

124 FERC ¶ 61,188
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. RP04-42-004

ORDER DENYING REHEARING

(Issued August 28, 2008)

1. On April 21, 2008, BP America Production Company and BP Energy Company (BP), and ExxonMobil Gas & Power Marketing Company (Exxon),¹ filed for rehearing of the Commission's Order Following Technical Conference issued March 20, 2008 (March 2008 Order).² The March 2008 Order accepted Southern Natural Gas Company's (Southern) tariff filing of October 31, 2003 (October 2003 filing), subject to Southern filing agreed-upon modifications to that filing.³ The order rejected Southern's proposed safe harbor provision in Southern's August 15, 2007 filing that established a floor of 15 degrees Fahrenheit (°F) to the HDP specification that may be set in an HDP Limitation.⁴

2. Indicated Shippers assert that the Commission erred (a) by failing to require Southern to establish a safe harbor provision at 25°F HDP in its tariff, (b) by failing to address the evidence submitted in support of a 25°F HDP safe harbor provision, and

¹ BP and Exxon were part of a group participating in these proceedings as "Indicated Shippers." Only BP and Exxon seek rehearing, but we will refer to BP and Exxon as Indicated Shippers

² *Southern Natural Gas Co.*, 122 FERC ¶ 61,240 (2008).

³ On April 4, 2008, Southern filed revised tariff sheets in Docket No. RP04-42-003, to comply with the March 2008 Order reflecting the modifications. On April 24, 2008, the Commission accepted Southern's April 4, 2008 filing, effective May 5, 2008.

⁴ HDP in the context of Southern's tariff and this order refers to cricondentherm hydrocarbon dewpoint. HDP Limitation refers to an HDP limit that Southern may post on its informational web site applicable to gas tendered to Southern.

(c) by failing to establish an evidentiary hearing if the record was insufficient to make a determination what the appropriate safe harbor level should be established on Southern's system. For the reasons set forth the Commission denies rehearing.

Background

3. The March 2008 Order described the extensive background to this proceeding, and we will repeat only that which is necessary to understand the issues presented. In late 2000 there was an increase in the HDP levels on Southern's system, resulting in an increase in the liquids in the gas stream. HDP levels are the temperatures and corresponding pressures at which hydrocarbons will condense out of the gas stream and become liquid. Liquids in the gas stream can cause operational and safety problems. As pressure rises from zero, the temperature necessary to maintain the gaseous state rises.

4. Historically, producers have processed natural gas and removed the hydrocarbons heavier than methane. In December 2000, Southern was notified by the operators of the three processing plants in Toca, Louisiana that process gas on Southern's interstate pipeline system, that they intended to shut down the processing plants by the end of the month.

5. Southern then issued notices of possible steps it might take to address this matter. Thereupon the Toca Producers⁵ filed a petition in Docket No. RP01-208-000, requesting that the Commission issue an immediate temporary restraining order to prevent Southern from shutting in natural gas supply upstream of the Toca processing plants. Southern did not shut in any gas, and the parties entered into negotiations to resolve the dispute. When negotiations failed to resolve the underlying dispute, the Toca Producers filed a complaint against Southern in Docket No. RP03-484-000, requesting an evidentiary hearing in order to establish, among other things, just and reasonable natural gas HDP specifications in Southern's tariff. On September 16, 2003, the Commission issued an order in *Toca Producers v. Southern Natural Gas Company (Toca Order)*.⁶ The *Toca Order* dismissed the complaint, and dismissed the pending proceeding in Docket No. RP01-208-000, subject to Southern making the filing that it had offered to make to modify its tariff to include an aggregation methodology substantially as agreed to by the parties, and including the flexible hydrocarbon dewpoint standard adopted in another

⁵ The Toca Producers consisted of BP, Exxon, Chevron U.S.A. Inc., and Shell Offshore, Inc.

⁶ *The Toca Producers v. Southern Natural Gas Co.*, 104 FERC ¶ 61,300 (2003), *reh'g denied*, 106 FERC ¶ 61,158 (2004), *aff'd*, *The Toca Producers v. FERC*, 411 F.3d 262 (D.C. Cir. 2005).

Commission proceeding. Southern thereupon made the October 2003 filing in Docket No. RP04-42-000, proposing revised gas quality standards pursuant to Natural Gas Act (NGA) section 4.

6. The October 2003 filing addressed issues related to gas quality specifications for gas received into and certain deliveries from Southern's pipeline system. Southern's filing included revised tariff sheets specifically proposing to revise section 3.1 of Southern's General Terms and Conditions (GT&C) to replace the existing 0.3 gallons per Mcf of isopentane and heavier (C5+) hydrocarbons quality standard with a new flexible HDP quality standard. That standard included an aggregation methodology that Southern stated would permit the blending of various supplies of gas before applying the HDP standard. Southern proposed to establish monitoring points on the mainline portions of its system placed downstream of the major supply receipt areas.

7. Southern stated that it would use chromatographs to monitor and record the liquefiable hydrocarbon content of the gas stream at the monitoring points. As long as the HDP reading indicated that the gas is not conducive to the condensation of liquids out of the gas stream, Southern would not refuse to accept gas at any receipt point because of its liquefiable content.

8. Southern would post a gas quality HDP limitation on SoNet Premier whenever monitoring point readings indicate that liquefiable hydrocarbons are likely to condense out of the gas stream, or if the liquefiable hydrocarbon content of the gas is likely to change and cause condensation. The limitation notice would include: (1) the HDP specification that will be put into effect, (2) the portions of the system on which the HDP specification will be in effect – groups of two or more meter stations that can be sampled at a common point will be combined to form an aggregation group, (3) the anticipated duration of the limitation period, (4) the date and time by which shippers must conform to the posted HDP specification, (5) the latest available HDP at the monitoring point and affected aggregation groups and receipt points, and (6) the reason the limitation is being implemented. Southern would post any limitation notice at least two days prior to the effective date set out in the notice, and Southern would attempt to provide the notice prior to the beginning of the month in which the limitation is to be effective in order to provide shippers with the opportunity to make appropriate arrangements for their gas supplies. Otherwise it would include an explanation of the factors which prevented it from doing so in the limitation notice.

9. The posted HDP specification would be based on the quantity of gallons per Mcf of hexanes and heavier (C6+) hydrocarbons in, or projected to be in, the gas stream at the monitoring point that Southern calculated need to be removed in order to ensure that liquefiable hydrocarbons do not condense out of the gas stream. Southern would transport all gas at individual receipt points meeting the posted HDP specification and at all receipt points within an aggregation group that meet the posted HDP specification.

10. GT&C section 3.1(g)(i) through (iv) sets forth a detailed methodology by which Southern will determine which shippers' nominations to schedule gas for transportation will be reduced. First, the quantity of equivalent gallons per Mcf of hexanes and heavier (C6+) hydrocarbons that Southern determined needed to be removed from the gas stream at the monitoring points would be allocated proportionately based on the liquefiable hydrocarbon content of the gas to the receipt points that are not part of an aggregation group where the gas does not meet the posted HDP specification and to each aggregation group not meeting the posted HDP specification at the furthest downstream point in the aggregation group. Second, the quantity of equivalent gallons allocated to such aggregation groups would be reallocated proportionately based on the liquefiable hydrocarbon content of the gas to each receipt point within the aggregation group where the gas does not meet the HDP specification. Third, the quantity of equivalent gallons as allocated to each receipt point is then converted to a gas volume and the quantity of gas nominated at that point is reduced accordingly. At such points, the reduced quantity of gas to be scheduled for transportation will be allocated to the various shippers nominating at such points using the same procedures applicable to capacity constraints set out in section 16.2 of the GT&C.⁷ Finally, because the liquefiable hydrocarbon content of a small quantity of gas will not adversely affect the entire gas stream, Southern proposed that any receipt point where the actual flow during the calendar month immediately preceding the month in which a gas quality HDP limitation is posted average 500 Dth per day or less will be exempt from such limitation.⁸

11. The Toca Producers protested the filing. The Commission accepted and suspended the filing subject to the outcome of a technical conference directed by that order, which was held on January 21, 2004.⁹

12. Southern, Toca Producers, and others filed initial comments to the technical conference. All parties also filed reply comments. With its initial comments, Southern also filed *pro forma* tariff sheets which incorporated certain changes to the previously filed tariff sheets that Southern stated it was willing to adopt from the list of items provided by the Toca Producers at the end of the technical conference.

⁷ Section 3.1(iv) also includes a procedure for shippers at the affected points to demonstrate that their gas will be processed, and thereby minimize the possibility that their gas will not be scheduled for transportation.

⁸ These gas quality provisions and procedures are enumerated at Southern's FERC gas Tariff, 5th Revised Volume No. 1, 4th Revised Sheet No. 108, 2nd Revised Sheet No. 108A, and 1st Revised Sheet No. 108B.

⁹ *Southern Natural Gas Co.*, 105 FERC ¶ 61,254 (2003).

13. Shortly before staff conducted the technical conference, the Commission commenced its industry-wide consideration of the gas quality issue of hydrocarbon liquids dropout and gas interchangeability in Docket No. PL04-3-000. Accordingly, this matter was held in abeyance pending industry-wide efforts to address the issue of hydrocarbon liquids dropout. In June 2006, in Docket No. PL04-3-000, the Commission issued the *Policy Statement*.¹⁰ The *Policy Statement* referred to a report on gas quality entitled *Liquid Hydrocarbon Drop Out in Natural Gas Infrastructure* (HDP Report or White Paper).¹¹

14. The White Paper recommended adopting interim standards that translate historic experience into terms of HDP or C6+ GPM methodologies. The phrase “C6+ GPM” represents hexanes and hydrocarbons with more than six carbon atoms, as measured in gallons per thousand cubic feet of natural gas. The White Paper suggested measuring and controlling for the amount of these heavier hydrocarbons in the natural gas stream as an alternative to the HDP method.

15. The Commission did not take any action on the technical conference until issuance of the September 27, 2006 Order.¹² In the meantime, the revised tariff sheets filed October 31, 2003, went into effect on May 1, 2004, at the end of the five-month suspension period, pending further Commission action. Thus, except for two modifications implemented in the settlement of Southern’s general rate case in Docket No. RP04-523-000, the HDP specification Southern filed October 31, 2003, has been the operative agent with respect to the control of the level of liquefiable hydrocarbons in the gas supplies tendered to Southern for transportation since May 1, 2004. The September 2006 Order directed Southern to submit revised tariff sheets addressing the requirements and concerns of the Commission’s *Policy Statement*.

16. In its request for rehearing of the September 2006 Order, Southern described certain events relevant to the instant proceeding. Southern stated that in 2004, shortly after the new HDP gas quality specification in the October 2003 filing went into effect, Southern faced the need to implement an HDP Limitation Notice when the larger of the two Toca processing plants had to be taken out of service for mandatory maintenance.

¹⁰ *Policy Statement on Provisions Governing Natural Gas Quality and Interchangeability in Interstate Natural Gas Pipeline Company Tariffs*, 115 FERC ¶ 61,325 (2006) (*Policy Statement*).

¹¹ The NGC+ Group, which wrote the White Paper, included many industry volunteers from the member companies of the various trade associations, as well as other industry participants interested in these issues.

¹² *Southern Natural Gas Co.*, 116 FERC ¶ 61,295 (2006), *reh’g denied*, 119 FERC ¶ 61,003 (2007) (September 2006 Order).

Southern advised customers it intended to put the new procedure into effect, but one customer, Pogo Producing Company (Pogo) filed an application with the Commission seeking to have the Commission order Southern to shut-in completely the receipt of gas supplies at certain offshore pipeline interconnections. However, after the vast majority of shippers voluntarily cooperated to ensure that Southern's aggregation methodology worked as intended, Pogo advised the Commission that its request for emergency relief was moot, and the Commission dismissed Pogo's request for emergency relief.¹³

17. Southern made its filing to comply with the September 2006 Order on August 15, 2007.¹⁴ In the August 15, 2007 filing Southern stated that it determined that a modified safe harbor provision could be added to its HDP gas quality specification, as set forth in the *pro forma* tariff sheets in Exhibit C to the filing.

18. Southern explained that because it had practically no experience operating its system with a gas stream having an HDP temperature as high as 15°F, especially over an extended period, it would not adopt a fixed safe harbor except at a much more conservative level. Accordingly, the *pro forma* tariff sheets also contained a new OFO provision that would have permitted Southern to set an HDP Specification below 15°F HDP in order to stop the condensation of hydrocarbon liquids that Southern reasonably determined constituted a critical threat to the physical or operational integrity of the facilities where the condensation was occurring.

19. Southern also included in its August 2007 filing, revisions to GT&C section 3.1(g), which it agreed to make in its comments after the January 2004 technical conference. These revisions include a requirement that Southern "shall attempt to minimize the use of HDP Limitation Notices and to the greatest degree possible, shall endeavor to implement the highest HDP for specific portions of its pipeline system as necessary to prevent hydrocarbon condensation based on operating conditions, and shall limit the duration of the HDP Limitation Notice to the extent possible." The revisions also include a requirement that, in assessing system operations, Southern will consider all relevant factors affecting hydrocarbon condensation, including (1) the HDP at the monitoring point, (2) events that could lead to hydrocarbon condensation, (3) market demand (location and volume), (4) supply diversity (location and volume), (5) the weather, and (6) any opportunities within Southern's control to blend gas supplies.

¹³ *Pogo Production Co.*, 109 FERC ¶ 61,026 (2004).

¹⁴ The time for the update filing was extended to permit interested parties to pursue settlement discussions. When settlement could not be achieved, Southern made the August 15, 2007 filing.

20. The September 2006 Order allowed parties to file comments on Southern's filing, and directed the holding of a technical conference if necessary. The technical conference was held on October 15, 2007, and comments and reply comments were filed.

The March 2008 Order

21. The March 2008 Order noted that none of the comments supported fully Southern's safe harbor proposal. The order at P 23-24 set forth Indicated Shippers' position that the Commission should reject the 15°F HDP safe harbor proposal and require Southern to adopt a 25°F HDP safe harbor provision. The comments of those opposing Indicated Shippers 25°F HDP safe harbor proposal were also described in P 27-30.

22. The March 2008 Order stated that no party supported the proposed 15°F HDP safe harbor proposal. A number of parties urged rejection, arguing that Southern's existing tariff gas quality provisions are satisfactory and no evidence was submitted to establish that the 15°F HDP safe harbor proposal was just and reasonable. In fact, Southern itself stated that it proposed these modifications on a *pro forma* basis "because it does not believe any of them are necessary to cure a defect in HDP gas quality specifications as originally filed. Southern believes that the record in this proceeding fully supports a finding that its effective HDP gas quality specifications meet the statutory standard of a just and reasonable term of service."¹⁵ On the other hand Indicated Shippers argued that a safe harbor provision was necessary, but that the proposed 15°F HDP safe harbor was too low and must be rejected, and that the Commission should establish a higher safe harbor provision of 25°F HDP.

23. The March 2008 Order stated that the Commission had reviewed Southern's 15°F HDP safe harbor proposal, and its supporting evidence, but found that Southern has failed to show that its proposed 15°F HDP safe harbor limit is just and reasonable. There was no showing that a 15°F HDP safe harbor was required to manage an ongoing problem of liquid dropout on Southern's system. Nor was any evidence provided to show that Southern's existing tariff provisions are insufficient to manage hydrocarbon liquid dropout. In fact, as described *supra*, Southern used its existing tariff provisions to prevent injury to its system and to its customers when faced with a possible increase in liquid fallout.

24. Moreover, the March 2008 Order continued, there was no evidence of any circumstances of changing conditions on Southern's system that would precipitate unmanageable liquid dropout, nor any evidence of any new supply sources with an HDP

¹⁵ Southern Initial Comments, October 31, 2007, at 3-4.

composition that would cause liquid dropout in the future. Accordingly, the Commission concluded that since Southern had not provided sufficient data to support its proposed HDP safe harbor limit, the Commission rejected Southern's safe harbor proposal.

Request for Rehearing

25. Indicated Shippers assert that the Commission's *Policy Statement* requires all pipelines to include a stated HDP safe harbor in their tariffs. By not requiring a safe harbor, the Indicated Shippers contend that the Commission is permitting Southern to put on its EBB whatever HDP limit it deems appropriate in its discretion.

26. Indicated Shippers argue that, to the extent a pipeline intends to enforce a liquefiable hydrocarbon limitation on gas entering its system, that limit must be established in the pipeline's tariff. Indicated Shippers contend that this rule has been followed by the Commission in all proceedings since the Commission issued the *Policy Statement*.¹⁶

27. Indicated Shippers state that it recognizes that the Commission has also rejected some pipelines' proposed HDP limits, but it contends that those orders are distinguishable from this proceeding.¹⁷ In those cases Indicated Shippers assert, while the Commission rejected the pipeline's proposed HDP safe harbor, either there was already an HDP limit in place in the pipeline's tariff, or the Commission required the pipeline to include a stated HDP limit in its tariff. In neither case did the Commission allow the pipeline to establish, at the pipeline's sole discretion, an HDP limit on its EBB, without a stated HDP safe harbor in its tariff, as the Commission did in this case.

28. Indicated Shippers argue that these cases establish that even where the pipeline afforded itself discretionary language to change the HDP limits through EBB postings, the Commission determined that an HDP safe harbor stated in the pipeline's tariff would

¹⁶ Indicated Shippers cite to *Natural Gas Pipeline Co. of America*, 104 FERC ¶ 61,322 (2003) (*Natural II*); *ANR Pipeline Co.*, 103 FERC ¶ 61,394 [sic] (2003) and 109 FERC ¶ 61,358, at P 14 (2004); *Indicated Shippers v. Columbia Gulf Transmission Co. and Indicated Shippers v. Tennessee Gas Pipeline Co.*, 106 FERC ¶ 61,040 (2004), and 116 FERC ¶ 61,302, at P 6 (2006); *Rockies Express Pipeline LLC*, 121 FERC ¶ 61,130 (2007); *Questar Pipeline Co.*, 120 FERC ¶ 61,137 (2007) (*Questar*); and *Questar Overthrust Pipeline Co.*, 120 FERC ¶ 61,136, at 61,146 (2007) (*Questar Overthrust*).

¹⁷ Indicated Shippers cite to *Gulf South Pipeline Co.*, 120 FERC ¶ 61,076 (2007), and *Norstar Operating, LLC v. Columbia Gas Trans. Corp.*, 118 FERC ¶ 61,221 (2007), *order on reh'g*, 122 FERC ¶ 61,163 (2008).

limit the discretion to post HDP limits on an EBB. Indicated Shippers assert that the March 2008 Order did not provide any explanation or justification for deviating from this well-established precedent, and accordingly the decision was arbitrary and capricious.

29. Furthermore, Indicated Shippers contend, that in this proceeding the Commission did not address the arguments and evidence Indicated Shippers raised in support of a 25°F HDP safe harbor. Indicated Shippers argue that evidence demonstrated that Southern's proposed HDP was overly restrictive, and consisted of a calculation demonstrating that a 25°F HDP safe harbor was more than adequate to protect Southern's system and shippers. Indicated Shippers also showed that several other pipelines in the same geographic area as Southern have HDP safe harbors that were equal to or were higher than the proposed 25°F HDP safe harbor.

30. Thus, Indicated Shippers argue, the Commission acted arbitrarily and capriciously in failing to consider an important aspect of this proceeding. Indicated Shippers request the Commission to grant rehearing, and to require Southern to specify a HDP safe harbor in its tariff, and establish that HDP safe harbor at 25°F HDP. However, to the extent the Commission deems the record insufficient to establish an HDP safe harbor at that level, Indicated Shippers request the Commission to hold an evidentiary hearing to determine what safe harbor level should be adopted.

Discussion

31. In order to require Southern to adopt an HDP safe harbor of 25°F HDP in this proceeding, as requested by Indicated Shippers, the Commission would have to act under NGA section 5. That is because Southern has not proposed a safe harbor at that level, nor does its existing tariff contain any safe harbor.¹⁸ Indicated Shippers have not provided a

¹⁸ In *Western Resources Inc. v. FERC*, 9 F.3d 1568, 1579-1580 (D.C. Cir. 1993), the court held that, before the Commission can impose its own tariff provision in a proceeding commenced under NGA section 4, the Commission must find both that the pipeline failed to carry its burden of proof to support its section 4 proposal, and that the pipeline's existing tariff is unjust and unreasonable. Here, Southern's tariff in effect when it made its October 2003 section 4 filing did not contain a safe harbor, and Southern did not propose a safe harbor in the October 2003 section 4 filing. While Southern subsequently proposed a 15° safe harbor in its filing to comply with the Commission's September 2006 order, neither Southern, nor any other party, including Indicated Shippers, has requested rehearing of the Commission's rejection of that proposal. Thus, Indicated Shippers is the only party seeking a safe harbor in this proceeding, and, consistent with *Western Resources*, must show that the lack of a safe harbor in Southern's current tariff is unjust and unreasonable.

basis for the Commission to find either that the absence of a safe harbor in Southern's current tariff is unjust and unreasonable or that Indicated Shippers' proposed safe harbor is just and reasonable.

32. Indicated Shippers' primary argument on rehearing is that Commission policy requires that every pipeline include in its tariff a safe harbor provision, and therefore Southern's failure to include an HDP safe harbor in its tariff violates Commission policy. However, current Commission policy, as set forth in the *Policy Statement*, does not require safe harbors. The Commission's *Policy Statement* on gas quality embodies five general principles, including both that "only gas quality specifications contained in a Commission-approved gas tariff can be enforced"¹⁹ and that "pipeline tariff provisions on gas quality and interchangeability need to be flexible."²⁰ The *Policy Statement's* only reference to safe harbors is a statement that pipelines "may consider 'safe harbor' provisions" as one method of minimizing the potential for the undue discrimination under a flexible tariff provision.

33. In the *Policy Statement*, the Commission explained the value of flexible tariff provisions as follows: "Pipelines operate in dynamic environments that frequently require quick responses to rapidly changing situations . . . The Commission believes that flexible tariff provisions on natural gas quality and interchangeability will allow pipelines to balance safety and reliability concerns with the importance of maximizing supply."²¹ While the *Policy Statement* recognized the need for flexible tariff provisions, it also recognized that such flexibility could be exercised in a not unduly discriminatory manner. Thus, the *Policy Statement* stated:

The Commission wishes to encourage pipelines to allow blending, pairing,[footnote omitted] and other strategies, to the extent these can be implemented on a non-discriminatory basis and in a manner that is consistent with safe and reliable operations. This is consistent with the Commission's policy of minimizing any unnecessary restrictions on the supplies available to the national gas market. *Pipelines may consider "safe harbor" provisions* and informational posting requirements *as means of minimizing the potential for undue discrimination*. [footnote 40: *See National Gas Pipeline Company of America*, 102 FERC ¶ 61,234, at PP 43, 48 (2003).] [Emphasis added.]²²

¹⁹ *Policy Statement*, 115 FERC ¶ 61,325 at P 29.

²⁰ *Id.* P 30.

²¹ *Id.*

²² *Id.* P 41.

34. The *Policy Statement*'s use of the phrase "pipelines may consider safe harbor provisions" clearly indicates that the Commission viewed safe harbor provisions as one possible option for minimizing undue discrimination, but it was not a requirement, contrary to Indicated Shippers' assertion.

35. In arguing that the *Policy Statement* requires safe harbors, Indicated Shippers focus on the principle that "only natural gas quality and interchangeability specifications contained in a Commission-approved gas tariff can be enforced." They argue that, without an HDP safe harbor in its tariff, a pipeline with a tariff provision permitting it to post varying HDP limits would be enforcing HDP limits that are not specified in its tariff. However, this argument ignores the fact that the *Policy Statement* also set forth a principle that gas quality provisions need to be flexible so as to enable pipelines to maximize supply and pointed to safe harbors as simply one method to be considered for minimizing undue discrimination under a flexible tariff provision.

36. The Southern HDP tariff provision approved by the March 2008 Order is consistent with these policies. It sets forth in GT&C section 3.1(g) of Southern's tariff the complete procedures Southern will use for controlling the HDP content of gas supplies tendered to it for transportation. Southern's tariff does permit Southern the flexibility to impose different and changing HDP limits on segments of its system. However, that flexibility is constrained as provided in its tariff. The constraints include detailed provisions concerning what factors Southern must consider when calculating an HDP limitation, when Southern will issue an HDP limitation notice and, as noted *supra* at P 8, the content of the notice. Most importantly, as described *supra* at P 10, sections 3.1(g)(i) through (iv) of Southern's tariff set forth detailed procedures Southern will utilize to schedule supply upstream of aggregation points subject to an HDP limitation notice, including a method for proportionately allocating reductions in nominations among affected receipt points and the individual shippers at each of those points. Thus, Southern's HDP provision clearly complies with the requirement that natural gas quality standards be set forth in a Commission-approved tariff. The HDP tariff provision also provides Southern flexibility to balance safety and reliability concerns with the importance of maximizing supply, because Southern will only post HDP limits as needed to control liquid drop out. At the same time, the tariff provision includes ample controls to minimize any undue discrimination by Southern in the exercise of this flexibility.

37. The Commission also observes that the *Policy Statement* stated that "Pipelines with existing tariff provisions that adequately control hydrocarbon dropout may continue to rely on their existing tariff."²³ Where it is alleged that an existing pipeline tariff is not just and reasonable, "that charge will be evaluated on its specific merit."²⁴ Southern's

²³ *Id.* n.30.

²⁴ *Id.*

new gas quality standard went into effect May 1, 2004, before the Commission issued the *Policy Statement*, and as described above, *supra*, P 16, the standard was applied in 2004 when Southern implemented an HDP limitation notice that became necessary when a processing plant at Toca required mandatory maintenance. As a result, hydrocarbon dropout on Southern's system was avoided to the satisfaction of all concerned. In addition, as discussed below, Indicated Shippers have not presented any evidence that, since Southern's proposed tariff provision went into effect on May 1, 2004, that provision has failed to adequately control hydrocarbon dropout, unnecessarily restricted gas supplies, or resulted in any undue discrimination among shippers. Thus, permitting Southern to continue its existing tariff provision without a safe harbor is consistent with the *Policy Statement's* holding that pipelines may retain existing tariff provisions that adequately control hydrocarbon dropout.

38. Indicated Shippers argue that the Commission's failure to require Southern to adopt a safe harbor provision is contrary to the Commission's orders in a number of other cases. However, each of the cases cited by Indicated Shippers is distinguishable. First, Indicated Shippers cite *Natural II* in which the Commission established a hearing concerning what level of HDP safe harbor should be included in Natural's HDP tariff provision. *Natural II* was, in fact, an order on a filing by Natural to comply with the Commission's February 2003 Order in *Natural I*,²⁵ an order decided before the *Policy Statement* issued. In *Natural I* the Commission approved a tariff provision which gave Natural considerable discretion to post varying HDP limits. In that order, at P 32, the Commission stated:

To balance the flexibility being afforded to Natural in the use of its new GT&C section 26.1(h) tariff procedures against the shippers' need for regulatory certainty regarding the quality standards their gas volumes must meet on Natural's system, the Commission will do two things. First, we shall require Natural to adopt a "safe harbor" dewpoint provision to accommodate shipper concerns over the ability of gas to flow on Natural's system.

39. Natural's GT&C section 26.1(h) gives Natural more discretion than the discretion that Southern has under its tariff. Section 26.1(h) does not contain any express requirements that Natural attempt to minimize the posting of HDP limits and endeavor to implement the highest HDP for specific portions of its pipeline system as possible, such as is included in section 3.1(g) of Southern's tariff. Nor does Natural's section 26.1(h) contain a listing of the specific factors Natural must consider in determining whether to post an HDP limit, similar to the six factors listed in Southern's tariff, as described *supra* at P 19. In addition, Natural's tariff authorizes it to consider HDP requirements necessary to deliver into downstream interconnections that are different from those

²⁵ *Natural Gas Pipeline Company of America*, 102 FERC ¶ 61,234 (2003).

required of its own system, whereas Southern's tariff contains no similar authorization. Most significantly, Natural's tariff contains nothing comparable to sections 3.1(g)(i) through(iv) of Southern's tariff, described *supra* at P 10, which specify the methodology the pipeline must follow to determine which shippers' nominations to schedule gas for transportation will be reduced.²⁶ Thus, Southern's tariff includes a provision requiring it to proportionately reduce each shipper's nomination of out of specification gas, whereas Natural's tariff does not. Given the fact that Southern's tariff provision gives it less discretion both in determining whether to post an HDP limit and how to implement that limit, the holding in *Natural I* that a safe harbor was necessary as a means of providing a level of regulatory certainty for shippers' gas is inapplicable here.

40. Southern chose another just and reasonable method of achieving the same goal of minimizing undue discrimination and providing regulatory certainty. While Southern is also focused on its operations in dealing with possible hydrocarbon dropout, it is committed to taking non-operational factors of interest to the shippers when calculating its HDP limitation, including market demand and supply diversity. Southern then provides the administrative support that takes numerous suppliers' gas supplies with different HDPs and allocates cuts in a proportionate manner that will still maximize throughput under an HDP limitation using a tariff-specified allocation procedure. The Commission has not prescribed a single method on how pipelines must address hydrocarbon drop out. Pipelines retain the initiative under section 4 of the NGA to propose solutions to the problem, and the Commission will accept pipelines proposals that it finds are just and reasonable.²⁷

41. Second, Indicated Shippers rely on the Commission's January 2004 Order on two complaints in *Tennessee* and *Columbia Gulf* for the proposition that the Commission has required pipelines to propose safe harbor tariff provisions.²⁸ In that order, issued before the *Policy Statement*, the Commission found that Tennessee's and Columbia Gulf's tariffs gave them too much discretion to vary the gas quality standard that must be

²⁶ Natural's GT&C section 26.1(h) is located at Natural's FERC Gas Tariff, 7th Revised Volume No. 1, Original Sheet No. 477.

²⁷ To the extent *Natural I* could be read as establishing a policy that all pipelines must adopt HDP safe harbors, the subsequent *Policy Statement* did not, as discussed above, continue that policy. The fact that Southern's alternative approach has succeeded in controlling liquid drop out on its system without unnecessarily restricting supply or causing undue discrimination supports the Commission's determination in the *Policy Statement* to permit pipelines to propose other methods of ensuring that flexible tariff provisions do not result in undue discrimination.

²⁸ *Indicated Shippers v. Columbia Gulf Transmission Co. and Indicated Shippers v. Tennessee Gas Pipeline Co.*, 106 FERC ¶ 61,040 (2004) (January 2004 Order).

satisfied if gas is to be accepted into its system, and required them to propose revised gas quality tariff language.²⁹ The Commission recognizes that the January 2004 Order stated, among other things, that if Tennessee desired the flexibility to vary its dewpoint standard, “then it should include in its tariff a mechanism for doing so, including a dewpoint safe harbor as in” Natural.³⁰ However, the Commission held Tennessee’s compliance filing in abeyance until it issued the *Policy Statement*, and then in August 2006 required Tennessee to update its compliance filing consistent with the *Policy Statement*.³¹ As discussed above, the *Policy Statement* does not require pipelines to adopt safe harbors. Moreover, in a subsequent order clarifying the August 2006 Order, the Commission stated, “The Commission has not yet made any merits determination as to how Tennessee must revise its tariff in order to remedy the fact the current tariff provision gives it too much discretion. Thus, Tennessee is free to adopt any revised tariff provision that it believes is a just and reasonable replacement to the tariff provisions that the Commission has found to be unjust and unreasonable....”³² The fact that Tennessee and Columbia Gulf thereafter proposed, and the Commission approved, safe harbor tariff provisions does not establish that it is current Commission policy to require all pipelines to adopt a safe harbor in their tariffs.

42. Third, in the other cases cited by the Indicated Shippers, *supra* n. 16, *Questar* and *Questar Overthrust*, the pipelines proposed safe harbor provisions, and no protests were filed to the proposals. Similarly, ANR proposed (twice) a safe harbor provision as part of its gas quality standards that it did not have previously.³³ Thus, it was the pipelines that sought the safe harbor provision, and was not a provision the Commission imposed on them.

43. Contrary to Indicated Shippers’ contention, the evidence they submitted in support of a 25°F HDP safe harbor provision was not ignored. As noted in the Background

²⁹ *Id.* P 38-41.

³⁰ *Id.* P 41.

³¹ *Indicated Shippers v. Tennessee Gas Pipeline Co.*, 116 FERC ¶ 61,113 (2006).

³² *Indicated Shippers v. Tennessee Gas Pipeline Co.*, 116 FERC ¶ 61,302, at P 27 (2006). Thereafter, Tennessee filed a settlement that included a safe harbor tariff provision. See *Indicated Shippers v. Tennessee Gas Pipeline Company*, 121 FERC ¶ 61,151, at P 47-70 (2007). Columbia Gulf also proposed a safe harbor provision. See *Indicated Shippers v. Columbia Gulf Transmission Co.*, 123 FERC ¶ 61,150 (2008).

³³ *ANR Pipeline Company*, 107 FERC ¶ 61,094, at P 10 (2004), which the Commission rejected with suggestions on how to improve its safe harbor proposal if it chose to make such a proposal, at P 26; and 108 FERC ¶ 61,323, at P 6 (2004).

section above, this proceeding was about establishing a tariff-based methodology to manage liquid hydrocarbon drop-out on Southern's system. Southern proposed and implemented a methodology that has since proven to be effective. The Indicated Shippers did not, and do not contest that fact. They do not assert that Southern has ever unnecessarily restricted gas supply pursuant to the existing methodology or imposed an HDP limit in an unduly discriminatory manner. Rather, they propose a safe harbor provision as a supplement or alternative to Southern's method without even attempting to demonstrate why Southern's method is ineffective or not just and reasonable. The Indicated Shippers' evidence cannot be a basis for the Commission to require Southern to adopt a 25°F HDP safe harbor. Even if Indicated Shippers could show that its safe harbor proposal is just and reasonable, as explained above the Commission could not act under NGA section 5 to require Southern to modify its existing tariff, without a showing that the lack of a safe harbor in the existing tariff is unjust and unreasonable.

44. Further, the March 2008 Order noted that the Indicated Shippers' evidence was contested. The order referenced the comments of other parties who objected to Indicated Shippers' proposal on a number of grounds.

45. One group asserted that Indicated Shippers failed to address the effect of a 25°F HDP safe harbor standard on downstream systems, and that Indicated Shippers failed to meet its burden under section 5 to demonstrate that any safe harbor it proposes would be reasonable.³⁴

46. Another commenter stated that the Indicated Shippers had not shown that a 25 °F HDP safe harbor is consistent with controlling liquid dropout problems on the systems that are in place, as opposed to the hypothetical systems which Indicated Shippers wish in hindsight had been built.³⁵ In addition, another commenter argued that although Indicated Shippers contend that a safe harbor is required, the *Policy Statement* does not mandate use of an HDP safe harbor, and no party showed that they have been prejudiced or harmed by Southern's existing tariff provisions.³⁶

47. The March 2008 Order stated that Indicated Shippers had advanced its proposal "to assure supply," but not a single Southern end user or local distribution company (the presumed buyers of gas supply) filing comments in this proceeding indicated that such assurance was necessary. Nor has Indicated Shippers alleged any instance of Southern unnecessarily imposing an HDP limit during the over four years Southern's current tariff provisions have been in effect.

³⁴ March 2008 Order at P 30.

³⁵ *Id.* P 31.

³⁶ *Id.* P 33.

48. This proceeding was instituted over concern about potential operational problems from liquid hydrocarbon drop out on Southern's system. Southern did not choose to use a safe harbor as a means of managing liquid fallout, but, instead, chose an allocation method, which has worked. Thus, the Commission properly found that it had no basis on which to find what Southern proposed in the October 2003 Filing not just and reasonable and must be replaced with a safe harbor mechanism, *citing Northern Natural Gas Co.*, 121 FERC ¶ 61,122 (2007) (*Northern*).

49. In that case, Northern proposed to post on its website an applicable specification for HDP for all gas receipts nominated for transportation of processed gas. The posted specification for HDP would vary and depended on system conditions and weather, but would not be lower than the safe harbor of 5°F HDP. The Commission rejected the proposal finding that Northern failed to show that its proposed 5°F HDP safe harbor was just and reasonable.

50. First, the Commission found insufficient Northern's assertion that it provided evidence showing an ongoing problem of unmanageable liquid dropout on its system. In addition, the Commission found that Northern failed to provide any circumstances of changing conditions on its system that would precipitate unmanageable liquid dropout.

51. These are exactly the conditions present in the instant proceeding. Indicated Shippers seek to distinguish *Northern* on the grounds that Northern's tariff does not grant Northern the discretion to establish an HDP limit. Indicated Shippers add that, in fact, Northern's tariff does not now, nor did it prior to Northern's filing, have any provision addressing hydrocarbon liquid fall-out. Thus, Indicated Shippers argues, Northern does not have the ability to enforce a liquefiable hydrocarbon gas quality standard that is not stated in its tariff. We fail to see how that addresses the issue because Southern's tariff includes provisions dealing with liquid dropout, provisions that have successfully been applied to prevent liquid dropout.

52. Under these circumstances there is no basis for instituting an evidentiary hearing as Indicated Shippers suggest, since nothing has been shown why Southern's existing tariff provisions must be replaced. This finding is further supported by the fact that Southern's HDP provisions have been in effect and proven effective since May 2004. Further, nothing has been shown why the Indicated Shippers' safe harbor proposal is just and reasonable.

The Commission orders:

Indicated Shippers' request for rehearing is denied.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.