

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. RP03-356-002

ORDER DENYING REHEARING

(Issued May 10, 2005)

1. On October 23, 2003, following a technical conference, the Commission accepted Southern Star Central Gas Pipeline, Inc.'s (Southern Star) revised tariff sheets to implement the daily allocation of gas on its system and to eliminate from its tariff the Periods of Daily Balancing (PODB) provisions.¹ Indicated Shippers² sought rehearing, arguing that the October 2003 Order erred on three points: (1) approving daily allocations of gas; (2) approving a daily overrun charge; and (3) approving a penalty for maximum daily quantity (MDQ) overruns during an operational flow order (OFO).

2. The Commission denies Indicated Shippers' request for rehearing. Our order benefits customers because it provides further clarity about how Southern Star's new tariff provisions will operate.

Background

3. On April 29, 2003, Southern Star filed revised tariff sheets to implement the daily allocation of gas on its system. Prior to November 1, 2003, when the tariff sheets became effective, Southern Star had scheduled gas on a daily basis, but aggregated daily

¹ *Southern Star Central Gas Pipeline, Inc.*, 105 FERC ¶ 61,034 (2003) (October 2003 Order).

² Anadarko Energy Services Company, Anadarko Petroleum Company, CP Energy Company, and BP America Production Company.

quantities each month to arrive at an aggregate monthly allocation for each shipper on its system. Its proposed tariff revisions, it said, would more accurately reflect how it transacts business in the natural gas marketplace. Southern Star did not propose any new fees or changes in the way shippers resolve imbalances.

4. More specifically, Southern Star proposed to revise its rate sheets to reflect daily reservation rates instead of monthly rates. It also proposed to clarify in its rate schedules that the monthly bill would be the sum of all daily charges for the month, and that it would calculate MDQ overrun charges on a daily basis. To accommodate the daily allocation, Southern Star proposed to eliminate the PODB provisions from section 9.5 of its General Terms and Conditions. It also planned to move its PODB tolerance and penalty provisions to its operational flow orders (OFO) section, and to assess PODB tolerance and penalty provisions only when it issues an OFO. Finally, Southern Star proposed to eliminate “burner-tip balancing,” under which it considers the actual volumes each local distribution company delivers to each transportation customer, as adjusted for lost and unaccounted-for fuel and thermal content, the transportation volumes that Southern Star delivers to the local distribution company on behalf of each customer.

5. In its initial order, the Commission noted that it shared protestors’ concerns about Southern Star’s filing.³ The order established a technical conference, which took place on June 26, 2003. Southern Star later filed initial comments that included *pro forma* changes to its original, active tariff sheets, addressing concerns that parties raised at the technical conference.

6. The October 2003 Order accepted Southern Star’s filing (as modified by its post-technical conference comments) to be effective November 1, 2003, subject to modifications. The Commission found that allocating gas on a daily basis would “more accurately accommodate the current marketplace where gas transmission is transacted on a daily or even intra-day basis. It will also allow Southern Star to manage its system more efficiently and effectively.”⁴ Further, the Commission found that Southern Star did not propose any changes in existing penalties, except for the elimination of penalties previously imposed for scheduling variances during the period of daily balancing.⁵

³ *Southern Star Central Gas Pipeline, Inc.*, 103 FERC ¶ 61,243 (2003).

⁴ October 2003 Order at P 10.

⁵ *See id.*

Request for Rehearing

7. Indicated Shippers allege that the Commission made three errors in the October 2003 Order.
8. First, Indicated Shippers argue that Southern Star has not justified its proposal to allocate gas on a daily basis or shown that there is an operational need to do so. They allege that Southern Star wants to use the daily allocations as a foundation for imposing new, excessive charges and penalties, and that those charges and penalties are unjustified.
9. Second, Indicated Shippers urge the Commission to reject Southern Star's proposal to implement daily overrun charges. They argue that Southern Star's proposal to implement a new authorized overrun service on a daily basis does not merely enforce existing tariff provisions, as the Commission found it did.⁶ Indicated Shippers acknowledge that Southern Star's tariff imposes a general obligation not to exceed maximum daily transportation quantities (MDTQ), but argue that this general obligation has never been interpreted as including a daily overrun charge. They argue that the Commission overlooked the significance of the fact that Southern Star has always used a monthly overrun approach. Indicated Shippers also aver that it is a standard principle of contract law (and the Commission's practice) to consider the parties' course of performance when interpreting a contract. As such, Indicated Shippers conclude that Southern Star's course of performance indicates that the overrun provision in its tariff contemplates only monthly overrun charges, and that Southern Star does not have tariff authority to impose daily overrun charges.
10. Citing Commission cases, Indicated Shippers argue that a change in the way a rate is implemented constitutes a rate increase if the change imposes additional charges on shippers. As such, Indicated Shippers believe that any change to daily overrun charges would constitute a rate change and would require a rate filing. They allege that the Commission erred in distinguishing *Tennessee Gas*⁷ from Southern Star's filing, because Tennessee Gas proposed a change in services that would impose additional charges on shippers.

⁶ Indicated Shippers Request for Rehearing at 2-3 (citing October 2003 Order at P 27).

⁷ *Tennessee Gas Pipeline Company*, 96 FERC ¶ 61,141, *reh'g denied*, 97 FERC ¶ 61,027 (2001) (*Tennessee Gas*).

11. Indicated Shippers also challenge the notion that a daily overrun charge can be characterized as a service. They state that the mere fact that Southern Star can provide daily throughput information does not, by itself, justify daily overrun charges, and that the Commission has not explained why such charges are appropriate. Further, they note that Southern Star has not provided operational justification for the charge or explained that overruns are a problem on its system. Indicated Shippers argue that the increased costs that shippers would have to bear if there is a daily overrun charge underscores the need to reject the charge.

12. Next, Indicated Shippers allege that switching to daily overrun charges would give Southern Star an unfair windfall because it would relieve the pipeline of the costs associated with its operational storage capacity without providing rate relief to shippers. They argue that the Commission erred in finding that this argument is conjectural because “it is obvious that any new restriction on the flexibility that shippers enjoy in connection with their use of services on Southern Star translates directly into a reduced need by Southern Star to reserve operational assets to support services.”⁸ Indicated Shippers dispute the Commission’s conclusion that the impact of daily overrun charges on Southern Star’s costs could be addressed in the pipeline’s next rate filing, on the basis that Southern Star will have no incentive to file a rate case if it is over-recovering its cost of service.

13. Third, Indicated Shippers argue that the proposed OFO penalty – 12 times the maximum monthly reservation rate for the applicable area per Dth – is excessive. They note that the October 2003 Order said that the OFO penalty reflects the same penalty that Southern Star imposed on violations of a PODB directive, and that the OFO penalty was acceptable because Southern Star did not propose any new penalties or changes to existing penalty amounts. Indicated Shippers argue, however, that the Commission is obliged to review whether the same penalties are appropriate for a different mechanism. They allege that this penalty is not appropriate because penalties based on small multiples of the index price provide a sufficient incentive to comply with OFOs, and the OFO penalty proposed here is much greater than that of other pipelines. Indicated Shippers also complain that that proposed OFO penalty does not incorporate tiers that are tied in to the level of the violation, as required by Order No. 637. They ask the Commission to require Southern Star to revise the penalties to incorporate tiers.

⁸ Indicated Shippers Request for Rehearing at 8.

Discussion

14. We will deny Indicated Shippers' request for rehearing on all three grounds. With respect to their argument that Southern Star has not justified its proposal to allocate gas on a daily basis, we stand by our finding that daily allocations will more accurately accommodate the current marketplace, in which gas transmission is normally conducted on a daily or intra-day basis. This is principally an administrative change, and it will allow Southern Star to manage its system more effectively. As such, the change will be an operational improvement for Southern Star that will also benefit all shippers on the pipeline, and it is just and reasonable.

15. Several parties argued following the technical conference that Southern Star had not provided adequate operational justification for its proposal, and the Commission responded to those arguments in the October 2003 Order. As Indicated Shippers have not provided any new arguments, we will not recap our discussion in detail here. We reiterate, however, that Southern Star has not proposed to implement any new charges or penalties as part of this tariff change. Therefore, the change from monthly to daily allocations cannot be impeached on the ground that it provides a foundation for imposing new, excessive charges and penalties. We agree with Indicated Shippers that if they continue to ship daily quantities of gas that exceed their MDQ, the new daily allocation requirement may expose Indicated Shippers to the imposition of further penalty charges. Southern Star's tariff provides a rate for authorized overruns that is equal to its rate for interruptible transportation service.⁹ As a result of the pipeline's change from monthly to daily allocations, it will still be possible to ship more than a shipper's daily MDQ; the difference is merely that the shipper will have to pay Southern Star when it does so. Because these charges are already specified in the tariff, however, we continue to find that Southern Star proposes to enforce an existing penalty provision, not create a new one. Moreover, the rate Indicated Shippers pay for firm service is only for service up to their MDQ. It is just and reasonable that Indicated Shippers pay an additional charge for any services received above their MDQ. That Southern Star's authorized overrun rates equal to its corresponding interruptible rates is consistent with Commission policy. In addition, it is just and reasonable that Indicated Shippers pay a penalty when an OFO is in effect because the system is under stress at this time.

16. Indicated Shippers next argue that Southern Star's proposal to implement a new, authorized overrun service on a daily basis does not merely enforce existing tariff

⁹ See Southern Star Statement of Rates for Transportation of Natural Gas and Other Related Services, Fourth Revised Sheet Nos. 10-11.

provisions, but imposes a new requirement not to exceed MDQ on a daily basis. We disagree. As we stated in the October 2003 Order, Southern Star's tariff plainly states that "[t]ransportation service under this rate schedule *on any day* shall not exceed the MDTQ within each area, or, the sum of the MDQ's for all Delivery Points within such area."¹⁰ The requirement not to exceed MDQ on a daily basis therefore is not new. Southern Star has a specific contractual right to enforce this provision, even if it has not been its past practice to do so. Further, we note that "Southern Star may, at the request of Shipper, receive, transport and deliver on any day quantities in excess of the MDTQ or of the sum of the MDQs within each area when, and to the extent, in Southern Star's reasonable judgment the delivery capacity of its system so permits"¹¹ Indicated Shippers may, therefore, request permission to ship more than its MDQ, and pay the applicable overrun rate for doing so.

17. Even if Southern Star's change from monthly to daily allocations constituted a revised rate, the fact that it sought to make a tariff change to implement this charge would not violate Indicated Shippers' rights or improperly modify its contract. Southern Star's transportation service agreement indicates that "Shipper agrees that Southern Star shall have the unilateral right from time to time to file with the appropriate regulatory authority and make effective changes in (1) the rates and charges applicable to service hereunder"¹² It also incorporates the terms and conditions of the tariff into the service agreement.¹³ These terms reflect standard Commission policy, which automatically applies modifications to a tariff to the service agreements under that tariff.¹⁴ Southern Star was, therefore, within its contractual rights to seek a change to the way it enforces a tariff provision.

18. We reiterate that a pipeline has the right to assess all charges specified in its tariff, and that a change to the way a tariff is enforced does not constitute a new rate. *Tennessee Gas* contains exactly the opposite factual situation that is presented here. In that case,

¹⁰ Southern Star Rate Schedule FTS, at § 5, Substitute Third Sheet No. 121 (emphasis added).

¹¹ *Id.*

¹² Form of Transportation Service Agreement Under Rate Schedule FTS at § 3.1, Original Sheet No. 417.

¹³ *Id.* at § 3.2.

¹⁴ See *Regulation of Short-Term Natural Gas Transportation Services, and Regulation of Interstate Natural Gas Transportation Services*, 101 FERC ¶ 61,127 at P 45-47 (2002).

Tennessee Gas filed a tariff sheet in order to notify customers under a certain rate schedule that it intended to charge them for transportation of swing volumes both in and out of storage. The Commission agreed with protestors that this right had not been provided for in the existing Tennessee Gas tariff, and that a proceeding under section 4 of the Natural Gas Act¹⁵ would be necessary to provide Tennessee Gas with that right.¹⁶

19. By contrast, Southern Star's daily overrun charge is an aspect of the authorized overrun service for which its tariff provides. We disagree with Indicated Shippers' assertion that Southern Star should not provide daily throughput information (and assess daily overrun charges) now that it has the capability to do so. Southern Star is responsible for maintaining its system operations, including remedying overruns that will result from a shipper's decision to transmit a quantity of gas in excess of its MDQ. Indicated Shippers benefit from Southern Star's system administration. They make plain that they have taken advantage of the opportunity to ship excess quantities of gas without penalty on individual days in the past, but they do not account for the effort that Southern Star must undertake to keep its system in balance when they do so. We find that the daily overrun charge is justified based on this effort, and we therefore deny Indicated Shippers' request for rehearing on this point. We disagree that receipt of daily overrun charges could constitute an "unfair windfall" to Southern Star. Southern Star's rate design indicates that it equates authorized overruns to interruptible service, and contemplates charging for that service. The daily overrun charges therefore remedy an unfair windfall to shippers, which was the ability to transmit quantities of gas in excess of their MDQ without charge. We again find that it is not certain that Southern Star will be relieved of costs associated with operational storage capacity, because it is not yet clear how shippers will adjust their behavior to daily allocation requirements.

20. Finally, we disagree with Indicated Shippers that the proposed OFO penalty is excessive. The penalty is not a new addition to Southern Star's tariff; it has merely been moved from one tariff section to another. It also does not, as Indicated Shippers allege, apply to a different mechanism; Southern Star stated in its original filing that the OFO penalties share the same calculations as the PO DB penalty, but only reference the calculations.¹⁷ It is not inappropriate for Southern Star to group the penalties together in

¹⁵ 15 U.S.C. § 717c (2000).

¹⁶ See *Tennessee Gas* at 61,605 ("Tennessee [Gas]'s allegation that it is only making this proposed change as a formality, and that it has the right to bill for this service is unsupported.").

¹⁷ See October 2003 Order at P 39.

its tariff. Further, we note that we approved the penalty structure in our order on Southern Star's Order No. 637 filing.¹⁸ Indicated Shippers' arguments that the OFO penalty should incorporate tiers that are tied to the level of the violation are therefore a collateral attack on that order.

The Commission orders:

Indicated Shippers' request for rehearing of the October 2003 Order is hereby denied.

By the Commission.

(S E A L)

Linda Mitry,
Deputy Secretary.

¹⁸ By order issued July 3, 2002, in Southern Star's Order No. 637 compliance filing proceeding, the Commission approved Southern Star's proposal to change the procedures for reporting penalty activity in PODBs and OFOs. *Williams Gas Pipelines Central, Inc.*, 100 FERC ¶ 61,034 at P 81, 87 (2002). On November 26, 2002, Southern Star filed its refund report for the twelve-month period ending September 20, 2002. Southern Star reported no issuance of a PODB or an OFO for that period, and thus no penalties were assessed or collected and no refund plan was necessary. The Commission accepted the report in an unpublished letter order dated February 26, 2003 in Docket No. RP03-117-000.