

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;  
Sudeen G. Kelly, Marc Spitzer,  
Philip D. Moeller, and Jon Wellinghoff.

Southern Natural Gas Company

Docket No. RP04-42-001

ORDER DENYING REHEARING

(Issued April 2, 2007)

1. On October 27, 2006, Southern Natural Gas Company (Southern) and the Market Area Firm Transportation Customers (Customers)<sup>1</sup> filed for rehearing of the Commission's Order Directing Update of Gas Quality Provisions issued on September 27, 2006 (the September 27 Order).<sup>2</sup> The September 27 Order required Southern to meet with its customers and to file within 60 days of the order revised tariff sheets to conform the tariff sheets initially filed in this proceeding to the specifications set out in the Commission's *Policy Statement on Provisions Governing Natural Gas Quality and Interchangeability in Interstate Natural Gas Pipeline Company Tariffs (the Policy Statement)*.<sup>3</sup> Parties were permitted to file comments, and Commission staff was directed to hold a technical conference on the revised tariff sheets that Southern filed.
2. Southern and Customers request that the Commission (1) rescind the requirement that Southern file revised tariff sheets, and (2) cancel the technical conference to be held on that filing. For the reasons set forth below, the Commission denies rehearing.

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<sup>1</sup> Customers are an *ad hoc* group of firm transportation and storage customers of Southern consisting of Alabama Gas Corporation, the Alabama Municipal Distributors Group, Atlanta Gas Light Company, Austell Gas System, Chattanooga Gas Company, the Municipal Gas Authority of Georgia, Southeast Alabama Gas District, South Carolina Pipeline Corporation, and the Southern Cities (consisting of the City of Tallahassee, Florida and the Cities of Cordele, Dublin, Cartersville, Cuthbert, Hawkinsville, La Grange, and Tallapoosa, Georgia).

<sup>2</sup> *Southern Natural Gas Co.*, 116 FERC ¶ 61,295 (2006).

<sup>3</sup> 115 FERC ¶ 61,295 (2006).

## **Background**

3. The September 27 Order described this proceeding as follows. On October 31, 2003, Southern filed revised tariff sheets (the October 2003 filing) pursuant to section 4 of the Natural Gas Act to be effective on December 1, 2003, in response to the Commission's September 16, 2003 Order in *The Toca Producers v. Southern Natural Gas Company (Toca Order)*.<sup>4</sup> The October 2003 filing revised section 3 of Southern's General Terms and Conditions (GT&C) of its tariff setting forth gas quality specifications for gas received into, and certain gas deliveries from Southern's pipeline system. The Commission accepted and suspended the October 2003 filing subject to the outcome of a technical conference directed by that order.<sup>5</sup> The technical conference was held in January 2004, and comments and reply comments were filed. However, this case has been held in abeyance pending industry-wide efforts to address the issue of hydrocarbon liquids dropout.<sup>6</sup> In that connection the natural gas industry, under the auspices of the Natural Gas Council,<sup>7</sup> initiated a collaborative effort to seek consensus on industry-wide standards for gas quality and interchangeability. On February 28, 2005, the Natural Gas Council filed with the Commission a report on gas quality entitled *Liquid Hydrocarbon Drop Out in Natural Gas Infrastructure* (HDP Report or *White Paper*). In June 2006, in Docket No. PL04-3-000, the Commission issued the *Policy Statement*.

4. The September 27 Order stated that Southern filed its proposed gas quality tariff provisions well before the issuance of the *White Paper* on liquid dropout, and the Commission's *Policy Statement*. As a result, those provisions, and the technical

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<sup>4</sup> 104 FERC ¶ 61,300 (2003), *reh'g denied*, 106 FERC ¶61,158 (2004), *affirmed*, *The Toca Producers v. FERC*, 411 F.3d 262 (D.C. Cir. 2005).

<sup>5</sup> 105 FERC ¶ 61,254 (2003) (the Suspension Order).

<sup>6</sup> The revised tariff sheets went into effect on May 1, 2004, at the end of the five month suspension period, pending further Commission action.

<sup>7</sup> The Natural Gas Council is an organization made up of the representatives of the trade associations of the different sectors of the natural gas industry. The associations particularly involved in writing the *White Paper* were the Independent Petroleum Association of America (IPAA), representing independent natural gas producers; the Natural Gas Supply Association (NGSA), representing producers and marketers of natural gas; the Interstate Natural Gas Association of America (INGAA), representing interstate pipelines; and the American Gas Association (AGA) representing natural gas utilities (LDCs).

conference that was held on that filing in 2004, and the parties' comments after the conference, did not address the requirements and concerns of the *Policy Statement*. Consistent with Commission action in other proceedings,<sup>8</sup> the September 27 Order required Southern to update its compliance filing in light of the *Policy Statement*, and address the relevant procedures and guidelines set forth in the *Policy Statement*. In addition, since the *Policy Statement* encourages pipelines, customers, and other interested parties to resolve gas quality issues on their own,<sup>9</sup> Southern was not required to make the filing until sixty days after the date of the order in order to provide Southern an opportunity to discuss with interested parties technical, engineering and scientific considerations of its proposal that could resolve as many issues as possible before Southern made the revised filing. Parties could then file comments on Southern's revised proposal. The order directed staff to convene a technical conference to address technical, engineering, and operational issues raised by Southern's revised proposal, and the comments filed on Southern's filing.

5. While this limited section 4 filing concerning Southern's gas quality standards was in abeyance pending the generic gas quality proceeding, Southern filed, in August 2004, a separate general section 4 rate case in Docket No. RP04-523-000. Issues in that proceeding were resolved and a settlement was approved by the Commission on July 13, 2005.

### **Request for Rehearing**

6. Southern and Customers<sup>10</sup> argue that a settlement entered into by Southern and approved by the Commission by letter order issued July 13, 2005, in Southern's general NGA section 4 rate case in Docket No. RP04-523-000 bars any revision to Southern's gas quality tariff provisions. They assert that the settlement in that proceeding (the 2005 Settlement) adopted several changes to the GT&C to Southern's tariff, including two changes to the HDP gas quality specifications in GT&C section 3.1(g), both of which were an issue in the 2004 technical conference in this proceeding. They argue that the

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<sup>8</sup> See *Indicated Shippers v. Columbia Gulf Transmission Co.*, 116 FERC ¶ 61,112 (2006), and *Indicated Shippers v. Tennessee Gas Pipeline Co.*, 116 FERC ¶ 61,113 (2006).

<sup>9</sup> *Policy Statement*, at P 31, *ANR Pipeline Co.*, 116 FERC ¶ 61,002 at P 110 (2006).

<sup>10</sup> Customers' argument is basically similar to Southern's, as to the Rate Moratorium.

2005 Settlement included in Article IV of that settlement a Rate Moratorium which prohibits any change in Southern's tariff provisions prior to March 1, 2009.<sup>11</sup> Moreover, the 2005 Settlement provided that during the Rate Moratorium any change to the terms of the Settlement would be subject to the *Mobile-Sierra* "public interest" standard.<sup>12</sup> Accordingly, they argue that no change to Southern's gas quality tariff provisions can be made until the Rate Moratorium expires in 2009. Moreover, if the Commission were to permit changes to be proposed, to be adopted any change would have to meet the "public interest" standard, not the just and reasonable standard.

7. Southern states that the *Policy Statement* is a policy statement and not a rule. Accordingly, Southern argues making compliance with the *Policy Statement* as the test to be applied is an error. Southern asserts the *Policy Statement* "is neither a substantive rule adopted in compliance with the requirements of the Administrative Procedure Act nor the

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<sup>11</sup> That Article provided in part, as follows:

(a) Southern Natural will not file a NGA section 4 rate case before March 1, 2009 to increase, change or modify the Settlement Charges or the tariff changes or additions (x) filed as part of this Settlement and approved by the Commission under the Settlement or (y) filed as part of this proceeding and approved by the Commission in the suspension Order or the Rehearing Order ("Settlement Tariff Provisions") which would be effective prior to September 1, 2009, unless such filing is made in accordance with Paragraph 1(b) or Paragraph 2 of this Article IV. Except as provided in Paragraph 1(b) or Paragraph 2 below, the Settlement Charges and/or the Settlement Tariff Provisions shall not be modified or changed under the terms of any proceeding prior to March 1, 2009 ("Rate Moratorium"). During the Rate Moratorium, Southern Natural shall not take any action with any governmental authority or regulatory body to (i) require an increase in the Settlement Charges; and/or (ii) cause a change in the Settlement Tariff Provisions, except as provided in Paragraphs 1(b), 2 and/or 3 below.

<sup>12</sup> *United Gas Pipeline Co. v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956) and *FPC v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956).

product of a prior adjudicatory proceeding where it has been formed on the basis of an evidentiary record. It is meant to be advisory in nature only, giving guidance as to the course the agency intends to follow in future proceedings.”<sup>13</sup>

8. Southern also argues that the Commission is erroneously applying the *Policy Statement* retroactively, which was intended to operate prospectively. Southern states that for all practicable purposes the record in this proceeding was completed in February 2004—over two years before the *Policy Statement* was issued. The Commission, Southern contends, should apply the *Policy Statement* to future gas quality cases and decide the instant proceedings on the basis of the record created to date.

9. Southern also argues that the existing filed tariff provisions were submitted before the *Policy Statement* was issued, and that Southern has met its burden to prove that its procedures are just and reasonable. In fact, Southern contends that if the Commission intends the *Policy Statement* to be the standard of decision in this proceeding, then the Commission has the burden to show that Southern’s procedures do not address “the requirements and concerns of the *Policy Statement*.”<sup>14</sup>

10. While Southern contends that it should not be required to refile revised tariff sheets, the rehearing request also appears to function as a substantive response to the September 27 Order because Southern argues that its current tariff provisions comply with the *Policy Statement*, and that the existing tariff provisions have worked effectively since the provision became effective in May 2004.

11. Southern refers to events when the tariff’s gas quality provisions were implemented when a processing plant was shut down for maintenance. When that occurred, Southern states the tariff provisions were invoked and worked effectively to avoid any service problems on Southern’s system. Accordingly, Southern contends that this proceeding can be, and should be, decided on its own merits without reference to the *Policy Statement*. However, even if the *Policy Statement* were applicable, the record confirms that Southern’s current tariff procedures are consistent with the five principles set out in the *Policy Statement* so an additional tariff filing and another technical conference are not required to make that determination.

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<sup>13</sup> Rehearing at 26.

<sup>14</sup> Rehearing at 27.

**Indicated Shippers' Answer and Customers' Response**

12. Indicated Shippers filed a motion for leave to answer, and answer in opposition to the requests for rehearing.<sup>15</sup> Indicated Shippers asserts that the Rate Moratorium in the 2005 Settlement did not resolve the gas quality issues in this proceeding. Indicated Shippers refer to five specific issues in this proceeding that were not addressed by the 2005 Settlement. They also assert that it is not correct to state, as Southern does, that it was the “expectation of practically all the interested parties” that GT&C section 3.1(g)<sup>16</sup> “remains unchanged during the moratorium.”<sup>17</sup> Since the Rate Moratorium applies only to issues that were decided by the 2005 Settlement, Indicated Shippers assert, it cannot bar changes to Southern’s gas quality tariff provisions still at issue in this proceeding.

13. Indicated Shippers argue that if the 2005 Settlement was intended to resolve all the issues pending in this docket, that settlement would have stated that specifically, and referred to this docket, but that settlement did not, and nothing in the Rate Moratorium referred to the issues in the instant proceeding.

14. Indicated Shippers also reject with Southern’s contention that since no parties objected to the existing tariff provisions, which have been in effect for a number of years, “the Commission should accept the status quo as a state of compromise acceptable to all parties and leave the current tariff provisions in place.”<sup>18</sup> Indicated Shippers contend that they continue to object to certain aspects of the current tariff provisions, including the need for a “safe harbor provision HDP specification in the tariff...”<sup>19</sup>

15. Indicated Shippers also argue that contrary to Southern’s position, Southern’s existing HDP gas quality tariff provisions do not satisfy the *Policy Statement’s* principles. Indicated Shippers contend that their concerns regarding the HDP provision were neither addressed nor even considered in the 2005 Settlement.

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<sup>15</sup> While Commission rules do not permit answers to rehearing requests, we find good cause to allow these filings since they assist the Commission in its decision-making process.

<sup>16</sup> That section sets forth the applicable gas quality provisions.

<sup>17</sup> Rehearing at 16.

<sup>18</sup> Rehearing at 19.

<sup>19</sup> Indicated Shippers’ Answer at 8.

16. In their answer, Customers reiterate that the 2005 Settlement included the gas quality specifications at issue here. They assert that the tariff sheets submitted in that settlement, and approved by the Commission, covered the entirety of the gas quality provisions, not merely changes to those provisions that had been proposed in the General Rate case, as Indicated Shippers argue. Thus, Customers assert that the Rate Moratorium clearly bars any future change in the gas quality provisions in Southern's tariff, and accordingly, Southern should not be required to make any additional filing.

### **Discussion**

17. We will deny rehearing and will require Southern is to make the filing required by the September 27 Order.

18. We do not find that the 2005 Settlement bars any further changes to Southern's gas quality tariff provisions that are in issue in this proceeding. We agree with Indicated Shippers, who objected to Southern's filing in this proceeding, that there is no merit to the contention that the Rate Moratorium in the 2005 Settlement in Docket No. RP04-523-000 bars further procedure in the instant docket. That rate moratorium only prohibits changes to "tariff changes ... filed as part of this Settlement." While the 2005 Settlement included two minor changes to GT&C section 3.1 of Southern's tariff concerning gas quality, those changes were not relevant to the issues in this proceeding. In its October 2003 filing, Southern proposed changes to many parts of GT&C sections 3 and 41 dealing with gas quality. Protestors objected to numerous aspects of the filing, and set forth many specific issues.<sup>20</sup> The 2005 Settlement dealt with Southern's filing in Docket No. RP05-423-000 for a general rate increase. The Explanatory Statement to the 2005 Settlement states that in addition to the rate changes, the filing also included certain changes to the GT&C, among which was "amendment of receipt points." No mention was made of gas quality issues. The Settlement itself, in Article XI stated that among the tariff changes were "(e) providing for a proof of processing priority for receipt points upstream of the Toca Processing Plant under an HDP limitation (Tariff Sheet Nos. 44A, 108, 108A and 108B); and (f) changing the hydrogen sulfide quality specifications (Tariff Sheet No. 107)."

19. In opposition to the rehearing requests here, Indicated Shippers, who had filed the protest to Southern's October 2003 filing, stated that the two changes mentioned in the

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<sup>20</sup> See November 12, 2003 Protest of Toca Producers at 2-3, and 11-16 setting forth 18 specific questions concerning the filing.

2005 Settlement did not address the issues pending in this proceeding which they had raised in their protest to the October 2003 filing, such as:

(1) the lack of an HDP safe harbor standard in the tariff; (2) the need for specific identification of the aggregation groups in the tariff and a specific non-discrimination standard; (3) the application of the criteria to liquid fallout on Southern's system only; (4) the need for greater frequency and information to be posted at the Monitoring Points on Southern's system; and (5) the need for greater notice prior to implementation of an HDP limitation.<sup>21</sup>

20. At the time of the 2005 Settlement, the technical conference had been conducted in this proceeding and comments filed after the technical conference were pending before the Commission. Many of the comments contested significant aspects of Southern's proposed gas quality standards.

21. Neither the Explanatory Statement<sup>22</sup> submitted in support of the 2005 Settlement, nor the Settlement itself, makes any reference to this docket. If the intent of the 2005 Settlement was to resolve the issues pending in this docket, Docket No. RP04-42-000, the 2005 Settlement would have so stated, but it did not. In fact the parties to the 2005 Settlement did not include Docket No. RP04-42-000 in the caption of that settlement. Nor did they request the termination of this docket, or withdraw their pleadings in this docket, following Commission approval of the 2005 Settlement. The Commission concludes that the 2005 Settlement did not resolve any of the issues in this proceeding, and thus those issues remain pending for Commission decision.<sup>23</sup> Accordingly, since the Commission is not ordering any change in the 2005 Settlement, the Mobile-Sierra "public interest" standard of review has no application here.

22. In this regard, it is true, as Southern and Customers argue, that the Commission's *Policy Statement* concerning gas quality is a statement of policy, not a binding rule. Since the instant proceeding remains pending before the Commission and the

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<sup>21</sup> Indicated Shippers' Answer at 5.

<sup>22</sup> Explanatory Statement attached to the Offer of Settlement submitted April 29, 2005 in Docket No. RP04-523-000 and 001.

<sup>23</sup> The Presiding Judge's certification of the 2005 Settlement specifically stated "No other pending cases are affected beyond those encompassed by these proceedings." *Southern Natural Gas Co.*, 111 FERC ¶ 63,043 P 19 (2005).

Commission has, as yet, made no decision concerning the merits of the parties' various contentions, the Commission believes the issues in this proceeding should be resolved based on current Commission policy.<sup>24</sup> The Commission recognizes that the *Policy Statement* was issued after the parties filed their comments following the technical conference. For that reason, the Commission is giving all parties an opportunity to update their pleadings in this case to reflect the *Policy Statement*. In the filing that Southern makes, Southern can explain why its existing tariff provisions concerning gas quality are consistent with the principles expressed in the *Policy Statement*, or explain what circumstances exist on Southern's system which make the *Policy Statement* principles not applicable to it.<sup>25</sup>

23. In its request Southern has asserted that the existing provisions have been tested and found to be effective and satisfactory to its customers. Whether this is true seems questionable in light of the position expressed by Indicated Shippers. Nevertheless, the Commission encourages all parties to discuss the issues in this proceeding and seek to resolve as many issues as possible. In the compliance filing, Southern may refer to the discussion, and the position expressed by customers in their discussions. Customers may then have an opportunity to file comments. The Commission will then determine the merits of the matters in dispute.

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<sup>24</sup> See *Natural Gas Pipeline Co. of America*, 116 FERC ¶ 61,262 P 32 (2006).

<sup>25</sup> See *Indicated Shippers v. Tennessee Gas Pipeline Co.*, 116 FERC ¶ 61,302 P 28 recognizing that the *Policy Statement* is not a binding rule and permitting the pipeline to argue that the *Policy Statement* was not applicable to it.

The Commission orders:

(A) The requests for rehearing are denied.

(B) The filing date for Southern's compliance filing is extended forty-five (45) days from the date of this order issuing to allow the parties time to discuss the issues to resolve as many of the issues as possible.

By the Commission.

( S E A L )

Philis J. Posey,  
Acting Secretary.