ORAL ARGUMENT HAS NOT BEEN SCHEDULED

In the United States Court of Appeals for the District of Columbia Circuit

No. 12-1242

BNP PARIBAS ENERGY TRADING GP,
Petitioner,

v.

FEDERAL ENERGY REGULATORY COMMISSION,
Respondent.

ON PETITION FOR REVIEW OF ORDERS OF THE FEDERAL ENERGY REGULATORY COMMISSION

BRIEF OF RESPONDENT FEDERAL ENERGY REGULATORY COMMISSION

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MARCH 29, 2013

CIRCUIT RULE 28(a)(1) CERTIFICATE

A. Parties and Amici

All parties and intervenors appearing below and in this Court are listed in the brief of petitioner.

B. Rulings Under Review

1. "Order on Initial Decision," *Transcontinental Gas Pipe Line Corp.*, 130 FERC ¶ 61,043 (January 21, 2010) (Opinion No. 507), JA 80; and

2. "Order on Rehearing," *Transcontinental Gas Pipe Line Corp.*, 139 FERC ¶ 61,002 (April 12, 2012) (Opinion No. 507-A), JA 108.

C. Related Cases

This case has not previously been before this Court or any other, and counsel is not aware of any related cases.

/s/ *Samuel Soopper*
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March 29, 2013

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Opinion No. 507-A	"Order on Rehearing," *Transcontinental Gas Pipe Line Corp.*, 139 FERC ¶ 61,002 (April 12, 2012), JA 108
Order No. 686	*Revisions to the Blanket Certificate Regulations and Clarification Regarding Rates*, Order No. 686, FERC Stats. & . Regs. ¶ 31,231 (2006)
Paribas	Petitioner BNP Paribas Energy Trading GP
South Jersey	Intervenor for petitioner South Jersey Resources Group, LLC
Transco	Intervenor for respondent Transcontinental Pipeline Corporation

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For The District Of Columbia Circuit

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FEDERAL ENERGY REGULATORY COMMISSION,
RESPONDENT.

ON PETITION FOR REVIEW OF ORDERS OF THE
FEDERAL ENERGY REGULATORY COMMISSION

BRIEF OF RESPONDENT
FEDERAL ENERGY REGULATORY COMMISSION

STATEMENT OF THE ISSUE

This case concerns the decision of the Federal Energy Regulatory Commission (Commission or FERC) authorizing a natural gas pipeline company to charge new customers receiving a particular service a new, higher rate for that service than that paid by existing customers. The pipeline proposed this rate differential for two reasons. First, it had incurred significant new costs as a direct consequence of providing the service to the new customers. Second, its existing customers had provided the company with significant assistance in establishing the

facility providing the service. The sole question presented for review is:

Whether the Commission appropriately accepted as just and reasonable under the Natural Gas Act, 15 U.S.C. § 717c, a proposal by Transcontinental Gas Pipe Line Corporation (Transco) to charge its new customers receiving certain storage service a rate that allocated solely to those customers the cost of natural gas the pipeline was required to purchase to serve them.

STATUTORY AND REGULATORY PROVISIONS

The pertinent statutes and regulations are contained in the Addendum to this brief.

STATEMENT OF THE FACTS

I. INTRODUCTION

Transco, intervenor for respondent in this appeal, is a natural gas pipeline company engaged in the transportation of natural gas in interstate commerce. Its natural gas transmission system extends throughout the southern and eastern United States. This case involves Transco's Washington Storage Field, a natural gas storage facility in St. Landry Parish, Louisiana. At issue are rates Transco proposed for new customers taking service from that facility.

Petitioner BNP Paribas Energy Trading GP (Paribas) is a natural gas company that is a shipper and storage customer on the Transco system. As of

March 31, 2005, Paribas became a new customer taking service from the Washington Storage Field.[1] Intervenor for petitioner South Jersey Resources Group, LLC (South Jersey) is Transco's other new customer receiving storage service from that facility, as of May 1, 2006. (A third new customer reached a settlement with Transco concerning its rate treatment.)

The new customers replaced two departing customers who had exercised their contractual right to remove a certain amount of base gas from the facility. Consequently, Transco was required to purchase sufficient gas to replace this amount once the new customers began taking service. ("Base gas" is that natural gas needed in a storage facility to provide adequate pressure for the storage reservoir in order to support "top gas," the gas that will be shipped by the pipeline's customers). Transco's proposed rate allocated the entire cost of the newly-purchased base gas to the new customers on an incremental basis, *i.e.*, solely to those customers, rather than allocating the costs proportionately, or rolling in the costs, among all of the facility's customers, new and already existing (or "historic").

In the first order on appeal, "Order on Initial Decision," *Transcontinental Gas Pipe Line Corp.*, 130 FERC ¶ 61,043 (January 21, 2010) (Opinion No. 507),

[1] Paribas is referred to by its former name (Fortis Energy Marketing & Trading GP) in the Commission's orders.

JA 80, the Commission approved Transco's proposed rate for the two new customers, Paribas and South Jersey, receiving Washington Storage Field service.

In the second order on appeal, "Order on Rehearing," *Transcontinental Gas Pipe Line Corp.*, 139 FERC ¶ 61,002 (April 12, 2012) (Opinion No. 507-A), JA 108, the Commission denied rehearing requests by Paribas and South Jersey on the rate issue.

II. STATUTORY AND REGULATORY BACKGROUND

The Natural Gas Act grants the Commission jurisdiction over the transportation and wholesale sale of natural gas in interstate commerce. 15 U.S.C. § 717(b). The Act charges the Commission with the duty "to ensure 'just and reasonable' rates in the natural gas industry." *Petal Gas Storage, L.L.C. v. FERC*, 496 F.3d 695, 698 (D.C. Cir. 2007). In order for the Commission to fulfill this obligation, every interstate pipeline must file "schedules" setting forth "all rates and charges for any [jurisdictional] transportation or sale," along with all "practices and regulations affecting such rates and charges." 15 U.S.C. § 717c(c). A natural gas pipeline may not change the rates, terms, and conditions of FERC-jurisdictional service without the Commission's review and approval. *See, e.g.*, *Pub. Serv. Comm. of N.Y. v. FERC*, 866 F.2d 487, 488 (D.C. Cir. 1989).

Under Section 4 of the Natural Gas Act, the Commission may establish a

hearing concerning the lawfulness of a pipeline's rate filings and suspend the effectiveness of the new rates pending the outcome of the hearing for a period of up to five months. 15 U.S.C. § 717c(e). In a section 4(e) proceeding, the pipeline making the filing has the burden of proving that any increased rate is just and reasonable. *Id.* Once a pipeline satisfies this burden, the Commission must accept that rate, regardless of whether other just and reasonable rates may exist. *See Western Resources, Inc. v. FERC*, 9 F.3d 1568, 1578-1579 (D.C. Cir. 1993).

On the other hand, under section 5(a) of the Act, 15 U.S.C. § 717d(a), the Commission has the burden of proof when it seeks to impose its own rate determination, rather than accepting or rejecting a rate change proposed by the pipeline. *See Consolidated Edison Co. of N.Y. v. FERC*, 165 F.3d 992, 1001 (D.C. Cir. 1999) (explaining the distinction between ratemaking under sections 4 and 5 of the Natural Gas Act).

Storage of natural gas is one type of jurisdictional service that pipeline companies provide to their shippers. *See, e.g., Northern Natural Gas Co. v. FERC*, 700 F.3d 11, 13 (D.C. Cir. 2012) (discussing storage service under the Natural Gas Act).

III. THE PROCEEDINGS BEFORE THE COMMISSION

A. Events Leading Up To Transco's Filing

The historical context of Transco's rate filing, described in Opinion No. 507 PP 2-7, JA 81-83, is not in dispute.

In 1975, the Commission (then operating as the Federal Power Commission) issued a certificate to Transco to provide natural gas contract storage service at the Washington Storage Field. *Transcontinental Gas Pipe Line Corp.*, 53 FPC 628 (1975). Because of a severe natural gas shortage then occurring, Transco's customers agreed to provide the base gas volumes necessary for the operation of the storage field, with the proviso that they would be able to repurchase their respective shares of the base gas from Transco at its historic cost upon their termination of service from the field. *Id.* at 630. When the Commission approved the expansion of the Washington Storage Field in 1978 and 1980, these customers – the 28 "historic shippers" – continued to contribute base gas to the facility, with the same right to repurchase. *See Transcontinental Gas Pipe Line Corp.*, 4 FERC ¶ 61,271 (1978); *Transcontinental Gas Pipe Line Corp.*, 12 FERC ¶ 62,287 (1980).

In a later proceeding, the Commission approved a new tariff governing the Washington Storage Field service that again recognized the historic customers' right to repurchase their gas at the historic cost upon their service termination. *See*

Transcontinental Gas Pipe Line Corp., 85 FERC ¶ 61,119 (1998), *order on reh'g*, 87 FERC ¶ 61,184 (1999) (1999 Conversion Order). The tariff also confirmed that Transco would be required to purchase new base gas as necessary if new customers took storage service from the facility.

Paribas became a Washington Storage Field customer on March 31, 2005, by means of a capacity release by PSEG Energy Resources & Trade LLC, a historic customer of the facility. *See* Pet. Br. 6. South Jersey acquired its right to storage capacity in the facility on May 1, 2006, by a release from its affiliate, South Jersey Gas Company, another historic shipper. *See* Intervenor Br. 2.

The predecessors of Paribas and South Jersey, upon terminating service from the Washington Storage Field, exercised their right to repurchase their base gas from Transco at the historic purchase price (approximately $0.89 per dekatherm). Thereupon, Transco purchased the replacement base gas required to operate the field with its new customers at the then-current rate of approximately $ 6.00 per dekatherm.

Transco's allocation of the cost of this gas purchase solely to the two new customers is the only issue on appeal.

B. Transco's Section 4 Rate Proceeding

On August 31, 2006, Transco filed with the Commission, pursuant to section

4 of the Natural Gas Act, a general rate increase for its services to natural gas shippers. Record (R) 3, JA 157. As relevant here, Transco proposed to establish a new rate solely for its new customers taking service from the Washington Storage Field. *Id.* 3 at 6, JA 163.

The tariffs governing the Washington Storage Field, Transco stated, contain "provisions that allow certain buyers to purchase specified quantities of base gas at historical cost when they terminate service from the Washington Storage Field." *Id.* The tariff also obligated Transco "to maintain sufficient base gas quantities to support the total top gas capacity entitlements of its customers." *Id.* Because "gas prices today are significantly higher than the price of the original injected base gas," the company explained, "the higher cost of the newly injected base gas increases [the] rate base" for Washington Storage Field service. *Id.*

Transco proposed to collect "the increased cost of service" stemming from its purchase of the new, more expensive base gas solely "from buyer(s) on whose behalf the newly injected base gas is or will be purchased," rather than from the existing customers receiving service from the facility. *Id.*

On November 28, 2007, Transco submitted a proposed settlement that it had reached with the parties to its general rate case, resolving most issues but reserving the question of the storage rates to be paid by Paribas and South Jersey for further

litigation. R 206. The Commission approved the settlement on March 7, 2008. *Transcontinental Gas Pipe Line Corp.*, 122 FERC ¶ 61,213 (2008). A hearing was then held before a Commission Administrative Law Judge (ALJ) on the reserved issue.

On November 21, 2008, the judge issued the Initial Decision. *Transcontinental Gas Pipe Line Corp.*, 125 FERC ¶ 63,020 (2008) (Initial Decision), JA 1. He rejected Transco's proposal to allocate the entire cost of its new gas purchases to the new storage customers on the ground that "all base gas benefits the deliverability of all top gas capacity entitlements of all of Transco's [Washington Storage Field service] customers." *Id.* Paragraph (P) 128, JA 40. Thus, the judge reasoned, "the principle of cost causation does not support the imposition of an incremental price on new customers based solely on the injection or withdrawal of any given quantity of base gas." *Id.* P 130, JA 40.

The judge further determined that permitting Transco to allocate the entire cost of the replacement base gas to Paribas and South Jersey would be unduly discriminatory, because they were similarly situated to the existing storage customers. Initial Decision PP 166-179, JA 52-57. Thus, he concluded that the costs of Transco's purchase of replenishment gas should be allocated proportionately among all of the Washington Storage Field service customers, old

and new.

C. The Commission's Orders On Review

On January 21, 2010, the Commission issued Opinion No. 507, JA 80, reversing the Initial Decision. In the Commission's view, the ALJ's cost causation analysis failed to recognize that Paribas and South Jersey becoming new Washington Storage Field customers directly caused Transco to purchase "approximately 3.3 million [dekatherms] of replacement base gas to serve their top gas capacity needs." *Id.* P 32, JA 91.

The Commission also rejected the judge's finding of undue discrimination. Instead, it considered "the rate differential reasonable, because the historic shippers were required to provide the base gas used to serve them, whereas the new shippers do not provide base gas." Opinion No. 507 P 51, JA 97. Thus, the agency held, the new shippers – Paribas and South Jersey – were not similarly situated to the historic shippers, so as to support a finding of undue discrimination under the Natural Gas Act.

Paribas and South Jersey jointly filed a timely request for rehearing of Opinion No. 507. R 410, JA 175.

On April 2, 2012, the Commission issued Opinion No. 507-A, JA 108, denying rehearing. The Commission concluded: (1) that Transco's incremental

rate proposal was just and reasonable both because the company had to purchase the base gas to accommodate the new shippers, and because the historic shippers had provided essential support for the establishment and expansion of the Washington Storage Field, by providing the necessary base gas from their gas purchase entitlements, *id.* PP 44-63, JA 127-37; (2) that in view of the factual circumstances of Transco's gas purchase, the proposed rate for the new customers was consistent with cost causation principles, *id.* PP 64-68, JA 137-39; and (3) that it was not unduly discriminatory for Transco to charge the new shippers a different rate from the historic shippers; the two customer classes were not similarly situated because the historic shippers, unlike the new shippers, had provided base gas for Transco's use necessary for the establishment and expansion of the storage facility, *id.* PP 69-77, JA 139-42.

SUMMARY OF ARGUMENT

1. The Commission's approval of Transco's incremental rate for service to its new customers using the Washington Storage Field is reasonable and should be affirmed by this Court.

As the Commission fully explained, while Transco's existing storage customers pay a lower rolled-in rate, they provided support for the company's ability to construct and operate the facility by contributing base gas between 1975 and 1981. These historic customers also had the contractual right to buy back the gas they had contributed, at the historic rate, upon the termination of their service. When the new customers, Paribas and South Jersey, began taking storage service at the facility, replacing two terminating historic customers who had removed their base gas, Transco was obligated to purchase new replacement base gas at market prices in order to serve the new customers.

Based on these particular circumstances, the Commission concluded that Transco's proposal to allocate the costs of the replacement gas purchase solely to the new customers was reasonable. Therefore, under section 4 of the Natural Gas Act, the proper course for the Commission was to approve Transco's proposal.

2. The Commission reasonably rejected the new customers' argument that Transco's allocation of the whole cost of the replacement gas violated regulatory

cost causation principles. While it is true that all storage customers, existing and new, receive a benefit from the facility having a sufficient supply of base gas, the Commission appropriately found, based on this Court's precedent, that this fact in itself did not mandate a rolled-in rate for all customers. Rather, it is a question of fact for the agency to determine whether the cost of a particular facility should be rolled into a company's rate base or segregated to particular customers. Here, the Commission concluded, in light of the history of the project, it was reasonable for Transco to charge the cost of the new base gas solely to the new customers who were directly responsible for its purchase.

The Commission also reasonably rejected the new customers' contention that it was unduly discriminatory to charge them a different rate than that paid by the historic customers. The agency determined that the new customers were not similarly situated to the historic customers, as only the latter had contributed base gas necessary for the operation of the Washington Storage Field.

ARGUMENT

I. STANDARD OF REVIEW

As this Court has stated, it reviews the Commission's Natural Gas Act orders "under the Administrative Procedure Act's . . . arbitrary and capricious standard." *Transcontinental Gas Pipe Line Corp. v. FERC*, 518 F.3d 916, 919

(D.C. Cir. 2008) (quoting *Sithe/Independence Power Partners, L.P. v. FERC*, 165 F.3d 944, 948 (D.C. Cir. 1999)). Under this standard, the Court "must uphold an agency's action where 'it has considered the relevant factors and articulated a rational connection between the facts found and the choice made.'" *Transcontinental Gas Pipe Line*, 518 F.3d at 919 (quoting *Nat'l Ass'n of Clean Air Agencies v. EPA*, 489 F.3d 1221, 1228 (D.C. Cir. 2007), and *Allied Local & Reg'l Mfrs. Caucus v. EPA*, 215 F.3d 61, 68 (D.C. Cir. 2000)).

In cases involving Commission rate review, the Court has emphasized that its review is "'particularly deferential' when FERC is involved in the highly technical process of ratemaking." *E. Ky. Power Co-op, Inc. v. FERC*, 489 F.3d 1299, 1306 (D.C. Cir. 2007) (quoting *Ass'n of Oil Pipe Lines v. FERC*, 83 F.3d 1424, 1431 (D.C. Cir. 1996)); *Midwest ISO Transmission Owners v. FERC*, 373 F.3d 1361, 1368 (D.C. Cir. 2004) (same). *See also Morgan Stanley Capital Group Inc. v. Pub. Util. Dist. No. 1*, 554 U.S. 527, 532 (2008) (because the just and reasonable standard for rates is not capable of precise judicial definition, the Court affords great deference to the Commission's rate decisions).

II. THE COMMISSION REASONABLY ACCEPTED TRANSCO'S PROPOSED INCREMENTAL RATE FOR NEW SHIPPERS

A. The Commission's Decision Was Appropriate Under The Natural Gas Act

At the heart of this case is the Commission's determination that it is reasonable for Transco to charge a higher rate for new shippers – Paribas and South Jersey – taking storage service from its Washington Storage Field facility than it charges existing (historic) shippers for the same service. This rate differential stems from the fact that "the costs of the newly purchased base gas" are included "solely in the rate base used to calculate the new shippers' rates, while the rate base used to calculate the historic shippers' rates continues to include only the lower cost base gas the historic shippers had previously supplied to Transco" pursuant to earlier transactions. Opinion No. 507-A P 44, JA 127.

The Commission determined that Transco's proposal was reasonable because of two basic facts. First, the Commission found that the historic customers pay a storage rate reflecting that they "agreed to a temporary reduction in their contractual rights to purchase gas from Transco in order to permit Transco to inject that gas into the Washington Storage Field as the base gas necessary" for its operation. Opinion No. 507-A P 47, JA 128. "In essence," the agency explained, the historic customers "agreed to postpone their contractual right to purchase (and

pay for) that gas, for so long as they continued to take the [Washington Storage Field rate schedule] storage service, with the right to exercise their purchase rights, and pay for the gas, at such time as they ceased taking the storage service for which they had supplied the base gas." *Id.* P 51, JA 130.

Second, when Transco had to develop a rate for its new customers, who had made no contribution to the facility's base gas, there was no need to design their rate to take this history into account. Indeed, Transco had to purchase new base gas at current market prices specifically because the new customers were beginning to receive storage service at the Washington Storage Field facility. Thus, the Commission concluded, it was reasonable for Transco "to design [Paribas's] and South Jersey's rates using a rate base reflecting the costs of the base gas Transco had to purchase to replace that taken by the shippers who released their capacity" to those new customers. Opinion No. 507-A P 63, JA 137.

As the Commission fully explained why Transco's proposed incremental rate was justified under the circumstances, it should be affirmed by the Court. *See Transcontinental Gas Pipe Line*, 518 F.3d at 920 (Commission's decision to approve incremental rather than rolled-in rate is "exactly the type of policy choice about which we defer to FERC," given the particularly deferential review of Commission ratemaking).

B. Paribas's Arguments To The Contrary Are Without Merit

Paribas makes two fundamental arguments that the Commission's decision here is unsound. First, Paribas argues that the allocation of the cost of the replacement base gas violates the basic regulatory principle of cost causation, *i.e.*, that the cost of service should be borne by the customer who gets the benefit. *See* Pet. Br. 20. Second, it argues that the incremental rate for the storage service unlawfully discriminates against the new customers, because all storage customers, new and historic, equally benefit from the replacement gas. *See id.* 22. However, as the Commission determined, its decision here is consistent with both of these regulatory principles.

With respect to cost causation, Paribas relies on the ALJ's finding that "the actual function and use of base gas in a single, unitary storage facility – that is, the fact that all base gas supports all entitlements, irrespective of any storage customer's status as an original or replacement customer – precluded any effort to assign artificially discrete base gas purchases to specific storage customers." Pet. Br. 21. In this regard, Paribas quotes the judge's opinion liberally. *Id.* 16-20. However, the issue before the Court is whether the Commission's decision is reasonable, regardless of the judge's conclusion. *Compare Mobil Pipe Line Co. v. FERC*, 676 F.3d 1098 (D.C. Cir. 2012) (where the Court reversed the

Commission's affirmation of a judge's decision) *with Entergy Services, Inc. v. FERC*, 568 F.3d 978 (D.C. Cir. 2009) (where the Court sustained the Commission's reversal of a judge's decision).

Here, based on this Court's reasoning in *Consolidated Edison*, the Commission concluded that Paribas seeks to apply the cost causation principle much too mechanically. Opinion No. 507-A P 45, JA 127. In this regard, the Commission relied on the Court's view that "[w]hether the cost of a particular facility is more properly treated as a systemic cost and rolled-in to the rate base of all the customers, or as a segregated cost to a particular customer," who should be responsible for the cost on an incremental basis, "is frequently a difficult issue of fact presented to the Commission." *Id.* (quoting *Consolidated Edison*, 165 F.3d at 1004 n.19 and *Battle Creek Gas Co. v. FPC*, 281 F.2d 42, 47 (D.C. Cir. 1960)). Thus, the Commission recognized that between the two extremes where incremental or rolled-in pricing would be specifically required, "lie a series of intermediate points in which both cost-recovery methods would satisfy [Natural Gas Act] section 4's just and reasonable test." *Id.*, JA 127-28 (quoting *Consolidated Edison*, 165 F.3d at 1004).

Because of the factual circumstances presented by this case, the Commission found that Transco's proposed incremental rates for new shippers fell within "one

of the 'intermediate points' in the 'rate setting continuum,'" so that "Transco could reasonably choose incremental treatment of its base gas costs." Opinion No. 507-A P 46, JA 128.

This being the case, the Commission properly applied section 4 of the Natural Gas Act, 15 U.S.C. § 717c, to approve Transco's proposal. To do otherwise would have ignored a second important principle clarified in *Consolidated Edison*, namely that "[a]t each of the places along the continuum, the pricing mechanism will essentially lie in the hands of the initiating pipeline." Opinion No. 507-A P 45, JA 128 (quoting *Consolidated Edison*, 165 F.3d at 1004). This is because, the Commission recognized, "[i]f the pipeline satisfies its burden under section 4 to show that its proposed rates are just and reasonable, the Commission must accept those rates, regardless of whether other just and reasonable rates may exist." *Id.* P 42 & n.53, JA 126 (citing *Western Resources, Inc.*, 9 F.3d at 1578-1579).

Paribas attempts to argue that the Commission's decision is contrary to prior agency policies. However, as the Commission demonstrated, this is not the case.

For example, the Commission found Transco's proposal consistent with FERC's "policy of permitting rate differentials between 'foundation' shippers who commit to purchase capacity on a project before it is built and shippers that sign up

for service later," because of the "essential support" such foundation shippers give to the project sponsor in establishing the facility. Opinion No. 507-A P 46 & n.58, JA 128 (citing *Revisions to the Blanket Certificate Regulations and Clarification Regarding Rates*, Order No. 686, FERC Stats. & Regs. ¶ 31,231 PP 65-70 (2006)).

Paribas complains that the Commission's reliance on Order No. 686 is not only an improper retroactive application of the policy established there, but also irrelevant because "Transco never offered lower 'foundation shipper' rates and higher 'incremental shipper' rates to potential participants in the Washington Storage Field project." Pet. Br. 27.

Neither point is valid. While Paribas is correct that Order No. 686 was issued after Transco's initiation of its rate proceeding here, the cited paragraphs actually restate previously-established Commission policy "that currently there are a variety of rate incentives available to project sponsors to induce potential customers to commit to a new proposal." Order No. 686, P 68. Nor do the particulars of the incentive Transco gave to historic customers here contradict the Commission's basic point: the historic shippers who provided support for the establishment and expansion of the Washington Storage Field are not similarly situated to Paribas and South Jersey, who began taking service from the facility approximately 25 years after the facility's final expansion.

Likewise, Paribas asserts that the Commission erroneously relied on the 1999 Conversion Order, *see supra* p.7, in explaining Transco's allocation of base gas costs to historic customers. Pet. Br. 23-25. The Commission agreed with Paribas and South Jersey that the 1999 Conversion Order did not directly address the cost allocation method for base gas replenishment. Nonetheless, the agency believed it was reasonable to examine that order, which had been cited by all parties to the proceeding, "to determine the regulatory context of the development" of the historic shippers' rates under the tariff. Opinion No. 507-A P 89, JA 148.

Finally, Paribas contends that the Commission's application of cost causation principles here contradicts its policy of rolling in the costs of new electric generation facilities that are interconnected to the existing electric transmission grid. Pet. Br. 28-31. However, the Commission appropriately rejected this contention, observing that its "policy concerning interconnections of new electric generators to the electric transmission network is not relevant to this case." Opinion No. 507-A P 77, JA 142. "The resolution of this case," the agency reiterated, "turns on equitable considerations arising from the unique circumstances concerning the development of the Washington Storage Field during a period of severe gas shortages." *Id.*

Because the Commission's interpretation of its orders is entitled to judicial deference, the Court should reject petitioner's contentions. *See, e.g., Consumers Energy Co. v. FERC*, 428 F.3d 1065, 1067-68 (D.C. Cir. 2005).

Paribas goes on to assert that the "the fact that historical customers negotiated for themselves a right to withdraw base gas from Transco's system at a below market rate" provides no justification for "penalizing" the new customers "with a much higher incremental rate," because "[t]he base gas purchase provision [for the historic customers] bears no relationship to the proper allocation of the cost of base gas." Pet. Br. 28.

Paribas ignores that it was only upon the termination of Washington Storage Field service by two historic shippers that the new shippers were able to begin to receive this service, "because Transco's services at that field are fully subscribed." Opinion No. 507-A P 60, JA 135. Further, because the two departing shippers exercised their right to repurchase at its historic price the base gas they had earlier supplied, Transco was required to purchase new base gas to have sufficient base gas to provide service to the new shippers. Thus, there is a direct causal link between Paribas and South Jersey taking service in place of the historic shippers and the cost of Transco's purchase of replacement bas gas.

Paribas's claim that the incremental rate discriminates against new shippers in favor of the historic shippers fares no better. *See* Pet. Br. 25. As this Court has explained, under the Natural Gas Act, "differences in the rates paid by two sets of customers are not always unduly discriminatory." *Consolidated Edison*, 165 F.3d at 1012. "Rather, to show undue discrimination, the petitioner must demonstrate that the two classes of customers are similarly situated for purposes of the rate." *Id.* (citing cases).

Paribas cannot make this showing because of the basic fact that the historic shippers paid a rate that takes into account that they provided essential support for Transco in its development of the Washington Storage Field, while the new shippers did not. As the Commission explained, "every base gas contribution made by the 28 historic shippers benefitting from Transco's incremental rate proposal in this case was made as part of the original project to develop the Washington Storage Field or a subsequent expansion, all of which were completed by the end of 1981." Opinion No. 507-A P 55, JA 133. "In contrast to the historic shippers," the agency observed, "[Paribas] and South Jersey did not provide support for the initial development or expansion" of the facility, and "made no sacrifice comparable to the historic shippers' agreement to reduce their purchase entitlements during a period of severe natural gas shortage to permit Transco to

obtain base gas." *Id.* P 56, JA 134. Differences in circumstances justify differences in rates.

CONCLUSION

For the reasons stated, the Court should deny the petition for review and affirm the Commission's orders.

Respectfully submitted,

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March 29, 2013

BNP Paribas Energy Trading GP v. FERC
Docket No. RP06-569
D.C. Cir. No. 12-1242

CERTIFICATE OF COMPLIANCE

In accordance with Fed. R. App. P. 32(a)(7)(C), I hereby certify that this brief contains 4,890 words, not including the cover page, table of contents and authorities, the glossary, the certificate of counsel, and this certificate.

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March 29, 2013

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clude, in addition to the President, any agency, officer, or employee who may be designated by the President for the execution of any of the powers and functions vested in the President under this chapter.

(Feb. 22, 1935, ch. 18, § 11, 49 Stat. 33.)

DELEGATION OF FUNCTIONS

Ex. Ord. No. 6979, Feb. 28, 1935, which designated and appointed Secretary of the Interior to execute powers and functions vested in President by this chapter except those vested in him by section 715c of this title, was superseded by Ex. Ord. No. 10752, set out below.

Ex. Ord. No. 7756, Dec. 1, 1937, 2 F.R. 2664, which delegated to Secretary of the Interior powers and functions vested in President under this chapter except those vested in him by section 715c of this title, and authorized Secretary to establish a Petroleum Conservation Division in Department of the Interior, the functions and duties of which shall be: (1) to assist, in such manner as may be prescribed by Secretary of the Interior, in administering said act, (2) to cooperate with oil and gas-producing States in prevention of waste in oil and gas production and in adoption of uniform oil- and gas-conservation laws and regulations, and (3) to keep informed currently as to facts which may be required for exercise of responsibility of President under section 715c of this title, was superseded by Ex. Ord. No. 10752, set out below.

EX. ORD. NO. 10752. DELEGATION OF FUNCTIONS TO THE SECRETARY OF THE INTERIOR

Ex. Ord. No. 10752, Feb. 12, 1958, 23 F.R. 973, provided:

SECTION 1. The Secretary of the Interior is hereby designated and appointed as the agent of the President for the execution of all the powers and functions vested in the President by the act of February 22, 1935, 49 Stat. 30, entitled ''An Act to regulate interstate and foreign commerce in petroleum and its products by prohibiting the shipment in such commerce of petroleum and its products produced in violation of State law, and for other purposes,'' as amended (15 U.S.C. 715 *et seq.*), except those vested in the President by section 4 of the act (15 U.S.C. 715c).

SEC. 2. The Secretary of the Interior may make such provisions in the Department of the Interior as he may deem appropriate to administer the said act.

SEC. 3. This Executive order supersedes Executive Order No. 6979 of February 28, 1935, Executive Order No. 7756 of December 1, 1937 (2 F.R. 2664), Executive Order No. 9732 of June 3, 1946 (11 F.R. 5985), and paragraph (q) of section 1 of Executive Order No. 10250 of June 5, 1951 (16 F.R. 5385).

DWIGHT D. EISENHOWER.

§ 715k. Saving clause

If any provision of this chapter, or the application thereof to any person or circumstance, shall be held invalid, the validity of the remainder of the chapter and the application of such provision to other persons or circumstances shall not be affected thereby.

(Feb. 22, 1935, ch. 18, § 12, 49 Stat. 33.)

§ 715*l*. Repealed. June 22, 1942, ch. 436, 56 Stat. 381

Section, acts Feb. 22, 1935, ch. 18, § 13, 49 Stat. 33; June 14, 1937, ch. 335, 50 Stat. 257; June 29, 1939, ch. 250, 53 Stat. 927, provided for expiration of this chapter on June 30, 1942.

§ 715m. Cooperation between Secretary of the Interior and Federal and State authorities

The Secretary of the Interior, in carrying out this chapter, is authorized to cooperate with Federal and State authorities.

(June 25, 1946, ch. 472, § 3, 60 Stat. 307.)

CODIFICATION

Section was not enacted as a part act Feb. 22, 1935, which comprises this chapter.

DELEGATION OF FUNCTIONS

Delegation of President's authority to Secretary of the Interior, see note set out under section 715j of this title.

CHAPTER 15B—NATURAL GAS

Sec.

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§ 717. Regulation of natural gas companies

(a) Necessity of regulation in public interest

As disclosed in reports of the Federal Trade Commission made pursuant to S. Res. 83 (Seventieth Congress, first session) and other reports made pursuant to the authority of Congress, it is declared that the business of transporting and selling natural gas for ultimate distribution to the public is affected with a public interest, and that Federal regulation in matters relating to the transportation of natural gas and the sale thereof in interstate and foreign commerce is necessary in the public interest.

(b) Transactions to which provisions of chapter applicable

The provisions of this chapter shall apply to the transportation of natural gas in interstate commerce, to the sale in interstate commerce of natural gas for resale for ultimate public consumption for domestic, commercial, industrial,

or any other use, and to natural-gas companies engaged in such transportation or sale, and to the importation or exportation of natural gas in foreign commerce and to persons engaged in such importation or exportation, but shall not apply to any other transportation or sale of natural gas or to the local distribution of natural gas or to the facilities used for such distribution or to the production or gathering of natural gas.

(c) Intrastate transactions exempt from provisions of chapter; certification from State commission as conclusive evidence

The provisions of this chapter shall not apply to any person engaged in or legally authorized to engage in the transportation in interstate commerce or the sale in interstate commerce for resale, of natural gas received by such person from another person within or at the boundary of a State if all the natural gas so received is ultimately consumed within such State, or to any facilities used by such person for such transportation or sale, provided that the rates and service of such person and facilities be subject to regulation by a State commission. The matters exempted from the provisions of this chapter by this subsection are declared to be matters primarily of local concern and subject to regulation by the several States. A certification from such State commission to the Federal Power Commission that such State commission has regulatory jurisdiction over rates and service of such person and facilities and is exercising such jurisdiction shall constitute conclusive evidence of such regulatory power or jurisdiction.

(d) Vehicular natural gas jurisdiction

The provisions of this chapter shall not apply to any person solely by reason of, or with respect to, any sale or transportation of vehicular natural gas if such person is—

(1) not otherwise a natural-gas company; or

(2) subject primarily to regulation by a State commission, whether or not such State commission has, or is exercising, jurisdiction over the sale, sale for resale, or transportation of vehicular natural gas.

(June 21, 1938, ch. 556, §1, 52 Stat. 821; Mar. 27, 1954, ch. 115, 68 Stat. 36; Pub. L. 102–486, title IV, §404(a)(1), Oct. 24, 1992, 106 Stat. 2879; Pub. L. 109–58, title III, §311(a), Aug. 8, 2005, 119 Stat. 685.)

AMENDMENTS

2005—Subsec. (b). Pub. L. 109–58 inserted ''and to the importation or exportation of natural gas in foreign commerce and to persons engaged in such importation or exportation,'' after ''such transportation or sale,''.

1992—Subsec. (d). Pub. L. 102–486 added subsec. (d).

1954—Subsec. (c). Act Mar. 27, 1954, added subsec. (c).

TERMINATION OF FEDERAL POWER COMMISSION; TRANSFER OF FUNCTIONS

Federal Power Commission terminated and functions, personnel, property, funds, etc., transferred to Secretary of Energy (except for certain functions transferred to Federal Energy Regulatory Commission) by sections 7151(b), 7171(a), 7172(a), 7291, and 7293 of Title 42, The Public Health and Welfare.

STATE LAWS AND REGULATIONS

Section 404(b) of Pub. L. 102–486 provided that: ''The transportation or sale of natural gas by any person who is not otherwise a public utility, within the meaning of State law—

''(1) in closed containers; or

''(2) otherwise to any person for use by such person as a fuel in a self-propelled vehicle,

shall not be considered to be a transportation or sale of natural gas within the meaning of any State law, regulation, or order in effect before January 1, 1989. This subsection shall not apply to any provision of any State law, regulation, or order to the extent that such provision has as its primary purpose the protection of public safety.''

EMERGENCY NATURAL GAS ACT OF 1977

Pub. L. 95–2, Feb. 2, 1977, 91 Stat. 4, authorized President to declare a natural gas emergency and to require emergency deliveries and transportation of natural gas until the earlier of Apr. 30, 1977, or termination of emergency by President and provided for antitrust protection, emergency purchases, adjustment in charges for local distribution companies, relationship to Natural Gas Act, effect of certain contractual obligations, administrative procedure and judicial review, enforcement, reporting to Congress, delegation of authorities, and preemption of inconsistent State or local action.

EXECUTIVE ORDER NO. 11969

Ex. Ord. No. 11969, Feb. 2, 1977, 42 F.R. 6791, as amended by Ex. Ord. No. 12038, Feb. 3, 1978, 43 F.R. 4957, which delegated to the Secretary of Energy the authority vested in the President by the Emergency Natural Gas Act of 1977 except the authority to declare and terminate a natural gas emergency, was revoked by Ex. Ord. No. 12553, Feb. 25, 1986, 51 F.R. 7237.

PROCLAMATION NO. 4485

Proc. No. 4485, Feb. 2, 1977, 42 F.R. 6789, declared that a natural gas emergency existed within the meaning of section 3 of the Emergency Natural Gas Act of 1977, set out as a note above, which emergency was terminated by Proc. No. 4495, Apr. 1, 1977, 42 F.R. 18053, formerly set out below.

PROCLAMATION NO. 4495

Proc. No. 4495, Apr. 1, 1977, 42 F.R. 18053, terminated the natural gas emergency declared to exist by Proc. No. 4485, Feb. 2, 1977, 42 F.R. 6789, formerly set out above.

§ 717a. Definitions

When used in this chapter, unless the context otherwise requires—

(1) ''Person'' includes an individual or a corporation.

(2) ''Corporation'' includes any corporation, joint-stock company, partnership, association, business trust, organized group of persons, whether incorporated or not, receiver or receivers, trustee or trustees of any of the foregoing, but shall not include municipalities as hereinafter defined.

(3) ''Municipality'' means a city, county, or other political subdivision or agency of a State.

(4) ''State'' means a State admitted to the Union, the District of Columbia, and any organized Territory of the United States.

(5) ''Natural gas'' means either natural gas unmixed, or any mixture of natural and artificial gas.

(6) ''Natural-gas company'' means a person engaged in the transportation of natural gas in interstate commerce, or the sale in interstate commerce of such gas for resale.

(7) ''Interstate commerce'' means commerce between any point in a State and any point

the issuance of the permit and to the exercise of the rights granted thereunder such conditions as the public interest may in its judgment require.

(b) In any case wherein the Secretary of Energy, the Secretary of State, and the Secretary of Defense cannot agree as to whether or not a permit should be issued, the Secretary of Energy shall submit to the President for approval or disapproval the application for a permit with the respective views of the Secretary of Energy, the Secretary of State and the Secretary of Defense.

SEC. 2. [Deleted.]

SEC. 3. The Secretary of Energy is authorized to issue such rules and regulations, and to prescribe such procedures, as it may from time to time deem necessary or desirable for the exercise of the authority delegated to it by this order.

SEC. 4. All Presidential Permits heretofore issued pursuant to Executive Order No. 8202 of July 13, 1939, and in force at the time of the issuance of this order, and all permits issued hereunder, shall remain in full force and effect until modified or revoked by the President or by the Secretary of Energy.

SEC. 5. Executive Order No. 8202 of July 13, 1939, is hereby revoked.

§ 717b–1. State and local safety considerations

(a) Promulgation of regulations

The Commission shall promulgate regulations on the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) pre-filing process within 60 days after August 8, 2005. An applicant shall comply with pre-filing process required under the National Environmental Policy Act of 1969 prior to filing an application with the Commission. The regulations shall require that the pre-filing process commence at least 6 months prior to the filing of an application for authorization to construct an LNG terminal and encourage applicants to cooperate with State and local officials.

(b) State consultation

The Governor of a State in which an LNG terminal is proposed to be located shall designate the appropriate State agency for the purposes of consulting with the Commission regarding an application under section 717b of this title. The Commission shall consult with such State agency regarding State and local safety considerations prior to issuing an order pursuant to section 717b of this title. For the purposes of this section, State and local safety considerations include—

(1) the kind and use of the facility;

(2) the existing and projected population and demographic characteristics of the location;

(3) the existing and proposed land use near the location;

(4) the natural and physical aspects of the location;

(5) the emergency response capabilities near the facility location; and

(6) the need to encourage remote siting.

(c) Advisory report

The State agency may furnish an advisory report on State and local safety considerations to the Commission with respect to an application no later than 30 days after the application was filed with the Commission. Before issuing an order authorizing an applicant to site, construct, expand, or operate an LNG terminal, the Commission shall review and respond specifically to the issues raised by the State agency described in subsection (b) of this section in the advisory report. This subsection shall apply to any application filed after August 8, 2005. A State agency has 30 days after August 8, 2005 to file an advisory report related to any applications pending at the Commission as of August 8, 2005.

(d) Inspections

The State commission of the State in which an LNG terminal is located may, after the terminal is operational, conduct safety inspections in conformance with Federal regulations and guidelines with respect to the LNG terminal upon written notice to the Commission. The State commission may notify the Commission of any alleged safety violations. The Commission shall transmit information regarding such allegations to the appropriate Federal agency, which shall take appropriate action and notify the State commission.

(e) Emergency Response Plan

(1) In any order authorizing an LNG terminal the Commission shall require the LNG terminal operator to develop an Emergency Response Plan. The Emergency Response Plan shall be prepared in consultation with the United States Coast Guard and State and local agencies and be approved by the Commission prior to any final approval to begin construction. The Plan shall include a cost-sharing plan.

(2) A cost-sharing plan developed under paragraph (1) shall include a description of any direct cost reimbursements that the applicant agrees to provide to any State and local agencies with responsibility for security and safety—

(A) at the LNG terminal; and

(B) in proximity to vessels that serve the facility.

(June 21, 1938, ch. 556, § 3A, as added Pub. L. 109–58, title III, § 311(d), Aug. 8, 2005, 119 Stat. 687.)

REFERENCES IN TEXT

The National Environmental Policy Act of 1969, referred to in subsec. (a), is Pub. L. 91–190, Jan. 1, 1970, 83 Stat. 852, as amended, which is classified generally to chapter 55 (§ 4321 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 4321 of Title 42 and Tables.

§ 717c. Rates and charges

(a) Just and reasonable rates and charges

All rates and charges made, demanded, or received by any natural-gas company for or in connection with the transportation or sale of natural gas subject to the jurisdiction of the Commission, and all rules and regulations affecting or pertaining to such rates or charges, shall be just and reasonable, and any such rate or charge that is not just and reasonable is declared to be unlawful.

(b) Undue preferences and unreasonable rates and charges prohibited

No natural-gas company shall, with respect to any transportation or sale of natural gas subject to the jurisdiction of the Commission, (1) make or grant any undue preference or advantage to

any person or subject any person to any undue prejudice or disadvantage, or (2) maintain any unreasonable difference in rates, charges, service, facilities, or in any other respect, either as between localities or as between classes of service.

(c) Filing of rates and charges with Commission; public inspection of schedules

Under such rules and regulations as the Commission may prescribe, every natural-gas company shall file with the Commission, within such time (not less than sixty days from June 21, 1938) and in such form as the Commission may designate, and shall keep open in convenient form and place for public inspection, schedules showing all rates and charges for any transportation or sale subject to the jurisdiction of the Commission, and the classifications, practices, and regulations affecting such rates and charges, together with all contracts which in any manner affect or relate to such rates, charges, classifications, and services.

(d) Changes in rates and charges; notice to Commission

Unless the Commission otherwise orders, no change shall be made by any natural-gas company in any such rate, charge, classification, or service, or in any rule, regulation, or contract relating thereto, except after thirty days' notice to the Commission and to the public. Such notice shall be given by filing with the Commission and keeping open for public inspection new schedules stating plainly the change or changes to be made in the schedule or schedules then in force and the time when the change or changes will go into effect. The Commission, for good cause shown, may allow changes to take effect without requiring the thirty days' notice herein provided for by an order specifying the changes so to be made and the time when they shall take effect and the manner in which they shall be filed and published.

(e) Authority of Commission to hold hearings concerning new schedule of rates

Whenever any such new schedule is filed the Commission shall have authority, either upon complaint of any State, municipality, State commission, or gas distributing company, or upon its own initiative without complaint, at once, and if it so orders, without answer or formal pleading by the natural-gas company, but upon reasonable notice, to enter upon a hearing concerning the lawfulness of such rate, charge, classification, or service; and, pending such hearing and the decision thereon, the Commission, upon filing with such schedules and delivering to the natural-gas company affected thereby a statement in writing of its reasons for such suspension, may suspend the operation of such schedule and defer the use of such rate, charge, classification, or service, but not for a longer period than five months beyond the time when it would otherwise go into effect; and after full hearings, either completed before or after the rate, charge, classification, or service goes into effect, the Commission may make such orders with reference thereto as would be proper in a proceeding initiated after it had become effective. If the proceeding has not been concluded and an order made at the expiration of the suspension period, on motion of the natural-gas company making the filing, the proposed change of rate, charge, classification, or service shall go into effect. Where increased rates or charges are thus made effective, the Commission may, by order, require the natural-gas company to furnish a bond, to be approved by the Commission, to refund any amounts ordered by the Commission, to keep accurate accounts in detail of all amounts received by reason of such increase, specifying by whom and in whose behalf such amounts were paid, and, upon completion of the hearing and decision, to order such natural-gas company to refund, with interest, the portion of such increased rates or charges by its decision found not justified. At any hearing involving a rate or charge sought to be increased, the burden of proof to show that the increased rate or charge is just and reasonable shall be upon the natural-gas company, and the Commission shall give to the hearing and decision of such questions preference over other questions pending before it and decide the same as speedily as possible.

(f) Storage services

(1) In exercising its authority under this chapter or the Natural Gas Policy Act of 1978 (15 U.S.C. 3301 et seq.), the Commission may authorize a natural gas company (or any person that will be a natural gas company on completion of any proposed construction) to provide storage and storage-related services at market-based rates for new storage capacity related to a specific facility placed in service after August 8, 2005, notwithstanding the fact that the company is unable to demonstrate that the company lacks market power, if the Commission determines that—

(A) market-based rates are in the public interest and necessary to encourage the construction of the storage capacity in the area needing storage services; and

(B) customers are adequately protected.

(2) The Commission shall ensure that reasonable terms and conditions are in place to protect consumers.

(3) If the Commission authorizes a natural gas company to charge market-based rates under this subsection, the Commission shall review periodically whether the market-based rate is just, reasonable, and not unduly discriminatory or preferential.

(June 21, 1938, ch. 556, § 4, 52 Stat. 822; Pub. L. 87–454, May 21, 1962, 76 Stat. 72; Pub. L. 109–58, title III, § 312, Aug. 8, 2005, 119 Stat. 688.)

REFERENCES IN TEXT

The Natural Gas Policy Act of 1978, referred to in subsec. (f)(1), is Pub. L. 95–621, Nov. 9, 1978, 92 Stat. 3350, as amended, which is classified generally to chapter 60 (§ 3301 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 3301 of this title and Tables.

AMENDMENTS

2005—Subsec. (f). Pub. L. 109–58 added subsec. (f).

1962—Subsec. (e). Pub. L. 87–454 inserted ''or gas distributing company'' after ''State commission'', and struck out proviso which denied authority to the Commission to suspend the rate, charge, classification, or

service for the sale of natural gas for resale for industrial use only.

ADVANCE RECOVERY OF EXPENSES INCURRED BY NATURAL GAS COMPANIES FOR NATURAL GAS RESEARCH, DEVELOPMENT, AND DEMONSTRATION PROJECTS

Pub. L. 102–104, title III, Aug. 17, 1991, 105 Stat. 531, authorized Federal Energy Regulatory Commission, pursuant to this section, to allow recovery, in advance, of expenses by natural-gas companies for research, development and demonstration activities by Gas Research Institute for projects on use of natural gas in motor vehicles and on use of natural gas to control emissions from combustion of other fuels, subject to Commission finding that benefits, including environmental benefits, to both existing and future ratepayers resulting from such activities exceed all direct costs to both existing and future ratepayers, prior to repeal by Pub. L. 102–486, title IV, § 408(c), Oct. 24, 1992, 106 Stat. 2882.

§ 717c–1. Prohibition on market manipulation

It shall be unlawful for any entity, directly or indirectly, to use or employ, in connection with the purchase or sale of natural gas or the purchase or sale of transportation services subject to the jurisdiction of the Commission, any manipulative or deceptive device or contrivance (as those terms are used in section 78j(b) of this title) in contravention of such rules and regulations as the Commission may prescribe as necessary in the public interest or for the protection of natural gas ratepayers. Nothing in this section shall be construed to create a private right of action.

(June 21, 1938, ch. 556, § 4A, as added Pub. L. 109–58, title III, § 315, Aug. 8, 2005, 119 Stat. 691.)

§ 717d. Fixing rates and charges; determination of cost of production or transportation

(a) Decreases in rates

Whenever the Commission, after a hearing had upon its own motion or upon complaint of any State, municipality, State commission, or gas distributing company, shall find that any rate, charge, or classification demanded, observed, charged, or collected by any natural-gas company in connection with any transportation or sale of natural gas, subject to the jurisdiction of the Commission, or that any rule, regulation, practice, or contract affecting such rate, charge, or classification is unjust, unreasonable, unduly discriminatory, or preferential, the Commission shall determine the just and reasonable rate, charge, classification, rule, regulation, practice, or contract to be thereafter observed and in force, and shall fix the same by order: *Provided*, *however*, That the Commission shall have no power to order any increase in any rate contained in the currently effective schedule of such natural gas company on file with the Commission, unless such increase is in accordance with a new schedule filed by such natural gas company; but the Commission may order a decrease where existing rates are unjust, unduly discriminatory, preferential, otherwise unlawful, or are not the lowest reasonable rates.

(b) Costs of production and transportation

The Commission upon its own motion, or upon the request of any State commission, whenever it can do so without prejudice to the efficient and proper conduct of its affairs, may investigate and determine the cost of the production or transportation of natural gas by a natural-gas company in cases where the Commission has no authority to establish a rate governing the transportation or sale of such natural gas.

(June 21, 1938, ch. 556, § 5, 52 Stat. 823.)

§ 717e. Ascertainment of cost of property

(a) Cost of property

The Commission may investigate and ascertain the actual legitimate cost of the property of every natural-gas company, the depreciation therein, and, when found necessary for rate-making purposes, other facts which bear on the determination of such cost or depreciation and the fair value of such property.

(b) Inventory of property; statements of costs

Every natural-gas company upon request shall file with the Commission an inventory of all or any part of its property and a statement of the original cost thereof, and shall keep the Commission informed regarding the cost of all additions, betterments, extensions, and new construction.

(June 21, 1938, ch. 556, § 6, 52 Stat. 824.)

§ 717f. Construction, extension, or abandonment of facilities

(a) Extension or improvement of facilities on order of court; notice and hearing

Whenever the Commission, after notice and opportunity for hearing, finds such action necessary or desirable in the public interest, it may by order direct a natural-gas company to extend or improve its transportation facilities, to establish physical connection of its transportation facilities with the facilities of, and sell natural gas to, any person or municipality engaged or legally authorized to engage in the local distribution of natural or artificial gas to the public, and for such purpose to extend its transportation facilities to communities immediately adjacent to such facilities or to territory served by such natural-gas company, if the Commission finds that no undue burden will be placed upon such natural-gas company thereby: *Provided*, That the Commission shall have no authority to compel the enlargement of transportation facilities for such purposes, or to compel such natural-gas company to establish physical connection or sell natural gas when to do so would impair its ability to render adequate service to its customers.

(b) Abandonment of facilities or services; approval of Commission

No natural-gas company shall abandon all or any portion of its facilities subject to the jurisdiction of the Commission, or any service rendered by means of such facilities, without the permission and approval of the Commission first had and obtained, after due hearing, and a finding by the Commission that the available supply of natural gas is depleted to the extent that the continuance of service is unwarranted, or that the present or future public convenience or necessity permit such abandonment.

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D.C. Cir. No. 12-1242

CERTIFICATE OF SERVICE

In accordance with Fed. R. App. P. 25(d), and the Court's Administrative Order Regarding Electronic Case Filing, I hereby certify that I have, this 29th day of March 2013, served the foregoing upon the counsel listed in the Service Preference Report via email through the Court's CM/ECF system:

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