

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

The Toca Producers
v.
Southern Natural Gas Company

Docket No. RP03-484-001

and

Amoco Production Company,
BP Exploration & Oil, Inc.,
Chevron U.S.A. Inc.,
Exxon/Mobil Gas Marketing Company, and
Shell Offshore, Inc.

Docket No. RP01-208-001
(not consolidated)

ORDER ON REHEARING

(Issued February 17, 2004)

1. The Toca Producers¹ request rehearing of the Commission's order issued September 16, 2003² (September 16 Order). The September 16 Order dismissed the complaint filed by the Toca Producers against Southern Natural Gas Company (Southern) that requested an evidentiary hearing in order to establish, among other things, just and

¹ The Toca Producers (or Producers) are comprised of BP America Production Company (successor to Amoco Production Company), Chevron U.S.A. Inc., ExxonMobil Gas & Power Marketing Company, and Shell Offshore, Inc.

² The Toca Producers v. Southern Natural Gas Co. et ano., 104 FERC ¶61,300 (2003).

reasonable natural gas hydrocarbon dewpoint (HDP)³ quality specifications in Southern's tariff. The September 16 Order also denied the Toca Producers' request to hold a pending case in abeyance during the litigation of this complaint, Amoco Production Company, et al., Docket No. RP01-208-000 (the TRO proceeding), and dismissed that proceeding subject to conditions. For the reasons set forth, the Commission denies rehearing.

Background

2. The September 16 Order fully described the background, and in this order we will only briefly summarize that recitation. The natural gas of the Toca Producers is processed at three processing plants at Toca, Louisiana, which remove liquefiable hydrocarbons from the natural gas stream.⁴ Natural gas produced in South Louisiana and offshore in the Gulf of Mexico typically has a high level of liquefiable hydrocarbons, and the Toca plant has been relied upon to reduce the amount of liquefiable hydrocarbons in the gas stream to a safe level. Normally, the gas processed at the Toca plant constitutes more than 50 percent of the gas flowing into Southern's system.

3. As we have recently stated:

When gas prices increase, it is less profitable to remove these hydrocarbons from the gas stream and sell them as natural gas liquids. Allowing them to remain in the gas stream flowing through the pipeline raises the heat content, or British thermal unit (Btu) level, of the gas. It also means that liquefiable hydrocarbons are conveyed into regions with lower temperatures and may condense out of the gas stream. Each type of liquefiable hydrocarbon, such as propane or butane, condenses out of the gas stream and becomes a

³ The hydrocarbon dewpoint is the temperature at which gas flow begins to change from a single gaseous phase to a dual gas and liquid phase, i.e., when liquids begin to fall out from the gas stream.

⁴ The three plants will at times be referred to as the Toca plant.

liquid at a specific temperature known as a dewpoint.[footnote omitted]. The resulting condensate may damage pipeline equipment through corrosion and obstruction.⁵

4. In late 2000 after operators of the Toca plant⁶ notified Southern that they intended to shut down plant operations, Southern notified its customers that if the Toca plant did not process the gas, then Southern would not accept the unprocessed gas into its pipeline for reasons of operational safety. Thereupon, in January 2001, the Toca Producers commenced the TRO proceeding seeking a Temporary Restraining Order, but since Southern's answer disputed the allegations, the Commission issued an order scheduling a technical conference,⁷ which was held on January 21, 2001. The parties then engaged in numerous settlement discussions, including the assistance of the Commission's Dispute Resolution Service.⁸ Although the parties reported that agreement had been reached on certain issues, an overall settlement was not achieved, and the Toca Producers requested another technical conference.

5. The Toca Producers' position was that the commingled gas streams, both upstream and immediately downstream of the Toca processing plants, comply with Southern's quality specifications. They also stated that it is their understanding that Southern was unduly discriminating by accepting gas at other interconnects that far exceeds the gas quality standard in the tariff, without the processing it required of the Toca Producers.

6. Southern's position was that it has an objective and specific quality specification in section 3.1(b) of the General Terms and Conditions (GT&C) of its FERC Gas Tariff that provides that gas delivered to Southern shall not contain more than 0.30 gallons per Mcf of isopentane and heavier hydrocarbons. That section operates in conjunction with

⁵ Indicated Shippers v. Columbia Gulf Transmission Co., 106 FERC ¶ 61,040 P 3 (2004).

⁶ Southern has stated that among the owners of the Toca plant are affiliates of some of the Toca producers including BP Amoco, Shell Oil, and ExxonMobil. See Amoco Production Co., et al., 94 FERC ¶ 61,026 n. 3 (2001) .

⁷ Amoco Production Co., et al., 94 FERC ¶ 61,026 (2001).

⁸ As a result of various actions by the parties, no gas was ever shut in.

GT&C section 3.1(a)⁹ to ensure that liquefiable hydrocarbons do not threaten the operational integrity of Southern's pipeline system as well as the facilities of interconnected pipelines, distributors, and end users. Southern states that excessive levels of liquefiable hydrocarbons in a natural gas stream pose a serious safety concern to all natural gas consumers, and in the past had caused serious problems on its system.

7. Southern stated that it has an obligation to its downstream, market-area customers to ensure that the integrity of gas quality on its system will not deteriorate to a point that will cause damage to their facilities or systems. Southern clarified that for production upstream of the Toca plant, it typically waives the specification in section 3.1(b) of the GT&C if the gas will be processed at the Toca plant, and the heavier liquids will be stripped out during processing. When the Toca plant is fully operational, approximately 92 percent of the heavier hydrocarbons are typically stripped from the gas stream so the stream leaving the plant poses no danger to the system. Southern contended that unless the entire gas stream was processed, it could not continue to waive the specification, and allow the out-of-spec gas containing the heavier hydrocarbons to be delivered into the system.¹⁰ Southern referred to events in previous years where liquid in the stream caused damage and problems for both Southern and its customers.

8. After being advised that settlement discussions had not resulted in an overall settlement, the Commission issued an order on further proceedings.¹¹ The order noted that there had not been any quantification of natural gas production shut-in, if any, as a result of Southern's conduct. The Commission directed the parties to identify which issues, if any, remained outstanding, and to set forth the parties' position on each of these issues in sufficient detail to enable the Commission to make a decision on the merits.

9. In their response to that order, the Toca Producers detailed the prior proceedings, and stated that they would file a complaint with respect to the matter at issue. The Toca Producers then filed the complaint in this proceeding. The main thrust of the complaint was that Southern's tariff fails to specify an HDP gas quality standard, which when such

⁹ Section 3.1(a) provides that gas delivered to Southern shall be free of objectionable liquids and solids and be commercial free from dust, gums, gum-forming constituents, or other liquid or matter which might become separated from the gas in the course of transportation through the pipeline.

¹⁰ A number of Southern's customers supported Southern's position.

¹¹ *Amoco Production Co., et al.*, 103 FERC ¶ 61,175 (2003).

a standard is met will insure that gas will flow on Southern's system (a "safe harbor" provision).¹² The complaint also asserts that although Southern's tariff sets forth a standard of 0.3 gallons per Mcf for isopentane and heavier hydrocarbons in section 3.1(b) of the GT&C, Southern had waived that provision on a regular basis at its sole discretion. Moreover, Southern purportedly has required the Toca Producers to process their gas to a greater degree than it has required other producers injecting rich gas into the Southern system.

10. In its response to the complaint, Southern asserted that its policy is that at receipt points upstream of processing plants, producers are permitted to deliver gas with a liquefiable hydrocarbon content above the quality specification in the tariff as long as that gas will be processed at the plant before entering the common stream. It asserted that at all receipt points, Southern uniformly enforces its liquefiable hydrocarbon quality specification. Southern argued that the fact that the liquefiable hydrocarbon content of the blended gas stream at one point on Southern's system is different from that at another point was not evidence of discriminatory conduct since all the gas meets the 0.3 gallons per Mcf tariff standard.

The September 16 Order

11. The September 16 Order stated that the allegations in the complaint did not differ significantly from the allegation in the January 5, 2001 Petition, except that the complaint included events that occurred from that time, and referenced certain recent Commission proceedings that the Toca Producers claimed supported their position. The order held that there were no genuine issues of material fact relevant to whether Southern's existing tariff is unjust or unreasonable or unduly discriminatory that would warrant an evidentiary hearing. Further, Southern had agreed to make a Section 4 filing in a new proceeding that would include an aggregation/blending approach and the imposition of reporting requirements for certain heavy hydrocarbon dew points on certain points on the Southern system.

¹² The Toca Producers state that the Commission has defined a "safe harbor" dewpoint as "a minimum systemwide dewpoint for the gas tendered to Natural, that guarantees that any gas with a dewpoint that does not exceed the safe harbor dewpoint will be allowed to flow on Natural's system, regardless of changing conditions in Natural's own market areas, and/or what Btu and/or dewpoint limits are in place on the deliveries Natural makes to interconnecting downstream pipelines" citing Natural Gas Pipeline Company of America, 102 FERC ¶ 61,234 at P 43 (2003)(Natural I).

12. The order stated that the complaint alleged that Southern was violating the undue discrimination provisions of Sections 4 and 5 of the NGA. Since Section 4 would apply to changes proposed by Southern, and Southern had not proposed any changes to the quality standards in its tariff, the order concluded that Section 4 was not applicable here.

13. As to NGA Section 5, changes to Southern's tariff can only be made if it is shown that the currently effective tariff is unjust and unreasonable. Section 3.1 of Southern's tariff, which Southern relies upon was not a new tariff provision, but one that has been in Southern's tariff for many years. Southern stated that it has also uniformly enforced the tariff's specifications at all receipt points, except for those receipt points located upstream of a processing plant because after processing the gas would meet the tariff standard. Southern represented that in the event that it determines that any gas is out-of-specification, it promptly notifies the producer or interconnecting pipeline and requires the submittal of a plan to bring the gas into compliance within a reasonable time, and it has done so both before and after the instant proceedings. The order stated that the Toca Producers had not provided any evidence to refute Southern's assertions.

14. The order also held that none of the Commission proceedings cited by the Toca Producers supported their contention that Commission policy is to require pipelines to include a safe harbor standard in their tariffs. The order found that in each of these cases the gas quality standard was proposed by the applicant for its own pipeline, and the Commission had addressed these proposals as pipeline specific proposals, not as proposals applicable the industry in general.

15. With respect to the TRO proceeding the order stated that no gas had been shut in on the Southern System in the more than two years since the Petition was filed in January 2001. The order dismissed the TRO proceeding, subject to Southern making the filing it had proposed to make as a condition to the Commission's dismissing the Petition, "to modify its Tariff to include an aggregation methodology substantially as agreed to by the parties as indicated in the status report filed with the Commission Staff on June 14, 2002,¹³ and including the flexible hydrocarbon dewpoint standard adopted in the Natural

¹³ The status report was in response to Staff's letter requesting the parties to identify the issues which had been resolved and those that remained. The Toca Producers and Southern filed a joint response.

proceeding.”¹⁴ On October 31, 2003, Southern made that filing in Docket No. RP04-42-000, which the Commission accepted and suspended and set for a technical conference.¹⁵

The Request for Rehearing

16. The Toca Producers’ request asserts that the September 16 Order did not address the central issue of the complaint, that Southern allegedly was holding the Toca Producers to a higher processing standard (i.e., 100% processing) than other gas entering its system. The Toca Producers argue that they were being required to process their gas to a much tighter HDP standard than other producers, even though the gas leaving the Toca plant was well within the 0.3 GPM C5+ standard in the tariff. They contend that the issue complained of was not that Southern was applying the 0.3 GPM standard in a discriminatory manner. Rather, the discrimination occurred because Southern was requiring the Toca Producers upstream of the Toca Plant to process to a much lower GPM than that required for other gas entering the system.

17. In conjunction with this argument they also contend that the Commission accepted Southern’s assertions, that Southern does not accept gas downstream of the Toca Plant that does not meet its gas quality specification in the tariff, but denied the Toca Producers the ability to develop evidence that would refute Southern’s assertions.

18. Moreover, they argue that the September 16 Order is inconsistent with the Commission’s Natural II Order that was issued one week after the September 16 Order.¹⁶

19. The Toca Producers argue that the September 16 Order incorrectly distinguished the prior Natural Order, and others cited by the Toca Producers, on the ground that the “gas quality standard [in Natural] was proposed by the applicant for its own pipeline,” but this they contend is not true in Natural. The Toca Producers assert that there is no basis to distinguish Natural from this case, and basically argue that in Natural the Commission imposed a safe harbor HDP on the pipeline, just like the Toca Producers are seeking in this proceeding.

¹⁴ June 3, 2003 response at 8.

¹⁵ Southern Natural Gas Co., 105 FERC ¶ 61,254 (2003).

¹⁶ Natural Gas Pipeline Company of America, 104 FERC ¶ 61,322 (September 23, 2003) (Natural II).

Discussion

20. We reject the Toca Producers' argument and deny rehearing. Contrary to the Toca Producers' assertion, the September 16 Order addressed their contention of undue discrimination that Southern was holding the Toca Producers to a different processing standard than other gas entering its system. The order cited Southern's reference to prior incidents where excessive levels of liquefiable hydrocarbons had caused serious operationable problems for Southern and its customers, and concluded that Southern was not discriminating in applying the specific gas quality standard included in its tariff.

21. The September 16 Order cited Southern's policy, that "At all receipt points, Southern uniformly enforces its liquefiable hydrocarbon quality specification. The fact that the liquefiable hydrocarbon content of the blended gas stream at one point on Southern's system is different from that at another point is not evidence of discriminatory conduct since all the gas meets the 0.3 gallons per Mcf tariff standard."¹⁷

22. Moreover, the order cited Southern's policy that "in the event that Southern determines the gas is out-of-specification, it promptly notifies the producer or interconnecting pipeline and requires the submittal of a plan to bring the gas into compliance within a reasonable time, and it has done so both before and after the instant proceedings. The Toca Producers have not provided any evidence to refute Southern's assertions."¹⁸

23. According to Toca Producers, "[t]he point of the Complaint was that the Toca Producers were required to process their gas . . . to a much stricter hydrocarbon content standard, far below the 0.3 GPM C5+ standard in the tariff, while other gas was permitted to enter the system with a higher liquefiable hydrocarbon content. Thus, all gas met the 0.3 GPM C5+ standard at the relevant measurement points into the mainline, but some gas was required to be processed below this standard to a greater degree than other gas."¹⁹ (Underlining in original.) The Toca Producers presented nothing to substantiate their claim that they were required to process their gas to a stricter standard than the standard that Southern applied to other gas injected into Southern's system. Southern, on the other hand, has consistently stated that it applies the same standard to all gas being injected into its system – the gas must meet the tariff standard of 0.3 GPM, unless gas

¹⁷ 104 FERC, P 28.

¹⁸ Id. at P 37.

¹⁹ Rehearing request at 24.

injected upstream will be processed so that it will meet the 0.3 GPM standard after processing. Southern does not apply a stricter standard to the Toca Producers' gas, and if after processing, the gas downstream of the Toca Plant is less than the 0.3 GPM tariff standard it is not because Southern is requiring them to do so, and does not establish that Southern is holding the Toca Producers to a higher standard than others.

24. If, as Toca Producers contend, Southern imposed a stricter standard for them than the 0.3 GPM tariff standard, they should have been able to present evidence substantiating that claim without any need for a hearing and discovery as Southern would have to have informed the Toca Producers of the stricter standard purportedly applicable to them. Toca Producers have presented no substantiating evidence, however, during this more than two-year proceeding. Under these circumstances, the Toca Producers have not established a basis for their complaint and thus there was no reason to set the matter for hearing since there are no disputed facts as to which a hearing is necessary.

25. What the Toca Producers seem to object to is that requiring them to process their gas to meet the specifications in Southern's tariff is a cost that other producers do not have to bear. The Natural II Order upheld the determination in Natural I that shippers injecting rich gas into any point of receipt or along any given line segment of Natural's system where the quality specifications are more stringent should be required to pay the processing costs needed to make the gas meet the more stringent standards, "since it is their rich gas creating the problem."²⁰ The Commission found that to require others to share in the cost, including shippers who might only be taking delivery where processing is required would be unfair because their "gas does not cause the problem."²¹

26. The Toca Producer's argument that the Natural II Order is inconsistent with the action here is incorrect. The September 16 Order rejected the Toca Producers' argument that the Commission policy, as demonstrated by a number of cases including Natural, is to require all pipelines to include a safe harbor standard in their tariffs, and that the policy should be applicable to Southern. While the Toca Producers are correct that the Commission required Natural to adopt a HDP permanent safe harbor, the circumstances there are wholly inapposite. The September 16 Order explained that here section 3.1 of Southern's GT&C is not a new tariff provision, but one that has been in Southern's tariff for many years, and that Southern was not proposing any change in that provision. That provision is a specific quality standard that provides that Southern will accept gas

²⁰ 104 FERC ¶ 61,322 at P 56.

²¹ Id.

delivered to its system if it does not contain more than 0.30 gallons per Mcf of isopentane and heavier hydrocarbons. In contrast, in Natural the pipeline proposed, under NGA § 24, a new gas quality standard based on an HDP methodology, and “[t]he Commission addressed this proposal as a pipeline specific proposal, not as a proposal applicable to Southern, much less the industry.”²² In fact, in Natural II the Commission declined to institute a rulemaking proceeding under NGA Section 5 to develop industry-wide pipeline quality standards for liquefiable hydrocarbons.²³ After the Commission determined that a safe harbor provision should be included in Natural’s tariff and parties protested the level that Natural set forth in its compliance filing, the Commission set a hearing to determine the level at which the safe harbor should be set. Thus, the Commission’s ruling in Natural II was applicable to Natural’s situation, and has no application to other situations where the circumstances differ from Natural’s.²⁴

27. Commission regulations do not require pipelines to include any specific type of gas quality standards. Southern has an existing specific tariff provision which does not conflict with the Commission’s regulations. The Toca Producers argue in their complaint that Southern’s tariff must include certain types of provisions regarding gas quality standards. They thus are arguing that Southern’s tariff is not just and reasonable. To replace Southern’s existing provision with a different provision as Toca Producers sought in their complaint, however, required them to show that Southern’s provision is no longer just and reasonable. They failed to demonstrate that. Thus it was appropriate to dismiss their complaint.

28. Southern filed to modify its tariff in Docket No. RP04-42-000, which filing was protested by the Toca Producers. The Commission accepted and suspended the filing, subject to the outcome of a technical conference and further Commission order.²⁵ In that proceeding the issue of justness and reasonableness of Southern’s proposal will be at issue. The Toca Producers are a party to that proceeding and in their protest asserted that

²² 104 FERC ¶ 61,300 at P 38.

²³ 102 FERC ¶ 61,234 at P 5.

²⁴ In Indicated Shippers v. Trunkline Gas Co., LLC, 105 FERC ¶ 61,394 (2003) the Commission declined to address the issue of industry-wide standards for gas quality in that order.

²⁵ Supra, n. 15. That conference was held on January 21, 2004.

the Commission should require Southern to include an HDP safe harbor provision that they had proposed in the complaint.

The Commission orders:

The Toca Producers request for rehearing is denied.

By the Commission.

(S E A L)

Linda Mitry,
Acting Secretary.