

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

Southern Star Central Gas Pipeline, Inc

Docket No. RP04-87-000

ORDER ON REFUND REPORT

(Issued April 20, 2004)

1. On November 26, 2003, Southern Star Central Gas Pipeline, Inc. (Southern Star) filed a refund report to show the amount of penalty revenue, and the proposed disposition of such revenue, collected pursuant to the provisions of Article 10 of the General Terms and Conditions (GT&C) of its FERC Gas Tariff during the periods in which an Operational Flow Order (OFO) occurred within the prior twelve months ending September 30, 2003. Southern Star proposes to make refunds, with interest paid through the date of the refund, to the non-offending parties within ten days of a final Commission order accepting the refund report.

2. The Commission conditionally accepts the refund report and directs Southern Star to make refunds to all non-offending parties, with appropriate interest accumulated until the date of the refund, within ten days of the issuance of this order, and to file a final refund report within thirty days of the date refunds are made. This order is in the public interest because it provides that non-offending customers during OFOs on Southern Star's system receive penalty revenue refunds from Southern Star in accordance with its tariff.

**Background**

3. OFOs are imposed on the Southern Star system pursuant to Article 10 of its GT&C. Section 10.3 provides that Southern Star may impose a penalty either for gas withdrawn from storage (storage depletion) or for gas transported (unauthorized overdelivery) in excess of the levels allowed by an OFO. Section 10.4(c) provides that Southern Star credit those shippers who did not incur penalties.

4. Southern Star imposed two OFOs during the 2002-2003 winter heating season. The first occurred on January 23, 2003. The second period occurred on March 7, 2003 through March 23, 2003. The January 23 OFO put transportation customers and point operators on notice that Southern Star was reducing nominations and actual takes at non-primary firm delivery points to zero quantities at points north and east of the Ottawa Compressor station. The March 7-23 OFO put storage customers with storage inventory levels below ten percent of their Maximum Storage Quantity (MSQ) on notice not to withdraw volumes in excess of their remaining storage inventory.

### **The Refund Report**

5. Southern Star states that it collected \$33,981.14 in OFO penalties for the two OFO periods during the 2002-2003 winter heating season, plus interest calculated through December 31, 2003. Southern Star proposes to refund penalty revenues for all periods plus accrued interest to non-offending parties within ten days of a final Commission order accepting the refund report.

6. Attachment 1 to the report shows the pro rata refund distribution by category and by penalty period of the total OFO penalties collected, plus accrued interest through December 31, 2003. In accordance with Article 10 of its GT&C, Southern Star proposes to refund penalty revenues associated with Unauthorized Over Deliveries during the January 23 OFO on a pro rata basis to point operators who did not incur penalties at such points specified in the OFO. Southern Star proposes to refund penalty revenues associated with excess storage withdrawals during the March 7-23 OFO on a pro rata basis to storage customers whose inventories were below ten percent of their MSQ and who did not deplete their storage account on the corresponding day.

7. Attachment 2 includes summary information detailing the OFO period and type of penalty incurred, as well as the penalty collected and the date payment was received. Interest is calculated on the penalty amounts, beginning with the date the penalty revenue was received by Southern Star. Attachment 2 filed within the Non-Public Version of this filing, submitted as privileged information, includes the names of those parties who incurred the penalties mentioned above.

### **Public Notice, Interventions and Protests**

8. Public notice of Southern Star's filing was issued on December 3, 2003. Interventions and protests were due as provided in section 154.210 of the Commission's regulations (18 C.F.R. § 154.210 (2003)). Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure (18 C.F.R. § 385.214 (2003)), all timely filed motions to intervene and any motions to intervene out-of-time filed before the issuance date of this order are granted. Granting late intervention at this stage of the proceeding will not disrupt the proceeding or place additional burdens on existing parties. Kansas Gas

Service, A Division of Oneok, Inc. (Kansas Gas) filed a motion to intervene and protest on December 9, 2003. The Missouri Public Service Commission (MoPSC) filed a protest on December 11, 2003. On December 18, 2003, Southern Star filed an answer to the protests of Kansas Gas and MoPSC. Answers to protests are prohibited by Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2003), unless otherwise ordered by the decisional authority. We find that good cause exists in this case to allow Southern Star's response to the protests of the Kansas Gas and MoPSC as it provides additional information that assists the Commission in the decision-making process.

### **Distribution of refunds**

9. Kansas Gas asserts that it was erroneously excluded from Southern Star's report of OFO refunds for storage depletion during the March 7-23 OFO. Kansas Gas, a Southern Star storage customer that has rights to a total MSQ of 12,429,582 MMBtu's,<sup>1</sup> states that it deserves over eighty percent of the total storage depletion refunds. Kansas Gas, setting forth amounts of gas it had in storage on certain dates during the March 7-23 OFO,<sup>2</sup> states that it did not deplete its storage balance and did not receive any OFO penalties during the March 7-23 OFO.

10. Kansas Gas states that Southern Star's proposed refund of storage depletion penalty revenues is not in accordance with section 9(c) of Southern Star's GT&C and, particularly, that all shippers who did not deplete their storage accounts are eligible for the refund, not just those shippers who are subject to the OFO because they had volumes in storage less than ten percent of MSQ. Kansas Gas cites section 9(c) of Southern Star's GT&C, Unauthorized Overdeliveries, Under Receipts, and Penalties, which states in part:

Penalty revenues resulting from MDTQ or MDWQ<sup>3</sup> Unauthorized Capacity Overruns will be credited to those Shippers who did not incur

---

<sup>1</sup> Under Trans-Storage Service agreements (TSS), the total MSQ is comprised of 9,037,248 MMBtu's in Market area (TSS-M) and 3,392,582 MMBtu's in the production area (TSS-P).

<sup>2</sup> During March 8-11, Kansas Gas' total amounts of gas in storage ranged from 12.4% to 8.60% of MSQ, or 1,544,090 to 1,068,635 MMBtu's.

<sup>3</sup> MDTQ, Maximum Daily Transportation Quantity, means the maximum number of Dth a Shipper is entitled to transport on Southern Star's system on any day. MDWQ, Maximum Daily Withdrawal Quantity, means the maximum number of Dth a Shipper is entitled to withdraw from Southern Star's storage facilities on any day. Footnote added.

Unauthorized Capacity Overrun penalties on that day. Penalty revenue associated with MDTQ overruns will be credited to Shippers who did not overrun their MDWQ on the same respective day and penalty revenue associated with MDWQ overruns will be credited to Shippers who did not overrun their MDWQ on the same respective day. Credits will be pro rata based on MDTQ and MDWQ, respectively. ... Daily penalty revenue related to storage depletion will be credited to those Shippers whose storage account was not depleted on that day.<sup>4</sup>

11. Therefore, Kansas Gas contends that the Commission should direct Southern Star to include Kansas Gas as a shipper that did not deplete its storage for all dates that penalties were imposed and to recalculate the pro rata share of refunds made to shippers. Kansas Gas also asserts that other storage customers likewise should share in the refund, to the extent that they had more than ten percent of their storage balance available on the relevant days and were not included in Southern Star's report.

12. In its answer, Southern Star states that "[a]rguably storage customers ... who had storage inventories in excess of 10% during all or a portion of the OFO were benefiting the system, but were not included in the proposed refund distribution because they were not issued the OFO on the days penalties were assessed."<sup>5</sup> Southern Star also states, however, that if the Commission decides all storage customers, regardless of whether or not they were issued an OFO, should be included in the refund distribution, Southern will agree to recalculate the refund distribution accordingly.

13. The Commission finds that Southern Star's proposal to restrict refunds to those shippers whose inventories were below ten percent of their MSQ is inconsistent with Southern Star's tariff. Consistent with section 10.4(c) of Southern Star's GT&C, we will require Southern Star to refund all storage penalty revenues to all "Shippers whose storage account was not depleted" during the days OFOs were issued. This includes Kansas Gas.

---

<sup>4</sup> Section 10.4(c) (Unauthorized Overdeliveries, Under Receipts, and Penalties), of Article 10 (Operational Flow Orders), contains identical language to section 9(c), but refers to OFOs rather than imbalances.

<sup>5</sup> Southern Star notes that Kansas Gas was issued the storage depletion OFO effective with gas day beginning March 12, 2003 and no penalties were assessed after March 11, 2003.

### **Failure to report PODB penalty refunds**

14. MoPSC states that Southern Star failed to report on Period of Daily Balancing (PODB) penalty refunds. MoPSC also states that Southern Star needs to indicate whether all assessed OFO and PODB penalties have been collected. MoPSC requests that the Commission order Southern Star to file the required PODB penalty report and refund plan and to identify any unpaid penalty amounts by customer and explain the status of its collection efforts with respect to each and why those amounts have not been recovered to date.

15. Southern Star acknowledges that it previously filed a general statement that no PODBs were issued during the relevant prior twelve-month period and that no penalties were assessed or collected. Southern Star states that it inadvertently failed to make such a statement in the instant docket. Southern Star requests that the Commission grant any waivers necessary to allow it to add the following statement to its report: “No PODBs were issued during the 12-month period from October 1, 2002 through September 30, 2003, and no penalties were assessed or collected for such period.”<sup>6</sup> Southern Star also stated that no PODB penalties were assessed and that it has collected all OFO penalties assessed.

16. The Commission finds that Southern Star has adequately addressed its failure to report PODB refunds and whether any OFO and PODB penalties were assessed and collected. The Commission will direct Southern Star to supplement its revised report with this information.

### **Alternative price index**

17. MoPSC contends that Southern Star needs an alternative index price in the event there is no published Gas Daily price index on days for which OFO penalties are assessed. MoPSC requests that the Commission order Southern Star to make revisions to its tariff language to provide for an alternate method for determining an index price for OFO penalties when one is not published.

18. Southern Star counters in its answer that the set price penalty alternative in its current OFO penalty provision would provide a defined penalty level in the event an average Gas Daily Index price is not published. Section 10.3 of Southern Star’s GT&C, Failure to Comply with Operational Flow Orders, states in part:

---

<sup>6</sup> Southern Star notes that in a December 11, 2003 Letter Order in Docket No. RP03-356-001 the Commission approved Southern Star’s tariff sheets eliminating the PODB section of the tariff, and that this will be the last report filed pursuant to the superceded section 9.7 of its tariff.

For emergency OFOs, the penalty for failure to comply with the terms of the OFO shall be the greater of \$10.00 or 5 times the average Gas Daily Index for Southern Star for the days of noncompliance for each Dth by which the Shipper deviated from the requirements of the OFO. For Standard OFOs, the penalty for failure to comply with the terms of the OFO shall be the greater of \$5.00 or 2.5 times the average Gas Daily Index for Southern Star for the days of noncompliance for each Dth by which the Shipper deviated from the requirements of the OFO.

19. Southern Star responds to MoPSC's request for an alternate method for determining an index price for OFO penalties by referencing its current OFO penalty provision, which provides that the greater of a set price per Dth or a multiple per Dth of the average Gas Daily Index will be used as the index price. Southern Star points out that in the event an average gas daily price is not published, the set price would provide a defined penalty level. In response to MoPSC's reference to "similar" changes being made to Southern Star's tariff language regarding cash-out refunds, Southern Star further clarifies that the alternate price index in its cash-out provisions deals with a monthly price, whereas the amounts collected to be refunded in this docket involve a daily price applied in calculations pursuant to approved tariff provisions and, therefore, no alternate daily index is needed. Accordingly, to the extent the Commission is reviewing various pipeline filings with respect to the alternative index price, Southern Star seeks Commission guidance before it proposes an alternate price index.

20. Although the current OFO penalty provision does not explicitly state the default penalty assessment in the event an average Gas Daily Index price is not published, the Commission finds that the set price penalty alternative serves as an acceptable defined penalty assessment.

21. The Commission will conditionally accept the refund report subject to Southern Star recalculating the refund distribution and making refunds of all storage depletion penalty revenues on a pro rata basis to all storage customers who did not deplete their storage account on the corresponding day, whether or not their inventories were below ten percent of their MSQ, for the reasons discussed below. The Commission also will direct Southern Star to refund penalty revenues associated with Unauthorized Overdeliveries on a pro rata basis to point operators who did not incur penalties at such points specified in the relevant OFO. The Commission will direct that such refunds will be made within ten days of the issuance of this order, with the appropriate interest accumulated until the date of the refund, and that Southern Star file a final refund report within thirty days of the date refunds are made. Furthermore, the Commission will direct Southern Star to supplement its report with the statements regarding the PO DB refunds and whether any OFO and PO DB penalties were assessed and collected, as discussed above.

The Commission orders:

The refund report is conditionally accepted and Southern Star is directed to re-file its report and make refunds with appropriate interest accumulated until the date of the refund, within ten days of the issuance of this order. The Commission also directs Southern Star to file a final report within thirty days of the date refunds are made, as discussed in the body of this order.

By the Commission.

( S E A L )

Linda Mitry,  
Acting Secretary.