

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

Indicated Shippers v. Trunkline Gas Company, LLC      Docket No. RP04-64-001

ORDER ON REHEARING

(Issued March 8, 2004)

1. Trunkline Gas Company, LLC (Trunkline) requests rehearing of the Commission's order of December 30, 2002<sup>1</sup> which required it to cease and desist from posting Critical Notices and OFOs that impose long-term restrictions on the gas quality standards in its tariff. For the reasons discussed below, the Commission denies the request. This order benefits the public because it ensures that pipelines implement gas quality standards in accordance with the Natural Gas Act and the Commission's regulations.

**Background**

2. Indicated Shippers, producers of gas, alleged that a number of pipelines are changing their gas quality standards without making Section 4 filings. Indicated Shippers are concerned that pipelines are restricting the amount of liquefiable hydrocarbons that enter their systems through improper means. When gas prices increase, it is less profitable to remove these hydrocarbons from the gas stream and sell them as natural gas liquids. Allowing them to remain in the gas stream flowing through the pipeline raises the heat content, or British thermal unit (Btu) level, of the gas. It also means that liquefiable hydrocarbons are conveyed into regions with lower temperatures and may condense out of the gas stream. The resulting condensate may damage pipeline equipment through corrosion and obstruction.

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<sup>1</sup> Indicated Shippers v. Trunkline Gas Company, LLC and Indicated Shippers v. ANR Pipeline Company, 105 FERC ¶ 61,394 (2003) (December 30 Order).

3. On November 21, 2003, Indicated Shippers filed a complaint against Trunkline alleging that Trunkline's tariff permitted gas transported on its system to have a heat content up to 1,200 Btu/cubic foot, but that Trunkline had imposed a limit of 1,050 Btu/cubic foot on gas entering its Terrebonne system by posting a Critical Notice on its website on January 26, 2001 that was effective indefinitely. Indicated Shippers asserted that such an indefinite change to the quality of gas Trunkline would accept was a revision to its tariff provisions and that Trunkline could only make such a change by filing under Section 4 of the NGA to change those provisions. They also asserted that the Commission's regulations<sup>2</sup> require pipelines to file these operational conditions as part of their transportation tariffs. Indicated Shippers asserted Trunkline was improperly using Critical Notices, which they regarded as equivalent to an Operational Flow Order (OFO) in these circumstances. They stated that the purpose of an OFO was to address emergency situations of short duration. They asked the Commission to require Trunkline to remove notices concerning restrictions on gas quality from its website and to direct Trunkline to cease and desist from the practice of posting long term OFOs and Critical Notices to impose gas quality specifications.

4. On November 21, 2003, Indicated Shippers filed a similar complaint against ANR Pipeline Company in Docket No. RP04-65-000. They alleged, inter alia, that ANR's tariff also permits gas to have a heat content of up to 1,200 Btu per cubic foot,<sup>3</sup> but that ANR had restricted the Btu content of gas received in its Southeast (SE) system to no more than 1,050 Btu per cubic foot through OFOs that have been issued since November, 2001, and are currently in effect until December 31, 2049. The OFOs were posted in the Critical Notice portion of ANR's website.

5. On December 11, 2003, Trunkline filed an Answer stating that it had removed the January 26, 2001, Critical Notice from its website on December 10, 2003. It asserted the complaint was moot and procedurally deficient because it did not quantify the economic impact of the issues raised and did not state that settlement procedures were used or why they were not used as required by the Commission's regulations.<sup>4</sup>

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<sup>2</sup> 18 C.F.R. § 284.7 (c) (2003).

<sup>3</sup> ANR's FERC Gas Tariff, Second Revised Volume No. 1, section 13.1, Original Sheet No. 129.

<sup>4</sup> 18 C.F.R. §§ 385.206(b)(4) and (b)(9) (2003).

6. The Commission issued an order granting the complaints against both Trunkline and ANR on December 30, 2003.<sup>5</sup> The Commission held the complaint against Trunkline was not moot. The Commission found Trunkline had not filed a joint motion with the complainant to dismiss the complaint which would be required to make the complaint moot under the regulation on which Trunkline relied.<sup>6</sup> In addition, the Commission found not all of the issues in the Trunkline complaint had been resolved. The Commission found that one aspect of the relief sought, that involving the removal of the January 26, 2001, notice from Trunkline's website, had been satisfied. However, it found that other relief had been requested, to cease and desist from such conduct in the future, and that this relief had not yet been provided. The Commission also stated that even if no relief remained to be provided, as a federal administrative body, it could still render an advisory opinion on the subject matter of the complaint.

7. The Commission also found that the procedural deficiencies in the Trunkline complaint, consisting of a failure to quantify the economic impact of the issues raised and to state the settlement procedures that were used or why they were not used,<sup>7</sup> were not decisive. The Commission stated it has discretion whether to waive the requirements for complaints stated in its regulations. The Commission found that, in this case, the Commission's regulatory interests in the issues raised in the complaints outweighed the procedural deficiencies cited by the pipelines. Therefore, it waived the two cited requirements and declined to dismiss the Trunkline complaint.

8. With regard to the merits of the Trunkline complaint, the Commission stated in the December 30 Order that gas quality standards are practices of the pipeline and operational conditions and must be included in the pipeline's tariff.<sup>8</sup> These standards and conditions establish the mutual obligations of shippers and pipelines for contracted services. The Commission stated Trunkline has gas quality standards in its tariff and that its tariff provides that shippers may deliver

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<sup>5</sup> 105 FERC ¶ 61,394 (2003).

<sup>6</sup> 18 C.F.R. §385.206(j) (2003).

<sup>7</sup> 18 C.F.R. §§ 385.206(b)(4) and (b)(9) (2003).

<sup>8</sup> Section 4(c) of the NGA; 18 C.F.R. §§ 154.108(e) and 284.7(c) (2003). Section 154.108(e) specifically identifies "heat content and measurement base" as items required to be part of a pipeline's tariff.

gas with a Btu content of up to 1,200 Btu per cubic foot.<sup>9</sup> The Commission found that Trunkline's tariff does not provide that the pipelines may require the reduction of Btu content below the level established in the tariff.

9. The Commission found in the December 30 Order that from January 2001 through December 2003, Trunkline posted a notice limiting gas quality in portions of its system on its websites. Trunkline issued its notice as a Critical Notice which was effective for its Terrebonne system beginning February 1, 2001 with no termination date. The Commission found this notice was posted in the Critical Notice portion of the pipeline's website, and the notice lowered the permissible Btu content for gas on this portion of its system from 1,200 Btu per cubic foot to 1,050 Btu per cubic foot.

10. The Commission held in the December 30 Order that Trunkline prescribed new, effectively permanent, lower gas quality standards through Critical Notices. The result was that the gas quality standards in the pipeline's tariff were superceded and the new lower limit contained in the Critical Notice became the standard for a substantial portion of the pipeline's system. Thus, the Commission held, the notice changed the provisions of Trunkline's tariff to require shippers to meet a stricter gas quality standard.

11. The Commission stated that Section 4(d) of the NGA requires pipelines to give notice and to make a filing with the Commission to change tariff provisions. The Commission found Trunkline had improperly used Critical Notices to make permanent changes to its tariff. It held that Trunkline's practice of making its gas quality standards more restrictive through posting notices on its websites is contrary to Section 4(d) of the NGA. The Commission found Trunkline had violated Section 4(d) of the NGA and the Commission's regulations by effectively making permanent restrictions on its gas quality standards through a notice on its website rather than through filings under Section 4(d) of the NGA. Consequently, the Commission granted the complaints.

12. The Commission also found in the December 30 Order that Trunkline had misused Critical Notices.<sup>10</sup> It found the Critical Notice procedures do not appear to be part of Trunkline's tariff. It stated that presumably Critical Notices are

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<sup>9</sup> Trunkline's FERC Gas Tariff, Third Revised Volume No. 1, section 13.6, Original Sheet No. 274.

<sup>10</sup> 105 FERC ¶ 61,394 at P 23.

intended to provide shippers with information, primarily concerning unusual conditions that arise within a short time on a pipeline system and require prompt action on the part of shippers. The Commission found Trunkline improperly used the Critical Notice mechanism to change provisions in its tariff concerning gas quality on an essentially permanent basis.

13. The Commission accepted Trunkline's statement that it had already removed the January 26, 2001 Critical Notice from its website. The Commission required Trunkline to cease and desist from posting Critical Notices and OFOs that impose long-term restrictions on the gas quality standards in its tariff. The Commission stated these holdings were without prejudice to Trunkline's filing under Section 4(d) of the NGA to make its current gas quality standards more restrictive.

14. In the ANR complaint in Docket No. RP04-65-000, the Commission found ANR had violated Section 4(d) of the Natural Gas Act by making permanent changes to its gas quality standards by posting OFOs on its website, that ANR had misused OFOs, and that it expected ANR to file a proposal concerning its gas quality standards on its system as soon as possible. The Commission required ANR to remove its then posted OFO of March 4, 2003 from its website on or before January 31, 2004.

15. Trunkline has requested rehearing of the December 30, 2003 Order. ANR has not requested rehearing.

## **Discussion**

16. On rehearing, Trunkline contends, among other things, that it should not be required to cease and desist from posting Critical Notices that impose long-term restrictions on the gas quality standards in its tariff because the Commission did not impose this requirement in a subsequent order on similar complaints Indicated Shippers filed against Columbia Gulf Transmission Company (Columbia Gulf) and Tennessee Gas Pipeline Company (Tennessee).<sup>11</sup> Trunkline asserts it followed the critical notice procedures of the North American Energy Standards Board (NAESB) which are incorporated in its tariff. Trunkline also contends the complaint should have been

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<sup>11</sup> Indicated Shippers v. Columbia Gulf Transmission Company and Indicated Shipper v. Tennessee Gas Pipeline Company, 106 FERC ¶ 61,040 (2004) (Columbia Gulf) (Docket Nos. RP04-98-000 and RP04-99-000).

dismissed as moot or premature. The Commission denies Trunkline's rehearing request, as discussed below.

17. Trunkline asserts it is similarly situated to Columbia Gas and Tennessee, since they also posted notices concerning gas quality. Trunkline insists that the Commission did not require Columbia Gas and Tennessee to cease and desist from posting notices concerning gas quality, and, therefore, should not require Trunkline to cease and desist from posting such notices. Trunkline states that its tariff permits it to protect its pipeline by rejecting gas when the gas received is not "free of water and hydrocarbons in liquid form."<sup>12</sup>

18. The Commission does not agree that there is any inconsistency between our actions with respect to Trunkline and our actions with respect to Columbia Gas and Tennessee. Trunkline posted Critical Notices that imposed a maximum Btu limit for gas of 1,050 Btu/cubic foot and those notices remained in effect from January 2001 until removed two years later in response to Indicated Shippers' complaint. This limit was lower than the maximum limit in Trunkline's tariff, 1,200 Btu/cubic foot. Trunkline's Critical Notices thus established an effectively permanent maximum Btu content level which was more restrictive than the maximum Btu content standard expressly set forth in its tariff. The fact that Trunkline used Critical Notices to implement an effectively permanent change to a gas quality standard expressly set forth in its tariff is sufficient basis for the Commission to find that Trunkline violated Section 4(d) of the Natural Gas Act, that it used Critical Notices to subvert the tariff filing process, and that it should be required to cease and desist from posting OFOs and Critical Notices that impose long-term restrictions on the gas quality standards in its tariff.

19. In the January 26, 2004, Order on the complaints against Columbia Gulf and Tennessee, the Commission found that from period January 25, 2001 through March 2, 2001, Tennessee had posted a notice requiring processing for gas with a heat content in excess of 1,050 Btus, even though its tariff contained an express provision permitting a maximum heating content of up to 1,100 Btus. Consistent with its action in Trunkline, the Commission found the 1,050 Btu restriction to violate Tennessee's tariff.<sup>13</sup> Apart from Tennessee's notice from January 25, 2001 through March 2, 2001, neither Columbia Gulf nor Tennessee attempted to implement a specific gas quality standard that was more restrictive than a specific gas quality standard in their tariffs. Columbia Gulf

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<sup>12</sup> Trunkline Gas Company, LLC, FERC Gas Tariff, Second Revised Vol. No. 1, section 13, Original Sheet No. 265.

<sup>13</sup> 106 FERC at fn. 37.

posted Critical Notices requiring a Btu content of 1,050 Btu/cubic feet. However, Columbia Gulf's tariff, unlike Trunkline's, contains no maximum Btu requirement and permits Columbia Gulf to impose additional gas quality restrictions. After March 2, 2001, Tennessee posted Critical Notices requiring gas to be processed when the hydrocarbon dewpoint of the gas is greater than 20 degrees Fahrenheit. Tennessee's tariff contains no hydrocarbon dewpoint limit and permits Tennessee to require gas to be processed. Thus, Columbia Gulf and Tennessee were using flexibility allowed by their approved tariffs and were not using notices to implement specific standards that were different from an express standard included in their tariffs. Therefore, there was no basis for requiring Columbia Gulf and Tennessee to cease and desist from enforcing gas quality standards in their notices and Critical Notices, the relief requested in those proceedings.

20. The Commission did determine, however, that the tariff provisions on which Columbia Gulf and Tennessee relied in posting the notices which imposed the gas quality restrictions were unjust and unreasonable because they gave the pipelines too much discretion to vary gas quality standards without notice or procedures to protect customers.<sup>14</sup> The Commission required Columbia Gulf and Tennessee to make Section 5 compliance filings to revise the gas quality provisions on which they had relied in posting their notices within 30 days of the issuance of the order. The result of the Commission's action will be that Columbia Gulf and Tennessee will establish gas quality standards in their tariffs, and not implement permanent standards through Critical Notices posted on their websites. Thus, the result is the same as that in this proceeding with Trunkline. Pipelines must use tariff filings, not website postings, to set their gas quality standards. The facts of Columbia Gulf and Tennessee are different from those in Trunkline, however, so that this result was reached in a different manner.

21. Trunkline also contends that its Critical Notices were in conformance with NAESB standards concerning Critical Notices<sup>15</sup> and that those standards are incorporated

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<sup>14</sup> 106 FERC ¶ 61,040 P 35 and 36.

<sup>15</sup> Trunkline states NAESB Definition 5.2.1 of the Capacity Release Related Standards provides "[c]ritical notices should be defined to pertain to information on transportation service provider conditions that affect scheduling or adversely affect scheduled gas flow." Trunkline also states that NAESB Standard 1.3.26 requires that the notice be sent only to the affected parties and "describe the conditions and the specific responses required." NAESB, Business Practice Standards, Version 1.6 (July 1, 2002).

in its tariff.<sup>16</sup> But the matter at issue here was whether Trunkline's Critical Notices implemented a specific gas quality standard on an effectively permanent basis that was different from an express gas quality standard in its FERC-approved gas tariff, not whether Trunkline's Critical Notices conformed to the NAESB standards. The NAESB Critical Notice standards do not and cannot give Trunkline the authority to make an effectively permanent change to its tariff.

22. Trunkline asserts the Commission applied too strict a standard to its Critical Notices. Trunkline cites the Commission's statement that Trunkline had made no showing that it was experiencing a force majeure situation that led to the limitation on liquids and liquefiabiles.

23. In its discussion, the Commission noted that Trunkline did not appear to be experiencing a force majeure situation or extraordinary levels of hydrocarbons.<sup>17</sup> The Commission made these statements concerning the lack of short-term emergency or force majeure situations on Trunkline to indicate that Trunkline's Critical Notices did not appear to address a short-term, current emergency. The Commission considered both force majeure situations and other emergencies. Since there did not appear to be any short-term emergency, there was no compelling reason to retain the Critical Notice for the immediate future and it could be removed as violative of Trunkline's tariff.

24. Trunkline asserts the Commission erred in requiring Trunkline to cease and desist from using OFOs to establish long-term gas quality standards because Trunkline did not issue such OFOs.<sup>18</sup> Trunkline asserts the Commission has applied its OFO policies concerning gas quality standards to Trunkline's Critical Notices. Trunkline asserts it has been ordered to stop doing something it was not accused of doing in the complaint. It also asserts the prohibition against using OFOs should not have applied retroactively to its Critical Notice (which, it asserts, had already been removed). Last, Trunkline asserts the Commission's ruling regarding OFOs appears to be an advisory opinion.

25. The Commission rejects these arguments. In Ordering Paragraph B of the December 30 Order, the Commission required Trunkline "to cease and desist from posting Critical Notices and OFOs that impose long-term restrictions on the gas quality standards in its tariff." Ordering Paragraph B correctly stated the requirements that

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<sup>16</sup> Trunkline cites section 28 of its tariff, Trunkline Gas Company, LLC, FERC Gas Tariff, Second Revised Vol. No. 1.

<sup>17</sup> 105 FERC ¶ 61,394 P 16 n.17 and P 19.

<sup>18</sup> Trunkline cites P 25 of the December 30 order, 105 FERC ¶ 61,394 (2003).

Trunkline issue neither Critical Notices nor OFOs that impose long-term restrictions on the gas quality standards in its tariff. This requirement is a determination on the merits, not an advisory opinion.

26. Trunkline asserts it should not be required to cease and desist from issuing OFOs on gas quality because it issued only Critical Notices. However, if Trunkline did issue an OFO, it would be posted on the Critical Notice portion of Trunkline's website.<sup>19</sup> Thus, as a practical matter, on Trunkline's system, an OFO is included in and is a type of Critical Notice. In addition, an OFO arguably falls within NAESB Standards 1.3.26 and 5.2.1 which Trunkline has cited. Consequently, the Commission did not add a requirement in prohibiting Trunkline from posting OFOs concerning gas quality, it only made its requirement concerning Critical Notices more specific by identifying a type of Critical Notice on Trunkline's system that is of great importance to the Commission, the OFO.

27. Trunkline contends the complaint was rendered moot when it removed its Critical Notice on December 10, 2003, and should have been dismissed. Trunkline asserts Indicated Shippers asked for new relief, revision of Trunkline's tariff, only in its Answer of December 29, 2003, but that the Commission did not rule on the Answer. Trunkline contends again that the Commission's opinion is only advisory and asks the Commission to vacate its December 30 Order as it pertains to Trunkline.

28. The Commission disagrees. As it stated in the December 30 Order, not all of the issues had been resolved. One aspect of the relief sought, that involving the removal of the January, 2001 notice from Trunkline's website, had been satisfied. However, other relief had been requested, to cease and desist from such conduct in the future, had not yet been provided. Thus, the controversy remained alive at the time of the Commission's ruling.

29. Trunkline issued a Critical Notice in January, 2001 that violated its tariff and retained that notice for a period of almost three years. The notice was in force at the time Indicated Shippers filed their complaint on November 21, 2003. The Commission issued its order on December 30, 2003. While Trunkline had removed the January, 2001 notice prior to December 30, it had not admitted that the original issuance of the notice, and the continuance of that notice in effect until after Indicated Shippers filed their complaint, violated its tariff. Thus, the actions of which Indicated Shippers complained appeared capable of repetition, yet Trunkline could evade review by removing the notice whenever

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<sup>19</sup> Trunkline's website has a section entitled Informational Postings, which, in turn, contains a section entitled Notices. Under Notices, there are Non-Critical Notices and Critical Notices.

a complaint was filed. How gas quality standards are to be established on Trunkline and relief for the future were viable issues at the time the Commission issued its December 30 Order. It was incumbent on the Commission, in carrying out its responsibilities under the Natural Gas Act, to ensure that tariff violations do not recur and thus to issue an order on the merits on Indicated Shippers' complaint in Docket No. RP04-64-000 concerning Trunkline.

30. For the reasons discussed above, the Commission affirms its holdings that Trunkline's removal of the Critical Notice on December 10, 2003 did not render the complaint moot and that the Commission's December 30 Order is a decision on the merits as to Trunkline, not an advisory opinion. Consequently, the Commission declines to vacate the December 30 Order as it pertains to Trunkline.

31. Trunkline also contends the complaint was premature because Indicated Shippers did not first contact the Commission or Trunkline, as Trunkline contends they are required to do by the Commission's regulations.<sup>20</sup> Trunkline contends the Commission required complainants to use informal dispute resolution procedures in Order No. 578.<sup>21</sup> Trunkline also asserts the Indicated Shippers violated section 2.10 of its tariff<sup>22</sup> by filing their complaint without first contacting Trunkline to try to resolve the issue.

32. The Commission denies Trunkline's request to dismiss the complaint as premature. It affirms its holdings in the December 30 Order. In the December 30 Order, the Commission found that the procedural deficiencies in the complaints, which consisted of a failure to quantify the economic impact of the issues raised and to state the settlement procedures that were used or why they were not used,<sup>23</sup> were not decisive. The Commission stated it has discretion whether to waive the requirements for complaints stated in its regulations. In the December 30 Order, the Commission found that, in this case, the Commission's regulatory interests in the issues raised in the complaint outweighed the procedural deficiencies cited by the pipeline. Therefore, it waived the two cited requirements and declined to dismiss the complaints.

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<sup>20</sup> 18 C.F.R. § 385.206(b)(9) (2003).

<sup>21</sup> Trunkline cites Alternative Dispute Resolution, Order No. 578 (Docket No. RM91-12-000) (April 12, 1995) and 5 U.S.C. §572(a)(2).

<sup>22</sup> Trunkline Original Sheet No. 215, Trunkline Gas Company, LLC, FERC Gas Tariff, Second Revised Vol. No. 1.

<sup>23</sup> 18 C.F.R. §§ 385.206(b)(4) and (b)(9) (2003).

33. Gas processing affects the safety of pipeline operations, a grave concern for the Commission and the industry. In addition, the complaint against Trunkline alleged a violation of Trunkline's tariff. Under these circumstances, the Commission found that it must act quickly rather than require the Indicated Shippers to quantify the economic impact of the issues raised and to state the settlement procedures that were used or why they were not used.

34. In any event, contrary to Trunkline's assertions, the Commission's regulations do not require a complainant to use informal dispute resolution procedures prior to filing a complaint. Instead, the regulations require the complainant to state whether any informal dispute resolution procedures were used or why such procedures were not used. And last, section 2.10 of Trunkline's tariff is part of section 2, Requests for Service.<sup>24</sup> It is not clear that section 2.10 is intended to apply to gas quality standards. While section 2.10 provides that if a shipper has any complaints, the shipper should contact Customer Services, it appears from the tariff that the complaints referred to in section 2.10 are concerned with requests for service and related matters covered in section 2 such as creditworthiness and choosing primary points, and not with gas quality.<sup>25</sup> Thus, the

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<sup>24</sup> See Original Sheet Nos. 211-215, Trunkline Gas Company, LLC, FERC Gas Tariff, Second Revised Vol. No. 1.

<sup>25</sup> Section 2.10 provides:

In the event that a Shipper or potential Shipper may have any complaints, Shipper or potential Shipper shall:

(A) Provide Trunkline a written description of the complaint, including the identification of Shipper's contract number or request for service, whichever is applicable, by contacting Trunkline at the following:

Trunkline Gas Company, LLC  
Attn: Customer Services  
P. O. Box 4967  
Houston, Texas 77210-4967  
Phone: (713) 627-4272 or  
1-800-275-7375

(B) Trunkline shall respond initially within forty-eight (48) hours and in writing within thirty (30) days advising Shipper or potential Shipper of the disposition of the complaint.

Commission finds Indicated Shippers was not required to file a complaint with Trunkline before filing a complaint with the Commission.

The Commission orders:

The Commission denies Trunkline's request for rehearing.

By the Commission. Commissioner Kelly not participating.

( S E A L )

Magalie R. Salas  
Secretary.