**ORAL ARGUMENT IS SCHEDULED FOR MAY 10, 2005**

**IN THE UNITED STATES COURT OF APPEALS**
**FOR THE DISTRICT OF COLUMBIA CIRCUIT**

---

**No. 04-1135**

---

**THE TOCA PRODUCERS, *et al.***
**PETITIONERS,**

**v.**

**FEDERAL ENERGY REGULATORY COMMISSION,**
**RESPONDENT.**

---

**ON PETITION FOR REVIEW OF ORDERS OF THE**
**FEDERAL ENERGY REGULATORY COMMISSION**

---

# BRIEF FOR RESPONDENT FEDERAL ENERGY REGULATORY COMMISSION

---

## COUNTER-STATEMENT OF JURISDICTION

Petitioners seek judicial review under Section 19(b) of the Natural Gas Act ("NGA"), 15 U.S.C. § 717r(b), of three orders issued by the Federal Energy Regulatory Commission ("Commission" or "FERC"): *The Toca Producers v. Southern Natural Gas Co.*, 104 FERC ¶ 61,300 (2003) (JA 123-29), *order on reh'g*,

106 FERC ¶ 61,158 (JA 160-64), *reh'g denied*, 107 FERC ¶ 61,009 (2004) (JA 178).[1] The Court lacks jurisdiction to hear this petition, because Petitioners lack standing.

## STATEMENT OF THE ISSUES

1. Should the petition be dismissed for lack of jurisdiction given that Petitioners have the opportunity to obtain the relief denied by the challenged orders in another proceeding currently pending before the Commission to which Petitioners are parties?

2. Did the Commission properly dismiss Petitioners' undue discrimination complaint, brought under NGA § 5(a), 15 U.S.C. § 717d(a), where Petitioners failed to provide sufficient supporting evidence to make a *prima facie* case of discrimination?

## PERTINENT STATUTES AND REGULATIONS

The statutes, regulations and tariff provisions applicable to this case are set forth in an addendum to this brief.

## STATEMENT OF THE CASE

### I. The Natural Gas Act

The NGA grants the Commission jurisdiction over the transmission and wholesale sale of natural gas in interstate commerce. *See* 15 U.S.C. § 717(b). NGA § 4(a), 15 U.S.C. § 717c(a), permits natural gas companies, including natural gas

[1] All citations to the FERC Reports are captioned *The Toca Producers v. Southern*

pipelines, to charge only those rates that are just and reasonable, and NGA § 4(b), 15 U.S.C. § 717c(b), prohibits such companies from engaging in undue discrimination by providing undue preferences or subjecting persons to undue disadvantages in connection with jurisdictional services.

The NGA requires natural gas companies to file "schedules" showing all "rates and charges" for jurisdictional services, all "practices and regulations affecting such rates and charges," and all "contracts which in any manner affect or relate to such rates, charges . . . and services." 15 U.S.C. § 717c(c). The Act prohibits such companies from making any change in such rates or services prior to giving the Commission and the public thirty days' notice. 15 U.S.C. § 717c(d). NGA § 4(e) provides that the Commission may suspend a proposed change in rates or services for up to five months while the Commission investigates the justness and reasonableness of the proposal; at the end of the suspension period, the proposed change becomes effective, subject to refund if the Commission later determines the change to be unjust and unreasonable. 15 U.S.C. § 717c(e).

NGA § 5(a) provides that when the Commission, after conducting a hearing on its own initiative or in response to a private complaint, finds a previously approved tariff provision or rate to be unjust, unreasonable or unduly discriminatory, it must

determine the just and reasonable provision or rate and "fix the same by order." 15 U.S.C. § 717d(a). The party alleging undue discrimination must show that the regulated company's action "has different effects on similarly situated customers" to make a *prima facie* case of discrimination. *Southwestern Elec. Coop. v. FERC*, 347 F.3d 975, 981 (D.C. Cir. 2003); *accord*, *Sebring Utils. Comm'n v. FERC*, 591 F.2d 1003, 1010 (5th Cir. 1979) (involving natural gas curtailment plan). Only when the complaining party establishes the required disparity does the burden shift to the utility to justify the disparity and thereby establish that the discrimination is not undue. *Southwestern*, 347 F.3d at 981; *Metropolitan Edison Co. v. FERC*, 595 F.2d 851, 857 (D.C. Cir. 1979).[2]

## II. The Proceeding Below

### A. Origins of the Controversy

Petitioners produce natural gas in the Gulf of Mexico and South Louisiana that typically has a high level of liquefiable hydrocarbons. 106 FERC ¶ 61,158 P 2 (JA 160). Petitioners' gas flows into the natural gas pipeline system of Southern Natural Gas Company ("Southern") upstream of three natural gas processing plants at Toca,

---

[2] *Southwestern* and *Metropolitan* involved interpretations of Section 205(b) of the Federal Power Act ("FPA"), 16 U.S.C. § 824d(b). The rate-setting provisions of FPA 205 are virtually repeated in NGA 4. Courts treat decisions interpreting each set of identical FPA and NGA provisions interchangeably. *Arkansas La. Gas Co. v. Hall*, 453 U.S. 571, 577 n.7 (1980) ("*Arkla*").

Louisiana (collectively referred to as the "Toca Plant"). *Id.* The Toca Plant is owned, in part, by Petitioners' affiliates. *Id.* P 4 n.6 (JA 160). Typically, 92% of the hydrocarbons are removed from Petitioners' gas stream at the Toca Plant, after which the gas flows back into Southern's system. 104 FERC ¶ 61,300 P 9 (JA 124).

Hydrocarbons removed from the gas stream generally are sold as natural gas liquids. When natural gas prices increase, however, it sometimes becomes more profitable to leave the hydrocarbons in the gas stream because it raises the stream's heat content (or British thermal unit ("Btu")) level, which, in turn, increases the value of the gas stream. 106 FERC ¶ 61,158 P 3 (JA 160). Leaving hydrocarbons in the gas stream also presents risks for the pipeline. Liquefiable hydrocarbons that are conveyed into regions with lower temperatures may condense out of the gas stream. *Id.* The resulting condensate may damage pipeline equipment through corrosion and obstruction. *Id.* The specific temperature at which each type of liquefiable hydrocarbon, such as propane or butane, condenses out of the gas stream is known as its "dewpoint." *Id.*

Section 3.1(b) of the General Terms & Conditions of Southern's tariff ("GT&C § 3.1(b)") is designed to protect Southern's facilities from such condensation. The provision provides that Southern will not accept gas flows containing more than 0.3 gallons per thousand cubic feet (hereafter referred to as "GPM," as in "0.3 GPM") of

isopentane and heavier hydrocarbons. 106 FERC ¶ 61,158 P 9 (JA 161). Southern's policy is to waive application of this provision for producers, such as Petitioners, that tender their gas at receipt points *upstream* of processing plants as long as the stream is eventually processed prior to moving into the system *downstream* of the plants. 104 FERC ¶ 61,300 P 9 (JA 124).

In December 2000, the Toca Plant operators notified Southern that they intended to shut down Plant operations by the end of the month. JA 71-72 P 4; JA 75-76 P 13. Southern asserts (and Petitioners do not dispute) that this "was a pure economic decision driven by the relative value of a BTU in the natural gas stream and the value of the BTU removed from the gas stream as a hydrocarbon liquid." JA 73-74 P 11.

On December 6, 2000, Southern notified its customers, including Petitioners, that it might "commence enforcement" of GT&C § 3.1(b) "to protect the operational integrity of Southern's system[,]" which could not "accept unprocessed gas downstream of the processing plant." JA 53. On December 21, 2000, Southern sent out a second notice stating that it would enforce GT&C § 3.1(b) upstream of the Toca Plant if the plants "decide[d] not to process 100% of the gas stream available to them." JA 54. Southern explained that only gas not meeting the 0.3 GPM standard for isopentane and heavier hydrocarbons would be rejected. JA 76-77 P 14.

### B. The Petition for a Temporary Restraining Order

On January 5, 2001, Petitioners filed a Petition for a Temporary Restraining Order and Request for an Emergency Technical Conference ("Petition") with FERC. 104 FERC ¶ 61,300 P 6 (JA 124). Petitioners requested that the Commission (1) immediately issue a temporary restraining order preventing Southern from shutting in gas supply upstream of the Toca Plant, and (2) schedule an emergency technical conference. *Ibid.* Southern filed an answer and a motion to dismiss the petition, and the Petitioners subsequently filed an answer to Southern's motion. *Id.*

Because of the parties' differing assertions, a technical conference was held on January 21, 2001. 104 FERC ¶ 61,300 P 11 (JA 125). Despite numerous settlement discussions, which resulted in agreement on certain issues, the parties were unable to reach agreement on specific, technical questions. *Id.* PP 11, 25 (JA 125, 126). Specifically, the parties could not reach agreement on certain critical elements of an aggregation methodology, such as the numerical value of the hydrocarbon dewpoint ("HDP") gas quality standard that would be applied at the aggregation points, whether that standard would be stated in Southern's tariff, the hydrocarbon quality specification to be applied at individual receipt points, and the conditions under which the specification would be applied. *Id.* P 25 (JA 126).

At no time was Petitioners' gas ever shut in. 104 FERC ¶ 61,300 P 26 (JA 126). In a June 3, 2003 pleading, Southern proposed, as a condition to the dismissal of the Petition, to make a voluntary NGA § 4(e) tariff filing to modify its tariff to include an aggregation methodology, including the flexible HDP standard described in *Natural Gas Pipeline Co. of Am.*, 102 FERC ¶ 61,243, *order on reh'g*, 104 FERC ¶ 61,322 (2003) (collectively, "*Natural*"). 104 FERC ¶ 61,300 P 26 (JA 126).

**C. The Complaint**

In the meantime, on May 28, 2003, Petitioners filed a complaint. 104 FERC ¶ 61,300 P 16 (JA 125). The complaint alleged that "in December 2000, Southern acted to unduly discriminate among its suppliers by threatening to shut in [Petitioners'] gas supplies upstream of the Toca Plant that did not meet the 0.3 GPM C5+ specification at the meters into Southern's system, unless the Toca Producers agreed to process 100% of their gas at the downstream Toca Plant." JA 24. Petitioners alleged "that to [Petitioners'] best knowledge and belief, the commingled gas stream upstream and downstream of the Toca Plant was well below the 0.3 GPM C5+ standard in the tariff." *Ibid.* Petitioners further asserted that to their "best knowledge and belief, the gas entering Southern's system from other pipeline interconnects was of a higher liquefiable content than the gas flowing into Southern's system downstream from the Toca Plant outlet." *Id.*

The complaint further alleged that Southern's "misconduct" resulted from a failure to specify an HDP "safe harbor" standard (which, if met, would assure the pipeline's acceptance of gas into its system) in the tariff. 106 FERC ¶ 61,158 P 9 (JA 161). Petitioners contended that the 0.3 GPM standard for isopentane and heavier hydrocarbons set out in GT&C § 3.1(b) did not operate as a safe harbor, because Southern had discretion to waive that provision, and did so on a regular basis. *Id.* Petitioners asked the Commission to compel Southern to modify its tariff to include a safe harbor provision containing an HDP standard as well as other, related protections. 104 FERC ¶ 61,300 P 18 (JA 125-26). Petitioners also requested an evidentiary hearing to resolve alleged disputes of material fact. *Id.* P 19 (JA 126).

In its answer, Southern asserted that it "uniformly enforces" GT&C § 3.1(b) "at all Receipt Points except for Receipt Points upstream of processing plants[,]" including the facilities upstream of the Toca Plant, which were specifically designed to accommodate a higher level of liquefiable hydrocarbons in the gas stream. To accommodate the upstream producers, Southern is willing to forego enforcing the tariff provision upstream of the Plant, as long as the gas is being processed there. JA 83-84 P 27 (citing Affidavit of Reji George ¶ 5 (JA 121)). On the other hand, "when the plants choose not to operate for economic reasons, gas suppliers at the upstream Receipt Points" must "meet the same quality specifications as are required at all other

Receipt Points" – *i.e.*, must comply with GT&C § 3.1(b). *Id.* The latter policy, Southern explained, was based on the pipeline's acceptance of unprocessed gas into its system in 1994 (as a result of a fire at the Toca Plant), and the consequent safety hazards and operational problems that ensued. JA 75-76 P 13. Southern further contended that the existence of disparities among the liquefiable hydrocarbon content of the blended gas streams at different points on its system did not constitute evidence of discrimination, because all the gas met the 0.3 GPM standard. 106 FERC ¶ 61,158 P 10 (JA 161).

### D. The Challenged Orders and Southern's Proposed Tariff Revision

The first challenged order dismissed the Petition and the complaint. 104 FERC ¶ 61,300 ("Complaint Order"), Ordering PP (A), (B) (JA 128-29). Dismissal of the Petition was conditioned on Southern "filing to modify its tariff to include an aggregation methodology, including the flexible HDP standard described in *Natural*." *Id.* P 26, Ordering P (B) (JA 126, 128-29). *See id.* PP 40-41 (JA 128).

Southern filed the proposed tariff revision on October 31, 2003 in a separate FERC Docket, No. RP04-42. *Southern Natural Gas Co.*, 105 FERC ¶ 61,254 P 1 (2003). Petitioners intervened and filed an extensive protest. *Id.* PP 12-21. FERC determined that Southern's "proposed tariff sheets [had] not been shown to be just and reasonable," and might be "unjust, unreasonable, unduly discriminatory, or otherwise

unlawful." *Id.* P 25. Accordingly, FERC suspended the effective date of the tariff for the maximum amount of five months, and ordered a technical conference. *Id.* P 26, Ordering PP (A) & (B). The technical conference was held on January 21, 2004, 106 FERC ¶ 61,158 P 28 n.25 (JA 164), after which many parties, including Petitioners, filed initial and reply comments; in theirs, Petitioners sought, *inter alia*, an evidentiary hearing. *See* "Reply Comments of the Toca Producers Under RP04-42" at 22 (Docket No. RP04-42-000, Feb. 18, 2004). The proposed tariff became effective May 1, 2004, and the proceeding is still pending.

In the second order challenged on appeal, the Commission denied rehearing. 106 FERC ¶ 61,158 ("Rehearing Order") (JA 160-64). The third challenged order denied rehearing by operation of law. 107 FERC ¶ 61,009 (2004) (JA 178).

This petition for review was filed on April 16, 2004.

## SUMMARY OF ARGUMENT

### I

### A

The petition for review should be dismissed for lack of jurisdiction, because Petitioners lack standing to challenge the orders. To satisfy the standing requirement, Petitioners must demonstrate (1) that they sustained "injury-in-fact" as a result of the Commission's action, and (2) that a favorable ruling by the Court will redress that injury. Petitioners have not made such a showing.

Dismissal of the complaint has not harmed Petitioners, and granting them the remand they request will not provide them any opportunity for redress that they do not already have. Southern's ongoing tariff proceeding in another docket, FERC Docket No. RP04-42, provides Petitioners a full opportunity to obtain the same relief (a safe harbor provision in Southern's tariff) that they sought in the complaint proceeding, and that they would seek in a remanded proceeding. The complaint did not seek relief for alleged past injuries, and the proceeding in Docket No. RP04-42, to which Petitioners are active parties, can address any threat of future harm. Accordingly, Petitioners lack standing to review the challenged orders.

**B**

Even if Petitioners can somehow satisfy the requirements for standing, the issues presented are not ripe for judicial review. The purposes of the ripeness doctrine are to enable the courts to avoid entanglement in unfinished agency business, and to prevent piecemeal and unnecessary appeals that are costly to the parties and consume limited judicial resources. Thus, the Court will defer review if its interests in postponing review, or those of the agency, outweigh the interests of those seeking relief.

Here, the ripeness doctrine dictates dismissal of the petition for review. There is a distinct possibility that the ongoing tariff proceeding in FERC Docket No. RP04-42 may resolve the issues presented here, and thereby obviate Petitioners' need to pursue this petition. Conversely, deferring review of those until the Commission addresses them in Docket No. RP04-42 will result in no hardship to Petitioners. Accordingly, deferring review at this time will enable the Court to avoid entanglements in matters that have yet to be resolved administratively, and will conserve judicial and agency resources, without subjecting Petitioners to hardship.

## II

As to the merits, the Commission properly dismissed the complaint. Petitioners based their request for relief – an evidentiary hearing in which to gather evidence that they hoped would support a subsequent revision of Southern's tariff – on an unsupported allegation that Southern had applied the GT&C § 3.1(b) in an unduly discriminatory manner by requiring Petitioners to process their gas to a greater extent than other producers. Southern denied this allegation, representing that it required all gas injected into its system downstream of processing plants to meet the tariff standard of 0.3 GPM, and waived that standard only for upstream gas that would be processed at downstream processing plants. During a proceeding spanning more than two years, Petitioners presented no evidence to substantiate their claim.

Dismissal for failure to present evidence sufficient to show the disparate treatment necessary to make a *prima facie* case of discrimination was consistent with the Commission's longstanding policy, codified in its regulations, of requiring that a complainant substantiate its allegations as a prerequisite to obtaining a hearing. Having failed to substantiate their allegations of undue discrimination, Petitioners provided the Commission no statutory basis for revising Southern's tariff.

## ARGUMENT

### I. THE PETITION SHOULD BE DISMISSED FOR LACK OF JURISDICTION.

Petitioners lack standing to seek judicial review of the orders because they have the opportunity to redress fully any possible aggrievement in a separate FERC proceeding. Alternatively, and for the same reason, the orders are not ripe for review.

#### A. Petitioners Lack Standing To Seek Review of the Orders.

To establish standing under Article III of the Constitution, a petitioner "must show (1) it has suffered an 'injury-in-fact' that is (a) concrete and particularized and (b) actual or imminent, not conjectural or hypothetical; (2) the injury is fairly traceable to the challenged action of the defendant; and (3) it is likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision." *Friends of the Earth, Inc. v. Laidlaw Environmental Servs. (TOC), Inc.*, 528 U.S. 167, 180-81 (2000). Standing is assessed as of the time a petitioner seeks "relief from an Article III court." *Id.* at 191. Petitioners have failed to meet prongs (1) and (3) of those criteria.

##### 1. The Orders Did Not Cause Petitioners "Injury-in-Fact."

This Court equates the requirement of "injury-in-fact" under Article III to NGA § 19(b)'s requirement that persons seeking judicial review of Commission action be "aggrieved by an order issued by the Commission in such proceeding." 15 U.S.C. § 717r(b). *See Northwestern Pub. Serv. Co. v. FPC*, 520 F.2d 454, 458 (D.C. Cir. 1975) (a petitioner is "aggrieved" within the meaning of NGA § 19(b) if as a result of a Commission order, the petitioner "has sustained 'injury in fact' to an interest arguably within the zone of interests to be protected or regulated by the [Commission] under the Act"). To establish "injury-in-fact," a petitioner must allege facts "sufficient to prove the existence of a concrete, perceptible harm of a real, non-speculative nature[.]" *North Carolina Utils. Comm'n v. FERC*, 653 F.2d 655, 662 (D.C. Cir. 1981) ("*NCUC*") (citation and internal quotation omitted). Moreover, "'petitioner's aggrievement must be present and immediate, or at least must be demonstrably a looming unavoidable threat.'" *Northwestern*, 520 F.2d at 458 n.6 (quoting *Cincinnati Gas & Elec. Co. v. FPC*, 246 F.2d 688, 694 (D.C. Cir. 1957)).

The petitioner has the burden of alleging facts sufficient to demonstrate such injury. *Friends of Keeseville, Inc. v. FERC*, 859 F.2d 230, 235 (D.C. Cir. 1985) ("'It is not this court's job to ferret out or even to speculate as to possible impacts of possible outcomes of existing lawsuits upon future litigation; it is the petitioner's responsibility to show the specifics of the injury alleged.'" (quoting *NCUC*, 653 F.2d

at 663)). Thus, failure to allege facts demonstrating that the agency's action has caused or will inevitably cause the petitioner concrete, imminent harm requires dismissal.

The challenged orders' dismissal of Petitioners' complaint has not caused them any cognizable injury-in-fact. The record shows that Petitioners' gas was never shut in. 104 FERC ¶ 61,300 P 26 (JA 126). Rather, Petitioners' sole claim of injury is that for an unspecified period of time, starting around December 2000, Southern required them to process their gas to a greater extent than other parties. Br. at 7-8. Petitioners do not allege, and the record does not show, that Southern imposed a new processing requirement in December 2000, or has since discontinued this requirement. Rather Petitioners claim to be "harmed" by the requirement, because for a temporary, unspecified period, they could have made more money from leaving the hydrocarbons in the gas stream than from selling the hydrocarbons extracted during processing. Br. at 4-5, 8. *See* 106 FERC ¶ 61,158 P 3 (JA 160). Petitioners did not seek retrospective relief for this "harm," *see* JA 34-37, and do not contend that Southern's implementation of its tariff is currently injuring them.

Accordingly, Petitioners can only be claiming that FERC's refusal to revise Southern's tariff may subject them to future injury, though they do not expressly make

that claim in their brief. The claim would have to be that if price fluctuations should ever again make it more profitable for sellers to sell gas in an unprocessed stream than to sell processed gas and extracted hydrocarbons separately, Southern's implementation of its current tariff will prejudice Petitioners. Because Petitioners have not even asserted, much less demonstrated, that such price fluctuations are likely to occur in the foreseeable future, Petitioners have not established that they face "a looming unavoidable threat" of harm. *See Northwestern*, 520 F.2d at 458 n.6.

Moreover, the Commission has given Petitioners a forum in which to seek revision of that tariff – the exact relief that they sought in their complaint. The first challenged order specifically conditioned dismissal of the Petition on Southern's filing revised tariff sheets that contained "an aggregation methodology, including the flexible HDP standard described in *Natural*." 104 FERC ¶ 61,300 P 26, Ordering P (B) (JA 126, 128-29). *See id.* PP 40-41 (JA 128). On October 31, 2003, Southern responded by filing revised tariff sheets that are being considered in FERC Docket No. RP04-42. *Southern*, 105 FERC ¶ 61,254 P 1. Petitioners intervened and protested Southern's filing. *Id.* PP 12-21. A technical conference was held on January 21, 2004, 106 FERC ¶ 61,158 P 28 n.25 (JA 164), and Petitioners filed extensive initial and reply comments the following month. Thus, by the time they filed the instant petition, on April 16, 2004, Petitioners had taken vigorous action in

another proceeding to eliminate any prejudice to them that might have resulted from the dismissal of their complaint.

### 2. Petitioners Have the Opportunity To Obtain Full Redress in Another Forum.

Similarly, Petitioners have not demonstrated that a favorable ruling by this Court will redress the injury they allegedly sustained as a result of the dismissal of its complaint. While the dismissal of the complaint denied Petitioners a forum in which to seek revision of Southern's tariff, the proceeding in FERC Docket No. RP04-42 provides them a forum for obtaining the same redress. A remand of the challenged orders would do no more than duplicate part of the proceeding in Docket No. RP04-42.

## B. The Commission's Determination Is Not Ripe for Review.

Even if Petitioners can somehow satisfy the Court's requirements for standing, the issues presented clearly are not ripe for judicial review. The ripeness doctrine's "basic rationale is to prevent the courts, through avoidance of premature adjudication, from entangling themselves in abstract disagreements over administrative policies,

and also to protect the agencies from judicial interference until an administrative decision has been formalized and its effects felt in a concrete way by the challenging parties." *Abbott Laboratories v. Gardner*, 387 U.S. 136, 148-49 (1967). In addition, the doctrine aims to avoid "piecemeal, duplicative, tactical and unnecessary appeals which are costly to the parties and consume limited judicial resources." *Mount Wilson FM Broadcasters v. FCC*, 884 F.2d 1462, 1465 (D.C. Cir. 1989).

In implementing the doctrine, a court must evaluate both "the fitness of the issues for judicial decision and the hardship to the parties of withholding court determination." *Abbott Laboratories*, 387 U.S. at 149. This Court "has framed the test to be: '[I]f the interests of the court and the agency in postponing review outweigh the interests of those seeking relief, settled principles of ripeness call for adjudication to be postponed.'" *Mount Wilson*, 884 F.2d at 1466 (quoting *State Farm Mut. Ins. Co. v. Dole*, 802 F.2d 474, 480 (D.C. Cir. 1986) ("*Dole*")). To find the converse, that hardship to the parties justifies immediate review, the Court must determine that the contested action's impact on the parties is "'sufficiently direct and immediate as to render the issue appropriate for judicial review at this stage.'" *Alascom, Inc. v. FCC*, 727 F.2d 1212, 1217 (D.C. Cir. 1984) (quoting *Abbott Laboratories*, 387 U.S. at 152). In evaluating whether hardship has been established, a court must also consider

whether judicial review will be available at a later stage. *Friends of Keeseville,* 859 F.2d at 236-37; *NCUC*, 653 F.2d at 663.

Application of the balancing test articulated in *Mount Wilson* and *Dole* to the issues under review dictates dismissal of the petition. The substantial benefits of deferring this adjudication derive from "the possibility that if the issue is not adjudicated at this time, it may not require adjudication at all." *Friends of Keeseville*, 859 F.2d at 235. The proceeding in FERC Docket No. RP04-42 could result in a tariff modification that Petitioners seek, thus resolving the issues raised in this appeal. Deferring review of those issues until the completion of the proceeding in docket No. RP04-42 would result in no hardship to Petitioners. Petitioners have never sought reparations for alleged past injury, and do not claim Southern's implementation of its tariff is adversely affecting them at this time. Moreover, deferral of judicial review will not deprive Petitioners of the eventual opportunity to seek judicial review of any adverse rulings concerning the inclusion of a safe harbor provision in Southern's tariff. *See Friends of Keeseville,* 859 F.2d at 236-37; *NCUC,* 653 F.2d at 663. Thus, Petitioners have not, and cannot, show hardship from deferral, or that the orders otherwise impact Petitioners' interests in the kind of "direct and immediate" way that would justify their request for piecemeal review.

## II. THE COMMISSION PROPERLY DISMISSED THE COMPLAINT.

### A. Standard of Review

"The role of judicial review is only to ascertain" if the agency "has met the minimum standards set forth in the statute." *U.S. Postal Serv. v. Gregory*, 534 U.S. 1, 7 (2001). A court reviews FERC orders under the "arbitrary and capricious" standard set out in the Administrative Procedure Act at 5 U.S.C. § 706(2)(A). *Sithe/Independence Power Partners v. FERC*, 165 F.3d 944, 948 (D.C. Cir. 1999). To satisfy that standard, the Commission must "demonstrate that it has made a reasonable decision based on substantial evidence in the record and the path of its reasoning must be clear." *Id.* (citations and internal quotations omitted).

### B. The Commission's Dismissal of the Complaint Was Reasonable.

The Commission properly dismissed the complaint. Petitioners alleged that Southern had applied GT&C § 3.1(b) in an unduly discriminatory manner by requiring more extensive processing of their gas stream than the pipeline required of other producers' gas streams. Petitioners sought an evidentiary hearing for the manifest purpose of obtaining evidence through discovery that might substantiate their claims.

The Commission refused to permit such a fishing expedition. To establish entitlement to a hearing, Petitioners had to provide something more than bare allegations that discrimination had occurred, and might possibly occur again. Petitioners had acknowledged that "all gas met the 0.3 GPM C5+ standard at the

relevant measurement points into [Southern's] mainline," and had presented nothing to substantiate their claim that they had been held to a more stringent processing standard than other suppliers of gas into that system. 106 FERC ¶ 61,158 P 23 (JA 163). For its part, Southern had consistently stated that all gas injected into its system must meet the tariff standard of 0.3 GPM, except for upstream gas that will be processed to meet the 0.3 GPM standard. *Id.* The Commission reasonably inferred that if Southern had held Petitioners to a stricter processing standard than 0.3 GPM, Petitioners should have been able to substantiate that claim, without any need for a hearing and discovery, by providing some sort of notification from Southern informing them of this stricter standard. *Id.* P 24 (JA 163). Despite having more than two years to develop such evidence, Petitioners presented nothing to substantiate their claim. *Id.*

Thus, there was no reason to set the matter for an evidentiary hearing, because Petitioners had raised no "genuine issues of material fact relevant to whether Southern's existing tariff is unjust or unreasonable or unduly discriminatory." 104 FERC ¶ 61,300 P 35 (JA 127-28). Rather, Petitioners, in effect, were seeking an evidentiary hearing to "create a new forum" for solicitation of "information through discovery" that "might justify their proposal for a safe harbor standard on Southern's system." *Id.*

FERC's ruling was consistent with a longstanding policy of requiring a complainant to substantiate its allegations as a prerequisite to obtaining an evidentiary hearing. That policy is codified in FERC's regulations and has been affirmed by this Court. *See* 18 C.F.R. § 385.206(b)(8) (a complaint must attach all supporting documents "in the possession of, or otherwise attainable by, the complainant, including, but not limited to, contracts and affidavits"); *City of Holyoke v. FERC*, 954 F.2d 740, 744 (D.C. Cir. 1992) ("*Holyoke*") ("[t]he threshold requirement that a complainant to proffer evidence adequate to support its allegations before the Commission screens out meritless hearing requests . . . . the Commission quite properly refused to hold a hearing based on 'bare allegations'"); *General Motors Co. v. FERC*, 656 F.2d 791, 798 n.20 (D.C. Cir. 1981) ("where a party requesting an evidentiary hearing merely offers allegations . . . without an adequate proffer to support them, the Commission may properly disregard them.").

Petitioners' failure to substantiate their claims also precluded a forced revision of Southern's tariff. Under NGA § 5(a), Petitioners could only compel the sought-after changes in Southern's tariff if they demonstrated that the currently effective tariff was unjust and unreasonable, and that their proposed changes were just and reasonable. 104 FERC ¶ 61,300 P 37 (JA 128); *see Sea Robin Pipeline Co. v. FERC*, 795 F.2d 182, 184 (D.C. Cir. 1986). Petitioners' claim that Southern's tariff was

unjust and unreasonable was based solely on their allegation that § 3.1(b) permitted Southern to require more extensive processing of Petitioners' gas stream than of other suppliers' gas streams. Because Petitioners failed to show that Southern had actually imposed such disparate processing requirements, they failed to make a *prima facie* case of discrimination. *See Southwestern*, 347 F.3d at 981 (complainant that failed to attach documents described in 18 C.F.R. § 385.206(b)(8) to its complaint and relied solely on oral testimony of disparate treatment developed at hearing "failed to meet its burden to make out a *prima facie* case of discrimination"). Accordingly, Petitioners failed to show that Southern's tariff was unjust and unreasonable, and the Commission had no basis for revising that tariff under NGA § 5(a).

Despite Petitioners' failure of proof, the Commission took action to minimize any adverse impact to them that might result from the rulings. Dismissal of the Petition was conditioned on Southern filing, under NGA § 4(e), revised tariff sheets containing an aggregation methodology with the flexible HDP standard described in *Natural*. 104 FERC ¶ 61,300 P 26, Ordering P (B) (JA 126, 128-29); *see id.* PP 40-41 (JA 128). The Commission explained that all matters of concern raised by Petitioners could "be examined in the NGA § 4(e) proceeding." *See id.* P 36 (JA 128). Southern's subsequent filing of revised tariff sheets in FERC Docket No. RP04-42

and Petitioners' active participation in that proceeding allow them to pursue the same remedy they sought in their complaint.

### C. Petitioners' Arguments to the Contrary Are Unavailing.

#### 1. The Challenged Orders Are Consistent with *Natural*.

Petitioners argue that the Commission has provided no rational explanation for requiring the pipeline in *Natural*, Natural Gas Pipeline Company of America, to implement a safe harbor HDP standard while declining to require Southern to implement such a standard in the instant orders. Br. at 19-21.

While acknowledging that it had required Natural "to adopt a HDP permanent safe harbor," the Commission explained that "the circumstances there" were "wholly inapposite" to those in the instant case. 106 FERC ¶ 61,158 P 26 (JA 163-64). The cases arose in different ways. Southern was not proposing to change GT&C § 3.1(b), Natural was proposing a "new gas quality standard[.]" *Id.* Southern's 0.30 GPM ceiling, was "a specific quality standard[,]" whereas Natural was proposing an "HDP methodology" that contemplated Natural posting on its website "a gas quality standard at a level and in a location" that Natural would set, at any given time, "in its sole discretion." Br. at 21. Given the wide latitude Natural was seeking, the Commission required a safe harbor "to balance the flexibility being afforded" to the pipeline

"against the shippers' need for regulatory certainty." *Natural*, 102 FERC ¶ 61,234 P 32.[3]

Petitioners also contend that Natural's request of "authority to post on its website a gas quality standard at a level and in a location to be determined by Natural in its sole discretion" was equivalent to Southern's issuance of "notices to shippers" that "threatened to shut in production upstream of the Toca Plant if 100% of the gas was not processed." Br. at 21-22. The actions of Southern and Natural were not equivalent. Contrary to Petitioner's characterization, Southern did not condition its acceptance of all gas upstream of the Toca Plant on the gas's being processed downstream. Rather, Southern stated that for reasons of safety, JA 53-54, gas not meeting the 0.3 GPM standard for isopentane and heavier hydrocarbons would be rejected. JA 76-77 P 14. This followed Southern's policy of enforcing § 3.1(b) when the Toca Plant chose not to operate for economic reasons. JA 83-84 P 27.[4] Thus, whereas Southern was enforcing an objective, long-standing gas quality standard in accordance with an established policy, Natural was proposing to impose a wholly

[3] In addition, the Commission had addressed Natural's proposal "as a pipeline specific proposal, not as a proposal applicable to Southern, much less the industry." 104 FERC ¶ 61,300 P 38 (JA 128). In *Natural*, FERC had "declined to institute a rulemaking proceeding under [NGA § 5(a)] to develop industry-wide pipeline quality standards for liquefiable hydrocarbons." 106 FERC ¶ 61,158 P 26 (JA 163-64) (citing *Natural*, 102 FERC ¶ 61,234 P 5).

subjective standard on its shippers.

Petitioners' other claim of equivalency between the two sets of orders assumes that both proceedings involved "the pipeline's unfettered discretion to impose processing requirements[.]" Br. at 23. Based on that assumption, and the further assertion that parties in both proceedings sought "exactly the same [relief]" – inclusion of a safe harbor HDP standard in the tariff – Petitioners claim that it was error for FERC to grant that relief "in one case, but not in the other[.]" *Id.*

Again, Petitioners mischaracterize the two situations. Southern did not exercise, or seek to exercise, "unfettered discretion" regarding gas processing; rather, it enforced a previously approved, objective tariff provision in accordance with established policy. JA 76-77 P 14; JA 83-84 P 27. Natural on the other hand, *sought* unfettered discretion to vary an HDP standard – from time to time and from location to location – as it saw fit. Br. at 21. Those significant differences dictated the differing Commission responses to the requested relief. Because Southern's tariff included an objective 0.3 GPM standard, and because Petitioners failed to support their allegations that Southern had implemented the tariff in an unduly discriminatory manner, FERC dismissed Petitioners' request for inclusion of a safe harbor HDP

---

[4] It should be remembered that the Toca Plant was owned in part by Petitioners'

provision in that tariff. *See* 106 FERC ¶ 61,158 PP 24, 26-27 (JA 163-64); *Southwestern*, 347 F.3d at 981. In contrast, because Natural effectively sought unfettered discretion to set standards, the Commission found it necessary to circumscribe this discretion by requiring inclusion of such a provision in Natural's tariff. *Natural*, 102 FERC ¶ 61,234 P 32. In short, there is no inconsistency between the two sets of orders, because each set addressed a different situation.

Petitioners' claim that the denial of their request for an evidentiary hearing here was inconsistent with the grant of such a hearing in *Natural*, Br. at 27-28, is similarly misguided. The Commission ruled that Natural had to include an objective HDP standard in its tariff without conducting a hearing. *Natural*, 102 FERC ¶ 61,234 P 32. Having made the threshold determination that Natural must include such a provision in its tariff, the Commission ordered an evidentiary hearing to ascertain what the HDP level should be. *Natural*, 104 FERC ¶ 61,322 P 38. Thus, *Natural* does not support Petitioners' claim that a hearing was needed to determine whether a safe harbor HDP provision should be included in Southern's tariff.

Finally, Petitioners assert that the instant orders are inconsistent with subsequent FERC orders that rejected proposals to give pipelines discretionary power to set "liquefiable gas quality standards," and that encouraged or required those

---

affiliates. 106 FERC ¶ 61,158 P 4 n.6 (JA 160).

pipelines to include safe harbor HDPs in their tariffs. Br. at 23-24 (citing *Indicated Shippers v. Columbia Gulf Transmission Co.*, 106 FERC ¶ 61,040 P 41 (2004); *ANR Pipeline Co.*, 108 FERC ¶ 61,323, *order on reh'g*, 109 FERC ¶ 61,138 (2004)).

Those orders cannot properly be considered as controlling in the instant case. The *ANR* orders were issued after the challenged orders, and thus "play no role" in the Court's "determination of the [challenged] orders' legality." *See Union Pacific Fuels, Inc. v. FERC*, 129 F.3d 157, 164 (D.C. Cir. 1997). Petitioners' failure to raise *Indicated Shippers* on rehearing, *see* JA 130-59, deprives the Court of jurisdiction to consider that decision now. The NGA precludes the Court from considering objections that a petitioner fails to make on rehearing absent good cause for the failure. 15 U.S.C. § 717r(b). The courts have strictly adhered to that requirement. *See*, *e.g.*, *Panhandle E. Pipe Line Co. v. FPC*, 324 U.S. 635, 645 (1945) (petitioner precluded from raising objection on judicial review that was not raised on rehearing, despite petitioner's having raised the objection earlier in the administrative proceeding); *ASARCO, Inc. v. FERC*, 777 F.2d 764, 773-74 (D.C. Cir. 1985) (petitioner precluded

from raising objection on judicial review that petitioner failed to raise on rehearing, even though other parties raised the same argument on rehearing).[5]

In any event, these subsequent orders are distinguishable from the instant orders. In *Indicated Shippers*, the pipelines had adopted new specifications, as permitted by their tariffs, giving them broad authority to vary the quality of gas they would accept into their systems. *See* 106 FERC ¶ 61,040 PP 12, 19 (pipeline may impose additional restrictions if it determines "in its reasonable judgment" that receipt of gas could harm its facilities; pipeline could require gas to be processed "at its reasonable discretion"). In *ANR*, the pipeline proposed a new gas quality provision similar to that proposed in *Natural*. 108 FERC ¶ 61,323 PP 1-9. Thus, it was appropriate to mandate a safe harbor provision in *Indicated Shippers* and *ANR* for the same reason it was appropriate to require such a provision in *Natural*. Southern, on the other hand, had an existing, objective standard, and Petitioners failed to show that the standard was enforced in other than a uniform manner. *See* 106 FERC ¶ 61,158

[5] The Commission issued *Indicated Shippers* after Petitioners filed their request for rehearing of the Complaint Order, but prior to the issuance of the Rehearing Order. Accordingly, there is no "good cause" for Petitioners' failure to bring the alleged inconsistencies between *Indicated Shippers* and the Complaint Order to the Commission's attention by supplemental filing or otherwise. Absent such effort, Petitioners lack good cause for not raising the alleged inconsistencies so that they could be considered in the Rehearing Order. Moreover, Petitioners can hardly fault the Commission for not considering alleged inconsistencies that Petitioners failed to point out.

PP 24, 26 (JA 163-64). Accordingly, there was no justification for requiring a safe harbor provision in the instant case.

### 2. Petitioners Did Not Establish a Need for an Evidentiary Hearing.

Petitioners claim that in declining to set an evidentiary hearing, FERC ignored allegedly "contested factual issues" raised by the complaint, such as "what is the proper HDP temperature that will protect Southern's system on the one hand, but not require more processing than necessary for safety reasons on the other hand[.]" Br. at 24-25.

Petitioners' list of "contested factual issues" puts the cart before the horse. These issues might be pertinent to the question of what HDP levels should be incorporated into Southern's safe harbor provision now being considered in FERC Docket No. RP04-42, but such issues were not relevant to whether Petitioners justified requiring such a provision. To support such a revision, Petitioners had to establish that Southern's existing tariff was unjust and unreasonable (*see* 104 FERC ¶ 61,300 P 37 (JA 128); *Sea Robin,* 795 F.2d at 184), which they attempted to show by claiming that the pipeline implemented GT&C § 3.1(b) in an unduly discriminatory manner. 104 FERC ¶ 61,300 P 16 (JA 125); 106 FERC ¶ 61,158 P 9 (JA 161). None of the allegedly "contested factual issues" listed by Petitioners bears on whether Southern

implemented the provision in such an unlawful manner, and thus all are irrelevant as to whether a hearing should have been held in this matter.

Petitioners assert "summary dismissal of the Complaint for lack of evidence, without providing any discovery rights to obtain evidence, was unreasoned decisionmaking." Br. at 28. Petitioners claim such action was particularly egregious because "crucial facts were in the control of" Southern. *Id.* at 26 (citation and internal quotation omitted). Moreover, Petitioners assert, the Commission's action was and is contrary to practice under the Federal Rules of Civil Procedure. *Id.* at 29.

The Commission's action was consistent, however, with its own rules, *see* 18 C.F.R. § 385.206(b)(8), and with its long-standing policy of requiring complainants to provide reasonable substantiation of their claims as a prerequisite for obtaining an evidentiary hearing. *See Holyoke*, 954 F.2d at 744; *General Motors*, 656 F.2d at 798 n.20. In addition, the Commission reasonably determined that if Southern had imposed a more stringent processing standard on Petitioners than 0.3 GPM, it would have notified them of that fact, and they could have presented that notification in support of their complaint. 106 FERC ¶ 61,158 P 24 (JA 163). Thus, the Commission properly followed its rules and policy in this matter.

### 3. Petitioners Failed To Establish That Southern Had Engaged in Undue Discrimination.

Petitioners assert that the Commission did not reasonably address Petitioners' contention Southern had engaged in "undue discrimination" by requiring "100% processing only for those producers whose gas was located upstream of the Toca Plant." Br. at 30. In this regard, Petitioners claim that they "were required to 'super-process' their gas, *i.e.*, process 100% of the gas at the Toca Plant, at considerable cost, to a much stricter level *far below the 0.3 GPM C5+ standard in the tariff*, while other gas was permitted to enter the system that had not been processed to this degree." *Id.* at 31 (emphasis in original).

The Complaint Order fully addressed Petitioners' claim "that the lack of standards in the tariff permitted Southern to require [them] to process the natural gas to a greater degree than other producers, or be shut-in, without any evidence that the level of processing required by Southern was necessary to protect the system integrity," and thereby "to discriminate unduly among suppliers of natural gas into Southern's system." 104 FERC ¶ 61,300 P 14 (JA 125). In response, Southern had asserted that "[a]t all receipt points," it "uniformly enforce[d] its liquefiable hydrocarbon quality specification." *Id.* P 28 (JA 127). As Petitioners had "not provided any evidence to refute" Southern's statement, the Commission found Petitioners had failed to meet their burden. *Id.* at P 37 (JA 128).

The Rehearing Order reiterated this lack of proof: Petitioners "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." 106 FERC ¶ 61,158 P 23 (JA 163). "Southern, on the other hand," had "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 injected upstream will be processed so that it will meet the 0.3 GPM standard after processing." *Id.* Accordingly, the record showed that Southern was not applying a stricter standard to Petitioners' gas. "[I]f after processing, the gas downstream of the Toca Plant" was "less than the 0.3 GPM tariff standard[,]" it was not because Southern was requiring that the gas be processed to a more stringent standard, and did not establish that Southern was holding Petitioners "to a higher standard than others." *Id.*[6]

Petitioners claimed to have proffered proof that Southern held them to higher processing requirements than other producers. But their "proof" is faulty. First, they contend that by acknowledging "'that the gas at the other downstream Receipt Points had a higher liquefiable hydrocarbon content than the gas flowing into Southern's

[6] Petitioners claim that Southern's assertion that it uniformly enforces § 3.1 is belied by the fact that the pipeline "routinely waives" the provision upstream of the Toca Plant. Br. at 32. As the Commission explained, it was Southern's policy only to grant such waivers with respect to gas streams that would be processed downstream. 106 FERC ¶ 61,158 P 23 (JA 163).

system downstream from'" the Toca Plant, "Southern conceded" the accuracy of Petitioners' contention. Br. at 31 (quoting JA 85 P 30). Next they point to Southern's notice, attached as Exhibit B to their complaint, that Southern would not waive GT&C § 3.1(b) for any gas stream upstream of the Toca Plant unless 100% of the stream was processed at the plant. Br. at 35-36 (citing JA 54).

The Court lacks jurisdiction to consider this proffer. The Complaint Order dismissed the complaint based on Southern's assertion that it enforced its tariff in a uniform manner and on Petitioners' failure to provide evidence refuting those assertions. 104 FERC ¶ 61,300 PP 28, 37 (JA 127, 128). Petitioners failed on rehearing to mention the alleged "evidence" they now proffer to the Court. *See* JA 130-59. Petitioners' failure deprives the Court of jurisdiction to consider this "evidence" now. *Panhandle*, 324 U.S. at 645; *ASARCO*, 777 F.2d at 773-74.

In any event, Petitioners' evidence does not demonstrate that Southern imposed disparate processing requirements on producers. First, Southern's admission that the hydrocarbon content of gas flowing into its system varies from receipt point to receipt point is not an admission that Southern is imposing different requirements on its suppliers. Nothing in the record suggests Southern is causing this disparity. *See* 104 FERC ¶ 61,300 P 28 (JA 127) ("[t]he 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").

Similarly, the notice stating that Southern would enforce GT&C § 3.1(b) upstream of the Toca Plant if the plant's operators decided "not to operate the gas to process 100% of the gas stream available to them[,]" *see* JA 54, does not show disparate treatment. Southern's statement that it enforced § 3.1(b) at all receipt points downstream of processing plants, and only waived this requirement for suppliers upstream of processing plants if the plants were processing all of the suppliers' gas, is unrefuted. Thus, there is no evidence that Southern did not impose the 100% processing requirement on all members of that similarly situated, upstream group, or even that Southern's imposition of this requirement on Petitioners constituted a departure from past practice. Given this record, Southern's imposition of the so-called "100% requirement" did not amount to discrimination, much less undue discrimination.

## CONCLUSION

For the foregoing reasons, the petition for review should be denied.

Respectfully submitted,

Cynthia A. Marlette

General Counsel

Dennis Lane
Solicitor

David H. Coffman
Attorney

Federal Energy Regulatory
Commission
Washington, D.C. 20426
Office: (202) 502-8132
FAX: (202) 273-0901

March 11, 2005

**ORAL ARGUMENT IS SCHEDULED FOR MAY 10, 2005**

**IN THE UNITED STATES COURT OF APPEALS**
**FOR THE DISTRICT OF COLUMBIA CIRCUIT**

---

**No. 04-1135**

---

**THE TOCA PRODUCERS, *et al.***
**PETITIONERS,**

**v.**

**FEDERAL ENERGY REGULATORY COMMISSION,**
**RESPONDENT.**

---

**ON PETITION FOR REVIEW OF ORDERS OF THE**
**FEDERAL ENERGY REGULATORY COMMISSION**

---

# BRIEF FOR RESPONDENT FEDERAL ENERGY REGULATORY COMMISSION

---

**CYNTHIA A. MARLETTE**
**GENERAL COUNSEL**

**DENNIS LANE**
**SOLICITOR**

**DAVID H. COFFMAN**
**ATTORNEY**

**FOR RESPONDENT**
**FEDERAL ENERGY REGULATORY**
**COMMISSION**
**WASHINGTON, D.C. 20426**

**MARCH 11, 2005**

## CIRCUIT RULE 28(a)(1) CERTIFICATE

**A.** ***Parties and Amici*:** All participants in the proceedings below and in this Court are listed in Petitioners' Circuit Rule 28(a)(1) certificate.

**B.** ***Rulings Under Review*:**

1. *The Toca Producers v. Southern Natural Gas Co.*, Docket No. RP03-484, 104 FERC ¶ 61,300 (2003) (JA 123-29).

2. *The Toca Producers v. Southern Natural Gas Co.*, Docket No. RP03-484, 106 FERC ¶ 61,158 (2004) (JA 160-64).

3. *The Toca Producers v. Southern Natural Gas Co.*, Docket No. RP03-484, 107 FERC ¶ 61,009 (2004) (JA 178).

**C.** ***Related Cases*:** Counsel is not aware of any related cases pending before this or any other Court.

_____

David H. Coffman
Attorney

March 11, 2005

TABLE OF CONTENTS

PAGE

TABLE OF CONTENTS

PAGE

TABLE OF AUTHORITIES

COURT CASES:



---

* Cases chiefly relied upon are marked with an asterisk.

TABLE OF AUTHORITIES

PAGE

COURT CASES: (Cont'd)

# TABLE OF AUTHORITIES

PAGE

ADMINISTRATIVE CASES:

# TABLE OF AUTHORITIES

# GLOSSARY

| | |
|---|---|
| BTU | British Thermal Unit |
| Commission or FERC | Federal Energy Regulatory Commission |
| FPA | Federal Power Act, 16 U.S.C. § 791a, *et seq.* |
| GPM | Gallons per thousand cubic feet |
| GT&C | General Terms and Conditions of Southern's tariff |
| HDP | Hydrocarbon Dewpoint |
| NGA | Natural Gas Act, 15 U.S.C. 717, *et seq.* |
| Southern | Intervenor Southern Natural Gas Company |
| The Toca Plant | Three processing plants partially owned by Petitioners |