



taxes and related interest. Burlington argued that under that settlement, which covered three gas contracts, one of which was a Kansas contract as to which Panhandle was seeking ad valorem tax refunds, Southland "gave up substantial take-or-pay claims, and agreed to reform the terms of the contracts."<sup>3</sup> The Settlement further provided a mutual agreement for each party to release and indemnify the other for all claims arising from or relating to these contracts under which the ad valorem tax reimbursements were paid.

3. Burlington relied upon paragraph 7 of the Settlement, which provided as follows:

Except for the obligations and rights specifically provided in this Letter Agreement, Buyer and Seller hereby forever release, discharge, waive and indemnify each other from and against all claims, demands, causes of action, damages, liabilities, expenses or payments known or unknown, present or future, that each party has or may have had against the other party relating to all the above referenced contracts.

4. Burlington did not claim that it received less than the MLP for gas sold to Panhandle. Burlington stated that its sole defense to the ad valorem tax refund claim was that by the Settlement Panhandle agreed to indemnify and release Burlington for all claims arising from or relating to Burlington's sale of gas to Panhandle, and agreed to assume all responsibility for claims relating to those contracts. Therefore, it contended, Panhandle was the party responsible for any ad valorem tax reimbursement refund liability that relates to the Kansas gas contract covered by the Settlement.

5. The April 1 Order stated that since both parties agreed that there are no factual issues involving Burlington's ad valorem refund liability, but only an issue as to whether a 1992 settlement with Panhandle relieves Burlington of that liability, the Commission removed Burlington from the hearing, and decided the issue. The order found no merit in any of the arguments Burlington had raised. Thus, even if the clause could be read as having the meaning claimed by Burlington, the Commission concluded that Burlington cannot prevail on its request to be relieved of the ad valorem refund liability. The order also denied Burlington's request for relief under NGPA Section 502(c) since Burlington did not show that payment of the refund would be a hardship or inequity.

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<sup>3</sup>Request at 7.

### **The Related Burlington-Northern Proceeding**

6. Burlington, in another Commission proceeding with another interstate natural gas pipeline, Northern Natural Gas Company, also involving ad valorem tax refunds, Docket No. RP98-39-000, made the same assertion that an indemnity clause in a settlement with that pipeline relieved it of any ad valorem tax refund liability. In that proceeding, the Commission, by an order issued April 1, 2003, also held that the settlement did not relieve Burlington of the ad valorem tax refund liability.<sup>4</sup> Burlington sought rehearing of that order, and by an order issued September 23, 2003, the Commission denied rehearing (the Natural order).<sup>5</sup>

### **Discussion**

7. In its rehearing request in the Natural proceeding, Burlington raised the same issues that it is urging in its rehearing request in this proceeding. Moreover, in the Natural proceeding it contended as a result of the settlement the pipeline received a reduction in its take-or-pay obligations more than the amount of the ad valorem tax refund liability at issue, but it makes no such assertion here. The Commission's Natural order found no merit in Burlington's arguments, and denied rehearing. Burlington generally raises the same issues in this case that it had raised in the Natural proceeding. We see no reason to repeat the full discussion in that order, but will adopt the reasoning in the Natural order in denying similar arguments in the instant hearing, and deny rehearing here as well.

8. However, there are several arguments that Burlington has asserted here that warrant some fuller discussion than set forth in Natural. Burlington argues that the Commission's decision here is inconsistent with the Commission's policy of encouraging resolution of gas contract disputes during pipeline restructuring in order to minimize take-or-pay and other costs,<sup>6</sup> as well as the Commission's general policy of favoring settlements as embodied in the numerous ad valorem tax refund settlements the Commission has approved, including Panhandle's.<sup>7</sup>

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<sup>4</sup> Burlington Resources Oil and Gas Co., 103 FERC ¶ 61,005 (2003).

<sup>5</sup> 104 FERC ¶ 61,317 (2003)

<sup>6</sup> Burlington cites to Iroquois Gas Transmission, L.P., 69 FERC ¶ 61,162 at 61,610 (1994).

<sup>7</sup> Panhandle Eastern Pipe Line Co., 96 FERC ¶ 61,274, clarified, 97 FERC ¶ 61,015 (2001).

9. It is of course true that Commission policy is to encourage settlements in general, and that the Commission encouraged pipelines and producers to resolve pipeline take-or-pay liability under existing gas contracts through settlements claims and ad valorem tax refund claims.<sup>8</sup> Nevertheless, we did not intend those settlements to allow that NGPA ceiling prices to be exceeded. This is demonstrated in the Commission's actions in Williams Natural Gas Co., 67 FERC ¶ 61,153 (1994) (Williams), involving a pipeline-recovery of take-or-pay settlement and gas supply realignment costs pursuant to the Commission's Order Nos. 500/528 and Order No. 636<sup>9</sup> policies. In that case the pipeline filed to pass-through the costs of a take-or-pay settlement which the pipeline had entered into with a producer consistent with the Commission's policy encouraging those types of settlements. A party sought to stay approval of the settlement costs, asserting that there were issues in another Commission proceeding as to whether the settlement allowed the producer to retain the ad valorem tax reimbursement in excess of NGPA ceiling prices, and until that was determined, the prudence of the settlement could not be evaluated. The Commission approved the pipeline's flowthrough of the costs of the settlement, finding no merit in the protestor's argument. The Commission stated:

To the extent producers are required to make refunds in that case of amounts charged in excess of ceiling prices, they must make such refunds regardless of any agreement by their customers to pay amounts in excess of the ceiling price. Thus, take-or-pay or GSR settlements between pipelines and their producer/suppliers cannot interfere with refunds required by the Commission to remedy violations of NGPA ceiling prices, or with the flow through of such refunds by the pipelines to their customers.<sup>10</sup>

10. In any event, the mutual release clause Burlington relies upon, by its own terms, releases claims "each party has or may have had against the other party...." These obviously relate to claims arising from the contract between the parties. The ad valorem tax refund is a refund that arises not from the contract, or a claim by one party to the

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<sup>8</sup> See, e.g., Order No. 500-H, FERC Statutes and Regulations, Regulations Preambles, 1986-1990 ¶ 30,867 at 31,525 (1989), and Order No. 528, 53 FERC ¶ 61,163 (1990).

<sup>9</sup> FERC Statutes & Regulations, Regulations Preambles, 1991-1996 ¶ 30,939 (1992).

<sup>10</sup> 67 FERC at 61,450.

contract against another party to the contract, but from a Commission order requiring all parties to comply with the NGPA, regardless of the terms of any contract the parties may have entered into. The mutual release of claims each party may have against the other in a settlement to which the Commission was not a party, and which was not filed with the Commission for its approval, does not release any claims that arise from Commission orders. Therefore, the Commission may order the producer to comply with the NGPA without violating or modifying the terms of the settlement between the parties.

11. The Commission's 1993 order, upon remand of the ad valorem issue from the court, directed producers to "refund any such excess revenues to the purchaser,"<sup>11</sup> and then described how the pipelines were to flow through the refunds to their customers. After the court required refunds from 1983 on, rather than from 1988, as the Commission had ordered in CIG, the Commission directed that pipeline should notify producers of "their obligations to refund the unlawful overcharges,"<sup>12</sup> by sending them Statements of Refunds Due. Thus, that the pipeline is the entity requesting payment of the ad valorem refund from the producer does not make the ad valorem tax refund liability the type of claim that comes within the "indemnity" clause. The ad valorem tax refund liability is not a "claim" by a party to the settlement. Rather, the pipeline is merely the vehicle for enforcing the Commission's order, and the NGPA ceiling price. Accordingly, we deny Burlington's request for rehearing.

The Commission orders:

Burlington's request for rehearing is denied.

By the Commission.

( S E A L )

Magalie R. Salas,  
Secretary.

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<sup>11</sup> Colorado Interstate Gas Company, 67 FERC ¶ 61,292 at 61,373 (1993) (CIG).

<sup>12</sup> Public Service Company of Colorado, 80 FERC ¶ 61,264 at 61,954 (1997).