

107 FERC ¶ 61,156
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
Nora Mead Brownell, Joseph T. Kelliher,
and Suedeen G. Kelly.

Transcontinental Gas Pipe Line Corporation

Docket No. RP92-137-053

ORDER ON REHEARING

(Issued May 10, 2004)

1. On August 29, 2003, Transcontinental Gas Pipe Line Corporation (Transco) and Indicated Shippers¹ filed requests for rehearing of the Commission's second order on remand issued on July 30, 2003.² In that order, the Commission addressed an apparent inconsistency that was raised and remanded by the Court of Appeals for the District of Columbia Circuit.³ The Commission, on remand, fully explained its policy decisions and determined that its earlier opinions are not inconsistent and do not result in the inconsistent application of Commission policy. This order denies the rehearing requests of Transco and Indicated Shippers, finding that the issues raised by the parties have been adequately addressed in prior orders.

¹ For purposes of this proceeding, Indicated Shippers are Exxon Mobil Corp., ConocoPhillips Corp., Amerada Hess Corp., Anadarko Petroleum Corp., ChevronTexaco Natural Gas, a division of Chevron U.S.A. Inc., and Shell Offshore Inc.

² Transcontinental Gas Pipe Line Corp., 104 FERC ¶ 61,171 (2003) (Second Order on Remand).

³ Exxon Mobil Corp. v. FERC, 315 F.3d 306 (D.C. Cir. 2003) (Exxon Mobil), remanding Transcontinental Gas Pipe Line Corp., 95 FERC ¶ 61,322, reh'g, 96 FERC ¶ 61,142 (2001).

I. Background

2. This proceeding has a lengthy and complex history.⁴ For over ten years now, Transco has attempted to justify its proposal to require certain firm transportation customers to take, and pay for, new service on the supply laterals in the production area.⁵ The proposal would replace its existing interruptible transportation (IT) feeder rates with so-called “firm to the wellhead” (FTW) rates.⁶ However, the Commission has found that it would be unjust, unreasonable, and contrary to Commission policy to require FT-conversion customers to take and pay for service which they do not currently receive.

3. In 1991, the Commission approved settlements providing that FT-conversion customers would receive firm transportation service (under Rate Schedule FT) only on the production area mainline.⁷ FT-conversion customers do not take service on the supply laterals in the production area since the primary receipt points listed in their contracts are all on the production area mainline. With the exception of a few grandfathered contracts held by firm shippers (other than FT-conversion customers), Transco only offers interruptible service (under Rate Schedule IT) on its supply laterals. However, pursuant to Transco’s tariff, IT service that supplies or “feeds” the FT service of the FT-conversion customers receives priority over other IT service and is known as “IT-feeder service.” Currently, for the most part, producers and marketers (and not the

⁴ For a detailed historical background of this proceeding, see the Second Order on Remand at P 2-22.

⁵ The customers that would be affected by the proposal are Transco’s former bundled sales customers who converted to firm transportation (FT) service under Rate Schedule FT pursuant to the settlement agreements approved by the Commission in 1991. They are referred to as the “FT-conversion customers.”

⁶ This proposal is somewhat mislabeled in that Transco does not propose to provide firm service on its gathering systems all the way to the wellhead supply sources. Rather, the proposal is to expand open access firm transportation service from the production area mainline to the supply laterals and to charge firm, two-part rates for that service.

⁷ Transcontinental Gas Pipe Line Corp., 55 FERC ¶ 61,446 (1991); order granting and denying reh'g in part, 57 FERC ¶ 61,345 (1991); reh'g, 59 FERC ¶ 61,279 (1992); aff'd in part and remanded, *Elizabethtown Gas Co. v. FERC*, 10 F.3d 866 (D.C. Cir. 1993).

FT-conversion customers) use the IT-feeder service to transport gas on the supply laterals, and on the production area mainline as well, to reach the FT-conversion customers' receipt points on the production area mainline.

4. The major point of contention throughout this proceeding centers on the question of how Transco should recover the fixed costs of its supply laterals. Under Transco's existing rate design, FT-conversion customers pay a reservation charge for service on the production area mainline, and as such, the FT-conversion customers are entitled to use secondary points on the production mainline. However, the Commission has held that since the FT-conversion customers do not pay for service on the supply laterals, they cannot use secondary points on the supply laterals.⁸

5. In Exxon Corporation v. FERC, 206 F.3d 47 (D.C. Cir. 2000), the Court held that the Commission had not adequately explained its finding that the proposed change to Rate Schedule FT would only be just and reasonable if the FT-conversion customers were given a choice whether to purchase new firm service on the supply laterals to be offered under Rate Schedule FT or purchase a lower quality interruptible service. The Court pointed out that the FT-conversion shippers' contracts contained Memphis⁹ clauses which permit Transco to make filings under section 4 of the Natural Gas Act (NGA) to modify the rates, terms and conditions of Rate Schedule FT service. Given that the Commission had found that firm service on the supply laterals with two-part rates would be just and reasonable, the Court did not understand why the Memphis clauses did not permit Transco to unilaterally impose its FTW proposal on the FT-conversion shippers. 206 F.3d at 52.

6. In our order responding to the Court's remand, the Commission clarified that the FT-conversion customers had not contracted for the IT-feeder service on the supply laterals.¹⁰ Rather, these customers only had contracts for Rate Schedule FT service on the production area mainline, and, consistent with this fact, the primary receipt points listed in the FT service agreements were all on the production area mainline. The Commission also found that the FT-conversion shippers had no right to use secondary

⁸ Transcontinental Gas Pipe Line Corp., 73 FERC ¶ 61,631 at 62,128 (1995).

⁹ United Gas Pipe Line Co. v. Memphis Light, Gas and Water Div., 358 U.S. 103 (1958).

¹⁰ Transcontinental Gas Pipe Line Corp., 95 FERC ¶ 61,322 at 62,138-139 (2001) (First Order on Remand).

points on the supply laterals. In these circumstances, the Commission held that Transco's FTW proposal would improperly require the FT-conversion customers to take, and pay for, service for which they had not contracted.

A. Circuit Court's Second Remand

7. The Commission's order on remand was once again appealed to the Court. In Exxon Mobil, the Court remanded this case to the Commission for a second time after finding that the Commission had not adequately reconciled its findings in the order on remand on Transco's FTW proposal with its orders rejecting a subsequent proposal filed by Transco to provide firm service on the supply laterals (FTSL proposal).¹¹

8. The Court held that it would appear perfectly reasonable to conclude that Transco's FTW proposal would force FT-conversion customers to take and pay for capacity in excess of their current contractual obligations, and that such a change would exceed the scope of the Memphis clauses.¹² The Court also observed that the petitioners were not able to provide any examples of where a Memphis clause was used to force customers to take additional service rather than to accept changes in the rates, terms, or conditions of service already agreed upon. Id.

9. However, the Court was concerned that the Commission made inconsistent statements with regard to whether Transco could impose secondary firm supply lateral service on the FT-conversion customers without modifying their contracts in its orders rejecting the FTW and FTSL proposals. Under the FTSL proposal, Transco would have provided firm service on the supply laterals under a separate FTSL Rate Schedule. FTSL service would have been limited to the supply laterals and would not have included any rights to service on the production area mainline. By the same token, service under Rate Schedule FT would remain limited to the production area mainline, with the FT shippers, including the FT-conversion shippers, having no rights to use the production area supply laterals, whether on a primary or secondary firm basis. As in the FTW proposal, Transco

¹¹ Transcontinental Gas Pipe Line Corp., Order Accepting and Suspending Tariff Sheets Subject to Further Conditions and Establishing Briefing Schedule and Technical Conference, 84 FERC ¶ 61,337 (1998); Order on Mobile-Sierra Doctrine and on Rehearing, 85 FERC ¶ 61,357 (1998); Order Following Technical Conference and Rejecting Tariff Sheets, 86 FERC ¶ 61,175 (1999); Order Denying Requests for Rehearing, Stay, and Clarification, 88 FERC ¶ 61,135 (1999).

¹² Exxon Mobil, 315 F.3d at 310.

proposed to eliminate the IT-feeder priority. In the course of rejecting the FTSL proposal, the Commission found, among other things, that upon the elimination of the IT-feeder service, its flexible point policy would automatically give FT-conversion customers secondary rights on the supply laterals (without any need for contract modification).

10. The Court stated that the Commission had not explained why, under the logic in the FTSL orders, Transco's FTW proposal to eliminate the IT-feeder service and require the FT-conversion shippers to take and pay for service on the supply laterals would entail modification of their contracts, since the FTSL orders seem "to indicate that the Commission's general policy would give the FT conversion shippers secondary rights on the supply laterals without the need for contract modification."¹³ Accordingly, the Court concluded that the Commission had not adequately responded to contentions that Transco's FTW proposal could be accepted as a proposal to provide such secondary firm rights.

B. Order on Second Remand

11. In the Second Order on Remand, the Commission explained that there are important distinctions between primary and secondary point rights.¹⁴ A shipper's firm contract will typically provide that the pipeline will transport up to a specified contract demand between primary receipt and delivery points listed in the contract. This provision specifies the shipper's guaranteed firm right to service, and the pipeline must reserve sufficient capacity at the primary points and the intervening mainline to be able to guarantee service. A change in primary points requires a change in the contract between the pipeline and the shipper. In contrast, pipelines must provide in the general terms and conditions of their tariff that firm shippers may use all other points in the zone for which they pay on a secondary basis. The shipper has no guaranteed firm right to use these secondary points, however, since shippers using their primary firm capacity have priority. The Commission has not considered the provision of secondary point rights to be a contract change, because shipper contracts include a provision incorporating the general terms and conditions of the pipeline tariff.

12. Although Transco argues that that the FTW proposal only provides FT-conversion customers with secondary rights on the supply laterals, the Commission found that

¹³ Exxon Mobil, 315 F.3d at 311.

¹⁴ Second Order on Remand at P 27-41.

Transco's proposal would actually provide FT-conversion customers with flexible primary firm rights. The Commission found that although Transco would not require FT-conversion customers to modify their contracts by selecting specific primary points on the supply laterals, the proposal required these customers to take, and pay for, primary firm service on the supply laterals in the production area.

13. The Commission explained that the FTW proposal created primary rights by virtue of the fact that it would provide FT-conversion customers with the highest possible priority for service on the supply laterals. The FTW proposal would require Transco to reserve capacity on the supply laterals in order to provide the FT-conversion shippers a guaranteed firm service on the supply laterals. By contrast, if Transco were proposing to give the FT-conversion shippers only secondary point rights on the supply laterals, it would be free to sell the entire firm capacity on the supply laterals to other firm shippers. Thus, the Commission found that the rights allocated by the FTW proposal on the supply laterals are more accurately determined to be primary rights. The Commission also stated that Transco's proposal to require the FT-conversion shippers to take primary rights on the supply laterals would also shift the costs of the supply laterals to the FT-conversion shippers, whereas simply giving them secondary point rights on the supply laterals would not involve a cost shift. This is because Transco's FTW proposal requires the FT-conversion shippers to absorb all the costs occasioned by the elimination of the IT-feeder service, without any possibility of having those costs reduced by the sale of additional firm service in the zone.

14. In sum, the Commission determined that Transco's proposal would provide FT-conversion customers with flexible primary point rights on the supply laterals. Accordingly, since the FTW proposal would modify the FT-conversion customers' primary rights, we found that such an action would constitute an impermissible modification of the FT-conversion customers' contracts, not merely a change in the terms and conditions of service in Transco's tariff that could be effectuated by the authority of a Memphis clause. We therefore concluded that Transco had not met its burden under NGA section 4 to show that its FTW proposal is just and reasonable. We also found that Transco's IT-feeder service customers had not met their NGA section 5 burden to justify imposition of the FTW proposal, since that proposal would force FT-conversion customers to take, and pay for, new service on the production area supply laterals which they do not currently receive.

15. Notwithstanding the fact that the Commission has consistently found this particular FTW proposal to be unworkable, other proposals to implement two-part straight-fixed-variable (SFV) rates on the supply laterals might be permissible. The Commission even suggested how an SFV rate could be permissibly designed and reiterated that Transco is free to make an additional NGA section 4 filing to eliminate the

IT-feeder service without providing firm shippers with primary point rights on the production area supply laterals.¹⁵

16. Transco and Indicated Shippers have both requested rehearing of the Second Order on Remand. They argue that the Second Order on Remand unlawfully rejects Transco's FTW proposal, contending that the Commission has misinterpreted and misapplied the Mobile-Sierra¹⁶ and Memphis doctrines and its decisions approving the unbundling settlements, service contracts, and tariff provisions governing Transco's existing IT-feeder service.

II. Discussion

17. A Memphis clause in a contract authorizes the pipeline to make unilateral section 4 filings to change the rates, terms, and conditions under which the pipeline will provide the service included in the customer's contract. It does not authorize the pipeline to require the customer to take and pay for additional service for which the customer has not contracted. For example, if a customer's contract specifies that it will reserve capacity in an amount of 10 Dth/day, the service agreement's Memphis clause would not allow the pipeline to require the customer to take 20 Dth/day. Similarly, if a customer's contract provides for it to take and pay for firm service on one part of the system, the Memphis clause would not permit the pipeline to require the customer to also take and pay for firm service on another part of the system. The Court agreed with this interpretation of the scope of a Memphis clause, stating "Petitioners . . . point to no case in which a Memphis clause has been used to force a pipeline customer to take additional service rather than to accept changes in the rate, terms, or conditions." Exxon Mobil, 315 F.3d at 310.

18. The only issue remanded by the Court is whether Transco's FTW proposal would, in fact, require the FT-conversion shippers to take additional firm service, rather than simply changing the rate, terms, and conditions of the service the FT-conversion shippers have already contracted for. In particular, the Court found that the Commission had failed to reconcile its holding that the FTW proposal required the FT-conversion shippers to take additional service "with its previous opinions concerning the complex ways in

¹⁵ Second Order on Remand at P 48; see also Transcontinental Gas Pipe Line Corp., 88 FERC ¶ 61,135 at 61,372-73.

¹⁶ United Gas Pipe Line Co. v. Mobile Gas Service Corp., 350 U.S. 332, 345 (1956) (Mobile), and F.P.C. v. Sierra Pacific Power Co., 350 U.S. 348, 355 (1956) (Sierra).

which the 1991 settlements and firm service agreements, Transco's FT tariff, and the Commission's own flexible delivery and receipt point policy interact with each other to shape the FT-conversion shippers' rights of service." Id. In the remand order, we reviewed the existing contractual arrangements and the FTW proposal and concluded that the existing 1991 settlement and firm service agreements do not give FT-conversion shippers primary firm rights on the supply laterals. Thus, the FTW proposal would require the FT-conversion shippers to take primary firm service on the supply laterals for which they have not contracted. Consequently, we reaffirmed our decision that the FTW proposal was beyond the scope of the Memphis clause.

19. The rehearing requests attack this finding from two points of view. First, both Transco and Indicated Shippers contend that the FT-conversion shippers' contracts, as implemented by the 1991 unbundling settlements, already include essentially the same type of primary firm service on the supply laterals as they would receive under the FTW proposal, and thus the provision in the FTW proposal for the FT-conversion customers to receive such a primary firm service on the supply laterals cannot be a contract change. Second, Indicated Shippers contend that the supply lateral service the FT-conversion shippers would receive under the FTW proposal is not, in fact, a primary firm service, but rather is more accurately characterized as a secondary firm service of the type the Commission has permitted to be implemented through changes in the terms and conditions of the pipeline's tariff. Finally, Indicated Shippers contend that, even if the FTW proposal would require the FT-conversion shippers to take additional service not currently included in their contracts, the Commission should modify those contracts to require the FT-conversion shippers to take additional service on the supply laterals by making the necessary public interest findings required by the Mobile-Sierra doctrine. Below, we deny rehearing on each of these issues.

A. FT-Conversion Customers' Existing Rights on the Production Area Supply Laterals

1. Rehearing Requests

20. Transco and Indicated Shippers contend that the IT-feeder service on the supply laterals was a part of the FT-conversion shippers' existing capacity, and that, therefore, Transco's proposal was nothing more than a proposed change in rate design from a volumetric to a firm rate design. Transco contends that under its current tariff, the FT-conversion customers already have access to the supply laterals, on an essentially firm basis, whether the FT-conversion customers transport gas supplies to feed their mainline FT capacity or have some other entity (i.e., a producer or marketer) transport such gas.

21. Transco cites to the fact that the unbundling settlements and its Rate Schedules FT and IT allow FT-conversion shippers to “access” the IT-feeder service.¹⁷ In support of its argument, Transco cites to Section 7.3 of its Rate Schedule FT as providing:

Transportation service from an off mainline receipt point upstream of one of the above designated compressor stations to any such compressor station which is a firm receipt point for Buyer under this rate schedule shall be provided by Seller under an interruptible feeder arrangement as set forth in Section 3.9 of Rate Schedule IT.

And, Rate Schedule IT provides, in section 3.9:

Transportation for a Buyer under this Rate Schedule shall be considered an interruptible feeder when such transportation feeds a firm receipt point where Seller provides Buyer firm transportation service to Buyer or another Buyer.

22. Transco claims that this tariff language affords FT-conversion customers with the right to access the essentially firm IT-feeder service. Transco therefore argues that the Second Order on Remand errs in finding that FT-conversion customers have no rights to service on the supply laterals, since such a finding contradicts the effect of the unbundling settlements and the tariff language in its Rate Schedules. Thus, Transco argues, its proposal simply continues the same type of essentially firm service the FT-conversion shippers already have on the supply laterals, particularly since the FTW proposal would not move the primary receipts points contained in the existing contracts. As such, Transco contends that its FTW proposal would only effectuate a permissible change in rate design that would increase the costs apportioned to the FT reservation charge.

23. Indicated Shippers, representing primarily producers and marketers currently contracting for the IT-feeder service, similarly take issue with the Commission’s determination that FT-conversion customers currently have no rights in the production area supply laterals. They contend that the purpose of the existing IT-feeder priority was to preserve the reliability and quality of their formerly bundled sales service by ensuring that the gas they purchased would be given essentially firm priority on the supply laterals. They assert that, as a result, the FTW proposal’s provision for the FT-conversion shippers to have the highest priority for service on the supply laterals other than grandfathered FT

¹⁷ Request for rehearing at 7-8.

rights simply preserves the FT-conversion shipper's existing priority rights on the supply laterals. Transco and the Indicated Shippers also point out that, in the FTSL case, the FT-conversion shippers themselves asserted that, in contrast to the FTSL proposal, Transco's FTW proposal was made within the framework of existing FT conversion contractual arrangements and was intended to preserve the same production area supply lateral flexibility those customers enjoyed under the IT-feeder system.

2. Discussion

24. The arguments by Transco and Indicated Shippers on rehearing repeat the arguments rejected in the first remand order that the IT-feeder service on the supply laterals was a part of the FT shipper's firm service, and, as a result, the FTW proposal does not require the FT-conversion shippers to take a new service not currently in their contracts but simply entails a rate design change. As the Commission found in the first remand order, after an extensive review of the contracts and settlements, "the FT conversion customers' firm contracts with Transco do not include service on the supply laterals."¹⁸ The so-called "IT-feeder service," in fact, was not a service at all, but merely a higher priority that was accorded to any shipper using IT service to provide gas to a firm shipper.

25. The Commission recognizes that the 1991 unbundling settlements provided for this priority at least in part to give the FT-conversion shippers an opportunity to preserve the quality of their firm bundled sales services by ensuring the gas that they purchased would be given an essentially firm priority on the supply laterals.¹⁹ However, as the Court of Appeals noted, "although the parties appear to have assumed during the negotiations that FT conversion customers would contract separately with Transco for IT-feeder service, the settlement agreements did not actually require them to do so."²⁰ And,

¹⁸ 95 FERC ¶ 61,322, at 62,134.

¹⁹ See Transcontinental Gas Pipe Line Corp., 55 FERC at 62,345-46 (cited by Transco and Indicated Shippers in their rehearing requests.) See also, Transcontinental Gas Pipe Line Corp., 85 FERC at 62,384 (also relied upon by Transco and Indicated Shippers.)

²⁰ 315 F.3d, at 308. Transco and Indicated Shippers cite certain statements in Opinion Nos. 405 and 405-A as suggesting that Transco's FTW proposal was only a change in rate design or allocation. However, as discussed in the first order on remand, the Commission in those orders failed to recognize that the FT-conversion shippers had not, in fact, entered into any contracts for IT-feeder service.

it is undisputed that the FT shippers did not contract for IT service; instead, the producers and marketers contracted and paid for this IT service to provide gas to the firm shippers. Thus, while the FT-conversion shippers may benefit from the IT-feeder priority, this cannot alter the fact that the relevant service is received only by producers and marketers pursuant to their contracts with Transco.

26. The arguments again put forward by Transco and Indicated Shippers in their rehearing requests do not demonstrate that the IT-feeder service was part of the FT conversion customers' contracts. Although section 3.9 of Rate Schedule IT offers FT-conversion shippers the right to purchase an IT-feeder service that would have priority over other interruptible transportation services, it does not require them to do so, and the right to purchase IT-feeder service is available to all shippers. Additionally, section 7.3 of Rate Schedule FT makes reference to the IT-feeder service available under a separate Rate Schedule IT. This suggests IT-feeder service was not part of the FT service which is reinforced because the language does not require the FT-conversion customers to obtain IT service. Thus, this tariff provision along with section 3.9 of Rate Schedule IT simply represents an offer of services. That the parties did not intend to include the IT-feeder service within the FT-service is shown by the IT-feeder service having to be purchased under Rate Schedule IT. Also, the hard fact remains that, even though Transco currently offers IT service to its FT-conversion customers, no evidence indicates that any of these customers ever purchased this IT-feeder service.

27. Although Transco contends that its FTW proposal does not require FT-conversion customers to contract for additional service on the supply laterals, as compared to the current IT-feeder structure, this argument is based on its misunderstanding of the orders that approved the unbundling settlements. The Commission does not disagree with Transco's interpretation that the unbundling settlements provided FT-conversion customers an opportunity to purchase IT service on the supply laterals. However, simply affording FT conversion customers an opportunity to "access" the IT-feeder service is not akin to requiring them to take primary service rights on the supply laterals in the production area, as Transco's FTW proposal would do.

28. Transco and Indicated Shippers both argue that in the FTSL proceeding the FT-conversion shippers themselves interpreted their contracts as including capacity on the supply laterals. They point out that, in opposing the FTSL proposal, the FT-conversion shippers contended in an October 30, 1998 pleading that the unbundling settlements preserved the contract entitlements to supply lateral service that the FT-conversion shippers had previously had as sales customers of Transco. The FT-conversion shippers therefore asserted the FTSL proposal would violate the Mobile Sierra doctrine, since it would permit Transco to sell to third parties firm supply lateral capacity which was contractually committed to the FT-conversion shippers. The FT-conversion shippers also

contrasted the FTSL proposal with the FTW proposal, which they stated did not violate the Mobile Sierra doctrine. That was because the FTW proposal was “made within the framework of existing FT conversion contractual arrangements” and was “intended to preserve the same production area supply lateral flexibility customers enjoyed under the IT Feeder system.”²¹

29. However, in its orders on Transco’s FTSL proposal, the Commission rejected these contentions by the FT-conversion shippers and instead adopted Transco’s position in that proceeding that the unbundling settlements had not given the FT-conversion shippers any contractual entitlement to service on the supply laterals.²² The Commission stated that the FT-conversion shippers had pointed to:

no provision of their service agreements which guarantee them a particular right to capacity on the supply laterals. Indeed, as Transco points out, and Con Edison et al. concede, the firm contracts signed by the converting sales customers do not refer to capacity on the supply laterals. The contracts rely on the provisions of Transco’s tariff to establish the conditions under which the service is provided. The provisions related to the rights and priorities for supply area capacity are governed solely by Transco’s firm and interruptible tariff and its General Terms and Conditions relating to service, which themselves contain no prohibition against a filing to modify the General Terms and Conditions of the tariff. 85 FERC at 62,390.

This is the same conclusion we reach here, discussed above, that those tariff provisions do not give the FT-conversion shippers any contractual rights on the supply laterals, only the opportunity to obtain such rights by signing contracts for IT service on the supply laterals, which the FT-conversion shippers never did.

30. Accordingly, we reaffirm our previous holdings that the FT-conversion shippers’ current firm contracts do not include any right to service on the supply laterals. The FTW proposal would require the FT-conversion shippers to take service on the supply laterals where they currently have no rights. We thus turn to the issue whether the contractual entitlements to service on the supply laterals imposed on the FT-conversion shippers by the FTW proposal are primary firm rights of the type the Court has

²¹ Response of Consolidated Edison Company of New York, Inc., et al., Docket No. RP98-381 filed October 30, 1998 at 5-6.

²² See 85 FERC at 62,390, and 88 FERC at 61,365-67.

recognized would exceed the Memphis clause or are secondary firm rights which can be implemented through a change in the terms and conditions of the pipeline's tariff.

B. Whether the FTW proposal would provide firm primary or secondary service on the supply laterals

1. Rehearing Requests

31. Indicated Shippers also contend that the Commission incorrectly treated the FTW proposal as giving the FT-conversion customers primary firm rights on the supply laterals and thus erroneously concluding that the proposal would improperly modify FT-conversion contracts.

32. Indicated Shippers contend that under the FTW proposal, FT-conversion customers would maintain their existing primary receipt point rights on the mainline but would not have any primary receipt points on the laterals. Indicated Shippers maintain, therefore, that the proposal would merely permit FT-conversion customers to select secondary receipt points in the supply laterals as a result of their payment of reservation charges applicable to the zones in which the laterals are located. Indicated Shippers state that as a result of the physical limitations of the supply laterals, Transco does not have the available capacity to offer new FT service on the laterals. As such, Indicated Shippers state that the FTW proposal does not provide guaranteed service on the supply laterals, but would only provide pro rata secondary rights to whatever capacity may be available on the supply laterals.

33. Indicated Shippers claim that because Transco's FTW proposal would not offer separate primary firm service in the supply laterals, the proposal does not elevate FT-conversion customer's flexible receipt point rights from secondary to primary rights. Indicated Shippers claim that Transco's decision not to sell separate firm capacity in the supply laterals does not show the FTW proposal makes these primary rights but merely continues Transco's practice under its IT-feeder rates to maintain the reliability and quality of the formerly bundled sales service to its FT-conversion customers. Indicated Shippers assert the Commission's finding that the proposal constitutes a modification of FT-conversion contracts cannot be reconciled with the fact that Transco does not propose to modify the FT-conversion customer's primary receipt point rights at the pools established under their contracts. Indicated Shippers also point out that, in holding that the FTW proposal constitutes a change in contract, the Commission has only cited cases involving changes in the specific primary points listed in a shipper's contract.

2. Discussion

34. The Commission reaffirms its holding in the Second Order on Remand that Transco's FTW proposal would require the FT-conversion customers to take primary firm service on the supply laterals, rather than just giving them the ability to use the supply laterals on a secondary basis. The Second Order on Remand recognized that the FTW proposal would not give the FT-conversion shippers point-specific primary points on the supply laterals. Nonetheless, the proposal is still properly treated as giving the FT-conversion shippers primary firm rights on the supply laterals because FT-conversion shippers would have the highest possible priority on the supply laterals, thus requiring Transco to reserve capacity on the supply laterals for them.

35. There is no dispute that the FTW proposal would require Transco to reserve capacity so as to give the FT-conversion shippers the highest priority on the supply laterals, subject only to certain grandfathered FT service. Transco's witness testified, "[u]nder our TABS proposal and firm-to-the-wellhead proposals, we would reserve the supply lateral capacity in our production area except for existing point-to-point firm arrangements for our FT customers as a class. That capacity would be reserved on a firm basis for the FT customers as a class." Testimony of Mr. Skains in Docket No. RP93-136, Tr. at 1109-1110. Consistent with this testimony, Transco's rehearing request expressly states that, after the grandfathered firm service on the supply laterals, "the flexible firm capacity rights of FT conversion shippers under Transco's [FTW] proposal would have the highest priority on the supply laterals." Rehearing request at 10. Indicated Shippers also recognize "the fact that under FTW rates Transco would not sell separate primary capacity in the supply laterals." Rehearing request at 36.

36. These undisputed aspects of the FTW proposal render the service to be given the FT-conversion shippers a primary firm service, not a secondary firm service. Section 284.7(a)(3) of the Commission's regulations provides that firm service "means that the service is not subject to a prior claim by another customer or another class of service"²³ Under Transco's proposal, the existing firm shippers would be provided with service that is not subject to a prior claim by another customer. In contrast, secondary service obtained by using flexible receipt and delivery points is, as its name implies, service that is secondary to the service held by the primary service holder. As the Commission stated in Order No. 636, in describing the provision of flexible receipt and

²³ 18 C.F.R § 284.7(a)(3) (2003).

delivery points, “firm shippers will have the right to change firm delivery points and to use other [secondary] delivery points on an interruptible basis without losing their priority for firm service.”²⁴

37. In Order No. 636-A, the Commission explained that under the flexible receipt and delivery point policy, “firm shippers’ use of designated alternate/flexible delivery points is subject to the rights of firm shippers using those points as primary delivery points but is superior to the rights of interruptible shippers to those points.”²⁵ As such, firm primary rights held by parties cannot be “bumped, preempted, or curtailed under the flexible receipt and delivery point policy.”²⁶ Indeed, it follows that when shippers are using secondary rights, the pipeline can still sell primary service at these same points to other customers. For example, if the FT-conversion shippers were using capacity on the supply laterals on a secondary basis, Transco could sell that lateral capacity to other shippers on a primary basis, and the FT-conversion shippers would then be subject to being bumped or preempted by the shippers with primary rights on the laterals. But Transco and Indicated Shippers both expressly state that Transco could not do this under its FTW proposal.

38. Transco and Indicated Shippers maintain that giving FT-conversion shippers rights on the laterals is a permissible extension of FT service, because Transco did not propose to modify the existing primary receipt points in the shippers’ contracts. Indicated Shippers emphasize that because the FTW proposal does not change the FT-conversion shippers’ primary receipt points, it would not give them specific primary contract paths on particular supply laterals, defined by primary rights at specific receipt points on those laterals. Indicated Shippers point out that each lateral has less capacity than the total contract demands of the FT-conversion shippers at their production area mainline receipt points. Therefore, the FT-conversion shippers’ requests to schedule service on any particular supply lateral would be subject to the availability of capacity on the lateral and would be subject to pro rata reduction if they exceed the capacity of the supply lateral in question.

39. These claims do not alter the fact that the FTW proposal gives the FT-conversion shippers the highest priority service on the supply laterals. The pro rata allocation

²⁴ Order No. 636, at 30,429.

²⁵ Order No. 636-A, at 30,583.

²⁶ Id.

described by Indicated Shippers only occurs when the FT-conversion shippers as a class seek to schedule more service on a particular supply lateral than that lateral can accommodate, and is consistent with Commission policy for pro rata allocation in similar situations. The FT-conversion shippers would not be bumped or preempted, however, in favor of a separate, higher priority primary firm service sold by Transco on the supply laterals because the FT-conversion shippers have the highest priority. This would not be the case if the FTW proposal only gave the FT-conversion shippers a secondary service of the type the Commission has found can be permitted through changes in the terms and conditions of the tariff.

40. Moreover, primary rights exist on the mainline, not simply at individual points, so identifying specific primary points need not be the sole determinant of whether a shipper has primary rights.²⁷ By giving the FT-conversion shippers the highest priority for service on the supply laterals mainline, Transco's proposal requires them to extend their primary firm service onto the supply area laterals' mainline. Indeed, the priority over mainline service is the principal benefit of obtaining firm primary rights. An LDC, for example, controls its own delivery points and thus has little need for primary service at the point of delivery. However, primary service on the mainline provides the LDC with the highest possible priority for capacity leading to its delivery point. Similarly, the importance of obtaining primary service on a supply area lateral is not the primary capacity at the receipt point, but the control of the supply lateral capacity downstream of the receipt point. As discussed, Transco's proposal gives the FT-conversion shippers such control.

41. More fundamentally, treating Transco's FTW proposal as only giving the FT-conversion shippers secondary point rights on the supply laterals, even though they would have to pay higher rates under the proposal, is inconsistent with Commission policy. That policy treats secondary firm service as an adjunct to a primary firm service for which the shipper has already contracted and paid. The linchpin of our requirement that pipelines give firm shippers secondary point rights is our holding that the pipeline must give a firm shipper "flexibility in receipt and delivery points for the part of the system for which it pays a reservation charge." Order No. 636-A at page 30,585. See also Order No. 636-B, 61 FERC at 62,013. In other words, when a shipper contracts for a primary firm service and pays a reservation charge for that service, the reservation charge includes the costs of a particular portion of the system. Because the shipper is paying

²⁷ The listing of primary points in the contract is a convenient means of identifying the beginning and ending point of the shipper's service. But the primary service being obtained is over the mainline between those points.

costs for that portion, the shipper receives secondary point rights throughout that portion of the system as a derivative of its primary firm service. Such a derivative right may be implemented through a change in the pipeline's terms and conditions of service for the very reason that such derivative rights do not increase the shipper's entitlement to primary firm service or its costs.²⁸

42. Here, however, the situation is different. The FT-conversion shippers have only contracted for primary firm service on the production area mainline, not on the supply laterals, and their reservation charges do not include responsibility for the supply laterals. This would change under the FTW proposal. As Transco states in its rehearing request, "the essential difference between Transco's proposed firm-to-the-wellhead rate design and the current IT Feeder rate design is an economic one: The difference is whether fixed costs are recovered via IT Feeder rates paid by producers and marketers, or via FT reservation rates paid by FT shippers." Rehearing request at 11. In short, the entire purpose of Transco's FTW proposal is to require the FT-conversion shippers to take and to pay for primary rights on the supply laterals for which they are not currently paying, not to give them secondary firm rights on facilities for which they are already paying. Thus, Transco's FTW proposal goes beyond simply giving the FT-conversion shippers rights that are a derivative of their current primary firm service on the production area mainline. Accordingly, this change cannot be implemented through a modification in the pipeline's existing terms and conditions of service.

43. In their rehearing request, Indicated Shippers point out that the FT-conversion shippers are paying reservation charges for service in production area rate zones 1, 2 and 3, and those rate zones include the supply laterals, as well as the production area mainline. Also, the rates for both firm and interruptible production area service are based on the system-wide costs allocated to the production area rate zones. There is no separate allocation of the costs of the production area mainline facilities to the firm rates paid by the FT-conversion shippers and the costs of the supply lateral facilities to the interruptible rates paid by the producers and marketers who have contracted for that service. In this sense, Indicated Shippers suggest, the FT-conversion shippers are already paying a portion of the costs of the supply laterals, and the FTW proposal only increases the

²⁸ Regulation of Short-Term Natural Gas Transportation Services, and Regulation of Interstate Natural Gas Transportation Services, 101 FERC ¶ 61,127 at P 48 ("the Commission is not requiring pipelines to permit the shipper to use primary point rights beyond those set forth in its contract.")

portion of the common cost pools attributable to the production areas zone that is allocated to the FT-conversion shippers.²⁹

44. While Indicated Shippers' description of the design of Transco's zone rates is correct, we do not draw the same conclusions as Indicated Shippers. The Commission commonly develops rates for a pipeline's different rate zones by starting with a system-wide cost of service and then allocating those costs among rate zones based on the contract demand miles of the shippers in the various zones. The Commission does not generally develop a separate cost of service for each rate zone. Opinion No. 405, 76 FERC at 61,070. However, the fact that a system-wide cost of service is used to design rates does not mean that shippers paying a zoned rate in one zone should be treated as also paying for other rate zones. Under Commission policy, a shipper is entitled to flexible point rights only in the zone for which it pays.

45. If a pipeline unilaterally proposed to expand a shipper's primary contract path (i.e., the portion of the mainline over which the shipper has primary firm rights, commonly that portion of the mainline extending from the primary receipt point to the primary delivery point) into another rate zone, the Commission would consider that proposal to be an unauthorized unilateral contract change under any Memphis clause. Such a contract change would be analogous to increasing the shipper's contract demand within its existing rate zones from 10 Dth/day to 20 Dth/day, because it would require the shipper to take and pay for a greater amount of service than it had agreed to in its contract. Just as a Memphis clause does not permit the pipeline to change the contractual amount of gas to be delivered under the contract,³⁰ it does not permit the pipeline to force shippers to accept and pay for a longer capacity path than they have contracted for.

²⁹ Indicated Shippers point out that in 1989 Transco proposed in Docket No. RP90-8-000, to replace an earlier version of its IT-feeder rates with FTW rates. The Commission accepted and suspended those rates, Transcontinental Gas Pipe Line Corp., 49 FERC ¶ 61,174 (1989), and they were in effect for about 15 months, until the rates for the supply laterals were changed back to IT-feeder rates by the 1991 unbundling settlements. Indicated Shippers contends this demonstrates that the Commission has previously treated implementation of FTW rates as simply a rate design changes that did not affect the shippers' contracts. However, the Commission never approved the Docket No. RP90-8-000 FTW rates on the merits. Rather, it suspended that proposal and set it for hearing, and the proceeding was ultimately resolved by the 1991 settlement, which implemented the IT-feeder rates at issue in this proceeding.

³⁰ 315 F.3d, at 310.

46. Instead of establishing a separate zone for the supply laterals, Transco achieved virtually the same result through its IT-feeder rate design. Under the IT-feeder rate design, two transactions are needed to move gas through the production area rate zones on a firm basis – the interruptible service on the supply laterals and the firm service on the production area mainline. In designing the firm rates for the production area rate zones, the IT-feeder transactions that must be entered into for service on the supply laterals reduce the costs allocated to firm shippers. This is because Transco takes all the costs allocated to each zone and divides those costs by the contract demand represented by firm service and by the imputed contract demand represented by the interruptible service. The additional imputed contract demand related to the IT-feeder service thus causes the per unit rates for the production area zones to be lower. Just as treating the supply laterals as a separate rate zone from the production area mainline based on a system-wide cost of service would allocate less costs to the FT-conversion shippers, the IT-feeder rate design also allocates less costs to the FT-conversion shippers.

47. Thus, when Transco implemented flexible point rights pursuant to Order No. 636, the Commission recognized that the IT-feeder rate design required that the FT-conversion shippers not be entitled to secondary point rights on the supply laterals, because, under this rate design, they were not responsible for the costs of the supply laterals.³¹ This followed from the fact that Transco's costs had been allocated and rates designed based on the assumption that separate (high priority) transactions were necessary to obtain service on the supply laterals. The FT-conversion shippers could not be considered to pay for the costs of the supply laterals when Transco's tariff required that they enter into a separate contract and pay an additional amount in order to obtain service on the supply laterals. The fact the FT-conversion shippers do not currently have secondary point rights on the supply laterals reflects this rate treatment, and applies our policy that firm shippers only have secondary point rights on the parts of the system for which they are paying.³²

³¹ Transcontinental Gas Pipe Line Corp., 73 FERC ¶ 61,361 at 62,128 (1995).

³² The Commission recognized the same point in the FTSL case, in which it stated that as long as the IT-feeder rate design were in effect, Transco was entitled to an exception to the general policy that firm shippers have flexible point rights throughout the zone on which their rates are based. The Commission recognized that, in effect, the FT-conversion shippers were not paying for the entire zone and therefore were not entitled to secondary access throughout the zone. The Commission, however, held that if Transco were to remove the IT-feeder rate design, there was no longer a justification for

(continued)

48. Transco's FTW proposal would modify its production area rates in a way that would require the FT-conversion shippers to pay for primary firm service on the supply laterals, as well as the production area mainline. Because the FTW proposal reserves all available firm capacity on the supply laterals for the FT-conversion shippers and Transco would not offer that capacity for sale to any other potential firm shippers, Transco's FTW proposal assumes that all current IT-feeder volumes will flow under the FT-conversion shippers' existing firm contracts. As a result, Transco proposes in its FTW filing to eliminate the IT-feeder volumes from its rate design volumes, without adding any other rate design volumes. This automatically increases the allocation factor on which the FT-conversion shippers' rates for service in production area zones 1, 2 and 3 (as well as increasing in the 100 percent IT rate for service in those zones) are based, with the result that the FT-conversion shippers would then pay the costs of the supply laterals. In fact, as stated above, Transco explicitly acknowledges that this is the purpose of its filing.

49. By contrast, if a pipeline were to propose simply to change its rate design by moving a zone boundary without changing the primary firm rights of any of its shippers in the affected zone, it would generally not be reasonable to assume that all transactions in the old zone would disappear from the volumes used to compute the redesigned rates, as Transco does here. Rather, all the existing transactions using the part of the system to be included in the revised rate zone would be used to allocate the costs for the revised rate zone, leading to a lower per unit rate than if a class of transactions was assumed to disappear. As the Second Order on Remand pointed out, if in this case Transco were proposing not to alter the FT-conversion shippers primary firm rights and only to give them normal secondary point rights arising from a change in rate design, it would have had primary firm capacity available for sale on the supply laterals, with the highest priority of service. The volumes associated with the sale of that capacity would have then reduced the impact of the elimination of the IT-feeder volumes on the existing rates charged to FT-conversion customers. Indeed, in Opinion No. 405, the Commission required that Transco have an open season to determine whether other shippers would be interested in obtaining firm capacity on the supply laterals. 76 FERC at p. 61,062. Also, in the FTSL proceeding when Transco did propose to offer firm services on the supply laterals to shippers other than the FT-conversion shippers, Transco stated that offshore producers were interested in signing up for this service. Based on this assertion by

restricting secondary point rights. Transcontinental Gas Pipe Line Corp., 86 FERC ¶ 61,175 at 61,609 (1999).

Transco, the Commission found, “[t]hus, the revenue derived from these services may equal or even exceed that produced by the volumetric interruptible rates.”³³

50. The Commission concludes that Transco’s FTW proposal has the same practical effect as requiring the FT-conversion shippers to contract for primary firm service in an additional rate zone, which a Memphis clause does not authorize. It is not akin to simply moving a zone boundary so as to reallocate costs without changing the primary rights of the firm customers, which a Memphis clause could permit. In short, Transco cannot avoid the consequences of its proposal by adopting the artifice of leaving the primary receipt points unchanged in the contract, because by requiring these shippers to take firm primary rights on the supply laterals the proposal will force them to pay for service for which they have not contracted.³⁴

51. If Transco’s goal is to find an acceptable SFV rate design for service on the supply laterals, requiring FT-conversion customers to take primary firm service on the supply laterals is not necessary. Transco continues to have the opportunity to propose a permissible change in its tariff priorities that would be consistent with the FT-conversion contracts’ Memphis clauses. To this end, the Commission suggested other methods to accomplish a result similar to the proposed FTW rates. For example, Transco is free under the Memphis clauses to eliminate the IT-feeder priority, and to offer firm capacity on the supply laterals. Transco could file under NGA section 4 to establish the lateral capacity as a new zone with its own firm and interruptible rates, which all shippers could choose.³⁵ The only thing the Commission finds that Transco cannot do is modify the existing shippers’ FT contracts to require that they take, and pay for, that capacity.

C. The Public Interest Does Not Support Transco’s FTW Proposal

1. Rehearing Request

52. Indicated Shippers contend that even if a change from IT-feeder rates to FTW rates constitutes an improper contract modification that is outside the scope of the

³³ Transcontinental Gas Pipe Line Corp., 86 FERC at 61,111.

³⁴ Transco’s proposal is no different than requiring that a shipper holding capacity from Zones 3 to 5 take and pay for capacity from Zones 1 to 5, without changing the primary receipt points listed in the contract. The effect in both cases is to change the shipper’s contractual obligation under the contract.

³⁵ Second Order on Remand at P 48.

Memphis clauses in the FT-conversion contracts, such a modification can be justified under a Mobile-Sierra public interest showing. Indicated Shippers argue that the Commission has not explained why the public interest does not support contract abrogation given its prior conclusion in Order No. 636 that the public interest requires the abrogation of contracts that use non-SFV rate designs, which, like IT-feeder rates, place fixed pipeline transmission costs in pipeline usage rates, thereby distorting producer price comparisons. Since IT-feeder rates effectively operate as a form of MFV rate design, Indicated Shippers argue that Transco's proposal to switch to an FTW rate design would be consistent with the goals of Order No. 636. Furthermore, Indicated Shippers emphasize that only Transco has an IT-feeder rate design, thereby placing Transco (and the producers connected to Transco) at a competitive disadvantage since fixed costs are included in its usage charges, but not in the usage charge of other pipelines. Indicated Shippers estimate that the resulting effect is that the existing IT-feeder rates place approximately \$50 million of fixed transmissions costs into Transco's usage charges on an annual basis.³⁶

53. Accordingly, Indicated Shippers argue that consistent with Order No. 636's strict adherence to SFV rate designs, the Commission should direct Transco to implement its similarly designed FTW rates. Moreover, Indicated Shippers argue that Commission, in addition to providing such prospective relief, must also remedy past harm imposed on the producers as a result of the remanded orders. Arguing that the Commission is obligated to place parties back in the position that they would have been had the Commission not committed error, Indicated Shippers request refunds to compensate IT-feeder shippers for IT-feeders rates paid since the implementation of Transco's restructuring rates on November 1, 1993.

2. Discussion

54. The Commission disagrees that, even if Transco lacks the authority under its Memphis clause to modify the existing contracts, the Commission should make the necessary public interest findings under the Mobile-Sierra doctrine in order to modify the contracts as necessary to implement Transco's FTW proposal and thus implement rates based on an SFV rate design. As explained above, Transco's FTW proposal would impose new primary firm service on its FT-conversion customers, thereby forcing them to accept and pay for capacity in excess of both the service they receive and their contractual rights.

³⁶ Request for rehearing at 56.

55. Indicated Shippers have not satisfied their burden to show that the public interest requires the Commission to take such an extraordinary step as to require customers to take and pay for a service for which they have not contracted.³⁷ Order No. 636 required pipelines to separate the transportation of gas from the sale of gas to allow buyers to have access to the wide variety of gas sources located throughout the continent. To achieve this goal, the Commission required pipelines to adopt the SFV rate design to minimize differences among pipeline's usage rates by removing the pipeline's fixed costs from its usage charges.

56. However, while the Commission found that it was generally in the public interest to use its NGA section 5 authority to compel the movement toward SFV rate designs, the Commission's SFV regulation has always permitted departures from SFV in individual cases.³⁸ Since the Commission's restructuring initiatives in 1992, the circumstances of the natural gas industry have changed, as described in Tennessee Gas Pipeline Co.³⁹ Thus, while the Commission was initially reluctant to permit variations from the SFV rate design in the years immediately following the restructuring effort, the Commission has since found that such variations were permissible in individual cases. Indicated Shippers

³⁷ See First Order on Remand, 95 FERC at 62,142, where the Commission previously determined that no public interest finding supports the abrogation of the FT-conversion contracts. Indeed, the Commission lacks the authority under the NGA to force FT-conversion shippers to pay for service they do not receive and for which they have not contracted. Indicated Shippers cites Union Pacific Fuels, Inc., 129 F.3d 157 (D.C. Cir. 1997), and Texaco Inc. v. FERC, 148 F.3d 1091 (D.C. Cir. 1998), in which the United States Court of Appeals affirmed Commission orders making Mobile-Sierra public interest findings in order to implement SFV rate design, despite the fact the pipeline had entered into contracts requiring use of a Modified Fixed Variable (MFV) rate design. However, in those cases, the Commission was simply requiring a change in the design of the rates to be charged for the service for which the customers had already contracted. Those cases did not involve a situation, as here, where the Commission would be requiring the customers to take service they do not currently receive.

³⁸ Section 284.7(e) states that "if a reservation fee is charged, it must recover all fixed costs attributable to the firm transportation service, unless the Commission permits the pipeline to recover some of the fixed costs in the volumetric portion of a two-part rate."

³⁹ See Tennessee Gas Pipeline Co., 77 FERC ¶ 61,083 at 61,355-359 (1996), order on reh'g, 78 FERC ¶ 61,069 (1997).

contend that Transco's current rates put them at a competitive disadvantage, stating that "no other pipeline, including pipelines directly competing with Transco, have IT-feeder rates or any similar charge that places fixed transmission costs in usage rates."⁴⁰

However, other pipelines have deviated from the SFV rate design, including Tennessee Gas Pipeline Company, which directly competes with Transco. Accordingly, Indicated Shippers' misleading argument that all pipelines are required to use the SFV rate design, and that Transco is the only pipeline that uses non-SFV rates, is clearly wrong.

57. Moreover, Transco's FTW proposal goes beyond a simple change in rate design comparable to the change from MFV to SFV rate design required by Order No. 636. As the Commission explained in Order No. 636, rate design refers to the method of designing the unit rates to be paid by customers of each class. Rate design occurs only after costs are allocated to each zone and class of customers.⁴¹ For example, in Order No. 636, the change to SFV rate design from MFV rate design, meant that of the costs allocated to firm shippers, more of the costs would be recovered through the reservation charge as opposed to the usage charge. In contrast, Transco admits that its proposal reallocates costs from IT services to the FT-conversion customers, so that all firm customers will pay more.⁴² Thus, Transco's proposal is not a rate design change, as it has maintained, but an effort to reallocate costs from one set of shippers to the FT customers by requiring FT customers to take primary firm service on the laterals.

58. Indicated Shippers has also provided no evidence to show that any other substantial harm will result if the proposed FTW rates are not accepted, such that an

⁴⁰ Request for rehearing at 58.

⁴¹ Order No. 636, at 30,431 (describing the five steps in the ratemaking process). In pertinent part, the Commission stated:

The fourth task is to apportion the costs classified to the reservation and usage charges among the pipeline's various rate zones and among the pipeline's various classes of jurisdictional services. This step is known as allocation. The fifth task is to design each service's rates for billing purposes by computing unit rates for each service. This step is known as rate design.

⁴² Transco's request for rehearing at 11 ("The difference is whether fixed costs are recovered via IT Feeder rates paid by producers and marketers, or via FT reservation rates paid by FT shippers.")

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entity will go out of business, consumers will be excessively burdened, or there will be undue discrimination as is required to meet the Mobile-Sierra public interest standard.⁴³

59. Finally, since the Commission is rejecting Transco's FTW proposal again, we do not reach the issue of refunds to IT-feeder shippers. Accordingly, Indicated Shippers' request for refunds is dismissed as moot.

The Commission orders:

The requests for rehearing of the Second Order on Remand are denied.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.

⁴³ Northeast Utilities Service Co. v. FERC, 55 F.3d 686, 692-93 (D.C. Cir. 1995).