*, 80 FERC ¶ 61,070, at 61,223-4 (1997) (Opinion No. 406-A), *aff'd*, *Consolidated Edison Co. v. FERC*, 165 F.3d 992, (D.C. Cir. 1999). *See also Cities of Bethany v. FERC*, 727 F.2d 1131, 1138 (D.C. Cir. 1984), *cert. denied*, 469 U.S. 917 (Cities); *Alabama Electric Cooperative, Inc. v. FERC*, 684 F.2d 20, 27 (D.C. Cir. 1982).

26 *Western Resources, Inc. v. FERC*, 9 F.3d 1568, 1578-1579 (D.C. Cir. 1993).

to replacement shippers of the Washington Storage Field because the replacement shippers and historic shippers are not similarly situated.

Cost Causation Principle

19. The parties have focused their contentions concerning the justness and reasonableness of Transco's proposed bifurcated rates on whether those rates are consistent with the "cost causation" principle. As the United States Court of Appeals for the District of Columbia Circuit has stated, "it has been traditionally required that all approved rates reflect to some degree the costs actually caused by the customer who must pay [for] them."27 Further, the courts have stated that "it has come to be well established that . . . rates should be based on the costs of providing service to the utility's customers."28 Compliance with this principle is evaluated by "comparing the costs assessed against a party to the burdens imposed or the benefits drawn by that party."29 However, the cost causation principle does not require a "ratemaking agency to allocate costs with exacting precision."30

Position of the Parties

20. During the hearing phase, Transco and the WSS Customer Group argued that Fortis and South Jersey should pay rates based on the full cost of the replenishment base gas, rather than lower rates based upon a roll-in of that cost with the historic cost of all base gas in the Washington Storage Field. Transco and WSS Customer Group asserted that Fortis and South Jersey should pay more because the succession of Fortis and South Jersey to the delivery entitlements of PSEG and South Jersey Gas caused the need for replenishment gas, whereas the service of all other WSS customers did not change.

21. Fortis and South Jersey contended that they should not be singled out and should pay rolled-in rates along with the other WSS customers because the purchase of the replacement base gas benefitted all customers. Fortis and South Jersey further argued that Transco never imposed such incremental rates for replacement base gas before, and instead charged such customers rolled-in rates whenever replacement gas was purchased.

22. Commission Staff asserted that the ALJ should approve its alternative, a part roll-in, part incremental rate for the WSS customers based on an estimate of the amount of replacement gas that Transco would need to inject into the field to support the existing customers' top gas deliverability needs if Fortis and South Jersey had not become replacement customers. Specifically, Commission Staff argued and presented evidence that 1.3 million Mcf of base gas should be attributed to the historic customers and should

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27 *KN Energy, Inc. v. FERC*, 968 F.2d 1295, 1300 (D.C. Cir. 1992) (KN Energy).
28 *Id.* at 1300.
29 *Midwest ISO Transmission Owners*, v. *FERC*, 373 F.3d 1361, 1369 (D.C. Cir. 2004) (Midwest ISO); *see also KN Energy*, 968 F.2d at 1300-1301.
30 *Midwest ISO*, 373 F.3d at 1369.

be paid for by them at Transco's replenishment cost while the remainder or approximately 2.1 million Dth, should be attributed and paid for by South Jersey and Fortis at Transco's replenishment cost. Commission Staff contended that its figures are based on Transco's own engineering calculation that approximately 1.3 million Mcf of gas would be needed to support the top gas deliverability requirements of the WSS/WSS-OA existing customers.

23. The ALJ ruled that since all base gas as a whole serves the top gas capacity and deliverability needs of all customers as a whole, it is impossible to attribute a portion of base gas to any customer in any way other than *pro rata* according to each customer's top gas volume. The ALJ stated that because no WSS/WSS-OA customer imposes more burdens or receives any more benefits from base gas than any other customer, the principle of cost causation does not support the imposition of an incremental price on new customers based solely on the injection or withdrawal of any given quantity of gas. Moreover, the ALJ contended that the base gas value of the remaining WSS/WSS-OA historic customers is not diminished by the establishment of rolled-in rates for all Washington Storage Field customers. The ALJ further opined that Transco replenished its base gas after PSEG and South Jersey Gas withdrew their respective base gas entitlements because Transco needed to support the top gas capacity and deliverability needs of all customers even if Fortis and South Jersey had not signed on as replacement shippers. Accordingly, the ALJ ruled that the principle of cost causation supports the imposition of rolled-in rates for the replenishment of the base gas for all customers receiving service from Transco's Washington Storage Field.

24. Transco filed an exception stating that the ALJ fails to abide by the principle of cost causation and relevant Commission precedent; therefore, the decision should be reversed by the Commission. Transco argues that the ALJ's mistaken conclusion is based on the use of the base gas in the operation of the Washington Storage Field, rather than the facts of this case. Transco asserts that the ALJ's analysis is inconsistent with previous determinations by the Commission that the integrated operation of a pipeline's facilities is not determinative of cost responsibility.31 Transco avows the ALJ errs by accepting the argument that there is at least a measurable portion of the replacement base gas purchased by Transco that, even in the absence of Fortis and South Jersey, would have been necessary to inject into the Washington Storage Field to service Transco's remaining customers. Specifically, Transco asserts that PSEG and South Jersey Gas exercised their option to purchase approximately 3.3 million Dth of gas, thereby necessitating Transco's purchase of 3.3 million Dth of replacement gas to accommodate their two replacement shippers, Fortis and South Jersey. Transco claims that Fortis and South Jersey contracted for the identical service terminated by PSEG and South Jersey Gas, respectively.

25. Transco also maintains that the relationship between the level of base gas and the deliverability capability at the storage field is not linear; its remaining customers could have elected to lower their top gas deliverability entitlements, which would have obviated the need to purchase the additional base gas.

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31 *See Transcontinental Gas Pipe Line Corp.*, 106 FERC ¶ 61,299 (2004).

26. The WSS Customer Group also filed an exception, stating the ALJ's analysis of Transco's incremental rate proposal is premised almost exclusively on the false proposition that because all base gas is fungible and supports deliverability on an undivided basis, all WSS-OA customers are similarly situated and must pay equal rates. The WSS Customer Group states that this proposition ignores that Fortis and South Jersey are not similarly situated to the historic customers because the historic customers provided the gas to supply the original base gas to the field by: (1) giving up delivery entitlements; and (2) paying the return and tax costs associated with the customer's allocable portion of that base gas for many years. Moreover, the WSS Customer Group contends that Fortis and South Jersey are replacement shippers and as such, the effect of the ALJ's decision is to shift the proportional share of base gas responsibility allocable to Fortis's and South Jersey's delivery entitlements to all WSS/WSS-OA customers. The WSS Customer Group maintains that this is not the correct application of the cost causation standard; indeed, it is precisely the opposite because the actual operational costs of storing gas for and delivering gas to Fortis and South Jersey are higher due to the higher costs of the replacement gas.

27. Commission Staff filed an exception to the ALJ's ruling on cost causation, arguing that the Judge incorrectly found that the cost causation principle does not support the imposition of any incremental price on new customers because no WSS-OA customer receives any more benefit from or imposes any more burden on base gas that any other customer. Commission Staff states this incorrect view led the ALJ to roll-in the base gas costs while citing no record evidence for his conclusion that new and existing storage customers receive the exact same benefit from all base gas injections. Staff argues that during the hearing it proposed an alternative split which more fairly allocated the costs of Transco's replenishment of the base gas at the Washington Storage Field. But, Staff contends the ALJ did not give sufficient consideration to its evidence, which is based on the correct application of the cost causation principle and a fair allocation of the base gas replenishment costs. Consequently, Commission Staff requests that the Commission reverse this decision and adopt its cost allocation proposal.

28. Fortis and South Jersey filed a brief opposing exceptions, arguing that the ALJ correctly determined, based on substantial evidence in the record, that Transco's proposed incremental rate for Fortis and South Jersey would amount to an unreasonable allocation of costs necessary to serve the whole. Fortis and South Jersey aver that the ALJ was not incorrect in rejecting Commission Staff's hybrid incremental/rolled-in proposal because the ALJ correctly opined in the Initial Decision that the base gas serves all customers of the Washington Storage Field and all customers must be responsible for its replenishment. Fortis and South Jersey also assert that whether their actions caused or necessitated Transco's base gas purchase is, as the ALJ found, irrelevant and therefore, the ALJ's rolled-in rate decision should be affirmed by the Commission.

29. Transco and WSS Customer Group filed separate briefs opposing exceptions, arguing that Commission Staff's partial rate roll-in would involve a disproportional reallocation of base gas responsibility among WSS-OA shippers on the basis of incomplete cost analysis and hypothetical facts. Specifically, Transco and the WSS

Customer Group state that Commission Staff's partial rolled-in rate proposal ignores Transco's statements that it cannot calculate the amount of base gas capacity needed to support WSS/WSS-OA deliverability until it knows what total top gas capacity and deliverability rights must be supported. Further, they state that staff's analysis is based on the premise that there were no replacement shippers and in this case, Fortis and South Jersey were replacement shippers. Transco and the WSS Customer Group also assert that staff's proposal wrongly assumes that the service of existing WSS/WSS-OA customers has improved as a result of the replenishment of base gas at the storage field. Finally, Transco and WSS Customer Group state the Commission should affirm the Initial Decision's rejection of the partial roll-in proposal for the same reason that it should reject the decision's adoption of a complete roll-in proposal because both proposals are not supported by the record of this proceeding.

Commission Decision

30. The Commission reverses the ALJ ruling that the principle of cost causation does not support the imposition of incremental rates for the replenishment of the base gas on new customers receiving service from Transco's Washington Storage Field. It appears the ALJ based his analysis on the premise that, since all base gas serves the top gas deliverability and capacity needs of all WSS/WSS-OA customers as a whole, it is not possible to attribute any portion of base gas to any customers other than *pro rata* according to each customer's top gas volume.32 Therefore, the ALJ's ruling is based on the use of base gas once it is injected in the storage field and not on the events that led to the purchase of the gas in the first instance. The fact that the interconnected nature of Transco's Washington Storage Field means that, once the replenishment base gas is in the ground, it supports the top gas needs of all customers is instructive information but not conclusive for the purpose of assigning cost responsibility. There are other factors that are more conclusive and lend support to Transco's incremental rate proposal.

31. In this case, PSEG and South Jersey Gas permanently exited Transco's Washington Storage Field with approximately 3.3 million Dth of base gas. South Jersey Gas and PSEG also contractually released their storage service rights at the field to Fortis and South Jersey. After Fortis and South Jersey became customers, Transco purchased approximately 3.3 million Dth of replacement base gas to serve their top gas capacity needs. This string of events is what caused Transco to purchase additional base gas; therefore, the imposition of costs on the new customers satisfies the principle of cost causation. If Fortis and South Jersey had not contracted for the exact same service as received by PSEG and South Jersey Gas, Transco and the existing members of the Washington Storage Field could have made other arrangements to serve their top gas deliverability entitlements by purchasing a smaller amount of gas or possibly reducing their top gas needs. However, this is not what happened. Fortis and South Jersey signed on as replacement shippers and as replacement shippers, it is not unreasonable that cost responsibility be assigned to them under the principle of cost causation.

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32 The Commission also notes that the relationship between the level of base gas and the deliverability capability of a storage field is not linear.

32. This position is further amplified by the Commission's directives to Transco in 1999 when the WSS-OA tariff was established. Specifically, the Commission opined that the termination of service of an historic shipper does not, by itself, require Transco to replenish base gas at the Washington Storage Field.[33] Instead, the Commission stated that Transco's obligation to inject base gas into the storage field only arises when Transco resells the top gas capacity entitlement to a different customer.[34] This language shows that the Commission considered the addition of new storage customers to be an important trigger leading to Transco's purchase of replacement base gas for the Washington Storage Field. Therefore, it is entirely reasonable that the new storage customers be considered the cost causers in this instance. Moreover, replenishment of the base gas does not change or improve the service received by the historic shippers because their service level will stay exactly the same as before.

33. It is true that Transco's bifurcated rate proposal gives the historic shippers who converted from Rate Schedule WSS the entire benefit of the lower cost of the base gas injected into the Washington Storage Field before the establishment of Rate Schedule WSS-OA. However, that is reasonable, because the historic shippers helped provide that base gas. As described above, during a period of severe gas shortages in the 1970s, the historic shippers agreed to a temporary reduction in their firm purchase entitlements in order to permit Transco to take gas, which the historic shippers would otherwise have been entitled to purchase, and to inject that gas into the Washington Storage Field as base gas. The historic shippers have also been paying Transco rates which reflect a return on the cost of that base gas, together with associated taxes, ever since it was injected into the Washington Storage Field. By contrast, the new shippers did nothing to help Transco obtain the lower cost base gas previously injected into Washington Storage Field, nor have they been paying Transco rates reflecting a return on the cost of that base gas. While Rate Schedule WSS required the historic shippers to provide the base gas needed to serve them, Rate Schedule WSS-OA requires Transco to supply the base gas required to serve new shippers. In these circumstances, Transco has reasonably proposed to require the new shippers to pay rates reflecting the cost of the base gas Transco is required to supply to serve those shippers.

34. With regard to Commission Staff's proposal to allocate the costs of the new base gas between Fortis and South Jersey and the historic WSS/WSS-OA customers, the 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

33 *See* case cited *supra* note 9.
34 *Id.*

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.

Discrimination

35. Pursuant to section 4 of the NGA, pipeline rates must not only be just and reasonable but also not unduly discriminatory.35 A nondiscriminatory rate, however, does not mean that a rate must be the same for all customers or all customer classes. In fact, the Commission and courts have stated that a "mere difference [in rates], however, is not discriminatory; there must also be a demonstration that the two classes of customers are similarly situated for purposes of the rate." 36

Position of the Parties

36. During the hearing, Transco and WSS Customer Group argued that Fortis and South Jersey were incremental shippers for whom Transco had to purchase base gas to provide service and that they were not similarly situated to the historic, non-incremental WSS customers for whom Transco did not have to incur these costs. Transco and WSS Customer Group further asserted that an incremental rate for the new shippers was not discriminatory because they are not equal to historic shippers who have contributed in the past toward the operation and maintenance of the Washington Storage Field. Commission Staff argued that an incremental rate based on the amount of gas needed to support the services of Fortis and South Jersey at the Washington Storage Field is not discriminatory because new customers have a different status from the historic shippers.

37. Fortis and South Jersey disputed the characterization of their uniqueness as customers by stating that they are "replacement" shippers, not "incremental" shippers as claimed by the other parties to the proceeding. Fortis and South Jersey also argued that Transco never attempted to impose incremental rates for replacement base gas on its replacement customers before this proceeding.

38. In the Initial Decision, the ALJ ruled that Transco's bifurcated rate proposal violated section 4 of the NGA because it was unlawfully discriminatory. Specifically, the ALJ opined that Fortis and South Jersey should be treated no differently than PSEG and South Jersey Gas because they "stepped into the shoes" of their predecessors. The ALJ contended that merely having replaced PSEG and South Jersey Gas in the same capacity is no rational basis for making Fortis and South Jersey pay more than other customers for receiving the exact same service from the exact same storage field. The ALJ asserted that this lack of a rational basis is underscored by the treatment of another replacement storage customer in the same position, Merrill Lynch. The ALJ argued that Merrill Lynch replaced Columbia VA upon its termination of WSS service and release of WSS storage capacity. The ALJ asserted that in its initial August 31, 2006 rate increase filing, Transco

35 15 U.S.C. § 717c(b) (2008).

36 *Tennessee Gas Pipeline Co. v. FERC*, 860 F.2d 446,452, n.9 (D.C. Cir. 1988); *See also Tennessee Gas Pipeline Co.*, 80 FERC ¶ 61,070, at 61,245 (1997).

proposed bifurcated WSS-OA rates to recover the cost of replenishment base gas attributable to Merrill Lynch; however, in the settlement agreement, Transco accepted and agreed to rolled-in rate treatment for Merrill Lynch. While the Commission does not consider settlement agreements precedential, the ALJ stated that the treatment of Merrill Lynch is illustrative of the fact that replacement shippers who are similarly situated to Fortis and South Jersey are subject to differing treatment by Transco under its incremental rate proposal.

39. In addition, the ALJ contended that the potential for widely differing treatment of similarly situated customers is particularly true given Transco's proposed amendment to section 8.3 of the WSS-OA tariff, which permits Transco to make a limited section 4 rate filing to recover from new buyers any increase in the costs of service attributable to the replenishment of base gas to service the new buyers. The ALJ reasoned that the impact of the language would mean that Transco could arbitrarily choose to impose incremental rates on some new buyers and not others.

40. Finally, the ALJ asserted that the fact that Fortis and South Jersey did not contribute to past costs of base gas needed to operate the Washington Storage Field is equally no distinction justifying differential treatment because Fortis's and South Jersey's predecessors did contribute to these costs. The ALJ opined that Fortis and South Jersey were also at a competitive disadvantage to the historic WSS/WSS-OA customers in that they do not enjoy the right to purchase base gas at historic cost. The ALJ reasoned that this disadvantage does not justify making Fortis and South Jersey even worse off by granting Transco's incremental rate proposal.

41. Transco filed an exception arguing that the ALJ's discrimination analysis is fatally flawed, as it disregards the factual record in this proceeding and well-established Commission precedent. Transco states it is undisputed that Fortis and South Jersey are replacement shippers for whom Transco had to purchase replacement base gas in order to provide their service. As a result, Transco asserts there can be no doubt that Fortis and South Jersey are not similarly situated to the non-incremental WSS customers, for whom Transco did not have to incur the costs for replacement base gas. Transco alleges the ALJ's oversimplified "stepping into the shoes" argument is insufficient to establish that Fortis and South Jersey are similarly situated to Transco's historic customers.

42. Transco argues the ALJ's conclusion that the fact Fortis and South Jersey did not contribute to past costs of base gas is not a basis for different rate treatment is inconsistent with Commission and judicial precedent. In particular, Transco states the Commission and federal courts have previously determined that there is no undue discrimination where: 1) rate differentials were the result of private contracts, where the complaining party chose not to execute the contracts;37 2) a rate disparity was the result of a settlement agreement, even though there was no cost basis;38 3) a complainant

37 *See Maine Pub. Serv. Co. v. FERC*, 964 F.2d 5 (D.C. Cir. 1992), *on remand sub nom. Central Maine Power Co.*, 60 FERC ¶ 61,285 (1992).
38 *See Cities*, 727 F.2d 1131.

rejected an offer to enter into a fixed-rate contract that other customers had accepted;39 and 4) substantially lower rates were given to help retain customers that represent over 90 percent of a utility's annual revenue, but were not offered to another class of customers.40

43. Transco claims the ALJ also errs in his suggestion that Transco's proposed treatment of the cost of base gas purchased to replace gas sold to Columbia VA undermines its incremental rate proposal to Fortis and South Jersey. Transco avows the ALJ is trying to use a decision reached regarding Merrill Lynch as part of a settlement agreement as precedent when this is improper. Transco states that it initially proposed the same rate treatment for all three replacement shippers; however, prior to the hearing and as part of the settlement, all parties agreed to rolled-in rate treatment for the base gas used for service to Merrill Lynch. Therefore, Transco contends the ALJ is incorrect in his suggestion that the settlement agreement's proposal with regard to Merrill Lynch's rates is somehow illustrative and provides evidence that Transco's interim rate proposal is unduly discriminatory.

44. Finally, Transco claims the ALJ's attempts to demonstrate that the proposed tariff language to allow incremental pricing of the costs of replacement base gas in the future has the potential for arbitrarily different treatment of customers. Transco contends that the ALJ's assertion is based upon pure speculation, and bears no relevance to whether Fortis and South Jersey are similarly situated to the existing WSS-OA customers. Further, Transco states that it has a *Memphis* clause41 in its tariff which permits the pipeline to propose unilateral rate changes, which must be deemed just and reasonable by the Commission.

45. WSS Customer Group filed an exception to the decision on discrimination arguing that the ALJ overly relies on the significance of the operational physics of the Washington Storage Field without regard to cost causation or other ratemaking principles and the utilization of a hypothetical set of facts regarding service to WSS-OA customers. WSS Customer Group argues that the ALJ's decision fails to account for the underlying facts and policies supporting Transco's NGA section 4 bifurcated rate proposals which demonstrate that it is both just and reasonable and not unduly discriminatory. WSS Customer Group states these facts include that Transco's base gas purchases at issue in this matter were directly and proximately caused by Fortis and South Jersey. WSS Customer Group further maintains that the bifurcated rate proposal is completely consistent with cost causation ratemaking principles. Finally, WSS Customer Group avers that Transco's incremental rate proposal is not unduly discriminatory because Fortis and South Jersey are similarly situated to Transco's historic WSS-OA shippers.

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39 *See City of Frankfort v. FERC*, 678 F.2d 699, 707 (7th Cir. 1982).
40 *See St. Michaels Utils. Comm'n. v. FPC*, 377 F.2d 912, 916 (4th Cir. 1967).
41 A "*Memphis* clause," is named for *United Gas Pipe Line Co. v. Memphis Light, Gas and Water Div.*, 358 U.S. 103 (1958). The *Memphis* clause specified that "rates, charges, classifications and service" were subject to FERC regulation, and allows Transco to request and implement rate changes.

46. WSS Customer Group also alleges that the ALJ spends essentially no time discussing the justness and reasonableness of the Fortis and South Jersey's uniform rate proposal in the Initial Decision. Instead, WSS Customer Group asserts the ALJ treats uniform rates as the inverse of bifurcated rates and apparently concludes that if bifurcated rates are unjust and unreasonable, then uniform rates must be just and reasonable. WSS Customer Group further argues that uniform rates in this regard are unjust and unreasonable because they: 1) send the wrong price signals to the market for storage service; and 2) cause historic WSS-OA shippers to subsidize the costs of the new shippers. Finally, WSS Customer Group states that as sophisticated customers, Fortis and South Jersey knew or should have known that they would be required to bear the costs related to the replenishment of base gas at the Washington Storage Field.

47. Commission Staff filed an exception to the ruling, asserting that the ALJ incorrectly found that bifurcated rates are unduly discriminatory. Commission Staff states that contrary to the ALJ's finding, Transco did have to purchase additional base gas which, in part, was specifically required to provide storage service to Fortis and South Jersey. Consequently, Commission Staff argues that Fortis and South Jersey are not similarly situated to the existing WSS/WSS-OA customers. Commission Staff contends that Fortis and South Jersey are new customers on the system and they impose additional base gas costs on Transco over and above the base gas requirements of existing customers. Commission Staff avers that it is simply wrong to hold that Fortis and South Jersey stand in the shoes of their predecessor shippers, PSEG and South Jersey Gas, when these shippers purchased back the historic base gas used to support their service upon exiting the system.

48. Furthermore, Commission Staff contends that the Merrill Lynch settlement is not precedent and certainly should not be cited as illustrative of undue discrimination as the Judge did. Commission Staff states that a settlement represents bargained for exchanges in which Merrill Lynch presumably gave up something of value to get uniform rate treatment. Moreover, Commission Staff states that Merrill Lynch is a significantly smaller storage customer than Fortis and South Jersey because Merrill Lynch only has 48,227 Dth of base gas attributable to it.

49. Fortis and South Jersey filed a brief opposing exceptions, arguing that the ALJ did not err in finding bifurcated rates unduly discriminatory and prejudicial. Fortis and South Jersey state that Transco still fails to justify why it is just and reasonable to treat similarly situated WSS customers differently when, in fact, Transco has never before done so with any other WSS or WSS-OA customer. Fortis and South Jersey also reiterated their arguments from the hearing regarding why uniform rates for all customers at the Washington Storage Field are just, reasonable, and nondiscriminatory. Therefore, Fortis and South Jersey urge the Commission to affirm the decision of the ALJ without modification.

Commission Decision

50. The Commission reverses the ALJ's ruling that Transco's incremental rate proposal violated section 4 of the NGA because it was unlawfully discriminatory. The Commission determines that Transco's proposal to charge different rates to Fortis, South Jersey, and other new shippers is not unduly discriminatory because Fortis and South Jersey are not similarly situated to historic shippers of the Washington Storage Field. The Commission considers the rate differential reasonable, because the historic shippers were required to provide the base gas used to serve them, whereas the new shippers do not provide base gas. As described above, during a period of severe gas shortages in the 1970s, the historic shippers agreed to a temporary reduction in their firm purchase entitlements in order to permit Transco to take gas, which the historic shippers would otherwise have been entitled to purchase, and to inject that gas into the Washington Storage Field as base gas. Moreover, until the historic shippers' conversion to open access service, section 9.1 of Rate Schedule WSS provided:

> The Base Gas shall be provided by Buyer from quantities otherwise available under Seller's CD, G, and OG [sales] rate schedules. Each Buyer shall be informed of the quantity of Base Gas to be supplied by such Buyer for each increment of Storage Quantity.

Similarly, section 9.5 of Rate Schedule WSS gave the historic shippers a right to repurchase the base gas they had supplied, if they terminated their WSS service. In recognition of the fact the historic shippers had supplied base gas, the Commission approved Transco's proposal, when it implemented Rate Schedule WSS-OA to grandfather the historic shippers' right to repurchase their base gas, but not to give any similar right to new shippers under that rate schedule.

51. The Commission further disagrees with the ALJ's assessment that Fortis and South Jersey should not be charged a bifurcated rate because they "stepped into the shoes" of their predecessors, PSEG and South Jersey Gas.[42] Transco's WSS-OA tariff is already designed so that historic shippers and replacement shippers are not similarly situated. Historic shippers provided their own base gas and have grandfathered purchase rights enshrined in section 8.2 of Rate Schedule WSS-OA. By contrast, section 8.1 of that rate schedule requires Transco to supply the base gas needed to serve new shippers, and does not give new shippers any right to repurchase base gas when they exit the system. It was this provision that allowed Fortis and South Jersey's predecessors to exit the system and purchase base gas at historic cost. As replacement shippers, Fortis and South Jersey do not have this right.

52. With regard to the ALJ's use of Merrill Lynch receiving the same rates as the historic shipper as illustrative of a lack of rational basis for treating Fortis and South Jersey differently from other WSS-OA storage customers, the Commission does not believe that this argument has merit. First, Transco proposed bifurcated rate treatment for

42 The Commission agrees with Commission Staff's assessment that it was not possible for Fortis and South Jersey to step into the shoes of their predecessors when these historic shippers purchased back the base gas used to support their service when they permanently left the system.

all the base gas purchased on behalf of the replacement shippers, including the base gas attributable to Merrill Lynch. It was only during the settlement process that the parties agreed to rolled-in treatment for the costs of replacement base gas for Merrill Lynch. The Commission does not consider it wise to use a term bargained for in a settlement agreement in which parties presumably gave up some rights to get others as evidence in a litigated proceeding because settlements are not precedential in any way.43

53. Finally, the Commission is not persuaded that Transco's proposed amendment to section 8.3 of the WSS-OA tariff will have the potential for widely different treatment of similarly situated customers. Transco's proposed amendment merely states that the pipeline will have the ability to make a limited section 4 rate filing to recover from new shippers any increase in the cost of service attributable to the replenishment of base gas to serve them. This amendment actually treats similarly situated replacement shippers exactly the same. The amendment subjects all new replacement shippers to the same requirements as other replacement shippers. As stated previously, replacement shippers and historic shippers are not similarly situated already under section 8.2 of the WSS-OA tariff and this provision helps to clarify that difference with regard to the different rate treatment.

54. Accordingly, the Commission determines that Transco's proposed bifurcated rate treatment for historic shippers and new shippers, including Fortis and South Jersey is just and reasonable and not unduly discriminatory.

1999 Pricing Policy Statement

55. During the hearing, the parties referred to the Commission's *Certification of New Interstate Natural Gas Pipeline Facilities* (*1999 Pricing Policy Statement*),44 including its three-part test to support their respective positions. The parties contended that the decision, while not directly on point, contains useful guidance for this proceeding. Specifically, the *1999 Pricing Policy Statement* was developed by the Commission to assist in determining whether natural gas pipeline expansion projects should be paid for by all gas customers or only specific gas customers using the service. The policy statement not only covers capital costs of expansion projects but also operational costs of projects; in addition, the *1999 Pricing Policy Statement* seeks to deter the subsidization by existing customers of those costs caused by new customers. As a result, the decision presumptively favors incremental rates over rolled-in rates to protect historic customers from subsidizing new customers. This presumption, like most others, is rebuttable and includes a three-part test which, if satisfied, leans toward rolled-in rates: 1) whether the new facilities are needed to improve service to existing customers; 2) whether the increased rates are related to improvements in service; and 3) whether raising rates to existing customers would not constitute a subsidy to new incremental customers.

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43 *See, e.g., Transcontinental Gas Pipe Line Corp.*, 122 FERC ¶ 61,213, at P 11 (2008) (Commission approval of the Settlement Agreement does not constitute approval of, or precedent regarding, any principle or issue in this proceeding.).

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

Position of the Parties

56. The parties differed over the first factor: whether the addition of replenishment base gas after PSEG and South Jersey Gas exercised their base gas purchase options constitutes an "improvement in service" to the existing customers such that rolled-in rates would be more appropriate than incremental rates. Fortis and South Jersey argued that the replenishment of base gas improved service to all customers because if the gas was not replenished, service to all customers would have been diminished. To Transco and the WSS Customer Group, the replenishment gas was not an improvement but merely a continuation of the existing service. Commission Staff, on the other hand, put forth a "middle ground" argument stating that a portion, but not all of, the base gas was needed to prevent a diminution in service for historic WSS-OA customers.

57. The ALJ ruled that, to the extent the *1999 Pricing Policy Statement* applies at all, it supports the imposition of rolled-in rate treatment for the replenishment of base gas at the Washington Storage Field.

58. Transco filed an exception to the ALJ's ruling, stating the Initial Decision's conclusion that *1999 Pricing Policy Statement* is of limited value because the Washington Storage Field serves all customers equally and that if anything, the decision militates toward rolled-in rates rests upon several assumptions contradicted by Commission precedent. WSS Customer Group filed an exception arguing that the ALJ's ruling the Commission's *1999 Pricing Policy Statement* supports rolled-in rates is seriously flawed.

59. Commission Staff filed an exception to the ruling stating the ALJ erroneously found that the *1999 Pricing Policy Statement*, to the extent it applies at all, favors rolled-in rates given the facts in this case, particularly the fact that all base gas supports all top gas. Commission Staff avers that the ALJ's conclusion that the first prong of the *1999 Pricing Policy Statement* is inapplicable to the facts of this proceeding is contrary to the evidence presented by Staff.

60. Fortis and South Jersey filed a brief of opposing exceptions arguing the ALJ appropriately found, to the extent the *1999 Pricing Policy Statement* applies at all, the decision weighs against Transco's incremental pricing proposal. Accordingly, Fortis and South Jersey argue the Commission should reject the arguments advanced by Transco, Commission Staff and the WSS Customer because such arguments have already been weighed by the ALJ and found deficient.

Commission Decision

61. The Commission determines that the *1999 Pricing Policy Statement* is inapplicable to the facts of this proceeding. Therefore, we reverse the ALJ's ruling that the *1999 Pricing Policy Statement* weighs against Transco's showing that its bifurcated rate proposal is just and reasonable. As stated previously, the purpose of the *1999 Pricing Policy Statement* was to provide the natural gas industry with guidance as to the analytical framework the Commission will use to evaluate proposals for certificating new construction.45 The *1999 Pricing Policy Statement* established criteria for determining whether there is a need for a proposed project and whether the proposed project will serve the public interest.46 It explains that in deciding whether to authorize the construction of major new pipeline facilities, the Commission balances the public benefits against the potential adverse consequences. The goal of the Commission is to give appropriate consideration to the enhancement of competitive transportation alternatives, the possibility of overbuilding, subsidization by existing customers, the applicant's responsibility for unsubscribed capacity, the avoidance of unnecessary disruptions of the environment, and the unneeded exercise of eminent domain in evaluating new pipeline construction.47

62. The *1999 Pricing Policy Statement* was never intended to be used as a tool to evaluate the proper rate treatment of a preexisting facility that has not been expanded or upgraded to provide service enhancements. In this case, there was no "construction" or "expansion" but only the replenishment of base gas at a preexisting facility. Transco's actions do not fit under the parameters of the *1999 Pricing Policy Statement* and the Commission declines to extend the application of the policy to these facts.

Scope of the Hearing

> **Issue B:** *Whether Fortis and South Jersey's have established that the existing base gas purchase option under section 8.2 of Transco's Rate Schedule WSS-OA is unjust and unreasonable.*
>
> **Issue C:** *In the event that Fortis/South Jersey have carried their burden of proof regarding Issue B above, whether Fortis/South Jersey have demonstrated that their alternative proposal either to eliminate the existing base gas purchase options under Rate Schedule WSS-OA or to make the purchase gas options exercisable only if Transco has proposed and the Commission has approved a reduction to Transco's WSS-OA capacity is just and reasonable.*

63. Before addressing the merits of Issues B and C, the Commission must determine whether these issues should have been addressed by the ALJ during the proceeding or

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45 *1999 Pricing Policy Statement*, 92 FERC ¶ 61,389 (2000).
46 *See Vector Pipeline, LP*, 117 FERC ¶ 61,018, at P 9 (2006).
47 *Id.*

whether the issues where barred from consideration under the terms of the parties' settlement.

64. As an initial matter, the Commission notes that settlement agreements are contracts and the Commission must abide by the unambiguously expressed intent of the parties to the settlement.48 A contract is considered ambiguous if it is "reasonably susceptible of different constructions or interpretations"49 and not simply because parties to the contract later on disagree on the provisions.50

Position of the Parties

65. During the hearing, Transco, WSS Customer Group and NYPSC argued that Article VII of the settlement agreement reserved a single issue for hearing and that this precludes consideration of other issues. WSS Customer Group averred that a resolution of Fortis and South Jersey's section 5 proposals in this proceeding would suggest that issues reserved in a settlement agreement for subsequent disposition are not binding nor limiting on the parties to settlement. NYPSC asserted in this regard that the settlement agreement is a contract and consequently, the Commission is required to give effect to the provisions of FERC-approved settlement agreements and to the parties' unambiguously expressed intent in such provisions. NYPSC also advised the ALJ to note the absence of express language in Article VII of the settlement agreement reserving the purchase option in the tariff as an issue for litigation. Fortis and South Jersey argued that the above issues are properly before the ALJ and should be considered during the hearing because the historic purchase provision has already inflated Transco's storage rates and if left in place, the provision might result in higher rates for WSS storage customers. Commission Staff did not take a position on the above two issues and did not comment on them during the hearing.

66. In the Initial Decision, the ALJ opined that, because a settlement agreement is a contract, he was obliged to construe the agreement "as a whole" giving effect to all of its terms.51 Accordingly, the ALJ held that other provisions of the settlement agreement besides the reservations clause in Article VII make clear that other issues may be addressed in this proceeding. The ALJ noted that Article X of the settlement agreement, entitled "Reservations," states, in pertinent part:

> Neither Transco, the Commission, its Staff, nor any other party or person shall be prejudiced or bound hereby in any proceeding except as specifically provided herein. Neither Transco, the Commission, its Staff, nor any other party or person shall be deemed to have approved, accepted, agreed or consented to any concept, theory, or principle underlying or supposed to underlie any of the matters provided for herein.

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48 *See Ameren Services Company v. FERC*, 330 F.3d 494, 498 (D.C. Cir. 2003) (Ameren).
49 *Consolidated Gas Transmission Corp. v. FERC*, 771 F.2d 1536, 1544 (D.C. Cir. 1985); *see also Lee v. Flintkote Co.*, 593 F.2d 1275, 1282 (D.C. Cir. 1979).
50 *See WMATA v. Mergentime Corp.*, 626 F.2d 959, 961 (D.C. Cir. 1980).
51 *See Ameren,* 330 F.3d at 498.

> . . . [E]xcept as expressly provided by this Agreement, the other parties hereto [other than Transco] preserve their rights under the NGA.
>
> Except as otherwise provided by this Agreement, nothing herein is intended to limit, supersede, or otherwise affect the resolution of issues not expressly resolved hereby.

Thus, the ALJ opined that Article X of the settlement agreement proves that the parties explicitly asserted their right to have the Commission resolve the issues put forth by Fortis and South Jersey.

67. Moreover, the ALJ asserted the Commission has consistently held that presiding ALJs in hearings regarding proposed rates may incorporate issues that they find are related to the justness and reasonableness of the proposed rates. The ALJ cited the decision in *Cincinnati Gas and Electric Company* (*Cincinnati Gas*), where he states the Commission concluded that an ALJ could consider the prudence of a utility's investment in a generating station where the issue explicitly set for hearing was the justness and reasonableness of the utility's proposed rate increases.52 The ALJ asserted the Commission in Cincinnati Gas concluded that the recovery of costs associated with the generating station related to the proposed rate increase in that case, adding that the parties had been on notice that intervenors intend to address the prudence of the costs of the generating station.53 In that same vein, the ALJ cited *Long Island Lighting Company*, as another example of a case where the Commission found that a party could raise issues related to the terms and conditions of a Power Supply Agreement (PSA) even where the Commission did not explicitly state that such factors would be at issue in the order setting the hearing on the PSA.54

68. The ALJ asserted that hearing these issues would not interfere with the negotiation of settlements by requiring participants to formulate exhaustive lists of the issues that are precluded from further litigation. The ALJ opined that parties negotiating future settlements who wish to avoid this possibility need only say so expressly and avoid such open-ended language. Instead, the ALJ argued that it is the open-ended wording of the provisions of Article X of the agreement itself that has left open the possibility of litigating other issues here. Hence, the ALJ concluded that it would be grossly restrictive to interpret the settlement agreement as a whole to preclude an examination of the purchase option itself for justness and reasonableness, along with the justness and reasonableness of how the purchase option is paid for.

69. Transco excepts to the ALJ's consideration of the NGA section 5 proposal by Fortis and South Jersey to modify or remove the base gas purchase option for original WSS shippers from Transco's tariff. Transco states that such consideration is barred by the explicit terms of Article VII, Section A, of the parties' settlement agreement. Moreover, Transco contends that the settlement agreement expressly states that any

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52 *Citing Cincinnati Gas and Electric Co.*, 59 FERC ¶ 61,072, at 61,292 (1992) (*Cincinnati Gas*).
53 *Id.*
54 *See Long Island Lighting Company,* 83 FERC ¶ 61,076 (1998).

proposed change to it may only be considered under the "public interest standard" of the *Mobile-Sierra* doctrine,55 any modification to the agreement which allows consideration of Fortis and South Jersey's tariff revision proposal requires a demonstration that the challenged term "seriously harms the public interest." Transco states, like Fortis and South Jersey during the trial phase, the ALJ does not even attempt to demonstrate that its expansion of the settlement agreement satisfies this standard.

70. Transco argues that the ALJ incorrectly attempts to justify his consideration of the NGA section 5 challenge based on an improper interpretation of Article X, which is entitled "Reservations." Transco avers the language in Article X of the agreement clearly indicates that the parties intended that Transco's bifurcated rate proposal would be the sole issue reserved for hearing. Transco states the language in Article X combined with the fact that Article VII expressly provides that it reserves for litigation only Transco's bifurcated rate proposal proves that the parties agreed that no other issues would be litigated during the hearing. Transco also contends that if the parties had intended to litigate other issues as part of the proceeding, there would have been no need for Article X's restriction of the parties' rights or Article VII's express delineation of the issue to be litigated at trial.

71. Lastly, Transco claims that an affirmation of the ALJ's interpretation of Article X would deter future litigants from entering into partial settlements. Transco avers that contrary to the ALJ's proclamations otherwise, future litigants would be required to submit exhaustive lists of issues that are precluded from litigation, notwithstanding the fact that they included language identifying the only issues they had reserved for litigation. Accordingly, Transco states the Commission should overturn, as outside the scope of the single issue reserved for litigation by the settlement agreement, the portion of the Initial Decision considering Fortis and South Jersey's section 5 NGA proposal.

72. WSS Customer Group filed an exception to the ALJ's decision allowing Fortis and South Jersey's section 5 proposal to be litigated stating that neither the settlement nor the certification of the settlement contemplate the hearing of additional or supplementary section 5 issues in this proceeding. WSS Customer Group asserts that there is simply no evidence that the ability of shippers to raise section 5 issues in this proceeding was reserved as part of the settlement in this case.

73. WSS Customer Group states that Fortis and South Jersey had every opportunity to formulate section 5 issues in the prior proceeding and to ensure that these issues were reserved for hearing in this docket. WSS Customer Group argues that nowhere in the record is there evidence that they preserved their section 5 rights as part of the settlement process. WSS Customer Group asserts that in as much as the stated purpose of the settlement agreement is to resolve all issues in Transco's rate case except for the sole reserved one, it is highly inappropriate to permit additional issues to be litigated at the last minute.

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55 *See FPC v. Sierra Pac. Power Co.*, 350 U.S. 348, 355 (1956); *United Gas Pipe Line Co.* v. *Mobile Gas Serv. Co.*, 350 U.S. 332 (1956).

74. Commission Staff excepts to the ALJ's interpretation of the settlement agreement stating that the parties to the settlement never intended that the boilerplate language of Article X would nullify the settlement provision in Article VII identifying the limited issues to be litigated. Commission Staff argues that most telling of this fact is that no party argued to the judge the settlement agreement should be read in such a manner because all parties intended to be bound by the settlement. Moreover, Commission Staff claims that the Reservations Article in the settlement is generally intended to address the parties' rights in future cases, not the present one. Consequently, Commission Staff alleges that the ALJ's view of the settlement is erroneous and Article X cannot be interpreted to allow any issue to be raised in this proceeding.

75. Fortis and South Jersey filed a brief of opposing exceptions alleging that the ALJ did not err in considering their section 5 challenge to eliminate prospectively the base gas purchase rights contained in section 8.2 of Transco's WSS-OA tariff. Fortis and South Jersey argue that the ALJ considered Transco's contention that the settlement foreclosed discussion of Fortis and South Jersey's section 5 proposal and each time the Judge rightly rejected that contention. Fortis and South Jersey avow that the settlement simply did not foreclose consideration of their challenge and no party has now or ever cited to a specific provision in the agreement that actually prohibits Fortis and South Jersey from raising the section 5 challenge.

Commission Decision

76. The Commission reverses the ALJ's ruling that Article X of the Settlement Agreement, entitled "Reservations" makes unambiguously clear that the parties reserved their right to have other issues addressed in the proceeding. The Commission further determines that Issues B and C were not properly before the ALJ as they were outside the scope of the issue reserved for consideration by the parties pursuant to the Settlement Agreement and therefore, they should not have been litigated during hearing.

77. A review of Article VII of the Settlement Agreement shows that the parties intended to reserve only one issue for litigation before the Commission. Specifically, the settling parties agreed in Article VII:

> **Section A:** **Reserved Issue** – The parties have agreed to reserve for resolution pursuant to hearing or further settlement the issue of Transco's proposal under NGA section 4 to establish incremental rates under Rate Schedule WSS-OA to Cinergy Marketing & Trading (and its successor Fortis Energy Marketing & Trading) and South Jersey Resources Group, LLC to recover Transco's cost of purchasing replenishment base gas.

This language only reserves the issue of the reasonableness of Transco's proposal under NGA section 4 concerning its recovery of the cost of purchasing replenishment base. It makes no reference to the separate issue of whether the historic customers' existing right to purchase base gas should be modified under NGA section 5. Consistent with this fact,

the ALJ stated, in his certification of the settlement to the Commission, that the parties have reserved only one issue for litigation before the Commission.

78. Although the ALJ relies on the reservations clause in Article X of the agreement as proof that the parties explicitly asserted their right to have the Commission resolve the issues put forth by Fortis and South Jersey, the Commission believes that the parties did not rely on such boilerplate language to nullify the explicit provision of Article VII binding them to litigate only one issue. The Commission notes that no party, not even Fortis and South Jersey, raised this as an argument to the ALJ in support of the consideration of Issues B and C. Moreover, this reservations clause states the parties shall not be "prejudiced or bound hereby in any proceeding except as specifically provided herein." The language of this phrase shows that the parties intended to bind themselves to the agreements made in the context of this settlement in this proceeding but not in any other proceeding. This language does not, as the ALJ suggests, show that the parties did not intend to be bound by Article VII of the settlement.

79. Finally, the ALJ cites several cases in which the Commission allowed the consideration of other issues in addition to the issues identified at the beginning of the hearing as evidence that any issue connected to the main issue may be raised and considered at trial. The Commission believes that the cases the ALJ cited are distinguishable from the facts of this proceeding. The cases cited by the ALJ were not ones in which all the parties agreed and stipulated to the sole issue for consideration in a settlement agreement that was later approved by the Commission as being in the public interest.56 Because the parties had settled on a single issue for trial and the Commission later approved this settlement, it is up to the Commission to honor the terms of the agreement as it would any contract.

ACTIVITIES:

The Commission orders:

Opinion No. 507 ORDER ON INITIAL DECISION

The Initial Decision is reversed as discussed above.

January 27, 2009 - Philadelphia Gas Works ("PGW") filed a motion to intervene to protect its interest in this case.

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56 *Transco*, 122 FERC ¶ 61,213 at P 11.

Docket RP10-310-000
Transcontinental Gas Pipe Line Company, LLC
Rate Schedules FDLS and IDLS

DATE FILED: January 13, 2010

BACKGROUND:

On January 13, 2010, Transcontinental Gas Pipe Line Company, LLC (Transco) filed revised tariff sheets57 to make miscellaneous revisions to its Rate Schedules FDLS and IDLS. Transco states that it is removing the language describing Transco's obligation to provide best available operating data and to replace it with a reference to section 29 of Transco's General Terms and Conditions (GT&C) titled "Best Available Operational Data." Transco states that the proposed revisions clarify that section 29 of the GT&C is the governing provision for best available operating data and removes redundant language contained in the individual Rate Schedules. The revised tariff sheets are accepted effective February 13, 2010, as proposed.

ACTIVITIES:

January 25, 2010 - Philadelphia Gas Works ("PGW") filed a motion to intervene to protect its interest in this case.

57 First Revised Sheet Nos. 225, 230, and 231 to FERC Gas Tariff, Fourth Revised Volume No. 1.

Docket RP10-326-000
Transcontinental Gas Pipe Line Company, LLC
Transportation Rate Changes – X-28

DATE FILED: January 20, 2010

BACKGROUND:

On January 20, 2010, Transcontinental Gas Pipe Line Company, LLC (Transco) filed a revised tariff sheet58 pursuant to section 26 of its General Terms and Conditions of its FERC Gas Tariff to track changes in rates attributable to storage service purchased from Texas Eastern Transmission, LP (Texas Eastern) under its Rate Schedule X-28. The costs of the storage service purchased from Texas Eastern are included in the rates and charges payable under Transco's Rate Schedule S-2. The Commission issued a letter order on January 13, 2010 accepting the revised Texas Eastern Electric Power Cost Adjustment under Texas Eastern's Rate Schedule X-28. The revised tariff sheet satisfactorily complies with Transco's tariff and is accepted effective February 1, 2010, as proposed.

ACTIVITIES:

February 1, 2010 - Philadelphia Gas Works ("PGW") filed a motion to intervene to protect its interest in this case.

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58 Sixth Revised Sheet No. 24 to FERC Gas Tariff, Fourth Revised Volume No. 1.

Docket RP10-356-000
Transcontinental Gas Pipe Line Company, LLC
Rate Schedule Parking and Loaning Service (PAL)

DATE FILED: February 1, 2010

BACKGROUND:

On February 1, 2010, Transcontinental Gas Pipe Line Company, LLC (Transco) filed revised tariff sheets[59] to add provisions to Rate Schedule PAL, Parking and Loaning Service, which allows Transco to allocate or curtail PAL service based on the highest revenue calculation. Specifically, Transco proposes to revise the Allocation of Service under PAL to provide for the allocation or curtailment of PAL service among customers based on the highest revenue calculation, with revenue calculated as the Daily Parking (or Loaning) Charge multiplied by the Maximum Parked (or Loaned) Contract Quantity multiplied by the number of days in the term. In addition, Transco is proposing to make other minor tariff revisions related to PAL service. Transco's revised tariff sheets are accepted effective March 3, 2010, as proposed.

ACTIVITIES:

February 16, 2010 - Philadelphia Gas Works ("PGW") filed a motion to intervene to protect its interest in this case.

59 First Revised Sheet No. 310 and Second Revised Sheet Nos. 311, 585 and 589 to FERC Gas Tariff, Fourth Revised Volume No. 1.

Docket RP10-375-000
Texas Eastern Transmission LP
Order No. 714 – Electronic Tariff Filing Requirements

DATE FILED: February 12, 2010

BACKGROUND:

On February 12, 2010, Texas Eastern Transmission, LP (Texas Eastern) filed revised tariff sheets60 to make miscellaneous changes to various sections of its tariffs in order to prepare for the implementation of the Commission's electronic tariff filing requirements (eTariff), as set forth in Order No. 714,61 and the conversion of the Texas Eastern Tariff from a sheet-based to a section-based tariff. The tariff sheets listed in the Appendix are accepted effective March 14, 2010, as proposed.

ACTIVITIES:

February 24, 2010 - Philadelphia Gas Works ("PGW") filed a motion to intervene to protect its interest in this case.

60 See attached Appendix for a listing of the filed tariff sheets.
61 *Electronic Tariff Filings*, 124 FERC ¶ 61,270 (2008) (Order No. 714).

Docket RP10-379-000
Transcontinental Gas Pipe Line Company, LLC
Annual Fuel Retention Percentage Filing (GRO)

DATE FILED: February 16, 2010

BACKGROUND:

On February 16, 2010, Transcontinental Gas Pipe Line Company, LLC (Transco) filed, pursuant to section 38 of the General Terms and Conditions of its FERC Gas Tariff, revised tariff sheets62 to redetermine the fuel retention percentages applicable to its transportation and storage rate schedules. The derivation of the revised fuel retention percentages is based on Transco's estimate of gas required for operations (GRO) for the period from April 2010 through March 2011, plus the balance accumulated in the Deferred GRO Account at January 31, 2010. The revised tariff sheets are accepted, effective April 1, 2010, as proposed.

ACTIVITIES:

March 2, 2010 - Philadelphia Gas Works ("PGW") filed a motion to intervene to protect its interest in this case.

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62 Seventh Revised Sheet No. 21, Fifth Revised Sheet No. 28, Fourth Revised Sheet No. 81, and Third Revised Sheet Nos. 87 and 88 to FERC Gas Tariff, Fourth Revised Volume No. 1.

Docket RP10-395-000
Transcontinental Gas Pipe Line Company, LLC
Transmission Electric Power Cost (EPC) Filing

DATE FILED: February 25, 2010

BACKGROUND:

On February 25, 2010, Transcontinental Gas Pipe Line Company, LLC (Transco) filed revised tariff sheets,63 pursuant to section 41 of the General Terms and Conditions of its FERC Gas Tariff, to reflect changes in the Transmission Electric Power (TEP) rates to be effective April 1, 2010. Transco's filing revises the TEP rates to: (1) recover $17,094,623 of estimated electric costs for compressor stations and gas coolers during the annual period April 1, 2010, through March 31, 2011, and (2) account for an over recovery of $2,727,645 reflected in the TEP Deferred Account Balance as of January 31, 2010. The tariff sheets are accepted effective April 1, 2010.

ACTIVITIES:

March 9, 2010 - Philadelphia Gas Works ("PGW") filed a motion to intervene to protect its interest in this case.

63 See Appendix for a list of revised tariff sheets.

Docket RP10-429-000
Dominion Transmission, Inc.
Non-Conforming Service Agreements and Negotiated Rates

DATE FILED: February 26, 2010

BACKGROUND:

On February 26, 2010, Dominion Transmission, Inc. (Dominion) filed the above referenced tariff sheets, consistent with orders issued on July 9, 2009[64] and October 13, 2009.[65] The referenced tariff sheets are accepted, effective April 1, 2010 as requested.

In the July 1 order, the Commission directed Dominion to file actual tariff sheets at least 60 days and no less than 30 days before commencing service on the Rural Valley Project. Eleventh Revised Sheet No. 36 and Sixth Revised Sheet No. 36A, as submitted in the instant filing, are consistent with the *pro forma* tariff sheets submitted in Docket No. CP09-10, *et al.* Accordingly, Eleventh Revised Sheet No. 36 and Sixth Revised Sheet No. 36A are accepted effective April 1, 2010 as requested.

In the October 13 order, several non-conforming service agreements were accepted for filing, including Contract 200550 between Dominion and Peoples Natural Gas Company (Peoples). In the instant filing, Dominion has submitted Second Revised Sheet No. 1422, which sets forth the details of the negotiated rate agreement with Peoples. The details set forth on Second Revised Sheet No. 1422, as submitted in the instant filing, are consistent with the actual non-conforming service agreement submitted in Docket No. RP09-1070-000 and accepted in the October 13 order. Accordingly, Second Revised Sheet No. 1422 is accepted effective April 1, 2010 as requested.

ACTIVITIES:

March 10, 2010 - Philadelphia Gas Works ("PGW") filed a motion to intervene to protect its interest in this case.

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64 *Dominion Transmission, Inc.*, 128 FERC ¶ 61,001 (2009), issued in Docket No. CP09-10-000 (the July 1 order).
65 An unpublished letter order issued in Docket No. RP09-1070-000 (the October 13 order).

Docket RP10-413-000
Transcontinental Gas Pipe Line Company, LLC
Rate Schedule FT – Service Agreement Amendments

DATE FILED: February 26, 2010

BACKGROUND:

On February 26, 2010, Transcontinental Gas Pipe Line Company, LLC (Transco) filed eighteen executed amendments to previously filed service agreements under Rate Schedule FT containing negotiated rates.66 All of the service agreements include an amended Exhibit C, which reflects language stating that Transco will not seek to modify its negotiated rates under Section 4 of the Natural Gas Act (NGA), and that the Shipper will not file under Section 5 of the NGA to seek to modify the negotiated rate. This language conforms to Transco's current form of service agreement. In addition, several of the agreements contain deviations that are minor and non-substantive, and thus are not material deviations. Accordingly, the amendments to the agreements reflecting the negotiated rates are accepted, effective as of the date Transco and the Shipper entered into each amendment, as shown on the attached appendix.

ACTIVITIES:

March 10, 2010 - Philadelphia Gas Works ("PGW") filed a motion to intervene to protect its interest in this case.

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66 See the attached appendix for a listing of the Shippers, the contract numbers and the corresponding effective dates of the amendments.

Docket RP10-444-000
Equitrans, L.P.
Pipeline Safety Cost Tracker (PSCT) Filing

DATE FILED: March 1, 2010

BACKGROUND:

On March 1, 2010, Equitrans, L.P. (Equitrans) filed the referenced tariff sheets to update its Pipeline Safety Cost Tracker (PSCT) to recover costs incurred under the Pipeline Safety Improvement Act of 2002 (PSIA). Equitrans asserted these costs were "Qualifying Costs" pursuant to section 38 of the General Terms and Conditions (GT&C) of Equitrans' tariff.67 In accordance to Section 38.2 of Equitrans' tariff, Equitrans is submitting its annual update to the PSCT surcharge to $0.1528 per dekatherm. The revised tariff sheets are accepted for filing effective April 1, 2010.

ACTIVITIES:

March 11, 2010 - Philadelphia Gas Works ("PGW") filed a motion to intervene to protect its interest in this case.

67 Section 38 is entitled "Pipeline Safety Cost Tracker (PSCT) Mechanism," and is found on Original Sheet Nos. 313 and 314 of Equitrans' FERC Gas Tariff, Original Volume No. 1. As set forth in GT&C section 38.1 of Equitrans' tariff, the Qualifying Costs recoverable through the PSCT surcharge shall include (i) the

Docket RP10-477
Dominion Transmission, Inc.
Form of Service Agreement – Flexibility

DATE FILED: March 5, 2010

BACKGROUND:

On March 5, 2010, Dominion Transmission, Inc. (DTI) filed revised tariff sheets[68] to its FERC Gas Tariff, Third Revised Volume No. 1 to update the process used for the administration of service agreements. Specifically, DTI's revised tariff sheets reflect that Section 11A.2.B of the General Terms and Conditions will allow Customers to return service agreements within fifteen days "or within such other time period agreed to by Pipeline on a not unduly discriminatory basis." Additionally, DTI is proposing minor changes to the form of service agreements. The revised tariff sheets referenced in footnote 1 are accepted effective April 5, 2010, as requested.

ACTIVITIES:

March 17, 2010 - Philadelphia Gas Works ("PGW") filed a motion to intervene to protect its interest in this case.

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return, taxes and depreciation expense associated with invested capital; and (ii) the actual operating and maintenance expenses incurred by Equitrans.

68 Second Revised Sheet No. 1050, Sixth Revised Sheet No. 2005, Third Revised Sheet No. 2055, Third Revised Sheet No. 2101, Second Revised Sheet No. 2251, Second Revised Sheet No. 2255, First Revised Sheet No. 2350, First Revised Sheet No. 2351 and Fourth Revised Sheet No. 2352.

Docket RP10-500-000
Transcontinental Gas Pipe Line Company, LLC
Non-Conforming Service Agreements – Market Link Expansion Project

DATE FILED: March 17, 2010

BACKGROUND:

On March 17, 2010, Transcontinental Gas Pipe Line Company, LLC (Transco) filed a non-conforming service agreement containing negotiated rate provisions between Transco and Consolidated Edison Energy, Inc. (Con Ed Energy) under Rate Schedule FT. In addition Transco filed two amendments to the Service agreement and the related tariff sheets.69 We accept for filing Transco's service agreement and related amendments. We will also grant waiver in order to accept the revised tariff sheets effective April 17, 2010.

Transco explains that during its ongoing review of its service agreements, Transco determined that the referenced contract with Con Ed Energy contains provisions that materially deviate from Transco's Rate Schedule FT Form of Service Agreement. It appears that Transco failed to timely file the subject service agreements in compliance with section 154.1(d) of the Commission's regulations. Applicants are reminded that they must submit required filings on a timely basis, or face possible sanctions by the Commission. *See Southern Star Central Gas Pipeline, Inc.*, 125 FERC ¶ 61,082 (2008). Thus, Transco proposes to amend Sheets No. 29 and 29A to include the referenced service agreement between Transco and Con Ed Energy.

Specifically, Transco states that the instant agreement is non-conforming because it involves the modification of Article IV, Term of Agreement, which conditions the agreement upon the approval of the Board of Trustees of Con Ed Energy on of before September 21, 2000. Also, Transco states that agreement includes an additional phrase to paragraph 1 of Article V, specifying that the Buyer shall pay Seller for natural gas delivered in accordance with FERC's order approving Transco's MarketLink Project. Transco states that the agreement was filed in Transco's September 20, 2000 application to amend the Market Link certificate in Docket No. CP98-540-003. Transco also filed the Service Agreement with the Commission on October 1, 2001 in Docket No. RP96-359-006 and it was accepted via letter order issued on October 25, 2001. In addition to the non-conforming provisions, Transco determined that a provision relating to the negotiated rate under the Service agreement was reflected in an ancillary agreement between Transco and Con Ed Energy, but not included on Exhibit C to the Service Agreement. Transco notes that it and Con Ed Energy agreed to amend Exhibit C to the Service agreement in accordance with Transco's current contracting procedures. Further, Transco states that the agreement contains some additional changes which do not affect the substantive rights of the parties.

ACTIVITIES:

March 29, 2010 - Philadelphia Gas Works ("PGW") filed a motion to intervene and comment to protect its interest in this case.

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69. Third Revised Sheet No. 29 and Second Revised Sheet No. 29A to FERC Gas Tariff, Fourth Revised Volume No. 1.

Docket CP10-46-000
Equitrans, L.P.
Pipeline Facility Replacement – Pratt Compressor Station

DATE FILED: January 25, 2010

BACKGROUND:

On January 25, 2010, Equitrans, L.P. ("Equitrans") filed an application to replace certain segments of its mainline system and to make certain modifications to compressor engines at its Pratt Compressor Station in Greene County, Pennsylvania. Equitrans requests authorization to modify and uprate its compressor units at the Pratt Compressor Station in Greene County, Pennsylvania and to upgrade and increase the capacity of its upstream facilities. Equitrans also requests authorization to test, replace and/or modify certain segments of its pipeline system to increase the maximum allowable operating pressure (MAOP) of its Low Pressure West System to 605 pounds per square inch gauge (psig) and the MAOP of its Low Pressure East System to 655 psig. These activities would include replacement of about 1.59 non-contiguous miles of pipeline and hydrostatic testing of about 5.14 non-contiguous miles of pipeline in Greene County, Pennsylvania and Doddridge, Harrison, Lewis, Marion, Monongalia, and Wetzel Counties in West Virginia.

The proposal would meet market demand for an additional 92,000 dekatherms per day (Dth/d) of firm, off-system capacity through the Pratt Compressor Station into downstream, interstate transmission systems. The proposed modifications would be confined to the existing footprint of the Equitrans Mainline System.

FERC granted Equitrans, L.P.'s (Equitrans) June 18, 2010 request to use a different access road for access to the H-115 pipeline located in Greene County, Pennsylvania. The change from Access Road 12 to 12A was requested by the landowner, Consol Energy, Inc. Equitrans indicated that it may be necessary to trim some overhanging branches, place additional rock down, and widen some turns or other areas. To support this request, Equitrans has obtained the environmental and cultural resources clearances from the U.S. Fish and Wildlife Service, Pennsylvania Fish and Boat Commission, Pennsylvania Game Commission, Pennsylvania Department of Conservation and Natural Resources, and the Pennsylvania Historical and Museum Commission.

FERC reminds that Equitrans must comply with all remaining standards set forth in the Commission's Upland Erosion Control, Revegetation, and Maintenance Plan during the Pratt Compressor Station Uprate.

ACTIVITIES:

April 2, 2010 - Philadelphia Gas Works ("PGW") filed a motion to intervene to protect its interest in this case.

Docket RP10-507-000
Transcontinental Gas Pipe Line Company, LLC
Rate Schedule FT Service Agreement Amendments

DATE FILED: March 23, 2010

BACKGROUND:

On March 23, 2010, Transcontinental Gas Pipe Line Company, LLC (Transco) filed eight executed amendments to previously filed service agreements under Rate Schedule FT containing negotiated rates.[70] All of the service agreements include an amended Exhibit C, which reflects language stating that Transco will not seek to modify its negotiated rates under Section 4 of the Natural Gas Act (NGA), and that the Shipper will not file under Section 5 of the NGA to seek to modify the negotiated rate. This language conforms to Transco's current form of service agreement. In addition, several of the agreements contain deviations that are minor and non-substantive, and thus are not material deviations. Accordingly, the amendments to the agreements reflecting the negotiated rates are accepted, effective as of the date Transco and the Shipper entered into each amendment, as shown on the attached appendix.

ACTIVITIES:

April 5, 2010 - Philadelphia Gas Works ("PGW") filed a motion to intervene and protest to protect its interest in this case.

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70 See the attached appendix for a listing of the Shippers, the contract numbers and the corresponding effective dates of the amendments.

Docket CP10-82-000
Northern Natural Gas Company
Southern Natural Gas Company
Florida Gas Transmission Company, LLC
Transcontinental Gas Pipe Line Company, LLC
Enterprise Field Services, LLC
Pipeline Facility Abandonment

DATE FILED: March 5, 2010

BACKGROUND:

On March 5, 2010, Northern Natural Gas Company ("Northern Natural"), on behalf of itself and Southern Natural Gas Company, Florida Gas Transmission Company, LLC, Transcontinental Gas Pipe Line Company, LLC, and Enterprise Field Services, LLC (collectively, the "Applicants"), filed and application in Docket No. CP10-82-000 to abandon in place the Matagorda Offshore Pipeline System ("MOPS"). Applicants assert that the continued operation of the MOPS has become uneconomic due to increasing costs of maintenance and repairs, as well as a result of falling revenues. Applicants request that the Commission grant the proposed abandonment effective December 31, 2010 to coincide with the expiration of the only firm transportation agreement on the MOPS.

ACTIVITIES:

April 6, 2010 - Philadelphia Gas Works ("PGW") filed a motion to intervene to protect its interest in this case.

Docket RP01-245-029 &
Docket RP01-245-030
Transcontinental Gas Pipe Line Company, LLC
Rate Zone 4 and Rate Zone 4A & 4B – Shipment Transport Charges

DATE FILED: March 22, 2010

BACKGROUND:

In *Transcontinental Gas Pipe Line Corp.*, 127 FERC ¶ 61,206 (2009) ("May 29 Order"), the Commission required Transco to comply with Order No. 587-F which requires that, "When a pool exists in a rate zone, the charge for shipment in that zone must be incurred either for shipment to the pool or shipment out of the pool."71 In response to that order, Transco submitted a compliance filing, a waiver request, and a request for rehearing or, in the alternative, request for clarification on June 29, 2009.

The Commission ruled on Transco's compliance filing, waiver request, and rehearing request in *Transcontinental Gas Pipe Line Corp.*, 130 FERC ¶61,109 (2010) ("February 18 Order"). As applicable to Transco's current clarification requests, the February 18 Order: (1) approved Transco's Option 1, a rate structure under which Transco would charge usage and fuel charges to all gas delivered out of the Station 85 pooling location based on the zonal charges for the transportation downstream of Station 85,72 (2) found, incorrectly, that it was unnecessary to grant waiver of Section 284.10(c)(5)(ii) of the Commission's regulations as proposed by Transco because Transco would not be providing transportation to shippers without their incurrence of the Zone 4 usage charge for the transportation, and (3) opined that concerns with Option 1 expressed by Con Edison and PGW, *i.e.*, that Transco would not collect usage charges or fuel for certain transportation services it provides Transco in Zone 4, were ameliorated by the Commission's conclusion, in paragraph 26, that Transco was in error in asserting that Option 1 would result in certain transportation in its Zone 4 escaping the imposition of usage and fuel charges.

Transco's current clarification requests make it clear that the Option 1 tariff sheets would result in certain Zone 4 transportation escaping the imposition of usage and fuel charges. Since this result would violate 18 C.F.R. § 284.10(c)(5)(ii)(A)73 and various

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71 *Standards for Business Practices of Interstate Natural Gas Pipelines*, FERC Stats. & Regs., ¶ 32,527 at 33,351 (1996) (Order No. 587-F).
72 Ordering Paragraph A.
73 "Except as provided in paragraph (d)(5)(ii)(B) of this section the pipeline may charge an individual customer any rate that is neither greater than the maximum rate nor less than the minimum rate on file for that service."

provisions of Transco's tariff,74 Transco seeks "clarification" to the effect that: (1) the Commission has unconditionally accepted Option 1, (2) Option 1 does not violate the Commission's regulations or Transco's tariff, and (3) Option 1 does not require waivers of Transco's tariff or Commission regulations. Transco also seeks clarification of the usage rates and fuel charges that will apply to specific transportation transactions and states that it would not oppose institution of technical conference procedures.

Reply In Opposition To Clarification Request

While Con Edison and PGW do not believe that the facts underlying their position are in dispute, it is worthwhile to outline those facts by way of background.

Transco's Station 85 is at the intersection of Transco's mainline Zone 4 and its Zone 4A (the Mobile Bay lateral). Station 85 also serves as the interconnect point between Transco and Gulf South Pipeline Company, LP ("Gulf South") and, as of approximately August 1, 2009, serves as the interconnect point between Transco and Midcontinent Express Pipeline LLC ("Midcontinent").

Under Transco's tariff, gas shipments received from locations in Zone 4 and delivered to Station 85 are required to pay Zone 4 usage and fuel charges (1.98%)75. If that gas is then transported from Station 85 to downstream locations on Transco's mainline, Zone 4 usage and fuel charges are again assessed. The Commission has determined that Transco's double-collection of usage and fuel charges is in violation of Order No. 587-F which permits imposition of those charges only on *either* the shipment to the pool *or* the shipment from the pool.

For transmission services solely on Transco's mainline, Transco's Option 1 fulfills the Commission's objective of charging shippers once, and only once, for Zone 4 usage and fuel. That is, if Shipper A transports gas through Zone 4 into the Station 85 pool and Shipper B transports gas from the Station 85 pool downstream through Zone 4, Shipper A would not pay usage and fuel costs, but Shipper B would.

The difficulty with Option 1 arises when Shipper C transports gas through Zone 4 into the Station 85 pool and Shipper D transports gas from the Station 85 pool directly into Transco's Zone 4A. In this case, Option 1 provides that Shipper C pays no usage or fuel charges, and Shipper D pays usage and fuel charges for Zone 4A (0.54%), but not the zone matrix charges for movements from Zone 4 to Zone 4A (2.52%). Thus, Option 1 permits gas to be transported *both* (a) on a forward-haul basis from upstream locations to Station 85 *and* (b) on a forward-haul basis from Station 85 to Transco's Zone 4A or to other pipeline interconnects at the same milepost as Station 85 without the imposition of Zone 4 usage and fuel charges. See, *e.g.*, Transco's "Transaction 2" at page 11 of its clarification request. As Transco recognizes, this result violates Order 587-B, which requires usage charges, including fuel retention, to be collected for all provided transmission services. This result, avoidance of the full usage charges associated with a movement commencing in Zone 4 and ending in Zone 4A, also violates the

74 At pages 15-16 of its clarification request, Transco references Sheet Nos. 41, 79, and 81 of its FERC Gas Tariff, Fourth Revised Volume No. 1.
75 All fuel percentages used herein are taken from Transco's March 31, 2010 filing in Docket No. RP10-554.

Commission's regulations and Transco's tariff, both of which prohibit Transco from charging less than its variable costs, here, usage charges and fuel.

The impact of Transco's Option 1 on Transco's other customers, including Con Edison and PGW, is clear. If certain transactions are exempted from paying Zone 4 usage and fuel charges, the underlying variable costs will be borne by Transco's other customers, e.g., through Transco's fuel tracker. Such cross-subsidies are implicitly prohibited by Order No. 587-F and should be prohibited explicitly by the Commission in this proceeding.

For the same reason, Transco's clarification request must be denied. 18 C.F.R. § 284.10(c)(5)(ii)(A) permits Transco to impose only those charges that are "neither greater than the maximum rate nor less than the minimum rate on file." Thus, Transco may not exempt a class of transactions from paying the variable costs underlying its usage and fuel charges.

When viewed against the facts presented by Transco, it is clear that its "clarification" requests are, in reality, requests for waivers of Commission regulations and Transco's tariff. However, save reference to the Commission's erroneous acceptance of Option 1, Transco provides no facts or arguments in support of such a waiver. Since it is clear that acceptable alternatives can be developed, the Commission should deny Transco's clarification/waiver requests.

Con Edison and PGW have taken no position on Transco's Option 2 as a potential resolution of these matters. However, if the Commission determines, for any reason, that Option 2 is not just and reasonable, Con Edison and PGW agree with Transco that a technical conference would be appropriate and suggest a third option for consideration at such a conference.

The May 29 Order rejected Transco's proposal to (1) establish two pools, a Station 85-Mainline pool, for volumes that *have* incurred the applicable Zone 4 usage and fuel charges, and a Station 85 pool for those volumes that *have not* incurred those charges, and (2) prohibit pool-to-pool transfers between those two pools. The Commission determined that prohibiting pool-to-pool transfers would be contrary to its pooling policy.

Con Edison and PGW believe that the parties should be permitted to explore the following approach:

First, Transco would create two pools, one for Zone 4 and another for Zone 4A.

Second, gas would enter and depart the Zone 4 and Zone 4A pools only from Zones 4 and 4A respectively, and would be charged usage rates and fuel only when departing the pool.

Third, customers would be able to transfer gas between the two pools only upon payment of the usage rates and fuel for the upstream zone. That is, the pool transfer charge for gas moving from the Zone 4 pool to the Zone 4A pool would be the Zone 4 usage and fuel rates and the pool transfer charge for gas moving from the Zone 4A pool to the Zone 4 pool would be the Zone 4A usage and fuel rates. Of course, under this approach, gas exiting the pools would continue to be charged the usage and fuel rates for transportation downstream of the pool.

This option appears to be: (1) consistent with Order No. 587-F, because it results in the collection of zonal usage and fuel charges only once, (2) consistent with the Commission's regulations because it results in the imposition of usage and fuel charges on all services using Transco's Zone 4 facilities, (3) administratively feasible, and (4) consistent with the Commission's pooling policy because it permits transfers between pools.

Conclusion

As Transco's clarification requests fully establish, the February 18 Order has placed Transco in an untenable position. If it implements Option 1, it will be in violation of Commission regulations and its own tariff. The just and reasonable resolution of this problem cannot be to exempt certain shipments from paying Zone 4 usage and fuel rates, thereby imposing additional costs on other Zone 4 shippers. Rather, an administratively convenient approach, such as the one proposed herein, must be adopted to ensure consistency with Order No. 587-F.

The Con Edison/PGW Reply was filed pursuant to Rule 213, 18 C.F.R. §385.213. Rule 213(a)(3) provides "An answer may be made to any pleading, if not prohibited under paragraph (a)(2) of this section." The BP Motion does not assert that the Con Edison/PGW Reply violates Rule 213(a)(2). Rather, BP concocts various other reasons for the relief it seeks, apparently in the belief that if other parties are prohibited from addressing the facts presented by Transco's clarification request, the Commission will permit BP and other similarly situated parties to obtain service from points in Transco's Zone 4 to the Station 85 pooling point and then to points in Transco's Zone 4A ("Zone 4-Station 85-Zone 4A") while escaping any variable costs for the Zone 4 portion of this movement.

A. <u>There is no Unauthorized Collateral Attack</u>

In asserting that Con Edison/PGW Reply is an unauthorized collateral attack on the February 18 Order, BP conveniently ignores the fact that the Con Edison/PGW Reply says nothing more about the February 18 Order than Transco said in its clarification request.76 The gravamen of the Transco clarification request is that the February 18 Order erred in both approving Transco's Option 1, which would allow BP and others to escape paying the full variable costs for Zone 4-Station 85-Zone 4A service, while, at the same time, not relieving Transco from its responsibility, under the Commission's regulations and Transco's tariff, to collect those variable costs. BP suggests no rationale, let alone precedent, for prohibiting Con Edison and PGW from agreeing with Transco that the February 18 Order erred in this fashion. In fact, the only thing separating Transco and Con Edison/PGW in their appraisal of the February 18 Order is that Transco appears willing to live with Option 1 (because it will collect the entirety of its fuel costs from other customers through its fuel tracker) while Con Edison/PGW advocate adherence to the Commission's regulations and Transco's tariff (because Con Edison/PGW are in the class of customers who would be forced to make up for the fuel retention not paid by BP and others).

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76 Unlike the compliance filing protests that were addressed in *California Independent System Operator Corp*, 104 FERC ¶ 61,128 at P 13 (2003), the Con Edison/PGW Reply does not challenge Transco's interpretation of the February 18 Order. Con Edison and PGW agree with Transco's interpretation.

To put a still finer point on this, Con Edison and PGW are in no way shape or form suggesting that BP or any other Transco customer should be required to pay variable costs twice for the same service. If BP or any other Transco customer moves gas through Transco's Zone 4 to Station 85 and then moves the gas from Station 85 to other points on Zone 4, Transco should collect the Zone 4 variable costs only once.

At the same time, it is entirely unjustified for BP to suggest that it should only pay Zone 4A variable costs for the above-described Zone 4-Station 85-Zone 4A movements. Transco's clarification request makes it abundantly clear that (1) this is the result of Option 1, and (2) this result demonstrates that free-rider concerns previously expressed by Con Edison and PGW have not been ameliorated. Once again, agreeing with the factual predicate of Transco's clarification request cannot be deemed grounds to strike the Con Edison/PGW Reply.

B. The Commission Has Not Rejected the Con Edison'/PGW Third Option

Notwithstanding BP's general agreement with aligned parties who have suggested that the February 18 Order was clear,77 Transco has sought various clarifications of that and has stated that it "would not oppose participating in a technical conference to discuss the transactions set forth below if the Commission determines that a technical conference would be helpful."78 Con Edison and PGW again have agreed with Transco that a technical conference would be helpful and have suggested an option for consideration at such a conference.

BP asserts that the option suggested by Con Edison and PGW already has been rejected by the Commission. This is false. As recognized by BP at page 6 of its motion, Transco previously proposed to create two separate pools at Station 85 and to **prohibit transfers** between those pools. The Commission found this to contravene its policies which require pipelines to permit transfers between pools.

In marked contrast, the option suggested by Con Edison and PGW **would permit transfers** between the two pools. Inexplicably, BP asserts it is unable to see a distinction between a proposal to **prohibit** transfers between pools and a proposal to **allow** transfers between pools. "In sort, there is no new substance provided in the ConEd/PGW Filing." BP motion at 6.

Con Edison and PGW assume BP simply is frustrated from years of seeking relief from an inequitable situation in which it has been required to pay variable costs twice for transportation within the same zone. Con Edison and PGW respectfully suggest that this relief will come more quickly if BP agrees with Con Edison and PGW that the Commission's regulations and Transco's tariff require Transco to collect the variable costs for all transportation, a result not achieved by Transco's Option 1.

ACTIVITIES:

April 6, 2010 - Philadelphia Gas Works ("PGW") filed a clarification request motion to protect its interest in this case.

April 29, 2010 - Philadelphia Gas Works ("PGW") filed a reply in opposition to motion to reject in this case.

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77 BP Motion at 3.

78 Transco clarification request at 10.

Docket RP10-554-000
Transcontinental Gas Pipe Line Company, LLC
Fuel Percentages and Trading Fees – Mobile Bay South Project

DATE FILED: March 31, 2010

BACKGROUND:

On March 31, 2010, Transcontinental Gas Pipe Line Company, LLC (Transco) filed, pursuant to section 4 of the Natural Gas Act and part 154 of the regulations of the Federal Energy Regulatory Commission, revised tariff sheets[79] to reflect the firm and interruptible transportation fuel retention percentages and the trading fees and trading fuel retention percentages coincident with the in-service date of Transco's Mobile Bay South Project (Project).[80] The revised tariff sheets are accepted, effective May 1, 2010, as proposed.

Transco submitted revised firm and interruptible fuel retention percentages in recognition of the assessment of Transco's Zone 4A fuel retention percentage on all gas transported in Zone 4A for the affected receipt and delivery zonal combinations. In addition to the revised firm and interruptible fuel retention percentages, Transco also revised the trading fees and trading fuel retention percentages to recognize that the Mobile Bay Lateral will become a bi-directional lateral with the in-service date of the Project.

ACTIVITIES:

April 12, 2010 - Philadelphia Gas Works ("PGW") filed a motion to intervene to protect its interest in this case.

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79 Fifth Revised Sheet No. 81 and Fifth Revised Sheet No. 87 to FERC Gas Tariff, Fourth Revised Volume No. 1.

80 *Transcontinental Gas Pipe Line Corporation*, 127 FERC ¶ 61,122 (2009).

Docket RP10-561-000
Dominion Transmission, Inc.
Non-Conforming Service Agreement

DATE FILED: March 31, 2010

BACKGROUND:

On March 31, 2010, Dominion Transmission, Inc. (DTI) filed revised tariff sheets[81] to report ten non-conforming service agreements.[82] DTI states that it has executed new service agreements with certain shippers based on its current *pro forma* Forms of Service Agreement. The new agreements contain comparable terms to those in shippers' prior agreements that DTI maintains are similar to terms previously accepted by the Commission. The service agreements are accepted and the revised tariff sheets are accepted effective April 30, 2010, as proposed. It appears that DTI failed to timely file the service agreement with Pivotal Utility Holdings, Inc., successor to Elizabethtown Gas Company, in compliance with section 154.1(d) of the Commission's regulations. Applicants are reminded that they must submit required filings on a timely basis, or face possible sanctions by the Commission. *See Southern Star Central Gas Pipeline, Inc.*, 125 FERC ¶ 61,082 (2008).

ACTIVITIES:

April 12, 2010 - Philadelphia Gas Works ("PGW") filed a motion to intervene to protect its interest in this case.

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[81] Eighteenth Revised Sheet No. 1300, Fifth Revised Sheet No. 1301, Second Sheet No. 1302 and First Revised Sheet No. 1303 to FERC Gas Tariff, Third Revised Volume No. 1.

[82] It appears that DTI failed to timely file the service agreement with Pivotal Utility Holdings, Inc., successor to Elizabethtown Gas Company, in compliance with section 154.1(d) of the Commission's regulations. Applicants are reminded that they must submit required filings on a timely basis, or face possible sanctions by the Commission. *See Southern Star Central Gas Pipeline, Inc.*, 125 FERC ¶ 61,082 (2008).

Docket RP10-549-000
Equitrans, L.P.
Non-Conforming FT and IT Service Agreements

DATE FILED: March 31, 2010

BACKGROUND:

80. On March 31, 2010, Equitrans, L.P. (Equitrans) filed four non-conforming service agreements and a revised tariff sheet.83 Two service agreements are for Firm Transportation Service (Rate Schedule FTS), and two are for Interruptible Storage Service (Rate Schedule INSS). As discussed below, the Commission accepts Equitrans' service agreements subject to conditions and rejects the revised tariff sheet, as detailed in the body of this order.

81. Equitrans states that all four service agreements deviate from the *pro forma* agreements in Equitrans' FERC gas tariff. Equitrans requests that the Commission find that the service agreements provide for service in a manner that is consistent with its tariff and do not create any potential risk of undue discrimination against other shippers.

82. The two FTS agreements are with Hess Corporation (Hess)84 and EQT Energy LLC (EQT Energy).85 Equitrans states that both agreements contain the same deviation from the FTS Form of Service Agreement in its tariff. Specifically, Section 4 of Exhibit A of the Form of Service Agreement provides that the agreement will be "in effect for a primary period of [space to be filled in] year(s) and thereafter yearly subject to a six months written cancellation notice by either party." Section 4 of the Hess agreement has been filled in to provide for a primary term of one month, and Section 4 of the EQT Energy Agreement has been filled to provide for a primary term of seven months. In both agreements, the provision for annual rollovers has been deleted. Equitrans notes that its agreement with Hess is for a term shorter than the six month notice of termination period in the annual rollover provision, and both agreements are intended to terminate at the end of the primary term as agreed upon by the parties. Therefore,

83 First Revised Sheet No. 319 to Equitrans, L.P.'s FERC Gas Tariff, Original Volume No. 1.
84 Firm Transportation Service Agreement, No. EQTR8991-316.
85 Firm Transportation Service Agreement, No. EQTR9063-469.

Equitrans asserts that this rollover language is unnecessary and contrary to the intent of the parties.

83. Equitrans asserts that the Commission has stated that deviations may be acceptable so long as the customer is not "receiving a different quality of service than that provided to other customers under the pipeline's tariff [footnote omitted] or that affect the quality of service received by others."86 Equitrans further asserts that removal of the rollover provision in Section 4 of Exhibit A does not create a different quality of service as any customer requesting a short-term FTS agreement and any customer, with Equitrans' agreement, can terminate the contract at the end of the contract term and also have the same rollover language removed. Equitrans also states that the Commission has previously ruled that removal of the rollover language is consistent with Equitrans' tariff.87 Therefore, Equitrans concludes that these non-conforming agreements provide service in a manner which is consistent with the FTS agreement in the tariff, and do not create any potential risk of undue discrimination against other shippers on Equitrans' system.

84. The two INSS agreements are with UGI Energy Services Inc. (UGI)88 and Dominion Field Services (DFS).89 Equitrans states that both the UGI agreement and the DFS agreement contain the same deviation from the INSS *pro forma* service agreement in the tariff. In both agreements, the *pro forma* Exhibit A has been modified to add a provision for a Maximum Daily Quantity at the Storage Receipt and Delivery Point. Equitrans asserts that this additional provision is necessary in order for Equitrans to manage and operate its system effectively and all current customers and any new customer's INSS Agreements would also contain this Maximum Daily Quantity term. Equitrans contends that this provision does not provide for service that is inconsistent with the tariff and the Commission has previously ruled on similar non-conformance filings in which the addition of operational details such as a Maximum Daily Quantity does not create any potential risk of undue discrimination against other shippers on Equitrans' system.90

85. Equitrans has also filed a revised tariff sheet adding these four agreements to its list of non-conforming agreements.

86. Public notice of the filing was issued on April 1, 2010. Interventions and protests were due on or before April 12, 2010. Pursuant to Rule 214 (18 C.F.R. § 385.214 (2009)), all timely filed motions to intervene and any motion to intervene out-of-time

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86 Equitrans cites *Columbia Gas Transmission Corp.*, 97 FERC ¶ 61,221, at 62,003 (2001).
87 Equitrans cites an unpublished letter order issued on December 1, 2009 in Docket Nos. RP10-96-000 and RP10-96-001.
88 Interruptible Storage Service Agreement, No. EQTR8894-432.
89 Interruptible Storage Service Agreement, No. EQTR8891-367.
90 Equitrans cites *Equitrans, L.P.*, 128 FERC ¶ 61,193 (2009).

filed before the issuance date of this order are granted. Granting late intervention at this stage of the proceeding will not disrupt the proceeding or place additional burdens on existing parties. No protests or adverse comments were filed.

87. The Commission accepts Equitrans' four filed agreements, subject to Equitrans revising its Forms of Service Agreement for both Rate Schedules FTS and INSS service, so that the material deviations in the four filed agreements no longer deviate from the relevant Form of Service Agreement. Because this condition will render the filed agreements conforming, the Commission rejects Equitrans' proposed tariff sheet adding these agreements to its list of non-conforming Agreements.

88. Section 154.110 of the Commission's regulations requires that pipeline tariff contain an unexecuted *pro forma* copy of each form of service agreement. The form of service agreement must:

> refer to the service to be rendered and the applicable rate schedule of the tariff; and, provide spaces for insertion of the name of the customer, effective date, expiration date, and term. Spaces may be provided for the insertion of receipt and delivery points, contract quantity and other specifics of each transaction as appropriate.

89. Sections 154.1(d) and 154.112(b) require that pipelines file any contract which "deviates in any material aspect from the form of service agreement" for Commission review. The Commission has held that such material deviations fall into two general categories – those that must be prohibited because they present a significant potential for undue discrimination among shippers and those that can be permitted without substantial risk of undue discrimination.91 In addition, section 154.112(b) requires that all accepted non-conforming agreements must be referenced in the pipeline's open access transmission tariff.

90. Consistent with section 154.110, Equitrans' *pro forma* service agreements for service under each rate schedule should have blank spaces or optional provisions which accommodate all the types of contractual provisions Equitrans typically offers to customers under that rate schedule in the normal course of business. Compliance with this requirement helps minimize undue discrimination among customers by ensuring that all customers have notice of all the types of contractual provisions that may be negotiated. It also reduces burdens on the pipeline, the Commission, and others from the filing and processing of non-conforming agreements, by minimizing the number of agreements that must be filed.92

91. Equitrans' explanation of why the material deviations at issue here do not present a risk of undue discrimination makes clear that the only reason these material deviations are included in the filed agreements is that its FTS and INSS Forms of Service Agreement

91 *Columbia Gas Transmission Corp.*, 97 FERC ¶ 61,221, at 62,003 (2001).
92 *Id.*, at 62,001-3.

do not accommodate all the types of contractual provision it typically offers to its shippers under those rate schedules.

92. Currently, the term provision of Equitrans' form of service agreement for firm service includes an automatic rollover provision unless notice is given six months prior to the end of the term. As Equitrans explains, this means that whenever it enters into a firm service agreement in which the parties do not intend to include a rollover provision, it must file the contract as non-conforming to eliminate the rollover provision. Equitrans also makes clear that it regularly agrees to remove the rollover provision from agreements where the parties intend for the agreement to terminate at the end of the primary term, without any rollover. This situation appears to arise particularly in circumstances where Equitrans enters into firm service agreement with a term of less than a year, as here. In these circumstances, the Commission's acceptance of the two FTS agreements filed in this case is subject to the condition that Equitrans revise its FTS Form of Service Agreement to make the rollover provision optional. This will eliminate any need to file FTS service agreements which do not contain rollover provision as non-conforming agreements.

93. Similarly, Equitrans' INSS Form of Service Agreement does not contain a blank space for the Maximum Daily Quantity term, despite the fact Equitrans states it intends to include such a provision in all INSS agreements. Thus, absent a change in the INSS Form of Service Agreement, Equitrans would have to file all its INSS service agreements as non-conforming. Accordingly, the Commission's acceptance of the two filed INSS service agreements is also subject to the condition that Equitrans must revise its INSS form of Service Agreement to include a blank for Maximum Daily Quantity.

94. Equitrans' compliance with the conditions of this order will render all four filed agreements in this proceeding conforming. Therefore, the Commission conditionally accepts the service agreements and rejects the tariff sheet in footnote 1, which would identify the service agreements as non-conforming.

By direction of the Commission.

On May 7, 2010, Equitrans, L.P. (Equitrans) filed the above referenced tariff sheets in compliance with an order issued by the Commission on April 30, 2010 in Docket No. RP10-549-000.[93] The referenced tariff sheets are accepted effective June 6, 2010, as requested.

Public notice of the filing was issued on May 11, 2010. Interventions and protests were due on or before May 19, 2010. Pursuant to Rule 214 (18 C.F.R. § 385.214 (2009)), all timely filed motions to intervene and any motion to intervene out-of-time filed before the issuance date of this order are granted. Granting late intervention at this stage of the proceeding will not disrupt the proceeding or place additional burdens on existing parties. No protests or adverse comments were filed.

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[93] *Equitrans, L.P.*, 131 FERC ¶ 61,090 (2010) (the April 30 order).

In Docket No. RP10-549-000, Equitrans filed four non-conforming agreements and a revised tariff sheet listing the agreements as non-conforming. Two of the agreements were for Firm Transportation Service (Rate Schedule FTS), and two were for Interruptible Storage Service (Rate Schedule INSS). In the April 30 order, the Commission rejected the tariff sheet, and directed Equitrans to revise the FTS and INSS forms of service agreement so that the subject agreements would not be non-conforming. In the instant filing, Equitrans has revised the FTS and INSS forms of service agreement.

ACTIVITIES:

April 12, 2010 - Philadelphia Gas Works ("PGW") filed a motion to intervene to protect its interest in this case.

Docket RP10-568-000
Transcontinental Gas Pipe Line Company, LLC
Non-Conforming FT Service Agreement – Sundance Expansion Project

DATE FILED: April 1, 2010

BACKGROUND:

On April 1, 2010, Transco submitted for filing a firm transportation service agreement under Rate Schedule FT with Carolina Power & Light Company that contains negotiated rates and non-conforming language and sets forth the terms of service under Transco's Sundance Expansion Project. Transcontinental Gas Pipe Line Company, LLC (Transco) filed a revised tariff sheet[94] and a non-conforming amendment dated February 23, 2010, containing a negotiated rate provision and non-conforming language to the April 19, 2001 service agreement[95] between Transco and Carolina Power & Light Company (CP&L) under Rate Schedule FT. We accept for filing Transco's amendment to the April 19, 2001 service agreement and grant waiver in order to accept the revised tariff sheet listed in footnote no. 1 effective May 1, 2010.

Transco explains that during its ongoing review of its service agreements, Transco determined that the referenced contract with CP&L contains provisions that materially deviate from Transco's Rate Schedule FT Form of Service Agreement.[96] Thus, Transco proposes to amend Sheet No. 29 to include the referenced service agreement between Transco and CP&L.

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94 Fourth Revised Sheet No. 29 to FERC Gas Tariff, Fourth Revised Volume No. 1.

95 The April 19, 2001 service agreement was executed on May 4, 2001.

96 It appears that Transco failed to timely file the subject service agreements in compliance with section 154.1(d) of the Commission's regulations. Applicants are reminded that they must submit required filings on a timely basis, or face possible sanctions by the Commission. *See Southern Star Central Gas Pipeline, Inc.*, 125 FERC ¶ 61,082 (2008).

Specifically, Transco states that the instant agreement is non-conforming because it involves a modification to an ancillary agreement with CP&L, but was not included in the April 19, 2001 Service Agreement, as amended on July 28, 2005. Transco and CP&L agreed to amend Exhibit C to provide for a most favored nation provision which constitutes a permissible deviation from Transco's form of service agreement. To date this provision has not been triggered, does not give CP&L any priority to capacity, and does not adversely affect the rights of other shippers. The April 19, 2001 Service Agreement with CP&L was accepted by delegated letter order issued March 28, 2002.[97] Further, the Commission accepted the July 28, 2005 amendment by Commission order issued November 3, 2005.[98] Transco notes that it and CP&L agreed to amend Exhibit C to the Service Agreement in accordance with Transco's current contracting procedures. Further, Transco states that the agreement contains some additional changes which do not affect the substantive rights of the parties or the quality of service to CP&L or other shippers.

ACTIVITIES:

April 13, 2010 - Philadelphia Gas Works ("PGW") filed a motion to intervene to protect its interest in this case.

97 *Transcontinental Gas Pipe Line Corp.*, (Docket No. RP96-359-008 order issued April 17, 2002)(unpublished letter order).

98 *Transcontinental Gas Pipe Line Corp.*, 113 FERC ¶ 61,129 (2005).

Docket CP10-58-000
Dominion Transmission, Inc.
Pipeline Facility Addition – Greenlick Storage Complex

DATE FILED: February 3, 2010

BACKGROUND:

On February 3, 2010, Dominion filed for authorization to convert one well located in the Greenlick Storage Complex in Potter County, Pennsylvania into an injection/withdrawal well. Dominion proposes to convert its RW-400 Well from an observation well to an injection/withdrawal well and to install about 650 feet of 6-inch-diameter storage pipeline in the Greenlick Storage Complex in Potter County, Pennsylvania. The conversion of the RW-400 Well would improve the overall performance of the Greenlick Storage Complex by more efficiently draining the portion of the storage pool in which the well is located.

Dominion would drill the well as a cased hole 7-inch completion and stimulate the well in order to enhance its performance. The well would be drilled to a maximum depth of about 7,100 feet. The associated storage pipeline would connect the well to an existing sideline, RP-47, which connects to Dominion's TL-389 transmission pipeline. The proposed conversion would not change the certificated physical parameters of the storage complex, including total inventory, reservoir pressure, reservoir and buffer boundaries, or certificated capacity.

Construction would take place within the existing limits of the storage complex. On November 23, 2009, Dominion conducted an online search of the Pennsylvania Natural Diversity Inventory database to determine the project's potential to affect federally-listed threatened and/or endangered species. The results of the search indicated that there would be no known impacts to federally-listed threatened and endangered species and/or special concern species and resources within the project area. Based on our review of the project and the location of the facilities, we agree. Dominion consulted with the Pennsylvania Historical and Museum Commission, Bureau of Historic Preservation (SHPO) to determine the project's potential to affect cultural resources. By letter dated November 30, 2009, the SHPO indicated that the project would have no effect on archeological or cultural resources.

ACTIVITIES:

April 19, 2010 - Philadelphia Gas Works ("PGW") filed a motion to intervene to protect its interest in this case.

Docket CP10-62-000
Dominion Transmission, Inc.
Pipeline Facility Abandonment – Oakford Storage Complex

DATE FILED: February 4, 2010

BACKGROUND:
On February 4, 2010, Dominion filed for authorization to plug and abandon one well located in the Oakford Storage Complex in Westmoreland County, Pennsylvania. Dominion proposes to abandon withdrawal storage well, the JW-481 Well, and interconnecting storage pipeline, the JP-442 Line, located in the Murrysville portion of the Oakford Storage Complex in Westmoreland County, Pennsylvania. A surveillance log conducted on the well on September 26, 2006 indicated mechanical integrity issues with the production casings, specifically, excessive metal loss due to corrosion. Subsequently, on December 6, 2006, a mechanical plug was set to prevent gas loss, gas migration, and environmental and safety hazards. On November 6, 2009, the well was re-evaluated using a High Resolution Vertilog to confirm its condition. Dominion currently seeks to permanently plug the well to maintain the integrity of the storage field. The proposed plugging and abandonment would not change the certificated physical parameters of the storage complex, including total inventory, reservoir pressure, reservoir and buffer boundaries, and certificated capacity.

The JW-481 Well would be plugged and abandoned from a depth of about 1,467 feet to the surface. Minor surface facilities and about 80 feet of the JP-442 Line would be removed. The remaining 1,318 feet of the line would be capped at the main pipeline and abandoned in place. A monument would be placed on the well pad to indicate the location of the well. All work would take place entirely on land within the Oakford Storage Complex lease on previously disturbed ground.

On August 6, 2009, Dominion conducted an online search of the Pennsylvania Natural Diversity Inventory database to determine the project's potential to affect federally-listed threatened and/or endangered species. The results of the search indicated that there would be no known impacts to federally-listed threatened and endangered species and/or proposed species within the project area. We agree. Dominion consulted with the Pennsylvania Historical and Museum Commission, Bureau of Historic Preservation (SHPO) to determine the project's potential to affect cultural resources. By letter dated September 23, 2009, the SHPO indicated that no archeological properties listed in or eligible for inclusion in the National Register of Historic Places are known to exist in the project area.

ACTIVITIES:

April 19, 2010 - Philadelphia Gas Works ("PGW") filed a motion to intervene to protect its interest in this case.

Docket RP10-593-000
Transcontinental Gas Pipe Line Company, LLC
Non-Conforming FT Service Agreement

DATE FILED: April 9, 2010

BACKGROUND:
On April 9, 2010, Transco filed non-conforming service agreements under Rate Schedule FT with Con Edison Energy, Inc. and Municipal Electric Authority of Georgia, along with a revised tariff page that adds these agreements to the list of Transco's non-conforming agreements. On March 17, 2010, Transcontinental Gas Pipe Line Company, LLC (Transco) filed two revised non-conforming service agreements containing negotiated rate provisions under Rate Schedule FT, and a revised tariff sheet[99] to update Transco's list of non-conforming agreements in its tariff. In addition Transco filed two amendments to the service agreement between Transco and Consolidated Edison Energy, Inc. (Con Ed Energy); and an amendment to the service agreement between Transco and Municipal Electric Authority of Georgia (MEAG). We accept for filing Transco's service agreement and related amendments. We will also grant waiver in order to accept the revised tariff sheet effective May 9, 2010.

Transco explains that during its ongoing review of its service agreements, Transco determined that the referenced contracts with Con Ed Energy and MEAG, contain provisions that materially deviate from Transco's Rate Schedule FT Form of Service Agreement.[100] Thus, Transco proposes to amend Sheet No. 29 to include the referenced service agreements between Transco and Con Ed Energy, and MEAG respectively.

ACTIVITIES:

April 21, 2010 - Philadelphia Gas Works ("PGW") filed a motion to intervene to protect its interest in this case.

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99 Fifth Revised Sheet No. 29 to FERC Gas Tariff, Fourth Revised Volume No. 1.
100 It appears that Transco failed to timely file the subject service agreements in compliance with section 154.1(d) of the Commission's regulations. Applicants are reminded that they must submit required filings on a timely basis, or face possible sanctions by the Commission. *See Southern Star Central Gas Pipeline, Inc.*, 125 FERC ¶ 61,082 (2008).

Docket RP10-599-000
Texas Eastern Transmission LP
Negotiated Rate Agreement – South Jersey Resources

DATE FILED: April 13, 2010

BACKGROUND:

On April 13, 2010, Texas Eastern Transmission, LP (Texas Eastern) filed a revised tariff sheet101 to reflect a negotiated rate agreement with South Jersey Resources Group, LLC (South Jersey) for firm transportation service under Rate Schedule FT-1. South Jersey acquired the capacity as a result of a short-term release of capacity for the period April 10, 2010, through and including April 12, 2010, by New Jersey Natural Gas Company (New Jersey). Texas Eastern and South Jersey entered into a negotiated rate agreement to reflect the negotiated usage and fuel rates that were automatically passed through to South Jersey pursuant to the terms of the negotiated rate agreement with New Jersey. Texas Eastern also filed a revised tariff sheet102 which reserves this tariff sheet, proposed to be effective April 13, 2010, after the expiration of the negotiated rate agreement with South Jersey. Waiver of the thirty-day notice period is granted to permit the tariff sheets referenced in footnote nos. 1 and 2 to be accepted effective April 10, 2010 and April 13, 2010, respectively, as proposed.

ACTIVITIES:

April 26, 2010 - Philadelphia Gas Works ("PGW") filed a motion to intervene to protect its interest in this case.

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101 Original Sheet No. 121K to FERC Gas Tariff, Seventh Revised Volume No. 1.
102 First Revised Sheet No. 121K to FERC Gas Tariff, Seventh Revised Volume No. 1.

Docket RP10-608-000
Transcontinental Gas Pipe Line Company, LLC
Non-Conforming FT Service Agreement

DATE FILED: April 15, 2010

BACKGROUND:

On April 15, 2010, in Docket No. RP10-608-000, and April 16, 2010, in Docket No. RP10-613-000, Transcontinental Gas Pipe Line Company, LLC (Transco) filed revised tariff sheets[103] to be effective on May 15, 2010 and May 16, 2010, respectively. Transco also filed non-conforming service agreements in those dockets to be effective on the effective date of each agreement. As discussed below, the Commission accepts Transco's proposed tariff sheets and non-conforming agreements, effective on the dates requested, subject to further review and order of the Commission.

Transco states that, in response to the Commission's order in *Southern Star Central Gas Pipeline, Inc.*,[104] it initiated a review of its agreements, including ancillary service agreements that might affect the terms and conditions of service for material deviations from the applicable form of service agreement in Transco's Tariff. Transco further states that it submitted the results of this review to the Commission's Office of Enforcement on August 28, 2009 (August 28 Report). Transco states that, in the August 28 Report, Transco identified certain service agreements containing deviations that could be considered material deviations and provided detailed descriptions of those deviations. Transco further states that it stated that it would seek to renegotiate the identified deviations or would file the service agreements with the Commission as non-conforming service agreements. Transco asserts that the service agreements filed in both these dockets were identified in the August 28 Report as containing deviations that could be considered material.

Specifically, in Docket No. RP10-608-000, Transco has submitted non-conforming agreements with Atlanta Gas Light Company (AGL), the City of Buford, Georgia (Buford) and Piedmont Natural Gas Co., Inc. (Piedmont).[105] In Docket No. RP10-613-000, Transco has submitted non-conforming agreements with PECO Energy

103 Sixth Revised Sheet No. 29 in Docket No. RP10-608-000, and Seventh Revised Sheet No. 29 and Third Revised Sheet No. 29A in Docket No. RP10-613-000 to its FERC Gas Tariff, Fourth Revised Volume No. I.

104 125 FERC ¶ 61,082 (2008).

105 With regard to AGL, Transco has submitted an amendment to an existing service agreement. With respect to Buford, Transco has submitted contracts 1009763, 1012032, 1037190, 1042065 and 9002596. With regard to Piedmont, Transco has submitted contract 1012026 and an amendment.

Company (PECO) and PPL Energy Plus, LLC (PPL).106 Transco asserts that the deviations are either permissible or not material. Transco's filings include marked copies of the agreements indicating the deviations.

Transco also filed revised tariff sheets adding these service agreements to its list of non-conforming agreements.

Public notice of Transco's filings was issued on April 19, 2010. Interventions and protests were due on or before April 27, 2010 in Docket No. RP10-608-000 and on or before April 28, 2010 in Docket No. RP10-613-000. Pursuant to Rule 214 (18 C.F.R. § 385.214 (2009)), all timely filed motions to intervene and any motions to intervene out-of-time filed before the issuance date of this order are granted. Granting late intervention at this stage of the proceeding will not disrupt the proceeding or place additional burdens on existing parties. No protests or adverse comments were filed.

If a pipeline and a shipper enter into a contract that materially deviates from the pipeline's form of service agreement, the Commission's regulations require the pipeline to file the contract containing the material deviations with the Commission.107 In *Columbia Gas Transmission Corporation*,108 the Commission clarified that a material deviation is any provision in a service agreement that (a) goes beyond filling in the blank spaces with the appropriate information allowed by the tariff, and (b) affects the substantive rights of the parties.109 However, not all material deviations are impermissible. If the Commission finds that such deviation does not constitute a substantial risk of undue discrimination, the Commission may permit the deviation.110 Therefore, there are two general categories of material deviations: (a) provisions the Commission must prohibit because they present a significant potential for undue discrimination among shippers, and (b) provisions the Commission can permit without a substantial risk of undue discrimination. Moreover, if the Commission determines the contract contains a material deviation that is permissible, the Commission's regulations require the pipeline to file tariff sheets that reference the materially deviating contract.111

Transco has presented the Commission with several non-conforming service agreements. These agreements contain various deviations from Transco's *pro forma* service agreements. The Commission has not completed its review of these service agreements. The Commission will accept Transco's proposed tariff sheets to be effective on May 15, 2010, and May 16, 2010, as requested, subject to further review and order of the

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106 With regard to PECO, Transco has submitted contract 1044182 and three amendments. With respect to PPL, Transco has submitted contract 9008608 and two amendments.

107 18 C.F.R. § 154.1(d) (2009).

108 *Columbia Gas Transmission Corp.*, 97 FERC ¶ 61,221 (2001) (*Columbia*).

109 In *Natural Gas Pipeline Negotiated Rate Policies and Practices*, 104 FERC ¶ 61,134 at P 27 (2003), the Commission stated "[s]ince there would appear to be no reason for the parties to use language different from that in the form of service agreement other than to affect the substantive right of the parties, this effectively means that all language that is different from the form of service agreement should be filed with the Commission." *Id.* at P 32.

110 *Columbia,* 97 FERC ¶ 61,221 at 62,004.

111 18 C.F.R. § 154.112(b) (2009).

Commission. Since the Commission has yet to complete its review of the service agreements, and because they have been in effect for a significant period already, the Commission will also accept all of the filed service agreements, effective on their respective effective dates, subject to further review and order of the Commission.

By direction of the Commission.

ACTIVITIES:

April 27, 2010 - Philadelphia Gas Works ("PGW") filed a motion to intervene to protect its interest in this case.

Docket RP10-613-000
Transcontinental Gas Pipe Line Company, LLC
Non-Conforming FT Service Agreements

DATE FILED: April 15, 2010

BACKGROUND:

On April 15, 2010, in Docket No. RP10-608-000, and April 16, 2010, in Docket No. RP10-613-000, Transcontinental Gas Pipe Line Company, LLC (Transco) filed revised tariff sheets[112] to be effective on May 15, 2010 and May 16, 2010, respectively. Transco also filed non-conforming service agreements in those dockets to be effective on the effective date of each agreement. As discussed below, the Commission accepts Transco's proposed tariff sheets and non-conforming agreements, effective on the dates requested, subject to further review and order of the Commission.

Transco states that, in response to the Commission's order in *Southern Star Central Gas Pipeline, Inc.*,[113] it initiated a review of its agreements, including ancillary service agreements that might affect the terms and conditions of service for material deviations from the applicable form of service agreement in Transco's Tariff. Transco further states that it submitted the results of this review to the Commission's Office of Enforcement on August 28, 2009 (August 28 Report). Transco states that, in the August 28 Report, Transco identified certain service agreements containing deviations that could be considered material deviations and provided detailed descriptions of those deviations. Transco further states that it stated that it would seek to renegotiate the identified deviations or would file the service agreements with the Commission as non-conforming service agreements. Transco asserts that the service agreements filed in both these dockets were identified in the August 28 Report as containing deviations that could be considered material.

Specifically, in Docket No. RP10-608-000, Transco has submitted non-conforming agreements with Atlanta Gas Light Company (AGL), the City of Buford, Georgia (Buford) and Piedmont Natural Gas Co., Inc. (Piedmont).[114] In Docket No. RP10-613-000, Transco has submitted non-conforming agreements with PECO Energy

112 Sixth Revised Sheet No. 29 in Docket No. RP10-608-000, and Seventh Revised Sheet No. 29 and Third Revised Sheet No. 29A in Docket No. RP10-613-000 to its FERC Gas Tariff, Fourth Revised Volume No. I.

113 125 FERC ¶ 61,082 (2008).

114 With regard to AGL, Transco has submitted an amendment to an existing service agreement. With respect to Buford, Transco has submitted contracts 1009763, 1012032, 1037190, 1042065 and 9002596. With regard to Piedmont, Transco has submitted contract 1012026 and an amendment.

Company (PECO) and PPL Energy Plus, LLC (PPL).[115] Transco asserts that the deviations are either permissible or not material. Transco's filings include marked copies of the agreements indicating the deviations.

If a pipeline and a shipper enter into a contract that materially deviates from the pipeline's form of service agreement, the Commission's regulations require the pipeline to file the contract containing the material deviations with the Commission.[116] In *Columbia Gas Transmission Corporation*,[117] the Commission clarified that a material deviation is any provision in a service agreement that (a) goes beyond filling in the blank spaces with the appropriate information allowed by the tariff, and (b) affects the substantive rights of the parties.[118] However, not all material deviations are impermissible. If the Commission finds that such deviation does not constitute a substantial risk of undue discrimination, the Commission may permit the deviation.[119] Therefore, there are two general categories of material deviations: (a) provisions the Commission must prohibit because they present a significant potential for undue discrimination among shippers, and (b) provisions the Commission can permit without a substantial risk of undue discrimination. Moreover, if the Commission determines the contract contains a material deviation that is permissible, the Commission's regulations require the pipeline to file tariff sheets that reference the materially deviating contract.[120]

Transco has presented the Commission with several non-conforming service agreements. These agreements contain various deviations from Transco's *pro forma* service agreements. The Commission has not completed its review of these service agreements. The Commission will accept Transco's proposed tariff sheets to be effective on May 15, 2010, and May 16, 2010, as requested, subject to further review and order of the Commission. Since the Commission has yet to complete its review of the service agreements, and because they have been in effect for a significant period already, the Commission will also accept all of the filed service agreements, effective on their respective effective dates, subject to further review and order of the Commission.

ACTIVITIES:

April 28, 2010 - Philadelphia Gas Works ("PGW") filed a motion to intervene to protect its interest in this case.

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115 With regard to PECO, Transco has submitted contract 1044182 and three amendments. With respect to PPL, Transco has submitted contract 9008608 and two amendments.
116 18 C.F.R. § 154.1(d) (2009).
117 *Columbia Gas Transmission Corp.*, 97 FERC ¶ 61,221 (2001) (*Columbia*).
118 In *Natural Gas Pipeline Negotiated Rate Policies and Practices*, 104 FERC ¶ 61,134 at P 27 (2003), the Commission stated "[s]ince there would appear to be no reason for the parties to use language different from that in the form of service agreement other than to affect the substantive right of the parties, this effectively means that all language that is different from the form of service agreement should be filed with the Commission." *Id.* at P 32.
119 *Columbia,* 97 FERC ¶ 61,221 at 62,004.
120 18 C.F.R. § 154.112(b) (2009).

Docket RP10-615-000
Texas Eastern Transmission LP
Negotiated Rate Agreement – South Jersey Resources

DATE FILED: April 16, 2010

BACKGROUND:

On April 16, 2010, Texas Eastern Transmission, LP (Texas Eastern) filed the referenced revised tariff sheet121 to reflect a negotiated rate agreement between Texas Eastern and South Jersey Resources Group LLC (South Jersey) under Rate Schedule FT-1 (Contract No. 8916326). The referenced tariff sheet contains a description of the negotiated rate transaction under Rate Schedule FT-1 with South Jersey. The subject agreement is accepted and referenced revised tariff sheet are accepted effective April 17, 2010, as proposed.

ACTIVITIES:

April 28, 2010 - Philadelphia Gas Works ("PGW") filed a motion to intervene to protect its interest in this case.

Docket RP10-616-000
Equitrans, L.P.
Order No. 714 – Electronic Tariff Filing Requirements

DATE FILED: April 16, 2010

BACKGROUND:

On April 16, 2010, Equitrans L.P. ("Equitrans") filed revised tariff sheets that Equitrans states reflect non-substantive changes to its Tariff in preparation for the implementation of the Commission's electronic tariff filing requirements set forth in Order No. 714 On April 16, 2010, Equitrans, L.P. (Equitrans) filed revised tariff sheets122 to make housekeeping changes to various sections of its tariff in anticipation of its conversion to electronic form in compliance with Order No. 714 (124 FERC ¶ 61,270 (2008)). The revised tariff sheets are accepted effective May 16, 2010, as proposed.

Specifically, Equitrans proposed tariff changes reflect non-substantive housekeeping corrections and clarifications consisting of: (1) tariff format updates to conform to the eTariff requirements; (2) correction of clerical errors, such as formatting, punctuation, and spelling; (3) updated or eliminated outdated provisions; and (4) clarification and revision of certain inconsistent or incomplete provisions. Equitrans states that the proposed changes will not impact current customers' existing rates or services.

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ACTIVITIES:

April 28, 2010 - Philadelphia Gas Works ("PGW") filed a motion to intervene to protect its interest in this case.

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121 Second Revised Sheet No. 121K to FERC Gas Tariff, Seventh Revised Volume No. 1.
122 See attached Appendix for a list of the revised tariff sheets.

Docket CP10-107-000
Dominion Transmission, Inc.
Storage Capacity Lease

DATE FILED: February 17, 2010

BACKGROUND:

On February 17, 2010, East Ohio Gas Company d/b/a Dominion East Ohio ("DEO") and Dominion filed an application for approval for a lease pursuant to which Dominion will lease storage capacity from DEO. DEO requests a limited jurisdiction certificate to provide services to Dominion under the lease, and Dominion requests authority to enter into the lease and to use the capacity leased from DEO. ORDER ISSUING
1. On March 26, 2010, The East Ohio Gas Company, d/b/a Dominion East Ohio (East Ohio), and Dominion Transmission, Inc. (Dominion) (jointly, Applicants) filed a joint application under section 7(c) of the Natural Gas Act (NGA)123 and Part 157 of the Commission's regulations124 requesting authorization for Dominion to lease storage capacity from East Ohio to provide interruptible interstate storage service to others. East Ohio, a local distribution company,125 requests a limited jurisdiction blanket certificate under section 284.224 of the Commission's regulations126 authorizing it to lease capacity to Dominion, to provide storage service to Dominion using the leased capacity, and to operate and maintain the related facilities.

The Commission will approve Phase I of the lease and issue the requested authorizations as conditioned below.

East Ohio and Dominion are subsidiaries of Dominion Resources, Inc. East Ohio is an Ohio corporation with its principal place of business in Cleveland, Ohio. East Ohio states that it is engaged in the business of gathering, purchasing, storing, and distributing natural gas at retail in Ohio and is regulated by the Public Utilities Commission of Ohio (Ohio

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123 15 U.S.C. § 717f(c) (2006).
124 18 C.F.R. Part 157 (2010).
125 In 1954 the Commission's predecessor agency, the Federal Power Commission, affirmed East Ohio's exemption under NGA § 1(c), the Hinshaw Amendment. *See The East Ohio Gas Co.*, 13 FPC 1397 (1954).
126 This section of the Commission's regulations provides for the issuance of blanket certificates to Hinshaw pipelines to provide open access transportation service to the same extent that and in the same manner that intrastate pipelines are authorized by Subpart C. 18 CFR § 284.224(b)(3) (2010).

PUC).127 East Ohio is exempt from Commission jurisdiction as a Hinshaw pipeline under NGA section 1(c).128 East Ohio serves approximately 1.2 million residential, commercial, and industrial customers in Cleveland, Akron, Canton, Lima, Marietta, Youngstown, and other communities primarily in northern and eastern Ohio.

The East Ohio system includes 41 interconnections with six interstate pipeline systems: Dominion, ANR Pipeline Company, Panhandle Eastern Pipe Line Company LP, Texas Eastern Transmission LP, Columbia Gas Transmission Corporation and Tennessee Gas Pipeline Company. East Ohio states that an interconnection with Rockies Express Pipeline should be operational in the near future.

East Ohio operates several storage fields located in the vicinity of Akron and Canton, Ohio that have a total capacity of approximately 140 billion cubic feet (Bcf), consisting of approximately 60 Bcf of working gas capacity and 80 Bcf of base gas, with peak day deliverability of over 1 Bcf per day. East Ohio uses over 25,000 horsepower of compression to inject gas into its storage fields and does not ordinarily compress gas on withdrawal from storage. East Ohio states that historically it would turn approximately its full storage capacity of 60 Bcf annually but, in the most recent years, it has turned only 54 or 55 Bcf of gas, leaving East Ohio with unused storage capacity.

Dominion is a Delaware corporation with its principal place of business in Richmond, Virginia. Dominion is engaged primarily in the business of storing and transporting natural gas in interstate commerce on an open-access basis for customers principally in New York, Ohio, Pennsylvania, West Virginia, Virginia, Maryland, and the District of Columbia.

Dominion states that it currently provides approximately 300 Bcf of top gas storage capacity to the interstate market, all of which is fully contracted under long-term firm service agreements. Dominion states that in the past seven years it has developed a series of storage projects that have added over 25 Bcf of additional storage capacity to its system. Another potential project, the Storage Factory Project, was the subject of the Commission's pre-filing process in Docket No. PF07-12-000. Dominion states that it had entered into precedent agreements for the initial phase of the Storage Factory Project to

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127 East Ohio states that it is regulated in Ohio as a "natural gas company," as defined in § 4905.03(A)(6) of the Ohio Revised Code, and as a "public utility" under § 4905.302(C) of the Ohio Revised Code.

128 Under NGA section 1 (c), known as the Hinshaw amendment, the NGA does not apply to a pipeline that engages in interstate sales or transportation of natural gas or to the facilities the pipeline uses for such transportation or sales, if it receives such natural gas from another person within or at the boundary of a state, the gas is ultimately consumed within that state, and the facilities, rates and services of the pipeline are subject to regulation by a state commission. Pipelines exempt under NGA section 1(c) are commonly referred to as "Hinshaw pipelines."

provide 7.5 million dekatherms (Dth) of storage capacity using a proposed new salt cavern storage in Pennsylvania with an in-service date of April 1, 2014, for injections and November 1, 2014, for withdrawals and related transportation. However, Dominion terminated the pre-filing process in Docket No. PF07-12-000 in November 2008, stating it would file a revised project application after initiating a new pre-filing process in 2011.

Dominion states that it intends its lease of capacity in the instant proposal to be part of the revised storage project that ultimately will replace the Storage Factory Project. Dominion states that it anticipates requesting permission to initiate pre-filing review proceedings for the larger project in July 2011, leading to a certificate application by June 2012.

Proposal

East Ohio requests a Section 284.224 limited jurisdiction blanket certificate authorizing it to lease capacity to Dominion, to provide storage service to Dominion using the leased capacity, and to operate and maintain the facilities necessary for such service.129

East Ohio states that it can initially make available three million Dth of storage capacity and specific associated deliverability rights for Dominion. East Ohio states that it can make this storage available to the interstate market while continuing to satisfy all its Ohio intrastate market commitments and regulatory requirements and without adversely impacting its existing customers. East Ohio states that it does not propose to devote any particular facilities to provide the interstate service but rather, will provide the capacity and deliverability rights specified in the Lease Agreement between it and Dominion using all of its integrated storage operations.

East Ohio further states that its ability to offer storage service to interstate customers currently is constrained because its system typically operates at lower pressure levels than the interstate pipeline systems that interconnect with its system. Therefore, volumes withdrawn from East Ohio's storage fields cannot physically be delivered onto an interstate pipeline system for further transportation to interstate markets. East Ohio and Dominion explain that they have agreed upon terms in the Lease Agreement, including displacement of gas, to address this limitation.130

Dominion requests authorization to enter into the Lease Agreement with East Ohio. Dominion also requests Commission authority to reserve the capacity acquired under the agreement to provide, in conjunction with other Dominion facilities and assets to be developed in the future, firm storage service beginning in 2014 for customers that entered

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129 Although East Ohio currently holds a Part 284.224 limited jurisdiction blanket certificate (*see The East Ohio Gas Co.*, 13 FERC ¶ 61,028 (1980)), the Commission has found that a separate limited jurisdiction certificate is necessary in order to lease capacity to or from an interstate pipeline. *TriState Pipeline, L.L.C.*, 88 FERC ¶ 61,328, at 62,001-02 (*preliminary determination*) (1999), *vacated*, 90 FERC ¶ 61,258 (2000) (TriState decided not to proceed with the project and withdrew its application).

130 Dominion states that it will propose construction of the compression which will be necessary to enable physical receipts of gas from East Ohio, making firm storage service possible in the future application requesting authorization for the project that will replace the Storage Factory Project.

into precedent agreements as part of the Storage Factory Project.131 Until that time, Dominion proposes to offer interruptible storage services using the leased storage capacity under the terms of its existing tariff and rate schedules.132

Dominion states that in the future application for the project to replace the Storage Factory Project it will propose rates for the firm storage service using the leased capacity which will include the costs of the Lease Agreement. Until it receives Commission approval of the future application, Dominion states it will be at risk for the costs of the Lease Agreement.

The Lease Agreement

The Applicants have structured the Lease Agreement as an operating lease. East Ohio will continue to own, operate, and maintain all of its facilities on an integrated basis. Dominion will use the storage capacity and associated injection and withdrawal rights specified in the Lease Agreement to perform services for others as if it were Dominion's own storage. Dominion and East Ohio request a waiver of the Commission's "shipper must have title" rule to allow East Ohio to provide service to Dominion with gas owned by Dominion's customers.[133]

The lease of capacity and associated service will continue for a primary term of fifteen years, subject to certain roll-over rights.[134] The leased storage rights are structured in two successive phases, with Phase I commencing upon Commission approval of the instant proposal. Phase II would begin upon East Ohio's notice that it is ready to provide additional capacity (up to five million Dth) to the interstate market, upon completion of the compression which Dominion states it will propose in its future application.[135]

Throughout the term of the Lease Agreement, firm injection rights are provided during the months of April through October, equal to one–one hundred eightieth (1/180th) of the storage capacity when Dominion's inventory is less than or equal to one half of the capacity, and one-two hundred fourteenth (1/214th) of the leased capacity when Dominion's inventory is greater than one half of the capacity.[136] Dominion will deliver

131 Because, as discussed below, Dominion will not be able to offer firm storage service using the capacity approved for lease herein, its request to reserve capacity for future use is moot.

132 As noted above, Dominion intends the instant proposal to be part of the revised storage project that ultimately will replace the Storage Factory Project. The first phase of the lease is all that is under review here. Dominion expects to file an application for the larger second phase by June 2012.

133 Section 25 of the General Terms and Conditions of Dominion's tariff provides for a waiver of the shipper must have title requirement when Dominion acquires off-system capacity. Such a waiver is necessary for East Ohio as well as Dominion.

134 Lease Agreement at Article V.

135 *Id.* at Article III and Exhibits A and B.

136 *Id.* at Section 3.2. Special terms address a shortened injection period during the first year of the lease.

gas for injection into storage at mutually-agreed interconnections between the Dominion and East Ohio systems,[137] and East Ohio will transport the gas on its intrastate system to its storage fields as part of the storage service under the Lease Agreement.

The withdrawal entitlements associated with the leased storage capacity are subject to varying daily and monthly limits, and differ in the first and second phases of the Lease Agreement.[138] During Phase I, there is a minimum withdrawal requirement in November, no withdrawal entitlements in December or January, and significant deliverability in February and March.

The sculpted monthly deliverability entitlements were negotiated to address East Ohio's operational needs (the required November withdrawals to avoid an adverse impact on storage migration and limited deliverability during the December and January peak periods of intrastate demand) and to satisfy Dominion's commercial needs (particularly for late-season deliverability). Gas withdrawn from storage will be transported from the storage fields by East Ohio on its own pipeline system to interconnections with Dominion under a new interstate transportation agreement to be entered into pursuant to East Ohio's existing authority under its section 284.224 limited jurisdiction blanket certificate.[139]

East Ohio will deliver the withdrawal volumes to the Dominion interconnects at the pressure existing on the East Ohio system, which currently significantly limits East Ohio's ability to flow gas physically into Dominion. Accordingly, for the Phase I service being considered here, redelivery of nominated withdrawals will be made by displacement; equivalent volumes that were scheduled for delivery by Dominion to the East Ohio system that same day instead will remain on Dominion's system. If the volumes scheduled for delivery on Dominion to East Ohio and available to displace withdrawals are insufficient on any day, East Ohio will have no obligation to provide the nominated withdrawals from storage. Applicants state that this provision, in effect, makes the leased storage deliverability interruptible.

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137 The following 15 interconnections, all in Ohio, exist between the Dominion and East Ohio systems: Gilmore, Petersburg, Pennline, Meadville, Clarks Corner, Petersburg, Mullet I, Mullet II, Ormet, Augusta, Texas Eastern, Harlem Springs, Wayfarm, Williamstown, and Bowerstown.

138 See Lease Agreement at Section 3.3 and Exhibits A and B.

139 Pursuant to Section 3.3(c) of the Lease Agreement, Dominion also will enter into an interstate transportation agreement with East Ohio (under authority of its existing section 284.224 blanket certificate) at the maximum rates on file with the Commission. East Ohio states that it intends to file a separate application soon to update its Operating Statement and the rates applicable under that blanket certificate and to elect to charge the cost-based rates for comparable intrastate transportation service approved by the Ohio PUC in East Ohio's recently concluded rate case.

Applicants state that the Lease Agreement requires Dominion to pay East Ohio a Monthly Lease Charge based on the maximum cost-based rates approved by the Ohio PUC for East Ohio's intrastate In/Out Storage Service, which is the East Ohio service which most closely resembles the terms of the Lease Agreement.[140] The Monthly Lease Charge is subject to future adjustment if East Ohio's maximum cost-based rates for its In/Out Storage Service (or another comparable intrastate storage service if that service is eliminated) change in the future. Dominion also will pay an authorized overrun charge based on East Ohio's rates and charges for comparable intrastate services, for authorized injections or withdrawals above the firm entitlements, and for summer withdrawals or winter injections when allowed.

Finally, East Ohio will retain 1.4 percent of all quantities withdrawn from storage as an incrementally calculated fuel charge covering injections, withdrawals and the associated transportation of storage volumes on East Ohio's system under the related transportation agreement.[141] East Ohio states that applying the incremental fuel charge to withdrawal volumes transported from storage is consistent with the approach that it takes when providing unbundled intrastate transportation and storage services.

Discussion

Because Dominion proposes to use the capacity at issue to transport natural gas in interstate commerce subject to the jurisdiction of the Commission, its proposal is subject to the requirements of sections 7(c) and (e) of the NGA. East Ohio's operation of capacity that it will lease to Dominion and Dominion's acquisition of such capacity by lease are also subject to such provisions of the NGA.

The Certificate Policy Statement

The Certificate Policy Statement provides guidance as to how we will evaluate proposals for certificating new construction by establishing criteria for determining whether there is a need for a proposed project and whether the proposed project will serve the public interest.142 A proposal to lease capacity with no related construction of facilities such as

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140 *Id.* at Article VI and Application at Exhibit N. Applicants state that the rates set forth in Section 6.2 of the Lease Agreement as applicable to the comparable intrastate In/Out Storage service are set forth in Section 5.2 of East Ohio's FSS Rate Schedule, on East Ohio's Second Revised Sheet No. F-FSS3; that tariff sheet and the maximum storage rates were approved by the Ohio PUC as part of the settlement of East Ohio's recent state rate case. *See* Ohio PUC, *In the Matter of the Application of The East Ohio Gas Co. for Authority to Increase Rates for its Gas Distribution Service*, Case No. 07-829-GA-AIR, Opinion and Order, (October 15, 2008) (approving settlement); Entry on Rehearing in the same docket issued on December 19, 2008. East Ohio filed final revised tariff sheets (including the sheet noted above setting forth the storage rates) in conformance with these orders by the Ohio PUC on December 22, 2008.

141 Lease Agreement at Section 3.3(c)(4).

142 *Certification of New Interstate Natural Gas Pipeline Facilities* (Certificate Policy Statement), 88 FERC ¶ 61,227 (1999), *order clarifying statement of policy*, 90 FERC ¶ 61,128, *order further clarifying statement of policy*, 92 FERC ¶ 61,094 (2000).

the proposal in this proceeding eliminates the Policy Statement's concerns with overbuilding, disruptions of the environment and the exercise of eminent domain. However, the threshold requirement under the Policy Statement, that a pipeline must be prepared to financially support the project without relying on subsidization from its existing customers, is equally applicable to leases of capacity. Similarly, whether the applicant has made efforts to eliminate or minimize any adverse effects the proposed lease might have on the applicant's existing customers and existing pipelines in the market and their captive customers is also relevant to our evaluation of the proposal.

Historically, the Commission views lease arrangements differently from transportation services under rate contracts. The Commission views a lease of interstate pipeline capacity as an acquisition of a property interest that the lessee acquires in the capacity of the lessor's pipeline.[143] To enter into a lease agreement, the lessee generally needs to be a natural gas company under the NGA and needs section 7(c) certificate authorization to acquire the capacity. Once acquired, the lessee in essence owns that capacity and the capacity is subject to the lessee's tariff. The leased capacity is allocated for use by the lessee's customers. The lessor, while it may remain the operator of the pipeline system, no longer has any rights to use the leased capacity.[144]

The Commission's practice has been to approve a lease if it finds that: (1) there are benefits from using a lease arrangement; (2) the lease payments are less than, or equal to, the lessor's firm transportation rates for comparable service over the terms of the lease; and (3) the lease arrangement does not adversely affect existing customers.[145] The lease agreement between Dominion and East Ohio satisfies these requirements.

As more fully discussed below, we find that benefits from use of the lease will accrue, that the payments are satisfactory, and that the lease arrangement will not adversely affect existing customers. Therefore, we find that the proposed lease is required by the public convenience and necessity, subject to the conditions described herein.

Under the proposal, Dominion will provide interruptible storage service using the leased capacity under its existing IT Rate Schedule. Since the lease costs associated with the capacity are not included in Dominion's current rates, existing Dominion customers will not subsidize the service. Dominion shall maintain separate accounting records to ensure that costs and revenues associated with the leased capacity from East Ohio can be identified in any future proceeding in which Dominion might seek to recover the lease costs through rates. In addition, despite the fact that there appear to be not additional costs associated with East Ohio's lease of a portion of its existing capacity to Dominion, the Commission will nevertheless explicitly condition its approval of the lease on East Ohio's not shifting any costs that may ultimately be associated with the leased capacity to

[143] *Texas Eastern Transmission Corp.*, 94 FERC ¶ 61,139, at 61,530 (2001).
[144] *Texas Gas Transmission, LLC,* 113 FERC ¶ 61,185, at P 10 (2005).
[145] *Id.*; *Islander East Pipeline Co., L.L.C.*, 100 FERC ¶ 61,276, at P 69 (2002); *Gulf Crossing Pipeline Co.*, 123 FERC ¶ 61,100, at P 111 (2008) (*Gulf Crossing*); *Midcontinent Express Pipeline LLC*, 124 FERC ¶ 61,089, at P 31, *reh'g denied*, 127 FERC ¶ 61,164 (2009).

any of its existing interstate customers.146

The Commission has found that capacity leases in general have several potential public benefits. Leases can promote efficient use of existing facilities, avoid construction of duplicative facilities, reduce the risk of overbuilding, reduce costs, minimize environmental impacts, and result in administrative efficiencies for shippers.[147] Here, the lease arrangement will allow for additional storage capacity to be available on the interstate market without construction of duplicative facilities.

As noted in the application, the Lease Agreement requires Dominion to pay East Ohio a Monthly Lease Charge based on the maximum cost-based rates approved by the Ohio PUC for East Ohio's intrastate In/Out Storage Service, which is the East Ohio service which most closely resembles the terms of the Lease Agreement.[148] The Monthly Lease Charge is subject to future adjustment if East Ohio's maximum cost-based rates for its In/Out Storage Service (or another comparable intrastate storage service if that service is eliminated) change in the future. Dominion also will pay an authorized overrun charge based on East Ohio's rates and charges for comparable intrastate services, for authorized injections or withdrawals above the firm entitlements, and for summer withdrawals or winter injections when allowed.

The leased capacity also allows for the efficient use of the available capacity on East Ohio, avoids the environmental impact and impacts on landowners associated with constructing duplicative facilities, reduces the costs of Dominion's storage expansion and allows it to be placed in service earlier than if redundant facilities were constructed. Further, as we find in response to the protests and comments addressed below, there is no evidence that the lease arrangement will adversely affect existing customers.

Protests and Comments

Cost Recovery

OCC contends that the Applicants have failed to provide sufficient information for the Commission to determine whether the proposed lease complies with the Commission's Certificate Policy Statement. OCC states that although Dominion proposes to be at risk for the leased capacity in Phase I and to file a certificate application in which it would propose incremental rates for Phase II, it has not provided sufficient evidence to determine whether rolled-in rate treatment in the future would be more appropriate for the recovery of the lease costs. OCC requests that if the Commission
grants approval of the lease it should rule that approval of the transaction is not a predetermination of the appropriate rate treatment for Phase II.

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146 *Midcontinent Express Pipeline LLC,* 124 FERC ¶ 61,089 at P 33.

[147] *See, e.g., Dominion Transmission, Inc.,* 104 FERC ¶ 61,267, at P 21 (2003); *Islander East Pipeline Co.,* 100 FERC ¶ 61,276, at P 70.

148 Lease Agreement at Article VI and Application at Exhibit N.

Richmond maintains that Dominion should remain at risk for the duration of the lease and requests the Commission to clarify that this will be the case unless and until the Commission authorizes the storage project contemplated in Phase II. Richmond also requests clarification that any authorization provided in this proceeding will not constitute pre-determination as to whether the Phase II storage project should receive Commission authorization or whether the services should be priced on a rolled-in or incremental basis.

In its answer, Dominion agrees that it will continue to be at risk for the costs of the lease until the Commission authorizes the storage project contemplated in Phase II subject to the clarification that the Commission has the authority to modify that situation in some future order. Dominion also does not object to Richmond's requested clarification that any authorization in this docket not constitute a pre-determination on the pricing of capacity for the Phase II project, noting that the application does not request predetermination of anything regarding a future application for a project using the leased capacity.

Richmond states in its answer it believes Dominion's clarification is acceptable as long as the Commission also clarifies that any certificate authorization provided in this proceeding shall not serve as a basis for approving any future recovery of the lease costs.

Commission Response

The Commission is only approving Phase I of the lease proposal in this proceeding; thus, Dominion is only being authorized to recover the costs associated with the capacity being leased in Phase I through its interruptible services under its existing tariff and rate schedules. As none of those costs are included in Dominion's existing rates, there will be no subsidization of the lease costs by existing customers. Applicants state that until Dominion constructs compression and other facilities to be proposed as part of the storage replacement project, Dominion is not able to offer firm storage service using the leased capacity. In addition, Dominion acknowledges that it will have to submit a separate certificate application for the storage project contemplated by Phase II of the Lease Agreement which would replace the authorization being approved here and incorporate additional leased capacity and other proposed facilities. Therefore, any determination regarding Phase II of the lease proposal, including the appropriate pricing conditions for the leased capacity, will be made in that proceeding based on the specific facts supporting the certificate application

OCC argues that the application in this proceeding should be rejected because it fails to include certain exhibits required under 18 C.F.R. § 157.16 (2010), i.e., Exhibits Q (Effect of Acquisition on Existing Contracts and Tariffs), Exhibit R (Acquisition Contracts), and Exhibit S (Accounting Statements). OCC states that such exhibits are required since the Commission views a lease of pipeline capacity as an acquisition of a property interest[149]

149 OCC Protest at 4-7.

and that East Ohio is accomplishing a transfer of an asset.[150]

Applicants respond that section 157.16 is not applicable here since Dominion is not acquiring any facilities from East Ohio, and the Commission has not withheld approval from prior certificate applicants seeking approval of leases, none of which filed Exhibits Q, R, or S.[151]

Commission Response

Section 157.16 refers by its own terms to acquisitions of facilities and thus does not apply to the application here. Nor is OCC's argument that East Ohio is transferring an asset to Dominion an accurate reflection of the nature of the commercial transaction involved here. East Ohio will continue to exercise management and control over its storage facilities, which will not be acquired by Dominion as it uses the capacity therein, just as East Ohio does regardless of the identity of a customer using its facilities. Further, the information included in the application allows the Commission to consider fully the issues relevant to whether the application is required by the public convenience and necessity. For these reasons, OCC's request that we reject the application is denied.

Request for Evidentiary Hearing

OCC states that the resolution of certain factual issues presented in this proceeding cannot be made in the absence of a formal evidentiary hearing. The issues include: (a) whether any harm to East Ohio and its in-state Ohio residential customers will result from approval of the proposed lease, especially by East Ohio's passing on any increased costs incurred by East Ohio; (b) whether the on-system storage to be made available to Dominion is excess to East Ohio's available capacity for intrastate needs; and (c) whether potential affiliate abuses, including open season concerns, require rejection of the application.

As demonstrated by the discussion below, we find that OCC has presented no material issue of fact that cannot be resolved on the basis of the material before us. Since the Commission is not required to conduct a formal evidentiary hearing where issues are efficiently and effectively resolved on the basis of a written record, we will deny OCC's request for an evidentiary hearing.152

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150 OCC Answer at 12.

151 Applicants Answer at 5.

152 *CNG Transmission Corp. v. FERC*, 40 F.3d 1289, 1293 (D.C. Cir. 1994); *Moreau v. FERC*, 982 F.2d 556, 568 (D.C. Cir. 1993); *Cascade Natural Gas Corp.*, 955 F.2d 1412 (10th Cir. 1992). *See also NE Hub Partners, L.P.*, 90 FERC ¶ 61,142, at 61,437 (2000) ("[o]ur practice is to hold a 'paper hearing' in those cases where the written record provides a sufficient basis for resolving the relevant issues rather than a formal in-person trial-type evidentiary hearing.").

Harm Through Increased Costs

OCC states that the Commission must examine closely whether East Ohio's existing local customer base will be faced with unnecessary and harmful charges resulting from the operation of the lease.[153] OCC states that East Ohio "will no doubt seek to pass on any increased costs to East Ohio's captive retail customers in Ohio."[154]

Applicants respond that, as explained in the Application, "the structure of the Lease Agreement enables East Ohio to make this storage [i.e., the quantities leased to Dominion] available to the interstate market while continuing to serve its traditional Ohio market and to satisfy all its Ohio intrastate commitments and regulatory requirements without any adverse impact on its existing customers."[155] Applicants state that the amount of capacity leased to Dominion is phased so that East Ohio can make additional limited investments in facilities to ensure that the protection of existing intrastate customers remains over time,[156] and that there will be no reduction in the amount of storage capacity or deliverability offered to East Ohio's existing intrastate customers as a result of the Lease Agreement.

During Phase I of the Lease, all withdrawals for the Dominion storage will be accomplished by displacement with volumes that otherwise would have been delivered to East Ohio by Dominion, limiting East Ohio's requirement to withdraw gas physically from storage.[157] During Phase I, the minimum withdrawal requirement in November avoids an adverse impact on storage migration while the absence of any withdrawal entitlements at all in December or January coincide with the peak period of intrastate demand.

Applicants also note that all of East Ohio's existing intrastate customers will receive the same amount and quality of storage service and will pay the same rates after commencement of the lease as they do now and that the lease will not affect the storage allocation in East Ohio's customer choice program or the amount of intrastate storage service offered to marketers and end-use customers in the annual open season East Ohio conducts each February. Applicants also state that the lack of incremental demand for additional Ohio intrastate storage service is reflected in the fact that no existing or potential customer has protested the application.

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153 *Citing Midcontinent Express Pipeline LLC, Enogex, Inc.*, 124 FERC ¶ 61,089 (2008).

154 OCC Answer at 9.

155 Application at 6.

156 *Id.*

157 *Id* at 10-12.

Applicants state that issues related to the allocation of costs to Ohio consumers, as raised by OCC, are outside the scope of this proceeding. Applicants note that Dominion will pay East Ohio lease charges based on the maximum cost-based rates approved by the Ohio PUC for East Ohio's intrastate storage service that most closely resembles the terms of the lease. Applicants also note that the application provides that East Ohio does not expect to include any incremental costs associated with the leased storage in its intrastate storage rates or in the rates of any other interstate service that it may provide in the future. Applicants also note that East Ohio has not sought to recover from its existing intrastate customers any of the costs of its investments made since its last rate case or of any future storage-related investments and that the Ohio PUC will determine the proper cost allocation and revenue attribution in its next rate case.

With regard to OCC's comments about Dominion's recovery of its costs, Applicants state that Dominion has not yet proposed any mechanism to recover the costs of the lease (other than by selling Phase I capacity as interruptible service at its existing approved rates) and the proper pricing of any planned future expansion project utilizing the leased capacity will be decided in a future Commission proceeding.

Commission Response

No evidence before us reasonably suggests that East Ohio's existing customer base will be forced to shoulder increased costs resulting from the operation of the lease and any attempt by East Ohio to recover increased costs incurred as a result of the lease must be approved by the Ohio PUC. The Monthly Lease Charge imposed upon Dominion established in the lease is based on the maximum cost-based rates approved by the Ohio PUC for East Ohio's most comparable intrastate storage service[158] and is subject to future adjustment if East Ohio's maximum cost-based rates change in the future.

In addition, Dominion will pay East Ohio the maximum rate for intrastate transportation service pursuant to East Ohio's Operating Statement as filed with the Commission. East Ohio will also retain a fixed percentage of 1.4 percent of all quantities withdrawn from storage as a fuel charge to cover injections, withdrawals and the associated transportation of storage volumes on East Ohio's system under the related transportation agreement. Applicants state that the cost of the leased storage service is significantly less than the costs of constructing new storage on Dominion's system. Therefore, we find that the monthly lease charge that Dominion will pay under the lease will be equal to the comparable firm storage service charge on the East Ohio System.

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158 The Monthly Lease Charge is based on the maximum cost-based rate approved by the Ohio PUC for East Ohio's intrastate In/Out Storage Service as set forth in Section 5.2 of East Ohio's FSS Rate Schedule. The jurisdiction of the Ohio PUC to protect East Ohio's existing customer base is not affected by our order in this proceeding.

Available and Excess East Ohio Storage Capacity

OCC argues that the Applicants have failed to demonstrate that the storage capacity included in the lease is excess to East Ohio's retail customer needs over the proposed term of the lease. OCC maintains that approval of the lease may have long-term adverse consequences for East Ohio's retail customers under the Commission's treatment of leased capacity, since East Ohio would no longer have any control over, or right to use, the capacity. OCC states the Ohio PUC's Management Performance audits have provided varying storage capacity levels and argues that there may be increased demand for intrastate storage in Ohio, citing a June 2006 long-term forecast by East Ohio and suggesting that the statements in the Application about declining load reflect only transient recent developments reflected nationally in post-2008 economic difficulties.[159]

OCC states that East Ohio recently submitted an application to the Ohio Power Siting Board claiming that it needed to construct a 20-inch pipeline to increase its gas storage capacity by 10 Bcf. OCC states the Commission should set the matter of the amount of excess on-system storage capacity East Ohio actually has to accommodate the proposed lease transaction for hearing.
Applicants respond that there can be no question that East Ohio's customer demand has decreased significantly, as summarized below: 160

	Total Throughput	Number of Customers
2005 (Last actual year in 6/1/06 long-term forecast)	274.1 Bcf	1,218,714
2007 (Test Year in last rate case)	254.8 Bcf	1,213,037
2009 (Last actual year)	232.4 Bcf	1,193,758

Moreover, Applicants state that the suggestion that the declining need for Ohio intrastate storage results only from the economic downturn of the last two years is contradicted by the Ohio PUC Staff's Report of Investigation in East Ohio's last rate case (at page 45), which shows an 18 percent decline in normalized residential usage from 2000 through 2007.[161]

159 OCC Protest at 10 and Answer at 15.

160 Answer of Applicants at 10-12.

161 Applicants Answer at 11.

As to how much storage capacity East Ohio has, Applicants note that the Liberty Consulting Group in 2006 stated: "The Columbiana storage field has been decommissioned during the prior audit period (November 2001 through October 2003), and due to storage migration problems the total working gas inventory is now considered to be about 55,000 MMcf."[162] Applicants note also that due to declining base load and winter season usage on its system in recent years, East Ohio has experienced increasing difficulty in turning the amount of storage capacity available in its system. As noted above, in previous years, East Ohio generally would turn approximately its full storage capacity of 60 Bcf; but, in the most recent years, it has turned only 54 or 55 Bcf of gas.[163]

Applicants state that this decline in Ohio intrastate demand and usage is a major contributor to East Ohio's increased difficulty in turning its working gas inventory each year, exacerbated by increases in local production adding more baseload supply during the winter periods, with winter deliveries of Ohio production increasing by nearly 4 Bcf since 2003. Applicants state that the combination of reduced demand and increased winter baseload supply have made it impossible for East Ohio to turn its historical volume of storage inventory, and that the Lease Agreement will help address this problem, while making incremental storage available to the interstate market.

As to the import of a 20-inch pipeline recently constructed by East Ohio, Applicants note that the 9-mile, 20-inch line, extending from East Ohio's Shoop Station to its Chippewa Station, allows gas from East Ohio's Stark-Summit base pools to be transported to the Cleveland market area. The pipeline construction responded to East Ohio's declining ability to withdraw gas from the base pools resulting from: (1) the down rating and subsequent removal of a pipeline previously used to deliver storage withdrawals to the Cleveland area; and (2) declining load in the Akron area, the remaining major market for the withdrawals.[164] The pipeline allows for increased storage withdrawals and injections into the base pools and effectively increases East Ohio's useable storage capacity by providing access to a larger market, but does not add to East Ohio's physical storage capacity.

In addition to the 20-inch pipeline, Applicants note that East Ohio has made a series of additional investments in its storage infrastructure since the 2007 test year of its last Ohio rate case, and it is continuing to make additional investments.[165] East Ohio has drilled

162 *Id.* at 12, n.25 (citing The Liberty Consulting Group, *Final Report of Management/Performance Audit of East Ohio in Ohio PUC Case No. 05-219-GA-GCR* (May 19, 2006), II-11 to II-12).

163 Application at 5-6.

164 Applicant Answer at 13, n.29.

165 *Id.* at 13-14.

five new storage wells, all of which will be tied into the storage system in 2010 after being hydraulically fractured. This year, East Ohio also will complete the installation of a new compressor unit at its Chippewa Station, increasing maximum storage injection rates.

Applicants note also that East Ohio has completed well bore cleanouts and acid cleaning on 9 existing, underperforming storage wells, returning the wells close to their original deliverability. East Ohio has also installed 60 ultrasonic meters at existing storage wells, allowing for real-time flow monitoring of operations and maintenance and the ability to test the wells remotely. In the coming years, East Ohio plans to drill an additional ten storage wells, to continue its maintenance and acid cleaning program for underperforming wells, and to add additional ultrasonic meters. The cost of these investments in the new 20-inch pipeline and in the storage facilities during 2008 and 2009, since the filing of East Ohio's last state rate case, has totaled nearly $30 million. For 2010 and 2011, East Ohio plans additional storage-related investments of approximately $16 million. All of these investments, applicants state, will help East Ohio to meet its commitments to existing intrastate customers with increased operational efficiencies, as well as provide the incremental capability contemplated under both phases of the Lease.

Commission Response

A review of the lease shows that Applicants have structured the lease to ensure that existing customers of both applicants are not adversely affected. The leased capacity is provided in two successive phases, with Phase I (3,000,000 Dths) commencing when the application is approved by the Commission and Phase II (5,000,000 Dths) upon East Ohio's notice that it is ready to provide the additional capacity to the interstate market. In addition, the lease contains sculpted monthly deliverability entitlements that were negotiated to address East Ohio's operational needs (i.e., Dominion is required to withdraw gas in November to avoid an adverse impact on storage migration and has limited deliverability during the December and January peak periods of intrastate demand) as well as to satisfy Dominion's commercial needs.

In addition, East Ohio will deliver the withdrawal volumes to the Dominion interconnects at the pressure existing on the East Ohio system, which currently significantly limits East Ohio's ability to flow gas physically into Dominion. Until Dominion constructs facilities for the purpose of receiving the leased capacity, the redelivery of nominated withdrawals will be made via displacement by which equivalent volumes that were scheduled for delivery by Dominion to the East Ohio system that same day instead will remain on the Dominion system. If the volumes scheduled for delivery on Dominion to East Ohio and available to displace withdrawals are insufficient on any day, East Ohio will have no obligation to provide the nominated withdrawals from storage.

We believe that East Ohio and Dominion have made reasonable decisions concerning the storage capacity to be made available for lease in this proceeding. We note that it is not possible to conclude, as OCC would have us do on the basis of the evidence before us, that the relevant Ohio economies will rebound to the point of making East Ohio's lease of

storage capacity to the interstate markets problematic in terms of Ohio's intrastate storage needs. The evidence is strong; however, that East Ohio's customer demand for service has diminished substantially over a number of recent years.

Ultimately the record of direct impacts of the lease on East Ohio's intrastate customers will be available to the Ohio PUC, which has not participated here. We note, however, that all of East Ohio's existing intrastate customers will receive the same amount and quality of storage service and pay the same rates after commencement of the lease as they do now. Further, the lease will not affect the storage allocation in East Ohio's customer choice program or the amount of intrastate storage service offered to marketers and end-use customers in the annual open season East Ohio conducts each February.

Applicants also note that the lack of incremental demand for additional Ohio intrastate storage service is reflected in the fact that no existing or potential customer has protested the application. OCC questions the total amount of on-system storage capacity East Ohio has and requests the Commission set that issue for hearing. However, the Commission does not believe an exact determination of East Ohio's on-system storage capacity, above and beyond the close approximations provided in the record, is required in order to approve the lease agreement. Applicants have shown that existing customers will not be adversely affected and all of East Ohio's existing intrastate customers will receive the same amount and quality of storage service and pay the same rates after commencement of the lease as they do now.

Open Season/Affiliate Concerns

The OCC suggests both that East Ohio awarded the storage capacity to its affiliate Dominion in an unduly discriminatory manner, without holding an open season, and that East Ohio's contracting for storage service from Dominion is questionable. OCC notes that East Ohio's on-system storage has long been used to serve the needs of Ohio retail customers, that the cost of such system storage has been built into the rates of East Ohio's retail customers, and that Dominion could turn around and lease the capacity to others, obtaining windfall profits, while East Ohio could also receive revenues above the cost of the system storage, which would also constitute windfall profit.[166]

Applicants state that East Ohio has an annual open season for intrastate storage service, but is currently unable to offer interstate storage service to the market generally, forcing the reliance on withdrawals by displacement of gas that otherwise would be delivered to its system, until new compression is constructed, as Dominion has committed to do as part of the Lease Agreement. East Ohio also requires very specific limitations on the timing of deliverability with this incremental storage, especially in Phase I when there are no entitlements in December or January. For these reasons, East Ohio elected to proceed with a lease of its storage capacity.

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166 OCC Protest at 17-18.

Applicants argue that open seasons are not required to select counterparty for a lease, and there is no evidence of any undue discrimination in East Ohio contracting here with Dominion for a capacity payment based on Ohio PUC-approved rates. No customer or potential lessee for East Ohio's storage has raised any concerns. Moreover, Dominion will make the interstate storage available to the market, and its allocation of the capacity has not been challenged.[167] Dominion proposes to reserve the capacity to serve firm customers who were previously awarded capacity, following an open season process that led to the Storage Factory project. In the interim, Dominion will make the leased capacity available to the market generally in accordance with its existing procedures for providing interruptible services.

Applicants state that the OCC's challenge to East Ohio's contracting for storage service from Dominion is beyond the scope of this Commission's jurisdiction. In any case, East Ohio states that it cannot substitute the capacity to be leased for contract storage for a number of important operational reasons, including the following: (1) operational balancing relies on firm withdrawal and winter reinjection rights, which are not present in the Phase I Lease capacity; (2) the Phase I Lease has no December or January deliverability rights, which are essential to provide operational balancing during those peak months; (3) unlike the leased capacity, contract storage provides an opportunity to carry an inventory balance out of the withdrawal season, which is essential to manage season-ending warmer than projected weather; and (4) on-system storage cannot provide operational balancing for East Ohio's West Ohio system, which relies exclusively on contracted storage service. Most importantly, Applicants state, East Ohio's usage of on-system and contract storage for operational balancing is a matter to be decided by the Ohio PUC, not by this Commission in this proceeding.

Commission Response

The Commission sees nothing in the structure of the lease or in the lease terms that raises issues of affiliate preference. Dominion will be paying rates for the lease capacity based on the maximum cost-based rates approved by the Ohio PUC for East Ohio's most comparable intrastate storage service and it will be offering the capacity to the market in Phase I of the lease at the Commission-approved interruptible rates in its tariff. The Commission is not granting to Dominion the authority to charge market-based rates for the leased capacity, as OCC alludes to in its protest.

In addition, the treatment of East Ohio's lease revenues is for the Ohio PUC to address. Finally, as to the process undertaken by East Ohio in entering into the lease with

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167 Concerning the significant need for incremental working gas capacity in the markets served by Dominion, Applicants cite *Columbia Gas Transmission Corp.*, 126 FERC ¶ 61,231, at P 27 (2009); *FERC Staff Report: Current State of and Issues Concerning Underground Natural Gas Storage* at p. 15 (Sept. 30, 2004).

Dominion, we note that lease arrangements are viewed differently from transportation services. The Commission views a lease of what is to be used as interstate pipeline capacity as an acquisition of a property interest that the lessee acquires in the capacity of the lessor requiring NGA section 7 certificate authorization. As such, this type of arrangement is only available to a natural gas company subject to the NGA. Lessees are not treated as shippers and the Commission does not consider them to be similarly situated to interstate shippers on the lessor's pipeline.[168] Therefore, there is no requirement for East Ohio to have conducted an open season for the leased capacity and, given the unique operational requirements of East Ohio in designing the lease; the Commission finds East Ohio did nothing improper under our regulations in entering into the lease with Dominion.

East Ohio's Limited Jurisdiction Certificate

We will grant East Ohio's request for a Part 284.224 limited jurisdiction certificate to enable it to carry out its responsibilities under the lease agreement. The Commission looks closely at proposals such as this one that would create dual jurisdiction facilities, i.e., facilities that would be subject to state and federal jurisdiction, in order to avoid duplicative and/or potentially inconsistent regulatory schemes over the same facilities. However, although federal regulation of East Ohio will be "limited," East Ohio and Dominion will both be subject to exclusive federal regulation regarding the lease and the capacity on the East Ohio system and any issues that may arise there under.

The limited jurisdiction certificate will enable East Ohio to operate the leased capacity being used for NGA jurisdictional services subject to the terms of the lease and subject to Dominion's open-access tariff. The limited jurisdiction certificate will require East Ohio to operate the leased capacity in a manner that ensures Dominion's ability to provide services, including interruptible transportation, using the leased capacity on an open-access, non-discriminatory basis. Our finding that East Ohio is NGA-jurisdictional is limited to its role as lessor-operator of capacity used by Dominion to provide Dominion's interstate services. East Ohio will remain non-jurisdictional as to its intrastate activities and may continue to provide NGPA section 311 transportation services on its system under its existing Part 284.224 certificate.

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168 *Midcontinent Express Pipeline LLC,* 124 FERC ¶ 61,089, at P 51 (2008).

Conclusion

Based on the benefits the proposed lease will provide to the market and the lack of adverse effect on existing customers, we find that the public convenience and necessity requires approval of the proposed lease arrangement. Dominion will recover the lease charge through its interruptible rates and as such will only recover the costs of the leased capacity from those shippers that will use the leased capacity.[169] Therefore, we approve use of Dominion's interruptible rates for the leased capacity.

9. The Commission on its own motion, received and made a part of the record all evidence, including the application(s), as supplemented, and exhibits thereto, submitted in this proceeding and upon consideration of the record,

The Commission orders:

(A) A certificate of public convenience and necessity is issued to Dominion authorizing it to lease the subject capacity from East Ohio, as described herein, The "shipper must have title" requirement is waived for Dominion and East Ohio.

(B) Dominion's proposal to use its interruptible rates for shippers using the Lease Capacity is approved.

(C) A Part 284.224 limited-jurisdiction certificate of public convenience and necessity is issued to East Ohio authorizing it to lease the capacity to Dominion as described herein. This limited jurisdiction certificate will enable East Ohio to operate the leased capacity being used for NGA jurisdictional services subject to the terms of the lease and subject to Dominion's open-access tariff, and will require East Ohio to operate the leased capacity in a manner that ensures Dominion's ability to provide services using the leased capacity on an open-access, non-discriminatory basis. East Ohio shall not shift any unrecovered costs of leased capacity to customers for whom it is providing jurisdictional interstate services under section 311 of the NGPA.

(D) OCC's request for an evidentiary hearing is denied.
(E) Motions for leave to file answers are granted and the answers of the parties are accepted as discussed in the body of the order.

ACTIVITIES:

May 3, 2010 - Philadelphia Gas Works ("PGW") filed a motion to intervene to protect its interest in this case.

[169] It is possible that Dominion's recovery of the lease costs may change in a future proceeding; however, that determination will be based on the specific facts in the certificate application to be filed and will be decided at that time in accordance with the evidence presented.

Docket RP10-623-000
Texas Eastern Transmission LP
Tariff Changes – Capacity Release

DATE FILED: April 21, 2010

BACKGROUND:

On April 21, 2010, Texas Eastern Transmission, LP (Texas Eastern) filed revised tariff sheets[170] to make clean-up changes to section 3.14 (Capacity Release) of the General Terms and Conditions of its tariff. Texas Eastern states that these changes are necessary in order to incorporate changes submitted by Texas Eastern on January 21, 2009, in a compliance filing that was approved by the Commission in an order issued April 19, 2010 in Docket Nos. RP09-70-0001, *et al.*[171] The tariff sheets listed in the Appendix are accepted effective November 16, 2009 and March 14, 2010, as proposed.

ACTIVITIES:

May 3, 2010 - Philadelphia Gas Works ("PGW") filed a motion to intervene to protect its interest in this case.

170 See attached Appendix for listing of tariff sheets.
171 *Texas Eastern Transmission, LP*, 131 FERC ¶ 61,049 (2010).

Docket RP10-625-000
Texas Eastern Transmission LP
Order No. 714 – Electronic Tariff Filing Requirements

DATE FILED: April 22, 2010

BACKGROUND:

On April 22, 2010, Tetco submitted the electronic baseline filing of its tariff pursuant to Commission directive and Order No. 714. On April 22, 2010, as corrected on June 28, 2010, Texas Eastern Transmission, LP (Texas Eastern) filed a revised tariff in the format required by Order No. 714172 and Part 154 of the Commission's regulations. Texas Eastern's, Texas Eastern Database 1 is accepted to become effective April 22, 2010, as proposed, subject to Texas Eastern refilling certain tariff records as set forth below, within 30 days of the date of this order. Tariff record *Tariff, Seventh Revised Volume No. 1, 0.0.0* is rejected as moot. Texas Eastern's FERC Gas Tariff, Seventh Revised Volume No. 1 is cancelled effective April 21, 2010.

Even though Texas Eastern's Texas Eastern Database 1 is organized on the basis of tariff sections, the tariff text contains cross references to "sheets" that do not exist in the tariff. In addition, tariff record *1. Definitions, 0.0.0* contains duplicate definitions for: Maximum Daily Withdrawal Quantity, Maximum Loan Quantity and Maximum Park Quantity. Accordingly, within 30 days of the date of Further, Texas Eastern must make required filings using eTariff resulting from the outcome of any existing compliance proceedings.173 Texas Eastern is reminded that it must make all subsequent tariff and tariff-related filings electronically using eTariff.174

this order, Texas Eastern must file revised tariff records to correct these references.

ACTIVITIES:

May 4, 2010 - Philadelphia Gas Works ("PGW") filed a motion to intervene to protect its interest in this case.

172 *Electronic Tariff Filings,* Order No. 714, FERC Stats. & Regs. ¶ 31,276; 124 FERC ¶ 61,270 (2008).
173 *Electronic Tariff Filings* at P 96.
174 *Order Establishing Baseline Filing Schedule Starting April 1, 2010,* 130 FERC ¶ 61,228 at P 7 (2010).

Docket RP10-661-000
Transcontinental Gas Pipe Line Company, LLC
Tariff Filing – Zonal Maps

DATE FILED: April 28, 2010

BACKGROUND:

On April 28, 2010, Transcontinental Gas Pipe Line Company, LLC (Transco) filed revised tariff sheets[175] to update its system and zonal maps, in accordance with section 154.106 of the Commission's regulations. Specifically, the revised tariff sheets reflect the general location of Transco's principle pipeline facilities and the points at which service is rendered under its FERC Gas Tariff. In addition, Transco states that it has included a new zonal map, Sheet No. 10A, which separately identifies its pipeline facilities in Transco's Zone 4A and 4B in Alabama. Sheet Nos. 6 through 9, 13, 17, and 18, submitted herein, are only updated for formatting purposes. The revised tariff sheets are accepted effective May 29, 2010, as proposed.

ACTIVITIES:

May 10, 2010 - Philadelphia Gas Works ("PGW") filed a motion to intervene to protect its interest in this case.

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175 See Appendix.

Docket RP10-644-000
Texas Eastern Transmission LP
Negotiated Rate Agreement – South Jersey Resources

DATE FILED: April 27, 2010

BACKGROUND:

On April 27, 2010, Texas Eastern Transmission, LP (Texas Eastern) filed a tariff section[176] to reflect a negotiated rate agreement with South Jersey Resources Group LLC (South Jersey) for firm transportation service under Rate Schedule FT-1. South Jersey acquired the capacity as a result of a short-term release of capacity for the period from April 26, 2010, through and including April 26, 2010, by New Jersey Natural Gas Company (New Jersey). Texas Eastern and South Jersey entered into a negotiated rate agreement to reflect the negotiated usage and fuel rates that were automatically passed through to South Jersey pursuant to the terms of the negotiated rate agreement with New Jersey. Waiver of the thirty-day notice period is granted to permit the tariff section referenced in footnote no. 1 to be accepted effective April 26, 2010, as proposed.

ACTIVITIES:

May 10, 2010 - Philadelphia Gas Works ("PGW") filed a motion to intervene to protect its interest in this case.

176 15.26 South Jersey Resources Group LLC – Contract 8916388, 0.0.0, to Texas Eastern Database 1, FERC Gas Tariff, Eighth Revised Volume No. 1.

Docket RP10-640-000
Texas Eastern Transmission LP
Update and Revise Electronic Tariff Filing – Order No. 714

DATE FILED: April 26, 2010

BACKGROUND:

On April 26, 2009, in docket no. RP10-637-000[177] Texas Eastern Transmission, LP (Texas Eastern) filed revised tariff sheets[178] to make clean-up changes to sections 29.5 and 29.7 of the General Terms and Conditions (GT&C) of its FERC Gas Tariff. The filed tariff sheets correct omissions of previously approved changes to the (GT&C) that were inadvertently omitted in subsequent filings.

On April 26, 2009 in docket no. RP10-640-000, Texas Eastern filed tariff sections[179] to make miscellaneous corrections to its baseline filing. The corrections include the addition of previously omitted language and the correction of inaccurate references to tariff sheets.

Waiver of the prior notice requirements is granted. Texas Eastern's revised tariff sheets filed in docket no. RP10-637-000 are accepted for filing, effective on the dates listed in appendix A, as proposed, subject to approval of Texas Eastern's baseline filing in docket no. RP10-625-000. Texas Eastern's revised tariff sections filed in docket no. RP10-640-000 are accepted for filing April 22, 2010, as proposed, also subject to approval of Texas Eastern's baseline filing in docket no. RP10-625-000.

ACTIVITIES:

May 10, 2010 - Philadelphia Gas Works ("PGW") filed a motion to intervene to protect its interest in this case.

177 Texas Eastern must make required filings using eTariff resulting from the outcome of any existing compliance proceedings. Texas Eastern is reminded that it must make all subsequent tariff and tariff-related filings electronically using eTariff.
178 See Appendix A for complete listing of revised tariff sheets.
179 See Appendix B for complete listing of revised tariff sections.

Docket RP10-637-000
Texas Eastern Transmission LP
Tariff Changes – Clean-up Filing

DATE FILED: April 26, 2010

BACKGROUND:
On April 26, 2009, in docket no. RP10-637-000[180] Texas Eastern Transmission, LP (Texas Eastern) filed revised tariff sheets[181] to make clean-up changes to sections 29.5 and 29.7 of the General Terms and Conditions (GT&C) of its FERC Gas Tariff. The filed tariff sheets correct omissions of previously approved changes to the (GT&C) that were inadvertently omitted in subsequent filings.

On April 26, 2009 in docket no. RP10-640-000, Texas Eastern filed tariff sections[182] to make miscellaneous corrections to its baseline filing. The corrections include the addition of previously omitted language and the correction of inaccurate references to tariff sheets.

Waiver of the prior notice requirements is granted. Texas Eastern's revised tariff sheets filed in docket no. RP10-637-000 are accepted for filing, effective on the dates listed in appendix A, as proposed, subject to approval of Texas Eastern's baseline filing in docket no. RP10-625-000. Texas Eastern's revised tariff sections filed in docket no RP10-640-000 are accepted for filing April 22, 2010, as proposed, also subject to approval of Texas Eastern's baseline filing in docket no. RP10-625-000.

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ACTIVITIES:

May 10, 2010 - Philadelphia Gas Works ("PGW") filed a motion to intervene to protect its interest in this case.

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180 Texas Eastern must make required filings using eTariff resulting from the outcome of any existing compliance proceedings. Texas Eastern is reminded that it must make all subsequent tariff and tariff-related filings electronically using eTariff.
181 See Appendix A for complete listing of revised tariff sheets.
182 See Appendix B for complete listing of revised tariff sections.

Docket RP10-643-000
Dominion Transmission, Inc.
Implementation – Rate Schedule GSS-E

DATE FILED: April 26, 2010

BACKGROUND:

On April 26, 2010, Dominion Transmission, Inc. (DTI) filed revised tariff sheets183 to revise specific provisions of the General Terms and Conditions (GT&C) of its FERC Gas Tariff to allow for storage inventory transfers of Rate Schedule GSS-E customers.184 In addition, DTI proposes unauthorized overrun charges applicable to Rate Schedule GSS-E. DTI states that the proposed charges were calculated in a comparable manner to those approved for Rate Schedule GSS. The revised tariff sheets are accepted effective May 26, 2010, as proposed.

ACTIVITIES:

May 10, 2010 - Philadelphia Gas Works ("PGW") filed a motion to intervene to protect its interest in this case.

183 See attached Appendix for a list of the revised tariff sheets.
184 On June 16, 2006, the Commission issued an order in Docket No. CP04-131-000 authorizing DTI to offer storage service under a newly established Rate Schedule GSS-E as a result of facilities to be constructed and operated as part of the Cove Point Expansion Project. *See Dominion Transmission, Inc.* Order Issuing Certificates and Granting Section 3 Authority, 115 FERC ¶ 61,337 (2006).

Docket RP10-668-000
Texas Eastern Transmission LP
Negotiated FT-1 Service Rate Agreement – NJR Energy Service Company

DATE FILED: April 30, 2010

BACKGROUND:

On April 30, 2010, Texas Eastern Transmission, LP (Texas Eastern) filed a tariff section[185] to reflect a negotiated rate agreement with NJR Energy Services Company (NJR) for firm transportation service under Rate Schedule FT-1. The tariff section identifies and describes the negotiated rate transaction with NJR, including the exact legal name of the shipper, the negotiated rates, the rate schedule, the contract terms, and the contract quantities. Specifically, Texas Eastern's tariff section reflects that, for the period from May 1, 2010 through March 31, 2011, a volume of 89,000 Dth per day will be transported for NJR. The referenced tariff section is accepted to be effective May 1, 2010, as proposed.

ACTIVITIES:

May 12, 2010 - Philadelphia Gas Works ("PGW") filed a motion to intervene to protect its interest in this case.

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185 15.27 NJR Energy Services Company – Contract 910531, 0.0.0, to Texas Eastern Database 1, FERC Gas Tariff, Eighth Revised Volume No. 1.

Docket RP10-699-000
Equitrans, L.P.
Tennessee Capacity Surcharge Tracker

DATE FILED: April 30, 2010

BACKGROUND:

| ~~3.~~ On April 30, 2010, Equitrans, L.P. (Equitrans) filed tariff sheets186 and supporting work papers to update its Tennessee Capacity Surcharge Tracker (TCST) in accordance with Section 41 of the General Terms and Conditions (GT&C) of its tariff. Equitrans proposes a TCST surcharge of $2.1224 per Dth for its Big Sandy Firm Transportation Customers and $0.0698 per Dth for Authorized Overrun Charges and Big Sandy Interruptible Transportation Customers. This reflects an increase of $0.2171 per Dth for its Big Sandy Firm Customers and $0.0072 per Dth for Authorized Overrun Charges and Big Sandy Interruptible Transportation Customers. Equitrans also requests waiver of Section 41.3 of its GT&C to enable it to submit this filing a month early.

On May 18, 2010, Equitrans filed a request to withdraw Thirty-Ninth Revised Sheet No. 5 and to replace it with Twenty-Ninth Revised Sheet No. 5. Equitrans states that it had inadvertently submitted an incorrectly paginated tariff sheet. For the reasons discussed below, the Commission grants Equitrans requested waiver and accepts Equitrans' proposed tariff sheets, Twenty-Ninth Revised Sheet No. 5 and Fortieth Revised Sheet No. 6, to be effective June 1, 2010, as proposed.

| ~~5.~~ Equitrans holds capacity on Tennessee Gas Pipeline (Tennessee) through a Gas Transportation Agreement under Tennessee's Rate Schedule FT-A.187 Section 41 of the GT&C permits Equitrans to recover the reservation charges Equitrans pays to Tennessee under the transportation agreement during the period October 1, 2008 through August 31, 2010 by means of the TCST. The TCST surcharge is applicable to shippers on the Equitrans' Big Sandy Pipeline under Rate Schedules FTS and ITS. Under Section 41.3 of the GT&C, Equitrans may adjust the TCST surcharge to take into account both prospective changes in transportation costs and unrecovered transportation costs from the preceding period by making a tracker filing annually on or before September 1 to become effective October 1, or at such other times as Equitrans in its reasonable discretion determines necessary. Also, under this section, within 90 days prior to the expiration of the Tennessee transportation agreement, Equitrans may make a filing to compare projected total revenue collected under the TCST to the projected total costs incurred

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186 Thirty-Ninth Revised Sheet No. 5 and Fortieth Revised Sheet No. 6 to Equitrans' FERC Gas Tariff, Original Volume No. 1.

187 The Commission approved Equitrans' TCST in Docket No. RP08-591-000, *et al.*, and a detailed description of the TCST and its evolution can be found in *Equitrans, L.P.*, 127 FERC ¶ 61,091 (2008).

under the Tennessee transportation agreement, and adjust the TCST surcharge to ensure accurate recover of the Tennessee reservation charges.

Following the expiration of the agreement, Equitrans is required pursuant to Section 41.5 of the GT&C, to make a filing showing the total dollars recovered under the surcharge compared with the total costs incurred under the Tennessee transportation agreement. If Tennessee has under or over recovered amounts in excess of $5,000, Tennessee is required to assess or credit Big Sandy Firm shippers, respectively, based on an allocated portion of each shipper's Big Sandy Pipeline firm entitlements. Equitrans is also required to include in this filing, revised tariff sheets to reflect removal of the TCST from its tariff.

Equitrans states that, without a change to its TCST, it is projected to under recover $84,681 at the end of the transportation agreement, August 31, 2010.188 Accordingly, Equitrans is requesting a waiver of GT&C Section 41.3 to file this comparison within 120 days of the transportation agreement's expiration, instead of the 90 days provided in its tariff. Rather than delay this comparison filing by one month and create a larger rate increase, Equitrans proposes to submit this comparison filing 30 days earlier in order to spread recovery of the Tennessee capacity costs over a longer period of time. Equitrans states that good cause exists for this waiver because all future costs are known, and if there are no interruptible volumes, then all future revenues collected by the TCST surcharge are known as well. Equitrans states that the proposed surcharge is projected to collect $703,560 for the capacity costs on Tennessee from June 1, 2010 through August 31, 2010 and $124,188 in under recovered costs during the period October 1, 2008 through May 31, 2010.

ACTIVITIES:

May 12, 2010 - Philadelphia Gas Works ("PGW") filed a motion to intervene to protect its interest in this case.

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188 Equitrans states that the reason for this under recovery is that the previous annual filing in Docket No. RP09-943 projected interruptible volumes that have not occurred.

Docket RP10-677-000
Texas Eastern Transmission LP
Negotiated MLS-1 Service Rate Agreement – NJR Energy Service Company

DATE FILED: April 30, 2010

BACKGROUND:

On April 30, 2010, Texas Eastern Transmission, LP (Texas Eastern) filed a revised tariff section189 to reflect a negotiated rate agreement with New Jersey Natural Gas Company (New Jersey) as administrator of a Multi-Shipper Option Agreement for firm transportation service under Rate Schedule MLS-1. New Jersey acquired the capacity as a result of a long-term release of capacity for the period May 1, 2010, through and including October 31, 2022, by New Jersey Natural Gas Company (NJNG) under its MLS-1 service agreement. Texas Eastern and New Jersey entered into a negotiated rate agreement for 591,855 Dth per day of firm transportation capacity to reflect the negotiated usage and fuel rates applicable to NJNG that were granted to New Jersey. The referenced tariff section is accepted to be effective May 1, 2010, as proposed.

ACTIVITIES:

May 12, 2010 - Philadelphia Gas Works ("PGW") filed a motion to intervene to protect its interest in this case.

189 15.28 New Jersey Natural Gas Company – Contract 8916563, 0.0.0, to Texas Eastern Database 1, FERC Gas Tariff, Eighth Revised Volume No. 1.

Docket RP10-684-000
Transcontinental Gas Pipe Line Company, LLC
Evergreen Provisions –Rate Schedules ESS and WSS-OA

DATE FILED: April 28, 2010

BACKGROUND:

On April 30, 2010, Transcontinental Gas Pipe Line Company, LLC (Transco) filed the above referenced tariff sheets to revise the evergreen provisions in the forms of service agreements for use under Rate Schedule ESS[190] and Rate Schedule WSS-OA,[191] to insert alternative language in Article III, Term of Agreement, to be used by Transco and its customers. Transco states that the alternative language would allow for a year-to-year evergreen period under the ESS and WSS-OA service agreements. The referenced tariff sheets are accepted effective May 31, 2010, as requested.

ACTIVITIES:

May 12, 2010 - Philadelphia Gas Works ("PGW") filed a motion to intervene to protect its interest in this case.

[190] Eminence Storage Service.
[191] Washington Storage Service – Open Access.

Docket RP10-722-000
Equitrans, L.P.
Non-Conforming FTS Service Agreement – Hess Corporation

DATE FILED: May 7, 2010

BACKGROUND:

On May 7, 2010, Equitrans, L.P. (Equitrans) filed the above referenced tariff sheets in compliance with an order issued by the Commission on April 30, 2010 in Docket No. RP10-549-000.[192] The referenced tariff sheets are accepted effective June 6, 2010, as requested.

In Docket No. RP10-549-000, Equitrans filed four non-conforming agreements and a revised tariff sheet listing the agreements as non-conforming. Two of the agreements were for Firm Transportation Service (Rate Schedule FTS), and two were for Interruptible Storage Service (Rate Schedule INSS). In the April 30 order, the Commission rejected the tariff sheet, and directed Equitrans to revise the FTS and INSS forms of service agreement so that the subject agreements would not be non-conforming. In the instant filing, Equitrans has revised the FTS and INSS forms of service agreement.

ACTIVITIES:

May 19, 2010 - Philadelphia Gas Works ("PGW") filed a motion to intervene to protect its interest in this case.

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[192] *Equitrans, L.P.*, 131 FERC ¶ 61,090 (2010) (the April 30 order).

Docket RP10-734-000
Transcontinental Gas Pipe Line Company, LLC
Rate Schedules SS-1 Open Access and 7(c)

DATE FILED: May 13, 2010

BACKGROUND:

On May 13, 2010, Transco submitted a letter agreement between Transco and its Rate Schedules SS-1 Open Access and SS-1 Section 7(C) storage service customers that addresses certain transition issues related to the continuation of service arising from filings by UGI Central Penn Gas, Inc. and UGI Storage Company. On May 13, 2010, Transcontinental Gas Pipe Line Company, LLC (Transco) filed, pursuant to section 4 of the Natural Gas Act, a March 10, 2010 letter agreement between Transco and its Rate Schedules SS-1 Open Access and SS-1 section 7(c) storage service customers. The letter agreement addresses transitional issues for Rate Schedule SS-1 storage service through March 31, 2011. The agreement is accepted for filing.

ACTIVITIES:

May 25, 2010 - Philadelphia Gas Works ("PGW") filed a motion to intervene to protect its interest in this case.

Docket RP10-741-000
Dominion Transmission, Inc.
Pipeline Facility Removal – Gathering Lines

DATE FILED: May 14, 2010

BACKGROUND:

On May 14, 2010, Dominion Transmission, Inc. (DTI) filed tariff sheets[193] to reflect the removal from its system of certain gathering lines by sale to CONSOL Energy, Inc. DTI states that no producers or shippers who currently utilize the lines will be affected as a result of the proposed changes. The tariff sheets listed in the Appendix are accepted effective July 1, 2010, as proposed.

ACTIVITIES:

May 26, 2010 - Philadelphia Gas Works ("PGW") filed a motion to intervene to protect its interest in this case.

193 See attached Appendix for a listing of the tariff sheets.

Docket RP10-753-000
Nexen Marketing USA, Inc. and J. Aron & Company
Transfer Gas Marketing and Trading Business

DATE FILED: May 21, 2010

BACKGROUND:

1. On May 21, 2010, Nexen Marketing USA, Inc. ("Nexen") and J. Aron & Company ("J. Aron") (collectively, "Petitioners") filed a petition for waiver of certain capacity release regulations to facilitate Nexen's exit from the US natural gas marketing and trading business ("US Natural Gas Marketing Business"). The Petitioners state the waivers will be used to facilitate Nexen's transfer of the US Natural Gas Marketing Business and related assets as an integrated package to J. Aron. The assets to be transferred include contracts for transportation and storage service on a number of interstate natural gas pipelines, among them, the Suppliers, in the United States. On May 21, 2010, Nexen Marketing U.S.A. Inc. (Nexen) and J. Aron & Company (J. Aron) (collectively, the Petitioners) filed a joint petition for temporary waivers (Petition). The Petitioners seek waiver of several of the Commission's capacity release regulations and related policies, and of certain related tariff provisions of affected pipelines, in order to allow Nexen to permanently release transportation and storage service agreements to J. Aron to facilitate Nexen's exit from the natural gas marketing and trading business. The Petitioners request Commission action by June 21, 2010, and ask that the waivers remain in effect for a 120-day period from the date of the order granting the waivers. For the reasons discussed below, we grant the requested waivers.

2. The Petitioners state that Nexen, a gas marketer, plans to exit the natural gas marketing and trading business and transfer its assets related to that business to J. Aron. The assets to be transferred include firm transportation and storage service agreements, natural gas purchase and sale agreements, gas held in storage at the time of transfer, as well as books, records, and office space. The Petitioners also state that certain Nexen employees have already accepted offers of employment from J. Aron. In the Petition, and as corrected by their May 28, 2010 supplemental filing, the Petitioners identify the interstate pipelines associated with the transportation agreements to be transferred, and list the specific contracts with each pipeline.[194] The Petitioners also identify which of

[194] The affected transportation providers are: Alliance Pipeline, L.P.; ANR Pipeline Company; Colorado Gas Interstate Company; Dominion Transmission, Inc.; Great Lakes Gas Transmission, L.P.; Iroquois Gas Transmission, LP; Kern River Gas Transmission Company; National Fuel Gas Supply Corporation; Natural Gas Pipeline Company of America, LLC; Northern Border Pipeline Company; Panhandle Eastern Pipeline Corporation; Ruby Pipeline, LLC; Gas Transmission – Northwest Corporation; Tennessee Gas Pipeline Company; Vector Pipeline, L.P.; Viking Gas Transmission Company; White River Hub, LLC; and Wyoming Interstate Company, LLC.

those transportation contracts are under asset management arrangements and note that the transportation agreements involve service under negotiated rates, maximum rates, and discounted rates. In its supplemental filing, the Petitioners also identify the interstate pipelines and storage companies associated with the storage contracts, and list the specific storage contracts.195 The Petitioners state that on May 17, 2010, they sent letters to all affected interstate pipelines informing them of the subject Petition, and that to date none have registered with Nexen any objection to the temporary waivers.

3. In order to facilitate the transfer of the transportation and storage contracts as part of the larger, integrated transaction, the Petitioners seek temporary waivers of the Commission's capacity release regulations, as well as the Commission's shipper-must-have-title policy, the prohibition on buy-sell arrangements, the prohibition on tying, the posting and bidding requirements for capacity release transactions, and the restrictions on capacity releases above or below the maximum rate. The Petitioners also request waivers of certain pipeline tariff provisions implementing these regulations and policies, to the extent the waivers are necessary to facilitate the transfer. The Petitioners assert the waivers would be temporary and would only be used for the limited purpose of consummating the referenced transaction. The Petitioners further state that the transfer of assets from Nexen to J. Aron is to become effective on the closing date of the transaction, which is scheduled for August 1, 2010, but may be pushed back if certain conditions are not met. Accordingly, the Petitioners request that the waivers remain in effect for a 120-day period from the date of the Commission order granting the requested waivers.

4. The Petitioners state that the Commission has previously granted temporary waivers of the capacity release regulations to permit parties to consummate complex transactions, similar to the waivers they request here.196 The Petitioners assert that granting the waivers will facilitate Nexen's orderly and efficient exit from the natural gas marketing and trading business. They add that the subject transaction qualifies for the requested waivers because the transaction goes beyond the mere transfer of transportation and/or storage capacity and involves the sale of an entire business.

5. The prearranged permanent capacity release transactions at issue are necessary to facilitate the transfer of Nexen's natural gas marketing and trading business assets to J. Aron, consistent with Nexen's interest to exit completely from the natural gas marketing and trading business. In cases involving transfers of assets other than firm transportation

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195 The affected storage providers are: ANR Pipeline Company; ANR Storage Company; Egan Hub Storage, LLC; Central New York Oil and Gas Company, LLC, (Stagecoach Storage); Panhandle Eastern Pipeline Company; Trunkline Gas Company, LLC; National Fuel Gas Supply Corporation; and ANR Pipeline Company (non-permanent assignment to Citigroup energy).

196 The Petitioners cite *Macquarie Cook Energy, LLC,* 126 FERC ¶ 61,160 (2009); *Sempra Energy Trading Corp.*, 121 FERC ¶ 61,005 (2007); *Bear Energy LP,* 123 FERC ¶ 61,219 (2008); *and Barclays Bank PLC and UBS AG,* 125 FERC ¶ 61,383 (2008).

capacity and gas supply contracts, including the sale of entire business units, the Commission has granted waiver of the capacity release regulations and tariffs, including posting and bidding, so that the parties could consummate the transfer of an entire business unit. As the Commission has explained:

> The capacity release mechanism is not suited to these types of complex, integrated deals that do not permit the disaggregation of assets. Order No. 636 adopted the capacity release program in order to permit shippers to "reallocate unneeded firm capacity" to those who need it and promote efficient load management by the pipeline and its customers. The Commission did not contemplate that the capacity release posting and bidding requirements would necessarily apply in cases of the merger or sale of entire business units as part of a corporate restructuring.197

~~7.~~6. The Commission has reviewed the Petitioners' request for a temporary waiver and finds that the request is adequately supported and consistent with previous waivers that the Commission has granted under similar circumstances. Accordingly, for good cause shown, the Commission grants the Petitioners' request for temporary waivers of the specified capacity release regulations, policies, and tariff provisions to allow the permanent release of the firm transportation and storage service agreements identified by Petitioners from Nexen to J. Aron. Specifically, the Commission grants temporary waivers of section 284.8 of its regulations requiring that long-term releases not exceed the maximum recourse rate,198 as well as sections 284.8(d) and (e) regarding notice and bidding of capacity releases. The Commission also grants waivers of the shipper-must-have-title requirement, and the prohibitions on buy-sell arrangements and tying of capacity releases to extraneous conditions, so that Petitioners can complete their transaction in an orderly and efficient manner.

7. The Commission also grants limited waivers of applicable tariff provisions of the affected pipelines implementing the regulations and policies for which we grant waivers above. The waivers of these tariff provisions applies only to the extent necessary to effectuate the permanent releases of capacity amounts specified in the Petition for the relevant agreements, and not for any other permanent or temporary releases.

ACTIVITIES:

June 2, 2010 - Philadelphia Gas Works ("PGW") filed a motion to intervene to protect its interest in this case.

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197 *Request for Clarification of Policy regarding Waivers of Applicable Requirements to Facilitate Integrated Transfers of Marketing Businesses*, 127 FERC ¶ 61,106, at P 8 (2009), and cases cited.

198 *See* 18 C.F.R. § 284.8(b)(2)(2010).

Docket RP10-763-000
Transcontinental Gas Pipe Line Company, LLC
Unauthorized Receipt Mechanism

DATE FILED: May 26, 2010

BACKGROUND:

On May 26, 2010, Transcontinental Gas Pipe Line Company, LLC (Transco) filed revised tariff sheets199 to set forth procedures which authorize Transco to obtain gas receipts that have not been confirmed in accordance with its tariff. Specifically, Transco proposes to add new Section 56 (Unauthorized Receipts) to its General Terms and Conditions (GT&C). In addition, Transco proposes to modify GT&C Section 38.3(3) to credit the volumes of unauthorized receipts that have been retained in its annual calculation of fuel retention percentages. The referenced tariff sheets are accepted effective July 1, 2010, as requested.

ACTIVITIES:

June 7, 2010 - Philadelphia Gas Works ("PGW") filed a motion to intervene to protect its interest in this case.

199 First Revised Sheet No. 336, Second Revised Sheet No. 444, Original Sheet No. 481, and a placeholder for Sheet Nos. 482-499 to its FERC Gas Tariff, Fourth Revised Volume No. 1.

Docket RP10-776-000
Transcontinental Gas Pipe Line Company, LLC
Rate Schedule FT – 85 North Expansion Project

DATE FILED: May 27, 2010

BACKGROUND:

On May 27, 2010, Transcontinental Gas Pipe Line Company, LLC (Transco) filed the above-referenced tariff sheets, to be effective on July 1, 2010, in order to implement an incremental Zone 4-4 maximum daily base reservation rate of $0.21675 for Rate Schedule FT transportation service on Phase 1 of Transco's 85 North Expansion Project. Such rate was approved in the certificate order in Docket No. CP09-57-000. (128 FERC ¶ 61,223 (2009)). No protests have been filed. The referenced tariff sheets are accepted to be effective July 1, 2010, as requested.

ACTIVITIES:

June 8, 2010 - Philadelphia Gas Works ("PGW") filed a motion to intervene to protect its interest in this case.

Docket RP10-768-000
Dominion Transmission, Inc.
Gathering Lines Sale to CONSOL Energy

DATE FILED: May 27, 2010

BACKGROUND:

On May 27, 2010, Dominion Transmission, Inc. (DTI) filed tariff sheets200 to reflect the removal from its system of certain gathering lines (Line Nos. H-19864, H-21409 and H-22018)201 by sale to CONSOL Energy, Inc (CONSOL). DTI states that no producers or shippers who currently utilize the lines will be affected as a result of the proposed changes. The tariff sheets referenced below are accepted effective July 1, 2010, as proposed.

ACTIVITIES:

June 8, 2010 - Philadelphia Gas Works ("PGW") filed a motion to intervene to protect its interest in this case.

200 Second Revised Sheet No. 61, Third Revised Sheet No. 79 and Sixth Revised Sheet No. 86A to FERC Gas Tariff, Second Revised Volume No. 1A.
201 DTI states in its transmittal letter that, due to administrative oversight, footnote 3 and Appendix B of the May 14, 2010 filing in Docket No. RP10-741-000 contained an incorrect reference to Line No. H-22008, a line previously certificated as a transmission facility. Line No. H-22008 is, in fact, not part of the

Docket RP10-779-000
Dominion Transmission, Inc.
Order No. 714 – Electronic Tariff Filing Requirements

DATE FILED: May 28, 2010

BACKGROUND:
On May 28, 2010, Dominion Transmission, Inc. (DTI) filed a tariff[202], initially consisting of two sections or volumes, in the format required by Order No. 714[203] and Part 154 of the Commission's regulations. On June 30, 2010 and again on August 31, 2010, DTI filed additional sections to DTI Tariffs in that appropriate format. The two initial sections of DTI Tariffs, *Tariff, Fourth Revised Volume 1* and *Tariff, Third Revised Volume 1A*, are accepted effective May 28, 2010, as proposed, subject to conditions set forth below. The third section of DTI Tariffs, *Original Volume 1B*, is accepted effective August 31, 2010 as proposed, subject to conditions. The fourth section of DTI Tariffs, *Tariff, Second Revised Volume 2*, is accepted effective June 30, 2010 as proposed, subject to conditions. DTI's FERC Gas Tariff, Third Revised Volume No. 1 and FERC Gas Tariff, Second Revised Volume No. 1A are canceled effective May 27, 2010. DTI's FERC Gas Tariff, First Revised Volume No. 2 is cancelled effective June 29, 2010.

Tariff records and the associated tariff section titles[204] are used to create the electronic table of contents visible to the public on the eTariff Viewer.[205] Section titles for each tariff record should allow the viewer to easily locate a specific provision within a pipeline's tariff. In its proposed DTI Tariffs, DTI includes its own unique "Tariff Record No." system of identifying its tariff sections. The table of contents for General Terms and

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assets being sold to CONSOL and, therefore, will not be removed from the Volume No. 1A tariff. The correct reference is Line No. H-22018.

202 DTI's Tariff Title is "DTI Tariffs." "Tariff Title" is the meta data element used to name the tariff data base. See the *Implementation Guide for Electronic Filing of Parts 35, 154, 284, 300, and 341 Tariff Filings (Implementation Guide)*, available at http://www.ferc.gov/docs-filing/etariff/implementation-guide.pdf.

203 *Electronic Tariff Filings*, Order No. 714, FERC Stats. & Regs. ¶ 31,276 (2008).

204 A complete section title is composed of the Record Content Description, Tariff Record Title, Record Version Number, and Option Code, as defined in the *Implementation Guide*.

205 The Commission's eTariff Viewer is located on the Commission's web site: www.ferc.gov.

Conditions (GT&C), *Tariff Record 40.1, GT&C - Index*, references for each GT&C Provision both a GT&C Section No. and a Tariff Record No. Throughout *Tariff, Fourth Revised Volume 1,* DTI references these GT&C section numbers or provision names.206 Since DTI's section numbers or provision names are not found within the tariff record section titles, this inconsistency could make it difficult for users to navigate DTI's tariff. To resolve this inconsistency, and to make tariff navigation more user-friendly, DTI should either: (1) include GT&C section numbers and consistent provision names in its tariff record section titles; or (2) reference the section title throughout the body of its tariff instead of GT&C section numbers or provision names. Lastly, for many of the tariff records throughout DTI Tariffs, the table formatting is disjointed, and in numerous instances the tariff record appears devoid of nearly all formatting. Tariff text should be legible.207 We direct DTI to file, within 60 days of the date this order, revised tariff records addressing the issues discussed above. The filing should address similar issues for any tariff records previously accepted pending the outcome of these proceedings.

DTI must make required filings using eTariff resulting from the outcome of any existing compliance proceedings.208 DTI is reminded that it must make all subsequent tariff and tariff-related filings electronically using eTariff.209

ACTIVITIES:

June 9, 2010 - Philadelphia Gas Works ("PGW") filed a motion to intervene to protect its interest in this case.

206 For example, *Tariff Record 20.1, FT Rate Schedule*, in subsection 10, references "Section 23" of the GT&C or "(Capacity Release)."
207 *Boston Edison Company*, 98 FERC ¶ 61, 292 (2002) at P 42.
208 *Electronic Tariff Filings* at P 96.
209 *Order Establishing Baseline Filing Schedule Starting April 1, 2010*, 130 FERC ¶ 61,228, at P 7 (2010).

Docket CP10-451-000
Transcontinental Gas Pipe Line Company, LLC
Pipeline Facility Abandonment

DATE FILED: June 3, 2010

BACKGROUND:
On June 3, 2010, Transco filed an application for an order permitting and approving the abandonment of the transportation of natural gas under certain rate schedules that Transco states are no longer active. Transco states there are no outstanding imbalances associated with the service agreements related to those rate schedules. No facilities are proposed to be abandoned or constructed in this application. Transco propose to abandon transportation of services to El Paso Field Services under Transco's Rate Schedule X-38, Sea Robin Pipeline Company under Transco's Rate Schedule X-123, Conoco Phillips Company under Transco's Rate Schedule X-256, and Calpine Corporation under Transco's Rate Schedule X-261. Transco states there has been no activity under the Rate Schedules since April 1, 2003, there are no outstanding imbalances associated with these agreements, and all Shippers have agreed to terminate the Rate Schedules. There will be no interruption, reduction, termination, or change in service presently rendered by Transco to any of their customers as a result of the proposed abandonment. The abandonment of Transco's firm transportation service would have no effect on the daily design capacity or operating condition of Transco's system and no ground disturbance is involved.

ACTIVITIES:

June 15, 2010 - Philadelphia Gas Works ("PGW") filed a motion to intervene to protect its interest in this case.

Docket RP10-834-000
Transcontinental Gas Pipe Line Company, LLC
Remove FT Service Rates Applicable to 7(c) Transportation

DATE FILED: June 9, 2010

BACKGROUND:

On June 9, 2010, Transco filed revised tariff sheets to remove the Firm Transportation Service Rates Applicable to Certificated Transportation Rendered Pursuant to Section 7(c) of the Natural Gas Act contained in its tariff. On June 9, 2010, Transcontinental Gas Pipe Line Company, LLC (Transco) filed revised tariff sheets210, proposing to remove the Firm Transportation Service Rates applicable to certificated transportation rendered pursuant to section 7(c) of the Natural Gas Act found on the tariff sheets listed in the footnote. Transco requests the Commission permit the revised tariff sheets to become effective July 10, 2010. We accept the revised tariff sheets effective July 10, 2010, as proposed.

Transco does not currently have any contracts that are charged the rates shown on the proposed tariff sheets nor does it anticipate having any contracts in the future that would be billed such rates. Therefore, Transco states the rates contained on the filed sheets are no longer needed. In addition, Transco submitted Second Revised Sheet No. 1 to make the corresponding change to its Table of Contents.

ACTIVITIES:

June 21, 2010 - Philadelphia Gas Works ("PGW") filed a motion to intervene to protect its interest in this case.

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210 Second Revised Sheet No. 1, Fourth Revised Sheet No. 82 and Fifth Revised Sheet No. 83 to FERC Gas Tariff, Fourth Revised Volume No. 1

Docket RP10-832-000
Equitrans, L.P.
Order No. 714 – Electronic Tariff Filing Requirements

DATE FILED: May 28, 2010

BACKGROUND:

On June 9, 2010, Equitrans, L.P. (Equitrans) filed a revised tariff211 in the format required by Order No. 714212 and Part 154 of the Commission's regulations. The *Equitrans Tariff* is accepted to become effective June 9, 2010, as proposed. Equitrans' FERC Gas Tariff, Original Volume No. 1 is cancelled effective June 8, 2010.

Equitrans must make required filings using eTariff resulting from the outcome of any existing compliance proceedings.213 Equitrans is reminded that it must make all subsequent tariff and tariff-related filings electronically using eTariff.214

ACTIVITIES:

June 21, 2010 - Philadelphia Gas Works ("PGW") filed a motion to intervene to protect its interest in this case.

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211 Equitrans' Tariff Title is "Equitrans Tariff." "Tariff Title" is the meta data element used to name the tariff data base. See *Implementation Guide for Electronic Filing of Parts 35, 154, 284, 300, and 341 Tariff Filings* (Jan. 2010), *available at* http://www.ferc.gov/docs-filing/etariff/implementation-guide.pdf.

212 *Electronic Tariff Filings*, Order No. 714, FERC Stats. & Regs. ¶ 31,276 (2008).

213 *Electronic Tariff Filings* at P 96.

214 *Order Establishing Baseline Filing Schedule Starting April 1, 2010*, 130 FERC ¶ 61,228, at P 7 (2010).