

should be assigned to those individual expansion customers through the establishment of an incremental charge. Among the projects at issue was Transco's Cherokee Expansion, which includes the addition of electric powered compression at Transco's Stations 115 and 125. Transco recovers the electric power costs associated with operating compressors through its Transportation Electric Power (TEP) surcharge. In orders issued in March 2004³ and August 2005,⁴ the Commission affirmed the Administrative Law Judge's Initial Decision,⁵ holding that Transco must establish an incremental TEP charge for the Cherokee project. The Commission found that the annual cost of the Cherokee electric compressors was approximately \$2.3 million, while the Cherokee shippers paid only \$135,151 of electric costs through Transco's existing system-wide TEP. Therefore, the Commission concluded that an incremental TEP charge was necessary in order to avoid having Transco's other customers subsidize the Cherokee expansion. The United States Court of Appeals for the District of Columbia circuit affirmed the Commission's orders on this issue in *Transcontinental Gas Pipe Line Corp. v. FERC*, No. 06-1286, 2008 U.S. App Lexis 4923 (D.C. Cir. 2008).

3. On August 31, 2006, Transco filed a general section 4 rate case in Docket No. RP06-569-000. Transco asserted that it had not included the resolution of any reserved issues in its filing because Article VII of the RP01-245 settlement provides that the final resolution of the reserved issues would be made effective "prospectively only after a final Commission order no longer subject to rehearing." On October 3, 2006, the Commission directed Transco to submit tariff sheets to implement the Commission's directives in Docket No. RP01-245 on those issues which had been finally decided.⁶ On November 2, 2006, Transco filed a request for rehearing challenging the Commission's interpretation that Article VII of the Agreement requires Transco to implement the final resolution of each reserved issue on an issue-by-issue basis. In its June 7 Order the Commission denied Transco's rehearing request and required Transco to implement the final resolution of issues which have been finally resolved in the Docket No. RP01-245 proceeding including Reserved Issue No. 5.⁷ On July 3, 2007, Transco submitted the instant filing to comply with the June 7 Order.

³ *Transcontinental Gas Pipe Line Corporation*, 106 FERC ¶ 61,299 (2004).

⁴ *Transcontinental Gas Pipe Line Corporation*, 112 FERC ¶ 61,170 (2005).

⁵ *Transcontinental Gas Pipe Line Corporation*, 101 FERC ¶ 63,022 (2002).

⁶ *Transcontinental Gas Pipe Line Corporation*, 117 FERC ¶ 61,009 (2006).

⁷ The September 29, 2006 Order suspended tariff sheets submitted in Transco's Docket No. RP06-569-000 general rate filing to be effective no earlier than March 1, 2007.

Transco's Filing

4. Transco states that the revised tariff sheets submitted in its filing reflect (1) a new incremental electric power surcharge applicable to Cherokee customers and (2) revised system electric power rates, adjusted to remove the electric power cost attributable to the Cherokee project. Transco states that the instant filing is based on the underlying cost estimates included in Transco's March 1, 2007 electric power cost filing in Docket No. RP07-338-000, which was accepted effective April 1, 2007 by unpublished letter order, issued March 20, 2007. Transco states that the only change in the instant filing compared to the March 1, 2007 electric power cost filing is related to Compressor Stations 115 and 125. For these stations, Transco's work papers show estimated electric power costs have been allocated between the system rates and the Cherokee project based on the ratio of horsepower installed for the Cherokee project to the total installed horsepower at those stations. Transco is proposing to charge a daily demand rate surcharge of \$0.00205 per Dth and a commodity rate of \$0.07816 per Dth for the Cherokee Electric Power costs. Transco requests that its proposed tariff sheets become effective on August 1, 2007.

Notice and Protests

5. Notice of Transco's filing was issued on July 10, 2007. Protests were due as provided in section 154.210 of the Commission's regulations, 18 C.F.R. § 154.210. Municipal Gas Authority of Georgia (MGAG)⁸, FPL Energy, LLC (FPL), KeySpan Delivery Companies⁹ (KeySpan), and Scana Energy Marketing, Inc. (SEMI) and South

⁸ MGAG consists, *inter alia*, of the following municipalities: the Georgia municipalities of Bowman, Buford, Commerce, Covington, Elberton, Hartwell, Lawrenceville, Madison, Monroe, Royston, Social Circle, Sugar Hill, Toccoa, Winder, Crawfordville, Greensboro, and Union Point; The East Central Alabama Gas District, Alabama; the towns of Wadley and Rockford, Alabama; the City of Butler, Alabama; The Utilities Board of the City of Roanoke, Alabama; Wedowee Water, Sewer & Gas Board, Wedowee, Alabama; and the Maplesville Waterworks and Gas Board, Maplesville, Alabama.

⁹The Brooklyn Union Gas Company d/b/a KeySpan Energy Delivery NY; KeySpan Gas East Corporation d/b/a KeySpan Energy Delivery LI; and Boston Gas Company, Colonial Gas Company, EnergyNorth Natural Gas, Inc., and Essex Gas Company.

Carolina Electric & Gas Company (SCE&G) filed protests to Transco's proposal. On July 25, 2007, Transco filed an answer to the protests.¹⁰

6. MGAG, FPL, KeySpan, and SEMI/SCE&G all argue that Transco's proposed allocation of variable power costs associated with the operation of Compressor Stations 115 and 125 is unjust and unreasonable and does not follow Commission precedent. Based on its arguments the parties request the Commission to (1) reject Transco's proposal; (2) require Transco to submit a revised compliance filing; and/or (3) establish a technical conference or hearing procedures to allow the parties to develop alternative methods of deriving incremental electric power rates for the Cherokee Expansion Project.

7. MGAG states that it recognizes that the Commission has mandated an incremental electric power charge for the Cherokee Expansion Project, but the charges proposed by Transco are designed inappropriately. MGAG states that Transco's proposal designs the incremental fuel rates by taking both variable and fixed electric power costs and allocating those costs using only a fixed allocator – installed horsepower. MGAG states that when the Commission ordered Transco to implement the electric power rates the Commission agreed with the ALJ that such rates should be based on Transco's "most recent operating experience."¹¹ MGAG states that the mere existence of equipment that was constructed as part of an expansion project provides no information pertaining to operating experience, while actual utilization of those facilities clearly does.¹² MGAG further states that Transco's allocation proposal is flawed in that it allocates variable electric power costs that Transco incurs only when the compressor stations are actually operating based on fixed-cost elements, the relative shares of installed horsepower. MGAG states that the use of installed horsepower is static and will not change regardless of the actual utilization of the electric-powered compressors.

8. MGAG states that a more appropriate and equitable approach, would allocate variable costs between the system and Cherokee Expansion Project using the actual quantities transported through the respective compressor stations by Cherokee Expansion Project shippers and shippers using other firm and interruptible transportation services.

¹⁰ The Commission's Rules of Practice and Procedure do not permit answers to protests or answers to answers (18 C.F.R. § 385.213(a)(2)(2007)). However, the Commission finds good cause to admit Transco's answer since it will not delay the proceeding, and may assist the Commission in understanding the issues raised and ensure a complete record on which the Commission may act.

¹¹ *Transcontinental Gas Pipe Line Corp.*, 106 FERC ¶ 61,299, at P 124 (2004).

¹² MGAG protest at pages 5 and 6.

9. FPL argues that Transco's methodology is (i) inconsistent with accepted principles and cost allocation; (ii) inconsistent with the series of orders with which the pipeline must comply; and (iii) inconsistent with recent Commission decisions involving the same allocation dispute. FPL states that Transco's methodology is unjust and unreasonable because the allocation of Compressor Stations 115 and 125 electric power variable costs to the Cherokee Expansion Project is based upon the ratio of expansion to total horsepower and ignores the actual Cherokee Expansion Project throughput *vis a vis* the Stations' throughput in the allocation of variable costs. FPL states that the Commission should reject Transco's proposed allocation methodology and require Transco to take into account actual throughput in determining the appropriate methodology to calculate the incremental power rate surcharge for Cherokee Expansion Service customers and to revise the electric power rates for system transportation customers.

10. FPL states that in the Commission's Order on Initial Decision in Docket No. RP01-245,¹³ the Commission affirmed the ALJ's decision that: (1) Transco must identify the amount of compression used by Cherokee Expansion Service shippers and charge them incrementally for the electricity costs associated with such compression; (2) the most recent data available to Transco should be the basis for the calculation; and (3) a reasonable allocation of electric power costs to incremental customers based on the incremental compression relative to the overall compression is just and reasonable and appropriate.

11. FPL states that Transco's proposed methodology is unjust and unreasonable because the allocation of Stations 115 and 125 electric power variable costs to the Cherokee Expansion Project is based upon the ratio of expansion to total horsepower at these stations and ignores the actual Cherokee Expansion Project throughput through stations 115 and 125 in the allocation of variable costs. Citing *Northwest Pipeline Corp.*, FPL states the Commission has long accepted the fundamental principle that cost responsibility should follow cost causation.¹⁴ FPL states that Transco's proposed methodology would allocate variable power costs to Cherokee Expansion Shippers regardless of the extent to which these shippers actually utilize their reservation entitlements. FPL argues that shippers that do not make use of their reservation entitlements are not causing variable electric power costs to be incurred at any compressor stations. FPL states that pursuant to cost allocation principles and

¹³ *Transcontinental Gas Pipe Line Corp.*, 106 FERC ¶ 61,299 (2004).

¹⁴ *Northwest Pipeline Corp.*, 87 FERC ¶ 61,266, at 62,045 (1999), *order on reh'g*, 92 FERC ¶ 61,287 (2000), *aff'd in part*, 96 FERC ¶ 61,049 (2001); see also, *Mich. Gas Storage Co.*, 89 FERC ¶ 61,131 (1999).

Commission policy, allocation of variable costs that takes no account of the actual throughput of Cherokee Expansion Project shippers cannot be countenanced, and is indeed unjust and unreasonable.

12. FPL further states that, while the Orders and the record in this case may be less than fulsome on the matter of methodology to be employed in the development of the surcharge, there is a clear indication that the ALJ contemplated that actual throughput would be the determinant of the variable cost allocation, a contemplation that would be consistent with the Commission policy and proper cost allocation.

13. FPL also states that in the *Texas Eastern Transmission, L.P.*¹⁵ (*Texas Eastern*) proceeding in Docket No. RP03-542, the Commission faced precisely the same issue raised here; namely, how to design an incremental electric power rate. In that proceeding, Texas Eastern proposed to allocate a portion of the electric power costs associated with incremental electric compression installed at an existing compressor station to system shippers' electric power rates in part on the basis of throughput. The case was set for hearing and subsequently settled by the parties, with the Commission finding the settlement to be fair, reasonable and in the public interest. The settlement provides for the allocation of electric power costs based on various factors including the season in which the electric power cost billing month falls, whether the compressor and/or the gas fired units at the compressor station are operating, and whether the project volumes are flowing. FPL states the Commission should likewise find in this proceeding that the appropriate manner to allocate electric power costs to incremental facilities must take into account actual throughput. MGAG also cites *Texas Eastern* as an example to an alternative method of allocating the variable costs associated with the incremental electric power costs. MGAG states that if the Commission does not reject Transco's filing for its failure to allocate electric power costs on a basis that comports with cost causation principles, the Commission should establish a technical conference or set the design of incremental electric power cost charges for hearing so that the parties may similarly explore and develop alternative approaches.

14. KeySpan states that Transco has offered no explanation as to why Transco's proposed methodology to allocate the variable power costs associated with the operation of Compressor Stations 115 and 125 based on the ratio of horsepower installed for the Cherokee Expansion Project to the total horsepower at those two stations produces a just and reasonable allocation of variable electric costs. KeySpan, citing earlier Commission's orders¹⁶ in these proceedings, argues that the orders do not appear to require Transco to allocate variable electric power costs in the manner proposed.

¹⁵ *Texas Eastern Transmission, L.P.*, 110 FERC ¶ 61,065, at 61,332 (2005).

¹⁶ *Transcontinental Gas Pipe Line Corp.*, 106 FERC ¶ 61,299, at P 124 (2004), *order on reh'g*, 112 FERC ¶ 61,170, at P 107 and 112 (2005).

KeySpan requests the Commission to convene a technical conference to determine whether Transco's proposed allocation of variable electric power costs is just and reasonable and to consider whether alternative methodologies might be more appropriate.

15. SEMI and SCE&G filed a joint protest stating that electricity used to power compressors is a variable cost and allocating this variable cost item based on compressor horsepower ratings instead of throughput may result in unjust and unreasonable rates. Accordingly, SCE&G and SEMI request that this matter either be set for hearing or consolidated for evidentiary hearing with the ongoing Section 4 general rate case in Docket No. RP06-569.

Transco's Answer

16. Transco states that the methodology used in its instant filing complies with the Commission's Order on Initial Decision and Order on Rehearing and that none of the suggested alternatives is supported by the record in the Docket No. RP01-245 proceeding, or the Commission's orders. Transco notes that FPL and MGAG refer to the allocation methodology reflected in the June 29 Filing as "Transco's" proposed allocation methodology. Transco states that the methodology used in the June 29 Filing is the methodology that Transco has been directed to use. Transco states that as to the methodology to be used to develop the incremental rate, the ALJ found that "[a] reasonable allocation of ... electric power costs to incremental customers based on the incremental compression relative to the overall compression" using "the most recent data available ... is a good start."¹⁷

17. In response to MGAG and FPL's assertion that the methodology reflected in the compliance filing fails to assign cost responsibility based on cost causation, Transco agrees that it does not.¹⁸ Transco states that it has maintained throughout the proceeding that the fully integrated operation of its system would dictate that those costs be recovered on a fully system-wide basis; however, the methodology underlying the compliance filing is the methodology that Transco has been directed to use, namely, the incremental compression relative to the overall compression using the most recent data available.¹⁹ Transco states that as far as Transco has been able to determine, that is the only methodology that can be derived from the Docket No. RP01-245 orders for use in the compliance filing.

¹⁷ *Transcontinental Gas Pipe Line Corp.*, 101 FERC ¶ 63,022, at P 185 (2002) (Initial Decision).

¹⁸ Transco answer at page 8.

¹⁹ See Initial Decision at P 185 and Order on Initial Decision at P 124.

18. Transco further states that MGAG and FPL's suggestion that the resolution by settlement in Texas Eastern's Docket No. RP03-542 proceeding of the issue of how to design an incremental electric power rate should be used as a guide to the resolution of that issue in this proceeding has no bearing. Transco states that the resolution in the Texas Eastern proceeding was reached by settlement, and thus establishes no precedent for use in any other proceeding.

19. Transco states that the only determination that needs to be made concerning this filing is whether Transco complied with the requirements of the Commission's orders affirming this aspect of the ALJ's Initial Decision. Transco states that the protestors' efforts to have the Commission impose a methodology for the design of the incremental electric power surcharge applicable to Cherokee customers that is not required by or specified in those orders and is not supported by the record in the Docket No. RP01-245 proceeding constitutes a collateral attack on the Commission's orders which must be rejected.²⁰

20. Transco argues that MGAG's suggestion that the projected electric power costs and throughput quantities used to develop the incremental power surcharge warrant further scrutiny should be rejected. Transco states that the projected power costs at stations 115 and 125 reflected in the instant filing are identical to those in Transco's March 1, 2007 filing in Docket No. RP07-338, which was accepted effective April 1, 2007 by unpublished letter order, issued March 20, 2007. Transco states that it followed its GT&C section 41 that requires Transco to use projected electric power costs in determining the electric power rates.

21. Transco states the Commission should reject the protestor's requests to either reject the filing, convene a technical conference or to consolidate the filing with Docket No. RP06-569 proceeding. Transco argues that with respect for rejection of a rate filing, it is appropriate only where the filing is so deficient, or so patently a nullity as a matter of substantive law, that administrative efficiency and justice are furthered by obviating the opening of a futile docket.²¹ Transco states that no such showing has been made with respect to the June 29 Filing, which was made in compliance with the Commission's orders in the Docket No. RP01-245 proceeding. Transco also argues that there is no need to establish a technical conference as the only determination that needs to be made is whether Transco's filing complies with the requirements of the Commission's orders. Finally, Transco states that the protestors have not established that any additional proceedings are necessary in order for the Commission to make that determination.

²⁰ See *e.g.*, *McCulloch Interstate Gas Corp. v. FPC* 536 F.2d 910, 913 (10th Cir. 1976); *El Paso Natural Gas Co.*, 7 FERC ¶ 61,121, at 61,185 (1979).

²¹ See *e.g.*, *Municipal Light Boards v FPC*, 450 F.2d 1341, 1345-6 (1971).

Discussion

22. For the reasons discussed below the Commission accepts Transco's compliance filing. At issue is the manner in which the electric power costs of Stations 115 and 125 are allocated between the incremental services rendered for the Cherokee shippers and the system rates applicable to existing shippers.²² The protestors base their arguments on the fact that the ALJ in his Initial Decision stated that "the most recent operating experience should be the basis for the calculation."²³ The protesting parties argue that this sentence infers that Transco should use actual volumes to calculate the commodity portion of the electric power costs. However, the ALJ continued his discussion and stated that "A reasonable allocation of fuel and electric power costs to incremental customers based on the incremental compression relative to overall compression . . . is just, reasonable and appropriate."²⁴ The ALJ further stated that compression was a way in which to base the allocation of electric power costs, specifically the ALJ stated that "I am certain that Transco can develop an allocation based on compression, just as PG&E was required to do by the Commission."²⁵

23. In developing the fixed-adder proposal in *PG&E*, the Commission accepted PG&E's proposal of using a fixed ratio of incremental compression to existing compression, multiplied by the most recent known and measurable annual fuel factor. The Commission rejected an alternative approach of using a ratio of the fuel used by incremental shippers to total fuel used, as the protestors are contemplating. The Commission stated that neither approach is without flaw. However, both adequately accomplish the Commission's goal of protecting existing shippers from subsidizing expansion shippers.²⁶

24. As noted in Transco's answer, the Commission's Order on Rehearing denied rehearing with respect to the requirement that Transco establish an incremental TEP charge for the Cherokee project and required Transco to implement an incremental

²² No party protests the manner in which Transco calculated the incremental electric power cost surcharges applicable to the Cherokee shippers once costs were allocated to the incremental services.

²³ Initial Decision at P 185.

²⁴ *Id.*

²⁵ *Id.* at P 186.

²⁶ *PG&E Gas Transmission, Northwest Corporation*, 101 FERC ¶ 61,116, at P 26 and 28 (2002) (*PG&E*).

electric charge.²⁷ The parties did not raise on exceptions to the Initial Decision or on rehearing and the Commission did not discuss in either order the methodology that Transco is required to use. For this we go back to the Initial Decision where the ALJ stated that a reasonable allocation of fuel and electric power costs to incremental customers based on the incremental compression relative to overall compression is just, reasonable and appropriate.

25. As this is a compliance filing, the Commission finds that Transco has complied with the Commission's orders to develop an incremental electric surcharge for Cherokee Shippers by using the methodology referenced by the Initial Decision, i.e., based upon a ratio of incremental compression to existing compression. In addition, that methodology is consistent with the methodology the Commission approved in *PG&E*. Transco's tariff sheets are thereby accepted effective August 1, 2007.

The Commission orders:

(A) The tariff sheets shown on the Appendix are accepted effective August 1, 2007.

(B) Transco is required to file within 30 days of the issuance of this order a revised Transmission Electric Power Cost adjustment filing in Docket No. RP08-251-000 to be effective April 1, 2008 to include a cost allocation, recalculated electric power rates and an incremental electric surcharge for Cherokee Shippers consistent with the discussion in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

²⁷ 112 FERC ¶ 61,170 (2005).

Appendix

Transco's Proposed Tariff Sheets
Accepted Effective August 1, 2007

Third Revised Volume No. 1

Forty-Eighth Revised Sheet No. 27
Sixty-Third Revised Sheet No. 28A
Forty-Second Revised Sheet No. 28C
Seventeenth Revised Sheet No. 35.01
Fortieth Revised Sheet No. 35A
Fifty-Ninth Revised Sheet No. 38
Thirtieth Revised Sheet No. 40.01
Twenty-Seventh Revised Sheet No. 40.02
Thirty-Second Revised Sheet No. 40C
Thirtieth Revised Sheet No. 40I
Twenty-First Revised Sheet No. 40J
Eighteenth Revised Sheet No. 40J.01
Twenty-Ninth Revised Sheet No. 40K
Seventeenth Revised Sheet No. 40L
Twelfth Revised Sheet No. 40M
Tenth Revised Sheet No. 40M.01
Fourteenth Revised Sheet No. 40O
Tenth Revised Sheet No. 40P
Seventh Revised Sheet No. 40P.01
Twenty-Eighth Revised Sheet No. 42
Sixteenth Revised Sheet No. 45.01
Twenty-First Revised Sheet No. 45A
Twenty-Sixth Revised Sheet No. 46
Twenty-Sixth Revised Sheet No. 47
Eleventh Revised Sheet No. 54
Fifteenth Revised Sheet No. 61
Eleventh Revised Sheet No. 61A