

104 FERC ¶ 61,322
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
William L. Massey, and Nora Mead Brownell.

Natural Gas Pipeline Company of America

Docket Nos. RP01-503-002
RP01-503-003

ORDER ON REHEARING AND COMPLIANCE FILING AND ESTABLISHING
HEARING

(Issued September 23, 2003)

1. On March 28, 2003, Natural Gas Pipeline Company of America (Natural) filed revised tariff sheets in compliance with the Commission's February 27, 2003 Order in this proceeding.¹ Among other things, the February 27, 2003 Order directed Natural to file revised tariff sheets to modify the procedures in its General Terms and Conditions (GT&C) for setting maximum limits on the Btu and/or dewpoint value of the gas entering its system.² Natural's compliance filing establishes a permanent dewpoint safe harbor; requires Natural to post certain dewpoint and Btu values with calculations on its Internet website; and requires Natural to continuously post variable safe harbor Btu and dewpoint values and to make any changes in the variable safe harbor values effective no sooner than 30 days after the changes are posted. Indicated Shippers and Alliance Pipeline L.P. (Alliance) filed protests to Natural's March 28, 2003 compliance filing. Indicated Shippers also filed a request for rehearing and clarification of the February 27, 2003 Order.

2. This order addresses both the rehearing request and Natural's compliance filing. For the reasons discussed below, the Commission accepts the revised tariff sheets, subject to conditions, grants in part and denies in part Indicated Shippers' request for rehearing and clarification, and establishes a hearing to address the issue of the

¹Third Revised Sheet No. 343 and First Revised Sheet No. 343A to FERC Gas Tariff Sixth Revised Volume No. 1.

²Natural Gas Pipeline Company of America, 102 FERC ¶ 61, 234 (2003).

appropriate permanent safe harbor level. This decision benefits the public because it ensures just and reasonable rates for Natural's customers while providing a forum for the parties to address the material issues of fact related to the appropriate permanent dewpoint safe harbor level.

I. Background

3. Section 26.1 of Natural's GT&C provides that gas delivered to Natural must be of pipeline quality and must conform to various specifications which are listed in Sections 26.1(a) through (k). Section 26.1(f) provides that gas tendered to Natural "shall not contain any hydrocarbons which might condense to free liquids in the pipeline under normal pipeline conditions." Section 26.1(h) provides that the gas shall contain a daily, monthly, and yearly average heat content of not less than 950 Btus per cubic foot. On August 6, 2001, Natural filed revised tariff sheets to modify Section 26.1(h).

Specifically, Natural proposed that it may, from time to time, post on its Internet website an upper Btu limit and/or a limit on the dewpoint for gas receipts on specified segments or locations. In Natural's view these limits would prevent hydrocarbon fallout consistent with Section 26.1(f) or assure gas is accepted for delivery by downstream pipelines, LDC's, or end users. Natural did not propose to modify the gas quality standard in Section 26.1(f). The Indicated Shippers protested Natural's filing contending that Natural's proposed changes to the gas quality provisions of the tariff were unnecessary. Three parties filed comments.

4. Natural's proposal was an attempt to remedy problems it experienced during the winter of 2000-2001 when gas prices were so high that liquefiable hydrocarbons had a greater value to shippers as constituents of the gas stream than as extracted liquids. Therefore, shippers ceased their common practice of extracting the liquefiable hydrocarbons before tendering the gas to Natural. This caused the closing of two non-affiliated gas processing plants that normally would tender processed residue gas. Natural then imposed limits on the Btu content of the gas it received along its Louisiana Line to maintain deliveries to interconnecting downstream pipelines, which had similar Btu and/or dewpoint limits on the gas Natural delivered into their systems.

5. Under the proposed procedures, Natural would give at least two (2) business days notice before a posted Btu and/or dewpoint limit would become effective, or explain why such notice could not be provided. Natural's posting would also state the anticipated duration of the posted limit and, where the posting included a dewpoint limit, Natural would (upon request) provide the affected point operators, gas producers, gas purchasers,

and shippers with current information regarding the dewpoint at any point of receipt affected by the posting.³

6. On September 5, 2001, the Commission accepted Natural's revised tariff sheets, effective September 6, 2001 (September 5 Order).⁴ Indicated Shippers promptly requested rehearing of the September 5 Order. On February 1, 2002, the Commission issued an order on rehearing establishing a technical conference to gather additional information and give the parties an opportunity to address the issues raised on rehearing.⁵

7. Following the March 19, 2002 technical conference, Natural filed comments proposing to revise Section 26.1(h) of its GT&C to state that it would post gas quality restrictions at least ten (10) days prior to the beginning of the month in which the limit is to be effective, instead of the 2-day notice period that was accepted by the September 5 Order. Additionally, Natural proposed to continuously post on its Internet website, a so-called "safe harbor" Btu and/or dewpoint value based on operational and engineering considerations and effectuate any subsequent change to the "safe harbor" values no sooner than 30 days after the initial value(s) were posted. Most importantly, Natural would not decline to accept gas which conforms to the posted safe harbor values.

8. On February 27, 2003, the Commission issued an order after technical conference and on rehearing. The Commission found that, with the modifications Natural proposed after the technical conference and with certain additional modifications, Natural's proposed changes to Section 26.1(h) would enable Natural to control liquids fallout on its system and the proposal was not unduly discriminatory. Accordingly the Commission approved the proposal, as modified.

9. The order rejected protestors' request that the Commission require Natural to adopt defined Btu and/or dewpoint limits in its tariff that are always applicable, not subject to change via posting on the internet. The Commission found that conditions vary on Natural's system from place to place and time to time and therefore Natural should have some discretion in dealing with the threat of liquids fallout. The Commission recognized that Natural's proposal permits it to set different Btu and/or

³Natural exempts points where the flow is 100 Dth/d or less from all Btu/cf and dewpoint limitations, because these points have essentially no impact on the system and would be difficult to monitor.

⁴Natural, 96 FERC ¶ 61,253 (2002).

⁵Natural, 98 FERC ¶ 61,099 (2002).

dewpoint limits at different times to meet different circumstances on different parts of its system, but found that this was not necessarily undue discrimination under the Natural Gas Act (NGA). The United States Court of Appeals for the District of Columbia Circuit has held that differences in treatment of shippers "based on relevant significant facts which are explained are not contrary to the NGA."⁶ The court further found that operational constraints in particular parts of a pipeline system may justify treating shippers on those parts of the system differently than shippers on other parts of the system.⁷ The Commission determined that Natural's ability to deal with liquid fallout problems from the injection of rich gas constantly changes depending on the amount of lean gas available to Natural to blend with the rich gas and the degree of operational flexibility Natural has to blend the gas mix over the path that the rich gas flows before delivery. Also, Natural must operate its system in a manner that allows it to deal with dissimilar gas volumes. The Commission stated that if evidence surfaces that Natural has applied its new procedures for controlling liquids in an unduly discriminatory manner, it would consider further action.

10. The Commission also found that attempting to prevent any and all discrimination by applying fixed standards could result in requiring certain shippers to process their gas even when Natural is operationally able to blend-away any potential liquids fallout problem. Thus, allowing Natural the flexibility to apply a more stringent liquefiable hydrocarbons standard when and where Natural's blending and extraction capabilities are insufficient benefits Natural's customers by allowing Natural to accept more gas than it could under a permanent quality standard. The Commission further stated that arriving at a more objectively stated liquefiable hydrocarbons quality standard than current Section 26.1(f) would compromise Natural's flexibility to operate its system to maximize gas flow and benefit all customers.

11. The Commission balanced the need to provide Natural the flexibility in proposed Section 26.1(h) against the shippers' need for certainty regarding the quality standards their gas must meet by requiring Natural to do two things. First, the order directed Natural to file to set forth in its tariff a permanent, systemwide "safe harbor" dewpoint, in addition to the safe harbor Btu and/or dewpoint values that Natural would continuously post on the internet. Natural is free to change the "safe harbor" values it will post on the internet on 30 days notice, based on changing conditions on its system. The Commission found, in addition to these changing safe harbor values, Natural should include a

⁶Consolidated Edison Co. v. FERC, 165 F.3d 992, 1013 (D.C. Cir. 1999).

⁷Consolidated Edison Co. v. FERC, 165 F.3d 992, 1010-14 (D.C. Cir. 1999).

permanent safe harbor dewpoint, *i.e.*, a minimum systemwide dewpoint for the gas tendered to Natural, that guarantees delivery of all gas with a dewpoint that does not exceed the safe harbor dewpoint, regardless of changing conditions in Natural's own market areas, and/or Btu and/or dewpoint limits in place on downstream pipelines. The Commission was persuaded by Indicated Shippers' argument that Natural should be able to set a permanent safe harbor dewpoint on its system, given that Natural strives to maintain a 25°F dewpoint in its Market Delivery Zone.

12. Second, the Commission stated that, to monitor Natural's actions, it would rely on shippers to file complaints. Therefore, the order directed Natural to file revised tariff provisions that provide that it shall post, on its Internet website, every receipt point dewpoint value Natural calculates, along with the method by which the dewpoint was calculated, and every blended dewpoint and blended Btu value Natural calculates for a line segment of its system. The Commission required Natural to post this information on its Internet website within 24 hours of completion of such calculations.

13. The February 27, 2003 Order also found it reasonable that a "shipper that injects rich gas at any point, or along any given line segment of Natural's system, must bear the cost of processing that non-conforming gas, since in the absence of such processing the presence of that rich gas in Natural's system could prevent Natural from providing service to other customers."⁸ The Commission thus rejected Indicated Shippers' proposal that all Natural's rate payers bear the cost of blending or processing the gas stream. The order also found that the public interest required allowing Natural to conform the gas it delivers to downstream pipelines to the Btu limits imposed by the interconnecting pipelines.

14. On March 28, 2003, Natural filed tariff sheets revising Section 26.1(h) of its GT&C to comply with the Commission's February 27, 2003 Order. As revised, Section 26.1(h) includes four subsections. Consistent with its original proposal, Section 26.1(h)(1) authorizes Natural to post on the internet an upper Btu/cf limit and/or a limit on the dewpoint for gas receipts on specified segments or locations on its system. Section 26.1(h)(1) also provides that Natural will post these gas quality restrictions at least ten (10) days prior to the beginning of each month, instead of the prior 2-day notice period. Proposed Section 26.1(h)(2) includes the required two safe harbor provisions: (1) a permanent, systemwide safe harbor dewpoint set forth in the tariff, and (2) a variable safe harbor Btu and/or dewpoint level posted on the internet. For the permanent, systemwide safe harbor dewpoint, Natural proposed to include in its tariff a provision

⁸Natural, 102 FERC ¶ 61,234 at P 42 (2003).

that it "may not decline to accept gas based on its dewpoint if the dewpoint of that gas is equal to or less than 15 degrees Fahrenheit. For the variable posted safe harbor, Section 26.1(h)(2) provides that Natural will continuously post on the internet, safe harbor Btu and dewpoint values and shall give at least 30 days notice before effectuating any subsequent changes in these values. Section 26.1(h)(2) provides that Natural may not decline to accept gas that conforms to these safe harbor values. Also, no posting can set out a dewpoint safe harbor of less than 15° F.

15. Proposed Section 26.1(h)(3) provides that where any posted limit under Section 26.1(h)(1) includes a dewpoint limitation, Natural will calculate the dewpoint at any receipt point affected by the posting on request of the operator of that point or any producer, purchaser, supply aggregator or shipper with gas being tendered at that point. Proposed Section 26.1(h)(4) provides for Natural to post on its Internet website (1) every receipt point dewpoint value Natural calculates, within 24 hours of such calculation, along with the method by which the dewpoint was calculated; and (2) every blended dewpoint and blended Btu value Natural calculates for a line segment of its system, within 24 hours of such calculation.

II. Notice, Interventions, and Protests

16. Notice of Natural's compliance filing was issued on April 1, 2003, with motions to intervene and protests due April 9, 2003. Notices of intervention and unopposed timely filed motions to intervene are granted pursuant to Rule 214 of the Commission's Rules of Practice and Procedure (18 C.F.R. § 385.214 (2003)).

17. Indicated Shippers and Alliance filed protests to Natural's March 28, 2003 compliance filing. On March 31, 2003, Indicated Shippers filed a timely request for rehearing and clarification of the February 27, 2003 Order. On April 17, 2003, Natural filed to clarify its compliance filing and augment the record in response to Alliance's and Indicated Shippers' protests. Alliance and Indicated Shippers filed responses to Natural's April 17, 2003, filing on April 22, 2003, and June 9, 2003 respectively. On June 24, 2003, as amended June 27, 2003, Natural filed an answer to Indicated Shippers June 9, 2003, response. On August 22, 2003, Indicated Shippers filed a response to Natural's June 27, 2003 filing.⁹

⁹While the Commission's Rules of Practice and Procedure generally prohibit answers to protests and answers, the Commission will accept all the filings to allow a better understanding of the issues. See 18 C.F.R. 385.213(a)(2) (2003).

III. Discussion

18. For the reasons discussed below, the Commission denies the requests for rehearing of the February 27 Order. However, the Commission requires Natural to make certain changes to its compliance filing and the Commission establishes a hearing to consider issues concerning the appropriate level of the permanent safe harbor dewpoint limits the Commission previously required Natural to establish.

A. Appropriate Permanent Safe Harbor Dewpoint Level

19. The parties have raised a number of issues both on rehearing of the February 27 Order and in protests to Natural's compliance filing concerning the permanent safe harbor provision which the February 27 Order required Natural to include in its tariff.

1. What did the February 27 Order require?

20. First, the parties raised issues concerning the nature of the permanent safe harbor dewpoint provision the February 27 Order requires Natural to implement, including whether there are circumstances under which Natural may reject gas that satisfies the permanent safe harbor dewpoint level and whether the February 27 Order requires the permanent safe harbor dewpoint level to be set at 25° F, rather than the 15° F level proposed by Natural in its compliance filing.

Parties' Positions

21. In its request for rehearing and clarification, Indicated Shippers request that the Commission clarify that it will not permit Natural to change the permanent "safe harbor" dewpoint to allow incremental deliveries, or provide incremental service to other shippers, and the permanent safe harbor will remain in effect as a safety net for gas suppliers. Indicated Shippers also request the Commission clarify that Natural cannot skirt the permanent safe harbor dewpoint by attempting to impose overriding Btu standards. Indicated Shippers argue that the record in this proceeding shows that the permanent dewpoint safe harbor should take Btu and other relevant factors into account.

22. In their protests to the compliance filing, Alliance and Indicated Shippers object that Natural's proposed tariff language would permit Natural to reject gas for reasons other than its dewpoint level, since it only states that Natural will not reject gas "based on its dewpoint" if it satisfies the permanent safe harbor dewpoint level. Alliance and Indicated Shippers contend that this means Natural could reject gas for other reasons,

including failure to meet Btu standards. The protestors request that the Commission direct Natural to clarify its tariff language by stating that it will not set some other standard, (e.g., Btu) to circumvent the intent and purpose of the permanent dewpoint safe harbor.

23. Finally, Alliance and Indicated Shippers contend that the February 27, 2003 Order required Natural to set a permanent 25° F safe harbor dewpoint level, and therefore Natural's proposal to set a permanent 15° F safe harbor dewpoint level violates the February 27 Order. Alliance further states that, if Natural did not believe it could adopt the 25° F permanent safe harbor dewpoint level, Natural should have sought rehearing of the February 27, 2003 Order.

Commission Decision

24. The Commission holds that, if gas complies with the permanent safe harbor dewpoint, it may not be rejected for Btu content or changes in the requirements of downstream pipelines, LDCs, or end users. The February 27, 2003 Order required Natural to "include a safe harbor dewpoint, *i.e.*, a minimum systemwide dewpoint for the gas tendered to Natural, which guarantees that any gas with a dewpoint that does not exceed the permanent safe harbor dewpoint will be allowed to flow on Natural's system, regardless of changing conditions in Natural's own market areas, including whatever Btu and/or dewpoint limits are in place on the deliveries to downstream pipelines."¹⁰ Thus, the Commission intended the permanent safe harbor dewpoint to provide shippers a guarantee that, if their gas satisfied that provision, Natural would accept the gas regardless of the Btu content or the changed conditions in its market area. The purpose of the permanent safe harbor dewpoint is to provide an outer limit to the flexibility we have permitted Natural to vary its gas quality standards to ensure that no liquids fallout in the gas stream. This also enables Natural to meet downstream gas quality requirements while giving shippers at least some degree of certainty that Natural will accepted their gas. Accordingly, if the tendered gas meets the permanent dewpoint safe harbor, it meets the requirements of proposed Section 26.1(h), including the Btu/cf requirement. However, the gas must still meet the other gas quality standards in Section 26.1 covering such matters as oxygen, nitrogen, and carbon dioxide content.

25. In light of the above clarification, the Commission finds that Natural's proposed language does not fully comply with the February 27, 2003 Order. Because Natural's proposed tariff language states that gas satisfying the permanent safe harbor dewpoint

¹⁰Natural, 102 FERC ¶ 61,234 at P 43 (2003).

level may not be rejected "based on its dewpoint," it leaves open the possibility that gas may be rejected due to Btu content or market area changes. Therefore, we direct Natural to clarify its tariff by stating that the permanent safe harbor dewpoint level cannot be overridden by a separate Btu limitation or changing conditions in Natural's market area.

26. However, the Commission rejects the contention in the protests to Natural's compliance filing that the February 27, 2003 Order directed Natural to set the permanent safe harbor minimum systemwide dewpoint at 25° F. In requiring Natural to establish a permanent safe harbor dewpoint, the Commission stated that it was "persuaded by Indicated Shippers' argument that it should be possible for Natural to set a permanent safe harbor dewpoint on its system, given that Natural strives to maintain a 25° F dewpoint in its Market Delivery Zone."¹¹ However, this was not a holding that Natural must set the permanent safe harbor dewpoint at 25° F. It was only a finding that Natural should be able to set a permanent safe harbor dewpoint level at some level. The Commission did not have the necessary record before it to hold or specify a permanent safe harbor dewpoint level and thus only intended to require that Natural propose a specific permanent safe harbor dewpoint level and provide support for its proposal.

2. What is the appropriate permanent safe harbor dewpoint level?

27. Given our interpretation of the February 27 Order above, we now turn to the issue of establishing an appropriate permanent safe harbor dewpoint level.

Parties' Positions

28. In their protests, Alliance and Indicated Shippers contend that there is no supporting evidence for the 15° F permanent safe harbor dewpoint level proposed by Natural. In its April 17, 2003 filing, Natural submits that a permanent safe harbor dewpoint level above 15° F could jeopardize the safety and reliability of its system and the protests confuse a target dewpoint (the level Natural generally tries to reach in its market area under anticipated operating conditions) with a permanent dewpoint safe harbor. Natural also provides an example of conditions which could occur during the winter heating season (including actual composition of gas taken just upstream of the Searcy plant on April 15, 2003), and a graph showing behavior of a gas stream with the same gas composition as the sample as pressure is reduced for delivery. Natural's example assumes that the Searcy plant is experiencing an outage. Natural asserts that a 25° F permanent safe harbor dewpoint level would not prevent hydrocarbon fallout under the operating

¹¹102 FERC ¶ 61,234 at P 43.

conditions in the example, while a 15° F permanent safe harbor would provide the necessary margin of safety.

29. On April 22, 2003, Alliance filed comments to Natural's April 17, 2003 clarification filing. Alliance states the filing does not provide a basis for its refusal to adopt the 25° F permanent safe harbor dewpoint. Alliance also states that Natural's explanation for the 15° F permanent safe harbor dewpoint is too late because Natural failed to provide the explanation only after parties protested its compliance filing.

30. On June 9, 2003, Indicated Shippers also responded to Natural's April 17, 2003 filing. Indicated Shippers request that the Commission require a permanent 25E F dewpoint safe harbor; however, if a permanent safe harbor that is more stringent than 25E F is accepted they argue that the Commission should suspend Natural's tariff sheets for the maximum statutory period and set the proceeding for hearing. Indicated Shippers insist that it is too late for Natural to attempt to change the permanent dewpoint safe harbor, since other parties have not had an opportunity to examine the additional data or cross-examine the preparers of the data. Indicated Shippers state that Natural's proposed permanent safe harbor dewpoint level is unnecessarily low and unsupported by any of Natural's filings in this proceeding. Indicated Shippers submit that Natural's assertions that during this past winter the use of a 25E F target dewpoint in the market area *began to present operational concerns* are unsupported as is its example which portrays conditions which could occur. They argue that setting a low permanent safe harbor to take into account rarely occurring, severe conditions on Natural's system will cause shippers unnecessary system costs and would require significantly more processing resulting in significant financial expense for shippers and producers.

31. Indicated Shippers submit that the permanent dewpoint safe harbor need not encompass every theoretical or hypothetical possibility. Indicated Shippers state that the example's assumption that the Searcy plant was not operating could be a *force majeure* event and warrant the issuance of an operational flow order (OFO). Indicated Shippers assert that OFO procedures are available for rare instances when the permanent safe harbor would not protect the system. Indicated Shippers suggest that a permanent 25° F dewpoint safe harbor limit is appropriate to strike a balance between the reluctance to issue OFOs and shippers' and producers' opposition to processing gas to meet a needlessly low dewpoint level. Indicated Shippers believe the facts that: (1) the market predicts the possibility of a supply shortfall; and (2) gas is more valuable than liquids resulting in negative processing economics, and therefore shippers minimizing extraction of liquids should be considered when establishing a dewpoint standard. Indicated Shippers believes that minimization of liquids extraction helps to dampen price spikes that result from temporary supply shortages by providing additional gas supply to the market.

32. Indicated Shippers contend that Natural's conclusions as to the actual dewpoint of its gas sample are incorrect and Natural offers no explanation or workpapers in support of its dewpoint calculation. Indicated Shippers list several problems with Natural's analysis. Indicated Shippers state that Natural's dewpoint calculation includes incorrect assumptions with regard to the mix of heavier hydrocarbons and the heavy carbon content in Natural's sample exceeds the standards set on two other pipelines. Indicated Shippers point out that Natural's gas sample was quite lean (1030 Btu/Mcf), indicating that the gas stream had already been processed. Even considering Natural's incorrect assumptions, Indicated Shippers believe that analysis of Natural's gas composition confirms that Natural's system would not experience operational problems even with the Searcy Plant shut-in. Indicated Shippers state that Natural raises concerns about what will happen when the line pressure of a gas stream of the given gas composition drops to below 350 psig from the prevailing 735 psig line pressure, but Natural has provided no evidence related to design pressure drops on its system. Indicated Shippers believe that the dewpoint standard should be the maximum dewpoint the mainline pipeline can safely accommodate. Indicated Shippers also maintain that there will be insufficient cooling due to further pressure drops by LDCs for gas of the composition in the sample to cause operational problems. Finally, Indicated Shippers state that in Natural's gas sample list is incomplete because the listed components do not add up to 100 percent.

33. On June 24, 2003, as supplemented on June 27, 2003, Natural filed a response to Indicated Shippers' June 9, 2003 comments. Natural objects that Indicated Shippers' comments are not timely. Natural states that the permanent 15° F safe harbor dewpoint it proposes would enable Natural to accept gas meeting that standard under virtually all conditions. Natural also states that this would allow Natural to operate its system in a safe manner without reliance on OFOs. Natural argues that Indicated Shippers' approach, that Natural set the permanent safe harbor dewpoint at a target level which should be acceptable under most operating conditions with the expectation that Natural would have to issue an OFO if anything unusual or outside the routine occurs, is distorted. Natural contends that Indicated Shippers' approach would erode Natural's ability to use posted dewpoint limitations to assure safe operations when adverse operating situations occur. Natural submits that to issue OFOs limiting gas receipts is inconsistent with the permanent safe harbor concept to provide producers with a high degree of assurance that their gas would always flow.

34. Additionally, Natural states that issuing frequent OFOs is contrary to the Commission policy established in Order Nos. 637, *et seq.*, to minimize the use of OFOs and not use OFOs as a regular means of operational management. Natural also states that a pipeline's imposition of an OFO is highly disruptive and should be reserved for very exceptional circumstances and is not the best way to deal with a vital safety parameter,

such as the dewpoint of delivered gas. Natural claims that by the time it imposes an OFO the pipeline could already be flowing gas, which could create a safety hazard in the market area. Natural states that it needs adequate tools as part of its ordinary operating procedures to control the dewpoint content of its gas stream on a continuous basis to forestall safety problems without resorting to OFOs.

35. Natural argues that Indicated Shippers' contention that a permanent 15° F safe harbor dewpoint will force producers to do more processing is not straightforward. Natural states that it posts the dewpoint and Btu limitations actually in effect on its system daily and most days the effective dewpoint would be well above the proposed permanent 15° F safe harbor dewpoint. Natural also states that the actual burden on producers of a 15° F versus a permanent 25° F safe harbor dewpoint would be minimal and would occur only where additional processing is critical to the safety of the gas stream. Natural states that safety in the market area greatly outweighs this burden. Natural claims that Indicated Shippers seeks to shift costs to consumers and Indicated Shippers' argument that the acceptable dewpoint level and the design of downstream facilities are related is an effort to shift costs downstream for the economic benefit of producers.

36. Natural contends that Indicated Shippers' assertion that the Commission's order requires a permanent 25° F safe harbor dewpoint is not supported by the record or the February 27, Order. Natural states that it has always characterized 25° F as a target under ordinary operating conditions. Natural states it did not propose including a permanent safe harbor in its tariff and first specified a figure for a permanent safe harbor dewpoint in its March 28, 2003 compliance filing. Natural states that adoption of 25° F as the permanent safe harbor would eliminate Natural's ability to protect its market area deliveries whenever there are sub-optimal operating conditions, except for regular issuance of OFOs. Natural further states that it cannot reasonably predict a permanent safe harbor on all systems operating at or near optimal level. Natural included a corrected list of components in the gas sample, and maintains that use of the corrected components would not materially change the dewpoint calculation.

37. On August 22, 2003, Indicated Shippers filed a response to Natural's June 27, 2003 filing. In summary, Indicated Shippers argue Natural's filing shows there is no operational support for Natural's proposed 15° F permanent safe harbor and it is not tied to the gas sample data Natural provided. Indicated Shippers contend that Natural's statements raise concerns over Natural's ability to accurately determine dewpoints on its system.

Commission Decision

38. The important issue of the appropriate permanent safe harbor dewpoint figure raises complex operational and technical issues and is hotly contested. Since the permanent safe harbor dewpoint level is intended to provide shippers a guarantee that gas satisfying that provision will be accepted, regardless of changing conditions on the system, it is important to establish the permanent safe harbor at a level that will accommodate all conditions on Natural's system. At the same time, the permanent safe harbor provision is intended as a protection for shippers from discrimination by the pipeline. The current record remains inadequate for the Commission to resolve the various factual issues raised by the parties regarding the appropriate permanent safe harbor dewpoint figure to balance these interests. In order to provide the parties an opportunity to develop the necessary record, we shall set this issue for evidentiary hearing.

B. Posted Variable Safe Harbor Dewpoint and/or Btu Levels

39. The Commission accepted, subject to modification, Natural's proposal to post on its Internet website Btu and/or dewpoint limits for gas receipts that may vary over time and from place to place on its system, depending upon current conditions. The Commission found that giving Natural this flexibility would benefit shippers, by permitting Natural to accept rich gas on parts of the system where it could blend that gas with gas with fewer liquids. The Commission accepted Natural's proposal to provide at least 30 days notice of changes in the posted variable dewpoint and/or Btu levels. The parties raise several issues concerning Natural's posting of these varying maximum allowable dewpoint and/or Btu amounts.

Natural's Right to Change Posted Dewpoint and/or Btu Levels

Parties' Positions

40. Indicated Shippers seek clarification that the Commission rejects the proposal allowing Natural to change the 25° F safe harbor dewpoint limit upon thirty days notice. Indicated Shippers state a safe harbor number should be safe and reliable and if it is arbitrarily changed at Natural's discretion, it would not be considered safe and would not provide producers and shippers with the certainty necessary to plan for deliveries.

Commission Decision

41. Indicated Shippers confuse the proposed permanent dewpoint safe harbor figure in Section 26.1(h)(2) of Natural's tariff with the proposed posted variable safe harbor dewpoint and/or Btu levels that Natural will post on its Internet website. Proposed

Section 26.1(h)(2) provides that no posted dewpoint limit will be less than the permanent dewpoint safe harbor. The Commission clarifies that Natural may vary its posted variable safe harbor dewpoint, upon at least 30 days' notice, as long as the posted limit does not go below the permanent safe harbor dewpoint level, the reasonableness of which the Commission sets for hearing in this proceeding.

C. Natural's Right to Take Into Account Gas Quality Standards

42. The Commission's February 27, 2003 Order stated that "Natural's proposed GT&C Section 26.1(h) procedures permit Natural to establish maximum limits on either the dewpoint or the Btu content of gas entering its system. While Natural states that it only uses dewpoint analyses to control liquids fallout on its own system, some downstream pipelines have Btu limits and Natural must have the ability to conform the gas it delivers to those downstream pipelines to the Btu limits imposed by those pipelines."¹² The Commission found that if Natural could not conform its deliveries to the standards of downstream pipelines, then the downstream pipelines would shut in Natural's gas and this would not be in the public interest. Therefore, the Commission permitted Natural to take into account the quality standards of downstream pipelines in establishing the upper Btu/cf and/or dewpoint limit authorized by Section 26.1(h)(1) of the GT&C, as revised by the instant compliance filing.

Parties' Positions

43. In its comments, Natural asserted that it has to acquiesce to Btu and/or dewpoint restrictions imposed by interconnecting downstream pipelines that receive gas from Natural. Natural stated that ignoring restrictions imposed by interconnecting downstream pipelines would simply result in Natural's deliveries to those pipelines being shut-in.

44. In their rehearing request, Indicated Shippers contend that the Commission erred in relying upon Section 26.1(f) as justification for Natural's requirement that shippers process their gas based on downstream pipeline qualifications and the requirement is not addressed in Natural's tariff. Indicated Shippers further state that the record does not support permitting Natural's on-system markets to be adversely affected by Natural's attempt to serve incremental off-system markets accessed through interconnecting downstream pipelines. Indicated Shippers assert that the order does not identify the downstream pipelines setting Btu restrictions requiring Natural to maintain a heating value of 1050 Btu/cf on the eastern end of its Louisiana Line, and that nothing in the

¹²Natural, 102 FERC ¶ 61,234 at P 34 (2003).

record indicates the volumes delivered to these downstream pipelines or analyzes the cost of making such deliveries.

45. Additionally, Indicated Shippers suggest that many questions require answers concerning whether Natural needs the restrictions to protect the integrity and safety of the pipeline or whether the Commission should impose these restrictions so that Northern can make a relatively small number off-system sales. These issues require resolution before deciding to require the processing of gas in order to make off-system deliveries that may not bring in much additional revenue. Indicated Shippers believe that the Commission should distinguish between granting Natural flexibility to operate its system to prevent liquid fallout and operating its system to make off-system deliveries. Indicated Shippers argue that the Commission assumes without any factual basis that Natural must require its on-system shippers to process gas in order to meet the quality specifications of the downstream pipelines serving off-system markets. Indicated Shippers state that Natural can and should refuse to make deliveries to interconnecting downstream pipelines where the costs of compliance exceed the benefits to Natural and its shippers and producers.

46. On rehearing, Indicated Shippers also object that it is unduly discriminatory to allow any pipeline to set different quality standards for different shippers to permit Natural to make off-system deliveries. Indicated Shippers claim that the Commission has no record support for its finding that a contributing factor to the quality problems Natural experienced during the winter of 2000-2001 was that Natural had no control over the reaction of interconnecting downstream pipelines that receive gas from Natural, when the liquefiable content of Natural's gas increases. Indicated Shippers submit that the Commission assumed that the downstream pipelines imposed Btu restrictions only when the gas prices were high. Indicated Shippers state that the record shows that Btu restrictions were semi-permanent and had not been changed either before or after the price fluctuations in the 2000-2001 winter. Indicated Shippers contend that the Commission erred by indicating that circumstances similar to the circumstances during the winter of 2000-2001 would cause similar downstream pipeline restrictions and gas processing plant shut downs in the future.

47. Indicated Shippers claim it is unreasonable for the Commission not to require Natural to weigh the incremental revenue its receives from deliveries to pipelines with stringent quality standards and the harm to shippers and producers from the marginal costs of being forced to process their gas to enable Natural to obtain incremental revenues. Indicated Shippers argue that Natural's producers and shippers should not be forced to bear the cost of more stringent requirements of another pipeline where such costs are not required for operational purposes on Natural's system and are not justified relative to the incremental transportation service being provided. Indicated Shippers suggest that the

Commission needs more information about the costs and availability of gas supplies on both Natural and the downstream pipeline and the off-system volumes delivered as a result of the incurrence of the incremental costs of meeting more stringent standards to determine if it is in the public interest for Natural to maintain its ability to deliver gas to pipelines with more stringent requirements.

Commission Decision

48. The Commission is not persuaded by Indicated Shippers' arguments. As stated in the February 27, 2003 Order, Natural cannot control what Btu and/or dewpoint limits a downstream pipeline sets on its receipts from Natural, but Natural must meet those restrictions in order to deliver gas nominated at those points. What Indicated Shippers suggest is that, rather than allowing Natural to conform the gas in its system to the quality standards required by the downstream pipelines, the Commission should require Natural to differentiate those standards from the dewpoint limits it needs to operate its system and apply only the dewpoint limits it needs to operate its own system. The obvious result would be that the downstream pipelines shut-in Natural's gas to conform with their own system requirements.

49. Such an outcome does not benefit the public. A fundamental goal of Commission policy since Order No. 436 has been to encourage development of a seamless interstate pipeline grid, so that "willing buyers and sellers can meet in a competitive national market to transact the most efficient deals possible. As the House Committee Report to the Decontrol Act stated: 'All sellers must be able to reasonably reach the highest-bidding buyer in an increasingly national market. All buyers must be free to reach the lowest-selling producer and obtain shipment of its gas to them on even terms with other suppliers.'"¹³ For one pipeline to reject gas delivered by an upstream pipeline for failure to meet gas quality standards would fly in the face of this fundamental objective of Commission policy. In short, the public interest requires Natural to maintain its ability to make those deliveries for its customers.¹⁴

50. Natural, and all pipelines, transport gas in the public interest. We affirm that the

¹³Order No. 636, Pipeline Service Obligations and Revisions to Regulations Governing Self Implementing Transportation Under Part 284 of the Commission's Regulations, and Regulation of Natural Gas Pipeline After Partial Wellhead Decontrol, FERC Stats. & Regs., Regulations Preambles January 1991-June 1996 ¶ 30,939 at 30,393, citing, H.R. Rep. No. 29, 101st Cong., 1st Sess., at 6 (1989).

¹⁴Natural, 102 FERC ¶ 61,234 at PP 37-38 (2003).

upstream pipeline not meeting the downstream pipelines gas quality requirements is not in the public or national interest regardless of the downstream Btu restrictions and when the restrictions were put into place. The Commission has accepted quality standards established on downstream pipelines and affected parties have had the opportunity to comment on those standards. Furthermore, the downstream pipelines have to meet the market and gas quality standards of the LDCs and others who are actually supplying gas for end users, not just transporting gas in interstate commerce. This holds for all gas on-system or off-system. Therefore, Natural has the right to require gas, received into its system, whether for its own markets or for others, possess qualities that do not cause operational or safety problems and allows gas deliveries to meet the standards on downstream pipelines.

51. We affirm that the application of a quality standard to shippers that inject rich, non-conforming gas is not unduly discriminatory when operational constraints require Natural to enforce Section 26.1(f) of its tariff to prevent liquids fallout or sustain the pipeline's ability to deliver gas off-system on behalf of its customers. As was stated in the February 27, 2003 Order, the United States Court of Appeals for the District of Columbia Circuit has held that differences in treatment of shippers "based on relevant significant facts which are explained are not contrary to the NGA."¹⁵ The court further found that operational constraints in particular parts of a pipeline system may justify treating shippers on those parts of the system differently than shippers on other parts of the system.¹⁶ Our determination in this proceeding is consistent with a recent Commission order that accepted revisions to Colorado Interstate Gas Company's (CIG) gas quality standards, which provide that CIG will accept gas that does not meet its quality standards only if the quality of gas will not adversely affect CIG's ability to tender gas for delivery to a downstream pipeline or end-user.¹⁷

52. The February 27, 2003 Order did not rely upon Section 26.1(f) to justify Natural's requirement that shippers process their gas based on downstream pipeline qualifications. The Order found Section 26.1(f) required shippers to keep any hydrocarbons that might condense into free liquids out of Natural's system. The Order also found that the proposed procedures in Section 26.1(h) permit Natural to conform the gas it delivers to

¹⁵Consolidated Edison Co. v. FERC, 165 F.3d 992, 1013 (D.C. Cir. 1999).

¹⁶Consolidated Edison Co. v. FERC, 165 F.3d 992, 1010-14 (D.C. Cir. 1999).

¹⁷CIG, 103 FERC 61,058 at P 3 (2003).

the Btu limits of downstream pipelines.¹⁸ Finally, contrary to Indicated Shippers' claim, the February 27, 2003 Order stated that it was unclear whether circumstances similar to the circumstances during the winter of 2000-2001, including high gas prices, would cause similar downstream pipeline restrictions and gas processing plant shut downs in the future.¹⁹

53. Indicated Shippers essentially asks the Commission to allow shippers of rich gas to shift the burden of bringing non-conforming gas to the tariff's standard onto other shippers, which may be unjust and unreasonable. As discussed above, it is in the public interest for Natural to deliver gas on its system to downstream pipelines. Therefore, we shall not require Natural to do a cost/benefit analysis to balance the incremental transportation revenues derived by Natural from off-system deliveries against the incremental cost incurred by producers and shippers processing gas.

D. Assignment of Marginal Processing Costs to Assist in Pipeline Operations

February 27, 2003 Order

54. Protestors argued that the Commission should require a shipper injecting gas into Natural's system outside the Louisiana Zone, but nominating for deliveries in the Louisiana Zone, to satisfy the more stringent Louisiana Zone quality standard imposed by Natural, whereas shippers injecting gas into the Louisiana Line for delivery to the Chicago market area should not have to meet the Louisiana quality standard. The February 27, 2003 Order found that the record shows that Natural's blending and liquefiable extraction efforts do not enable it to accept all non-conforming gas. The Order stated that, "regardless of where a shipper nominates deliveries, the shipper that injects rich gas at any point, or along any given line segment of Natural's system, must bear the cost of processing that non-conforming gas, since in the absence of such processing the presence of that rich gas in Natural's system could prevent Natural from providing service to other customers."²⁰

Parties' Positions

¹⁸Natural, 102 FERC ¶ 61,234 at PP 10 and 34 (2003).

¹⁹Natural, 102 FERC ¶ 61,234 at P 19 (2003)

²⁰Natural, 102 FERC ¶ 61,234 at P 42 (2003).

55. In their request for rehearing, Indicated Shippers state that where Natural requires the processing of gas on one part of the system to a more stringent standard, only shippers nominating gas for delivery to that point where the quality specification is more stringent should be required to pay the processing costs needed to make the gas meet the more stringent standard. Indicated Shippers request the Commission to rely on a method similar to the locational marginal pricing (LMP) concept employed in electric proceedings, which involves the mitigation of congestion such that a transmission customer who is causing congestion must pay the marginal cost necessary to transmit the electricity and relieve the congestion that scheduling its transaction causes. Indicated Shippers suggest that the Commission should not require shippers who deliver gas to an area where their gas meets the necessary quality standards (for example, into Natural's Chicago market area) to pay for processing of their gas so that other shippers can deliver gas to an off-system market that requires heavier processing. Indicated Shippers suggest that a concept similar to LMP is both equitable and economically efficient, because it motivates optimal pipeline use by balancing the shipper's needs and desires to deliver gas off-system where there are more stringent quality standards on the one hand and requiring other shippers to unnecessarily process their gas on the other hand.

Commission Decision

56. The Commission denies Indicated Shippers' request for rehearing. We affirm the February 27, 2003 Order's determination that shippers injecting rich gas into any point of receipt or along any given line segment of Natural's system where the quality specifications are more stringent -- not shippers nominating gas for delivery out of such points -- should be required to pay the processing costs needed to make the gas meet the more stringent standards, since it is their rich gas creating the problem. The absence of such processing could prevent Natural from providing service to other customers. Requiring only the shippers nominating gas for delivery from the point where the quality specification is more stringent, as suggested by Indicated Shippers, would shift the cost of additional processing from the shippers injecting rich gas at points of receipt where gas quality standards are more stringent, to other shippers that are only taking delivery at those points, whose gas does not cause the problem.

57. Indicated Shippers request the Commission to rely on a method similar to the LMP concept employed in electric proceedings which involves the mitigation of congestion such that a transmission customer who is causing congestion must pay the marginal cost. We shall not require Natural to adopt an LMP type method here. An LMP type method is not appropriate in the circumstances of this case. In the case of electric transmission, the LMP method shifts the marginal costs of mitigating congestion on the electric load that is causing congestion. This properly assesses the cost of the congestion to the entities

causing the problem. Shippers injecting rich gas where more stringent gas quality standards are imposed should bear the cost of additional processing, not other shippers who are only taking delivery from those points. The LMP adjustment Indicated Shippers propose would unreasonably shift such costs to shippers merely taking delivery from points with stringent quality standards, rather than assessing the costs on shippers tendering nonconforming gas for receipt at such points.²¹

E. Informational Posting of Hydrocarbon Dewpoint Levels

58. As stated above, the Commission required Natural to increase the amount of Btu and dewpoint information it makes available to its shippers. The Commission required Natural to post every receipt point dewpoint value Natural calculates, along with the method of dewpoint calculation, and every blended dewpoint and blended Btu value Natural calculates for a line segment of its system. In their request for rehearing and clarification, Indicated Shippers request clarification that Natural should calculate the hydrocarbon dewpoint level for all receipt points impacted by dewpoint limits on its system. Indicated Shippers' requested clarification is unnecessary. The revised tariff provisions proposed in Natural's compliance filing provide that Natural will calculate the dewpoint at any point of receipt into Natural's system affected by the posting of a limitation under Section 26.1(h)(1) on the request of the point operator, or any producer, purchaser, supply aggregator or shipper of gas tendered at that point. Therefore, Indicated Shippers and other affected parties can obtain information from Natural and independently examine the data for any point where they are affected.

F. Adequacy of the Commission's Complaint Process to Prevent Pipeline Discrimination

February 27, 2003 Order

59. In the February 27, 2003 Order, the Commission stated that it will rely upon the ability of Natural's shippers to use the Commission's complaint process, the imposition of a permanent dewpoint safe harbor, and the requirement that Natural file revised tariff provisions to provide that it shall post, on its Internet website, every receipt point

²¹While it is possible that shippers injecting gas into other parts of Natural's system may tender gas of the same quality as the nonconforming gas injected by shippers at receipt points with the more stringent gas quality standards, the gas injected by those shippers on other parts of the system is not causing any operational problem, because Natural has the operational capability to handle nonconforming gas injected into other portions of its system.

dewpoint value Natural calculates, along with the method of dewpoint calculation, and every blended dewpoint and blended Btu value Natural calculates for a line segment of its system to prevent undue pipeline discrimination. The Commission explained that coupled with the Section 26.1(h) procedures, and the shipper's ability to question Natural about the flow path of the shipper's volumes, a shipper should be able to assess whether Natural's imposition of quality restrictions on a given shipper is reasonable and not unduly discriminatory.

Parties' Positions

60. Indicated Shippers state that although information provided by Natural would help shippers assess whether Natural is discriminating, the complaint process is not an expeditious or cost-effective process and consequently does not provide adequate protection against discriminatory treatment of shippers. If there is discriminatory treatment found, by the time a shipper goes through the complaint process, the economic situation has long passed.

Commission Decision

61. We affirm the February 27, 2003 Order. The complaint process is the method the Commission uses in finding and rectifying discriminatory actions once it accepts appropriate tariff provisions. Moreover, the hearing process established by this Order will ensure that the permanent safe harbor dewpoint level is fully examined to validate its propriety. The Commission or the shippers may not be able to recognize discriminatory action instantaneously, and in all cases there will be some lag time between the action, the complaint, and the resolution of the complaint. However, even though the economic effect has passed, the pipeline is not relieved from the consequences of its action. If it is proven during the complaint process that pipeline discrimination has occurred, the Commission has a variety of measures it can take to make the party discriminated against whole.

IV. Conclusion

62. The Commission generally affirms the February 27, 2003, Order, which sought to balance the need of Natural to meet the operational requirements of its system and its shippers' need for certainty that Natural will accept their gas for transport on its system without undue discrimination. However, the Commission finds that the existing record in this proceeding does not provide an adequate basis to resolve the material issue of facts raised by the parties concerning Natural's support for its proposed permanent safe harbor dewpoint figure. Therefore, the Commission will set the issue of the appropriate permanent safe harbor dewpoint figure for an evidentiary hearing before an

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Administrative Law Judge (ALJ). The Commission grants in part and denies in part, as described above, Indicated Shippers' request for rehearing and clarification on the remaining issues. Finally, the Commission accepts the revised tariff sheets listed in footnote number 1 of this Order, subject to the outcome of the hearing and the conditions discussed above, as complying with the February 27, 2003 Order.

The Commission orders:

(A) Pursuant to the authority of the Natural Gas Act, particularly Sections 4, 5, 8, and 15 thereof, and the Commission's rules and regulations, a public hearing is to be held in the instant proceeding concerning the lawfulness of Natural's proposed tariff revisions related to the appropriate level of the permanent dewpoint safe harbor.

(B) A presiding ALJ, to be designated by the Chief ALJ, pursuant to 18 C.F.R. § 375.304, must convene a prehearing conference in this proceeding to be held within 20 days after issuance of this Order, in a hearing room of the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. The prehearing conference is for the purpose of clarifying the positions of the participants and establishing any procedural dates necessary for the hearing. The presiding ALJ judge is authorized to conduct further proceedings in accordance with this order and the rules of practice and procedure.

(C) Indicated Shippers' request for rehearing and clarification are granted in part and denied in part, as discussed in the body of this order.

(D) The tariff sheets listed in footnote No. 1 of this order are accepted as in compliance with the February 27, 2003 Order, subject to the outcome of the hearing and the conditions set forth in the body of this order.

By the Commission.

(S E A L)

Linda Mitry
Acting Secretary