UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Transcontinental Gas Pipe Line Company, LLC	)	Docket No. RP24-1035-000

MOTION TO INTERVENE, PROTEST, AND
REQUEST FOR SUSPENSION AND EVIDENTIARY HEARING PROCEEDINGS
OF AMERICAN FOREST & PAPER ASSOCIATION, INDUSTRIAL ENERGY CONSUMERS OF AMERICA, AND PROCESS GAS CONSUMERS GROUP

On August 30, 2024, Transcontinental Gas Pipe Line Company, LLC ("Transco") pursuant to Section 4 of the Natural Gas Act ("NGA") and Part 154 of the regulations of the Federal Energy Regulatory Commission ("FERC" or "Commission"), filed revised tariff records to its FERC Gas Tariff to effectuate changes in the rates applicable to Transco's jurisdictional transportation, storage, and gathering services.[1] Pursuant to Rules 211, 212 and 214 of the Commission's Rules of Practice and Procedure,[2] and the Commission's Combined Notice of Filings,[3] the American Forest and Paper Association ("AF&PA"), Industrial Energy Consumers of America ("IECA"), and Process Gas Consumers Group ("PGC") (jointly, "AIP") hereby submit this motion to intervene and protest in the above-captioned proceeding. In support of this motion, AIP states as follows:

I. COMMUNICATIONS

All correspondence, communications, pleadings, and other documents relating to this proceeding should be served upon the following:

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[1] Transmittal Letter at 1.

[2] 18 C.F.R. §§ 385.211, 385.212, 385.214 (2024).

[3] *See* Combined Notice of Filings (September 3, 2024).

II. BACKGROUND

Transco's current rates were established pursuant to the Stipulation and Agreement dated December 31, 2019, in Docket No. RP18-1126-000, et al. ("RP18-1126 Agreement").[4] The *2024 Pipeline Cost Recovery Report* published by the Natural Gas Supply Association ("NGSA") estimates that Transco earned an average 17.5% annual rate of return on equity ("ROE") from 2019 through 2023.[5] Transco states that it now files this rate case to satisfy Article VI of the RP18-1126 Agreement requiring Transco to file a general NGA section 4 rate case no later than August 30, 2024.[6]

Transco proposes increases in the maximum rates for its non-incremental Rate Schedule FT services, including increasing the maximum rate for receipt and delivery in Zone 5 from $0.19054 to $0.27039 (a 41.91% increase) and the maximum rate for receipt and delivery in Zone 6 from $0.13192 to $0.19010 (a 44.10% increase).[7] These rates reflect Transco's increasing the cost of service by 41.81% from $2,011,057,796 to $2,851,829,505 and increasing the rate base by 32.18% from $7,796,302,311 to $10,304,838,295.[8]

Transco states the increases in cost of service and rate base are attributable to "certain expansion projects"[9] which were placed in service after March 1, 2019, the effective date of Docket No. RP18-1126 rate change. Transco further states"[s]pecifically Transco's St. James Supply Project, Rivervale South to Market Project, Gateway Expansion Project, Leidy South Project, Southeastern Trail Project, Regional Energy Access Expansion Project, and Phase II of

[4] Transmittal at 2.

[5] Natural Gas Supply Association, *2024 Pipeline Cost Recovery Report*, at 4 (Aug. 2024), https://www.ngsa.org/wp-content/uploads/sites/3/2024/08/2024-NGSA-Pipeline-ROE-Report.pdf.

[6] Transmittal at 2 (citing *Transcontinental Gas Pipe Line Co., LLC*, 170 FERC ¶ 61,245 (2020)).

[7] Marked Tariff, Part II - Statement of Rates and Fuel, Section 1.1.1 - FT - Non-Incremental Rates, at 2.

[8] Transmittal at 2.

[9] *Id.*

Transco's Hillabee Expansion Project were placed in service after March 1, 2019" and "Transco's Southside Reliability Enhancement Project is anticipated to be placed in service in December 2024."[10] Transco proposes to increase its billing determinants by 10.15% from 5,321,670,762 Dekatherms ("dts") to 5,861,996,661 dts,[11] reflecting Transco's proposal to include a discount adjustment to reduce the base period interruptible transportation ("IT") and IT Feeder imputed reservation quantities by 23,073,888 dts and 2,980,900 dts, respectively, and base period firm transportation reservation quantities by 33,271,805 dts.[12]

Transco also proposes decreases to twenty-one incrementally priced transportation services.[13] Those incremental services are for transportation on Transco's Rockaway Lateral, Woodbridge Lateral, Gateway Expansion, Leidy East, Leidy to Long Island, Market Link, Mid-South Phase I and Mid-South Phase II, Mobile Bay South III, Momentum, Pocono, Potomac, Rivervale South to Market, Southcoast, Sundance, Trenton Woodbury, Trenton Woodbury Surcharge, Leidy South, Regional Energy Access, Rock Springs, and Southeastern Trail.[14]

In addition, Transco proposes to add new Section 62 to its General Terms and Conditions ("GT&C") of its Tariff to establish a Modernization Surcharge for the purpose of collecting $1.55 billion to implement its Modernization Program over a six-year period.[15] Transco states that the projects comprising the Modernization Program broadly fit into five categories:

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[10] *Id.* at 2, n.2. *See also* Schedule C.

[11] *Id.*

[12] *Id.* at 6.

[13] *Id.* at 9.

[14] *Id.* at 9 n.6.

[15] *Id.* at 7; Statement P, Exhibit No. T-0085, at 28.

Compliance, Cybersecurity, Material Threats, Pressure Restoration, and Compression Modernization.[16]

The Compliance category includes projects intended to ensure compliance with the U.S. Pipeline and Hazardous Materials Safety Administration's ("PHMSA") "Mega Rule," in particular, recertification of Maximum Allowable Operating Pressure ("MAOP") for certain pipeline segments.[17] Transco estimates Compliance projects will cost $270 million.[18] The Cybersecurity category includes projects to ensure Transco's Operational Technology environment is secure from external threats and remains compliant with Transportation Service Administration requirements.[19] Transco estimates Cybersecurity projects will cost $81.4 million.[20] The Material Threats category includes projects to address safety and reliability threats associated with a legacy pipe manufacturing defect known as "hard spots."[21] Transco estimates projects to address Material Threats will cost $86.9 million.[22] The Pressure Restoration category includes projects to restore the MAOP of certain sections of the Transco mainline system currently operating at reduced MAOP because of PHMSA Class Location requirements.[23] Transco estimates Pressure Restoration projects will cost $288.5 million.[24] The Compression Modernization category will include projects to "replace antiquated, legacy compressor units . . .

[16] Transmittal at 7.

[17] Statement P, Exhibit No. T-0085, at 5.

[18] *Id.* at 9.

[19] *Id.* at 5.

[20] *Id.* at 11.

[21] *Id.* at 5.

[22] *Id.* at 13.

[23] *Id.* at 5-6.

[24] *Id.* at 14.

with state of the art, highly reliable, fuel efficient, lower-emitting gas turbines"[25] to "increase operational flexibility, remove reliability risk, reduce emissions, and reduce maintenance costs."[26] Transco estimates that the Compression Modernization Projects will cost $793.2 million.[27] Transco argues that its Modernization Surcharge meets the five standards set forth in the Commission's Policy Statement on *Cost Recovery Mechanisms for Modernization of Natural Gas Facilities* in Docket No. PL15-1-000 ("PL15-1 Policy Statement").[28]

III. MOTION TO INTERVENE

AF&PA serves to advance a sustainable U.S. pulp, paper, packaging, tissue, and wood products manufacturing industry through fact-based public policy and marketplace advocacy. AF&PA member companies make products essential for everyday life from renewable and recyclable resources and are committed to continuous improvement through the industry's sustainability initiative – Better Practices, Better Planet 2020. The forest products industry accounts for approximately 4% of the total U.S. manufacturing GDP, manufactures over $200 billion in products annually, and employs approximately 900,000 men and women. The industry meets a payroll of approximately $50 billion annually and is among the top ten manufacturing sector employers in forty-five states. AF&PA member companies own and operate facilities that consume natural gas delivered through the numerous interstate natural gas pipelines, including Transco.

The Industrial Energy Consumers of America is a nonpartisan association of leading manufacturing companies with $1.3 trillion in annual sales, over 12,000 facilities nationwide, and with more than 1.9 million employees. It is an organization created to promote the interests of

[25] *Id.* at 6.

[26] *Id.* at 14.

[27] *Id.* at 28, Table 1.

[28] Transmittal at 7, (citing *Cost Recovery Mechanisms for Modernization of Natural Gas Facilities*, 151 FERC ¶ 61,047 (2015)).

manufacturing companies through advocacy and collaboration for which the availability, use and cost of energy, power or feedstock play a significant role in their ability to compete in domestic and world markets. IECA membership represents a diverse set of industries including: chemicals, plastics, steel, iron ore, aluminum, paper, food processing, fertilizer, insulation, glass, industrial gases, pharmaceutical, consumer goods, building products, automotive, independent oil refining, and cement. IECA members are served through Transco.

PGC is a trade association that represents energy-intensive large industrial and manufacturing natural gas consumers who are typically longstanding, significant employers within their respective communities. PGC members own and operate hundreds of manufacturing plants and facilities in virtually every state in the nation and consume natural gas delivered through interstate natural gas pipeline systems throughout the United States. PGC members hold transportation capacity on numerous interstate pipelines, and receive gas delivered over Transco.

As customers that receive gas delivered over Transco, AIP members have a direct and substantial interest in this proceeding. AIP's intervention is in the public interest, and the group cannot be adequately represented by any other party in this proceeding. Thus, granting this motion would be in the public interest. AIP requests that this intervention be granted with all rights associated with that status.

IV. PROTEST

Transco has not shown that the proposed rates are just and reasonable. AIP submits that there are numerous material issues of fact arising from Transco's filing that warrant full investigation in an evidentiary hearing, including, but not limited to, the following:

Modernization Surcharge – Transco has not demonstrated that its proposed Modernization Surcharge satisfies the standards set forth in the Commission's PL15-1 Policy Statement. The PL15-1 Policy Statement permits the use of a tracker mechanism in "*limited* circumstances"[29] as defined by five standards: (1) Review of Existing Base Rates, (2) Defined Eligible Costs; (3) Avoidance of Cost Shifting; (4) Periodic Review of the Surcharge and Base Rates; and (5) Shipper Support.[30] The Commission established these standards to "ensure that consumers are protected against potential effects of any modernization cost trackers or surcharges,"[31] including "cost shifts and other potential pitfalls commonly associated with trackers."[32] Indeed, the Commission generally "disfavor[s]" tracker mechanisms because cost shifting could occur "without consideration of any offsetting items that would generally be considered in a section 4 rate proceeding, and which the pipeline would normally need to justify to recover."[33]

First, Transco has not met the Commission's requirement to demonstrate its proposed base rates are just and reasonable.[34] The Commission states "this is necessary to ensure that the overall rate produced by the addition of the surcharge to the base rate is just and reasonable and does not reflect any cost over-recoveries that may have been occurring under the preexisting base rates."[35] NGSA's *2024 Pipeline Cost Recovery Report* shows Transco is likely over-earning, estimating Transco on average earned a 17.5% annual ROE from 2019 through 2023.[36] NGSA states it calculated earned ROEs based on its cost recovery analysis comparing annual revenues for each pipeline to an estimate of its regulated cost of service for the same year, using the methodology that

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[29] PL15-Policy Statement, 151 FERC ¶ 61,047 at P 39 (emphasis added).

[30] *Id.* P 2.

[31] *Id.* P 31.

[32] *Id.* P 39.

[33] *Id.* P 79.

[34] *Id.* P 45.

[35] *Id.* P 51.

[36] Natural Gas Supply Association, *2024 Pipeline Cost Recovery Report*, at 4.

would be applied in a NGA general section 4 rate case.[37] On top of potentially over-recovering under its existing rates, Transco now proposes to increase its non-incremental rates, some by over 44%, to recover increases in costs of service and rate base which Transco states are related to certain expansion projects. However, as discussed in more detail below, there are material issues of fact regarding whether Transco may roll-in the costs of those expansion projects, many of which are incrementally priced.

Second, Transco's Modernization Surcharge may include costs that are not "Eligible Costs" as defined by the PL15-1 Policy Statement, that is, those that are not "one-time capital costs incurred to modify or replace existing facilities on the pipeline's system to comply with safety or environmental regulations" or "other one-time capital costs shown to be necessary for the safe or efficient operation of the pipeline."[38] The Commission permits these types of costs to be included in a tracker to serve the PL15-1 Policy Statement's intended purpose of "address[ing] imminent and foreseeable developments related to the safety and reliability of the natural gas interstate pipeline system."[39] Capital costs that a pipeline incurs as part of its "ordinary, recurring system maintenance requirements" do not meet the PL15-1 Policy Statement's intended purpose and are not "Eligible Costs."[40]

Transco's proposed Modernization Surcharge may include costs that are not "Eligible Costs" in part because the proposed Eligible Facilities Plan is subject to unilateral change by Transco. Put differently, there is not sufficient information to ensure facilities listed in the Eligible Facilities Plan are in fact "Eligible Costs." Transco may "unilaterally remove Eligible Facilities"

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[37] *Id.* at 2.

[38] PL15-1 Policy Statement, 151 FERC ¶ 61,047 at P 63.

[39] *Id.* P 42.

[40] *Id.* P 63.

and may "substitute" and "add new" facilities so long Transco determines such substitutions and additions are consistent with the objective of its Modernization Program.[41] Transco acknowledges it cannot "rule out the possibility that . . . the list of projects will have changed,"[42] and as a consequence, the Modernization Surcharge may run counter to the Commission's goals of ensuring participants have the necessary information to "allow for a more transparent and upfront determination of the project costs that are eligible for recovery through the tracker" and "help ensure that normal capital or other expenditures to maintain the pipeline's system in the ordinary course of business are not eligible for recovery through a surcharge mechanism."[43]

Moreover, the Modernization Surcharge may recover costs of projects that are not meant to address "imminent and foreseeable developments" – the intended goal of the PL15-1 Policy Statement.[44] For instance, Transco states that the Pressure Restoration category projects will generally "provide reliability and system flexibility,"[45] not to address an "imminent and foreseeable" safety or reliability concern.

Third, Transco has not addressed the PL15-1 Policy Statement's concern regarding avoidance of cost shifting. Transco's filing makes no mention of how its Modernization Surcharge "protect[s] the pipeline's existing customers from cost shifts if the pipeline loses customers or has to offer increased discounts of its rates to retain business during the period the modernization cost tracker is in effect."[46] In addition, the Modernization Program does not appear to protect shippers

[41] Proposed GT&C Section 62.3(e).

[42] Statement P, Exhibit T-0085, at 27.

[43] PL15-1 Policy Statement, 151 FERC ¶ 61,047 at P 70.

[44] *Id.* P 42.

[45] Statement P, Exhibit No. T-0085, at 3.

[46] PL15-1 Policy Statement, 151 FERC ¶ 61,047 at P 80.

from cost shifts attributable to any new transportation capacity created by Compression Modernization category projects.

Fourth, the Modernization Surcharge may not satisfy the standard for including a method for "a periodic review of whether the surcharge *and* the pipeline's base rates remain just and reasonable."[47] Although Transco proposes annual limited NGA section 4 filings to review each change to the Modernization Surcharge, [48] Transco proposes no method to periodically review its base rates over the planned six-year term. Moreover, as written, proposed GT&C Section 62 may allow Transco to extend the Modernization Surcharge beyond the planned six years. Proposed GT&C Section 62.3(f) includes no six-year term limitation. Instead the proposed provision states, "[t]he Modernization Surcharge will remain in place until all of the Facilities are placed in service and the associated Modernization Program Revenue Requirements for all of the Eligible Facilities are included in Sellers' approved base recourse rates,"[49] that is, the effective date of its next general NGA Section 4 rate proceeding which Transco can file any time at its discretion.[50] In addition, the proposed provision allows Transco to unilaterally "add new facilities not currently included in the Eligible Facilities Plan."[51]

Fifth, Transco has not demonstrated it has "work[ed] collaboratively with shippers and other interested parties to seek support for any such proposal" as required by the PL15-1 Policy Statement.[52] While Transco states it hosted four meetings with shippers to discuss the proposed

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[47] *Id.* P 87 (emphasis added).

[48] Statement P, Exhibit No. T-0087, at 11.

[49] Proposed GT&C Section 62.3(f).

[50] Statement P, Exhibit No. T-0087, at 8-9 ("Transco would seek in its next general NGA Section 4 rate proceeding to recover in rates any undepreciated capital costs and all other allowed costs associated with the Eligible Facilities then included in or eligible for inclusion in the Modernization Surcharge.").

[51] Proposed GT&C Section 62.3(e).

[52] PL15-1 Policy Statement, 151 FERC ¶ 61,047 at P 93.

Modernization Program,[53] there is no indication that Transco sought "resolution of as many issues as possible" or provided "customers and interested parties an opportunity to comment on draft tariff language setting forth [Transco's] proposed modernization cost recovery mechanism."[54]

Cost of Service and Rate Base – Transco's proposed increases in cost of service and rate base raise issues of material fact that require examination in an evidentiary hearing. Transco states increases in cost of service and rate base are attributable to "certain expansion projects" placed into service after March 1, 2019, and specifically identifies the St. James Supply Project, Rivervale South to Market Project, Gateway Expansion Project, Leidy South Project, Southeastern Trail Project, Regional Energy Access Expansion Project, Phase II of the Hillabee Expansion Project, and Southside Reliability Enhancement Project.[55] For many of these projects, however, the Commission authorized Transco to charge an incremental rate and did not grant Transco a predetermination of rolled-in rate treatment.[56] An evidentiary hearing is necessary to investigate what costs of these projects are proposed to be included in the cost of service and whether rolling in those costs is appropriate.

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[53] Statement P, Exhibit No. T-0087, at 11.

[54] PL15-1 Policy Statement, 151 FERC ¶ 61,047 at P 93.

[55] Transmittal at 2, n.2.

[56] *See Transcontinental Gas Pipe Line Co., LLC*, 182 FERC ¶ 61,006, at PP 40-44 (2023) (only granting pre-determination of rolled-in rates for Regional Energy Access Expansion Project modifications to Compressor Stations 505 and 515); *Nat'l Fuel Gas Supply Corp.*, 172 FERC ¶ 61,039, at P 71 (2020) (approving incremental reservation charge for Leidy South Project); *Transcontinental Gas Pipe Line Co., LLC*, 165 FERC ¶ 61,221, at P 31 (2018) (approving incremental reservation charge for Gateway Expansion Project); *Transcontinental Gas Pipe Line Co., LLC*, 164 FERC ¶ 61,101, at P 23 (2018) (approving incremental reservation charge for Rivervale South to Market Project); *Transcontinental Gas Pipe Line Co., LLC*, 162 FERC ¶ 61,050, at P 17 (2018) (in the certificate authorizing the St. James Supply Project, the Commission approved the use of the existing recourse rate and stated it "*is not, however, making a predetermination* that in a future general NGA section 4 rate case, rolled-in rate treatment will be appropriate for the costs of the St. James Supply Project") (emphasis added); *Fla. Se. Connection, LLC*, 154 FERC ¶ 61,080, at PP 13, 104 (2015) (stating Phase II of the Hillabee Expansion Project would provide capacity for Sabal Trail Transmission LLC to lease and that "Transco may not reflect in its system rates any of the costs (*i.e.*, the fully-allocated cost of service, including actual fuel costs) associated with the lease capacity during the lease term").

Return on Equity – Transco's proposed 13.74% ROE may be unjust and unreasonable as it exceeds the last litigated ROE of 11.25%.[57]

Depreciation Rates – Transco has not supported its proposal to increase depreciation rates.[58] Transco bases its adjustments on an economic horizon truncated at 2050[59] – that is, a 25-year economic life – based on "the expected significant reduction in natural gas consumption and transportation, which would be necessitated by the requirements of public authorities that target 2050 or earlier."[60] However, the Energy Information Administration's *Annual Energy Outlook*, published in May 2023, forecasts that the total "domestic natural gas consumption remains relatively stable" through 2050.[61] Moreover, a 25-year economic life is significantly less than the 35-year economic life that the Commission has approved for several pipelines.[62]

Discount Adjustment – Transco has not sufficiently supported that its proposed discount adjustments for interruptible and firm transportation are necessary to meet competition. Transco's testimony provides generic statements about discounting and competition.[63] In *Panhandle Eastern Pipe Line Company, LP*, however, the Commission explained that such generic statements are not sufficient for a pipeline to satisfy its initial burden of demonstrating that discounts are given to

[57] *Panhandle E. Pipe Line Co., LP*, Order No. 885, 181 FERC ¶ 61,211, at P 110 (2022), *order on reh'g*, Opinion No. 885-A, 184 FERC ¶ 61,181 (2023) (*Panhandle*).

[58] Transmittal at 3.

[59] Statement P, Exhibit No. T-0044, at 11.

[60] Statement P, Exhibit T-0055, at 44.

[61] Energy Information Administration, *Annual Energy Outlook*, at 6 (May 2023), https://www.eia.gov/outlooks/aeo/pdf/AEO2023_Narrative.pdf.

[62] *Panhandle,* 181 FERC ¶ 61,211 at PP 189, 191 (citing *Portland Nat. Gas Transmission Sys.*, 134 FERC ¶ 61,129, at P 138 (2011); *Williston Basin*, 95 FERC ¶ 63,008, at 65,102-65,103 (2001); *Kern River Gas Transmission Co.*, 117 FERC ¶ 61,077 (2006)).

[63] Statement P, Exhibit No. T-0012 at 10-12.

meet competition.[64] Transco must "at a minimum identify all of its long-term discounts and provide some explanation for the basis of its discount in order to meet its initial burden."[65]

Transco's filing also raises issues regarding its downward adjustment to short-term firm transportation reservation and commodity determinants and to the Rate Schedule PAL commodity volumes.[66]

V. REQUEST FOR EVIDENTIARY HEARING AND MAXIUM RATE SUSPENSION

AIP requests that the Commission find that the proposed rates and tariff records have not been shown to be just and reasonable and that they may be unjust, unreasonable, and unduly discriminatory or otherwise unlawful. Based on this finding, the Commission should suspend their effectiveness for the full five-month maximum period permitted by the NGA.

VI. CONCLUSION

For these reasons, AIP requests that the Commission suspend the proposed rate and tariff provisions for the maximum suspension period, subject to refund and the outcome of evidentiary proceedings.

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[64] *Panhandle*, 184 FERC ¶ 61,181, at P 247 (2023).

[65] *Id.*

[66] Statement P, Exhibit No. T-0012, at 5-7.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that I have this day caused a copy of the foregoing document to be served upon each person designated on the Service List for this docket compiled by the Secretary in accordance with the Commission's Rules of Practice and Procedure.

Dated at Washington, DC, this 11th day of September 2024.

/s/ Carolyn E. Clarkin
Carolyn E. Clarkin