STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Transcontinental Gas Pipe Line Corporation — Docket No. RP01-245-000
101 FERC ¶ 63,022

INITIAL DECISION
(Issued December 3, 2002)

APPEARANCES

Gregory Grady, Esq., Michael J. Thompson, Esq., Randall R. Conklin, Esq., David A. Glenn, Esq., and Julie P. Baumgarten, Esq., for Transcontinental Gas Pipe Line Corporation

Helen M. Hight, Esq., and Anita R. Wilson, Esq., for Duke Pipelines, Texas Eastern Transmission and East Tennessee Natural Gas Company

Henry S. May, Jr., Esq., and Judy M. Johnson, Esq., for Texas Eastern Transmission, L.P.

Steve E. Hellman, Esq., for Texas Eastern Transmission, L.P. and East Tennessee Natural Gas Company

Henry S. May, Jr., Esq., for East Tennessee Natural Gas Company

Amy E. Hamilton, Esq., Kent D. Murphy, Esq., and Michael C. Griffen, Esq., for PECO Energy Company

Mark G. Cook, Esq., Patrick B. Pope, Esq., James D. Johnston, Esq., and J. Gordon Pennington, Esq., for Southern Natural Gas Company

T. Alana Deere, Esq., and James M. Costan, Esq., for Virginia Power Energy Marketing, Inc.

Thomas Thackston, Esq., Jodi Moskowitz, Esq., Tamera Linde, Esq., and Richard T. Saas, Esq., for Public Service Electric and Gas Company (PSE&G)

Douglas F. John, Esq., for North Carolina National Gas Corporation and Carolina Power and Light Company

Suzanne M. Calcagno, Esq., for Enron North America Corporation

Thomas J. Eastment, Esq., for Indicated Shippers

Kirstin E. Gibbs, Esq., Dena E. Wiggins, Esq., and *Alisa N. Stein, Esq*., for Process Gas Consumers Group, United States Gypsum Company, Smurfit - Stone Container Corporation

Denise Goulet, Esq., and *Stephen Keene, Esq.*, for Pennsylvania Office of Consumer Advocate

Barbara M. Simons, Esq., for North Carolina Utilities Commission

Barbara K. Heffernan, Esq., and Kevin D. Ryan, Esq., for Delmarva Power and Light Company

Daniel Adamson, Esq., for Amoco Production/BP Energy

Lisanne Crowley, Esq., for NUI Utilities Inc.

Stephen J. Karina, Esq., for City of Danville

Marilyn Specht, Esq., and *Adusei Poku, Esq.*, for NiSource Energy Distribution Group

Frederick W. Peters, Esq., for New Jersey Natural Gas Company

Steven J. Kalish, Esq., for Consolidated Edison of New York, Inc.

Kenneth T. Maloney, Esq., for The KeySpan Energy Delivery Companies

Patrick Nevins, Esq., for Dominion Transmission, Inc.

Anne E. Bomar, Esq., for Dominion Resources, Inc.

Nicholas C. Minshew, Esq., and *Christopher J. Barr, Esq*., for UGI Utilities Inc.

Frank H. Markle, Esq., for UGI Corporation

Beverly A. Sikora, Esq., and *Gary E. Guy, Esq.*, for Baltimore Gas and Electric Company

Kenneth M. Gossel, Esq., and *Alice A. Curtiss, Esq.*, for National Fuel Gas Distribution Corporation

Mark Haskell, Esq., and *Christie Richart, Esq*., for Motiva Enterprises LLC

James H. Byrd, Esq., and *Phyllis G. Kimmel, Esq*., for Transco Municipal Group, Municipal Gas Authority of Georgia, City of Richmond, Virginia

Rebecca A. Blackmer, Esq., *Marvin T. Griff, Esq*., and *Robert E. Shanning, Esq*., for Niagara Mohawk Power Corporation

Jerry W. Amos, Esq., and *James Jeffries, Esq*., for Piedmont Natural Gas Company, Inc.

Rose T. Lennon, Esq., for Washington Gas and Light

Charles H. Shoneman, Esq., for Northwest Energy Associates; North Jersey Energy Associates; Cherokee County Cogeneration Partners, L.P.

Joseph Stengel, Esq., *William C. Muntzer, Esq*., for Philadelphia Gas Works (PGW)

Matthew Rick, Esq., and *Gordon Smith, Esq*., for Pancanadian Energy Services, Inc., Mirant Americas Energy Marketing, L.P., Duke Energy Trading and Marketing, L.L.C.

Cary Silverman, Esq., Elisabeth R. Myers-Kerbal, Esq., Richard G. Morgan, Esq., and *Robert R. LeGros, Esq*., for Sunoco, Inc. (R&M)

Gregory K. Lawrence, Esq., Mark Garrett, Esq., and *Mike Yuffee, Esq*., for Shell Energy Services Company, L.L.C. and Coral Energy Resources

Bridget Shahan, Esq., *Joel Zipp, Esq*., and *George Williams, Esq*., for Scana Corporation
David D'Alessandro, Esq., *Kelly A. Daly, Esq*., *John E. McCaffrey, Esq*., for New York Public Service Commission

Jacolyn A. Simmons, Esq., and *Curtis D. Blanc, Esq*., for Atlanta Gas Light Company and Virginia Natural Gas Company

James H. Holt, Esq., Kirk Howard Betts, Esq., and Jill M. Barker, Esq., for the University of Maryland, College Park, Johns Hopkins University; Johns Hopkins University Health Systems

Jennifer M. Buettner, Esq., for Southern Company Services, Inc.

William Collins, Esq., Irene Szopo, Esq., Janet Jones, Esq., and *Linda Lee, Esq*., for Federal Energy Regulatory Commission Staff

David I. Harfeld, Presiding Administrative Law Judge

TABLE OF CONTENTS

APPEARANCES ... 1
TABLE OF CONTENTS ... 4
PROCEDURAL HISTORY ... 6

INTRODUCTION ... 6

THE ISSUES ... 9

ISSUE I: THE RIGHTS OF CONVERSION BUYERS UNDER TRANSCO'S RATE SCHEDULE FT AT THE EXPIRATION OF THE TERM OF THEIR RATE SCHEDULE FT SERVICE AGREEMENTS, THE RESOLUTION TO BE PROSPECTIVE ONLY. ... 10
Discussion ... 15

ISSUE II: SCANA'S PROPOSAL FOR LIMITED PART 284 CONVERSION OF CERTAIN BUNDLED STORAGE SERVICES. ... 16
Discussion ... 21

ISSUE III: THE RIGHTS UNDER TRANSCO'S FERC GAS TARIFF OF CERTAIN REPLACEMENT SHIPPERS TO CONTINGENCY RANK CERTAIN PART 284 SERVICES, THE RESOLUTION TO BE PROSPECTIVE ONLY. ... 23
Discussion ... 25

ISSUE IV: THE UNBUNDLING OF TRANSCO'S RATE SCHEDULE GSS SERVICE, THE RESOLUTION TO BE PROSPECTIVE ONLY. ... 26
Discussion ... 31

ISSUE VI: THE ROLLED-IN TREATMENT FOR THE COST OF THE FACILITIES ASSOCIATED WITH TRANSCO'S MOBILE BAY EXPANSION PROJECT CERTIFICATED IN DOCKET NOS. CP97-92, ET AL., WITH THE FINAL RESOLUTION TO BE APPLIED RETROACTIVE TO SEPTEMBER 1, 2001 UNDER NGA SECTION 4 OR APPLIED PROSPECTIVELY UNDER NGA SECTION 5. ... 33
A. Burden of Proof ... 35
B. Changed Circumstances ... 36
Discussion ... 44
C. Conclusion ... 46

ISSUE VII: THE ROLLED-IN RATE TREATMENT FOR THE COSTS OF TRANSCO'S INCREMENTALLY PRICED SUNBELT, POCONO, AND CHEROKEE EXPANSION FACILITIES, RESOLUTION TO BE EFFECTIVE PROSPECTIVELY ONLY. ... 46
A. Controlling Pricing Policy ... 47

B. Cherokee & Pocono 48
Discussion 49
C. SunBelt 50
Discussion 52

ISSUE V: FUEL AND TRANSMISSION ELECTRIC POWER CHARGES FOR CERTAIN TRANSCO SERVICES, THE RESOLUTION TO BE PROSPECTIVE ONLY 53
Discussion 56

ISSUE VIII: THE ALLOCATION OF CERTAIN STORAGE COSTS BETWEEN AND AMONG STORAGE AND TRANSPORTATION SERVICES, THE RESOLUTION TO BE PROSPECTIVE ONLY. 58
A. Proposed Allocation of Transco's General Storage Function Costs 59
B. Proposed Allocation of LNG Storage Facility Costs 63
Discussion 65

ISSUE IX: THE UNBUNDLING OF EMERGENCY EMINENCE STORAGE WITHDRAWAL SERVICE, THE RESOLUTION TO BE PROSPECTIVE ONLY 68
Discussion 72

ISSUE X: INCLUDING THE DESTIN SHUBUTA INTERCONNECT AND OTHER RECEIPT POINTS AS PART OF THE STATION 85 POOLING POINT 74
Discussion 80

ISSUE XII: ALLOCATION OF COSTS TO TRANSCO'S INCREMENTALLY PRICED TRANSPORTATION SERVICES AND TO TRANSCO'S BUNDLED STORAGE SERVICE. 83
A. Allocation of O&M Expenses to Incremental Services 84
B. Allocation of A&G Costs 87

ISSUE XIII: THE ALLOCATION OF A&G COSTS TO TRANSCO'S LNG SERVICE 92
Discussion 93

ISSUE XIV: THE VALUE, AND REFLECTION OF THAT VALUE IN RATES, OF THE ACCESS TO TRANSCO'S RIGHT OF WAY FOR THE INSTALLATION OF A FIBER OPTIC COMMUNICATION SYSTEM, THE RESOLUTION TO BE PROSPECTIVE ONLY 95

CONCLUSION 99

ORDER 101

PROCEDURAL HISTORY

1. On March 1, 2001, Transcontinental Gas Pipe Line Corporation (Transco) filed revised tariff sheets to reflect a general Natural Gas Act (NGA) Section 4 rate increase. The proposed rates would have resulted in an annual revenue increase of approximately $227.8 million. In a March 28, 2001 order, the Commission accepted and suspended the tariff sheets to be effective September 1, 2001, subject to refund and the outcome of the established hearing.

2. On March 1, 2002, Transco also filed, in Docket No. RP01-253-000, revised tariff sheets to change the fuel retention percentages applicable to transportation and storage rate schedules for the next annual period with a proposed effective date of April 1, 2001. By Commission Order issued March 28, 2001, these sheets were accepted for filing and suspended to be effective April 1, 2001, subject to refund and further review. By an Order issued July 30, 2001, these two proceedings were consolidated. Further Orders by the Commission accepted the motion rate filing, granted and denied rehearing, accepted Transco's compliance filing and consolidated the dockets for hearing.

3. Direct, Cross-Answering, Rebuttal, and Supplemental testimony and exhibits were filed by 28 witnesses. Simultaneously, the participants conducted lengthy, contentious, and arduous settlement negotiations. On April 12, 2002, Transco submitted a Stipulation and Agreement which settled most of the cost of service, cost allocation, rate design, and other issues in these dockets. Article VII of the Stipulation, however, reserved fourteen issues for hearing (referred to herein as "Issues I through XIV"). The April 12, 2002 Stipulation was approved by letter order issued July 23, 2002. On July 10, 2002, Transco submitted an additional unopposed Stipulation, which would resolve Issue XI.

4. Hearings on the reserved issues were held on July 9, 2002 through July 31, 2002. Parties filed Initial Briefs and Reply Briefs on August 28, 2002 and September 17, 2002, respectively.

INTRODUCTION[1]

5. Transco's system is one of the largest, long line natural gas pipeline systems in the United States. The mainline system originates in southern Texas near the boarder with Mexico and extends in somewhat of a northeasterly arc along the Gulf of Mexico through Texas, Louisiana, Mississippi, and Alabama. The system includes offshore and onshore gathering lines, processing facilities and major supply lines throughout the Gulf Coast areas of each of those states. From Alabama, the system extends northward on a route

[1] The description of the Transco system comes from the Prepared Direct Testimony of Larry G. Cunningham. *See* Ex. No. T-13 at 4.

east of the Appalachian Mountains, with multiple large-diameter mainline pipe and compression facilities running through the southeastern and mid-Atlantic states to the systems' terminus in New York City.

6. The Transco mainline primarily transports gas supplies from offshore and onshore Gulf Coast producing areas to local distribution companies ("LDCs") that serve most of the major metropolitan areas of the eastern United States, including Atlanta, Charlotte, Richmond, Washington, D.C., Baltimore, Wilmington, Philadelphia, the major cities of New Jersey, and New York City. Transco's customers also include numerous other LDC's, municipal utilities, industrial users, electric power generators, and energy marketers. The number and type of customer on the Transco system have been increasing.

7. The Transco system includes both production area and market area storage assets. The production area storage includes the Hester, Eminence and Washington storage fields in Louisiana and Mississippi.[2] Market area storage is comprised of system and contract storage at the Leidy and Wharton storage fields in south-central Pennsylvania. Through interconnections with Dominion Transmission, Inc. ("Dominion") (formerly DNG Transmission Corporation) and with National Fuel Gas Supply Corporation ("National Fuel"), these fields are connected to Transco's large-diameter Leidy Line system. The Leidy Line system is comprised of multiple, large-diameter pipelines and compression facilities and extends approximately 200 miles from Clinton County, Pennsylvania, to its interconnection with the Transco mainline system near Centerville, New Jersey, at a point known as Princeton Junction. Transco's system also includes liquid natural gas (LNG) storage located on the mainline in Carlstadt, New Jersey.

Leidy Line

8. According to Transco, it operates all of its facilities, including the Leidy Line and the storage connected to it, as a single, fully integrated system. Transco uses all its facilities to serve all of its customers. All gas in the system flows in a commingled stream, regardless of the rate schedule or service with which the gas is associated for billing or accounting purposes. Particularly during winter periods, the flow of gas on the Leidy Line is predominantly west to east, supplementing mainline supplies from the south to meet the demands of mainline customers both upstream (by displacement) and downstream of Princeton Junction. In addition, the design of the Leidy Line for bi-directional flow enables Transco during summer and other low-flow demand periods to divert a portion of the gas flowing northbound in the mainline into the Leidy Line to flow east to west for injection into the storage fields in Pennsylvania. It is not uncommon for Transco to inject or to withdraw gas from storage out of season (*i.e.*, inject in the winter

---

[2] *See* Ex. T-14, a diagram of the Transco system.

and withdraw in the summer) to provide hourly and daily operational flexibility to customers throughout the system.

9. Transco also serves as a "middleman" in a role as operator for its customers of the bundled, market-area storage services under Rate Schedules GSS, LSS, SS-1, SS-2, and S-2. In this role, Transco schedules use of these services with the pipelines that operate the storage fields, based on overall system requirements, using the aggregate contract rights of its customers who contract for the services. In Transco's Order 636 restructuring proceeding, the Commission approved Transco's proposal to serve in this "middleman" capacity. *Transcontinental Gas Pipe Line Corp.*, 48 FERC ¶ 61,399 (1989). Transco's aggregate peak daily delivery obligations to its firm transportation (FT), bundled storage, and LING customers total approximately 7.56 million dekatherms per day ("MMDt/d").

Firm Transportation Service (FT)

10. All of Transco's FT service is "no-notice" service. Transco does offer "notice" service under its Rate Schedule FT-N, but no customers have ever subscribed to that service. Transco's customers are permitted each day to take any amount of gas from the system, up to their aggregate daily maximum contract quantities, regardless of the delivery quantity they schedule for the day. Although customers must in good faith nominate and schedule a quantity of gas for each day prior to the day of flow and on an intraday basis during the day of flow, they are not assessed daily scheduling or imbalance penalties if their requirements deviate from their scheduled quantities.

11. Transco does not require its customers to take gas from Transco's system at uniform or other, prescribed hourly rates during the day. The system consistently has accommodated such hourly "swings" and when operationally feasible, has accommodated hourly flow variations at delivery points that were considerably in excess of the system design parameters for hourly variations flow. Customers' hourly variances are additional to, and separate and apart from, their daily variances from their scheduled quantities.

12. Transco customers in the New York/New Jersey area and other major markets use Transco as their "swing" supplier. The LDCs and other delivery point operators on the system vary their takes of gas from Transco at their delivery points to meet day-to-day and hour-to-hour variations in demand on their systems. This can be accomplished because there is no physical flow control at the Transco's system city gate delivery points. Transco provides its customers with a highly flexible, no-notice service with no scheduling penalties and no flow control, with full rights to flexible receipt and delivery points and to release capacity rights, by discrete segments or in full.

Expansion Projects – SunBelt, Pocono, and Cherokee

13. The SunBelt expansion facilities include approximately 23,100 horsepower (hp) of new compression at five existing compressor stations in Mississippi, Alabama, Georgia, and South Carolina; approximately 15,000 hp of new compression at each of two new compressor stations in Alabama and Georgia; and approximately 15 miles of 42-inch pipeline loop on Transco's mainline between Station Nos. 140 and 145 in South Carolina. The SunBelt project increased Transco's mainline capacity by approximately 103,500 Dt/d from Station 65 at the Louisiana-Mississippi border to "Station 85," the point at which Transco's Mobile Bay Lateral interconnects with the mainline system, and by approximately 150,765 Dt/d from Station 85 to various delivery points upstream of Station 145 at the South Carolina-North Carolina border. The SunBelt facilities went into service in November 1997.

14. The Pocono project consists of the installation of 4.88 miles of 36-inch pipeline loop on Transco's Leidy Line in Lycoming County, Pennsylvania. This pipeline loop provides capacity for an additional 35,000 Dt/d of firm service from the Leidy market hub. The Pocono facilities also went into service in November 1997.

15. The Cherokee expansion project generally consists of: installing approximately 11 miles of 48-inch loop pipeline on Transco's mainline in Alabama; installing a gas cooler at Station No. 110 in Alabama; upgrading the maximum allowable operating pressure of certain segments of 16-inch pipe in Georgia; adding approximately 15,000 hp of compression at a new Station No. 115 in Georgia; adding approximately 8,000 hp of compression at Station No. 125 in Georgia and making various modifications to existing compressor units at the existing Station Nos. 110 and 120 in Alabama and Georgia, respectively; and modifying certain metering and pig launching/receiving facilities in Georgia. The Cherokee expansion added approximately 87,070 Dt/d of firm capacity to Transco's mainline system in the southern market area. The Cherokee facilities were placed in service in November 1998.

THE ISSUES

16. The parties filed a "Second Revised Joint Stipulation of Issues" on July 1, 2002. The issues are included below, seriatim, except for Issue V, which is discussed after Issue VII.[3]

---

[3] All arguments made by each party have been carefully considered. If a specific argument is not addressed within this decision, that does not in any way indicate that it was not considered. Rather, if such arguments are omitted, they were determined to be without merit.

ISSUE I: THE RIGHTS OF CONVERSION BUYERS UNDER TRANSCO'S RATE SCHEDULE FT AT THE EXPIRATION OF THE TERM OF THEIR RATE SCHEDULE FT SERVICE AGREEMENTS, THE RESOLUTION TO BE PROSPECTIVE ONLY.

17. At issue here is determining the rights that exist for the current FT Conversion Buyers upon expiration of the current FT service agreements. Testimony and exhibits were filed on this issue by the Public Service Commission of the State of New York (PSCNY), the KeySpan Delivery Companies (KeySpan), Indicated Shippers,[4] and Transco.

18. Currently, the conversion buyers'[5] service rights are governed by both Settlement Agreements between the Conversion Buyers and Transco and by Transco's tariff. Ex. T-49 at 4, Prepared Answering Testimony of Paul F. Egner. These settlement agreements stem from Transco's conversion of its bundled merchant sales services to firm transportation services in 1991, as a result of the Commission's rulemaking prior to Order 636. Transco I.B. at 3. At that time, Transco entered into Commission-approved settlement agreements restructuring Transco's FT and other contracts, tariff provisions and rates. *Id.* In these new settlements, the conversion buyers signed new FT conversion contracts for firm transportation services comparable to the transportation portion of their former bundled sales services.

19. These contracts include various provisions, but two that particularly address the rights of the conversion buyers at issue here. First, the FT conversion contracts explicitly provide that while the service is provided under Part 284 of the Commission's regulations, no additional pre-granted abandonment of the service would exist. *See* Ex. T-50, Article IV at 3. The contracts provide that the conversion buyers have all the protections associated with the requirements of § 7 of the NGA. This means that Transco must first seek abandonment authority from the Commission under § 7, before any abandonment could occur, and the conversion buyers could argue that any abandonment should include approval with conditions, which the Commission could evaluate based on the facts existing at the time. *Id.* The contracts further provide that Transco cannot seek abandonment of the service so long as the conversion buyers continue to pay either maximum rates or rates "no less favorable" than Transco is otherwise able to obtain from third party bidders.

---

[4] Indicated Shippers includes: Shell Oil Company, Amerada Hess Corporation, Chevron Texaco Exploration & Production Company, Conoco Inc., Exxon Mobile Corporation, and Occidental Energy Marketing, Inc.

[5] Conversion buyer is defined in § 7.1 of Transco's Rate Schedule FT as a buyer that has converted a firm sales contract to service under Rate Schedule FT.

20. The second relevant provision of the FT conversion contracts and tariff provisions give the FT conversion shippers "telescoped" rights to their respective *pro rata* shares of all the production area mainline capacity. Ex. T-49 at 4. This insures the shippers secure capacity and service arrangements to get their supplies from the production area to their city gates. *Id.*

21. Here, however, PSCNY and KeySpan are seeking an amendment of their termination rights "to establish the appropriate conditions related to abandonment under § 7 of the NGA and to provide a transition to FT service." PSCNY I.B. at 9. PSCNY and KeySpan claim that the current contracts and tariff are unjust and unreasonable in that they lock conversion buyers into telescoped production area mainline capacity indefinitely. PSCNY claims that the telescoping approach[6] is unjust because it places the Conversion Buyers in the situation of paying for telescoped production area capacity in perpetuity. PSCNY bases this allegation on the fact that the alternative to paying for specific production area mainline capacity is to terminate their service agreements and risk losing all capacity. This alternative, according to PSCNY, is where the unjust and unreasonableness comes into the contracts. It claims that contracts leave the conversion buyers at the end of the contract, because they are essentially left with the "choice of continuing their current service agreements at maximum rates, paying for specified production area mainline capacity that does not make any business sense for them, or terminating the service agreements and running the risk of losing their historic service entitlements on Transco. . . ." PSCNY I.B. at 13.

22. PSNCY attempts to support its argument by stating that the current framework frustrates the Commission's goals of Order 636. Order No. 636, FERC Stats. & Regs., Regulations Preambles 1991-1996 ¶ 30,939. According to PSCNY, with Order 636, the Commission intended "to insure that all shippers have meaningful access to the pipeline transportation grid so that willing buyers and sellers can meet in a competitive, national market to transact the most efficient deals possible. *Id.* at 30,393. The second argument that PSCNY puts forth as a Commission goal for Order 636 is that the "Commission aimed to accomplish the first goal in a way that continues to ensure consumer 'access to an adequate supply of gas at a reasonable price.'" *Id.* PSCNY posits that the current contracts and tariff frustrate these Commission goals.

23. As a solution, PSCNY suggests that the Commission adopt Witness Winters' proposal that would give the Conversion Buyers at the end of the primary terms of the contracts the right to terminate the existing arrangements and to renominate for capacity with the right of first refusal (ROFR). This proposal would allow the Conversion Buyers, at the end of the expiration of the service agreements to terminate their existing service

[6] "Telescoping" is the phrase used to describe the pipeline because the pipeline increases in size as it moves from the production area to the market area.

under the agreement and bid with other interested parties for capacity without losing capacity rights. Further, the Conversion Buyers should have the option of bidding on market area capacity alone and/or production area paths different than the telescoped capacity under the existing service agreements. This proposal, PSCNY argues, would "at least give the Conversion Buyers some greater flexibility in servicing gas supply." PSCNY I.B. at 22.

24. KeySpan argues, similarly to PSCNY, that the Conversion Buyers are entitled to ROFR because, while the service agreements explicitly reflected an agreement that Transco does not have pre-granted abandonment, it is silent on the issue of ROFR. KeySpan I.B. at 5. KeySpan argues that under the current arrangement for modifying service agreements, all Conversion Buyers cannot be assured of securing any particular amount of capacity. Furthermore, KeySpan argues, the Conversion Buyers are the only Part 284 shippers with contracts having a term of one-year or more that do not have a ROFR.[7] It argues that the Commission has previously held that under the ROFR provisions in Transco's tariff, a firm shipper has the right to terminate a volumetric portion of its contract and retain its ROFR for the remaining portions. KeySpan I.B. at 6, *citing Transcontinental Gas Pipe Line Corp.*, 87 FERC ¶ 61,109 (1999), *order granting clarification*, 88 FERC ¶ 61,155 (1999). KeySpan urges that Part 284 shippers are entitled to have a regulatory ROFR, regardless of any other rights that may be in the service agreements or tariff.

25. KeySpan encourages the Commission to require Transco to afford its shippers a ROFR through a proposal it sponsors. KeySpan Witness Chezar proposes that:

> Under this proposal, eligible firm shippers would be permitted to give Transco notice in accordance with the expiration notice provisions of their existing contracts as to the volume and geographic path that the shipper wished to retain at expiration. With respect to the volume that the shipper no longer wished to retain, Transco would seek abandonment of such volume and the shipper would retain no ROFR with respect to such volumes. With respect to the volume that the shipper wished to retain, Transco would (1) post and solicit bids for such volume for the entire existing contract path, (2) determine the highest net present value bid for such volume, and (3) offer the existing shipper the right to match the bid for

[7] KeySpan, however, neglects to describe that the Conversion Buyers have a unique relationship with Transco, in that they did not fully opt to become Part 284 shippers under Order 636. Rather, they maintained, by election under the service agreements, to remain under § 7 of the NGA, at least in so far as rights to any pre-granted abandonment authority.

> such volume. If no bids were received, the shipper would be permitted to contract for the volume and path specified in its notice, and Transco could require the shipper to maintain rates for such volume path for a term chosen by the shipper.

KeySpan I.B. at 12.

26. KeySpan argues that this proposal is consistent with Transco's current contractual ROFR under its current tariff and that this proposal does not propose a geographic ROFR. KeySpan's proposal is based on Witness Chezar's recommendation that a shipper exercising the ROFR would not be able to select the geographic path which it would be required to match in order to retain its capacity.

27. However, KeySpan goes on to argue that even if the ROFR is considered geographic, it is just and reasonable and should therefore be approved. It cites to Order No. 637-A, where it claims that the Commission has clearly stated that whether a geographic ROFR would be permitted in certain situation depends upon the specific facts and circumstances of such cases. *Id.* at 13.

28. Transco, in its opposition to PSCNY and KeySpan, maintains that the FT conversion shippers entered into contracts at the time of Transco's unbundling of services that addressed all the important concerns of the conversion shippers at the time. Transco I.B. at 4. Therefore, Transco asserts, that the conversion shippers have all the protections under Section 7, which require Transco to seek abandonment authority from the Commission before any abandonment could occur, and they also have "telescoped" rights to their respective *pro rata* shares of all of the production mainline capacity. *Id.*, *citing* Ex. No. T-49 at 4-5. Transco maintains that now, PSCNY and KeySpan are seeking to revise the present contracts in by adding further enhancements for the FT conversion shippers.

29. Transco maintains that because the freely negotiated contracts explicitly do not permit pre-granted abandonment, Transco views PSCNY's attempt at adding ROFR rights to this already generous protection of no pre-granted abandonment, as an attempt to circumvent the Commission's longstanding policies. Here, Transco asserts that the Commission's position in Orders 636 and 637 is to grant the ROFR only to shippers who were subject to pre-granted abandonment, not those that already had the protection. *Id.* at 6. Transco notes that the theory behind the Commission's policy is for those shippers who are subject to pre-granted abandonment to have some protection, via ROFR, for their capacity, so long as they agreed to pay rates no lower than those offered by third parties. *Id.* Moreover, PSCNY and KeySpan's attempt to have both the ROFR as well as pre-granted abandonment merely creates a double layer of protection, according to Transco, and a means to get out of paying market rates for existing capacity.

30. Transco also notes that PSCNY and KeySpan are also seeking a geographical ROFR which, according to Transco, is patently contrary to existing Commission policy. Transco maintains that § 284.221(d) of the Commission's Regulations explicitly prevents a shipper from picking and choosing geographical portions of capacity that it wishes to retain. *Id.* at 7.

31. Indicated Shippers, in its opposition to PSCNY and KeySpan, echo much of Transco's argument in opposition. However, Indicated Shippers go one step further in addressing the policy considerations if the Commission were to adopt either of PSCNY's or KeySpan's proposals. Indicated Shippers maintain that the proposals for a geographic ROFR are a collateral attack of the Commission's position in both Orders 636 and 637 in that:

- The purpose of a ROFR is "to protect the captive customer's historical service, and therefore should apply only when the existing customer is seeking to contract for historical capacity. Order No. 637 at 31,339.

- ROFR rights are limited and not intended to allow shippers to increase or change their pre-existing rights. *Id.*

- "A shipper that can terminate a geographic portion of its historical service, and therefore is not a captive customer that requires the protection of the right of first refusal." *Id.* at 31,340.

- A geographic ROFR would give existing shippers an unwarranted preference over new shippers for a service that is different from the existing shippers' historical service. *Id.* at 31,339.

- A geographic ROFR could lead to unused capacity on the system, the cost of which would be borne by other customers or absorbed by the pipeline. *Id.* at 31,340.

Indicated Shippers maintain that neither PSCNY or KeySpan identified or addressed any of these policy considerations. Indicated Shippers I.B. at 4. Moreover, Indicated Shippers content that PSCNY and KeySpan's proposals are nothing more than existing shippers seeking a competitive advantage in the bidding process with other shippers likewise seeking capacity on the pipeline. *Id.*

Discussion

32. After examining the proposals offered by PSCNY and KeySpan, a threshold question must be answered – has either party met their burden to modify a contract freely entered by the parties? PSCNY puts forth the "just and reasonable" standard as their burden. However, I find that, to modify a contract freely negotiated and entered into by the parties, the Mobile-Sierra doctrine must be used. *United Gas Pipe Line Co. v. Mobile Gas Serv.*, 350 U.S. 332 (1956); *FPC v. Sierra Pac. Power Pipe Line Co.*, 350 U.S. 348 (together "Mobile Sierra").

33. The law is well settled that requires PSCNY and KeySpan to meet the public interest standard as laid out by the Supreme Court in the Mobile-Sierra doctrine. The Court there found that a compelling "public interest" must exist before contracts could be overridden. *Mobile*, 350 U.S. at 344-45; *Sierra*, 350 U.S. at 353-55. Here, PSCNY and KeySpan claim that the shippers have to terminate their contracts "and risk losing all the capacity." This claim, however, as demonstrated on the record before me, ignores the full protections the shippers currently have under § 7 of the NGA, which provides full abandonment protection. Furthermore, it assumes that the shippers would not enter into negotiations with Transco prior to the expiration of the agreements to discuss a new contract and the potential, at the request of abandonment, that the Commission would condition such authority according to its then-current policies.

34. I find that the arguments that PSCNY and KeySpan put forth only seek flexibility on one side of the agreement – that is, benefits only for the shippers with little recognition of any benefits for Transco and the existing, contracted-for agreements between these parties. The contract amendments and tariff modifications sought by PSCNY and KeySpan go well beyond the protections for shippers provided by Order Nos. 636/637, under the guise by PSCNY and KeySpan of "added flexibility." The flexibility they seek is to have the full protection of no pre-granted abandonment, full protections of § 7, and the ROFR.

35. Finally, I must note that KeySpan's reliance on the recent Commission order in Texas Eastern for support of its ROFR proposal is short sighted. *Texas Eastern Transmission, LP*, 101 FERC ¶ 61,215 (2002). In Texas Eastern the Commission overtly stated that any tariff already deemed just and reasonable by the Agency will remain so until otherwise proven unlawful. *Id.* at 6 (slip opinion). This case is just such an occurrence. In addition, in Texas Eastern the Commission determines that the companies' tariff is not operating in the manner consistent with its policies regarding ROFR. In fact the Commission shows in that order the tariff in question could not function under the policy as was intended when the ROFR clause had been previously accepted. *Id.* at 14.

36. Here we have factually different circumstances. The parties freely negotiated a hybrid situation where the customers were granted abandonment protection under Section 7 while gaining the flexibilities afforded shippers under the then newly promulgated part 284 transportation program. These parties at the time did not need a ROFR clause because they had the FERC's commitment of secure service under Section 7 of the NGA. They did not need ROFR nor did they seek it. This fact plus the Commission's recognition of permitting previously determined lawful terms and conditions (apart from a strict ROFR standard) distinguishes the Transco situation from that existing in Texas Eastern. As determined, Transco's current tariff adequately reflects these shipper's protection needs as well as providing Transco the certainty it had bargained for under the existing contracts.

37. The Conversion Buyers entered into agreements in 1991 that avoided being subject to pre-granted abandonment and that assured them of firm capacity in the production area, so to have transportation of their gas to the market area and city gates that was comparable to the transportation service they received when they purchased gas in a bundled service from Transco. Today, however, they seek the ROFR in addition to the protection of no pre-granted abandonment. The compelling "public interest" requirement has not been met by the Conversion Buyers. Nor have they demonstrated that the current situation in the Transco tariff is unjust or unreasonable. In essence, proponents seek regulatory intervention to alter contracts that were freely entered into, which no longer fit their particular needs, where it would be more appropriate that they should work on a new arms-length deal with Transco at the negotiating table, where all parties have the equal opportunity to craft an agreement which is beneficial to all. Therefore, I find that no modification of the service agreements or the existing Transco transmission tariff is warranted.

ISSUE II: SCANA'S PROPOSAL FOR LIMITED PART 284 CONVERSION OF CERTAIN BUNDLED STORAGE SERVICES.

38. On this issue, South Carolina Pipeline Corporation ("SCPC")and SCANA Energy Marketing ("SEMI") (collectively "SCANA") seek an order from the Commission directing Transco to facilitate conversion of Rate Schedules GSS and LSS from Part 157 services to limited Part 284 service.[8] SCANA I.B. at 9. SCANA states that the current Part 157 service under Transco's tariff is unjust and unreasonable because it limits retail

[8] Part 157 Service does not allow the release of capacity to a replacement shipper without prior FERC approval, whereas Part 284 Service permits release or assignment of capacity without prior FERC approval. *See* 18 U.S.C. § 157 (2002) and 18 U.S.C. § 284 (2002).

competition and because the Commission has demonstrated a preference for such a conversion. *Id.*

39. First, SCANA argues that not only does the Commission have a policy preference for conversion to unbundled service, it has the full authority to order such a conversion. *Id*. at 10 – 11. SCANA first cites to the *Revisions of Existing Regulations Under Part 157 and Related Sections of the Commission's Regulations Under the Natural Gas Act* where it states that the Commission's policy is "to foster conversion from individually certificated transportation and storage to open access transportation and storage." SCANA I.B. at 10, *citing* FERC Stats. & Regs. ¶ 31,073 at 30,810 (1999). Further, SCANA cites *Algonquin Gas Transmission Company*, 63 FERC ¶ 61,188 (1993), where the Commission states that it "expects pipelines to implement such conversions to the maximum extent feasible." *Id.*

40. SCANA points to the Commission's order in *Transcontinental Gas Pipe Line Corp.*, 94 FERC ¶ 61,362 at 62,321 (2001) where it ordered Transco to unbundle its SS-1 Part 157 service and convert it to Part 284 service. Though SCANA highlights this case where the Commission ordered the conversion of service, SCANA quickly states that it is not seeking such an order here, rather it is looking for the Commission to order Transco to *offer* a limited Part 284 service. SCANA I.B. at 12.

41. SCANA seeks such a limited Part 284 service because, it claims, circumstances on Transco's system have changed, specifically in North Carolina and Georgia. *Id.* In North Carolina, SCPC plans to enter into agreements with some customers who are interested in only transportation service. Ex. SCA-2 at 6. In Georgia, SCANA describes a new unbundling program promulgated by the Georgia State Legislature that would change the function of some marketers to shippers, SEMI in particular. SCANA I.B. at 13. SCANA claims that because the role of the marketer is taking over the historical role for companies such as Atlanta Gas Light Company ("Atlanta") to serve retail load, but Atlanta retains control of the upstream capacity resources, Atlanta and companies like it will have no incentive to minimize storage costs and, indeed, may be influenced by undue preferences by its relationship with an affiliated asset manager. *Id.* However, SCANA argues, if the services were converted to Part 284, Atlanta would have the authority to release the storage assets to each marketer separately. This, SCANA, argues will increase competition, as each marketer will create its own strategy to compete with other marketers. *Id.*

42. Finally, SCANA maintains that the service obligations and rates on Transco's system will go unaffected by this conversion, specifically when it comes to operational functions, creditworthiness, or rates. Specifically, in regard to the operational functions, SCANA cites the fact that Transco has converted to Part 284 service in other rate schedules and has done so with no negative impact on its current system. *Id.* Further, SCANA argues that the specific limited conversion policy it recommends was designed

to insure no adverse impact on Transco's system. It does so, SCANA claims, because it does not permit segmentation or receipt/delivery point flexibility. *Id*., *citing* Ex. SCA-1 at 5.

43. As for the creditworthiness issue, SCANA claims that no such issue would arise, because the marketers that would benefit from the conversion already have been deemed creditworthy to participate in Transco's system. SCANA I.B. at 13. SCANA argues further that Transco would retain its ability to seek a modification of its credit standards in its tariff from the Commission if it so chose. Lastly, SCANA states that its proposal does not call for any change in Transco's costs, therefore, its proposal should have no affect on the rates.

44. In its arguments opposing SCANA's limited conversion to Part 284 service, Atlanta alleges that the proposal is inconsistent with Order No. 636. Atlanta asserts that SCANA's proposal that includes only Part 284 capacity release rights, the Part 284 ROFR process, and protection against cost increases for the service agreements at issue is contrary to the Commission position in Order No. 636-A, where the Commission ruled that

> holders of individually certificated transportation under Part 157 should not be able to release capacity under the capacity release mechanism of Part 284, since they are not governed by Part 284 or affected by the provisions of Order No. 636 which revised Part 284 regulations.

Atlanta I.B. at 7, *citing* Order No. 636-A, FERC Stats. & Regs. ¶ 30,950, at 30,565 (1992). Atlanta goes further and cites the Commission's rehearing of Order No. 636-B, where the Commission emphasized that shippers cannot benefit from capacity release or other Part 284 service without a full conversion to Part 284. Atlanta states, quite accurately, that the Commission's foundation for this position is that shippers who want the benefit of Part 284, must also carry any burdens that come along with it. Atlanta I.B. at 8, *citing* Order No. 636-B, 61 FERC ¶ 61,272 at 61,992-93 (1992).

45. Not only does Atlanta argue that a "limited" conversion to Part 284 service is inconsistent with Order Nos. 636, 636-A, and 636-B, but that SCANA does not have standing to force Atlanta, as capacity holder, to convert its service if such a conversion were ordered. Atlanta cites to *Northern Border Pipeline Co.*[9], 81 FERC ¶ 61,402 (1997),

---

[9] It must be noted, however, that in the *Northern Border* case, the Commission did not permit abandonment of Panhandle's service in order to convert to Part 284 service because Panhandle had special standing as a creditor of Northern Border. Yet, the Commission did state ". . . the Commission will not compel Section 7(c) shippers to convert to service under Part 284." *Northern Border Pipeline Co.*, 81 FERC ¶ 61,402 at

where the company in that case sought authorization to abandon service under § 7(b) of the NGA, in order to cause the conversion of the shipper's Part 157 service to Part 284 service. In that case, the Commission held that it will not compel § 7(c) shippers to convert to Part 284 service, and it denied Northern Border's s request to abandon the shipper's § 7(c) capacity.

46. Atlanta argues that in addition to the Commission precedent against a pipeline compelling conversion, likewise, a third-party has no standing to compel a shipper to convert to Part 284 service. Here, Atlanta maintains that although the Commission may favor the conversion, if a shipper chooses not to convert, it has not required such a conversion. Atlanta I.B. at 5, *citing Great Lakes Gas Transmission Limited Partnership*, 70 FERC ¶ 63,001 (1995); *aff'd.*, 74 FERC ¶ 61,257 (1996).

47. Although Atlanta argues that SCANA has cited no Commission policy permitting such a conversion to Part 284 service, Atlanta goes further by alleging that SCANA has provided no basis to force such a conversion. Additionally, Atlanta addresses SCANA's argument that Transco's system requirements have changed in North Carolina and Georgia. Atlanta counters this argument by maintaining, accurately, that even under the restructuring plan, Atlanta still retains responsibility for acquiring and managing upstream interstate pipeline storage and for offering balancing/sales services to marketers in Georgia. Atlanta I.B. at 9. These responsibilities, according to Atlanta, are in accord with the requirements of the State statute, and also include providing marketers with no-notice service to balance firm loads and using retained storage to balance shippers' accounts daily for interruptible demand behind Atlanta's system. *Id.* All of these services, Atlanta argues, are provided under Part 157 service and are consistent with what is required of Atlanta by Georgia's new regulatory scheme.

48. Transco, in its opposition to SCANA's proposal, argues that such a conversion of bundled storage services will have significant negative impacts on its services. Specifically, Transco maintains that the quality of no-notice firm service on it system will deteriorate, operational changes will be significant and will include installation of flow control equipment, and considerable, additional costs will be incurred due to changes in Transco's systems and practices. Transco I.B. at 11. Transco, through its witness, Cunningham, outlines three major areas of Transco's system that would be negatively impacted: physical operations, business practices, and business systems. Ex. T-52 at 14.

49. Witness Cunningham states that a conversion, even a "limited" one as SCANA seeks, would change Transco's use of the GSS service on its system. Currently, the GSS service is a bundled transportation and storage service. *Id*. at 15. Those customers under the bundled GSS Rate Schedule can only use the transportation capacity when they use their GSS storage. *Id*. When these customers are not using their transportation capacity,

---

62,847 (1997).

Transco uses that capacity in its "middleman" role on the system. In that role, Transco transports the gas from the storage facilities to the city gates, and vice-versa, to accommodate the hourly and daily swings in demand. *Id*. GSS service also includes rights to inject and withdraw gas throughout the year, and Transco's middleman role is, according to witness Cunningham, a critical component "of the collection of tools that [Transco] uses to manage its highly flexible no-notice service." *Id*.

50. According to Witness Cunningham, Transco's operating flexibility would be severely impaired by the unbundling of GSS service. *Id.* at 17. He maintains that, physically, Transco would be unable to consistently support the same level of no-notice service that customers presently enjoy. *Id.* Witness Cunningham further emphasizes that if Transco is prevented from using the all or part of the unbundled GSS service, it is very likely that Transco will not be able to effectively perform its middleman function, and meet the hourly and daily swing demands that it currently meets. *Id.* Additionally, Witness Cunningham asserts that the system's current line pack alone cannot support no-notice service. *Id*. According to Witness Cunningham, once gas leaves the Transco system, "the available line pack to support no-notice hourly and daily swings flexibility is reduced; the unbundling and conversion of the GSS transportation component likewise would reduce Transco's ability to replenish line pack, because it would not have the right to use the GSS transportation capacity to transport gas that it might want to withdraw from GSS storage." *Id.* at 18. Finally, Witness Cunningham concludes that unbundling the GSS transportation component would reduce the available transportation Transco could use in its middleman role. *Id*. This, as a result, would reduce Transco's operational flexibility.

51. As a result of limitations on operational flexibility, Transco would have to control the flow of gas on its system much more strictly than it currently does. *Id*. As a result of that strict control, it is highly likely, according to Witness Cunningham, that Transco would have to install control valves at city gates to track the flow of gas on the system. Although Witness Cunningham admits that Transco has not priced such an alternative, he did state that whatever the cost, it is highly likely that Transco will seek to cover those costs through a modification in rates. *Id.* An additional effect of unbundling, alleges Witness Cunningham, is the potential restriction of contingency ranking services on the system. *Id* at 19. Transco states that with a less reliable source of gas, *i.e.* storage and transportation, it has less ability of an ability to contingency rank. Lastly, Witness Cunningham states that another recourse for Transco to deal with unreliability is to revise Transco's tariff to have uniform take hourly take OFO provisions. *Id* at 20. This, Witness Cunningham stresses, would be necessary to balance the demands on its system. *Id.*

52. Moreover, Transco asserts that SCANA has not carried its burden in showing that the current Part 157 service is unjust or unreasonable. Lastly, Transco adds that both it and Atlanta have shown that other states have had similar unbundling plans and have

successfully implemented those programs within Part 157 service. Therefore, Transco argues, SCANA's allusion to Georgia's restructuring plan as a need for conversion is unfounded.

Discussion

53. Although the Commission favors conversion from Part 157 to Part 284 service,[10] I am bound by its precedent that unequivocally holds that I cannot force such a conversion. Therefore, I must find that Transco cannot be compelled to offer Part 284 service.

54. After careful examination of Commission Order Nos. 636-A and 636-B, I am confident that the Commission did not intend for Part 157 shippers to benefit from the capacity release mechanisms under Part 284. The Commission explicitly states that "Holders of individually certificated transportation may convert to Part 284 transportation if they wish to release capacity. Order No. 636-A, FERC Stats. & Regs. [Regs. Preambles 1991-1996] ¶ 30,950 at 30,565 (1992). Furthermore, the Commission in Order No. 636-B, revisited this issue and only re-iterated its position in Order No. 636-A, and used the same basis to deny 157 shippers other rights under Part 284. There the Commission stated that ". . . part 157 shippers are not eligible to release capacity under section 284.243 since they are not governed by Part 284 or affected by provisions of Order 636 that amend Part 284 regulations." Order No. 636-B, 61 FERC ¶ 61,272 at 61,992 (1992). I cannot now find any new reason to contradict the Commission's position here, that Part 157 shippers are not governed by Part 284. Furthermore, SCANA has not provided any compelling evidence to demonstrate how these Part 157 shippers are any more like Part 284 shippers, and thus should be governed by the regulations of Part 284 shippers even on a limited basis.

55. SCANA seeks a "limited" conversion to Part 284 service. However, the Commission has addressed such "limited" conversions in Order No. 636-B. Again, there the Commission explicitly stated that "Part 157 shippers cannot simply be included in the capacity releasing mechanism established under Part 284." SCANA seeks only the benefit of the capacity release element of section 284, but does not want to have any of the regulatory obligations that go along with such benefits, as Part 284 shippers currently shoulder.[11]

---

[10] Order No. 636-A, FERC Stats. & Regs. [Regs. Preambles 1991-1996] ¶ 30,950 at 30,588 (1992).

[11] For example, Part 284 shippers have a penalty provision that is applied to them, whereas Part 157 shippers do not. For a complete analysis and discussion of the benefits and burdens of Part 284 service, *see* Order No. 636-B at 61,992.

56. I recognize the Commission's position toward encouraging conversions from Part 157 to Part 284 service, as it is generally in the public interest and that such conversions are done to the maximum extent feasible on Transco's current system. *Id.* at 61,994. I believe this has been achieved at this time. However, I further acknowledge that the Commission has stated that it "anticipates that pipelines and their customers will be able to reach agreement on proposals for implementing such conditions and encourages them to do so." *Id*. SCANA would like the record to show that it has put forth a proposal, but one that Transco has rejected. It is my view that SCANA would like to characterize Transco as unwilling to facilitate a conversion. However, the evidence shows otherwise. Transco has effectively demonstrated that it currently unbundles its service to the maximum extent feasible. Transco has demonstrated that the unbundling of the GSS storage service could, and likely would, have a number of negative impacts on Transco's overall system, and its function as a middleman.[12] The reliability of the entire system would be put in jeopardy if require this "limited" conversion SCANA seeks.

57. At the outset of this hearing, SCANA was seeking "limited conversion" of service agreements GSS, LSS, SS-1, and LG-A. Transco I.B. at 13-15. However, it was not until Transco's Witness Cunningham pointed out in his testimony that Transco already permits conversion to Part 284 under rate schedules LNG and LNG-R that SCANA limited its interests in conversion to GSS and LSS schedules. Ex. T-52 at 31. I find that SCANA has put forth a disingenuous proposal in hopes that the record will reflect that Transco is unwilling to follow the Commission's preference toward conversion. However, what the record actually shows is that SCANA would like all the benefits of Part 284 service without a full conversion to that service as the Commission requires.

58. As for SCANA's argument that the conditions in Georgia require such a conversion to Part 284 service, it is without merit. As both Transco and Atlanta have pointed out, various states have implemented unbundling without forcing a conversion of the existing shippers from Part 157 service to Part 284. *See* Ex. AGL-1 at 4-7; Ex. T-52 at 33-35. I am confident that the shippers in the State of Georgia can implement such a retail program within the requirements of Part 157 service and seek what it desires through the controlled negotiation process with Transco if these parties find the "elusive" common ground outside of a determination by this regulatory agency forcing terms and conditions of service that this record shows are not currently "required."

59. Finally, I find that it is unnecessary to reach any conclusions on the arguments put forth by Atlanta regarding a third-party compelling a shipper to convert to Part 284 service. As I have already concluded, *supra,* SCANA is not entitled to a "limited

---

[12] Such negative changes include erosion of quality of no-notice firm service on the system and a need to install flow control equipment, at a substantial cost. *See* Transco I.B. at 11.

conversion," thus Atlanta's concern with being "forced" to convert against its business interests cannot exist under this issue's construct and resolution.

ISSUE III: THE RIGHTS UNDER TRANSCO'S FERC GAS TARIFF OF CERTAIN REPLACEMENT SHIPPERS TO CONTINGENCY RANK CERTAIN PART 284 SERVICES, THE RESOLUTION TO BE PROSPECTIVE ONLY.

60. On this issue, SCANA seeks a modification in Transco's tariff to ensure that replacement shippers will have the same right as releasing shippers to contingency rank their capacity.[13] SCANA I.B. at 9. To support such an argument, SCANA maintains that the Commission's Order No. 637-A mandates scheduling equity among releasing and replacement shippers in regard to no-notice scheduling rights and contingency ranking. *Id.* at 20. As it currently stands, SCANA emphasizes how critically important contingency ranking is to the Marketers in Georgia in order to "maximize the efficient use of upstream rights." *Id.*

61. According to SCANA witness Wingo, under the current capacity release rules for Part 284 service, a releasing shipper can provide capacity to multiple replacement shippers at a given delivery point. *See* Ex. S-1 at 10. Witness Wingo asserts that each replacement shipper should inherit the same rights as the releasing shipper, including the right to designate a "contingency ranking" of that shipper's storage supplies for no-notice purposes. *Id.* Witness Wingo further describes the "contingency ranking" process as follows:

> When an imbalance occurs at a delivery point, for a no-notice shipper with contingency ranking rights, that shipper may utilize its existing storage rights (injection/withdrawal entitlements based on current inventory levels) to satisfy such imbalance in a predetermined order (ranking) of its storage assets. Transco's contingency ranking provides this necessary link between the no-notice shipper's storage assets and its imbalance. The no-notice shipper specifies the order in which withdrawals from each of its storage services would be used to resolve any potential imbalances.

Id. As opposed the process described above, SCANA states that rather being able to

---

[13] Contingency ranking is specified in § 18.1 of Transco's General Terms and Conditions, and provides that a no-notice customer can meets its over-deliveries or under-deliveries from inventories in a number of different Transco storage fields. *See* SCANA I.B. at 4.

specify the particular storage asset to minimize cost imbalances, the replacement shippers (marketers in Georgia) are relegated to paying charges for resolving imbalances as assessed by Atlanta, in its discretion. SCANA I.B. at 20. This, SCANA claims, is unjust and unreasonable.

62. SCANA proposes to modify the language in Transco's tariff to reflect the Commission's Order No. 637, in that all Transco storage assets – those held by each shipper, not just the delivery point operators – must be eligible for ranking. *Id.* Specifically, SCANA seeks the following modification to Transco's tariff (modification is bolded):

> The downstream entity, **after consulting with all shippers and/or replacement shippers scheduling quantities to its delivery point,** shall be required to designate **for each shipper and/or replacement shipper** which services are to "take the swing" on any day that measured quantities are greater than or less than the scheduled quantities for such day.
> . . .

Id.

63. Transco, in its arguments in opposition to SCANA's proposal, stresses that contingency ranking is not an aspect of no-notice service, as SCANA alleges, and therefore does not fall within Order No. 637's scheduling equity provisions. Transco I.B. at 11. Transco's Witness Cunningham, in his filed testimony, describes Transco's metering facilities. Ex. T-52 at 36. He states that metering exists only at physical delivery points and that Transco has no way of knowing how much gas is taken by any particular customer, behind that delivery point meter. *Id.* On brief, Transco also argues that it does not have the business systems to support the "virtual meter station" for every customer behind each delivery point. Transco I.B. at 12. Implementing such changes, Transco maintains, would not only require extensive allocation agreements between Transco and its customers, but would add significant costs to Transco's existing business systems. *Id.*

64. On brief, Transco also asserts that SCANA's allegation that Order No. 637-A requires scheduling equity for replacement shippers with regard to contingency ranking is misplaced. *Id.* Transco contends that SCANA's understanding of Order No. 637-A is premised upon an error – SCANA assumes that contingency ranking is a universal right of firm shippers on the Transco system. Transco clarifies that a releasing shipper who is not a delivery point operator has no contingency rights. *Id.*

Discussion

65. Based on the evidence provided by each party on this issue and a careful read of Order No. 637-A, I am compelled to find that Transco must modify its existing tariff to provide replacement shippers with the right to contingency rank with no-notice service. The language in Order No. 637-A cannot be clearer: "There should be no operational reason why the pipeline should limit the release of no-notice service or place restrictions on the released service that do no apply to the releasing shipper." Order No. 637-A, FERC Stats. & Regs. [Regs. Preambles 1996-2000] ¶ 31,098 at 31,548 (2000). The Commission goes on to say that the pipeline will not be providing any additional service that it did not originally contract for by providing contingency ranking to replacement shippers.

66. Transco's argument that SCANA errs when it considers contingency ranking a right of all firm shippers on the Transco system is fundamentally flawed. The consideration is whether Transco provides that service, contingency ranking, to other similarly situated customers, not whether it is a right of all no-notice shippers on the system. Because Transco provides such a service to other shippers on the system, Transco is obligated by the Commission's Order No. 637-A to provide such a service to replacement shippers as well. Furthermore, Transco's argument that it provides only contingency ranking service to city gate delivery point operators is equally unpersuasive. Both of these arguments proffered by Transco are transparent. Nowhere in Transco's tariff is it designated that those who receive contingency ranking rights must be delivery point operators.[14]

67. I am persuaded by the evidence offered by SCANA's witness Wingo that the data exists for Transco to determine the volumes of the replacement shippers at the city gate. SCANA R.B. at 9. As SCANA pointed out, the market share calculations, collected pursuant to AGL's Tariff,[15] would provide the necessary information for Transco to capture the actual flows at the city gate and the volumes attached to each replacement shipper. *Id.*

---

[14] Notably, Transco alleges in note 14 of its Initial Brief that a releasing shipper must be a delivery point operator, or it cannot enjoy contingency ranking rights. However, conspicuously absent from that note is a cite to Transco's FERC Gas Tariff. Nowhere does Transco cite to where its tariff specifically designates contingency rights are exclusive to delivery point operators. Indeed, a review of Transco's Witness Cunningham's testimony and of the Transco FERC GAS Tariff itself on the subject of contingency ranking and delivery point operators reveals no such tariff limitation either. See Ex. T-52 at 35-37.

[15] AGL's Tariff, Terms of Service § 1.56 and § 13

68. Transco has argued that it would be too difficult to implement such tracking system for volumes. It claims that implementation would require “elaborate allocation agreements” as well as “potentially costly changes” to its business systems. Transco I.B. at 12. However, Transco offers no evidence on the level of complexity or an estimate of the costs associated with such a plan. Interestingly, Transco does state that it is planning to implement the 1 Line software program that will allow Transco to track such volumes, but it unavailingly attempts to distinguish between single-level and multi-level allocations. Ex. T-52 at 35-38.

69. Regardless of the complexities involved, Transco must permit replacement shippers the same rights and terms of service as the releasing shippers’ associated volumes. Otherwise the capacity release is not comparable to the FT service it is replacing. These services are intended to be identical while internally competitive, at the same time. Without this needed inherent equality, the Transco releasing FT shippers’ service is superior, and, correspondingly, the replacement shipper’s service is not provided on an equal footing. This significant challenge limits the pro-competitive aspect of providing capacity release by Transco and its releasing shippers. As such it is an unnecessarily anti-competitive outcome of Transco’s tariff and an unduly discriminatory practice. As currently written, the Transco tariff is clearly in violation of the Commission’s 636, and 637 initiatives regarding this issue and is unjust and unreasonable.

70. Furthermore, § 5 of the NGA prohibits pipelines from shrouding themselves in “administrative limitations” as a rationale or excuse for why some customers are treated differently than others. 15 U.S.C. § 717d (2002). Therefore, although it may be complex to install, Transco must be fair to all its shippers and grant each contingency ranking rights on its system, and implement a system to do exactly that.

ISSUE IV: THE UNBUNDLING OF TRANSCO’S RATE SCHEDULE GSS SERVICE, THE RESOLUTION TO BE PROSPECTIVE ONLY.

71. This issue concerns the unbundling of the GSS Rate Schedule under Part 157. PECO Energy Company (“PECO”) seeks a Commission order requiring Transco to provide its Rate GSS customers the option to convert their bundled Part 157 GSS storage entitlements to unbundled open access storage and transportation entitlements under Part 284 of the Commission’s regulations. Testimony in favor of this conversion was filed by PECO and Dominion Energy, Inc. (“Dominion”). Transco and Transco Municipal Group (“TMC”), The City of Richmond, Virginia (“Richmond”), and the Municipal Gas Authority of Georgia (“Gas Authority”), (collectively “the Municipal Customers”) filed testimony in opposition to the proposed conversion. Though KeySpan did not file testimony directly supporting or opposing unbundling, it filed testimony on this issue

requesting that, if the Commission ordered unbundling, the Commission also order further proceedings to ensure the operational integrity of the Transco system after unbundling for all existing customers.

72. The GSS service at issue is Transco's largest bundled storage and transportation service, and one of the few remaining bundled services on its system. Transco I.B. at 16. It provides approximately 65 billion cubic feet ("Bcf") of storage capacity, a maximum daily withdrawal capability of 1,082,907 dekatherms ("Dt") per day, and a maximum daily injection quantity ("MDIQ") of 364,669 dt per day. Ex. No. KSD-6. The transportation facilities associated with Rate Schedule GSS are designed in a manner that permits Transco to deliver the maximum daily withdrawal quantity ("MDWQ") from the GSS storage fields and facilities that are located in Pennsylvania at the western terminus of the Leidy Line to GSS customers' city gates, which are located along the mainline. Ex. No. T-52. As mentioned *supra*, Transco operates all of its facilities, including the Leidy Line, from Pennsylvania to New Jersey, as a single, fully integrated system. Transco uses all of its facilities to serve all of its customers and all of the gas in the system flows in a commingled stream. *Id.*

73. PECO argues that Transco's unwillingness to provide the unbundling of Part 157 services to Part 284 service option to customers is unjust and unreasonable. In order for PECO to carry its burden under Section 5 of the NGA, PECO must show that not only is the current service unjust and unreasonable, but it must offer a just and reasonable alternative. 15 U.S.C. § 717d (2002).

74. As for the first prong, PECO states that the current service it receives from Transco is unjust and unreasonable because that service impedes competition, lacks customer flexibility, and does not allow current Part 157 customers to use the GSS transmission capacity separate from using it to withdraw gas from GSS storage. PECO I.B. at 6. Additionally, PECO argues, the Part 157 service under Rate GSS forbids the shippers to use flexible delivery and receipt points, perform in-field storage transfers, using the GSS transmission capacity as a separate transportation service, using other transportation service to inject into GSS storage, and capacity release, reassignment, and transportation path segmentation. *Id.* By denying Part 157 shippers to convert to Part 284, PECO alleges Transco is behaving discriminatorily, thus providing unjust and unreasonable service.

75. PECO further alleges that this behavior by Transco violates current Commission policy towards unbundling. PECO refers to the Commission's decision in *Transcontinental Gas Pipeline Corp.*, 87 FERC ¶ 61,087 (1999), *order on reh'g.*, 94 FERC ¶ 61,362 (2001), where the Commission declared that "Unnecessary bundling of services such as storage and transportation is *per se* unjust and unreasonable. It is only when there are countervailing considerations that the bundling of storage services will be

considered just and reasonable."[16] Here, PECO stresses that Transco has failed to provide in any testimony or on brief, compelling evidence that the continued bundling is necessary. Based on that, PECO would like the undersigned to find that the service it currently receives is just and reasonable.

76. In addition to attempting to show that its current service is unjust and unreasonable, PECO outlines a proposal, through its witness Flebbe, that, according to PECO, is just and reasonable, thus meeting the second element of its Section 5 burden. Witness Flebbe's proposal suggests the "separation of the storage function from the transmission function to create two separate and distinct Part 284 open access transportation services – one a firm storage-only service and the other, a firm transportation service that would be available, among other purposes, to transport gas injected into and withdrawn from the GSS storage capacity . . . ." Ex. PE-2 at 1-2.

77. Specifically, Witness Flebbe's proposes that the option to convert be voluntary for customers, and those customers who choose to convert would be entitled to use the transportation component separate from the storage assets, with each component having the full benefits of Part 284 service. Witness Flebbe recommends that the transportation component, alone, be converted to Part 284 FT service, but only for the zones in which that service is currently provided.[17] Witness Flebbe's proposal also recommends that:

> Unbundled GSS service would be entitled to a Zone 6-6, Zone 6-5 or Zone 6-4 firm transportation service (depending on the location of the GSS customer electing unbundled service) equivalent to the existing maximum daily withdrawal quantity during the 151 day winter season. An entitlement equivalent to the highest maximum daily injection quantity would be available during the remaining 214 days of the year. Under my proposal, the rate for the unbundled storage component would be the existing rate less what is currently allocated as transmission function costs.

Id. Additionally, Witness Flebbe's proposal also suggests that Transco's contracts with upstream service providers not be assigned to individual shippers. *Id.* at 3. PECO seeks

---

[16] It must be noted, however, that the Commission ordered the unbundling of Transco's SS-1 service because it found that Transco did not retain control over the gas in question, thus having the bundled service did not add any benefit to Transco's system as a whole. *Transcontinental Gas Pipeline Corp.*, 87 FERC ¶ 61,087 at 61,397 (1999), *order on reh'g* 94 FERC 61,362 at 62,322 (2001). This aspect of the decision will be discussed further, *infra*.

[17] *See* Ex. No. T-14 (a map describing the current system and showing rate zones).

that this storage service be treated as if it is on-system Transco storage, thus the only injection and withdrawal points for the service would be Transco points. *Id.* As a result, PECO asserts, Transco's throughput would not be impacted by the unbundling, thus maintaining its current "middleman" role. *Id.*

78. In its testimony and evidence, Dominion alleges, for many of the same reasons PECO has raised, that the current Rate GSS schedule is unjust and unreasonable. Through its witness Raikes, Dominion claims that Transco must follow Commission policy favoring unbundling. Witness Raikes first claims that unbundling "may create additional flexibility for customers and could increase competition among service providers. These results, in turn, could lead to more efficient use of pipeline infrastructure." Ex. No. DEI-4 at 3. Additionally, Dominion cites the same *Transco* case that PECO relied on in establishing the Commission's policy on unbundling.[18]

79. Dominion also states that Transco's witness Cunningham has not provided thorough enough rebuttal testimony to show why Transco has a need for or interest in continuing bundled service. Dominion I.B. at 13. Dominion fully supports the PECO case and the testimony of PECO Witness Flebbe. *Id.*

80. On brief, KeySpan urges that the Commission, if it does order unbundling, do so without degrading the service currently offered by Transco. KeySpan I.B. at 18; R.B. at 6. Indeed, KeySpan asserts on brief that an adversarial proceeding is "ill-suited to determin[e] the impact of changes in terms and conditions of a particular service on Transco's overall service quality level." *Id.* at 20. Hence, if the Commission determines that the service should be modified, KeySpan seeks from the Commission an order requiring further procedures to determine how GSS service can be modified without adversely affecting "Transco's ability to provide daily and hourly flexibility." *Id.*

81. It must be noted, however, that KeySpan does state that it shares some of the frustration expressed by PECO that the GSS customers do not share in the benefits available to other services. KeySpan R.B. at 6. However, KeySpan also notes, with greater emphasis, that Transco provides a valuable service by functioning in its middleman role. *Id.* Furthermore, KeySpan asserts that Transco uses the GSS service on a daily basis to accommodate variances in service on a daily and hourly basis. Highlighted by KeySpan is that the storage service Transco uses to maintain a balance on the system is the most important tool Transco has available to maintain system flexibility. *Id.*

82. Transco, in its case opposing unbundling, maintains that PECO has not met either prong of its Section 5 burden: it has not demonstrated that the current service is unjust or

[18] *Transcontinental Gas Pipeline Corp.*, 87 FERC ¶ 61,087 (1999), *order on reh'g* 94 FERC ¶ 61,362 (2001).

unreasonable and that its proposed alternative is not just and reasonable. Transco R.B. at 10. Transco highlights the fact that, by definition, the GSS service is less flexible than Part 284 service. Transco argues that this alone is not enough for PECO to show that GSS service is unjust or unreasonable. *Id.* at 11. Its middleman role, asserts Transco, that role's contribution to system operational flexibility, and the value that flexibility offers to all customers is why GSS continues to be a just and reasonable service. *Id.*

83. The middleman role to which Transco refers, requires Transco to determine the appropriate quantities of the bundled storage services to use based on overall system requirements and using the aggregate contract rights of the customers who contract for those services. Ex. No. T-52. Transco argues further that the middleman operation of its bundled storage services, is critical to the hourly and daily flexibility that is unique to Transco's no-notice service, because the storage provides both a source for gas and capacity for moving gas on the system. Transco R.B. at 10. Furthermore, Witness Cunningham stated that without the bundled GSS service, Transco would not be able to support the same level of no-notice service it provides today. Ex. No. T-52 at 17.

84. Additionally, Transco refutes PECO's claim that Transco would retain the same level of operational control it has today even after unbundling because Transco could use Operational Flow Orders ("OFOs") or penalties to maintain such control. Transco R.B. a 15. Transco claims that such an acknowledgement by PECO that measures like OFOs and penalties would have to be employed to maintain control, amounts to an admission by PECO that Witness Cunningham's description of the negative operational implications is accurate if unbundling were to occur.

85. In addition to the operation concerns Transco uses as a basis to refute the claims made by PECO, Transco also argues that such an unbundling would present cost allocation and rate design issues, that PECO did not consider. Transco I.B. at 18. Transco relies on the testimony provided by its Witness Cathey who testifies that, as an example,

> [A]s to GSS withdrawals, there is currently a 5/12 adjustment to the annual costs the customers would otherwise pay in recognition of the bundled nature of service. Upon unbundling, there presumably should be a full allocation of costs. Also, 15% of GSS costs are currently allocated to transportation services, but, if GSS were unbundled, the issue would arise as to whether this would continue to be appropriate.

Ex. No. T-47 at 12. Witness Cathey also explains that allocation and rate design issues with respect to injections or whether or not injections or withdrawals came from or went off-system would also arise. *Id.*

86. Transco is not the only party to object to the proposal endorsed by PECO. The Municipal Customers also filed testimony and evidence in opposition to PECO's position and argues that unbundling the GSS service would not yield a just and reasonable result. Municipal Customers I.B. at 13. For many of the same reasons Transco has set forth, the Municipal Customers also argue that PECO has not met either prong of its two-part burden.

87. The Municipal Customers echo Transco's operational concerns when it comes to Transco being able to effectively maintain its middleman role after an unbundling. *Id.* at 14. The Municipal Customers state that Transco has effectively provided no-notice transportation service to all firm customers, and has done so efficiently and without delay or hourly penalties by having access to storage facilities. According to the Municipal Customers, "[t]he use of this storage along with other operational tools to facilitate no-notice transportation service, coupled with existing allocation of such storage costs to transportation services, remains just and reasonable." *Id.*

88. Again, the Municipal Customers also point out, as Transco does, that PECO's proposal does not take into consideration "a radical shift in cost responsibility that would result if GSS service is unbundled and the transportation component of that service is available for independent storage injections and withdrawals." *Id.* at 15. The Municipal Customers also highlights the fact that 15 % of Transco's storage function costs are allocated to transmission services. They argue that allocation would not be justified if Transco is unable to rely on the bundled GSS service. *Id.*

Discussion

89. After consideration of all the evidence on the record on this issue, I must find that the current GSS service provided by Transco is just and reasonable. I am persuaded, not only that the current GSS service is just and reasonable, but that the alternative proposal offered by PECO is not just and reasonable in this situation.

90. There is no sound evidence offered by PECO on this record showing that the current GSS service is unjust or unreasonable. PECO does a fine job comparing and contrasting GSS service with Part 284 service, and I recognize that they are different. However, different is not enough to make the case that the current service is unjust or unreasonable. I will agree with PECO that GSS service is not as flexible as Part 284; I will agree with PECO that GSS services does not permit customers to separate the transmission capacity from the storage capacity; and I will even agree with PECO that GSS service prevents customers from choosing to use other transportation service to inject into storage. PECO I.B. at 6. However, I cannot agree with PECO that these limitations amount to undue discrimination.

91. In its case, PECO cited to the Commission's decision in *Transcontinental Gas Pipeline Corp.*, 87 FERC ¶ 61,087 (1999), *order on reh'g* 94 FERC ¶ 61,362 (2001), and quoted the Commission's own language, "[u]nnecessary bundling of services such as storage and transportation is *per se* unjust and unreasonable." *Id.* at 61,398. However, we cannot stop reading there. The Commission continues with, "[i]t is only where there are countervailing considerations that the bundling of services will be considered just and reasonable." *Id.* Numerous countervailing circumstances that the Commission refers to exist in the record before me. In that case, the Commission did, indeed, order Transco to unbundled its SS-1 services. There, however, the Commission did so because it found that Transco had no control over the gas stored under the SS-1 service, therefore the bundling of transportation and storage did not add any system benefit or system flexibility to Transco's own system operation. Here, however, we have markedly different facts, thus we must continue reading the Commission's order in that case. No denial of access exists here and there is no evidence of anti-competitive practices, but real benefits to Transco's customers do exist, which is the countervailing circumstance that continues to warrant a bundled-style service for GSS customers.

92. The Commission went on to say that Transco had been permitted to keep its bundled storage by showing "it needed the access to the storage to provide its no-notice service." *Id.* I, then, read that order to mean that had Transco demonstrated that it had control over the storage service, and demonstrated that it needed the service to maintain its current no-notice service, the Commission would have permitted bundling to continue. The facts on the record before me fit squarely within this rubric.

93. Transco and the Municipal Customers, and even KeySpan in its subtle request for further study, have keenly demonstrated that Transco's GSS service is necessary to maintain the key middleman role that Transco currently performs. Transco has persuaded me that it is Transco's ability to draw on the storage and to use the associated transportation capacity to move the gas on the system that allows Transco to manage the system operations that provides the daily and hourly no-notice flexibility on which Transco's customers depend. Ex. No. T-52 at 12-13; Ex. No. T-47 at 11.

94. Furthermore, PECO repeatedly states that Transco has not shown with definitiveness why it cannot unbundle the GSS service. However, I must note that it is not Transco's obligation to compellingly show why, though it has, unbundling is not feasible. Rather, it is PECO's burden to show why the current service is unjust and unreasonable. It has failed to do so.

95. PECO has also failed to demonstrate that its proposed alternative is just and reasonable. Under the alternative, PECO fails to consider both the negative impacts on reliability for no-notice service on Transco's system and the related cost-allocation issues. PECO has not demonstrated how Transco will have the capability to insure the

current level of service after unbundling, if it were it to take place. PECO merely posits that Transco will be able to employ punitive measures like OFOs to maintain some level of control over the system and meet its customer demands. This, however, is not a well structured plan. Clearly the plan is not sufficient, as it does nothing to substantiate the claim that it will insure the integrity of the customers' existing service as well as the other services on the Transco system.

96. As for cost-allocation, PECO does not address this issue at all. Therefore, its proposal cannot be judged in its final form. The impact of this proposed change in the Transco operations and services on cost allocation and rate design cannot be ignored. It is likely that significant cost shifts among customer classes would result under PECO's plan, but it has offered no evidence with which this decision maker or the Commission can evaluate the feasibility considering the effects on Transco's customers who ultimately pay the bills. No change in cost allocation or rate design can be thoroughly evaluated without such an analysis. Again PECO has not carried it burden.

ISSUE VI: THE ROLLED-IN TREATMENT FOR THE COST OF THE FACILITIES ASSOCIATED WITH TRANSCO'S MOBILE BAY EXPANSION PROJECT CERTIFICATED IN DOCKET NOS. CP97-92, ET AL., WITH THE FINAL RESOLUTION TO BE APPLIED RETROACTIVE TO SEPTEMBER 1, 2001 UNDER NGA SECTION 4 OR APPLIED PROSPECTIVELY UNDER NGA SECTION 5.

97. This issue centers on whether the cost of the Mobile Bay expansion project should be rolled-in to existing rates for shippers, or incrementally priced, and thus be directly assigned to those customers who benefit most from the expansion. Testimony and evidence on this issue was filed by Consolidated Edison Company of New York, Inc. and Philadelphia Gas Works (collectively "CEPGW"), KeySpan Delivery Companies ("KeySpan"), BP Energy Company ("BP"), The Public Service Commission of the State of New York ("PSCNY"), Baltimore Gas and Electric Company ("BGE"), the Pennsylvania Office of the Consumer Advocate ("POCA"), the Commission Trial Staff ("Staff"), and Transco.

98. Those parties that oppose roll-in rate treatment contend that, though the 1995 Pricing Policy[19] controls this proceeding, the presumption for roll-in rate treatment has been rebutted, and Transco has not met its burden to show that the roll-in rates are just and reasonable. It must be noted that although the Commission has since changed its position on roll-in versus incremental pricing to favor incremental pricing, the Commission's 1995 Pricing Policy, establishing a presumption for roll-in treatment, must

[19] Pricing Policy for New and Existing Facilities Constructed by Interstate Natural Gas Pipelines, 71 FERC ¶ 61,241 (1995).

be used here, pursuant to the Commission's order certificating the Mobile Bay expansion project ("MBX"). 81 FERC ¶ 61,107 (1997); *order denying reh'g* 82 FERC ¶ 61, 084 (1998); *decision on appeal Brooklyn Union Gas Co., et al. v. FERC*, 190 F.3d 369 (5th Cir. 1999).

99. In that certificate issuance, the Commission stated that it did not have the authority under Section 7 of the NGA to change existing rates, so it stated that the Commission's 1995 Pricing Policy would govern the first rate case following the issuance of the certificate for Mobile Bay. This is that case. The 1995 Pricing Policy states that

> [t]he Commission will apply a presumption in favor of rolled-in rates when the rate increase to existing customers from rolling-in the new facilities is 5% or less and the pipeline makes a showing of system benefits . . .
>
> * * *
>
> Moreover, even when the rate increases are less than 5%, existing shippers still have the opportunity to show that the system benefits do not warrant even this rate increase.
>
> * * *
>
> The decision made in the certificate order will apply to the pricing of the facilities in the first rate case[20] after the facilities go into operation, unless the parties demonstrate that circumstances have changed significantly between the time the certificate is issued and the pipeline files the rate case.

Pricing Policy for New and Existing Facilities Constructed by Interstate Natural Gas Pipelines, 71 FERC ¶ 61,241 (1995), *reh'g denied*, 75 FERC ¶ 61,105 (1996) ("1995 Pricing Policy").

100. Transco, however, argues that rolled-in rate treatment is completely appropriate pursuant to the Commission's Suspension and Hearing Order in this case and the Commission's order in the MBX Certificate Proceeding. Transco argues that opponents of rolled-in rates have an NGA Section 5 burden of proof; that the MBX project meets the 5% threshold test of the 1995 Pricing Policy and that no changed circumstances have occurred to warrant incremental pricing.

101. Those parties opposed to rolled-in rate treatment, specifically CEPGW, BP, and KeySpan ("CEPGW *et al.*"), point to the language cited above stating that 1) this issue must be governed by Section 4 of the NGA, 2) the MBX project exceeds the 5% test, and

---

[20] Under § 4 of the NGA. 15 U.S.C. § 717c (2002).

3) circumstances surrounding the project have changed significantly since the certificate proceeding. CEPGW I.B. at 31-40.

A. Burden of Proof

102. CEPGW *et al.* maintain that Section 4 of the NGA governs this issue. These parties assert that, because Transco is proposing to roll-in the costs of the MBX facilities into system rates, the rates will increase. KeySpan I.B. at 22. They argue that since this increase is being sought by Transco, and Section 4 of the NGA permits a pipeline to increase rates, Section 4 must be applied. *Id.* Further, CEPGW *et al.* argue that no other provision of the NGA permits a pipeline to propose an increase in its customer's existing rates. Lastly, these parties argue that under NGA Section 4, the pipeline has the burden to prove that such a rate increase is just and reasonable.

103. Transco, on the other hand, argues that what CEGW *et al.* seek is a shift to incremental pricing. Transco I.B. at 29. Therefore, Transco claims, any party seeking a change in the rate structure has an NGA Section 5 burden of proof. Here, Transco urges that because the 1995 Pricing Policy is "in effect, a declaratory order establishing that rolled-in rates, barring a significant change in circumstances, are just and reasonable," opponents of the rolled-in rate structure have a Section 5 burden of proof. *Id.*

104. This characterization, however, of the 1995 Pricing Policy is misplaced. The 1995 Pricing Policy is not a "declaratory order" and cannot be construed as such. As the Commission itself states, "the principal goals of its pricing policy should be to provide the industry with as much up-front assurance as is possible with respect to the rate design to be used for an expansion project, while, at the same time, to provide for a flexible assessment of all the relevant facts of a specific project. 1995 Pricing Policy at 61,915. What the Commission does identify as a declaratory order is "[t]he decision made in the certificate order, . . . since the pipeline's existing rates will not change until the pipeline makes a filing under § 4 of the NGA to make the change." *Id.* at 61,918. Therefore, the Commission stated that only a § 4 filing would effect such a change in rates to existing customers. As such, Transco carries the burden under § 4, not the opposition to its rate increase.

105. The Commission's advanced determination that the 1995 Pricing Policy would control,[21] thus applies a presumption in favor of rolled-in rates, but that does not

[21] The Commission's determination in the Certification order of MBX stated that the 1995 Pricing Policy should apply in this case. Transcontinental Gas Pipe Line Corporation, Docket Nos. CP97-92-000 and CP97-92-001, 81 FERC ¶ 61,104 (1997), *on appeal The Brooklyn Union Gas Co. v. FERC*, 190 F.3d 369 (5th Cir. 1999) ("*Brooklyn Union").*

eliminate Transco's obligation to show system benefits for the rolled-in treatment. On the contrary, the 1995 Pricing Policy explicitly states that the Commission will apply the presumption "when the rate increase to existing customers from rolling-in the new facilities is 5% or less *and when the pipeline makes a showing of system benefits*." *Id.* at 61,916 (emphasis added). Therefore, since the current proceeding is the first since the certificate order and Transco is seeking rolled-in rate treatment, such a proceeding is brought under § 4 and Transco bears the burden of showing that such system benefits exist. Upon making such a showing, the burden then shifts, under the 1995 Pricing Policy, to those opposing the roll-in to show that circumstances have significantly changed since the certification of the project in order to rebut the presumption for rolled-in rates. *Id.* A full discussion of changed circumstances will further address this issue of burden, *infra*.

B. Changed Circumstances

106. According to the 1995 Pricing Policy, the decision made in the certificate order "will apply to the pricing of the facilities in the first rate case after the facilities go into operation, unless the parties demonstrate that circumstances have changed significantly between the time the certificate is issued and the pipeline files the case." 1995 Pricing Policy, 71 FERC ¶ 61,241 at 61,918 (1995). Here, CEPGW *et al.* have highlighted several distinct areas where circumstances have notably changed and three, in particular, warrant discussion and are addressed below.

1. Affiliated Relationship

107. The first circumstance that rises to the level of changed circumstances in this case is that Transco Energy Marketing Company ("TEMCO"), an affiliate of Transco, is the only shipper currently subscribed to the MBX. At the time the MBX was certificated, TEMCO was not the original shipper subscribed, rather Williams Energy Services Company ("WESCO") had contracted for the entire firm capacity for fifteen years. BP I.B. at 35. This affiliated relationship between Transco and TEMCO creates a situation that the 5th Circuit stated should "trigger a hard look." *The Brooklyn Union Gas Company*, 190 F.3d 369 at 374 (5th Cir. 1999). There, the court declined to decide on the merits of the claim before it, but rather took a "wait and see approach." *Id.* In doing so, however, the court explicitly stated that the next rate case would provide an opportunity ripe for the petitioners to challenge the rolled-in rates. *Id.*

The court further stated that:

> WESCO and companies like Destin are competitors, and WESCO will enjoy large advantages if rolled-in rates are allowed. Providing the roll-in subsidy allows WESCO to

> receive 100[%] of the transportation capacity while paying for only 41[%] of the cost of service, $10.9 million. Transco's unaffiliated ratepayers will suffer an initial annual cost shift of $15.7 million. Petitioners urge that the proposed rate has immediate and injurious consequences in the market is plain [sic].

Id. Since the MBX certificate filing, circumstances have changed, as the court has explicitly highlighted this affiliate transaction as one that needs close examination. For instance, the Commission's position toward affiliate pricing and its concerns about unreasonable subsidization by existing customers has taken hold in a new policy statement, the *1999 Certificate Policy*. 88 FERC ¶ 61,227 (1999). Although that policy does not control the applicable standard in this case, the considerations underlying that policy cannot be ignored. As it currently stands, by maintaining rolled-in pricing under the 1995 policy, existing customers will become responsible for 62.1% of the cost of service associated with the MBX project. KeySpan I.B. at 24.

108. Moreover, the Commission itself has noted its own obligation to monitor and scrutinize affiliate transactions. *See Shell Offshore, Inc.*, 100 FERC ¶ 61,253 (2002). The Commission has an obligation here to insure that no shipper receives unduly preferential treatment. Particularly where an affiliate is involved, the Agency's duty and awareness in this regard are heightened.

109. Transco, however, urges the Commission to acknowledge that the "affiliate relationship" that CEPGW *et al.* point to was not intended by Transco. Transco I.B. at 32. Transco points out that when it announced the open season for the MBX facility, it stated unambiguously that it intended to roll-in costs of the expansion and it offered the MBX capacity to any and all interested shippers. *Id.* Transco further argues that this issue was considered and rejected by the Commission in the MBX rehearing proceeding. 82 FERC ¶ 61,084 (1998).

110. The arguments that Transco offers appear valid. However, when further explored they prove to be without particular merit given the facts in this case. Transco has alleged that when it held open season for the MBX project, it was open to any and all shippers who were interested. However, what is not clear on the record in the MBX certificate proceeding is that SOCO Offshore, Inc. ("SOCO"), then the sole producer at the MBX receipt point in Block 261, had dedicated significant amounts to WESCO. Furthermore, it was Transco's intention to purchase, market, gather, process, and transport the gas from the MBX receipt point. *See* CE-5. Therefore, I can only conclude that because WESCO had a dedication of the SOCO production and due to the Commission's "shipper must have title" rule,[22] it is highly unlikely that any other shipper would have been able to gain

[22] This rule prohibits entities without title to gas from utilizing pipeline capacity.

access to MBX. Without gas supply, over which WESCO had an exclusive agreement, no other shippers could bid on the capacity at MBX, even if they had sought to do so. *See* Ex. No. KSD-7.

111. Transco raises a second argument to rebut this issue of affiliate transaction by claiming that the Commission addressed this issue in the original MBX certificate proceeding. 82 FERC ¶ 61,084 (1998). I acknowledge that the Commission did consider the relationship between Transco and its affiliates during the rehearing proceeding and, at the time, found no evidence of anticompetitive behavior or discriminatory impact. *Id.* at 61,318. However, the Commission at that time did not have before it a complete record, as we do today. At the time of the MBX certificate proceeding, Transco did not have any executed service agreements for the project, so the Commission did not have the information about SOCO and WESCO before it when it addressed the affiliate relationship issue.[23]

112. The arguments put forth by Transco are good ones and arguments that I considered at length. However, the facts on this record show that the existing customers will shoulder 62% of the costs of this expansion, and this forces me to consider equity in light of who is the primary beneficiary from the actual use of the expansion facilities versus who is actually carrying the burden of the costs associated with them. I must conclude that the heavy burden that existing customers will bear outweighs the fact that Transco claims it opened the season to everyone. The fact remains that an affiliate of Transco will benefit 100% from an expansion that it shoulders only 41% of the cost. This is an unreasonable subsidization by existing customers and an undue preference between these corporate affiliates. Transco has the ultimate burden to prove the lawfulness of its proposed rate increase resulting from rolling in the MBX facilities costs. It has not demonstrated that there are other situations on its system where a customer (non-affiliate, for instance) is being afforded this level of subsidization in a similar manner. These particular facts themselves demonstrate that the current state of rolling in MBX costs to Transco's system rates is unduly preferential, but there is more evidence to consider in light of the Commission's awarded presumption of rolled-in treatment. This issue is discussed next.

2. Realization of System Benefits

113. The 1995 Pricing Policy states that Transco has the presumption for rolled-in rates so long as the rate increase does not exceed 5% and Transco makes a showing of system benefits. 1995 Pricing Policy, 71 FERC ¶ 61,241 at 61,917. Furthermore, the policy requires that the pipeline seeking rolled-in rate treatment must "specifically identify the system benefits, describe the value of the benefits to its existing customers, and

---

Texas Gas Transmission Corp., 97 FERC ¶ 61,250 at 62,111 (2001).

[23] MBX Application at 12.

demonstrate, with particularity, how the expansion project will provide the claimed benefit." *Id.* at 61,916.

114. Transco argues that the system does benefit through the MBX because the MBX provides access to additional gas supplies in the Mobile Bay region where the development of reserves continues to expand. Transco I.B. at 33. Additionally, Transco alleges, that the MBX facilities are attached to reserves which shippers on the Transco system can take advantage of to meet their market needs. *Id.* at 34. Transco also points out that the MBX is 100% subscribed and fully integrated with the rest of the Transco system. *Id.* at 33.

115. CEPGW *et al.* maintain that in the case before us the system benefits are so insignificant that rolled-in rates cannot be justified. KeySpan I.B. at 27. CEPGEW *et al.* point to the certificate orders in Docket No. CP97-92, where the Commission found that the sole benefit created by the MBX was access to new supplies. *Transcontinental Gas Pipe Line Corp.*, 81 FERC ¶ 61,104 (1997). However, parties argue that the record shows the average use of the MBX facilities over a 37-month period was only 46.3% of the total capacity created by the expansion. *Id.* What's more, parties argue, is that other lines like Destin Pipeline Company, LLC and Dauphin Island Gathering System ("DIGS") provide far more gas supply to the Transco mainline than the MBX. Ex. No. BP-28 at 6-7.

116. On this point, I acknowledge that Transco has created the opportunity for benefits to accrue to the entire system, though those benefits are largely not realized today. KeySpan I.B. at 27. However, because I have the responsibility to determine if the MBX has provided system benefits to existing shippers at this time, I must conclude that the benefits are not accrued to the level required to permit rolling in the costs of the MBX project at the level proposed by Transco. Indeed the Commission itself has reconsidered the system benefit requirement as a sole means for determining the appropriateness of rolling new facility costs to existing system customers. MBX Certificate Order, 81 FERC 61,104 at 61,384-385 (1997).

3. Appropriateness of Combining MBX with Cherokee

117. Although CEPGW *et al.* argue at length that the 1995 Pricing Policy should not apply at all to this case, they go on to state that if the policy does apply, Transco does not meet the requirements as set forth to maintain the presumption. CEPGW *et al.* acknowledge that, by itself, MBX does not exceed the 5% test as set forth by the 1995 policy. Rather, they have not challenged either Transco's claim that MBX exceeds FT customers' total revenue responsibility by 3.89%, or Staff's calculations of 4.6092%. CEPGW I.B. at 37. Instead, CEPGW *et al*. argue that the MBX project cannot be considered without including the impact of the Cherokee roll-in impacts, and urge the Commission to aggregate both the MBX and Cherokee projects. They state that once the

two projects are properly aggregated, the total revenue responsibility for the existing customers increases by 5.43%. Ex. CE-24 at 3.

118. CEPGW *et al.* emphasize that Transco's last rate case determined the four tests for grouping or aggregating projects. *Transcontinental Gas Pipe Line Corporation*, 87 FERC ¶ 61,087 (1999). Those tests include: 1) the timing of each project; 2) the location of the facilities; 3) whether the parties treated several projects as interrelated; and 4) previous findings by the Commission. *Id*. at 61,389. As for the timing of each project, CEPGW *et al.* argue that the MBX and Cherokee facilities were part of a coordinated effort to increase supply at Station 85. The opponents of rolled-in rates allege that the open season for the MBX was conducted between November 15, 1996 and December 16, 1996, and the open season for the Cherokee project was conducted between December 18, 1996 and January 20, 1997. KeySpan I.B. at 26. Furthermore CEPGW *et al*., note that the MBX certificate application was originally filed on November 12, 1996, and subsequently amended to reduce the size of the project on May 1, 1997, while the Cherokee expansion project certification application was filed on April 9, 1997. *Id. citing Transcontinental Gas Pipe Line Corp.*, 81 FERC ¶ 61,104 (1997) *and* 80 FERC ¶ 61,398 (1997). Furthermore, Williams[24] announced the Cherokee open season on the same day it announced the results of the MBX open season. Tr. at 330.

119. As for the location of the facilities, witness Cunningham testified that the delivery point for MBX and the primary receipt point for Cherokee are at the same location, Station 85. Tr. at 329. In addition to the same delivery and receipt points, CEPGW *et al.* claim that Transco has treated these projects as interrelated. CEPGW *et al.* point out that as early as November 12, 1996, Transco was engaged in discussions with shippers for expansions that would rely on access to gas supplies at Station 85 originating from the Mobile Bay area. Further, CEPGW *et al.* entered into the record during the hearing, a Transco business document from May 1997 that shows that Transco planned the Mobile Bay and Cherokee projects at the same time as part of the Mobile Bay investment strategy. Ex. No. CE-24 at 2-3.

120. Transco, on the other hand, argues that the expansion projects are completely distinct from one another and no basis exists for MBX and Cherokee to be treated as a single project. To draw such a distinction, Transco states that the MBX expanded the Mobile Bay lateral, a supply lateral that brings gas to the Transco mainline. Transco R.B. at 17. Additionally, TEMCO is the only shipper on the expansion line, and is a gas marketer. However, the Cherokee expansion shippers are two distribution company customers of Transco, Atlanta Gas & Light and the City of Toccoa, and is about one-half the size of the MBX. Ex. T-13 at 9-10; T-15 at 3. Further, Transco argues that the MBX facilities are mainly offshore facilities, whereas the Cherokee facilities consist mainly of a mainline loop on land. Additionally, Transco refutes the intersection of receipt and

[24] Williams Companies, Inc. is the parent company of Transco.

delivery point at Station 85 significance as nothing more than the most upstream primary receipt point for the Cherokee expansion shippers. Transco emphasizes that Station 85 is not the only potential receipt point for Cherokee shippers and those shippers are in no way obligated to obtain supplies at Station 85 or from the Mobile Bay lateral at all. Transco R.B. at 18.

121. Transco concludes by arguing that, "while the Mobile Bay and the Cherokee Expansions may both be part of a series of 'coordinated' expansions by Transco to bring additional supplies onto its system to serve growing markets," both projects are not a single project. *Id.*

122. After examining all the evidence put forth by all parties on this issue, I conclude that MBX and Cherokee should be grouped into one project, thus yielding one calculation to determine the revenue responsibility for existing customers. I base my conclusion on the Commission's statement in its 1995 Pricing Policy that projects should not be broken up to avoid the 5% test for revenue increases and the Commission's Order in Transco's last rate proceeding, *Transcontinental Gas Pipe Line Corp.*, 87 FERC ¶ 61,087 (1999). There, though the Commission overturned the ALJ's Initial Decision for incremental rates, it provided significant guidance on how to evaluate similar projects for grouping purposes. In its order, the Commission explicitly stated that separate certificates do not always constitute separate and distinct projects. *Id.* at 61,389. Further, the Commission pointed out that "when projects authorized in separate certificates were nevertheless planned and built as part of a single overall project, their impact must be considered cumulatively." *Id.* As stated, *supra*, in that same decision, the Commission outlined four "tests" to help determine the similarities between projects for the purposes of grouping: timing of each project; location of projects; whether the parties treated the projects as interrelated; and previous findings by the Commission relative to the independence of the various projects from one another. *Id.*

123. I find that the record evidence shows that the MBX and Cherokee projects are similarly situated in regard to timing and location. As emphasized by CEPGW *et al.*, the certificate applications for each project were sought less than one month apart,[25] and the open season for each project was separated by just two days. Ex. No. CE-1 at 10. In regard to the location of the projects, the MBX delivery point and the Cherokee receipt point are both located at Station 85. Tr. at 329. Although Transco attempts to contrast the facilities by describing the physical attributes and listing the varying customers for each – MBX primarily being offshore and Cherokee consisting of a mainline loop – this analysis does not control the determination of whether there is a reasonable connection between the projects which needs consideration when designing appropriate rates for services on the Transco system. The key to location is whether the projects are so located

[25] *Transcontinental Gas Pipe Line Corp.*, 81 FERC ¶ 61,104 (1997) and *Transcontinental Gas Pipe Line Corp.*, 80 FERC ¶ 61,398 (1997).

that they can complement one another to transport gas. In Witness Cathey's testimony, he states, "[i]ndeed, we have proposed and built additional expansions downstream on the system which are based in large measure on the enhanced system capabilities afforded by the Mobile Bay expansion project." Ex. T-47 at 27. Clearly, Cherokee was an expansion project contemplated downstream of Mobile Bay that fits the Transco witness's description. Such a description indicates to me a coordinated investment by Transco of the Mobile Bay "investment strategy" that wholeheartedly encompasses Cherokee.[26]

124. Transco further counters this location issue by stating that Cherokee has many other receipt points on the line. However, this is also equally unpersuasive. Because the relationship exists at Station 85, it matters not that other receipt points exist. Transco has not shown that the projects are not interrelated.

125. The parties also treated the projects as related. As CEPGW *et al.* stated, as early as November 12, 1996, Transco was already discussing with other shippers the matter of expansions that would rely on Station 85 supplies that were originating from the Mobile Bay area. CEPGW I.B. at 37, *citing* MBX Application at 12. Further, the record supports the fact that when Transco sought internal approval to build MBX it referred to the relationship between MBX and Cherokee. *See* Ex. No. KSD-7.

126. Previous findings by the Commission have also alluded to the fact that MBX and Cherokee could be "a series of expansion projects." *Transcontinental Gas Pipe Line Corp.*, 80 FERC ¶ 61,314 at 62,318 (1998). Additionally, the Cherokee facilities will allow the shippers to have greater access to gas supplies throughout the offshore and onshore Gulf Coast Region, especially in the Mobile Bay region. *Id.* at 62,318.

127. All of these factors lead me reasonably to conclude that these projects should be considered together, as part of the Transco Mobile Bay investment strategy for purposes of evaluating the 1995 Policy's 5% impact test.

4. Associated Rate Impact

128. The last relevant issue that deserves attention as a changed circumstance since the MBX Application is the rate impact associated with roll-in pricing. As discussed, *supra*, the 1995 Pricing Policy requires the proponent of rolled-in rate treatment to show that the increase in rates after roll-in will be less than 5% of the existing rate. *1995 Pricing Policy*, 71 FERC ¶ 61,241 (1995), *reh'g denied* 75 FERC ¶ 61,105 (1996). The theory

---

[26] According to Transco's own internal communications, justification for the MBX was that it will provide additional supply for Transco to meet additional needs in the Southeast; Transco will be able to build economic expansions into the southern market area once MBX is up and running; and MBX is the necessary first step prior to the construction of Cherokee. *See* Ex. No. KSD-7.

underlying this Pricing Policy was to afford both pipelines and customers some degree of certainty in anticipating rate increases after the addition of expansion projects on existing lines. *Id.*

129. On the record in this case, CEPGW *et al.* maintain that, after aggregating the impact of both MBX and Cherokee, the impact on rates for existing customers is 5.62% increase in FT reservation charge revenue responsibility and 5.43% increase in the total revenue responsibility of FT shippers. *See* Ex. No. CE-24 at 3. According to CEPGW *et al.*, and witness Stengel, these percentage increases are based on the data provided in the April 12, 2002 Stipulation and Agreement, which settled "most of the cost of service, cost allocation, rate design" issues in this case. CEPGW R.B. at 15; Ex. No. CE-24 at 3. These increases are not based exclusively on the roll-in cost of Cherokee and MBX facilities and do not reflect any fuel subsidies in the calculations. *Id.* at 16.

130. On this issue, Staff concluded that it could not agree with the rate impact calculations sponsored by the CEPGW *et al.*. Rather, Staff offers two alternative calculations for determining the rate impact of the MBX project, exclusive of the Cherokee project. In its first calculation, based on the April 12, 2002 S&A, Staff determined that $18.7 million is shifted to shippers, for an overall impact of 4.609% for the roll-in of the MBX.[27] Staff I.B. at 12.

131. In its second calculation to determine the rate impact for the MBX project alone, Staff again used the S&A data, though adjusted in the same way as the first calculation, and included the roll-in costs of the twelve Leidy Line and Southern expansion projects approved by the Commission in 1999. Under this calculation, Staff finds that $18 million is shifted to shippers, for a rate increase of 3.70%. *Id.* at 14. Staff urges the adoption of this second calculation because, it argues, that the Commission had approved these additional expansions, even though Transco has yet to roll them in, prior to the end of the test period in this proceeding. *Id.* at 15.

---

[27] It must be noted, however, that Staff made three adjustments to its calculations. They are 1) the use the straight K-N method to functionalize A&G costs between LNG storage service and other services as opposed to Transco's use the modified K-N method (*see* Kansas-*Nebraska Natural Gas Co.*, 53 FPC 1692, *reh'g denied*, 54 FPC 923 (1975), *aff'd* 534 F.2d 227 (10th Cir. 1976)); 2) the use of gross plant factors to functionalize administrative and general (A&G) costs between incremental and non-incremental transportation services under the K-N method as opposed to Transco's use of dekatherm-mile factors; and 3) the use of gross plant factors to allocate operation and maintenance (O&M) and A&G costs between the Maiden Lateral incremental project and non-incremental transportation services as opposed to Transco's use of $150,077 of O&M and A&G costs for the Maiden Later project.

132. According to Staff, the calculations sponsored by CEPGW *et al.* are not appropriate because it is inaccurate to "merely update the costs reflected in Transco's 1997 certificate application." *Id.* at 19. Staff relies on the Commission's statement that the actual costs in effect during the test period or approved to go in effect which capture all changed circumstances should be considered in roll-in impact studies. Staff I.B. at 19, *citing Transcontinental Gas Pipe Line Corp.*, 95 FERC ¶ 61,268 (2001).

133. Staff does not sponsor any data showing what the rate impact would be after aggregating the MBX and Cherokee projects. Staff argues that the Commission has already considered arguments as to whether the MBX and Cherokee expansions should be considered together as one project and concludes that it would be "very unfair" if Transco was not given rolled-in rate treatment. Staff supports that argument by alleging that the Commission pre-determined that such a presumption would apply. However, Staff neglects to address that it is the 1995 Pricing Policy that the Commission stated would control this proceeding, and that Transco still would have to meet the requirements of that Pricing Policy. Staff acknowledges, however, that new information has been presented in this record, but that such information may not produce a different result from the Commission. *Id*. at 20. Staff neglects to recognize that the introduction of this new information constitutes changed circumstances in and of itself.

134. Transco's argument in favor of roll-in is premised upon its rate calculations that the MBX roll-in increases existing customer's revenue responsibility, on average, by only 3.01 – 3.75%, less than the 5% threshold test. Transco I.B. at 30. In calculating this rate impact, Transco includes the roll-in of the Leidy Line and Southern Expansion projects and excludes abandonment of certain offshore gathering facilities that Transco has proposed, but that will not be implemented in the immediate future. *Id*., note 26. Transco argues, for the same reason that Staff does, the Leidy Line and Southern expansions should be included in the roll-in calculation because they were approved for roll-in by the Commission prior to the end of the test period. *Id*.

135. Further, Transco argues that even if the Leidy Line and Southern Expansion facilities were excluded, and the gathering facilities included in the rate calculation, the rate impact would still be less than 5%. Ex. No. T-9 at 3; T-48 at 7.

Discussion

136. After examining the data presented on the record to determine rate impact, I must conclude that the aggregate rate impact on existing shippers exceeds the 5% threshold test under the 1995 Pricing Policy statement. The rate calculation that both Staff and Transco offer that includes the Leidy Line and Southern Expansion facilities is misguided. The inclusion of those facilities in this calculation is unfounded. Though the Leidy Line and Southern Expansion projects were approved by the Commission for roll-

in, a final order on this decision has yet to be issued. No. 01-1345, *Consolidated Edison of New York, et al. v. FERC*, currently before the D.C. Circuit Court of Appeals. Transco has not been afforded final roll-in status for such facilities by this Commission and it would be inappropriate to include them in the present calculation.[28]

137. Excluding the lack of a final order on the roll-in of the Leidy Line and Southern Expansion facilities, other reasons exist for not including those facilities in the present calculation. Though they were approved before the end of the test period, the actual effective date for the roll-in of the Leidy Line and Southern Expansion is not for thirteen months after the end of the test period in this case. CEPGW R.B. at 13, note 23. The proposal to include these facilities is, therefore, also inconsistent with the Commission's policy of limiting facts considered in rate cases to those that occur *within* the test period. Furthermore, Transco cites no good cause for the Commission or this judge to consider the Leidy Line roll-in in this rate case. As such, this consideration is too speculative.

138. I am also convinced that CEPGW witness Stengel performed the appropriate and correct calculations to arrive at a revenue responsibility of 5.42%. On brief, Transco argues that it calculated the cost after combining MBX and Cherokee and concluded that the combined impact would be "slightly under 5 percent." Transco I.B. at 31; Ex. No. T-47 at 31. It is highly notable, however, that Transco witness Cathey's calculations were completed prior to the submission of the April 12, 2002 S&A was filed. CEPGW R.B. at 16. This can only lead me to conclude that had Transco run its calculations using the appropriate S&A cost of service data, its conclusion would be a rate exceeding the 5% threshold, consistent with that of Witness Stengel.

139. It must be highlighted that even if Transco's calculation that the rate impact after combining the MBX and Cherokee is slightly less than the 5% threshold, those parties opposing the roll-in may still have grounds to challenge the roll-in, according to the 1995 Pricing Policy. As noted *supra,* the 1995 Pricing Policy states that "even when the rate increases are less than 5%, existing shippers still have the opportunity to show that the system benefits do not warrant even this rate increase." 1995 Pricing Policy, 71 FERC ¶ 61,241 (1995), *reh'g denied*, 75 FERC ¶ 61,105 (1996). The previous discussion and analysis of the affiliated relationship and system benefits leads me to conclude that even if the 5% threshold is not exceeded by combining MBX and Cherokee, though the evidence supports that it does, existing shippers opposed to roll-in have persuasively demonstrated that the "system benefits to not warrant even this rate increase." Moreover, in conjunction with the fact specific considerations of this case including the changed circumstances discussed throughout this section of the decision the MBX facilities must be priced incrementally to avoid an unlawful result.

[28] Transcontinental Gas Pipe Line Corp., 87 FERC ¶ 61,087 (1999).

140. I am compelled to agree with CEPGW *et al.* that the revenue responsibility of rolling-in the MBX and Cherokee facilities exceeds the maximum 5% that the Pricing Policy sets. Therefore, this constitutes a changed circumstance and violates the 1995 Pricing Policy.

C. Conclusion

141. In conclusion, I find that not only have circumstances changed between the time the MBX project was certificated and now, but that the 5% threshold test of the 1995 Pricing Policy is no longer met. I must acknowledge, for the record, that this question is a close call. However, in seeking a lawful, just, and reasonable result, I cannot, and nor should this Commission, support a roll-in where the existing customers will bear 62% of the cost of a project that will overwhelmingly benefit only an affiliate of the pipeline. In doing so, the Agency would be creating an unduly preferential environment on the Transco pipeline. After careful examination of all the evidence presented on this issue, a preponderance of that evidence favors a finding of incremental pricing for the MBX.

ISSUE VII: THE ROLLED-IN RATE TREATMENT FOR THE COSTS OF TRANSCO'S INCREMENTALLY PRICED SUNBELT, POCONO, AND CHEROKEE EXPANSION FACILITIES, RESOLUTION TO BE EFFECTIVE PROSPECTIVELY ONLY.

142. At issue here is Transco's proposal seeking rolled-in rate treatment for the Cherokee, Pocono and SunBelt expansion facilities. Various parties have filed opposition to this proposal, on various grounds. The Baltimore Gas and Electric ("BG&E") and Staff oppose the roll-in proposal for all three facilities; the Pennsylvania Office of the Consumer Advocate ("POCA") and KeySpan oppose roll-in treatment for Cherokee and Pocono, but take no position the SunBelt facility; CEPGW also oppose roll-in treatment for Cherokee and Pocono, but are not completely opposed to roll-in for SunBelt; and Northeast Energy Associates, North Jersey Energy Associates, and Cherokee County Cogeneration Partners, L.P. (collectively "Energy Associates"), and the Transco Municipal Group, the City of Richmond, Virginia, and the Municipal Gas Authority of Georgia (collectively "Transco Municipal Group" or "TMG") oppose the roll-in treatment of the SunBelt expansion, but take no position on the Cherokee or Pocono facilities.

143. The Cherokee, Pocono, and SunBelt expansion facilities were certificated in 1996 and 1997 with incremental pricing, and each of these expansion facilities were completed and placed in service on or before November 1, 1998. Ex. T-8 at 26-27. Each of these

projects involves a mainline loop and compression facilities, which are fully integrated into Transco's system. Ex. No. T-13 at 8. Each project was fully subscribed, under long-term, firm service agreements at the time of construction and is so today. Ex. T-40 at 6.

A. Controlling Pricing Policy

144. A preliminary matter that deserves attention is the Pricing Policy that will be applied to the facilities in question. Transco argues that the 1995 Pricing Policy should apply, as opposed to the 1999 Pricing Policy[29] because all of the projects are consistent with that 1995 Policy. Transco I.B. at 36. Further, Transco emphasizes, the Commission had expressly stated that the 1999 Policy "will not be applied retroactively to cases where the certificate has already issued and the investment decisions have been made." *Policy Statement Concerning Certification of New Interstate Natural Gas Pipeline Facilities*, 88 FERC ¶ 61,227 (1999), *order on reh'g*, 90 FERC ¶ 61,128, *order on reh'g,* 92 FERC ¶ 61,094 (2000) ("1999 Certificate Policy").

145. However, the Commission, in its suspension order, expressly stated that the 1999 Certificate Policy should govern Transco's proposal. *Transcontinental Gas Pipe Line Corp.*, 94 FERC ¶ 61,360 at 61,300-03, *order on reh'g*, 95 FERC ¶ 61,268 (2001). The Commission iterated that "[we] believe it appropriate to apply [the] current policy to newly filed rolled-in rate proposals, unless the pipeline and expansion shippers have reasonably and detrimentally relied on obtaining rolled-in rates under the earlier 1995 Pricing Policy Statement in making their decisions to invest in an expansion project. Here, we find no such reliance." *Id.* at 62,302. Further, the Commission added that "unless the proponents of rolled-in rates could show a significant change in circumstances," incremental pricing would remain. *Id.* In its order, the Commission also noted the fact that "when Transco and the expansion shippers made their investment decisions to proceed with these projects, they could not reasonably rely on obtaining rolled-in rates pursuant to the 1995 Pricing Policy Statement [because they made their agreement prior to the issuance of the 1995 Pricing Policy]." *Id.* It is clear that applying the 1999 Pricing Policy has no retroactive effect, as Transco argues, because Transco itself could not have at all relied on the 1995 Pricing Policy for making its investment decisions. Therefore, not only I am I bound by the Commission's order to apply the current concepts underlying the 1999 Pricing Policy Statement to the facts of this case, but I find no reason to disagree with the Commission's conclusion in its suspension order setting this case for hearing.

146. For ease of this decision I will address Cherokee and Pocono together and then Sunbelt, due to the unique factual circumstances surrounding each facility. In the

[29] Certification of New Interstate Natural Gas Pipeline Facilities, Statement of Policy, 88 FERC ¶ 61,227 (1999) ("1999 Certificate Policy").

Commission's order setting this case for hearing, the Commission reiterated statements made in the Pocono and Cherokee certificate orders, when it stated that "those expansions must remain incrementally priced, unless proponents of rolled-in rates could show a significant change in circumstances" in this rate proceeding. 95 FERC ¶ 61,268 at 951. Moreover, in the certificate orders, the Commission stated that the roll-in of the Leidy Line and Southern projects would constitute such a change in circumstances. *Id.*

147. As for the SunBelt project, because different rate impacts result in different zones, SunBelt will be addressed separately.

B. Cherokee & Pocono

148. Despite Transco's discontent at applying the 1999 Pricing Policy, it argues that roll-in rate treatment for Cherokee and Pocono is completely in accord with that Policy. First, Transco argues that the 1999 Pricing Policy does not provide a method for its application to a proposal for rolled-in rate treatment for facilities already built and in service. Ex. No. T-40 at 4-6. As a result, Transco has determined that the only issue for it to address when making its proposal is whether the threshold requirement of the 1999 Policy is met, that is to say, whether Transco can financially support such facilities without subsidies from existing customers. Transco I.B. at 38, *citing 1999 Certificate Policy* at 61,746.

149. Transco maintains that neither Cherokee or Pocono expansions rely on subsidies from existing customers. It supports its conclusion by relying on the fact that each facility was fully subscribed at the time it was certificated and is currently. Ex. No. T-40; T-54 at 17. Further, Transco alleges that no party in opposition to roll-in has offered any evidence that either project would not be viable if the Commission declined to approve roll-in pricing for these facilities. Ex. No. T-54 at 17. Moreover, Transco alleges that no party has supported its accusation that Transco is not financially prepared to support each project without the subsidization from existing customers.

150. Those parties opposing the roll-in treatment of Cherokee and Pocono, specifically, CEPGW, KeySpan, POCA, BG&E, and Staff, all state that the roll-in of Cherokee and Pocono will, indeed, have an increased revenue responsibility for existing shippers. Specifically, data sponsored by Staff[30], state that the increased revenue responsibility for the roll-in of Cherokee costs will produce an overall system transportation rate increase of 1.710% under study one and 1.458% under study two. Staff I.B. at 25, *citing* Ex. No. S-64. As for Pocono, the increased revenue responsibility will be 0.152% under study

[30] Staff conducted the same two analyses as offered in the previous discussion of the MBX project, with the same inclusions and exclusions in the formulas. [*Supra*, page 39.].

one and 0.118% under study two. Staff I.B. at 25. According to CEPGW, these data offered by Staff do not even reflect the accurate impact. CEPGW offer data that show an actual increased impact of 1.54% for Cherokee, excluding the Mobile Bay roll-in. CEPGW I.B. at 42. As for Pocono, CEPGW asserts that existing shippers will subsidize the project by $400,000 annually. *Id.* at 43.

151. In addition to these data, these parties in opposition maintain that Transco has not demonstrated any changed circumstances in regard to Cherokee or Pocono. Staff, on this point, stresses that the Commission's approval of roll-in for Leidy Line and Southern expansion facilities does not constitute such a change in circumstances. Staff I.B. at 27. Regardless, Staff argues, even if the Leidy Line and Southern facilities are rolled-in, the burden on existing shippers remains, as Staff included the roll-in of Leidy Line and Southern in its rate-impact calculations. *Id.* at 28.

Discussion

152. After close examination of facts and data provided by the parties, I am obligated to find that roll-in costs for the Cherokee and Pocono facilities is unjust and unreasonable. First, I must acknowledge the Commission's language and instruction in both the Cherokee and Pocono Certificate Orders. . In both orders, the Commission explicitly stated that,

> there would have to be a showing that circumstances had changed since the issuance of the certificate. Given that the parties were put on notice that rolled-in rates could not be approved without a change in circumstances, it makes sense that all changes in circumstance since the certificate order be considered, including the subsequent change in policy.

Order on Rehearing, 95 FERC ¶ 61,268 (2001). This is a direction by the Commission that in order for rolled-in rates to apply to the Cherokee and Pocono facility, changed circumstances must be shown; this is more than showing that Transco is prepared to financially support the projects without subsidy from existing customers.[31] Transco, I find, has not made such a showing in this case. Although it claims that the Leidy Line and Southern expansions have been approved for roll-in and that constitutes changed circumstances, I am not persuaded – as discussed in the previous section on MBX, as of

[31] To be sure, and contrary to its argument, nowhere on this record does Transco offer that it would be willing to absorb the risk of any cross allocation of costs associated with these facilities on its own, by not assigning them to <u>any</u> of its customers. Transco's argument here has no meaningful effect when the Commission's certificate Policy concepts are fully considered.

the close of the test period in this case the Leidy Line facilities have not been placed into service nor have the costs been rolled-in to Transco's system rates, and no final order on the disposition of the rates associated with those projects has yet to be issued. The only changed circumstance evident on this record, already recognized by the Commission, is that the Commission has changed its policy regarding rolled-in rates and expansion facilities.[32]

153. In light of the 1999 Policy, I am persuaded by the data offered by the opposing parties demonstrating that the revenue responsibility will increase after a roll-in of Cherokee and Pocono. *See* Ex. No. S-64 and Ex. No. CE-25. Under the 1999 Pricing Policy, such an increased revenue responsibility impedes any proposal for rolled-in cost treatment. *1999 Pricing Policy*, 88 FERC ¶ 61,227 at 61,750 (1999).

154. Moreover, Transco has neither demonstrated a system benefit that would result in a shift from incremental rate treatment to rolled-in costs, nor has Transco demonstrated that circumstances have changed so that rolled-in rates would be justified. As such, I find that Transco has failed to carry its burden on this issue and that rolled-in rate treatment is inappropriate for either the Cherokee or Pocono facilities.

C. SunBelt

155. In its arguments in favor of rolling-in the SunBelt facility, Transco states that the effect of roll-in will actually decrease the revenue responsibility for existing shippers. Ex. No. T-40 at 7-11; T-41 at 1; and T-42 at 1. Transco states the actual revenue impact, with the Leidy Line and Southern facilities included, will be -0.28% on existing shippers. Ex. No. T-40 at 10. Therefore, Transco maintains, the 1999 Pricing Policy is met and rolled-in rates are justified.

156. CEPGW, on the other hand, argues that rolled-in rate treatment is inappropriate for the entire SunBelt project when examined as a whole, but would be appropriate for those zones that would not shoulder a subsidy after roll-in. CEPGW I.B. at 44. CEPGW supports Transco's roll-in proposal insofar as zone 4-5, because, according to CEPGW's data, that is the only zone where a subsidy would not be realized after roll-in rates. *Id.* at 43. However, CEPGW argues, that the other affected zones, 3-4, 3-5, and 4-4, should not have roll-in treatment, because a subsidy from existing shippers would result. *Id.* at 44.

---

[32] Moreover, it is clear that neither Transco nor the expansion shippers relied upon rolled-in rate treatment for these facilities for financing of the projects. They simply could not have given that Transco did not request such rate treatment in the associated applications. *See* CEPGW I.B. at 27-28.

157. CEPGW relies on the 1999 Policy for direction on this matter. CEPGW asserts that the 1999 Policy states, in addition to that when a proposed roll-in would result in pre-existing customers subsidizing incremental customers, it is not permitted, that when a roll-in would result in raising rates for incremental customers t the level of FT rates, the roll-in is required. *Id.* Finally, CEPGW asserts that incremental shippers should pay the higher of incremental rates or FT rates. *Id.*

158. Energy Associates, a SunBelt expansion shipper, and TMG, however, vehemently oppose rolled-in rate treatment, by claiming that such a roll-in violates the 1999 Pricing Policy. Through its witness Briden, CEPGW asserts that the roll-in of the SunBelt expansion would be contrary to the basic principles of the 1999 Policy and would not yield just and reasonable rates. Energy Associates' I.B. at 7. Witness Briden particularly argues that the SunBelt incremental shippers would have to pay, over the life of their contracts, more than the respective portions of the expansion facility built for their service. *Id.* at 8.

159. Witness Briden specifically emphasizes that permitting roll-in would fly in the face of three, in particular, goals of the 1999 Policy Statement. First, he argues that roll-in would frustrate i) competitive markets; ii) protection of captive customers; and iii) providing appropriate incentives for the optimal level of construction and efficient customer choice. Ex. No. EACH-1 at 7. First, witness Briden argues that competitive markets would be frustrated because the shippers agreed to incremental rates and a roll-in would reverse that very agreement. *Id.* Further, according to witness Briden, roll-in would cause expansion shippers to pay "more than the costs of the SunBelt expansion facilities over the life of their contracts and more than pre-existing shippers taking similar service under GSS rates." *Id.*

160. Protection of captive customers would also be frustrated under rolled-in rates, according to witness Briden, because Transco would not be prevented from exercising market power at the customer's expense and generally insulating them from costs associated with expansions. Ex. No. EACH-1at 9. Accordingly, witness Briden urges that the SunBelt shippers would have their revenue responsibility increased, while the pre-existing shippers would enjoy a subsidy. *Id.*

161. Lastly, according to witness Briden, a roll-in would frustrate economic efficiency. He maintains that rolled-in pricing at SunBelt would send mixed, inappropriate, "marginal" price signals to the market. *Id.* at 10-11. This, argues, Energy Associates, does not yield just and reasonable results.

162. In addition to Energy Associates' arguments claiming that rolled-in rate treatment would violate the 1999 Pricing Policy, Energy Associates also argue that Transco's claimed reduction in rates would not be enjoyed by all shippers. Energy Associates' I.B. at 11. Similarly to what CEPGW argues, the Energy Associates claim that Transco's FT

customers would receive a rate increase, as well as an increase in the GSS rate. *Id*. Additionally, Energy Associates also point to the inter-zonal rate differences that are highlighted by CEPGW and Staff. *Id*.

163. Finally, Energy Associates specifically point to the effect rolling-in rates would have on the Cherokee County Cogen facility. Energy Associates stress that rolling-in rates would result in a significant rate increase for Cherokee County Cogen, without any offsetting benefits. *Id.* at 12. Here, Energy Associates highlight the fact that the SunBelt incremental facilities have not changed, and the SunBelt service has not changed since the facility was certificated. Energy Associates maintains that a change in Transco's position in rate design does not constitute a change in circumstances or a system benefit that would permit a change to roll-in rates as prescribed under the 1999 Policy or the Commission's suspension order in this case.

Discussion

164. On this aspect of this issue, I must find that the current rate structure – incremental rates – is just and reasonable for the SunBelt expansion and should not be replaced with rolled-in rate treatment. Although Energy Associates and TMG make persuasive arguments, it is not on those arguments that I rely in drawing my conclusion. Although Transco asserts that the rates decrease if the rolled-in methodology is used, I am not persuaded that a rate reduction is determinative on this issue. I must refer to the Commission's suspension order and its order denying and granting in part rehearing in this proceeding. 94 FERC ¶ 61,360, *order on reh'g* 95 FERC ¶ 61,268 (2001). In both of these Commission orders, the Commission reminds the parties of the language in the Certificate Orders for Cherokee, Pocono, and SunBelt, that "the three expansions would remain incrementally priced in the first section 4 rate case, unless the proponents of rolled-in rates could show a significant change in circumstance." 94 FERC ¶ 61,360, *order on reh'g*, 95 FERC ¶61,268 (2001).

165. I find that Transco has demonstrated a change circumstance, in that overall rates will decrease if the SunBelt project is rolled-in for particular rate zones on Transco. However, as identified by Staff and CEPGW, the rate after roll-in will actually increase in many of the zones. I consider the opportunity to lower rates in 1 zone while increasing costs to other zones under the same project an inconsistent application of the Commission's policy (at least in 1995 under which these services were certificated). Pipeline expansion projects, as the Commission articulated, should not be divided in a manner just to gain an advantageous rate treatment when these projects should be appropriately considered together for certain reasons when evaluating rate impact analyses. Likewise, breaking up the Sunbelt Project by zone in the face of customer opposition to gain a particular rate treatment even in isolation by zone should not be considered appropriate.

166. Additionally, to address this issue, I again refer to the Commission's order setting this case for hearing. There the Commission stated that it would not be unduly discriminatory to delay full roll-in until the contracts between Transco and its current shippers expire. *Id.* at 62,303. Indeed, this approach would adhere to the Commission's objective to permit the contractual agreement between the parties to control the allocation of risks associated with these projects, as well as ameliorating Energy Associates' witness Briden's notable concerns about potentially paying more for a project, over its contractual life, than his client bargained. I find that incremental rates will remain until existing contracts expire, and at that time, Transco will be permitted to file for roll-in rates of the SunBelt expansion project.

ISSUE V: FUEL AND TRANSMISSION ELECTRIC POWER CHARGES FOR CERTAIN TRANSCO SERVICES, THE RESOLUTION TO BE PROSPECTIVE ONLY

167. On this issue, CEPGW, Dominion Transmission, Inc., Virginia Power Energy Marketing, Inc., and Virginia Power Services Energy Corp., Inc. (collectively "Dominion"), and Staff assert that Transco should be required to amend its tariff for cost recovery of the costs of fuel and electric power used by compressors constructed as part of incremental expansion projects. Specifically, proponents argue that Transco's imposition of system fuel percentages on MBX volumes and system electricity charges on Cherokee and SouthCoast volumes is unjust and unreasonable and that it would also be unjust and unreasonable for Transco to impose incremental fuel retention percentages on MBX volumes and incremental electricity charges on Cherokee and SouthCoast volumes.

168. Transco, on the other hand, responds that its treatment of fuel and electricity charges is in full accord with its tariff and is just and reasonable. Transco also argues that the proponents of the change to the tariff have not met their burden to show that current rates are unjust and unreasonable, nor have they proposed a just and reasonable alternative to the current rate methodology.

169. The burden of proof on this issue lies with CEPGW and Dominion to show that Transco's existing rates are unjust and unreasonable and that they propose a just and reasonable alternative.

170. All parties involved in the dispute over this issue agree that the compressor facilities at issue here, MBX, Cherokee, and SouthCoast, are part of Transco's "integrated" system. CEPGW I.B. at 18; Dominion I.B. at 7; Staff I.B. at 8; Transco I.B. at 24. This, in other words, according to CEPGW, means that "Transco uses (1) gas compressors at Station 82 and 83 for pre-existing Mobile Bay volumes and incremental

MBX volumes, (2) electric compression at station 115 for pre-existing system volumes and incremental Cherokee volumes, and (3) electric compression at Station 115 for pre-existing system volumes and incremental SouthCoast volumes." CEPGW I.B. at 18.

171. CEPGW, Dominion, and Staff assert that Transco currently spreads the cost for fuel/electric costs of incremental compressors over all shippers on the Transco system, disregarding the fact that the fuel/electricity is required to permit Transco to transport pre-existing volumes and incremental volumes. CEPGW I.B. at 19; Dominion I.B. at 3; Staff I.B. at 7. Here, CEPGW makes the analogy that these incremental shippers for MBX, Cherokee, and SouthCoast, all bear the entire cost of service related to those incremental compressors in their incremental rates. CEPGW I.B. at 19.. CEPGW urges the Commission to see that no difference exists between the cost of service and the fuel/electricity costs, therefore, the incremental shippers should bear their full burden of costs associated with fuel/electricity, as no difference in the overall approach should exist when evaluating either fuel expenses or cost of service. *Id.* at 19. Currently, CEPGW argues, the system shippers are supplying a significant subsidy to the incremental shippers. *Id.*

172. Although CEPGW acknowledges that the Transco system is integrated, it does not accept that as a bar to incrementally pricing the fuel/electricity costs associated with incremental compression. *Id.* at 20. CEPGW further acknowledges that Transco uses all the compressors in an integrated manner to optimize all facilities. As a result, sometimes compression that would be used to support incremental customers has to be used to support system shippers. This, however, CEPGW asserts, is not reason alone for existing shippers to shoulder all the fuel/electric costs of compression, as they currently do. CEPGW again refers us to the fact that the incremental shippers pay the full cost of service of incremental compressors, but little of the cost of service for pre-existing facilities. *Id.* Therefore, CEPGW urges, incremental shippers must shoulder the entire cost of fuel and electricity for the incremental compressors for the same reason. *Id.*

173. CEPGW further asserts that MBX, Cherokee, and SouthCoast in no way subsidize system shippers. *Id.* According to CEPGW, since Cherokee and SouthCoast volumes pass through gas-fired compressors between their receipt and delivery points, those shippers must provide fuel whether or not gas compressors were added for those services. *Id.* at 21. This, CEPGW concludes, is no subsidization of system shippers.

174. Finally, CEPGW offers a proposal for calculating incremental fuel/electric rates, that they contend is just and reasonable. CEPGW first notes that Transco's tariff does not prohibit fuel or electric charges. CEPGW I.B. at 21, *citing* Tr. 249. In light of that, CEPGW asserts that Transco's most recent operating experience should be the basis for determining the incremental rate for both the MBX fuel percentage and the electric charges for the Cherokee and SouthCoast . *Id.* at 22. As for the MBX fuel retention percentage, CEPGW offers evidence that through August 31, 2001, the incremental fuel

retention should be 1.14%. *Id.*, *citing* Ex. No. CE-24 at 6. Additionally, CEPGW cites to the Commission's decision in *Northwest Pipeline Corp.*, 99 FERC ¶ 61,365 (2002), where the Commission details a structure for incremental fuel and electric charges.[33]

175. In its argument, Dominion advances similar arguments as CEPGW, though asserts further that Transco has the capability to track fuel and electric costs and can identify those costs for each incrementally priced service. On this point, Dominion first cites to the Commission's regulations that requires a certificate applicant to calculate the fuel used at each affected compressor station and with and without new facilities, on a design day. Dominion I.B. at 8, *citing* 18 C.F.R. § 157.14(a)(7) (2002). This, Dominion alleges, requires Transco to calculate the fuel it expects to be used by an expansion when it applies for the certificate. Dominion I.B. at 8. Dominion argues that Transco knows the quantity of the fuel it expects to use, and that it is unjust and unreasonable to apply the system rate when Transco knows that the expansion will take more fuel on any design day than the system rate is designed for. Dominion urges that Transco not be able to use its tariff to justify such an inequity. *Id.*

176. Additionally, Dominion alleges, as CEPGW does, that Transco does have the ability to calculate incremental fuel charges. Dominion notes that the costs at issue here are tracked, and that rates can be adjusted based on the fluctuations over time to devise a rate that reflects actual operations. *Id.* at 9.

177. Staff, in its argument in favor of incremental fuel/electricity charges, maintains that such a modification of Transco's tariff is consistent with the Commission's 1999 Pricing Policy. Staff I.B. at 7. Staff also acknowledges the integrated nature of the Transco system, but stresses that should not be a bar to Transco's creation of an incremental methodology. *Id.* Specifically, Staff points to the Commission's recent decision in *PG&E Gas Transmission, Northwest Corp.*, where the Commission rejected an identical system integration argument that Transco now maintains. 99 FERC ¶ 61,366 (2002). There, the Commission held that existing customers must be insulated from increased fuel costs attributable to the expansion project, and it required the pipeline to establish an incremental fuel charge. *Id* at 62,551 and 62,554-55.

178. In Transco's opposition to the claims of CEPGW, Dominion, and Staff, Transco first states that its fuel retention percentages and electric power reimbursement charges are determined in complete accordance with FERC-approved tariff provisions. Transco

---

[33] In *Northwest*, the Commission stated that ". . . expansion shippers are to pay both the compressor fuel rate charged to existing shippers and any additional fuel costs attributable to the proposed expansion, with the additional fuel costs captured in the surcharge. . . The incremental fuel surcharge is intended to amount to the difference between the proposed incremental fuel rate and the existing compressor fuel rate." *Northwest Pipeline Corp.*, 99 FERC ¶ 61,365 (2002).

alleges that its tariff had been reviewed on this very issue of fuel and electric charges in last year's Leidy Line East Expansion project. There, Transco emphasizes, the Commission rejected arguments nearly identical to those proffered by CEPGW and Dominion. Transco I.B. at 23, *citing Transcontinental Gas Pipe Line Corp.*, 97 FERC ¶ 61,094 (2001).

179. Transco further asserts that the integration of the Transco system, particularly the MBX project, is dispositive on this issue. Transco maintains that such a level of integration produces a range of system-wide operational and service benefits. Therefore, concludes Transco, isolating fuel costs for specific services is unmanageable and contrary to the Commission's previous findings on operational integration. Ex. No. T-47 at 44. Transco maintains that there is no way to "isolate a particular piece of pipe or compressor unit for the purpose of providing a specific tariffed service." *Id.* at 37.

180. Additionally, Transco points out that adding compression to a fully integrated pipeline system improves the overall system efficiency and reliability. This system benefit, according to Transco, is impossible to calculate or compute. Transco I.B. at 26. Further, Transco stresses, that the CEPGW and witnesses have themselves acknowledged that Transco is an integrated system and have failed to accurately demonstrate that certain portions of added compression can be isolated and determined to benefit a certain customer. *Id.*

181. Finally, Transco claims that CEPGW, Dominion, and Staff have failed in meeting their Section 5 burden because they have not offered a just and reasonable alternative to the existing rate structure. This, Transco claims, is determinative on the entire issue, as the burden is two-prong, and if either prong is not met, the party has failed to meet the burden. *Id.* at 27.

Discussion

182. After careful consideration of all the arguments before me on this issue, I am convinced in finding that Transco's tariff should be amended to reflect incremental rates on the fuel/electricity charges for the MBX, Cherokee, and SouthCoast expansion facilities. I am persuaded by the arguments offered by Staff, CEPGW, and Dominion. First, I must note that incremental rates for the fuel/electricity charges are in accord with the 1999 Pricing Policy. The evidence on the record before me shows that the added compression the MBX, Cherokee, and SouthCoast facilities provide was not added to the Transco system to provide a service to the pre-expansion customers. *See* CEPGW I.B. at 18. Indeed, Transco has offered no evidence demonstrating a need for the added compression by the existing customers, even if they benefit from enhanced system flexibility due to their operation. Therefore, burdening existing customers with costs for which expansion customers benefit flies in the face of the Commission's 1999 Pricing

Policy. I acknowledge Transco's argument that the system is integrated. Transco I.B. at 23-24. I further acknowledge that all parties proposing incremental treatment also recognize the level of integration of Transco's system. Yet, Transco fails to recognize that the added compression offered by MBX, Cherokee, and SouthCoast were added for expansion shippers, not for an added overall system benefit. Therefore, to the extent possible, Transco must identify the amount of compression used by expansion shippers and charge them incrementally for the fuel/electricity costs associated with such compression.

183. Further, this conclusion is consistent with the Commission's recent actions in similar cases. The Commission, in *PG&E Gas Transmission , Northwest Corp.*, found that PG&E was required to charge incrementally for fuel/electric charges for its added compression facilities. 99 FERC ¶ 61,366 (2002). Additionally, the Commission found in *Kern River Gas Transmission*, that a pipeline "must maintain the principle that existing ratepayers not be required to subsidize any fuel costs attributable to the proposed expansion." 98 FERC ¶ 61,205 at 61,724, *reh'g denied and certificate issued*, 100 FERC ¶ 61,056 (2002). These cases, all of which involved applications for incremental pricing without requests for determinations of rolled-in rates, set a strong precedent supporting the tenets underlying the 1999 Pricing Policy, whereby existing shippers are not to subsidize expansion shippers.

184. Moreover, the Commission has also required these pipelines to develop methodologies to track the incremental use of the compression facilities supported by fuel/electricity costs and to insure that existing customers do not subsidize fuel costs of incremental service. *See PG&E Gas Transmission, Northwest Corp.*, 99 FERC ¶ 61,366 (2002); *Texas Eastern Transmission LP*, 99 FERC ¶ 61,383 (2002). This body of Commission precedent permits me confidently to conclude that CEPGW and Dominion have met the first prong of their Section 5 burden of proof.

185. As for the second requirement as set forth by Section 5, that the opponents of rolled-in fuel/electricity costs offer a just and reasonable alternative to the existing methodology, I also find that CEPGW and Dominion have met their burden. CEPGW proposes that Transco use its most recent operating experience to develop the fuel retention percentages. CEPGW I.B. at 22. At this point, CEPGW states that the fuel retention for the MBX facility should be 1.14%. *Id.* As for the Cherokee and SouthCoast facilities, CEPGW states that the most recent data available to Transco should be the basis for the calculation. *Id.* This approach, I believe, is a good start. A reasonable allocation of fuel and electric power costs to incremental customers based on the incremental compression relative to the overall compression, as CEPGW, Dominion, and Staff propose, is just, reasonable, and appropriate.

186. I am not compelled by Transco's arguments that it is "unfeasible" to track, as a practical matter, fuel and electric costs that cannot be identified for any specific

customer. Transco's own witness Turkington conceded that Transco must calculate the incremental fuel or electric power that will be used in an expansion project. Tr. 239-40. With this data as a basis, I am certain that Transco can develop an allocation based on compression, just as PG&E was required to do by the Commission. *See PG&E Gas Transmission, Northwest Corp.*, 99 FERC ¶ 61,366 (2002). Furthermore, the Commission has previously rejected the "impracticality" arguments as offered by Transco in this case. *Id.* As such, I find that CEPGW, Dominion, and Staff have compellingly shown that Transco must amend its tariff to include incremental pricing for fuel/electricity costs for compression, and that it must develop a method, based on CEPGW's suggestion, to accurately capture such costs.

ISSUE VIII: THE ALLOCATION OF CERTAIN STORAGE COSTS BETWEEN AND AMONG STORAGE AND TRANSPORTATION SERVICES, THE RESOLUTION TO BE PROSPECTIVE ONLY.

187. This issue surrounds how Transco allocates its storage facilities' costs among its existing transportation shippers and storage customers. The Staff and Atlanta Gas Light Company, Public Service Electric and Gas Company, KeySpan Delivery Companies, Virginia Natural Gas, Inc., and Washington Gas Light Company (collectively "AGL *et al.*") have proposed modifications to Transco's existing allocations of storage costs to transportation costs. Indicated Shippers[34], NUI Utilities, N.E. Energy Associates, CEPGW, and Piedmont Natural Gas Company, Inc., New Jersey Natural Gas Company, National Fuel Gas Distribution Corporation, The City of Richmond, Virginia, The Transco Municipal Group, and The Municipal Gas Authority of Georgia (collectively "Piedmont") all, generally, oppose any modification in the current allocation of storage costs to system services.

188. The relevant portions of the Transco system at issue here include twelve storage facilities in and around the service area, that includes the Washington, Hester, and Eminence storage facilities. Ex. No. T-13 at 5; Ex. No. KSD-6. In the market area, Transco owns and operates a liquefied natural gas ("LNG") storage facility which is located near the terminus of its mainline pipeline in Carlstadt, New Jersey, and shares ownership of the Leidy and Wharton storage fields located at the western terminus of Transco's Leidy Line in Pennsylvania. *Id.* The Wharton and Leidy fields are located in Pennsylvania and are two of the three components of which Rate Schedule GSS service is comprised. The third component of that service is storage purchased from Dominion Transmission. *See* Ex. No. T-8 at 9. The Eminence costs allocated to transportation are

[34] Indicated Shippers include Shell Oil Company, Amerada Hess Corporation, ChevronTexaco Exploration & Production Company, Conoco Inc., Exxon Mobile Corporation, and Occidental Energy Marketing, Inc.

those associated with the Emergency Eminence Withdrawal Service, a component of Rate Schedule FT service. *See* Ex. No. T-49 at 11-12.

189. Transco's LNG storage facility is located in Transco's Rate Zone 6. The LNG facilities include liquefaction and gasification equipment, LNG tanks, and tanker-truck loading facilities. Injections and withdrawals may occur at any time, but large withdrawals typically occur only during the winter season. Transco operates its LNG facility generally as a peaking facility on a seasonal basis. Gas is liquefied during the spring, summer, and fall months and vaporized on the coldest days of the winter, when it is needed.

190. Due to the nature of the proposals offered by the parties in favor modifying the current allocation of storage function costs, the discussion of this issue will be divided into two sections: allocation of general storage facility costs, excluding LNG, and allocation of LNG storage facility costs.

A. Proposed Allocation of Transco's General Storage Function Costs

191. AGL argues that Transco provides extensive daily and hourly flexibility to its customers. According to AGL, Transco permits no-notice transportation customers to take its full contract entitlement on any day, regardless of whether the customer nominated any service or delivered any gas to the Transco system. *Id., citing* Ex. No. T-13 at 7; Tr. 614. This system, claims AGL, creates for large physical imbalances that the LNG storage facility makes up for, to nearly 1 Bcf. Ex. No. DPY-1 at 25.

192. AGL also asserts that when determining utilization of storage, Transco considers the demands of all customers, not just those of storage customers in determining the level of storage injection or withdrawal activity on any given day. *See* Ex. No. T-51 at 4. Ultimately, AGL argues that Transco uses its various storage facilities and services to meet the demands of contract storage customers and manage transportation customers' imbalances. AGL I.B. at 7.

193. According to AGL, the Commission has determined that in order to make a showing that the current allocation of storage costs to transportation service is unjust and unreasonable, the party seeking the change must examine: 1) the costs of <u>all</u> the storage facilities used by Transco; and 2) the impact of a change in Transco's existing cost allocation on both storage and transportation services. *Id. citing Transcontinental Gas Pipe Line Corp.*, 97 FERC ¶ 61,044 at 61,237 (2002), *order on reh'g*, 99 FERC ¶ 61,002 at 61,016-17 (2002). Based on AGL's interpretation of this Commission statement, its witness Yardley developed an analysis of Transco's use of all its storage services. Based on that analysis, AGL proposes its allocation of 22.5% to 26.2% of certain market area storage costs to transportation services.

194. Witness Yardley determined his cost allocation after considering all information that demonstrates that Transco uses its various self-owned and purchased storage services on an integrated basis. Witness Yardley inferred from this data that Transco uses the Hester, Eminence, and Washington facilities, as well as the Transco-owned portions of Rate Schedule GSS, and the contract storage services to provide GSS, LSS, S-2, and SS-2 services, and the LNG facility. *Id.* at 10-11. After drawing this conclusion, witness Yardley developed an analysis to more closely examine how each of the various Transco owned and purchased storage services should be analyzed to determine a final allocation of costs. *Id.* at 11.

195. Further, witness Yardley analyzed the difference between actual daily physical storage utilization and the allocated utilization by Transco's storage customers over a three-year period. *Id.* at 29. Witness Yardley reasoned that he designed his calculations in this way because Transco operates these storage components on an integrated basis for the benefit of all services. *Id.* Further, Witness Yardley claims that this methodology was patterned after a similar analysis conducted by a Transco witness in previous proceedings.[35] Furthermore, AGL also claims that this methodology is what Transco stated in discovery as the appropriate way to measure the system's use of storage. *See* Ex. No. KSD-11; Ex. No. DPY-13. It must also be noted that witness Yardley's calculation is also designed to capture bundled storage services in Transco's use of storage. Ex. No. DPY-15 at 15.

196. AGL further urges that, in addition to witness Yardley's calculations and analysis, other facts, on the record, show that Transco's current allocation is unjust and unreasonable. The first argument AGL offers is that because Transco existing tariff allows transportation customers the right to create imbalances, Transco is compelled to maintain those imbalances on a "stand ready" basis. AGL I.B. at 16. Due to this "stand ready" approach, AGL maintains, it is unjust that these storage services and facilities have no costs allocated to transportation services.

197. AGL further argues that just as Transco uses other tools to provide system flexibility, and allocates those costs to various services, so too should the storage costs be allocated to the transportation customers. *Id.* at 17. AGL maintains that "[t]here is no reason why the costs of various storage services used to provide daily and hourly flexibility should be subject to a vastly different approach in which substantial storage costs are allocated solely to certain storage services even though they are incurred to provide both storage service and daily and hourly flexibility to transportation shippers. *Id.*

[35] Docket Numbers RP95-197 and RP97-71.

198. AGL also argues that the record shows that since the allocation of storage costs was initially adopted on Transco's system, the size of the physical imbalances created by transportation customers has increased. *Id.* at 19. Based on this, AGL argues that it is unjust and unreasonable to continue to allocate a level of storage costs to transportation service that was determined during a period in which imbalances imposed a lesser obligation on Transco to use storage for the benefit of transportation customers.

199. Transco in its opposition to AGL's proposal maintains that the analysis used by witness Yardley is fatally flawed in many respects. Transco I.B. at 44. With its own witness Cunningham, Transco contends that AGL's methodology for analyzing the use of storage resources to support transportation services is "overly simplistic and substantially inaccurate." *Id.* Transco goes on to identify four significant errors in AGL's methodology.

200. First, Transco maintains, witness Yardley's initial critical error was assuming that all "system use" benefits transportation services alone. Here, Transco argues that its contingency ranking procedures put both storage and transportation customers on the same level of no-notice service. *Id.* at 45.

201. The second fatal flaw, according to Transco, is that witness Yardley fails to understand how storage is used in Transco's system operations. Here, Transco maintains that the contingency scheduling process inherently makes Transco's operational use of storage differ from customers' allocated use, which is unknown until the gas day has ended. *Id.* Witness Cunningham also highlights the potential inaccuracy in witness Yardley's consideration of each day's operations in isolation from every other day. Witness Cunningham analyzed Witness Yardley's calculations in two different ways – in a three-day example and on a seasonal basis – to show that a very large probability of error exists in Witness Yardley's methodology. *Id.* at 46.

202. Staff, CEPGW, Indicated Shippers, Energy Associates, and NUI Utilities all agree with Transco that AGL has not met its burden to show that the other existing allocations for storage costs on Transco's system are unjust and unreasonable.

203. Staff and the other parties opposing AGL explain that they do not agree with AGL's interpretation of the Commission orders on this issue. After noting that, however, they go on to state that witness Yardley's methodology does not meet this standard that AGL says it is using. First, witness Yardley did not independently analyze the daily physical and customer allocated use of the SS-1 storage asset, the Hester storage field, or the 40% of Eminence storage field used for the ESS service in his initial determination of the percentages of market area and production area storage assets used for system management. Staff R.B. at 14. These parties also argue that AGL ignores the fact that system flexibility reflects only one component of storage use. Piedmont specifically points out that there is no agreement or even significant evidence as to the relative

contribution of line pack, compression, storage, unutilized capacity, and so forth, to overall system flexibility. Piedmont I.B. at 9. Energy Associates point out that witness Yardley did not perform any studies of the operational benefits that may flow to storage customers as a result of the operation of Transco's transmission rates. Energy Associates I.B. at 24. Furthermore, witness Yardley's analysis does not contain a weighting mechanism to consider the requirements of contract storage customers during the peak winter season, due to Transco's obligation to meet the "stand by" needs of contract storage customers. Staff R.B. at 15.

204. Staff and the other parties also argue that AGL's position that use of the *Equitable* method for determining allocation was not necessary is inappropriate. However, all parties agree that the *Equitable* method is the Commission approved method for classifying and allocating storage costs. *Id.* at 16. According to Staff's witness Taylor's use of the *Equitable* method, he determined that 15% of Washington storage costs to system management is reasonable. *Id.* Yet, Staff points out, if witness Yardley's conclusions, which are based upon a method other than *Equitable*, are accepted, an allocation of 36.4% of Washington would be applied to system transportation. *Id.* Staff witness Taylor also conducted another independent analysis, using the *Equitable* method, and found that Transco's existing and proposed allocation of 15% of Leidy and Wharton is reasonable. Staff I.B. at 37. These calculations, Staff argues, demonstrate that Transco's existing allocations are comparable with the results of analysis under the *Equitable* method and are, therefore, just and reasonable. *Id.* at 17.

205. Staff and the other parties opposing AGL further maintain that the deliverability and capacity cost allocation factors used by witness Yardley are arbitrary, and contrary to the consistent method used under the *Equitable* method, as applied by witness Taylor. *Id.*

206. On this issue of allocation of storage costs from other storage facilities, I find that Transco and the other parties opposed to AGL's proposal have effectively demonstrated that AGL's calculations for re-allocating these storage costs to transportation are flawed. In particular, Transco has demonstrated that Yardley's assumptions about the daily use of storage, when compared to other time frames, do not indicate the magnitude of storage usage by Transco for system transportation services to the extent relied upon by the witness. Consequently, these assumptions are not reasonably reliable to use for their intended purpose, thereby invalidating his analysis. In addition, the Yardley analysis deviates from the Commission's longstanding application of the *Equitable* method for analyzing storage function costs and their associated fair allocation between system services.

207. Moreover, the Yardley proposal does not take into consideration the seasonal dimension for the use of the Transco storage fields. Because the storage facilities primary purpose is to deliver contract storage gas during the peak winter season, it is then that firm contract storage customers most heavily rely on Transco's ability to meet its

contract storage entitlements. *See* Staff I.B. at 39; Ex. No. S-17. Moreover, witness Yardley's analysis is based completely on year-round injections and withdrawals and treats firm contract storage as if it is an interruptible service year round. *Id.* As a result, witness Yardley's analysis does not accurately reflect the true nature of the Transco storage facilities' operation and cannot be relied upon.

208. For the reasons offered by Transco, Staff, Indicated Shippers, CEPGW, and Energy Associates, I find that AGL has not met its burden to show that Transco's current allocation of 15% of GSS, LSS, SS-1, SS-2, S-2, and Washington storage costs to transportation services is unjust or unreasonable. Moreover, the record demonstrates that the current allocation comports with the Commission's *Equitable* pricing methodology for the analysis of storage functions and associated cost allocation. Furthermore, AGL has not demonstrated that its alternative, proposed allocations are just and reasonable. Parties opposed to AGL have effectively demonstrated flaws in the AGL methodology and calculations. For all of these reasons, I find that Transco's current allocation is just and reasonable.

B. Proposed Allocation of LNG Storage Facility Costs

209. Staff asserts that Transco's 100% allocation of its LNG storage facility costs to contract storage services is unjust and unreasonable. Staff I.B. at 28. Staff proposes allocating 85% of LNG storage facility costs to the Rate Schedule LN-A/LNG contract storage services, and 15% to system management based on Staff witness Taylor's analysis of utilization of the LNG facility. *Id.* Staff bases its proposed allocation on a utilization analysis by Witness Taylor that considered: a) daily LNG physical net injection/withdrawal and physical storage inventory volumes; b) daily contract storage injection/withdrawal and inventory volumes; c) LG-A/LNG contract deliverability and capacity and actual injection/withdrawal data provided in Statement G-1 of Transco's filing, as updated through the end of the test period; and d) certificated parameters for Transco's LNG facility. *Id.* at 29. With those factors, witness Taylor then calculated the deliverability, capacity, and injection/withdrawal allocation factors for LG-A/LNG and system management. *Id.*

210. Witness Taylor calculated the use of LNG deliverability for system management using Transco's three most recent consecutive three-day peaks. Ex. No. S-10 at 27. He calculated daily system management capacity by subtracting daily LNG contract storage inventory from daily LNG physical inventory. After determining the maximum daily capacity during each of the three most recent years, he then averaged these three maximum daily capacity volumes to develop his capacity allocation units for system management. *Id.* Further, he calculated that injection/withdrawal allocation units for system management are based on doubling the calculated LNG system management capacity allocation units. *Id.* This contract deliverability and capacity was used to

develop deliverability and capacity allocation units for LG-A/LNG. Witness Taylor's calculated injection/withdrawal allocation units for contract storage are based on actual injections/withdrawals for LG-A/LNG during the 12-month period ending August 31, 2001. *Id.*

211. Staff also proposes that an alternative method for determining the utilization of the LNG facility is to compare schedules, on a monthly basis, the overall physical usage of the LNG facility with the use by its customers. Staff I.B. at 31. Under this method, Staff argues that "large unexplained differences between actual physical injections and withdrawals and customer injections and withdrawals." *Id.* This disparity, Staff argues, shows that because the physical injections and withdrawals do not match the customer activity, the LNG facility is heavily supporting system management, resulting in a significant benefit to system customers at the expense of storage customers. *Id.*

212. Furthermore, Staff maintains that without the LNG facility, Transco would need to upgrade its baseline supply capacity to meet its potential peak loads, because, Staff alleges, the LNG facility frees considerable pipeline capacity on Transco's mainline. Tr. 1379. Staff maintains that its proposal for LNG facilities more accurately captures Transco's actual use of the LNG facility than Transco's current zero allocation.

213. AGL's position on the allocation of LNG storage is consistent with their general argument that storage costs should be allocated to transportation, *supra*. AGL argues that 22.5% to 26% of LNG storage costs should be allocated to system transportation services. AGL I.B. at 7.

214. Transco, and those parties opposed to allocating storage costs for the LNG facility to transportation, Indicated Shippers, CEPGW, Energy Associates, Piedmont, and NUI Utilities, all contend that neither Staff or AGL meet their burden to show that LNG storage costs should be allocated, in part, to transportation. First, Transco rebuts Staff's approach to LNG by claiming that Staff witness Taylor failed to establish that Transco's present allocation of costs to system transportation produces unjust and unreasonable rates. Transco I.B. at 48. Transco claims that witness Taylor, rather than examining the system as a whole, merely isolated LNG utilization from all other storage services on the system. *Id.* This, Transco asserts, is not in accordance with the Commission's directive to "evaluate the use of storage on the system as a whole." *Transcontinental Gas Pipe Line Corp.*, 97 FERC at 61,237. Therefore, Transco concludes that witness Taylor never considered the $20 million in storage costs that Transco does allocate to transportation services.

215. Transco also claims that contingency ranking "necessarily exaggerates differences between physical and customer-allocated LNG withdrawals." Transco I.B. at 49. This, alleges Transco, coupled with the fact that witness Taylor overlooks Transco's practice of using the relatively inflexible LNG facility in the most efficient manner makes it

unreasonable to focus on the single day of maximum difference between customer inventories and physical inventories as the basis for allocating LNG costs. *Id.*

216. Indicated Shippers also make a similar argument against Staff's calculations for allocating LNG costs, but also argue that Staff's and AGL's analysis is absent of any recognition of the fact that the LG-A/LNG service is a bundled service, yet no transmission costs are allocated to the service. Indicated Shippers I.B. at 10. Indicated Shippers claim that Staff offers a one-sided analysis and that such an analysis fails to account for the benefits that LG-A/LNG customers enjoy from the use of transmission facilities. Indicated Shippers point out that without a study of how this bundled transmission benefits LG-A/LNG shippers, no basis exists for a cost shift for storage costs to transportation customers. *Id.*

217. Indicated Shippers also argue that the backhaul argument that Staff proffers does not justify the allocation of zero transmission costs to LG-A/LNG customers. Indicated Shippers contend that because backhaul rates and forward haul rates are the same on the Transco system, the use of backhaul service to deliver LNG withdrawals from the LNG facility to the city gate does not provide a justification for allocating zero transmission costs to the LG-A/LNG service. *Id.* at 11.

218. Another assertion by Indicated Shippers is that Staff and AGL's argument that Transco uses storage service for system management reflects that they do not take into account the actual operations on Transco's system. *Id.* Indicated Shippers claim that because the LG-A/LNG service is the one of last resort (in contingency ranking), at peak periods Transco will withdraw gas from the LNG facility in anticipation of the LG-A/LNG customers' demands. Ex. No. T-52 at 55. This withdrawal, Indicated Shippers claim, is not what Staff or AGL characterize it as, use for transportation customers, but rather is merely meeting the anticipated demand of the LNG storage customers. Indicated Shippers I.B. at 12.

Discussion

219. I am persuaded that the Staff's evidence, as put forth on the record, fully supports its proposed 15% allocation of LNG storage facility costs to transportation costs. I must first note that no party, including Transco, disputes the calculations offered by Staff witness Taylor on the allocation of LNG costs. Transco I.B. at 48. Therefore, as the calculations are unchallenged, I will adopt them as presented on the record. Therefore, what remains is the challenge that Staff's proposal does not demonstrate that Transco's present allocation of costs to system transportation produced unjust and unreasonable rates. As stated, however, I am persuaded that Staff has carefully and appropriately demonstrated such unjust and unreasonable rates.

220. First, it must again be noted that Transco currently allocates **no** LNG storage costs to transportation services. Transco I.B. at 48; Staff R.B. at 8. That stated, I will first address the claim that Staff's recommendation does not comply with Transco's, AGL's, Energy Associates', and Indicated Shippers' construction of a Commission decision that determines that the level of storage costs to be included in the FT rates requires an evaluation of the use of storage on the system as a whole. Transco I.B. at 48; AGL I.B. at 9; Energy Associates I.B. at 15; Indicated Shippers I.B. at 14; all *citing Transcontinental Gas Pipe Line Corp.*, 97 FERC ¶ 61,004 (2001), *order on reh'g*, 99 FERC ¶ 61,002 (2002). In that case, the Commission was assessing whether a Brooklyn Union proposal to change the current allocation of the storage costs related to the bundled GSS, LSS, and S-2 storage services and the unbundled WSS service. *Transcontinental Gas Pipe Line Corp*., 97 FERC at 61,044 (2001), *order on reh'g* 99 FERC at 61,016-17 (2002). Brooklyn Union argued that Transco's methodology did not allocate sufficient storage costs related to these four storage services to system transportation. It took the position that since it was only seeking a change to those particular services, NGA section 5 required only that it show the current allocation of costs to those services as unjust and unreasonable. Therefore, in its calculations, Brooklyn Union did not consider data for other rate schedules (SS-1, SS-2, Hester or Eminence). However, the Commission noted that the FT rate contained not only a small portion of the storage costs related to the firm bundled storage services, but also 50% of the cost of Eminence and Hester storage services. Thus, the Commission's actual ruling was that adding the costs to be allocated by Brooklyn Union to system transportation without considering data for the Hester and Eminence storage services, which had costs already allocated to system transportation, was inappropriate. Staff points out that the Commission's Order does not state that analyses of the SS-1, SS-2, and LNG storage services were also required.

221. After distinguishing this case, Staff accurately contrasts its proposal with that offered by Brooklyn Union. Staff's proposal of 15% does not increase storage costs borne by any of Transco's current shippers. In actuality, all else being equal, Staff's proposal would result in a reduction of FT rates, LNG contract storage rates, and the ISS rate. *See* Ex. NO. S-53 at 7.[36] Furthermore, Staff's proposal is neutral with respect to the GSS, LSS, SS-1, SS-2, ESS, and WSS rate schedules because Staff is recommending no change in the allocation factors for storage assets associated with these services. *Id.* It must also be noted here, but will be more fully discussed, *infra*, that Staff's analysis did include reviews of the Hester and Eminence storage field data, but resulted in specific recommendations per those storage costs consistent with the true Commission concern's cited in the above cases. Furthermore, the Staff analysis for LNG storage operations uses the *Equitable* method and gives strikingly consistent results with the conclusions reached regarding its general system storage analysis. I consider Staff's analyses firm evidence

[36] When considered in conjunction with the Staff's proposed service unbundling of Emergency Eminence Storage. This adjustment more than offsets the added 15% allocation of LNG storage facility costs to FT customers' rates. Staff R.B. at 10.

demonstrating the actual use of the Transco storage operations, including LNG storage, and it is the most appropriate method on this record to evaluate storage cost allocation.

222. I am not persuaded by Transco's and Indicated Shippers' argument that the Staff proposal does not take into consideration Transco's system operations that surround the LNG service and associated facilities. To the contrary, I am convinced that Staff has appropriately addressed all concerns related to contingency ranking on Transco's system. Transco would like the Commission to believe that its contingency ranking procedures exaggerate the differences between physical and customer-allocated LNG withdrawals. Transco I.B. at 49. As makes sense, the LNG service is usually ranked last in contingency ranking because it is very expensive. Indicated Shippers have posited that, if at the end of the day the customers' actual takes were not large enough to encompass the entire contingency scheduled withdrawals of the customers, the actual withdrawals would exceed the withdrawals allocated to customers. Indicated Shippers I.B. at 12. However, according to Staff, this does not explain the magnitude of the differences. Staff R.B. at 11. The record shows that the differences between the actual physical LNG injections and withdrawals and customer's injections and withdrawals differ by a factor of 2 to 5 times. *Id.* It is clear on the record before me that the LNG storage facility is being used heavily for system management.[37] Consequently, Transco's current zero dollar allocation is unjust and unreasonable.

223. Lastly, the *quid pro quo* argument must be addressed. This argument, as both CEPGW and Indicated Shippers proffer, is that because no transportation costs are currently allocated to LNG facility customers, it is inappropriate to allocate any storage costs to system management. CEPGW I.B. at 45; Indicated Shippers I.B. at 10-11. As Staff argues, and I adopt, a *quid pro quo* exists only such that no transportation costs are assessed to LNG customers in consideration of the valuable mainline capacity that is freed-up as a result of LNG customer backhauls. If LNG customer use and physical use were roughly equal, there would be no need to allocate any LNG costs to system management. Staff R.B. at 12. However, the data presented on the record shows that the customer use and physical use are not equal, and Staff's LNG system management study demonstrates LNG facility usage beyond the level of LNG customer backhauls necessary in the current *quid pro quo* arrangement. *See* Ex. No. S-47 at 14. Therefore, CEPGW and Indicated Shippers argument that storage customers will get more than they bargained for is without merit. Transco must amend its tariff to allocate 15% of LNG storage facility costs to system transportation services consistent with Transco overall 15% allocation factor re-determined for general storage costs.

---

[37] Staff provides an example of the heavy system use of LNG services, when it shows that in the period from February, 2000 to January, 2001, the LNG physical withdrawals were five times the amount that customers withdrew. *See* Ex. No. S-68. This reflection of use cannot support Transco's or Indicated Shippers' argument that all of this activity is for the direct benefit of LNG customers.

ISSUE IX: THE UNBUNDLING OF EMERGENCY EMINENCE STORAGE WITHDRAWAL SERVICE, THE RESOLUTION TO BE PROSPECTIVE ONLY

224. The facility in question on this issue is Transco's Eminence storage facility in Covington, Mississippi. This facility is an underground, salt dome storage field. It has a working capacity of 15 Bcf, daily withdrawal capability of 1.5 Bcf, and daily injection capability of 0.1 Bcf. It is located downstream of Compressor Station No. 65; the demarcation between the production and market areas. The Eminence facility is used to provide ESS service and emergency backup *force majeure* service for FT shippers. The costs of Eminence storage are divided between those same two categories for cost allocation purposes. Approximately 40% of Eminence storage costs are allocated to Rate Schedule ESS, while the remainder is currently recovered through FT rates in association with the so-called Emergency Eminence service. Staff I.B. at 41. It must be noted that Transco has been ordered to unbundled the Emergency Eminence storage costs in Docket No. RP95-197-000, *et al*. Therefore, the only question that remains on this issue is how the unbundling should be done. Staff and AGL have offered proposals on how the unbundling should be handled, and Transco opposes each proposal.

225. Prior to addressing the arguments offered by the parties, it must be noted the Commission has already ordered Transco to unbundled its Emergency Eminence storage costs and provide a separate service associated with this storage facility. Docket No. RP95-197-000, *et al.*. In that prior Transco proceeding, the Presiding Judge determined that the costs attributable to the Emergency Eminence Service must be unbundled from FT rates and the charges for the service assessed only to those shippers who are eligible to use the service. *See Transcontinental Gas Pipe Line Corp.*, 82 FERC ¶ 63,019 (1998). The Judge also held that "Transco shall unbundled the Emergency Eminence Storage Withdrawal Service and recover the cost of the service in a *separate* charge applicable only to FT shippers holding TCQ entitlements at the point where the Eminence Storage Facility interconnects with Transco's main line." *Id.* at 65,192. The Commission accepted the Judge's decision pertaining to the unbundling of this service. *See Transcontinental Gas Pipe Line Corp.*, 87 FERC ¶ 61,087 (1999), *reh'g denied*, 94 FERC ¶ 61,362, *reh'g denied*, 95 FERC ¶ 61,388 (2001). Both Staff and AGL argue that this Commission decision is the basis for finding that Transco's continued bundling of this service is unjust and unreasonable. Staff I.B. at 44; AGL I.B. at 36. On this point, however, Transco maintains that it will unbundle Emergency Eminence Storage Service once there is a Commission order no longer subject to rehearing. Ex. No. T-49 at 14.

226. Staff, in its proposal to unbundle the Eminence storage facility costs, includes an analysis of the current utilization of the Eminence storage facility. Staff witness Taylor conducted the analysis. His analysis included the following data: 1) daily Eminence physical net injection/withdrawal and inventory volumes; 2) daily Eminence contract storage injection/withdrawal and inventory volumes; 3) ESS contract deliverability, capacity, and actual monthly injection/withdrawal data; 4) certificated parameters for

Eminence storage field; and 5) information contained in Transco's rate schedule FT pertaining to the amount of Eminence deliverability and capacity reserved for the Emergency Eminence Service. Staff I.B. at 45. After witness Taylor's examination of Transco's existing allocation of Eminence storage costs to ESS, based on actual contract entitlements, and to Emergency Eminence Service, on rate schedule FT requirements, he found them to be reasonable. *Id.*

227. After conducting his analysis, witness Taylor determined the appropriate billing determinants for delivery and capacity to be 60% of the maximum delivery and capacity, as specified in Transco's Rate Schedule FT tariff. This, of course, is based on the assumption that the service will be fully subscribed by Transco shippers. Additionally, witness Taylor established the appropriate billing determinants for injection/withdrawal on twice the capacity determinant. This reflects the understanding that all gas withdrawn from Eminence will be returned to the Eminence field. *Id*. at 46. Finally, witness Taylor concludes that his method is the fairest way of unbundling the service because it allocates costs only to those FT shippers who actually sign up to take advantage of the service. *Id*.

228. On the other hand, AGL argues that its proposal, one that would allow existing FT shippers a one-time, all-or-nothing opportunity to acquire additional storage rights under Rate Schedule ESS, and at the same time to eliminate Transco's obligation to provide Eminence emergency backup service to converting shippers, is the most appropriate approach for unbundling. AGL I.B. at 35. AGL argues that its newly proposed ESS storage rights would be apportioned to existing FT shippers that pay for Eminence *force majeure* costs, in proportion with the amount they pay for their firm mainline entitlements at Eminence. *Id.* At the same time, AGL argues, Eminence storage capacity would continue to be fully subscribed. Those costs formerly associated with the Eminence *force majeure* back-up capability, AGL maintains, would be allocated to Rate Schedule ESS for rate design purposes. *Id.*

229. The benefits, AGL argues, of is proposal designed by witness Yardley, include that Transco's aggregate *force majeure* obligation under Rate Schedule FT would be reduced by the level of additional Rate Schedule ESS rights elected by customers, once existing shippers make their one-time election. Ex. No. DPY-1 at 36. AGL points out that if all shippers elect to acquire the more flexible ESS service, Transco's emergency *force majeure* commitment would be eliminated. Additionally, AGL contends, those shippers who did not take advantage of the additional ESS rights would be able to get emergency Eminence service only up to the amount Transco would be required to maintain after existing shippers make their elections. *Id.* Lastly, AGL draws a distinction between its own and Staff's proposal: under Staff's proposal, all Emergency Eminence Service costs would be allocated to the unbundled service and none to the FT shippers; whereas under the AGL proposal, Emergency Eminence Storage Service would be unbundled and combined into Rate Schedule ESS storage rights.

230. Regardless of the distinctions between the two proposals, Transco rejects both, asserting that neither Staff nor AGL has met its burden to show that Transco's current bundling of Eminence storage costs to the emergency service is unjust and unreasonable. Transco alleges that in Transco's current compliance filing, Emergency Eminence Storage Service will be allocated only to FT shippers with mainline entitlements at Covington who are eligible for the service. Ex. No. T-49 at 13.

231. In Transco's opposition to Staff's proposal, Transco claims that Staff has not demonstrated any reason to "fundamentally change the character of the Emergency Eminence Storage Service." Transco I.B. at 50. Transco claims that the Emergency Eminence Storage Service serves as an "insurance policy" for FT customers and FT-R replacement shippers in the event of supply emergencies. *Id.* at 51. Because of this function, Transco asserts that its current billing determinants are appropriate for the existing charge.

232. In its opposition to AGL's proposal, Transco maintains that after implementation of such a proposal, the "insurance" FT customers currently enjoy from this service would no longer be available. Particularly, Transco notes, it would not be available to new FT customers to the extent that other FT customers chose to take an allocation of the Eminence capacity, or to FT-R customers that took capacity releases from customers that had taken Eminence capacity on a contract basis. *Id.* at 51.

233. Lastly, Transco notes an additional impact of either of the proposals that it would incur and increased risk of cost recovery by placing Transco at risk for any Eminence capacity that might go unsubscribed at the end of a customer's contract term.

234. In resolving this issue, the first consideration I must make is the impact of the parallel proceeding on this issue in RP95-197-000, *et al.* and the procedural history between the Judge's issuance in 1998 in that docket and today. Staff's representations on that proceeding are correct – the Judge in that proceeding found that:

> A. Firm shippers which are eligible to use receipt points only on the Leidy Line in Pennsylvania and delivery points downstream in the market area are unable to use Eminence Storage as an emergency backup during *force majeure* events and accordingly should not be required to pay for this separately identifiable service in Transco's firm transportation rates.
>
> B. Unbundling the cost of Emergency Eminence Storage Withdrawal Service from Transco's firm transportation rates and separately charging shippers which are eligible to use the service is consistent with the Commission's

> unbundling policy and regulations.

Staff I.B. at 43, *citing Transcontinental Gas Pipe Line Corp.*, 82 FERC ¶ 63,019 at 65,192 (1998). Further, the Commission upheld the Judge's decision in *Transcontinental Gas Pipe Line Corp.*, 87 FERC ¶ 61,087 (1999), *reh'g denied* 94 FERC ¶ 61,362, *reh'g denied* 95 FERC ¶ 61,388 (2001). On August 30, 2002, Transco made a limited section 4 tariff filing to revise its rates effective October 1, 2002 to comply with Commission orders in the RP95-197 *et al.* docket, and included in its filing tariff sheets to comply with the Commission's section 5 finding that Transco must unbundle the costs of its Emergency Eminence Withdrawal Service.

235. On September 30, 2002,[38] the Commission issued an "Order Accepting and Suspending Tariff Sheets Subject to Refund and Conditions." *Transcontinental Gas Pipe Line Corp.*, 100 FERC ¶ 61,377 (2002). In that Order, the Commission required, among other things, Transco "to refile tariff sheets within 15 days of the issuance of this order, in a separate filing that complies with the directive to unbundle the Emergency Eminence Withdrawal Service storage costs." *Id.* at 62,687.

236. On October 15, 2002, Transco made a filing in compliance with the directive mentioned above. *Transcontinental Gas Pipe Line Corp.* Docket Nos. RP95-197-042, *et al.* Compliance Filing, dated October 15, 2002. Critical language appears in that filing that has a direct impact on this proceeding. In the cover letter of its filing, Transco states:

> Accordingly, the instant filing to implement the unbundling for the costs of the Emergency Eminence Service as a result of the ruling in Docket No. RP95-197 is a matter entirely separate from any potential, prospective proposals for unbundling in the Emergency Eminence Service itself in Docket No. RP01-245.
>
> * * *
>
> Section B of Article VII of the RP01-245 Agreement also expressly acknowledges the existence of the reserved issues from the RP95-197 Agreement, and provides that 'this [RP01-245] Agreement does not resolve those issues. . . Such issues shall be resolved pursuant to the Docket No. RP95-197 hearing proceeding . . . with the final resolution of those issues to be made effective as indicated in Section B of Article VI of the [RP95-197 Agreement].' That provision of the RP01-245 Agreement clearly recognizes that **the issues**

[38] Fifteen days after the filing date for Reply Briefs in this proceeding.

> **pertaining to the Emergency Eminence Service in each respective proceeding are different issues on separate and distinct procedural paths.** [emphasis added].

Id., page 3. Here, Transco clearly states that the Emergency Eminence Storage Service at issue in the instant proceeding is a different issue than that in the RP95-197 docket. However, it must be noted that in its arguments against unbundling on the record in this case, Transco states that "the costs of the Emergency Eminence Storage Service and the design of rates for such service were recently decided in certain of Transco's recent general rate dockets. [Citation omitted]. In Transco's compliance filing in those dockets, the costs of Emergency Eminence Storage Service will be allocated only to FT shippers with mainline entitlements at Covington who are eligible to use the services."

Discussion

237. It is clear on the face of these filings by Transco, that it is attempting to play one proceeding against the other, hoping for the Commission not to notice. Transco should have been aware of what it claimed in its Initial Brief and Reply Briefs (filed on August 28, 2002 and September 17, 2002, respectively) and what it represented in its October 15, 2002 compliance filing with the Commission. In one, Transco claims that the RP95-197 proceeding will resolve all matters related to this issue; in the other it claims that the issues in each proceeding have no overlap and are separate and distinct. Unfortunately, Transco cannot have it both ways.

238. Although Transco has overtly represented that these two proceedings are separate and distinct, Transco has asserted that its compliance filing will establish that the cost of Emergency Eminence Service will be allocated only to FT shippers with mainline entitlements at Covington who will be able to use that service. However, as Staff points out, Transco has still maintained that "the billing determinants that Transco presently uses. . . are the appropriate determinants for designing the Emergence Eminence Storage Service charge." Staff R.B. at 19, *citing* Transco I.B. at 51. Therefore, it appears as though Transco is maintaining that the only appropriate billing determinants are the ones that assign the costs to all shippers. Therefore, I can only conclude that these are conflicting representations by Transco. Though I am bound to use the record before me as the basis for my conclusions, I must take notice of other Commission decisions or issuances on matters related to those in this case.

239. That said, I must conclude that Staff and AGL have effectively shown that the existing allocation by Transco is unjust and unreasonable. Transco, on brief, has maintained that its various filings in the parallel docket since this case began, and even since the Initial Briefs were filed, demonstrate that it proposes that the Emergency Eminence Service charge shall only apply to those contracts that have Transportation

Contract Quantity (TCQ) entitlements at the point on Transco's mainline system where Transco's facilities interconnect the Eminence Storage Field facilities. Staff R.B. at 20. However, as Staff has pointed out, Transco makes no attempt to show in its related tariff sheets in these filings just how it plans to do that, because the filings do not contain any related volumes or billing determinants. *Id.* As Staff accurately states, without an explanation of its intentions with regard to unbundling and without tariff sheets to clarify, it is impossible to determine how Transco developed the unbundled Emergency Eminence service rate. *Id.*[39] Equally important, as Staff also notes, is the distinction that Transco made between unbundling the Emergency Eminence *charge* and unbundling the Emergency Eminence *service*. *See* Tr. 1437-38. This distinction makes it even more difficult to assess Transco's position in the filings it claims would resolve this entire issue. Staff R.B. at 21.

240. In addition, permitting Transco to separately state the costs of Eminence without also having a separate service associated with that allocation places the form of the operation ahead of the true substance of the Commission's purpose for ordering the unbundling in the first instance. Transco uses a play on words in its attempt to put off the true unbundling of the ordered Eminence Storage service. (Granted the parties may have settled to hear the unbundling of the service aspect in this case, but Transco continues to blur this fact with language meant to confuse the parties and the Commission). Transco has been on notice for some time to implement this unbundling and the Company has been dragging its feet ever since. The unbundling objective by the Commission was enacted to ensure that only those customers who truly use or benefit from the costs included in a particular service should have to pay for that service or facility used. This objective furthers the goals of shielding transportation customers from monopoly power abuse by a pipeline and providing transparency of prices for services to customers. Doing so enhances the forces of competition in the transportation market place. Merely separating stating the Eminence rate component for FT service on a tariff sheet will not attain this objective. Transco's avoidance tactic in this case is just a window dressing of the same situation as it stood before – FT customers would continue to be forced to pay an amount for the Emergency Eminence storage cost which is not commensurate with any potentially associated benefit received from this facility. Furthermore, Transco's gaming of the Commission's orders between the separate dockets must come to an end.

241. Therefore, I must conclude, contrary to Transco's claim, that the proceeding in Docket No. RP95-197 *et al.* will not resolve this issue on the record before me.

---

[39] In the Transco October 15 filing to the Commission, the Company has included work papers which appear to remove certain FT customer entitlements in designing the charges for Emergency Eminence service. See Compliance Filing at Appendix B pages 1-2. However, that filing remains under review by the Commission. Furthermore, that filing does not, by Transco's own statements, resolve the questions surrounding the appropriate unbundling of the Emergency Eminence Service.

Accordingly, I find that Staff has proposed the most efficient, fair, and feasible approach to unbundling the Emergency Eminence Storage costs. Staff's proposal is to charge the unbundled rate to only those shippers who elect to use the service, not as AGL would charge those eligible but who do not choose to use the service. Staff's proposal fairly addresses Transco's concern of who will absorb the costs of the unbundled but not fully subscribed service. Although Staff based its calculations on a fully subscribed Emergency Eminence Service, it proposes that any unsubscribed portion could be recovered from ISS shippers or Transco could offer a new Eminence storage service based on the unsubscribed deliverability and capacity. Ex. No. S-53 at 13. If these methods continue to leave unsubscribed capacity then Transco will be at risk for the costs and appropriately so.

242. Moreover, the Staff's approach to unbundling is more equitable than the approach suggested by AGL, because the AGL proposal goes beyond the Commission's current requirement. Specifically, under AGL's approach, once the FT shippers make their one time election and Transco's aggregate *force majeure* obligation is reduced, if all shippers do elect to acquire the ESS rights, Transco's emergency Eminence *force majeure* obligation would be eliminated. *See* Ex. No. DPY-1 at 36. Whereas under the Staff proposal, if the Emergency Eminence Service is not fully subscribed, costs related to any unsubscribed portion could be recovered from ISS shippers and Transco could offer a new Eminence storage service based on this unsubscribed delivery and capacity. *See* Ex. No. S-53 at 13. Rather than eliminating the emergency service as AGL suggests and maintaining an allocation of Eminence storage costs to FT shippers, I find that it is more appropriate to have it re-packaged as Staff proposes. Staff's method complies fully with the unbundling of services policy of the Commission because it allocates costs only to those FT shippers who actually sign up to use the service.

243. Finally, Staff, AGL, and TMG persuasively justify change in the character of the Emergency Eminence Storage Service because, as each accurate state, there is no operational or other justification for the continued bundling of this service. Furthermore, as noted above, unbundling of this rate is fully consistent with the Commission's policies that support unbundling of services to the fullest extent practicable. Moreover, unbundling in this situation would advance the Commission's objective to requiring customers who actually use the service to pay for that service.

ISSUE X: INCLUDING THE DESTIN SHUBUTA INTERCONNECT AND OTHER RECEIPT POINTS AS PART OF THE STATION 85 POOLING POINT

244. This issue surrounds Transco's current policies regarding access to its pooling point at Station 85 in Zone 4 of its system. BP argues that the "physical" pool point at Station 85 is unjust and unreasonable, and BP offers a "paper" pooling proposal as an

alternative to the existing situation. Transco, on the other hand, argues that BP is looking for free transportation between the Destin interconnect and the Station 85 pooling point.

245. The Station 85 pooling point is the only physical pool located in all of Transco's zone 4 and only shippers with delivery into the point may use the pooling service. Station 85 is also the receipt point where the Mobile Bay Pipeline connects with Transco's mainline. The pool was created in January, 1992, after the construction of the Mobile Bay Lateral. At that time, the Mobile Bay Lateral was the only major production lateral in Zone 4. That has changed since the construction of the Destin pipeline in 1994. Destin constitutes a new supply source entering the Transco system in Zone 4.

246. BP argues that the current pooling point is unjust and unreasonable for many reasons. Primarily, BP argues that the unjustness and unreasonableness of the pooling point by maintaining that the Commission requires "effective" pooling on pipeline systems; that the existing pooling structure is unduly discriminatory; that the current system is in violation of various Commission policies; and that the Commission has refused to allow Transco to restrict pooling on its system. BP I.B. at i-ii.

247. First, BP maintains that the Commission requires that pipelines allow for "effective" pooling on their systems. *Id.* at 8. BP maintains that Order 636 requires pipelines not to adopt policies that would inhibit the development of pooling points and marketing centers on their systems. *Id.*, *citing* Order No. 636, FERC Stats. and Regs., Regs. Preambles 1991-1996, ¶ 30,939 (1992); Order No. 636-B, 61 FERC ¶ 61,272 (1992). BP alleges that since the issuance of Order 636, the Commission has gone even further, and the current standards require that gas can be both delivered from receipt points into at least one pool and received at a delivery point in at least one pool. *See* 18 C.F.R. § 284.10(b) (1) (i), Nominations Related Standards 1.3.17 and 1.3.18; *Order No. 587-F*, FERC Stats. and Regs., Proposed Regs., ¶ 32,527 (1997).

248. BP witnesses Holligan and Swanson espouse the value of pooling when they testified that supply aggregation at a pool provides benefits to both the buyer and seller of natural gas. Those benefits include: increased competition and market liquidity; a reduction in administrative burdens related to gas transportation achieved through flexible scheduling of transportation and the management of scheduling variation; the facilitation of imbalance management; enhanced transactional efficiency regarding the purchase and sale of natural gas; and title transfer tracking related to the pool-to-pool transfer of gas supplies among buyers and sellers at the pool. BP I.B. at 10.

249. BP contends that the pooling at Transco's Station 85 pooling point is unjust and unreasonable because the existing practice at the pooling point is for actual, physical transactions to take place at the pooling point. BP argues that all other major pipelines, in similar size, customer make-up, and volumes, provide "virtual" or "paper" pooling at their pooling points. *Id.* BP describes paper pooling as an accounting method where gas

supplies are aggregated from multiple receipt points to one conceptual point, on paper. This, contrasts BP, is opposed to actual, physical aggregation of the gas. *Id.*

250. The design of the Station 85 pool, combined with the fact, BP alleges, that only entities permitted to access the pool without paying an additional Zone 4 transportation rate are shippers on the Mobile Bay Pipeline. *See* Ex. No. BP-23 at 17; Ex. No. BP-28 at 27; Tr. 538, at lines 13-25. Therefore, BP concludes, all other shippers from other mainline receipt points in Zone 4 have to pay a Zone 4 transportation charge to physically transport gas in order to use the pool. This, BP maintains, constitutes undue discrimination because the terms governing the access to the pool are not all Zone 4 shippers. *Id.* at 12.

251. BP argues that this alleged undue discrimination goes a step further because Transco's marketing affiliate, TEMCO, is the primary beneficiary of the current pool structure in Zone 4 that, BP maintains, allows free access to the pool only for Mobile Bay Pipeline shippers. BP maintains this violates the Commission's regulations governing affiliate relationships. *Id.* BP notes what is undisputed on the record: shippers entering Transco's system from the Mobile Bay Pipeline are the only parties delivering gas into Zone 4 that have free access to the Zone 4 Pool. Further, TEMCO is the dominant shipper on the Mobile Bay Pipeline – it holds 100% of the firm capacity in Zone 4B, and 58% of the contracted firm capacity on the Mobile Bay Lateral in Zone 4A. Ex. No. BP-28 at 29.

252. The existing pooling structure gives TEMCO a competitive advantage over the Destin and DIGS shippers. Currently, TEMCO enjoys more than a $0.10/Dt advantage over Destin shippers and a slightly more than a $0.12/Dt advantage over DIGS. *See* Ex. No. BP-3 at 38. This, BP maintains, is a significant advantage because it gives TEMCO a $0.10 margin to use to attract gas on the MBX. *Id.* Moreover, BP argues that if TEMCO sells a package of gas services in which the price for the transportation component matched the Destin rate, then TEMCO would receive a $0.10/Dt profit over its own transportation rate on the Mobile Bay pipeline. *Id.*

253. BP further argues that Transco perpetuates undue discrimination in that the current pool structure raises economic barriers to pooling service for off-system gas. *Id.* at 13. BP argues on this point that shippers from other Zone 4 mainline receipt points are effectively denied access to the Station 85 pool because Transco requires them to pay transportation charges to physically deliver gas to Station 85 to use the pooling service. BP acknowledges that a one-way charge to the pool is permitted, but urges that the flaw in Transco's practice is the requirement that the gas must be physically shipped to the pool. *Id.* BP argues that Transco has acknowledged that the pooling point was created in 1992, that the Destin interconnect did not connect until 1999, and that the Destin interconnect is the second largest in Zone 4. *See* Tr. 540. After all of these considerations are acknowledged, maintains BP, Transco gives no indication why the

same pooling procedures offered to the Mobile Bay shippers are not offered to shippers from other Zone 4 receipt points. *Id.* at 14. BP maintains the same procedures are not offered because the shippers from other receipt points are not using Transco-owned facilities. *Id.* at 15. This denial of equal access, contends BP, violates Commission Orders 436 and 636, which are premised upon equal access principles. *Id., citing* 18 C.F.R. § 284.7 (b) (2001).

254. BP's last prong of its undue discrimination argument is that the existing structure of the pooling point denies benefits of pooling to Transco's existing, mainline shippers, unless they physically purchase gas at Station 85. *Id.* at 16. On this point, BP maintains that mainline shippers, who have paid for firm capacity from Station 65 down to and beyond Station 85, cannot economically pool gas in Zone 4 that is obtained at Zone 4 receipt points other than the Mobile Bay Pipeline receipt point at Station 85. *Id.* BP asserts that these shippers can purchase gas at other points, but then they effectively lose the access to pooling.

255. BP alleges that these shippers lose this access because they would have to pay a second Zone 4 transportation charge when using the Zone 4 pool at Station 85. BP asserts that Transco's witness Cunningham conceded this "double" charge in his cross-examination testimony. *See* Tr. 540; Tr. 732.

256. BP's second attack on Transco's existing pooling structure is that it violates current Commission pooling regulations and policies. First, BP maintains that the existing structure allows Transco to charge twice for pooling, as mentioned above. BP alleges these charges – one to bring gas into the pool, and one to take the gas out of the pool, downstream – violates Commission Order No. 587-F, where the Commission held: "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." *Order No. 587-F*, FERC Stats. and Regs., Regs. Preambles ¶ 32,527 (1997). BP maintains that this "double charge" imposed by Transco violates Order No. 587.

257. Additionally, BP attacks Transco for violation of FERC regulations and policies is based on BP's claim that Transco does not allow access to the pool from multiple receipt points. BP I.B. at 18. As previously described, the pooling point for Zone 4 exists exclusively at Station 85, and the Mobile Bay Pipeline is the only interconnecting pipeline at Station 85. BP argues that Transco witness Cunningham describes the Transco version of pooling as that pooling points are set up at certain station numbers, and the producer/customer can deliver gas to that point, aggregate their supplies there, are re-package for their customers. *See* Ex. No. T-52 at 59. However, BP's own witness Swanson maintains that this description of pooling does not conform with the Commission's definition of pooling. BP I.B. at 19. Witness Swanson argues that the Commission definition of pooling requires the aggregation of supply from multiple receipt points. *See* Ex. No. BP-28 at 16.

258. BP relies on a recent Commission decision where the Commission rejected a proposal by Kern River that limited access to pooling to just one physical point, on the ground that it violated GISB's definition of pooling. BP I.B. at 19. BP argues that just as the Commission rejected a single pooling point in *Kern River*, it should similarly reject the Station 85 pool because the its structure forces shippers to individually nominate delivery and receipt points, which the Commission rejected in *Kern*. *Kern River Gas Transmission Co.*, 98 FERC ¶ 61,079 (2002).

259. Lastly, BP argues that the existing structure at Station 85 violates Commission regulations and policy because it inhibits competition. BP I.B. at 20. BP relies on its witness Swanson's analysis of the Herfindahl-Hirschman Index (HHI) to determine the relative competitiveness of the Station 85 pool. Witness Swanson concluded that the current HHI is 4423, which indicates a very highly concentrated market. *See* Ex. No. BP-28 at 34. According to the HHI analysis, the standard reflecting a competitive market is an index rating between 1000 to 1800. *See* BP I.B. at 21. BP argues that the current rating of 4423 clearly demonstrates the severe lack of competition at the Station 85 pooling point. BP then offers a comparison index of 1931, conducted by witness Swanson, that includes all Zone 4 upstream points and Station 85. BP draws the comparison that by adding the upstream points, the level of competition increases significantly, although it still lies outside the standard of a competitive market. BP I.B. at 21-22.

260. Transco, in its opposition to BP's position, maintains that changes to the Station 85 pooling point are unwarranted and that BP has not shown that the current structure is unjust or unreasonable. Transco I.B. at 52. Transco asserts that its pooling points have been "designed consistently across its system, primarily at junctures with major supply laterals and pipeline interconnections." *Id., citing* Ex. No. T-52 at 58-59. Transco maintains that all mainline capacity within Zone 4 is fully subscribed on a firm basis, so that contracting for new firm transportation service from Shubuta to the Station 85 pool is not feasible. Further, Transco maintains, any shipper holding capacity in Zone 4 may, using secondary receipt point rights under the FT service agreements, access upstream Zone 4 interconnections at no extra charge. *See* Ex. No. T-52 at 61.

261. Transco avers that BP has not shown that Shubuta shippers would make use of the pooling point at Station 85. Further, Transco argues that BP has not provided any evidence that Transco provides free transportation to the pooling point in other pooling arrangements on its system. Transco I.B. at 53. Additionally, Transco notes that the "operational reality" is that the conveniences offered at Station 85 pooling are primarily administrative in nature, such that an upstream shipper would have no interest or reason to pool at Station 85. Transco maintains that the real reason BP is seeking to change the existing pooling structure is to avoid payment of Transco's Zone 4 IT rate. Transco I.B. at 54, *citing* Ex. No. T-52 at 62. Transco argues that the intended and actual result of

installing a "virtual" pooling point at Station 85 would be to permit shippers that deliver gas at Destin or Shubuta, or any other upstream delivery point, to gain access to Station 85 without paying for transportation for nearly 129 miles. *Id.* at 54.

262. Transco maintains that the price differences that BP asserts are due primarily to a function of Destin's lower quality of service to Shubuta, rather than the existing pooling structure at Station 85. Furthermore, Transco argues that since such large offshore volumes are offloaded at Shubuta, despite four other large capacity interconnections at other interstate systems, BP cannot support its claim that the structure at the Station 85 pool is anticompetitive or impedes market development. *Id.* at 55.

263. Transco maintains that the current structure at Station 85 is consistent with its FERC-approved rate structure and is no more discriminatory than requiring different rates or rate designs for different types of service. Transco relies on the Commission's decision in *Williams Natural Gas Co.*, where the Commission recognized that pooling points are "merely intended to provide shippers the administrative convenience of supply aggregation; they are not a vehicle for avoiding charges for transportation services." *Williams Natural Gas Co.*, 80 FERC ¶ 61,085 at 61,299 (1997).

264. Additionally, Transco points out that the Commission has addressed the issue posed by BP here in Transco's 1997 compliance tariff filing in Docket No. RP97-159-000. Transco maintains that the Commission rejected a proposal similar to that which is raised here by BP. In that decision, Transco asserts, the Commission explicitly stated that using IT transportation to get supplies to a pooling point is in accordance with the GISB standard. Transco I.B. at 56. Transco maintains that it incurs costs when gas entering the system from Destin uses the Transco mainline to reach downstream points (including Station 85). Transco emphasizes, that because it incurs costs, it is completely reasonable that an additional interruptible transportation charge is imposed. *Id.* at 57.

265. Finally, Transco asserts that the virtual pool proposal by BP is "nonsensical." *Id.* Transco contends that the virtual pool that BP proposes puts Transco at risk for cost recovery by eliminating the IT transportation revenues that are currently accounted for on Transco's system. Moreover, Transco maintains that a shift to a virtual pool of all Zone 4 interconnects would substantially decrease the need or demand for Zone 4 interruptible transportation. *Id.* It follows, Transco argues, that the corresponding costs currently allocated to Zone 4 interruptible transportation initially would be lost and eventually would be reallocated to Transco's FT shippers. *Id.* at 58. Transco maintains that the end result of this "virtual" pool structure would be an effective conversion to a "firm-to-the wellhead" design. Tr. 738. Transco claims that its exposure to cost risk recovery is not justified, because BP has not addressed how such a virtual pool would be implemented. Transco maintains that BP has not met its section 5 burden on this issue.

Discussion

266. I construe BP's arguments as meeting its NGA section 5 burden, and therefore find Transco's existing structure at the Station 85 pooling point to be unduly discriminatory and thereby unjust and unreasonable. I also find that BP's proposed "paper" or "virtual" pooling is a just and reasonable alternative to the existing pooling structure. First, I find the existing structure unjust and unreasonable because it is unduly discriminatory and because it appears to violate the Commission's most recent regulations and policies for pooling.

267. Undue discrimination is brought to the forefront on this issue, as BP has demonstrated that Transco does not treat all of its pooling points consistently across its system. Through testimony by Transco's own witness Cunningham, I cannot agree with Transco that it treats all pooling points consistently. On cross-examination, witness Cunningham conceded that no other pool on the Transco system, but the Zone 4 pool, allows a shipper to access the pool without paying the zone rate for the zone in which the pool is located. *See* Tr. 553 at 23.

268. Additionally, Transco's current structure at Zone 4 for customers who bring in gas from other than the Mobile Bay Lateral must pay a Zone 4 transportation charge to transport the gas to the Zone 4 pool, and the downstream shipper must pay another transportation charge to transport the gas from the pool further downstream. This double charging is unjust and unreasonable, impedes competition, and further growth of its own use. This not only contradicts existing Commission policy on pooling, but is an economic deterrent to pooling at Station 85. Again, Transco's witness Cunningham described on cross-examination that Transco charges a transportation charge to come into the pool and one to come out of the pool. Tr. 546 at 4-10. According to Commission Order No. 587-F, a charge can be incurred for shipment into or out of the pool, but not for both. *Order No. 587-F*, FERC Stats. and Regs., Regs. Preambles ¶ 32,527 (1997). Therefore, Transco's economic barrier to the Zone 4 pooling point at Station 85 is unjust and unreasonable.

269. Here, I must recognize the Commission's previous acknowledgement of Transco's prior attempt at limiting access to the pooling point in a proposed transmission rate schedule, the Firm Transportation Supply Lateral (FTSL). There, the Commission found that the proposed FTSL service was unjust and unreasonable because it failed to provide shippers with their full rights to use flexible receipt and delivery points, and it failed to permit adequate opportunity for shippers to access pooling at the Station 65 pooling point. *Transco FTSL Orders*, 86 FERC ¶ 61,175 (1999). Just as the Commission rejected Transco's attempt to limit pooling at Station 65, it would be unjust and unreasonable to limit access to pooling at Station 85.

270. Also, in *ANR Pipeline Co. v. Transcontinental Gas Pipe Line Corp.* the Commission ordered Transco to interconnect with ANR because the Commission found that by Transco's refusal to interconnect limited ANR's shippers access to Station 50 at reasonably competitive rates. 91 FERC ¶ 61,066, *order denying reh'g*, 93 FERC ¶ 61,277 (2000). The Commission further stated that it is the Commission's obligation to foster the competitive process and protect it, and making supplies available at pooling points does exactly that. *Id.* at 61,240. Just as the Commission required Transco to interconnect with ANR, Station 85 must be opened to just and reasonable pooling for all shippers in Zone 4.

271. Lastly, it must be noted under this undue discrimination analysis that Transco has affiliate relationship with TEMCO, the only shipper in Zone 4 who does not pay an interruptible transmission transportation charge to move its gas to the Zone 4 pooling point at Station 85. Transco has attempted to show that BP's only reason for seeking reconfiguration of the Zone 4 pooling point is so that it can avoid paying an IT rate to the pool in Zone 4. I believe that this is a mischaracterization of BP's goals and is an attempt by Transco to deflect the impact of its relationship with TEMCO and its effect on the Station 85 pooling point. Notably, the Commission in Order No. 636-B has determined that a market center could encompass a 30-mile radius around a central point. *Order No. 636-B*, 61 FERC at 62,012. Therefore, the Destin pipeline interconnection on Transco, which is approximately 27 miles from the Mobile Bay Pipeline interconnection, qualifies as operating within the same "market center," and should not be denied equal access, either physically or economically, to the Zone 4 pool.

272. Nowhere in Transco's pleadings does it acknowledge that TEMCO is the only shipper that does not have to pay an additional transportation charge to get its gas to the Zone 4 pool. As discussed in Issue VI, Transco's affiliate relationship with TEMCO colors any attempt Transco makes at claiming that the pooling structure is just and reasonable and not unduly discriminatory. As stated, *supra*, in Issue VI, TEMCO is the sole subscriber to capacity at the Mobile Bay facility, and has been since WESCO, another affiliate of Transco, transferred all of its capacity to TEMCO. As I see it, Transco is making another attempt to protect its affiliate, while clinging to the argument that it will be at risk for cost recovery. This argument, however, does not counter-balance the affiliate relationship that exists between Transco and TEMCO. TEMCO is the sole beneficiary from Transco's efforts to maintain the status quo at Station 85. Transco treats all other shippers who seek to pool at Station 85 differently than it treats its affiliate, TEMCO. This treatment, on its face, is unduly discriminatory and is unjust and unreasonable.

273. Transco has erected various economic barriers to competition at the Zone 4 pooling, and those economic barriers, along with the affiliate relationship that exists between Transco and TEMCO, demonstrate that the existing pooling structure at Zone 4, Station 85 is unduly discriminatory and unjust and unreasonable.

274. In addition to the existing pooling structure being unduly discriminatory, Transco's current policies controlling the pooling point appear, on their face, to violate the Commission's recent policies regulating pooling points. As briefly stated earlier, Transco has two transportation charges for its pooling point at Station 85. According to the Order No. 587-F, "[w]hen a pool exists in a rate zone, the charge for the shipment in that zone must be incurred either for shipment to the pool or shipment out of the pool." Order No. 587-F, FERC Stats. and Regs., Regs. Preambles ¶ 32,527 (1997).

275. What is more, because the Zone 4 pooling point is a single, physical point at Station 85, and there are no other receipt points except for the Mobile Bay lateral, the Zone 4 pool does not include multiple Zone 4 receipt points. *See* Ex. No. T-52 at 6-9. This configuration, argues BP, and I agree, does not conform with the Commission's definition of pooling. The Commission requires aggregation of supply from multiple points. Though Transco claims that other shippers can access the pooling point, they can only do so if they pay an additional charge, though shippers who enter at Mobile Bay do not. In addition to this being an economic barrier, it also violates the Commission's recent decision in *Kern River*. 98 FERC ¶ 61,079 (2002). There the Commission rejected Kern River's attempt to limit pooling access to a single point on the system by stating that such a limitation circumvented the Commission's intention of pooling, by limiting or even eliminating all the benefits of aggregating supplies from multiple points. *Id*. at 61,240. Transco is attempting the very same limitation with its current pooling structure at Zone 4. Destin, as the second largest supplier in Zone 4, is severely limited by this lack of access to pooling, because it is essentially excluded from aggregating the incoming gas with gas from other points in Zone 4.

276. Transco argues that its current structure complies with its FERC-approved rate schedule. I do not disagree. However, the situation has evolved, developed, and grown since the pooling point was built in 1992. At that time, I have no doubt that the structure was appropriate to meet the needs of the customers within Zone 4 and met the then-vague policies regarding pooling. However, the additions of the Destin interconnect in 1999 and the evolution of the Commission's view of pooling cannot be ignored. The market within Zone 4 has changed, and the Commission's view of pooling has, likewise, evolved. Therefore, the structure of the pooling point within Zone 4 must also be updated to serve the industry and to meet the expectations of the contemporary natural gas marketplace.

277. The proposal that BP offers does just that. "Paper" or "virtual" pooling is an administrative supply aggregation service, separate and apart from a physical transportation service. According to BP, physical transportation would continue in accordance with the receipt and delivery point rights of shippers on Transco's system. BP's proposal is a method that will promote competition in the natural gas market through reasonable, non-discriminatory, and economic access to pooling, not "free"

transportation. Under the BP proposal, buyers and sellers using all Zone 4 receipt points downstream of Station 65 and upstream of, including, Station 85, would have access to the Zone 4 pool on equal terms. BP I.B. at 26. Additionally, suppliers and marketers, who may not be transportation customers, would be able to enter into pooling agreements, separate and distinct from transportation agreements. *Id.*

278. I find that this proposal offered by BP would infuse more gas supplies, suppliers, and marketers into the pooling process broadening the market, and helping to make it more competitive, liquid, and efficient. Creating a larger market would also dilute the existing market power, which currently and specifically benefits, unfairly, an affiliate of Transco. In doing so the HHI for market concentration will be reduced, a positive and desirable outcome. Ultimately, the paper pooling proposal also promotes the development of market centers and pooling, complimenting the Commission's directives in Order No. 636.

279. Lastly, I can comfortably conclude that the proposal offered by BP is just and reasonable, because it is comparable and consistent with other virtual pooling designs on other, similarly situated pipelines. *See* Ex. No. BP-23 at 36. Furthermore, the proposal by BP does not negatively impact Transco's customers or Transco's existing transportation arrangements. Contrary to what Transco claims, the paper pooling proposal would not require Transco to provide additional capacity, because there is not independent, physical transportation associated with a virtual pool. Only under separate transportation agreements would actual capacity be relevant, not under the paper pool. Similarly, the location of the actual pooling point is not a critical factor in a virtual pooling system. Again, because only the rights of the shippers under the transportation agreements are relevant for ranking purposes, no services would be eroded no matter where the pooling point is located. Moreover, the existing service would not "dismantle" or deteriorate the existing service on Transco's system, nor would it leave Transco at risk for unsubscribed IT rates. In BP's proposal, IT rates would be continue to be paid by shippers accessing the virtual pool from the production laterals.

ISSUE XII: ALLOCATION OF COSTS TO TRANSCO'S INCREMENTALLY PRICED TRANSPORTATION SERVICES AND TO TRANSCO'S BUNDLED STORAGE SERVICE

280. This issue surrounds how Transco allocates transmission operation and maintenance (O&M) and administrative and general[40] (A&G) costs among non-

[40] A&G costs include administrative wages and salaries, rent expenses, insurance, office supplies, employee benefits, regulatory commission expenses, and other administrative costs. A&G costs cannot be directly assigned, nor easily identified, with any particular pipeline service function such as transmission, gathering or storage. *See*

incremental transportation, incremental transportation and the transportation component of GSS storage service. Staff and Indicated Shippers propose that Transco change its existing allocation method, while Energy Associates supports the currently applicable method, although it maintains the "10% override" to A&G costs should not be applicable to incremental services.[41] Transco, however, maintains that no party has upheld an NGA section 5 burden to change the existing allocation method used by Transco.

281. As it stands, Transco allocates transmission O&M and A&G costs among non-incremental transportation, incremental transportation, and the transportation component of GSS storages services using factors based on demand Dth-miles and commodity Dth-miles.[42] Transco then increases the Dth-mile allocation to incremental and GSS services costs by 10% and correspondingly reduces by the same amount the costs allocated to non-incremental services. *See* Ex. No. T-8 at 10; Ex. No. S-1 at 65-66; Tr. 508. Then, Transco allocates these system assigned transportation O&M and A&G costs among rate zones using for the O&M costs Dth-miles and for the A&G costs contract demand and commodity volumes (a volume only and non-mileage based approach) related factors. Staff I.B. at 49, note 125.

A. Allocation of O&M Expenses to Incremental Services

282. On the allocation of O&M costs, Staff maintains that Transco's assignment to incremental services based on Dth-miles is unjust and unreasonable. Staff. I.B. at 54. Staff highlights that the allocation of A&G costs and O&M costs are two separate steps in the ratemaking process, and must be treated separately. *Id.* According to Staff, apportioning the O&M costs between the incremental transportation sub-function and the non-incremental sub-function is a cost of service functionalization step that must be completed before designing rates, and requires that the costs be correctly identified with the sub-function in which they belong. *Id.* Here, Staff maintains that the O&M costs should be directly assigned (not allocated) because they are direct costs. For the rate design step of the process, Staff then agrees with Transco's current method for spreading O&M system costs among rate zones. That is only once the O&M costs have been identified and assigned to separate sub-functions. *Id.* at 55. Staff seeks that Transco be ordered to maintain its accounting records into the future so that O&M costs, and any other direct costs attributable to each incremental service, can be directly assigned to those services. *Id.* at 49.

Staff I.B. at 50, note 129.

[41] On brief, Energy Associates did not pursue this analysis, therefore the arguments are deemed abandoned.

[42] This means contract demand and commodity volumes multiplied by contract path miles.

283. Staff maintains that Transco's current allocation does not accurately identify the O&M costs associated with incremental transportation facilities. *Id.* This is so, according to Staff, because the Dth-mile factor is composed of the contract path miles between service receipt and delivery points used by the incremental shippers. Further, these contract path miles are significantly different than the actual physical miles of the incremental pipeline projects. This, then, results in a mismatch of cost incurrence and cost responsibility, as the Dth-mile allocation includes the O&M factors associated with services and facilities other than the costs of the incremental projects themselves. *Id.* at 55.

284. Staff further maintains that the Dth-mile based factors are also inappropriate to use in allocating O&M costs to incremental projects on the Transco system that solely involve construction of compressor stations or added compression. According to Staff's witness Burtt, no relationship exists between a mileage-based Dth-mile factor and compressors incremental functions which have no associated miles of pipe. *Id.* at 56. This application of the Dth-mile, Staff concludes, is arbitrary and results in subsidies among transportation shippers.

285. Staff's proposal to directly assign O&M costs is the only way to insure that some customers will not be subsidizing the services of other customers, in the Staff's opinion. *See* Ex. No. S-1 at 69; Ex. No. S-50 at 4; Ex. No. S-56 at 3. According to witness Burtt's testimony, this issue is critical, especially in light of the Commission's current policy under the 1999 Certificate Policy Statement that requires that incremental expansion projects stand completely on their own, without any financial subsidy from existing, pre-expansion shippers. *Policy Statement Concerning Certification of New Interstate Natural Gas Pipeline Facilities*, 88 FERC at 61,746 (1999), *order clarified*, 90 FERC at 61,391-94, *order clarified*, 92 FERC ¶ 61,094 (2000). Witness Burtt determined that O&M costs not directly assigned were quite significant, constituting over 18.5% of the total incremental cost of service, or almost $33 million. Staff I.B. at 57. Witness Burtt also emphasizes that not only are the dollars at stake here large, but this issue will have significant implications for future construction projects. *Id.*

286. In fact, Staff argues, the Commission's precedent fully supports its proposal. The Commission found in *Michigan Gas* that although "Michigan Gas has not maintained records that would allow it to make direct assignment [of O&M costs] in this in this case. . . in future rate cases, Michigan Gas must make direct assignment of these costs to the extent possible." 89 FERC ¶ 61,131 at 61,375 (1999). The Commission also directed that Michigan Gas "should develop an allocation methodology that more accurately reflects the charges to it by Consumers." *Id.* at 61,376. Furthermore, the Commission held that Michigan Gas can choose any allocation it wishes, but it must be prepared "to provide full support for its choice." *Id.* Consequently, I find that Transco is required to

directly assign its O&M costs, and to set up the requisite procedures to collect the necessary data and implement a direct assignment strategy to do so.

287. As of now, Transco maintains that it cannot collect the data required for direct assignment of its O&M costs because of the highly integrated nature of its system. Ex. No. T-47 at 5; Ex. No. S-56 at 13-14. Staff agrees that Transco does not currently collect the data, though, Staff believes, Transco has the ability to capture such data. Staff I.B. at 59-61. However, Staff's proposal includes a recommendation that until such procedures are in place for Transco to accurately collect the necessary data, Transco, in the interim, should be required to use the gross plant factor in calculating the allocation of the O&M costs. Staff I.B. at 52. Staff finds support for this approach in the Commission's decision in *Northwest Pipeline Corp.* where the Commission directed that "O&M costs be directly assigned where possible." *Northwest Pipeline Corp.*, 87 FERC ¶ 61,266 (1999), *order on reh'g* 96 FERC ¶ 61,049 (2001). In a virtually identical situation to the one we have in this case, the Commission found that not only should O&M costs be directly assigned, but if O&M costs are not currently directly assigned, the remaining "O&M costs be allocated based on the ratio of the project gross plant balances to total transmission plant." 96 FERC ¶ 61,049 at 61,120.

288. Transco argues that because there is no one, "correct" method for allocating O&M costs, its Dth-mile cost allocation is fair and reasonable, and reflects an equitable accommodation of competing interests. *Id.* at 61. Additionally, Transco maintains that because its methodology has been in place for many years and because it has withstood two prior rate proceedings and ultimate settlements, the methodology is just and reasonable. On the other hand, Transco argues that Staff's proposal is just the opposite – it is "unworkable, impractical, and incompatible with the integrated nature of operations of the Transco system." *Id.*

289. Transco's arguments, however, are not persuasive.[43] Based on the Commission precedent, I find that Staff has effectively demonstrated that Transco's current allocation of O&M costs are unjust and unreasonable. Transco is ordered to set up accounting systems to track the necessary data and to directly assign the O&M costs to incremental shippers. Also, where Transco can demonstrate that such an allocation is either impractical or impossible to implement, then the gross plant ratio method proffered by Staff is adopted.

---

[43] Noted also is Transco's ability to identify and assign O&M costs in certain situations. Staff I.B. at 59-61; Ex. No. S-56 at 15-16, T-55 at 9; T-56; Tr. 1532-38. Based on this record evidence, consequently, I am confident that Transco can adjust its accounting procedures to recognize the distinctions between its system vs. non-incremental facilities' expenses. Thereby abiding by the Commission's expressed preference on O&M cost assignment.

B. Allocation of A&G Costs

290. Staff maintains that A&G costs should be allocated to incremental services through the K-N method. However, until reliable, accurate records exist for A&G to be allocated using K-N using both direct plant and direct labor factors, Staff recommends using gross plant factors alone.[44] Staff recommends this method because Transco's current allocation of transmission A&G costs between system and incremental transportation services has no relation to cost causation, and forces some ratepayers to subsidize others, and, similar to the arguments set forth on O&M above, is contrary to Commission precedent.

291. Staff maintains that Transco's current allocation method is unjust and unreasonable because, it argues, the Commission has repeatedly found that A&G costs do not vary with miles of haul and, therefore, cannot be allocated using the mileage-based factors such as Dth-miles. Staff I.B. at 50. Staff asserts that Transco is aware of the error of applying the Dth-miles method because Staff claims that Transco has used a non-mileage method in other rate making procedures. *Id*.

292. Staff not only maintains that Transco's approach is unjust and unreasonable, but also that the K-N method is the only appropriate approach, and is just and reasonable. Staff relies on the K-N method, as it maintains that the Commission has routinely approved the K-N method as the established method for allocation of A&G costs, and because the Commission has specifically found that the K-N method should be used to allocate A&G costs on the sub-functionalization level between system and incremental facilities. *Id.* at 53, *citing Northwest Pipeline Corp.*, 87 FERC ¶ 61,266 (1999), *reh'g denied on this issue*, 92 FERC ¶ 61,287 (2000). Additionally, Staff contends that its K-N calculation is accurate and appropriate because Staff witness Burtt has allocated A&G costs using gross plant, and because Transco has not identified the direct labor costs associated with incrementally priced facilities. Staff I.B. at 53. Staff concludes that by using the gross plant factors under the K-N method, about $5 million of A&G costs are shifted from system shippers to incremental shippers. *Id.*; T-48 at 1. This is based on the April 11, 2002, cost-of-service settlement. Staff notes, however, that not all incremental shippers will see an increase in costs as a result of using the gross plant factors under the K-N method. It asserts that some shippers will experience a reduction, depending upon which service is taken. *Id.* Lastly, Staff maintains that by not adjusting the allocation method, incremental shippers are receiving a subsidy of about $5 million, shouldered by the system shippers.

[44] Under the K-N method, A&G costs are allocated on the basis of gas plant and labor ratios, using direct labor ratios for labor-related A&G costs and plant ratios for plant-related A&G costs and a combination of plant and labor for certain A&G accounts. *See* Ex. No. S-50 at 8

293. In its proposal, Indicated Shippers also oppose the Dth-mile method for calculating and allocating A&G costs. Indicated Shippers propose that allocation among incremental, GSS, and system transportation services be allocated on a volumetric (actual and imputed contract demand) basis. Indicated Shippers I.B. at 35. Similarly to Staff, Indicated Shippers maintain that the Commission has held that A&G costs are not mileage sensitive, but should be allocated on a volumetric basis. *Id.*, *citing Great Lakes Gas Transmission, L.P.*, 74 FERC (CCH) ¶ 61,257, *order on reh'g*, 76 FERC (CCH) ¶ 61,179 (1996); *Tennessee Gas Pipeline Co.*, 76 FERC (CCH) ¶ 61,022 (1996); *Texas Eastern Transmission Corp.*, 63 FERC (CCH) ¶ 61,100 (1993).

294. Indicated Shippers also maintain that the Commission has specifically applied this volumetric approach to Transco's system transportation services. *Transcontinental Gas Pipe Line Corp.*, Opinion No. 405, 76 FERC (CCH) ¶ 61,021, *order on reh'g*, Opinion No. 405-A, 77 FERC (CCH) ¶ 61,270 (1996). Further, Indicated Shippers contend that under Transco's existing methodology, significantly less A&G costs are allocated to incremental shippers than if a volumetric allocation method were employed. Indicated Shippers I.B. at 36. The reason for this inaccurate allocation of A&G to incremental shippers is because under the Transco Dth-mile approach, the length of haul for incremental services is much less than the average length of haul for system shippers. *Id.* at 37; Tr. 474. This results in the short-haul system shippers bearing a greater burden of A&G costs than comparable short-haul incremental shippers. Ex. No. IS-11.

295. Indicated Shippers state that it would not oppose the Dth-mile approach if it were applied equitably for allocation of A&G costs. Indicated Shippers I.B. at 37. However, it further posits that the Commission will not permit such a methodology. *Id.* Indicated Shippers point out that if the Dth-mile allocation of A&G is used for incremental shippers and a volumetric allocation for system transportation, fundamentally unfair and discriminatory rates result. *Id.*

296. Indicated Shippers maintain that although this volumetric allocation would shift costs, such a cost shift does not preclude a necessary change. Further, Indicated Shippers argue that where the existing allocation is contradictory with well-established Commission policy, a change is necessary and appropriate. *Id.* at 41. Moreover, Indicated Shippers argue that the incremental shippers have avoided shouldering their fair share of costs for nearly ten years; there is no reasonable basis, according to Indicated Shippers, to continue to subsidize these shippers. *Id.*

297. Energy Associates, on the other hand, support a Dth-mile allocation factor, based on volume, is just and reasonable. Energy Associates' witness Briden maintains that A&G costs and distance are interrelated. Energy Associates I.B. at 28. He supports his contention with regression analyses that demonstrate that there is a strong correlation between pipeline's A&G costs and their MDt-miles. *See* Ex. No. EACH-1 at 17, EACH-4, EACH-17 at 4-6, and EACH-19. Witness Briden further asserts that although the

Commission generally uses a volumetric allocation method for A&G costs, that method ignores, to some extent, that A&G costs are interrelated. Energy Associates I.B. at 28.

298. In his analysis, witness Briden used data on throughput, capacity, and length of various interstate pipelines from their public websites. Ex. No. EACH-1 at 17. He then compared this data to FERC Form 2 reports of A&G expenses for the year 1999 using regression techniques. *Id.* Based on this model, witness Briden concludes that the results show a significant positive relationship between pipeline A&G expenses, length, and measures of capacity or throughput. *Id.* Therefore, he maintains, it is reasonable to allocate transmission O&M and A&G expenses on a volume-distance basis using the Dth-mile allocation factor developed by Transco. *Id.*

299. Transco, in its opposition to the proponents of changing its A&G allocation methodology, maintains that neither Staff or Indicated Shippers have met their NGA section 5 burden of proof. Transco opposes any changes to its existing methodology. Transco I.B. at 60. Transco first attempts to rebut the proposal offered by Staff that would allocate the A&G costs based on the K-N method. Prior to examining the merits of Witness Burtt's analysis under the K-N method, Transco maintains that its integrated system operation does not permit direct O&M costs assignments to individual services which is a vital component for use of the K-N method. Ex. No. T-47at 5. Therefore, Transco maintains that Staff's proposal to allocate A&G costs on gross plant in service, until the O&M costs can be directly assigned, is unfeasible. As stated in the previous section, Transco claims that the level of integration on its system makes it virtually impossible to assign O&M expenses on a segment-by-segment or service-by-service basis. Transco I.B. at 60. Transco further argues that the Commission has required direct assignment only where it is reasonable do so; Transco maintains that it is not reasonable and, indeed, unfeasible to do so here. *Id.*

300. Transco further maintains that Staff's allocation of A&G based on gross plant, is misplaced, because no evidence shows a connection between the gross plant associated with any Transco service and incurrence of A&G costs. This lack of evidence, Transco maintains, shows that gross plant is no more reliable for providing an accurate representation between cost causation and cost responsibility than Transco's Dth-mile calculations Transco currently uses. *Id.* at 62.

301. Transco similarly attempts to rebut the volumetric methodology offered by Indicated Shippers by claiming that proposal also is not supported on the record. Further, Transco maintains that Indicated Shippers have not alleged that the current Dth-mile allocation of A&G costs to incremental and GSS services is *per se* improper; rather that consistency must be achieved through using the same allocation methodology for A&G among system transportation, incremental, and GSS services. *Id.* at 63. Transco responds to this by stating that the very nature of incremental services is different from system services, and, therefore, different allocation methods are perfectly fair and proper.

Id. Transco maintains that Indicated Shippers have not met their burden under NGA section 5. *Id.*

302. As all parties acknowledge, and the Commission has recognized, there is no single way accurately to capture and allocate A&G costs among system customers. Because of the challenge allocation poses, we must look to the Commission for clarification, if the Commission has provided any guidance on the issue. Here, the Commission has established that A&G costs do not vary with miles of haul, and therefore should not be allocated using mileage-based factors such as Dth-miles. *ANR Pipeline Co.*, 82 FERC ¶ 61,145, *reh'g denied*, 83 FERC ¶ 61,263 (1998); *Pacific Gas Transmission Co.*, 76 FERC ¶ 61,247 (1996); *Great Lakes Transmission Limited Partnership*, 74 FERC ¶ 61,257, *reh'g denied*, 76 FERC ¶ 61,179 (1996); *Texas Eastern Transmission Corp.*, 63 FERC ¶ 61,100 (1993). I find the "non-mileage" Commission policy for assignment of A&G costs equally applicable to the functionalization and rate design steps in the rate-making process. Indeed, and contrary to Transco's assertion, the company has the burden to prove that its existing proposal is just and reasonable when a reasonable doubt of its lawfulness exists to that portion of its rate making structure. Moreover, when that existing proposal is clearly at odds with a longstanding Commission policy, the burden on the company is even greater. Nowhere on this record has Transco offered evidence to rebut the Commission's longstanding policy with substantive proof demonstrating that the Commission should deviate from its own proclamations.

303. Further, the Commission has well established that its preferred method for allocating A&G costs to a company's basic functions or sub-functions is the K-N method. *See Panhandle Eastern Pipe Line Co.*, 74 FERC ¶ 61,109 (1996); *Arkla Energy Resources Co.*, 67 FERC ¶ 61,208, *reh'g denied sub nom.*, *NorAm Gas Transmission Co.*, 69 FERC ¶61,154 (1994). Therefore, when the Commission has such a long-standing policy, and parties have not provided any compelling reasons to deviate from that Commission standard, as Transco and Energy Associates have failed to do here, the Commission policy must be applied. Transco claims that because determining allocation is challenging and may require some level of subjectivity (Transco I.B. at 61), the Commission should accept its existing methodology that has been in place for years. However, Transco fails to notice that the very reason we must turn to the Commission for clarification and apply its stated policy for allocation of A&G costs *is* because determining allocation of A&G costs is not an exact science. It is unreasonable to allow Transco merely to say that "this is how we've always done it, so that's how we should continue" when there is an existing, contradicting Commission policy on the very matter in question, as we have here. Additionally, the existing Transco allocation method allows the system shippers to subsidize the incremental shippers for nearly $5 million for these O&M and A&G costs. Staff I.B. at 53; Tr. 523-24. This is patently unjust and unreasonable.

304. Moreover, Indicated Shippers' proposal to use contract demand and commodity volumes in a purely volume-based allocation has not been proven a reasonable method to functionalize cost to Transco's basic operations, incremental services, or sub-functions. There is no basis to conclude that A&G costs that are to be assigned to separate functions of a pipeline are significantly related to throughput of the pipeline.

305. Additionally, the regression models offered by Energy Associates do not withstand scrutiny during the hearing. The studies relied upon by Witness Briden for Energy Associates have underlying assumptions which make them suspect. For instance, witness Briden used peak day volumes (as a surrogate for pipeline capacity) without knowledge of the true capacity of the pipelines in question. Tr. 943-44. Further, he used actual miles of transmission lines as opposed to contract path mileage more appropriately used for a Dth-mile calculation. Staff I. B. at 52, fn. 136. Additionally, the pipelines used in his workpapers do not match those listed in his study. Tr. 962-66. Further, several of his alterations of the study remain unexplained. See Tr. 946, 956-57, 962-66. Consequently, I cannot, in confidence, rely on his conclusions.[45] On the other hand, I agree with Staff witness Burtt that the gas plant in service cost has the distinct advantage of being the only cost that is directly tied to each incremental facility for which A&G costs need to be allocated. Ex. No. S-50 at 12. Neither Indicated Shippers nor Energy Associates have presented evidence to justify a deviation from the Commission's preferred allocation method. Whereas, the Commission has determined repeatedly that the K-N approach is reasonable and preferred. Indeed, the K-N method uses the gross plant factor within its calculation and no volume components at all. Therefore, I find that the K-N method must be applied in this case.

306. In the interim, I find that Staff has proposed the most feasible, and Commission accepted, method to recoup A&G costs from incremental services. Staff proposes that the gross plant factor be used as a surrogate to the full application of the K-N method, which would include a labor cost factor. Until such time that Transco implements a more appropriate method for the assignment of these O&M costs, ones reflecting a more direct allocation, this surrogate method must be used. Therefore, the Commission position on the allocation of A&G costs is clear – they must be assigned using the K-N method

307. In conclusion, Transco is directed to establish methods to collect the data for direct assignment of O&M costs, and directly assign those costs to incremental shippers. Additionally, Transco is directed to use the K-N method to allocate A&G costs to incremental shippers, using the gross plant factor procedure alone advocated by the Staff until Transco has corrected the O&M allocation.

---

[45] Indeed Staff Witness Ms. Burtt has demonstrated that both studies of A&G costs versus throughput, and mileage exhibit less of a correlation when compared to studies between A&G costs versus capacity, and gas plant in service. S-51 at 18-20.

ISSUE XIII: THE ALLOCATION OF A&G COSTS TO TRANSCO'S LNG SERVICE

308. This issue surrounds how Transco currently allocates its A&G expenses among its functions, specifically the LNG Service, under rate schedules LG-A, LNG, and LNG-R. Currently, Transco uses the K-N method to allocate A&G expenses among its basic operational functions, with an exception of how Transco applies the K-N method to its LNG service. Transco I.B. at 65. Transco makes two modifications to the K-N method as applied to the LNG storage services: 1) it eliminates some of the A&G expense accounts from the allocation process; and 2) it modifies the direct labor allocation factor by eliminating some of the direct labor from the calculation. *Id.* These modifications result in a reduction of A&G costs allocated to the LNG storage service. *Id.*

309. Staff maintains that Transco inaccurately modifies the K-N method in that it eliminates seven of the eleven A&G accounts in which Transco recorded expenses from the allocation process, and of the four A&G cost accounts that are allocated to LNG, Transco eliminates much of the associated labor accounts. Staff I.B. at 62. Staff concludes that this modification of the K-N method by Transco results in a severe under-allocation of A&G costs to the LNG service by more than $2.1 million, based on the April 12 cost-of-service settlement. Staff contends that, under Transco's existing methodology, current LNG customers do not pay almost all of the A&G expenses in eight accounts, rather the Transco system customers largely subsidize LNG storage service. *Id.*

310. Moreover, Staff maintains that because A&G costs are common, indirect costs relating to all services Transco provides, they must be apportioned over all services for the very reason that they cannot be identified with any services in particular. Staff also points out that A&G costs are not incurred by the level of use of a facility, consequently there is no justification for using cost as a basis for altering the allocation to the LNG service. *Id.* at 63. Staff recommends that Transco be directed to allocate the costs of all A&G accounts to the LNG storage method using the K-N method. *See* Ex. No. S-56 at 31.

311. Transco and NUI Utilities, Inc. ("NUI") maintain that Staff has not met its NGA section 5 burden to show that the existing allocation is unjust and unreasonable. Transco maintains that its current allocation is just and reasonable as it is a "settled practice, reflected in rates approved by the Commission in a general rate settlement, and has existed on the Transco system for decades, since the inception of such services in 1970." Transco I.B. at 65. Transco contends that Staff's argument is based solely on the idea of "consistency" in the application of the A&G expenses. *Id.* at 66. Further, Transco asserts that Staff has not shown that the existing allocation is unjust or unreasonable. *Id.*

312. NUI also maintains that Staff's argument has not met its dual burden under the NGA section 5. NUI maintains that Staff has argued that any method for allocation other than the K-N method is unjust and unreasonable. NUI I.B. at 6. NUI contends that in its argument, Staff has failed to consider the factual context of Transco's allocation or its application to a service whose customers support substantial benefits to Transco and to the non-LNG system customers. Further, according to NUI, Staff's application of K-N does not consider the unique characteristics of the LNG services which justify a lighter allocation of A&G costs.

313. NUI also maintains that Staff's own proposal does not result in just and reasonable rates, and thus fails the second prong of its section 5 burden of proof. NUI alleges that Staff's only justification for the use of the K-N method is that it is routinely approved by the Commission. NUI further claims that Staff fails to discuss the impacts of the application on K-N, which would result in a cost shift to LNG customers, who, NUI noted, already bear a disproportionate share of costs associated with the LNG facility.

Discussion

314. I disagree with Transco and NUI on this issue. As stated in the discussion of Issue XII, the K-N method is the Commission-endorsed method for appropriately and accurately allocating A&G expenses. The very nature of A&G services, that they are indirect costs relating to all services on the system, indicate that they should be shared among all system customers, and the K-N method is the method the Commission has recognized that distributes those costs most equitably. Transco must allocate the cost of all A&G accounts to the LNG service using the K-N method.

315. Further, Staff has effectively demonstrated that the LNG service receives a subsidy of more than $2.1 million from system customers – this subsidy shows that the current application of the K-N method is resulting in unjust and unreasonable rates for system customers. Likewise, this subsidy analysis by Staff shows that the LNG customers do not pay a fair level of the A&G expenses associated with the service they receive. The Commission has stated that the principles of cost of service ratemaking demand that customers pay for the services from which they benefit. *Policy Statement Providing Guidance with Respect to the Designing of Rates*, 47 FERC ¶ 61,295 (1989), *order on reh'g*, 48 FERC ¶ 61,122 (1989). Therefore, the LNG service cannot avoid paying the A&G costs fairly attributed to the service they receive. Neither Transco nor NUI has provided evidence that demonstrates either the need , equity, or appropriateness of the cost subsidy recognized on the record of this case for the LNG service.

316. Transco argues that because the existing methodology for allocating A&G to LNG was approved in 1970, at the start of the LNG service, it should be upheld today. This argument is offered by Transco without the necessary support on this record for it to be

seriously considered. Merely because this allocation has not been challenged since 1970, does not mean that it is currently a just and reasonable allocation. I cannot find that the existing allocation is just and reasonable solely because it has been in effect for over thirty years without a rational justification provided in the record demonstrating either on contractual, factual, or a policy basis that is appropriate to do so. Quite to the contrary, the evidence on this record shows that system customers are shouldering over $2.1 million[46] that should be allocated to LNG services. This is patently unjust and unreasonable.

317. Indeed, neither Transco nor NUI contends that LNG customers do not receive the benefits associated with the costs that are currently excluded from those service's rates. They simply cannot. These cost accounts are: regulatory Commission expenses, outside services, general salaries, the maintenance of general plant and rent, and miscellaneous general expenses. There can be no doubt that these all truly benefit the LNG customers. Staff I.B. at 62, Ex Nos. S-1 at 69-70, S-56 at 28-30, and S-57 at 15. Additionally, no party claims that this part 157 LNG service should receive a smaller allocation of A&G costs than Transco's part 284 services are allocated. SRB at 31-33. These facts are not refuted by either of the opposition to Staff's proposal. As noted, customers who benefit from the cause of certain costs should incur such costs in their rates for the associated service. To be sure, Transco's payments for each of the categories of expenses excluded from LNG rates equally benefit all customers benefiting from the pipeline's services. Excluding LNG customers from sharing in these expenses is unfair.

318. NUI particularly argues that LNG service deserves a break from A&G costs because the LNG service itself is expensive. This argument is specious. Again, NUI does not offer a valid justification for why LNG should receive less than a fully allocated share of A&G costs to the detriment of Transco's system customers. Indeed, if this concept were to be adopted, the price signals that should disclose the true cost of providing the LNG service on the system would be obscured. *See* Staff R.B. at 33. This is not a desirable result. I am not prepared to base the allocation of A&G costs, as a matter of policy, on the underlying overall cost of service incurred to provide the service. Furthermore, NUI is suggesting that its rates for LNG service be discounted, by the reduced amount of A&G it is charged. This is in blatant contradiction to Commission policy, because much of the LNG service is taken under Part 157 of the Commission's regulations. Pointedly, the Commission does not permit discounting for Part 157 services.[47] The reality is NUI seeks to avoid the true costs associated with the LNG service it receives from Transco. Correspondingly, Transco seeks to continue an unfair

[46] If this impact is netted out with Staff's proposed allocation of LNG costs to system services as discussed in Issue VIII of this decision, then the under allocation of A&G costs would be calculated to $1.8 million. *See* Staff I.B. at 62-63, note 160; Ex. No. NUI-1.

[47] *See* 18 C.F.R. § 284.10(c)(5)(ii) (2002).

allocation practice in the design of its LNG service rates which is unduly preferential to the LNG customers.

319. Therefore, I conclude that Transco must allocate to LNG services A&G costs under the K-N method consistent with the Staff proposal.

ISSUE XIV: THE VALUE, AND REFLECTION OF THAT VALUE IN RATES, OF THE ACCESS TO TRANSCO'S RIGHT OF WAY FOR THE INSTALLATION OF A FIBER OPTIC COMMUNICATION SYSTEM, THE RESOLUTION TO BE PROSPECTIVE ONLY

320. This issue surrounds whether Transco should credit its existing customers with a value for service provided to its then-affiliate, Williams Communications Company (WCC, formerly Vyvx), for the cost-free access to Transco's existing jurisdictional assets, and whether such an agreement should result in a rate credit to existing customers. Staff and North Carolina Utilities Commission, Johns Hopkins University, Johns Hopkins University Health System, and University of Maryland-College Park (collectively Johns Hopkins) argue that the agreement was not an arm's length agreement between affiliates and maintain that system customers should see a revenue credit for the transaction. Transco, on the other hand, maintains that the transaction has no revenue impact whatsoever, and that neither party has carried its burden to show that such a revenue credit is warranted.

321. In 2001, Transco entered into an agreement with WCC where Transco would not object to WCC's seeking from landowners easements to install a fiber optic system over some of the same land for which Transco already held easements for its pipeline. The relevant portions of Transco's pipeline at issue here run between Houston, TX and Philadelphia, PA, where Transco currently has a right-of-way (ROW) made up, on a mileage basis, primarily of pipeline easements negotiated and purchased from third party landowners. Transco I.B. at 66; Ex. No. T-55 at 4; T-56. Under these easements, Transco is permitted only to install, operate and service its own pipelines, and nothing else. *Id.* In its agreement with WCC, Transco would not object to WCC seeking its own ROW within the Transco pipeline ROW. *Id.* In exchange, WCC gave Transco an indefeasible right of use (IRU) of two "dark" fibers in its new cable for Transco's telecommunications use in its jurisdictional operations. *See* Ex. No. T-55 at 3-4; T-57.

322. Johns Hopkins claims that the agreement between Transco and WCC was not a bona fide arm's-length transaction, and one that gave access to a valuable jurisdictional asset at the expense of jurisdictional customers. Johns Hopkins I.B. at 6. Johns Hopkins witness Kravtin identified the Transco ROW as a key element of WCC's entry into the fiber-optic business; indeed, Transco witness Linn stated on cross-examination that only

with Transco's agreement was WCC able to install their telecommunications facilities. *See* Ex. No. UN-1 at 15-19; Tr. 1522.

323. In furtherance of its argument, Johns Hopkins maintains that the agreement between Transco and WCC did not include adequate compensation for such valuable corridor access, via the Transco ROWs. *Id.* at 9. Johns Hopkins maintains that because the agreement was not an arm's-length transaction, the agreement must now be scrutinized under the fair-market standards of the industry for such transactions. Johns Hopkins, however, acknowledges that it is very difficult to determine the actual market value for the dark fibers Transco received in the agreement because those fibers are not marketable by Transco, as the agreement limits Transco's use of the fibers to only that which is related to the jurisdictional uses of the pipeline. *Id.* at 10. Johns Hopkins notes, however, in valuing the exchange, that "lighting"[48] the fibers cost Transco $4.6 million, yet the fibers were only two out of a total of 96-168 (depending upon the location of the segment) and had capacity of OC-12, whereas fibers today have a greater capacity of OC-192. *Id.*

324. Johns Hopkins witness Kravtin reviewed the various agreements and determined that since they were not arm's-length agreements, a determination would have to be made on what the value would have been had they been arm's-length transactions. *Id.* at 11. Witness Kravtin adopted the "Comparable Transactions" approach to make this determination. Under this method, witness Kravtin established a group of market transactions that were comparable to the Transco-WCC agreement. In these comparable transactions, however, the dollars-per-mile spread was very large between the Transactions; ranging from a low of $11,500 per mile, to a high of $115,430 per mile. After assessing these transactions, witness Kravtin determined a $16,000 per mile value of the ROW. *Id.* at 12. Using that figure, witness Kravtin multiplied $16,000 by the 1200 miles of the corridor, to establish the value of the Transco ROW at $19.2 million. *Id.*; Ex. No. UN-1 at 28. Witness Kravtin maintains that a $19.2 million credit to rate base is reasonable considering that, according to Transco witnesses, the cost to Transco for establishing its own fiber-optic system would have cost between $24 and $60 million. Ex. No. T-55 at 7; Ex. No. T-57 at 16.

325. Staff, in its arguments maintaining that Transco's ratepayers are entitled to a revenue credit as a result of the agreement between Transco and WCC, contends that the agreement had a value of $4 million to existing ratepayers and should be considered a revenue credit. Staff witness Catlin calculated that amount on two agreements that WCC has with non-affiliated companies for use of ROWs that are in excess of 130 miles and are the result of arms-length negotiations. Staff I.B. at 67. The first agreement witness Catlin relies on is one with the Massachusetts Turnpike Authority (MTA) for the use of about 133 miles of turnpike ROW. The second contract is a co-occupancy agreement

---

[48] Making the fibers usable.

with Amoco Pipeline Company (Amoco) for approximately 275 miles of pipeline ROW in Kansas and Colorado. *Id.* Additionally, witness Catlin reviewed other contracts provided by WCC.

326. Witness Catlin concludes that, if rent payments were made to Transco by WCC based on the MTA agreement's pricing structure, WCC's lease payment to Transco would have been $15.9 million per year. *Id.* at 68; *see* Ex. No. S-44 at 1. As for the pricing structure under the Amoco agreement, if applied to the Transco-WCC agreement, witness Catlin maintains that the annual payment would have been $1.5 million. *See* Ex. No. S-45 at 1. Though using these contracts as a base, witness Catlin recognized that these contracts differ in how they value the ROW, so he therefore made adjustments to these contracts to make them comparable. *Id.*

327. As for the MTA contract, witness Catlin adjusts the $15.9 million figure downward because the MTA owns the property, not just the easement rights (as Transco does here), and because property in an urban environment has a higher value. Staff I.B. at 68. In consideration of these differences, witness Catlin reduces the $15.9 million by 50%, down to $8 million. Further, he also adjusts for the Commission's allowance of revenue sharing, which would have resulted from an arms-length agreement. *See Pacific Gas and Electric Co.*, 90 FERC ¶ 61,314 (2000). Based on that, witness Catlin further reduces the $8 million by another 50%, so he concludes that existing customers deserve a revenue credit of $4 million.

328. Witness Catlin recognizes the Amoco agreement, but determined that the $1.5 million valuation is too low for use as a tool in valuing the Transco-WCC agreement. Staff I.B. at 69. Witness Catlin was also concerned with this agreement because it concerns a largely rural ROW. He maintains that this is not comparable to the Transco-WCC agreement. *Id.*

329. Transco maintains that the there is no basis for a revenue credit or a credit to rate base for the agreement between itself and WCC. Transco I.B. at 66. In its argument, Transco asserts that it received a significant benefit from the dark fibers, permitting it to upgrade to the superior fiber-optic technology at a cost that was a fraction of the projected cost of such technology. *Id.* at 68. Transco maintains that the exchange between itself and WCC was mutually beneficial.

330. Transco asserts that the contracts that Johns Hopkins witness Kravtin has used as comparison contracts are not comparable at all. Transco stresses that the transactions are different in so many ways that they are not comparable and cannot support the $19.2 million "payment" that Johns Hopkins seeks. Transco contends that the very trade articles Johns Hopkins relies upon indicate that the WCC, even when paying top dollar to landowners for its own ROW, paid only $0.50 per linear foot for underground cable easements in rural areas and $2.00 per linear foot for urban areas. *Id.* at 69. Transco,

therefore, concludes that the total cost for an easement from landowners would be $7.92 million, assuming a 50/50 split between urban and rural areas. *Id.* This, Transco strenuously notes, is for the actual purchase of an easement, not for what Transco provided – an agreement not to object to WCC's obtaining its own easements from existing landowners. *Id.* Additionally, it must be noted, as Transco does, that neither Johns Hopkins or Staff provide a value for the dark fibers that Transco received for its non-opposition to WCC. *See* Ex. No. T-57 at 20-22.

331. As for Staff's recommendation that existing ratepayers be given a $4 million revenue credit for the value of the "rental" of its existing easements, Transco maintains that witness Catlin came up with the $4 million figure because, it argues, Staff recognizes that the contracts used as comparisons are not at all comparable. Transco argues that Staff is basing its calculations on pure speculation – both its base calculations and the factors Staff uses to reduce the $8 million figure back to $4 million. *Id.* at 70. Moreover, Transco argues that Staff's position for a revenue credit instead of crediting the rate base as Johns Hopkins proposes is even more detrimental to Transco and its customers.

332. Further, Transco maintains that the proponents erroneously attempt to use value of a service as a credit against a cost of service, which, Transco argues, is not the appropriate approach to ratemaking here at the Commission. *See S.C. Generating Co.*, 16 FPC 52, 56-59 (1956). Transco maintains that to the extent there was any value of significance given by Transco, it is fully offset by what Transco received in return from WCC. Moreover, Transco alleges, the eighteen inch fiber ROW has not significant adverse operational or safety effects, and imposes no costs upon Transco's jurisdictional operations. *See* Ex. No. T-55 at 6; Ex. No. T-5 at 12-14; Tr. 1547-49.

333. I am persuaded that Staff and Johns Hopkins did not meet their burden on this issue. I am convinced that Transco's ROW was exactly that, its ROW. Neither Staff or Johns Hopkins offered convincing evidence otherwise, showing that somehow Transco gave its own existing ROW to WCC. Instead, the evidence demonstrates that Transco agreed not to object when WCC sought to obtain its own ROW from customers along Transco's existing ROW. Ex. No. T-55 at 6; Ex. No. T-57 at 13-14; Tr. 1476, 1485, 1547-49. I acknowledge all the arguments that Johns Hopkins put forth that the agreement significantly benefited WCC. However, that does not demonstrate that Transco's existing customers should receive a revenue credit or a reduction in rate base. Nowhere in the record has Staff or Johns Hopkins demonstrated that existing customers have, in any way, specifically funded the arrangement between Transco and WCC.

334. Additionally, Transco, in return for its agreement not to object, received two dark fibers in the exchange – a valuable asset, enhancing Transco's jurisdictional services. Both Staff and Johns Hopkins have attempted to show that the cost of lighting of these fibers - $4.6 million – is further evidence that this agreement was not a good one for Transco. However, the parties forget that these fibers are only used to support the

functions of the pipeline, and, therefore, the related costs should be borne by rate payers. Even in the event that Transco would have built the fiber optic system itself, the rate payers would bear that expense. This presents a situation that would exist in either event which does not argue in favor for the relief Staff or the other proponents seek in this instance.

335. Indeed, Transco has presented evidence that had it undertaken the cost and effort to upgrade its existing communications system before it entered into the agreement with WCC, it would have cost its ratepayers much more than just the $4.6 million to light the fibers, and an agreement not to object. Transco I.B. at 68. This demonstrates to me that Transco and its ratepayers received a significant, quantifiable benefit from the agreement between Transco and WCC.

336. Though this does not appear to be an arm's-length transaction, neither Staff or Johns Hopkins has marshaled enough evidence for me to convincingly conclude that the agreement resulted in an unjust or unfair circumstance with the current ratepayers shouldering more of the cost than they should. Both of the proponents' analyses are fraught with speculative and subjective adjustments to real world contracts. Consequently, these presentations do not provide substantive rebuttal to the benefits shown by Transco. Had Staff or Johns Hopkins presented a more accurate and thorough analysis of the true cost of the ROW inclusion by WCC, which clearly demonstrated excessive costs borne by existing ratepayers due to the affiliate agreement, I would have concurred that this arrangement produced an unfair result. To be sure, the Commission should be prepared to protect a pipeline's ratepayers when the jurisdictional assets they are paying for are being used for non-traditional business endeavors, especially without adequate compensation for such use.[49] However, on the record before me, I cannot draw that conclusion with the evidence as presented.

CONCLUSION

337. I find that:

1. The existing contractual and tariff rights afforded to the FT Conversion Shippers are just and reasonable and warrant no modification;

2. SCANA has not met its burden to justify a limited Part 284 conversion of certain unbundled storage services;

3. Transco must modify its Tariff to allow replacement shippers to contingency rank certain Part 284 services;

---

[49] According to Transco's witness Linn, "The vast majority of Transco's pipeline system is located on property owned by third party landowners." Ex. No. T-55 at 5.

4. Transco's existing GSS service is just and reasonable;

5. Transco's proposal to roll-in the costs of the Mobile Bay Expansion project is unjust and unreasonable;

6. Transco's proposal to roll-in the costs of the Cherokee, Pocono, and SunBelt is unjust and unreasonable;

7. Transco's Tariff should be amended to reflect incremental rates on the fuel/electricity charges for the Mobile Bay Expansion, Cherokee, and SouthCoast expansion facilities;

8. Transco's current allocation of 15% of general storage facility costs to system transportation is just and reasonable and they are required to allocate 15% of the LNG storage costs as well;

9. Transco must unbundle its current Emergency Eminence Storage withdrawal service according to the method provided by Staff, herein;

10. Transco's existing pooling point in Zone 4 at Station 85 is unjust and unreasonable and Transco must adopt the paper pooling proposal offered by BP, as it is just and reasonable;

11. Transco's current allocation of O&M costs are unjust and unreasonable and Transco must allocate A&G costs according to the K-N method;

12. Transco's current allocation of A&G costs to LNG services is unjust and unreasonable and must be allocated according to the K-N method; and

13. Transco's existing treatment of its agreement with WCC is just and reasonable.

ORDER

338. It is ordered that subject to review on exceptions or on the Commission's own motion, as provided in the Commission's Rules of Practice and Procedure, that within 30 days of the issuance of the Final Order of the Commission adopting the Initial Decision in this proceeding, all parties shall take the appropriate action to implement all the rulings in this decision.

David I. Harfeld
Presiding Administrative Law Judge