

SCANNED

IN THE CIRCUIT COURT OF HARRISON COUNTY, WEST VIRGINIA

RILEY NATURAL GAS COMPANY,
a West Virginia corporation;

Plaintiff,

v.

Civil Action No. 15-C-405-3

NORTHSTAR ENERGY CORPORATION,
a West Virginia corporation;

Defendant.

**RILEY NATURAL GAS COMPANY'S VERIFIED COMPLAINT FOR BREACH OF
CONTRACT AND DECLARATORY AND MONETARY RELIEF**

Riley Natural Gas Company ("RNG"), by and through counsel, hereby files this Verified Complaint for Breach of Contract and Declaratory and Monetary Relief against Northstar Energy Corporation ("Northstar"), and states as follows:

Nature of Action

1. This action relates to the breach of a contract for the purchase and sale of natural gas and breach of contractual commitments pertaining to the reimbursement of charges for firm transportation acquired by RNG on behalf of Northstar to facilitate the purchase and sale of Northstar's natural gas.

2. RNG seeks a declaratory judgment from this Court declaring that Northstar, as part of its agreement with RNG for the purchase, sale and marketing of its natural gas, is contractually liable and responsible to RNG for all costs, charges, surcharges, deductions, and fees for firm transportation capacity on Dominion Transmission, Inc.'s ("DTI") Appalachia Gateway Pipeline Expansion Project ("DTI Gateway") incurred by RNG on behalf of Northstar

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irrespective of whether RNG, on behalf of Northstar, uses DTI Gateway capacity because of Northstar's failure to tender its gas to RNG.

3. RNG seeks monetary relief for damages it has or will suffer as a result of Northstar's failure to comply with its contractual obligations.

Parties

4. RNG is a West Virginia corporation with its principal place of business located at 120 Genesis Boulevard, Bridgeport, West Virginia 26330.

5. Defendant Northstar Energy Corporation is a West Virginia corporation with its principal place of business located at P.O. Box 3720, Charleston, West Virginia 25337.

Jurisdiction and Venue

6. Jurisdiction and venue are proper.

7. This declaratory judgment proceeding is instituted pursuant to the provisions of Rule 57 of the West Virginia Rules of Civil Procedure and the West Virginia Declaratory Judgment Act, West Virginia Code Section 55-13-1 et seq.

Facts

8. RNG is engaged in the business of buying, selling, and marketing natural gas, including on behalf of natural gas producing companies like Northstar. RNG is not a producer of natural gas.

9. Northstar is engaged in the business of natural gas production.

10. In order for produced natural gas to be successfully purchased, marketed and sold, in this case a service Northstar contracted with RNG to provide, requires that the producer, here Northstar, bear the cost of transporting their natural gas on pipelines on a firm or interruptible basis to desired physical points located on pipeline systems. Producers, like

Northstar, as is the case here, contracted with RNG to acquire firm pipeline transportation capacity, on its behalf, on DTI Gateway at a monthly cost and obligation, in order for the producers' gas to be received and transported on DTI.

11. DTI Gateway was designed to help meet the demand for natural gas in the Mid-Atlantic and Northeastern United States by constructing additional firm pipeline transportation capacity on DTI Gateway to transport natural gas to homes, businesses, industries, and power plants throughout the eastern United States.

12. Before constructing a pipeline or expanding an existing one, pipeline companies such as DTI rely on contractual commitments (called precedent agreements) between the pipeline company and its shippers of natural gas, in this case RNG on behalf of Northstar, which contain commitments from shippers to pay monthly charges, surcharges, deductions and fees to DTI ("DTI Gateway Charges") to financially support DTI's incurrence of millions of dollars of construction costs to construct the additional firm pipeline transportation capacity. In exchange, DTI commits to reserve firm capacity or space (firm transportation capacity) in the pipeline ready at all times for the shipper to call upon to use when needed; again, in this case for RNG's use on behalf of Northstar.

13. DTI conducted an open season that started on April 1, 2008, and ended on April 25, 2008, to seek commitments in the form of precedent agreements from shippers to reserve firm transportation capacity on DTI Gateway, and to pay the DTI Gateway Charges over a fixed term of years for the reserved firm transportation capacity to be constructed.

14. RNG and DTI subsequently entered into a precedent agreement in which RNG, on behalf of Northstar, purchased firm transportation capacity on DTI Gateway, with the

actual implementation of the firm transportation service (the “in-service date” of the pipeline facilities) to begin upon completion of the DTI Gateway facilities.

15. As an integral part of the DTI open season process and as a pre-requisite to RNG committing to purchase firm transportation capacity on DTI on Northstar’s behalf, Northstar agreed to reimburse RNG for the DTI Gateway Charges RNG would pay to DTI for the DTI Gateway firm transportation capacity for 10 years that was to facilitate RNG’s ability to purchase, market and sell Northstar’s natural gas on a firm basis on the DTI Gateway facilities. This agreement between Northstar and RNG is memorialized in an agreement dated August 1, 2008 (“Agreement”), a copy of which is attached hereto as “Exhibit 1.”

16. Without the agreements and commitments by Northstar, RNG would not have acquired DTI Gateway firm transportation capacity on behalf of Northstar; and, without such firm capacity, Northstar understood and knew that RNG, on Northstar’s behalf, may not be able to sell Northstar’s gas into the DTI Gateway system, which would have jeopardized Northstar’s revenue earnings capabilities from such gas sales.

The Agreement

17. The primary purpose of the Agreement was to facilitate the purchase, sale, and marketing by RNG of Northstar’s natural gas at physical points into DTI Gateway (“Delivery Point(s)”) up to and requiring a firm transportation quantity on DTI Gateway specified in the Agreement of August 1, 2008 as 3500 dth/day for 10 years. See Ex. 1, at Exhibit A.

18. Northstar’s commitment was subsequently modified to include a FT [firm transportation] Rate of \$0.495/dt; however, the firm transportation quantity remained as 3500

dth/day. See Contract #1065 Revised Exhibit A Term Sheet dated August 8, 2012, attached hereto as "Exhibit 2."

19. Pursuant to the Agreement, Northstar is responsible and liable to RNG for all charges of any kind, including transportation charges such as the DTI Gateway Charges, upstream or downstream of Delivery Point(s) identified in the Agreement. See Ex. 1, ¶ 2.

20. As a purchaser of DTI Gateway firm transportation capacity on behalf of Northstar to facilitate the delivery of Northstar's gas into the DTI Gateway Delivery Point(s), RNG agreed to pay DTI Gateway Charges on behalf of Northstar.

21. Pursuant to its agreement with DTI, and given the nature of firm transportation capacity on pipelines and the charges therefore, as described above, RNG is responsible and liable to DTI for the DTI Gateway Charges on behalf of Northstar irrespective of whether Northstar tenders natural gas to RNG for purchase and sale at the Delivery Point(s) under the Agreement.

22. Correspondingly, pursuant to the Agreement, Northstar is responsible and liable to RNG, and agreed to reimburse RNG, for all DTI Gateway Charges incurred by RNG on behalf of Northstar. See Ex. 1, ¶ 2; Ex. 1 at Exhibit B.

23. Moreover, Northstar is responsible and liable to RNG, and agrees to reimburse RNG, for DTI Gateway Charges irrespective of whether Northstar actually tenders natural gas to RNG for purchase and sale at the Delivery Point(s) pursuant to the Agreement. Id.

Count I – Breach of Contract

24. The Agreement is governed by the Uniform Commercial Code. See W. Va. Code § 46-2-107(1).

25. The Agreement contains all essential terms, including the parties to the Agreement, the subject matter of the Agreement, terms for determining the price of the natural gas to be purchased, the fees for marketing and selling the natural gas, the agreed upon volumes for firm transportation on DTI Gateway to facilitate the purchase and sale of the natural gas, the duration of the Agreement, and for the reimbursement by Northstar to RNG of DTI Gateway Charges.

26. The Agreement provides a reasonably certain basis for granting an appropriate remedy for breach. See W. Va. Code § 46-2-204(3).

27. Although Northstar has tendered natural gas to RNG for purchase and sale at the Delivery Point(s) pursuant to the Agreement, Northstar has wrongfully refused to reimburse RNG for all DTI Gateway Charges incurred by RNG on behalf of Northstar.

28. Northstar is legally obligated to pay and is legally liable to RNG for the DTI Gateway Charges. Section 2 of the Agreement clearly sets forth this obligation:

All charges of any kind upstream of the Delivery Point(s) including without limitation any gathering and extraction charges or deductions for retainage, fuel or shrink. In addition, charges downstream of Delivery Point(s) shall be borne as follows:

(a) for any Delivery Point(s) not into DTI's Appalachia Gateway Project facilities, [RNG] shall be responsible and liable for payment of all charges that are downstream of such Delivery Point(s); and

(b) for any additional Delivery Point(s) into DTI's Appalachia Gateway Project facilities, the terms set forth on Exhibit B, "ADDITIONAL TERMS FOR ANY DELIVERY POINT(S) INTO DTI'S APPALACHIA GATEWAY PROJECT FACILITIES" shall also apply.

Ex. 1, ¶ 2.

29. Exhibit B referenced in above Section 2 of the Agreement further states that Northstar shall pay and be liable to RNG for the DTI Gateway Charges listed in detail:

(a) the cost and fees for all FT [firm transportation] reserved from DTI by [RNG] for [Northstar]'s Firm Quantity for the ten (10) year period; (b) all other charges or deductions of any kind whatsoever including without limitation commodity fees, retainage, fuel and shrink assessed by DTI; and (c) the Management Fee set forth in the Term Sheet that shall compensate [RNG] for its management of assets including without limitation the management of nominations and the meeting of DTI's credit requirements by [RNG.]

Ex. 1 at Ex. B, ¶ ii.

30. RNG has invoiced Northstar for DTI Gateway Charges incurred by RNG on behalf of Northstar.

31. Northstar has wrongfully refused to reimburse RNG for DTI Gateway Charges incurred by RNG on behalf of Northstar as required by the Agreement.

32. Northstar's wrongful refusal to reimburse RNG for DTI Gateway Charges incurred by RNG on behalf of Northstar constitutes a breach of the Agreement, which provides in relevant part:

In no event whatsoever shall [Northstar] be relieved from its obligations to make payments to [RNG] for all FT [RNG] has reserved for any or all of [Northstar]'s Firm Quantity irrespective of the cause or contingency of such losses and any such failure to make payments shall be a breach under this Agreement.

Ex. 1 at Ex. B ¶ iii; see also Ex. 1, ¶ 2; Ex. 1 at Ex. A.

33. RNG has incurred substantial expenses resulting from Northstar's failure to comply with the Agreement.

Count II – Declaratory Relief

34. RNG re-alleges and incorporates by reference all of the allegations of paragraphs 1 through 33 of this Verified Complaint.

35. Under the Agreement, Northstar is contractually liable and responsible to, and required to reimburse, RNG for all DTI Gateway Charges for firm transportation capacity on DTI Gateway incurred by RNG on behalf of Northstar irrespective of whether RNG, on behalf of Northstar, uses DTI Gateway capacity because of Northstar's failure to tender its natural gas to RNG.

Count III – Monetary Relief

36. RNG re-alleges and incorporates by reference all of the allegations of paragraphs 1 through 35 of this Verified Complaint.

37. RNG has incurred substantial expenses resulting from Northstar's failure to reimburse RNG for DTI Gateway Charges incurred by RNG on behalf of Northstar as required by the Agreement.

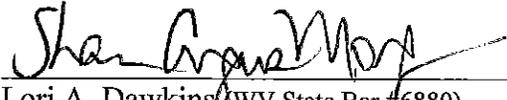
38. RNG is entitled to recover from Northstar all costs incurred as a result of Northstar's breach of contractual obligations.

WHEREFORE, Plaintiff Riley Natural Gas Company prays that this Court enter an order granting the following relief:

A. A declaration that Northstar is contractually obligated to reimburse RNG for DTI Gateway Charges incurred by RNG on behalf of Northstar;

B. Damages for all losses incurred by RNG from Northstar's breach of contractual agreements, including pre-judgment and post-judgment interest, attorneys' fees and costs associated with Northstar's breach of contractual obligations; and

C. Such other relief as this Court may deem just and appropriate.



Lori A. Dawkins (WV State Bar #6880)
600 17th Street, Suite 1950 S
Denver, CO 80202
(303) 389-4300

STEPTOE & JOHNSON PLLC
Of Counsel

Shawn A. Morgan (WV State Bar #6640)
Lauren K. Turner (WV State Bar #11942)
400 White Oaks Boulevard
Bridgeport, WV 26330
(304) 933-8000

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VERIFICATION

STATE OF WEST VIRGINIA

COUNTY OF HARRISON, TO-WIT:

Kathie Bonnell, being first duly sworn, states that she is employed by Riley Natural Gas Company as its Manager of Marketing, that she has read the foregoing "Verified Complaint for Breach of Contract and Declaratory and Monetary Relief" and that the information therein is true and correct to the best of her belief and knowledge.

Kathie Bonnell
Kathie Bonnell

The foregoing instrument was acknowledged before me this 13th day of October 2015, by Kathie Bonnell.

Susan D. Drimes
Notary Public



FILED IN 2570
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