168 FERC ¶ 61,209
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, DC 20426

September 30, 2019

In Reply Refer To:
Transcontinental Gas Pipe Line Company, LLC
Docket No. RP19-1526-000

Transcontinental Gas Pipe Line Company, LLC
2800 Post Oak Boulevard (77056)
P.O. Box 1396
Houston, TX 77251-1396

Attention: Charlotte A. Hutson, Director
Rates & Regulatory

Dear Ms. Hutson:

1. On August 30, 2019, Transcontinental Gas Pipe Line Company, LLC (Transco) filed tariff records[1] to add two service agreements under Rate Schedule FTP (Firm Transportation - Production Area) containing negotiated rates and non-conforming provisions to its FERC Gas Tariff (Agreements). The Agreements are between Transco and Deepwater Development Company, L.L.C. in Contract No. 9224022, and LLOG Omega Holdings, L.L.C. in Contract No. 9224021 (collectively, Customers). As discussed more fully below, the tariff records are accepted, effective October 1, 2019, subject to condition.

2. Transco states that the Agreements supersede and cancel existing negotiated rate service agreements between Transco and the Customers. Moreover, Transco explains that it and the Customers executed the superseding Agreements to effectuate amendments to Article IV of the Agreements to provide that the Customers may, under specified conditions, terminate the agreements upon at least 10 days prior notice. Transco states

[1] Transcontinental Gas Pipe Line Company, LLC, FERC NGA Gas Tariff, Original Volume No. 1A, Contract No. 9224022, Deepwater Development Co., LLC, FTP Agreement dated 8/23/19, 0.0.0 and Contract No. 9224021, LLOG Omega Holdings, FTP Agreement dated 8/26/19, 0.0.0.

that Article IV of the Agreements includes language permitting the early termination of agreements that does not conform to the *pro forma* Form of Service Agreement for use under Rate Schedule FTP in Transco's tariff. However, Transco asserts that the non-conforming provision is consistent with its tariff, which it states allows Transco and a customer to mutually agree to the term of the service agreement.[2]

3. Transco states that the Customers' willingness to enter into the commitment required under Rate Schedule FTP to deliver into Transco's system all gas attributable to the Customers' leasehold interests in the properties listed in the Agreement (Committed Properties) for the life of the Committed Properties was conditioned on Transco's agreement to include the non-conforming termination provision in the Agreements. Transco states that the non-conforming provision was added to the Agreements to address the concern of the Customers regarding their ability to deliver the dedicated production from the Committed Properties. According to Transco, the non-conforming language is not unduly discriminatory, does not affect service to any other shipper, and will not give the Customers any priority to capacity.

4. Public notice of the filing was issued on September 3, 2019. Interventions and protests were due as provided by section 154.210 of the Commission's regulations.[3] Pursuant to Rule 214,[4] all timely motions to intervene and any unopposed motions to intervene out-of-time filed before the date of this order are granted. Granting late intervention at this stage of the proceeding will not disrupt the proceeding or place additional burdens on existing parties. No adverse comments or protests were filed.

5. If a pipeline and a shipper enter into a contract that materially deviates from the pipeline's form of service agreement, the Commission's regulations require the pipeline to file the contract containing the material deviations with the Commission.[5] A material deviation is any provision in a service agreement that goes beyond filling in the blank spaces with the appropriate information allowed by the tariff, and affects the substantive rights of the parties.[6] The Commission prohibits negotiated terms and conditions of service that result in a shipper receiving a different quality of service than that offered to other shippers under the pipeline's generally applicable tariff or that affect the quality of

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[2] Transco Transmittal at 3.

[3] 18 C.F.R. § 154.210 (2019).

[4] 18 C.F.R. § 385.214 (2019).

[5] 18 C.F.R. §§ 154.1(d) and 154.112(b) (2019).

[6] *Columbia Gas Transmission Corp.*, 97 FERC ¶ 61,221, at 62,002 (2001).

service received by others.[7] Provisions that materially deviate from the corresponding *pro forma* agreement fall into two general categories: (a) provisions the Commission must prohibit because they present a significant potential for undue discrimination among shippers, and (b) provisions the Commission can permit without a substantial risk of undue discrimination.[8]

6. Transco's proposed non-conforming provision, which provides that Transco and a customer may mutually agree to reduce the term of an executed service agreement, presents a significant potential for undue discrimination among shippers, and thus is not a permissible deviation from Transco's tariff. The ability to have an early termination provision is a valuable asset that any reasonable shipper may desire, and thus to offer it to only select customers appears discriminatory.

7. Transco's contention that the non-conforming provision is consistent with its existing tariff also fails. Although Transco's tariff allows it and a customer to mutually agree to the term of a service agreement, Transco does not demonstrate that any other portion of its tariff provides for the ability to negotiate the early termination of a service agreement.

8. As discussed, the proposed non-conforming provision presents a substantial risk of undue discrimination among shippers and therefore constitutes an impermissible material deviation from Transco's form of service agreement. Therefore, the Commission accepts the non-conforming agreements and corresponding tariff records referenced above, to be effective October 1, 2019, subject to the condition that Transco either (a) revise its tariff to offer the early termination provision to all similarly situated shippers, or (b) revise the agreements to remove the early termination provision, within 30 days of the issuance of this order.

By direction of the Commission.

Nathaniel J. Davis, Sr.,
Deputy Secretary.

[7] *Monroe Gas Storage Co., LLC*, 130 FERC ¶ 61,113, at P 28 (2010).

[8] *Equitrans, L.P.*, 130 FERC ¶ 61,024, at P 5 (2010).