

101 FERC ¶ 61, 134  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;  
William L. Massey, Linda Breathitt,  
And Nora Mead Brownell.

In Re Investigation of Certain Financial Data  
(Transwestern Pipeline Company)

Docket No. IN02-6-000

ORDER APPROVING STIPULATION AND CONSENT AGREEMENT

(Issued October 31, 2002)

1. The Commission approves the attached Stipulation and Consent Agreement (Agreement) between the Commission's Chief Accountant, the Division of Enforcement and Investigations (Enforcement), Office of Market Oversight and Investigations, and Transwestern Pipeline Company (Transwestern). The Agreement resolves only those issues of fact and law as discussed in the Commission's August 1, 2002 Order to Respond issued in the above referenced proceeding concerning possible violations of the Commission's regulations under Part 201 of the Uniform System of Accounts governing interstate pipelines, 18 C.F.R. Part 201 (2002).
2. The Order to Respond directed Transwestern to provide, within thirty days, written responses stating why the Commission should not find that each company: (1) violated the General Instructions-Records under Part 201 of the Uniform System of Accounts by failing to maintain written cash management arrangements with their parent, Enron Corporation (Enron); (2) entered into imprudent loans, the proceeds of which were transferred to Enron shortly before Enron filed for bankruptcy; and (3) should be prohibited from passing costs arising from such loans and arrangements on to ratepayers after settlement rates now in effect expire. On September 3, 2002, Transwestern submitted its Response to the Commission.
3. The Agreement provides, among other things, that Transwestern and its parent company, Enron Corporation, will comply with the provisions of the Final Rule regarding written cash management practices resulting from the Commission's Notice of Proposed Rulemaking, Regulation of Cash Management Practices, in Docket No. RM02-

14-000 issued on August 1, 2002.<sup>1</sup> Transwestern will not include the costs associated with the \$550 million loan entered into on November 13, 2001, with Citicorp North American, Inc. and JP Morgan Chase Bank as co-administrative agents, nor the costs of any successor loans used to retire the initial loan obligations in any future rate proceedings before the Commission. Specifically, Transwestern will not include the loan itself, the interest cost of the \$550 million loan, or the cost of acquiring such loan or any successor loan(s) used to retire the \$550 million debt, in any future Commission rate proceedings. Further, Transwestern agrees to file with the Chief Accountant conforming changes to its books and records maintained under the Uniform System of Accounts and its FERC Form No. 2 that reflect, for regulatory accounting purposes, the appropriate treatment of the \$550 million loan as well as any successor loan(s) used to retire that debt.

4. The Commission finds that the Agreement provides an equitable resolution of the specific issues raised in the August 1, 2002 Order to Respond with respect to Transwestern and is in the public interest. Approval of this Agreement does not constitute settlement or waiver of any further action or remedies the Commission may find appropriate concerning matters that are not addressed in the August 1, 2002 Order to Respond. Further, nothing in this approval constitutes immunity from any civil or criminal action that any other federal agency or department may take.

The Commission orders:

(A) The attached Stipulation and Consent Agreement is approved in its entirety without modification.

(B) The Commission's approval of the attached Stipulation and Consent Agreement does not constitute approval of, or precedent regarding, any principle or issue in this matter.

By the Commission.

( S E A L )

Magalie R. Salas,

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<sup>1</sup>100 FERC ¶ 61,142 (2002).

Secretary.

**UNITED STATES OF AMERICA  
BEFORE THE  
FEDERAL ENERGY REGULATORY COMMISSION**

In Re Investigation of Certain Financial Data                      Docket No. IN02-6-000  
(Transwestern Pipeline Company)

**STIPULATION AND CONSENT AGREEMENT**

**I.     Introduction**

1.     The Chief Accountant, the Division of Enforcement (Enforcement) of the Office of Market Oversight and Investigations (OMOI), and Transwestern Pipeline Company (Transwestern) enter into this Stipulation and Consent Agreement (Agreement) which resolves all issues and matters arising from or pertaining to an August 1, 2002 Order to Respond that directed Transwestern and Northern Natural Gas Company (Northern) to respond to certain questions concerning, among other things, a \$550 million loan between Transwestern and certain banks, designated below, as well as the concomitant loans by Transwestern to Enron Corporation (Enron), its sole indirect shareholder at that time.<sup>2</sup>

**II.    Stipulation of Fact**

The Chief Accountant, Enforcement and Transwestern hereby stipulate and agree on the following facts:

2.     The Commission initiated this proceeding on August 1, 2002, when it issued the Order to Respond that directed Transwestern to provide written responses concerning whether: (a) Transwestern violated the Commission's Uniform System of Accounts for natural gas

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<sup>2</sup>     In Re Investigation of Certain Financial Data, Docket No. IN02-6-000, 100 FERC ¶61,143 (2002). The August 1 Order emanated from an ongoing non-public industry-wide investigation initiated by the Commission in Docket No. IN02-2-000 and conducted jointly by the Chief Accountant and Enforcement concerning the reporting of certain financial data submitted to the Commission from jurisdictional entities pursuant to Commission regulations.

companies; and (b) the secured loan transactions entered into by Transwestern in November 2001 were imprudently incurred and that the costs arising from such loans and arrangements

should therefore not be passed on to ratepayers. Transwestern duly filed its Response to the August 1 Order on September 3, 2002.

3. On November 1, 2001, Enron issued press releases announcing the written commitments for an additional \$1 billion in a line of credit from Citicorp North America, Inc. (Citicorp) and JP Morgan Chase Bank (JP Morgan) (or the banks) to be supported by loans executed with Transwestern and Northern. The press releases stated that the proceeds were to be used by Enron to supplement short term liquidity and to refinance maturing obligations. The Transwestern credit agreement was structured such that the proceeds of Transwestern's borrowing would be loaned to Enron, with the banks holding a secured interest in Transwestern's note receivable from Enron.

4. The proposed \$550 million loan to Transwestern was structured so that, to the extent Enron developed future credit rating difficulties, Enron's access to cash from Transwestern under a separate Cash Management Agreement (between Enron and Transwestern) would be subject to limitations such that inter-company loans or advances would be prohibited in the event of continuing default by Transwestern or when the sum of Transwestern's unrestricted cash and any unutilized borrowing capacity under the \$550 million loan is less than \$10 million or when Enron is no longer investment grade.

5. On November 13, 2001, the agreements between Citicorp, JP Morgan and Transwestern were executed. These agreements were approved by Transwestern's board of directors consisting of three Transwestern senior executives including its chief executive officer, senior vice president and chief commercial officer and senior vice president and chief financial officer. Simultaneously, on November 13, 2002, Enron executed two subordinated promissory notes in favor of Transwestern for \$137.5 million and \$412.5 million. The \$550 million in credit extended to Transwestern was comprised of: (1) the \$412.5 million in cash proceeds to Transwestern, \$402.5 million of which was, in turn, loaned by Transwestern directly to Enron; and (2) Transwestern's assumption of a pre-existing \$137.5 million Enron obligation to the banks. Enron's promissory notes to Transwestern provided that they are subordinated to prior payment of all senior indebtedness upon dissolution, liquidation, or reorganization for the benefit of creditors of Enron. Enron borrowed the full amount of the \$550 million face value of these notes from Transwestern, less \$10 million retained by Transwestern as supplemental working capital. None of the \$540 million was used to provide or support any of Transwestern's jurisdictional services.

6. Transwestern duly recorded the loan in accordance with the Uniform System of Accounts under Part 201 of the Commission's regulations. The recordation, however, was

made to account 231, Notes payable. This account does not affect the jurisdictional rate base of Transwestern. Thus, none of the principal amount of the \$550 million loan is included in those accounts of Transwestern that make up Transwestern's jurisdictional rate base. Further, Transwestern's jurisdictional rates do not now reflect any costs associated with the \$550 million loan and it is intended by this Agreement, as specified below, that no such costs will be reflected in future rates.

7. After Enron filed for Chapter 11 bankruptcy on December 2, 2001, Transwestern made adjustments under the Uniform System of Accounts to take into account the Enron bankruptcy and its effect on the Transwestern loans to Enron. As a result, Transwestern's management reserved the amount of the loan by charging Account 426.5, Other deductions, which was reflected in retained earnings. Thus, the accounting for the \$540 million loan appropriately reflects the fact that the loans made by Transwestern to Enron were no longer deemed by Transwestern to be recoverable. Accordingly, because of the \$540 million offsetting charge against Transwestern's retained earnings, Transwestern's principal shareholder, Enron, has borne this reduction and no longer had these amounts of retained earnings available to it as a source of equity value, dividends or other capital asset.

### **III. Agreement**

8. Transwestern neither admits nor denies any violation of the Commission's Uniform System of Accounts and Transwestern neither admits nor denies that any of its loans were entered into imprudently. However, Transwestern, the Chief Accountant, and Enforcement agree as follows:

9. Transwestern agrees that it will comply with the Final Rule regarding written cash management practices resulting from the Commission's Notice of Proposed Rulemaking, Regulation of Cash Management Practices, in Docket No. RM02-14-000 issued August 1, 2002.

10. Transwestern agrees that it will not include the costs associated with the \$550 million loan entered into on November 13, 2001 with Citicorp North and JP Morgan as collateral trustees, and Citicorp North American, Inc. and JP Morgan Chase Bank as co-administrative agents, in any future rate proceedings before the Commission. Specifically, Transwestern will not include the principal of the loan itself, the interest cost of the \$550 million loan, or

any associated expenses incurred in acquiring such loan, in any future Commission rate proceedings. These costs are identified in the accounting entries set out in Attachment A to

the Agreement. Transwestern agrees that it will identify those amounts by footnote in its 2002 Form No. 2 filing with the Commission. Transwestern further agrees that all existing balances and year to date 2002 financial activity will be reclassified immediately upon the Commission's approval of the Agreement and that Transwestern will, within 15 days of the Commission's approval of this Agreement, submit to the Chief Accountant a filing that reflects such changes to its records maintained pursuant to Part 201 of the Uniform System of Accounts.

11. The \$550 million loan is structured as a revolving line of credit that expires and must be paid in full on or before November 8, 2002 and, therefore, will not be included in the capital structure of Transwestern after November 2002. To the extent Transwestern retires the \$550 million loan with new short-term (less than 365 days) financing vehicle, Transwestern agrees that it will reflect such refinancing by reclassifying and segregating the loan components in specified sub-accounts as follows: (a) Principal to Account 231.1 Note Payable; (b) Deferred Expenses to Account 181.1; (c) Interest Expense to Account 431.1; and (d) Amortization of Deferred Expenses (legal and bank fees) to Account 428.2. To the extent Transwestern retires the \$550 million loan with a new long-term (greater than one year) financing, Transwestern agrees that it will reflect such refinancing by segregating and reclassifying the loan components in sub-accounts specified above except that (a) Principal to Account 224.1 (other long-term debt) in lieu of Account 231.1; and (b) Interest Expense to Account 427.1 (interest on long-term debt) in lieu of Account 421.1. Transwestern further agrees that within 15 days of the execution of such successor financing arrangements, Transwestern shall submit to the Chief Accountant a filing that reflects such changes to its records maintained pursuant to Part 201 of the Uniform System of Accounts. Transwestern further agrees that it will identify those reclassified and segregated amounts attributable to such successor financing arrangements in the accounts specified above by footnote in its 2002 Form No. 2 or any succeeding Form No. 2 filed with the Commission as long as such successor financing arrangements remain effective.

12. Notwithstanding the provisions set forth in Paragraph 11, the Commission reserves the right to determine, in any future NGA Section 4 rate proceeding, whether the costs associated with any future refinancing of the \$550 million loan is just and reasonable.

#### **IV. Terms**

13. By this Agreement, Transwestern, the Chief Accountant and Enforcement intend to settle only the matters referred to in this Agreement and that are within the Commission's jurisdiction and statutory authority to settle.

14. Transwestern, Chief Accountant and Enforcement acknowledge and agree that this Agreement is a settlement only of those matters specifically set forth in the Commission's August 1, 2002 Order to Respond that are being investigated by the Chief Accountant and Enforcement. Nothing herein is intended to be an admission or a denial on the part of Transwestern of any violation or wrongdoing.

15. Transwestern, the Chief Accountant and Enforcement agree that they enter into this Agreement voluntarily and that other than the agreements set forth herein, no tender, offer, or promise of any kind whatsoever has been made by any party to this Agreement, or any member, employee, officer, director, agent, or representative of any such party, to induce the other party to enter into this agreement.

16. If the Commission does not issue an order which becomes final approving this Agreement in its entirety, without modification, this Agreement shall become null and void and of no effect whatsoever and neither Transwestern, the Chief Accountant, nor Enforcement shall be bound by any of its terms, unless they otherwise agree in writing.

17. Should the Commission's order referenced in Paragraph 16 above be subsequently modified on appeal in a fashion that modifies this Agreement, then this Agreement shall be null and void and of no effect whatsoever and neither Transwestern, the Chief Accountant nor Enforcement shall be bound by any of its provisions or terms, unless they otherwise agree in writing.

18. Except as expressly stipulated and acknowledged and agreed herein, neither Transwestern, the Chief Accountant nor Enforcement makes or has made any admissions or acknowledgments or agreements in connection herewith.

19. The Chief Accountant and Enforcement agree to a full and complete settlement of all civil and administrative disputes, or other claims the Commission has or may have against Transwestern or any of its predecessors, officers, directors, or employees either before the Commission or in the courts and is in lieu of any other remedy that the Commission might assess, determine, initiate or pursue, including remedies pursuant to Section 5, 7 and 16 of the Natural Gas Act, concerning only those matters specifically described or referred to in the Commission's August 1, 2002 Order to Respond. The Commission reserves the right to pursue any other matters that are not the subject of the August 1, 2002 Order to Respond.

20. With the exceptions of any additional administrative or civil remedies that may be imposed for failure to comply with the terms of Part III of this Agreement, any and all administrative or civil remedies that the Commission may have against Transwestern, its successors or assigns, either before the Commission or in the courts, arising from the matters

set forth in Part III of this Agreement, shall be forever barred upon compliance with the provisions of Part III of this Agreement.

21. The undersigned representative of Transwestern affirms that he has read the representations set forth in this Agreement, that all of the matters set forth herein are true and correct to the best of his knowledge, information and belief and that he understands that this Agreement is entered into by the Chief Accountant and Enforcement in express reliance on those representations.

22. The provisions of this agreement are binding on Transwestern and its agents, successors and assigns.

23. By its order approving this Agreement, the Commission shall terminate with respect to Transwestern matters specifically referred to it in the August 1, 2002 Order to Respond. Transwestern waives any rights to seek further administrative review or to seek judicial review of any Commission order approving this Agreement in its entirety without modification.

24. Each of the undersigned warrants that he or she is an authorized representative of the party designated, is authorized to bind such party, has notified the party of the terms of this Agreement and accepts it on the party's behalf.

Agreed to and accepted:

\_\_\_\_\_  
Deputy Executive Director  
and Chief Accountant

\_\_\_\_\_  
Date

\_\_\_\_\_  
Deputy Director, Investigations and  
Enforcement, Office of Market  
Oversight and Investigations

\_\_\_\_\_  
Date

\_\_\_\_\_  
Transwestern Pipeline Company

\_\_\_\_\_  
Date

**TRANSWESTERN PIPELINE COMPANY**  
**Docket No. IN02-6-000**

**ATTACHMENT A**

Proposed Accounting Entries to segregate referenced \$550 million debt and related costs

Debit	231	Note payable
(Credit)	231.1	Note payable (special sub account for this debt)

To reclassify and segregate loans with CitiCorp and JP Morgan Chase into a separate sub account

Debit	181	Unamortized debt expense
(Credit)	181.1	Unamortized debt expense (special sub account)

To reclassify and segregate deferred expenses related to above loans into a separate sub account

Debit	431	Other interest expense
(Credit)	431.1	Other interest expense (special sub account)

To reclassify and segregate interest expenses related to above loans into a separate sub account

Debit	428	Amortization of debt discount and expense
(Credit)	428.2	Amortization of debt discount and expense (Special sub account)

To reclassify and segregate amortization of deferred expenses related to above loans into a separate sub account

Notes:

1. Existing balances and year to date 2002 activity will be reclassified immediately upon approval of this settlement, and on going activity will be accounted for via the above subaccounts.
2. Upon refinancing:
  - a. If refinanced on a short term basis the same above subaccounts will be used.
  - b. If refinanced on a long term basis the following subaccounts will be used:
    - 224.1 Other long term debt (in lieu of account 231.1)
    - 427.1 Interest on long term debt (in lieu of account 431.1)